

# Citizen Participation and Public Petitions Committee

13th Meeting, 2023 (Session 6), Wednesday  
20 September 2023

## PE1977: Require social services to inform biological fathers of concerns about their children

<b>Lodged on</b>	3 October 2022
<b>Petitioner</b>	Helen Duncan
<b>Petition summary</b>	Calling on the Scottish Parliament to urge the Scottish Government to amend the law and update the National Guidance for Child Protection to require social services to inform biological fathers of concerns about their children
<b>Webpage</b>	<a href="https://petitions.parliament.scot/petitions/PE1977">https://petitions.parliament.scot/petitions/PE1977</a>

### Introduction

1. The Committee last considered this petition at its meeting on [18 January 2023](#). At that meeting, the Committee agreed to write to CELCIS – Scotland’s Centre for Excellence for Children’s Care and Protection, Shared Parenting Scotland, The Promise Scotland, the Scottish Children’s Reporter Administration, and the Scottish Child Law Centre.
2. The petition summary is included in **Annexe A** and the Official Report of the Committee’s last consideration of this petition is at **Annexe B**.
3. The Committee has received new responses from Shared Parenting Scotland, the Scottish Children’s Reporter Administration, The Promise Scotland, and CELCIS, which are set out in **Annexe C**.
4. Written submissions received prior to the Committee’s last consideration can be found on the [petition’s webpage](#).

5. Further background information about this petition can be found in the [SPICe briefing](#) for this petition.
6. The Scottish Government's initial position on this petition can be found on the [petition's webpage](#).
7. Every petition collects signatures while it remains under consideration. At the time of writing, 5 signatures have been received on this petition.

## **Action**

The Committee is invited to consider what action it wishes to take.

### **Clerk to the Committee**

## Annexe A

### PE1977: Require social services to inform biological fathers of concerns about their children

#### Petitioner

Helen Duncan

#### Date lodged

3 October 2022

#### Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to amend the law and update the National Guidance for Child Protection to require social services to inform biological fathers of concerns about their children

#### Previous action

I contacted David Torrance MSP for help.

#### Background information

So many kids have died in horrendous circumstances. Currently social services are not required to inform biological fathers/families about concerns within the child's home.

In my family's experience, social work had been involved for a few months before we were made aware of the concerns. When we asked why we hadn't been informed sooner, my family were told it was none of our business as the original concern related to another child living in the same household.

I have also become aware of situations where fathers were not informed of child welfare concerns and are now fighting to have their children released from foster care.

How many more kids such as Brandon Muir, Liam Fee or Logan Mwangi must die? Recently, in England, Logan Mwangi's father stated the situation could have been different if he knew his son was at risk of harm.

We must put a stop to children being left in harmful situations. By introducing this requirement on social services, fathers will be provided with the opportunity to fully exercise their parental rights and responsibilities.

## Annexe B

### Extract from Official Report of last consideration of PE1977 on 18 January 2023

**The Convener:** PE1977, which was lodged by Helen Duncan, calls on the Scottish Parliament to urge the Scottish Government to amend the law and update the national guidance for child protection to require social services to inform biological fathers of concerns about their children.

Helen Duncan tells us in her submission that social services are not required to inform a child’s biological father when concerns have been raised about the welfare of their child. She highlights her family’s experience of finding out about child welfare concerns months after social work had become involved in the case. In researching the issue more broadly, Helen has become aware of situations in which fathers have not been informed of child welfare concerns and they have had to fight to have their child released from foster care.

Responding to the petition, the Minister for Children and Young People refers to the “National Child Protection Guidance in Scotland 2021” and its emphasis on listening to children and the participation of and support for families. She also refers to multi-agency partnership being one of the core elements of child protection processes, and indicates that, when child protection measures are required, social work should include fathers when appropriate and when they have active involvement in the child’s life.

Recognising that each set of circumstances is different and would require professional assessment before information is shared, the minister notes that introducing an automatic notification for biological fathers could place significant risks on children and adults—for example, in cases of domestic abuse, or where the child has requested that their father is not made aware.

The petition is interesting, and raises conflicting emotions and potential consequences. Do members have any comments or suggestions as to how we should proceed?

