**JUSTICE COMMITTEE**

**CHILDREN (SCOTLAND) BILL**

**SUBMISSION FROM GLASGOW HEALTH AND SOCIAL CARE PARTNERSHIP**

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?

   The legislation is clear that there is no age limit for seeking views and that the views are sought by the court based on an assessment of the child's maturity. The terms of 11(7)(b) state the general proposition and come before 11(10) which begins 'without prejudice to the generality of paragraph (b) of subsection (7)'. It is <u>not</u> the experience of the respondents that the presumption has the practical effect of stopping the child from expressing their views. To the contrary, the experience of the respondent is that the matter of eliciting and considering the views of the child, tends to be at the forefront of the court and children's hearings mind, no matter the age of the child.

   The presumption was inserted on the suggestion of the Scottish Child Law Centre. In its 1992 Report on Family Law, the Scottish Law Commission explained its thinking:

   2.65 - "…a rigid adherence to age limits was undesirable but [the Scottish Child Law Centre] made the interesting suggestion that there should be a presumption of maturity at the age of 12. This would continue a valuable feature of the Scottish common law and would be in line with psychological evidence. Professor Bissett-Johnstone made a somewhat similar suggestion designed to prevent a too-ready assumption that children *never* needed to be consulted because they were too young to understand and express reasonable views. We agree with these suggestions. It would, of course, be essential to avoid giving the impression that the views of children under the age of 12 were never important. That, however, could be made clear in the legislation."; and

   5.25 "We also think that it would be useful, as suggested by the Scottish Child Law Centre, to have a presumption that a child of the age of 12 years or more is capable of forming his or her own views and is sufficiently mature to be able to express a reasonable view on matters affecting him or her. This would not only reflect in a statutory, non-discriminatory form the long-standing Scottish approach to the views of minors above the age of puberty but would also, and

more importantly, recognise the actual capacities of young people in that age group. The presumption would not be intended, however, to discourage courts from having regard to the clearly expressed views of children below the age of 12 who are capable of forming their own views".

The terms of the statutory provisions are perfectly clear – any child who is capable of expressing a view must be given the opportunity to do so, and regard must be had to those expressed views. *If* decision-makers are failing to correctly interpret the current provisions (which is not the experience of the respondents), it seems unlikely that they could reliably interpret an alternative. You'd therefore be removing the protection afforded to the over-12s, with no clear benefit overall.

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?

The Respondents take the view that it is impossible to apply a blanket rule in these cases. The SLC in its 1992 report recognised the centrality of the views of the child, whether a case is opposed or not. In para 5.26 and 5.27 there was discussion about how the child's views might be obtained. There was also, however, recognition that while some children would want to be directly involved in speaking to the Sheriff, others will not want to say anything to anyone. They also pointed out that "Under the existing law and practice the views of the child can often be ascertained by the court from the evidence presented in the case, and from any report which is ordered…". The respondents suggest that in situations involving very young children, the evidence in the case might be the Sheriff's primary source of information about the child's views and feelings.

The SLC formulated the 1995 Act with a view to requiring expressed views to be taken into account, but not forcing children to express a view or to choose between parents. A child's right not to express a view also needs to be respected, as does the necessity for a range of options for doing so: for some children that might be direct involvement in the court action, for others it might be choosing whether or not to complete an F9, for others a trusted adult such as a teacher, social worker or child support worker may be appropriate. While we agree that it's worth looking to improve the Form F9, we believe that the more varied the possible routes to hearing a child's views that are available, the better.

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?

   The changes proposed require the local authority children and families social work team to submit information to satisfy the Scottish Ministers that staff meet the requisite standards. It is anticipated that it would require every qualified social worker within the local authority children and families social work team to be appointed to a list held by Scottish Ministers. It is submitted that such a system is likely to be overly bureaucratic and burdensome. It too would result in the local authority's staff and resources being controlled and affected by an external agency.
   It must be borne in mind that every social worker in the local authority's children and families' social work team is regulated by Social Work Scotland. In addition, every social worker must complete CPD and training provided by the Social Work Department. Each social worker is bound by the law and is deemed to have training, experience and to be able to apply detailed statutory provisions (*see City of Edinburgh Council v RO, RD 2017 Fam. L.R. 27 at page 29*)

   As a matter of fairness, it is appropriate that any skilled witness, which could include a child welfare reporter, must detail in the reports which they prepare, why they are qualified to undertake the task incumbent upon them. The Respondents suggest that in so doing, the Sheriff determining the matter before him/her is able to determine whether the report writer is suitably qualified to take on the task in hand.

   The Respondents note that consistency of standards is desirable; those without a legal background may benefit from training on the legal framework; those from a legal background may benefit from training on child development. The Respondent's wish to highlight that 'in house' training for social workers can and does encompass legal matters including those related to actions under Section 11 of the Children (Scotland) Act 1995.
   The Respondents suggest that either there is development of existing arrangements or a new framework established however, the Respondents suggest that 'local authority reporters' should be excluded from any new regulations, it being unnecessary and unworkable to include that group of reporters for the reasons set out above.

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, local authority does so at present.