Shared Parenting

Better for Scotland's Children

A report by Families Need Fathers Scotland highlighting the benefits of shared parenting in separated families.

- research results showing advantages for children in shared parenting
- interviews with parents and children
- suggested changes to Scottish family law

Both parents matter

FAMILIES NEED FATHERS SCOTLAND

"Children need positive and healthy relationships with both parents and that's what all this is about. The agenda is, and should always be, raising happy, healthy children"

Families Need Fathers Scotland - Both Parents Matter is a Scottish charity that provides support to parents facing contact problems after separation and promotes shared parenting. We publish a wide range of legal and parenting information and handle individual enquiries as well as supporting five monthly self-help support groups across Scotland.
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SUMMARY

This year, both the SNP Manifesto and Scottish Parliament's Justice Committee have stated that Scots family law should be reviewed. Families Need Fathers Scotland (FNFS) suggests that any forthcoming review of family law should include a statement in favour of shared parenting.

We believe all children should have the opportunity to benefit from having both of their parents actively involved in their lives and that both parents should share responsibility in all decisions about their upbringing. We want this to be the starting presumption in Scotland rather than an outcome that has to be argued for often with great difficulty and at financial and emotional cost within the adversarial court system.

We believe a legislative commitment to the values of shared parenting would save the public purse in court time and legal aid funding (as well as the psychological drain on the parents and their children) of high octane disputes about controlling rather than sharing time. If the starting point for the parents is clear then the discussion becomes about practical arrangements.

We suggest that the "contact and residence" labels under the existing legislation should be removed and replaced with less value loaded terms, as has been done in England and Wales with "child arrangement orders." We also suggest that parental rights and responsibilities should be retrospectively allowed for unmarried fathers.

This report collates existing research into the benefits of shared parenting. It also includes information from our own 15 questionnaires and interviews with families who have experienced shared parenting first hand.

There is overwhelming evidence of the benefits to both parents and children of shared parenting from a broad range of studies and reports around the world. Children in shared parenting families have significantly better outcomes in terms of emotional, behavioural, and psychological well-being, as well as better physical health and better relationships with their father and their mother compared to those who are only brought up by one parent. These benefits can remain even when there is a high level of conflict between their parents. We also look at some of frequently made objections

We discuss the practice in other countries where there is already a framework of shared parenting in place, such as Sweden, Australia and the Netherlands. We suggest that mediation should be encouraged in order to shift away from the current adversarial approach of raising disputes in court.

The overall message of this report is that there is a clear case in favour of shared parenting and recognising both parents as equals.

"I believe that the law should start with an expectation that both parents are equal (unless evidence to contrary) and then adjust depending on realities. At the moment, the dad loses out completely overnight, without just cause, and has a multi-year fight at significant cost. The current system doesn't work. Change must happen." **Steve**

"Just because your relationship has come to an end as a couple, you will still always have a relationship together as parents and you have to navigate the relationship in this way. It's in everyone's best interests to cooperate, and we both want what's best for the children. You need to minimise the damage to each other and the children and this should be the first principle after any separation." **Sally**

INTRODUCTION

Families Need Fathers Scotland (FNFS) wants to encourage a fairer and more equal legislative framework in Scotland that recognises the importance of both parents in the upbringing of a child. For us, shared parenting means that both parents are actively involved in all aspects of their children's lives and both share meaningful parenting time and responsibility. Children gain different things from their father and their mother or from two same-sex parents, and therefore benefit from shared parenting whether the parents live in the same or different households.

'Joint custody', 'equal parenting', 'involved parenting', 'co-operative parenting', 'parallel parenting' and other names are used, but the term preferred by FNFS is 'shared parenting'. Throughout the literature, there are differing views on how far the amount of time spent with each parent defines genuine shared parenting. Some argue that there should be a starting presumption of a 50/50 time split following separation or divorce, while others suggest that shared parenting requires a minimum 25% or 30% of the time to be meaningful. FNFS has decided not to include a specific time frame in our definition of shared parenting. An equal 50/50 time split is obviously aspirational, and our case studies show that this does work successfully for some families and should be encouraged wherever possible. Having said this, we also acknowledge that this may not always be practicable for all families or in the best interests of the children. Instead, we want the focus to be on the quality of the relationship, not the quantity of time spent. However, time is obviously a fundamental component in building up and maintaining a meaningful relationship and we feel that if children spend too little (effectively "visiting") time with one of their parents it makes it very hard to achieve equality on other factors.

We want children to have an equally significant relationship with both their mother and father and their respective extended families wherever possible. This means that the child will spend a considerable amount of time with each parent; that both parents will have equal weight in important decisions affecting the child and that both parents will be recognised equally by public agencies such as schools and doctors.

The FNFS definition of shared parenting is based on the following objectives:

- Children should feel that they have two properly involved parents
- One parent should not be able to dominate the lives of the children to the detriment of the other or to control the other parent through the children
- Parents have broadly equal 'moral authority' in the eyes of the children and children should have free access to both their parents over routine as well as major matters
- Children are able to share their lives with both parents 'in the round' - for example not being with one parent all 'routine time' and the other only for 'leisure'
- There is no part of children's lives - for example, school life or friends - that one parent is excluded from by virtue of the allocation of parenting time
- There is no part of a parent's life that the children are excluded from by virtue of the allocation of parenting time

CONTEXT

2016 is an important year. 2016 is Scotland's Year of the Dad. This year also marks the ten-year anniversary of the introduction of the Family Law (Scotland) Act 2006, which was the first major piece of family law passed by the Scottish Parliament. It amended the Children (Scotland) Act 1995 which provides the current legislative framework to be applied in the family courts. It therefore also informs the nature of the negotiations that go on between separated parents even in cases that never get as far as court.

