

## JUSTICE COMMITTEE

### CHILDREN (SCOTLAND) BILL

#### SUBMISSION FROM JOSEPH MANDAVA

##### **1. Voice of the child:**

*(a) 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?*

Yes- I agree for the presumption be removed. Children mature at different ages. Each “view” should be evaluated in light of a child’s age. Parental alienation is a serious form of child abuse and very common in many contact and residence disputes. It can taint the views of a child easily. Mainly because the parent(s) think weaponizing a child with hatred will help them to limit contact for a child with the other parent or the other parent may get residence as a result of making the other parent a bad one.

*(b) Do you agree that it should be left to be the court to decide the most suitable way of obtaining a child’s views?*

Yes- However, Parliament may wish to consider consulting with the Head of the Scottish Judiciary for guidance on this this question. A holistic approach which involve experienced child therapists and child psychologists appointed by the court at an earliest stage may be very helpful. This will help to see if the views of a child are genuinely a child’s views. I do not think the level of rigour and expertise of child welfare reporters often get this right. A wrong assessment is gamble of a future of a child and damage to the whole society.

*(c) How do you think children should be given the opportunity to express their views?*

The views of the children should be taken at their own space by including at nursery and school. This should be done by an expert. Environment where these views are taken matters most. I am concerned of parental influence on this and ways should be found to try best to get the independent views of a child free from parental influence.

*(d) Are there other measures that you think should be in the Bill to ensure that the voice of the child is heard?*

Evidence of a child’s voice must be taken by several methods. This may include visiting the child when he or she is in the space of both parents. Where domestic abuse was alleged in the past. Social workers and health visitors sometimes make very poor reports and do not have the correct skills for thorough fact-finding. The effect of this having records and suggestions from them which are sometimes biased.

##### **2. Child’s best interest:**

*To what extent does the Bill meet one of its key policy aims of ensuring that the best of the interest of the child are at the centre of contact and residence cases and Children’s Hearings?*

To a moderate extent on other issues and to a limited extent on others, the Bill achieves its key policy aims. Recognising parental rights and responsibilities is just a theoretical principle but practically deficient in application. Terminology such as primary carer is problematic. It assumes that the other is a secondary carer and in essence that has a bearing in many decisions that affects a child. The decisions are likely to be made favourable in the primary carer's best interest rather than a child's best interest. This is true because of a general pattern of many decisions which are settled on every second weekend only. I struggle to understand in what way does minimum contact is in the best interest of a child whose parent spend a lot of time either at work or studying when a child is glued on a television and iPad instead of having quality time with the other parent.

The law purports that named parents in a child's birth certificate have equal parental responsibilities and rights. This is not practically true. A resident parent can easily make very important decision believed by another parent as contrary to that child's best interest. This is often done without the consent of another parent. By the time the other parent finds out, damage might have already happened. Attempts to raise an interdict or a specific issue order is painstaking and expensive process especially for low income families who rely on legal aid. You may be aware that legal aid assessment can take several months before an award is made. A non-resident parent exercise what I will call "residue parental responsibilities and rights". They get limited PPRs and end up settling for that because it is better than no contact at all.

Some nurseries/schools and health visitors often take one side and react to that, often that of a resident parent especially on cases of allegations of domestic abuse even when the allegations have never been founded in court of law. This certainly have perilous effects in a child's development and future life. The best interest test is a complex legal test which I doubt at all if many health visitors, social workers and nursery/schoolteachers have adequate knowledge and understanding of its depth and breadth. Secondary carers are hugely discriminated by institutions which should remain neutral. Reforms that will make equal PPRs practically exercised will be in the best interest of a child.

It seems to me that it is acceptable with some social workers and some health visitors for children to be kept away from the other parent based on unfounded allegations of domestic abuse. Unfounded allegations of domestic are a common feature in almost all contact and residence proceedings. To properly protect the future generation of children, the law must adequately address allegations of abuse by evidence.

Secondly, the best interest of a child should be looked beyond the existing circumstances. It has to be struck by looking at the future of the child who should not be held hostage by tangled dispute of parents. Dilly-dallying with a child's life cause a huge damage in a child's future life as an adult. In my view, the current law and the scope of this Bill on child's best interest is distant from the real life that the children are going through in the real world.

