



Stand Up For Siblings’ response to the Scottish Government consultation on the Review of Part 1 of the Children (Scotland) Act 1995 and creation of a Family Justice Modernisation Strategy

Introduction

[Stand Up For Siblings](#) is a collaboration between a number of child welfare, children’s rights and legal organisations and academics within Scotland. We share a collective concern that children who face adversity greatly value their relationships with siblings yet often these relationships become disrupted when children come into public care or when courts intervene in children’s parenting. We believe that more can be done to protect the rights and promote the wellbeing of siblings in such circumstances. This will require changes to the law, policy guidance, legal and welfare practices and the culture of organisations. Our mission is informed by a children’s rights approach as well as the increasingly robust evidence-base concerning sibling relationships of children who enter public care.

Key issues requiring legislative change:

- **Recognition within the law of the diversity of sibling relationships experienced by children who enter public care.**
- **Enshrining within the law a duty on local authorities to consider placing siblings together when in care concurrently.**
- **Placing sibling contact on the same legal footing as parental contact for care experienced children and young people.**

We welcome the consultation’s adoption of a broad definition of sibling and its recognition of the diversity of modern families. For the purposes of this submission we define a sibling as:

“a full sibling, half sibling, step sibling by virtue of marriage or civil partnership, sibling by virtue of adoption, and any other person the child regards as their sibling and with whom they have an established family life”.

About Stand Up For Siblings

The Stand Up For Siblings initiative has received support from the Children and Young People’s Commissioner Scotland, Bruce Adamson; the Chair of the Independent Care Review, Fiona Duncan; and the First Minister, Nicola Sturgeon MSP. At the launch of Stand Up For Siblings, talking of sibling separation, the First Minister said *“we talk a lot about wanting to put love into the care system but we should also make sure that we don’t inadvertently take it out”*.

While the collaboration is a new initiative, launched in March 2018, the organisations and individuals involved in Stand Up For Siblings have established reputations in the fields of child welfare and children’s rights, and a range of expertise in the promotion and protection of sibling relationships¹. For example, research partners in Stand Up

¹ For a full list of partners involved in Stand Up for Siblings, please go to www.standupforsiblings.co.uk.

For Siblings, University of Strathclyde and Scottish Children's Reporters Administration, have published reviews of international evidence and have led the first national research in Scotland on the issue of sibling relationships and children's rights. Who Cares? Scotland has an extensive network of advocates in regular dialogue with children and young people with first-hand experience of the care system. The Fostering Network, Adoption and Fostering Alliance Scotland, CELCIS, Scottish Adoption, SCRA, Siblings Reunited (STAR) and local authority partners have a track record of leading successful practice developments locally and nationally across Scotland. Clan Childlaw provide legal advice and representation to children seeking contact with their siblings, and has been instrumental in advocating children's right to maintain contact with their siblings².

Evidence on the importance of maintaining sibling relationships of children in care

A small but robust body of research evidence is now available to guide policy decisions in this area of child welfare. Evidence suggests that the majority of children who enter public care following abuse or neglect have siblings (around 90%), some of whom will also be in public care³. It is widely acknowledged that relationships with brothers and sisters are among our most long-lasting relationships and children in care typically express a strong desire to stay in touch with their siblings⁴. Research has demonstrated that siblings can serve as important attachment figures and sources of emotional security⁵ and positive sibling relationships can aid resilience when children face adversity⁶. While there is some evidence that, in a small proportion of cases, children who have experienced abusive or neglectful environments can present a risk to their siblings⁷, for most, sibling relationships are protective, and an important contributor to children's wellbeing. For example, studies have shown that a positive sibling relationship can mitigate trauma and psychological distress⁸. Studies of different sibling placement arrangements report an association between sibling group integrity and placement stability⁹.

“For families who have had it tough, sibling relationships are even more intense than normal. Trauma glues you together. But when you go into care, siblings become unusually distant. So it's a huge turnaround. You really miss the simple

² For more background to this issue see the following publications:

Promoting Sibling Contact for Looked After Children:

<https://www.clanchildlaw.org/Handlers/Download.ashx?IDMF=6be66e0e-4216-4bad-979b-e5cee781c320>

Prioritising Sibling Relationships for Looked After Children:

<https://www.clanchildlaw.org/Handlers/Download.ashx?IDMF=3edff743-f3cf-442b-b7c8-b56d6e11a98e>.

³ McDowall, J. J. (2015). *Sibling placement and contact in out-of-home care*. Sydney: CREATE Foundation; Meakings, S., Sebba, J. C., & Luke, N. (2017). *What is known about the placement and outcomes of siblings in foster care? An international literature review*. Oxford, Rees Centre for Research in Fostering and Education, University of Oxford.

