

## JUSTICE COMMITTEE

### CHILDREN (SCOTLAND) BILL

#### SUBMISSION FROM THE ADOPTION AND FOSTERING ALLIANCE

The Adoption and Fostering Alliance (AFA) Scotland welcomes the opportunity to contribute to the Scottish Government's consultation in relation to the proposed legislation to further strengthen their commitment to making Scotland the best place in which children can grow up and in supporting Scotland's children to fulfil their potential.

AFA Scotland is an independent, charitable organisation dedicated to improving outcomes for children in care by providing support to all those working in the field of adoption, fostering and the care of looked after children. Our response is informed by the views we have sought from our membership including 32 local authorities, voluntary adoption associations, independent fostering providers, legal firms as well as independent members.

***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?***

AFA Scotland agrees with the removal of the presumption that a child aged 12 or over is of sufficient age and maturity to form a view. Each child's capacity and understanding should be assessed on an individual basis without reference to an arbitrary chronological age. Several pieces of child care legislation require decision makers, including the court and children's hearing to ascertain whether the child wishes to express a view, how that view should be obtained, to give appropriate weight to this view and to explain to the child how that view is taken into account when making their decision. It is vitally important that children are active participants in decisions which involve and affect them so that they know this process is something done with and not to them.

Children should be offered the services of child advocacy workers to support them in communicating their views throughout the process. Children have the right to have sufficient time so that they can become familiar with the workers, feeling confident in discussing their situation and to agree the best way to let the decision makers know what their views are. The worker's role is purely to help the child express their view and to inform the decision maker of the most suitable way for this to happen or to express the child's view on the child's behalf. This is a very different role to that of a safe guarder or curator ad litem who will make recommendations in terms of what they believe to be in the child's best interests.

Decision makers should be encouraged to refer to carers and professionals whose experience and skills may assist them in obtaining or interpreting the views of the child,

including for example child psychologists. This is particularly relevant where the child's ability to communicate verbally is inhibited because of young age, trauma, learning support need or medical, cultural or linguistic reasons. This will allow the child's voice not just to be heard but also to be understood.

Under the Adoption Children (Scotland) Act the consent of a child who is aged 12 or over is required before a Permanence Order or Adoption Order may be granted by the Court. This provision should remain as it provides an additional right to such a child over and above the general obligation in relation to every child's views being sought and considered in the decision-making process.

***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?***

AFA Scotland welcomes the introduction of the regulation of child welfare reporters and curators ad litem. There should be a statutory framework to include provision on recruitment and selection, appointment and removal, remuneration, training and monitoring. This should be administered by a panel to ensure a fair, consistent and standardised approach as currently exists in relation to safe-guarder appointments.

Practice should be guided to include: practice standards; a performance, support and monitoring framework; data retention policy; data management guidance; fees, expenses and allowances scheme and complaints policy.

Local authorities and parties to proceedings bear the financial burden in relation to the appointment of curators ad litem in permanence proceedings. There is a wide and disparate range of practices in relation to the application of costs; in some local authority areas this expense has become untenable and urgent regulation is required to ensure an equitable and standardised approach to fee charging.

***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?***

AFA Scotland believes that the child has the right to have decisions about their life explained to them in a way which recognises and best meets the needs of the child. Reference is made to the reasons provided above in paragraph 1. Furthermore, for the sake of transparency and natural justice, decision makers are obliged to ensure the participation of the child in proceedings. This can be achieved only where the child is informed of the decision and the implications that decision may have in respect of the child. This will enable and empower the child in terms of their right to appeal that decision.

AFA Scotland supports the inclusion of the provision that a children's hearing, pre-hearing panel or court is to have regard to any risk of prejudice to the child's welfare that delay in proceedings would pose. Decisions should be made with the needs of

the child as the paramount consideration. Drift and delay in proceedings undermines this principle causing unnecessary instability, uncertainty, insecurity and distress to children which can have a profound detrimental effect on their current and future welfare.

