

A survey of sheriff clerks' perspectives on child contact enforcement in Scottish sheriff courts

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This Research Finding presents the findings of a small scale survey and information gathering exercise on sheriff clerks' perspectives of child contact enforcement in Scottish sheriff courts. While most child contact arrangements following parental separation are decided privately by mutual arrangement between parents, some cases do involve the courts. This aspect of child contact following parental separation was the subject of considerable Parliamentary discussion during the passage of the Family Law (Scotland) Act 2006 particularly the enforcement of child contact arrangements and how the courts handle non-compliance with contact orders. The survey was carried out to enhance policy-makers understanding of the issue.

Main Findings

- Child contact enforcement is not a significant issue for the courts surveyed.
- The incidence of cases of non-compliance with child contact orders dealt with by the courts surveyed is low, and the number of families involved is even lower.
- The most common reason to return to court in relation to an earlier contact order was to vary that order, rather than to seek enforcement due to non-compliance.
- Enforcement of contact orders for reasons of non-compliance form a negligible proportion of family actions or court business generally, typically reported as 5% or less. Where they do arise, they may involve repeated appearances by the same families, but do not seem to present any particular operational issues for the courts.
- Mediation service and contact centres are seen to have a valuable role to play in contact disputes.

Introduction

This report presents the findings of a small survey and information gathering exercise on sheriff clerks' perspectives on child contact enforcement in Scottish sheriff courts. While most child contact arrangements following parental separation are decided privately by mutual agreement between parents, some cases do involve the courts. This aspect of child contact following parental separation was the subject of considerable Parliamentary discussion during the passage of the Family Law (Scotland) Act 2006 particularly in relation to the enforcement of child contact arrangements and how the courts handled non-compliance with contact orders. Policymakers therefore wish to improve their understanding of non-compliance with contact orders and how this matter is dealt with by the courts.

The survey was carried out by Fran Wasoff of the University of Edinburgh in June 2006 as part of the funding agreement between the Centre for Research on Families and Relationships and the Office of the Chief Researcher, Scottish Executive on behalf of the Civil Law Division of the Justice Department of the Scottish Executive. It was designed also to inform the research programme of the Analytical Services Division of that Department around various aspects of child contact following parental separation and other aspects of the Family Law (Scotland) Act 2006.

One objective of the survey was to estimate the extent to which individuals involved in family actions that involve the making of a contact order return to the court to enforce the order for reasons of non-compliance. A second objective was to collect information from sheriff clerks about their perceptions of the scale of such actions and what demands non-compliance with child contact orders place on their courts.

Information was gathered from a mixture of small, medium and large sheriff courts throughout Scotland chosen by the Analytical Services Division. Selected courts were alerted by telephone by the Scottish Courts Service. A letter was sent by the Head of the Civil Law Division of the Justice Department of the Scottish Executive to three of each type of court, or nine in total, explaining the purpose of the exercise and what was required in response to a questionnaire. Respondents were also advised that questionnaires could be accessed from the website of the Centre for Research on Families and Relationships and completed and returned electronically. Eight responses were received, with some telephone follow up.

Are repeated child contact actions a significant issue for the courts surveyed? What are the main reasons

the parties to an earlier child contact order return to court?

In response to these questions, all but one sheriff clerk replied that repeated family actions involving child contact are not a significant issue for their particular court. Where parties to earlier contact actions did return to court, most sheriff clerks reported that it was most commonly to seek a variation in the order on the grounds of changed circumstances, e.g. if one of the parties has moved or changed their working pattern, or to deal with particular 'one-off' situations, such as extending the contact period for a family holiday, rather than to seek a remedy for non-compliance, although such cases did arise. As one respondent observed:

"The majority of court time involving contact is taken up with the initial decision on whether contact should be allowed, and if so to what extent, and where contact should take place. Beyond that, the main reason for return to court is for some form of variation of a contact order previously made."

One sheriff clerk commented that in most cases where the sheriff has made the original order, subsequent problems are sorted out by the solicitor who can explain to clients the nature of a court order and that they must comply with it. In another court, it was reported that one reason for a contact case to come back to court where known problems existed was at the request of the sheriff who wished to monitor progress of an existing order, and perhaps to adapt the order in the child's best interests if the arrangements ordered were thought not to be working well.

Another sheriff clerk commented that a return to court could be prompted by unfinished adult 'relationship' motives:

"There is very often a considerable degree of residual ill feeling between parties following a relationship breakdown, particularly in the early stages. A common complaint between parties is that one parent is using contact periods to influence the views of the children against the other party. Another complaint is that the children may be exposed to the influence of unsuitable third parties during the contact period."

