What day to day challenges do you experience as a lone / unmarried father in Scotland?

By far the most significant challenges I face relate to the financial implications of the failure of the Child Support Agency (CSA) to take my ex-wife’s income into account when calculating child maintenance, and their knock-on effects. I will focus on this issue because it affects large numbers of fathers who have shared care of their children, it clearly places them at a dramatic disadvantage compared with their fellow parent, the unfairness of the system of maintenance calculation is demonstrably both unfair and unreasonable, and it is within the gift of the Scottish Parliament to do something to help.

95% of ‘Paying Parents’ as defined by the CSA are male. 95% of ‘Receiving Parents’ as defined by the CSA are female. In my submission I think it is therefore justifiable to use the terms ‘father’ and ‘mother’ rather than ‘Paying Parent’ and ‘Receiving Parent’.

I have no sympathy for those parents who refuse to pay maintenance for their children. I wish to make it absolutely clear that I have no objection whatsoever to paying child maintenance for my children. I continue to do so and am keen to pay an amount of maintenance which reflects a fair and reasonable share of the burden of financial responsibility for my children. However I do object to my ex-wife being able to use the CSA to abdicate her financial responsibility for our children.

The CSA will not take the income of the ‘Receiving Parent’ into account under any circumstances. In shared care situations a father has a responsibility to pay a proportion of his income to his children’s mother to help with the care costs for the time that she has care of their children. There is no reciprocal obligation for her to pay a proportion of her income to her children’s father to help with the care costs for the time that he has care of their children. In shared care situations it takes a conspicuous act of Orwellian ‘doublethink’ to imagine that this is fair, reasonable or consistent with the UK Government’s stated objective for parents to ‘fulfil their responsibilities as parents in terms of continuing involvement in their children’s lives and through the payment of child maintenance’. (Strengthening families, promoting parental responsibility: the future of child maintenance. 2001)

In his judgement regarding giving the job-seeker’s child care supplement to only the mother in shared care situations, Lord Justice Ward stated “That notion that only one parent is to be treated as responsible for his or her child and the other parent is deemed not to be responsible at all is a total anathema to a family lawyer. A cornerstone of the reforming Children Act 1989 is that where the parents were married to each other at his birth each shall have parental responsibility for the child ....Each may act alone and without the other in meeting that responsibility. To be forced to treat only one as responsible where there is a shared residence order in force and in operation is grotesque. It is degrading to fathers who actually – and lovingly – tend to their children. A law so framed is so far removed from reality that it brings the law into disrepute and justifiably fuels the passions of protesting fathers.” The CSA maintenance calculation does precisely
this and this leads to appallingly unfair maintenance calculations.

I share care of my children, having about 42% of care time. The associated costs of caring for them will amount to at least 42% of the total, and probably nearer 50%, before any transfer of maintenance. When my children are with their mother I still have to pay for their accommodation at my home and the associated costs. Additionally my, and other fathers’, time with children usually includes a higher proportion of weekend and holiday time which carries with it higher costs than weekday nights. A study from Australia concluded that separated fathers who had care of their children for 30% of the time carried 40-50% of the costs associated with care of their children prior to transfer of any maintenance. This has face validity given the fixed costs of accommodation etc. associated with providing any significant amount of overnight care for children.

My ex-wife earns as much, and possibly more, than I do, yet I pay her the same amount of child maintenance as if she were on benefits. She pays nothing towards the costs of me caring for our children when they are with me. I will give an example which reflects my circumstances.

Under the current maintenance calculation if the costs of supporting two children are divided roughly 45/55 %, and parental incomes are equal then the logical conclusion, if both parents have responsibility for financially supporting their children, is that the father should pay the mother 5% of the costs of caring for the children i.e. half of the 10% difference in care costs. Actually what happens is that the mother will have approximately 35% more total net income than the father after transfer of maintenance (and she will receive 100% of the Child Benefit!). This will be a far higher percentage difference after the parents’ own fixed living expenses are taken into account. This is ludicrous. Of course if the mother’s income is effectively zero, with the same care division, then the father should be liable for approximately 55% of the care costs. Hence in shared care situations, not taking maternal income into account, where this is at all significant, makes it impossible to achieve an arrangement that could remotely be considered fair or reasonable.

