



# **THE WAY FORWARD FOR SCOTLAND**

FAMILIES NEED FATHERS SCOTLAND

# A LANDMARK MOMENT

The Scottish Government is publishing its proposals for reform of the Children (Scotland) Act 1995 and along with it a Family Justice Modernisation Strategy.

This will be a landmark moment for tens of thousands of children and their families in Scotland. It represents a once in a generation opportunity to bring the law into line with the reality of family life as it is lived here.

Law by itself cannot solve every problem. A court is not a precision tool. However they do affect the approach and the language and the attitude of the many individuals and agencies whose job is to make it work.

FNF Scotland is urging the Scottish Government to be radical. This is time for a paradigm shift in what parents and children can expect from the law and what they can expect from each other. In other areas of public policy such as violence reduction or adverse childhood experiences politicians have adopted a public health approach to serious issues. We are asking for the new legislation and the Family Modernisation Strategy to adopt a public health approach.

FNF Scotland's interest is particularly the situation of children and parents who do not live together. Our experience from the 10 years since we were set up in Scotland is that the present system lacks emotional intelligence when it gets drawn into settling matters when parents aren't able to agree arrangements for parenting their children.

Civil Law in personal injury claims or contract disputes is designed to find a winner and a loser.

We believe the 'winner-loser' approach isn't best fitted for reaching decisions about parenting. The paramount interests of the children and their right to a positive relationship with both sides of their family can get lost.

The adversarial approach lacks incentives for separated parents to collaborate positively for the benefit of their children and at crucial points embeds disincentives to share parenting.

**We need to start somewhere else.**

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## What is wrong with what we have?

**It is a problem** when the system set up to resolve disagreements explicitly in the name of the interests of the child often creates entirely new expressions of hostility that did not exist at the time of separation.

**It is a problem** that correspondence between solicitors can be intemperate and hostile about the character of one parent without evidence or regard to the interests of the child rather than their client. Not all solicitors do this so it would appear not to be a professional requirement.

**It is a problem** that (tens of) thousands of pounds can be spent and months pass into years in prolonging disagreement through correspondence and court litigation while relationships with the children that are the point of the exercise are affected simply by the passing of time. Too many parents are broken by the system itself and their resource as a loving parent is lost to them.

**It is a problem** that identical family facts and circumstances will result in different outcomes in different sheriff courts across Scotland.

**It is a problem** that family law solicitors will advise their client they have to "play the sheriff. Don't even ask for shared care. S/he never gives it."

**It is a problem** that gender stereotypes still dominate thinking in how parenting can be shared by two genuinely loving parents who no longer want to live together. These are equally unfair on mothers as well as fathers and on their children.

**It is a problem** that parents who have actually shared parenting of their children and had a close and loving relationship with them prior to separation as encouraged to do in the 21st century find that on separation the legal system and the attitudes within it revert to a 1970s model of family life of one main carer and another who sees the kids at weekends.

**It is a problem** that Child Welfare Reporters (who are instructed by sheriffs to ascertain the views of the children where their parents cannot agree on how to include each other in their children's life) have no requirement for training in interviewing children, have no performance appraisal and have no transparency in their work. This contrasts with the training and appraisal required of social workers and police who interview children in connection with criminal matters

where they are taught how to avoid tainting evidence and how to identify 'coaching'.

**It is a problem** that there is negligible research on either the immediate or the long term effects on children's emotional and social well-being of decisions made on their behalf by sheriffs, lawyers or other professionals such as social work.

**It is a problem** that the system of child support, retained at Westminster, represents a direct disincentive to sharing parenting even where both parents know their children would prefer it. One parent is deemed to be a payer and the other a receiver. The Child Maintenance Service currency is 'overnights' so at present genuinely sharing parenting may reduce the payment one is receiving.

**It is a problem** that the language of the legislation itself can undermine its objective. The law refers to "contact" and "residence" which supports a perception that one parent has more status than the other even where the law also refers to the importance of sharing key decisions such as choice of school. The terms have an effect on other agencies such as schools, health visitors or social workers who slip into assumptions about the significance of their relationship with respective parents.

