

Citizen Participation and Public Petitions Committee

15th Meeting, 2023 (Session 6), Wednesday
25 October 2023

PE1968: Restrict perpetrators of domestic abuse from using family court proceedings to continue tormenting their victims

Lodged on 18 October 2022

Petitioner Angela Evans

**Petition
summary** Calling on the Scottish Parliament to urge the Scottish Government to review existing legislation on family law and seek to stop perpetrators of domestic abuse causing further abuse and distress to partners and children by removing their ability to apply for contact orders under Section 11 of the Children (Scotland) Act 2020.

Webpage <https://petitions.parliament.scot/petitions/PE1968>

Introduction

1. The Committee last considered this petition at its meeting on [8 February 2023](#). At that meeting, the Committee agreed to write to the Scottish Government, the Law Society of Scotland, Scottish Women's Aid, Shared Parenting Scotland, and the Children and Young People's Commissioner Scotland.
2. The petition summary is included in **Annexe A** and the Official Report of the Committee's last consideration of this petition is at **Annexe B**.
3. The Committee has received new responses from the then Minister for Community Safety, Shared Parenting Scotland, Scottish Women's Aid, the Children and Young People's Commissioner Scotland, and the Law Society of Scotland, which are set out in **Annexe C**.
4. Written submissions received prior to the Committee's last consideration can be found on the [petition's webpage](#).

5. Further background information about this petition can be found in the [SPICe briefing](#) for this petition.
6. The Scottish Government's initial position on this petition can be found on the [petition's webpage](#).
7. Every petition collects signatures while it remains under consideration. At the time of writing, 81 signatures have been received on this petition.
8. Members may wish to note Pam Gosal MSP has secured the right to introduce the Proposed Domestic Abuse (Prevention) (Scotland) Bill. Details of this proposal are available on the Scottish Parliament [website](#).

Action

The Committee is invited to consider what action it wishes to take.

Clerk to the Committee

Annexe A

PE1968: Restrict perpetrators of domestic abuse from using family court proceedings to continue tormenting their victims

Petitioner

Angela Evans

Date lodged

18 October 2022

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to review existing legislation on family law and seek to stop perpetrators of domestic abuse causing further abuse and distress to partners and children by removing their ability to apply for contact orders under Section 11 of the Children (Scotland) Act 2020.

Previous action

I have written to the First Minister, Nicola Sturgeon, but the response contained only general information about family law and my concerns weren't taken seriously.

Background information

Mothers and children are repeatedly put through the family court process when section 11 applications are made by former partners. Contact orders are given to the detriment of all the victims involved. The mother is forced against her will to force her child or children, who are also victims, to spend time with someone who has abused them. The term 'best interest of the child' is used very loosely and, in my view, domestic abuse isn't taken seriously.

The family court system is vastly underestimating the emotional trauma that is relived every day by victims of domestic abuse, even after the

perpetrator has left the home. In my view, perpetrators of domestic abuse use the family court system as a way to continue abusing their victims. This happens even when there are no parental rights and no claim of interest, yet the Section 11 order can still be sought by the abuser, causing severe emotional turmoil for the victims.

Annexe B

Extract from Official Report of last consideration of PE1968 on 8 February 2023

The Convener: We now move to new petitions. As I normally caveat when we discuss new petitions, before the committee considers a new petition, we send the petition to the Scottish Government and request an initial view in relation to the objectives of the petition, simply so that we do not spend the first meeting agreeing to do that, which would only delay our progress and consideration.

The first new petition that we will consider is PE1968, which was lodged by Angela Evans and is on restricting the ability of perpetrators of domestic abuse to use family court proceedings to continue tormenting their victims. The petition calls on the Scottish Parliament to urge the Scottish Government to review existing legislation on family law and seek to stop perpetrators of domestic abuse causing further abuse and distress to partners and children by removing their ability to apply for contact orders under section 11 of the Children (Scotland) Act 2020.

Angela tells us that mothers and their children are being let down by the family court system, which has granted contact orders to perpetrators of domestic abuse. In her view, that forces victims of abuse, who can include the child or children, to spend time with someone who has abused them, potentially putting them at further risk.

As I said a moment ago, and as we do with all new petitions, the committee has sought an initial response from the Scottish Government. The Government states that there is no place for domestic abuse in Scotland but suggests that removing the ability of perpetrators of domestic abuse to apply for contact orders might raise questions about access to justice.

I should note that the Scottish Government response and the briefing that we have received from the Scottish Parliament information centre both highlight that applications to the court for contact orders are made under section 11 of the Children (Scotland) Act 1995, rather than the 2020 act that is referred to in the petition.

The Scottish Government's response also notes that changes to section 11 of the 1995 act have recognised the impact of domestic abuse. There are also provisions contained in the Children (Scotland) Act 2020 that have yet to be implemented and which relate to matters such as the appointment of a child welfare reporter to gather the views of the child and report on the child's best interests, and the use of special measures to help protect vulnerable witnesses and parties when family cases are considered. Information in the SPICe briefing suggests that it may be 2024 before those provisions are implemented, or the new systems of regulation become operational, which hardly seems ideal.

Do members have any comments or suggestions for action?

