

JUSTICE COMMITTEE

CHILDREN (SCOTLAND) BILL

SUBMISSION FROM SCOTTISH ASSOCIATION OF SOCIAL WORK

1. Voice of the Child

The Scottish Association of Social Work – part of BASW UK – is the professional association for social workers in Scotland. We're here to promote the best possible social work services for all people who may need them, while also securing the wellbeing of social workers. Many of our members include social workers working in the field of children and families, who have extensive knowledge and frontline expertise of how significant changes like those outlined in this bill will affect the families and young people they work with.

SASW welcomes the approach taken to remove the presumption that a child aged 12 or over is of sufficient age and maturity to form a view. Children should always be given the opportunity to have their views heard - the current presumption has led in some cases to a disregard for the views of children under 12. Removing the presumption will ensure that that does not happen going forward.

SASW believes an 'age and stage of development framework' should be used across Scotland to ensure that the judgement of 'capacity' 'age' and 'maturity' is consistent across the country. This may also prevent tests of sufficient capacity from being more restrictive.

Whilst children may not always know what's in their best interests, this does not mean they do not have the right to have their opinion heard in matters that affect them.

SASW believes it should not be down to the court to decide the most suitable way of obtaining a child's views. There should be a variety of ways that a child can communicate their views to a judge or sheriff, and these should be tailored to meet the age, developmental and cultural needs of an individual child. Children should have access to support to help them express their view, from someone who is trained and skilled in communicating with children, and who understands the dynamics of domestic abuse and coercive control. They should be provided with clear information about the role of child welfare reporters and what to expect when they meet them. Confidentiality should be carefully explained, and children should be informed about what will happen with the information they provide, who will see it and how it will be used.

All children who are subject to court proceedings about contact should be offered access to an independent support person or advocate who can be with the child through all stages of the process. The child should have the opportunity to get to know and build trust in this person and have the option to have them in any meetings. There should be an option for a child to meet directly with the judge or sheriff if this is what they wish to do, and for the child to have a support person present.

SASW feels all sheriffs who deal with Section 11 cases should have training in how to talk and listen to children.

3. Child welfare reporters and curator's ad litem

The role of the child welfare reporter and curator ad litem is vital in ensuring that children's views are heard and represented accurately. This requires an ability to communicate with children using a range of methods, as well as an understanding of child development, the legal system and the dynamics of domestic abuse and its impact on children. SASW believes these roles should be regulated and overseen by a similar arrangement to that currently in place for safeguarders. This would help to ensure consistency across Scotland, appropriate training and standardization of costs, as well as more equal access to the service across Scotland.

5. Other requirements on the court

SASW are of the view that a thorough review of the court process would be helpful, resulting in some recommendations for better and more transparent and understandable actions. We are concerned that some issues are escalated and debated within a court setting, when such could have been avoided by better preventative actions. Social work, and other professions united within 'Getting it right for every child' should be allowed the time and resources to develop meaningful relationships with children and families, so that such matters can be explored and worked through with them. There is a significant emphasis on processes, forms and procedures, reports and targets, when there is insufficient time for the work which should inform these.

At present there is no mechanism for ensuring that children are informed of the court's decision. If we are to move forward in fully including the views of the children in the court process, then SASW believes we must also introduce a procedure which ensures children receive information about the outcome, in a way that is age and stage appropriate and considers the needs of an individual child. To that end there should be some flexibility regarding the method and person who explains the decision to the child. The most logical answer is for the decision maker to explain why he or she made the decision, and this should be in child friendly and/or appropriate language. Where desirable or necessary, the decision maker should do so within the presence of a known person. It should be someone who the child trusts and has a relationship with. In many cases this will hopefully be a or both parents, and their input should at least be considered. In some cases, this might be the child support worker, if there is one, or the child welfare reporter, if a trusting relationship has been established. Some children might wish to hear the decision from a parent, perhaps with a support worker or child welfare reporter present.

