

## **JUSTICE COMMITTEE**

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

#### **SUBMISSION FROM RICHARD SINCLAIR**

General comments prior to the Justice Committee meetings, this supplement submission dated 30 October 2019. I will only comment on issues for which I have experience.

The two main problems with Family Law in Scotland are.

1. Inadequate or non-existent procedures in the civil courts.
2. The lack of a reasonable degree of accountability for Family Lawyers.

All the other "new" proposed legislation are of secondary importance. They will enhance certain areas and provide protection for individuals in others. However, addressing the 2 points above should be the main aim of the consultation. The system is centred on the civil courts and controlled by lawyers. It has to be robust and safe from the outset. If not, any new legislation will fail to be fully effective.

There are no other options available to parents. You have to use the civil courts if an ex refuses access to your children. So the system has to be robust, controlled and importantly fair for both parents. Obviously the children's wellbeing is the main focus. However, the bias against Dads has to be addressed by adopting a more balanced approach.

I could write on this topic all week. The consultation is basically a massive risk assessment. Risk assessments require that ALL risks are identified, before establishing mitigating measures to eliminate that risk, or minimise to acceptable levels. There are lots of hazards in the current system that require to be addressed before adding further legislation. If you do not identify all potential hazards then the risk assessment has failed, simple as that.

I fear that the current system will stay much as it is, with a few new additions. That will be a disaster for families in the future. I also fear that the issue of parental alienation will be swept under the carpet as it is not a vote winner.

#### **7th January 2020 Justice Committee 10am meeting**

There was a very limited degree of balanced content during both sessions.

Generally children have 2 parents, please correct me if I am wrong. A mother and a father? After this morning's submissions, children appear to have a mother and either an abuser or a perpetrator as second parent.

Women's aid were quick and emphatic to agree that robust regulation is required at contact centres and for court reporting. What regulation and formal procedures do Women's Aid adhere to before conducting interviews with young children? What background checks if any? I fully appreciate that this is a charity and therefore funding will be a major concern. I am sure that difficult decisions with respect to priorities, will

be required with such limited resources. However, when children and their wellbeing is the focus, a good level of regulation and checks are essential before conducting any psychological counselling sessions.

A doctor would never put a stookie on a child's arm just because their mum told the doctor the arm was broken. An x-ray would be taken first. Putting a stookie on an arm that is not broken will do more damage than good. Likewise, putting young children through unnecessary counselling sessions will also be damaging and confusing, rather than helpful. Please check with WA their procedure, I fear that they just take the mothers word and action without question. That is unsafe and potentially harmful to a child. Can the government provide funding to ensure regulation is in place, to enhance the good service that WA currently provide?

I absolutely agree 100% that the child's view should be taken into consideration, and indeed heavily weighted with respect to parental contact matters. However, it is essential to establish if the child's view is their own, or that moulded by a controlling and manipulative parent.

Please wake up to parental alienation in 2020.

#### **14th January 2020 Justice Committee 10am meeting**

Firstly, I was pleased that the issue of parental alienation(PA) was discussed to a degree. All 3 members of the first panel gave evidence to explain the adverse effect, both to the children and the parent who is suffering. Please take it on board, it is a real issue.

I am perfectly aware that coercive control(CC) and domestic abuse(DA) are very serious issues. I fully appreciate that the committee need to mitigate for such behaviour to protect vulnerable adults and children. I do not for one minute suggest that protective steps should be compromised in any way. However, PA has to be assessed alongside, with training made available just as for CC and DA.

My main take from this morning is that every child is different, as is every parents broken relationship. Therefore, in order to take the correct actions for a child's welfare, a full picture is required. It is essential, but at this time it does not happen. For example, currently social workers generally fail to take the view of the second parent. The parent that is denied contact with their children will likely never meet a single social worker never mind in the company of their children. Likewise, with court reports performed on someone's ability as a parent, they will likely never be observed in the company of their children to assess interaction! How can a proper assessment be made under those circumstances?

Grandparents could provide valuable input to a child's parental contact case. Again, very often the grandparent's views are never sought from social works or court reporters. Grandparents often have very strong bonds with their grandchildren and regularly observe the children in the company of their parent. Their input would give an alternative view to supplement or counter that of the resident parent. In contrast, multiple bodies will take the view of the resident parent, without question and action accordingly.

Parental alienation can be the main reason for the destruction of a parent's relationships with children. Womens Aid (WA) suggest that PA is not an issue, that might be so for many cases but not all. Again you need the full picture, the alternative view, to assess each individual case.

### **21st January 2020 Justice Committee 10am meeting**

A good session with some compelling evidence with respect to sibling relationships. I have no experience to offer on this topic. My only comment would be that there are many other very important relationships for children, which should not be ignored.

### **28th January 2020 Justice Committee 10am meeting**

One of the major faults of the child welfare reporting system is that it suffers from a potential single point failure, with one person responsible for planning, interviews and report writing. All reports should be quality checked by a second competent person. Why not have a mix of professions from a core dedicated team producing the reports? For example, a solicitor and a child social worker. The solicitor could be the senior reporter but has the support of a qualified social worker to assist with any child interviews and to quality check the content of the reports. It is a complex issue and would benefit from combining two centres of excellence. A quality assurance plan should be in place for child welfare reporting, please do not just tinker. It is a critical task, if you get it wrong the consequences can be catastrophic. It is unbelievable that reports are currently lodged with the court, created without procedure or any quality control. I strongly believe personnel should be dedicated to the task, not a side line for a very busy lawyer.

