

Michael McMahon, MSP  
Convener  
Public Petitions Committee  
Scottish Parliament  
EDINBURGH  
EH99 1SP

26<sup>th</sup> April, 2017

Dear Convener

PE1635 – Review of Section 11 of the Children (Scotland) Act 1995

I thank the Committee for the opportunity to comment on the above petition.

Disputed contact is one of the most frequently raised issues via our Enquiries Service.<sup>1</sup> Those using the service often raise concerns about children being ‘forced’ into contact with a domestically abusive parent. This is true even where the child or young person has expressed a strong desire for such contact not to take place.

As the Committee may be aware, my office has commissioned two reports which examined how the views of children affected by domestic abuse were taken into account in child contact cases:

1. *Child contact proceedings for children affected by domestic abuse: a report to Scotland’s Commissioner for Children and Young People.* Fiona Morrison and E. Kay M. Tisdall, Centre for Research on Families and Relationships, University of Edinburgh; and Fiona Jones and Alison Reid, Clan Childlaw, March 2013
2. *The treatment of the views of children in private law child contact disputes where there is a history of domestic abuse.* Dr Kirsteen Mackay, December 2013.

Both reports are available online [here](#). The research found that there was often a lack of awareness by professionals and Sheriffs of the dynamics of domestic abuse, and a need for more training and awareness raising for all professionals involved in domestic abuse court cases.

The reports also highlighted a number of other key difficulties for children and young people:

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<sup>1</sup> The Enquiries Service provides information and signposting to children and young people, parents and professionals, on a wide range of children’s rights related issues.

## Presumption of Contact

Our March 2013 research found in reported case law, the courts consistently emphasise the need to judge each case on its facts and there is no legal presumption for contact, or against contact in situations of domestic abuse. However, later research (December 2013) indicated a bias towards contact with both parents when there was an absence of the views of the child. When a Sheriff worked from the presumption that contact with both parents was likely to be beneficial to a child, then this had the potential to cause significant difficulties for children and young people who did not want to maintain contact with a domestically abusive parent.

Many of the children participating in the research had directly witnessed or had been subjected to violence and coercive behaviour in the home. A presumption in favour of contact with both parents meant that even children who reported being scared of their non-resident parent, could still be ordered to have contact by the court.

Whilst our research (December 2013) found that commissioning background reports (e.g. from a Court Reporter) was vital in ensuring the Sheriff had a clear picture of risk, we also found that Court Reporters would benefit from further training to help them recognise the dynamics of domestic abuse, including coercive control.

## Reporting of Incidents

Our December 2013 report highlighted the problems faced by some parents and children in proving domestic abuse was taking place in the home. The research found that only a small minority of domestic abuse incidents are ever reported to the Police. This can cause difficulties when contact decisions are being taken, as a Sheriff may doubt the existence of domestic abuse, believe that allegations of domestic abuse are being used to manipulate the situation in the mother's favour or base their assessment of risk purely on the number of times the Police have been called. It's therefore important that Sheriffs understand that incidents reported to the Police form only a very small part of a domestic abuse picture.

## Views of the Child

Current methods of seeking children's views are generally not age-appropriate, and do not always make clear to the child the weight their views will be given. My office has worked recently with the Scottish Civil Justice Council to make improvements to the F9 form, which is one of the ways in which children's views are currently sought. In doing so, we highlighted the need to find more child-friendly ways of seeking children's views.

Our 2013 research found that processes for consulting with children also did not adequately take into account the child's fears that their views will be fed back to the non-resident parent, and that there may be a risk of retaliation. This, understandably, made it more difficult for children to feel that they could speak freely.

Since Scottish Legal Aid Regulations were altered in 2010, it has also become much harder for a child or a young person to seek independent legal representation. Without such representation, their views are often presented alongside those of the resident parent (most likely the child's mother). As such, it is often suggested that their views have been manipulated. As a result, the child's views may be given lesser weight or may be disregarded entirely.

In our 2013 research, over a third of children whose views were sought had a contact outcome that bore no resemblance to their views. When this happened, children reported rarely receiving feedback on that outcome from the Sheriff/court. Without a clear indication of how their views had been factored into the Sheriff's decision-making, then the children felt that their views had simply been ignored.

### Child Contact Centres

Our 2013 research also found that very young children who are *least* likely to be heard are *most* likely to be the subject of a contact order. Just over a third of the children in our research group, with a contact order in place, met their non-resident parent in a child contact centre.

I would suggest that it would also be helpful to explore Sheriffs' and parents' understandings of what constitutes 'supervised contact', to avoid a perception that 'supervised contact' will involve much more supervision than may actually be the case. There is a need to ensure appropriate assessment of the risks factors inherent in contact and that it does not provide opportunities for continuation of domestic abuse, such as coercive control or further trauma to the children and the main carer (most often their mother). There is also a need to include adequate review periods for the 'supervised contact' to take account of changes in circumstances or any negative impact on the children or mother.

Given the vulnerability of the children involved, I agree with the Petitioner that it would be helpful to have greater oversight and regulation in this area. I would also welcome the creation of an inspection regime, to ensure that contact centres are able to provide the best possible safety-planning for children affected by domestic abuse.

I recognise that children attending child contact centres are often those with the most complex family circumstances and, as such, there is a clear responsibility to ensure that their experience is as safe and stress-free as possible.

If the work of contact centres is to be reviewed, as I believe that it should, then I agree with the Petitioner that it would also be helpful to look at whether these centres are adequately resourced, including secure independent funding for provision on a national basis.

Finally, in relation to how the views of children and young people affected by domestic abuse are taken into account by the courts, the Committee may be interested in a joint project in which we have recently been involved with Scottish Women's Aid.

Entitled 'Power Up, Power Down', it has engaged with 27 children and young people aged 5-17 years with experience of domestic abuse and disputed contact through the medium of a comic strip. An initial comic strip was designed to represent the current experiences of children and was used as a means of prompting discussion. The children and young people involved in the project then worked together to form a new comic strip, which outlined the more creative and child-friendly ways in which they'd like their views to be sought. The range of recommendations from the children and young people is extensive and I will forward a link to the film once it is completed (after 4<sup>th</sup> May). My office will be happy to share further information about this project with the Committee, should they wish to know more.

Should you require any further information in relation to this response, please contact my Parliamentary and Policy Officer, Pauline McIntyre, in the first instance ([pauline.mcintyre@cypcs.org.uk](mailto:pauline.mcintyre@cypcs.org.uk)).

Yours sincerely

A handwritten signature in black ink that reads "Tam Baillie". The signature is written in a cursive, slightly slanted style.

Tam Baillie  
Children and Young People's Commissioner Scotland