

JUSTICE COMMITTEE

CHILDREN (SCOTLAND) BILL

SUBMISSION FROM PARTNERS IN ADVOCACY

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

Partners in Advocacy believes wholeheartedly in providing the opportunity to children of all ages the opportunity of to share their views in court, by whatever means they are able to do so. In our experience of providing independent advocacy for children in a range of situations, most are able to form a view about what is happening in their lives. In some cases, this may be simply be to state that they are happy with things as they are and don't want anything to change; in other circumstances, children may express that they are unhappy with what is happening and want changes such as reduced or no contact to be considered by the court. We agree that removing the existing presumption of children over the age of 12 being of sufficient age and maturity being able to form a view will allow access for younger children to be able to share their views in important matters affecting them.

We feel strongly that it should not be left to the court to decide the most suitable way of obtaining a child's views. We have experience of some Sheriffs permitting the views of the child to be accepted in court where they have been expressed to an independent advocate, and others who have not given them any consideration, e.g. a Sheriff said that the views of a child were 'not worth the paper they were written on'. This is contrary to their UNCRC Article 12 right to have their views heard. We are encouraged that the Bill states that the court 'shall comply' with obtaining the views of children so that practice should be more consistent.

Children should be given the opportunity to share their views with an adult that they trust and feel comfortable with. Independent advocacy is impartial and works with a child to build up a trusting partnership where the child feels able to share their thoughts, feelings and views, and has no other agenda or role in the child's life. Equally, a child may feel more at ease discussing their views with a relative, teacher, support worker or friend of the family. We believe that having the option to choose the best person for them is crucial to their effective participation. Where there are no appropriate people to fulfil this role naturally, independent advocacy will work with the child to build a trusting partnership and only take forward the views that the child wishes to share. Equally, a child may request that their views are submitted by advocacy directly to the Sheriff but not disclosed to their parents and carers as they don't want to upset them by letting them know what they feel and would like to happen.

Views expressed by children come in a variety of formats and can't be prescriptive in nature, so although courts may find it helpful to have a template form (similar to SCRA's All About Me form) our experience tells us that children do not use these much

at all and being able to speak to someone such as an independent advocate who will capture exactly what they want to say in their own words and submit these to the court, with the child's agreement, is often much more helpful to them at a difficult time in their lives where they are worried about what might happen. Those with complex communication needs should also be supported to share their views, via assistive technology or Talking Mats for example. Partners in Advocacy has supported many children to have their views known to the court in this way, providing a photograph of the Talking Mat, together with explanation of the questions asked and the child's responses.

We feel that every child in Scotland whose life is being affected by the Court system should be afforded the right to quality, independent advocacy in order to ensure that their views are sought in the most appropriate way for them, where they feel confident that their advocate has no other agenda and is truly independent of their family, school, Social Work and any other agency, and who will ensure that their rights are defended. We often receive referrals from one parent to advocate for their child, and we only accept these referrals where there is a third party, such as a Sheriff, Social Worker or Children's Reporter to convey the child's views to. It would be better if a referral came automatically from the court for independent advocacy for every child going through the system, and then the advocacy service would be able to meet with the child and let them decide whether they wanted this kind of support or not.

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?*
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?*

Partners in Advocacy strongly agrees that regulation should be introduced for Child Welfare Reporters and Curators ad Litem to ensure a more consistent, standardised approach to this work. Anecdotally, we have heard of huge differences in the approach of Child Welfare Reporters in particular, some of whom have been dismissive of the views of the child and one who said to a child that if they didn't talk to them they would have to go to Court and tell the Sheriff, which understandably caused the child a great deal of anxiety and upset.

4. ***Factors to be considered by the court when making contact and residence orders:*** *The Bill would require the court to consider the effect of an order on the involvement of the child's parents in bringing up the child and the effect on the child's important relationships with other people. This is in addition to statutory factors relating to protecting the child from abuse and other factors appearing in case law. Do you agree with this approach? Should any other factors be listed in the Bill?*

We believe that any decision made by the court should consider the effects of an order on a child's network of important relationships, and any responsible and informed decision-maker should understand the impact on a child of these relationships being taken away will have and add to any trauma they may have experienced,

notwithstanding of course where significant abuse has occurred and it is necessary to ensure the safety and wellbeing of the child. Young people who are moved far away from home and unable to see friends and extended family are isolated and lonely (we have witnessed this in children who have been detained in hospital under the MHCTA hundreds of miles from home and have little contact with their family). More support from Social Work and other agencies for families whose children have been removed should be provided in the hope that a child may still have contact with them, and perhaps they will return home in the future.

Children's views should be sought regarding both residence and contact orders. Children we have supported have told us that where supervised contact is in place, they find the contact centre unnatural and depressing or if they don't want to attend contact, they are forced to do so as it is stipulated in the order. Again, in our experience, this has been conveyed to the court with the support of advocacy but often the Sheriff will insist that contact arrangements will remain as they are, despite the anxiety and distress this may cause to the child.

Partners in Advocacy would like to see all children affected by contact and residence orders to be able to access independent advocacy services to be able to have their views heard and respected and their rights upheld.

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?*

Decisions should be communicated to children in a child-friendly way and in a variety of formats to ensure understanding. In addition, someone that the child knows and trusts should be involved in explaining decisions to the child.

We regularly witness the heightened anxiety of children who are affected by delays in legal proceedings, and therefore it is of paramount importance to the child's welfare that such delays are kept to a minimum. We strongly agree that the court should consider the impact on a child being involved in legal proceedings at all, but especially when delays are likely to occur.

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 agree that a party (parent) should be prevented from conducting their own case as they would be able to question the child and potentially further traumatise them, but that legal aid should be made available to those who are unable to afford their own solicitor.

All special measures that allow a child to provide their views to the court should be afforded to them.

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?*

Based on what children have told us about their experiences of attending contact centres, we would welcome a system of independent inspection to ensure a better standard of facilities and a more consistent approach to their design and operation.

Q.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?*

Q.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?*

We strongly agree that there should be a requirement for local authorities to promote and support regular contact between a child and their siblings and friends as often as possible and according to what they ask for, where this can be accommodated. We have supported too many children who have had little or no contact with their siblings when they have been accommodated, and sadly we have seen these vital relationships affected and beyond repair. In addition to this, we believe that children should be supported to access safe spaces outwith contact centres to meet up with their siblings and friends, such as cafes, sports centres, etc. to provide some normality to their interactions.

Q.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?*

Partners in Advocacy
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