I am in a situation where both I and my ex-wife have well above-average incomes. Parents’ spending on children does not rise in line with income. The Middleton study ‘Small Fortunes’ found that spending on children was only 20% higher in the top income quartile than in the bottom income quartile. "We also found, at first sight strangely, that average spending did not vary greatly with income of a family; about 20 per cent from the bottom quartile to the top income quartile." (Sue Middleton, co-researcher of Small Fortunes, in evidence to the Social Security Select Committee). The result is that the amount of maintenance I give my ex-wife more than covers the costs of care of our children when they reside with her. She not only pays nothing for their care when they reside with her, nor when they reside with me, but also makes some profit over and above this.

The powers of enforcement that the CSA has compounded the injustice and inequality. If I were to stop paying my ex-wife the sums demanded by the CSA I would erroneously be deemed to be failing my financial responsibility to my children and the CSA could, and would, ‘take money direct from my earnings, take money direct from my bank or building society account, or take action through the courts. Taking action through the courts can be expensive and can result in me paying my own legal costs and the CSA’s legal costs, as well as the child maintenance I might owe, being forced to sell my home or other assets, losing my driving licence for up to 2 years or going to prison’ (CSA website).
My ex-wife can use the CSA to abdicate her own financial responsibility to our children and she risks no punishment for this crime but instead she can use a Government agency, that the public is paying for, to do this for her.

This has a number of adverse consequences.

1. It makes conflict between separated parents much more likely. This is universally regarded as bad for children of separated parents.
2. It encourages a culture of using children as a source of income.
3. It brings the law into disrepute.
4. It is rightly seen as a betrayal of the trust that the public place in politicians to make law that is fair, just and reasonable.
5. It destroys fathers’ trust in the law to protect their rights.
6. It means that whenever some politician or senior legal figure comes out with the oft-repeated statement ‘separated parents have equal rights and responsibilities’, that they are manifestly talking complete nonsense.
7. It means that fathers with shared care of children are systematically discriminated against when these are the very separated, yet caring and loving, fathers that society should be supporting.
8. It sends a clear message to separated fathers that their rights do not matter.
9. It sends a clear message to separated fathers that the time, effort and money they spend caring for their children is not valued by society.
10. It provides a financial motivation for mothers to manipulate care arrangements in order to maximise the money they can make. This has been made worse by the incomplete implementation of Sir David Henshaw’s recommendations; please see below.
11. It provides a very effective tool for mothers to financially abuse their ex-partners (now recognised by the UK Government as a form of domestic abuse).
12. In equal pay scenarios it means that fathers with shared care have to work much longer hours than mothers to achieve the same ability to financially provide for their children when the father has care of them. I work a minimum of 50 and maximum of 80 hours per week in order to try, but fail, to achieve this because of the unfairness of the CSA calculation.
13. My income, and that of most individuals, has a work-time equivalent. By the time my children leave school I will have spent at least three whole years working as a slave for my ex-wife. Forcing a father to work for their ex-partner for no good reason represents cruel and inhuman treatment.
14. Having a conspicuously unfair method of maintenance calculation will reduce compliance rates and increase costs of enforcement, ultimately paid by taxpayers (many of whom are separated fathers with shared care who will be paying for their own persecution). The UK CSA costs 56 pence for every pound it collects. The Australian CSA, whose maintenance calculation does take maternal income and essential living costs into account, costs 31 cents for every dollar it collects, suggesting that compliance rates are much higher.

In his 2006 report to the Secretary of State for Work and Pensions regarding recovering child support, Sir David Henshaw recommended that the government should ‘remove the current 12-month break-point, preventing consent orders from being overturned by the administrative organisation, in line with the pre-2003 position’. The government has thus far failed to implement this recommendation. Sir David spent much of his report explaining the rationale for this recommendation.
There is a major issue regarding denial of justice because of the failure to implement this recommendation. I am not aware of any other provision in UK law whereby an organisation can routinely overturn a court order regarding a financial obligation between two adults.

There is also an issue regarding national jurisdiction. The Family Law Scotland Act states ‘any economic burden of caring, after divorce, for a child of the marriage under the age of 16 years should be shared fairly between the parties’. This is plainly fair, reasonable and accords with human rights legislation. However the current position is that the CSA can overturn an order made by a Scottish court without the need to demonstrate any change in circumstances, and replace it with a maintenance award which is plainly unfair, unreasonable and violates human rights legislation. How on earth can Scottish politicians have allowed this to happen? Possibly because they too view separated fathers as some kind of second class citizen.

Approximately 95% of parents who pay child maintenance are male and 95% of parents who receive child maintenance are female. The CSA only takes one parent's income into account when calculating child maintenance. In shared care situations this will frequently lead to situations whereby a parent who receives child maintenance can use the CSA to partly or wholly abdicate their own financial responsibility to their children, both for the periods that they have care of their children, and the periods that their fellow parent does.

