

# Grandparents Rights Petition

A Response to the Government



## A response to the Government on behalf of:



### The Charities

The Grandparents Association  
Grandparents as Parents  
Grandparents Apart  
The Grandparents Action Group UK



Families Need Fathers  
Jewish Unity for Multiple Parenting  
Mothers Apart from their Children



Petition Creator  
Michael Robinson



1,673 individuals and representatives  
of organisations who signed this petition



we believe that children need families, not 'corporate parents'

<http://petitions.pm.gov.uk/grandparents/>

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## Executive Summary

In January 2008 the Grandparents' Rights petition closed on the Prime Minister's website. The Government's response to the petition is unsatisfactory and ignores the fundamental failures that exist within the Courts and welfare services and how this affects children and families.

We continue to ask that:

- grandparents to have the automatic right to inclusion in care and adoption proceedings via an amendment to the Adoption and Children Act 2002;
- grandparents be granted parental responsibility for children following the parents' death;
- there be an amendment to the Adoption and Children Act 2002;
- the leave requirement be abolished for the extended family when applying for orders under the Children Act 1989.

In the 2007 UNICEF report, the United Kingdom was found to have the lowest levels of child wellbeing in the developed world. The UK grants too much power to the corporate parent and fails to respond to the changing social and cultural dynamics within our society.

This statement by charities representing grandparents, fathers, mothers and the petition creator sets out why the law needs to be changed, the inconsistencies and inaccuracies in the Government's response and why the Government must reconsider its stance.

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*We the undersigned petition the Prime Minister to introduce legislation granting legal rights to grandparents.*

## **Petition Details**

Grandparents play a substantial and vital role in the care of children, providing 60% of childcare, but their role is not recognised in law. A grandparent may have provided day care for the children 5 days a week but has no right to apply for contact in the event parents separate or die.

We propose an amendment to the Children Act granting the automatic right for grandparents to apply to the court for Contact or Residence Orders.

Grandparents should automatically be granted Parental Responsibility in the event of the death of the holder(s) of parental responsibility.

We ask for the automatic right to involvement in care and adoption proceedings and the automatic right to apply.

We ask that the Adoption and Children Act 2002 be amended to include grandparents alongside parents and guardians.

These measures recognise the role and importance of grandparents while adhering to the principle that the child's welfare is of paramount importance.

***1,673 individuals and representatives of organisations and charities signed this petition including mothers, fathers, grandparents, Members of Parliament and peers.***

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## **Misconceptions exist as to what the signatories to the petition are asking for**

The petition does **NOT** ask for the extended family to automatically have children come to live with them in place of fostering or adoption. We **ARE** asking that the biological family has an automatic right to be involved in any court case where alternative carers to the parents are being considered.

We are **NOT** suggesting that the extended family's rights be equal to or greater than those of the parents. Nor are we suggesting that any adult's rights should outweigh a child's. Our petition to the Prime Minister calls for a safeguard to be introduced which protects the child's Article 8 Right to Family Life under the Human Rights Act 1998. We ask that specific legislation be amended so it upholds the Human Rights Act and provides a clearer legal framework for public sector organisations.

Many people believe they have a right to family life. Difficulties arise when they discover that being a relative by blood does not mean you are legally considered to be family, even if you are a father or grandparent.

## **Why does the extended family need rights in law?**

Currently, grandparents have no right to involvement in care and adoption proceedings. The grandparent may even be deliberately excluded.

There are many reasons why a parent may be unable to care for their child. Some are beyond their control and may only be temporary. In such circumstances, family relationships are often best maintained when the child is cared for by the family.

It is a concern that the number of babies taken into care in 2005-06 may be linked to a lack of funding for support services for mothers with post natal depression. Whether or not adoption targets for Social Services are finally to be abolished, poor funding, a scarcity of support services, poor training and low moral continue to be major obstacles which the Government has failed to resolve.

The Government's argument against a grandparent having an automatic right for inclusion in public law proceedings is that this in some way violates the child's right to family life. This does not stand up to scrutiny.

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# Grandparents Rights Petition

A Response to the Government

## Statistics

1% of children live with a grandparent in the UK – an average of 2-4 primary children in every school.

