Children 1st response to the Justice Committee's call for views on the Children (Scotland) Bill

November 2019

A child friendly justice system brings relief and redress; it does not inflict additional pain and hardship and it does not violate children's rights

Council of Europe Guidelines on Child- friendly Justice, Adopted by the UK Nov 2010[1]

Introduction

Children 1st is Scotland's national children's charity. We have over 130 years of experience of working alongside families to provide relationship- based support when they need it and to help children and families to recover from the trauma associated with childhood adversity. Many of the children and families that we work alongside have experience of the family justice system in Scotland, in particular relating to child contact arrangements. Our response is informed by their views and experiences, and those of our service managers and support workers.

We warmly welcome the provisions included in the Children (Scotland) Bill and this important opportunity to scrutinise improvements for children and families' experiences of the civil justice system in Scotland. When we spoke to families about the changes included within the Bill, one mother who had experienced domestic abuse and was subsequently involved in making contact arrangements for her child through the courts told us that the current system was "like moving from one form of abuse to another." Transformative reform is essential to ensure that rights are not continually eroded in this damaging way. Appendix 1 to this document sets out more detail of the experiences of the children and families that we work alongside as they have journeyed through the civil justice system.

The Bill provides an opportunity that should not be missed to re-frame the existing system by taking a rights- based approach to children's participation and to considering their best interests, ensuring that our legislation and processes relating to the civil justice system are compliant with (or even more ambitious than) the UNCRC. This is especially important given the upcoming incorporation of the UNCRC into Scots Law—ensuring that the Bill is compliant at this stage will avoid the unnecessary bureaucracy of going back to amend it at a later stage after incorporation. Children's voices must be systematically and routinely sought, their views must be taken seriously and their best interests must be placed front and centre so that they no longer have to live with lifelong trauma caused or exacerbated by the civil court system.

Throughout our response Children 1st refer to the Council of Europe's Guidelines on Child-Friendly Justice,[2] which was adopted by the UK in 2010. The Guidelines are a "promise of justice and friendship to every child" and we urge the Committee to ensure that the proposed legislation takes these into account as the Bill progresses through Parliament.

We are pleased to note that many of the recommendations made in our response to the consultation on Part One of the Children (Scotland) Act 1995 have been included in the Bill. However we think that there are further opportunities to improve children and families' experiences of civil justice in Scotland and make the following recommendations to the Justice Committee to strengthen the Bill and bring it in line with the UNCRC:

[1] Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on child- friendly justice, adopted by the Committee of Ministers of the Council of Europe on 17th November 2010 and explanatory memorandum

[2] Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on child- friendly justice, adopted by the Committee of Ministers of the Council of Europe on 17th November 2010 and explanatory memorandum

- A **rights- based approach** should be taken to resourcing and implementing the provisions set out in the Bill, including by ensuring innovative and creative approaches to listening to all children's views.
- Include a '**positive presumption'**, stating that all children are capable of giving their views.
- Ensure that **due weight** is given to children's views by amending and strengthening sections (1)(1A)(a) and (b).
- Amend the Bill to ensure it reflects the stated intention that all children- **even very young children**- should be provided with the opportunity to express their views and that these views should be taken into account in line with their best interests.
- Ensure that children are able to be **involved in deciding how to express their views** and allow for **flexibility and resource in terms of suitable appropriate methods** for facilitating this. We encourage a **systematic review** of the current barriers to ensuring a rights- based approach is taken to listen to children's voices.
- Allow for **flexibility and opportunities for children to feed back** to the court their thoughts about the decisions made and **mechanisms for redress**.
- Ensure that there is **sufficient training provision** for those working alongside children to ascertain their views and in contact centres.
- Amend the Bill to ensure that children's **best interests are taken into account when the court is considering whether their own information should be disclosed** in cases under s. 11 of the 1995 Act.
- Amend the Bill so that **investigations into compliance with contact orders always seek the views of the child** or children involved.
- Ensure that **interim arrangements are put in place** while the Bill's provisions are being set up and while the Scottish Government undertakes work around child support workers.

Finally, we remind the Committee that for the purposes of this legislation, terms like 'contact' and 'parental responsibility' and 'shared parenting' are used, but in reality we are talking about children's right to build, establish and frame safe, loving relationships with the important people in their lives.

1. Voice of the child.

Children 1st agrees with the need to remove the presumption that a child aged 12 or over is of sufficient age or maturity to form a view, given we understand that this can mean that the views of children under 12 years are not routinely taken into consideration in practice.[3] For some of the children that access support through our services, their experience of the family justice system has left them feeling unheard, insignificant, distressed and worried about the future. Many children said that they don't feel part of decision- making processes, even when decisions are being made about them, and we have heard many times that children have not been asked their views at all, even when they have wanted to share them.

This can have a significant impact on children's development and happiness, especially when unsafe or concerning decisions are made about contact with their parents without their consent or without an effort to understand why they may be reluctant to see a particular parent. We particularly notice this in our work with children affected by domestic

[3] Porter, B., *Recording of Children and Young People's Views in Contact Decision- Making,* British Journal of Social Work, 2019

abuse, where research has demonstrated that children are not always believed when they have shared their views.[4] For some children, the impact of not being heard or having their wishes taken into account is so severe that their lives will never be the same again. We know that for some older children not being listened to in important discussions about them has had a subsequent effect on their mental health and emotional wellbeing.

