

JUSTICE COMMITTEE

CHILDREN (SCOTLAND) BILL

SUBMISSION FROM NSPCC SCOTLAND

KEY MESSAGES

- We support the general aims of the Bill, but more must be done to realise these aims for very young children
- For the aims of the Bill to be realised very much depends on the *right* individuals with the *right* skills working with children and families
- More generally, we note disparities across our legal systems; our policy aspirations for reform, and ensuring their child-centredness, varies across the criminal, family justice and Children's Hearings System

About NSPCC Scotland

We are working with partners to introduce new child protection services to help some of the most vulnerable and at-risk children in Scotland. We are testing the very best intervention models from around the world, alongside our universal services such as *Speak out. Stay safe*, ChildLine, and the NSPCC Helpline. Based on the learning from all our services we seek to achieve cultural, social and political change to improve the lives of children.

Abuse ruins childhood, but it can be prevented. That's why we're here. That's what drives all our work, and that's why – as long as there's abuse – we will fight for every childhood.

Introduction

NSPCC Scotland supports the aims of the Children (Scotland) Bill to ensure further compliance with children's rights under the UNCRC within family justice proceedings. Overall, we strongly welcome the direction of travel the Bill represents for the family court system including: improving how children's right to be heard in matters profoundly their everyday lives can be realised in family court cases; regulating aspects of the system to enable this to happen; improving protections for vulnerable witnesses, particularly those affected by domestic abuse. However, we would suggest that there are several areas where the Bill could be strengthened to better realise these aims, as detailed below.

We respond to this call for evidence through the specific lens of the experiences of infants and very young children. Through our provision of services for 0-5s and their families at our Glasgow Service Centre, we have developed expertise in working with this age group. For young children, we would suggest that realisation of their rights is best facilitated by the support of the right people with the rights skills making the right decisions at the right time. We need to look at how we can design the system so that it puts the child at the centre.¹

¹ <https://blogs.gov.scot/justice-safety/2019/07/17/improving-scotlands-collective-response-to-child-victims/>

The Scottish Government has long declared its ambition for this country to be the best place in the world for children to grow up and is committed to delivering policies that get it right for every child. This Bill represents progress towards making the family justice proceedings more child-centred, reflecting on-going reform in the criminal justice system in children's best interests. Whilst we welcome the proposed measures, we are at the same time concerned at the lack of progress to this end *across* legal systems. In particular, we are concerned that the process of reform across the family and criminal systems may result in the Children's Hearing System – widely held-up as the most child-centred system - is the system within which young children in particular can be least protected, and least able to have their voice heard. NSPCC would strongly urge the government to take this opportunity to consider give substantial consideration to the reforms required *across* legal systems, to ensure children's rights to be heard and to be protected are realised within all Scottish legal systems.

The Voice of the Child

NSPCC Scotland supports the proposal to remove the presumption that children are able to form a view in legal proceedings concerning them at age 12². As it was found that this presumption created a practical situation in which the views of children under 12 are routinely neither sought nor listened to,³ it is appropriate that it should be removed. Indeed, the Policy Memorandum states that the Scottish Government's policy intention is to ensure that children's views are heard in legal proceedings concerning them⁴, in line with their rights under Article 12 of the United Nations Convention on the Rights of the Child (UNCRC).⁵

We would suggest, however, that the wording of the Bill does not achieve this as robustly as it might have. Indeed, we, and others, advocate the introduction of a positive presumption that *all* children are capable of forming a view about matters affecting them⁶. The introduction of such a provision would leave no room for doubt around the right of children to have their views heard and taken into consideration, and would ensure that the emphasis is then on *how* rather than *whether* children should be involved in decisions made about them. It would also ensure that Scottish family law is in line with Article 12 of the UNCRC, which has been found to require that children are not required to prove their capacity but rather that that all children are presumed to be capable to forming and expressing views.⁷

We note the Scottish Government's ambition to 'ensure that there is no barrier to younger children who are capable and wish to do so expressing their views' in matters affecting them.⁸ The Bill contains a caveat to the requirement to give children an opportunity to express a view where the decision maker is satisfied that 'the child is not capable of forming a view'; with this being envisaged as potentially