An additional obligation should be placed on children's hearings, pre-hearing panels and courts which reflects their existing responsibility in terms of making decisions.

"The children's hearing, pre-hearing panel or court is obliged to ensure that all reasonable measures are taken to avoid or reduce any such delay."

***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?***

AFA Scotland welcomes the recognition of the value of sibling relationships. The special relationship between siblings, must be respected as this will normally be the longest lasting relationship not just in childhood, but throughout a person's life. AFA Scotland welcomes the increased focus on maintaining the critical relationships a care experienced child has developed, including those that have the character of a sibling relationship but fall outside strict definitions based on legal or blood ties. The proactive assessment and support of personal relations and contact between the child and their siblings must always have at its heart the best interests of each individual child. A thorough, comprehensive multi-disciplinary informed assessment must be undertaken to highlight the needs of each child and the strengths, benefits and possible challenges such contact may present. Any decision about sibling contact should be reviewed and where appropriate reassessed at reasonable intervals. This takes account of the changing needs and views of each child and recognises their right to revisit any such decision in light of their current circumstances.

While supporting the principle of a wider definition of siblinghood, we are concerned about the application of the proposed definition in Section 10(b) in practice, namely "any other person with whom the child has lived or is living and with whom the child has an ongoing relationship with the character of a relationship between siblings." It is unclear who decides the identity of any such "other person", who has the right to claim such a relationship and what criteria are applied in determining the character of a sibling relationship. There is a risk of the inconsistent application of the principles where an inexact definition of siblinghood is provided. This could result in transient influences and relationships in a child's life being elevated to the status of that of siblings and those who have Parental Rights and Responsibilities.

Inconsistent application of the principles could result in the inappropriate sharing of information about the child and family members with someone who does not have a significant and long-lasting involvement in the child's life.

AFA Scotland members have also raised concerns about the impact on planning for children, in particular the achievement of early permanence, if the legislation is interpreted by practitioners to mean that the maintenance of sibling contact is the paramount consideration. There are already serious concerns about the time it takes

to achieve permanence for many young children and the detrimental impact this has on their welfare.

The concerns noted need to be considered in the context of a clear acknowledgement of the message we hear from care experienced children, that they want more to be done to enable them to continue friendships and relationships and to maintain contact with individuals who are important to them. This should form part of any assessment in making plans for the child and it is recognised that this has often not been given the attention that it deserves

The legislative changes provide a strong base for improving the position, but for these to be implemented without unintended and negative consequences, they will need to be supported by clear and robust regulation and practice guidance.

***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?***

For the proposals to bring about effective and consistent changes to practice, sufficient financial provision requires to be made by Scottish Ministers. The financial burden cannot be carried by individual local authorities each of whom may not be able to implement the terms of the Bill if increased resources are not provided.

***Other areas in your submission that you think are relevant to the Committee's consideration of the Bill.***

**AFA Scotland seeks to draw to the attention of the Committee for consideration the inclusion of the right for the Local Authority to seek an Order under Section 11(3) of the Children (Scotland) Act 1995**

Children (Scotland) Act 1995 S.11 (3) which states that:

(a) That application for an order under that subsection is made by a person who—

not having, and never having had, parental responsibilities or parental rights in relation to the child, claims an interest;

(ii) has parental responsibilities or parental rights in relation to the child

S 11(5)

In subsection (3) (a) above “person” includes (without prejudice to the generality of that subsection) the child concerned; but it does not include a local authority.

It is submitted that the words “but it does not include a local authority” should be removed.

This current restriction is not justified and in practice creates difficulties for children. It inhibits the local authority in exercising its statutory duty in respect of the looked after child. Under the Children (Scotland) Act 1995 Section 17(1) (a) the local authority is obliged to:

“safeguard and promote his welfare (which shall, in the exercise of their duty to him be their paramount concern)”

In certain circumstances those with parental rights and responsibilities unreasonably withhold permission in relation to a looked after child which is contrary to that child's welfare. Examples of this include making decisions about the child's education:

participation in school and afterschool activities such as Brownies, sport and music camps; applying for a passport; holidaying abroad with foster carers or taking a Saturday job. This restricts the child's opportunities to have as normal and fulfilling childhood experience as his peers.

