

JUSTICE COMMITTEE

CHILDREN (SCOTLAND) BILL

SUBMISSION FROM DR SUE WHITCOMBE

Biography and context

1. I am Dr Sue Whitcombe, Chartered Psychologist, Associate Fellow of the British Psychological Society (BPS) and Health and Care Professions Council (HCPC) registered Counselling Psychologist. I am currently Chair of the BPS Training Committee for Counselling Psychology and sit on the BPS Expert Witness Advisory Group. I have 25 years' experience working with children and families. I am former Chair of the BPS Division of Counselling Psychology Welsh Branch and member of the BPS Division of Counselling Psychology Executive Committee.
2. My current area of work is with children, adults and families who are, or have been, impacted by family breakdown. Most usually I work with complex family breakdown including individuals, families and cases where there are allegations of domestic violence or child abuse, inter-parental conflict, mental health difficulties, alienation and estrangement. In addition to my therapeutic work I also provide supervision, training and consultancy to legal, mental health and social work professionals.
3. I deliver BPS approved training specifically around post separation difficulties where a child appears resistant to a relationship with a parent, which has been attended by Cafcass and Cafcass Cymru practitioners. I delivered this training for Children in Scotland in 2018.
4. I contributed to the development of the Cafcass *Child Impact Assessment Framework* in 2017/2018.
5. I am regularly instructed as a Part 25 Expert in family proceedings in England and Wales, predominantly in private law. I have similarly been instructed as an Expert in Scottish family proceedings. As an instructed Expert with a duty to the Court, the majority of the cases in which I am instructed are complex. Many have been in proceedings for more than a year, often 2-3 years. Some cases have a history of prior litigation. It is not unusual for these families to have been involved in repeated litigation over 5-10 years.
6. My previous experience includes primary and secondary care adult mental health, short and medium term psychological interventions with children and young people and teaching on Psychology and Therapeutic Studies programmes in a number of British universities.
7. I responded to the initial consultation on the review of Part 1 of the Children (Scotland) Act 1995 and creation of a family justice modernisation strategy in 2018. My response, number 481282804, is here <https://consult.gov.scot/family-law/children-scotland->

[act/consultation/view_respondent? b_index=180&uuld=481282804](#)

Views on the Children (Scotland) Bill

8. I intend to focus my views on three key areas:
 - Child Welfare Reporters and curators ad litem
 - Voice of the child
 - Factors to be considered by the court when making contact and residence orders

9. Before moving to my views of the Bill, I would like to raise concerns about the initial consultation, specifically, the young persons' survey. Your summary report indicates a total number of 295 responses to this survey, with ages ranges up to 25. 12% of respondents were aged 17-18, 17% age 19-25 with a further 25% not giving their age.

10. You have stated that completion of the young persons' survey was anonymous, and anonymised quotes have been presented from these respondents (summary report, para 1.2.7). Under section 1.3, *Report Presentation and Research Caveats*, you have commented that some adults may have completed the young persons' survey, and some respondents may have contributed via both consultation formats (summary report, para 1.3.4). Indeed, you specifically invited adults to complete the young persons' survey indicating an age range up to 25 years. Just 46% of the responses were identified as from children and young people aged 16 or less.

11. There is no information provided in the methodology section on how children and young people were introduced to the survey, or whether they were assisted in completing the survey in a particular setting, by another party, particularly an adult, or who that adult might be. It is extremely unlikely that a young person would stumble across this consultation without being signposted toward it. It is highly likely that a significant proportion of those children and young people aged 16 or under would have been signposted to the survey by a parent, or a professional, and supported to complete their response.

12. In considering these responses it is important to be mindful of a young person's need to please an adult, a parent in particular, or at least not to upset them or anger them. There is also a need to consider whether there may have been any explicit or implicit manipulation or coercion in the responding.

13. I suggest, as you have indicated, the views presented should not be taken as representative of children and young people nor generalised too broadly (summary report, para 1.3.5). This is particularly important with the young persons' survey as it is not possible to verify the identity (or age) of those completing the survey
 - a. Child Welfare Reporters and curators ad litem

14. I have significant concerns about the role of Child Welfare Reporters, defined as "court appointed people who investigate and prepare reports on the best

interests of the child [...] usually independent solicitors, experienced in Family Law, although social workers also prepare such reports in some areas.” (report, p201)

