

**Cross Party Group on Children and Young People**  
**Minutes for Wednesday, 28 November**  
**13:00 – 14:30**  
**Committee Room 1, Scottish Parliament**  
**Family Contact – Grandparents rights to contact**  
**Should there be a presumption in law that children benefit from contact with their grandparents?**

**Chair: Alison Johnstone MSP**

Alison Johnstone MSP	Rachael Hamilton MSP	Ruth Maguire MSP
Chris Ross	Kelly McFadden	Jan Hiddleston
Shona Spence	Lizzie Morton	Sarah Lilley
Sarah Paterson	June Loudon	Elaine Gray
Marguerite Hunter Blair	Beth-Anne Logan	Angus MacLean
Patricia Hutchison	Annie McGovern	Sara Lurie
Claire Hunter	Susie Dalton	Julie Reid
Sara McFarlane	Susan Hunter	Simon Stockwell
May Chamberlain	Maria Doyle	Gordon Mason
Katy Macfarlane	Lauren Pluss	Shoina Mason
Susan Hunter	Jackie McRae	Kirsteen MacKay
Carlene McAvoy	Mhairi Reid	Lindsay Jessiman
Hannah Martin	Roseanna MacDonald	

## **1. Welcome from Chair & Previous Actions**

The meeting was opened with a welcome from Chair, Alison Johnstone MSP.

Previous minutes from October meeting on Brexit were agreed. Chris Ross, Children in Scotland updated CPG members of progress on previous actions;

- The Children and Young People's Panel on Europe will continue to pursue a meeting with convenors of the CPG to discuss their work.

Alison Johnstone MSP introduced that the meeting would focus on the subject of family contact with a specific focus on grandparents rights

Member of the CPG then heard a case study highlighting the issues from grandparents, Gordon and Shoina Mason:

## **2. Case Study – Gordon & Shoina Mason**

Gordon and Shona gave a case study of their experience. Gordon and Shona have been grandparents 2013 but have not had any access to their grandson since spring 2014, indeed we are threatened with legal action if we even broach the subject.

The lack of rights for both grandchildren and grandparents has caused us much distress and we are delighted that a review of how family law in Scotland operates, particularly to "ensure, as far as possible, that grandparents' rights are considered and that they can retain the contact with their grandchildren that is sometimes denied to them".

This follows on from the Charter for Grandchildren in 2006. In addition, the Children and Young People (Scotland) Act 2014 placed a duty on the Scottish Ministers to keep under consideration and take steps to further the rights of children and young people, to promote and raise awareness and understanding of the United Nations Convention on the Rights of the Child.

Their campaign has had support from MSPs from across the political spectrum.

Gordon and Shona's key points included;

- The law should cover rights of grandchildren and grandparents at any time and not restricted to marriage or relationship break ups.
- The presumption under law that grandchildren should have contact with their grandparents should be the minimum position with the introduction of rights the goal.
- Comparison with international law;
- including France where grandchildren and grandparents not only have rights but also obligations.
- Spain where grandchildren and grandparents have the rights to contact each other.
- Comparison with the law in Australia where grandparents have the rights to apply for contact with their grandchildren.
- The law to be applicable to grandchildren born with the jurisdiction of the Scottish courts but residing outwith Scotland.
- That the parents can still be married or in a relationship but both sets of the grandparents can still have access to the grandchild.
- The aims of the Children's Charter 2006 to be put into the Bill.
- Grandparents should not be sent abusive, threatening etc emails, letters, phone calls, texts etc. especially when they have done nothing wrong.

Grandparents to have professional people they can talk to when they are worried about the circumstances/conditions their grandchild is being brought up in and what help/advice can be given.

I hope that by completing this consultation that in the future when the Children's law is passed by the Scottish Parliament it will save other grandchildren/grandparents going through all the pain, suffering, worry, sleepless nights which we have experienced on a daily basis. Even although we do not know what our grandson looks like our love for him has never diminished and never will.

### **3. Simon Stockwell, Head of Family Law Unit, Scottish Government – The Family Law Bill**

Simon Stockwell set out the proposed Family Law Bill in the context of wider Scottish Government policy to frame the panel contributions. Simon discussed the proposed changes to the Bill and some initial findings from the consultation process.

Simon noted that from the Scottish Government's perspective the Grandchild is at the centre of the of their work. Simon did however note that grandparents can be a vital relationship for children and young people that can reduce stress.

### **4. Panel Contributions**

*Roseanna MacDonald, Scottish Women's Aid*

Roseanna MacDonald focused on issues relating to contact with grandparents and wider family members in the specific context of domestic abuse:

Roseanna noted that;

- Many grandparents are vital protective factors in children's lives. However, some also collude in the ongoing abuse by the perpetrator (either unwittingly, through coercion or actively). This increases risk and harm to both the child and the non-abusing parent - blanket assumptions about the benefits of contact should therefore not be assumed, but assessed on a case-by-case basis.
- The discussion should be framed within a children's rights perspective, not a grandparents' rights perspective - best interests of the child should be paramount and children's views a vital part of the decision-making process around this. A presumption of grandparents rights could move the focus off of children.
- UNCRC incorporation would give a right to family contact.

