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Dear John

Thank you for your letter of 6 March 2015 notifying me of the various petitions that the Committee have received regarding access to justice. I have now had a chance to read over and consider the 4 petitions that you have highlighted.

Petition PE1513 Equal Rights for Unmarried Fathers

This petition asks the Scottish Parliament “to urge the Scottish Government to review the laws that govern parental rights and child access, and their implementation, to ensure unmarried fathers have guaranteed rights to be a part of their children's lives if they are deemed fit parents.”

I recognise that family disputes can be very difficult and can have long lasting effects on all those involved. The Government believes that the current law, based on the welfare of the child being paramount, is sound. The petitioner makes three detailed proposals to support the aims of his petition. I will deal with each of those briefly.

- *Both parents must be named on a birth certificate before a birth can be legally registered. Where the child's parentage is in doubt, all avenues must be explored in determining the child's father to the satisfaction of a court. If it is still not possible to name the child's father for whatever reason, a court may grant a registered birth with only one parent.*

We have considered this proposal and do not agree with it. It is important for births to be registered quickly and without delays. There are valid reasons why a mother may choose not to register the child's father, such as where he has abused the mother.

In examining the policy in this area, we looked at the process for adding a father to a birth certificate following a declarator of parentage made by a court. There is an argument that we should change our practice so that such a court decree will be reflected in any birth

certificate ordered after the decree. We will consult key bodies later this year to seek their views on this matter.

- *After parentage is determined, and should both parents be found to be fit and able to care for the child should an investigation be necessary, full rights and responsibilities will be awarded to BOTH parents. This will include the duty of care and living arrangements either agreed by mutual consent or, as a last resort, a court order.*

Parliament changed the law on Parental Responsibilities and Rights (PRRs) in the Family Law (Scotland) Act 2006. The Government at the time decided – and Parliament agreed – that it was not appropriate to give PRRs to all parents. For most children born since that Act came into force in May 2006, both parents have PRRs. In a small proportion of cases (5.0% in 2013) the mother registers the birth without the father and the father will not acquire PRRs by this route. He can still acquire PRRs by agreement with the mother or by being given them by a court.

We agree with the reasons given by the Government at the time. In brief these are:

- (1) The father registering the birth alongside the mother demonstrates some commitment to joint parenting;
 - (2) Giving PRRs to an abusive father could endanger mothers and children unnecessarily; and
 - (3) It could place an onus on a woman who was raped to go to court to ask the court to remove the father's PRRs
- *And perhaps my most important change in that if the court orders a DNA test, or anything else for that matter, then failure to comply with this request should be considered contempt of court. If we cannot rely on our legal system to fall back on, then we simply have a lawless and anarchic society.*

The court can already draw an adverse inference from a person's refusal to provide a sample of tissue or blood or a refusal to consent to the provision of such a sample from a child. In addition, in some cases, a child will be capable of consenting or withholding such consent. It is difficult to see that it would be in the interests of a child to hold him or her in contempt of court if he or she refused to provide a sample.

Petition PE1528 Child Court Reform

This petition calls on the Scottish Parliament "to urge the Scottish Government to amend child contact laws to provide that the starting point for the judge should be near to 50/50 contact for both parents if parents are fit and proper to parent."

We believe that such a presumption is incompatible with the rights of the child. In some cases, it will be contrary to the child's welfare to split his or her time equally between parents. The court can already order that a child should reside with different people at different times, including a 50/50 split, but only where that is in the child's interests.

In addition, anyone making a decision about a child – including the court – should have regard to the child's views, taking account of the child's age and maturity. It is not clear how that could happen if such a presumption was in place.

Petition PE1458 Register of Interests for the Judiciary

This petition calls on the Scottish Government to create a Register of Interests for the Judiciary. The Scottish Government considers that such a register of judicial interests is not necessary and that the existing safeguards – the Judicial Oath, the Statement of Principles of Judicial Ethics and the system for complaints against the judiciary – are sufficient. These safeguards, together with the register of judicial recusals, are sufficient to protect individuals from judicial bias.

Further to the evidence that the Minister for Community Safety and Legal Affairs, Mr Wheelhouse, gave to the Committee on 9 December 2014, he discussed this petition when he met the Lord President in February. The Minister acknowledged the Lord President's concerns about the introduction of a register of judicial interests. The breadth of such a register would make it virtually unworkable. It would need to cover not only financial interests, but also memberships of groups and associations and familial and social relationships. Even so, such a register might not capture relevant issues that could arise.

The position of the judiciary is different from that of MSPs and others who hold public office. The judiciary cannot publicly defend themselves. The Lord President has cautioned that such a register could also have unintended consequences. Consideration requires to be given to judges' privacy and freedom from harassment by aggressive media or hostile individuals, including dissatisfied litigants. In addition, there is currently no evidence that judges who should have recused themselves from cases have not done so.

Petition PE1525 Access to Justice

I understand that Mr Wheelhouse was able to update you on our position on this petition on 4 March. Data from the Scottish Legal Aid Board showed that, in a high proportion of cases, the requirements of the Civil Legal Aid for Defamation or Verbal Injury Proceedings (Scotland) Direction 2010 were not sufficiently addressed in the application. The Scottish Legal Aid Board has amended its guidance in an effort to improve this. The Scottish Government will therefore not be reviewing the legislation on legal aid for defamation and verbal injury cases itself at this time.

You also asked for more information about the consultation on legal aid that I mentioned at our meeting. This is the Consultation on Expenses and Funding of Civil Litigation Bill, which is due to close on 24 April and can be found at www.gov.scot/Publications/2015/01/9932. In addition to proposals arising from Sheriff Principal Taylor's Review of Expenses and Funding in Civil Litigation in Scotland and from Lord Gill's Scottish Civil Courts Review, this includes proposals on the provision of legal aid for 'legal persons' and the Scottish Legal Aid Board's powers to assess the availability of other funding mechanisms for civil litigation when considering an application for civil legal aid.

I hope this is helpful.

NICOLA STURGEON