One mother told us: ""*If my child was able to have gone to court to speak to privately with the correct support worker there or whoever was deemed appropriate to give his opinion (I believe it would have made him) feel good (and) in control of his situation… I would have hoped that the judge would have found some understanding and reasoning and therefore gave a better contact decision… until my child was a lot happier and mentally better."*

We know that many children can find it distressing when relationships break down, but in our view the court system should not be exacerbating a traumatic time or making things even more difficult for children. We believe that this Bill has the potential to make transformative changes so that children's experiences of civil justice are positive: so that they feel heard, that decisions are made that they understand and feel involved in—even when decisions are made in their best interests that are contrary to the views that they have expressed. We also believe that there should be flexibility for children to express their views in a way that makes sense to them and allows them to change their minds about arrangements or feed back to the courts how they are feeling. Children are not robots—we cannot expect them to be passive bystanders, going along with decisions made by adults in a system designed for adults without considering the impact this may have on them and the important relationships in their lives.

As we set out in our joint response with Scottish Women's Aid to the Financial Memorandum, we believe that there are significant benefits to investing in ensuring children's voices are properly taken into account at an early stage. We anticipate that this will result in fewer unsafe contact arrangements being made, a reduction in rates of non-compliance with contact orders and a reduction in the need for lengthy repetitive Court proceedings.[5] Children 1st believe that this should alleviate any concerns relating to a child potentially being influenced by one parent or a need to specify provisions around shared parenting. The Council of Europe Guidelines state: "Child- friendly justice is about fostering a responsible system solidly anchored in a professionalism that safeguards the good administration of justice and thereby inspires trust among all parties and actors involved in the proceedings." [6]

With this in mind we highlight the following areas in relation to sections 1-3 of the Children (Scotland) Bill:

<u>Positive presumption relating to the views of the child</u>

As set out in our response to the initial consultation, Children 1st is clear that any child of any age should be given the opportunity to share their views with decision- makers, if they want to. We believe that even very young children can do this with the help and assistance of skilled professionals.

We are concerned that the complete removal of this presumption may inadvertently lead to less children being asked their views, not more, in the absence of any presumption at all. In order to mitigate against this unintended consequence we encourage the Committee to

[4] Harrison, C. (2008). 'Implacably hostile or appropriately protective?: Women managing child contact in the context of domestic violence.' Violence Against Women, 14, 381–405; Holt, S. (2011) 'Domestic abuse and child contact: positioning children in the decision making process', Child Care in Practice, 17 (4), 327-346.

[5] See, for example: Morrison, F, Tisdall, E.K.M., Callaghan, J.E.M. (2020) Manipulation and Domestic Abuse in Contested Contact – Threats to Children's Participation Rights, Family Court Review (Accepted).

[6] Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on child- friendly justice, adopted by the Committee of Ministers of the Council of Europe on 17th November 2010 and explanatory memorandum

consider the potential effectiveness of a 'positive presumption' stating that all children are capable of giving their views, in line with Art.12 of the UNCRC and General Comment 12 (the child should be given the opportunity to express views in all matters affecting him or her and those views should be given due weight in light of the child's age and maturity.)[7] We refer to the comments from the office of the Children and Young People's Commissioner for Scotland for more detail about a potential amendment in this area.

Due weight given to children's views

We note that the Bill states (1)(1A)(a) that a person must "give the child an opportunity to express the child's views." Given the stated policy intention set out in the Policy Memorandum (Para.28) that "all children who are capable and wish to do so to be able to give their views" and (Para.29): "the Scottish Government considers that the majority of children are able to express their view in these situations," Children 1st would welcome strengthening this provision to be clear that all children can give their views in a manner that is suitable to them.

Additionally, the Bill also states (1)(1A)(b) that a person must "have regard to any views expressed by the child, taking into account the child's age and maturity". The Council of Europe's Guidelines state: "A child- friendly system… makes sure that (children) have a place and say, gives due consideration and interpretation to their words without endangering the reliability of justice or the best interests of the child. It is age- sensitive, tailored to children's needs and guarantees an individualised approach without stigmatising or labelling children." [8]

It is not clear to Children 1st how decisions will be made relating to age and maturity and we are concerned that this would mean there is inconsistency in practice. Further consideration must be given to how children's views can best be given due weight and taken into account. It is important to note that we are not just talking about asking children their views and reporting back to the Court, but interpreting what has been expressed and ensuring that views are properly considered and taken seriously in measured discussions and decisions involving them. This is why we have referred later in our response to the considerable skill this takes and the need for training, which should include information on interpreting what children are expressing including through non verbal communication.

Children must be able to participate in these processes meaningfully, with an understanding that their views will be taken seriously and the flexibility to change their minds. Children 1st therefore recommend strengthening these provisions through amendments.[9]

The views of younger children

Despite the stated intention in the Policy Memorandum: "the Scottish Government is aiming to ensure that there is no barrier to younger children who are capable and wish to do so expressing their views" (Para.28), we are concerned that the Financial Memorandum says: "The views of children aged 12 or over are already being taken and the views of the youngest children would not be taken as they would not be capable of forming a view" (Para.51). We note the clause in the Bill (1)(1B)(a) that views are not required to be sought if the child is "not capable of forming a view."