Roseanna also shared the experiences and views around this issue from children we consulted with on the 1995 Act consultation

*Sarah Lilley, Innes & MacKay*

Sarah Lilley noted that Gordon & Shiona Mason's experience is not atypical.

Sarah also identified that;

- According to the Scottish Government, as many as 69% of families now rely on grandparents for childcare. To many parents these grandparents are an invaluable source of support.
- The positive benefits for the grandchildren from being supported by grandparents cannot be overestimated.
- Research indicates that in around 40% of cases where parents separate, one set of grandparents end up losing all contact with their grandchildren.
- As a family law solicitor practicing locally, my colleagues and I have seen a significant rise in grandparents contacting us looking for advice as a result of contact with their grandchildren having been stopped.
- It is only right that the priority should usually be in resolving the children's arrangements with their own parents and this is recognised by the Courts. However, there will often come a time, once the dust has settled, when the children's relationships with their wider family needs to be considered.
- The grandparents of a child resident in Scotland do not have an automatic legal right to contact with their grandchild. There are, however, certain steps they can take through a solicitor including mediation or Collaborative Family Law to resolve the problem. The final course of action is a court order for contact.
- A court order for contact is by nature adversarial and can damage the family dynamic, however it can remedy the situation.
- What needs to be borne in mind, at all times, is that the courts primary concern is with what is in the best interests of the children. The grandparents would have to persuade a

court that it is in the best interests of their grandchildren that the court grants an order for contact with them.

- If, after the court action has been raised parties are still not able to reach an agreement between themselves, then the raising of a court action hands control of the matter to the Sheriff. The Sheriff's will always have the best interests of the children at the forefront of their minds when making a decision.

Sarah noted that the legal profession is not in favour of a presumption of grandparents rights to contact in her experience.

*Dr Kirsteen MacKay, University of Edinburgh*

Dr MacKay identified that her position was that there should not be a presumption in law that children benefit from contact with their grandparents. The conflict that has caused grandparents to not see their grandchild could be increased by more parties having rights.

Dr MacKay noted a range of key points;

- Where the child's parent feels cared for and supported by their own parents, they are very unlikely to deny a child contact with their grandparents (indeed they are likely to promote it, with grandparents undertaking significant informal childcare). However, a parent may have reasons for denying contact. It would clearly not be desirable to force such parents to ensure contact between her/his children and her/his parents. This would undermine the primary carers' ability to provide care to their children.
- Research has found that the closeness of a grandparent to a grandchild pre divorce or separation of the parents of the child, predicts the closeness after the separation or divorce – so it is not divorce or separation of the parents *per se* that impact on relations between children and their grandparents [GUS 2012, the involvement of grandparents in children's lives, Chapter 1, <https://www.gov.scot/Publications/2012/05/4455/3>]
- Dr MacKay's research found that, in child contact court actions, unmarried fathers who had never lived with their child regularly informed the court that their own mother would be present during contact and providing care to the child (particularly in respect of infant children). However, *forcing* a non-resident parent to ensure his or her children have contact with their own parent/s on the basis of a non-voluntary agreement risks increasing any pre-existing conflict between family members.

Where the children are not having contact with a parent, this may increase the likelihood of loss of contact between the child and their grandparents on that side of the family. In this case grandparents may apply to the court for contact however when this is against the will of the parent caring for the children (as the fact of the court action implies), this risks undermining the primary carer's own care of the children (and increases the stress upon that parent).

*June Loudoun, Grandparents Apart UK*

June Loudoun noted that Grandparents Apart UK think that the child have a legal right of contact with grandparents. Protections already exist where this would be harmful to the child.

- The current legal position - Grandparents / grandchildren have no specific legal right of contact with each other. A right exists if you can prove you are a 'relevant person' but this means you have to have made a medical or educational decision about the child, so doesn't cover where a grandparent / grandchild bond exists due to time spent together.
- At the moment anyone who has been involved in a child's life can seek contact.
- When parents separate the family of the 'non-resident' parent can be easily excluded even when they have previously had a close relationship with the child. Grandparents describe it as a living bereavement, so what does the child feel.
- Grandparents Apart and others have, over the years, made a case to show the benefits of contact and the effect on a child when contact is stopped for no legitimate reason. It is generally accepted that contact between the generations is beneficial and can have a huge impact on a child.
- You can see situations of false reports and manipulation of family members to exclude grandparents. This can cause anger and fear about the system and that they can't protect their grandchildren because there is no legal relationship.
- All children should have the right of contact with family and extended family unless it would be unsafe to do so.
- France gives children the legal right of access to their extend family, particularly grandparents. The grandparents needs to apply for a ' child arrangement order'. Scandinavia has different parental separation processes where there is no adversarial system like the UK.

