

JUSTICE COMMITTEE

CHILDREN (SCOTLAND) BILL

SUBMISSION FROM THE CARE INSPECTORATE

The Care Inspectorate is the official body responsible for inspecting standards of care in Scotland. That means we regulate and inspect care services to make sure they meet the right standards and help them improve if needed. We also carry out joint inspections with other scrutiny bodies to check how well different organisations in local areas are working to support adults and children. We help ensure social work, including criminal justice social work, meets high standards.

Across all our work, we provide independent assurance and protection for people who experience care, their families and carers and the wider public. In addition, we play a significant role in supporting improvements in the quality of care, and reducing health and social inequalities, in Scotland. As the scrutiny and improvement body for social care and social work, we have a strong interest in this area and are happy to provide a professional perspective drawn on evidence we hold. We regulate, inspect and support improvement in a wide range of care services for children, adults and older people, and also work with all local authorities, community planning partnerships, health and social care partnerships, and with community justice partners.

- 1. Voice of the child: Do you agree with the approach taken in the Bill to remove the presumption that a child aged 12 or over is of sufficient age and maturity to take a view? Do you agree that it should be left to the court to decide the most suitable way of obtaining a child's views? How do you think children should be given the opportunity to express their views? Are there other measures that you think should be in the Bill to ensure that the voice of the child is heard?**

Yes, we agree with the proposal to remove the presumption as we consider that children from a young age can give their views if given the time, appropriate tools to support them and a feeling that they are being listened to. Some children and young people will be very articulate and well able to express their views to adults. It is also important that attention is paid to making sure that the views of younger children, infants and children with special communication needs are heard and sought. Children should be supported by people who they know and trust to express their views in whatever way is most suited to their needs and preferences. The adults and practitioners who support children to express their views need to have knowledge and understanding of child development, adversities such as trauma, abuse and loss, be appropriately skilled and have capacity to get alongside a child and go at the child's pace. It is also important to note that children's views may not be static and there should be ways of capturing children's changing views.

Children need to trust the adult and receive support through effective questioning and the availability of appropriate tools including for example, visual tools to express themselves. Children need to feel safe and secure so a familiar environment; an adult they are familiar with, who has appropriate skills to use

effective questioning and tools that support the child to express themselves is important. The child should not feel guilty about how they feel or what they are saying so this process should be managed sensitively. We recognise that children and young people also need to have an understanding of why their views are being sought.

The Care Inspectorate's experience of inspecting services for children and young people informs our view that a rights based approach which maximises opportunities for children young people's voices to be heard in relation to processes which affect their lives leads to more positive experiences and supports better outcomes overall. The rights of all children to participate in matters that affect them are in line with Article 12 (1) of UNCRC. Furthermore, the Health and Social Care Standards are based on human rights, and Standard 2:11 is relevant in this context: My views will always be sought and my choices respected, including when I have reduced capacity to make my own decisions. As well as support to express their views, children and young people will need support to understand decisions and careful attention needs to be paid to how these decisions are communicated. Children and young people should be able to ask questions about things they do not understand or may not agree with. This links in with Health and Social Care Standard, 2:13: If a decision is taken against my wishes, I am supported to understand why.

We would propose that the Barnahus model, currently being looked at for children to give evidence where they have been harmed or witnessed harm, could be considered as a way of encouraging children to give their views in a supportive environment. The model involves a child friendly place for children to provide evidence away from a court or legal setting, with a multidisciplinary team including counsellors and therapists. There could also be more flexibility regarding how children's views are obtained; for example, children could write or record their views rather than being interviewed.

While we can agree to remove the presumption that only children 12+ years are of sufficient age, the Bill could be clearer and stronger that there should be a presumption that almost all children can be expected to have a view and for this view to be heard. There are a range of methods for gaining children's views in a non-threatening way, such as using play therapy or counselling approaches. While Child Welfare Hearings are intended to be informal and are less formal than a Sheriff court, they may not be experienced by children as such. As the only child sitting round a table with parents in dispute and adults in positions of authority regarding the dispute, this can be intimidating for some children and we have a responsibility to make the environment as conducive as possible for a child's views to be heard.

