

## **JUSTICE COMMITTEE**

### **CHILDREN (SCOTLAND) BILL**

#### **SUBMISSION FROM GORDON MASON**

I make this submission as a grandparent who has had no contact with a grandchild since the grandchild was a few months old: it is for my grandchild's benefit that the law be changed. For me, this period is like a living bereavement.

Much of the discussion about rights of grandchildren and grandparents is on marital separation or divorce. It is important to stress, however, that it can also arise while a marriage continues and the parents (albeit one under duress by way of psychological abuse and coercive control by the other) deny the grandchild access to or contact with one set of grandparents.

Sadly, when a grandchild is not allowed to develop a relationship with one set of grandparents, the loss for the grandchild goes even further than this because it is through them that the grandchild would be able to know and benefit from the wider family on that side. Relationships with the whole of a person's family are important because each side of the family is part of a child's make up. It is a key part of his identity as an individual and becomes even more important as a child gets older. A grandparent can be an important emotional and practical resource for the grandchild. A grandchild wouldn't lose anything by having contact with the grandparent, but if the grandchild doesn't have contact at all, the grandchild could be missing out on an important source of help, love and affection. As the grandchild grows older, grandparents can be a vital source of information for the grandchild, providing knowledge of family origins and roots which this may help the grandchild to develop and understand their identity.

The lack of rights for both grandchildren and grandparents has caused much distress. It brought great hope therefore when a review of how family law in Scotland operates began in 2018,

- particularly to (in the words of the First Minister) "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".

In Family Justice Modernisation Strategy published in September 2019, the stated aim for grandchild contact with grandparents is set out:

- 3.14 "The Scottish Government wants to make Scotland the best place in the world for children and young people to grow up. The 2012 National Parenting Strategy highlights the importance of creating and maintaining healthy relationships within families and communities. The Scottish Government recognises the importance of parents and the wider family, including grandparents, in a child's life and wants to ensure that grandchildren can expect, amongst other things, to know and maintain contact with their wider family, except in very exceptional circumstances."

Following the Consultation on the Review of the Children (Scotland) Act 1995, which took place in 2018, the Family Justice Modernisation Strategy goes on to state about contact with grandparents:

- 3.20 “The Scottish Government has not included a specific provision in the Bill on the relationships between a grandparent and a child as the Scottish Government believes that such a provision could cut across the key principle in the legislation that the welfare of the child is the court’s paramount consideration. In addition, making specific provision in respect of grandparents would also raise questions on whether there should be specific provision for other family members.”
- 3.22 “The Scottish Government proposes to continue to promote the Charter for Grandchildren.”

**It is particularly difficult to understand why the grandchildren’s rights have not been included in the Children (Scotland) Bill as the responses to the Consultation on the Review of the Children (Scotland) Act 1995 showed that of the respondents who answered the questions:**

- **97% of children came out in support of a grandchild having contact with their grandparents.**
- 53% of adults came out in support of a presumption in law that grandchildren benefit from contact with their grandparents.

**Surely now is the time and the opportunity to have the non-statutory Charter for Grandchildren introduced in 2006 brought into statute where it states that**

- **“grandchildren can expect to know and maintain contact with their family (except in very exceptional circumstances) and other people who are important to them and to know that their grandparents still love them, even if they are not able to see them at the present time”.**

**Surely now is the time and the opportunity to let grandchildren have legal rights and voices in Scotland that they have in certain other countries. Let Scotland be seen as a family-orientated society.**

**(A) An Analysis of the Consultation on the Review of the Children (Scotland) Act 1995**

When the analysis of the Consultation on the Review of the Children (Scotland) Act 1995 was published, we were heartened and encouraged by the responses that relate to grandchildren having contact with their grandparents.

The percentages in favour would be even higher if the non-responses to questions were stripped out.

As can be seen in 2.1.2, many questions failed to provide a response which has been described as possibly from an element of respondent fatigue due to the length of the consultation; but we would argue that many respondents (like us) would only have interest and knowledge in specific areas of the consultation and could therefore give no opinions on areas out with that sphere.

- “Should a child have contact with their grandparents?”.

Specifically, we would draw your attention to 2.2.3 and 5.5.1 regarding YP5.

All that was highlighted in the Main Findings in 2.2.3 was: “YP5. Should a child have contact with their grandparents? - 51% said only when it was good for the child.”

But a more thorough analysis is crucial.

YP5. Should a child have contact with their grandparents?	Number	Percentage
Yes, always	68	23%
Yes, but only if it good for the child	151	51%
No	4	1%
Don't know	2	1%
No response	70	24%
Total	295	100%

Only 4 of the respondents said “no” to this question.

In 2.2.3 the analysis correctly states that 51% said only when it was good for the child; but fails to mention the 23% who said yes always to this question. Therefore, the figure in support of the premise in the question is 74% (subject to best interests).