The 2016 SNP Manifesto stated: *"while we are rightly proud of the ground-breaking approach taken to parental rights and responsibilities in the Children (Scotland) Act 1995, we recognise that this legislation is now over 20 years old and the shape of families has changed considerably in that time. We will review the legislation to ensure the interests of children and their need to form and maintain relationships with key adults in their lives – parents, step-parents, grandparents and other family members – are at the heart of any new statutory measures."* [1]

In March 2016 the Scottish Parliament's Justice Committee said *"with the main legislation over 20 years old, we note views that it may be time for a wholesale review, focussed on as much how the law is applied, and the mechanism used to resolve disputes, as on what the law says."* [2]

FNFS suggests that any forthcoming review of family law should include a statement that all children should have the benefit of having both of their parents actively involved in their lives and that both parents should share responsibility in all decisions about their upbringing. We want this to be the starting presumption in Scotland that can be varied where it is not practicable, rather than the outcome that has to be argued for often with great difficulty within the adversarial court system. We also suggest that the "contact and residence" labels under the existing legislation should be removed and replaced with more neutral terms, as has been done in England and Wales with "child arrangement orders." Alternatively, Scotland may create its own more suitable wording. This will help to remove the assumption that one parent has more status than the other, and should create a more equal playing field for both parents. Moreover, we propose a reconsideration of parental rights and responsibilities (PRRs) for fathers insofar as that they are granted to both parents from birth and that they are retrospective for fathers of children born before the 4th of May 2006.

We are contacted by separated parents every day (mainly fathers, but some mothers too) who say that their ex-partner is making all the decisions in relation to their child - including major matters like the school the child will go to - without any consultation or discussion. Contact with their children, if any, is controlled by the "resident" parent. Such problems formed by far the largest category amongst the 2,100 enquiries we received in 2015. The reality is that there is a real imbalance in parenting after separation. We believe that a statement in the law recognising the equal importance of both parents will help to shift public attitudes away from this presumption that the "resident" parent makes all the decisions.

Changing the law and therefore the way in which courts deal with such disputes will have a considerable impact. Scottish society is already changing as fathers become more and more involved with their children. Very involved fathers who have done the majority of parenting of their children prior to separation risk being shut out after separation. The onus is on them to prove themselves as a parent all over again.

[1] SNP Manifesto, 2016, http://www.snp.org/manifesto_plain_text_extended

[2] Scottish Justice Committee Post Legislative Scrutiny 2016 of the Family Law (Scotland) Act 2006, http://www.parliament.scot/S4_JusticeCommittee/Reports/JS042016R06.pdf

- In Scotland, between 2014 and 2015 there were 9,030 divorces granted (Scottish Government, 2016)
- There were 1,821 contact cases initiated in Scotland's Sheriff Courts between 2014 and 2015. (Scottish Government, 2016) This figure is likely to be an underestimate, as the current statistics do not include secondary craves (whereby contact is part of another outcome being sought, such as in a divorce or PRR case)
- Half of all children in the UK are now born to unmarried parents (Office of National Statistics, 2014)
- According to One Parent Families Scotland, there are approximately 170,000 single parents in Scotland with over 291,000 children. (Most of them do have two parents.)
- Around a quarter of the 12 million children in the UK have experienced parental separation during childhood. (Ministry of Justice, 2014)
- 1 in 3 children in the UK live apart from their father and 3.8 million children have no paternal involvement at all. (Office of National Statistics, 2012)
- After separation, 90% of children will end up living with only one parent and in 97% of cases this will be their mother. (Office of National Statistics, 2012)

Given the complicated and ever-changing nature of families it is difficult to have a precise picture of the number of children impacted by parental separation or divorce. The above statistics do indicate that significant numbers of children are affected and many do not have the benefit of input from both parents. In particular, it is fathers who experience the greatest level of disadvantage in terms of gaining and retaining meaningful parenting time with their children. They discover that the relationship between them and their children has become contingent on the cordiality of their relationship with their children's mother. It doesn't feel like a level playing field.

In our society at present, legal presumptions are rooted in notions about women and their status as mothers that conflate fundamental biological reality with more fluid cultural and economic roles. While we appreciate in some cases that maintaining a continuing family relationship is not possible or desirable, we do not believe the current legislative framework reflects current social and economic realities or the tide that is flowing in the direction of both greater involvement of fathers in parenting and the gender emancipation of women as individuals in their own right rather than their role as mothers.

These societal prejudices have created the opportunity for parental alienation to occur, particularly at the expense of fathers who are the majority of non-resident parents. Parental alienation describes a set of behaviours that one parent does (usually intentionally) with the effect of distancing and damaging a child's relationship with the other parent. These can be subtle or obvious acts that promote an unhealthy or severed relationship with the targeted parent. This could materialise in the child refusing to see or talk to the parent with whom they previously had a strong and happy relationship.[3] This is clearly harmful to both the parent and child, and needs to be recognised in order for it to be prevented.

Central to Scots Family Law is the notion of parental rights and responsibilities ('PRRs') encompassed in the Children (Scotland) Act 1995. Part 1 of the Act lists the corresponding PRRs held by the parents of a child. These include the responsibility to safeguard and promote the child's health, development and welfare, provide the appropriate direction and guidance to the child depending on their stage of development, and most importantly for the purposes of this discussion, **the responsibility to maintain personal relations and direct contact on a regular basis where the parent does not live with the child**.

[3] Harman, Jennifer Jill and Zeynep Biringnen. *Parents Acting Badly*. [San Bernardino, CA]: CreateSpace, 2016. p11-12

Our experience is that the occasional sheriff will remind the resisting parent of that part of her/his legal duty but that it is overlooked in the adversarial noise before them. If the original legislators meant it to be the touchstone by putting it, as they did, on the list of parental responsibilities it has not worked in practice. That is why we are making the case for an overt legislative commitment to shared parenting.

Mothers automatically have PRRs, whereas fathers do not. Fathers acquire PRRs if they are either married to the mother at the time of the child's birth or subsequently, or (after May 4th 2006), even if unmarried, they are registered on the birth certificate. Upon separation or divorce, mothers usually retain residence of the child, especially if the children are under school age. This leaves many fathers fighting for contact hours.

Another important aspect to be considered is the impact of separation on grandparents, aunts and uncles and cousins. Organisations such as Grandparents Apart recount distressing stories of grandparents being cut off from grandchildren by hostility from the parent with care. In their written submission to the Scottish Justice Committee for their Post-Legislative Scrutiny of the Family Law (Scotland) Act 2006 in 2016, Grandparents Apart called for *"an even playing field. No discrimination, no preconceived opinions and no assumptions about which gender is better at which role within the family."*[4] FNFS agrees with this approach: inherent discrimination against fathers needs to be prevented and the importance of other family members needs to be recognised.