## The paradigm shift we need

The law itself can only go so far. It already says the interests of the children should be paramount. That will and must remain the fundamental approach but the application of it and the language around it must change. Scottish politicians and those who influence the public narrative often warm to the proposition that we are leading the world in some area. In family law and the promotion of parenting that focuses on the long term well-being of children Scotland is far from leading.

Some of the radical changes we propose will require primary legislation. Some can be incorporated into regulations. Other simply require a change of practice, a change of mindset, a change of attitude. A change of culture.

Our recommendations are based on casework over the last 10 years. The headlines are:

**SHARED PARENTING** The new law should include a presumption of equal shared parenting as the starting point for decision if parents can't agree on the care arrangement for children and have to go to court. Either parent can present reasons why equally shared care isn't the best option for the children but the presumption will level the playing field between parents and preempt the trading of unevidenced assertions between lawyers that can delay agreement.

**TERMINOLOGY** Remove the term "residence" and "contact" from the courts to stop one parent assuming they can make unilateral decisions on important parenting issues and control relations with schools and health providers. Substitute "Child Orders", "Parenting Orders" or "General Issue Orders".

**CHILD WELFARE REPORTING** A required programme of induction, training and oversight of child welfare reporters should be introduced across Scotland.

**SPEEDY CONTACT DECISIONS** The law should stress the importance of quick action to decide on resumption of contact and the benefits to children on seeing both parents.

**ENFORCEMENT** Change the procedures for enforcement of contact orders to allow for a range of sanctions including community service for persistent refusal to comply. Court should also be able to order parenting/family therapy and measures to address Parental Alienation which is unjustified rejection by a child of one parent with whom they previously had a loving relationship.

**PARENTAL RIGHTS AND RESPONSIBILITIES** Give parental rights and responsibilities to all parents or considerably simplify the process for obtaining PRRs, including requirement to put both parents on the birth certificate, with provisions for exception in case of rape/incest.

**VOICE OF THE CHILD** Improve the way in which children are involved in contact cases, both for collecting their views and giving them feedback on the court decision.

**CONTACT CENTRES** New standards should be introduced for the regulation of contact centres and training of contact centre staff, including appropriate long-term funding to maintain and extend contact centre provision

**FAMILY JUSTICE MODERNISATION STRATEGY** Non legislative measures to provide more support for separating parents, improved case management in court, court cases to be conducted on an inquisitorial basis, parenting coordinators appointed by court to help implement parenting orders, compulsory mediation information sessions before court action, standards for cross border cases.

### TOO SLOW AND TOO EXPENSIVE

While acknowledging that the cases that come to FNF Scotland are likely to be the most difficult ones, we do hear about a very large number of problems with adversarial correspondence, multiple appearances in court, long delays of months, even years, before any order for contact is made and excessive costs. During last year's consultation period on the proposed Bill civil servants attended 5 out of our six monthly group meetings across Scotland. They heard from parents - mostly fathers - who had paid anything from £10,000 to £150,000 in legal costs in contact/residence actions to achieve meaningful parenting time with their children.

The Scottish Legal Aid Board (SLAB) paid £9 million for contact/parentage cases and a further £3.3 million for residence cases in 2016/17 (Rethinking Legal Aid Report p38). Public money above this figure is spent on court and judicial costs, and a significant sum is paid by the parents who do not qualify or only partially qualify for legal aid.

The Scottish Legal Aid Board reports that: of the child welfare hearings that they fund, 50% are in cases with more than 6 hearings and 17% in cases with more than 10 hearings (871 such cases in 2016/17). That means proceedings are dragging on without resolution over months into years.

These figures relate only to cases in which legal aid was claimed so do not include cases in which neither side has legal aid. We know of cases which have involved more than 80 hearings in court.

