

JUSTICE COMMITTEE

CHILDREN (SCOTLAND) BILL

SUBMISSION FROM SCOTTISH WOMEN'S AID

Introduction

Scottish Women's Aid (SWA) is the lead organisation in Scotland working to end domestic abuse, playing a vital role in campaigning and lobbying for effective responses to domestic abuse. SWA is the umbrella organisation for 36 local Women's Aid organisations across Scotland; they provide practical and emotional support to women, children and young people who experience domestic abuse. The services offered by our members include crisis intervention, advocacy, counselling, outreach and follow-on support and temporary refuge accommodation.

Key points

SWA welcomes the opportunity to respond to the call for views on the Children (Scotland) Bill. We strongly support the Scottish Government's commitments to children's rights and to the reform of Family Law.

We are broadly in agreement with the general principles outlined by the Bill and we are pleased to note that it includes many of the recommendations made in our response to the consultation on Part One of the Children (Scotland) Act 1995. We do however feel that the Bill could be stronger on a number of areas which we have outlined in this response. Our key recommendations are:

- We recommend full embedding of the entitlements set out under the United Nations Convention on the Rights of the Child (UNCRC), in line with the Scottish Government's commitment to its incorporation into Scots Law, particularly in relation to implementing children's participation rights and the protection of children's confidential information
- The UNCRC sets out the *minimum* entitlements and freedoms for children that should be respected by governments. We believe this Bill presents an opportunity for Scotland to further build on the provisions outlined in the UNCRC, becoming a world leader in adopting a children's rights-based approach in the justice system
- Mechanisms for feedback and redress must be included in the Bill and the relevant processes clearly communicated to children and young people
- Protection for women, children and young people who have experienced domestic abuse requires professionals in civil court settings and contact centres take a Safe and Together approach to ensure that adult and child victims are safe, supported and able to begin their recovery. This must be reflected in the training provisions made by the Bill
- Strengthening and extending the Bill's provisions on vulnerable witnesses in civil proceedings is needed to provide adequate protection for women who have experienced domestic abuse

- In order to ensure that children and young people who have experienced domestic abuse have access to support and advocacy workers that they know and trust, we would strongly welcome greater recognition and inclusion of the expertise of Women's Aid workers in civil court proceedings
- Monitoring and review of the Bill's implementation is required to ensure that children's rights are realised in practice

Our response has been informed by the expertise of the Women's Aid network, work undertaken with survivors and Women's Aid workers in relation to a feasibility study on the regulation of contact centres carried out by the Care Inspectorate in autumn 2019 (Appendix 1) and YELLO!, our Young Expert Group of CYP aged 12-18 years in SWA's Improving Justice in Child Contact project, who have also submitted their own response to the Bill (Appendix 2).

1. Voice of the child

We welcome the removal of the presumption that a child aged 12 or over is of sufficient age and maturity to form a view (Sections 1-3), as this has historically resulted in children younger than 12 not being asked for their views on the matters that affect them. However, the wording of the amendments proposed by the Bill to the Children (Scotland) Act 1995, the Adoption and Children (Scotland) Act 2007, and the Children's Hearings (Scotland) Act 2011, does not in our view place enough of a duty on the courts to ensure all children are able to give their views in a meaningful way, including their views being given due weight.

We support the call from the Children and Young People's Commissioner Scotland to include an explicit presumption in the Bill that all children are capable of forming a view. This is firmly stated in the key entitlements set out by the UN Committee on the Rights of the Child, in General Comments 2005 and 2009,¹ and thus would ensure that the Bill is strengthened in meeting one of its key policy aims of further compliance with the UNCRC in family court cases.. We believe that wording in the Bill should be amended to explicitly reflect this; rather than decision makers 'giving the child an opportunity' to share their views, they must 'ensure all children have the right to express their views and have those views taken into account' or words to that effect.

Provision currently included in the Bill regarding the 'due weight' requirement in Article 12 of the UNCRC² states that decision makers must have regard to children's views while 'taking into account the child's age and maturity'. The Bill and its accompanying memoranda do not clarify how a decision maker can assess a child's maturity, leaving this open to inconsistent practice. For children and young people, they have told us that they feel deeply disempowered when they are asked for their views and these are not taken into account, or the results aren't shared.³ Women's Aid workers have shared the detrimental impact of this on children and young people's recovery from

¹ UN Committee on the Rights of the Child (CRC), General comment No. 7 (2005): Implementing Child Rights in Early Childhood, 20 September 2006, CRC/C/GC/7/Rev.1 <https://www.refworld.org/docid/460bc5a62.html>;

UN Committee on the Rights of the Child (CRC), General comment No. 12 (2009): The right of the child to be heard, 20 July 2009, CRC/C/GC/12 <https://www.refworld.org/docid/4ae562c52.html>

² UN Committee on the Rights of the Child (CRC), General comment No. 12 (2009): The right of the child to be heard, 20 July 2009, CRC/C/GC/12 <https://www.refworld.org/docid/4ae562c52.html>

³ Appendix 2: YELLO! response to the call for views on the Children (Scotland) Bill

the abuse they have experienced.⁴ In order to ensure the Bill meets its policy aim of further compliance with the UNCRC, the issue of further consideration must be given to how children's views can best be given due weight in an effective, transparent and consistent manner,⁵ and this must be addressed clearly and deliberately in the Bill. Giving due weight to the views of children and young people must also include the provision of feedback to the child(ren) on how their views or wishes have influenced a decision.⁶ This should be a duty on the courts and must be reflected in the Bill and accompanying regulation.

To ensure that the assessments made of a child's capacity and maturity are as informed as possible by those who have established trusting relationships with them, the Bill should encourage courts to consult with professionals in close contact with the child. This could include teachers, Women's Aid children's advocates, and social workers with whom the children and young people have an established relationship.

Decision makers are also required to 'give the child an opportunity to express the child's views in a manner suitable to the child', with a number of options listed. In order to ensure children and young people are able to participate meaningfully, they must not only have the opportunity to be listened to but also space and time to discuss and reflect on their options.⁷ We believe that flexibility and creativity is key to ensuring that children are able to give their views, which is reflected in the Policy Memorandum (p.4) but something we have raised as requiring further financial provision in order to fully realise in our joint response with Children 1st to the call for views on the Bill's Financial Memorandum (Appendix 3). The Bill also does not outline what will happen if it is not possible for children and young people to give their views in their preferred way, which must be addressed.

Children and young people have been clear that they would like more opportunity to speak directly to sheriffs.⁸ We believe this must also be reflected in a corresponding commitment in the Bill for training for sheriffs in the dynamics of domestic abuse for children specifically and in methods for speaking directly to children and young people. We would happily work with officials to design and deliver this training. This is further reflected in our response to the Bill's Financial Memorandum (Appendix 3). Confidentiality and transparency in court systems on why children are asked for their views and who may see them is also an essential part of ensuring that children can give their views on the matters that affect them. We go into greater detail on this issue in our response to Q.2.

While the Bill is moving towards a positive position in terms of providing that children's views are to be taken, we are concerned that the Bill then goes on to create a loophole

⁴SWA (2018) Response to the consultation on Part One of the Children (Scotland) Act 1995

<https://womensaid.scot/wp-content/uploads/2018/09/1995-Act.pdf>

⁵ Daly, A. (2018) Children, Autonomy and the Courts: beyond the right to be heard. Leiden: Brill | Nijhoff

⁶ UN Committee on the Rights of the Child (CRC), General comment No. 12 (2009): The right of the child to be heard, 20 July 2009, CRC/C/GC/12, available at: <https://www.refworld.org/docid/4ae562c52.html>

⁷ Fitzgerald, R. and Graham, A. (2011) "'Something amazing i guess": Children's views on having a say about supervised contact', Australian Social Work, 64(4), pp. 487–501

⁸ SWA and Children and Young People's Commissioner Scotland (2017) Power Up/Power Down

<https://womensaid.scot/project/power-up-power-down/>; Appendix 2: YELLO! response to the call for views on the Children (Scotland) Bill

that effectively excuses the various bodies and parties charged with obtaining children's views, including courts and parents, from having to actually undertake that task. None of these parties is required to either give the child an opportunity to express their views, or have regard to them, if "...*satisfied that the child is not capable of forming a view.*" There is nothing in the Bill setting out how this conclusion would be proven or tested, which must be addressed.