Alexander Stewart: I am perplexed by this in some ways. I appreciate what the Scottish Government is saying about what it is attempting to do, but, in my view, there are still areas of responsibility that may require some clarity. I think that the time lapse on this is also stressful. I note what the petitioner says about being let down and the complexities of such issues. There is no doubt that there is exposure of individuals to potential abusers in the process.

I would seek some clarity. I would like to see more information from organisations that may be able to give us a little bit more advice and support. I suggest that we write to the Law Society of Scotland. I think that Scottish Women's Aid, Shared Parenting Scotland and the Children and Young People's Commissioner Scotland have a role, too.

I acknowledge what the Government is saying. In due course, things may improve, but at the present time I do not see that being the reality.

The Convener: Thank you. I have to say that it was judged necessary for the protection of families in situations of domestic abuse to introduce regulations as a consequence of the 2020 act, but those are not going to be implemented until 2024. Let me anticipate that we will be told that the pandemic means that work on various things was delayed. However, to be told that it is expected that that might not happen until 2024 all sounds a bit vague and woolly to me.

In addition to Alexander Stewart's recommendations, I propose that we go back to the Scottish Government to ask why on earth this delay involving an issue of protection—a protection that the Parliament regarded as being so necessary that we embodied it in legislation—is going to take until an unspecified date in 2024 to resolve. There seems to me to be a lack of urgency. The pandemic is now behind us, in the sense that I do not think that it is imposing a burden on the Government such that it cannot pursue the implementation of provisions in its own legislation. I think that the distress that the delay will be causing really ought to be given greater urgency than the response suggests that it has been. Are colleagues content that we proceed on that basis? Does anybody else want to comment?

Carol Mochan: I am very supportive of the comments that have been made. I would particularly support getting some feedback from organisations such as Scottish Women's Aid, because that might give some weight to the fact that, as you say, convener, it does not seem sensible to wait for four years to implement such urgent legislation.

The Convener: It is not even that we do not have the legislation. The issue is with implementing it—that is the extraordinary thing. Are we agreed that we will proceed on that basis?

Members *indicated agreement.*

Annexe C

Minister for Community Safety submission of 16 March 2023

PE1968/C: Restrict perpetrators of domestic abuse from using family court proceedings to continue tormenting their victims

I am grateful to the Committee for your letter of 16 February. You asked for clarification on why provisions included in the Children (Scotland) Act 2020 have not yet been implemented.

The briefing from the Scottish Parliament Information Centre drew particular attention to:

- Section 1, designed to strengthen the importance of the child's views in court decision-making.
- Sections 4–8, which aim to improve the experience of vulnerable people in the courtroom in family cases, including people affected by domestic abuse, by enhancing special measures (eg screens and IT equipment) which can be used in court.
- Section 9, which makes provision for a system of regulation of child welfare reporters and would establish a register of child welfare reporters.
- Sections 10-12, which make provision for the regulation of child contact centres.

As the SPICe briefing notes, there are budgetary pressures here. We estimate that implementing the 2020 Act in full will cost around £15 million a year.

On sections 10 to 12, following the enactment of the 2020 Act, the Scottish Government carried out a consultation on the [Regulation of child contact centre services](#). Since then, we have been discussing the details of the proposed regulation with the Care Inspectorate, who would be the proposed regulator as they have experience in similar areas. We plan to lay SSIs in Parliament later in 2023 on the regulation of child

contact centres. Once SSIs are in place, it will still take some time for regulation to be fully in place as both the Care Inspectorate and centres will need some time to gear up.

On sections 4 to 8, the Family Law Committee of the Scottish Civil Justice Council has set up a sub-group on the implementation of these provisions. Please see paragraphs 13 to 15 of the minutes of the Family Law Committee meeting on 27 September 2021: [agreed-20210927-flc-draft-minutes.pdf \(scottishciviljusticecouncil.gov.uk\)](https://www.scottishciviljusticecouncil.gov.uk/agreed-20210927-flc-draft-minutes.pdf)

As matters stand, sections 4 to 8 only apply to some family proceedings as this reflects what the 2020 Act covered. However, abuse and domestic abuse may be a feature in civil proceedings generally. Therefore, the Scottish Government has consulted on whether the protections in sections 4 to 8 should be extended to civil cases generally: please see [Improving victims' experiences of the justice system: consultation - Scottish Government - Citizen Space](#) (the relevant chapter in the consultation is chapter 3). The Scottish Government is considering the results of this consultation.

On section 9, following the enactment of the 2020 Act, the Scottish Government carried out a consultation on [Registers of child welfare reporters, curators ad litem and of solicitors who may be appointed when an individual has been prohibited from conducting their case themselves - Scottish Government - Citizen Space \(consult.gov.scot\)](#)

The Scottish Government sees establishing a register of child welfare reporters as a priority given the need to ensure reporters are qualified, experienced and trained. In addition, the Scottish Government considers that for a number of the provisions of the 2020 Act to work effectively, the register would need to be in place. Therefore, we plan to carry out more work in this area once the SSIs on the regulation of child contact centres have been laid. However, we estimate that establishing a register of Child Welfare Reporters may cost around £5 million a year, which is a significant financial pressure at the current time.

