

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

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

We support the aims of the bill to further incorporate the voice of the child. The voice of the child is often inadvertently lost when parental relationships fracture and legal frameworks become a focus. The reality of these aims will be dependent on the changes made to the role of the Child Welfare reporters. For any child (particularly those under 12yrs) relationship is central to gaining their credible views. Gaining the views of children under 12yrs has the benefit of maintaining a child centred approach to proceedings. It also supports the child to understand the processes while maintaining a sense of autonomy. The role of other professionals already integral to a child's life should be considered to gain their views. This could be a Teacher or Social Worker. Integrity of the views could be maintained by using a pro forma, which the Children's Hearing System could inform from their practice experience. The checks considering the impact of gaining these views are appropriate.

**• 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?**

This is addressed throughout our response. The detail of the regulation of Child Welfare Reporters and Contact Centres will be important. Assessing the impact of these measures should guard against unintended consequences, such as restricting the involvement of third sector organisations.

**• 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?**

It is our views that the creation and maintenance of a register is in the best interests of the children likely to come before the court. While we recognise the legal expertise of those currently involved, the reporters would benefit from guidance on the needs of the child and greater practice expertise. Such practice expertise can be informed by best Social Work practice on gaining the views of the child and the knowledge refined in the Getting It Right For Every Child policy (with regard to child welfare/needs). This would maintain a more credible child centred approach to legal proceedings, particularly when seeking to differentiate between the responsibilities of parents in conflict.

**• 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?**

See notes following our final response (Family Justice Modernisation Strategy / issues not covered by the Bill), there remains a need to directly address the equality in opportunity to meet parental responsibilities.

**• 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?**

As with gaining the Voice of the Child it is important that children maintain a sense of autonomy with regard to the process that regard them. The role of other professionals already integral to a child's life should be considered when explaining them.

Sensitivity should be given to the pace at which a child builds an understanding of events. This makes the considerations of section 21 (delay in proceedings likely to prejudice child's welfare) a dynamic one.

**• 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?**

It is our view that the Bill reflects best practice, including the Safe and Together model, which seeks to protect the child with the none offending parent. The provision in section 22B (8-9) are essential to ensure the views of an adult, with a credible connection to the child, are heard. This allows for the timely treatment of the views of someone with parental rights and responsibilities who may not act in the best interests of the child, therefor addressing legitimate welfare concerns. As well as safeguarding the views of a relevant person who might otherwise be excluded without valid reason.

It is worth noting and defining the impact and expectation of section 21 (delay in proceedings likely to prejudice child's welfare) of this Bill. Such provisions should be considered at an early stage so adequate council can be found for the party in a timely manner. It is our experience that by the time proceeding seeking to re-establish contact with in an estranged parent come to court, a considerable amount of time will have passed. Further delays, no matter how essential to adult or child protection, will further damage credible and positive relationships.

**• 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?**

It is our view that further consideration should be given to the impact of such measures. The Bill contains benefits including quality control and Child Protection. However, it would have the potential to restrict the service offered by Circle and other third sector service organisations, who's primary role is not to support contact between children and an adult with whom they are not resident. It is Circle's experience that our professionally trained staff (Social Work, Community Education, Education...) have used their expertise and existing relationship with families to support contact following court proceedings. This has provided a valuable service to the court and the child. Regulation could have the unintended consequence of limiting the options open to the court and families. Further amendments could be to consider the safety of the child and subsequent necessity of a contact centre being used in the first instance.

**• 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?**

The Bill makes improvements to ensure court orders are acted upon, but could better incorporate the needs of the child and the expectations of section 21. Within our practice experience we understand the frustration of a child being estranged from a parent despite of court orders, and the corrosive impact court proceeding can have on the emotional and mental wellbeing of the resident parent. The court investigation could contain the principle that further delay, without due cause, constitutes the neglect of a child.

Financial fees connected to contempt of court could compound the impact of poverty on the child, without effecting any positive practical change. The provision to investigate should focus on safeguarding the child's welfare (including the unjustified exclusion of anyone parent), while giving consideration to the family's circumstances. Seeking alternative methods of contact which build trust with the resident parent. Our practice examples suggest lessons can be learned from mediation services.

**• 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, sibling relationships are an essential point of resilience in any child's life. When changes are being made to their care, these sibling relationships must be safeguarded. This can only be a reality when local authority Social Workers (in

particular) are adequately equipped. Without time and support, Social Work professionals cannot practice the flexibility and creativity that this task entails.

**• 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?**

**• 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?**

These provide balanced powers for the Principal Reporter to act in protecting the best interests of the child.

**• 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?**

**• 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?**

Children deserve and require access to their parents, unless there is a defined risk. Principles of the 1995 Act state that parents should normally be responsible for the upbringing of their children and should share that responsibility. This is frequently not the case particularly for unmarried fathers referred to our service. The mechanism within the law to grant PRR's to unmarried fathers leaves a section of fathers excluded by default. This is not addressed within the Children (Scotland) Bill, while provisions within the existing legislation Children (Scotland) Act 1995 sec11 means a father's ability to act on their responsibilities to a child are inherently delayed. This disregards the principle put forward in section 21 of the Bill.

While elements of the Family Justice Modernisation Strategy and the Bill seek to limit the separation of children from any one parent, they do not address core issues such as the granting of PRR's. While beneficial, strategies to increase schools' engagement of none residential parents and elements of the Bill including sec 21 risk tinkering around the edges, while a child is unable to build a positive relationship with a parent. It is not the parents right to view information that makes a difference in a child's life, it is the ability of a child to form a relationship with the parent.

The Bill does not fully address the need to expedite the process of conveying or implementing PRR's, when children have access withheld from one parent by another. We recognise that sensitivity is required to ensure that any contact of the parent is

positive and meets the needs of the child. This is defined in elements of the Bill regarding the protection of vulnerable witnesses and gaining the views of the child. Existing legislation and child protection policy also provide mechanisms to safeguard the welfare of children. The Bill does not take the opportunity to amend registration processes (for example) that would register both parents' rights to meet their child's needs equally, at the point of that child's birth. This would set a precedent on the responsibility placed on fathers in particular. Were this possible, it would avoid the time consuming process being initiated during fraught times of separation in the child's future.

Circle  
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