Replacing the current adversarial system with a judge-led inquisitorial process could save substantial amounts of money, produce contact decisions much faster and also reduce the stress on parents and children of long-running high-conflict court proceedings. We also advocate the introduction of Parenting Coordinators to supervise the day to day issues that arise for parents after the court has made its order to stop low level matters being brought back to a sheriff for 'micro-management'.

## Shared Parenting

The new law should include a presumption of shared parenting as a starting point if parents can't decide on the care pattern for children and have to go to court. This sets the starting point and either parent can present reasons why equally shared care isn't the best option for the children.

### PROBLEMS WITH THE CURRENT SYSTEM

The default position in current court hearings in Scotland is often to restart contact on a very limited basis. This happens even when the parent seeking contact was very much present in the family throughout the child's life before separation, and played a full and equal part in parenting up to that point.

When parents separate the old stereotypes of Mother/Carer and Father/Worker reappear, whatever the reality has been for the children before the split. Fathers often feel they are seen as a risk rather than a resource for their children. They feel they are on trial and have to prove their worth as a parent

When contact restarts a father can go back to court seeking more time, but once the court order reaches the "every 2nd weekend and half the holidays" level it is very difficult to go back for more contact because of the NO ORDER principle. Without evidence that we are aware of, we hear sheriffs say that the alternate weekend pattern is "normal" instead of whether it is good for the children concerned. By custom rather than evidence it has become a ceiling and a parent who asks for more is liable to be viewed as "demanding".

### REBUTTABLE NOT COMPULSORY

A "rebuttable presumption" of shared care means that if separated parents have to go to court because they can't agree about arrangements for time with their children, the judge's starting point will be an equal split of time with each parent.

Both parents can advance reasons why the time share should be different. Starting from this point wastes less time, money and emotion on the petty attacks by each parent on the character or competence of the other that characterises so many cases in the "winner takes all" approach of the current adversarial system in Scotland and focuses discussion on practicality and sustainability.

### WHICH COUNTRIES HAVE THIS IN LAW?

Shared care presumptions or significant statutory encouragement of shared care have been made a wide range of legislatures including Alaska, Arizona, Australia, Belgium, France, Kentucky, Louisiana, the Netherlands, New Zealand and Wisconsin.

Countries such as Sweden and Norway have achieved high levels of shared parenting without specific legal changes, and separating parents in these countries are discouraged from using court to make decisions.

Case law supports equal parenting time in Canada with 70 cases since 2005 in which shared decision-making was ordered despite evidence of parent conflict and failure to communicate and cooperate<sup>1</sup>.

### WHAT DOES THE RESEARCH SAY?

Evidence from many studies provide evidence of benefits for children in having equal involvement of both parents. This includes positive effects on children's mental health and stress levels due to equal time with both parents. Research has also shown that shared parenting can alleviate tension, even in high conflict cases.

Belgium introduced a rebuttable presumption of shared care in 2006. Judges comment that this makes it easier for them to make such orders, while retaining full scope to order other arrangements when necessary in the interests of the children.

In Sweden, shared parenting (50:50 joint physical custody) has grown from 2% in 1984 to 35% in 2013. Using data from the child supplement of the annual Swedish Living Survey, Bergström et al<sup>2</sup> showed that for children aged 10-18, most measures of well-being were similar for children with shared residence after separation and those still living with two parents in the same household, whereas outcomes were measurably worse for children living solely or mostly with one parent.

<sup>1</sup> Fabricius, W. V. *Equal parenting time: the case for a legal presumption in Oxford Handbook of Children and the Law*, 2019.

<sup>2</sup> *Child Indicators Research*, January 2017 DOI:10.1007/s12187-017-9443-1

Children living with one parent were significantly more likely to report experiencing health problems, more psychosomatic complaints, more stress, higher incidence of smoking and skipping breakfast than children in shared care or living with two parents.

In 60 studies from around the world recently reviewed by Professor Linda Nielsen<sup>3</sup>, 34 showed that children in joint physical custody (more than 35% of time with each parent) had better outcomes than children in sole physical custody on all the measures of behavioural, emotional, physical and academic well-being. They also had better relationship with parents and grandparents.

