Families Need Fathers Scotland welcomes the interest that the Equal Opportunities Committee has expressed in finding out more about the experience of fathers and fatherhood in Scotland.

Our submission below is drawn from the experiences shared with us by those who have attended our monthly group meetings in Stirling, Glasgow, Edinburgh and Aberdeen and from in the region of 2,000 e-mail, telephone or face to face contacts over the last 3 years. Most but not all of those who engage with FNF Scotland are non-resident fathers who are experiencing difficulties in connection with contact with their children after separation. However, a significant proportion of people who get in touch are mothers, grandparents, step fathers, other family members and new partners.

FNF Scotland’s view is that a public narrative has developed in Scotland that men in general are somewhat suspect and that the contribution fathers across Scotland already make to parenting is under-valued and dispensable. We feel this may have been an unintended consequence of the overt promotion of other valid and important government and public service priorities such as support for single parents, child protection, targeting of domestic abuse and domestic violence.

FNF Scotland invites the Equal Opportunities Commission to consider some specific recommendations that will, in the name of equality and inclusiveness, acknowledge the existing contribution of fathers to Scotland’s children and promote a greater presumption of inclusiveness in the future.

WHY PEOPLE CONTACT FNF SCOTLAND

Almost all of the enquiries received by FNF Scotland concern unilateral restrictions on contact, imposed on fathers after separation. Here are some typical requests:

I separated with the mother of my daughter in July 2013, and I've had fairly regular contact with my daughter since. I have always paid the child maintenance I'm meant to, however my ex partner has always complained wanting more. I contacted a solicitor who sent her a letter trying to arrange access with my daughter which she ignored, my solicitor then sent a follow up letter which she also ignored. I eventually started to get a good access routine in place and my solicitor advised me to just run with it and stay on my ex partners good side. She is now stopping my access to see my daughter and I am unsure as to what my next route should be, everywhere I look says that I need to come to arrangements with my ex but she's not willing to work with me for what's best for our daughter. I don't feel that my solicitor wants to take it to court as she has said that I will more than likely get less time with my daughter as judges tend to side with the mothers. Where do I turn? All I want is to play an active role within my daughter’s life and I feel all I can do is sit back and let my ex dictate what happens.

“A father who now has regular overnight care of his two young children after a long court battle is now very concerned about his son’s eating problems. The child’s mother refuses
to discuss this with him, and he has just been told by the children’s health visitor that he cannot have any information about what is or isn't being done to resolve this problem.”

“A father had a court order setting out the times of his contact with his son. He had helped out at the Saturday morning football training for a couple of years before the separation because he was dead keen on football. His ex-wife took the court order to the school and told the head teacher that it meant these were the only times he was permitted to see his son. The head teacher told him he could only help at football training if his son wasn't there.” [This was incorrect on the part of the head teacher, extremely upsetting for the father and confusing for the son as they discovered that the things that were normal for a father to do before separation are subject to other people’s decisions after separation.]

The Growing Up in Scotland survey provides some statistics.

- More than two-thirds of non-resident fathers see their children at least once a week, but 9% see their children once a month or less and 24% do not see their children at all. This pattern has developed by the time these children are ten months of age.

- In a quarter of families where the non-resident father’s name was on the birth certificate, that father was not allowed any involvement in key decisions about his child relating to inoculations or diet.

There is much research evidence that children do better in terms of wellbeing, education and their own relationships when both parents are involved in their welfare and development. Many parents manage to achieve this by informal agreement or by a formal Minute of Agreement lodged with a court.

However, most of the fathers who contact us are being prevented from seeing their children at all or are being restricted to very limited contact and minimal involvement in their children's lives. The transition from fully involved father to this position is particularly painful and undermining.

In some cases conflict may be reduced by encouragement to attend formal or informal mediation. In practice, a substantial proportion of those who contact us are already involved in court proceedings or feel that the refusal of their former spouse/partner to engage after separation leaves them with no alternative but to go to court.

Many non-resident fathers describe their encounter with the courts as profoundly shocking. They feel they are on trial, and that they will only regain contact if they can prove their worth. This is diametrically opposite to the situation in some countries, such as Sweden, where separating parents are assumed to have equal roles and have to justify any departure from this shared parenting.

Committee Questions

We will touch on some of the issues raised by the questions set out by the Committee. However, our greatest concern is that the answers to each of the specific questions should be seen in the context of a public narrative that often appears to regard fathers and men in general often as invisible or, where visible, as likely to be suspect.
We understand – and support – the efforts that have been made in recent years to remove the perceived stigma, for example, from single mothers and same sex relationships. However, this has inhibited unequivocally positive statements in support of fathers and non-resident fathers in particular. The word “father” was replaced by “partner” in a recent NHS Health Scotland guide in order to make it more “inclusive”.