However, our experience—in line with the recommendations from the UN Committee on the Rights of the Child—is that, with the help of skilled and experienced workers, it is possible for even very young children to express whether they would like to establish, build or

[7] General Comment No 12: The Right of the Child to be Heard (2009) CRC/C/GC/12.
[8] Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on child- friendly justice, adopted by the Committee of Ministers of the Council of Europe on 17th November 2010 and explanatory memorandum
[9] Daly, A. (2018) Children, Autonomy and the Courts: beyond the right to be heard. Leiden: Brill| Nijhoff

maintain a relationship with important people in their lives. Indeed, the Bill's Policy Memorandum (Para.28) says, "by not specifying an age limit, the Scottish Government is aiming to ensure that there is no barrier to younger children who are capable and wish to do so expressing their views."

The Committee will be familiar with Article 12 of the UNCRC and the 2016 Concluding Observations of the UN Committee on the Rights of Child, which specifically make reference to the importance of meaningfully gathering the views—and giving them due weight—of "younger children and children in vulnerable situations, such as children with disabilities." In our experience operating the Safeguarders Panel on behalf of the Scottish Government, as well as through supporting families, the views of very young children can be obtained and shared, if appropriate, if a sufficiently creative approach is taken to eliciting them. This needs to be done by a skilled worker who has a clear understanding of child development and is able to clearly interpret body language and non-verbal communication.

We strongly recommend that the Bill is amended to reflect the stated intentions of the Bill that all children should be provided with the opportunity to express their views. Resources should be put in place to ensure that even very young children are able to share their feelings about issues that affect them.

Ways in which children express their views

Children and families have told us that there is an urgent need for a culture change to ensure a rights- based approach in the civil justice system to listening to children and taking their views into account. Children need to make sure they understand their options and are able to claim their rights and are consulted about how they wish to be involved in sharing their views.

With this in mind, we note that there is no current requirement contained within the Bill for Courts to do anything new regarding children's views. Although we hope that the removal of the existing presumption—and clarity that all children should have the opportunity to express their views—will mean that more children will be involved in sharing their voices, the mechanisms already existing in the 1995 Act legislation for this to happen.

Children 1st think that the Bill can be more ambitious around the opportunity afforded by the removal of the presumption, which allows the Scottish Government and the courts to think much more carefully what provisions should be put in place to ensure the system is much more child- friendly. Views should be sought in trauma- sensitive ways, which are in accordance with children's developmental needs so that the experience is not onerous or distressing. We would encourage a strategic review of how children's voices are heard, and what needs to change to make this happen—where the barriers are and how this can be addressed. And crucially, we think that children should be involved in this process. We refer to the response from the University of Edinburgh and the University of Stirling, which sets out the specific entitlements in the General Comment on Article 12 that should be addressed in the Bill.

The Policy Memorandum (Para.32) sets out that the policy "is for the views of the child to be expressed in a manner suitable to the child. This would require the individual or organisation obtaining the views to consider a range of options on how this is done, including speaking directly to the decision maker, by completing a form, or through submitting a drawing or letter. In addition… the views of the child can be taken by a Child Welfare Reporter."

This is welcome. However, the Financial Memorandum only includes resource relating to Child Welfare Reporters and some associated costs relating to children speaking directly to the Court, with respect to these provisions. Children 1st and Scottish Women's Aid are concerned that further resource has not been attached outwith these areas to the extent of

the flexibility envisioned in the Policy Memorandum and we believe that the Bill provides scope for more meaningful and innovative engagement with children.

Although we recognise that it is important to take into consideration future developments (as set out in the Policy Memorandum) we remind the Committee that there are existing technologies that children are familiar with using that could be helpful. We encourage Sheriffs and Courts to be innovative in their thinking and understanding of how children communicate given the way in which children currently use technology in their daily lives.

We also know that children can express a great deal through non-verbal communication and body language, and our workers have shared with us the skill that is required in order to understand what children are communicating through means other than talking. A range of options must be available, depending on the child, including for children who are younger, who express views through behaviour rather than speech due to trauma and children who have disabilities or who cannot write. There are a range of different methods that experienced practitioners tell us work well—such as the International Future Forum's Kitbag,[10] which Children 1st support workers use on a regular basis.

It is important, therefore, that maximum provision is allocated and a review is undertaken with the aim of ensuring that *all* children are supported to give their views in *all* matters that affect them in a way that is appropriate and in line with their wishes. This includes ensuring there is enough resource both for Child Welfare Reporters and for other means by which it may be appropriate for children to share their views.

Additionally, it is important that children do not feel forced to give their views in a particular way and that they are involved in decisions about how to keep them emotionally and physically safe when they are sharing their views.

We are concerned that Para.38 of the Policy Memorandum says that it is "not feasible" for a decision maker to be required to "use the method preferred by the young person for obtaining their views" because it may lengthen a case. Children 1st would not wish to see lengthy delays to court processes, but we also do not think it is in a child's best interests to share their views in a way they consider unsafe or unsuitable.

Although children have been clear that it is important to them that their views and voices are heard, it must be acknowledged that if this does not happen in a way that they feel comfortable it can be distressing for them. One child supported through our services was so worried about having to complete an F9 form that he was awake every night for a week, distressed and crying. The thought of filling in the form proved to be so anxiety- provoking that he was unable to concentrate in school and his mental health deteriorated—he even spoke about running away.

We have also heard from families that the idea of discussions with Child Welfare Reporters coming to school is particularly distressing as school is "supposed to be a safe place". Other families have told us that school was in fact the most appropriate place for these discussions to take place, demonstrating that there is no 'one size fits all' approach. It is important to ask children and families what would work for them.