**Alexander Stewart:** As you identify, this is an interesting petition. We should seek more information from stakeholders on where they are on the issue. It would be useful to write to CELCIS, Shared Parenting Scotland, The Promise Scotland, the Scottish Children’s Reporter Administration and the Scottish Child Law Centre to seek their views on the issues that are raised. As the convener rightly identifies, the current situation seems to require a complex on-going process.

**The Convener:** As there any no other suggestions, are colleagues content to proceed on that basis?

*Members indicated agreement.*

**The Convener:** We will keep the petition open and progress it as suggested.

# Annexe C

## Shared Parenting Scotland submission of 7 February 2023

### PE1977/B: Require social services to inform biological fathers of concerns about their children

#### EQUALITY AND CHILD PROTECTION ISSUES

This petition raises significant equality and child protection issues and should also be considered in the light of the Scottish Government's planned incorporation of the UN Convention of the Rights of the Child into Scottish law and existing equality legislation.

The petitioner mentions a number of recent cases in which the biological father of a child who came to harm was not involved in the child protection work or other investigation. As noted below, there is also evidence from various sources that social workers are very likely to avoid making contact with fathers who do not live with their children and treat them as a potential risk rather than a person who needs to know about concerns and could potentially be a protective factor.

We would therefore suggest that there is already an obligation on social work and other agencies to inform both parents of concerns about their children – so the question should be about why this is not already being done.

The Minister's letter states: "*When child protection measures are required. Social work should include fathers where appropriate and where they have an active involvement in the child's life.*" (our emphasis). We suggest that there is no justification for excluding fathers who do not currently have an active involvement. In some of the cases mentioned by the petitioner the father had been excluded without reason.

The Minister's letter also mentions situations in which abuse or other issues justify non-involvement of a father. That is a reason for social workers and other professionals to treat each case according to its circumstances, not for a failure to find out about the father and assess whether he should be involved in the support for the child.

## OBLIGATION TO INFORM BOTH PARENTS

In families where the parents are not living together, they both have equal rights to receive welfare information about their children unless there is a court order which stops one of the parents from receiving this information.

When a residence order has been made in favour of one of the parents this relates purely to where the child should live, and does not make that parent the “main carer” in any other aspect or remove responsibility to safeguard and promote the child’s health, development and welfare from the other parent. It is possible for court orders to be made to remove all or part of the responsibilities from one parent, but before that is done “*a careful balancing exercise requires to be carried out and factors require to be identified which clearly make that step necessary and justified in the paramount interest of the child*”<sup>1</sup>.

There are particular circumstances in which one or both parents can be prevented from receiving health or education information about a child, but welfare information from social services does not have similar legal exemptions that prevent either parent from being informed.

Social services may not be given information about the father of a child or young person by the mother, but that does not exempt them from making reasonable enquiries about how to contact that parent. An analysis of serious case reviews conducted from April 2005 to March 2007 across England found a tendency for professionals to adopt ‘rigid’ or ‘fixed’ thinking, with fathers labelled as either ‘all good’ or ‘all bad’, leading to attributions as to their reliability and trustworthiness.

A Scottish study in 2012 “*Listening to fathers: men’s experience of child protection in Central Scotland*” also showed that fathers were not treated equally to mothers by social work.

## FATHERS WITHOUT PARENTAL RIGHTS AND RESPONSIBILITIES (PRRs)

Fathers who were not married to the mother or whose name is not on the child’s birth certificate do not have PRRs, but as the biological father they do have responsibilities to pay child maintenance and also to receive education information about the child or young person. At

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<sup>1</sup> <https://www.scotcourts.gov.uk/search-judgments/judgment?id=c88ae0a6-8980-69d2-b500-ff0000d74aa7> para 25

present just under 4% of fathers are not registered on their child's birth certificate (1848 births in 2021), although an unknown number may subsequently obtain PRRs.

In the Minister's letter it is stated that: *"If a father does not have PRRs, social work will request permission to share from the mother; if this is refused, such information cannot be shared."* We also query whether this approach is legally correct.

