

# Shared Parenting Scotland submission of 7 February 2023

## PE1977/B: Require social services to inform biological fathers of concerns about their children

### EQUALITY AND CHILD PROTECTION ISSUES

This petition raises significant equality and child protection issues and should also be considered in the light of the Scottish Government's planned incorporation of the UN Convention of the Rights of the Child into Scottish law and existing equality legislation.

The petitioner mentions a number of recent cases in which the biological father of a child who came to harm was not involved in the child protection work or other investigation. As noted below, there is also evidence from various sources that social workers are very likely to avoid making contact with fathers who do not live with their children and treat them as a potential risk rather than a person who needs to know about concerns and could potentially be a protective factor.

We would therefore suggest that there is already an obligation on social work and other agencies to inform both parents of concerns about their children – so the question should be about why this is not already being done.

The Minister's letter states: "*When child protection measures are required. Social work should include fathers where appropriate and where they have an active involvement in the child's life.*" (our emphasis). We suggest that there is no justification for excluding fathers who do not currently have an active involvement. In some of the cases mentioned by the petitioner the father had been excluded without reason.

The Minister's letter also mentions situations in which abuse or other issues justify non-involvement of a father. That is a reason for social workers and other professionals to treat each case according to its circumstances, not for a failure to find out about the father and assess whether he should be involved in the support for the child.

## OBLIGATION TO INFORM BOTH PARENTS

In families where the parents are not living together, they both have equal rights to receive welfare information about their children unless there is a court order which stops one of the parents from receiving this information.

When a residence order has been made in favour of one of the parents this relates purely to where the child should live, and does not make that parent the “main carer” in any other aspect or remove responsibility to safeguard and promote the child’s health, development and welfare from the other parent. It is possible for court orders to be made to remove all or part of the responsibilities from one parent, but before that is done “a careful balancing exercise requires to be carried out and factors require to be identified which clearly make that step necessary and justified in the paramount interest of the child”<sup>1</sup>.

There are particular circumstances in which one or both parents can be prevented from receiving health or education information about a child, but welfare information from social services does not have similar legal exemptions that prevent either parent from being informed.

Social services may not be given information about the father of a child or young person by the mother, but that does not exempt them from making reasonable enquiries about how to contact that parent. An analysis of serious case reviews conducted from April 2005 to March 2007 across England found a tendency for professionals to adopt ‘rigid’ or ‘fixed’ thinking, with fathers labelled as either ‘all good’ or ‘all bad’, leading to attributions as to their reliability and trustworthiness.

A Scottish study in 2012 “*Listening to fathers: men's experience of child protection in Central Scotland*” also showed that fathers were not treated equally to mothers by social work.

## FATHERS WITHOUT PARENTAL RIGHTS AND RESPONSIBILITIES (PRRs)

Fathers who were not married to the mother or whose name is not on the child’s birth certificate do not have PRRs, but as the biological father they do have responsibilities to pay child maintenance and also to receive education information about the child or young person. At present just under 4% of fathers are not registered on their child’s birth certificate (1848 births in 2021), although an unknown number may subsequently obtain PRRs.

In the Minister’s letter it is stated that: “*If a father does not have PRRs, social work will request permission to share from the mother; if this is*

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<sup>1</sup> <https://www.scotcourts.gov.uk/search-judgments/judgment?id=c88ae0a6-8980-69d2-b500-ff0000d74aa7> para 25

*refused, such information cannot be shared.”* We also query whether this approach is legally correct.

It could be argued that they should also receive welfare information unless there is a court decision to stop this. Under articles 8 and 14 of the European Convention of Human Rights this emphasis on registration of paternity rather than on paternity itself is possibly problematic. This may also be contrary to article 2 of the UN Convention on the Rights of the Child (non-discrimination based on child's birth status) and also article 18(1) of the UNCRC which requires that states ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of their children. In 1992 the Scottish Law Commission recommended that all parents should hold PRRs.

Although changes brought about in the Family Law (Scotland) Act 2006 widened the availability of PRRs to fathers whose name is on the birth certificate, the subsequent opportunity to level the playing field in the 2020 Children (Scotland) Act was not taken. While it was argued that this would give PRRs to fathers of children born from rape or incest, this is not an issue in the countries which have compulsory birth registration by both parents as further safeguards are used to prevent this possibility.

#### 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.

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.