Indeed, this can be taken further by stripping out the non-responses as “don’t know” is included in the results. This takes the figure in support to 97%.

- “Should there be a presumption in law that children benefit from contact with their grandparents?”

Specifically, again, we would draw your attention to 5.5.7 and Q8.

Nothing was highlighted in the Main Findings. But a more thorough analysis is crucial.

Q8. Should there be a presumption in law that children benefit from contact with their grandparents?	Number	Percentage
Yes	114	45%
No	101	40%
No response	39	15%
Total	254	100%

45% said that they agreed. But stripping out the non-responses takes this into a majority. This takes the figure in support to 53%.

(B) Grandchildren's rights in other countries

Grandparents in Scotland have to apply to the courts even to be given permission to make a request for some sort of contact, a lengthy and expensive process (Section 11 (3) (a) (i) of the Children (Scotland) Act 1995).

The creation of rights for grandchildren and grandparents such as in France or Spain, or to a lesser extent in Australia would be the major goal.

- To be considered like rights of grandchildren and grandparents under French law

The law in France which relates to grandparents and grandchildren includes not only rights of grandchildren and grandparents but also obligations. In the event of divorce or family conflict, grandparents may be excluded from relationships with their grandchildren. Yet, even in the case of a family dispute, the ancestors retain rights and duties towards their grandchildren to maintain a bond and preserve their relationship. For the sake of the well-being of the grandchild, the law regulates the right of access and accommodation granted to grandparents. Moreover, article 371-4 of the Civil Code, relating to parental authority stipulates that "the child has the right to maintain personal relations with his ancestors. Only the interest of the child can hinder the exercise of this right".

In concrete terms, this means that relations between parents and grandparents, even if they are stormy, cannot hinder this right. The reality is much more nuanced, because if the conflict between the two parties becomes too important, the courts consider that the interest of the child is at stake and can suspend the right of access. If no agreement can be reached amicably, the Family Justice Judge will decide according to the situation, direct the protagonists to a mediator or order a social inquiry. Namely that a judgment is never fixed, and the appearance of a new element may be sufficient for the case to be reviewed by a court. The Judge will decide, considering the interest of the grandchild (solution best suited to the needs of the child), to either allow relations between the grandchild and the grandparents by determining the modalities or refuse the relations between the grandchild and the grandparents if the interest of the

grandchild requires it. Nevertheless, the law does not require grandparents to see their grandchildren. In the same way, grandchildren can also refuse to see their grandparents, without this choice being challenged. Grandparents also have obligations to support their grandchildren.

- To be considered like rights of grandchildren and grandparents under law in Spain

In Spain grandparents have the legal right to see their grandchildren. This right is stated in the Spanish Civil Code and it applies to grandparents, siblings, and other relatives of the minor. In cases where parents or guardians do not allow the grandparents to see their grandchildren in Spain, the grandparents have the right to request visitation rights through the Spanish Courts. Under normal conditions, the grandparents are entitled to contact with their grandchildren and vice versa. This is a family bond which is proven to be beneficial to grandparents and grandchildren, and the Judge always seeks the best for child's interest. So, a judge may grant a ruling after a proper hearing regarding the rights of the grandparents to visit the grandchildren in Spain.

- To be considered like rights of grandchildren and grandparents under law in Australia

In Australia, grandparents do have rights to make an application for time with grandchildren, under the Family Law Act. However if they want to spend time with grandchildren, but that is not agreed by the parents of the children, grandparents could invite the children's parents to meet with a child psychologist or to participate in mediation before making an application to the Family Court of Australia. The Family Law Act allows the Court to make orders for the time a child is to spend with other people other than that child's parents, and this category of people includes grandparents. In fact grandparents are specifically referred to in the legislation as people who may apply for orders to spend time with children or to have children live with them.

The principles which the court applies in deciding whether to order that time be spent with a grandparent are the same principles that apply to any other person. The main principle is that any court order must have regard to the best interests of the child or children concerned. If children are at an age to express a view, that view may be taken into account by the court. In reality, if there is conflict and a lack of agreement between the parents of the child/children and grandparents, a court will have to consider the effect of any orders on the relationship between the parents and grandparents, which may in turn affect the children. In reality, where a grandparent is keen to spend time with children but that is not appreciated or agreed to by the child's parents, the court is likely to order limited time with the grandparents. In these cases, the court will also take into account the time that the grandparents have spent with the children to date, their relationship with the children and practicality of time being spent. If there is failure to agree, or if a dispute exists between the parents of the children and the grandparents, the court will not adjudicate that dispute, and may err on the side of the children's parents in limiting the extent and nature of contact between the grandparents and the children.

Gordon Mason  
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