Shared care is often dismissed as not working for parents in poorer situations or where conflict levels are high, but Nielsen's meta-analysis found better outcomes for children independent of household income or conflict.

### WHAT HAPPENS WHEN THE LAW CHANGES

In Belgium, where family law changed in 2006 to include a rebuttable presumption of shared parenting, the percentage of children spending at least 33% of time with each parent has risen from less than 10% to more than 40%.

Speaking at a conference to mark 10 years of the law change in Belgium, one judge commented that it makes her life far easier to have a set starting point to such decisions.

### PUBLIC SUPPORT FOR SHARED PARENTING

81.5% of respondents supported a change in law to create a presumption of shared parenting meaning children spend half their time with each parent unless there is good reason not to (UK Google Poll of 376 people in January 2019).

80% of respondents support a recently proposed Kansas law that encourages courts to give fit parents equal parenting time after divorce" (Researchscape survey of 532 Kansans in February 2019).

<sup>3</sup> Linda Nielsen (2018) Joint versus sole physical custody: Outcomes for children independent of parental income or parental conflict, *Journal of Child Custody*, DOI:10.1080/15379418/2017:1422414

## Terminology

Remove the terminology "residence" and "contact" from the courts to stop one parent assuming they can make unilateral decisions on important parenting issues and control relations with schools and health providers.

Section 11 of the Children (Scotland) Act 1995 refers to orders about with whom a child is to live and orders for maintaining personal relationships and direct contact with children, labelling them "residence" and "contact" orders. These replaced the previous terms, "custody" and "access" orders.

### WHAT'S WRONG WITH THESE NAMES?

Parents with a residence order often say that this puts them in sole control. They may feel that they are the only decision-maker when it comes to a child's well-being or education, and that they are doing the other parent 'a favour' by allowing the child to spend time with him or her. They may also feel that they can dictate how the other parent spends his or her time with the child - giving instructions and demanding accounting for the time in a way they would consider oppressive and controlling if applied in reverse. In other words, the label puts the 'non-resident' parent in an inferior position, which is not what the Children (Scotland) Act actually intends.

Child support legislation around the world has largely moved away from such terminology, and the most recent family law changes in England and Wales also avoid such labelling.

### WHAT NAMES COULD BE USED?

If all court orders simply refer to "parenting" or "children's" orders the disparity can be removed at a stroke, although the public may persist in talking about custody and access for some time to come.

This simple change doesn't undermine the legislation in any way, but would strengthen the understanding of its intent. It would send a clear message that children deserve to see both their parents regarded as equal individuals however much time they spend in the respective homes.

If that terminology isn't accepted, the other option is to call these orders "general issue" orders, to distinguish them from "specific issue" orders covering specific questions that arise in court.

## Child Welfare Reporting

A required programme of induction, training and oversight of child welfare reporters should be introduced across Scotland

Child Welfare Reporters are lawyers or, occasionally, social workers appointed by the family court to investigate and report on the circumstances and views of children and the respective parents and some others who know them, so that the sheriff can have an independent source of information.

A working group representing a wide range of interests convened by the Scottish Government considered these arrangements between 2013- 2015.

Some of the recommendations of this group were accepted, such as the change in title from Bar Reporter to Child Welfare Reporter, the need for sheriffs to specify more clearly what should be investigated, guidance for parents and reporters, and set time-scales specifying that reports should be available at least three days before a child welfare hearing.

Recommendations for a minimal required programme of induction, training and oversight of child welfare reporters could not be implemented without primary legislation.

### WHAT IS NEEDED?

The working group suggestions included:

- recruiting and oversight of reporters should be uniform across Scotland, rather than varying sheriffdom by sheriffdom;
- required training should cover child development, talking to children, issues affecting child welfare including domestic abuse, mental health, addiction and parental alienation, and report writing.

Although individual reporters may already possess such skills, the lack of oversight and transparency means neither parents nor sheriffs can know for sure. We have seen some shockingly questionable child welfare reports and worrying inconsistency of enquiry and insight between reporters.