On section 1, this makes a number of amendments to provisions on hearing the views of the child. In particular, one of the amendments is to insert section 11ZB into section 11 of the Children (Scotland) Act 1995 relating to court cases such as child contact and residence. Section

11ZB will make provision on the child being given the opportunity to express views in the manner the child prefers. One of the options may be through a child welfare reporter: as indicated above, the register of child welfare reporters is not yet in place.

However, we will consider when section 1, or aspects of section 1, could be commenced. More generally, the Scottish Government is considering if there is scope to commence further provisions of the 2020 Act. I attach a table outlining the position with all of the provisions in the 2020 Act.

Elena Whitham MSP
Minister for Community Safety

Attachment

Commencement of the Children (Scotland) Act 2020

The 2020 Act is at [Children \(Scotland\) Act 2020](#)

Section	Purpose	Commencement status	Comments Potential to commence now?
<i>Regard to be had to child's views</i>			
1	Proceedings under Children (Scotland) Act 1995 [amendments]	Not yet commenced.	<p>Section 1 makes a variety of amendments to the Children (Scotland) Act 1995 covering:</p> <ul style="list-style-type: none"> • Views of the child concerned when a person with parental responsibilities and rights reaches a major decision. • Changes to section 11 of the 1995 Act (which covers court actions in areas such as contact and residence) including the regard to be had to the views of the child. • Changes to section 16 of the 1995 Act (on court actions on children involving local authorities and the children's hearings system) on the regard to be had to the views of the child.

			<p>The Scottish Government will consider when section 1, or aspects of section 1, could be commenced.</p> <p>On amendments to section 11 of the 1995 Act on hearing the voice of the child in contact and residence cases, the register of child welfare reporters is not yet in place.</p>
2	Proceedings under Adoption and Children (Scotland) Act 2007 [amendments]	Not yet commenced.	<p>Section 2 makes amendments to the Adoption and Children (Scotland) Act 2007 and the court or adoption agency hearing the voice of the child when coming to a decision on adoption and the court hearing the voice of the child when coming to a decision on making a permanence order.</p> <p>The Scottish Government will consider when this could be commenced.</p>
3	Proceedings under Children's Hearings (Scotland) Act 2011 [amendments]	Not yet commenced.	<p>Section 3 makes amendments to the Children's Hearings (Scotland) Act 2011 on children's hearings proceedings and hearing the voice of the child.</p>

			The Scottish Government will consider when this could be commenced
<i>Vulnerable witnesses and parties</i>			
4	Vulnerable witnesses: prohibition of personal conduct of case	Not yet commenced.	The Family Law Committee of the Scottish Civil Justice Council Family Law Committee (scottishciviljusticecouncil.gov.uk) have established a sub-group to consider how these provisions could be implemented: please see paragraphs 13 to 15 of the minutes of the Family Law Committee meeting of 27 September 2021
5	Vulnerable witnesses: requirement to consider special measures without application in certain cases	Not yet commenced.	
6	Hearing to ascertain if case involves vulnerable witnesses	Not yet commenced.	
7	Register of solicitors for section 22B of the Vulnerable Witnesses (Scotland) Act 2004	<ul style="list-style-type: none"> Section 7(3) and (4) came into force on 25 October 2021 - commenced for purpose of laying regulations: The Children (Scotland) Act 2020 (Commencement No. 2) Regulations 2021 (legislation.gov.uk) Other provisions not yet commenced. 	<p>For a ban on personal representation in certain circumstances to be in place, a register of solicitors who may be appointed by the court will need to be in place.</p> <p>The Scottish Government has consulted on whether provisions on vulnerable witnesses and parties along the lines of those in the 2020 Act should be extended to civil cases generally. Please see Improving victims' experiences of the justice system:</p>

		<ul style="list-style-type: none"> • Regulations not yet laid. 	consultation - Scottish Government - Citizen Space [chapter 3 of the consultation]. The Scottish Government is considering the responses made.
8	Vulnerable parties	Not yet commenced.	
<i>Register for child welfare reporters</i>			
9	Establishment of a register	<p>Commenced for the purpose of making regulations on 25 October 2021. The Children (Scotland) Act 2020 (Commencement No. 2) Regulations 2021 (legislation.gov.uk)</p> <p>Regulations not yet made</p>	<p>The Scottish Government has consulted on the establishment of Registers of child welfare reporters, curators ad litem and of solicitors who may be appointed when an individual has been prohibited from conducting their case themselves - Scottish Government - Citizen Space (consult.gov.scot)</p> <p>The regulation of children welfare reporters and the establishment of a register is a priority for the Scottish Government, once work on the regulation of child contact centres has been completed.</p> <p>However, there are budgetary constraints as the estimated cost of establishing the register is around £5 million a year:</p>

Contact			
10	Regulation of provision of contact services	<ul style="list-style-type: none"> • Section 10(1) and (3) came into force on 25 October 2021 - commenced for purpose of making regulations. The Children (Scotland) Act 2020 (Commencement No. 2) Regulations 2021 (legislation.gov.uk) • Regulations not yet made. 	<p>The Scottish Government has consulted on the regulation of child contact centres: Regulation of child contact centre services - Scottish Government - Citizen Space (consult.gov.scot)</p> <p>Section 10(2) depends on a new regulatory system for child contact centres being in place.</p> <p>The Scottish Government expects to lay SSIs before Parliament later in 2023 to introduce the regulation of child contact centres.</p> <p>It will take some time before the regulation of child contact centres to have full effect as both the Care Inspectorate (the proposed regulator) and the centres will need time to gear up.</p>