At present, Scotland makes use of the legislative framework provided by the Children (Scotland) Act 1995 as amended by the Family Law (Scotland) Act 2006 when settling disputes following a divorce or separation. Parents are encouraged wherever possible to reach their own private agreement without ever going to court. These agreements can be formalised in a Minute of Agreement that can be registered. There are also non-statutory measures in place to encourage parenting arrangements in the form of the Parenting Agreement for Scotland. This document provides a guide to reaching agreements and aims to help parents consider some of the key issues that are important, such as schooling, money matters and arrangements for holidays and special days. While we recognise that this is an extremely useful and valuable template, our experience is that there isn't wide scale awareness of the Parenting Agreement – or enthusiasm for it within the legal profession - and therefore it may not be being used to its fullest potential at present.

A Minute of Agreement is a document that makes a private agreement reached between parties legally binding without going to court. The document is usually drafted by solicitors and is then registered with the Keeper of Register and is held as a public record in the Scottish Records Office in Edinburgh. This allows families to be flexible and allows them to make arrangements specifically tailored to their family and circumstances.

The current legislative stance in cases involving children is also underpinned by three main concepts: that the child's welfare is the paramount consideration; that no order will be made unless it's better for the child; and that the child's views will be considered provided they are of sufficient maturity. We believe that a presumption in favour of shared parenting as a default is not at odds with these principles and instead enhances them to their fullest in the majority of cases.

[4] Written Submission from Grandparents Apart UK for the Justice Committee Review 2016 of the Family Law (Scotland) Act 2006, http://www.parliament.scot/S4_JusticeCommittee/Inquiries/FL6.Grandparents_Apart.pdf

This report has gathered existing research into the benefits of shared parenting, and includes information from our own 15 questionnaires and interviews with families who have experienced shared parenting first hand. These show that shared parenting has significant benefits for both children and adults.

CASE STUDIES

FNFS has spoken to some families who have achieved shared parenting arrangements in Scotland. We acknowledge it is a modest sample but nevertheless provides significant insight that has not been published elsewhere. We asked them questions about how they reached and managed their agreements, and what they believe the benefits to be.

Case study 1: Lindsay and Cathy separated in 1997, and have two children: Caitlin who was 4 when they separated (now 23) and Ali who was 6 (now 25). They divided their time 50/50 and the children would spend alternate weeks (Wednesday to Wednesday) with each of their parents. This arrangement would continue over holidays, and they would usually alternate Christmas and New Year.

They reached this agreement between themselves before they separated. It was then formalised in a Minute of Agreement by their solicitors. They live less than a mile apart and both have new partners. Lindsay is a retired police officer and Cathy is a pharmacist, so they both had full time employment commitments.

Lindsay:

"For me, I think it's allowed me to have a better relationship with my children, perhaps even better than if we'd stayed together. I sometimes had to play mum and dad, but sharing parenting meant that I actually got to be a proper parent and had full responsibility. And this is part of parenting; it's not just about seeing your child and taking them to the park for a couple of hours at the weekend, it's about experiencing everything."

"It makes you appreciate your time with them more as well, and it makes you concentrate on them rather than on yourself all the time. I also think it allowed them to get to know me better and they'd be excited to see me. I think overall we probably had a better relationship that we would have done had we stayed together."

"I would like to see a legal assumption of 50/50 shared parenting, unless there are reasons agreed otherwise. I think there should always be a 100% responsibility on both sides."

Cathy:

"Sharing parenting meant I had time to recover, could be a better parent and be in a good frame of mind. I could be a full on parent then could relax in my week off and I think it made my life bearable!"

"It gets easier to communicate over time and it improved our ability to communicate clearly and directly with each other. We didn't use the children to communicate at all because that wouldn't have been fair on them."

"Children need both parents and parents should continue to communicate on how to raise their children. It [shared parenting] might not work for everyone but should be the overall goal."

Caitlin:

"I had the benefit of seeing both my parents get on with their new lives and meet other people and be happy. Those people (my step-mum and step-dad) are now also big parts of my life. I don't think it would've been pleasant if they were still together and I certainly wouldn't have just stayed with one parent or the other."

"I can't imagine growing up with restricted time to see one parent or the other. Both have such important roles in your life when you are growing up and as much as there might be hate/anger/issues between the couple separating it would be a shame and inappropriate to let that affect your children - they should be allowed to grow up in a stable environment, which I believe shared parenting can give."

Ali:

"I think that it provided us with a much more stable home life without putting too much stress on one parent. It also meant that our skills and experiences were a lot more varied once we had grown up compared with being raised by predominantly one parent."

"I believe that it [shared parenting] allowed me to have a much more varied upbringing compared to a single parent upbringing, and it also meant that my parents both had an equal say in my development and still shared the burden despite being divorced."

Case study 2: Sally and Leon separated in 2012 and have four boys aged between 6 and 14. Sally has the children for two-thirds of the week and Leon has them for one-third. They also reached their agreements before they separated and have a Minute of Agreement. They made use of Citizen's Advice Bureau, family mediation and counselling services to help them reach their arrangements. They negotiate holidays and special occasions between themselves, and live less than a mile apart.

Sally:

"We try and do what's manageable for us as parents and also for the children. I strongly think that we should always be seen as being on the same side, or that there shouldn't be sides at all. Children need positive and healthy relationships with both parents and that's what all this is about. The agenda is, and should always be, raising happy, healthy children. They need a strong relationship with both parents and input from both their mum and dad."

"I think us being separated is fairer for the children and we are all so much happier. I also think it means the boys have good relationships with both parents, they love both of us and we both love them and we reinforce this everyday. I also have a really healthy life outside of the children so there is more balance for me and then for the kids as well. I have time for myself that I didn't have before, or where I did have it before I would feel guilty for leaving them, but now I don't have this. I'm also more resourced to commit to the parenting side of things when I am responsible."

Leon:

"I have extensive time with the children and I am actively involved in all the important aspects of their lives. When the boys are not with me I am also able to enjoy time pursuing interests, socialising, going away with friends and so forth."

"The Scottish Government should be working to encourage shared parenting by explaining the benefits to separating parents, and make sure public institutions (such as schools) are cognisant that families may have these arrangements in place. From my perspective I have a stronger relationship with my children as a result and am able to enjoy time to do other things as well."

Case study 3: Ian has two children with different mothers and shares in the care of both of them. His son was 5 when he and his wife divorced and is now 15. The parents reached their shared care arrangement themselves before they separated. They have a split-week arrangement. Ian has his son from Wednesday evening until Sunday morning. His son spends the rest of the week with his mother. This is allowed for under a flexible Minute of Agreement.