This is a very important matter. The recommendations made by Child Welfare Reporters have far reaching significance to the children concerned yet there is no transparency in their appointment and no appraisal of performance. This contrasts with the training and appraisal required of social workers and police who interview children in connection with criminal matters where they are taught how to avoid tainting evidence and how to identify 'coaching'.

A Child Welfare report is also a major cost to the parties and/or the Scottish Legal Aid Board in any case where it is ordered.

### STATISTICS

The Scottish Legal Aid Board funded 1112 child welfare reports in 2016. 743 were initial reports and 366 supplementary reports in an existing case.

The cost of these reports was £3 million in 2016/17, giving a legal aid cost of £4037/case.

Overall costs and numbers will be higher, as these figures don't include cases in which one parent pays a share of the case or where neither parents receives legal aid.

## Speedy Contact Decisions

The law should stress the importance of quick action to decide on resumption of contact and the benefits to children on seeing both parents

There are a significant number of contact cases which have taken far too long in both the Sheriff Court and the Court of Session.

One case which now only concerns contact has been in front of the Court of Session since 2009 and although a judgement ordering contact was handed down in 2016 (AH against CH, CSOH 152) the contact has not taken place and a further proof has been ordered.

A case which was heard in the Sheriff Court but resulted in an appeal to the Court of Session (SM v CM [2017] CSIH 1) was similarly prolonged.

Lord Glennie wrote in that judgement:

*"This case raises issues of practice and procedure of more general application. It also gives rise once again to real concern about the time taken in the Sheriff Court to determine issues of contact and other matters concerning young children."* [Para.2]

Lord Glennie recognised the harm done by delay when he wrote, *"The problems arising from delay are obvious. The longer a dispute about contact goes on, the more difficult it is likely to become, and the more the life of the child will be overshadowed by the continued and protracted nature of the proceedings. The passage of time can have irremediable consequences for relations between the child and its parents, particularly the non-cohabiting parent seeking contact or greater contact. Delay in resolving the proceedings may result in a de facto determination of the issue before the court."* [Para 65]

*"The time taken to resolve disputes about contact should be measured not in years but in weeks or, at most, months."* [Para 66].

## WHAT THEY DO ELSEWHERE

German family judge Jürgen Rudolph developed a radically different approach to family cases in Cochem. This accelerated family procedure involves the following steps:

- Lawyers limit themselves in procedural briefs to the substantive case in order to avoid aggravating the conflict; the emphasis is on oral presentation at the trial and paper submissions can be no longer than one page.
- Court sits within 14 days of receipt of contact application.
- Social and youth welfare officers are involved to support the family.
- If a mutual agreement is not reached, the parents go to mediation/counselling, also within 14 days.
- Experts commit to solution-oriented work.

Key elements of the Cochem model are now being used in other countries. Children and parents both benefit from this speedy and constructive approach.

If serious issues of safety are alleged there should be early findings of fact by the sheriff or judge. Too often such allegations hang like a shadow over child welfare hearings and are never resolved or tested by evidence.

### Enforcement

Change the procedures for enforcement of contact orders to allow for a range of sanctions including community service for persistent refusal to comply. Courts should also be able to order parenting/family therapy and measures to address Parental Alienation.

Even when a decision is made on arrangements for children in the family court it can be very difficult to enforce this decision. It brings the courts into disrepute when it is widely commented that a court order, achieved at great cost, "isn't worth the paper it is written on". Such non-compliance is contempt of court, but at present the only available penalties for such contempt are imprisonment or fines - neither of them suitable for use within family cases except in absolutely extreme circumstances. No parents who contact us want to send the other to gaol, they just want the order enforced.

### WHAT COULD WORK BETTER?

All contact orders must include mention that there will be a penalty if the order is not upheld (as in English family court orders).