Unfortunately, not all children in all areas of Scotland have equal access to child support workers, so to decide that they are the best person to explain the decision would require funding to ensure this service was uniformly available.

A proposal that might be considered is that the child welfare reporter's report to the court could include a recommendation for how the decision is communicated to the child, which the sheriff considers and decides on. If possible, and unless there are clear reasons not to, the parents should be able or be supported to help explain to the child the decision that has been made and why through agencies such as social work.

SASW welcomes the provision in the Bill which would require the court to consider the risk to the child's welfare if there are any delay in the proceedings. There is evidence to show that many cases can last longer than 6 months, and longer than families anticipated they might. Delays can cause undue distress and uncertainty to children and parents. There could also be risks to the child's safety and wellbeing if decisions are not being made in time. It is always in the best interests of the child that cases be resolved as quickly as possible.

6. Vulnerable Witnesses

SASW is supportive of the provision in the bill which will prevent a party from personally conducting their case in contact and residence cases, and Children's Hearing in certain circumstances. Perpetrators of domestic abuse can use personal cross examination as a means of extending and perpetuating the abuse and this can be detrimental to women and children. SASW agrees with the approach that a solicitor could be appointed to represent the party who is prevented from conducting their own case, but it is imperative that measures are taken to ensure that the solicitor is trained in how to talk and listen to children, and in the dynamics of domestic abuse and coercive control.

SASW is supportive of the use of special measures in contact and residence cases. There is extensive evidence to suggest that not only is the experience of giving evidence in court distressing and traumatic for children, it is also not an effective way to get good evidence from them (Scottish Court Service, 2015). SASW believes that making enhanced use of available technology could allow for a less daunting experience for children, as well as increasing accessibility for children with disabilities. If the technology is available steps should always be taken to utilize it if it is in their best interests.

7. Contact Centres

SASW believes that contact centres should be regulated as they are important points of contact for vulnerable children and parents. However, this would require funds to be put in place to allow all the centres to be brought to the same standard. Regulation would only be a feasible move if funds were put in place.

8. Enforcements of orders

SASW believes that in all cases should be considered sensitively and from a perspective of what will be in the long-term best interests of the child. What is more important is to record why a contact is being breached, what has been done to investigate the reasons, if any support has been offered to people involved to assist maintaining contact, so that at a later stage a child can see evidence of attempts made and assist understanding. Mediation should be considered where there is apparent conflict. Such services should be of a high standard.

9. Contact with siblings

SASW feels that siblings have the right to have contact with each other and shouldn't have to seek this via complex processes. Local Authorities should do whatever they can do ensure this contact is promoted, to enable contact with people known and loved. A child flourishes when they can continue with lasting relationships, the sense of loss when contacts are suddenly terminated can affect lifelong progress, leading to loss of confidence, self-esteem and even mental wellbeing issues.

The current guidance should be extended to help a looked after child to keep in touch with other children they have shared family life with, for example in foster placement. Children in the LAAC system already experience multiple loss and change in their lives. Peer relationships are hugely important in a young person's life and maintaining contact allows a child to understand that relationships are not dependent on proximity of contact. Children can often build up meaningful relationships with other children in the place in which they live, and separations can be detrimental. When appropriate for each child, and with necessary supports and safeguards in place, efforts should be made to allow ongoing contact.

Sibling contact is essential for maintaining relationships and developing a child's understanding and knowledge of his/her family circumstances and should be uncomplicated and centred the children's best interests. Appropriate risk assessments must be carried out to ensure this is the case. Advancements in technology means there are possibilities to facilitate contact other than face to face, such as via video chat or social media.

11. Children's Hearings

The reporter, acting in the best interest of the child, already has a right of appeal where the sheriff does not confirm a children's hearing and should be able to appeal in relation to relevant person. One of our members has highlighted frequently witnessing the distress and negative implications of inappropriate persons having relevant person status in practice and SASW feel this should be considered moving forward.

Scottish Association of Social Work
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