11	Referrals by solicitors to contact services	Not yet commenced.	Dependent on new regulatory system for child contact centres being in place.
12	Arrangements for contact services	Not yet commenced.	Section 12 provides a statutory basis for the Scottish Ministers to contract for the provision of services to facilitate contact with children. This would enable Scottish Ministers to carry out a tendering exercise for the provision of child contact centre services.
13	Promotion of contact between looked after children and siblings	Came into force on 26 July 2021: The Children (Scotland) Act 2020 (Commencement No. 1 and Saving Provisions) Regulations 2020 (legislation.gov.uk)	In force
14	Duty to consider contact when making etc. compulsory supervision order	Came into force on 26 July 2021: The Children (Scotland) Act 2020 (Commencement No. 1 and Saving Provisions) Regulations 2020 (legislation.gov.uk)	In force

Further provision about orders under section 11(1) of the Children (Scotland) Act 1995			
15	Clarification of order-making power	Came into force on 17 Jan 2021: The Children (Scotland) Act 2020 (Commencement No. 1 and Saving Provisions) Regulations 2020 (legislation.gov.uk)	In force
16	Factors to be considered before making order	Not yet commenced.	Section 16 makes amendments to section 11ZA of the Children (Scotland) Act 1995, which is inserted by section 1(4) of the 2020 Act. Section 1(4) will need to be commenced to enable section 16 to be commenced.
17	Curators ad litem	<ul style="list-style-type: none"> Section 17(1) and (3) commenced for purpose of making regulations - came into force on 25 October 2021. The Children (Scotland) Act 2020 (Commencement No. 2) Regulations 2021 (legislation.gov.uk) Other provisions not yet commenced and 	The Scottish Government has consulted on the establishment of Registers of child welfare reporters, curators ad litem and of solicitors who may be appointed when an individual has been prohibited from conducting their case themselves - Scottish Government - Citizen Space (consult.gov.scot)

		regulations not yet made.	Work in this area will be taken forward with work on the regulation of children welfare reporters and the establishment of a register of reporters.
18	Duty to consider child's best interests when allowing access to information	Not yet commenced.	<p>This relates to situations where the court is considering making an order under section 11(1) of the 1995 Act.</p> <p>The provision lays down that that when the court has to decide whether a person should have access to anything in which private information relating to a child is recorded, it must regard the best interests of that child as a primary consideration.</p> <p>It also makes provision on hearing the voice of the child which could perhaps be through a child welfare reporter. As indicated above, the new register of child welfare reporters is not yet in place.</p>
19	Local authority reporters	Not yet commenced.	Dependent on new register of child welfare reporters being operational.

20	Explanation of decisions to the child	Not yet commenced.	Dependent on new register of child welfare reporters being operational.
21	Duty to ensure availability of child advocacy services	Not yet commenced.	<p>Following a previous public petition, the Scottish Government committed to consulting in 2023 on the implementation of this provision. Please see PE1838/N Minister for Community Safety submission of 8 October 2021 Scottish Parliament Website</p> <p>The Scottish Government has estimated that establishing a child advocacy service for contact and residence cases could cost around £5 million a year: please see Microsoft Word - AccessibleVersion_SPBill52AFMS052020 (parliament.scot) (paragraphs 34 to 43).</p>
22	Failure to obey order	Not yet commenced.	<p>This relates to a duty on the court to establish the reasons for a failure by a person to obey a court order under section 11 of the 1995 Act on matters such as contact and residence</p> <p>The provision includes duties in hearing the voice of the child and on the court being able to appoint a</p>

			<p>child welfare reporter to investigate a failure or alleged failure to obey an order.</p> <p>Dependent on new register of child welfare reporters being operational.</p>
<p><i>Alternative dispute resolution</i></p>			
23	<p>Funding for alternative dispute resolution</p>	<p>Came into force on 17 Jan 2021 to enable reports to Parliament: The Children (Scotland) Act 2020 (Commencement No. 1 and Saving Provisions) Regulations 2020 (legislation.gov.uk)</p> <p>The funding mechanism itself is not yet in place. It may also be better to design the mechanism following the conclusion of the pilot (section 24).</p>	<p>The Scottish Government is providing regular reports to Parliament in this area. The most recent report is at The Reporting Period - Children (Scotland) Act 2020 - section 23(1) and section 24(1): third report on the Scottish Ministers' duties - gov.scot (www.gov.scot)</p>

24	Pilot scheme for mandatory alternative dispute resolution meetings	<p>Came into force on 17 Jan 2021 to enable reports to Parliament: The Children (Scotland) Act 2020 (Commencement No. 1 and Saving Provisions) Regulations 2020 (legislation.gov.uk)</p> <p>The pilot has not yet run, though work has been carried out in preparation (see reports to Parliament).</p>	<p>The Scottish Government is providing regular reports to Parliament in this area. The most recent report is at The Reporting Period - Children (Scotland) Act 2020 - section 23(1) and section 24(1): third report on the Scottish Ministers' duties - gov.scot (www.gov.scot)</p>
<i>Children's hearings</i>			
25	Opportunity to participate in hearing	<p>Came into force on 26 July 2021: The Children (Scotland) Act 2020 (Commencement No. 1 and Saving Provisions) Regulations 2020 (legislation.gov.uk)</p>	In force.