Contempt hearings should be separate from child welfare hearings to allow the parent to take specific legal advice. The sheriff who is conducting the child welfare hearings should also conduct the contempt hearing. This continuity is desirable at all stages of family cases, putting the emphasis on finding solutions that will promote resolution of the child contact issue rather than simply punishment for the contempt. If contempt is established, the sheriff must impose a penalty but has the option to suspend this penalty.

There should be a limited time period after the contempt is established to allow parent to purge contempt by ensuring contact takes place (3 months maximum). A Child Welfare Hearing should be held at the end of this period and agents/party litigants also asked to provide monthly reports on whether contact has taken place.

The time-scale for suspension of penalty can be extended by sheriff if reasons are accepted at the contempt hearing or 3-month hearing. Sheriffs can re-impose the contempt penalty if monthly reports are not provided.

### MAKING THE PENALTY FIT THE CRIME

Penalties for contempt in child contact cases could include community service (to be carried out at the time of contact), financial penalties (not for parents on low income), attendance at Parenting Apart or other training. In extreme cases of parental alienation where the resident parent is determined to destroy the relationship between the child and the other parent a transfer of residence to the other parent remains an option for the court.

The time-scale for carrying out this action is crucial - many of the current problem cases have dragged on for a long period before any attempt was made to enforce the court order.

### Parental Rights and Responsibilities (PRRs)

Give parental rights and responsibilities to all parents or considerably simplify the process for obtaining PRRs, including compulsion to put both parents on the birth certificate, with provisions for exception in case of rape/incest.

All biological fathers and mothers should be granted PRRs. Removal of PRRs in certain cases (incest, rape etc.) should be made easier to cater for the (likely) small number of such cases where it is immediately obvious that the child will not benefit from having paternal or maternal involvement.

The current court process for obtaining PRRs is cumbersome and practice varies across courts.

## HUMAN AND CHILDREN'S RIGHTS

This change would save court costs and also be compatible with human and child rights and be an equal opportunities measure, as noted in resolution 209 of the Council of Europe<sup>4</sup>.

This resolution stresses the benefits for children of the involvement of both parents in their upbringing, and calls on member states to 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.

States should remove from their laws any difference based on marital status between parents who have acknowledged their child.

The Scottish Government is presently consulting on incorporation of the United Nations Convention on the Rights of the Child into Scots Law which includes a right to know its parents and to have a personal relations and direct contact with them - "except if it is contrary to the child's best interests".

### Voice of the Child

Improve the way in which children are involved in contact cases, both for collecting their views and giving them feedback on the court decision.

Children are the central characters in family court actions but their voices are often missing or swamped when key decisions are made.

Recent changes such as the introduction of a friendlier form F9 to collect children's views show that this issue has been recognised, but they fall far short of what should be done.

The methods for obtaining children's views need far wider consideration than the simple updating of a court form. CAF/CASS in England and Wales is already developing use of online and social media to enable children to communicate using these methods alongside interviews and form filling. Representative organisations like the Youth Parliament and Young Scot could consider these and other suggestions.

### CONSULTING NOT DECIDING

Children should be able to provide their views to court and obtain proper support to help them communicate. They should also get feedback in appropriate form on all occasions when decisions are made, not just when the court decides that they should be told why their views weren't followed in the final decision.

<sup>4</sup> (<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=22220&lang=en>).

These two steps in communication are important ways of making it clear to children that they are not being asked to make the decisions or to choose between their parents.

It's hard enough for a child to compose views in the difficult circumstances of a parental separation. Loyalty to both parents can make this extremely difficult.

The people obtaining children's views need to understand a lot about the capacity of children at various ages to express views, and should also develop ways to ensure that the child is not unduly influenced by one parent (either through parental alienation or worry about the effect expression of affection for the other parent may have on the one s/he lives with more of the time).

Family law can lay down standards, such as the age at which views should be obtained, but as discussed above with respect to Child Welfare Reporters, there is also a need for measures of support and standards for the people obtaining views which should be covered in the Family Justice Modernisation Strategy.

### Contact Centres

New standards should be introduced for the regulation of contact centres and training of contact centre staff, including appropriate long-term funding to maintain and extend contact centre provision.

