

JUSTICE COMMITTEE

CHILDREN (SCOTLAND) BILL

SUBMISSION FROM YELLO!

Introduction

We are YELLO!, the young expert group in the Improving Justice (IJCC) in Child Contact project¹, which is a joint project between the University of Edinburgh and Scottish Women's Aid along with four other European countries: Romania, Bulgaria, Cyprus and Portugal. The project works alongside children and young people in each country to improve the way these countries respond to children and young people who have experienced domestic abuse.

We have worked with Scottish Women's Aid to share our views on the Children (Scotland) Bill. We haven't answered every question asked in the call for views but have shared our thoughts and feelings on what we think are the most important things about the Bill.

1. Voice of the child

We believe that all children, no matter how old or mature, can form a view, and most children are able to express their views if they are given the correct way to do it. Very young children know who they do and don't feel safe with and they know who they are scared of. Young children may not have the words to say how they feel, but if someone they know well and who they trust spends time with them and asks them, then they will feel more comfortable to share their feelings with them.

The adults who know the child best and spend most time with the child will be able to advise the courts on how best to hear the child's views. If no one at the court knows the child, they won't know the best way to talk to them. Some children don't like to talk, especially when talking involves remembering scary or sad times. But others want to speak directly to a judge, so there needs to be lots of options for all different types of children. Lots of children are also very good at technology and are used to using different apps on tablets and phones, the court should change to use those.

Children shouldn't have to speak in a way that adults do just to have their views heard. It's important that our voices are listened to. Don't dismiss us – we experienced it, and we know what we're talking about. If we feel like we aren't being listened to, it can make us not want to speak to people or take part in things.

Children should be given all the options on how to share their views and then should be given time to decide. This will give them a chance to speak to people they trust about all their fears. They should be allowed to talk to their mum about what to do and not told to keep the decision secret from their mums. Children should only have to say

¹ Improving Justice in Child Contact Project <https://www.ed.ac.uk/education/rke/centres-groups/childhood-and-youth-studies-research-group/research/ijcc>

what their views are once. It should be up to the adults to record their views properly, as sharing your views or story again and again is very upsetting and scary.

It can be really difficult if people from the courts ask you about the abuse you experienced, and for your views on your dad and having contact with him, when you don't know where those views are going. Children should be told where their views are being shared and who is going to read or hear them. Children's views shouldn't be shared with anyone the child doesn't want to see them. A child's right to privacy is more important than the adult's need to know what is going on. Right now there isn't enough protection of children's information. Protection of children's information needs to be included in the Bill, not just in guidance. This is important not just in court cases but also in schools and other places where children and young people talk about their experiences.

The courts should be aware of how much pressure dads can put on children when they are giving their views. The child can be too scared to say how they really feel because their dad is demanding to know and is very angry. There should be good protection in place for children who have experienced domestic abuse, to make sure the dad isn't near when the child is giving their views and that the dads don't see what the children have said. Privacy is really important.

It doesn't make sense that only children over 12 would be able to appoint a solicitor. There shouldn't be a cut off point because it's important that all children can do this.

2. Child's best interests

Children have been telling adults in positions of power for years that children want their views listened to. We want proof that the system is going to change. It is not enough to tell people that they should listen to children, they need to be made to listen and then have to explain to us directly what decisions they are making about us and why.

Adults always seem to be given more priority than children, even though it is all supposed to be about the child. We hope that this Bill will change that. That the courts won't only say they are working in the best interests of the child, but they will have to prove that they are doing it. And they can't do that without speaking to children.

3. Child welfare reporters and curators ad litem

Any adult who is speaking to children about their feelings should be properly trained in understanding the child's experiences. If the child has experienced domestic abuse then the person speaking to them should have a lot of knowledge on how domestic abuse affects children and their mums. If a reporter does not listen to a child properly and doesn't report back exactly what the child said, then the child should know how they can complain and be supported to do this.

The child welfare reporters should spend a lot of time training and working with experts on domestic abuse. They should be specialised in that area. It is not good enough to only have a few days training. These people are paid to help children and they need to be aware of children's rights, and to help children be aware of their rights.