It could be argued that they should also receive welfare information unless there is a court decision to stop this. Under articles 8 and 14 of the European Convention of Human Rights this emphasis on registration of paternity rather than on paternity itself is possibly problematic. This may also be contrary to article 2 of the UN Convention on the Rights of the Child (non-discrimination based on child's birth status) and also article 18(1) of the UNCRC which requires that states ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of their children. In 1992 the Scottish Law Commission recommended that all parents should hold PRRs.

Although changes brought about in the Family Law (Scotland) Act 2006 widened the availability of PRRs to fathers whose name is on the birth certificate, the subsequent opportunity to level the playing field in the 2020 Children (Scotland) Act was not taken. While it was argued that this would give PRRs to fathers of children born from rape or incest, this is not an issue in the countries which have compulsory birth registration by both parents as further safeguards are used to prevent this possibility.

## ABOUT SHARED PARENTING SCOTLAND

Shared Parenting Scotland had just over 1,000 active enquiries during 2022. We staff a daily telephone helpline for individual enquiries. We run monthly support group meetings in Edinburgh, Glasgow, Stirling, Dundee and Aberdeen. We run one online meeting a month for people who are still uncomfortable with in person gatherings. All our meetings now have a family law solicitor in attendance on a pro bono basis for general advice about the law and legal procedures.

We publish several free 'user guides' to help inform individuals about rights and responsibilities of parents in relation to maintaining and nurturing a meaningful relationship with their children after divorce or separation. [Downloadable guides and publications from Shared Parenting Scotland - Shared Parenting Scotland](#)

We also provide the [New Ways For Families® training and coaching programme](#) to calm potentially high-conflict separation and help separated parents to communicate and reach agreement.

## Scottish Children’s Reporter Administration (SCRA) submission of 24 February 2023

### PE1977/C: Require social services to inform biological fathers of concerns about their children

#### Introduction

Before providing views, and to provide a proper context to our response, we consider it appropriate to summarise relevant aspects of the statutory role that SCRA fulfils.

One of the main functions of SCRA is to support the Principal Reporter in the exercise of the powers and obligations given to him by the Children’s Hearings (Scotland) Act 2011 and associated legislation. In practice these powers and obligations are delegated to children’s reporters and other staff who operate in 9 Localities across Scotland. The key tasks are undertaken by reporters. They include:

1. Reporters (i) consider referrals of children from local authorities, Police Scotland, health agencies, courts and others, (ii) carry out an appropriate investigation relating to the referred child, and (iii) decide whether to arrange a Children’s Hearing for the child. This decision focusses on 2 things. Firstly, whether there is sufficient evidence of one of the grounds<sup>2</sup> listed in the Children’s Hearings (Scotland) Act 2011, and secondly whether a statutory order – a “compulsory supervision order” - is necessary for the child.
2. If the reporter considers that a ground applies and a compulsory supervision order is necessary, the reporter arranges a Children’s

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<sup>2</sup> Section 67 of the Act lists a number of grounds reflecting a range of concerns for the welfare of children and which can for the basis for the referral of a child to a children’s hearing. They include (i) where there has been a lack of parental care for a child, (ii) where the child has been the victim of an offence, (iii) where the child has not attended school and where there is no reasonable excuse, (iv) where the child has committed offence, and others. For full details follow this link: [Children's Hearings \(Scotland\) Act 2011 \(legislation.gov.uk\)](#)

Hearing which will decide whether to make a compulsory supervision order.

SCRA and its staff are required to carry out other functions, for example to do with (i) providing accommodation for children's hearings, or (ii) the conduct of court proceedings which are related to children's hearings. However these are not relevant to the issues raised by this petition.

As the obligations on the Principal Reporter centre only on those children who have been referred to him, we consider that it would be inappropriate to comment on (i) the content of legislation or guidance (such as National Guidance for Child Protection in Scotland) which applies to children out-with the children's hearing system, or (ii) how other agencies apply this legislation or guidance. As a result the remainder of our response focusses on where SCRA staff may notify a child's father of any referral received or any action by the reporter.