Given the above I fail to understand how the CSA can possibly not be engaging in indirect gender discrimination by impairing the opportunity of male separated parents to financially provide for their children when they have care of them. The Westminster Joint Committee on Human Rights appears to have failed to give any consideration whatsoever to this issue when reviewing the relevant legislation. This failure would appear to be another measure of how little regard is given to the basic rights of separated fathers.

Sir Daivid Henshaw also recommended ‘Given that cases of equal, or near equal, shared care involve both parents taking financial responsibility for their children, I believe that these cases should be exempt from third-party involvement, with no provisions within the child support formula for transferring funds between parents.’ This recommendation has recently been implemented but only for cases where there is an effectively precisely equal number of nights’ care provided by each parent. Of course this provision would be completely unnecessary if there was an equal and reciprocal responsibility for both parents to financially provide for their children. There is no conceivable child welfare argument for preventing completely equal shared care where there is already substantial shared care yet the CSA calculation provides a massive financial motivation for mothers to prevent this from happening, even where the children and their father want it.

Do you experience any particular challenges in a specific aspect of your life for example - work / family / social?

The main issues I face are the direct consequences of the blatantly unfair financial arrangements. I work a minimum of 50, and maximum of 80 hours per week in order to try, but fail, to achieve the same ability as my ex to financially provide for my children when I have care of them. This means that I am pretty much constantly tired and have very little spare time to devote to other family, friends, social life, etc.
Do you experience any particular challenges dealing with a specific subject for example - finance or dealing with access or care arrangements?

Access and care arrangements are always difficult to negotiate but again I think this is primarily because if my ex were to agree to the children having additional nights with me this could lead to a significant drop in the amount of money she would receive.

If you said that you experience challenges, what are your thoughts on public perception and general awareness of the issue?

The use of the terms “parent with care” and “non-resident parent” is commonplace and until recently was adopted by the CSA. It is completely inappropriate in shared care situations. It systematically devalues and dismisses the role of fathers in the lives of children of separated parents. It is sexist, offensive and discriminatory. It highlights the flawed assumptions upon which the CSA calculation is based. It appears to be founded upon archaic gender stereotypes in which women care for the children and men go out to earn money.

Care of my children, the ability to buy things for them and living with them are at the core of my family life. I have care of, care about and care for my children yet I am commonly referred to as a ‘non-resident parent’ and my ex is referred to as the ‘parent with care’. As a result of this when my children have hospital appointments only my wife is sent notice of these. I do not find out about them until after the event because, despite repeated requests, my ex does not tell me about them.

A recent Equal Opportunities Commission survey concluded that fathers in dual full time earner couples provide 43% of the direct care of their children. Fathers in Scotland have more involvement with care of their children than the rest of the UK. The use of the terms ‘non-resident parent’ and ‘parent with care’ also appears to be based upon an extreme pattern of post-separation parent roles i.e. the “one parent family” and the “absent father” which is widely recognised as the most harmful for children.

I am very glad that my children do not have a “one parent family” or an “absent father”. Children of divorced or separated parents are at increased risk for a variety of adverse outcomes. Care from fathers for these children protects against these adverse outcomes with children in shared care/joint custody situations having just as good outcomes as those from intact families. It is my view that the use of the terms “parent with care” and “non-resident parent” fosters a culture in which fathers’ care of children is under-valued, and furthermore in which children are commonly denied that care after their parents’ separation.

The Scottish Crime and Justice survey revealed that 5% of women and 5.3% of men had suffered domestic abuse within the preceding year. The survey used an anonymous community survey methodology which is recognised as the ‘gold standard’ when ascertaining the true prevalence of any condition. It avoids the bias inherent in other methodologies such as crime report statistics. However many politicians still state that ‘the overwhelming majority of victims of domestic abuse are female’.

What does this say to male victims of domestic abuse? I think it sends a clear message that society does not care about our suffering.
Maintaining a reasonable level of communication regarding one’s children’s needs and care with someone who is repeatedly abusive carries huge challenges on a multitude of different levels. The main concern is always the effect on my children. When I have approached the Police about my ex-wife’s behaviour I have faced staff who assume that I am the perpetrator despite being abused on multiple occasions and never reciprocating.

I am very thankful to the Scottish Parliament for considering the needs of separated fathers, and in particular those with shared care. I would urge the Committee to ask the UK government to implement Sir David Henshaw’s recommendation that the 12 month break point be abolished and thus give the fathers of Scotland access to justice through the Scottish courts.

20 February 2014