The Council of Europe Guidelines are also clear that a child- friendly justice system is not about "leaving children alone with the burden of making decisions in lieu of adults."[11] We must ensure that children's engagement through the courts does not cause or compound trauma and they do not feel responsible for "saying the right thing" or the weight of upsetting one parent or another. Listening to how a child would feel most comfortable sharing their views means designing a system with children at the centre whereby

[10] http://www.internationalfuturesforum.com/iff-kitbag

[11] Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on child- friendly justice, adopted by the Committee of Ministers of the Council of Europe on 17th November 2010 and explanatory memorandum

perpetrators are not able to continue to offend through contact arrangements and the court system.

We also refer to our comments relating to training and child support workers, later in our response.

Need for flexibility, response and redress

The Bill must contain the flexibility that children and young people require in order to develop, build and maintain safe relationships with important people in their life at their own pace. At present we do not believe there to be any provisions for children to change their mind about contact and residence orders, or to respond to decisions made by the Court. It must also be made clear to children that they do not have to share their views and opinions if they do not want to.

The Bill must be amended to ensure that children and young people are able to raise concerns and feedback on, and challenge, decisions made by the courts. Some families have advised us that their children have sometimes decided that they do not want to have contact with a parent, but this has then changed over time—or vice versa. We must allow for children to be able to express their views and recognise that relationships change over time.

As it stands the Bill includes little to no provision regarding mechanisms for children and young people to seek redress for poor decisions made, to appeal the content of child welfare reports, or to flag concerns about contact orders that have been made. The ability to feed back and challenge decisions is central to the meaningful participation of children and young people; this must be incorporated into the Bill if it is to truly achieve its key policy objective of ensuring the views of the child are heard in contact and residence cases.

Training for those taking the child's views

Practitioners have identified significant challenges in building and sustaining a relationship with a child: "children who have been consistently let down by adults often build a protective barrier that means they are very cautious of, or even closed down to, investing in a relationship." [12] Tait and Wosu highlight that listening to a child and helping them to share their experiences is a huge privilege and also a huge responsibility, which requires significant skill and patience.

Children 1st note that the Financial Memorandum makes provision for training relating to domestic abuse, coercive control and report writing for those working alongside children. This is very welcome, however, in order to provide the quality of service, knowledge and understanding required to ensure that children and young people are safe and supported in Court and in contact centres, training on trauma, child development, and effective communication with children (particularly in relation to children with complex needs, with different cultural backgrounds or those who are very young) should also be provided.

We also note that there is no specific provision for the associated judicial training for Sheriffs in speaking to children (Para.87 of the Financial Memorandum). We know from our experience of working with children that there is often inconsistent practice and methods of engagement in this area. Our experience is that talking to children and asking their views in a way that is rights- based and trauma- sensitive is a significant skill that often involves interpreting non-verbal as well as verbal communication.[13] We believe that Sheriffs should

[12] For example, Tait, A. & Wosu, H., 'Direct work with vulnerable children', Jessica Kingsley Publishers, 2013.
[13] See, for example: Morrison, F, Tisdall, E.K.M., Callaghan, J.E.M. (2020) Manipulation and Domestic Abuse in Contested Contact – Threats to Children's Participation Rights, Family Court Review (Accepted). ; Tisdall, E. K. M. (2018) 'Challenging competency and capacity? Due weight to children's views in family law proceedings', *International Journal of Children's*

be supported to be trauma- sensitive and consider not just what a child says but the wider context in which the child's views are given in line with our comments above about 'due weight' (incl. with respect to domestic abuse and where a child may be exhibiting normal separation anxiety due to previous periods of no contact) and the way in which some children communicate through behaviour rather than speech. This is especially important if a child chooses to share his or her view directly with the Sheriff.

We believe that training must be part of a wider implementation strategy, which includes ongoing monitoring and evaluating of practice, assessment of culture change and supervision of professionals. The Financial Memorandum does not include provision beyond a few days of training and we feel this must be addressed in order to implement the changes that are envisioned by the Bill. A few days training in each of these areas is, in our view, not adequate if we are expecting legal professionals and members of the judiciary to work in a way that is trauma- sensitive and helps children to share their views comfortably and safely.

Presumption that a child is mature enough to instruct their own lawyer

Although we welcome the removal of the presumption in section 1 of the Bill we remain concerned that the presumption of 12 years old remains in terms of a child being mature enough to instruct their own lawyer (11ZB(3) and (4). We understand that there is no evidence behind the age of 12 being set out here and would strongly recommend that this presumption is also removed in line with the overall intentions of the Bill and children's rights as set out in Article 12 of the UNCRC and the respective General Comments.

2. Child's best interests

Children 1st welcomes the Scottish Government's efforts to ensure that children's best interests are better reflected throughout the civil justice system. General Comment 14 on the right of the child to have his or her best interests taken as a primary consideration is clear that states are obligated to help children, families and caregivers understand their rights and to create the necessary conditions for children to express their views and ensure that their opinions are given due weight. We have commented throughout our response on areas where we consider this could be better reflected through a rights- based approach to civil justice.

Commission and Diligence

Children 1st warmly welcomed the inclusion of a question relating to the disclosure of children's confidential information in the initial consultation document. We work with children and young people and families who have experienced sexual, emotional, physical and domestic abuse, in a number of different services across Scotland. Due to this work we hold case files and notes of private and confidential one-to-one sessions during which children and young people are given the opportunity to express their thoughts and feelings about their experiences at home. These files are often extremely sensitive due to the work that we do, which often relates to family support, domestic abuse and trauma recovery, and include very personal information the child has shared in the context of safe and trusting environment with a support worker.

