

UN SPECIAL RAPPORTEUR CALL FOR INPUTS – CUSTODY CASES, VIOLENCE AGAINST WOMEN AND VIOLENCE AGAINST CHILDREN

Shared Parenting Scotland receives enquiries from more than a thousand mothers, fathers and wider family members every year. Most find us themselves though we also receive referrals from MPs, MSPs and a range of other advice and support agencies.

We provide information and support on a range of issues, which include contact with children, court action, and enforcement of court orders for contact. We support and encourage shared parenting because research evidence around the world repeatedly shows that full co-parenting involvement after separation is in the best interests of children unless reasons are established why this should not happen.

We believe our casework over the last 12 years and the accumulated experience drawn from it gives us a unique insight into the successes and failures of Scottish courts in resolving matters when parents are unable to reach agreement about sharing the parenting of their children after divorce or separation.

We hear about domestic abuse alleged by both fathers and mothers. We are contacted by both fathers and mothers whose children abruptly refuse to have contact with them despite their previous close and loving relationship.

From this experience and from our knowledge of published research on these topics, we are very concerned that this call for inputs is based on generalised assertions that are not well founded. They present an incomplete, inaccurate and prejudicial picture of a very important and serious issue.

Most importantly from our perspective, the restricted premises and presumptions of the report seem designed to lead to a conclusion that is not evidence-based. They do not leave room for the actual decisions from Scottish courts and the practice of sheriffs and judges we are aware of.

In particular, we challenge the accuracy of statements such as *“regular and widespread dismissal of intimate partner violence history and incidents by family courts”*. Our experience is the complete opposite.

The same applies to, *“The tendency to dismiss the history of domestic violence and abuse in custody cases extends to cases where mothers or children have brought forward credible allegations of child physical or sexual abuse.”*

Our knowledge of court cases conducted in Scotland does not support these statements.

These issues are taken very seriously in Scottish courts and proven abuse is often the reason for restricting or stopping contact.

If anything the sense of frustration is experienced by fathers who have experienced abuse but who find it difficult to have their reports accepted by Police and who may be advised by

their legal representatives not to mention such experience in court for fear of it rebounding on them.

Our experience, supported by a number of recent Scottish and English court decisions, is that the unjustified rejection on one parent due to the conscious or unwitting influence of the other parent does happen in some families after separation. The features that are described as Parental Alienation are shown in such cases. We know of both fathers and mothers who have been rejected in this manner.

Our experience is that family court sheriffs and family lawyers in Scotland rarely use the phrase 'parental alienation' in their judgements or in their submissions to court even when that is what the evidence before them describes.

We are aware of letters written to children by sheriffs explaining their decision not to order contact. In one such case the court had already concluded that none of the alleged domestic abuse had taken place. The children had been influenced by these false allegations and were still unwilling to see their father. The sheriff's letter expressed the hope that in years to come they may view matters differently.

While we fully support the need to protect both children and parents from domestic violence, we do not agree that *"the parental alienation concept has become a tool for denial of domestic and child abuse"*. Assertion is not evidence. We are deeply concerned that the terms of this Call For Inputs are in themselves based on inaccurate gender stereotypes.

We agree with the Special Rapporteur that there are significant problems in obtaining disaggregated data on family court cases in Scotland. It is an issue we have raised ourselves. It is therefore contradictory for the Special Rapporteur to then assert that there is clear evidence supporting assertions such as there is: *"a disregard [in Scottish courts] for the history of domestic violence and abuse and intimate partner violence or the penalising of such allegations in custody cases"*. There is no such clear evidence.

In our experience of many court cases across Scotland over the past 12 years, Scottish sheriffs and judges do not disregard these issues - they treat domestic violence very seriously. If anything, in our experience, they are extremely cautious.

They are also aware that they have a duty in justice to consider whether allegations of domestic abuse are genuine or have been made instrumentally in order to advance the case of that parent or justify restriction of contact.

Lady Hale, former president of the UK Supreme Court emphasised the need for testing of such serious allegations in *Principal Reporter v K* [UKSC 56 (2010) para 44] *"No child should be brought up to believe that she has been abused if in fact she has not, any more than any child should be persuaded by the adult world that she has not been abused when in fact she has."*

Yours sincerely



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