



The Scottish Parliament  
Pàrlamaid na h-Alba

## Justice Committee

Humza Yousaf  
Cabinet Secretary for Justice  
Scottish Government

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By e-mail

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Dear Cabinet Secretary,

### Arrangements for child contact during

The Committee has been contacted by Shared Parenting Scotland highlighting some concerns they have about arrangements for child contact during the Covid-19 public health emergency. I believe you may be aware of this already. The Committee agreed that I should write to you to ask you to respond to the points in the letter from Shared Parenting Scotland.

The current legislation (The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020) states at section 8(5)(j) that—

“in relation to children who do not live in the same household as their parents, or one of their parents, to continue existing arrangements for access to, and contact between, parents and children, and for the purposes of this paragraph, “parent” includes a person who is not a parent of the child, but who has parental responsibility for, or who has care of, the child”

Shared Parenting Scotland’s letter reports that it is receiving calls “seeking clarification on whether it is allowed for children to move between homes of parents who do not live together”.

The Committee would be grateful for your views on this matter and whether the Scottish Government would issue some form of statement to clear up any potential for confusion.

Best wishes,

Margaret Mitchell MSP, Convener, Justice Committee

## **ANNEX**

Mr Humza Yousaf,  
Cabinet Secretary for Justice,  
Scottish Government

14/10/2020

Dear Mr Yousaf,

### **Re-inforcing official guidance on children moving between parental homes**

Shared Parenting Scotland is a Scottish charity dedicated to supporting individuals who encounter difficulties in maintaining a meaningful parenting relationship with their children after separation or divorce or when the parents have never lived together. This includes fathers, mothers, grandparents and other extended family members.

We support the right of children to a relationship with both their parents and wider family as set out in the UNCRC. You may have seen our submission to the Justice Committee on the Children (Scotland) Bill and our wide-ranging response to the preceding Scottish Government consultation. We have had several meetings with Ash Denham and regular contact with her officials.

We changed our name to Shared Parenting Scotland (from Families Need Fathers Scotland) in February this year to reflect the work we do. Around 20% of those who contact us for information or advice are female – non-resident mothers, grandparents, sisters and new partners. Half of our trustees are female from a range of backgrounds.

We give individual information but also run group meetings around Scotland in Aberdeen, Glasgow, Edinburgh, Stirling, Paisley and Dundee though all our meetings are currently online.

We are active on a number of Scottish Government working groups including revising the statutory guidance to the Scottish Schools (Parental Involvement) Act. I was a lay member of the Scottish Civil Justice Council for 6 years.

I am writing today to draw to your attention to a number of issues that have arisen as a consequence of the COVID-19 emergency and in particular the suspension of normal business in the courts and the effective closure of contact centres across Scotland. Some of these are explicitly matters for the courts and we have separately written to the Lord President about the issues arising in our casework and also our suggestions for early actions that can be taken to reduce the flood of actions that are likely to be released when the courts reopen.

However, I would like to suggest that a statement of some sort from you or a ministerial colleague in connection with sharing parenting during present travel restrictions might help pre-empt some of the cases that will otherwise end up in court.

In the last three weeks the proportion of calls to us from women has increased to around 30%. Many are from mothers genuinely seeking clarification on whether it is allowed for children to move between homes of parents who do not live together.

The UK Government guidance on this is clear that it is an exception to the general travel restrictions. Guidance from the Lord President and his equivalent in England and Wales, the President of the Family Division, is also clear that they expect court orders to be complied with - obviously within the bounds of common sense that children are moving from one symptom-free household observing social distancing to another. Police Scotland instructions to officers are also clear that such travel constitutes a 'reasonable excuse'. It is also set out in the Scottish Government Parent Club website.

Such travel is an exception because at a time of anxiety it is good for children to have the reassurance of continuity. Children's mental health campaigns have stressed that children want to know that both their parents are safe and well. It is also important that parents unused to 24/7 childcare in restricted circumstances should be able to give each other a break. It is important for children to know that at a time of emergency they can see their parents pulling together on their behalf.

It is apparent from the calls we have received that a good deal of confusion on the matter stems from an unfortunate mis-statement by Michael Gove on BBC Breakfast TV that such travel would not be permitted. He corrected it within the hour and went round the studios later that morning with the correct version but the damage was done.

I believe a clear statement at Scottish Government level would at the very least separate out the parents who are genuinely uncertain in good faith and others – mothers and fathers - who are regrettably taking advantage of the emergency to close down contact and communication.

I am pleased to report that we also have examples of breakthroughs by parents who have appreciated that they need to shelve old grievances on behalf of their children rather than rehearse them all over again.

For our part we are issuing our own tips and suggestions for parents to find a way of communicating respectfully and honestly with each other. If they cannot pull together for their children during a national emergency then when will they ever? Their children need to know that both parents are safe and looking out for them.

We have drawn up template letters for parents to help them open up communication and we have commissioned one of our outside trainers to develop an online course called "Communicating in Difficult Times".

We would be happy to liaise with your officials on any form of words that would be of assistance.

Finally, it may be helpful for you to know the issues and suggestions we raised with the Lord President. You may also care to express a view as appropriate either with the Lord President or in your own policy development.

#### COURT ACTION DURING THE CLOSEDOWN

We have heard from our colleagues in England and Wales that some cases are continuing using remote hearings of various sorts. This would seem particularly helpful where there are no allegations of domestic abuse or safety of children.

You may have seen the proactive guidance to his courts from the President of the Family Division and also the recent report from his family court working group.

We have asked the Lord President if there is any scope for resuming business in such cases and hearing non-compliance motions online? That would help both to reduce the pressure of cases that are likely to flood the courts when general business resumes and also build public confidence that the courts recognise the importance of relationships between children and separated parents.

#### UNSISTING

Contact and residence cases have been administratively sisted for entirely understandable reasons.

However, the procedure for recalling sists puts the responsibility on one of the parties, usually the pursuer, to make the case for returning to court. There are also substantial fees. We suggest it might be appropriate to introduce a special procedure that would relieve the parties of the responsibility of recalling the sist, restoring the status quo ante, and removing the recall fees on the basis that parties were not responsible for the sisting. This will be especially important for Party Litigants.

#### CURRENT PROOF HEARINGS

We are already aware of several proof hearings which have extended over several months a day or two at a time. They have now been continued indefinitely. This leaves both the parties and the children involved in limbo.

We have urged the Lord President to consider putting a very high priority on such hearings being resumed with utmost urgency, and also to consider with the Sheriff Principals whether such proof hearings can be conducted online, especially if they have reached the final submission stage.

Yours sincerely,

Ian Maxwell