

Non-implementation of Legislation

Children First is Scotland's national children's charity. We stand up for children, keep them safe and support them to recover from trauma and abuse through our national and local services.

When the Children (Scotland) Act 2020 passed, we felt this was a landmark law that would transform the civil court system for children. We hoped that the legislation would put an end to traumatic and distressing experiences some children and families we worked alongside have faced through the civil court system.

We worked hard to ensure that the experiences of children and families informed the contexts of the Bill. One survivor we worked with, who had experienced domestic abuse and the court contact process, told us that "this was like moving from one form of abuse to another".

For many of those we worked with, this legislation was a sign of hope that their distress would not be something other children and families would have to experience. When the Bill passed, Tamzin Baxter, from our children and families team in the Borders, said "It is so incredibly positive, motivating and uplifting to know that somehow all this unfairness and heartache is finally really being seen and addressed, and that hopefully in the future families won't have to go through such crushingly difficult experiences in relation to contact and court process."

With much of this legislation still sitting unimplemented, this not only means children and families are continuing to experience trauma from an unchanged system. It also means that hope for change is damaged.

Our understanding is that the reason for the failure to bring this legislation into force is primarily financial. We appreciate that budgets have been under pressure. However, we are deeply disappointed at the way this work has been stalled and deprioritised – particularly in light of the UNCRC (Incorporation) (Scotland) Act 2024. The changes contained in the Children (Scotland) Act 2020 would make an immediate, tangible difference to children's rights in Scotland, in particular around children's right to be listened to and taken seriously in matters that affect them.

Child Welfare Reporters

The Scottish Government have shared a view that key sections of the Bill, including Section 1 which would improve the way that courts listen to children's views, are dependent on the implementation of Section 9 which would establish a Register for Child Welfare Reporters.

Child Welfare Reporters have an important role in ensuring children's voices have been heard and in safeguarding their rights during court processes. Child Welfare Reporters can be appointed to provide a report to establish relevant information to help a Sheriff make

decisions in the best interests of any children involved in a civil case. This legislation sought to ensure consistency in the provision of Child Welfare Reporters in civil court cases by creating a national register of Child Welfare Reporters and Curators Ad Litem and to provide a regulatory framework to support practice and ensure consistency.

Because Child Welfare Reporters play such a central role in how children's views are gathered and shared with their court, it has been said that the register, which will establish minimum levels of training and competencies, would be critical to making sure that the improvements for children could be made real. However, the Scottish Government have estimated that the establishment of this register would cost an estimated £5 million, and this has not come through in any budget settlement since the Bill was passed.¹

We have discussed options for amending the order of implementation with the Scottish Government and have been open to options that would allow for some improvements without the full register being established. Child Welfare Reporters continue to work with children and report to court, and steps could be taken to roll out training. However, we do accept that this might involve compromising on how this is done and would not match the ambition set out in the legislation. The central issue remains that the Scottish Government have not brought forward the budget to finance the legislation passed by parliament.

The issues for children and families who are currently experiencing civil court processes remain as they were when we gave evidence to the parliament as this legislation passed. We also shared that:

- Some children and families felt as though courts being used to continue to perpetrate domestic abuse and that children feel that no one is listening to them.
- 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 abuse, where research has demonstrated that children are not always believed when they have shared their views.
- There are significant benefits to investing in ensuring children's voices are properly taken into account at an early stage. This leads to 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
- 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.
- 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

¹ See the Scottish Government response to a petition, issued in March 2023: [pe1968_c.pdf](#).

to concentrate in school and his mental health deteriorated—he even spoke about running away.

Children First have worked closely with Scottish Women's Aid who have highlighted many similar concerns, and we would therefore also point to their submission on the issues created by the failure to create this register.

Commission and Diligence Arrangements

Children 1st work alongside many children, 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.

During the Bill's passage we shared concerns that information/ documentation held by services and organisations working with children and families can be capable of easy recovery through the Commission and Diligence processes and released to the parties of a court action without considering whether this is in the child's best interests. We believe 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.

Section 18 of the Bill was added by amendment to address this, and requires that where the court is considering making an order under section 11(1) of the 1995 Act, and the court has to decide whether information should be shared during this process, the court should consider the best interests of the child in making this decision. This is another section which has been held up as a result of the failure to fund the register for Child Welfare Reporters, and highlights the way in which implementation of one Section of the Bill is acting as a barrier to a range of different, technical surrounding sections.

Contact Centres

Many women we work alongside have reflected concern about inappropriate contact arrangements, which were made even when they, and their children, had expressed that they did not want to see their other parent at a particular time. We were also told about abuse occurring during contact. There was a strong feeling that contact should be suspended while any allegations of abuse are fully investigated.

Some also spoke about the stress and worry that needing to comply with contact orders placed upon them. One woman was particularly worried when her child was ill and she felt concerned about the ramifications if that prevented her from taking the child to pre-arranged contact.

Views around contact centres were also mixed. Some families felt that they were suitable and safe places. Others felt that there were gaps around interpreting children's behaviour. They felt that it was a "false situation" because the child appeared happy during contact but that those supervising or observing contact and reporting back to the Court did not see the fuller picture of behaviour at home, school and before and after the arranged contact had taken place.

Many families spoke about the need to try and maintain a safe, happy environment for children while civil procedures were continuing. Often women told us that their mental health was impacted by the stresses and strains of their ongoing situation, which they worried, in turn, affected the children. They also spoke about the need for time to heal and the need for consistency for children, when arrangements relating to contact may seem chaotic and complicated. One woman reflected the impact that this process had for other children in the house.

We understand from responses to parliamentary questions that secondary legislation relating to contact centres should be laid this year.² We understand that there have been discussions with the Care Inspectorate, and it is expected that this body will take on the role of independent regulator.

For further detail, our original evidence on the Bill can be found here: [JS519CH16 Children 1st.pdf](#), and our joint submission with Scottish Women's Aid in relation to the Financial Memorandum can be found here: [\[ARCHIVED CONTENT\]](#).

² [Written question and answer: S6W-27581 | Scottish Parliament Website](#)