### **SCRA's Obligations**

Note that SCRA's obligations under the Children's Hearing's (Scotland) Act and related legislation uses the term "relevant person" to describe a person who has rights to be notified of certain things including decisions made and children's hearings arranged. The term covers a range of individuals, principally those who have parental responsibilities and rights in relation to children. This includes most parents who are registered on the child's birth certificate as well as other individuals who hold these rights. "Relevant person" also generally includes other parents who do not hold parental responsibilities or rights.<sup>3</sup>

In practice, fathers will almost always be relevant persons with the rights and obligations that flow from that.

The reporter has various statutory obligations to notify relevant persons where the person's contact address is known. The reporter depends on other agencies to provide this information and will seek to ensure any contact information held by the reporter is kept accurate and up-to-date.

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<sup>3</sup> Unless the reason the parent has no parental responsibilities and rights is because they have been removed by a court

Where a relevant person's contact details are not known, then no notification can be made.

In dealing with referrals received and making decisions there are a number of points at which reporters may require to communicate with relevant persons.

1. On receipt of a referral for a child.

There is no express statutory requirement to notify relevant persons that a referral has been received. However, reporters generally do so in order to be appropriately open and transparent and support the understanding of those involved in the Children's Hearings System. The reporter will in due course require to tell the relevant person whether a Children's Hearing is being arranged and, further, other agencies may have contact with the relevant person as part of the investigation and/or the relevant person may have information or questions they wish to address directly to the reporter. On occasion it will be appropriate for the reporter to proceed to a decision about a child without further investigation, in which case a separate notice about receipt of the referral will not be given.

There are however other circumstances in which the reporter will not inform a relevant person of a referral. In particular, where receipt of such a letter by the relevant person would be likely to create a risk of harm to someone. (An example of this would be where a relevant person is known to have carried out domestic abuse in the past and where notifying them might result in further abuse.) Other than this, for any particular referral there may be a number of factors, and their interaction, that influence whether to tell a particular relevant person that a referral has been received. These include:

- The extent of involvement of the relevant person in the life of the child,
- The extent of likely direct knowledge of the issues or concerns about the child,
- The age of the child, and
- The sensitivity of the information in the referral.

Consideration of these is always balanced with the general reasons that support giving notice of receipt of a referral. (An example of this flexible

approach might be where a 15 year old girl has been subjected to a sexual assault and she has had no contact with her father since she was three. In such a case the reporter may decide NOT to notify the father.)

The lack of notice from the reporter about the referral does not prohibit contact with the relevant person as part of the investigation.

2. On making a decision that no children's hearing is required

When the reporter decides not to arrange a Children's Hearing for the child, they are obliged by statute to inform a number of individuals of that decision. These include each relevant person in relation to the child.

3. On deciding that the child's case will be referred to a children's hearing.

Where the reporter decides to arrange a Children's Hearing, the reporter is obliged to notify a range of individuals including each relevant person in relation to the child. In addition the reporter must provide each relevant person with information about their rights in relation to the hearing and a copy of all reports and other documents that will be considered at the Children's Hearing. There are statutory provisions that allow the withholding of some information in specified circumstances.

4. Other situations where a relevant person will be notified

Relevant persons will be notified by the reporter of a range of other matters including hearing decisions, hearings to review the compulsory supervision order in respect of the child, and court proceedings which arise from Children's Hearings.

## General Comments

We have tried to summarise the obligations on the Principal Reporter which may involve informing a father of concerns for his child's welfare. Thinking more generally about the subject matter of the petition, we offer the following comments:

- (i) While the petitioner talks about informing fathers about concerns, it may be that the same question arises in some situations for mothers or others with parental responsibilities and rights.

- (ii) If some change is considered necessary to legislation or guidance, it is likely to be unhelpful if the obligations imposed on agencies were to lack a degree of flexibility and discretion. There are many situations where there may be good reasons not to share some or all of the available information with fathers, mothers or others with parental responsibilities and rights. Relevant considerations might be the child's welfare or the welfare of others and the Article 8 rights of children or others to respect for their private and family life. For these reasons we consider that whether or not any change to legislation or guidance is considered necessary, a degree of flexibility requires to be retained in deciding whether to inform fathers of welfare concerns.

If the Committee require further comment or information we would be happy to oblige.