Children 1st became aware of Courts in Scotland granting orders for Commission and Diligence in terms of a Specification of Documents which contained a call to recover documents from us. This is particularly in the context of residence/ contact disputes. Even when we have lodged the documents at court in a confidential envelope, this has

Rights, 26(1): 159-182; Tisdall, E.K.M. (2016) 'Subjects with agency? Children's participation in family law proceedings', *Journal of Social Welfare and Family Law,* 38(4): 362-379.

nevertheless resulted in some of our case files being shared, in their entirety, through the civil courts. In some cases this can mean that information held by a service working with a child who has experienced domestic abuse being shared with an alleged, or convicted, perpetrator.

We are aware that there is no existing legislation preventing the admissibility of documents/ information as evidence in civil court proceedings from organisations such as Children 1st in a similar way that information as to what occurred during family mediation is inadmissible (in the Civil Evidence (Family Mediation) (Scotland) Act 1995). Through our experience, the law of evidence is such that any documents lodged by Children 1st are admissible and that they can also then be disclosed to the parents of the children.

We believe that this is a violation of children's rights under Article 8 of the ECHR and Article 16 of the UNCRC. Should information/ documentation held by services and organisations working with children and families in this way be capable of easy recovery through the Commission and Diligence processes and released to the parties of a court action, **this greatly undermines the service that we offer to children and young people and the trusting relationships that our workers develop in order to facilitate healing and recovery**.

We note that the Family Justice Modernisation Strategy states (para.6.18) that the Scottish Government "intends to issue guidance to family law practitioners that reiterates that the best interests of the child should be a primary consideration in cases under section 11 of the 1995 Act when disclosing confidential documents." **However, we have been clear that in our experience there is an urgent need for primary legislation in this area and we are extremely disappointed that this has not been reflected in the Bill. Children 1st strongly encourage the Committee to explore how the Bill can be amended to reflect that children's best interests must be taken into account when the court is considering whether their own information should be disclosed.**

There are a number of issues that gravely concern Children 1st which lead us to consider that there should be an amendment to the current law to ensure safeguards to children's wellbeing when case files are requested from Children 1st and other service providers offering support to children and young people. We have set out these concerns in Appendix 2 to our response. We believe that sharing children and young people's very personal case files without seeking their views first is a violation of their rights under the ECHR and UNCRC, and a child's best interests should be paramount in any decision to request such files.

The proposed change is not intended to inhibit a parent's Article 6 right under the ECHR, nor prevent all confidential documents relating to a child from being disclosed in section 11 cases. The proposed change puts in place certain safeguards for children when the disclosure of confidential documents relating to that child is sought by an adult.

3. Child welfare reporters and curators ad litem.

Children 1st warmly welcome the provision within the Bill to create a register of Child Welfare Reporters and Curators Ad Litem and to provide a regulatory framework to support practice and ensure consistency. We have heard first-hand the important role that Child Welfare Reporters have had in ensuring children's voices have been heard and in safeguarding their rights (see Appendix 1).

Given the vital role that a Child Welfare Reporter can play in the civil court process we consider it important that Reporters are fully trained in child development and communication, trauma and domestic abuse and that reports are consistent across Scotland so that there is not a postcode lottery of provision. We also welcome measures to

ensure that the cost of Child Welfare Reporters will no longer be met by the parties involved.

We are pleased that the Bill's accompanying documentation specifically refers to the experience of the Safeguarders Panel for the Children's Hearings, which is currently run by Children 1st. The role includes recruitment and selection, training, managing appointments and monitoring performance of Safeguarders across Scotland. We have worked to ensure consistency in the quality of the safeguarding role across Scotland that that the context in which Safeguarders operate is clearly defined. Our experience with the Safeguarders Panel is that putting in place these safeguards can be complex and requires investment and time, but that there are significant advantages in terms of advancing children's rights in this area.

We consider it important to learn the lessons from setting up the Panel, and the length of time it took to establish processes and procedures to streamline practice for Safeguarders. It should also be noted that the existence of the Safeguarders Panel means that there is an existing, successful infrastructure terms of support and performance monitoring that could also deliver the Child Welfare Reporters and Curators Ad Litem register, regardless of who delivers the contract.

Our understanding is that Child Welfare Reporters will also undertake new responsibilities identified in the Bill with respect to explaining decisions to a child and establishing why an order has not been complied with. Even though the Scottish Government do not currently anticipate an increase in demand for Child Welfare Reports (par.40), given that it is expected that more children will be asked their views through these provisions, this may need to be reviewed at a later date.

We note that the Financial Memorandum states that if it is more cost effective to keep the register for Child Welfare Reporters in-house, they will do this, as opposed to outsourcing it (par.33). We believe that in line with meeting Article 4 of the UNCRC, capacity and quality must be the primary concerns in deciding where maintenance of the register sits, rather than cost.

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

Children 1st believe that the primary concern for the court when making contact and residence orders should be the best interests of any child or children involved. We recognise the right of a child to maintain relationships with both parents when it is safe to do so.

We agree with Scottish Women's Aid that in court processes, assessing what is in a child's best interests is crucially dependent on children feeling able to give their views, on professionals working with best practice models in children's rights and wellbeing, and on a robust understanding of domestic abuse and coercive control. Domestic abuse is a factor in the majority of cases coming through the family courts,[14] and we strongly oppose any assumption of shared parenting or involvement in children's lives in cases where a parent has been abusive.

