

JUSTICE COMMITTEE**CHILDREN (SCOTLAND) BILL****ANONYMOUS SUBMISSION 9**

I am the grandmother of a young child whose residency and contact with the parents are the subject of court orders through no fault of the part of the child or either parent, simply the parents no longer live together and cannot reach agreement privately. Mediation between the parents ordered by the court has proved of little benefit in resolving communication or contact issues, something routinely quite common in these situations. Instead the likely outcome is that the existing legal process and procedures to resolve high conflict cases have the end result of engendering alienation of the parent who has been given what is perceived to be a secondary role in the child's life of "contact". Sheriffs do not appear to understand or recognise the resultant abuse caused to a child by granting one parent only limited access to his/her child as a result of these court orders, as well as limiting the contact of that parent's wider family with the child. The current system engenders likely life-long psychologically adverse implications for the well being of the child, the parent granted contact only and the wider family of that parent. Reference is made to two attached articles which highlight these highly relevant issues. The article on Parental Alienation Syndrome was first published in 1999, 20 years ago. Reading it, what applied then, still applies 20 years later. That is a dreadful indictment of the current legal system and laws relating to children and their families in Scotland. This should be essential reading for all Sheriffs and those engaged in family law. Better that the current Bill rights this dreadful wrong.

The second article is a Briefing Note in November 2019 issue of the Journal of the Law Society of Scotland about an appeal made to the Sheriff Appeal Court which involved a dispute about children. As the commentary by a Sheriff acknowledges "The resolution of disputes involving children on occasions does not fit comfortably within the court process, as a consequence of the desirability of flexibility." The postscript of one of the appeal sheriffs does not instil any confidence that the existing system is working in the interests of children or their parents and families. Imagine that in order to obtain "the precise nature of ...contact" a parent might have to go through two Sheriff Court Proof hearings. Imagine the cost both financial and emotional to all involved. Is this what an allegedly progressive country like Scotland wishes to subject families to? Surely the Scottish Government needs to take urgent action to create a user friendly system which recognises the reality of present day society. The first step is to acknowledge and embed in the law, equal shared parenting as the default position.

- A) A Guide to the Parental Alienation Syndrome by Stan Hayward published November 1999; and
- B) Briefing (Civil court) by Lindsay Foulis, Sheriff at Perth,--Family Actions, November 2019 issue of the Journal of the Law Society of Scotland.

Substantive comments are as follows:

1. The Bill fails to address the “elephant in the room” ie abuse of children by way of parental alienation which is being supported, presumably unwittingly and possibly out of ignorance by the first tier judiciary. In any event, the judiciary is not trained in psychology.
2. The Bill needs to recognise the rights of children in terms of the UN Convention on Children’s rights that they are entitled to equal shared parenting and recognition of equal reciprocal rights of both parents and the parents’ families in the life of that child, unless there is proven good reason for the position to be otherwise. At the moment the starting point is that the child “resides” with one parent and the other parent has a lesser role of “contact”. These two words expressly describe an inequality. That child is therefore having to live a life which is not equal, presided over by the legal system.
3. The use of the words “residency” and “contact” should be abolished. The implication is and as a matter of fact, the parent with residency claims to be the “main” carer. This places the parent with “contact” in a position of weakness and input into the child’s life. Effectively the parent with “residency” has control of the child, not only physically about also psychologically. The Scottish Government’s strategy document appears to recognise this unfairness by suggesting that more needs to be done in ensuring that Education and Health authorities recognise the rights of both parents. The fact that this situation exists reflects that the current law and the new Bill fail to address the failure to recognise the rights of all children to have both parents recognised as having equal rights in their care and protection, as a matter of fact. The child, by nature, loves both parents. The law in Scotland should ensure that the child is entitled to equal shared parenting as the default situation.
4. It is very surprising and indeed contradictory that the law of Scotland fails to recognise parental alienation ie coercive control of a child by a parent as child abuse and therefore a criminal offence. The recent legislation introduced in April 2019 recognises coercive behaviour towards a partner or ex partner as psychological abuse so why is that same coercive behaviour towards children by a parent not also similarly legislated for? In fact, by not introducing the child’s right to equal shared parenting in the Children (Scotland) Bill, the Scottish Government is permitting knowingly child abuse to continue by way of coercive behaviour or psychological control by a parent towards a child so as to prevent that child from spending equal time with its other parent and assist in destroying a child from developing and engaging in a full and loving relationship with the other parent and that parent’s family and wider circle of friends. The current system means that in general terms the Scottish Courts (in particular Sheriff Courts) are assisting, albeit unwittingly, in child abuse. Sheriffs are there to interpret the law. In general, they are not trained in either psychology, mental health issues or to identify child abuse. Therefore why should Sheriffs be engaged in deciding how much time a child should spend with one parent or the other or where a parent can take a child. I hold evidence of a Sheriff ordaining that a child should not be moved from one part of a Sherifdom to another part of the same Sherifdom because the Sheriff chose (not on oath) to

accept the submission of the solicitor of a parent that flights to a major island community were unreliable. Further, it is ironic that children with social problems were removed from the Sheriff Court system 25 years ago into the Childrens Panel System whereas children who have no social issues as such but are merely the “victims” of parental separation find major life decisions such as with which parent they live permanently or with which parent they have “X” number of hours contact in a month or with whom they can spend a birthday or Christmas made by Sheriffs in those same Sheriff Courts. The Sheriffs rarely meet the children and are not educated or trained to deal with such highly emotive and psychological issues. In general the Sheriffs appear unaware of parental alienation issues and the manipulation and lies which can be presented by a controlling former partner and parent and whose interests are argued before the court by a solicitor whose obligation is to look after the best interests of their client, not the best interests of the child.