² Children (Scotland) Bill Ss 1-3

³ Kirsteen Mackay, Hearing children in court disputes between parents, 2013

⁴ Policy memorandum, p5

⁵ UN Convention on the Rights of the Child; <https://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.pdf>

⁶ NSPCC Response: Review of Part 1 Children (Scotland) Act, 2018

⁷ UNCRC General Comment 12; <https://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.pdf>

⁸ Policy memorandum, p5

including very young children.⁹ We would suggest that the extent to which children are ‘capable of forming a view’ might be, to some extent, contingent upon the capacity of the adult taking their view to understand them. If a child’s view is unable to be understood, then it might be considered that they are not capable of forming one at all.

Experienced practitioners working with infants, children, young people and families, across local and national NSPCC services in Scotland, are unequivocally of the view that children of all ages, from infancy upwards, are able to express their views about important matters affecting them, when enabled to do so, albeit using very different modes of communication. The challenge for very young children is how best to facilitate these views.

Representing the best interests of young/pre-verbal children is a key skill of NSPCC Scotland’s Glasgow Infant and Family Team (GIFT)¹⁰. Using a range of evidence-based assessment tools, practitioners build a picture of the *subjective experience of the child* – an insight into the child’s health, development and emotional functioning, with a view to ensuring the child gets the care they need. Practitioners have found that by use of these methods even very young children are capable of forming and expressing views, but that to understand these views requires skilled professionals. At a focus group with Practitioners from NSPCC’s GIFT service to discuss the Bill, participants suggested that to effectively understand the views and experiences of young children required:

“someone who is trained in child development, someone who has had opportunity for training in all of the different complex legal systems and what it’s like for children to be in that, and someone who will then listen to all the other adults around the child” (NSPCC practitioner)

“someone who is able to understand stuff that’s not verbal.” (NSPCC practitioner)

We therefore suggest that any assessment as to whether a child is capable of forming a view must be made by someone with appropriate knowledge and understanding of issues such as child development and attachment.

There are also important considerations regarding the manner in which children are able to give their views. The Bill states that decision makers will be required to give the child the opportunity to express their views in a manner that is suitable to them. There is no further detail on the face of the Bill as to what methods will be permitted and what must be offered to the child. The Policy Memorandum suggests that any list given could not be exhaustive and that laying down a list of methods that must be offered would limit flexibility.

Whilst we agree with the Scottish Government that taking a flexible and holistic approach is essential to facilitating the hearing of children’s views,¹¹ we suggest that it is essential that there are minimum requirements for options available to children.

⁹ Policy memorandum p5

¹⁰ For more information on GIFT see <https://learning.nspcc.org.uk/services-children-families/infant-and-family-teams#heading-top>

¹¹ Policy memorandum

Without this, a ‘postcode lottery’ situation could emerge, with the extent of a child’s right to be heard being limited by resources in the area in which they live in, or the discretion of the individual decision-maker presiding over their case. This is not to say that flexibility could not be retained to allow decision makers to take a holistic approach that is responsive to the needs of the individual child. A stated list of methods which a child must have available as options to give their views, supplemented with an ‘and any other appropriate method’ clause would retain flexibility but also ensure there is a ‘minimum floor’ of options available for all children to give their views.

We would suggest that methods available for children to give their views must take into account the needs of young children. The Policy Memorandum suggests that those taking the views of children would be required to consider a range of methods for the child to be heard such as: speaking directly to the decision maker, completing a form, submitting a drawing, or letter or in cases under section 11 of the 1995 Act the views of the child can be taken by a Court Welfare Reporter. We suggest that this list does not adequately consider the needs of infants and young children.

As discussed above, understanding the views of young children requires an approach that considers their experience in a broad and holistic way. The focus must not only be on verbal information but also must look at children’s behaviours and relationships with important people in their lives. The experiences of NSPCC Scotland’s GIFT service have suggested that to properly understand the views of young children requires professionals with appropriate understanding of child development, attachment and infant mental health to adopt a holistic approach that looks the child’s world as a whole. We would therefore suggest that the Bill should provide for the appointment of such skilled professionals to *actively enable* children to give their views. We note the possibility of the appointment of Court Welfare Reporters in s11 cases but would suggest that as the vast majority of CWRs are lawyers by training¹², they are unlikely to have the depth of child focussed skills and knowledge required.