In order to achieve the minimum standard of compliance with the UNCRC, the Bill must be amended to include provision for a system of redress which ensures that children and young people are able to raise concerns and feedback on, and challenge, decisions made by the courts. Children and young people have advised us that they must be able to do this for as long as is required after a contact or residence order has been made.⁹ We also strongly support calls for provision in the Bill for the monitoring and review of the implementation of the Bill by the Scottish Government and the Scottish Parliament.¹⁰

The removal of the 'age threshold', must be consistent across this Bill in order to avoid confusion or subconscious bias where age is a consideration; specifically, this means also removing the age presumption from Section 11ZB(4), introduced by section 1(4) of the Bill, in relation to legal representation for children. This is particularly important as we know that children and young people supported by Women's Aid often experience difficulties in obtaining legal representation due to solicitors refusing to take their cases on, particularly if the child is accessing Legal Aid – which in turn is incredibly difficult to access for numerous reasons. This inaccessibility is further compounded by poor access to solicitors, specifically those who are informed and aware of domestic abuse, in rural parts of Scotland. Removing the presumption of children of 12 years and over having the capacity to appoint legal representation will at least go some way in lifting the age-related barrier to children's right to access legal representation. Consistency must also be sought in amending some of the concerning language in the accompanying Financial Memorandum relating to very young children 'not being capable of forming a view' (para 51); we have gone into further detail on this in our response to the Memorandum (Appendix 3).

2. Child's best interests

Consideration of whether the Bill meets 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 is threaded throughout our response. We will take the opportunity in responding to this question to highlight a particular issue in relation to the best interests of the child: confidentiality of their information.

Young people have stressed the importance of maintaining their confidentiality within and outwith the courts, highlighting how difficult it is to share the impact of domestic abuse without knowing where and how these views will be shared, and crucially, with who.¹¹ Confidentiality of children and young people's information has been addressed in the Family Justice Modernisation Strategy, with guidance planned for family law

⁹ Appendix 2: YELLO! response to the call for views on the Children (Scotland) Bill

¹⁰ Please see response to this call for views submitted by Professor Kay Tisdall, Dr Fiona Morrison and Dr Ruth Friskney (University of Edinburgh and University of Stirling)

¹¹ Ibid.

practitioners reiterating that the best interests of the child should be a primary consideration when disclosing confidential documents (par 6.18). Young people have been clear that guidance will not sufficiently protect their anonymity.

We therefore strongly support the call from Children 1st for an amendment to the Bill ensuring that the court should only grant an order requiring the disclosure of information relating to a child in receipt of a support service where the benefits to the child's wellbeing of disclosing the information/documentation outweighs any adverse effects to their wellbeing.¹² A thorough assessment of whether it is in the best interests of the child to do so must be carried out, and the child must be given the opportunity to express and have regarded their views about the disclosure. This must be included in the Bill in order to meet its key policy objective of ensuring the best interests of the child are at the centre of court cases, and to ensure that the Bill further incorporates compliance with the UNCRC under Article 16 (the child's right to privacy).

3. Child welfare reporters and curators ad litem

We are in agreement with the Bill's proposal to regulate child welfare reporters and curators ad litem.

The provision made in the Bill for four days training for each of these roles on subjects including domestic abuse, coercive control and report writing, is very welcome, but we would caution that training must be part of a wider implementation strategy required if the Bill is to achieve its objectives. Infrastructure that supports leadership, ongoing attention to quality of provision, data gathering that reflects gender and other protected characteristics, accountability systems that ensure that improvements in provision are sustained and expanded are all necessary elements of the package. We also believe that in order to provide the quality of service, knowledge and understanding required to ensure that children and young people are safe and supported in court, training on the Safe and Together approach (more information provided in our response to Q.4), trauma, child development, and complex needs should also be provided.

Finally, in order to ensure that children and young people across Scotland receive equal and fair access to regulated child welfare reporters, there must be careful consideration of their geographical spread and availability.

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

This Bill must have at its heart the protection of children and young people who have experienced domestic abuse. In line with Article 9 of the UNCRC,¹³ while consideration can be paid to the effect that an order will have on both parents' abilities to raise a child, the focus of this consideration should be on the child's best interests in having their parents involved in their raising, not on the wishes of either parent to be involved in the child's life.

¹² Please see response from Children 1st to the call for views on the Children (Scotland) Bill

¹³ Article 9, UNCRC <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>; 'I have a right to live with a family that cares about me' <https://www.cypcs.org.uk/rights/uncrcarticles/article-9>

We welcome orders that enable contact with both parents *when it is in the child's best interests*. In court processes, assessing what is in a child's best interests is crucially dependent on children being able to give their views (please see our response to Q.1.), on professionals working with best practice models in children's rights and wellbeing, and on a robust understanding of domestic abuse and coercive control. Domestic abuse is a factor in the majority of cases coming through the family courts,¹⁴ and we strongly oppose any assumption of shared parenting or involvement in children's lives in cases where a parent has been abusive. Indeed, even in cases where no domestic abuse is present, research indicates that if there is high conflict between parents then children are at risk of harm when contact is assumed to be in their best interests.¹⁵ We welcome the Bill's key policy objective of providing further protection for victims of domestic abuse, including children, and we feel that Section 12 of the Bill may be able to contribute substantially to that protection if applied in a way that is evidence-based and truly has children's best interests at heart.

In order to achieve the best outcomes in the civil courts for children and young people who have experienced domestic abuse, it is crucial that all legal professionals in contact with the child(ren) take a Safe and Together approach.¹⁶ Safe and Together is an internationally recognised model of best practice in working with families where one of the parents is a perpetrator of domestic abuse. The model recognises perpetration of domestic abuse by a parent as a parenting choice, calls for recognition of the full spectrum of harm caused by a perpetrator's abusive actions and advocates for partnering with the non-offending parent to ensure that children are safe, supported and able to begin their recovery.

The model also highlights gendered societal expectations of parenting and calls for fathers to be held to the same standards of parenting as mothers. This is crucial in the court's duty to consider the effect of an order on both parents' involvement in raising the child; careful consideration must be paid to the standards of parenting that the father has exhibited at all stages of the child's life when making contact orders. This is particularly useful in assessing whether fathers have a genuine interest in being involved in their child(ren)'s lives, or if seeking contact is actually a means of 'custody stalking',¹⁷ furthering abuse and control of the children and the mother. It is crucial that we move away from the notion that perpetrators of domestic abuse can be assumed to be good-enough parents unless particularised harm to children is demonstrated.

¹⁴ Mackay, K (2012) *The Child's Voice in Contact Disputes: Genuine Participation in Private Law Court Actions*. Lambert Academic Publishing. Saarbrücken, Germany.

¹⁵ Newis, P (2011) 'Shared Care in Separated Families: Building on what Works.' London: Gingerbread; Fehlberg B., Smyth B. et al (2011). 'Family Policy Briefing 7: Caring for children after parental separation: would legislation for shared parenting time help children?' University of Oxford, Department of Social Policy & Intervention; Trinder, L. 'Shared residence: A review of recent research evidence', *Child & Family Quarterly*, Vol 22, No. 4, pp. 475-498.

¹⁶ Safe and Together, <https://safeandtogetherinstitute.com/about-us/about-the-model/>, [Edinburgh Council \(2014\) Safe and Together Implementation Report, http://tiny.cc/xtr7fz](http://tiny.cc/xtr7fz)

¹⁷ Elizabeth, V. (2017) "Custody Stalking: A Mechanism of Coercively Controlling Mothers following Separation," *Feminist Legal Studies* 25, no. 2, 185

Contact arrangements that go against children's wishes are harmful to the child,¹⁸ to the child's relationship with the non-offending parent,¹⁹ and to the child's relationship with the offending parent. Contact orders that are made against children's wishes link to a poor relationship between the child and the father in later life.²⁰ When children wish to have contact with their father but their father does not wish to have contact with them, contact does not happen. However, when children who have experienced domestic abuse express a desire to not have contact with their father who does want contact, we know that they often are disbelieved, and their mothers accused of coaching them to express these views.²¹

We know that many courts operate from a default (but often implicit) assumption in favour of contact with both parents, despite Scotland's commitment to children's best interests as paramount. This default endangers children and mothers experiencing domestic abuse in a number of ways and must be challenged explicitly in the Bill and its accompanying memoranda. For example, paragraph 144 of the Policy Memorandum state that 'the Scottish Government believes that both parents should be fully involved in their child's life as long as this is in the child's best interests', is dangerously devoid of any recognition of domestic abuse or the impact it has on women, children and young people.