The Local Authority has a duty towards, knowledge of and relationship with the child which means they are often best placed to petition the court in the child's best interests. This does not mean that the local authority will assume any such rights and responsibilities, merely that they are enabled to draw to the attention of the court the possibility that the paramountcy of the child's welfare is being compromised by the behaviour of those who do have parental rights and responsibilities. The court will hear all parties then make the decision which represents the child's best interests. There must first, though, be a process that allows for the court to be made aware of this situation by the local authority.

**AFA Scotland seeks to further draw attention to the situation where children are being moved to live with prospective adopters or permanent carers and where their address is disclosed to those with Parental Rights and Responsibilities.**

There is confusion on the test to be applied in prohibiting disclosure of the address at which a child is living under s 83(2) (c) of the Children's Hearings (Scotland) Act 2011.

Section 25(b) of the Act states that:

*The children's hearing, pre-hearing panel or court is to regard the need to safeguard and promote the welfare of the child throughout the child's childhood as the paramount consideration.*

This is an absolute obligation which may only be set aside where it is made explicit that a different test is to be applied. These circumstances are referred to under Section 83 of the Act in relation to specific directions which may be attached to a Compulsory Supervision Order and do not refer to circumstances where information about the child's address may be withheld from those who hold Parental Rights and Responsibilities.

*Under Section 178 (1) A children's hearing need not disclose to a person any information about the child to whom the hearing relates or about the child's case if disclosure of that information to that person would be likely to cause significant harm to the child.*

Arguably, the "significant harm" test does not apply to the address at which a child is residing under a Compulsory Supervision Order. Clarification is required as to the correct application of the legislation.

In any event, in the circumstances where a child is being moved to a potentially permanent or lifelong home, it is proposed that consideration should be given to withholding the address of any such placement or any other identifying information about the carers from those with Parental Rights and Responsibilities without this test being applied. This would enable Panel Members to take into account all circumstances and particularly looking at the views of the child, birth parents and prospective long term carers in holding the paramountcy of the child's welfare at the

centre of their decision making. It should in no way impact on the commitment to supporting, wherever practicable and appropriate, continuing contact between the child and those with Parental Rights and Responsibilities.

This approach would ensure the stability and safety of the placement until the Court, in making the decision to grant an Adoption Order or Permanence Order, can at that stage consider whether the child's best interests requires the withholding of the name and address of the adopters or carers.

Disclosure prior to this at a Hearing under a Compulsory Supervision Order deprives the Court of the opportunity to decide on this matter at the appropriate time where all the circumstances of the child's life are taken into account. Furthermore, in the making of an Adoption Order or Permanence Order, the court is obliged to take account of the child's welfare throughout his life and not just during their childhood, the latter being the consideration of the Children's Hearing.

**AFA Scotland further refers to the Adoption and Children (Scotland) Act and the vesting of Parental rights and Responsibilities only in a "person".**

#### **80 Permanence orders**

*(3) In making a permanence order in respect of a child, the appropriate court must secure that each parental responsibility and parental right in respect of the child vests in a person*

On granting a Permanence Order, the Court should have the choice of vesting in the Local Authority rights in relation to contact about the child. Currently, these rights can only be vested in "a person".

This creates difficulties in practice, because if there is not an appropriate "person" in whom these may be vested, they remain with the person who had Parental Rights and Responsibilities (PRRs) namely, the birth parents. This means that, even where the court has decided to remove all other PRRs, the parent retains this important right. The Local Authority is in the most informed position to make decisions about the child which best reflect the child's changing circumstances and that represent the best interests of the child. In making any such decisions, particularly in relation to matters of contact, the Local Authority must ensure that the child is supported in expressing his views. It is imperative that the child is given every opportunity to express these views on an ongoing basis and that these are continually reviewed with the child throughout the child's childhood.

Adoption and Fostering Alliance  
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