

JUSTICE COMMITTEE

CHILDREN (SCOTLAND) BILL

ANONYMOUS SUBMISSION 3

Introduction

I am writing with my views on the Children's (Scotland) Bill and Family Justice Modernisation Strategy. While I give permission for my statements to be published I ask that my name is not revealed.

I am a Grandmother who was the primary carer in the first years of my Grandchild's life and I had a contact order only to be removed on the back of the Child Welfare Report which I felt my Grandson did not express his genuine views or have matters sufficiently explained to him. I feel I am experience enough to make my views on key areas as below.

1. Voice of the Child

Yes, remove the presumption. It is important to involve children in matters which affect their lives.

It is my understanding that in acquiring the views of the child that children should understand why their views are being sought and he or she should be able to understand that if he or she does express a view how that could affect his or her future with those seeking the contact and possibly their extended family. This should be clearly shown within Child Welfare Reports and other court documents and in Children's Hearings. I have experience of a young child of four years old being spoken to by a Child Welfare Reporter only briefly in the home of the parents where it was possible the child was influenced. Clearly the child did not understand what was happening or have it explained to him that his contact with a carer he loved would be stopped for all of his childhood. It is not enough to say that the views of the child are given due weight when it is not demonstrated that this was the genuine views of a child and that they understood what was being asked and the consequences.

We should be very clear, careful and have a consistent plan in how we obtain the views of children, particularly very small children. We should be sure that we are obtaining the genuine views of the child and we should do this also within a neutral venue also. The child should be spoken with in a way that they can process what is happening, by those suitably trained in obtaining the views of children. This is why for we must maintain that those in this position are suitably trained and regulated. I agree that support workers trained in this regard and other matters would be best placed to acquire the views of the child.

This may require further training but it is indeed worthwhile if we are to 'Getting it Right for Every Child' as outlined in The GIRFEC Model, The Scottish Government. I think it is worthwhile to quote Dr Sue Whitcombe from her response to the Consultation in Children's Act 1995, as she explains how I feel about this and it is similar to my experience.

“...Any defined age is arbitrary. Children develop at different rates. Children and young people's expressed views are not only based on their subjective wishes. Children may be influenced to express views which are not congruent with their true wishes. They may be directly coached, manipulated or threatened to express a particular view (weir, 2011). Research at Edinburgh University by Mackay (2012) indicated that solicitors believe children to be negatively influenced by a resident parent in more than 95% of cases. This was true for children under the age of 12, as well as those aged 12 and over...” This is a huge percentage and this states to me that we are not acquiring the true genuine voice and wishes of the children. This clearly means that those who are appointed to ascertain the views of the children are failing, if their views are, “influenced” then they are not reliable. So we need to change this and this Bill is an opportunity to do so.

Dr Sue Whitcombe further explains, “...All children are capable of forming a view. However not all professionals involved in Child proceedings have the necessary understanding of normal and abnormal child development to identify when the expressed view may not be a child's true view, based on the entirety of their own subjective experience...”

We could use a variety of ways to ascertain the views of the child. For children, “Helping Hands” by the Children's Law Centre could be used and this is done with a trusted adult as well as conversations, the F9 form and/ or speaking with the sheriff. It may be that more than one of these methods would ensure we have a better understanding of what the child's views are. If there is any indication of influence or/and abuse then the matter should be looked into further by other professionals or/and child psychologist. It is very important that we do not have a few sentences made by the child then conclude that this is the wishes of the child. This falls short and we must be able to demonstrate, in the best interest of the child that we are sure as we can be that it is the genuine view of the child.

Dr Sue Whitcombe again expresses this in a way I totally agree with, “...It is important that the child understands the decision to be objectively made, based on what the Court considers to be their best interest. All efforts should be made to assist the child to understand the reasons behind the decisions in an age and developmentally appropriate manner...”. I conclude that in my experience this did not happen. We did not get it right for this child.