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

The aims of the Bill are clear and focus on current issues that evidently have an impact on children's wellbeing. Promoting the rights of children when making

decisions about contact and residency will raise the profile of how children's best interests can be achieved. However, we suggest that there may be gaps.

For example:

- Promoting the rights of children to have an opportunity to have relations with family members who are or who may become important to them e.g. with whom they identify as siblings and grandparents. The Care Inspectorate has highlighted the need for improvement with regard to children being supported to maintain contact with siblings, and we have worked with the organisation Stand up for Siblings, as well as highlighting the issue in our forthcoming improvement resource on compassionate care. Listening to children who potentially have witnessed/experienced domestic abuse to determine whether they want to have contact with non-resident parents Experienced skilled adults should work closely with families to build trusting relationships to ensure that contact is in the best interest of children.

From our knowledge and experience we recognise that legislation is a positive start but there needs to be investment, guidance, and training to make meaningful and embedded cultural changes. Therefore, it will also be important to ensure that sufficient resources are available.

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

Yes, child welfare reporters and curators ad litem could be registered by the SSSC in the same ways as MHOs. As with the Barnahus model, the professional roles supporting children through the process should be drawn from professionals from a welfare background. People supporting children to give their views in a legal process should be trauma-informed and have continuous professional development.

We note the importance of ensuring the best interests of the child is a key aim of the Bill. Child welfare reporters and curators ad litem need to have the appropriate knowledge, skills and understanding to be able to undertake these complex roles and ensure that the views, rights and interests of children are better captured in keeping with these aims. They need to have an understanding around domestic abuse, coercive behaviour, trauma, child development, attachment, loss and the messages from lived experience of children and families. Children and young people have a right to expect a high and consistent standard from the adult appointed to them and some sort of regulation to ensure consistency, training and checks would support this. This would need to be further considered and a feasibility study undertaken informed by the views of all relevant parties.

4. Factors to be considered by the court when making contact and residence orders: The Bill would require the court to consider the effect of an order on the involvement of the child's parents in bringing up the child and the effect on the child's important relationships with other people. This is in

addition to statutory factors relating to protecting the child from abuse and other factors appearing in case law. Do you agree with this approach? Should any other factors be listed in the Bill?

Yes, we agree that it is important that the effect of children's important relationships with other people are very carefully considered when making contact and residence orders. There needs to be consideration of the short and long term effects, the importance of ensuring children have a sense of their own identity and that protective factors, continuity and their wishes are considered. Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the ECHR) recognises the respect for family life, and the relationship between siblings is an important part of this. Some families have complex family structures that can mean siblings can live separately, have little opportunities to meet or form supportive relationships with an increased risk of estrangement.

Transitions for children are important in that they should have an understanding of what is happening and why, should have a say in changes that affect them, and should experience continuity as far as possible. For example, a change of contact centre should be managed with services working together to ensure an approach that minimises disruption for the child having contact with a parent, sibling or other relation.

5. Other requirements on the court: Do you agree that the court should ensure that certain decisions are explained to the child? Do you have any views on the provision in the Bill which would require the court to consider the risk to the child's welfare of any delay in the proceedings?

We agree that the court should ensure decisions are explained to the child. This means that the adults charged with communicating these decisions must have the appropriate skills to engage with a child and ensure the child understands what the decision is, why it has been made and what it means to them. The adult should have sufficient capacity to undertake this at a pace that suits the child, and it may be that several conversations are needed with the child having the opportunity to reflect and make sense of decisions. It is important that decisions are made in a timely way which minimise delay to protect children's longer term development and well being. The work done by The Permanence and Care Excellence (**PACE**) programme, delivered by the Permanence and Care Team (**PaCT**) at the Centre of Excellence for Looked After Children (CELCIS), is relevant in this regard.

