

PE2166/B: Establish a standardised timeframe for civil proceedings in child custody cases

Petitioner written submission, 29 September 2025

1. Introduction and Purpose

Thank you for the opportunity to address the Committee. This submission builds upon a constructive dialogue with the Scottish Government's Family Law Policy Office and the Civil Law and Legal System Division. Its purpose is to advocate for a specific, evidence-based amendment to the proposed rules for child dispute resolution, focusing on the critical issue of procedural timeliness.

2. Acknowledgement of Legislative Intent

I wish to first acknowledge the significant efforts embodied in the Children (Scotland) Act 1995 and the Children (Scotland) Act 2020. The principles and protections these Acts establish are commendable and vital. However, as both my extensive, eight-year first-hand experience and discussions with government officials confirm, a gap persists between legislative intent and practical enforcement.

3. The Critical Issue: Enforcement and Delay

The core issue is not a lack of rules but a systemic failure to enforce them consistently, leading to harmful delays that are detrimental to child welfare.

For instance, the current enforceable rules mandate:

- A Case Management Hearing (CMH) within 28 days of a Section 11 application.
- A final hearing date within 12 weeks of the CMH.

Furthermore, Section 3(1)(c) of the Children (Scotland) Act 1995, provides a crucial safeguard, stipulating that in cases involving allegations of abuse, the Sheriff **must** list a preliminary hearing within 14 days to assess the allegation.

Despite this clear legal requirement, evidence suggests this specific 14-day rule is seldom, if ever, enacted in practice. This enforcement gap is a significant concern, as delays are one of the most damaging factors in child dispute cases, often exacerbating conflict and enabling the alienation of children.

4. Proposed Amendment and Rationale

Following my meeting with the Family Law Policy office, a consensus was reached that a more practicable and still highly effective timeframe for such a proof hearing would be **4 to 6 weeks**.

I therefore respectfully ask the Committee to amend the original proposal to reflect this **4 to 6-week** timeframe. This adjustment achieves several key objectives:

- It is pragmatic: it aligns with operational realities of the courts while still drastically accelerating the process.
- It protects child welfare: it prioritises a swift resolution, minimising the time children are separated from a parent based on unproven allegations and reducing the risk of parental alienation. This aligns with the Scottish Government's "The Promise"
- It improves system efficiency: by reducing opportunistic and malicious litigation, it frees up invaluable court time and resources to focus on genuine and complex cases.
- Aligns with the Children (Scotland) Act 2020: which prioritises child welfare. Similar to **English Family Court** reforms under the **Family Procedure Rules 2010**, which encourage strict timetables.

5. Systemic Failure in Court Processes: A Case Study from an Eight-Year Campaign

5.1. Chronic Failure and Delay

My experience over the past eight years demonstrates a systemic failure in the court processes for child custody cases. A specific example illustrates this point: it took **41 months**, from January 2019 to May 2022, simply to secure a proof hearing date for my case, despite meticulously following every required procedure.

This was not an exception but a characteristic of a process that is fundamentally unfit for purpose, causing profound distress to families.

5.2. The Limits of Alternative Dispute Resolution

I note the Scottish Government's policy on alternatives to court, such as mediation and parenting plans. While valuable, these measures are, by design, precursors to court action. This petition addresses the critical breakdown that occurs *after* these alternatives have been exhausted. The core question for the Committee is whether the subsequent court systems themselves are functional, efficient, and just.

5.3. The Critical Issue of Child Welfare Reports

The Scottish Government Policy Office has rightly highlighted the importance of how "child welfare reports are requested and used." I wish to bring the Committee's attention to a grave concern regarding their execution.

In my case, a child welfare report concluded that the child in question was unhappy with in-person contact and preferred video calls. However, this conclusion was starkly contradicted by video evidence recorded less than two weeks before the report was written. With the Committee's permission, I would be prepared to provide access to both the report and this short video. This discrepancy is not a minor oversight; it calls into question the very foundation of evidence upon which the court made its decision.

5.4. A Fundamental Conflict of Interest: Solicitors as Child Welfare Reporters

This leads to a fundamental, structural problem: the prevalent use of solicitors as

child welfare reporters. This creates a conflict of interest analogous to a situation understood by Police Scotland.

Police Scotland does not allow a serving police officer to pilot its aircraft because the pilot's primary duty must be to the safety of the aircraft and its passengers, not to the operational priorities of a police investigation. The roles are distinct and require separate, specialised skillsets.

Similarly, the role of a child welfare reporter must be exclusively focused on the welfare of the child, conducted with impartiality and specialist training in child development and psychology. A solicitor, by training and professional duty, is an advocate and a legal technician. Placing a solicitor in the role of a welfare reporter risks conflating legal argument with child welfare assessment, potentially privileging procedural form over substantive, evidence-based findings on a child's best interests.

5.5. The Child's Voice and the Consequences of Systemic Failure

The ultimate measure of any system dealing with children is the well-being of the children themselves. The human cost of the current adversarial process is profound and lasting.

In January 2025, I encountered two of my children. Their reaction—expressing feelings of abandonment and rejection—screaming at me, “*you abandoned us*” is a direct consequence of the prolonged and damaging court process they have been subjected to for years. This is not merely a personal tragedy; it is a demonstrable social outcome resulting from a system that prioritises legal conflict over child welfare.

The social damage caused by these procedural failures is measurable not only in the immense emotional toll on families but also in the long-term costs to public services, including mental health support and social work intervention.

Therefore, the core aim of this petition is to make the Sheriff's responsibilities simpler and more direct. The current framework allows for complex legal manoeuvring that can obscure the fundamental principle of the child's best interests. We must streamline processes to ensure that the views and welfare of the child are the paramount and expedited focus of proceedings, not a secondary consideration to legal technicalities.

This petition proposes concrete steps to achieve that clarity. I urge the Committee to recognise this not as an isolated case, but as evidence of a systemic issue requiring legislative and procedural reform. Allowing this petition to progress is the first step towards ensuring that the voices of children are heard and that their welfare is truly placed at the heart of our family court system.

6. Conclusion

Just as speed limits on our roads are essential for safety but require consistent enforcement to be effective, our legislative frameworks require robust and consistent procedural enforcement to fulfil their purpose. The proposed **4 to 6 week** timeframe is a balanced, reasonable, and enforceable measure that will give practical force to the admirable goals of our existing legislation and ensure that the child's sense of time is placed at the heart of the process.

Thank you for your consideration of this important procedural matter.