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

*Should any other factors be listed in the Bill?*

Yes-The primary carer should be limited in his or her plans for relocating. This will minimise the practical difficulties for equal parenting time created by going to live far away from the other parent. Sometimes relocating too far from another parent is only done out of bitterness and anger for separation. When contact proceedings are raised, usually children would have settled in a new area or county. Unplucking them may create problems which are not in their best interest. However, those children happen to have very little access with the other parent. Phone calls and skype are not good enough. They only work if the primary carer is promoting contact. In many circumstances, the opposite is true. The Bill may need to consider restricting flight with children to another county based on allegations of abuse. Allegations of abuse have to be proven. In many cases, children`s relationships with the other parent are made practically difficult because of the bitterness of the parent. If this bill is to sufficiently achieve its objectives, it must attempt to do what is in the best interest of a child not a parent.

### **8: Enforcement of orders:**

*Do you have any views on this approach?*

Yes-I strongly believe that this is a best way forward. Many parents ignorantly breach contact orders. A contact order breach has minimum consequences if it has any when breached by a primary carer. A non-resident parent is unlikely to breach a contact order given the limited time he or she has with a child. In many circumstances, contact time of a child with a resident parent exist because of mercy of a court otherwise most resident parents would wish contact could be terminated or rejected at first instance. It is important to remember that often the parent who is unhappy with the order tend to be the one likely to breach it to frustrate contact.

Some excuses are petty to excuse why contact did not happen. The court is best placed to judge the reasons behind. A parent who constantly frustrate contact is emotionally abusing the child. Contact proceedings are raised mainly because they are in the child`s best interest and therefore efforts to make them work must be implemented. The Convention on the Rights of the Child emphasise this.

A parent that unreasonably frustrate contact is emotionally abusing the child and his or her non-resident parent. I view this as post-separation abuse. A primary carer often has an upper hand to control contact rather than promoting it regardless of the order in place. I would be grateful if Committee would spare more time discussing and seeking more views from affected parents on this issue. The experiences of children who are denied time with the other parent are heart-wrenching.

*Are there any other options which should be included in the Bill to ensure orders are enforced?*

Yes-Residence should be granted not on basis of primary carer or secondary carer. It should be granted based on who is the parent likely to facilitate contact with the other parent. Where a parent is constantly breaching orders, contact should be transferred to the other parent. This may need to be decided at early stages so as to give a child stability as soon as possible and minimise psychological damage to the child. It is

important to note potential coercive control by a resident parent by frustrating another parent. Being a primary parent should not be a trump card to abuse a child and the other parent.

Committee may need to look at other jurisdictions where it works best such as those that promote shared parenting such as Belgium. There is huge evidence on this matter that the Committee can easily gather from experts. I suggest experts such as Dr Elizabeth Bates from University of Cumbria, Ms Alison Bushell director of CFS and Prof Thom Mackay from University of Strathclyde.

### **13. Issues not covered by the Bill:**

*Are there issues which are currently not covered by the Bill which you think should be?*

It is very regrettable to see Parental Alienation missing in this Bill. UNICEF has recognised the effects of Parental Alienation to children. Scotland led the world by her Domestic Abuse (Scotland) Act 2018. Sadly, we are prepared to let this opportunity slip through our fingers to protect our future generation. The Scottish government have very good policies which promote childbirth. This is beneficial to our population growth. However, it is lacking in protecting the same children from mental stress fuelled by huge gaps in our family law and other policies. A healthy Scottish economy we thrive for should be an economy built by a health society. Parental Alienation breeds a mentally damaged society. The government should not underestimate the effects of parental alienation. They are interconnected to many societal problems such as drug abuse, mental health, obesity, fractured relationships in future life and suicide. Our description of a healthy economy is now outdated. I suggest that we start examining the wealthy and success of our nation through social lenses. Scotland can surely do better. I sympathise with children and adults who are victims of this kind of abuse. I had hoped this is the opportunity to resolve it ones and for all. The infectious effects of Parental Alienation will spread for generations.

I strongly suggest the Committee take evidence beyond Scottish jurisdiction. England has many experts in the field of parental alienation, and we can learn from them. I also suggest that the Committee utilise the expertise of retired UK Supreme Court Justices such as Lord Sumption, Lord Neuberger, Lord Mance. Although Lady Hale is still serving, if my memory is correct, her retirement will come before this bill becomes law.

Joseph Mandava  
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*I am a 3<sup>rd</sup> Year Law Student at University of Stirling in Scotland. I have done modules in Family Law in Scotland and Private International, Family and Succession Law. I have interest in Child Law and continuously researching on the subject.*