60% of childcare is provided by grandparents.

1 million children are denied contact with their grandparents.

### The Grandparents Association

Grandparent carers save the economy £4billion per annum.

### Age Concern

1 in 5 adolescents say they'd put seeing their grandparents above anything else in their lives

### Heritage Lottery Fund Survey 2006

The average age for becoming a grandparent for the first time is 49.

There are 14million grandparents in the UK

By 2020, one third of the adult population will be grandparents.

### Corporate Parenting

1,400 newborn babies taken into care in 2005-06 compared with 540 in 1995.

2,800 children under 12 months taken into care in 2005 compared with 1,600 in 1995.

2,700 children adopted in 2000.

3,700 children adopted in 2006.

£18,000,000 payment shared by 30 local authorities for meeting the target to increase adoptions in their areas.

£0 the incentive for placing children in the care of their grandparents.

60,000 children in local authority care.

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When parents name the grandparents in their will as their children's legal guardians, the grandparents no longer require the Court's permission before seeking a court order upon the parents' death. As guardians, they would automatically be involved should Social Services wish the children to be taken into care or adopted. If parents have failed to make a will (as more than 50% of adults have) then grandparents have no legal rights. A parent's failure to make arrangements in a will can have devastating consequences for all. We are **NOT** asking for grandparents to be automatically made guardians upon the death of parents. We **ARE** asking that the biological family has a right to involvement in decisions about the children's future when children are placed in care or for adoption.

We are also asking for the 'leave to apply' requirement to be removed from children's extended family. If frivolous or vexatious applications are made to the Court, awarding costs against the unreasonable party is usually a sufficient deterrent. Section 91(4) of the Children Act 1989 provides a mechanism for stopping repeatedly vexatious applications.

We accept that the Government is attempting to address problems within our care system, however their reports and white paper focus too much on the role of **'the corporate parent'** and not enough on the natural family. Corporations can never be truly child focussed and should be the option of last resort. Corporations deal with targets, goals and numbers and people get lost within their processes. Current proposals talk of improving academic achievements for children in care but not the children's fundamental need for nurture and love. Currently the corporation's rights outweigh those of the individual.

When investigating CAFCASS, Ofsted recently stated:

*"most (CAFCASS) reports contain recommendations to the court that fail to take account of a key principle of the Children Act 1989 that there should be minimum state intervention in family life".*

Granting grandparents parental responsibility upon the death of the parents is one means of helping to achieve their inclusion. As you will read further on, having parental responsibility does not guarantee a Court will seek your permission before your children or grandchildren are adopted.

# Grandparents Rights Petition

## A Response to the Government

### Does a child have the right to know their father or extended family?

In a recent court case, a father was not informed his child was to be adopted. In that case, the mother was unwilling to care for the child and wanted the child adopted. She had not informed the father or her family she was pregnant and did not want the father to be told he had a child. The court agreed to this, the child was adopted. Did the child have a right to know his/her father? Did the father have the right to be told he had a child? Did the child have a right to know both sets of grandparents, aunts, uncles and cousins? According to human rights legislation, yes, but not according to the Court's interpretation.

In the above case, re C (A child) (Adoption: Local authority duty), heard before Lord Justice Thorpe, Lady Justice Arden and Lord Justice Lawrence Collins, the Court ruled that there was no duty on a local authority to make inquiries of a child's extended family or father about the possibility of their providing long-term care where the mother wished to place the child for adoption (Judgment November 23, 2007).

### Social Services

We are not suggesting all social workers, court welfare officers or Judges fail children. In the above legal case it had been Social Services who were attempting to uphold the right of the father and grandparents to be involved. Many social workers are dedicated and some departments provide an excellent service, as do the other professionals involved with these matters. There is, however, inconsistency within all of these offices. In the following case, it was the Court that attempted to include the family but social workers refused to follow the Court's direction:

### **Birmingham City Council (05/C/14043 & 14757) Ombudsman Findings 13 March 2007**

The Ombudsman found that Social Services:

1. Did not comply with the court order to maintain and fund contact between Natasha and her grandparents;
2. Did not arrange for Social Workers to visit Natasha for 18 months while she was in the Council's care;
3. Failed to assess her grandparents as prospective carers;
4. Moved her to foster carers following the breakdown of her placement with her mother instead of contacting her grandparents as the court order required;
5. Sought to prevent her grandmother from caring for her while on a visit to England.

