I wish to show that male parents whether in a relationship with the child’s mother or not are treated at best as second class parents or mother’s helps and at worst as a danger to their children in our society. This has been my personal experience and the experience of other fathers in Scotland. This is based on sexist, stereotypical attitudes towards fathers in our legal system and social institutions.

Much of what is written about fathers in the media is negative and implies that they are uncaring of children. Fathers are often presented as emotionally distant and physically absent from children or, if physically present, as functionally absent from children’s lives. Fathers, moreover, often struggle to be involved with children in what Dienhart and Daly (1997) described as ‘a culture of maternalism’ which idealises motherhood and results in mothers being perceived as having primary responsibility for children and mothers who feel that they essentially own their children. As Kelly puts it ‘[w]e seem to require that men prove their parenting skills whereas with women we assume that the skills are already there.’

Burgess (1997) also points out that ‘it is now understood that much of what fathers can do for their children, and children for their fathers, depends on the value accorded their interactions by the local and wider community. This is just as important as what actually goes on between fathers and children in everyday life. If a culture is saturated with indifferent or clearly negative attitudes to close father-child relationships, then this often results in such a relationship (even one that actually works well on a day-to-day basis) being felt to be of little importance, or problematic.’

South of the Border, the then Minister for Children, Young People and Families, Beverley Hughes stated ‘Research has confirmed time and time again that parents are the single most significant determinant - for better or worse - of children’s wellbeing. The impact of ineffective parenting blights children’s prospects. And it can blight our communities. Conversely, positive, aspirational, loving parents enable children, especially poorer children, to harness the opportunities of education and move beyond the circumstances of their birth. But too often, when we talk about engaging parents, we actually only engage mothers. The automatic default position is that parent equals mother. This has to change.

It is a sad indictment of our society that some fathers come to view themselves as an irrelevance. This is often reinforced by professionals who should be trying help the parent child relationship rather than undermine it. These are some of the faults in our society’s attitudes to male parenting and therefore the issues which need to be addressed by the Equal Opportunities Committee.
Studies have shown that the vast majority of fathers and mothers are positively involved with their children. Some research, however, has found that non-resident fathers at times disengage from children so as to avoid contact with the children’s mother. Clinical experience also shows that a number of fathers reduce or stop contact with children because they believe that their absence will be less harmful for children than will the continuing parental hostility should the fathers remain involved. If fathers are lead to believe that they do not make much difference to their children’s lives, it is hardly surprising that some of them disengage from children, particularly when they experience a high level of stress or domestic abuse in their efforts to remain involved.

That fathers care for, want to be with and are distressed when their children are taken from them, should not be open to dispute. The literature suggests that non-residential fathers are faced with financial problems, dealing with hostile and abusive ex-partners, attending to their own emotional state and they often struggle to maintain relationships with their children while feeling ostracized, anxious, without roots and suffering with low self-esteem, depression, poor work performance and disturbed sleep. According to Wallerstein and Kelly (1980), much of the suffering can be attributed to the transition from being a full-time parent to a part-time parent. Some fathers are concerned with the fear of losing their children and feel powerless. It is not surprising, therefore, that the relationship between fathers and their children and the male suicide rate has been raised by several researchers with suggestions that parental status, rather than marital status, may be the demographic marker for suicide. Anne Harris and Rosemary Cockrill of the St Neots Abuse Project, Cambridgeshire, state that: “Around 50 men a week commit suicide not just through domestic violence - but family break downs and health issues”. Although there is no figures that I am aware of to show a direct correlation between non-resident fathers and suicide in Scotland, in 2004, deaths from intentional self-harm numbered 606 (448 males and 158 females). Suicide is the most common cause of death for men aged 15 and 44. Separated fathers tend to suffer more mental health problems than do both separated mothers and married fathers. Studies have shown that the grief of non resident fathers stems primarily from the loss of their children rather than from the loss of marital identity and that the most deleterious consequence of relationship breakdown for non-residential fathers is the absence of their children. Non resident father’s loss of daily contact with children is often socially defined as insignificant. This only adds to non resident fathers’ sense of being marginalised. Our society barely acknowledges the grief of non resident fathers.