A related area in which women and children who have experienced domestic abuse can be endangered, which must also be explicitly challenged by the Bill, is allegations of parental alienation, or 'undue influencing' of the child by a parent. Allegations of parental alienation are often used against mothers as a tactic by perpetrators in contact cases to deny, minimise or counter abuse allegations. This ultimately silences the views of women, children and young people who have experienced domestic abuse; research shows that women are advised by solicitors to not disclose the domestic abuse they and their children experienced in court because of the risk of being accused of parental alienation by the perpetrator.²² Allegations of parental alienation are unsupported by empirical evidence.²³ Indeed, research with adults who experienced court-ordered contact as children shows no evidence of contact being resisted based entirely on pressure from their resident mothers; rather this was due to the child's own reasoning, often in response to the non-resident parent's behaviour.²⁴ Any concern regarding children sharing views that are not their own would be mitigated by them having access to and establishing trusting relationships with trusted support and advocacy workers (further information in our response to Q.13), and in having the

¹⁸ SWA (2018) Response to the consultation on Part One of the Children (Scotland) Act 1995, Q.24

<https://womensaid.scot/wp-content/uploads/2018/09/1995-Act.pdf>

¹⁹ Humphreys, C. and Thiara, R. (2015) 'Absent presence: The ongoing impact of men's violence on the mother-child relationship', *Child and Family Social Work*, 1-9.

²⁰ Daly, A. (2018) *Children, Autonomy and the Courts: beyond the right to be heard*. Leiden: Brill | Nijhoff

²¹ Harrison, C. (2008). 'Implacably hostile or appropriately protective?: Women managing child contact in the context of domestic violence.' *Violence Against Women*, 14, 381-405; Holt, S. (2011) 'Domestic abuse and child contact: positioning children in the decision making process', *Child Care in Practice*, 17 (4), 327-346.

²² Lapierre, S. & Côté, I. (2016). 'Abused women and the threat of parental alienation: Shelter workers' perspectives'. *Children and Youth Services Review* 65, 120-126

²³ Doughty, J., Maxwell, N., & Slater, T. (2018) 'Review of research and case law on parental alienation.' Cardiff University: <http://tiny.cc/3ur7fz>

²⁴ Fortin, J., Hunt, J., & Scanlan, L. (2012). 'Taking a longer view of contact: The perspectives of young adults who experienced parental separation in their youth.' Brighton: Sussex Law School.

ability to raise concerns and feedback on contact arrangements after they have been made (further information in our responses to Q.1 and Q.8).

Children and young people who have experienced domestic abuse and those working on their behalf want to see clear risk assessment of the contact arrangements being ordered. Children and young people's views are currently not reflected in risk assessments related to domestic abuse carried out by Police Scotland or MARACs. Children and young people constantly experience and assess risk on their own terms, and they may not share these assessments with their mother in an effort to protect her from further harm or worry or for fear of retaliation from their abuser. Therefore, it is essential that risk is assessed with children and young people separately to the non-offending parent.

Children and young people have particularly stressed that courts must monitor the contact arrangements that are made, and as outlined in our response to Q.1, that it must be clearly communicated to them how they can redress or challenge a contact order when it is made or at any point afterwards.

We echo the above views in relation to contact with grandparents and siblings (i.e. we are in support of contact when in a child's best interests but a careful consideration is required in cases of domestic abuse), with further views on sibling contact addressed in our response to Q.9.

We are also concerned by the changes made by the Bill to Section 11 (7A) – (7E) of the Children (Scotland) Act 1995, which removes sections (7A)-(7C), situating them in a separate part of the legislation, in addition to re-wording parts of these sections. As the Committee will be aware, these subsections were introduced into the 1995 Act as amendments during the passage of the Family Law (Scotland) Act 2006. When the 2006 Act was introduced, it was Parliament's intention that Section 11(7A)-(7E) were read together and in sequence in order to best inform decisions made in relation to children who had experienced domestic abuse and contact arrangements. This was particularly relevant to the impact on women of forcing them to engage with domestic abuse perpetrators around contact, given the evidence on the extent of the perpetration of domestic abuse post-separation and how child contact decisions facilitated the continuation of such abuse. Section 11(7D) was created as part of this suite of amendments specifically to address this situation.

Therefore, the references to the court's duty to consider domestic abuse and the impact of this, as set out in 11 (7A)-(7C) are inextricably linked to 11 (7D), and these subsections cannot be split and separated, as the Bill proposes. We do not see a clear reason why this amendment has been made and believe it both frustrates the intention of Parliament in creating these sections to address a particular concern and could dilute the duty that the legislation imposes on the court to consider the impact of domestic abuse when making a contact or residence order.

5. Other requirements on the court

The explanation of decisions to children and young people (Section 15) is a welcome inclusion in the Bill but must be strengthened in order to ensure the best interests of the child are met. The Bill states that not all decisions will need to be communicated to the child – while this may be the case, it is our belief and one shared by the children

and young people that we work with that it is the children and young people affected who should set the limits on the amount of information they receive from the courts, rather than this being pre-emptively decided by adults. We do not believe this will necessarily result in increased costs or time allocation in explaining decisions, as it is likely that many children and young people will choose to receive minimal information. We also support the call for the amendment to the Children (Scotland) Act 1995, proposed through new section 11(E)(3)(a) and (b), as introduced by section 15(2) of the Bill, to be removed and replaced with recognition of a child's right to information under the UNCRC and a presumption that all children are capable of understanding.²⁵ We believe the Bill should be amended to reflect these points.

In regards to delays in court proceedings, we welcome the acknowledgement of the negative impact that this can have on the welfare of children and young people. We know that domestic abuse perpetrators habitually use the court system to further their control and abuse of their ex-partners and children,²⁶ and workers in the Women's Aid network have shared numerous stories of supporting children and young people through court cases that last for the duration of the children's childhood. We would however caution that in cases of domestic abuse, it is important that women are not penalised for challenging court decisions in relation to unsafe contact.

Children and young people who have experienced domestic abuse have shared with us that they feel it is also very important that women, children and young people are given as much information as possible about why delays to the court proceedings are occurring and the actions that courts are taking to mitigate these delays. We believe this should be included as a duty on the courts in the Bill.

6. Vulnerable witnesses

We welcome the provisions made in the Bill for the use of special measures to protect vulnerable witnesses in court (Section 4), in particular the provisions preventing a party from personally conducting their case in contact and residence cases and Children's Hearings court cases in certain circumstances, for example, where the witness is a victim or complainer of domestic abuse. However, we believe these must be more robust and that eligibility coverage should be extended, generally reflecting the protection afforded to victims of domestic abuse in criminal cases under the Victims and Witnesses (Scotland) Act 2014.

In terms of this Bill, firstly, the Vulnerable Witnesses (Scotland) Act 2004 is expanded by new sections 11A and 11B, which create new categories of 'deemed vulnerable witnesses' eligible for access to standard special measures when giving evidence in civil proceedings. These sections set separate and different eligibility criteria – 11A on the basis of the content of the 'statement of grounds' for Children's Hearing court

²⁵ Please see response to this call for views submitted by Professor Kay Tisdall, Dr Fiona Morrison and Dr Ruth Friskney (University of Edinburgh and University of Stirling)

²⁶ Miller, S.L. & Smolter, N.L. (2011) "Paper Abuse": When All Else Fails, Batterers Use Procedural Stalking," *Violence Against Women* 17, no. 5, 637; King, N.J. "Naming the Judicial Terrorist: An Exposé of an Abuser's Successful Use of a Judicial Proceeding for Continued Domestic Violence," *Tennessee Journal of Race, Gender & Social Justice* 1, no. 1 (2012) 153. ; Coy, M., Scott, E., Tweedale, R., & Perks, K., (2015) 'It's like going through the abuse again': domestic violence and women and children's (un)safety in private law contact proceedings, *Journal of Social Welfare and Family Law* , 37:1, 53-69

proceedings, and 11B, for civil court actions concerning orders under section 11, defines eligibility around the woman having certain protective orders in force and/or criminal proceedings/convictions in place against the perpetrator.

However, the eligibility criteria must be the same across both sets of civil court proceedings, in order to protect, as opposed to exclude, vulnerable women. Therefore, women seeking the use of special measures in relevant Children's Hearings court proceedings should also be "passporting" if they have a qualifying protective order or criminal proceedings against the perpetrator engaged. Similarly, women seeking use of special measures during section 11 proceedings should also be eligible if they have been protected in previous Children's Hearings court proceedings.

In addition, since we know that not all women can access protective orders or report domestic abuse to the police, we would want section 11B to also include wording to the effect that eligibility will also be conferred if the action involves allegations of domestic abuse under section 11 (7A)-(7E).