The public narrative is further driven by the focus on child protection and domestic abuse. We support both of these as public objectives but the perception, presumably unintended, driven by government minister statements, campaigners and professionals has created an oversimplified picture.

Again and again the non-resident fathers and grandparents who contact us complain that they come up against a professional default position of suspicion that is undermining, demeaning and hard to dispel. We often hear,

“I felt I was assumed to be guilty of something but the stronger I argued my case to carry on being the father to my kids, the more I could see suspicion in their eyes.”

Language in this area is very important. We still hear too many opinion formers and professionals in relevant areas referring to ‘absent fathers’ when they should know how undermining it is for non-resident fathers who work very hard to remain involved with their children to be lumped in with parents who appear to have no wish for contact with their children.

Even among that group the story is not always the same. At our local groups we hear on a regular basis fathers who have fought hard for years and spent thousands of pounds in legal costs in the face of unremitting hostility from their former partner ask aloud “would it just be better for my kids if I just stop trying”. The answer is not always easy.

When parents separate the reality for most children is that they have in effect two “lone parents” even when either or both form a new relationship or household. Unfortunately there is no simple word or phrase that encapsulates that reality and which could convey an equality of status in the children’s eyes to both parents.

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

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

**Question:** Do you experience any particular challenges dealing with a specific subject for example - finance or dealing with access or care arrangements?

**SCHOOLS**

One of the issues that arises repeatedly at meetings is the reluctance and sometimes the refusal of schools to engage with non-resident fathers.

The law (Education Act 1980) is clear about the definition of a parent and that schools should deal fairly and equally with parents. The Scottish Schools (Parental Involvement) Act 2006 and its guidance explicitly acknowledged the role of the non-resident parents and the importance for the child’s benefit of schools making active efforts to engage with them.
Our **Equal Parents** report (below) and experiences shared by members demonstrates how far short of those obligations many schools fall. There are of course many examples of good practice with teachers and head teachers welcoming the involvement of non-resident parents but we also hear repeatedly of correspondence and phone calls simply ignored; repeated ‘administrative failures’ in recording the contact details for the non-resident parent so that notification of parents’ nights never arrives; examples of head teachers ‘just checking’ with the parent with care before agreeing to engage with the non-resident parent.

We recommend that Schools Inspectorate should explicitly include assessing schools on efforts they are making in terms of the Scottish Schools (Parental Involvement) Act to include fathers in general and non-resident parents in particular. Without inspection the Act will remain a low priority.

**GP/MEDICAL INFORMATION**

High in the list of issues that are raised by members is exclusion from information about the health of their children if the parent with care chooses to withhold it.

Even for the vast majority of non-resident fathers who have full Parental Rights and Responsibilities in terms of Children (Scotland) Acts (and who have therefore a legal obligation to look after the health and wellbeing of their children) it is common to encounter refusal of GPs and hospitals to engage with them at all.

One father who actually cared for his son 4 nights a week by Minute of Agreement but who did not claim child benefit discovered his former wife had changed GP surgery without telling him far less consulting with him. The GP practice manager refused “on data protection grounds” to tell him which practice his son had been transferred to.

There is some useful guidance available from the BMA and the Medical Protection Society on what happens when people with parental responsibility disagree, but this needs to be widely implemented.

**COURTS**

Scottish family court proceedings are essentially adversarial. That is, the proceedings and procedures are in their origin the same as other forms of litigation such as personal injury or debt where the aim of going to court is to produce a clear result, a winner and a loser. This does not seem appropriate for settling disputes about contact and residence after separation.

Parents have been criticised by senior judges and politicians for using their children as “collateral” in the conflict between them but we cannot help but feel the adversarial system itself invites them to do so.

The way proceedings are conducted pre-court and then in court frequently heighten rather than reduce conflict and, in our view, contradict the core concept of the Children (Scotland) Act that the interests of the children are paramount. The introduction of Child Welfare Hearings as the first stage of this court process and the presumption by the Scottish Legal Aid Board that family mediation should be considered (but cannot be forced) before court action has helped to remove some less conflicted cases from the courts, but if settlement isn't reached then the battle resumes at great human and financial cost to all concerned.
In this process non-resident parents - usually but not always the father - perceive themselves to be at a systemic disadvantage, discovering that they have to prove that they are ‘safe’ to do the sort of things with their children that until the moment of separation, were regarded as normal.

