FAMILIES NEED FATHERS – SCOTLAND
Both Parents Matter
Feumaidh na Teaghlaichean Athair Alba
Tha an Dà Phàrant Cudrom

Help and support for separated families

10 Palmerston Place,
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0131 557 2440 scotland@fnf.org.uk

The Hon Lord Pentland,
Scottish Law Commission,
140 Causewayside,
Edinburgh EH9 1PR

Dear Lord Pentland,

We understand that the Commission has invited suggestions for additions to the forthcoming work programme.

We read the Faculty of Advocates submission suggesting the Commission look at the fairly narrow matter of clarifying the functions and powers of the separate roles of curator ad litem and safeguarder in family court proceedings.

FNF Scotland would support that proposal. Our casework experience has thrown up several instances of problems arising from confusion about their respective roles.

We would also add that our casework has raised a specific difficulty in child contact proceedings when a bar reporter becomes a curator in the same case. In our experience this transition effectively creates a conflict of interest where he/she has to make recommendations on the welfare of the child that would be better viewed through fresh eyes.

FNF Scotland is represented on the working group that has been drawing up proposals for overhauling the bar reporter system.

However, we would propose that it might be time for the Commission to take a broader look at family law. It is almost a decade since the Family Law (Scotland) Act 2006 began its parliamentary journey. That legislation clarified various aspects of family law, although it failed to enact the changes in rights for unmarried parents that had been suggested by the Commission.

Since then the law has been overtaken both by social and economic changes within families in Scotland and by government policy which now recognises more clearly the obligations of both parents to promote the wellbeing of their children and also their children's right to family life.

The majority of separated parents do not go to court to resolve contact and residence disputes. FNF Scotland always advises avoiding court if at all possible on the grounds that the adversarial nature of proceedings is as likely polarise attitudes and may often generate entirely new areas of conflict. We feel that the Family Law (Scotland) Act 2006 has often been instrumental in encouraging parents to criticise and undermine each other in order to progress their argument for awarding residence or increasing (or decreasing) contact time.

Some of these issues have been aired in recent petitions (PE1529 and PE1513) before the Public Petitions Committee of the Scottish Parliament. I am enclosing our responses to both petitions but the full deliberations and observations made by other interested groups are published on the Petitions Committee website.

I am also attaching our submission to the Scottish Parliament Equal Opportunities Committee inquiry into fathers and parenting. The Committee's final report was strongly critical of the obstacles it had found to the involvement of fathers but felt our specific recommendations were more appropriately addressed to the Justice Committee.

Please feel free to contact us if you would like any further information or would find a face to face meeting useful.

Yours sincerely,

Ian Maxwell

Ian Maxwell
National Manager

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We are grateful for the opportunity to contribute to the Committee's deliberations on the issues raised by Mr John Ronald in Petition PE1529.

We note from the official record that several members observed that the subject matter overlaps in some degree with that of the Petition PE 1513 raised by Mr Ron Park. We agree.

We reiterate our strong belief that these petitions taken together should be seen as a timely invitation to the Scottish Parliament to review and update Scottish Family Law which has been overtaken both by social and economic changes within families in Scotland and by government policy which now recognises more clearly the obligations of both parents to promote the wellbeing of their children and also their children's right to family life.

The majority of separated parents do not go to court to resolve contact and residence disputes. FNF Scotland always advises avoiding court if at all possible on the grounds that the adversarial nature of proceedings is as likely polarise attitudes and may often generate entirely new areas of conflict.

However, it is clear that the numbers going to court have been steadily increasing since 2006 when the law was last examined in broad terms by the Scottish Parliament. There is a spectrum of reasons for this increase that we do not need to explore in this response.

Our observations here are based on the cases brought to us at group meetings and directly to our Edinburgh office. Most meetings hear at least one example of great frustration at the problems of securing contact as ordered by a court.

We are aware that at FNF Scotland we are likely to see the most troubled cases with contact orders being complied with irregularly or not at all. We know that many fathers despair of the support the courts give to their own orders and some decide to give up. We are contacted by some non-resident mothers and appreciate that the problems of enforcing compliance are rooted in the inherent weakness of the position of the non-resident parent rather than gender though of course the vast majority of non-resident parents are fathers.

Contempt of Court

We note the Minister's letter of response to this petition. The Minister writes: *If one parent does not obey a contact order, the other parent can return to court to ask the court to deal with the breach of the order. Requiring the parent to return to the court enables the court to determine whether the order was breached, examine the reasons for any breach and decide how to proced [sic], having regard to the welfare of the child.*

You asked about our policy intention in this area. The Government considers that going back to court is the right approach to enforcement. There may be a variety of reasons why a court order has not been obeyed and the court must asesss [sic] each case on a case by case basis. In addition, any dispute is a private matter between the parents.

If the Minister is referring to the potential remedy for a "breach of the order" then the action is for a failure to obtemper. As the sheriff in a recent contempt case, JDE v SDW, in Dumfries https://www.scotcourts.gov.uk/search-judgments/judgment?id=46709da6-8980-69d2-b500-ff0000d74aa7 pointed out: *"There is a difference between an application to the court under section 11 of the Children (Scotland) Act 1995 for an order relating to parental responsibilities and rights; and an application to the court under its inherent common law jurisdiction to punish a contemnor for not obtempering such an order."*

The distinction clarified by the sheriff is that an order under section 11 of the Children (Scotland) Act 1995 must put the interests of the children above all others but once an order is made it is an offence against the court to fail to obey it. The sheriff in a failure to obtemper/contempt of court action will not, as the Minister suggests, have to have regard to the welfare of the child because the order that has been breached already regarded the welfare of the child as its paramount consideration.