His daughter is now 3 and Ian has a very difficult relationship with her mother due to lengthy litigation and her mother's expectations not being met. At the moment, the child resides with each parent for a two-week period

and attends two different nurseries where the handovers occur. The mother lives and works north of Inverness and Ian lives outside Edinburgh and is retired. The shared care of their daughter was ordered by court. The court order notes that when the child starts school, her mother has agreed to move to enable the shared care arrangement to continue. Ian is unable to move due to his existing care arrangement. This shows that even in cases where there are high levels of hostility and animosity, shared parenting is still applicable.

"I can't see why shared parenting is not the presumption in law; it's fairer, it's better for children and I feel the current gender bias is bad for children and discriminatory. How do you differentiate between two capable and loving parents? Why should you? How is it better for the child if one parent is effectively removed from their life? In my opinion, the child needs the nurturing of both of their parents."

"I am a capable and loving parent who is able and willing to look after my children. My daughter is happy and content when she's with me and I've had 10 years of experience sharing the care of my son, yet I still felt that I was having to prove myself as a parent and that I had to fight hard to be allowed to share in the care of my daughter and for her to have a full relationship with me."

"If the law had a rebuttable presumption of shared parenting or even an equal standing for both parents then this would change everything for people like me. I've seen that shared care can and does work from birth to a child being three years old, and then five to fifteen whether it's ordered by a court or not. For me, it's a no-brainer. You have to prioritise your children over everything; they come first. I would like to see the law reflect the fact that both parents are not only responsible for bringing up the children they had together, but that the law expects them both to do so too (if they are able and willing to do so) without them having to fight a long, expensive and uphill battle in court for it."

We believe these case studies (albeit on a small scale) show that shared parenting can, and does, work for families in Scotland. Children should always be the focus of any decisions made, with their needs and preferences at the centre, rather than the wishes of parents. Although our case studies don't include same sex partnerships with children, parents who have separated from such relationships also contact FNFS, and we would support shared parenting in these circumstances. We believe that by overturning the current legislative presumption weighted in favour of mothers, children will be able to benefit from meaningful parenting time with both parents or at the very least have both parents actively involved in all aspects of their life.

There is overwhelming support by the British public that both a mother and a father must share the responsibility for bringing up children, with over four fifths agreeing that fathers are instrumental in a child's life. According to a 2012 YouGov poll, 84% said both parents deserve equal custody rights; 85% said fathers are instrumental to child's life. FNFS argues that this responsibility should continue after separation and both parents should have equal input. https://yougov.co.uk/news/2012/06/13/equal-rights-over-child-custody/

SHARED PARENTING PROBLEMS AND HOW TO SOLVE THEM

We are, of course, aware that there is opposition to shared parenting. A recent briefing by Scottish Women's Aid (SWA) stated *"there is no empirical evidence showing a direct link between the amount of time a child shares with a parent and better outcomes for children."*[5] SWA relied heavily on the 2011 Nuffield Report for this statement, which argued that the then proposed Bill in England and Wales for shared parenting were not in the interests of children. The Nuffield Report based its conclusions predominantly on a limited analysis of the Australian approach. Despite this, in the same briefing, the Scottish Women's Aid also made the following statement

> *"SWA is fully supportive of shared parenting where this means a 'flexible and child-centred approach between parents,' where the child's welfare is central and contact is safe for the children and parents. However SWA is opposed to shared parenting where this is primarily concerned with a set amount of contact or residency time for parents, providing a guarantee that both parents spend equal or substantial amounts of time with a child (i.e., 'shared care'). "*

FNFS too wants the child's welfare to be at the core of any decisions made and we are not saying that the law should prescribe a set amount of time with each parent. However, sharing care and time will obviously be a fundamental component in allowing a child to have equally meaningful relationship with both parents where it is safe and in the child's best interests. We set out below the most frequently made objections (FMOs) we hear in meetings and discussions. Then over the following pages we summarise the body of international experience and research that supports shared parenting as being generally beneficial for children whose parents live apart but, as it happens, good for the parents too.

Frequently Made Objections

1. Distance between parent's homes

Wherever possible families should be encouraged to stay within reasonable travelling distance for the sake of their children. Some jurisdictions in Europe and some US states require evidence of major benefit to the children before permitting relocation. However, it is possible for shared parenting to continue where parents live further apart; both parents can at least be equally involved in all levels of decision making. A proposed move by one of the parents can be challenged in court if it is motivated by a wish to make the children's contact with the other parent and other family members very difficult. We are aware of families in Scotland who have resolved the complexities of having the children move between homes by establishing the children's home and having the parents move in on alternate weeks. A little imagination can go a long way.

2. Babies and young children

Childcare author Penelope Leach warned in a recent book ('*Family Breakdown: Helping children hang on to both their parents*') that children under four could be psychologically damaged by staying overnight with their father when the parents are separated. This claim has been fundamentally challenged by other specialists who show the importance of strong multiple attachments for very young children. This will be discussed below in relation to Warshak and Nielsen's reports which look at a wide range of new studies showing that overnight stays with fathers from a young age are not harmful and may in some cases be positively beneficial. Breastfeeding need not also be a reason for stopping overnights with separated fathers. We are aware of cases where it has been

[5] A Briefing Paper by Scottish Women's Aid, '*What is shared parenting? And what do we know about it?*' http://www.scottishwomensaid.org.uk/sites/www.scottishwomensaid.org.uk/files/What%20is%20Shared%20Parenting-.pdf

used to limit contact for 3 – 4 years. If the parents were still living together it is likely that they would fairly quickly discover the benefits of expressing breast milk or supplementary bottle feeding. Overnight care is a crucial part of bringing up a baby, and should be shared between parents.

3. Child maintenance

Despite the recent emphasis on parents making agreements rather than using the state to collect maintenance and slightly better allowances for shared care in the child maintenance assessment, disputes over eligibility for maintenance can be a cash reason for controlling and minimising the amount of time children spend with the parent who pays maintenance. It is a strong but perverse disincentive to shared parenting. At the time of the Smith Commission FNF Scotland proposed that child support should be devolved to the Scottish Parliament. It is unsatisfactory that family law and child support should travel on parallel lines run by two administrations.