6. Vulnerable witnesses: The Bill would prevent a party from personally conducting their case in contact and residence cases and Children's Hearings in certain circumstances, for example, where the witness is a victim or complainer of domestic abuse. A solicitor could be appointed by the court to represent the party who is prevented from conducting their own case. Do you agree with this approach? The Bill would also allow the court to order the use of other special measures, such as the use of a live TV link or screen, in contact and residence cases. Do you have any views on this provision?

We are in agreement with this approach. Special measures including the use of a live TV link or screen would protect the child or other individual when giving evidence. The civil courts should at least replicate, if not go further, than the criminal courts in protecting children from trauma.

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

The Care Inspectorate has been commissioned to undertake a feasibility study in relation to the regulation of child contact centres. The work for this is currently underway and due to conclude in December 2019.

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

If court orders are made in the best interest of the child, then if they are not adhered to this could have a potentially negative impact on outcomes for the child. For this reason, there should be a full investigation and consideration given to the impact of the action on the wellbeing of the child and steps taken accordingly. In the example of contact, any contact centre used may need to ensure that the terms of the order are clear to enable staff to support an understanding of action to be taken and the service to be delivered. A proactive and positive approach is needed from the outset to try and minimise non-compliance and take into account all views, particularly if there are concerns about safety.

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

Yes, as referred to in our answer to question 2, the Care Inspectorate has highlighted the need for improvement with regard to children being supported to maintain contact with siblings, and we have worked with the organisation Stand up for Siblings, as well as highlighting the issue in our forthcoming improvement resource on compassionate care.

As far as possible children should be supported to have contact with family members including those they identify as siblings. Family makes a child a whole

person; if they are separated from the people that love them the impact can cause anxiety. The loss of a parent and the loss of siblings or other family members as a result can be catastrophic for the child.

Sibling relationships are some of the longest lasting and most enduring across the life span and we welcome that this Bill is recognising this. When siblings are separated the needs, views and wishes of siblings to keep in contact with one another should be of primary consideration. As a Corporate Parent the Care inspectorate recognises that sibling separation is an issue that can and has particularly affected care experienced brothers and sisters. The impact of sibling separation and limited poor quality contact has been clearly articulated by many care experienced children and young people. The importance of this is reflected as one of the intentions of the Independent Care Review. Research shows that children's views in relation to contact with their siblings are poorly documented and often contact diminish over time. It can be very difficult for children and young people to re-establish meaningful relationships.

The Bill could go a step further by including exploring extended family and the possibility of the child having contact with them, and the process of making decisions regarding contact and residency could be more holistic. This would minimise separation anxiety, Adverse Childhood Experiences and improve the wellbeing of children if effective communication with the child and potentially contact with the non-resident parent and siblings/family members could be part of the order. There is a need to do much more to address this issue and we welcome the changes to legislation to strengthen requirements and expectations. In order to make meaningful changes and address this issue, further changes need to be made to support change in culture, policy and practice. This will require investment and resources.

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

No further comments.

11. Children's Hearings: Some of the Bill's provisions, for example, in relation to ensuring that the voice of the child is heard and protecting vulnerable witnesses would apply to Children's Hearings. The Bill would also make other changes relating to Children's Hearings, for example, giving the Principal Reporter the right to appeal against a sheriff's decision in relation to deemed relevant person status. Do you have any views on these changes?

Yes, as above there should be as much consistency as possible across the complex landscape of different laws, policies and provision for children. We suggest that the Health and Social Care Standards and the UNCRC are helpful in articulating how children's rights to be heard and involved in decision making are exercised in practice.

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

Consideration should be given to the cost implications of for example, regulating contact centres to meet minimum standards and improve quality. Support will be needed to ensure improvements can be made.

13. Family Justice Modernisation Strategy / issues not covered by the Bill: The Family Justice Modernisation Strategy, published alongside the Bill, sets out other actions the Scottish Government intends to take to improve the operation of family justice. It also sets out the reasons why certain areas that were previously consulted on by the Government are not being taken forward. Do you have any views on the actions set out in the Family Justice Modernisation Strategy? Are there issues which are currently not covered by the Bill which you think should be?

No further comments

Care Inspectorate
11 November 2019