That distinction has been clearly spelled out by Lord Gill in the Inner House in the separate cases of AG v JB in 2011 and TAM v JHS in 2009. In AG v JB [2011] CSIH 56] Lord Gill said: *"This case exemplifies yet another attempt by a custodial parent to sever the bond between the other parent and their child by means of delaying tactics and in due course by protracted defiance of an order of the court. This court has already made clear its disapproval of such conduct" [Lord Gill then refers to TAM v JHS an Inner House decision of December 2009] CSIH 44). ... Her defiance not only thwarted the respondent's rights but undermined the rule of law. Conduct of this kind constitutes a grave contempt of court."*
In contrast with the Minister's assertion that "any dispute is a private matter between the parents" Lord Gill has made clear that a breach of an order is a matter for the court and is a matter of upholding the rule of law.

In JDE v SDW the sheriff explained that if the mother had had concerns about the welfare of the child it was for her to raise an action to vary the contact order or reduce it to nil. She had not done so.

Disincentives to pursue contempt of court actions
JDE v SDW is a sheriff court decision and is not binding in the way the Inner House decisions are. However it spells out very clearly the tests that have to be satisfied for a contempt of court action to be proved and that the failure to obey the contact order is wilful rather than due to coughs, colds, birthday parties etc. Sufficient evidence of wilful failure to comply will only become clear after months of missed contact.

All the cases cited above state that contact between the child and the non-resident parent had been lost for a year and half or more.

The reality for the majority of non-resident fathers (and other family members) who contact FNF Scotland is that their legal advisers will be advising them not to pursue the contempt of court route but instead to persist with child welfare hearings where they are the pursuer. For those in receipt of legal aid for the initial contact action their certificate will continue. For those who do not have legal aid the projected costs may be prohibitive and the outcome will be dependent on the amount of leeway the sheriff will give the parent with care.

What does a sheriff do when the contact order is obtempered once out of three, four or five dates? Is that complying or not complying? We are aware of a spectrum of tolerance among sheriffs leading to differences in outcome that are often difficult to explain. What is clear that the effect of occasional and irregular contact can be irreparably damaging to the relationship between father and children and does not help settle matters between the parents.

Research
We note the Minister gave the Committee a link to some research with sheriff clerks carried out in 2006. We do not think it assists the Committee. The researcher herself explains that the research was a "limited exercise" and carried out among only nine sheriff courts.

As explained in our discussion of disincentives above we suspect that clerks would not be among those most likely to have a clear view of the whole matter of breach of court orders. The research was carried out before the 2006 Family Law Act was embedded; before the dramatic increase in contact and residence cases; before the changes that we have explained – and the Equal Opportunities Committee recently explored – in family life and the expectations of both parents; and before the evolution of Scottish government policy in this area.

Wider issues
We found some the ancillary issues explored in JDE v SDW to be most instructive.

The sheriff criticised the social worker and health visitor for giving the mother in the case advice that was simply incorrect in law and confused their wish to support her with their duty not to connive with her pick and mix approach to obeying the contact order.

It was also clear from the evidence given by the mother herself to the sheriff that she believed a court order was in some way discretionary in terms of her convenience, her feelings about the father on any particular day and how her son was responding to her general discouragement of spending time with his father.

Being as generous as possible to her, perhaps she genuinely believed that she had a duty above that of the court to regulate contact. It is certainly an explanation that comes up again and again among fathers who contact us and is extremely difficult to deal with without appearing to be oppressive and uncaring.

Recommendations
We respect the aims of the Petition and support its general objective in asking the courts to be robust in enforcing the orders that it has made. These orders are usually the outcome of a series of child welfare hearings that will already have taken many months, often at the expense of the relationship between non-resident parent and child. It seems entirely reasonable to expect that orders should be upheld immediately without further expense to the pursuer.

We suggest that a review of Family Law will also create an opportunity for an active programme of training among the professionals who may be in contact with the mother and who rarely think of looking at the situation from the non-resident parent's eyes.

It would also create the conditions for awareness raising among both parents about their duties and obligations in terms of their Parental Rights and Responsibilities. We believe a statutory presumption of 'shared parenting' will be as helpful to mothers as fathers in clarifying their obligations and responsibilities to their children and to each other as parents. We note that research carried out in Sweden showed that children in separated families experiencing shared parenting (spending at least 30% of time with each parent) showed significantly higher scores for many indicators of wellbeing than those with only one involved parent. These Swedish findings are comparable to the recent Growing Up in Scotland study, in which seven-year old children not in regular contact with their father were more than twice as likely as those who have regular contact with their father to show behavioural and emotional difficulties (36% vs 15%, figure 3.2 on page 18).

We know that the Judicial Institute is incorporating a broader perspective in its training of new judges. If specialist family law sheriffs will become a feature of the new system we would urge that there may be a firmer view taken at an earlier stage where there is a suspicion that the parent with care is failing to uphold the court's intentions.

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PUBLIC PETITION PE1513: Ron Park: Rights of Unmarried Fathers

Families Need Fathers Scotland [FNFS] is grateful for the opportunity to contribute to the Committee's consideration of Mr Park's petition.

Although the title of the petition refers to the rights of unmarried fathers Mr Parks makes it clear that he is approaching the issue from the standpoint of the interests and the rights of the children concerned.

