

**JUSTICE COMMITTEE****CHILDREN (SCOTLAND) BILL****SUBMISSION FROM SOCIAL WORK SCOTLAND**

Social Work Scotland is the professional body for social work leaders, working closely with our partners to shape policy and practice, and improve the quality and experience of social services. We welcome this opportunity to comment on the Children (Scotland) Bill.

**Voice of the child**

- 1. Do you agree with the approach taken in the Bill to remove the presumption that a child aged 12 or over is of sufficient age and maturity to form a view?**

Every child is unique, and we are in support of case by case consideration about how children's views are taken into account. While a child aged 12 or over will usually be of sufficient age and maturity to form a view, this will not always be so; and children under 12 years of age will often be able to form and express view, which should also be taken into account in any proceedings and decisions that affect them. We understand that the original provisions of the Children (Scotland) Act 1995 were never intended to discourage courts from having regard to the views of children under the age of 12, but assumption and practice have unfortunately developed in such a way that there is effectively a chronological threshold. The provisions of the Bill should redress this, ensuring the right of every child to express view (as set out in Article 12 of the UNCRC) is respected.

- 2. Do you agree that it should be left to the court to decide the most suitable way of obtaining a child's views?**

Broadly, yes. We agree that the courts or other decision-maker should give the child a suitable opportunity to express their views, and that the opportunity (or opportunities) are in a manner suitable to the child. In every instance the preferences of the child (for how they wish to express their view) must be sought and considered by the court or decision-maker; indeed, where that preference is not accepted, a clear rationale and explanation must be given.

However, we do have a concern about the availability and accessibility of relevant professionals necessary to give effect to these provisions. If we accept that the monies allocated in the financial memorandum (for CWRs and SCTS) are sufficient, it is not clear to us that there are sufficient numbers of available social workers, art and play therapists, and psychologists to meet the expected increase in demand. With the welcome removal of the presumption that a child aged 12 or over is of sufficient age and maturity to form a view, and other changes introduced in this Bill, we should expect to see more children being offered a wider range of ways through which they can articulate their views. That will require a broader range of skills being available to the courts. Policy change and new investment are necessary, but not sufficient, drivers for change. We encourage Scottish Government to work with its partners to model in

detail the expected impact of these changes in terms of demand on relevant professionals, and to put in place a plan to ensure that children have access to the people and skills they need to help make their rights real.

### **3. How do you think children should be given the opportunity to express their views?**

For these changes to be meaningful for all children, it is important there is flexibility and variety in the opportunities children are given to express their views. These should include speaking directly to the decision maker, submitting a written statement (e.g. a letter), through a Court Welfare Reporter (CWR) and through other means. Whatever the method chosen, the process (of seeking and providing views) must be supported by individuals who have appropriate training and skills, with courts fully aware of the complexity of children's communication. For example, a picture prepared by a child should not be considered in itself to communicate their views, and then subsequently 'interpreted' by the court. Child mental health professionals will confirm that the process of creating the picture / artwork is as important (if not more) than the final picture / artwork itself. Such additional material (i.e. what happened while the art was being made) will need to be considered by the court if it is to properly understand the child's views.

We strongly support the provision that in cases under section 11 of the 1995 Act the views of the child can be taken by a CWR, appointed by the court to either obtain the views of the child or to produce a report on the best interests of the child. We also recognise that in relation to Children's Hearings, the introduction of advocacy services in 2020 (to support implementation of section 122 of the Children's Hearings (Scotland) Act 2011) will provide further support for children to give their views. Safeguarders, when appointed, would also have a duty to reflect a child's views when the child wishes them to. To repeat a point already made above, all of these roles reflect an understanding that giving meaning to Article 12 of the UNCRC takes more than creating opportunities for children to give their views; we have a responsibility and obligation to provide the people and tools necessary for them to do so, taking into account their developmental stage, relationships and environment. Children's communication is not the same as adult communication, and independent, impartial professionals have a critical role in ensuring the full breadth of a child's view is captured and conveyed.

