

Children and Young People's Commissioner Scotland submission of 9 October 2023

PE1968/F: Restrict perpetrators of domestic abuse from using court proceedings to continue tormenting their victims

Thank you for inviting us to comment on this petition. The impact of child contact proceedings on the lives of children who have experience domestic abuse is something that our office has been working on for some considerable time. In 2013, we published research by Dr Kirsteen Mackay into the treatment of the views of children in private law child contact disputes where there is a history of domestic abuse¹, which informed our work with Scottish Women's Aid on Power Up Power Down² and our subsequent work on the Domestic Abuse (Scotland) Act 2018³.

In our evidence to the Justice Committee on the Children (Scotland) Act 2020⁴, we highlighted the ways in which increasing the extent to which courts take account of the views of children could act to ensure their best interests are treated as paramount by the courts, as required by section 16 of the Children (Scotland) Act 1995. Provisions in the 1995 Act on the paramountcy of the child's welfare and the non-intervention principle were strengthened by inserting new section 11ZA.

Our evidence on the 2020 Act, together with our response to the Scottish Government's consultation on the Family Justice Modernisation Strategy,⁵ explains the human rights context in relation to the European Convention on Human Rights (ECHR), the UNCRC, the Council of Europe Guidelines on Child Friendly Justice and other international human rights treaties and guidelines.

The 2020 Act made a large number of changes to improve the ability of the courts to take account of the views of the child by inserting new

¹ SSCYP, 2013. <https://www.cypcs.org.uk/wpcypcs/wp-content/uploads/2020/03/views-of-children-and-domestic-abuse.pdf>

² SWA and CYPCS, 2016. <https://womensaid.scot/project/power-up-power-down/>

³ CYPCS, 2017. *Parliamentary evidence: Domestic Abuse (Scotland) Bill (Stage 1)*
<https://www.cypcs.org.uk/resources/domestic-abuse-scotland-bill-stage-1/>

⁴ CYPCS, 2019. <https://www.cypcs.org.uk/get-help/policy-and-law/our-policy-work/evidence-submission-justice-committee-call-for-views-on-the-children-scotland-bill/>

⁵ CYPCS, 2018. *Consultation response: Review of Part 1 of the Children (Scotland) Act 1995 and creation of a family justice modernisation strategy.* <https://www.cypcs.org.uk/resources/scottish-government-consultation-response/>

section 11ZB into the 1995 Act. This included replacing the presumption that children aged 12 and over are capable of giving their views with a presumption that all children have the capacity to form a view and placing a duty on the court to give all children the opportunity to express their views in an appropriate manner. The Act also introduced advocacy services to support children who are the subject of private law disputes. This brings the 1995 Act more in line with children's right to participate when decisions are made about their lives, in line with Article 12 and General Comment 12 of the UNCRC.

The 2020 Act also introduces registration, with minimum requirements for training, for child welfare reporters along with access to advocacy. We welcomed this and called for that training to include children's human rights, child development, effectively seeking the views of children and supporting children to express their views in person. We also supported calls for child friendly complaints mechanisms and advocacy, however we note that advocacy is not a substitute for qualified legal advice and representation where this is required.

Our view is that by improving the information available to be the court, particularly regarding the views, and strengthening the understanding of children's human rights courts will be in a position to make decisions where children's best interests are paramount, in line with section 16 of the 1995 Act.

Although, as stated in our Stage 3 evidence,⁶ we felt that there were amendments that would further strengthen the 2020 Act, our view is that it presents a significant step in ensuring that the courts focus is on the best interests and views of children who are subject to contact proceedings and a significant step towards compatibility with the UNCRC.

It is therefore extremely disappointed at delays in implementation of the 2020 Act. In particular, we are concerned there is currently no timescale available on implementation of the register of Child Welfare Reporters and we call on Scottish Government to make funding available to progress this.

March 2023*

**Originally submitted in March 2023 but only received by Committee in October 2023.*

⁶ CYPES, 2020. <https://www.cypes.org.uk/get-help/policy-and-law/our-policy-work/msp-briefing-children-scotland-bill-stage-3/>