A young girl (called 'Natasha' in the report) was deprived of four years of family life by the failures of Birmingham City Council. The Ombudsman said this arose "*... as a result of the Council's incompetence and complete failure to act in any way which promoted her welfare.*" She added, "*It failed utterly to carry out its duty.*"

The Ombudsman recommended the Council to pay £40,000 compensation to Natasha, and a further £10,000 to her grandparents to recognise that they were deprived of giving their granddaughter the care she deserved, that they suffered stress and anxiety from the treatment by the Council, and that they incurred very considerable expenses in fares and telephone calls trying to sort things out. The Council agreed to these recommendations.

# Grandparents Rights Petition

## A Response to the Government

### Would Social Services ever illegally remove a child from its mother?

A case was recently made public where they did. Social Services have also been known to disregard court orders, stopping parents with shared residence from seeing their children without having approached the courts for permission to do so (if Social Services have concerns, they should apply for an Emergency Protection Order and not take the law into their own hands).

### How do Court Welfare Services (CAFCASS) compare?

The recent inspection of CAFCASS East Midlands found there to be endemic failures within the service. Excerpts from the Ofsted inspection into CAFCASS East Midlands include the following observations:

- *Overall, the systems that support and assure work with children and families are inadequate. Local leadership has shown that it has some strengths, but has been inadequate in its quality assurance functions. Good services are not delivered consistently, which is unacceptable.*
- *Children's wishes and feelings – inspectors found examples of reports stating 'the child is too young to express wishes and feelings'. In one example, a report for a four-year-old child included nothing regarding the wishes or feelings of the child. Another report included the following inappropriate comment about an 11-month-old child: 'J is too young to appreciate the political significance of his circumstances'.*
- *There were a few constructively critical comments, but it was not possible to assess whether any reports had been subsequently amended or had been read before the report was filed at court. Comments included: 'Within the welfare checklist missed opportunity to link to placement within extended family.'*
- *Overall, Ofsted judges safeguarding in the region as inadequate.*

*'J is too young to appreciate the political significance of his circumstances'...* language of the family or corporate parent?

Ofsted's recent findings reinforce the belief that the Government has refused to open up the courts to scrutiny due to the fear of a tidal wave of negative publicity.

It is true that if you are treated unfairly in Court, you can appeal or complain. A complaint to the Local Government Ombudsman will not result in a Court's decision being overturned even if upheld. If you wish to appeal a Court's decision, you are likely to be warned that appeals are prohibitively expensive and if lost you face bankruptcy. Such warnings are commonplace and dissuade many from challenging unfair decisions and practice. The children lose, the family are left devastated.

# Grandparents Rights Petition

A Response to the Government

## The Government's Response to the Grandparents' Rights Petition

**Government Response:** *'Thank you for your e-petition about introducing legislation to grant legal rights to grandparents with respect to their grandchildren.'*

*The Government recognises and values the support provided by many grandparents to their grandchildren. Our Care Matters White Paper and the Children and Young Persons Bill include a range of measures intended to provide a more visible and strengthened framework for supporting relatives caring for children who can't be looked after by their parents.'*

**Our reply:** The 'Care Matters: A Need For Change' White Paper recognises that the outcomes for children in care have 'not sufficiently improved'. It discusses the role of the 'corporate parent' and how to improve it without giving proper consideration to kinship care. The paper states that children say they want to live normal lives.

### Excerpt from 'Care Matters: A Need for Change'

**2.1** Care Matters proposed earlier intervention to support children on the edge of care so that, where appropriate, they can be supported in their family settings rather than in care. The focus on support for children on the edge of care, early intervention and prevention has been widely welcomed throughout the consultation.

**2.2** Local authorities supported this move to earlier intervention but are concerned that these proposals will require long term redirection of resources toward preventative services, and are anxious that adequate resources are found for this. Many respondents called for more investment in family support services so that the social care system can properly focus on early intervention and prevention rather than being reactive and crisis-driven.