We refer the Committee to our response to question 1 to ensure that children's voices are heard with respect to decisions that affect them.

Additionally, in order to further protect victims of domestic abuse, we agree with Scottish Women's Aid that it is crucial that the language in the Bill concerning domestic abuse is updated to include coercive control as defined under the Domestic Abuse (Scotland) Act 2018. We are also concerned by the changes made by the Bill to Section 11 (7A) – (7E) of the Children (Scotland) Act 1995, which removes sections (7A)-(7C), situating them in a

[14] Mackay, K (2012) The Child's Voice in Contact Disputes: Genuine Participation in Private Law Court Actions. Lambert Academic Publishing. Saarbrucken, Germany.

separate part of the legislation, in addition to re-wording parts of these sections. As the Committee will be aware, these subsections were introduced into the 1995 Act as amendments during the passage of the Family Law (Scotland) Act 2006. When the 2006 Act was introduced, it was Parliament's intention that Section 11(7A)-(7E) were read together and in sequence in order to best inform decisions made in relation to children who had experienced domestic abuse and contact arrangements. Our understanding is that the references to the court's duty to consider domestic abuse and the impact of this, as set out in 11 (7A)-(7C) are inextricably linked to 11 (7D), and these subsections cannot be split and separated, as the Bill proposes. We do not see a clear reason why this amendment has been made and believe it could dilute the duty that the legislation imposes on the court to consider the impact of domestic abuse when making a contact or residence order.

We would encourage the Committee to address this as the Bill progresses.

5. Other requirements on the court.

Feeding decisions back to children

Some of the families that we work alongside have shared with us that they felt "abandoned" after the court had made a decision. In our experience, information about the court and decisions made is typically fed back by parents, who may require additional support to do so.

Children 1st welcome inclusion within the Bill that certain decisions should be explained to children—but we feel there is scope to expand this further to ensure that children's best interests are taken into account regarding how this happens and what decisions are communicated. We would also welcome further consideration of how a court can keep a child up to date with important progress when it is appropriate to do so.

Decisions must be properly and appropriately explained to children in a way that they have identified so that even if a decision is different to what they expressed they have an understanding of how this has been reached and what it means. 'Power Up Power Down' talked about integrating a system of feeding back decisions and ensuring that children are involved in all parts of the process.

In line with our comments in answer to question 1, Children 1st believe that a range of options to feed decisions back to children must be available, including for children who are younger and cannot read or find it hard to understand certain forms of communication. We would welcome further consideration of how this can be achieved as the Bill progresses.

Provision requiring the Court to consider the risk to the child's welfare of any delay in the proceedings

In regards to delays in court proceedings, we welcome the acknowledgement of the negative impact that this can have on the welfare of children and young people. The Council of Europe's Guidelines state that a child' friendly justice system "adjusts its pace to children: it is neither expeditious not lengthy, but reasonably speedy." [15]

Children 1st believe that a rights- based approach should be taken to this provision to ensure that the courts are respectful of individual circumstances and responsive to concerns relating to safety, for example.

[15] Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on child- friendly justice, adopted by the Committee of Ministers of the Council of Europe on 17th November 2010 and explanatory memorandum

6. Vulnerable witnesses.

The Justice Committee will be aware of the commitment made by Scottish Ministers that the Barnahus (Child's House) model[16] is the intended destination for support for all child victims and witnesses to crime.[17] We encourage the Scottish Government to ensure that close links are made between the provisions within this Bill and the ambitions around delivery of Barnahus model given their similar aims. Some children will be experiencing the civil and criminal courts concurrently and it is vital that their interaction with these systems does not cause any harm or compound any trauma.

Children 1st believe it is vital that perpetrators of domestic abuse are not able to continue perpetrating abuse through the Courts. This includes ensuring that the Courts are alert and aware of methods of coercive control and the dynamics of domestic abuse. In particular we think it is important that survivors of domestic abuse are not subject to cross examination in either civil or criminal courts by their abusers and we therefore welcome the proposals relating to the prohibition of a perpetrator conducting their own defence and the special measures available.

We refer to comments from Scottish Women's Aid about how the provisions within this section of the Bill will apply in practice, in particular with respect to how a 'victim' will be determined and links with any criminal court proceedings.

We understand from the Scottish Government that these provisions will apply to children and support the NSPCC's call that the ban should be extended to any child involved in a case involving domestic abuse, regardless of whether they are the child of the perpetrator or not. Although we understand that limited numbers of children are likely to appear in person it is vital that these special measures are extended in these limited cases and that children understand and are aware of their rights.

We also remind the Committee that there is still not a specific offence that recognises children as victims of domestic abuse, separate from the aggravator in the Domestic Abuse (Scotland) Act 2018. It is vital to ensure that children's voices are taken into account where they have been affected by domestic abuse and the correct processes are put in place to keep them safe even in the absence of this important recognition.

Children 1st consider it important that solicitors included on the register have knowledge and experience of the dynamics of domestic abuse so that perpetrators are not able to continue to offend through their legal representatives. Some of the women that we work alongside have raised this as a key point, reflecting their own experience that they did not feel that the solicitors representing the perpetrator in their case had a clear understanding of the impact of his behaviour or of coercive control.