## The Promise Scotland submission of 1 March 2023

### PE1977/D: Require social services to inform biological fathers of concerns about their children

The Promise Scotland is the organisation established to support and monitor the implementation of the Independent Care Review. This is the organisation's clear focus and purpose, ensuring that Scotland's children grow up loved, safe and respected, and it is through that lens that we offer our views on this petition.

One of the underpinning themes of the Independent Care Review was for the need for universal family support, including for families who have had their children removed. This should include the offer of "therapeutic support, advocacy and engagement in line with principles of intensive family support." The Promise Scotland believes this family support should be fully inclusive of fathers and different types of family situations.

The Promise Scotland does think it is important to be mindful of the circumstances in which children might be removed from their families. As noted in the Independent Care Review's Evidence Framework, domestic violence can be one of the contributory factors within a family setting that can lead to children entering the orbit of the child protection or care system. In such a situation, it is important to be mindful of whether informing a father of concerns would in fact enhance the child's wellbeing and safety, or could potentially increase the risk to other family members.

Another key underpinning of the Independent Care Review is about the voice of children and young people. In particular "children's voices and their experiences must be the focus of inspection and investigation processes." There may be cases where a child specifically requests that their biological father is not made aware of any concerns. In such a situation, we believe that the workforce should be empowered to respect the voice and rights of children.

It is these types of particular situations that mean point 4.10 of the existing National Child Protection Guidance 2011 states: "Inclusive protection and support of children also involves engaging with the risks and strengths presented by fathers and/or the men that are most significant to the child's safety and wellbeing."

The National Child Protection guidance should be used to support what the Independent Care Review identified as "reflective practice" which "supports the development of a workforce that can manage risk in a relational rather than a process driven way." It is not clear that imposing an automatic duty as requested by the petition upon the workforce would be consistent with the management of risk in a relational rather than process driven way.

It is clear that the underpinning motivations of this petition are rooted in the need to protect and safeguard the wellbeing of children. This is a sentiment which The Promise Scotland would fully support and we appreciate the efforts of the petitioner to ensuring that Scotland is a place where all of our children grow up safe, loved and nurtured. However, we are not confident that requiring social services to inform biological fathers of concerns in all cases would in fact support this aim,

or would be consistent with the aims and actions of the Independent Care Review.

I hope this response will be helpful for the committee as it considers the petition and The Promise Scotland would be happy to clarify or provide further detail.

## CELCIS (Centre for Excellence for Children's Care and Protection) submission of 5 July 2023

### PE1977/E: Require social services to inform biological fathers of concerns about their children

#### **Children's human rights**

We suggest that the paramount focus in this matter should be on a child's human rights under the UNCRC, as well as European Convention on Human Rights, in particular Article 8, the right to respect for private and family life. All rights under these treaties must be considered, as these are interrelated and indivisible, requiring a skilled approach to individual contexts and circumstances of the child, their parents and, most importantly, to the needs of the child. This is a highly complex area which requires a nuanced and flexible approach within multi-agency assessment, planning and decision making.

#### **Parental rights and responsibilities**

Part 1 of the [Children \(Scotland\) Act 1995](#) sets out 'parental responsibilities and rights' (PRRs), which includes both the responsibilities and rights of a mother and father in many families. We note that it may be particularly difficult to devise a working definition and practice to establish biological fatherhood in all families. Many fathers who are biological fathers will have PRRs for a child, but others may not. Some fathers will exercise PRRs where they do not formally have them (regardless of whether they are or are not a biological father), while others who have them will not be involved in the care of their children. Therefore, a practice protocol would be required to establish paternity,

with careful planning in any circumstances of doing so. Some children, including those raised in same sex relationships, will be conceived via a donor (who may have explicitly relinquished PRRs), raising further equalities and legal issues.

Careful consideration about information sharing must be made in any circumstance and assessed in terms of a child's rights, including for their views to be given due weight in all matters affecting them, their safety, best interests, as well as respect for privacy and family life. An assessment must take place before information is shared that considers any risk, for example concerns around domestic abuse, as well as the needs of the child. In some situations, this information could be distressing to a child, and will not be shared if there is a risk of harm to parent or child, with these circumstances are subject to robust assessment and protocols. A child should be consulted on their view and have access to independent advocacy and if appropriate, legal advice.

