

PE1838/E

Children 1st response of 2 February 2021

Children 1st does not currently provide formal advocacy services to the children and families that we work alongside. Our services are family support services, though this often does include supporting children and families who are part of civil and criminal court proceedings and Children's Hearing processes.

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 tell us that they don't feel part of decision-making processes, even when decisions are being made about them, and that they feel overlooked. This has a significant impact on their 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 abuse. For this reason, along with our partners Scottish Women's Aid, Dr Fiona Morrison and Professor Kay Tisdall our briefings throughout the passage of the Children (Scotland) Act 2020 strongly supported the inclusion of provision for a child advocacy service for children experiencing the civil courts.ⁱ

Our organisations have consistently highlighted the need for skilled and individualised support to facilitate children's participation in the civil courts and their support and recovery needs. The UN Committee on the Rights of the Child's General Comment 12 states that where possible, children must be given the opportunity to have their views heard directly.ⁱⁱ Research shows that addressing children's advocacy is critical if we are serious about improving children's participation rights.ⁱⁱⁱ

We are therefore pleased that the Children (Scotland) Act 2020 now contains a 'duty to ensure availability of child advocacy services' in addition to the Scottish Government commitment to undertake further scoping work in relation to child support workers (for example, para 36 of the Scottish Government's response to the Justice Committee's Stage One report). We understand that this work will also include a review of the vast number of different professionals that can sometimes be involved in a child's life.

As part of the new duty, Ministers have the flexibility to make "such provision as they consider necessary and sufficient to ensure that all children concerned in relevant proceedings have access to appropriate child advocacy services." As work to progress the implementation of this duty progresses, Children 1st firmly believes that this should include consideration of a framework of quality and accountability, that includes training, supervision and regulatory requirements for advocacy workers.

Children 1st currently operates the national Safeguarders Panel on behalf of the Scottish Government. It has been clear that this programme of modernisation has improved quality and ensured greater system alignment. As with Safeguarders and Child Welfare Reporters, more standardised processes relating to advocates would raise standards of practice and uphold children's rights by providing consistency in training and support to ensure that the child remains the focus.

As Children 1st stated when this amendment passed, we therefore urge careful consideration of how the provision will be adequately resourced and competently commissioned going forward. Advocates in all services need professional supervision, review and overview to ensure that the worker is able to frame their assessment advocacy in a child- focused way. The provision of advocacy must be set within the context of a child's right to have their views heard and not be repeatedly asked to tell their story.

It will also be important to link work to develop the advocacy and support provision in the civil courts to the ongoing work on advocacy and support in the Children's Hearings, the implementation of the recommendations of the Independent Care Review and improvements in the criminal courts including the development of a Scottish Barnahus.

Finally, while the issue raised is certainly one that is important to consider—especially given the ongoing parallel discussions about advocacy provision in the Children's Hearings and to implement the calls to action in The Promise; the incorporation of the UNCRC into Scots Law; and the drive to ensure consistency and regulation for Safeguarders and Child Welfare Reporters—we have significant concerns about the framing of this petition.

We strongly refute the suggestion that “child advocacy services approach their work from inherently prejudiced assumptions.” Our experience is that the existing civil court processes can often be retraumatising, overwhelming, complex and confusing for children—and their families. Children 1st are supportive of all measures to ensure children's voices are heard, their rights are upheld and—where they have experienced abuse and trauma—they are supported to recover.

We note that the majority of cases which make it to courts include reports of domestic abuse,^{iv} and extensive research shows that child contact is used by perpetrators as a means of furthering and intensifying abuse.^v Accusations of 'alienation' can be used by perpetrators of domestic abuse to justify behaviour and hide behind actions. Extensive research (Meier, 2009; Bala, Hunt and McCarney, 2010; Johnston, Walters and Oleson, 2005; Lee and Oleson, 2005; Clarkson and Clarkson, 2006; etc.) has emphasised the need to distinguish parental alienation from justifiable estrangement due to abuse, violence or impaired parenting and where parental alienation claims can be far more often used in practice to deny real abuse than to actually reduce psychological harm to children (Meier, 2009:250).

We support the suggestion that, as part of discussions about how children should be supported to share their views with the court, it would be helpful to consider the regulation and accountability of child advocacy workers, in a similar manner as Child Welfare Reporters. Ultimately, the aim is to ensure that all children's participation rights are upheld and that they have a choice about how their views are shared—including the option of a supportive person who can advocate on their behalf. An approach that enables children to decide the safest and most appropriate way for them to be able to express their views directly to the court makes participation as safe and as meaningful as it can be.

ⁱ Children 1st, Scottish Women's Aid, Dr Fiona Morrison and Professor Kay Tisdall (2020) Joint briefing on Stage One of the Children (Scotland) Bill <https://www.children1st.org.uk/media/7849/joint-briefing-on-stage-1-children-scotland-bill.pdf>; Stage

Two briefing <https://womensaid.scot/wp-content/uploads/2020/06/Joint-Briefing-on-Stage-Two-Children-Scotland-Bill.pdf>;
Morrison, F, Tisdall, E. K. M., Warburton, J., Reid, A, Jones, F (2020) Children's Participation in Family Actions – Probing
Compliance with Children's Rights Research Report <https://bit.ly/2WMMWqhl>;
https://www.parliament.scot/S5_JusticeCommittee/Inquiries/JS519CH26_Morrison_Friskney_Tisdall.pdf

ⁱⁱ Morrison, F, Tisdall, E. K. M., Warburton, J., Reid, A, Jones, F (2020) Children's Participation in Family Actions – Probing
Compliance with Children's Rights Research Report <https://bit.ly/2WMMWqhl>; UN Committee on the Rights of the Child, General
Comment on Article 12 (2009) par 34

ⁱⁱⁱ Morrison, F, Tisdall, E. K. M., Warburton, J., Reid, A, Jones, F (2020) Children's Participation in Family Actions – Probing
Compliance with Children's Rights Research Report <https://bit.ly/2WMMWqhl>

^{iv} Mackay, K (2013) The treatment of the views of children in private law child contact disputes where there is a history of
domestic abuse, A Report to Scotland's Commissioner for Children and Young People <https://bit.ly/3e4kthK>

^v Scottish Women's Aid (2018) Briefing: Domestic abuse and child contact <https://bit.ly/2YNdmE6>