Check lists are extremely useful tools, even for very experienced personnel. Having used check lists extensively for nearing 3 decades, I can assure the committee that they improve standards both in terms of consistency and quality by reducing errors and omissions. I would suggest that if the panels experience with the use of checklists is negative, then the checklists used were not appropriate or comprehensive. Indicating a problem with the checklist not the concept. The other main benefit of a checklist is that if someone is distracted by other issues, the check list quickly gets them back on track and ensures no omissions. They are also useful for audits or investigations in the case of a complaint. Obviously there should be the facility for the users to offer suggestions for improvement to the responsible person for any checklist, resulting in a more robust checklist over time. (you would never get a MOT, Corgi Gas appliance, or building planning certificates without passing all items on a checklist)

Today's panel were generally ruthless with their thoughts with respect to grandparent's rights. The position being that grand parents have the option to take a separate court action, if they can afford it (benefiting lawyers greatly), or accept that the relationship with their grandchildren is gone forever. WOW just WOW. The committee seem to have prioritised sibling relationships far above those of grandparents, that can have very strong and positive influence on young children's lives. Please don't misinterpret my comments, both relationships are vitally important as far as I am concerned. It should not be one over the other. Once more, another session and parental alienation gets not a single mention.

The purpose of the consultation as I understand, is to improve Family Law within Scotland with a focus on children. The legal representatives, from the Faculty of Advocates in particular, took every opportunity to discourage change, in order to protect the position of lawyers. Seemingly a daily rate of £672 for an 8-hour shift is not adequate, £2000 being quoted as normal. Please suggest that to many parents on the minimum wage, or no wage at all as I am currently experiencing. The consultation priority is to improve family law for children and their families, not to enhance lawyer's terms and conditions or protect them from potential complaints. The pleas for extra funding for charities, assisting both children and families, would be far more worthy recipients of any available funds.

The only "concession" the Faculty of Advocates seemed to agree to, is the training of their members for child welfare reporting, which actually benefits the lawyer. I was half expecting the discussion to progress to training rates for lawyers, thankfully that did not happen.

The following is possibly the greatest obstacle to the efficient and safe running of child welfare hearing in the civil courts. It may be considered a controversial view; however, I have experienced it multiple times.

A lawyer knowingly presenting in the civil courts, ambiguity/conflict/lies, for the benefit of their client, is not acceptable. A sheriff can only make a sound judgement if presented fully with facts. I believe lawyers should have a basic professional duty to clarify and present the full picture and the facts to the courts. They should endeavour to present those facts in best light for their client, I do not dispute this.

However, to knowingly present confusion/conflict/lies in a family court that can have a detrimental impact on a child/parent relationship is unacceptable on every level. To use "tactics" (lies) to the detriment of another human being's relationship with their children is shameful. Do you not have a code of conduct to adhere to?

If Scottish lawyers fail to self-regulate, or the SLCC fail to regulate its members, then I would suggest the Scottish government should take on the task.

Lawyers should only use "tactics" for assets or business matters. There has to be a level of responsibility when dealing with family relationships. Wrong decisions in the courts can have catastrophic consequences.

I shall develop my argument further. I have watched all public sessions of the justice committee's meetings into Family Law. A recurring point made by multiple contributors, is the requirement to have "the full picture" before making decisions with respect to children. Not only for child/parent contacts but for a variety of issues within the proposed legislation. I have been stating this requirement repeatedly over the past 2 years, the need for a balanced view.

In attempt to present the full picture (at times a complex jigsaw) a large amount of various professional skills, time and resources are required to be invested. To allow a family lawyer to knowingly present confusion/conflict/lies in a civil court as a tactic, simply hinders the issue and can distort the picture. A Sheriff is likely to be unable to make a safe decision due to the lack of a sufficiently clear overview, therefore resulting

in further delays and expense. Or in the worst case, the Sheriff can make the wrong decisions based on a distorted picture (pieces of a different jigsaw). The Sheriff already has an extremely difficult task, without knowingly introducing confusions.

I cannot state strongly enough, that lawyers should absolutely not be allowed to knowingly distort or withhold facts purely for the benefit of a client, with respect child welfare. (They should practice business or criminal law if they wish to behave in such a way).

Another of the big concerns is the unacceptable delays in the decision making process within the courts, and the subsequent detrimental impact on the children. As I outlined above by contaminating the facts, decisions are more difficult and can lead to unnecessary delays.

I have heard several sheriffs state that the decisions in the civil court with respect to child welfare hearings are made solely in the best interest of the children. That being the case, can someone please inform the lawyers to present their cases accordingly.

Please do not let the lawyers restrict change, for their own benefit. Please focus on our children and their family relationships and act accordingly.

Below is a quote I made in June 2019, unfortunately I still feel the same but hope for better.

"My greatest concern is that the process is simply "going through the motions". My gut feeling is that the main decisions were made before the start of the consultation process and the data will be presented to justify those decisions being taken to legislation. I will not be surprised if the significant change to legislation will be to encourage interviews/statements from vulnerable witnesses to be conducted out with the court environment. Denying (mostly) fathers the chance to question malicious accusations. I hope to God I am wrong, as it will result in many innocent father's lives being destroyed without a fair hearing. It is bad enough at this time, without further major bias against Dads.

The system requires significant overhaul, however I believe what will result is "legislation lite" with politically motivated agendas making the headlines."

Richard Sinclair  
30 January 2020