We endorse that approach and regard Mr Park's initiative as a timely invitation to the Scottish Parliament to review and update the amendments made to the Children (Scotland) Act 1995 by s23 of the Family Law (Scotland) Act 2006. The 1995 Act has been overtaken both by social and economic changes within families in Scotland and by government policy which now recognises more clearly the obligations of both parents to promote the wellbeing of their children and also their children's right to family life. More than half of Scottish children are born to unmarried parents and the courts now recognise the rights of cohabitants on separation or death of their partner.

We note with regret the contents of the Minister's letter[1] to the Committee which appears reluctant to acknowledge that there are substantial policy inconsistencies between the hurdles the 2006 Act places in the way of unmarried fathers in particular (but also many non-resident fathers who do have Parental Right and Responsibilities) in securing meaningful involvement with their children and other areas of Scottish Government activity.

For example, the Scottish Government's National Parenting Strategy[2] highlights the importance of fathers playing an active role in their children's upbringing. It recognises that the positive involvement of fathers with their children is associated with better exam results, better school attendance and behaviour and better relationships in adult life. Recent results from Growing Up In Scotland show that children not in contact with their father were twice as likely to show high levels of behavioural and emotional difficulties[3].

The Strategy also restates the United Nations Convention on the Rights of the Child (UNCRC) which repeatedly refers to the right of children to family life and identity.

The Children and Young People (Scotland) Act 2014, passed in the current session of the Scottish Parliament, was founded on a commitment to assimilate the spirit of the UNCRC into Scottish public life.

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[1] http://www.scottish.parliament.uk/S4_PublicPetitionsCommittee/General%20Documents/PE1513_F_Scottish_Government_19.06.14.pdf

[2] http://www.scotland.gov.uk/Resource/0040/00403769.pdf section 6, Additional Challenges

[3] http://www.scotland.gov.uk/Resource/0045/00452548.pdf figure 5.2 page 18

The Act's opening section on the duties of Scottish Ministers states they must:

> *(a) keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements, and*
>
> *(b) if they consider it appropriate to do so, take any of the steps identified by that consideration.*

The Scottish Parliament Equal Opportunities Committee recently published a report and recommendations aimed at challenging institutional and cultural barriers to the full involvement of fathers (including single dads, non-resident dads and dads in mainstream relationships) in parenting their children. They referred to the Justice Committee some additional matters raised in the FNFS submission[4]. We drew their attention, for example, to the unintended consequences on ordinary, reasonable fathers and non-resident parents of some of the premises underpinning legislation on child protection and domestic abuse.

The relevance of Mr Park's petition is in fact reinforced in Para 13 of the Minister's response in which she summarises some of the concerns that were raised in the consultations leading up to the 2006 Act and that led to imposition of limits on the new rights that were accorded to unmarried fathers. The new rights were unavoidable in terms of the European Convention of Human Rights but the Scottish Parliament appeared to choose the most restrictive option at the time. It is salutary but dispiriting to read the official record of the debates on the Act, much of it couched in negative and hostile language that would be out of place today.

In 13.1 the Minister refers to the fear of abuse and violence at the hands of former partners as a reason for not naming the father on the birth certificate but does not recognise that withdrawal or control of contact with the children of a relationship is itself a pernicious form of abuse of both fathers and children.

Lady Hale stated the position very clearly in the Supreme Court[5]: *"If decisions are then made on an inaccurate factual basis the child is doubly let down. Not only is the everyday course of her life altered but she may be led to believe bad things about an important person in her life. No child should be brought up to believe that she has been abused if in fact she has not, any more than any child should be persuaded by the adult world that she has not been abused when in fact she has."*

In 13.2 the Minister unhelpfully joins together women who have been raped with those who have become pregnant through a brief relationship and suggests it is not "fair" that they should have to go to court to have PRR removed. In equalities terms it is difficult to see how it can be "fair" for a father to be denied involvement or even knowledge of his child even if it is the result of a brief relationship.

We would not expect women who have conceived after rape to be required to name the father.

However, we feel it is incumbent on the Minister to disaggregate the numbers from the general groups listed in 3.1 and 3.2 above to give a sense of how many of the 3,009 (5.2%) sole registered births in 2012 would be covered by each.

Most important of all is the assertion in 13.3 that "it was felt that some evidence of a commitment to joint parenting should be required." That seems to us to be the heart of Mr Park's petition. It is the Catch 22 issue that arises very frequently in calls to the FNFS office and at monthly group meetings.

In child contact and residence cases sheriffs tend to look for "established family life". How does a father establish family life when he has been excluded from his child from birth, not because of domestic abuse or other question mark against his suitability and commitment as a parent but because the mother does not want him to be involved?

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[4] http://www.scottish.parliament.uk/S4_EqualOpportunitiesCommittee/Families_Need_Fathers_Scotland.pdf

[5] http://supremecourt.uk/decided-cases/docs/UKSC_2010_0128_Judgment.pdf para 44

This is not a rare and unusual situation in our experience.

The name on the birth certificate is effectively the gateway to demonstrating commitment. FNFS always advises people who get in touch with us to avoid going to court if at all possible. Negotiation or some form of out of court agreement are preferable. Whether in or out of court the toehold in law that the birth certificate offers gives the unmarried father the opportunity to explain his commitment. Without his name on the certificate it is too easy to stereotype him as an irritant or somehow suspect, rather than the parent he wishes to be.

Refusal to name the father on the birth certificate may sometimes be for one of the reasons cited by the Minister. However, it is often a deliberate act of exclusion. We are aware of situations where a mother has made the decision under pressure from her own family for racial, religious, class or other reasons. Exclusion in these cases is not attributable to the behaviour or character of the father and takes no apparent account of the rights of the child or the benefits that generally come from the involvement of the father - and, by extension, paternal grandparents, aunts and uncles.