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1 Frieman, 1994
2 Greif & Kristall, 1993
3 Fox & Blanton, 1995 Nicholls and Pike
4 Ambrose et al. 1983; Wasserman, 1984
5 Clark & Fawcett, 1994; Cantor & Slater, 1995 Smith and Wang (Dec 2000)
6 Scotland’s Population 2004 - The Registrar General’s Annual Review of Demographic Trends
7 Ambrose, Harper & Pemberton, 1983
8 Guttman, 1989; Jacobs, 1982
9 Guttman, 1989; Kruk, 1994
10 Smith and Wang (Dec 2000)
11 Baker & McMurray, 1998
who tend to have limited opportunities in their emotional turmoil to link with some support system\textsuperscript{xii}. Baker & McMurray (1998) recognised that non-resident fathers’ grief is disenfranchised because social norms do not permit public acknowledgement of their mourning.\textsuperscript{xiii}

Perhaps the most difficult thing to identify and change are those unconscious attitudes and reactions in society towards fathers and because of these attitudes and reactions, some fathers come to view themselves as an irrelevance in their child’s lives. This is often reinforced by professionals who even if the father is present, can quite unashamedly direct all comments to the mother, or tend to patronise fathers when they do turn up\textsuperscript{xiv}

It is worth highlighting at this point that family services, school and medical facilities access should also be equally targeted at fathers and mothers. Fathers are often excluded from the ‘family’ sphere because family or parent is still taken to mean mother by both providers of services and users.\textsuperscript{xv} There are few support networks for fathers because, wrongly, father’s primary role is often seen to be to support the mother of the child. Also fathers are not sure whether they are welcome at family support services, medical facilities and schools so they do not attend.\textsuperscript{xvi} This is a very real concern for fathers because, as Baker and Townsend point out, social workers and welfare professionals are lukewarm, unreceptive and uninterested generally in the role of the father.\textsuperscript{xvii} They are often faced with posters on the walls of medical surgeries and in schools which demonise men as the sole perpetrator of domestic and child abuse, however many of these fathers and children are themselves the victims of abuse and there is no balanced help and services available to them, even the police are at best indifferent to domestic and child abuse where the perpetrator is a women. (I have been told by the Police that domestic abuse is not a matter for them but is a matter for my lawyer.) It would also appear from past experience that social institutions regard the wants of the female users to be of a higher priority than the best interest of the child, or they at least believe that the wants of the female users are synonymous with the best interest of the child and this is not the case in reality.

We are led to believe that the law is gender neutral\textsuperscript{xviii}, that both parents have equal status and value under the law.\textsuperscript{xix} In practice however both parents do not have equal status and value as parents in the interpretation of current law. The present interpretation infers that one parent is better fitted to safeguard and promote the health, development and welfare of their child than the other simply because of their gender, regardless of individual circumstances.

The fundamental flaw lies with the Family Law (Scotland) Act. The Policy Memorandum to the Family Law Bill stated that the objective is to promote fathers’ participation with their families [and that] a child has two parents and is entitled to the loving involvement of both of them in his or her upbringing…even

\textsuperscript{xii} Dudley, 1996; Kruk, 1991a
\textsuperscript{xiii} Hawthorne B
\textsuperscript{xiv} Burgess (1997)
where a father is not living with the mother.\textsuperscript{xv} Moira Wilson of the Scottish Executive Justice Department \textsuperscript{xvi} states that ‘promoting the involvement of fathers in their children’s lives is a key plank of the bill’.

However from the moment their child is born fathers are detrimentally treated, not because of their individual parental abilities but because of their sex and this negatively impacts on their children and on their relationship with their children. The campaign group Families Need Fathers highlighted the basic inequality regarding Parental Rights and Responsibilities (PRRs) which “should be automatic for all fathers [as it is with mothers], by virtue of their being fathers”\textsuperscript{xvii} The organisation’s view is that the role of unmarried fathers in the family is not sufficiently recognised in legal terms and that in conferring PRRs on fathers would go some way to addressing this perceived inequality. This was a standpoint shared by the Family Law team at Balfour and Manson Solicitors, Edinburgh, who said in their written evidence to the Justice 1 Committee (J1C):

“A child has the right to know and have a relationship with both parents. Enabling a mother to determine the quality of that relationship by means of a registration process is insulting to the father and the child…If one of the other core principles guiding these reforms is to update the law and reflect the reality of family life in Scotland today then the unmarried father, whether in an on going relationship with the mother or not, is part of that reality and should not be treated any differently from the mother.”\textsuperscript{xviii}

Both Children in Scotland and Children 1st have supported the automatic conferral of parental responsibilities and rights on unmarried fathers in their written and oral submissions to the J1C.