While laudable sentiments, there are no realistic proposals as to how this will be achieved and Local Authorities recognise this. Inadequate funding, local authority budget restrictions and problems within the services make this an unrealistic goal.

**Government Response:** *'It is right, however, that the Children Act 1989 and the Adoption Act 2002 focus on how the welfare of children can best be safeguarded and promoted, rather than on the rights of adults, whether parents, grandparents or others. The court must also make the welfare of the child their primary consideration when making decisions about a child.'*

**Our reply:** The Government's comments are contradictory. The principle of adults having rights of inclusion in public family law cases is well established. Parents and guardians have an automatic right to involvement in care and adoption proceedings (although as we've seen, these rights can still be violated). An adult having a right to involvement in court proceedings does not remove the child's rights, it merely guarantees that possibilities that may benefit the children cannot, legally, be overlooked.

# Grandparents Rights Petition

## A Response to the Government

If children are subject to care proceedings there is a strong possibility that all links with the biological family will be severed (unless it is open adoption). The child has the right to family life under the Human Rights Act 1998.

60% of childcare is carried out by grandparents, evidencing the extent of their relationship with children, their commitment, that they are capable of providing care and trusted by the parents to do so.

**Government Response:** *'The Children Act 1989 introduced the concept of 'parental responsibility' which is vested in all mothers and can be acquired, in a range of ways, by fathers. That Act also sets out how other adults, such as grandparents, can obtain parental responsibility, and how they can become guardians. Only those adults who hold parental responsibility for a child may, as of right, apply for many of the orders set out in the Children Act 1989. Other adults generally need to seek and obtain the leave of the court before making an application. With leave of the court, grandparents, or any other relative, can apply for any of the orders under section 8 of the Children Act 1989, including residence orders and contact orders.'*

**Our reply:** Our suggestion that grandparents be granted parental responsibility upon the death of the parents removes the need for a grandparent to have to apply to the court for this on the parents' death. The matter of residence/guardianship may still need to be agreed by the Court.

The Government response incorrectly quotes the Children Act 1989. Step parents have an automatic right to apply for section 8 orders if the child lives with them. A step parent does not have parental responsibility unless they have acquired it, either by way of a parental responsibility agreement or via a court order. Other adults such as a boyfriend or girlfriend can apply for section 8 orders if they have lived with the children for 3 years. The Government intends to reduce this waiting period to 1 year. The principle of adults without parental responsibility having an automatic right to apply for section 8 orders is established.

There are too many instances of CAFCASS, Social Services and the Courts failing to take account of a key principle of the Children Act 1989 that there should be minimum state intervention in family life.

It is worth noting that the refusal of a grandparent's application for contact is usually based on the Court wishing to placate a hostile parent at the time of separation, rather than in consideration of the child's right to have a relationship with its grandparents or the child's long term emotional needs. Children are not marital possessions. *Main carers* should not have rights which enable the exclusion of all others. As our society becomes more diverse, we should embrace the strengths of those cultures which form a part of our own, including those that value adults of all ages and their contribution to a child's upbringing.

**One in five adolescents said they'd put seeing their grandparents above anything else in their lives.**

**A visit from grandma and grandpa ranked second only to going on the internet as a favourite way to spend time.**

*Heritage Lottery Fund - 2006 Survey*

# Grandparents Rights Petition

## A Response to the Government

**Government Response:** *'The leave requirement is a mechanism to filter out frivolous or vexatious applications, where it would not be in the child's interest for the application to proceed. It ensures that the child's right to respect for privacy and family life, as set out in Article 8 of the European Convention of Human Rights (and now incorporated into domestic UK statute law by the Human Rights Act 1998) is safeguarded.'*

**Our reply:** There is no statistical or research evidence to suggest that grandparents make frivolous or vexatious applications. Awarding costs against and section 91(4) orders under the Children Act 1989 are effective tools in penalising and preventing such behaviour.

When Social Services unreasonably ignore a relative's wish to care for the children, only a full hearing by the Court is likely to prevent a breach to human rights and subsequent harm to child welfare. Child welfare can only be assured when all available care options have been properly considered. With legal aid restrictions and excessive legal costs facing entrants to the family courts, further barriers are unnecessary. To suggest that human rights are safeguarded is disingenuous.