26	Appeal against relevant person decision	Came into force on 26 July 2021: The Children (Scotland) Act 2020 (Commencement No. 1 and Saving Provisions) Regulations 2020 (legislation.gov.uk)	In force.
27	Appeals to Sheriff Appeal Court and Court of Session	Not yet commenced.	<p>Section 27 makes provision so that appeals against the sheriff's decision in a children's hearings case are to the Sheriff Appeal Court.</p> <p>The Scottish Government will consider if this section could be commenced.</p> <p>Commencing this section may require amendments to court rules.</p>
<i>Miscellaneous provisions</i>			
28	Conferral of parental responsibilities and parental	Not yet commenced.	This section would allow the Scottish Ministers to make regulations to confer parental responsibilities

	rights: births registered outwith UK		<p>and rights on fathers and second female parents in Scotland when they have followed a process (e.g. joint birth registration) with the mother outwith the UK.</p> <p>The Scottish Government has carried out some research to help inform what processes outwith the UK could be covered by any regulations</p>
29	Extension to sheriff of enforcement powers under Family Law Act 1986	Not yet commenced.	<p>This provision would allow family law orders made elsewhere in the UK to be enforced in the sheriff court.</p> <p>Court rules may be required.</p> <p>The Scottish Government will consider if this section could be commenced.</p>
30	Delay in proceedings likely to prejudice child's welfare	Not yet commenced.	<p>This requires the court, when considering the child's welfare, to consider whether any delay in</p>

			<p>proceedings would negatively affect the child's welfare.</p> <p>This could be as part of a decision about an order under section 11 of the 1995 Act; under section 16 of the 1995 Act; in relation to adoption cases under section 14 of the 2007 Act; and for children's hearings or children's hearings court proceedings under section 25 of the 2011 Act.</p> <p>The Scottish Government will consider if section 30, or aspects of section 30, could be commenced.</p> <p>On the provision which relates to section 11 of the 1995 Act, this depends on section 11ZA, inserted by section 1(4) of the 2020 Act, being commenced.</p>
<i>Final provisions</i>			
31	Review of children's ability to participate	Not yet commenced.	This places a duty on the Scottish Ministers to review the effect of the Act on children's participation in the making of various types of decisions which affect them and in relation to which their views are required to be sought and taken into account.

32	Power to replace descriptions with actual dates	Came into force the day after Royal Assent.	In force
33	Ancillary provision	Came into force the day after Royal Assent.	In force
34	Commencement	Came into force the day after Royal Assent.	In force
35	Short title	Came into force the day after Royal Assent.	In force

Scottish Government

March 2023

Shared Parenting Scotland submission of 17 March 2023

PE1968/D: Restrict perpetrators of domestic abuse from using family court proceedings to continue tormenting their victims

As noted in the SPICE Briefing on this petition, the issue raised by the petitioner is already covered in section 11 of the Children (Scotland) Act 1995, which states the principle that the welfare of the child is the paramount consideration. Further points were added in the Family Law (Scotland) Act 2006, which states that the court has to have particular regard to various aspects of protection from abuse. Further changes will be made when the Children (Scotland) Act 2020 is implemented.

The Committee might wish to comment about the slow progress of implementation of that Act, particularly the experimental scheme to hold dispute resolution information meetings before cases are considered in court.

Shared Parenting Scotland considers that this scheme could have great benefits to children if it is successful in helping more separated parents to reach decisions about child contact quickly and avoid adversarial, expensive and slow court processes.

Shared Parenting Scotland agrees with the petitioner's concern about the impact of family court hearings in Section 11 child contact cases, but does not recognise her assertion that perpetrators of domestic abuse repeatedly use the family court system as a way to continue abusing their victims.

We have stated many times, including during consideration of the Children (Scotland) Bill in 2020 and the consultations that preceded it that there is a very serious lack of statistical information about the number and extent of child contact cases in Scottish courts. The one study which is often quoted in relation to this issue in Scotland¹ is based on a limited number of cases in 2006 and explicitly acknowledged that it

¹ <https://www.research.ed.ac.uk/en/publications/the-treatment-of-the-views-of-children-in-private-law-child-conta>

was not part of the research to examine the detail of the allegations of domestic abuse.

Another study², also limited, investigated 107 children from 72 families in which residence issues had been previously settled but which were subject to ongoing disputes regarding contact or change of residence. Such cases are marked in general by allegations and counter-allegations in regard to the historical or current conduct of the other. Of the 37 cases where allegations of abuse had been made, 26 (70 per cent) were found in court or were judged on the best available evidence to be false. Of the remainder, the allegations were unsubstantiated in nine cases (24 per cent), while the remaining two (5 per cent) were upheld.

It would therefore be very appropriate for the Committee to suggest that more detailed statistical information on child contact cases should be recorded by the Scottish Courts and Tribunals Service in order to establish information about what actually happens in these cases.