The Bill also creates completely new protections for parties to "non-evidential" proceedings such as Child Welfare Hearings who are currently excluded from accessing special measures in civil proceedings because vulnerable witnesses legislation currently excludes use of special measures in civil court "hearings" as opposed to formal proofs. Section 7 of the Bill seeks to create protection for these parties but there is no "passporting" qualification, unlike section 4 above, and the amendments propose that courts retain complete discretion as to whether or not they decide a woman is vulnerable. Women experiencing domestic abuse must be afforded protection when participating in any form of court proceedings or hearing and therefore, the "passporting" qualifications referred to above in relation to section 4 must be incorporated into section 7. Given that Child Welfare Hearings often precede formal proofs, it is unacceptable that a woman experiencing domestic abuse would be protected in a proof but not in a Child Welfare Hearing where she is obliged to be in closer proximity to the abuser.

Finally, provisions to protect vulnerable witnesses in court must extend beyond the court room. In order to protect women and children who have experienced domestic abuse there must be separate waiting areas and separate or staggered entrances, and these measures communicated clearly to women and children so that they know they will not encounter the perpetrator unexpectedly. In order to fully meet the Bill's policy aim of providing further protection for victims of domestic abuse, Section 4 must be extended to provide protection outside of the courtroom, and adequate financial provision must be made to ensure courts can enact these measures.

We are in support of the establishment of a register of solicitors as a measure to prohibit self-representation in court cases involving vulnerable witnesses. It is essential that solicitors on the register must have sound knowledge and experience of working with women and children affected by domestic abuse. We also believe that careful consideration must be made to the geographical spread of the solicitors on the register to ensure that cases in rural areas are not delayed due to a lack of availability of registered solicitors.

7. Contact centres

It is contact itself that must be scrutinised for safety, not the contact centre. If contact is unsafe for women and children, it should not happen, regardless of potential changes and regulation relating to contact centres.

Further, we wish to highlight that if contact is safe, parents and children may prefer to use other local child-friendly spaces than travel to a contact centre. We are concerned that investing large amounts of public money in contact centres will incentivise the use of an industry that in itself is unaccountable to the women and children at risk of unsafe contact arrangements. Contact centres, no matter how comfortable and safe they are, should not exist to facilitate contact which in itself is unsafe for women and children.

For those experiencing domestic abuse, the safety of contact centres is much more to do with the ability of women, children and young people to be able to share their views regarding contact arrangements, and to have these views listened to and acted upon, than it is to do with the physical premises. This includes allowing time and space for children to express their views about contact arrangements and, crucially, to be able to change their minds if they wish.

SWA was approached by the Care Inspectorate in September 2019 to provide views from women, children, and Women's Aid workers on the regulation of contact centres in order to inform a feasibility study commissioned by the Scottish Government. The findings from this work and the recommendations relating to provisions made in the Children (Scotland) Bill are available in a summary of the findings in Appendix 1. Some top-level recommendations include:

- Increased provision for training for contact centre staff on the dynamics of domestic abuse and in taking trauma-informed and child-centred approaches
- Improved risk assessment, monitoring and reviewing of contact taking place in contact centres
- Improvements to the physical environments of contact centres to increase the safety, comfort and enjoyment of women and children

We believe that if solicitors make referrals to contact centres, they should also have a duty to refer only to regulated centres, in order to ensure consistent practice and quality of provision. We do not feel that the inclusion of solicitors being 'encouraged' to refer to regulated centres in the Family Justice Modernisation Strategy is sufficient, and believe that it should be included in the Bill.

We go into further detail on our views of financial provision to contact centres in our response to the Financial Memorandum (Appendix 3).

8. Enforcement of orders

The provision regarding investigation into non-compliance with contact orders (Section 16) is one which we feel could go some way in meeting one of the Bill's key policy aims of further protecting victims of domestic abuse. Orders that reflect the consensus of mother and child of what is in their best interests will normally be followed, even in

cases where they have experienced domestic abuse.²⁷ When women do not comply with contact orders, they are labelled as deliberately obstructive or ‘hostile’.²⁸ However, in the vast majority of cases, women and children who have experienced domestic abuse who do not comply with court-ordered contact do so for good reason: they fear for their safety. We believe that investigation into non-compliance could help to highlight unsafe contact arrangements and protect victims of domestic abuse if the investigation is carried out by professionals who understand the dynamics of domestic abuse, coercive control, and the effects of trauma.

Investigations into non-compliance with contact orders should effectively review whether a contact order should have been made in the first place. The investigation must place the views and best interests of children and young people at their centre. The Bill currently states that a Child Welfare Reporter may be appointed in investigating non-compliance. Whether it is a Child Welfare Reporter or another relevant professional, we believe that an investigation must *always* seek the views of the child(ren) involved, and that the wording in this section should be amended to reflect this. This is particularly important in the context of so many children and young people in Scotland experiencing contact arrangements that do not even closely resemble their wishes.²⁹ If children’s and young people’s views are sought and acted upon, fewer unsafe contact arrangements will be made, and rates of non-compliance with contact orders will drop. Please see our response to Qs.1 and 4 for further information.

A related issue is the fact that the Bill as it stands includes little to no provision regarding mechanisms for children and young people to seek redress for poor decisions made, to appeal the content of child welfare reports, or to flag concerns about contact orders that have been made. The ability to feed back and challenge decisions is central to the meaningful participation of children and young people; this must be incorporated into the Bill if it is to truly achieve its key policy objective of ensuring the views of the child are heard in contact and residence cases.

9. Contact with siblings

We recognise that sibling relationships are often an important protective factor in the lives of children and young people and commend the work that Stand Up for Siblings has done to draw attention to this issue in recent years. However, we know that in cases of domestic abuse, perpetrators may use the opportunity of a sibling applying for contact as means to continue the abuse of another child and/or their non-abusing parent, and thus it is important to stress that sibling contact must be carefully assessed

²⁷ Hunt, J., & Macleod, A. (2008). ‘Outcomes of applications to court for contact orders after parental separation or divorce’. London: Ministry of Justice; Thiara, R. and Gill, A. (2012) ‘Domestic Violence, Child Contact and Post Separation Violence: Issues for South Asian and African Caribbean Women and Children; A Report of Findings’, London, NSPCC; Morrison, F. (2015) ‘All over now?’ The ongoing relational consequences of domestic abuse through children’s contact arrangements’, *Child Abuse Review*, 24 (4), 274-284.

²⁸ Harrison, C. (2006). ‘Damned if you do and damned if you don’t? The contradictions between public and private law.’ In C. Humphreys, & N. Stanley (Eds.), *Domestic violence and child protection: Directions for good practice* (pp. 137–155). London: Jessica Kingsley

²⁹ McKay, K. (2013) ‘The treatment of the views of children in private law child contact disputes where there is a history of domestic abuse’: <https://www.cypcs.org.uk/ufiles/views-of-childrenand-domestic-abuse.pdf>

by the courts and by local authorities to ensure it is in the best interests of the child(ren).

In order to provide better protection for the best interests of the child and better access for children to relationships and contact with their siblings in cases where it is in their best interests, we recommend two changes in wording in the Bill. The first change should reflect that children have a *right* to contact with their sibling, and that local authorities have a duty to inform them of this right, rather than a requirement to 'promote', and the second should reflect that contact between siblings must also be in the child's best interests, rather than simply the current wording of 'practicable and appropriate'. We also support the call made by the Children and Young People's Commissioner Scotland for removal of the wording of 'whether of the half blood or of the whole blood' in Section 10 (2)(a)(b) of the Bill as this does not reflect how children and young people understand their lives.³⁰

Women's Aid groups recommend that guidance is created for local authorities outlining children's rights to contact with siblings and how local authorities can facilitate this in a way that reflects the child(ren)'s wishes and best interests, with particular consideration to the dynamics of domestic abuse.

10. Births registered outwith the UK

We do not oppose these provisions in principle but urge careful scrutiny in assessing which jurisdictions and processes can be considered to be sufficiently similar to the obtaining of parental rights and responsibilities in Scotland. As outlined in our response to the consultation on the 1995 Act, the proposed regulations must assess whether the processes elsewhere reflect women and children's human rights, meet the best interests and welfare tests, take the views of children/involvement in decision making into account when dealing with PRR issues and cover a comparable age range of what is defined as a child.³¹ We would welcome further information on this provision regarding what is proposed to be included in regulations and the process for assessing this.

On a related note, we note that Section 20 of the Bill extends enforcement powers of contact to sheriffs under the Family Law Act 1986. Enforcement of child contact from other jurisdictions is only appropriate if the same considerations regarding the welfare of the child and their safety that exist in Scots Law have been enacted in the granting of these orders. If women have not been afforded the opportunity to participate in proceedings where orders have been made against them as they would under Scots Law then enforcing them in Scotland is wholly unacceptable.