Another point where male parents are discriminated against in our society is in the provision of paternity /maternity leave and benefits. Endowing only women with work-family benefits discriminates against male parents and is not going to deliver equality for women. This only makes women of child-bearing age relatively unattractive to employers. Research reveals that maternity and parental leave weakens mother’s possibilities of a pay raise and that maternity/parental leave is an important explanatory factor of the gender pay gap. The Industrial Society (The Work Foundation) has even claimed that laws which were designed to help women in the workplace could be doing more harm than good. The Society argues that the Government’s introduction of increased maternity leave without bringing in similar rules for fathers means many employers are now reluctant to take mothers on.

Helen Wilkinson of the Industrial Society (The Work Foundation) said: "Whilst we have a scheme of paid maternity leave and unpaid parental leave we are discriminating against men as fathers in the workplace…We are also reinforcing gender inequality between women and men and reinforcing the pay gap, hence

\textsuperscript{xv} Policy Memorandum SP Bill 36-PM
\textsuperscript{xvi} Justice 1 Committee Official Report 16 March 2005
\textsuperscript{xvii} Justice 1 Committee Official Report 18 May 2005
\textsuperscript{xviii} SPICe briefing 3 March 2005 05/13,
women are not actually getting the equality that they deserve in the workplace. Delivering equality for women in the workplace actually means giving men parallel rights as parents."

Children are also disadvantaged by this inequality: In May 2006 more than 40 heads of charities and leading academics specialising in family care published an unprecedented call on the Government to take into account the increased aspirations in the last 30 years of parents to fulfil both earning and caring roles. Paternity and maternity policies must therefore look at the roles and needs of both parents if it is to fully benefit children.xix

The Equal Opportunities and Human Rights Commission (EOHRC) confirms the demise of the 'breadwinner dad' and 'homemaker mum'.xx Feminist group, the Fawcett Society, state that ‘the idea that a woman’s role is in the home and a man’s is breadwinner is comically outdated.’ They have continually stated that the limited amount of paternity leave given to fathers encourages the notion that caring for children is a woman’s role.xxii

The European Commission underlines that eliminating all gaps between women and men on the labour market is crucial in promoting equality. Parental leave must be targeted at both men and women and must be, in particular, individual and non-transferable.xxii The EOHRC state that allowing working mothers to 'transfer' maternity leave to their partners would not go far enough to address the issue. Our parental leave system will continue to be antiquated and out of step with modern families unless the Government introduces equal, well-paid paternity/maternity leave.

The EOHRC have stated that an outcome of Gender Equality Duty should be that fathers receive equal recognition and support for their childcare responsibilities. Public authorities will not meet their gender equality duty if they assume that only women take responsibility for parenting and caring. An equal balance in family responsibilities is actually key to achieving greater equality between men and women in the labour market.xxiii Equal, paid parental leave for both men and women are important preconditions in tackling the gender pay gap and the European Council has urged Member States to urgently take up this challenge.

Also, the EOHRC state that workplace cultures do not support a father’s family or childcare responsibilities. Many fathers are the sole or primary carer of their children from the day their children are born, but will also be forced to go back to work because of the disparity in leave entitlement, financial hardship and social pressure. Gender stereotypical assumptions about parenting roles lead many

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xix Parental Care and Employment in Early Childhood – Working Paper Series No 57 by Shirley Dex and Kelly Ward, Institute of Education
xx The Millennium Cohort Survey (MCS), the most comprehensive study of its kind, surveyed nearly 30,000 parents at the start of the millennium and again in 2003.
xxi Benefits system can keep a woman’s role in the home (09/04/06) http://www.fawcettsociety.org.uk/index.asp?PageID=250
xxii The gender pay gap — Origins and policy responses
xxiii DADS ON DADS: NEEDS AND EXPECTATIONS AT HOME AND AT WORK Warren Hatter Louise Vinter Rachel Williams MORI Social Research Institute EQUAL OPPORTUNITIES COMMISSION
employers to expect that work is the primary focus of a man’s attention. There is a general feeling that although it is acceptable for mothers to take advantage of part-time or flexible working, it is still not accepted for fathers. The system perpetuates gender stereotypes and makes it impossible for most fathers care for their children, and sets the scene for ongoing inequalities.