We suggest that sheriffs already have the legislative backing to make suitable decisions in child contact cases including the power under the no-order principle to refuse consideration of contact applications and powers in relation to vexatious litigants. Given that the court also has to consider Articles 5, 9 and 12 of the UN Convention on the Rights of the Child it would not be in the interest of children to make the change suggested in Petition 1968.

ABOUT SHARED PARENTING SCOTLAND

Shared Parenting Scotland had just over 1,000 active enquiries during 2022. We staff a daily telephone helpline for individual enquiries. We run monthly support group meetings in Edinburgh, Glasgow, Stirling, Dundee and Aberdeen. We run one online meeting a month for people who are still uncomfortable with in person gatherings. All our meetings now have a family law solicitor in attendance on a pro bono basis for general advice about the law and legal procedures.

²https://www.researchgate.net/publication/265346094_False_allegations_of_child_abuse_in_contested_family_law_cases_The_implications_for_psychological_practice

We publish several free ‘user guides’ to help inform individuals about rights and responsibilities of parents in relation to maintaining and nurturing a meaningful relationship with their children after divorce or separation. [Downloadable guides and publications from Shared Parenting Scotland - Shared Parenting Scotland](#)

We also provide the [New Ways For Families® training and coaching programme](#) to calm potentially high-conflict separation and help separated parents to communicate and reach agreement.

Scottish Women’s Aid submission of 4 April 2023

PE1968/E: Restrict perpetrators of domestic abuse from using family court proceedings to continue tormenting victims

Joint response from [Scottish Women’s Aid](#), and Dr Fiona Morrison and Professor Kay Tisdall (of the [Childhood and Youth Studies Research Group](#) at Moray House School of Education and Sport, University of Edinburgh), to the Citizen Participation and Public Petitions Committee in relation to PE1968: Restrict perpetrators of domestic abuse from using family court proceedings to continue tormenting their victims

1. Lack of progress made in implementing the Children (Scotland) Act 2020 and improving compliance with the UNCRC

The Children (Scotland) Act 2020 aims to better protect both children’s protection and participation rights in the current legal framework for family law. However, progress in its implementation has stalled. Evidence from Scotland³ and elsewhere demonstrates that allegations and concerns of domestic abuse underlie many, if not the majority of, disputed contact cases that reach courts.⁴ Family law systems and procedures need to be able to deal with allegations of

³ Scottish Government. 2019 [Family Justice Modernisation Strategy](#)

⁴ CAF/CASS & Women’s Aid. 2017 [Allegations of domestic abuse in child contact cases](#); Mackay, K. 2013 [The treatment of the views of children in private law child contact disputes where there is a history of domestic abuse](#), Scotland’s Commissioner for Children and Young People.

domestic abuse and work to eradicate barriers to implementing children's participation rights.

There is an urgent need to implement the system of child advocacy that was intended to be enacted through the Children (Scotland) Act 2020. The UN Committee on the Rights of the Child's General Comment No. 12⁵ requires, when implementing children's participation rights, to ensure: preparation for the child; an enabling and encouraging environment for the hearing; assessing the capacity of the child, so as to guide the weight to be given to these views in the decision; feedback to the child on the outcome and how the child's views were considered. **Without an accessible system of advocacy available to children it is unclear how these rights are being met⁶.**

General Comment No. 12 is clear that all children should be presumed to have the capacity to express views. It is the duty of the relevant individuals to enable children to express their views in the most suitable way to them. Such issues were duly considered in the Children (Scotland) Act 2020, in the wording of Section 1. **We are concerned that the absence of an advocacy infrastructure, means that younger children are routinely disenfranchised from their rights as set out under the UNCRC. We have further concern that the rights of specific groups of children (e.g. children with learning difficulties) are also at risk.** There is an urgent need to consider how mechanisms can be developed to accommodate these groups of children who are the main constituents of family courts.

Contrary to the UN Committee on the Rights of the Child's General Comment Number 5,⁷ there is no clear or accessible way for children to complain or seek remedy about court decisions and practices about child contact. While there is an existing legal process for appeals it is not accessible to children. **This needs to be addressed for law and practice to be compliant with the UNCRC.**

Contrary to Article 11 of the Istanbul Convention, no routine data is available on courts practices and outcomes in relation to disputed

⁵ United Nations Committee on the Rights of the Child (2009) *General Comment No. 12, The right of the child to be heard*, <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.pdf>

⁶ Morrison, F, Tisdall, E. K. M., Warburton, J., Reid, A., & Jones, F. (2020a). Children's Participation In Family. Actions-Probing Compliance With Children's Rights Research Report. <https://dspace.stir.ac.uk/bitstream/1893/31100/1/Childrens%20Participation%20in%20Family%20Actions.pdf>

⁷ UN Committee, Committee on the Rights of the Child, General Comment No. 5, *General Measures of Implementation of the Convention on the Rights of the Child*, 2003. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2003%2f5&Lang=en

contact in Scotland. Data needs to be collected and made available to monitor the following: decisions made by court; the nature of cases (e.g., where there are allegations of domestic abuse); how children’s participation rights were implemented; children’s experiences of the process (including their participation rights). **Without robust disaggregated data on courts practices it is not possible to monitor the implementation of children’s rights in this context.**

2. The urgent need to ensure that we have domestic abuse competent courts

In spite of legislative changes that were introduced as part of the Domestic Abuse (Scotland) Bill, research⁸ shows that awareness of the dynamics of domestic abuse within civil proceedings remains limited. International research shows that child contact and legal proceedings can become a focal point for post-separation abuse.⁹ We are concerned that women are advised against raising domestic abuse in child contact proceedings and that domestic abuse is not adequately addressed through court proceedings with negative consequences for women’s and children’s rights to protection. There is **a clear need for improved understandings of domestic abuse as a pattern of behaviour that impacts both women and children**, and the ways contact proceedings can be used by perpetrators to prolong their abuse.