15. Of those that responded to this question (Q4), 75% indicated some reform was required for the Child Welfare Reporter system (report, para 3.4.1).
16. Only 29% (n=74) of the respondents to the consultation felt that it was appropriate for Child Welfare Reporters to be the means by which the child's voice is heard in proceedings (report, para 3.2.27).
17. My concerns arise solely from the child welfare reports which I have viewed in the course of my work as a psychologist. As far as I am able to recall, all of these reports were written by solicitor Child Welfare Reporters. Many of these reports evidenced inappropriate questioning of children. There was a lack of understanding of coercive control, family dynamics and psychological functioning and how this impacted on the child's behaviour and voice. I have noted a failure to identify and report children experiencing harm and at risk of harm.
18. Cases which present in private family proceedings are rarely simple cases of arrangements for parenting time. They are often complex, with many challenging factors which inevitably means there are welfare concerns for a child. This complexity was highlighted in a 2017 report, in which allegations of domestic abuse featured in 62% of cases in private proceedings, with allegations of parental substance misuse, parental mental health, and emotional abuse of the child recorded in 73% of the cases. Multiple types of allegation were present in 55% of the cases (Womens Aid & Cafcass, 2017).
19. There is increasing acknowledgement of the complexity of cases in private family law. Safeguarding concerns can be overlooked when professionals assume minor level inter parental conflict over child arrangements such as in the fatality of Child E (Shropshire Safeguarding Children Board, 2018). The failure to progress a case appropriately means that the judicial process itself causes children significant and long-term emotional harm (Baillii, 2019).
20. I am of the opinion that solicitors do not have the necessary competence to investigate, report or make recommendations on the best interests of the child. I find it exceedingly difficult to comprehend how solicitors can acquire the required competence with the minimal level of training which seems to be being considered.
21. In order to investigate the best interests of the child, it is essential that the person tasked has a thorough primary grounding in family functioning, normal relationships, child attachment and safeguarding. In England and Wales, this function is the remit of social workers, most usually employed by Cafcass, Cafcass Cymru or a local authority. My understanding is that previously in Scotland, this function was also carried out by registered social workers.

22. Where additional concerns are identified – social workers recognise the need for further advice and expertise, often from a psychologist or a psychiatrist. Social workers, psychologists and psychiatrists all have a statutory duty to report or act on their safeguarding concerns. Primary training for these professionals ranges between 3 and 7 years. There is usually a statutory requirement to maintain and update knowledge that is essential to the role in which they are employed.
23. I note from the Financial Memorandum, that it is intended that the majority of the current Child Welfare Reporters, almost all of whom are solicitors, are minimally trained to meet some as yet unidentified competences in order to carry out their role.
24. In my opinion, to continue along this path will mean that there will be a continued failure to identify or refer children experiencing or at risk of harm. If the Scottish Government proceeds with the Child Welfare Reporter system, I strongly recommend that Child Welfare Reporters have the minimum competence and knowledge indicated above (para 21) and should be appropriately registered professionals – such as social workers.
- b. Voice of the child
25. As a psychologist who has worked with children for more than twenty years, I hold concerns regarding the eliciting of children's views in proceedings and the weight that is given to expressed views.
26. My concerns about the gathering of children's expressed views in Scotland are based on my sight of child welfare reports in my role as a psychologist. It is evident that Child Welfare Reporters, on the whole, have little understanding about the necessary conditions for ensuring a child is best able to provide a view that is as free from influence or contamination as possible.
27. In my response to the initial consultation (number 481282804), I wrote at length about some of the issues of taking a child's expressed views at face value. Children should be listened to, but their articulated response needs to be considered alongside factual evidence and in light of their full experience. Children often find it difficult to express their views for fear of repercussions. They fear upsetting one or other parent.
28. Depending on their situation, children may give contradictory responses conditional upon the context and environment in which their views are sought. In some situations, children can be incongruent – the views they express are not matched by their observed body language or actions. Any such incongruence needs further exploration.
29. In contrast, some children are very clear and articulate in the expression of their wishes, yet when these are explored, they are unable to provide rational explanations for their expressed views. In some cases, children disclose information, or apparent direct experience, of which they could not possibly, or should not, have any knowledge – such as incidents which occurred before

their birth, when they were not present or adult matters which have been shared with them.

30. Prior to the views of children being sought in proceedings, children may have been questioned about their experience by one or more of their parents, by domestic violence service staff, well-meaning family, friends and relatives, by the police and the LA. They may have overheard very negative comments about a parent and received covert or overt messages about what, if anything, they can talk about in relation to an absent parent.
31. In expressing their views, children, even young children are aware of the impact of what they say on the people they care about and love. Children will “lie” in order not to upset a significant adult, or to avoid any potential negative response. Children will give the response that they believe is expected, or wanted, by an adult. Children are prone to suggestibility, pressure and influence. A child’s memory is not static. Repeated questioning, as is often evident in many protracted cases, has a negative effect on children’s consistency and accuracy. The more often a question is asked, the more likely children are to invent a response.
32. The use of more creative and less direct elicitation techniques can be appropriate, but only when facilitated by a professional with the appropriate skills and knowledge.
33. The original consultation gained limited support for the gathering of views by Child Welfare Reporters and child support workers. I do not feel that either of these are suitably qualified to ensure that expressed views are appropriately gathered and interpreted. My understanding is that there are no minimum levels of knowledge, competence or skills for child support workers and no professional regulation.
34. With regards to the Bill (11ZB, para 6) it states:

the sheriff must (b) have regard to any views expressed by the child, taking into account the child’s age and maturity

I would also suggest that account needs to be taken of the context in which the child’s views were elicited and the interpretation of the child’s voice in light of the entirety of their experience.