Finally, although we recognise these important provisions for survivors of domestic abuse it is important to reflect that some of these measures already exist and are not implemented consistently. Children 1st would encourage the Committee to consider what the barriers are to implementation and to ensuring that survivors are aware of their rights and the options available to them in terms of special measures. We also highlight that these special measures apply within the court setting but women have spoken to us about being asked to wait in the same area or arrive at the same time as the perpetrator or the perpetrator walking past them to use the bathroom. We would welcome further consideration of these issues.

[16] https://www.children1st.org.uk/media/6701/trauma-free-justice-care-and-protection-for-scotlands-children.pdf
[17] http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12083

7. Contact centres.

Role of contact centres in maintaining contact

Children have the right to safe and positive relationships with important people in their lives. However, the right to be involved in a child's upbringing is not an absolute right, and should be restricted, or in some cases denied, where this exposes a child to abuse. We believe that discussions around contact should start from this perspective, placing a child's best interests at the centre.

Contact arrangements themselves should be the focus of scrutiny for safety initially, not the contact centre. If contact is unsafe for survivors and children, it should not happen, regardless of potential changes and regulation relating to contact centres. This means ensuring that children's voices are heard and their best interests are taken into account. If they express a view that they are worried about contact arrangements or feel unsafe, they must be taken seriously—even if they change their mind.

In our view, contact centres can play an important role in facilitating safe contact arrangements and there is much potential for them to be part of a rights- based approach to civil justice for children. We would welcome a broader discussion about the potential role of skilled staff to signpost or offer support given what we know from models such as Safe and Together, which talks about assessment of the parenting role. We would also welcome further discussion about how decisions are made regarding access to contact centres and supervised contact, which we understand can be inconsistent in practice.

Regulation of contact centres

Children 1st welcome proposals to regulate child contact centres, plans for a system of independent inspections and provisions for minimum standards in relation to training of staff and accommodation.

There is much scope for contact centres to develop into welcoming spaces where children and families want to go, but this requires resources and must be done in collaboration with children and families who use contact centres. Much of what needs to change relates to culture and practice as well as systems and processes.

We have referred earlier in our response (question 1) to training requirements for those who will be supervising contact. We reiterate here the importance of ensuring that professionals are fully trained in the dynamics of domestic abuse and the way in which perpetrators may use contact arrangements to continue to exert coercive control. We are also clear that training must include child development and communication and trauma. As we mentioned in our response to the Financial Memorandum (Appendix 3), in order to provide the quality of service, knowledge and understanding required to ensure that children and young people are safe and supported in Court and in contact centres, training on trauma, child development, and effective communication with children (particularly in relation to children with complex needs, with different cultural backgrounds or those who are very young) should also be provided. As identified in Relationship Scotland's consultation response to Part One of the Children (Scotland) Act 1995, there has been a significant increase in recent years in the complexity of issues faced by families using contact centres, including mental health and addiction issues, which must be reflected in the training provided.

There are also practical considerations about these proposals relating to the standard of supervision and recording and how it would be accredited and regional accessibility to a regulated contact centre. We would also be interested to hear further about accountability and enforcement mechanisms for recommendations after an inspection and what independent complaints processes can be put in place.

We refer to our comments on the Financial Memorandum in terms of our views on the practical or resource implications of the regulation of contact centres. Specifically, we raised concerns about the resources allocated to meet accommodation and training standards, and provision for Island communities.

We also understand that there is currently no statutory funding available for contact centres, so centres are dependent on precarious funding streams in order to deliver services. Children 1st would welcome discussion about how this may impact on the quality of safe contact arrangements and what could be better put in place to ensure continuity and sustainability. We note that the Policy Memorandum of the Bill (Para.102) considers that contact centres may be required to close because they do not meet standards. In our view, contact centres should not be operating that do not meet minimum standards, but provisions must be put in place to ensure that there is equitable access to safe contact facilities.

8. Enforcement of orders.

Children 1st welcome the provisions within the Bill which require the court to investigate the reasons for a person's failure to comply with a court's order. We consider this measure is especially important for survivors of domestic abuse, who are concerned for their safety and for the safety of their children. In our experience, survivors may often be labelled as destructive or hostile when there is usually a good reason why contact orders have not been complied with and once explored a solution can be found.

Women in our domestic abuse services have spoken about the fear of failing to comply with contact orders, even when they suspect that the contact arrangements put in place may not be safe. One survivor told us that she was so anxious when her child was ill and not able to attend a pre-arranged visit to a contact centre that she spent the day calling the court and arranging for a doctor's note because she was so worried that her reasons for not bringing her child to the contact centre would not be believed.

Talking about 'enforcing' contact orders, as set out in the initial question in this call for views fails to recognise that we are talking about children's relationships. In our view, it is not a rights- based approach to force children into situations where they feel uncomfortable or unsafe against their will or best interests. Indeed, we consider that it would be detrimental not only to the child[18] but also to non- offending parents[19] and to the person who is trying to forge a relationship with the child if contact arrangements were not of a voluntary nature.

We have heard from children who have changed their minds about contact arrangements at the last minute but have still felt forced to attend against their will. It is difficult to overestimate the impact of forcing a child into situations where they may feel uncomfortable or unsafe. Our support workers have told stories of children screaming and crying on the way to arranged visits, and the way in which children's distressed behaviour manifested in the weeks leading up to and after contact visits took place. One child kicked a hole in a door, for example, unable to express his feelings in words.

