

Law Society of Scotland submission of 29 July 2023

PE1984/I: Introduce the C100 form for child arrangement orders in Scotland

Thank you for your letter seeking views on the above petition.

Though we would not necessarily support the introduction of the C100 form, the petition raises wider issues around affordability and accessibility for parents and children in organising and maintaining child contact, which are important to consider.

While Scotland maintains legal aid provision for child contact, unlike England and Wales, there are many families that find themselves outside the financial scope of this system. Also, the financial eligibility for legal aid has not kept pace with inflation, resulting in fewer and fewer people being eligible for legal aid over time, an issue that we have raised separately in terms of future legal aid reform.

A necessary step prior to seeking a child arrangement order in England and Wales is the completion of a Mediation Information and Assessment Meeting (MIAM). Where a party is eligible for legal aid in England and Wales, there are not separate costs for this meeting. The Children (Scotland) Act 2020 introduced a mediation pilot for family cases in Scotland, with an evaluation pending. Following the MIAM, however, there is not legal aid available for any court proceedings (though there is a scheme for fee remission depending on a party's financial eligibility).

Ensuring that any process for seeking court determination of child contact needs to be accessible and further consideration could be given to the current forms and guidance. The petition also notes the fixed fee element of the C100 form in England and Wales, which is currently £232. There is not a fixed fee element in Scotland, with fees charged instead for a party to lodge a writ (£135) and the other party to lodge defences (£134). There can be additional court fees in the event of proceeding to an evidence hearing, though this is usually rare in child contact cases (and if eligible for legal aid, that scheme meets the cost of all court fees applicable). A fixed fee for court fees might offer greater predictability, and reduce the cost of court fees in more complex cases,

though would follow that court fees would increase (at least marginally) in less complex cases.

Issues around support through technology have also been raised, and these merit further exploration. Whether interactive forms of guidance, or more directly facilitated through online dispute resolution, there may be benefits in terms of accessibility.

We hope that this information is helpful and if we can assist further in consideration of this petition, we will be very happy to do so.