We are aware of the Scottish Law Commission Report 1992[6] and its observation at the time that the law discriminated against unmarried fathers by treating them less favourably than married fathers and unmarried mothers.

The 2006 Act addressed part of that discrimination even though it still leaves the status of most unmarried fathers contingent on the state of relationship with the mother at the time of registering the birth. It still excludes fathers in Mr Park's situation by treating them differently because the mother of their children refuse to put their name on the birth certificate.

The arbitrary selection of May 4th 2006 as the watershed date has created two sets of anomalies which arise regularly in calls to FNFS.

The first is that we have unmarried fathers who have Parental Rights and Responsibilities for a child born after May 4th 2006 but not for older brothers or sisters born before that date.

The second anomaly arises when children were born in England and Wales to unmarried parents after 1st December 2003, the relevant date south of the border for Parental Rights of unmarried fathers. When parents have separated and the mother has moved with the children to Scotland the father discovers that the rights he had and still has in England have somehow evaporated at the Tweed. Our experience is that the Scottish courts have not been energetically helpful in such cases[7].

We believe the 2006 Act was not a precision tool but a blunt instrument and requires to be revisited. It contains too much that is arbitrary and has caused great damage in the lives of many children and their unmarried fathers. We believe it remains essentially discriminatory by accepting that the status of separated fathers is largely contingent on the state of the relationship as perceived by the mother, and may be open to challenge on ECHR grounds and/or under section 149 of the Equality Act.

We do not excuse or condone abusive behaviour on the part of separated fathers any more than we excuse or condone it on the part of separated mothers. We accept entirely that the welfare of the children is paramount and must remain so. The evidence is overwhelming that children prosper when both parents and their extended family are involved and co-operate with mutual respect. With respect to Mr Park's petition, in the context of our explanation above that it is time to bring family law in Scotland up to date with the overall benefits for children of support by both parents we believe a culture change is already under way that rejects the marginalisation of fathers.

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[6] http://www.scotlawcom.gov.uk/publications/reports/1990-1999/#r135 paras 2.36 – 2.5

[7] D v CHILDREN'S REPORTER 2009 Fam LR 88

Proposition 1: Requiring both parents to be named on the birth certificate.

We suggest that there should be a requirement for an explanation for 'sole registrations', perhaps by a tick box list of likely reasons that could be viewed by the father and is challengeable. We are aware that a mother determined to exclude the father is likely to tick the least challengeable box. This change would also be an opportunity to inform unmarried parents about the Parental Responsibilities and Parental Rights Agreement.

We do not understand why there is such urgency to register births in Scotland (21 days) when there are no obvious problems in England, Wales and Northern Ireland (42 days).

We believe that the registration of births should be accurate for public as well as private reasons. We do not understand a system that prefers to hold an original inaccurate birth certificate as sacrosanct and propose that the present obscure system of the Register of Corrections is insufficient to meet the requirements of family life for the children or parents.

Proposition 2: Award of full parental rights and responsibilities to both parents.

We find the Minister's reasoning for preserving the status quo insufficient. At UK and Scottish Government level fathers who do not support their children financially or emotionally are berated. It seems perverse that a system that excludes unmarried fathers who wish to be parents and do all the things that fathers are enjoined to do is justified by reference to those who do not.

While courts are not nurturing places for family relationships we believe that they are already well used to determining which parents are focused on the welfare and best interests of the children and which are not.

We support the proposition that both parents should be deemed to have Parental Rights and Responsibilities. Where, as now, there is dispute about the degree to which each parent should be able to exercise them, the courts can decide.

Proposition 3: Failure to supply a DNA sample.

In all of the above we are mindful that high conflict cases are rarely characterised by a focus on the best interests of the children. Parents need a route out of conflict so that, in the interests of the children, they will be able to co-operate with tolerance if not enthusiasm. Both mother and father have to be good parents long after the lawyers have gone home.

In this respect we tend to agree that the existing law in which "an inference can be drawn" from a refusal to supply a DNA sample is probably sufficiently flexible. In a recent interview Lady Elizabeth Butler-Sloss, former president of the family law division in England and Wales, commented about contempt actions: "To send her to prison is counter productive, because the child will not want to know the man who sent his mother to prison, particularly when she comes back and tells him about it."

In a case in which the mother was married and it was alleged that another man was the father of her child, a Scottish court decided against making a declarator of paternity based on the mother's refusal of DNA testing. A subsequent rapprochement between the parties led to a DNA test revealing that the child was in fact the child of the pursuer[8]. It is clearly in the interests of children in such cases to know who is their biological father, and this aspect of the law should be clarified in order to offer such children the certainty of DNA testing.

27th June 2014

[8] http://www.journalonline.co.uk/Magazine/53-11/1005883.aspx

Fathers and parenting

Families Need Fathers Scotland submission to the Scottish Parliament Equal Opportunities Committee

21st February 2014

Families Need Fathers Scotland welcomes the interest that the Equal Opportunities Committee has expressed in finding out more about the experience of fathers and fatherhood in Scotland.

Our submission below is drawn from the experiences shared with us by those who have attended our monthly group meetings in Stirling, Glasgow, Edinburgh and Aberdeen and from in the region of 2,000 e-mail, telephone or face to face contacts over the last 3 years. Most but not all of those who engage with FNF Scotland are non-resident fathers who are experiencing difficulties in connection with contact with their children after separation. However, a significant proportion of people who get in touch are mothers, grandparents, step fathers, other family members and new partners.