11. Children's Hearings

We welcome the provisions made in relation to the voice of the child and protecting vulnerable witnesses in Children's Hearings and have commented on them in further detail elsewhere in this response. In addition, we support the provision in the Bill that

³⁰ Please see response to this call for views by the Children and Young People's Commissioner Scotland

³¹ SWA (2018) Response to the consultation on Part One of the Children (Scotland) Act 1995, Q.22

<https://womensaid.scot/wp-content/uploads/2018/09/1995-Act.pdf>

allows the Principal Reporter in a Children's Hearing to appeal the sheriff's decision of deemed relevant person status.

A further comment made by the network in relation to improvements needed in Children's Hearings is that often children and young people are dismissed from the Hearings due to the environment being deemed unsuitable – for instance, a parent behaving hostilely or a discussion with sensitive content occurring. It is important that efforts are directed at mitigating the impact of the conduct or the content on the children and young people involved rather than dismissing them, for instance through clearly explaining the processes to the child(ren) in question, providing the child with support, and challenging hostility. If necessary to dismiss children and young people from Hearings, the reasons and how the decision was arrived at must be clearly explained to them prior to dismissal. Otherwise, as outlined in our response to Q.1, this will result in children and young people feeling disempowered and disregarded in the process

12. Practical, financial or other impacts of the Bill

Please see our response to the call for views on the Bill's Financial Memorandum (Appendix 3) for our views on financial impacts and practical impacts related to training. We would like to raise the additional point that it is unclear how the amount of training proposed for child welfare reporters, curators ad litem, and contact centre staff (four days annually) has been arrived at. A thorough assessment of training needs and wider infrastructure to ensure effective implementation (as outlined in our response to Q.3) is required.

We note that the proposed timescale will see the regulation of contact centres, child welfare reporters, curators ad litem and the register of solicitors operational by 2023. The issues identified and addressed by this Bill are in need of urgent attention, and additional action is required in the interim between the Bill passing and these practical provisions being implemented in order to improve outcomes for women, children and young people. We believe that greater awareness, recognition and inclusion of support and advocacy workers in civil court processes would go some way in achieving this, as well as further embedding the key policy objectives set out by the Bill. Please see our response to Q.13 for more detail.

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

We have made comment on relevant areas of the Family Justice Modernisation Strategy at various points in this response, particularly in our call for greater legal protection for children's confidentiality in our response to Q.2. We would like to take the opportunity here to draw attention to an area that is not covered by the Bill, nor clearly addressed in terms of provision or timescales allocated in the Family Justice Modernisation Strategy.

A recommendation consistently made by children and young people in regards to their experiences in the justice system is the need for increased access to child support

and advocacy workers.³² This has been recognised by the Family Justice Modernisation Strategy (paras 2.20-2.24), which goes on to state that further work is required to ensure children who are in contact with more than one part of the justice system do not end up with multiple support workers as a result. While we agree that multiple support workers are unlikely to be in the best interests of the child, we believe that urgent action needs to be taken to ensure that the access that children do currently have to support and/or advocacy workers in the Women's Aid network is facilitated and supported by the legal system.

Awareness and recognition of the expertise and role of Women's Aid's Children Support and Advocacy workers in providing support to children and young people experiencing domestic abuse is very inconsistent in courts across Scotland. For example, we hear regularly reports that these professionals are not allowed to sit in as a support worker to children in Children's Hearings, despite this being clearly stated in child welfare reporter guidance as something that is permitted.³³

With some notable exceptions, Women's Aid workers are often not permitted to support or give evidence in support of children and young people in court. Sheriffs, child welfare reporters and solicitors across Scotland are inconsistent in their engagement with and often dismissive of workers' expertise. As outlined in our response to Q.12, we feel that greater recognition of and engagement with the support and advocacy networks that already exist for children and young people will result in improved outcomes, and further embed all policy aims of the Bill.

In other areas of the Family Justice Modernisation Strategy, we note the proposal for the making of regulations under section 102 of the Courts Reform (Scotland) Act 2014 allowing the Court of Session, the sheriff court or the Sheriff Appeal Court to make an order in relation to a person who has behaved in a vexatious manner in civil proceedings (para 4.26). While we are keen to ensure that perpetrators are prevented from using the civil law and justice systems as a mechanism to further abuse, we have concerns that women experiencing domestic abuse who challenge inappropriate and unsafe court decisions in order to protect their children will be in danger of being labelled vexatious. Careful consideration must be paid to ensure protection for victims of domestic abuse in the making of the regulations.

The Family Justice Modernisation Strategy also states that the Scottish Government proposes to submit policy papers to the next meeting of the Family Law Committee of the Scottish Civil Justice Council (SCJC) which will include discussion on ensuring the civil courts are provided with information on domestic abuse in actions under section 11 of the 1995 Act, and also on the implications of extending existing court rules in relation to mediation to all family and civil partnership actions, taking account of domestic abuse. It is crucial that the Scottish Government and SCJC fully engage with external stakeholders, particularly Scottish Women's Aid, in the formation of this important work.

³² SWA, University of Edinburgh, Rape Crisis Scotland, Barnardos and Scottish Youth Parliament (2018) Everyday Heroes Justice Report, Priority 3 <https://everydayheroes.sps.ed.ac.uk/wp-content/uploads/2018/11/everyday-heroes-briefing2-Justice.pdf>; SWA and Children and Young People's Commissioner Scotland (2017) Power Up/Power Down <https://womensaid.scot/project/power-up-power-down/>; Appendix 2: YELLO! response to the call for views on the Children (Scotland) Bill

³³ Instructions to Child Welfare Reporters (2016) p. 2 <https://www2.gov.scot/Resource/0049/00498005.pdf>

Scottish Women's Aid
15 November 2019

Appendix 1

Regulation of contact centres: recommendations from women and children who have experienced domestic abuse

'Everytime I spoke to the contact centre, it felt like I was walking on eggshells – just like I had to do with my ex-partner' - woman in contact centre focus group

Introduction

Scottish Women's Aid (SWA) is the lead organisation in Scotland working to end domestic abuse, playing a vital role in campaigning and lobbying for effective responses to domestic abuse. SWA is the umbrella organisation for 36 local Women's Aid organisations across Scotland; they provide practical and emotional support to women, children and young people who experience domestic abuse. The services offered by our members include crisis intervention, advocacy, counselling, outreach and follow-on support and temporary refuge accommodation.

SWA was approached by the Care Inspectorate in September 2019 to provide views from women, children, and Women's Aid workers, on the regulation of contact centres, in order to inform a feasibility study they have been commissioned by the Scottish Government to carry out. The Care Inspectorate have been commissioned to carry out the study as one of the potential regulatory bodies in Scotland who may be tasked with the regulation of contact centres, a proposed provision in the Children (Scotland) Bill which is expected to achieve royal assent in summer 2020.

Gathering of views

A survey was sent out to Women's Aid groups to gather workers' views on the experiences of the women and children they support in using contact centres. SWA facilitated a focus group of five women using a local Women's Aid service who had recent or ongoing experience of using contact centres to facilitate contact between their children and their abusive ex-partners. SWA also asked YELLO!, the Young Expert Group in the Improving Justice in Child Contact project, for their views on the regulation of contact centres.

All groups agreed that contact centres should be regulated. Discussions covered a wide range of issues, including contact centre staff and volunteers (including training and the views of children and young people), the physical environment of the contact centres, and the relationship between contact centres and the courts.

We have summarised the findings below.

Contact centre staff and volunteers

Training on domestic abuse and coercive control

'I don't want people on my side, I just want people to speak the truth' – woman in contact centre focus group

The Children (Scotland) Bill includes provision for four days training for contact centre staff and volunteers. Women, children and Women's Aid workers agreed that while this was a welcome provision, it is an insufficient amount to create the culture change that is required. They highlighted the importance of this training covering the dynamics of domestic abuse and coercive control (and specifically, its impact on children and young people), the impact of trauma, and how to take a child-centred approach in contact.

Women, children, and Women's Aid workers agreed that contact centre staff do not currently possess sufficient knowledge or understanding of domestic abuse and coercive control. Women described having their experiences of domestic abuse dismissed, minimised, or sometimes not acknowledged at all. Risk assessment processes were often non-existent, particularly for children and young people, and if they were carried out, women who had experienced domestic abuse often felt that there was an insufficient understanding of the impact of domestic abuse and how this affected their use of contact centres. Women reported harmful comments from staff and volunteers in contact centres, including 'it's hard to understand how you could have experienced all of this when you were pursuing a career and he was at home taking care of the children', and 'it's difficult for [the child's] dad as he has to travel so far to get here'. Women also reported a lack of understanding of the impact of domestic abuse on their children, with comments made by staff implying that if domestic abuse had happened, it had happened 'in the past' and 'only to them', not their child(ren).