5. The type of control exerted by a parent can vary widely, with women more likely (based on research) to exert control through less direct but much more insidious coercive behaviour than the direct physical action of a man. Why do Sheriffs tend to adopt a very old fashioned approach that a child’s home should be with the mother? That represents institutional bias. The current attitude in the courts, very prevalent especially in first tier courts ie the Sheriff Courts is outmoded and is directly causing harm to the mental health of children and their families. A Sheriff is known to have stated recently that “a child’s natural home” is with the parent who has residency—in that instance the mother and then refused to agree to the father who had only “contact” no time with the child on birthdays, Christmas, etc. Another example is a Sheriff who prefers to order a parent not to take his child to another place within the same Sheriffdom to spend time with the child’s parent and grandparent without any good reason being stated apart from a claim that flights to this major island town might be unreliable and has been persuaded by the parent with residency and that parent’s solicitor that this could not be in the best interests of the child—no explanation given; no evidence on oath taken; little possibility of a successful appeal. The Sheriff has huge discretion and is making orders which impact profoundly on the life and family involvement of that child, parent and wider family and rarely has to justify those decisions by way of an appeal process. The current system which has “evolved” in the Sheriff Courts is a mix match of formal and “informal” procedures as can be evidenced by recent decisions in the Sheriff Appeal Court.
6. The current system as is evident from the Scottish Government’s Family Justice Modernisation Strategy is treating and will continue to treat the parent with “contact” as second class and unable, even with agencies, to input into a child’s welfare or education. This is evidenced by the Scottish Government recognising the need to work with Education Authorities and the medical profession to treat parents equally and with reciprocal rights rather than dealing only with the parent who has the court order for residency. This is also the position with nurseries. Many parents are not aware of their legal rights. They are closed down. The Scottish Government which is signed up to the UN Convention on the Rights of the Child should be taking direct action to stop the current

psychological abuse of children which the current law and the current Bill will continue to enforce at state level through the judiciary.

7. It is imperative for the well being of children, their parents and their families, including grandparents, aunts, uncles and the wider circle of family and friends that the Scottish Government recognises and implements using this Bill, EQUAL and RECIPROCAL SHARED CARE ARRANGEMENT as the default situation for all children with their parents.
8. The law should be altered so that this becomes the default position to assist in stopping the insidious and hard to prove parental alienation.
9. The courts fail to recognise High Conflict individuals who are controlling and coercive, not only of their partners but of their children. These people are often charming and very effective liars. The present system of using Child Welfare Hearings where parties are not placed on oath and no formal record of proceedings is kept, means that any decision depends entirely on the discretion of the Sheriff. Effectively there is no right of appeal as there is no record of what is said on the day. Surely the system would operate more effectively and cost efficiently, if the judiciary spent their time otherwise than deciding the fate of a child and with which parent it resides. These are highly emotive and psychological issues for which the Sheriffs are not trained.
10. Child Maintenance Service assessments also assist in parental alienation. What do Sheriffs know about the Child Maintenance rules and the ramifications causing the parent in right of the maintenance payments to decline further contact between the child and the non resident parent as it would lead directly to a reduction in the amount of the Child Maintenance assessed payment? Do Sheriffs know that the payment made by the non resident parent is based on the number of nights which the child spends with the non resident parent? It is in the financial interests of the parent with residency to argue against the child spending any additional nights with the non resident parent. This is abuse of the child's rights enforced by the State and the legal system. Surely no Sheriff and no law maker within the Scottish Parliament could support such a situation.
11. The adversarial system in the courts is also adding to the psychological abuse of the child and depriving that child of its rights to spend equal time with each parent. The duty of the lawyer in the adversarial system is to promote the interests of the client, not the interests of the child despite the terms of the 1995 Act.
12. Employment of lawyers is very expensive. Many parents are unable to obtain legal aid. Pursuing a case on getting time with a child is very expensive. Each Child Welfare Hearing can cost at least £500 to £1000 as often there are long waits and solicitors charge for their waiting time. To pursue a case to a hearing on evidence is extremely expensive, if not financially crippling for most people if they are not eligible for legal aid. What are they then forced to do? Feel completely crushed, financially and mentally and physically and wonder what has hit them? This is driven by the State as it is failing to recognise, even with

the current Bill that the child is entitled to spend equal time with both parents unless there is good reason for the position to be otherwise.

13. It is sincerely hoped that the Justice Committee will seriously consider amending the current Bill to legislate against the current failure to treat all children and their parents equally with every child having the right to have equal shared parenting time with both parents, unless there is shown to be a good reason why such parenting should not be equally shared. The current situation engenders child abuse by the State and the courts. Child abuse is a criminal offence. It is time that the Scottish Government recognises the basic right of all children to have equal shared parenting by both parents.