Scotland needs to ensure equal leave and terms for fathers and mothers as a statutory right. The EOHRC wants to see all barriers to active fatherhood removed and the European Commission advocate, as a matter of urgency, an equal and fair system. If we believe in equal opportunities for all parents to successfully balance home and work and enable both parents to spend valuable time with their children, then fathers should have an equal chance to do this. Furthermore, by perpetuating the maternity and paternity leave/benefits imbalance, it continues the belief in breadwinner Dad and ‘stay–at –home’ Mum stereotype. This in turn, if the child’s parents separate, leads to an automatic assumption, real or imagined, that the primary care giver is the female parent. An assumption that the woman is always the primary care giver impacts on a child’s contact with his/her father.

At present if a child’s parents separate, contact orders are prejudiced against one parent giving them only contact or limited residence. Sarah Harvie-Clark states ‘anecdotal evidence from legal academics and practitioners in the field would suggest [that] courts usually stipulate that the child will reside with one parent, and that the other parent will have right of contact with the child…typically the mother …is awarded the residence order and the father the contact order…whilst orders sharing residence between the parents are…relatively unusual.’ As Harvie-Clark points out, it is fathers, not mothers, who are lobbying for shared residence and one only has to follow the news to see that it is fathers, not mothers, who are campaigning for equal time with their children. There is clearly a bias in operation. There is a rubber-stamping of cases in favour of one parent without recourse to the circumstances in each individual case. From personal experience I know that sheriffs do not take individual circumstances into account and, as my solicitor put it, are not interested in the ‘minutia’ of the case. UK courts award custody of children to mothers in 91 per cent of cases. Pryor and Rodgers (2002) point out that contact ‘every other weekend is the default position in many countries. An Australian study revealed that only 27% of separated fathers had weekly contact with their children, 35% had monthly contact and 38% had less than monthly contact with their children. These figures are also consistent with other studies on father contact after separation.

Of course, as a parent, I believe that what is best for children should be paramount and where a child is at risk the law should have the power to protect that child from harm. However, in Scotland, “doing what is best for the children” is
translated to mean residence for the children with parent ‘A’ and contact only with parent ‘B’. There is no indication given as to why residence with parent ‘A’ is in the best interest of the children rather than residence with parent ‘B’. The only difference between these two parents is their sex. The unwritten law would appear to be that sexual equality is all well and good, except where children are involved and then one parent, because of their sex, is favoured over the other. If Parliament will not fully implement and enforce its present legislation and human rights commitments a change in the law is needed.

So when the then Deputy Minister for Justice stated that, ‘a simplistic or crude approach to the issue would not necessarily be helpful’xxx He failed to realise that it is ‘a simplistic and crude approach’ that exists at present. It would appear that although we are told that each case is taken on its own merits, a one size fits all system is in operation. This severely restricts a non-resident parent’s ability to be an effective parent. Pryor and Rodgers (2002) say ‘provision of support and monitoring is difficult for fathers who are not in daily contact with their children. Staying overnight in their fathers’ homes facilitates the establishment of involved parenting, especially for younger children…These include providing meals, preparing children for bed, and being involved in comforting and monitoring by setting limits and disciplining them. For school-aged children, overnight staying means that fathers have to ensure that they are dressed, prepared, and delivered to school…this fosters a…closer father child relationship…Closeness between fathers and their children, then is fostered and sustained when men are involved in caretaking activities such as those called on when their children stay the night with them…The opportunity for doing so is reduced because of lack of day-to day contact’. xxxi

The courts base what should happen after separation on what does happen, not on what is best for the children. The legal system does not acknowledge that each case is different and therefore it perpetuates the same old stereotypes. The legal system frequently discourages fathers from applying for joint residence of children in the belief that their application is unlikely to succeed. The legal system also fails to acknowledge the heavy pre-separation involvement fathers have with children, even to the extent of not acknowledging that many fathers are the primary care giver, offering them a contact regime that effectively marginalises them in their children’s lives.

