

JUSTICE COMMITTEE**CHILDREN (SCOTLAND) BILL****SUBMISSION FROM ASSIST**

Please note that all of ASSIST's responses have been drafted in the context of domestic abuse and coercive control. The new legislation recognises that domestic abuse is a feature of a large proportion of the child contact cases heard in the civil court. As our work is exclusively with families experiencing this issue, we have considered the questions solely from this perspective.

We have reiterated throughout our response that children involved in this process should be given the opportunity to build a relationship of trust with an independent person who has sufficient training and understanding of:

- **The dynamics of domestic abuse and coercive control**
- **The ways that children can be targeted**
- **The impact that this has on children**
- **The ways that abuse is often continued post-separation.**

If this worker is able to give the child the time and space they need to get to know them, to understand their circumstances and to work with them for the duration of the court process, many of these issues described below will naturally be addressed. If the Bill is to achieve its ambitions, we believe this infrastructure is crucial.

1. **Voice of the child:** 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? Do you agree that it should be left to the court to decide the most suitable way of obtaining a child's views? How do you think children should be given the opportunity to express their views? Are there other measures that you think should be in the Bill to ensure that the voice of the child is heard?

Removing the presumption would be beneficial as the use of the benchmark age has tended to result in rigidity within the civil court process. In relation how these views should be obtained, we believe it is important that a variety of methods are available. If children are given an opportunity to build a trusting relationship with an independent as described above, this will enable them to agree together on the most suitable method, assuming the child wishes to express a view. This should guide the court as how the children's views should be obtained. Specific requirements within the Bill may be helpful to ensure that discretion is not used to obstruct this potential benefit. We further believe that how children's views are obtained should be guided by the child. As long as there are no financial/ legal/ practical barriers to their chosen method, there should be a presumption that a child can decide, where appropriate and with support, how their views are expressed. Other measures could include provision for nonverbal communication (e.g. for a very young child) to be considered by the court in lieu of more conventional methods available for older children.

2. **Child's best interests:** 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?

It is our experience that the views of children and non-abusing parents in relation to contact are often superseded by the presumption that contact is in the best interests of a child. The Bill partially addresses this issue by recommending the regulation and training of curators, CWR and contact centres. However we believe that this is not sufficient unless Sheriff's also receive mandatory training as ultimately they decide what they believe the child's best interests are. This training must include a focus on coercive control and the ways in which child contact is used to continue the abuse after separation. We would expect that statutory factors, such as protection from abuse, would be considered in terms of the child's best interests. If all those involved in the decision making process have a shared understanding of how domestic abuse might target children, this will promote consistency amongst courts and make this a central factor when the child's best interests are being considered.

3. **Child welfare reporters and curators ad litem:** Do you agree that child welfare reporters and curators ad litem should be regulated? Do you have any views on how this should work in practice?

We absolutely agree that the regulation of CWRs and curators is essential. We would want the Bill to be specific about what that training and regulation looks like in practice. This training must include a focus on coercive control and the ways in which child contact is used to continue the abuse after separation. A baseline awareness of coercive control and the interface with child contact is essential for any professional involved in the assessment of a child's best interests. The Bill should make specific recommendations about what the mandatory training on domestic abuse and coercive control should consist of. This will ensure that the best interests of the child accounts for psychological and emotional, as well as physical safety.

4. **Factors to be considered by the court when making contact and residence orders:** 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? Should any other factors be listed in the Bill?

We do not have a strong opinion on the list of factors that should be included in the Bill as domestic abuse would be considered in the context of the child's best interests (see Q2). We would wholly agree that parents should be fully involved in the life of their children where this is safe for the children and that the court needs all the relevant information made available to make a full assessment of risk and safety.

5. **Other requirements on the court:** Do you agree that the court should ensure that certain decisions are explained to the child? 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?

Yes, we believe that children benefit from having any decisions explained to them and that this should be provided timeously. If the child has been given the opportunity to build a trusting relationship with an independent person we believe that this may often be the most appropriate person to translate any court decisions. The court should have flexibility about when, how and if this is undertaken. Where domestic abuse is a factor, it should not be the default position that the non-abusing parent would be expected to take this on.

6. **Vulnerable witnesses:** The Bill would prevent 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. 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? 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 would welcome both of these measures. This would bring the civil court in line with the criminal court. There should be no requirement to prove vulnerability, these measures should be automatic. Any progress in relation to a more child friendly approach within the criminal court e.g. Barnahus should be reflected within the civil court. Children should be given the message that they are deserving of this protection and support by the court, regardless of the context.

7. **Contact centres:** What role should child contact centres play in maintaining contact between children and family members they do not live with? Do you agree with the proposal in the Bill to regulate child contact centres and for there to be a system of independent inspections? The Bill would only require the use of regulated contact centres where referral is made by the court, although the Family Justice Modernisation Strategy suggests solicitors could also be encouraged to refer to regulated centres. Do you agree with this approach? Do you have any views on the practical or resource implications of the regulation of contact centres?

Consideration needs to be given to the use of contact centres in relation to location and cost. The use of a contact centre should not add to the financial and practical issues already experienced by victims of domestic abuse. We would agree that contact centres should be regulated and all staff should be trained in coercive control and the ways in which contact can be used to continue the abuse post-separation. We agree any use of contact centres should be regulated regardless of the source of the referral.

8. **Enforcement of orders:** 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 do want the court to investigate the reasons for failure to comply by either party however this should be considered in the context of domestic abuse and the ways in which contact can be used to further abuse both the non-abusing parent and the child/ren. Many victims of domestic abuse discuss the risks associated with child contact with specialist workers from IDAA services, Women's Aid etc. This information could be helpful to those investigating failure to comply.

ASSIST
6 November 2019