In planning for the implementation of the Bill, we would encourage the Scottish Government and its partners (in particular SCTS and Sherriff Principals) to consider the new Joint Investigative Interviewing of Children (JII) model, developed by Police Scotland and Social Work, with support from Scottish Government, NHS Education Scotland and others. This model is built on a standard of knowledge and competencies which, in full or in part, we should expect all adults working with children (in processes to ascertain children's views) to hold. The JII may be a useful reference when developing the protocols and guidance to give effect to the Bill (such as training requirements for CWR).

Finally, we are concerned that in some circumstances children may have multiple interviews with different professionals seeking their views, in different contexts; in

thinking about the welfare of the child, consideration may need to be given not only to the manner but also to the timing of such interviews.

**4. Are there other measures that you think should be in the Bill to ensure that the voice of the child is heard?**

There will be training needs for those who have a role in gathering the views of children, which should be carefully factored into the costing and implementation strategy. Within this, account should be taken of the availability of relevant professionals (e.g. to become CWRs under the new terms) and the impact of these changes on similar activities / functions, such as safeguarding. The pool of suitably skilled and experienced individuals to undertake these jobs is finite, and may need to be systematically expanded if all these welcome policy developments are to deliver as hoped.

We note that Scottish Government expects that future digital developments will offer greater flexibility in the ways children may give their views. While we appreciate it is difficult to predict how technology will develop in the future, and particularly children's interaction with it, we would encourage Scottish Government to utilise the skills of colleagues in its Digital Directorate and elsewhere to plan as comprehensively as possible, identifying the current knowledge gaps and likely training needs of the professionals supporting children.

**Child's best interests**

**5. To what extent does the Bill meet one of its key policy aims of ensuring that the best interests of the child are at the centre of contact and residence cases and Children's Hearings?**

Overall the Bill does help move Scotland towards achieving this policy aim, with its provisions informed and shaped by a commitment to children's rights and the best available evidence. For example, the establishment of a register of CWRs will help put the best interests of children at the centre of proceedings by ensuring the individuals appointed to this complex, skilled role have the experience, knowledge and competencies necessary; and to remove them if from the register if they do not. Similarly, the measure preventing persons convicted or accused of serious offences, including domestic abuse, to be able to personally examine their victims and children, should also help, removing the potential for the intimidation and retraumatisation of children.

In assessing the potential impact of the Bill, it is important to remember that a child's best interests are not uncontested facts, simply waiting to be discovered and articulated. Various parties in a legal process may legitimately believe they understand, and are focused exclusively upon, a child's best interests. This is why it is important that children affected by these processes are supported by impartial, objective adults, whose roles are focused squarely on identifying a child's best interests, centered on the child's views and informed by holistic assessment.

We would also stress again that policy is a necessary, but not alone sufficient, ingredient to making change. And much the same can be said for the availability of

funding and resources. Realising change, such as ensuring that the best interests of children are the centre of legal proceedings which affect them, will require considered, conscientious implementation, over a number of years. If the Bill becomes law it represents an important milestone, but one nearer the beginning than the end of this particular change journey. The really hard work will follow its commencement, shifting human attitudes and established practice. We urge the Scottish Government to work closely with its partners to think through implementation, and to put in place the support and structures necessary to deliver it.

### **Child welfare reporters and curators ad litem**

#### **6. Do you agree that child welfare reporters and curators ad litem should be regulated?**

Yes, we strongly support this development, as it should help improve quality and consistency across Scotland. In particular, these proposals should ensure that all individuals employed in such roles have the knowledge and skills necessary, and that they are committed (through the need to be periodically re-registered) to ongoing learning and development. And it would be a very positive outcome if the register alleviates the pressure on individuals who are not eligible for Legal Aid, by ensuring a consistent fee structure.

#### **7. Do you have any views on how this should work in practice?**

The Bill's accompanying policy memorandum suggests that Scottish Government could either run the register 'in house' or contract its day-to-day operation out to a third party (with Scottish Ministers retaining overall responsibility and accountability). Both of these seem viable options, with examples from recent years to learn from (including but not limited to National Mentoring Scheme for Looked After Children, national Safeguarder service, Children's Hearings Advocacy services). With the limited information available we do not feel in a position to judge between them, and would encourage Scottish Government to work closely and transparently with its partners to identify the costs, practicalities, risks and issues of each. Whatever the option chosen, it is essential that the full operational cost of running the scheme properly is identified over a number of years, and commitment given to meeting it.

