

Shared Parenting Scotland submission of 17 March 2023

PE1968/D: Restrict perpetrators of domestic abuse from using family court proceedings to continue tormenting their victims

As noted in the SPICE Briefing on this petition, the issue raised by the petitioner is already covered in section 11 of the Children (Scotland) Act 1995, which states the principle that the welfare of the child is the paramount consideration. Further points were added in the Family Law (Scotland) Act 2006, which states that the court has to have particular regard to various aspects of protection from abuse. Further changes will be made when the Children (Scotland) Act 2020 is implemented.

The Committee might wish to comment about the slow progress of implementation of that Act, particularly the experimental scheme to hold dispute resolution information meetings before cases are considered in court.

Shared Parenting Scotland considers that this scheme could have great benefits to children if it is successful in helping more separated parents to reach decisions about child contact quickly and avoid adversarial, expensive and slow court processes.

Shared Parenting Scotland agrees with the petitioner's concern about the impact of family court hearings in Section 11 child contact cases, but does not recognise her assertion that perpetrators of domestic abuse repeatedly use the family court system as a way to continue abusing their victims.

We have stated many times, including during consideration of the Children (Scotland) Bill in 2020 and the consultations that preceded it that there is a very serious lack of statistical information about the number and extent of child contact cases in Scottish courts. The one study which is often quoted in relation to this issue in Scotland¹ is based on a limited number of cases in 2006 and explicitly acknowledged that it

¹ <https://www.research.ed.ac.uk/en/publications/the-treatment-of-the-views-of-children-in-private-law-child-conta>

was not part of the research to examine the detail of the allegations of domestic abuse.

Another study², also limited, investigated 107 children from 72 families in which residence issues had been previously settled but which were subject to ongoing disputes regarding contact or change of residence. Such cases are marked in general by allegations and counter-allegations in regard to the historical or current conduct of the other. Of the 37 cases where allegations of abuse had been made, 26 (70 per cent) were found in court or were judged on the best available evidence to be false. Of the remainder, the allegations were unsubstantiated in nine cases (24 per cent), while the remaining two (5 per cent) were upheld.

It would therefore be very appropriate for the Committee to suggest that more detailed statistical information on child contact cases should be recorded by the Scottish Courts and Tribunals Service in order to establish information about what actually happens in these cases.

We suggest that sheriffs already have the legislative backing to make suitable decisions in child contact cases including the power under the no-order principle to refuse consideration of contact applications and powers in relation to vexatious litigants. Given that the court also has to consider Articles 5, 9 and 12 of the UN Convention on the Rights of the Child it would not be in the interest of children to make the change suggested in Petition 1968.

ABOUT SHARED PARENTING SCOTLAND

Shared Parenting Scotland had just over 1,000 active enquiries during 2022. We staff a daily telephone helpline for individual enquiries. We run monthly support group meetings in Edinburgh, Glasgow, Stirling, Dundee and Aberdeen. We run one online meeting a month for people who are still uncomfortable with in person gatherings. All our meetings now have a family law solicitor in attendance on a pro bono basis for general advice about the law and legal procedures.

²https://www.researchgate.net/publication/265346094_False_allegations_of_child_abuse_in_contested_family_law_cases_The_implications_for_psychological_practice

We publish several free 'user guides' to help inform individuals about rights and responsibilities of parents in relation to maintaining and nurturing a meaningful relationship with their children after divorce or separation. [Downloadable guides and publications from Shared Parenting Scotland - Shared Parenting Scotland](#)

We also provide the [New Ways For Families® training and coaching programme](#) to calm potentially high-conflict separation and help separated parents to communicate and reach agreement.