We believe it is probably time for a review of the Children (Scotland) Acts of 1995 and 2006. We believe much contrived adversarial behaviour and airing of unfounded accusations aimed at controlling contact with a non-resident parent would be pre-empted by a presumption of ‘shared parenting’.

Shared parenting is not about a forced, arithmetical division of time that children should spend with each parent, shuttling between their respective homes. It is about a presumption that both parents should be accorded equal respect in discussions about contact and residence. We believe this would reduce conflict, save court time and expense.

The dissatisfaction with the way cases are conducted is not limited to individuals who contact FNF Scotland. We recently received the following description in an e-mail from a long established firm of family law solicitors:

“What we often see, and have to guard against very quickly, is the residential parent (usually the mother) seeing contact as something that is gifted, rather than something to which the child and the non-residential parent have a right. When contact is seen as a gift, the residential parent then feels empowered to control it - to impose restrictions, such as on the presence of a new partner, or perhaps new step children. … This is very unfortunate, as it can lead to residential parents feeling they have a degree of control which is neither appropriate nor healthy. … It may seem obvious, but it is very important to remember that the non-residential parent is just that, a parent, and that when the child is with them, they have to exercise the same responsibilities, judgement and discretion as the residential parent does at other times.

Courts cannot order parents to like each other but neither can they be blind to the consequences of the narrative unfolding before them that allows and sometimes encourages parents to attack each other’s character and history in order to seek short term advantage over each other at the expense of the long term contribution they (and their extended families) might both make to the benefit of their children.

We have been struck by the experience reported by solicitors and their clients who are able to fund collaborative law or one of the other forms of alternative dispute resolution that mutual civility is built into the process of negotiating arrangements for contact and residence. This is explicitly set out in the contract that both parties sign at the outset. The aim is to leave both parents standing at the end, in the interests of the future emotional security of their children. They have to be good parents long after the solicitors and judges have closed the file.

UNFOUNDED ACCUSATIONS

Successive Scottish administrations have made tackling domestic abuse and domestic violence a priority. Reducing domestic abuse is clearly in the interests of the men and women who experience it and their children who may be affected by witnessing it.
FNF Scotland does not deny that there is domestic abuse/violence nor excuse the conduct of perpetrators of domestic abuse.

However we are concerned about that the joint police and Crown Office joint protocol on domestic abuse has unintended consequences.

Not only our members but many solicitors acknowledge that an allegation of domestic abuse can derail child contact/residence proceedings whether or not there is substance to it. Many of our members report that their former partner will threaten to make an allegation as a method of taking control of child contact negotiations.

We are also familiar with the “doorstep ambush” in which a non-resident parent arrives at an agreed (or court ordered) contact time to collect his children but is informed “They’re not coming and I’ve called the police”.

One of the greatest frustrations that undermines confidence in the fairness of the legal process is the difficulty in persuading courts to enforce contact arrangements that they have ordered. We feel that wilful obstruction of contact arrangements is a form of domestic abuse.

However, when the police arrive and find the non resident parent on the doorstep they will remove him - often to the cells and often to the bringing of charges. We hear from police officers that they know they have taken the wrong person to the cells and that what has happened is conflict not abuse but that “there is nothing we can do …”.

Even when there is no charge or where the Crown Office decline to prosecute or where the matter does go to trial and results in acquittal the fact that there has been an allegation will be brought up in child contact proceedings or will be used provocatively in the solicitor’s letters that will never be referred to in court.

We feel a blanket policy that requires police officers to arrest people they do not believe have committed an offence and that creates such disillusion on the part of fathers who have not committed any offence brings Scottish criminal justice into dangerous disrepute.

One father told a recent meeting:

“I am bemused by the debate about the abolition of corroboration. In my case it was already abolished. I was stunned that my ex knew that all she had to do was say that I’d shouted at her – which I hadn’t – and I’d be taken to the cells for the first time in my life.”

A recent PIRC report concluded that there were shortcomings in the way Police Scotland handled a complaint from a father who had been arrested following false accusations.

Lady Hale stated the position very clearly in the Supreme Court: “If decisions are then made on an inaccurate factual basis the child is doubly let down. Not only is the everyday course of her life altered but she may be led to believe bad things about an important person in her life. No child should be brought up to believe that she has been abused if in fact she has not, any more than any child should be persuaded by the adult world that she has not been abused when in fact she has.”
We recommend that the Committee raise with the Crown Office and Police Scotland the reality that their joint protocol on domestic abuse is itself open to abuse and that refusal to comply with agreed or court ordered contact arrangements should itself be recorded as incidents of domestic abuse.