FNF Scotland's view is that a public narrative has developed in Scotland that men in general are somewhat suspect and that the contribution fathers across Scotland already make to parenting is under-valued and dispensable. We feel this may have been an unintended consequence of the overt promotion of other valid and important government and public service priorities such as support for single parents, child protection, targeting of domestic abuse and domestic violence.

FNF Scotland invites the Equal Opportunities Commission to consider some specific recommendations that will, in the name of equality and inclusiveness, acknowledge the existing contribution of fathers to Scotland's children and promote a greater presumption of inclusiveness in the future.

WHY PEOPLE CONTACT FNF SCOTLAND

Almost all of the enquiries received by FNF Scotland concern unilateral restrictions on contact, imposed on fathers after separation. Here are some typical requests:

I separated with the mother of my daughter in July 2013, and I've had fairly regular contact with my daughter since. I have always paid the child maintenance I'm meant to, however my ex partner has always complained wanting more. I contacted a solicitor who sent her a letter trying to arrange access with my daughter which she ignored, my solicitor then sent a follow up letter which she also ignored. I eventually started to get a good access routine in place and my solicitor advised me to just run with it and stay on my ex partners good side. She is now stopping my access to see my daughter and I am unsure as to what my next route should be, everywhere I look says that I need to come to arrangements with my ex but she's not willing to work with me for what's best for our daughter. I don't feel that my solicitor wants to take it to court as she has said that I will more than likely get less time with my daughter as judges tend to side with the mothers. Where do I turn? All I want is to play an active role within my daughter's life and I feel all I can do is sit back and let my ex dictate what happens.

"A father who now has regular overnight care of his two young children after a long court battle is now very concerned about his son's eating problems. The child's mother refuses to discuss this with him, and he has just been told by the children's health visitor that he cannot have any information about what is or isn't being done to resolve this problem."

"A father had a court order setting out the times of his contact with his son. He had helped out at the Saturday morning football training for a couple of years before the separation because he was dead keen on football. His ex-wife took the court order to the school and told the head teacher that it meant these were the only times he was permitted to see his son. The head teacher told him he could only help at football training if his son wasn't

there." [This was incorrect on the part of the head teacher, extremely upsetting for the father and confusing for the son as they discovered that the things that were normal for a father to do before separation are subject to other people's decisions after separation.]

The Growing Up in Scotland survey provides some statistics.

- More than two-thirds of non-resident fathers see their children at least once a week, but 9% see their children once a month or less and 24% do not see their children at all. This pattern has developed by the time these children are ten months of age.
- In a quarter of families where the non-resident father's name was on the birth certificate, that father was not allowed any involvement in key decisions about his child relating to inoculations or diet.

There is much research evidence that children do better in terms of wellbeing, education and their own relationships when both parents are involved in their welfare and development. Many parents manage to achieve this by informal agreement or by a formal Minute of Agreement lodged with a court.

However, most of the fathers who contact us are being prevented from seeing their children at all or are being restricted to very limited contact and minimal involvement in their children's lives. The transition from fully involved father to this position is particularly painful and undermining.

In some cases conflict may be reduced by encouragement to attend formal or informal mediation. In practice, a substantial proportion of those who contact us are already involved in court proceedings or feel that the refusal of their former spouse/partner to engage after separation leaves them with no alternative but to go to court.

Many non-resident fathers describe their encounter with the courts as profoundly shocking. They feel they are on trial, and that they will only regain contact if they can prove their worth. This is diametrically opposite to the situation in some countries, such as Sweden, where separating parents are assumed to have equal roles and have to justify any departure from this shared parenting.

Committee Questions

We will touch on some of the issues raised by the questions set out by the Committee. However, our greatest concern is that the answers to each of the specific questions should be seen in the context of a public narrative that often appears to regard fathers and men in general often as invisible or, where visible, as likely to be suspect.

We understand – and support – the efforts that have been made in recent years to remove the perceived stigma, for example, from single mothers and same sex relationships. However, this has inhibited unequivocally positive statements in support of fathers and non-resident fathers in particular. The word "father" was replaced by "partner" in a recent NHS Health Scotland guide in order to make it more "inclusive".

The public narrative is further driven by the focus on child protection and domestic abuse. We support both of these as public objectives but the perception, presumably unintended, driven by government minister statements, campaigners and professionals has created an oversimplified picture.

Again and again the non-resident fathers and grandparents who contact us complain that they come up against a professional default position of suspicion that is undermining, demeaning and hard to dispel. We often hear,

"I felt I was assumed to be guilty of something but the stronger I argued my case to carry on being the father to my kids, the more I could see suspicion in their eyes."

Language in this area is very important. We still hear too many opinion formers and professionals in relevant areas referring to 'absent fathers' when they should know how undermining it is for non-resident fathers who work very hard to remain involved with their children to be lumped in with parents who appear to have no wish for contact with their children.

Even among that group the story is not always the same. At our local groups we hear on a regular basis fathers who have fought hard for years and spent thousands of pounds in legal costs in the face of unremitting hostility

from their former partner ask aloud "would it just be better for my kids if I just stop trying". The answer is not always easy.

When parents separate the reality for most children is that they have in effect two "lone parents" even when either or both form a new relationship or household. Unfortunately there is no simple word or phrase that encapsulates that reality and which could convey an equality of status in the children's eyes to both parents.

Question: What day to day challenges do you experience as a lone / unmarried father in Scotland?

Question: Do you experience any particular challenges in a specific aspect of your life for example - work / family / social?