Work is required to **harmonise the ways in which domestic abuse is addressed across criminal, civil and public law.** A recent study¹⁰ illustrated the persistent disconnect between civil and criminal proceedings, noting that the outcomes of domestic abuse within criminal proceeding will rarely inform the decisions of child contact. This undermines the safety and protection of women and children, often in favour of maintaining contact with the abusive parent. Recent Scottish research has pointed to gaps in criminal law, including less rigorous implementation of protective orders (non-harassment orders) for adult and child victims of domestic abuse in criminal proceedings so that such

⁸ <https://www.sccjr.ac.uk/wp-content/uploads/2023/01/SCJH-Executive-Summary-11.01.23.pdf>

⁹ Birchall, J. and Choudhry, S. 2022. ‘I was punished for telling the truth’: how allegations of parental alienation are used to silence, sideline and disempower survivors of domestic abuse in family law proceedings. *Journal of Gender-Based Violence*, 6(1), pp.115-131. See Hunter, R., Barnett, A., Kaganas, F. and Choudhry, S. eds. 2020. *Domestic Abuse and Child Contact: International Experience*. Routledge. Holt, S. 2017. *Domestic Violence and the Paradox of Post-Separation Mothering*, *The British Journal of Social Work*, 44(7) 2049–2067; Morrison, F., 2015. ‘All over now?’ ‘The ongoing relational consequences of domestic abuse through children’s contact arrangements. *Child Abuse Review*, 24(4), pp.274-284; Hardesty, J. L., Haselschwerdt, M. L., & Johnson, M. P. 2012. Domestic violence and child custody. In K. Kuehnle & L. Drozd (Eds.), *Parenting plan evaluations: Applied research for the family court* (pp. 442–475). Oxford University Press

¹⁰ <https://www.sccjr.ac.uk/wp-content/uploads/2023/01/SCJH-Executive-Summary-11.01.23.pdf>

orders do not ‘interfere’ with child contact.¹¹ There are further and significant concerns about the adequacy of legal aid provision and the implications this has for effective legal representation of non-abusing parents and children during contested child contact.¹² These raise significant concern about children’s and women’s rights to protection.

Children and Young People’s Commissioner Scotland submission of 9 October 2023

PE1968/F: Restrict perpetrators of domestic abuse from using court proceedings to continue tormenting their victims

Thank you for inviting us to comment on this petition. The impact of child contact proceedings on the lives of children who have experience domestic abuse is something that our office has been working on for some considerable time. In 2013, we published research by Dr Kirsteen Mackay into the treatment of the views of children in private law child contact disputes where there is a history of domestic abuse¹³, which informed our work with Scottish Women’s Aid on Power Up Power Down¹⁴ and our subsequent work on the Domestic Abuse (Scotland) Act 2018¹⁵.

In our evidence to the Justice Committee on the Children (Scotland) Act 2020¹⁶, we highlighted the ways in which increasing the extent to which courts take account of the views of children could act to ensure their best interests are treated as paramount by the courts, as required by section 16 of the Children (Scotland) Act 1995. Provisions in the 1995 Act on the paramountcy of the child’s welfare and the non-intervention principle were strengthened by inserting new section 11ZA.

¹¹ See Houghton, C., Morrison, F., Warrington, C. and Tisdall, EKM. (2023). Domestic Abuse Court Experiences Research: the perspectives of victims and witnesses in Scotland. Scottish Government; McPherson, R. 2022. Unintended Consequences Of non-harassment Orders: Child Contact decision-making, Journal of Social Welfare and Family Law, DOI: 10.1080/09649069.2022.2136714

¹² <https://www.scottishlegal.com/articles/legal-aid-crisis-hitting-scotlands-most-deprived-families>

¹³ SSCYP, 2017. <https://www.cypcs.org.uk/wp-content/uploads/2020/03/views-of-children-and-domestic-abuse.pdf>

¹⁴ SWA and CYPCS, 2016. <https://womensaid.scot/project/power-up-power-down/>

¹⁵ CYPCS, 2017. *Parliamentary evidence: Domestic Abuse (Scotland) Bill (Stage 1)* <https://www.cypcs.org.uk/resources/domestic-abuse-scotland-bill-stage-1/>

¹⁶ CYPCS, 2019. <https://www.cypcs.org.uk/get-help/policy-and-law/our-policy-work/evidence-submission-justice-committee-call-for-views-on-the-children-scotland-bill/>

Our evidence on the 2020 Act, together with our response to the Scottish Government's consultation on the Family Justice Modernisation Strategy,¹⁷ explains the human rights context in relation to the European Convention on Human Rights (ECHR), the UNCRC, the Council of Europe Guidelines on Child Friendly Justice and other international human rights treaties and guidelines.

