Dear Convener,

NSPCC recently gave evidence¹ to the Justice Committee on the Children (Scotland) Bill. Since our evidence session, indeed subsequent to the majority of the Committee’s evidence gathering, the Independent Care Review has published its recommendations. In light of which, we wish to submit some additional comments on the Bill, and family justice reform more generally, which we hope will be helpful to the Committee’s considerations.

We strongly feel that the conclusions of the Review have significant ramifications for the Bill currently under consideration.

In our evidence we stressed, in particular:

- the need for specific attention to be given to how the views of very young children are heard in private and public family justice cases;
- the need for Court Welfare Reporters to be skilled in working with children and to have specialist knowledge in child development; and
- the need for more wholesale examination of Scotland’s various legal systems pertaining to child welfare.

While these remain our principle reflections on the Bill, it is the final point which the Care Review recommendations bring into sharp relief.

The Care Review has, as one of its five foundations, ‘voice’; which is also at the core of some of the principal provisions within the Bill. The Care Review Promise states:

Children must be listened to and meaningfully and appropriately involved in decision-making about their care, with all those involved properly listening and responding to what children want and need. There must be a compassionate, caring decision-making culture focussed on children and those they trust.²

As part of its Stage One considerations, we would encourage the Committee to consider the extent to which the Bill, as drafted, delivers on this Promise.

¹ Official Report, 7 January 2020
The Review includes some significant recommendations for the Children’s Hearings System, ostensibly the most child welfare-focused legal forum. The Review questions the capacity of a volunteer tribunal system to ensure the consistency and level of child welfare expertise required in making profoundly important decisions about children and families lives, and concludes that the Hearing System must prepare to shrink and specialise.

Against such a backdrop, we are concerned that the current proposals set out in the Bill may be tinkering around the edges of a disparate and incoherent legal system which needs more substantial reform.

Take, for example, proposals to regulate Court Welfare Reporters. While these provisions are a positive step, current proposals fall short of designing a system around children’s rights and needs. We note that in England and Wales, CAFCASS, an independent body, staffed by specially-trained cadres of social workers already trained in child and family welfare, provide the child welfare reporting function in all family justice cases, private and public, reflecting the need for enhanced understanding of complex family issues and how they impact on children. We also note that these cases are heard in specialist courts by a specialist judiciary.

Whilst we are not suggesting an identical system be imported wholesale, we feel there is scope to be more ambitious in the system we create in Scotland. The Care Review presents an opportunity to reconsider our legal decision-making systems.

NSPCC practitioners speak with frustration and dismay at the profound disconnect that exists between legal systems in Scotland as they pertain to child welfare. Yet the current trajectory means that the private and public systems will be considered almost entirely separately, as if they do not share similar problems, as if they do not depend on some of the same expertise, as if they do not concern each other.

Reform is required in both private and public family tribunal systems, to ensure that they have the capacity to fulfil children’s rights to have their views and experiences heard and given due weight, and the expertise to inform complex child welfare decisions.

Scotland has ambitiously stated its intention to be ‘the best place for children to grow up’ and has committed to imminent full corporation of the UNCRC into Scots Law. With the publications of the Care Review, we consider it to be of huge importance at this juncture to pause and consider how the ‘family justice system’ in its broadest sense needs to reform to serve children’s best interests and realise their rights.

Yours sincerely,

Joanna Barrett
Policy and Public Affairs Manager
NSPCC Scotland

\[3 \text{ Ibid. p44}\]