Grandparents Apart feel that the next step for government is to listen to the various evidence which has been presented to them and focus on what is actually happening to children within our current system and how badly affected children are by officialdom who bully and mistreat families, whether intentionally or unintentionally.

*Beth Anne Logan – youth campaigner for care experienced young people*

Beth's key points included;

- The solution to the issue is unlikely to be found in legislation as emotion is the driving force when there is family conflict. There may need to be a safe guard in law but just creating new legal rights to contact may make things worse.
- Children and young people may decide they want to see grandparents but this decision may be driven by emotion. Decisions need to be made on a case by case basis to account for this.

*Alison Bavidge, Social Work Scotland*

Alison noted that SWS members did not want to see an extension of rights to contact for grandparents. However Alison did identify that there may be a benefit of a wider presumption which would include grandparents and which, where it is in the best interests of the child to do so, recognises those who are significant to the care of the child.

Alison's key point included;

- Clarity that the paramount consideration is the child's welfare – care must be taken to ensure that the relationship does not take precedence over this. This would be important in cases for example where the grandparents relationship with the child could be positive and important, but where they (the grandparent) might be complicit or unable to protect the child from contact with the child's parent (the grandparent's son or daughter). It would be concerning if any new legislation led to more people having rights to have contact with the child – this should be child led.
- Situations of issues with grandparents contact tend to be big issues. The lack of relationship between parents and grandparents can cause issues for the child.
- Whole Systems approach would be better than a legislative one.

Alison Johnstone then summed up the contributions, thanked members and the panel for their contributions.

## 5. Open Floor Discussion

*Patricia Hutchison, Western General Hospital* – Patricia noted you can see manipulation from both parties in family contact. The wider issue can often be pushed under the carpet and children and young peoples needs can be ignored. Patricia noted she would like to see a change in the law to give more space for grandparents to raise an issue.

*Ian Maxwell, Families Need Fathers* - Ian noted that Families Need Fathers hear from lots of grandparents. Ian felt that the Family Law Bill will need to either remove the presumptions that are currently in place or put in place a wider range of presumptions to contact.

*Roseanna MacDonald, Scottish Womens Aid* – Roseanna recognised that abuse can go both ways. Roseanna also identified that a presumption of shared parenting could cause issues where people need to provide proof of their relationship to a child.

*Dr Kirsteen MacKay, University of Edinburgh* – Dr MacKay noted that New Zealand brought in a shared care presumption that caused issues and now needs to be amended.

*Sam Petrie, Association of Family Therapists* – Sam noted the importance of gather the voice of the child in a meaningful way as this can be influenced by their experiences and what they hear from family members.

*Beth Anne Logan* – Beth noted the value that incorporation of the UNCRC could have in this area by putting in place rights to support for families.

*Sarah Lilley, Innes & MacKay* – Sarah suggested that a presumption in law could actually increase the amount of litigation but law is unlikely to change the damaged relationships that cause the situation.

*Patricia Hutchison, Western General Hospital* - Patricia noted that children and young people are not heard from enough in decisions about contact in this sort of situation.

*Chris Ross, Children in Scotland* – Chris reiterated the previous points raised about the role of UNCRC incorporation and highlighted the importance of getting support to families at the earliest stage to prevent conflict if possible.

*Dr Kirsteen MacKay, University of Edinburgh* – Dr MacKay noted that grandparents do receive rights when it is in the best interests of the child.

*Ian Maxwell, Families Need Fathers* – Ian noted we need to move away from adversarial legal system. Ian also mentioned the work of the Cross Party Group on Shared Parenting.

*Ruth Maguire MSP* – Ruth noted that it is important to consider rights in a wider sense than just having a voice in the process.

*Jackie McRae, Children's Hearing Service* – Changes to the law do not get rid of conflict. Conflict resolution is key and mediation can play a key role.

*Gordon Mason* – Gordon suggested a presumption in the opposite direction may work where a child would have a right to see their grandparent.

*Susan Hunter, Citizens Advice Scotland* – Susan noted that relationship and placement with family can be vital but the situation is not black & white.

*Sara Lurie, Fostering Network* – When children come into care settings we need to consider their relationships.

*Lizzie Morton, CELCIS* – Lizzie mentioned the stand up for siblings campaign. The campaign recognises the rights of siblings to have contact with one another. 70% of children in permanent care lose contact with their siblings.

*Hannah Martin, Carers Trust* – Grandparents can be a support mechanism for young carers. However a presumption to have contact in law might make things more difficult and so is inclined to focus on gathering evidence on a case by case basis while providing support.

## **6. Agree Actions and Close**

- The CPG will send minutes from the November meeting to the Justice Committee.
- The CPG will encourage the Justice Committee to have an evidence session with children and young people on the Family Law Bill when appropriate.

*Next meeting Date*

6/2/19 – 13:00- 14:30