In considering how best to facilitate the child’s voice and ensure their participation in decisions which affect them, we recognise the importance of children and young people having a right to choose how. Some young people feel that talking directly to decision makers, such as Sheriffs or Children’s panel members, is the best way to feel included and listened to and indeed, the denial of choice can lead to them feeling disempowered and disengaged. they wish to be heard¹³ We support the position of Women’s Aid, and others, that this right to choose to speak directly to decision makers should be protected and facilitated.¹⁴

However, NSPCC Scotland would also like to stress the importance of avoiding a default of, especially very young, children attending decision-making forums such as Courts or Children’s Hearings when this experience might be potentially traumatic. Children’s physical presence is something the Scottish Government is increasingly keen to avoid in criminal justice settings¹⁵, but it appears more acceptable in civil

¹² Policy memorandum

¹³ Scottish Women’s Aid Response to the call for evidence on the Children (Scotland) Bill

¹⁴ Scottish Women’s Aid Response to the call for evidence on the Children (Scotland) Bill

¹⁵ See, for example, <https://www.bbc.co.uk/news/uk-scotland-43960379>

settings, to the point of almost seeming mandatory within Children's Hearings. Again, there are discrepancies in our expectation and ambitions across the various legal systems with which vulnerable children can come into contact.

We would argue that more must be done to ensure the appropriate participation of children within our Children's Hearing System, most especially for our youngest and most vulnerable children. Practitioners from NSPCC Scotland's GIFT service have observed that convention for attendance of young children has developed within the Hearing System. From an examination of early GIFT cases, it can be seen that the majority (25 of 39) of GIFT children attended at least one Hearing¹⁶. The rationale behind these children's attendance at Hearings reflects the importance attached, within the Children's Hearing system, to the child's view being heard, with the explanation often given that *it is the child's Hearing*.

However, when dealing with children aged five and under, more appropriate ways of eliciting – and making sense of - 'the child's view' are required. In GIFT practitioners' experience, the attendance of young children at Children's Hearings is **very seldom helpful** and does not provide a reliable means by which to understand a child's experience or views. Expectations and requests were observed to be made of the infants which, in NSPCC clinicians' view, were developmentally inappropriate, for example being asked about frequency of contact with their birth parents in the presence of the parents. Many children involved with GIFT have experienced trauma within the context of their parental relationships and have developed emotional and behavioural strategies to deal with this – for example not showing distress or miscuing; showing affection when they are afraid of a parent, as a strategy to placate them. GIFT clinicians *frequently* witness these behaviours at hearings and regard misinterpretation of young children's behaviour by panel members and other professionals as a common problem. It is therefore essential that this situation is addressed within the Hearings System and that development of new methods to take children's views in Courts or the CHS takes account of the potential impact of trauma on children and allows children to give their views in safe, secure ways that are appropriate to their stage of development.

Child Welfare Reporters and Curators ad Litem

NSPCC Scotland supports the regulation of Court Welfare Reporters and Curators ad Litem. However, we feel this regulation does not go far enough and feel a number of questions remain unanswered. Clarity is needed in terms of what the roles are of CWRs and Curators ad Litem and when they should be used.¹⁷

We echo others' comments that the training outlined for these roles in the financial memorandum is insufficient, particularly in regard to a lack of training on trauma, child development, and attachment.¹⁸ Indeed, we would suggest there is a fundamental question about the skill set of CWRs and Curators ad Litem. It is envisaged that Court Welfare Reporters will be appointed to carry out essential tasks such as taking children's views¹⁹ and explaining decisions to children. Due to the

¹⁶ Bryce, G. (2018) *GIFT unwrapped: the New Orleans Intervention in Glasgow: summary report*. London: NSPCC. Available at: <https://learning.nspcc.org.uk/media/1543/gift-unwrapped-new-orleans-intervention-glasgow-summary-2018.pdf>

¹⁷ NSPCC Response: Review of Part 1 Children (Scotland) Act, 2018

¹⁸ Scottish Women's Aid Response to the call for evidence on the Children (Scotland) Bill

¹⁹ Policy memorandum

skills in child development and working with children that will be necessary to carry out these roles effectively, there is a question as to whether the current situation, where 90% of CWRs are lawyers²⁰, is conducive to best practice.