Women, children and young people raised experiences they have had of perpetrators of domestic abuse bringing presents for the child to the contact centre, and despite this being forbidden in the contact centre's policy, staff and volunteers allowing the gifts to be given to the child. This demonstrates a lack of understanding of the dynamics of domestic abuse and characteristically manipulative tactics often used by perpetrators.

Women shared examples of being told they were being 'deliberately hostile' or 'obstructive' to contact by staff at contact centres because they expressed concern over their children's welfare and behaviour before or after contact, and as a result, feeling unable to voice legitimate concerns about how they and their children were being treated or about the behaviour of staff.

Views of children and young people

Women and children had experience of contact centre staff and volunteers prioritising the wishes of the non-resident parent over that of the child, with children unwilling to meet their dad being enticed by staff using toys or sweets, or children being visibly very upset for the duration of contact. Women shared how damaging these experiences have been to their relationship with their children, resulting in their children saying 'you are not listening to me, no one is listening to me', and asking their mothers if they love them. Children and young people felt strongly that staff shouldn't try and convince or persuade the children to see their dad.

Children and young people highlighted the need for children's views to be asked for, and heard, by the people working in the contact centre. They felt there should be specific training for staff and volunteers on listening to children and young people, and

giving their views due weight. They felt it would be helpful to be able to bring someone they trusted into contact with their dad if they were worried about it; this could be another family member, a support worker, or another trusted adult like a teacher.

Recommendations:

- Staff in contact centres to follow a Safe and Together™ approach when facilitating contact in families where a parent has been abusive
- Increased provision of training for contact centre staff and volunteers on issues relating to dynamics of domestic abuse and coercive control, its impact on children and young people, the impact of trauma on women and children who have experienced domestic abuse, and how to take a child-centred approach in contact
- Training should be robust and carried out by experts after a training-needs assessment. Basic training in domestic abuse and coercive control does not mean that staff should feel qualified to ‘mediate’ between parents. This is potentially extremely harmful for all involved
- Training is not the only element required to ensure that staff and volunteers in contact centres are better equipped to understand the dynamics of domestic abuse; feedback mechanisms for women, children and young people, infrastructure that supports leadership, ongoing attention to quality of provision, and accountability systems that ensure that improvements in provision are sustained and expanded are also required
- Women and children must be involved in thorough risk assessment of the contact taking place, with assessment occurring prior to contact and monitored throughout
- Clear monitoring processes for contact communicated to those using contact centres, with regular reviews carried out of the contact arrangement consulting with all involved
- Contact centre staff must identify, intervene and cut contact short if they feel the child is distressed
- Support sessions prior to children and young people attending the centre, where they have the opportunity to meet workers at the centre and see the room where contact will take place
- Better info to women, children and young people on what to expect in using a contact centre, communicated in advance of first visit
- Clear and child-friendly complaint policies and procedures

Physical environment

‘How can seeing your perpetrator be in any way positive?’ - woman in contact centre focus group

The Children (Scotland) Bill includes financial provision for improvements to contact centre buildings.

Women, children and Women's Aid workers all recommended that major improvements be made to the physical environment of contact centres to better facilitate contact, and to ensure the safety of women and children. Women highlighted the need for CCTV in and outside the centre which is accessible to those using the contact centres for use in court if needed, separate entrances to the centre, and separate waiting areas (and not 'safe rooms' that women are put in while perpetrators of domestic abuse have unrestricted use of the rest of the space). Workers in Women's Aid groups in rural areas also highlighted the fact that women and children using public transport to get to contact centres would often have to use the same bus or train as their perpetrator.

On a related note, Island-based Women's Aid groups have also raised that additional provision needs to be made for those living in island or rural communities without access to a contact centre. The Islands Communities Screening Assessment of the Children (Scotland) Bill states that those in island communities travel to access contact centres on the mainland, and that this is not expected to change (par.23). Very few women can travel to the mainland to use contact centres, with contact often happening in spaces that will not be regulated, or at home, instead. It is not reasonable nor in line with children's rights or best interests to expect children to have to travel a long distance to contact centres. One Women's Aid group recommended a model where trained contact centre staff are able to provide mobile contact spaces across island communities in community centres or other suitable spaces.

Children and young people highlighted that often, contact centre buildings can be 'boring', and not places that feel very fun or natural to be in. They felt that having more activities, and age-specific areas in contact centres to reflect different interests and abilities, would make it easier to have fun and to interact with their non-resident parent.

Recommendations:

- Better geographical provision of contact centres, or alternative flexible arrangements where staff from contact centres could come to other agreed buildings, to cut down on travel time and disruption for children and young people
- CCTV in and outside contact centres which can be used by those using contact centres as evidence in court
- Separate entrances and waiting areas (which do not serve to restrict the space of women who have experienced domestic abuse)
- Staggered arrival and leaving times facilitated by contact centre staff
- Improvements to how child-friendly spaces are; better provision of toys and activities for different age groups

The relationship between contact centres and the courts

'You escape an abusive partner and then you are abused by the system' - woman in contact centre focus group

There is very little contact between criminal and civil court proceedings, and women raised examples of court orders made by civil court being enforced during criminal proceedings in a way that is dangerous and unethical. One woman shared her experience of being threatened with a charge of contempt of court by a Sheriff for refusing to facilitate contact between her son and ex-partner while her ex-partner was indicted on criminal charges of sexual abuse against her other children. Only when he was found guilty and sentenced to nine years in prison did attempted enforcement of the order cease.

Women raised concerns about the content of reports from contact centres to the courts. Several women in the focus group shared examples of staff in contact centres raising concerns with the mother about the child's happiness with the contact arrangement, which was then however not reflected in reports made by the centre to the Sheriff about the quality of contact. Women also raised that reports that are written and submitted to court are not able to be amended; this is particularly problematic when women only see the content of the report after it has been submitted. Multiple Women's Aid workers and women in the focus group shared examples of notes on contact being written up in centres by someone who did not supervise the contact

One woman commented that 'it felt that the contact centre was a place where my perpetrator can win the child back', and that it felt as if the perpetrator has to do very little in order for contact to eventually move to unsupervised, often without any consultation with the child(ren) in question. Another woman shared that the contact centre she had been using wrote a letter to court in support of her abusive ex-partner when she attempted to move contact to a different centre based on concerns she had for how staff were treating her children.

Children and young people advised that it should be up to the child is contact is supervised or unsupervised, and if contact should move out of a contact centre.

Recommendations

- Contact should cease with immediate effect and be reviewed if circumstances change, particularly in relation to criminal charges being made
- Regular reviews of contact and regular seeking of views of CYP on their experiences
- Reports to court made available to parents and children in order to allow for feedback
- Processes clearly communicated to women and children on how to dispute or amend content of reports made by contact centre to courts
- Contact centre staff with a thorough understanding of the dynamics of domestic abuse must flag issues or report back on the contact they have seen to the courts or other relevant professionals

Appendix 2

Introduction

We are YELLO!, the young expert group in the Improving Justice (IJCC) in Child Contact project³⁴, 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 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

³⁴ Improving Justice in Child Contact Project <https://www.ed.ac.uk/education/rke/centres-groups/childhood-and-youth-studies-research-group/research/ijcc>

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.

Appendix 3

Call for views: Financial Memorandum, Children (Scotland) Bill

Children 1st and Scottish Women's Aid warmly welcome the introduction of the Children (Scotland) Bill, and in particular the measures to ensure that children's voices are better heard and that their views are better reflected throughout the civil court process. We have jointly responded to this call for views on the Financial Memorandum to highlight our support for these important changes which, if fully resourced, can make a significant difference to the way children experience the civil justice system.

The Children (Scotland) Bill presents an opportunity to integrate a children's rights-based approach into the Scottish justice system, in line with the upcoming incorporation of the United Nations Convention on the Rights of the Child (UNCRC) into Scots Law and the principles of the Scottish Government's Equally Safe strategy. We encourage the Finance and Constitution Committee to take a rights-based approach to budgeting and resourcing these important provisions.

1. Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

Both Scottish Women's Aid and Children 1st submitted responses to the consultation on the review of Part 1 of the Children (Scotland) Act 1995 and the creation of a Family Justice Modernisation Strategy. Comments on financial assumptions were made in relation to a number of areas, including the banning of self-representation in cases concerning contact and residence, providing special measures for vulnerable witnesses, and domestic abuse risk assessments.

