

Justice Committee

Family Law (Scotland) Act 2006

Written submission from Grandparents Apart UK

Thank you for the opportunity to submit our views on what aspects of the Act have been successful and unsuccessful in our experience. Being involved in The Stakeholder Group in 2005/6 was a valued opportunity.

As anticipated we have had no time to survey our members to provide statistics, however we have recorded information from callers to our helpline over the years and provide our response based on that evidence.

The laws created for families in the main are fair; it is the way they are abused and manipulated in practice that is the problem. We raised concerns about this in 2005/6 and the same problem is still widespread.

Our first observation is that there is an anomaly in our family law in regard to grandparents – a child can legally make a claim on their grandparent's estate if their parent predeceases their grandparent, BUT they have no legal claim to their grandparent's love or support in life.

In 2006 it was decided grandparents should not have a right of contact with their grandchildren or more importantly, children should not have a right of contact with their grandparents. Since then the government has often stated that grandparents are a valuable part of the family but fail to support that in practice. It is only in the last few years we have seen a difference in how grandparents are perceived in a court situation, but we remain at the mercy of the personal opinion of professionals on any given day.

EU legislation states that a person is entitled to a family life. The Scottish Government must decide if grandparents are a part of that family life or not.

To accompany the 2006 Act and with our input, The Charter for Grandchildren was created as guidance for best practice by the Scottish Government on what should be considered in The Best Interest of the Child. However, geographical and personal differences have lead to different outcomes and that is simply wrong. There are too many inconsistencies in outcomes for children when professionals become involved in family life.

It has taken a long time for the advice on The Charter to be considered important and for attitudes to start changing, but there is still a long way to go as there are still too many Social Workers, Solicitors and Courts ignoring this advice, simply because they can. All looking at too narrow a picture and hiding behind the principle of The Child's Best Interest, without understanding exactly what that is for each child.

The Parenting Agreement was created at the same time but has been largely dismissed in our experience. We understand this document is being reviewed at the

moment but unless the Government puts some weight and awareness behind it there will be no improvement in its value to separating families.

There is still a huge gap in the training of authorities involved in children's lives.

When Social Services become involved in family life there is too often fear, exclusion and lies. Social Services have been found to produce false reports and nothing is done by managers or hearings when this happens. We had one case in particular where the information provided by Social Services was proved in court to be false, yet submitted once again at a following hearing. No repercussions for the social worker, just more delays in finding a solution for the children.

This is frighteningly common and must be addressed. Personal disagreements between Grandparent and Social Worker become a reason to exclude the grandparent(s) without any just cause. The love, care and stability they can offer a child are ignored because personalities get in the way. Any contact is reduced until it is stopped. We hear it over and over.

There is a complaints system, however telephone calls are not returned, letters receive no response and meetings are held without all parties being informed. It is unbelievably difficult to negotiate 'the system' and the process is much too slow to allow a decision to be investigated adequately before it is too late for many children. There is no accountability, no transparency and no openness.

We strongly believe that benefits would be found for families, courts and our country's finances if minutes were taken at Child Welfare Hearings. At present there is no note of how a sheriff reached a decision and a lot of time is wasted at each hearing going over old ground with parties being asked to provide information already given on previous occasions. Minutes would provide continuity and also highlight anomalies or concerns from one hearing to another.

There is clearly an issue in child cases with confidentiality and data protection if minutes are taken; however there is the option of excluding names to protect identities.

When Solicitors are involved in family life too often their focus is on their own financial gain and the immediate needs of their client, without consideration of how their actions affect the children in the family. The current remuneration system encourages conflict and this only encourages parental alienation. Early resolution is in everyone's best interest. Simple changes like how a letter is worded, prompt responses and checking facts would go a long way to reducing conflict without a lot of effort.

Dr. Edward Kruk Ph.D, has written several articles on parental alienation and in July 2015 wrote *"For the child the biopsychosocial-spiritual effects of parental alienation are devastating. For both parent and child, the removal and denial of contact in the absence of neglect or abuse constitute cruel and unusual treatment. Adversarial court processes often add salt to the wound of both parents and child. As a form of child maltreatment, parental alienation is a serious child protection matter as it*

undermines a basic principle of social justice for children: the right to know and be cared for by both of one's parents."

Again the complaints system is not user friendly as any complaint against a solicitor is investigated by their peers, which is clearly a biased system. The Law Society does not fully appreciate that clients are not generally happy with their member's work. On a previous survey we had 44.3% of replies expressing dissatisfaction with their solicitor.

