

Response to Petition PE1120

In responding to this petition, we focus on two issues that arise in the petition text and additional information: contact arrangements between children and their extended family after separation or divorce; and the role of extended family in the lives of children. We note that the petition calls for more funding to be attached to family mediation services, and refer to Family Mediation Scotland's response as the best provider of information around this issue.

Summary of points raised in response

- Resolving contact arrangements outwith court is a far better approach wherever possible. The Committee could ask about usage of the Parenting Agreement and Grandchildren's Charter to this end.
- Contact arrangements should not be given blanket enforcement because of the possible good reasons for not meeting them, including domestic violence. Children's safety must be a paramount concern.
- Kinship care options should be fully explored whenever a child cannot live with their parent(s). The Committee could ask for information about how the Government is ensuring that this happens in practice.
- Family Group Conferencing is an effective way of involving the wider family in caring for a child, and this should be developed in the remaining 12 local authority areas where it is not currently available.

1. Contact with extended family after separation or divorce

• Level of concern around contact

When there has been a breakdown in a relationship that has led to separation, it can often be very difficult for parents to agree on issues affecting their children, including contact. CHILDREN 1ST runs ParentLine Scotland, the national, confidential and free helpline for parents and carers. This helpline receives approximately 16% of calls related to contact or residence arrangements, with parents or extended family members concerned about issues such as a child's wellbeing during contact, a child's relationship with new partners, and fairness in judicial proceedings.

Contact arrangements are also a major concern for children. Many of the children that CHILDREN 1ST works with are affected by their parents' separation, and this is often a very difficult experience, including worries about future contact and what will happen on special days such as birthdays or Christmas. A recent ChildLine study¹ found that many children who call the helpline about parental separation talk about being caught in the middle of the conflict between their parents and being forced to choose who to live with, or to decide how much contact they wanted to have with a non-resident parent. Understandably, children and young people find this extremely upsetting and are often very concerned about hurting one or both parents.

¹ NSPCC (2007) Children talking to ChildLine about Family Relationship Problems

- **Family law and contact**

Courts are rarely the best place for resolving family disputes, and therefore everything possible should be done to help families negotiate contact without having to resort to a legal process. The inadequacy of formal court processes in resolving this type of issue is reflected in the concern from a small minority, and from the petitioner, when contact arrangements do not appear to reflect the best interests of the child.

It is easy for this debate, and for each case, to be shaped around meeting the different needs and wants of the adults in the family. The Family Law (Scotland) Act 2006 confirmed the paramourcy of the best interests of the child in any decision by the court around contact.

The recent Act was accompanied by several other developments around non-court-based resolutions. The Parenting Agreement is a document drawn up by experts to help parents to put the child's best interests first, and the Grandchildren's Charter which is *not* about grandparents' right to contact with their grandchildren, but about their grandchildren's interests – these documents are available at:

<http://www.scotland.gov.uk/Topics/Justice/Civil/17867/10388>

CHILDREN 1ST is a strong supporter of this approach. The Committee may want to ask the Government about how widely these documents are used, and whether any further non-legislative measures are needed to help embed their use.

- **Enforcing contact**

The Family Law (Scotland) Act 2006 specified in more detail that the best interests of the child must include specific consideration of any issues around their safety. Domestic violence is all too common in Scotland, with an estimated one in five (19%) women reporting having experienced threats or force from a partner or ex-partner². Any decision about policy around separation/ divorce must recognise that a significant proportion of these cases are characterised by a history of domestic violence –indeed research found that there were allegations of domestic abuse in 30% of sample court actions involving contact³. In the vast majority of calls to ChildLine Scotland about physical or sexual abuse, the child is being abused by a family member or somebody known to the family, and in a substantial number of cases, children have not confided in adults about what is happening.

CHILDREN 1ST would therefore be very concerned about any moves to increase the enforcement of contact, whether with the other parent or with extended family members. There are many reasons why it could be best for a child to not maintain contact with certain individuals, even in the context of a court order. It is important that family law policy is not characterised by blanket enforcement policies, but instead are shaped by discretion within parameters – namely the best interests of the child – to avoid enforcing contact arrangements that jeopardise vulnerable children's safety or happiness.