**CHILD MAINTENANCE**

The involvement of the UK government in assessment and collection of child support since 1994 has been less than satisfactory for separated parents. For the parents who are actually paying maintenance, the continuing emphasis on penalties and charges for defaulters masks the fundamental problem that paying for your children isn’t linked to actually seeing them.

This undermines confidence in the fairness of this public policy and for non-resident parents – mostly fathers – feels deeply unequal. It is not so long ago that the DWP itself sent out a press release referring to “Deadbeat Dads.”

The 2012 system (CS3) does make further allowances for shared care, but there is an inherent disincentive for the parent receiving maintenance to allow increased amounts of contact, because this will lead to reduced maintenance payments.

The charging regime that will soon be introduced within CS3 penalises the parent who pays (mainly fathers) with a 20% surcharge, while charging the parent who receives maintenance only 4%. Charging may be a strong incentive for parents to reach “family” arrangements rather than use the government service, but this loading of the charges seems disproportionate and takes no account of which parent is responsible for the failure to reach agreement.

In similar terms we also encounter repeatedly the part child benefit plays in the calculations that the parent with care and her advisers make in agreeing or declining to agree shared parenting time. It was encouraging - but very rare – earlier this year to hear a sheriff advise the parties that he was going to order a 50:50 arrangement to take the arguments about child support and child benefit out of the case and allow the parties to concentrate on time with their son.

Child support and child benefit arrangements are currently reserved to Westminster However, we recommend that the Committee take this unequal system of charging and the manifest disincentive child support and child benefit represent to genuine sharing of parenting into account when considering how it can contribute to a culture change in the perception of fathers.

**CHANGING ATTITUDES**

In the legal sphere, there is a current running in favour of change.

The UK Supreme Court in the case of NJDB v JEG explicitly called for a change in culture in the way all the participants in an action view their contribution to proceedings in addition to any improvements in procedures within the courts.

Lord Brailsford among others has spoken about the need for publicly funded parties (and their agents) to focus on the financial realities of protracting proceedings in the way parties paying their own way have to.
The Scottish Legal Aid Board has reminded solicitors of their statutory duty to report clients who are behaving unreasonably and wilfully protracting proceedings.

In her keynote speech at the official launch of the Glasgow branch of FNF Scotland Janys Scott QC outlined the changes in family law decisions over a comparatively short time. As recently as the late 1970s in a key case the judge expressed astonishment that a father should have any expectations of seeing his son at all after divorce.

There has been significant evolution of judicial attitude since then as the law has changed along with family structures and economic realities within households. Many fathers have been liberated by the possibilities now available to them to become primary carers or shared carers of their children. Paradoxically as more fathers actually take a greater role in parenting there appears to be a growing parallel suspicion of men as a group – regarding them as suspect and 2nd class fathers.

We hope the Equal Opportunities Committee will agree with us that equality is indivisible and that parenting is not a zero sum contest for status. Acknowledging fathers and their role in parenting is a good thing in itself and should not always have to be hedged around with qualifications lest some other family structures be offended.

We would therefore welcome an unequivocal statement by the Equal Opportunities Committee that acknowledges the need for both parents to be involved in their children’s lives after separation. If the committee considers that any such statement requires some form of qualification, we would suggest “… unless it is shown that this will not be in the best interests of the child”.

RECOMMENDATIONS

We believe Scotland has drifted into a situation where the contribution of fathers, including non-resident fathers is undervalued and individual fathers are subjected to suspicion and resistance that is undermining and disempowering to them and disadvantages their children. In attitudes and practice non-resident fathers in particular are subjected to questions about their motivation and worth as parents that are discriminatory.

We would call on the Equalities Committee to review these inequalities and press for a broader culture change. Specific elements of that change would be assisted by:

1 Legislative change

We believe it is probably time for a review of the Children (Scotland) Acts of 1995 and 2006. We believe much contrived adversarial behaviour and airing of unfounded accusations aimed at controlling contact with a non-resident parent would be pre-empted by a presumption of ‘shared parenting’.

Shared parenting is not about a forced, arithmetical division of time that children should spend with each parent, shuttling between their respective homes. It is about a presumption that both parents should be accorded equal respect in discussions about contact and residence.