### **Factors to be considered by the court when making contact and residence orders**

#### **8. The Bill would require the court to consider the effect of an order on the involvement of the child's parents in bringing up the child and the effect on the child's important relationships with other people. This is in addition to statutory factors relating to protecting the child from abuse and other factors appearing in case law. Do you agree with this approach?**

Although this will add complexity, it is a welcome and necessary step. It is in a child's interests that we consider the long term impact of sustaining or disrupting relationships, as these will shape their emotional security and wellbeing.

## Other requirements on the court

### **9. Do you agree that the court should ensure that certain decisions are explained to the child?**

Yes. We believe that it is very important that certain decisions (the reasons and consequences) are carefully and sensitively explained, as their understanding will, in part, determine their ability to accept and adjust to the decision taken. The child should be given an explanation in a manner suited to their age, development and communication needs, taking into account the impact of individual experience and circumstances. Also, the process must be seen as a dialogue, with time and space given for the child to ask questions and receive answers. A decision might be seen as 'explained' only when a child has sufficiently understood it.

### **10. Do you have any views on the provision in the Bill which would require the court to consider the risk to the child's welfare of any delay in the proceedings?**

We agree with the rationale for requiring the court to have regard to any risk of prejudice to the child's welfare that a delay in proceedings may represent. However, even though the provision in the Bill is welcome, there is likely to be considerable complexity in making its policy intention real (i.e. reducing delay). Delays in legal proceedings stem from multiple interacting factors, including the action or inaction of the various parties. The Scottish Government will need to work closely with SCTS and others to map out the principal drivers of delays, and put in place specific plans for addressing them.

## Vulnerable witnesses

### **11. A solicitor could be appointed by the court to represent the party who is prevented from conducting their own case. Do you agree with this approach?**

Yes, we agree with this approach.

### **12. The Bill would also allow the court to order the use of other special measures, such as the use of a live TV link or screen, in contact and residence cases. Do you have any views on this provision?**

We are supportive of these measures. They helpfully parallel the special measures available to vulnerable witnesses when giving evidence in other civil and criminal proceedings (and which were extended in the Vulnerable Witness (Criminal Evidence) (Scotland) Act 2019).

## Contact centres

We agree with measures that would ensure contact centres are safe locations for children and adults, operating to minimum standards and subject to inspections. However, this should not prohibit local authorities from the use of other locations to facilitate and promote contact.

## Enforcement of orders

### **13. The Bill would require the court to investigate the reasons for a person's failure to comply with a court's order relating to, for example, contact. Do you have any views on this approach? Are there any other options which should be included in the Bill to ensure orders are enforced?**

We agree that a person's failure to comply with court order should be investigated. An order would have been made with a view to the child's best interests, and so its decisions should be respected (unless to do so put the child's welfare at risk). We do though have some concern about a standard approach to enforcement, and believe that the appropriate actions should be left at the discretion of the court. In some instances there may be legitimate reasons for non-compliance, related to the safety and protection of those involved. In other situations, where there is self-interested contempt of a court decision, proportionate enforcement will need to be considered (otherwise the credibility and effectiveness of the system will be steadily eroded). The central, directing principle throughout must be the best interests of the child. As these may evolve and change over time, the court will need to utilise the support and skills of relevant professionals to ascertain what the child's best interests when determining how to respond with non-compliance.

#### **Contact with siblings**

### **14. Do you agree that local authorities should be required to promote contact between a child and any siblings or other people with whom the child has a sibling-like relationship?**

We strongly agree with the principle that relationships which are significant to children (be they infants or young people) be protected and supported unless it is not safe to do so. Even though current legislation does not specifically reference sibling contact, this principle, expressed in the intentions of the Independent Care Review and the Bill's proposals, already directs much current social work practice. The importance of brothers and sisters, extended family, peers and trusted adults is not in question, and considerable effort is often made to maintain these relationships. In some local authorities teams even exist to identify and cultivate relationships with family members previously unknown to the child.

However, while we accept that children have not always been able to maintain important relationships, decisions about securing a child's safety and wellbeing are determined by many factors, and placement and contact arrangements involve a degree of realistic compromise. While local authorities would seek to understand, record, protect, support and promote contact with siblings, the availability of placements and carers may mean it is not always possible. Social Work Scotland does not disagree with the principle or practice of promoting contact with siblings, but without significant, more fundamental changes in the structure and resourcing of the care system, realising the policy aim may be difficult.