“there is a real lack of education of lawyers about the skills of communicating with children, understanding children’s needs, attachment – none of these things are covered in the course.” (NSPCC Practitioner)

“there is so much that they would need to know, that it would almost be another postgraduate degree that would cover a hybrid blend of social work skills and knowledge and mental health” (NSPCC Practitioner)

We note that the Scottish Government intends that non-lawyers such as social workers and child psychologists would be encouraged to join the new register.²¹ This is a welcome step. However, to mould a legal system truly has children’s needs to its heart, it is important to consider how we can ensure that all CWRs have the essential knowledge and skills in child development and attachment needed to effectively communicate with children. As such, we would support the creation and enforcement of minimum standards of training in child development and attachment for all those on the CWR register. To achieve this goal, more thought must be given to how experts on child development and attachment, like social workers and child psychologists, will be encouraged to join the register. It also would require the provision of comprehensive training of all others, including lawyers, who wished to join the register, to ensure that they meet the minimum standards set.

It is also necessary to consider that, as much as we would support the appointment of experts in child development and attachment, such as social workers and child psychologists, to the role of CWR, it must be considered how this would work within the current legal context. NSPCC practitioners have described professional power imbalances that increasingly operate within the Children’s Hearing System²². Their experience is that often the contributions of professionals such as social workers were viewed as less valuable as it is not delivered in the same way as those of legal professionals:

“I have had to work very, very, very hard to try and convince panel members to implement an order, or an interim order, because we’ve got a solicitor here saying ‘well it doesn’t say that in the legislation; you’re saying this. but if you look at section . . . because that’s what solicitors in children’s hearings like to do, they like to kind of dazzle panel members with legal jargon. So, they’ll say ‘if you look at section 2.5.5 of this legislation etc, and so [social worker’s name] is just surmising that that’s her position, but actually legally you can’t say that, it isn’t in the law”. (NSPCC Practitioner)

There needs to be consideration of what cultural change might be needed, examining any existing professional bias, within Courts to prevent similar issues arising as exist within the Hearing system. It is important to consider what skills we should prioritise for those in roles like Court Welfare Reporters: those that allow them

²⁰ Policy memorandum p14

²¹ Policy memorandum p14

²² NSPCC Response: Review of Part 1 Children (Scotland) Act, 2018

to fit most seamlessly into the legal system as it stands, or those that allow them to work most effectively with children.

We would argue that, like in the criminal law sphere where we are moving towards thinking about a Child's House model²³ that places children at its centre, Scotland needs to take an ambitious approach to family law reform. It is essential that we think about each element of the system, how well they each interface with each other, and whether they work as well as they could for children.

Explanation of Decisions to Children

NSPCC Scotland supports the introduction of a duty on Courts to explain decisions to children. The creation of narrative about their lives is an important aspect of recovery for children who have experienced abuse and maltreatment.

“Children need a narrative. We all need a narrative to make sense of what’s happening to us. It’s not something that any adult would be expected to tolerate; a massive change in their life without any understanding of it.” (NSPCC Practitioner)

There is a question, however, as to how this explanation is to be provided to children. The Bill sets out that decisions would be explained to the child by either the Sheriff themselves or by a Court Welfare Reporter, who is likely to be a lawyer by training.²⁴ NSPCC Scotland practitioners felt that while, for some children, it is desirable that they should be able to communicate with Sheriffs directly, for others, especially young children, this may not be appropriate. It was felt that their best way to explain decisions would vary for each individual child. Therefore, that the best solution would be for the court to be under a duty to ensure that their decision was explained to the child.

“There needs to be a pause. Okay, the Sheriff has made a decision. Now, let’s pause and consider together and plan when, how, by who that explanation is going to happen.” (NSPCC Practitioner)

Who the right person to provide this explanation to the child is will depend on the circumstances of each individual case.