4. Sharing of benefits/tax credits

Although UK benefits and tax credit can't be paid in part to each parent (Swedish ones can), some families agree to share child benefit equally, either by a financial transfer or with each parent holding the child benefit for some of the children. This also relates to eligibility for other benefits.

5. Hostility and allegations of abuse

While domestic or child abuse committed by one parent may well be a legitimate reason for refusing shared parenting, we also regularly come across the use of unfounded allegations of abuse to frustrate contact and prolong legal proceedings. As noted in one of our case studies, the courts should still be prepared to make shared parenting orders if allegations cannot be justified. Some Sheriffs are reluctant to order shared parenting in situations where there are high levels of hostility. The height of hostility is not always proportional to the seriousness of the issues in dispute. We question why children should miss out on the involvement of both of their parents when neither parent has done anything to harm them. Shared parenting is more difficult under hostile conditions, but it can still operate and often disappears entirely when a sheriff makes clear that s/he won't entertain unnecessary interference with what is best for the children. Drop offs and pickups can take place from nursery or school rather than the other parent's home.

6. New partners

Re-partnering can often be the cause of renewed disagreement. It can be uncomfortable for one parent and ideally it should be handled responsibly. There is no reason why this should prevent shared parenting. As one of our case studies shows, new partners have a contribution to make, however the biological parent has to try and maintain boundaries and put their child's needs first.

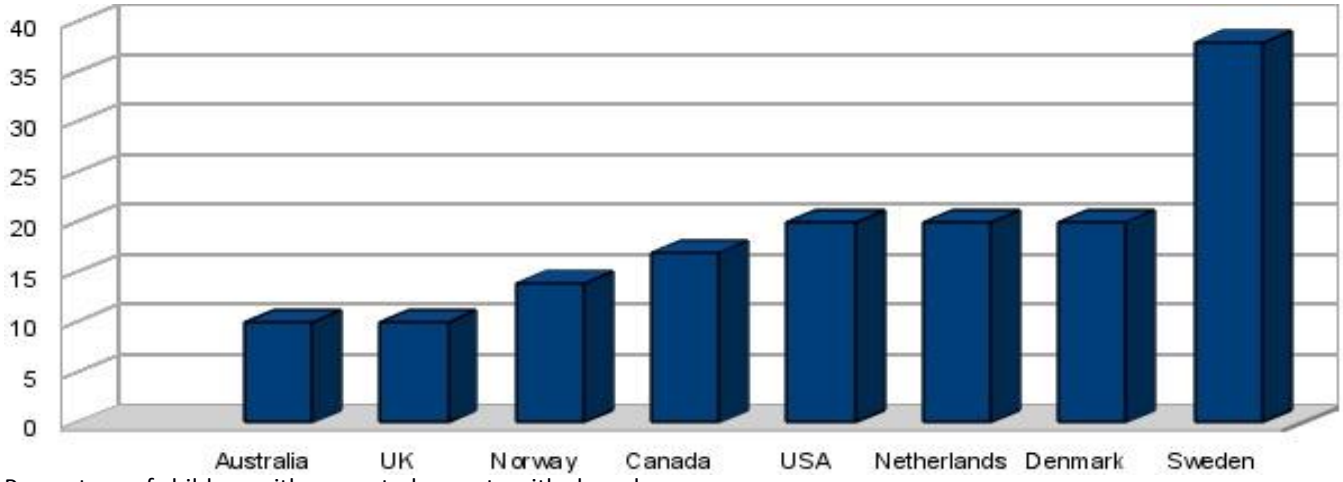
"Because we each had our own parenting time it gave us the opportunity to meet someone new and to see if it worked, and it also meant you could keep things quite separate. [My new partner] didn't and doesn't have a proper parenting role because the children know who their father is and he maintained this role. Instead, he became more like an advocate who the children went to for unbiased advice, and everyone gets on really well now." **Cathy**

DEMONSTRATED BENEFITS OF SHARED PARENTING

This section will examine some of the existing international academic research showing the benefits of shared parenting. A number of countries already have legal recognition of shared parenting. We believe that we can learn from these countries and build upon their experience so that we can ensure that Scotland is indeed the best place for children to grow up, as promised in the National Parenting Strategy.

UNICEF

A 2007 UNICEF Report found that the UK had the least happy children in the developed world which is rather shocking. They were at the bottom of the list of the 21 countries that were polled on a variety of factors, including educational, material and subjective wellbeing and peer and family relationships. The three countries whose children came top of the well-being index have a presumption of shared parenting. These three countries were the Netherlands, Sweden and Denmark. [6] The graph below shows the percentage of children in separated families where shared care is used and that these three countries have the highest levels of shared parenting.



Percentage of children with separated parents with shared care

Swedish Studies

Sweden is clearly leading the way in terms of shared parenting and gender equality. A study in 2015 based on a national survey of nearly 150,000 Swedish children aged 12 and 15 years shows that children who live equally with both parents after a parental separation suffered from less psychosomatic problems than those living mostly or only with one parent. [7]

Moreover, a further report from the Swedish Centre for Health Equity Studies (CHESS) presented results on the mental health and life quality of children in a shared parenting arrangement. This report explained that shared parenting levels are so high in Sweden because fathers are more involved from birth and it even reported

[6] UNICEF, 2007, '*Child Poverty: An overview of child well-being in rich countries: A comprehensive assessment of the lives of children and adolescents in the economically advanced nations*', https://www.unicef-irc.org/publications/pdf/rc7_eng.pdf

[7] Bergström, Malin et al, 2015, "Fifty Moves A Year: Is There An Association Between Joint Physical Custody And Psychosomatic Problems In Children?". *J Epidemiol Community Health* 69.8, 769-774

parents saying "we gave birth" showing the levels of equality. Shared parenting has grown from 18% to 38% between 1984 and 2011 in Sweden, helped by a change in family law in 1998. Nevertheless, the law alone is not sufficient: public opinions and attitudes have changed to support it. In this whole population study of 11-15 year old children in Sweden, children in shared parenting showed lower levels of truanting (19%) than those in sole care of mothers (22%) or fathers (28%) and only slightly above children living with both parents (18%). Many other indicators of mental health and wellbeing show similar results.[8]

These Swedish findings are comparable to the *Growing Up in Scotland 2014* 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). [9]