The 2020 Act made a large number of changes to improve the ability of the courts to take account of the views of the child by inserting new section 11ZB into the 1995 Act. This included replacing the presumption that children aged 12 and over are capable of giving their views with a presumption that all children have the capacity to form a view and placing a duty on the court to give all children the opportunity to express their views in an appropriate manner. The Act also introduced advocacy services to support children who are the subject of private law disputes. This brings the 1995 Act more in line with children's right to participate when decisions are made about their lives, in line with Article 12 and General Comment 12 of the UNCRC.

The 2020 Act also introduces registration, with minimum requirements for training, for child welfare reporters along with access to advocacy. We welcomed this and called for that training to include children's human rights, child development, effectively seeking the views of children and supporting children to express their views in person. We also supported calls for child friendly complaints mechanisms and advocacy, however we note that advocacy is not a substitute for qualified legal advice and representation where this is required.

Our view is that by improving the information available to be the court, particularly regarding the views, and strengthening the understanding of children's human rights courts will be in a position to make decisions where children's best interests are paramount, in line with section 16 of the 1995 Act.

Although, as stated in our Stage 3 evidence,¹⁸ we felt that there were amendments that would further strengthen the 2020 Act, our view is that it presents a significant step in ensuring that the courts focus is on the best interests and views of children who are subject to contact proceedings and a significant step towards compatibility with the UNCRC.

¹⁷ CYPCS, 2018. *Consultation response: Review of Part 1 of the Children (Scotland) Act 1995 and creation of a family justice modernisation strategy*. <https://www.cypcs.org.uk/resources/scottish-government-consultation-response/>

¹⁸ CYPCS, 2020. <https://www.cypcs.org.uk/get-help/policy-and-law/our-policy-work/msp-briefing-children-scotland-bill-stage-3/>

It is therefore extremely disappointed at delays in implementation of the 2020 Act. In particular, we are concerned there is currently no timescale available on implementation of the register of Child Welfare Reporters and we call on Scottish Government to make funding available to progress this.

March 2023*

**Originally submitted in March 2023 but only received by Committee in October 2023.*

Law Society of Scotland submission of 19 October 2023

PE1968/G: Restrict the perpetrators of domestic abuse from using family court proceedings to continue tormenting their victims

[Note from the Clerk – This is an extract of the Law Society of Scotland submission which responded jointly to petitions PE1968 and PE1981]

Thank you for giving our Child and Family Law Sub-Committee the opportunity to comment on the above mentioned petitions.

PE1968

Having looked at this, the Sub-Committee understand that the effect of this petition would be to prohibit contact for any perpetrator of domestic abuse irrespective of circumstances, and without recourse. There is a very difficult equilibrium of rights at issue in such cases, not least the child's right to maintain contact/direct relations with a parent (subject, of course, to welfare considerations). The issues raised here are neither straightforward nor clear-cut, and the Sub-Committee consequently believe that a blanket ban is unlikely to be appropriate.

Domestic abuse should be at the forefront of every Sheriff's mind in any applicable cases in relation to substantive decision making. As mentioned in the SPICe briefing which your Committee has already had sight of, the current law relevant to this petition is found in the Children (Scotland) Act 1995 ('the 1995 Act'), as amended by the Children (Scotland) Act 2020 ('the 2020 Act'). This recognises that the occurrence, risks, and effect of domestic abuse on both a child and on

another person with parental rights and responsibilities must be taken into account, (see s.11(7A) to (7C)). This often dovetails with the issue of whether parents can cooperate, or be expected to cooperate, see (s.11(7D)).

The concern that family court actions can, themselves, be a traumatising experience for victims of domestic abuse is a legitimate and important one. Appropriate and sensitive procedural rules should address this. Examples include a Sheriff being able to bring an appropriate case to an end at a child welfare hearing, and even at a first child welfare hearing (OCR 33.22A.), meaning that, contrary to the common assumption, cases of this type do not need to be long and drawn out; the Sheriff being able to excuse attendance of a party at a child welfare hearing in appropriate circumstances; and that the occurrence of domestic abuse must be taken into account in deciding whether to refer a case to mediation.

The Sub-Committee believes that training is a key issue here, with judicial training considered a vital component. Increasing awareness of the effect of domestic abuse on children should enable practitioners and the court to respond to the particular circumstances of each case.

...

In conclusion, and with regard to both Petitions, the Sub-Committee understand the strength of feeling, and is aware of the relationship between criminal allegations and civil procedure becoming a material issue, something we will look to explore further in our work. There is a very difficult balance to be struck in these matters. The view of the Sub-Committee is that there is already a solid framework in the law that regard must be given in circumstances where there has been domestic abuse and to take early steps to make sure a case is dealt with expediently, not going to proof if unnecessary, and that there is a full suite of powers available to judges to deal with these matters early on. For us, training is vital to make sure these laws and powers are fully understood and therefore better used. These matters are case specific, though, and it is not the view of our Sub-Committee that a blanket approach is a suitable solution.

I hope this is helpful in your discussions and please do let us know should you require further clarification.