Question: Do you experience any particular challenges dealing with a specific subject for example - finance or dealing with access or care arrangements?

SCHOOLS

One of the issues that arises repeatedly at meetings is the reluctance and sometimes the refusal of schools to engage with non-resident fathers.

The law (Education Act 1980) is clear about the definition of a parent and that schools should deal fairly and equally with parents. The Scottish Schools (Parental Involvement) Act 2006 and its guidance explicitly acknowledged the role of the non-resident parents and the importance for the child's benefit of schools making active efforts to engage with them.

Our **Equal Parents** report (below) and experiences shared by members demonstrates how far short of those obligations many schools fall. There are of course many examples of good practice with teachers and head teachers welcoming the involvement of non-resident parents but we also hear repeatedly of correspondence and phone calls simply ignored; repeated 'administrative failures' in recording the contact details for the non-resident parent so that notification of parents' nights never arrives; examples of head teachers 'just checking' with the parent with care before agreeing to engage with the non-resident parent.

We recommend that Schools Inspectorate should explicitly include assessing schools on efforts they are making in terms of the Scottish Schools (Parental Involvement) Act to include fathers in general and non-resident parents in particular. Without inspection the Act will remain a low priority.

GP/MEDICAL INFORMATION

High in the list of issues that are raised by members is exclusion from information about the health of their children if the parent with care chooses to withhold it.

Even for the vast majority of non-resident fathers who have full Parental Rights and Responsibilities in terms of Children (Scotland) Acts (and who have therefore a legal obligation to look after the health and wellbeing of their children) it is common to encounter refusal of GPs and hospitals to engage with them at all.

One father who actually cared for his son 4 nights a week by Minute of Agreement but who did not claim child benefit discovered his former wife had changed GP surgery without telling him far less consulting with him. The GP practice manager refused "on data protection grounds" to tell him which practice his son had been transferred to.

There is some useful guidance available from the BMA and the Medical Protection Society on what happens when people with parental responsibility disagree, but this needs to be widely implemented..

COURTS

Scottish family court proceedings are essentially adversarial. That is, the proceedings and procedures are in their origin the same as other forms of litigation such as personal injury or debt where the aim of going to court

is to produce a clear result, a winner and a loser. This does not seem appropriate for settling disputes about contact and residence after separation.

Parents have been criticised by senior judges and politicians for using their children as "collateral" in the conflict between them but we cannot help but feel the adversarial system itself invites them to do so.

The way proceedings are conducted pre-court and then in court frequently heighten rather than reduce conflict and, in our view, contradict the core concept of the Children (Scotland) Act that the interests of the children are paramount. The introduction of Child Welfare Hearings as the first stage of this court process and the presumption by the Scottish Legal Aid Board that family mediation should be considered (but cannot be forced) before court action has helped to remove some less conflicted cases from the courts, but if settlement isn't reached then the battle resumes at great human and financial cost to all concerned.

In this process non-resident parents - usually but not always the father - perceive themselves to be at a systemic disadvantage, discovering that they have to prove that they are 'safe' to do the sort of things with their children that until the moment of separation, were regarded as normal.

We believe it is probably time for a review of the Children (Scotland) Acts of 1995 and 2006. We believe much contrived adversarial behaviour and airing of unfounded accusations aimed at controlling contact with a non-resident parent would be pre-empted by a presumption of 'shared parenting'.

Shared parenting is not about a forced, arithmetical division of time that children should spend with each parent, shuttling between their respective homes. It is about a presumption that both parents should be accorded equal respect in discussions about contact and residence. We believe this would reduce conflict, save court time and expense.

The dissatisfaction with the way cases are conducted is not limited to individuals who contact FNF Scotland. We recently received the following description in an e mail from a long established firm of family law solicitors:

"What we often see, and have to guard against very quickly, is the residential parent (usually the mother) seeing contact as something that is gifted, rather than something to which the child and the non-residential parent have a right. When contact is seen as a gift, the residential parent then feels empowered to control it - to impose restrictions, such as on the presence of a new partner, or perhaps new step children. ... This is very unfortunate, as it can lead to residential parents feeling they have a degree of control which is neither appropriate nor healthy. ... It may seem obvious, but it is very important to remember that the non-residential parent is just that, a parent, and that when the child is with them, they have to exercise the same responsibilities, judgement and discretion as the residential parent does at other times.

Courts cannot order parents to like each other but neither can they be blind to the consequences of the narrative unfolding before them that allows and sometimes encourages parents to attack each other's character and history in order to seek short term advantage over each other at the expense of the long term contribution they (and their extended families) might both make to the benefit of their children.

We have been struck by the experience reported by solicitors and their clients who are able to fund collaborative law or one of the other forms of alternative dispute resolution that mutual civility is built into the process of negotiating arrangements for contact and residence. This is explicitly set out in the contract that both parties sign at the outset. The aim is to leave both parents standing at the end, in the interests of the future emotional security of their children. They have to be good parents long after the solicitors and judges have closed the file.

UNFOUNDED ACCUSATIONS

Successive Scottish administrations have made tackling domestic abuse and domestic violence a priority. Reducing domestic abuse is clearly in the interests of the men and women who experience it and their children who may be affected by witnessing it.

FNF Scotland does not deny that there is domestic abuse/violence nor excuse the conduct of perpetrators of domestic abuse.

However we are concerned about that the joint police and Crown Office joint protocol on domestic abuse has unintended consequences.

Not only our members but many solicitors acknowledge that an allegation of domestic abuse can derail child contact/residence proceedings whether or not there is substance to it. Many of our members report that their former partner will threaten to make an allegation as a method of taking control of child contact negotiations.

