

Justice Committee

Family Law (Scotland) Act 2006

Written submission from Linda George, Linda George Family Law Limited

Thank you for your email timed at 4:39 on 26th January 2016 in relation to the post-legislative scrutiny of the Family Law (Scotland) Act 2006.

I have an interest in Family Law and have been practising that for some twenty years. Recently, there is a decided move through the Courts and indeed from clients themselves towards a shared care arrangement in relation to Parental Rights and Responsibilities and contact/residence of a child. That move is welcomed. However, consequent upon that move, there are difficulties for some of my clients in relation to financial implications of that. Currently, in terms of statute, as we understand the situation, only one parent can have a claim for Child Benefit and/or Tax Credits. Generally speaking, that one party may have slightly more by way of care perhaps even a matter of hours, but the statute is written so that the finances go to the party with the majority of the care unless special circumstances can be shown.

I have had three cases recently where that has proved a difficulty. The first is a lady who is unemployed and entitled to Benefits. She has the children for less than half the time although she is now approaching an equitable shared care arrangement in relation to her two children. She is currently in correspondence with both Child Benefit and Tax Credits because the father of the children is receiving both. Our client is on minimum Benefits. She does not have the funding to feed the children or to buy them clothes or indeed to give them the normal treats which parents would expect to give their children. She is disadvantaged in her care of the children because of the statute. I wonder if Parliament could look at making it some form of condition on shared care that the responsibility on a financial level is shared also – while I am well aware that this is the law at the moment, the statute does not allow for a division of either Tax Credits or Child Benefit. This cannot be to the advantage of the children.

I have two other cases which are much the same and I also have a case where dad has six days out of fourteen and mum has eight days out of fourteen. Not only does dad not receive Child Benefit or Tax Credits to any extent but he has also been assessed by the Child Maintenance and Enforcement Commission to pay maintenance to mum. The level of care which he has of the children does not appear to be taken into account although we understand that that particular client is in consultation with the Child Maintenance and Enforcement Commission at the moment.

One of the consequences of shared care, unless this is absolutely equal, and even when it is, is that one parent may well be financially disadvantaged. Both parents would be seeking to care for the children. Only one of them has the statutory financial support which the legislation provides.

This is becoming an increasing concern and I wonder if as part of the assessment and post-legislative scrutiny of the Act the concept of Parental Rights and Responsibilities could be looked at in terms of any shared care arrangement?

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5 February 2016