

Justice Committee

Family Law (Scotland) Act 2006

Supplementary written submission from Scottish Women's Aid

What is 'shared parenting,' and what do we know about it?

After their parents have separated, most children continue to spend some time with both parents. In the majority of cases, one parent, usually the mother, has primary responsibility for child-care.

The child-contact arrangements made by parents who have separated or divorced have become a source of increasing political and academic focus in recent years with calls for legislation to promote 'shared parenting'. The current position in Scotland, laid out in the Children (Scotland) Act 1995 and Family Law (Scotland) Act 2006, is that any decision about the care of a child must be predicated on the child's welfare and give paramount consideration to the child's best interests.

Scottish Women's Aid (SWA) is concerned that any shift from this principle may inadvertently increase risk to children, place children's human rights in conflict with parents' legal entitlements and prioritise parents' entitlements over their responsibilities for their children's welfare.

We think the conflation of shared care with shared parenting has undermined Scotland's commitment to the principle of children's best interests, and we set out below a brief overview of the academic literature pertaining to shared parenting and our conclusions in light of the evidence.

Definitions: What are 'shared parenting' and 'shared care'?

Definitions of 'shared parenting' vary widely in academic and political debate. Sometimes '*shared parenting*' is taken to mean 'a co-parenting approach characterised by flexibility and focused on the child's needs'.¹ In other words, this is different to '*shared care*,' which focuses on residency and generally means when a child spends the equivalent of three days and nights per week with each parent. However, when the phrase 'shared parenting' appears in debates in the United Kingdom (UK), it is most usually in the context of division of time; thus shared parenting and shared care become conflated.²

¹ **Philippa Newis** *Firm Foundations: Shared Care in Separated Families: Building on what Works* (London: Gingerbread, 2011)

² **Belinda Fehlberg, Bruce Smyth et al** *Family Policy Briefing 7: Caring for children after parental separation: would legislation for shared parenting time help children?* (University of Oxford, Department of Social Policy & Intervention, 2011).

SWA is fully supportive of shared parenting where this means a '*flexible and child-centered approach between parents*,' where the child's welfare is central and contact is safe for the children and parents. However SWA is opposed to shared parenting where this is primarily concerned with a set amount of contact or residency time for parents, providing a guarantee that both parents spend equal or substantial amounts of time with a child (i.e., 'shared care').

The weight of research evidence suggests that a legal presumption of shared care is at best a superfluous tool: unnecessary for parents who engage positively in negotiations for shared care and incapable of guaranteeing the quality of relationship (parent to parent and parent to child) on which successful shared parenting is predicated. At worse, such a presumption places children who have experienced domestic abuse at significant risk by generating an expectation of equal access of both parents to children even where such access is unsafe.

Who are the families where shared care is an issue?

Parental separation affects around 3 million of the 12 million children in the UK.³ Post separation, contact arrangements are agreed either through negotiation (the majority of cases) or through court intervention. Shared care is most likely to work where parents have entered into agreement freely and with the child's best interests at heart. In contrast, as is often the case when courts are involved, families are experiencing high levels of conflict, repeat litigation, and low levels of cooperation. Women in these cases are likely to express feelings of fear for their own and their children's safety.⁴ This is problematic because, as outlined below, research suggests that shared care is not effective where it is imposed and where there is conflict and/or coercion of one parent by another.

What does the research say about shared care?

While there has been a gradual increase in shared care over the past decade, it remains a minority situation both for countries that have legislated for it (e.g., Australia and France) and those that have not (e.g., UK).⁵ Research suggests that between 3% and 9% of separated couples in the UK share care.⁶ This is simply an extension of the arrangement of caring responsibilities seen within families that remain a unit, where the mother is most usually the dominant care-provider.⁷

³ **Departments of Constitutional Affairs, Education & Skills, and Trade & Industry figures, 2004** quoted in Philippa Newis *Firm Foundations: Shared Care in Separated Families: Building on what Works* (London: Gingerbread, 2011)

⁴ **Philippa Newis Firm Foundations- ibid; Fehlberg Smyth et al Family Policy Briefing7-ibid; LTrinder 'Shared residence: A review of recent research evidence', *Child & Family Quarterly*, vol22, no4 pp475-498**