We are also familiar with the "doorstep ambush" in which a non-resident parent arrives at an agreed (or court ordered) contact time to collect his children but is informed "They're not coming and I've called the police".

One of the greatest frustrations that undermines confidence in the fairness of the legal process is the difficulty in persuading courts to enforce contact arrangements that they have ordered. We feel that wilful obstruction of contact arrangements is a form of domestic abuse.

However, when the police arrive and find the non resident parent on the doorstep they will remove him - often to the cells and often to the bringing of charges. We hear from police officers that they know they have taken the wrong person to the cells and that what has happened is conflict not abuse but that "there is nothing we can do ...".

Even when there is no charge or where the Crown Office decline to prosecute or where the matter does go to trial and results in acquittal the fact that there has been an allegation will be brought up in child contact proceedings or will be used provocatively in the solicitor's letters that will never be referred to in court.

We feel a blanket policy that requires police officers to arrest people they do not believe have committed an offence and that creates such disillusion on the part of fathers who have not committed any offence brings Scottish criminal justice into dangerous disrepute.

One father told a recent meeting:

"I am bemused by the debate about the abolition of corroboration. In my case it was already abolished. I was stunned that my ex knew that all she had to do was say that I'd shouted at her – which I hadn't – and I'd be taken to the cells for the first time in my life."

A recent PIRC report concluded that there were shortcomings in the way Police Scotland handled a complaint from a father who had been arrested following false accusations.

Lady Hale stated the position very clearly in the Supreme Court: *"If decisions are then made on an inaccurate factual basis the child is doubly let down. Not only is the everyday course of her life altered but she may be led to believe bad things about an important person in her life. No child should be brought up to believe that she has been abused if in fact she has not, any more than any child should be persuaded by the adult world that she has not been abused when in fact she has."*

We recommend that the Committee raise with the Crown Office and Police Scotland the reality that their joint protocol on domestic abuse is itself open to abuse and that refusal to comply with agreed or court ordered contact arrangements should itself be recorded as incidents of domestic abuse.

CHILD MAINTENANCE

The involvement of the UK government in assessment and collection of child support since 1994 has been less than satisfactory for separated parents. For the parents who are actually paying maintenance, the continuing emphasis on penalties and charges for defaulters masks the fundamental problem that paying for your children isn't linked to actually seeing them.

This undermines confidence in the fairness of this public policy and for non-resident parents – mostly fathers – feels deeply unequal. It is not so long ago that the DWP itself sent out a press release referring to "Deadbeat Dads."

The 2012 system (CS3) does make further allowances for shared care, but there is an inherent disincentive for the parent receiving maintenance to allow increased amounts of contact, because this will lead to reduced maintenance payments.

The charging regime that will soon be introduced within CS3 penalises the parent who pays (mainly fathers) with a 20% surcharge, while charging the parent who receives maintenance only 4%. Charging may be a strong incentive for parents to reach "family" arrangements rather than use the government service, but this loading of the charges seems disproportionate and takes no account of which parent is responsible for the failure to reach agreement.

In similar terms we also encounter repeatedly the part child benefit plays in the calculations that the parent with care and her advisers make in agreeing or declining to agree shared parenting time. It was encouraging - but very rare – earlier this year to hear a sheriff advise the parties that he was going to order a 50:50 arrangement to take the arguments about child support and child benefit out of the case and allow the parties to concentrate on time with their son.

Child support and child benefit arrangements are currently reserved to Westminster However, we recommend that the Committee take this unequal system of charging and the manifest disincentive child support and child benefit represent to genuine sharing of parenting into account when considering how it can contribute to a culture change in the perception of fathers.

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CHANGING ATTITUDES

In the legal sphere, there is a current running in favour of change.

The UK Supreme Court in the case of NJDB v JEG explicitly called for a change in culture in the way all the participants in an action view their contribution to proceedings in addition to any improvements in procedures within the courts.

Lord Brailsford among others has spoken about the need for publicly funded parties (and their agents) to focus on the financial realities of protracting proceedings in the way parties paying their own way have to.

The Scottish Legal Aid Board has reminded solicitors of their statutory duty to report clients who are behaving unreasonably and wilfully protracting proceedings.

In her keynote speech at the official launch of the Glasgow branch of FNF Scotland Janys Scott QC outlined the changes in family law decisions over a comparatively short time. As recently as the late 1970s in a key case the judge expressed astonishment that a father should have any expectations of seeing his son at all after divorce.

There has been significant evolution of judicial attitude since then as the law has changed along with family structures and economic realities within households. Many fathers have been liberated by the possibilities now available to them to become primary carers or shared carers of their children. Paradoxically as more fathers actually take a greater role in parenting there appears to be a growing parallel suspicion of men as a group – regarding them as suspect and 2nd class fathers.

We hope the Equal Opportunities Committee will agree with us that equality is indivisible and that parenting is not a zero sum contest for status. Acknowledging fathers and their role in parenting is a good thing in itself and should not always have to be hedged around with qualifications lest some other family structures be offended.

We would therefore welcome an unequivocal statement by the Equal Opportunities Committee that acknowledges the need for both parents to be involved in their children's lives after separation. If the committee considers that any such statement requires some form of qualification, we would suggest "... unless it is shown that this will not be in the best interests of the child"

RECOMMENDATIONS

We believe Scotland has drifted into a situation where the contribution of fathers, including non-resident fathers is undervalued and individual fathers are subjected to suspicion and resistance that is undermining and disempowering to them and disadvantages their children. In attitudes and practice non-resident fathers in particular are subjected to questions about their motivation and worth as parents that are discriminatory.