We were also clear that there must be adequate training and resource put in place to ensure that the ambition for children's voices to be heard more clearly through the civil courts and Children's Hearings is realised. We highlighted in our responses the significant skill required to work with children of all ages to develop a strong, trusting relationship and share children's views in a way that reflects their thoughts and feelings.

2. If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?

Our comments are not directly referred to in the Financial Memorandum. The areas where we specifically suggested that additional funding would be required have been allocated some funding. Please refer to our comments in answer to question 5 relating to the specific details.

3. Did you have sufficient time to contribute to the consultation exercise?

Our organisations expressed some initial concerns about the breadth and depth of the initial consultation exercise and the timeframe in this regard. We are aware that some issues—such as support workers—will be examined in further detail outwith this Bill and anticipate that other areas covered in the Family Justice Modernisation Strategy will be consulted on further. We consider that we had sufficient time to respond to the consultation on the Bill.

4. If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.

Please refer to our comments in answer to question 5.

5. Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

Children 1st and Scottish Women's Aid highlight the following provisions included in the Children (Scotland) Bill, which must be implemented with the maximum possible resources, in line with Article 4 of the UNCRC which states that state parties should undertake measures to implement rights to 'the maximum extent of their available resources'. We go into detail on how this implementation might look in specific areas of the Bill, below.

Child Welfare Reporters

Children 1st and Scottish Women's Aid have warmly welcomed the intention by the Scottish Government to establish a register of Child Welfare Reporters. Given the vital role that a Child Welfare Reporter can play in the civil court process we consider it important that Reporters are fully trained in child development and communication, trauma and domestic abuse and that reports are consistent across Scotland so that there is not a postcode lottery of provision. We also welcome measures to ensure that the cost of Child Welfare Reporters will no longer be met by the parties involved.

We are pleased that the Financial Memorandum specifically refers to the experience of the Safeguarders Panel for the Children's Hearings, which is currently run by Children 1st. We consider it important to learn the lessons from setting up the Panel, and the length of time it took to establish processes and procedures to streamline practice for Safeguarders. The cost of undertaking this exercise should not be underestimated, in order to ensure high quality reports, which accurately reflect the views of the children involved are delivered. In particular, Child Welfare Reporters must be supported to understand domestic abuse and dynamics between parents and children in order to ensure that children and young people are asked for their views in a way which is empowering, supported and child-centred.

Our understanding is that Child Welfare Reporters will also undertake new responsibilities identified in the Bill with respect to explaining decisions to a child and establishing why an order has not been complied with. We are pleased that some resource has been attached to these additional functions within the Financial Memorandum but would encourage the Scottish Government to consider whether enough resource has been attached once these processes have begun. In our experience, additional resource is often required to safeguard the quality of the work, especially in the initial few months of exercising a new function. Even though the Scottish Government do not currently anticipate an increase in demand for Child Welfare Reports (par.40), given that it is expected that more children will be asked their views through these provisions, this may need to be reviewed at a later date.

We note that the Financial Memorandum states that if it is more cost effective to keep the register for Child Welfare Reporters in-house, they will do this, as opposed to outsourcing it (par.33). We believe that in line with meeting Article 4 of the UNCRC,

capacity and quality must be the primary concerns in deciding where maintenance of the register sits, rather than cost.

Ensuring the views of children are heard

The Bill sets out provisions to improve children and young people's participation, particularly in Sections 1-3 (Regard to be had to child's views), Section 15 (Explanation of decisions to the child) and Section 16 (Failure to obey order).

The Policy Memorandum of the Bill states (Pg 5) that: "The policy intention is for all children who are capable and wish to do so to be able to give their views, including in family court cases, Children's Hearings, exclusion order proceedings, permanence and adoption cases," and that "by not specifying an age limit, the Scottish Government is aiming to ensure that there is no barrier to younger children who are capable and wish to do so expressing their views" (par. 28). It goes on to say (Pg 6) that "the policy is for the views of the child to be expressed *in a manner suitable to the child*. This would require the individual or organisation obtaining the views to consider a range of options on how this is done, including speaking directly to the decision maker, by completing a form, or through submitting a drawing, or letter."

Our organisations recognise that the Financial Memorandum includes resource relating to Child Welfare Reporters and some associated costs relating to children speaking directly to the Court, with respect to these provisions. However, we are concerned that further resource has not been attached outwith these areas to the extent of the flexibility envisioned in the Policy Memorandum and we believe that the Bill provides scope for more meaningful and innovative engagement with children. Indeed, the Financial Memorandum recognises that "different ways of communicating with children would cost different amounts" (par.82) but it then does not further discuss these different ways and potential cost implications.

It is clear that in many cases the production of a Child Welfare Report or talking directly to the Sheriff will be the preferred way for children to give their views, and we welcome allocated resources outlined in the Financial Memorandum. However, as stated in the Policy Memorandum, there are a range of alternative methods which may be suitable for the child to express their views- including consideration of digital developments as stated on Page 4. In line with the removal of the presumption of children of 12 and over the capacity to give their views, we think it is important to explore with the Courts the financial impact that it may have if more children, particularly younger children, are provided with meaningful opportunities to decide how to participate and engage, in line with article 12 of the UNCRC.

We are concerned that despite the stated intention in the Policy Memorandum that the Scottish Government is aiming to ensure that there is no barrier to younger children who are capable and wish to do so expressing their views (par. 28), the Financial Memorandum says: "The views of children aged 12 or over are already being taken **and the views of the youngest children would not be taken as they would not be capable of forming a view**" (par.51). As a result, the Scottish Government has calculated that the number of Child Welfare Reports would be lower than the total number of cases.

However, our experience—in line with the recommendations from the UN Committee on the Rights of the Child—is that, with the help of skilled and experienced workers, it is possible for even very young children to express whether they would like to

establish, build or maintain a relationship with important people in their lives. The UN Committee on the Rights of the Child (General Comments from 2005 & 2009) have very clearly stated that all children should be presumed capable of giving their views.

Examples from our own services include drawing pictures, writing letters and using tools such as Kitbag or art therapy to allow a child to express their feelings and thoughts. We also know that children can express a great deal through non-verbal communication and body language, and our workers have shared with us the skill that is required in order to understand what children are communicating through means other than talking.

It is important, therefore, that maximum provision is allocated with the aim of ensuring that *all* children are supported to give their views in *all* matters that affect them in a way that is appropriate and in line with their wishes. This includes ensuring there is enough resource both for Child Welfare Reporters and for other means by which it may be appropriate for children to share their views. For instance, we believe that an investigation into failure to obey an order (Section 16) should always seek the views of the child(ren) involved—if they wish to give their views—and that adequate provision should be allocated to ensure that a Child Welfare Reporter can be appointed if required in every case that this occurs.

We are also clear the participation of children and young people should not be limited by the cost of the method. Effective participation will inevitably incur costs, and the central focus should be on taking a rights-based approach rather than a cost-saving exercise. We are aware that some methods may incur higher costs and we consider it important that decisions are made based on best interests rather than costs, so that there is not inconsistency in practice depending on available resource.

Additionally, par.79 of the Financial Memorandum sets out resources to enact the duty in the Bill to consider the best way of obtaining a child's views. It states that this cost would be £100 per case and it is not clear to Children 1st and Scottish Women's Aid how that figure has been arrived at. This section goes on to repeat the assertion that very young children are incapable of communicating their views—however we would suggest that even in cases involving very young children the duty would still apply and the Court would still be required to consider a way that may be suitable to obtain their views.

In order to fully operationalise the aims of the Bill as set out in the Policy Memorandum we must take a child-centred and rights-based approach and ensure that budgets are fully reflective of the variety of ways in which it may be appropriate for children to share their views with the Courts safely.

Contact arrangements

Children 1st and Scottish Women's Aid welcome the recognition that improvements must be made to the quality of contact arrangements and infrastructure that makes these arrangements possible in Scotland. Before commenting on the financial provision in the Financial Memorandum, we feel it is important to stress that it is the contact itself that must initially be scrutinised for safety, not the contact centre. If contact is unsafe for women and children, it should not happen, regardless of potential changes and regulation relating to contact centres.

Further, Scottish Women's Aid wish to highlight that if contact is safe, parents and children may prefer to use other local child-friendly spaces than travel to a contact centre. Scottish Women's Aid is concerned that investing significant sums in bricks and mortar will incentivise unsafe contact by creating options paid for by the public pound but not accountable to the women and children ordered to use them by Courts. Scottish Women's Aid would encourage the Finance and Constitution Committee to read the following section on contact centres bearing this in mind.