4. Factors to be considered by the court when making contact and residence orders

Every contact order needs to have the child's best interests at the heart of it, not the best interests of either of the parents. There is so much pressure on children already. If children say they don't want contact, then listen to them. They're not throwing a tantrum, they have reasons for saying that.

It needs to be made really clear to children how they can raise any problems with the contact order after it has been made. Children should have the right to ask questions and appeal. Cases should be kept open so children and young people can continue sharing their views and experiences of the aftermath of the decisions made. The courts should also monitor how these decisions are working out and review the contact order if it is not working and it's not in the child's best interests. If children and young people raise concerns for their safety about contact with their dads, this needs to be urgently listened to and something done about it.

Sometimes there needs to be more protection for children and young people. If a mum gets a non-harassment order against a dad who has been abusive, this should also mean that he can't approach the children. Courts need to reach out to children and young people in these situations to make sure they are safe.

5. Other requirements on the court

All decisions that are made about the child should be explained to the child. And if the child is too young, the decisions should be explained properly to the person the child lives with most of the time. The decisions need to be explained in a way that the child understands. Children should then have the opportunity to respond to the decision, they should be able to appeal if they don't like the decision. Children and young people are all different, so some might want lots of information, some might not, but it needs to be up to them.

Courts should prioritise the cases involving children. Having delays can cause the child to feel scared and have anxiety, and this affects their schoolwork and their chances to have fun. If there has to be delays, then someone should explain why to the child. The child should be told directly and not through an adult. The child might be angry with the adult who has to tell them, when it is not their fault but the court's fault.

Court cases shouldn't be dismissed if children are involved because it takes lots of time and effort to keep going back to court. If cases are thrown out then children should be given an explanation and someone to talk to about the case and how it feels.

6. Vulnerable witnesses

Do not underestimate how unsafe children and young people can feel when they are in court having to talk about bad things that have happened to them or their mums. Children should not have to give their views in courts or hearings in front of lots of people and should not have to speak in front of their dad if their dad has been abusive. It is very scary for children and can make them very nervous. If they were in another room which is just for children, then they would feel more comfortable. This room

should be safe and confidential, and also designed with children and young people in mind. And they should know the person who is asking them questions. If children and young people have a support worker then the worker should be allowed to be there too. It's not just court rooms that can be scary – children shouldn't have to come out of the court building or the court room at the same time as their dads.

Solicitors shouldn't be able to call children liars. Also, it's hard to see your mum being treated badly by people in the court, and this shouldn't happen.

It's important that mums and children and young people hear about support services they can go to. They should be given this information right at the start.

7. Contact centres

Contact centres should definitely be regulated. We and other children and young people have had really scary experiences in them.

The buildings they are in should be safe for children. They shouldn't have to walk through the same entrance or exit at the same time as their dad. They should be suited for all ages. Young children should have toys and older children and young people should have rooms that are not boring.

The staff who work in contact centres should be trained in how to support and talk to children. They should have a lot of training on domestic abuse and how this affects the child and the mum. They should also have training on how to really listen to children – children know if they want to see someone or not. Contact centre staff should not be there to convince or bribe children to see their dads. The staff shouldn't let dads bring presents to the contact centre for their children. They should be working with all the family and not just one parent. And it should be up to the children if they want to have someone from the contact centre there or not when they see their dads. It would be good if children could bring someone else with them when they see their dad – this could be a family member, or a teacher or another adult they trust.

When the contact centres are inspected, the inspectors should speak to the children who use the centres to find out how they feel about them. There should be somewhere children or mums can complain to, and the contact centre have to respond to the complaint, not ignore it.

8. Enforcement of orders

If contact isn't happening in the way that it has been agreed, it's important that children and young people are asked about why this is the case. Courts don't do a good enough job of asking people about their thoughts on contact orders or on their safety.

13. Family Justice Modernisation Strategy / issues not covered by the Bill:

There should be more support for mothers and children who have experienced domestic abuse, both inside and outside courts. There should be someone that children and young people can speak to about what's happening to them.

Yello!
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