² Scottish Executive (2001) Domestic violence: Findings from the 2000 Scottish Crime Study

³ Ann McGuckin, Brian McGuckin, AMA Consultancy (2004) Contact Applications Involving Allegations Of Domestic Abuse: Feasibility Study, Scottish Executive

We note that Scottish Women's Aid remain concerned about gaps in awareness in the judicial system around domestic violence. We support their calls for further training and education around domestic violence as this would help ensure decisions that protect some of Scotland's most vulnerable children.

2. The role of extended family in the lives of children

We note that the petitioner is concerned about a lack of importance given to contact between children and extended family members.

- **Care within extended family, rather than foster care**

We do not agree with his assertion that social workers are 'adopting children out like pets catering only for their physical needs without concern for their emotional, mental and spiritual needs or long term welfare'. Most social workers are very concerned about the vulnerable children whom they work with and care for every aspect of their wellbeing, as best they can within tight financial and other constraints.

However, we do agree that there are children who are in foster care who could have gone to live with extended family members if only kinship care options had been fully explored by social workers. We also know that kinship care is often a better solution for children who can no longer live with their parents than stranger-based care, with benefits such as increased stability, better inclusion in education, regular experiences of fun, and a sense of belonging.⁴

CHILDREN 1ST is pleased that the Scottish Government stated in 'Getting It Right for Every Child in Foster or Kinship Care' that family-based care should be considered as the primary option for all children. We recommend that the Committee asks the Government what steps they are taking to ensure that this principle is implemented in practice.

- **Recognising the role of wider family in a child's life**

CHILDREN 1ST is a strong advocate of recognising that almost every child in Scotland has significant relationships with family or friend adults other than their parents. We also highlight that there is already an established process called Family Group Conferencing (FGC), pioneered by CHILDREN 1ST and now available in 21 Local Authority areas in Scotland, that involves the wider family network in making decisions about the care of a child. In the FGC process, extended family and family friends, as well as the child and their parents, are brought together in a family meeting where they make a plan for the child's future care and safety. This approach can help a family fully explore and support issues such as any kinship care options, and the best contact arrangements after parental separation.

However, the FGC approach is currently not available in 12 Scottish Local Authority areas. We welcome the Committee's support in encouraging Local Authorities to adopt this innovative, and most importantly effective, approach to involving the wider family in caring for a child.

⁴ Aldgate, J. & McIntosh, M. (2006) Looking After the Family: a study of children looked after in kinship care in Scotland

Case example of FGCs resolving contact arrangements

Amy (9) lives with her Dad, his partner Jane and her children. Her mother died four years ago and, about a year ago, she and her Dad moved to another town. Amy's maternal grandmother, aunt and cousins were keen to keep in touch with Amy and they used to see her a lot when she lived nearby, but they had seen her only occasionally since she moved. There had then been conflict between Amy's Dad and partner, with the maternal family, and all contact was stopped.

A referral was made for a Family Group Conference (FGC). The FGC Co-ordinator spent time with Dad, Jane and Amy, and with the maternal family, helping them to sort out their views and think about what they thought was best for Amy. It was clear that Amy wanted to see her grandmother and aunt, but she was also clear that she did not want any fighting or conflict.

A family group meeting was held where a plan for a weekend visit to see her grandmother and aunt once a month was agreed. Practical details of pick up and collection were worked out to minimise the possibility of conflict arising. The atmosphere at the family group meeting was positive and constructive; there was a sense of everyone working together for Amy's benefit. By focusing on the child, on the future, and not on the past or on blaming anyone, the family were all able to reach agreement.

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CHILDREN 1ST works with vulnerable children and their families through our 40 local and 5 national services, including ParentLine Scotland, the free and confidential national helpline for parents and carers, and managing ChildLine Scotland on behalf of the NSPCC.

For more information about our work, see www.children1st.org.uk

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