It is vital that the investigation into non- compliance with contact orders is undertaken by a skilled professional with understanding of the dynamics of domestic abuse and trauma and in a way which does not cause the child or children involved undue distress. As we stated in our joint response to the Financial Memorandum with Scottish Women's Aid (Appendix 3)

[18] SWA (2018) Response to the consultation on Part One of the Children (Scotland) Act 1995, Q.24 https://womensaid.scot/wp-content/uploads/2018/09/1995-Act.pdf

[19] Humphreys, C. and Thiara, R. (2015) 'Absent presence: The ongoing impact of men's violence on the mother-child relationship', Child and Family Social Work, 1-9.

we believe that the investigation must always seek the views of the child or children involved and that the wording in this section of the Bill should be amended to reflect this. [20]

9. Contact with siblings.

Children 1st warmly welcomes the provisions within the Bill to regarding relationships between siblings. As stated above, we believe that the Courts should adopt a rights- based approach taking into account children's views around the important relationships in their lives. We support the Stand Up to Siblings campaign and refer to the expertise of our colleagues working on that campaign for a more detailed response.[21]

10. Births registered outwith the UK.

Children 1st do not have any specific comments on this question as it is not something that we are aware of being raised by the families we work alongside.

11. Children's Hearings.

We have responded to the areas of the Bill that cover Children's Hearings in many of the other questions. We support the provision in the Bill that allows the Principal Reporter in a Children's Hearing to appeal the sheriff's decision of deemed relevant person status.

12. Practical, financial or other impacts of the Bill.

Children 1st responded to the call for views from the Finance and Constitution Committee on the Financial Memorandum of the Bill in a joint response with Scottish Women's Aid, which we have attached as Appendix 3.

Our response highlighted the importance of taking a rights- based approach to resourcing and implementing the provisions, including by ensuring innovative and creative approaches to listening to children's views and allowing opportunities for flexibility and change. In line with Article 4 of the UNCRC which states that state parties should undertake measures to implement rights to 'the maximum extent of their available resources,' we believe that there must be adequate resources in place to fund the variety of different ways in which children may wish to express themselves and to fund sufficient high- quality training to ensure those working alongside children are highly skilled and equipped with information and knowledge about children's rights, child development and communication, trauma and the dynamics of domestic abuse.

Finally, we note that the proposed timescale as set out in the Financial Memorandum indicates that the regulation of contact centres and provisions for Child Welfare Reporters, Curators Ad Litem and solicitors will not be fully operational until 2023. We also note that the Scottish Government will be undertaking mapping work relating to child support workers but do not wish to see a gap in terms of support for children while this work is ongoing. We encourage the Committee to consider what interim arrangements will be in place until then to safeguard children's best interests and keep them safe as civil court cases continue.

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

<u>Commission and diligence</u>

As stated above in answer to question 2 on children's best interests, Children 1st are extremely disappointed that issues relating to commission and diligence are set out in the

[20] McKay, K. (2013) 'The treatment of the view s of children in private law child contact disputes where there is a history of domestic abuse': https://www.cypcs.org.uk/ufiles/views-of-childrenand-domestic-abuse.pdf
[21] https://www.clanchildlaw.org/Handlers/Download.ashx?IDMF=3edff743-f3cf-442b-b7c8-b56d6e11a98e

Family Justice Modernisation Strategy rather than on the face of the Bill itself. We encourage the Committee to explore this further with the Scottish Government and recommend that the Bill is amended going forward.

Child support workers and trauma recovery

Children tell us that a trusted relationship often makes the difference between them feeling supported to tell their story and/ or to help them to begin their journey to recovery. Many children prefer to tell their story once to a trusted professional—instead of repeatedly telling their story to different people—with whom they have built an established relationship and trust to share their views.

Children 1st recognise the concerns of the Scottish Government outlined in the Family Justice Modernisation Strategy (para.2.23) that establishing a system of child support workers may result in children having multiple child support workers appointed. We welcome the commitment (para.2.24) that the Government will consider whether to introduce child support workers to ensure that any new system would work with existing systems and other proposed work. We look forward to working with the Government to explore this further and in the interim would welcome reassurance that children will be provided with adequate support to ensure that they are supported to recover from their experiences, if required, and to ensure that their experience of sharing their voice through the civil courts is positive.

Our experience is also that family support workers are not often permitted to support to give evidence in civil procedures. On the occasions that support workers were able to share views relating to the child's experiences we did not have a sense that we were taken seriously or listened to. Any discussion about a potential role of a child support worker or indeed establishing a system of child support workers must work to address this.

Alternatives to Court

Courts are rarely the best place for resolving family disputes. Children 1st is firmly of the view that families should be given early help and support to resolve problems and disputes, where it safe and appropriate to do so, before these issues reach the Courts. In particular we highlight the value of Family Group Decision Making (FGDM) as an important option to help resolve conflict and reduce stress. We believe that no child should ever experience a life- changing decision before a Family Group Meeting takes place.

Mediation and other alternatives to Court must sit within a continuum of support and risk assessments should be conducted regularly to ensure children and families are safe. In Scotland we believe FGDM is in line with the policy direction set out in GIRFEC. Family Group Meetings are also one of the support services that can help local authorities to deliver on their obligations under Part 12 of the Children and Young People (Scotland) Act 2014, in terms of provision of services for children at risk of becoming looked after. We are aware of the review of how Part 12 is being enacted and would welcome further discussion about how to embed FGDM as a viable and practical alternative to Court processes.

For further information or questions about our response please contact our Policy Manager Chloe Riddell, chloe.riddell@children1st.org.uk.