International Council on Shared Parenting

The International Council on Shared Parenting (ICSP) is an organisation of leading scientists, child and family practitioners, and members of civil society who are focused on research that examines parenting after divorce arrangements that are in the best interests of children. They call on legislatures to enact a rebuttable presumption of shared parenting in family law, in line with the European Council's recent recommendations. More information about the ICSP and their work can be found on their website: http://twohomes.org/en_home

The European Council passed Resolution 2079 in 2015 which calls on member states to better recognise and positively value the role of fathers and do various things to support shared parenting for the benefit of children. It stresses the benefits for children of the involvement of both parents in their upbringing, and calls on member states ensure that family law foresees, in case of separation or divorce, the possibility of joint custody of children, in their best interests, based on mutual agreement between the parents. It included a number of recommendations including:

- States should remove from their laws any difference based on marital status between parents who have acknowledged their child.
- States should introduce into their laws the principle of shared residence following a separation, limiting any exceptions to cases of child abuse or neglect, or domestic violence, with the amount of time for which the child lives with each parent being adjusted according to the child's needs and interests.
- States should take all necessary steps to ensure that decisions relating to children's residence and to access rights are fully enforced, particularly by following up complaints with respect to failure to hand over a child.
- States should encourage and, where appropriate, develop mediation ... in order to make the parents aware that shared residence may be an appropriate option in the best interests of the child, and to work towards such a solution, by ensuring that mediators receive appropriate training and by encouraging multidisciplinary co-operation.

FNFS welcomes this major step taken by the Council of Europe, and is pressing for these resolutions to be incorporated into Scottish family law in this Year of the Dad.

[8] Bergström, Malin, Bitte Modin, Emma Fransson, Luis Rajmil, Marie Berlin, Per A Gustafsson, and Anders Hjern. 2013. *"Living In Two Homes-A Swedish National Survey Of Wellbeing In 12 And 15 Year Olds With Joint Physical Custody". BMC Public Health* 13 (1): 868

[9] The Scottish Government, 2014, '*Growing up in Scotland: Family and school influences on children's social and emotional well-being*,' http://www.gov.scot/Resource/0045/00452548.pdf

ICSP President Edward Kruk's 2013 book *'The Equal Parent Presumption'* identified sixteen arguments in support of equal parenting:

1. Equal parenting preserves children's relationships with both parents.

2. Equal parenting preserves parents' relationships with their children.

3. Equal parenting decreases parental conflict and prevents family violence.

4. Equal parenting reflects children's preferences and views about their needs and best interests.

5. Equal parenting reflects parents' preferences and views about their children's needs and best interests.

6. Equal parenting reflects child caregiving arrangements before divorce.

7. Equal parenting enhances the quality of parent-child relationships.

8. Equal parenting decreases parental focus on "mathematizing time" and reduces litigation.

9. Equal parenting provides an incentive for inter-personal negotiation, mediation, and the development of cooperative parenting plans.

10. Equal parenting provides a clear and consistent guideline for judicial decision-making.

11. Equal parenting reduces risk and incidence of parental alienation.

12. Equal parenting enables enforcements of parenting orders, as parents are more likely to abide to an equal parenting order.

13. Equal parenting addresses social justice imperatives regarding protection of children's rights.

14. Equal parenting addresses social justice imperatives regarding parental authority, autonomy, equality, rights and responsibilities.

15. The discretionary best interests of the child/sole custody model is not empirically supported.

16. A rebuttable legal presumption of equal parenting responsibility is empirically supported. [10]

Such suggestions show that there are a number of clear benefits and arguments in favour of shared parenting and that it is better for both children and parents.

Dr Linda Nielsen (a Professor of Adolescent & Educational Psychology and leading international expert in father-daughter relationships) produced a report in 2014 that brought together extensive research from 40 studies into shared parenting arrangements. The summary is as following:

"One of the most complex and compelling issues confronting policymakers, parents, and professionals involved in making custody decisions is this: What type of parenting plan is most beneficial for the children after their parents separate? More specifically, are the outcomes any better or worse for children who live with each parent at least 35% of the time compared to children who live primarily with their mother and spend less than 35% of the time living with their father? This article addresses this question by summarizing the 40 studies that have compared children in these two types of families during the past 25 years. Overall the children in shared parenting families had better outcomes on measures of emotional, behavioural, and psychological well-being, as

[10] Edward Kruk, 2013, *The Equal Parent Presumption: Social Justice In The Legal Determination Of Parenting After Divorce*. McGill-Queen's University Press

well as better physical health and better relationships with their fathers and their mothers, benefits that remained even when there were high levels of conflict between their parents."[11]

Some of the specific benefits include that children were *"less stressed, less depressed and less agitated*" where their parents share parenting and *"shared children were better off in regard to their emotional, social, and psychological well-being, peer relationships and social acceptance, and physical health."* Dr Nielsen also brought together research on the relationship specifically between fathers and daughters in 2011 and concluded that *"fathers who spend plenty of time with their daughters after the divorce have the greatest chance of creating and maintaining a loving, meaningful, lifelong relationship*" and were less likely to experience a wide range of issues such as teen pregnancy, stress-related illnesses, dropping out of school or college and they were less likely to be arrested. [12]

In addition, Nielsen wrote another review on 'Parenting Plans for Infants, Toddlers and Pre-schoolers: Research and Issues' looking at 11 studies into this area. Overall, it was found that overnight stays away from their mothers with their fathers were not associated with any negative outcomes for infants and toddlers and were positive for pre-schoolers. This indicates that there is evidence against common misconceptions that very young children should not spend time overnight with their fathers.

Dr Richard Warshak of University of Texas Southwestern Medical Centre is an expert on parental alienation and was a White House consultant on child custody. His review analysed the benefits of shared parenting from a young age and has the endorsement of 110 researchers.

His 2014 Consensus Report[13] "debunks" what is commonly referred to as 'attachment theory' that infants form attachment relationships with a single caregiver before all other important relationships and that this first relationship serves as a foundation and template for all subsequent attachment bonds. Attachment theory has been used as a basis for opposition to overnight staying contact in particular and shared parenting arrangements for very young children in general. This report argues against this hypothesis, and instead presents the basis for post-separation arrangements which, he argues, best supports child welfare:

- Parents' consistent, predictable, frequent, affectionate, and sensitive behaviour toward their infants is key to forming meaningful, secure, and healthy parent-child relationships.
- Having a secure attachment with at least one parent provides children with enduring benefits and protections that offset mental health risks of stress and adversity.
- Having a relationship with two parents increases children's odds of developing at least one secure attachment.
- The deterioration of father-child relationships after divorce is a pressing concern (Zill, Morrison, & Coiro, 1993).