“Often for little children, the best people to do it are primary caregivers, if the primary caregiver is able to do it.” (NSPCC Practitioner)

“Or the social worker, who knows the child” (NSPCC Practitioner)

We therefore suggest that the wording of the section is changed so that the Court has a responsibility to create a plan for the decision to be explained to the child and then to ensure this is carried out. This allows space for the method of explanation chosen to be bespoke to the unique circumstances of the child involved. It also would allow space for children to choose how they would like to be communicated with. In making a plan for how to explain decisions to children, the Court could be required to take into account the wishes of children.

²³ See:

http://www.healthcareimprovementscotland.org/our_work/standards_and_guidelines/stnds/barnahus_standards.aspx

²⁴ Policy memorandum

The duty in S15 of the Bill contains a caveat that children will not need to have a decision explained to them if the court considered that they would not be capable of understanding the explanation however it was given. The Policy Memorandum explains that the Scottish Government recognises ‘that even young children are capable of understanding a decision if it is explained to them in language which they understand’. It is then suggested that this exception would apply to cases of ‘very young children’ or those with ‘significant disabilities’ who would be incapable of understanding a decision.

As discussed above, in terms of the capacity of a child to form a view being dependent on the capacity of the adult taking their view, the capacity of a child to understand an explanation will depend on how capable the adult explaining it to them is. If decisions are only to be explained to children by Sheriffs and Court Welfare Reporters, who for the most part are not trained extensively in child development, many children might be found to be incapable of understanding an explanation who may have understood an explanation given in a different way. Therefore, we would recommend that the system is flexible and allows for various age and stage appropriate ways of explaining decisions, particularly to young children.

Delay

NSPCC Scotland welcomes the introduction of a duty to consider the impact delays to proceedings may have on a child’s welfare under s21 of the Bill. We know that long delays in making decisions for children are a common feature our current system and that they can be detrimental to children’s welfare, development and attachment relationships.²⁵ This can be another area where the needs of our system, in tolerating drift and delay, can overshadow the needs of the child. While we understand that it is difficult to set a prescriptive time limit at which a delay is detrimental,²⁶ we seek clarification as to how this provision would be enforced to ensure that a ‘duty to consider’ does not become a ‘tick-box’ exercise. It is also essential that the determination of whether a delay is prejudicial to a child’s welfare takes into account children’s developmental timescales, recognising the particular impact delay can have on very young children.²⁷

Vulnerable Witnesses

We join with Scottish Women’s Aid (SWA) in welcoming the provision made in the Bill for the use of special measures to protect vulnerable witnesses in court (Section

²⁵ *Permanently Progressing: Building secure futures for children in Scotland*. Research reports available at: <https://www.stir.ac.uk/about/faculties/social-sciences/our-research/research-areas/centre-for-child-wellbeing-and-protection/research/permanently-progressing/>

²⁶ Policy memorandum

²⁷ *Permanently Progressing: Building secure futures for children in Scotland*. Research reports available at: <https://www.stir.ac.uk/about/faculties/social-sciences/our-research/research-areas/centre-for-child-wellbeing-and-protection/research/permanently-progressing/>; Bryce, G. (2018) *GIFT unwrapped: the New Orleans Intervention in Glasgow: summary report*. London: NSPCC. Available at: <https://learning.nspcc.org.uk/media/1543/gift-unwrapped-new-orleans-intervention-glasgow-summary-2018.pdf>

4) and also the provisions preventing a party from personally conducting their case in contact and residence cases and Children’s Hearings in certain circumstances, for example, where the witness is a victim or complainer of domestic abuse.²⁸ However, we also agree with SWA that there are areas of potential improvement in terms of extending the coverage of provisions and ensuring that protections operate across various systems. If someone is deemed to be a vulnerable witness in one legal system, this status, and the protection it infers, should be transferrable to other areas. For instance, if a parent is deemed to be a vulnerable witness due to allegations of domestic abuse featuring in referral grounds, they should then be entitled to protection in Section 11 proceedings. Equally, even where domestic abuse does not feature in CHS referral criteria, a parent should be entitled to vulnerable witness protection if they have a qualifying protective order or criminal proceedings against the perpetrator are engaged.