2. Children's Best Interest

Everything should come from the premise that it is in the child's best interest. However, this must not be a statement to put into reports without clarifying how and in what aspects has the best interest of the child been considered and this should be demonstrated within reports and through the Children's Hearings. I also believe that we should begin with the understanding that it is in the child's best interest to maintain contact with both parents and with those who have come to care for the child, that often being grandparents and other family members, unless there is “exceptional” reasons why not and I would like it to be proven before contact is denied or suspended from those parents and care givers. In my experience this is happening to quickly on the back of a Child Welfare Report which has not been challenged by the parties

before it goes to the Sheriff. This creates a situation where the child is suddenly broken from that person and usually this can also be with an extended family. As court process is generally slowly a situation becomes the norm to the court that the child is not seeing that person. We should resist this sudden breaking of family contact. If there are concerns and supported by other professionals and not just the Child Welfare Reporters report then, of course we must protect that child and I propose that contact is maintained through a Child Contact Centre rather than abruptly stopped. I am pleased that within this Bill and Family Justice Modernisation Strategy there will be a move to keep families together which includes siblings and grandparents.

3. Child Welfare Reporters

Yes, regulation is essential for this important role for children and families. I had hoped that the Bill would offer a different way to make reports other than in the main solicitors who are Child Welfare Reporters. As also suggested by Dr Sue Whitcombe as she stated in her response, "...Child Welfare Reporters should be drawn from a professional population which has significant core competency in child development and family functioning such as social workers or psychologists...".

It seems that in the Bill we are to continue to instruct Child Welfare Reporters to make reports. If this is the case I would ask that additional training in matters proposed by the Working Group in 2015 in areas such as, The Voice of the Child, Parental Alienation, Report Writing and other areas suggested by them. This would be a necessary requirements. I do not think we should keep matters of training the same and only a minimum standard being the necessary requirements. This was discussed in 2013 within the, Working Group On Bar Reporters: Terms of References Statutory background to child welfare hearings stated, "...The induction, training and continuing professional development which bar reporters need..." "Within that paper it was also written, "...The right of parties to challenge statements in the bar report should be more clearly specified..." and, "...A system for monitoring the quality of the work done and reports provided by appointees and for dealing with situations where they fall below the standard expected..." I agree these matters should be included. It is so serious for the child that we must be doing everything to get it right.

In my case I do not believe the Child Welfare Reporter acquired the genuine views of the child, did not explain her role and what she was required to do to the child, did not explain her conclusions and recommendations to the child. This is not acceptable. From my experiences it seems that reports are given to the court without first being able for parties to put forward their comments on it or to challenge inaccuracies. This despite the Working Group stating, "...How the parties involved in a case can challenge the contents of a report..." It is not working that matters can be raised with the sheriff and I believe that this should be done before the papers are submitted as in my case the recommendations were already followed and lawyers stated this would be the case, this before any comments were made on it. This happening when solicitors stated that they believed 95% of children were, "influenced" as quoted above.

I believe Child Welfare Reporters should be regulated, there should be consistency in report writing, further and on-going training as described here in this view, reports made available for comments to the parties before submitting to court making further inquiries and investigations if any sign of abuse is discovered and this includes

Parental Alienation as well as Domestic Abuse. Someone should be appointed to view reports to ascertain that standards are met.

4. Factors to be Considered by the court when making contact and residence orders

I agree the Bill would require the court to consider the effect of an order on the involvement of the child's parents in bringing up the child and the effect on the child's important relationships with other people. The court should also consider this for family members who have been a carer to that child in some cases this has been a grandparent who has parented that child. All efforts should be made to keep families together unless there is exceptional reasons 'proven' why not. In my experience, "Exceptional circumstances were not established".

5. Other requirements on the court

I believe it is essential that matters affecting a child's life should be explained and those suitably qualified and/or trained should be ensuring the children understand and this should be demonstrated. It is not enough to have very brief conversation with a child and conclude that it is the voice of the child.

6. Vulnerable Witnesses

I agree with the proposal in this matter

7. Contact Centres

I agree that contact centres be regulated and with the outline proposed. I believe that contact centres should be used rather than abrupt stopping of contact without proof of being harmful to the child.