More specifically, in view of the complexity of modern family structures (and the journeys of some children through care placements) the Bill's extension of the duty to promote contact to any siblings and sibling-like relationships is likely to place

considerable new burdens on local authority social workers. Notwithstanding the fact that facilitating contact is significantly determined by the practical realities noted above, the new duty will require all relevant relationships to be assessed. This is not necessarily a simple process, and in every case requires time. As has been well documented across numerous inquiries, consultations and reviews, there is not the capacity within the current social work profession to accommodate additional tasks without cost elsewhere. And as we share the aspiration, identified by the Independent Care Review and others, that social workers will have more time to build relationships of their own with children and their families, we are concerned about any development which risks increasing the priority of assessment and planning over direct, relational work.

Social work is a profession rooted in human rights, and the promotion of personal relations between a child who has been taken into care and their siblings is congruent with Article 8 of the UNCRC. But social work is delivered within the realities of public sector structures, policies and resourcing, dealing with cases where the wishes and interests of different children are in conflict. Like with other parts of this Bill, the duty to promote sibling contact is welcome, but must be seen as the start, not the end, of a process of change. Expectations of what is immediately possible will need to be responsibly managed, and further detailed work will need to be undertaken with local authorities (and social work managers in particular) to understand how to realise the policy aims. That work should inform a detailed implementation plan, co-owned by all relevant stakeholders.

### **Births registered outwith the UK**

**15. Do you have any views on the provisions in the Bill that would allow parental rights and responsibilities obtained outwith the UK to be recognised?**

We recognise the potential advantages of the provisions in S19 of the Bill for some families. However, we have not been able to form a clear recommendation, being insufficiently informed about potential legal pitfalls, loopholes and hazards for a child that might relate to this process.

### **Children's Hearings**

**16. The Bill would also make other changes relating to Children's Hearings, for example, giving the Principal Reporter the right to appeal against a sheriff's decision in relation to deemed relevant person status. Do you have any views on these changes?**

We recognise and understand the rationale outlined in the Policy Memorandum. For these reasons we support this measure. The Principal Reporter's (proposed) right of appeal would enhance clarity in the interpretation of 'significant involvement', which is still a relatively new test requiring judicial examination.

**Practical, financial or other impacts of the Bill****17. Do you have any views on the practical, financial or other impacts, such as the equality impacts, of the Bill?**

The duties relating to siblings will require attention to be paid to the recruitment and support of looked after child placements, as well as to extended assessments (in relation to identifying and evaluating relationships) and the extended facilitation of contact. These would help secure the best interests of the child, but cumulatively will lead to increases in staff and carer time, and in general, overall costs. Moreover, recruitment of carers and the identification of placements can be problematic for local authorities; the practical realities of promoting and facilitating contact will affect all authorities, not just highland and island councils, as implied in the Policy and Financial Memorandum. If these new costs are to be met by council budgets, it is the case that services or support provided elsewhere will be impacted. We would urge the Scottish Government to work with COSLA and others to undertake a more detailed financial assessment of these changes, and to commit to resourcing both the implementation and delivery of them.

Similarly, the suggestion that there could be a saving to local authorities in relation to court requested welfare reports has uncertain basis. Local authorities would presumably still have a statutory duty to report when the court requires in relation to eg s11 applications.

**Family Justice Modernisation Strategy / issues not covered by the Bill****18. Are there issues which are currently not covered by the Bill which you think should be?**

The overall intentions are congruent with a range of policy supporting children's rights and best interests. Robust steps have been taken to consult with children and young people and take in to account research about their views. We welcome the balanced approach to the question of contact with grand-parents. There is succinct reference to some complex questions and brief explanation of available (or potentially available) steps. For example, we welcome the intention to produce a policy paper for the Family Law Committee and a general discussion paper for key stakeholders on improving interaction between criminal and civil courts; and also welcome the aim of the Member's Bill intended to increase the use and consistency of mediation services for certain civil cases by establishing a new process of court-initiated mediation that includes an initial mandatory process involving a statutory duty mediator.

Social Work Scotland  
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