Child contact centres perform an important role within the family court system, particularly as a way of ensuring that interim contact orders can be effected as early as possible while a court awaits independent information from a child welfare report. This importance should be recognised by provision of a long-term funding stream, either direct from Scottish Government or from the Scottish Courts and Tribunal Service or the Scottish Legal Aid Board. Our experience is that courts that make orders for supervised or supported contact are unaware of the waiting list for time at many contact centres or of the quite substantial fees that the non-resident parent may be charged in the process.

As noted above, the Inner House has already ruled that child contact decisions should be made in weeks, or at most months - and without adequate child contact centre provision this will be very difficult for Scottish courts..

Without such funding guarantees it will be very difficult to impose anything more than very minimal regulation without risking damage to the overall provision of child contact. Scottish contact centres are already overseen when in membership or association with Relationships Scotland. While it is desirable that such an important service should be subject to nationally uniform regulation, this should be proportionate and accompanied by adequate and long-term funding support.

It is also important that the volunteers who currently provide a key component within contact centres are fully supported and that training requirements are not made so onerous that volunteers are deterred from taking part. In terms of gender balance there are very few male volunteers. An active recruitment effort should be undertaken.

We also suggest that national guidelines for child contact centres should be prepared and publicised to contact centre users.

## Family Justice Modernisation Strategy

Non legislative measures to provide more support for separating parents, improved case management in court, court cases to be conducted on an inquisitorial basis, parenting coordinators appointed by court, compulsory mediation information sessions before court action, standards for cross border cases.

Changing Scottish Family Law will only do so much to address the problems faced by separated parents.

A wide range of other issues were raised in last year's Scottish Government consultation, and the wide range of responses included many interesting suggestions.

The forthcoming Family Justice Modernisation Strategy will present proposals for change, and we will respond in more detail when it is published.

In its analysis of the public responses to last year's consultation on family law reform, the Scottish Government included non-responses in their calculation of the percentages. Taking out these "don't knows" gives a far more emphatic agreement with the following questions, as we show below.

Q9. Should the 1995 Act be clarified to make it clear that siblings, including those aged under 16, can apply for contact without being granted PRRs?  
**90% agreed**

Q22. Should fathers who jointly register the birth of a child in a country where joint registration leads to PRRs have their PRRs recognised in Scotland?  
**86% agreed**

Q23. Should there be a presumption in law that a child benefits from both parents being involved in their life?  
**64% agreed**

Q28. Should the Scottish Government take action to try and stop children being put under pressure by one parent to reject the other parent?  
**78% agreed**

Q33. Should section 11 of the 1995 Act be amended to provide that the court can, if it sees fit, give directions to protect domestic abuse victims and other vulnerable parties at any hearings heard as a result of an application under section 11?  
**83% agreed**

Q36. Should action be taken to ensure the civil courts have information on domestic abuse when considering a case under section 11 of the 1995 Act?  
**88% agreed**

Q38. Should the Scottish Government explore ways to improve interaction between criminal and civil courts where there has been an allegation of domestic abuse?  
**85% agreed**

Q39. Should the Scottish Government introduce a provision in primary legislation which specifies that any delay in a court case relating to the upbringing of a child is likely to affect the welfare of the child?  
**80% agreed**

Q44. Should the Scottish Government produce guidance for litigants and children in relation to contact and residence?  
**92% agreed**

Q47. Should S.I. 1965/1838 be amended so that a father who has a declarator of parentage and has PRRs can re-register the birth showing him on the birth certificate?  
**90% agreed**

## **PUBLICATION DETAILS**

This report is published by Families Need Fathers Scotland, 10 Palmerston Place, Edinburgh EH12 5AA  
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"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**

"Although it was difficult at first, it made it easier to support him. I could help with things like checking his homework and I felt I was there for him if he ever needed me. It's not a simple solution but at the time we were one of the only families to achieve 50/50 care. Hearing other people's stories made me realise how lucky I was." **Mark**



**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 six monthly self-help support groups across Scotland.



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