8. Enforcement of Orders

Yes I believe that contact orders should be enforced and it is my experience and understanding that they are often broken and not complied with and there is no repercussions for the breaking of an order. When orders are made by the sheriff they should be complied with. I have no knowledge to express how this should be done.

9. Contact with sibling

I agree that contact with siblings should be maintained and with other family members of importance to the child like grandparents.

10.

No view

11. Children's Hearings

Ensure the voice of the child is heard as I described above in Voice of the Child and protect vulnerable witnesses and consider other forms of abuse like Parental Alienation as In 'The Children (Scotland) Act 1995 Regulations and Guidance Volume 1 Support and Protection for children and their families', it states, "...essential principles of the Act....each child has the right to the protection from all forms of abuse, neglect or exploitation..."

12.

No suitable experience to make a view.

13. Family Justice Modernisation Strategy/issues not covered by the Bill

I agree that we should be trying to keep families together and that through mediation being required this could be beneficial, especially to the child. Matters could be resolved sooner and parties should be made aware that they are expected to be attempting mediation sincerely. Other methods put forward as an alternative have merit too.

As the Scottish Government has continued to meet with individuals and organisations since the Bill I propose that the Government would meet with individuals who have experienced Parental Alienation and talk with professionals in this matter like Dr Sue Whitcombe.

Ensure that children are protected from all forms of abuse.

Child support workers are an excellent idea and agree there needs to be standards relating to this role as I have suggested for Child Welfare Reporters too.

I agree to the importance of children having contact with their grandparents and the extended family. Efforts should be made to continue this in the best interest of the child and in line with the Governments Charter for Grandchildren, Girfec and UNICEF. Unless there are exceptional reason why this should not continue and which should be proven.

Consider trauma for victims of other forms of abuse like Parental Alienation

Issue not covered by the Bill but should be.**Parental Alienation**

I am very surprised that this has not been included within the Bill. In 'The Children (Scotland) Act 1995 Regulations and Guidance Volume 1 Support and Protection for children and their families', it states, "...essential principles of the Act....each child has the right to the protection from all forms of abuse, neglect or exploitation..." I believe to safeguard that right we should without delay introduce Parental Alienation into the

Bill by an amendment, otherwise we are continuing to fail our children on giving them that 'essential' right to protection from the abuse. Children must be free from this.

This is serious form of abuse on our children and I am concerned about our children. We are not protecting them as is their right. Parent Alienation is recognised by Cafcass and we in Scotland should be addressing this as our children are suffering. Children should have a life free from abuse. I suggest that we use the same or similar structure that is in the Bill for Domestic Abuse for Parent Alienation. This would, of course mean that Child Welfare Reporters are required to attend training in this as suggested by the Working Group in 2015. Dr Sue Whitcombe has spoken about Parent Alienation and Child Welfare Reporters in her response to the Consultation on the Children's Act 1995, she has a great amount of experience in Parental Alienation and has published on the subject.

Links

<https://www.gov.scot/publications/scotlands-children-children-scotland-act-1995-regulations-guidance-volume-1-support-protection-children-families/pages/1/>

[https://consult.gov.scot/family-law/children-scotland-act/consultation/view_respondent?](https://consult.gov.scot/family-law/children-scotland-act/consultation/view_respondent?show_all_questions=0&sort=submitted&order=ascending&q_text=Dr+Sue+Whitcombe&uuld=481282804)

[show_all_questions=0&sort=submitted&order=ascending&q_text=Dr+Sue+Whitcombe&uuld=481282804](https://consult.gov.scot/family-law/children-scotland-act/consultation/view_respondent?show_all_questions=0&sort=submitted&order=ascending&q_text=Dr+Sue+Whitcombe&uuld=481282804)

<https://www.cafcass.gov.uk/grown-ups/parents-and-carers/divorce-and-separation/parental-alienation/>
<http://www.sclc.org.uk/publications-list.html>

<https://www.gov.scot/publications/qirfec-national-practice-model/>

<https://www2.gov.scot/Resource/Doc/112493/0027333.pdf>