

JUSTICE COMMITTEE

CHILDREN (SCOTLAND) BILL

SUBMISSION FROM STAND UP FOR SIBLINGS

Following the conclusion of evidence taken by the Justice Committee relating the stage one of the Children (Scotland) Bill, Stand Up For Siblings would like to further clarify our position on one important point that was discussed by the Committee on Tuesday 25th February 2020.

A question was raised by Ms. Shona Robison MSP about the need for contact to be “as natural as possible” and a response was given by Minister for Community Safety Ash Denham MSP. In it Ms. Denham suggested that keeping contact is not always practical and then went on to give a number of circumstances which were:

- the children have never met,
- they live far apart,
- one sibling is not interested in maintaining contact.

We are concerned that the response conflated two separate issues that are laid out in the wording of the Bill and require individual attention, that is, whether steps to promote personal relations and direct contact are ‘**appropriate**’ and ‘**practicable**’. It is important that these issues are differentiated in law and any guidance that follows, and that they are not used to justify decisions which are made for reasons other than what is best for the child and the sibling relationship.

The first example given, where children have never met, will undoubtedly raise important questions about the practical arrangements needed to enable children who have never met to establish a meaningful relationship. This will require planning and careful support. The implication in Ms Denham’s response though is that this is a circumstance where contact “is not practical”. The collective experience of the partners involved with Stand Up For Siblings is that these ‘stranger’ relationships can be very important to children’s sense of identity and wellbeing. Direct contact may or may not be desired by the children in the present or at some point in the future. Indirect contact through a third party agency or a substitute carer may also have a role to play in allowing the siblings to know how the other is getting on and to keep a door open for future direct contact. These are questions of **appropriateness** rather than **practicality** based on children’s views, professional knowledge of the long-term needs of children facing adversity and any risk assessment. As the welfare of the child must be given primacy in decision-making, so appropriateness must be prioritised over practicality. Without this, the Bill would risk being non-compliant with the right to family life protected by the ECHR and UNCRC.

The second example given by Ms Denham, children live far apart, undoubtedly creates practical challenges but again we take issue with the implication within Ms Denham’s response that this means that promoting personal relations and contact is, therefore, “not practical”. The primary question in all situations is whether it is ‘appropriate’. If the answer is that it is, the implication is that practical solutions should be found to allow this to happen. Local authorities and voluntary sector organisations are already using creative solutions to enable good practice, for example, using social media to facilitate

staying in touch and family holidays that bring together children who are in multiple foster placements. We would like to see such good practice shared and more widely adopted.

We envisage very few situations where sibling contact would be inappropriate in some form whether through face-to-face meetings, staying in touch through social media or more indirect exchanges of information through a professional agency. We acknowledge that a positive contact experience for siblings may require careful support and in some cases initial therapeutic intervention to rebuild positive relationships. We also acknowledge that there will be a very small number of circumstances where contact with a sibling may not be 'appropriate' or in the child's long-term interests despite such support, for example, where there has been sibling sexual abuse.

In our [written evidence](#) relating to the Bill we strongly advocated for the removal of the term 'practicable' in the wording of the Bill. Given the dangers of conflating the two issues of whether contact is '**appropriate**' and '**practicable**' we wish to reassert this. Without the removal of 'practicable' there is a high risk that decisions will continue to be led by resourcing issues and the proposed legal changes will be utterly ineffective. If the wording is retained, there will be a need for clear recording and accountability measures where a decision is taken that direct contact between siblings is not practicable. We suggest that collation of data on unmet need for sibling contact at a national level would be helpful.

[Stand Up For Siblings](#) is a collaboration between a number of child welfare, children's rights and legal organisations and academics within Scotland who share a collective concern that too often sibling relationships become disrupted when children come into public care or when courts intervene in children's parenting. The partnership includes organisations and individuals with established reputations in this field. For example, research partners in Stand Up For Siblings, University of Strathclyde and Scottish Children's Reporters Administration, have published reviews of international evidence and have led the first national research in Scotland on the issue of sibling relationships and children's rights. Who Cares? Scotland has an extensive network of advocates in regular dialogue with children and young people with first-hand experience of the care system. The Fostering Network, Adoption and Fostering Alliance Scotland, CELCIS, Scottish Adoption, SCRA, Siblings Reunited (STAR) and local authority partners have a track record of leading successful practice developments locally and nationally across Scotland. Clan Childlaw provide legal advice and representation to children seeking contact with their siblings, and has been instrumental in advocating children's right to maintain contact with their siblings¹.

¹ For more background to this issue see the following publication:
Prioritising Sibling Relationships for Looked After Children:
<https://www.clanchildlaw.org/Handlers/Download.ashx?IDMF=3edff743-f3cf-442b-b7c8-b56d6e11a98e>.