We would call on the Equalities Committee to review these inequalities and press for a broader culture change. Specific elements of that change would be assisted by:

1 Legislative change

We believe it is probably time for a review of the Children (Scotland) Acts of 1995 and 2006. We believe much contrived adversarial behaviour and airing of unfounded accusations aimed at controlling contact with a non-resident parent would be pre-empted by a presumption of 'shared parenting'.

Shared parenting is not about a forced, arithmetical division of time that children should spend with each parent, shuttling between their respective homes. It is about a presumption that both parents should be accorded equal respect in discussions about contact and residence.

The welcome introduction of Parental Rights and Responsibilities (PRRs) for unmarried fathers whose children were born after May 2006 leaves several loose ends. The lack of back-dating means that some fathers have a mixed bag of PRRs if some of their children were born before May 2006. Fathers who have to go to court to obtain PRRs are usually doing this within a motion seeking contact or residence, but courts sometimes seem to view the PRRs as an optional bonus, to be withheld until the father has proved his worth. This attitude contrasts strongly with the automatic granting of PRRs to all mothers, married or not. The unmarried father who succeeds in establishing his paternity through court action is still restricted to having his name added to the Register of Corrections, rather than having his child's actual birth certificate altered to include his name.

2 Political Leadership

Fathers in Scotland would appreciate enormously a speech by the First Minister or senior ministers that unequivocally spoke with warmth and enthusiasm about the overwhelmingly positive contribution of fathers to the care and welfare of Scottish children, without hedging qualifications about other family forms or the need to view parenting by fathers through the prism of child protection.

3 More inclusion

Guidance should be given to GPs on how to be even handed between parents about the provision of information about their children's health.

Posters, leaflets and other public information material should ensure they are father friendly. Being 'gender neutral' is not enough when the context remains that good parenting is the province of mothers and questionable parenting is about fathers. We commend the work of Gary Clapton of Edinburgh University in this area.

4 Parental Involvement in Education

Schools Inspectorate should explicitly include assessing schools on efforts they are making to include fathers in general and non resident parents in particular. Without this the Scottish Schools (Parental Involvement) Act will remain a low priority.

5 Abuse of domestic abuse protocol

We recommend that the Committee raise with the Crown Office and Police Scotland the reality that their joint protocol on domestic abuse is itself open to abuse and that refusal to comply with agreed or court ordered contact arrangements should themselves be recorded as incidents of domestic abuse.

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Families Need Fathers Scotland, 10 Palmerston Place, Edinburgh EH12 5AA www.fnfscotland.org.uk

BACKGROUND TO FNF SCOTLAND

Families Need Fathers was founded in 1974. The organisation has had individual members in Scotland throughout its existence but a grant from the Equalities and Human Rights Commission in 2010 funded the establishment of a small staffed office in Edinburgh and formation of local mutual support groups across Scotland. In 2012 Families Need Fathers Scotland secured its independent status as a charity registered in Scotland [SC 042817] with its own constitution and trustees. FNF Scotland presently employs two part time members of staff in its Edinburgh office.The 2 year funding from the Equalities and Human Rights Commission ended in 2012 and since then FNF Scotland has been supported by grants from the Scottish Government and the Big Lottery and from membership income and fundraising.We try to assist where possible in reducing conflict by encouraging individuals who get in touch with us to focus on the best interests of the child and, by concentrating on what they can both contribute as parents rather than on their feelings about each other or the past conflict in their relationship.. As well as holding monthly self-help support group meetings in Edinburgh, Glasgow, Aberdeen and Stirling, FNF Scotland is running parenting classes for separated fathers in Edinburgh and Glasgow, working with Parent Network Scotland.Over the last three years FNF Scotland has contributed to a number of Scottish Government consultations and taken up membership of several relevant committees and forums including the Scottish Government Parenting Strategy.FNF Scotland aims to support individuals who have come up against difficulties in maintaining contact with their children after separation and raise broader awareness of the institutional obstacles that often appear to make conflicts worse rather than better not just for the fathers (and other family members) involved but above all for the children of the relationship. To that end we have published several reports, freely downloadable from our website, aimed at informing and empowering individuals who are experiencing obstructions to contact or residence with their children. Our view is that the more the parties know about what's happening, the greater will be the focus on the central issues to be addressed and the less stress there will be at a human level for the individuals involved.**Representing Yourself in the Scottish Family Courts.** The aim of this was not only to be a user guide to prospective party litigants but by explaining the procedures and terminology in plain English to improve the quality of the conversation between a prospective litigant and his or her solicitor. We are presently working on a revised edition.**Equal Parents. Clearing the obstacles to involvement of non-resident parents in their children's education.** This report set out the general legal rights and obligations between schools and parents and, in particular, explored the rather unsatisfactory performance of schools and education authorities across Scotland to follow through the requirements of the Scottish Schools (Parental Involvement) Act in actively engaging with 'hard to reach groups' including non-resident parents. We are presently working with Children in Scotland on a new edition.

Bar Reports: A guide for parents in Scottish family court hearings. Bar reports are instructed in the majority of child welfare hearings involving residence/contact. Our experience is that the system of appointing and training bar reporters is not transparent; the quality and cost is inconsistent across Scotland; and that non-resident parents often feel at a disadvantage in having to 'prove' their worth to continue to be the parent after separation that was accepted without question before. FNF Scotland has been represented on the Scottish Government working group on reforming the bar reporter system.