**Government Response:** *'The leave requirement is not a significant hurdle for genuine applicants. However, the Government has listened to concerns about the difference in treatment of relatives and others applying for residence and special guardianship orders. Currently relatives must wait three years before they can apply for residence and special guardianship orders without leave of the court; the Bill reduces this to one year, in line with the current position for non-relatives. This is intended to support more stable placement of children with their family.'*

**Our reply:** The Government response gives no cogent reason as to why relatives (or others) who already have children living with them must wait for one year before being allowed to apply for residence or special guardian orders (without the Court's permission).

The Bill referred to is the 'Children and Young Person Bill'. While a move from three years to one is an improvement, it does not address the fundamental reasons as to why change is required:

- 1) When children are already living with relatives who wish to apply for a permanent arrangement, an application to the Court is unlikely to be for vexatious or frivolous reasons. There should therefore be no requirement for 'leave to apply' or a waiting period prior to relatives being able to apply to formalise arrangements for the children.
- 2) There are no child welfare grounds to support delays. Child welfare will not be affected if an application, once heard and properly considered, is unsuccessful. Welfare **will** be affected if the child must wait in limbo and experience uncertainty as to what their living arrangements will be. This causes unnecessary family stress, especially in situations where children may be experiencing grief or other hurt due to the previous events which led to their not being cared for by their parents.
- 3) We are aware of kinship care cases taking two years to resolve. A further year spent waiting prior to Court proceedings commencing is unacceptable. Time is critical in a child's life, as is the certainty of their having a home and the knowledge of who will care for them.

# Grandparents Rights Petition

## A Response to the Government

- 4) Family, as defined by the Children Act 1989, only extends to people with whom the children have been living or who hold parental responsibility (for the child). If there is to be a genuine commitment to removing children from the 'care system', the role of the kinship carer needs to be enshrined in law and the biological family recognised in law. 60% of child care is provided by grandparents who play a significant role in the majority of children's lives. Under Government proposals, a short term partner of a parent, who has lived with the children for a year, will have greater legal rights than biological family who are likely to have been involved in care throughout the children's lives.

**Government Response:** *'Turning to your comments about the Adoption and Children Act 2002. We do not consider it necessary to amend this Act in the way you suggest, because provision exists already for grandparents to be involved in their grandchildren's cases, provided an order made under the Children Act 1989 has been made in their favour.'*

**Our reply:** Local Authorities have a duty to consider grandparents and the extended family as carers for the child, but this does not always happen. This legislation is also open to interpretation which can result in their exclusion.

Our proposed changes to the law are essential for the following reasons:

1. Welfare services are not fit for purpose.
2. Basic human rights are being violated and current legislation is incompatible with the Human Rights Act 1998 (Article 8).
3. The Government's own measures to reduce the number of children in care have failed.
4. While there are principles embodied within the Children Act 1989 (s.17(1)b) that kinship care should be considered in care and adoption proceedings, there is no automatic right for the extended family to be involved in these proceedings.
5. In Ofsted's own words, the core principle of the Children Act 1989 (s.1(5)) is being routinely ignored, that state intervention should be minimal.
6. The 'corporate parent's' powers are too great when compared to those of the individual.
7. Children are unnecessarily losing contact and care and deprived of the right to family life.

The Government previously brought in adoption targets to reduce the number of children in care. While the number of babies taken into care and adopted has risen, the number of older children in care who were adopted has declined. Thankfully, financial rewards for local authorities in respect of adoption targets have been abolished. We call upon the Government to protect a child's right to family life, to show commitment to children's biological families, to adequately resource family support services, to recognise, enable and support kinship carers. Only by doing so will we see more children taken out of the care system and placed in nurturing, stable and loving homes.

*'Children are not rugged individualists. They depend on adults they know and on thousands more who make decisions every day that affect their well-being. All of us, whether we acknowledge it or not, are responsible for deciding whether our children are raised in a nation that doesn't just espouse family values but values families and children.'* Hilary Clinton – from her book 'It Takes a Village: and Other Lessons That Children Teach Us'.