Steps to ensure connected, consistent protections work across systems are essential. NSPCC Scotland practitioners repeatedly express concern about what they describe as a disconnect between legal systems in relation to child welfare, with current systems and courts – civil courts, Children’s Hearings and criminal courts - often working in silos. Separate, siloed systems fundamentally undermine a child centred, GIRFEC approach. In practitioners’ experience, it is not uncommon for social work to be involved, or on the cusp of involvement, with families where disputes go to civil court. Some practitioners stressed that social work may withdraw where live cases go to family court, as court decision will ultimately supersede a children’s hearing panel decision, regarding a child. Improved interaction between the civil courts and children’s hearing system, where there has been an allegation of domestic abuse is of particular concern. There must be true join-up across systems to ensure the protection of women and child victims of domestic abuse.

Enforcement of Orders

NSPCC Scotland support the position of Scottish Women’s Aid that the measures in the Bill requiring investigation into non-compliance with contact orders²⁹ are important in terms of protecting women and child victims of domestic abuse. Our practitioners have expressed concerns that disconnects between the various legal systems, and a subsequent lack of information sharing, can lead to dangerous situations where there is a context of domestic abuse.

“I was involved with a family where there was domestic violence, and Dad raised a civil case for contact. I liaised with Mum’s solicitor, provided info, but still the decision was made to allow unsupervised contact, even though I was highlighting a significant, live risk. We thought about referring to the Children’s Hearing System, but I was advised against this, as any order they made around contact with Dad would be superseded by the Sheriff’s civil decision. We had been working very hard with Mum to recognise the risks Dad posed, and were having to tell her not to allow contact if he was presenting in a certain way. However, she was getting strong messages from Court that if she did not allow the contact she would be in contempt

²⁸ Scottish Women’s Aid Response to the call for evidence on the Children (Scotland) Bill

²⁹ Children (Scotland) Bill S16

of court. This is a pretty common occurrence, in my experience". (NSPCC Social Work Practitioner)

It is important that there is appropriate investigation where contact orders are not complied with, to ensure that there is not enforcement of decisions that are dangerous to children and their non-abusing parents. We therefore welcome this step. However, as stated above, there must be steps taken to improve the interface between legal systems.

Sibling Contact

NSPCC Scotland recognises the important place that sibling relationships occupy in the lives of many children and young people and that for many children in the care system these important relationships are undermined.³⁰ It is therefore important that provision is in place so that sibling relationships are protected and supported, so long as this is in the best interests of all children and young people involved.

S10 of the Children (Scotland) Bill places a duty on the local authority looking after a child to 'take such steps to promote, on a regular basis, personal relations and direct contact between the child and their sibling'. The effect of this being that where siblings are not living together, the local authority has a duty to promote and facilitate direct contact between them. The local authority also has a duty to safeguard and promote the welfare of the child, which shall be their paramount concern.³¹

The possible issue is in how this structure of provisions would be interpreted; whether it would be that looked after children would have contact with siblings *if it was* in their best interests or whether they would have contact with their siblings *unless it was not* in their best interests. The distinction is important because the latter option amounts to a presumption that contact with siblings is in the best interests of looked after children. This could have implications as to the thoroughness of the inquiry.

NSPCC Scotland practitioners have expressed concerns about any presumptions being made about contact for looked after children in cases that reach civil courts, or indeed children's hearings. For the small number of children whose cases reach this stage family situations and dynamics are often extremely complex. There is also a question as to the best interests of **which** child(ren) are to be considered when determining whether sibling contact is in their best interests. Is it the best interests of the child being looked after by the local authority/whose case is currently being considered or the best interests of **all** children involved? If the best interests of multiple children are considered when making a decision about sibling contact how are they weighted against each other and how would any conflicts be resolved? Deciding whether contact is in the best interests of *all* children must be assessed on an individual case by case basis.

"It's such a difficult one, isn't it? I think particularly that one where what is in the best interest of one sibling might very much not be in the best interests of another sibling.