⁵ **Fehlberg, e Smyth et al Family Policy Briefing 7: -ibid**

⁶ **J Ernisch et al 'Family Relationships' in S McFall (ed) *Understanding Society* (Swindon: ESRC, 2011). V. Peachey & J Hunt *I'm not saying it was easy: contact problems in separated families*(London: Gingerbread, 2011). L Trinder 'Shared residence-ibid**

⁷ **Fehlberg, Bruce Smyth et al Family Policy Briefing 7: -ibid**

Many academics agree that there are benefits for children in maintaining regular contact with both parents *where those parents cooperate and communicate effectively and respectfully with each other*.⁸ Research shows that children's best interests and wellbeing are served by the *quality* of the parenting they receive rather the amount of time spent with a parent.⁹ Quality outcomes for children are related to involved, warm and active parenting, parental cooperation and adequate resources (housing, income). Parenting skills and emotional availability are thus key. The following factors critical to positive outcomes for children:

- The wishes and needs of children are prioritised.
- The arrangements are flexible and adapt to children's changing needs.
- Children feel equally safe and well with both parents.¹⁰

These factors are not in place when a family has separated due to domestic abuse. It is therefore unsurprising that research has found that where there is abuse, coercion and conflict, shared care does not offer positive outcomes for children.¹¹ Indeed, *there is no empirical evidence showing a direct link between the amount of time a child shares with a parent and better outcomes for children*.¹²

Additionally, and vitally for those wishing to implement a children's rights approach, children are more likely to report being happy with shared care arrangements when they are flexible, child-focused, when their parents are respectful of each other and the children's views are considered.¹³ Fathers report higher levels of satisfaction with shared care irrespective of levels of cooperation and conflict; mothers only prefer it when there is cooperation and no conflict.¹⁴

The weight of evidence on this thus suggests that a legal presumption for shared care is unnecessary for parents who engage positively in negotiations for shared care. For children in families who have experienced domestic abuse, a presumption increases risk by generating an expectation of the equal access of both parents to children even where this is not safe.

⁸ **J Pryor & B Rodgers** *Children in changing Families: Life After Parental Separation* (Oxford: Blackwell Publishers, 2001). **J Hunt & C Roberts** Family policy briefing 3: *Child Contact with non-resident parents* (Oxford University Department of Social Policy & Social Work; 2004); **Philippa Newis Firm Foundations- ibid**

⁹ **Fehlberg, e Smyth et al Family Policy Briefing 7-** ibid; **HH Irving & M Benjamin** 'Shared parenting: Critical review of the research literature' in HH Irving & M Benjamin (eds) *Family mediation: Contemporary issues* (Thousand Oaks: Sage Publications, 1995) pp229-276;. **L Trinder** 'Shared residence- ibid.

¹⁰ **C Smart** 'Equal shares: rights for fathers or recognition for children?' *Critical Social Policy*, vol 24 no 4 pp484-503.

¹¹ **Philippa Newis Firm Foundations- ibid; Fehlberg, Smyth et al Family Policy Briefing 7-** ibid; **L Trinder** 'Shared residence- ibid

¹² **Fehlberg, Smyth et al Family Policy Briefing 7-** ibid

¹³ **B. Neale et al** 'Drifting towards shared residence?' *Family Law*, 33 2003, pp904-912; **Fehlberg, Smyth et al Family Policy Briefing 7-** ibid

¹⁴ **L Trinder** 'Shared residence- ibid

Key messages

In light of the evidence, therefore, we offer the following conclusions:

- Research consistently shows that the best interests of children are closely linked to good quality parenting, parental cooperation and adequate practical resources.
- There is no research evidence that establishes a clear and direct link between shared care and better outcomes for children.
- In cases where domestic abuse existed or exists in a family, contact is often a site for continued abuse of both the child and the non-abusing parent (most usually the mother).
- Post-separation shared parenting should not be dislocated from pre-separation parenting arrangements as this will shape the on-going pattern. Certainly if a parent (most usually the father) has perpetrated domestic abuse, that parent has made a parenting choice that is significant and pertinent to deciding about contact.
- A move to a presumption of shared care will inadvertently put some children, those who have lived with domestic abuse, at risk.

The best interests of the child must remain the key to decision making around contact.
It is vital that parents' access to contact and residency are not prioritised over children's rights and that non-abusing parents' safety is a key consideration of contact decisions.

Scottish Women's Aid
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