### **Supporting child and family social work practice**

Child and family social work services should always include fathers taking an active role in that child's life regardless of whether they have PRRs, as part of any assessment into any concerns. We recognise that sometimes fathers may not be actively involved in their children's lives even though they may like to be, for example, in situations of conflict and separation. When a concern is raised about a child, it would be best practice for child and family social work services to make inquiries into a father's whereabouts, and if found, include him in the multi-agency assessment if deemed safe to do so. We recognise that workforce capacity may sometimes prevent social workers from dedicating the necessary time where it is proving difficult to locate the father. We also recognise that for some separated fathers it can be hard to navigate complex state systems. Any parent who has had negative experiences of other state processes can find it especially difficult to navigate systems such as child and family social work services, and there should be consideration of how to engage and support these parents.

In recent consultation work CELCIS has undertaken, some fathers reflected that they felt judged by services and individual staff, not heard or listened to, and that their relationship with their children had been actively degraded throughout their experience with child and family social work services. One father shared his experience where he alleged that, when he raised concerns about his child, these were not taken seriously or acted upon. We recognise that these views are anecdotal,

and there may be other relevant factors relating to the individual circumstances of a child and their family.

However, these perspectives indicate a gap in engagement of fathers where there are concerns about their child’s welfare. Evidence about engaging fathers in these circumstances emphasises the need for high quality assessments that avoid simplistic approaches to the role of a father, not positioning fathers as “*either* a risk *or* a resource” but recognising that any relationship between a parent and child may include both risk, protective and nurturing characteristics, which must be understood in the context of each individual relationship and child’s needs<sup>4</sup>.

### Existing legislation and guidance

Whilst there is a need to support high quality, child rights informed practice in this area, CELCIS holds the view that existing legislation and guidance is sufficient to support best practice in this area, and a legislative change will not necessarily address these concerns. Current child protection processes are not statutory,<sup>5</sup> but are based on practice that manages risk and supports the welfare of children in a local context and are based on the individual needs of a child and their family. The National Guidance for Child Protection in Scotland (2021) does not distinguish between parents but offers general principles in terms of working with families. This guidance also highlights relationship-based and strengths-based approaches to assessment such as [Family Group Decision Making](#) and [Signs of Safety](#). These approaches require a ‘whole family’ approach to assessment, incorporating the views of all relevant people in the care of the child/ren where it is safe to do so. The use of the national practice model and ‘My World Triangle’ within the GIRFEC approach requires practitioners to consider the people surrounding the child or young person and the support they provide.<sup>6</sup>

Where compulsory measures of care are required to support a child and their family, and investigations find it necessary to schedule a Children’s Hearing, the [Children’s Hearing \(Scotland\) Act \(2011\)](#) sets out ‘relevant

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4 Philip, G., Clifton, J., & Brandon, M. (2019). The Trouble With Fathers: The Impact of Time and Gendered-Thinking on Working Relationships Between Fathers and Social Workers in Child Protection Practice in England. *Journal of Family Issues*, 40(16), 2288–2309. <https://doi.org/10.1177/0192513X18792682>

5 The National Guidance for Child Protection in Scotland (2021)

6 Scottish Government (2022) [Getting it right for every child – Practice Guidance 1 – Using the National Practice Model – 2022](#) (page 10)

persons' who should be notified and receive information about Children's Hearings' processes. In most cases fathers will be included as 'relevant persons' for this purpose and therefore will access the information and reports associated with the concerns for the welfare of their child at various points.

We suggest that it may be more effective to address the matters raised by this petition through improvements to workforce learning, knowledge and skills in this area. Evidence from CELCIS improvement programmes show that the principles of relationship-based practice such as this can be supported by:

- A focus on leadership that supports practice;
- Improvements to self-evaluation, and the collection and use of data across local areas;
- Reflection on current assessment models;
- And high-quality supervision and improvements to workforce capacity.

CELCIS thanks the Committee for seeking our views on this matter, we would also suggest that the Committee seeks the views of Social Work Scotland and Scottish Women's Aid regarding this issue.