³⁰ F. Jones, C. Jones (2018) *Prioritising sibling relationships for looked after children*, <https://www.clanchildlaw.org/Handlers/Download.ashx?IDMF=3edff743-f3cf-442b-b7c8-b56d6e11a98e>

³¹Children (Scotland) Act 1996 S17(1)(a)

And again, the task of meaningfully assessing the impact on all of the children involved is a huge one.” (NSPCC Practitioner)

To be meaningful this assessment must also be done in a holistic way by someone with appropriate skills, knowledge and experience in child development and attachment. It is desirable that the importance of sibling relationships is recognised in contact decisions but the insertion of legal presumptions into this sphere would likely not be helpful and the focus should instead be on making considered and informed decisions on a case by case basis that focus on the best interests of all children involved. Therefore, we would recommend that it is made clear by the text and structure of the Bill that sibling contact decisions are to be based on meaningful assessments of the best interests of *all* children involved, carried out by appropriately skilled professionals, and not subject to any presumptions.

The Scottish Government have stated that the intention of the section is to ‘place a duty on local authorities to promote sibling personal relations in the same way as they are required to promote personal relations and direct contact with a child and their parent.’³² While NSPCC Scotland supports recognition of the importance of sibling relationships in children’s lives³³, there are some issues around this aspiration.

NSPCC Scotland practitioners have expressed concerns about the way that decisions around contact between children and their birth parents are made, and indeed the decisions themselves. There are concerns that contact decisions are often made without full understanding of child attachment and development and are therefore not always truly in a child’s best interests. The existence of a *de facto* presumption within civil courts that contact with both parents is in a child’s best interest³⁴ is a key example of this. We would suggest that in the making of such important and often complex decisions, presumptions are unhelpful and cases of sibling contact require to be decided on a case by case basis with the best interests of all children involved at the centre. Therefore, it would not be desirable for sibling contact to be on the same footing as with birth parents if this resulted in a similar ‘de facto presumption’ that contact is always in a child’s best interests.

It is also essential that, where sibling contact is taking place, it is appropriately supported, as parental contact should be. This calls for relationship-based practice that works with the relationship between the siblings but also with their primary caregivers. Especially for young children, mental health is dependent on having safe, secure relationships with the person looking after them. Without this, it can be difficult for other important relationships, such as those with siblings, to develop in a healthy way. We are unsure of the extent to which, currently, our systems are enabled to support sibling contact in the necessary way.

“There’s monitoring often of the parental contact where there’s concerns about it but for siblings, often that happens at the weekend facilitated by whoever is looking after the children and there’s not any support or specialist thinking going into what’s actually happening.” (NSPCC Practitioner)

³² Policy memorandum p18

³³ Wojciak, A.S., McWey, L.M. & Waid, J. 2018. *Sibling relationships of youth in foster care: A predictor of resilience*. Children and Youth Services Review, 84

³⁴ K. Mackay, (2013) *Hearing children in court disputes between parents*

“These are children who have experienced difficult, traumatic, damaging relationship issues. So, they need help to recover and to learn how to trust again. And until they’ve got that foundational, secure relationship with a primary care giver, the quality of all their other relationships is going to be the same. So, I think there’s a key educational message that needs to be trickled through like all parts of the system. Once everyone gets that. It feels like we are trying to build a house without bits of the foundations.” (NSPCC Practitioner)

NSPCC Scotland practitioners also felt that it was important that sibling contact decisions, as with all contact decisions, are monitored and reviewed on a regular basis.

“It’s about, at that point in time this is what’s in the best interests of this child and this child and that everyone understands and it can be reviewed. Because a child’s journey through care, a child’s journey through life, has so many changes and stages of development that everybody needs help with. If that was brought into the thinking as well, that this doesn’t have to be forever.” (NSPCC Practitioner)

Conclusion

While we support the aims of the Bill, more needs to be done to ensure that the policy aspirations and intentions will meet the needs of very young children. Close consideration should be paid to how the various legal systems with which children can interact – criminal justice, family law proceedings and Children’s Hearings Systems – read across each other, and the extent to which our aspirations for child-centredness and realising children’s rights are con

NSPCC Scotland
18 November 2019