

We are very grateful for this opportunity to take part in the committee's round table session.

We are offering this briefing note in advance in the hope it may assist the committee put the specific issues associated with COVID and the legal process in a wider context. There are real difficulties in resolving issues that arise when Scottish parents can't agree arrangements that work best for their children after separation or divorce.

Shared Parenting Scotland is a critic of the adversarial system that is engaged in family court hearings.

We advocate for a more problem-solving approach that is in the best interests of children who generally benefit from a continuing relationship with both parents.

The adversarial system is slow, expensive (both to individuals and the public purse), unpredictable and incentivises parents to "win" time with their children by undermining and diminishing each other. There are too many incentives in our system to discourage parents from working together and too few incentives to help them put their children first.

Close to 1,000 individuals got in touch with us last year seeking help to retain or secure a meaningful relationship with children. Most are 'non-resident' fathers but a substantial and increasing proportion are mothers, new partners, grandparents and brothers and sisters.

Our help is sought by separated same-sex parents. The proportion of black and minority ethnic enquirers to SPS is approximately three times the proportion in the general population.

While the focus of this round table may be on the courts we draw to your attention to the sprawling hinterland to the legal process, starting with basic communication between parents, support from other advice organisation, and services such as mediation and contact centres.

We suggest that the Equalities and Human Rights aspects of this committee are engaged by the current position of 'non-resident' parents. In current government and public narratives they risk being rendered invisible.

This completely ignores the positive role they can play in the wellbeing of their children after separation. Our observation is that this invisibility has been made worse during Covid, through changes such as being left out from home-schooling arrangements.

Impact of the Pandemic on families living apart

Our casework increased substantially over the period of Covid restrictions. We were critical of the lack of clarity in briefings by political leaders and medical advisers. They failed to mention that from Day One of lockdown travel between separated parents for contact time was excluded from travel restrictions. This led to confusion and unnecessary withholding of contact, sometimes in good faith, by confused 'resident' parents. It also created a pretext for others to stop contact and sometimes communication of any kind with the other parent.

We conducted a survey among our users in late 2020 which showed an increase in contact disruption – 64% of responses said Covid-19 was exploited by the other parent to reduce or stop their time with the children.

Some contact parents found it difficult to get involved in home learning and some schools were not willing to communicate with them – 76% said that they were not included in the arrangements made by the children's school for supporting their learning during the time of school closure.

Parents reported they found official information about children moving between homes confusing and every time the rules changed we had lots of enquiries – 42% of our survey respondents said that official guidance was not easy to understand.

Increased stress levels made shared parenting less easy and undermined trust between separated parents.

Some children lost contact of any sort with their non-resident parent for months (in some cases more than a year) with consequent damage to the mental health and wellbeing of both child and parent.

Backlogs in civil and criminal court have slowed down court decisions. Ongoing serious backlogs in contact centres are still causing up to six months delay in starting sessions of court-ordered supervised contact. The shift to online mediation seems to have increased capacity in some centres. It makes it easier for parents to attend sessions and less intimidating when they are not in the same room, but is a problem for those without access to online connections.

How the pandemic has exacerbated delays in family cases in the civil court system

Child welfare hearings in sheriff courts were triaged in the early parts of the pandemic and this helped a lot to avoid delays in some jurisdictions but appeared to be inconsistently applied across Scotland. Urgent in one court was not urgent in another.

Hearings now seem to have returned to pre-pandemic timescales. Phone conferences and Webex during the restricted period helped the speedy consideration of cases and the scheduling of court time.

Some Sheriff courts still don't seem to be equipped to provide Webex for Child Welfare Hearings.

We hear from many parents that they aren't being included in Webex Child Welfare hearings, which contravenes the court rules (OCR 33.22A).

Long delays in criminal hearings relating to a parent are causing knock-on delays if that parent is also seeking contact in civil court.

Long waiting lists for contact centre places are also delaying court decisions. It was not always clear that sheriffs were aware how difficult or impossible it was to fulfil their orders.

General issues around post separation parenting

Shared Parenting Scotland has learned through our casework over the last 11 years that Scotland should be getting it better for children when parents separate.

The adversarial system in court and in the legal correspondence between solicitors that can run up large fees over many months before even seeing the inside of a court does not serve the resolution of disagreement between parents who are in all other respects good and loving mothers and fathers.

It focusses on the short term and overlooks the evidence of research from around the world that these decisions will affect a child throughout its life into adulthood.

Even within the adversarial system there is a serious issue of legal aid deserts in several parts of Scotland, with no solicitors taking on legal aid clients or restricting the numbers they will accept.

We strongly advocate solutions that empower parents to reduce their own hostility and find their own way round short term animosity.

Support should be available as early as possible, such as training (***Parenting Apart*** and ***New Ways for Families***), mediation, legal aid and family therapy SLAB should spend more on this work and less on family court action.

Court should be the last resort and all hearings should be inquisitorial and problem solving as has been adopted in some drug and alcohol courts. Family courts across the world are changing towards this approach. The adversarial approach in evidential hearings escalates conflict.

The planned new case management processes should be introduced soon, with complex cases going to family sheriffs in all courts throughout Scotland, not just those in the cities.

All hearings should be in-person, with Webex restricted to special circumstances.

Priority should be given to speedy resumption of contact. If a case is raised in court it should be triaged within 2 weeks not 2 months. This triaging and involvement of specialist family sheriffs in complex cases could lead to far quicker decision making.

Far better online information on all aspects of separation should be made available including online parenting agreements – see this good example <https://www.lawhelpmn.org/>

How children's views are heard and how to ensure children are incorporated into the decision making process without making them the decision-makers.

We suspect the rights embedded within the UNCRC Incorporation Act may take some - including social workers and other professionals - by surprise by giving increased legal force to the rights of children to have a full parenting relationship with both parents who no longer live together.

There is unacceptable inconsistency of approach between courts across Scotland about who speaks to children and how qualified they are for interviewing children.

If a child appears to entirely reject one parent without obvious reason there should be prompt action involving child psychologists, lawyers, sheriff and other agencies working together. It is not normal for a child to reject a parent and the child needs to be understood and supported when this is suggested.

Sheriffs should always consider how the children are to be informed about court decisions through letters, child-friendly judgments and other communication.

All Proof judgments should be published in anonymised versions to improve transparency and understanding of what the court does.

Non-statutory organisations providing advocacy to children in the hinterland of a civil case should be independently regulated with qualified staff working to transparent standards.

Children continuing to see both parents should be the norm. Evidence from other jurisdictions where 'equal joint custody' is embedded in legislation reveals better child welfare and reduced incidence of IPV or new conflicts between parents.

If there are concerns about the safety of contact, court can order supervised contact while a Child Welfare or Social Work report is obtained.

Long gaps in contact should be avoided. Both parents and the children need expert support in these circumstances.

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