The incidence of child contact enforcement cases in sheriff courts surveyed

Several questions were asked to gain an impression of the incidence of child contact enforcement cases in the court surveyed, both as a proportion of the court's overall caseload and as a proportion of family actions. In all courts, both measures were very small. As one sheriff clerk in a large sheriff court commented:

"There is a public perception that contact compliance is a serious issue. But in my experience that just isn't the case. It

is rare in the extreme. Non-compliance is very low; disputed contact is even lower.”

There was wide variation reported in the proportion of court business that family actions comprised: from 3% to 30%, and in one case, 40% of civil cases. In this context, sheriff clerks were asked to provide a ‘broad brush’ impression, rather than a precise measurement, of the scale of contact enforcement cases as a proportion of family business and an estimated number of cases in the previous year. As a proportion of *family business*, all but one reported estimates at about 5% or less, and one court with a low incidence of family business (3% of its overall business) reported that 8% of that consisted of cases of non-compliance with earlier contact orders. The number of such cases reported in the previous year varied: the numbers reported were none (or unknown or low), ‘maybe half a dozen’, less than 10, 15, 20 and 50. Some of these cases appear to involve repeated appearances by the same family. By both measures used, the incidence of non-compliance cases dealt with by the courts surveyed are low, and the number of families involved lower still.

What operational issues do “non-compliance” actions present to the court and how demanding are such actions?

Sheriff clerks were asked about whether non-compliance actions presented any particular operational issues to their courts and how demanding such actions are for the court. In all instances, they did not consider that such cases presented any particular demands on the courts beyond those of other types of case and they were accommodated as routine court business. For example, one respondent observed that while these cases required nothing more than other cases coming to court, occasionally steps were needed to keep the parties apart or from meeting. But this was no different than for other actions where parties should not or do not wish to see each other, e.g. adoptions, rapes or some criminal cases. Two respondents mentioned that they could take a little more court or staff time spent explaining the impact of court orders but not significantly so.

In one court, while these cases were not seen as especially demanding of court resources, it was noted that they could take a considerable amount of time (an hour or more at a time) and still not resolve the case, that there could be a lack of continuity and consistency with different sheriffs dealing with a case, and some sheriffs are reluctant to take action against a mother who flatly refuses to obtain a court order, with the case continued in the hope that she will eventually do so.

When asked about their impression of the intractability of the contact disputes that return to the court or of the

effectiveness of remedies available to the court for resolving them, most responded that most contact disputes were resolved by the original court order and did not appear to be intractable. As one person commented:

“Only one case has ever come back because parties wouldn’t comply. The court has no real restrictions in bringing in other services. There are plenty of remedies available including the powers of the court to report to social services, to ask for reports, etc.”

Family support services outwith the court

Respondents were asked if they thought contact disputes could be reduced or resolved by support services out with the court, and if so, which were most beneficial. Half mentioned that both mediation and contact centres could be helpful in some cases, and all but one mentioned mediation services as helpful. One person observed that contact centres were useful for being ‘neutral ground’. Two sheriff clerks regretted the absence of such services in their areas. One person with no experience of support services outwith the court commented on the value of reports to the court:

“I have no experience of support services use out with the court. Reference to conciliation services is in my experience rare in xxxx. The court has the facility to request a report from one of a panel of reporters to the court to impartially investigate circumstances. This is useful in my experience in focusing issues and assisting with resolution.”

In another court, it was noted that some cases were resolved by the solicitors involved who were also family accredited [CALM - Comprehensive Accredited Lawyer Mediators] mediators who can sit down and have round the table talks with the other parties.

Conclusion

On the basis of this limited information gathering exercise from a small number of sheriff courts of varying sizes, the main conclusion is that repeated child contact actions are not a significant issue for the courts surveyed. By both measures used, the incidence of cases of non-compliance with child contact orders dealt with by the courts surveyed is low, and the number of families involved is even lower. The most common reason to return to court in relation to an earlier contact order was to vary that order, rather to seek enforcement due to non-compliance. Enforcement of contact orders for reasons of non-compliance form a negligible proportion of family actions or court business generally, typically reported as 5% or less. Where they do arise, they may involve repeated appearances by the same families, but do not seem to present any particular operational issues for the courts. Mediation services and contact centres are seen to have a valuable role to play.

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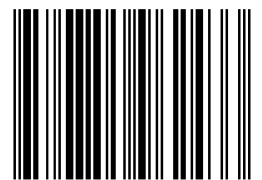
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ISBN 0-7559-6243-5



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