Fathers are keenly aware that infrequent contact with their children in no way compensates for real parenting and is, as Furstenberg et al (1983) concluded, at best ‘tantamount to a ritual form of parenthood’. Wallerstein and Kelly (1980) found that ‘almost one-quarter of the children [in their survey, five years after separation] continued to be very disappointed with the visiting relationship…because of its infrequency. Some fathers, moreover, encounter mothers who are at best uncommitted to, or at worse strongly opposed to, their continued involvement with children after separation’.xvi Resident mothers who do not encourage children to visit fathers are signalling that they do not think the

xxx Justice 1 Committee Official Report 18 May 2005
xxxii Pryor and Rodgers (2002)
children have much to gain by paternal involvement. This implicit message can place children in a situation where they experience a conflict of loyalty, understanding that their mothers are not keen for them to spend time with their fathers\textsuperscript{xvii}.

The Law Society of Scotland state that under the Children (Scotland) Act 1995, ‘there is also a corollary responsibility on the parent with care to make contact possible.’\textsuperscript{xviii} However a bad parent does not need to carry out this responsibility. A survey commissioned by the Executive and carried out by the Centre for Research on Families and Relationships at the University of Edinburgh\textsuperscript{xix} indicated that ‘sheriffs are reluctant to take action against a mother…although such cases did arise’. This is also highlighted in John Taylor’s article in ‘The Scotsman’\textsuperscript{xx} in which he quotes two leading academics who stated that a father trying to get contact with his children through the court, in the face of implacable hostility from the mother was wasting his time and money. Obviously, for these children and their wider families the Executives much vaunted Parental Agreement and Grandparents Charter are effectively useless when faced with an intransigent parent.

Parenting means meeting obligations to ensure our children are confident individuals, effective contributors, successful learners and responsible citizens. In order to achieve this, parents need to ensure children are safe, nurtured, healthy, achieving, active, respected, responsible and included. Good parents use their rights to implement and achieve these goals. Bad parents use their rights to control their children. In the granting of these Parental Rights and Responsibilities (PRRs) fathers and children are further disadvantaged. The Executive believes that PRRs granted under the Children (Scotland) Act 1995 and the Family Law Act 2006 entitle a parent to take key decisions relating to the child, such as where they will live and go to school and what medical treatment they should receive\textsuperscript{xxi}. However no organisation or public authority will ask for the non-resident father’s opinion or input or pass on unsolicited information.

Decisions can and are made by the resident parent without recourse to the non-resident father or any other party with PRRs. A resident parent can simply impose their views on any situation without trying to reach a consensus in the child’s best interest and there are no systems in place to help a loving parent with this. This is particularly worrying for parents when we consider medical treatments. A child’s welfare may be compromised because of something the parent should or should not have done because they not kept informed by the NHS, GPs, another medical institution or the resident parent. Conversely that they have not been allowed to discuss anything with their child’s medical practitioners, for instance, a hereditary condition, which may have a bearing on what course of treatment they would recommend. This attitude is typified by Dr Alison Graham, former Board Medical Director, NHS Highland who believes that only the parent with whom the child has primary residence i.e. the resident parent will be consulted about and agreement sought on medical treatment the non-resident parent will not be consulted or informed.\textsuperscript{xxii}

In the case of the education system, a choice of school can be taken by the resident parent and the school will not question that all persons with PRRs have
been consulted. Indeed the choice of school may even be made by the resident parent not on educational grounds but specifically to thwart the child’s contact with the non resident parent.

When discussing the Parental Involvement Bill the then Minister for Education and Young People, Peter Peacock, has stated that ‘All the evidence points to the fact that, when parents are successfully involved in their children's education, schools are stronger institutions and children's learning is stronger as a consequence.’ While most of the literature refers to ‘parents’ as a collective item and does not distinguish between the respective impact of mothers and fathers, there is evidence that fathers have a unique and significant impact on their children’s education and adjustment. For example, Flouri and Buchanan (2001) found that fathers’ involvement meant children did better at school, had better mental health and were less likely to be involved in anti-social behaviour, even after controlling for fathers’ socio-economic status and education and this view echoed by the Department of Education and Skills in their booklet “Engaging Fathers” Hobcraft (1998) also found that fathers’ lack of interest in schooling is a particularly strong predictor of lack of qualifications, with persistent low interest quadrupling the risk for both men and women. It is not enough therefore for schools simply to engage the mother and dismiss the father, but to actively seek out and engage fathers- they are there and they are ready and willing to participate. As Duncan Fisher, Fathers Direct chief executive says: ‘bringing dads in…breaking through barriers that fathers face and can radically transform a child’s prospects.”

