

JUSTICE COMMITTEE

CHILDREN (SCOTLAND) BILL

SUBMISSION FROM THE SCOTTISH LEGAL AID BOARD

The Scottish Legal Aid Board was set up in 1987 to manage legal aid in Scotland. We are a non-departmental public body responsible to the Scottish Government. Our purpose is to manage and improve continuously public funded legal assistance and to advise Scottish Ministers on its strategic development for the benefit of society.

Our comments are principally on matters that relate to the operation of civil and children's legal assistance and our experience of the resolution of cases.

- 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 view? 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?**

On the question of the court deciding the most suitable way of obtaining a child's view we support the idea that there should be many options available to the court for this whether this be by way of the F9, a child welfare reporter, the judge or sheriff speaking directly to the child or children or any other option such as the introduction of child support workers. It is desirable to have several options to make sure the child's view is heard in any proceedings concerning their welfare.

- 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**

Given our role and that of legal aid we have no observations.

- 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?**

We consider that arrangements should be put in place to manage and provide training for child welfare reporters. Equally we have long considered that this work should be funded centrally and not depend on the individual resources of parties or their ability to access legal aid.

While there will be cost implications in creating and running a centralised system, there are currently costs of around £3 million a year spent from the civil legal aid budget on child welfare reports in contact and residence disputes. The equivalent of those funds could be used to help to fund the creation and operation of a new centralised body that would also ensure quality assurance, consistency in approach to such reports throughout Scotland and could provide for comprehensive training for those

undertaking reports to cover all the key areas of work that should be considered in preparing a report for the court.

- 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 a child and the effect of a 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 have no observations on this aspect. These issues will not impact on the availability of civil legal assistance.

- 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?**

There may be benefits to certain key decisions taken in a case being explained to a child. The benefit of the court's decision being explained to the child is that the child would not be so likely to think their views had been ignored in the event that the outcome of the court case was not the one they wanted. It would allow them to see that their views were taken into consideration before any final decision was reached. This could benefit the system by making the decisions taken less likely to be undermined and subject to challenge by one or other of the parties involved.

- 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 parties' 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?**

The use of special measures such as a video link or a screen is a useful means of giving protection to vulnerable witnesses. Extending and promoting their use in court cases or in children's hearings would not create any problems from our perspective.

The duty being imposed to ascertain at the outset whether a vulnerable witness is to give evidence in Children's Hearings (Scotland) Act 2011 matters should assist in ensuring that this issue is dealt with early. It could potentially reduce the number of continued diets and this may give cost savings for SLAB. At present there can be a number of adjournments and continuations until this issue is resolved so dealing with it at the outset is beneficial.

The legislation proposes that any solicitor appointed by the court will not be funded by legal aid and therefore we have no further observations to make.

- 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 for referrals made by the court although the family justice modernisation strategy suggests solicitors could also be encouraged to refer cases 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 availability of centres where children can have contact with family members with whom they do not live can be very important particularly in situations where there is conflict between the individual with care of the child and the person seeking contact. It can be a means to smooth the introduction of contact between a child and their parent in a safe and regulated space, under the supervision of individuals who have experience in these matters. It is however rarely a long-term solution as inevitably supervised contact within a contact centre does not promote a normalisation of the contact arrangements between the child and the absent parent. However as a short-term solution and as a means of re-introducing a child into an adult's life or giving control where there may be risk factors involved the resource can be extremely useful.

It is important that such centres are regulated. Supervised and supported contact is used frequently as an option for dealing with contact cases and not necessarily only in long-running and complex cases. Legal Aid Fund costs for this head of work have increased significantly over the years. In 2011/12 the total spent on supervised contact was £70,407.00. The cost has risen markedly each year and at the last assessment of the cost in 2017 it was £459,583.00. There is no reason to suppose that this trend of making greater use of supervised contact will not continue. Where such contact is ordered a consistent approach to the public funding of these centres and a transparent charging regime is needed. At present the charging regimes and the operation of centres varies from area to area. This is not desirable. In addition the introduction of a Scotland-wide set of standards for such centres, essentially putting in place a quality assurance scheme, will mean that parents who use such centres can be confident in the service and standards they will receive irrespective of where the supervised or supported contact is taking place.

While the Bill envisages the use of regulated contact centres only where the referral is made by the court it is equally desirable if use is made of regulated centres where litigation is not underway. In June 2016, we extended the availability of funding to cover the costs of supervised contact before litigation was considered or entered into rather than simply restricting such funding to situations where the court had ordered supervised contact. This extension of funding has the potential to resolve disputes without the need for court proceedings at all.

- 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?**

We receive a relatively small number of applications each year about failures by one party to obtemper a court order (around 100 – 150). Legal aid is available for this if the statutory tests for civil legal aid of financial eligibility, probable cause and reasonableness are met.

It is possible that if a child welfare reporter is appointed to investigate and report to the court on the person's failure (or alleged failure) to comply with the order then this might reduce the need for court actions to be raised about such failures with consequent savings to the Legal Aid Fund.

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 have no observations to make on this as it is a matter that is not directly connected to the availability of civil or children's legal assistance.

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 registered?

We agree with this proposal. It has the potential to minimise the need for a court action to be taken in Scotland to establish parental rights and responsibilities if arrangements are made to register those rights and responsibilities on an administrative basis.

11. Children's Hearing: Some of the Bill's provisions, for example, in relation to ensuring that the voice of the child was 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?

The ability of the principal reporter to appeal against a Sheriff's decision in relation to deemed relevant person status could potentially add to Legal Aid Fund costs. Where such an appeal is brought, a legal aid application by a child and/or a relevant person to respond to it is unlikely to be refused. Each party in a case is entitled to separate representation and on average there are two legally aided parties in such disputes. While it is not anticipated that the number of appeals would be significant there is the potential for this change to increase costs to the Legal Aid Fund.

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

We have provided comments on the financial impact of the Bill and is commenting on the Financial Memorandum in this connection.

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?

We do not have any additional comments to make.

Scottish Legal Aid Board
26 November 2019