[11] Linda Nielsen 2014. "Shared Physical Custody: Summary Of 40 Studies On Outcomes For Children". *Journal Of Divorce & Remarriage* 55 (8): 613

[12] Linda Nielsen, 2011, "Divorced Fathers and Their Daughters: A Review Of Recent Research". *Journal Of Divorce & Remarriage* 52 (2), 78

[13] Richard A. Warshak, 2014, "Social Science and Parenting Plans For Young Children: A Consensus Report.". *Psychology, Public Policy, and Law* 20.1, 46-67

- The majority of children from preschool through college are dissatisfied, some even distressed, with the amount of contact they have with their fathers after divorce and with the intervals between contacts (Kelly, 2012; Hetherington & Kelly, 2002; Warshak & Santrock, 1983).
- Policies and parenting plans should encourage and maximize the chances that children will enjoy the benefits of being raised by two adequate and involved parents.
- We have no basis for rank ordering parents as primary or secondary in their importance to child development.
- Normal parent-child relationships emerge from less than full-time care and less than round-the-clock presence of parents.
- Full-time maternal care is not necessary for children to develop normally. Children's healthy development can and usually does sustain many hours of separation between mother and child. This is especially true when fathers or grandparents care for children in place of their mothers.
- These findings support the desirability of parenting plans that are most likely to result in both parents developing and maintaining the motivation and commitment to remain involved with their children, and that give young children more time with their fathers than traditional schedules allow (generally daytime visits every other weekend with perhaps one brief mid-week contact).[14]

Warshak also produced a follow up White Paper in 2016 (*'Stemming the Tide of Misinformation: International Consensus on Shared Parenting and Overnighting')* which included two new studies that lent additional weight to the report's conclusions. The 2016 paper discusses these new studies and describes reactions to the consensus report and concludes by explaining the advantages of having the consensus report reviewed and endorsed by prominent international authorities. It was also discussed here whether parental conflict should trump parenting time, as seen in the box below.[15]

"A policy of automatically restricting children's time with one of the parents when a couple is labelled as "high conflict" brings additional drawbacks and deprives children of the protective buffer of a nurturing relationship with one of their parents. This policy sends parents the message that generating or sustaining conflict can be an effective strategy to override shared custody. This discourages civil communication and cooperation, and may reduce children's time with the parent who is less angry, who does a better job of shielding the children from conflict, and who recognizes and supports the children's need for positive relationships with both parents.
Any policy that encourages the instigation and maintenance of conflict between parents by suggesting that such behaviour might be rewarded with more parenting time puts the needs of the children second to the desires of whichever parent opposes sharing parenting time. Such a policy contradicts the best interest standard whose primary purpose is to ensure that the child's welfare trumps parental entitlements."

[14] Richard A. Warshak, 2014, "Social Science And Parenting Plans For Young Children: A Consensus Report.". *Psychology, Public Policy, and Law* 20.1, 46-67. Web; summarised by the Custody Minefield Blog http://thecustodyminefield.com/shared-parenting-research/warshak-2014-social-science-and-parenting-plans-for-young-children-a-consensus-report/

[15] Richard A. Warshak, 2016, *'Stemming the Tide of Misinformation: International Consensus on Shared Parenting and Overnighting',* http://warshak.com/blog/wp-content/uploads/2016/04/CR68-e-Stemming-the-Tide1.pdf

LEGISLATION IN OTHER COUNTRIES

A number of countries that already have a legislative presumption of shared parenting that provide greater insight into how a change in Scots family law could work.

Sweden

As mentioned previously, Sweden introduced a presumption of shared parenting in 1998. They have the highest levels of shared care in Europe with between 30-40% of children in separated families are in joint parental custody, spending at least 30% of their time with each parent. It is estimated that around 14% of separating parents in Sweden have conflicts regarding custody and children's housing and only about 2% have their custody disputes resolved in court.[16] As demonstrated by the above studies, Sweden is leading the way in terms of shared parenting which clearly has a positive impact in terms of happiness of their children and the problems they face and FNFS believes Scotland should follow suit.

Netherlands

The Dutch Law on Continued Parenting after Separation (No. 30145) came into effect in 2009. This law has many positive features with regard to shared parenting arrangements and the reinforcement of parenting orders by the Dutch family courts. It introduces and aims to guarantee the basic principle of equality for both parents and the presumption of shared equal parenting both before and after divorce or separation, and regardless of whether the parents were previously married or not. It introduces a strong incentive for parents to come up with a mutually agreed parenting plan during the separation and divorce proceedings. It does so by adding new reinforcement possibilities to the toolbox of options available to judges to ensure compliance with court-ordered parenting arrangements.

In September 2012, the Dutch Father Knowledge Centre did a representative public survey research about custody of children after divorce. They found in a poll of the Dutch public that 71% said they agreed with co-parenting after divorce. (Peter Tromp MSc and Robert Whiston FRSA, Dutch Father Knowledge Centre Press Release, September 14, 2012, https://europeanfathers.wordpress.com/2013/10/04/36/)

Denmark

The Danish Fathers Association found 33% of all children live in a shared parenting family.[17] Upon divorce in Denmark, parents will automatically have joint custody of a child or children. Decisions regarding custody or residence are always dealt with in separate proceedings and only if specifically requested by one or both parents. The court can decide that the parents will remain having joint custody and make a decision about the residence of the child accordingly. Sole custody is only awarded if that is considered explicitly to be in the best interests of the child.

Australia

Under Australia's Family Law Amendment (Shared Parental Responsibility) Act 2006, the court begins with the principle of equal division of custody. The presumption may then be rebutted *"by evidence that satisfies the court that it would not be in the best interests of the child for the child's parents to have equal shared parental*

[16] Bergström, Malin et al, 2015, "Fifty Moves A Year: Is There An Association Between Joint Physical Custody And Psychosomatic Problems In Children?". *J Epidemiol Community Health* 69.8, 769-774

[17] Jesper Lohse (Chairman of the Danish Fathers Association) 2015, *'On-going Shared Parenting Reforms on Denmark: United Nations Report'* International Council on Shared Parenting (ICSP), Bonn 9-11

responsibility for the child" (s 61D(4)). The second key feature of the amendments was the inclusion of the explicit statement that shared parental responsibility creates obligations to share decision-making (s 65DAC(3)). There is a presumption of '*equal shared parental responsibility'* except where there is evidence to assume the contrary, such as if there is violence or abuse.