Peter Peacock went on to say “Our wider parental involvement agenda is about enabling parents to do what they can in their specific circumstances to support their children. We want to extend the opportunity for parental involvement not just to those who are comfortable with sitting on committees and representative structures, but to parents who have found involvement in their schools not easy in the past. I recognise that some parents face significant challenges in getting involved in their children's education, which is why the flexibility that we seek in the bill is essential. The emphasis in the bill is on empowering parents, giving local choice and flexibility in the arrangements that are put in place and allowing parents to make decisions without having unnecessary detail in legislation.”

At present schools do not ‘enable[e] parents to do what they can in their specific circumstances to support their children’. This is even more apparent for fathers who may be deprived of day to day contact with their children and therefore their children’s schooling (not because they are unfit parents but solely due to the

xxi http://www.scottish.parliament.uk/business/committees/education/or-06/ed06-0102.html#Col2961
Education Committee Official Report 11 January 2006


xxiv Parents’ involvement in their children’s learning and schools: How should their responsibilities relate to the role of the state? NFPI policy discussion paper by Jenny Reynolds January 2006
http://www.nfpi.org/data/research/docs/Parental_Involvement_Reynolds.pdf

xxv http://www.scottish.parliament.uk/business/committees/education/or-06/ed06-0102.html#Col2961
Education Committee Official Report 11 January 2006
schools decision not to engage with them) but who still wish to get involved. These are the ‘parents [who] face significant challenges in getting involved in their children’s education’. School should not forget that children in one parent households are still from two parent families and that, by accident or design, fathers are excluded from their child’s lives.

From personal experience and anecdotal evidence from other Dads, when a father contacts their child’s school they are not excluded, but they are not encouraged to take part either – schools do not contact non resident parents– they are treated as second class parents, at best, and they are even treated with suspicion in some cases. The situation is, or is at least is perceived to be, that non resident parents, who are mostly fathers, struggle to be involved with their children education, in what, at preschool and primary level at least, is a female dominated environment where mothers being perceived as having primary responsibility for children.xxxvi. For individual children this may not be the case.

The courts, medical practitioners and social institutions about should consult and inform with all those with PRRs before decisions relating to major long-term issues concerning care, welfare and development of their children are made.

This should include, but not be restricted to:

(a) The child’s education (both current and future). This will include issues such as which school a child attends;
(b) The child’s health. This will include longer term issues such as immunisation and other matters affecting the child’s long-term health;
(c) The child’s religious and cultural upbringing. This will include decisions about which religious or cultural practices a child might observe;
(d) The child’s name. This will include a child’s first name, middle name and surname; and
(e) Significant changes in the child’s living arrangements. This will include any substantial changes to the type and location of the residence in which the child usually lives.

Parents should be required to consult and to make a genuine effort to come to a joint decision in the best interest of the child.

Ideally a father’s involvement would be part of a cooperative parental relationship after separation However this is often not the case. Mothers are often seen as the ‘gatekeepers’ of father-child relationships, both during the relationship and after divorce or separation. The breakup of families in which fathers take an active role in parenting, or is the primary care giver, has serious consequences for the children, who experience the loss of the more prominent parent.xxxvii

xxxvi Kelly, J B PhD An examination of attitudes by counsellors, therapists, attorneys and judges toward the concept of joint custody for the children of divorce.
Transcript of presentation during the conference: "Patterns and Perspectives: The 21st Century Family" Conducted by the Association of Family and Conciliation Courts on May 20, 1982 at the Sheraton Palace Hotel, San Francisco, California.
Hobart (1990) comments that often fathers have to deal with ex-partners that are bitter and hostile, while trying simultaneously to continue with obligations to their children. In cases like these, social institutions should effectively bypass the hostile parent who is blocking a father’s involvement. The resident parent may want little or no involvement in their child’s health or welfare but will block the involvement of the non-resident parent who does. As the Department for Education and Skills rightly point out, “there may be times when...the mother is reluctant for the father to be involved. In such situations do talk to the child and the father to find out more.”