The main problem we see in legal situations is the continuing inequality in separated families between the resident parent and the non-resident parent. Despite most parents now having equal rights and responsibilities the rights of the non-resident parent to have access to medical, school, general information about their child and in particular a relationship with that child are not adequately enforced by our courts and are often ignored by authorities. Straightforward things like forms for child information within schools and doctors surgeries don't have adequate provision for information about both parents. This should be standardised in every health and education area of Scotland.

The length of time it takes the legal process to resolve simple issues and the adversarial way matters are dealt with are in no-one's best interest, in particular the child's.

There still has been no solution found to the problem of contact orders granted by the courts which are flouted and where children are alienated from a parent or from extended family members. It is mental abuse to deny a child their right to family life and our laws say it shouldn't happen, but it still does too often because our legal system allows it.

In divorce cases one party can delay matters, manipulate situations and give false information without repercussions. This has an impact on the mental health of everyone involved creating stress which in turn has a detrimental effect on the children. It also has an unnecessary financial impact on families and on every citizen in Scotland when Legal Aid is awarded. The only winners in this event are solicitors.

Whilst all non-resident parents should contribute to the upkeep of their child (responsibilities) this should be discussed in conjunction with contact arrangements (rights), all of which should be negotiated in the child's best interest, not the parent's best interest. Again the laws are there to deal with this, but are abused and manipulated by the strongest solicitor, rather than used to reach an agreement in the best interest of the child. Winning should be seen as reaching the best compromise in the best interest of the child, not the highest settlement.

All family legislation, principles and intentions, whatever they are, should begin with an even playing field. No discrimination, no preconceived opinions and no assumptions about which gender is better at which role within the family. Shared parenting must be the ideal and unless there are genuine safety concerns this outcome should be the aim in all cases. Shared parenting is part of our legislation, but this doesn't always carry through to court decisions. A very high percentage of

our callers raise concerns that one person holds power over the whole family. If this was discouraged and education put in place to prevent it, there would be much less acrimony in separating families.

There should be no assumption for example, that the male is the perpetrator of violence within the relationship, no assumption that the female is the better parent and no assumption that any accusations are true. The whole picture must be looked at thoroughly with the child at the centre of every question, action and decision.

Women have had a long and ongoing fight for equality, but in family situations we need to be careful that the 'pendulum hasn't swung too far'. Equality should mean just that. There should, in practice, be equal value put on the time each parent has with their child and the contribution each parent can make to the child's life

The focus on domestic violence is on help and support for women, but there must be equal opportunity and support for abused men.

At a very recent Centre for Research on Families and Relationships seminar on 'Domestic Abuse, Criminal Justice and the Scottish Courts – New Direction?', we were dismayed to hear Sheriff Principal Derek Pyle dismiss domestic violence against men as unimportant. It does abused women no service to dismiss male victims of domestic violence. We see on a daily basis men being given a heavier sentence for domestic violence than a woman receives in similar circumstances. We must encourage men to speak out, not make it harder for them to do so. Equality means domestic violence is wrong whichever gender you are.

Education should be provided for separating families to help them realise the short and long term effect their behaviour has on their child. Most parents don't mean to do any harm to their child, they just don't realise their behaviour is wrong. There should also be education for both partners in a violent relationship; the offender to understand and alter their behaviour, often learned behaviour, and for the victim to increase their confidence and change the cycle of dependency on a controlling partner, male or female. Their cycle of violence needs to be prevented.

There must be an avenue for adults with mental health issues to seek help and for this to be recognised and dealt with within the divorce and court processes. Facts must be checked and confirmed and any pattern of irrational behaviour must be addressed, brought into the open and taken into consideration when decisions are made about any child. Psychiatric reports should be part of the process where necessary.

In court, solicitors should present all information, not just information benefiting their client, so that a fair and proper all round settlement can be reached. The fairer any agreement is then the less friction there will be and in turn less animosity will cause less stress to affect the child.

The fact that pensions are included in settlements needs to be reconsidered given that pension values are calculated at the time of separation but may not remain at that value. Therefore the party given the settlement based on the amount at date of separation could easily benefit more than the pension holder.

In financial agreements both parents should have shared costs to meet child contact requirements. e.g. if parents live a distance away from each other then transport costs and time should be proportionately shared.

In summary we believe there is much work to be done to improve the situation for children involved in separating families, but most of the necessary work and education appears to be in how the laws are used in practice rather than the laws themselves. There is also work to be done to improve systems and processes within professional organisations. The disappointing thing is that the issues we raised in 2005/6 still seem to be the issues we are raising in 2016.

Grandparents Apart UK
8 February 2016