This legislation means that both parents have the opportunity to have custody divided between them as this is the starting point for decision makers. It also means that those with parental responsibility have a duty to share key decisions being made. This approach also retains the best interests of the child as the main consideration, meaning the child's welfare will always be the most important factor.

Switzerland

In Switzerland, separated parents automatically have joint custody of their children except in cases involving the specific protection of the child. When a couple splits or gets divorced, custody of their children will be shared without the need for a prior agreement or the approval of a judge.

As a principle of the revised law on the effects of parent-child relationship, which entered into force on 1 July 2014, a court in Switzerland generally assigns joint parental responsibility (or parental authority) to both of the parents (*Article 133.1, 298 CC*). Sole custody will only be granted if necessary to protect the child's wellbeing, such as if there is infirmity, a history of violence or absence. According to the principle of joint parental authority, the parents make decisions together (for example, names, education, medical matters and religion). A parent can be entitled to make the decisions alone if he or she is caring for the child and the matter is routine or urgent or if the other parent cannot be reached with a reasonable amount of effort. The children are interviewed by the court when parental responsibility, daily care and custody and visiting rights are under consideration (*Article 298, Code of Civil Procedure (CCP)*). They can ask for their own counsellor, who may submit petitions in the child's interests. Prior to the introduction of this legislation, when a couple divorced, one parent generally would obtain sole custody. If the couple were not married, the mother would be the legal custodian. Joint custody would only be possible where both parties signed an agreement on how they plan to distribute and share alimony and child-care. [18] This is comparable to the current approach in Scotland at present.

[18] Daniel Trachsel and Gian Brändli, 2015, *'Family law in Switzerland: Overview',* http://uk.practicallaw.com/7-612-5665

A SCOTTISH FUTURE FOR SHARED PARENTING

A number of countries that Scotland likes to invoke as comparators in other areas of policy already have the notion of shared parenting included in their legislation. The approach whereby this is the starting assumption which can be displaced does not undermine the overarching principle of the child's welfare as the paramount consideration. We believe it strengthens it immeasurably. Shared parenting will not apply where there are specific concerns about one of the parents, but if introduced it would apply to the vast majority of Scotland's families. This has the potential to produce benefits for a large number of Scotland's children. The potential for increased involvement of fathers could have particular advantages for children growing up in disadvantaged conditions and should form a component in the Scottish Government's early intervention strategy.

When looking to the future, changes will need to be made on two levels. First, the legislation will need to be changed to include a statement encouraging shared parenting. In addition, FNFS strongly endorses automatic PRRs for all fathers unless after due process it is established that it is not in the interests of the child he should have them. The same due process would apply to mothers whose involvement would damage their children.

In this context we also propose the removal of the "contact" and "residence" labels in favour of less value loaded terms.

Secondly, there will need to be wider changes to the interaction between the reformed family law and the courts (and solicitor practice) as a whole. This could include a greater encouragement of mediation services to aid communication and decision-making outside of the courts and training of the legal profession to assist their clients to negotiate solutions rather than continue fighting. There perhaps should be a shift towards a use of mandatory mediation intake and assessment meetings prior to litigation as in England and Wales. There is an opportunity for this to be reviewed as part of the civil court rules rewrite. Mediation could be used to maintain civil relationships between separated parties, encourage cooperation and to work out shared parenting arrangements specifically tailored to each family.

Attitudes are already changing as family life and economic realities have evolved in recent decades. We should strive for greater gender equality in Scotland. Parents should be able to collaborate in the interests of the children long after the sheriff has gone home and the solicitors have closed their files.

We believe a presumption of shared parenting would encourage more parents to live up to expectations.

ADDITIONAL INFORMATION AND GUIDANCE

- For more information about mediation, counseling and relationship support visit the Relationships Scotland Website http://www.relationships-scotland.org.uk or The Spark Website http://www.thespark.org.uk
- Helpful books include *'The Guide for Separated Parents: Putting Your Children First'* by Karen and Nick Woodall and *'Parenting Partnership: How Men and Women Parent Differently-Why It Helps Your Kids and Can Strengthen Your Marriage'* by Kyle and Marsha Kline Pruett.
- For more information about FNFS and our work please visit http://www.fnfscotland.org.uk

When asked whether or not shared parenting should be a policy objective of the Scottish Government in our questionnaires and interviews, here are some of the responses:

"Absolutely. I have two happy, confident enthusiastic kids who have an excellent relationship with both parents. The kids gain huge amounts from both of us being fully involved in their lives." Alistair

"I think that both parents should be involved in the nurture of their child, and that my daughter SHOULD be privy to the nurture of both her mother and father." Chris

"I feel that the Scottish Justice system has always given the benefit of doubt to my wife either because she is female and not male or because she is a mother and not a father. This has been a shock to me in the last two years as I simply did not expect this. I hope that you and others may in time influence a fairer system." James

"Definitely, this would very much be a good thing for mothers and fathers because when they decide they are going to separate they need to consider what is best for the child. I personally think that fathers should be a part of every child's life." Robert

"Shared Parenting can only be a good thing as a child needs a mother and father influence as well as further support from families. It gives the chance to provide a starting ground for separated families who can't come to an agreement. Most importantly, the child is not deprived of a parent whether that is a Mum or Dad." Martin

"Shared parenting is for the children's benefit of not losing a whole family on one side, with numerous other benefits, including balanced parenting, safety check/mechanism/haven and balanced decisions in children's favour. Parents benefit in sharing all the challenges of parenting, while giving respite and time for themselves." Greg

"I believe that the law should start with an expectation that both parents are equal (unless evidence to contrary) and then adjust depending on realities. At the moment, the dad loses out completely overnight, without just cause, and has a multi-year fight at significant cost. The current system doesn't work. Change must happen." Steve

This report was prepared and written by Beth Nandwani on behalf of FNFS. Her student intern project was funded by Santander through Employ.Ed at Edinburgh University.

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