If the Executive wishes to maximise the chances of loving involvement of both parents in their children’s upbringing as they say they do, why do they not follow more enlightened countries in Europe and Scandinavia where there is emerging a legal presumption of shared parenting, meaning joint legal custody, joint parental decision making and shared physical residence should be made the starting point after separation. The present ‘winner takes all’ approach where a parent can control a child and act a gatekeeper of the other parent and family’s relationship, where the law defends bad parenting over good parenting, is failing our children.

Non-resident fathers constantly encounter social institutions which are unwilling or unable to acknowledge that most children living in a single-parent household in fact belong to a two-parent family. In effect it is a self-fulfilling prophecy: fathers are seen as being irrelevant as parents therefore the law does not give them sufficient time with their children and because the law does not give them sufficient time with their children they are seen as being irrelevant as parents. Perhaps the most difficult thing to identify and change are those unconscious attitudes and reactions in lawyers, sheriffs or legislators which shape our thinking regarding post separation residential arrangements. In the end it is up to the legislature to stop the rot. If society’s negative attitude towards fathers is to change then the Law has to acknowledge fathers as equal parents and allow them to be fully involved in their children’s life.

What is required:

1) The Family Law Bill should contain a presumption of joint legal custody:

    a) This should already happen under the parental responsibilities and rights (‘PRRs’) granted under the Children (Scotland) Act 1995 (c 36) (‘the 1995 Act’), but does not in reality.

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xxxviii Nicholls and Pike


xl Hawthorne B

xli Kelly J. B.
2) Presumption of joint parental decision making:

a) At present one parent can make major decisions about these things without consulting or informing the other parent. This needs to change to ensure that those with PRRs are in the loop and can get involved in any decisions to ensure that the best interests of their child is paramount.

3) Presumption of equal shared physical residence

a) Having PRRs entitles a parent to take key decisions relating to the child, such as where they will live – once again this does not happen as contact orders are prejudiced against one parent giving only contact or limited residence.

b) The United Nations Convention on the Rights of the Child, Article 9 states that the child has a right to live with his/her parents and to maintain personal relations and direct contact with both parents if separated from one or both, except if it is contrary to the child’s best interests. The UN Convention on the Rights of the Child was ratified by the UK in 1991. It binds the UK in international law and has some effect in the courts, yet South of the Border the Commons Select Committee on Constitutional Affairs in their Fourth Report stated that "we conclude that, although the courts rigorously avoid conscious bias [my emphasis], there are considerable grounds for accepting that non-resident parents are frequently disadvantaged by the system as it is administered at present." We know that the situation in Scotland is just as bad. This means that any direct contact the child has is not judged solely by the child’s best interests, but is coloured by the unconscious bias and administration of the court system. The child’s rights have been undermined by court bias. Therefore it would seem clear that the UK and Scottish governments have breached Article 9 of the Convention and children’s rights are not being upheld.

Please, can you actively work to change these failing laws and ensure that parents are treated equally before the law so that we can truly act in our children’s best interest?

4 March 2014

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i Baker & McMurray, 1998

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iii Kelly J. B.(1982)

iv Kelly J. B.(1982)

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vii Burgess (1997)


ix Arendell, 1992; Koch & Lowery, 1985

x Hawthorne B


xiv Parental Separation: Children’s Needs And Parents’ Responsibilities P18 par. 41.

xv Ibid. P19 par. 42.

xvi Hawthorne B

xvii Hawthorne B

xviii Justice 1 Committee Official Report 18 May 2005

xix ‘A survey of sheriff clerks’ perspectives on child contact enforcement in Scottish sheriff courts’ Fran Wasoff of the Centre for Research on Families and Relationships, University of Edinburgh

xx ‘Have we lost contact with what is best for children?’] Scotsamn 9th Jan 2007

xxi Sarah Harvie-Clark SPICe briefing 3 March 2005 05/13

xxii Letter received from Dr Graham, 6th April 2005 ref AGIP