Families Need Fathers Scotland is a Scottish charity principally concerned with providing support and advice for parents seeking to maintain full and constructive involvement with their children after separation.

We endorse the general philosophy expressed in the Gill Review and the Policy Memorandum accompanying the Courts Reform (Scotland) Bill that access to justice is fundamental to an active and healthy experience of citizenship in modern Scotland.

The observations in this submission are directed at those parts of the Bill that touch on the way contact and residence cases may be affected from the perspectives of access to justice and reduction of conflict between parties.

The observations are largely drawn from the issues that have arisen and experiences that have been shared at FNF Scotland local support group meetings and also from approximately 2,000 telephone calls taken in the Edinburgh office over the last three years. We receive calls not only from non-resident fathers but other family members including grandparents, new partners, non-resident mothers, mothers with care and fathers with care.

FNF Scotland generally advises callers to avoid litigation if possible. However, we receive many calls from people who are already involved in litigation or who feel that they have no alternative but to go to court.

We also have experience of cases where non-resident parents abandon litigation, not because of their lack of commitment to secure parenting time or lack of merit in their case but because of the attrition of protracted proceedings that drain finances and spirit over months and years.

**Specialisms and summary sheriffs**

In general we support the proposal to designate specific specialist sheriffs in every sherrifffdom if not in every court. Family sheriffs would be among the specialisms.

We are agnostic about who should have responsibility for appointing specialist family sheriffs but believe strongly the appointment criteria and post appointment training must be transparent and oriented to the positive benefits for our children when both parents are fully involved in their development and welfare.

In conjunction with the proposals for enhanced case management by the judicial office holder we anticipate that, if fully resourced (and freed from the ad hoc demands of criminal casework), specialist family court time would meet one of the greatest frustrations expressed by non-resident parents that cases drag out over months and sometimes years for want of effective use of court time and at the expense of relationships between the parties and between the pursuer and his/her children.
We are aware that there are critics of the proposed new tier of summary sheriffs that their involvement will somehow reduce the status of family actions. We do not necessarily share that assumption. It cannot be guaranteed, but we feel summary sheriffs may be an infusion of new blood into the arteries of the civil courts system.

However, in terms of the family courts and contact and residence actions in particular we recommend that it may be more than a matter of who is on the bench but how they conduct proceedings.

We note that earlier this month Lord Thomas, Lord Chief Justice in England and Wales, said in a speech to Justice that an inquisitorial approach may be a better way of conducting family cases.

He was speaking with particular reference to the reported increase in the number of Litigants in Person in family cases south of the border but our experience is that as a general approach it has much to recommend it.

Proceedings and procedures in the family courts 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 most disputes about contact and residence after separation.

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.

Lord Thomas went on to acknowledge that some lawyers would see it as a "process alien to our adversarial tradition" and that research would have to consider whether an inquisitorial procedure would require more judges or a "new cadre of junior judges". That sounds remarkably like the proposal for summary sheriffs in the Courts Reform (Scotland) Bill.

It may be that such a change to the prevailing adversarial philosophy may need to be incorporated into the Bill or its accompanying Guidance.

**ADR**

Our view is that the references to mediation or other forms of alternative dispute resolution in the Bill are unduly tentative in terms of ‘encouraging but not compelling’.

Our view, as expressed above, is that many of the conflicts that take up court time are better suited to negotiation in which the parties, separated parents, are expected to find a route to resolving matters concerning their children rather than seeking to defeat each other.

Our experience, however, is that there is no incentive for an intransigent parent with care to take part in mediation. While many solicitors are mediators themselves and some will encourage their client to go to mediation we hear often of others who advise...
their client against it on the basis that they may have to give up some of the control over their former partner that being a parent with care gives them.

In Scotland parties cannot be compelled to mediate and no inference may be drawn by a sheriff from a refusal to mediate. We believe this has held back the development of mediation as a useful tool in Scotland.

In England and Wales since 2011 there has been a requirement for parties to attend a Mediation Assessment before lodging court papers. We understand this has been rather patchy in implementation but the terms if the imminent Children and Families Act south of the border will make it a legal requirement.

We recommend that the Courts Reform (Scotland) Bill should be more robust about requiring attending at least an assessment meeting before a writ can be lodged.

We further recommend that a judge be permitted to take into account a refusal to attend mediation (or some other form of ADR) in assessing that parent’s commitment to the “best interests “of their child.

Party Litigants

It is our expectation that there is likely to be a rapid increase in the number of party litigants representing themselves in contact and residence and associated cases.

There are several reasons for believing so. The first is the increase in the number of party litigants who contact FNF Scotland for advice or support.

A significant proportion of them are non-resident parents from other parts of the UK whose children are now resident in Scotland. Others are from rural parts of Scotland where there is restricted availability or choice of solicitors. Others are in the position where they have spent thousands of pounds in solicitor fees and have run out of money and feel they have no choice but to represent themselves. Others simply believe – justifiably or not - they will do a better job because they can give 100% to their case while he may be one of a score or more of their solicitor’s current clients.

If we are asked, we impress on those considering representing themselves that it is not an easy thing to take on and that they must be extremely ruthless in assessing whether they are up to the challenge.

In the context of our criticisms (above) of the adversarial nature of court proceedings a party litigant may find his emotional commitment becomes a serious disadvantage in court.

Reports from the judiciary and the legal profession in England and Wales are that the number of Litigants in Person there have exploded since the withdrawal of legal aid from family cases.

Our intelligence is that there is an increase in ‘pay as you go’ relationships with solicitors where the Litigant in Person recruits the assistance of the legal professional in drawing up a strategy and writing legal documents but conducts correspondence and represents himself in court. We know of several similar relationships in Scotland.
Nevertheless, the number of Party Litigants is increasing and we believe will go on increasing.

We feel that the Courts Reform (Scotland) Bill does not yet sufficiently comprehend the adaptations it will have to make to accommodate Party Litigants in family cases (as opposed to other simplified procedures) and the information that will have to be made available in plain English in terms combining court efficiency and access to justice.

**Enforcement of orders**

We have some experience of contact orders and interim orders being deliberately frustrated rendered ineffective by the decision of the parent with care to move out of the jurisdiction in which the order has been made.

While a consideration of such conduct will fall to the discretion of the whichever judicial officer made the order about how this impinges on the “best interests” of the children we feel it is important that contact orders are among those that are deemed to be enforceable across Scotland.

We would also draw the committee’s attention the current lack of clarity in enforcement of cross –border orders. We have found lack of clarity and lack of consistency among Scottish courts both in their approach to enforcing orders in cases where the children have been moved elsewhere in the UK and also to the procedures for accepting orders from other parts of the UK.

**Background on Families Need Fathers**

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.

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. 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.

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.

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. FNF Scotland has been represented on the Scottish Government working group on reforming the bar reporter system.

Families Need Fathers Scotland
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