The welcome introduction of Parental Rights and Responsibilities (PRRs) for unmarried fathers whose children were born after May 2006 leaves several loose ends. The lack of back-dating means that some fathers have a mixed bag of PRRs if some of their children
were born before May 2006. Fathers who have to go to court to obtain PRRs are usually doing this within a motion seeking contact or residence, but courts sometimes seem to view the PRRs as an optional bonus, to be withheld until the father has proved his worth. This attitude contrasts strongly with the automatic granting of PRRs to all mothers, married or not. The unmarried father who succeeds in establishing his paternity through court action is still restricted to having his name added to the Register of Corrections, rather than having his child’s actual birth certificate altered to include his name.

2 Political Leadership

Fathers in Scotland would appreciate enormously a speech by the First Minister or senior ministers that unequivocally spoke with warmth and enthusiasm about the overwhelmingly positive contribution of fathers to the care and welfare of Scottish children, without hedging qualifications about other family forms or the need to view parenting by fathers through the prism of child protection.

3 More inclusion

Guidance should be given to GPs on how to be even handed between parents about the provision of information about their children’s health.

Posters, leaflets and other public information material should ensure they are father friendly. Being ‘gender neutral’ is not enough when the context remains that good parenting is the province of mothers and questionable parenting is about fathers. We commend the work of Gary Clapton of Edinburgh University in this area.

4 Parental Involvement in Education

Schools Inspectorate should explicitly include assessing schools on efforts they are making to include fathers in general and non resident parents in particular. Without this the Scottish Schools (Parental Involvement) Act will remain a low priority.

5 Abuse of domestic abuse protocol

We recommend that the Committee raise with the Crown Office and Police Scotland the reality that their joint protocol on domestic abuse is itself open to abuse and that refusal to comply with agreed or court ordered contact arrangements should themselves be recorded as incidents of domestic abuse.

Ian Maxwell
Families Need Fathers Scotland
24 February 2014
BACKGROUND TO FNF SCOTLAND

Families Need Fathers was founded in 1974. The organisation has had individual members in Scotland throughout its existence but a grant from the Equalities and Human Rights Commission in 2010 funded the establishment of a small staffed office in Edinburgh and formation of local mutual support groups across Scotland. In 2012 Families Need Fathers Scotland secured its independent status as a charity registered in Scotland [SC 042817] with its own constitution and trustees. FNF Scotland presently employs two part time members of staff in its Edinburgh office. The 2 year funding from the Equalities and Human Rights Commission ended in 2012 and since then FNF Scotland has been supported by grants from the Scottish Government and the Big Lottery and from membership income and fundraising.

We try to assist where possible in reducing conflict by encouraging individuals who get in touch with us to focus on the best interests of the child and, by concentrating on what they can both contribute as parents rather than on their feelings about each other or the past conflict in their relationship. As well as holding monthly self-help support group meetings in Edinburgh, Glasgow, Aberdeen and Stirling, FNF Scotland is running parenting classes for separated fathers in Edinburgh and Glasgow, working with Parent Network Scotland. Over the last three years FNF Scotland has contributed to a number of Scottish Government consultations and taken up membership of several relevant committees and forums including the Scottish Government Parenting Strategy. FNF Scotland aims to support individuals who have come up against difficulties in maintaining contact with their children after separation and raise broader awareness of the institutional obstacles that often appear to make conflicts worse rather than better not just for the fathers (and other family members) involved but above all for the children of the relationship. To that end we have published several reports, freely downloadable from our website, aimed at informing and empowering individuals who are experiencing obstructions to contact or residence with their children. Our view is that the more the parties know about what’s happening, the greater will be the focus on the central issues to be addressed and the less stress there will be at a human level for the individuals involved.

Representing Yourself in the Scottish Family Courts. The aim of this was not only to be a user guide to prospective party litigants but by explaining the procedures and terminology in plain English to improve the quality of the conversation between a prospective litigant and his or her solicitor. We are presently working on a revised edition. Equal Parents. Clearing the obstacles to involvement of non-resident parents in their children’s education. This report set out the general legal rights and obligations between schools and parents and, in particular, explored the rather unsatisfactory performance of schools and education authorities across Scotland to follow through the requirements of the Scottish Schools (Parental Involvement) Act in actively engaging with ‘hard to reach groups’ including non-resident parents. We are presently working with Children in Scotland on a new edition.

Bar Reports: A guide for parents in Scottish family court hearings. Bar reports are instructed in the majority of child welfare hearings involving residence/contact. Our experience is that the system of appointing and training bar reporters is not transparent; the quality and cost is inconsistent across Scotland; and that non-resident parents often feel at a disadvantage in having to ‘prove’ their worth to continue to be the parent after separation that was accepted without question before. FNF Scotland has been represented on the Scottish Government working group on reforming the bar reporter system.