

PE1838/J

The Court Said (Scotland) submission of 15 February 2021

The submission we give does not relate to petitioners particular court case but addresses their petition. Family court involvement can be extremely distressing for parents, children and grandparents. We agree generally speaking that there must be more regulation and accountability in the system. However, it is crucial that the parties who, in line with academic research, have abused their power and acted outwith the remit of their appointment get regulated, not the parties who work tirelessly to protect the vulnerable from harm.

We base our submission on the lived experience of survivors of domestic violence in Scotland whose children are experiencing unsafe family court contact arrangements. We support the Government's progressive legislation which will help give children a voice in family court proceedings and advance their human rights. Victims of egregious domestic violence have consistently reported that when raising allegations of harmful and abusive behaviour in the family courts, they face counter-allegations of parental alienation. This non-scientific theory has the power to confuse matters, and it has the power to silence the vulnerable when applied in child contact and custody disputes that involve domestic abuse.

Research published in Scotland in 2020 by the University of Edinburgh details how children's participation rights are adversely affected when domestic abuse victims face accusations of 'manipulation'. *Dr Fiona Morrison, Professor Kay Tisdall, Professor Jane Callaghan*). While no one can doubt that false allegations occur in harrowing circumstances, academic research shows that false allegations of domestic abuse are rare. (*Ministry of Justice Harm Report 2020, Literature Review*).

An abundance of recent academic research shows that allegations of parental alienation in domestic abuse cases are incredibly harmful. (*Professor Joan Meier, Dr Adrienne Barnett, Dr Julie Doughty, Dr Joyanna Silberg, Professor Simon Lapierre, Zoe Rathus AM, Gloria Casas Villa*). The majority of cases in the family courts are domestic abuse cases. The application of the theory by family courts obscures the elements of risk thus paving the way for contact to take place. When children are silenced and forced into unsafe contact against their will, it further traumatises vulnerable children.

Therefore, the concept of parental alienation is dangerous when considering any legislation intent on protecting the vulnerable from harm, such as the Children Scotland Act 2020. Proponents of the theory now claim it to be coercive control and a specific form of domestic abuse; this should raise a red flag when considering legislation to advance children's rights. A good understanding of perpetrators' tactics is vital when considering legislation for this Act. Consultation with domestic abuse experts such as Women's Aid is essential on anything purported to be coercive control and a form of domestic abuse.

We must commend non-statutory child advocates for the important work they do in difficult and sometimes dangerous circumstances. We support the Child Advocacy Services provision in the Children Scotland Act 2020, which will help give children a voice in family court proceedings. It is imperative that child advocates from the legal profession, like Child Welfare Reporters (CWR's), must be regulated and held accountable. Victims of court reporters misconduct have told us they currently face difficulties when making a complaint. Legal professionals who offer services of CWR also offer child advocacy services.

When acting in a family court role, the route to complain about a legal professional's conduct is through the Scottish Legal Complaints Commission (SLCC). (*Guide to Child Welfare Reports, 2016*). When victims of misconduct raise a complaint with the SLCC, obstacles arise due to the report's status – the report is considered evidence to the court and therefore privileged. The role of CWR can result in the SLCC applying the rules differently when deciding if a complaint is eligible. This can lead to an expensive appeal in the Court of Session, which can lengthen the complaints process for already vulnerable users and result in a barrier to justice for those harmed, thus harming them further. The Government must note this when considering regulation of child advocates.

Any regulation should provide a simple, and cost-effective path to justice for users of the family courts who experience misconduct. Transparency and accountability are necessary and will help restore the user's confidence in the family justice system; however, the Government must target the regulation towards the professionals in the system who have, in academic research, shown to harm the users of the system. Targeting the regulation will help uphold parents' human rights to a fair trial, children's human rights to a voice, and their rights to be protected from mental and physical violence. Transparency and accountability will help make the process fairer and keep children safe from harm.

[Manipulation and Domestic Abuse in Contested Contact – Threats to Children's Participation Rights](#)

[Ministry of Justice Harm Report](#)

[U.S. child custody outcomes in cases involving parental alienation and abuse allegations: what do the data show?](#)

[A genealogy of hostility: parental alienation in England and Wales](#)

[Abusers gaining custody in family courts: A case series of overturned decisions](#)

[Professional responses to 'parental alienation': research-informed practice](#)

[A history of the use of the concept of parental alienation in the Australian family law system: contradictions, collisions and their consequences](#)

[The legitimization and institutionalization of 'parental alienation' in the Province of Quebec](#)

[Parental Alienation Syndrome in Spain: opposed by the Government but accepted in the Courts](#)