Contact centres

For those experiencing domestic abuse, the safety of contact centres is much more to do with the ability of women, children and young people to be able to share their views regarding contact arrangements, and to have these views listened to and acted upon, than it is to do with the physical premises. This includes allowing time and space for children to express their views about contact arrangements and, crucially, to be able to change their minds if they wish. Scottish Women's Aid go into further depth on this in their response to the Bill's call for views.

However, we understand that contact centres can be a useful resource for some parents and children who may welcome the dedicated space and expertise of skilled and experienced staff. With that in mind, we make the following observations on the financial provisions allocated to the regulation of contact centres in the Financial Memorandum.

The Financial Memorandum takes the approach that the average one-off cost per contact centre of meeting the new accommodation standards will be between £10,000 and £50,000 (par. 112). However, it is unclear what these estimates have been based on. Feedback from women, children and young people who have used contact centres is that vast improvements must be made to the physical environment of contact centres, both in terms of the safety and the enjoyment and suitability of the space for children and young people.

As outlined in the Financial Memorandum, consultation on draft regulations and corresponding cost implications will be set out in due course, however we would caution that this may be an area that requires resource in addition to what has been initially set out. Again, financial provision for contact centres must be secondary to improvements made in court processes to ensure that unsafe contact arrangements are not made.

Island-based Women's Aid groups have also raised that additional provision needs to be made for those living in island or rural communities without access to a contact centre. The Islands Communities Screening Assessment (par.23) states that those in island communities travel to access contact centres on the mainland, and that this is not expected to change. We know from Women's Aid groups in island communities that very few women can travel to the mainland to use contact centres, with contact often happening in spaces that will not be regulated, or at home, instead. We do not consider it reasonable nor in line with children's rights or best interests to expect children to have to travel a long distance to contact centres. One Women's Aid group recommended a model where trained contact centre staff are able to provide mobile contact spaces across island communities in community centres or other suitable spaces. We would welcome additional consideration in the Financial Memorandum of this model and alternative models of ensuring that those who require the use of contact

centres and trained staff will have their needs met, and how the spaces and staff required for safe contact to take place in rural and/or island communities will be resourced.

We are also concerned that the point made in par.125 of the Financial Memorandum regarding potentially charging registration and inspection fees to contact centres could ultimately result in these costs being passed on to those using contact centres; this impacts the children and young people involved.

Training

It is difficult to ascertain if the costs attributed to the training of Child Welfare Reporters, curators ad litem, and staff and volunteers in contact centres are accurate, as we believe further training needs assessments must first be carried out. We would welcome assurances about the quality of the training being carried out in relation to domestic abuse, coercive control, and report writing, given the importance of high-quality training for members of the judiciary, Child Welfare Reporters, curators ad litem, and those working in contact centres. We welcome the resource allocated for training but note that feedback from domestic abuse specialists and young people with experience of the courts is that they are unlikely to be enough to upskill professionals to the level required to meet the Bill's policy objectives. Training must be part of a wider implementation strategy, which includes ongoing monitoring and evaluating of practice, assessment of culture change and supervision of professionals. The Financial Memorandum does not include provision beyond training and we feel this must be addressed in order to implement the changes that are envisioned by the Bill.

These are the training areas identified in the Financial Memorandum, but we feel in order to provide the quality of service, knowledge and understanding required to ensure that children and young people are safe and supported in Court and in contact centres, training on trauma, child development, and effective communication with children (particularly in relation to children with complex needs, with different cultural backgrounds or those who are very young) should also be provided. As identified in Relationship Scotland's consultation response to Part One of the Children (Scotland) Act 1995, there has been a significant increase in recent years in the complexity of issues faced by families using contact centres, including mental health and addiction issues.

We also note that there is no specific provision for the associated judicial training for Sheriffs in speaking to children (par. 87). We know from our experience of working with children that there is often inconsistent practice and methods of engagement in this area. Our experience is that talking to children and asking their views in a way that is rights- based and trauma- sensitive is a significant skill that often involves interpreting non-verbal as well as verbal communication.³⁵ We would therefore urge reconsideration into financial provision allocated to this area.

³⁵ See, for example: Morrison, F, Tisdall, E.K.M., Callaghan, J.E.M. (2020) Manipulation and Domestic Abuse in Contested Contact – Threats to Children's Participation Rights, *Family Court Review* (Accepted). ; Tisdall, E. K. M. (2018) 'Challenging competency and capacity? Due weight to children's views in family law proceedings', *International Journal of Children's Rights*, 26(1): 159-182; Tisdall, E.K.M. (2016) 'Subjects with agency? Children's participation in family law proceedings', *Journal of Social Welfare and Family Law*, 38(4): 362-379.

A few days training in each of these areas is, in our view, not adequate if we are expecting legal professionals and members of the judiciary to work in a way that is trauma-sensitive and helps children to share their views comfortably and safely.

6. If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

Children 1st already provides support to children and families and Scottish Women's Aid provides support to women, children and young people who may be experiencing the civil court processes, as well as the criminal court processes. We are interested to see how costs for some of the proposals identified within the Family Justice Modernisation Strategy will be met following further consideration—for example with respect to ongoing discussions relating to support workers for children and young people in the court processes. We are aware that the current provision of trauma-informed support to children and young people in civil and criminal processes such as that which Children 1st and the Women's Aid network in Scotland provides is often inconsistent and inadequate due to the precarious funding for these services, and encourage the Scottish Government to fully consider how this provision can be improved for children. We anticipate that this work would involve an expansion of access to trauma recovery services and therefore that there would be a cost involved. We hope that improved experiences for children and young people in the justice system and further protection for victims of domestic abuse will empower those who have experienced it to come forward and seek support from specialist domestic abuse and children's services. Therefore we would urge the Government to consider the impact of this additional demand on services and to make provision in line with this, particularly in relation to the Equality Unit's current review into funding for front-line domestic abuse services.

7. Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?

We feel that the Financial Memorandum does a good job in reflecting the uncertainty associated with estimated costs. We understand that estimated timescales will incur similar uncertainties, but would urge that it is important to be as realistic as possible in the setting out of timescales for practical provisions such as the register of Child Welfare Reporters and the regulation of contact centres. These measures will have direct and significant impact to the lives of the people our organisations work alongside in Scotland, and it is important that they are implemented in as timely a fashion and to the highest quality possible. Realistic timescales will also allow services to be fully prepared to support those affected by the new provisions and to manage the expectations of those who are in contact with the Courts in the years between the Bill passing and some of the practical provisions being in place.

8. Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?

Please see our comments above relating to capturing children's voices and training and our answer to Q.6 regarding support workers.

9. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

It is likely that there will be future costs associated with the Bill and its implementation, particularly as training needs become more apparent, and unforeseen issues arise in its implementation. We would urge that any future costs associated with the Bill again take a children's rights-based approach as outlined above, which requires the State to implement rights to the maximum extent of available resources. Monitoring of the implementation of the Bill could go some way in identifying areas requiring financial attention early, ultimately leading to cost-saving.

As the Child Welfare Reporters register is established we anticipate that there may be some additional training and start-up costs that are difficult to quantify at the moment but would encourage resource flexibility to ensure high-quality provision of services for children.

It is worth noting that if the measures within this Bill are implemented with a rights-based approach with the maximum available resource and in line with the recommendations of the Council of Europe's Guidelines on Child Friendly Justice³⁶ that we anticipate these measures will indeed lead to significant cost savings. If children are able to express their views and there are adequate protections in place to keep children safe then we will not be traumatising them through the Courts. Keeping children involved where appropriate, safe and in line with their wishes will inevitably mean that their experience is not negative and that they will not require costly trauma recovery support work on a long term basis or experience many of the long-term effects we have seen described by the children we work alongside.

If children's views and voices are taken into account and decisions fed back to them at an early stage we can work to ensure that they understand what is happening and that they are not forced into situations in which they feel unsafe and out of control. We would anticipate that there will not be a need for lengthy Court proceedings or for a return to Court many times over unsatisfactory contact arrangements.³⁷ Investing into these key changes in a meaningful way at this stage will have significant long-term effects for the future of the civil justice system.

We believe it is essential that children who require access to trauma recovery support are provided with it, and recognise that at present provision across Scotland is patchy and inconsistent. Our organisations are working closely with the Scottish Government to highlight these issues and are keen to further discuss what necessary resources will make children's right to recovery real as the Bill progresses.

³⁶ <https://rm.coe.int/16804b2cf3>

³⁷ See, for example: Morrison, F, Tisdall, E.K.M., Callaghan, J.E.M. (2020) Manipulation and Domestic Abuse in Contested Contact – Threats to Children's Participation Rights, Family Court Review (Accepted).