35. In particular, it is highly unusual for a child to express wholly negative opinions of parent. It is well evidenced that even when a child has experienced abuse, or harm, from a parent, they are ambivalent in their views. They love their parent, even though they have been harmed. They most usually express positive and negative views.
36. It is of particular concern that when a child expresses wholly negative views, that these are not sufficiently explored. It is unsafe to give substantial weight to the expressed views of a child who is alienated as indicated by HHJ Stephen Wildblood QC

The problem with wishes and feelings reports where a child has been alienated is that they can simply reinforce the child's sense of alienation. The report does not address the problem. What is the alienated child going to say other than that he or she does not wish to see the other parent? (Wildblood, 2017)

37. In my opinion children's views should be elicited, and interpreted, by appropriately qualified and registered professionals such as social workers or psychologists.
- c. Factors to be considered by the court when making contact and residence orders
38. It is now usual for both parents to be involved in the daily care of a child. Further, there is a desire for, and an expectation of, significant involvement in all aspects of a child's life by both parents. As such, I would suggest that post separation child arrangements should reflect a similar involvement and pattern, agreed by parents, through a mediated process if necessary.
39. In my opinion, a critical lens needs to be applied to consideration of the "status quo." It is apparent that arrangements for the child when a case actually reaches the court, are often not reflective of the status quo upon separation. More cognisance needs to be given to the best interests of the child than maintaining an artificial status quo.
40. The only exception to a presumption of shared parenting should be where there is evidence of harm, or likely harm, to a child. I would suggest that any such harm should be determined by the local authority who have a statutory responsibility to investigate any concerns and intervene to support the family and protect the child where necessary.
41. My view as an instructed expert is that complexity in cases is often not identified in Scotland where there is no involvement of skilled competent professionals (social workers) in the majority of cases. This also leads to a failure to intervene, appropriately, at the earliest opportunity, where better outcomes would be more likely. These failures exacerbate parental anxiety, inter-parental conflict and harm to the child.
42. It is evident in court paperwork, that there is often a preference for the subjective narrative of one parent. In particular, assumptions are regularly made that the parent who is currently in care of a child is the better parent, and likely to be more "truthful".
43. Where there are allegations by both parties of domestic violence or child abuse, there is often a preference for one parent's narrative, despite there being no corroborating evidence or objective analysis and evaluation of the facts. Operational protocols and procedures need to be put in place to ensure a more objective assessment of risk in cases by appropriately qualified professionals.
44. All cases in which a child is not having current direct parenting time with both parents is, in my opinion, urgent. There is too little recognition and

understanding of the short and long term impact of disrupting or fracturing the child's attachment with a parent. There is a systemic failure to acknowledge the likely harm resulting from the interruption of the attachment relationship of a child in this way, or to evaluate the relative harms of interrupting the relationship versus maintaining a child's relationship with a parent.

45. Where safeguarding concerns have been raised, but not investigated or evidenced, there should be a requirement to maintain safe direct parent-child time while the concerns are promptly investigated and evaluated. My opinion is that this investigation should be conducted by the local authority who hold a statutory responsibility.
46. Far too often local authorities fail to intervene when safeguarding concerns are reported by a parent, interpreting these, without sufficient investigation, as "contact issues", and advising parents to seek legal advice and make an application in private law (Shropshire Safeguarding Children Board, 2018). In failing to take responsibility for, and appropriately investigate, reported safeguarding concerns, children and vulnerable parents are left at risk of harm.
47. Where there are no safeguarding concerns identified by the local authority, the interruption or fracturing of a child's relationship with a parent should in itself be considered as likely harmful, and a safeguarding concern.

d. Additional comments

48. In my opinion radical reform of family law is essential and long overdue; the family law system is not fit for purpose. Our adversarial process, where the child, supposedly the focus of any decision, is often unrepresented or placed centre stage, is made the spoils to be won by battling parents, is harmful to all concerned.
49. I recommend consideration is given to more therapeutic, supportive and conciliatory approaches in operation in other jurisdictions. Examples of these include:
 - Judge Philip Marcus, Israel eg (2019) The Israel Family Court – Therapeutic jurisprudence and jurisprudential therapy from the start. *International Journal of Law and Psychiatry* 63, 68-75 <https://www.sciencedirect.com/science/article/abs/pii/S0160252718300128>
 - Judge Jurgen Rudolf et al's Cochem/Consensus Model <https://thealienationexperience.org.uk/2018/10/19/a-typewriter-cannot-juggle-but-cochem-can/>
 - Judge Marie-France Carlier, Belgium <https://youtu.be/R4HeAu53il> (from 40.15)

Dr Sue Whitcombe BSc MA DCounsPsych
Chartered Psychologist, AFBPsS
HCPC Registered Counselling Psychologist
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- Wildblood, S. (2017). HHJ STEPHEN WILDBLOOD QC – Speech 14 October 2017. *FNF Central London Branch conference on Parental Alienation.* Retrieved from https://www.fnf-bpm.org.uk/image/upload/branch/cymru/Stephen_Wildblood_speech_CLB_PA_conference.pdf
- Womens Aid, & Cafcass. (2017). *Allegations of domestic abuse in child contact cases.*