⁴ Morgan, R. (2009). *Keeping in touch*. Manchester: Ofsted.

⁵ Whiteman, S. D., McHale, S. M., & Soli, A. (2011). Theoretical Perspectives on Sibling Relationships. *Journal of Family Theory & Review*, 3(2), 124–139.

⁶ Gass K., Jenkins J, Dunn J. (2007). Are sibling relationships protective? A longitudinal study. *J Child Psychol Psychiatry*. Feb;48(2),167-75.

⁷ Linares, L.O. (2006). An understudied form of intra-family violence: Sibling-to-sibling aggression among foster children. *Aggression and Violent Behavior* 11: 95–109.

⁸ Wojciak, A.S., McWey, L M. & Helfrich, C. M., (2013). Sibling relationships and internalizing symptoms of youth in foster care. *Children and Youth Services Review*, 35(7), 1071-1077.

⁹ Jones, C. (2016). Sibling Relationships in Adoptive and Fostering Families: A Review of the International Research Literature. *Children & Society*. 30 (4), 324-334.

stuff – playing football in the park, asking each other how their day was.” (Quote from the Who Cares? Scotland, Young Radicals Group)

Despite widespread commitment to the principle of maintaining sibling relationships and research evidence supporting this principle, sibling relationships continue to be particularly vulnerable to disruption when children come into care. Studies of children in care at the same time as their siblings show that around a third of these children experience being placed apart from all siblings in care (split placements) and between half and three quarters are separated from at least one sibling in care (split and splintered placements). These rates are even higher when considering both siblings in care at the same time and those not in care and are replicated across the UK, USA and Australia¹⁰.

There are no current statistics available on rates of direct contact in Scotland between looked-after siblings living apart. Older UK studies have estimated that between a third and a half of children in care have ‘regular’ contact with siblings (typically defined as at least monthly) and as many as a quarter to a third have no contact with any siblings¹¹. Studies also suggest that children are typically seeking more direct contact with their siblings rather than less but while this is children’s aspiration, in reality contact tends to diminish over time¹². Who Cares? Scotland has identified sibling contact as being the most common and consistent issue brought to its advocacy workers by young people¹³.

“I don’t have a strong bond with my sister because of the separation and now it’s hard to maintain a relationship with her. We used to be really close, but since being separated, it’s awkward and strained.”

“It was worse being taken away from my brothers than my mother. The relationship with your mum, you can get that relationship back. With my brothers, it’s difficult going back after six years – it’s not something you can get over. There’s so many things you miss.”

(Quotes from the Who Cares? Scotland, Young Radicals Group)

¹⁰ Ashley, C and Roth, D. (2015). *What happens to siblings in the care system?* London, Family Rights Group; Jones, C. & Henderson, G. (2017). *Supporting Sibling Relationships of Children in Permanent Fostering and Adoptive Families: Research Briefing*. Glasgow, University of Strathclyde; McDowall, J. J. (2015). *Sibling placement and contact in out-of-home care*. Sydney: CREATE Foundation; Webster, D., Lee, S., Dawson, W., Magruder, J., Exel, M., Cuccaro-Alamin, S., Putnam-Hornstein, E., Wiegmann, W., Saika, G., Eyre, M., Chambers, J., Min, S., Randhawa, P., Sandoval, A., Yee, H., Tran, M., Benton, C., White, J., & Cotto, H. (2018) *CCWIP reports*. Retrieved [January, 1, 2018], from University of California at Berkeley California Child Welfare Indicators Project website. URL: <http://cssr.berkeley.edu/ucb_childwelfare/> .

¹¹ Bilson, A. & Barker, R. (1992) 'Siblings of children in care or accommodation: a neglected area of practice', *Practice*, 6 (4), 307-28; Neil, E. (1999) The sibling relationships of adopted children and patterns of contact after adoption', in A Mullender (Ed) *We are Family: Sibling Relationships in Placement and Beyond*, London: BAAF; Ofsted (2012) *Children’s care monitor 2011: Children on the state of social care in England Reported by the Children’s Rights Director for England* Manchester: Ofsted; Wojciak, A. S., McWey, L. M., & Helfrich, C. M. (2013). Sibling relationships and internalizing symptoms of youth in foster care. *Children and Youth Services Review*, 35(7), 1071-1077.

¹² Neil, B., Beek, M. & Ward, E. (2014) *Contact after Adoption: A longitudinal study of adopted young people and their adoptive parents and birth relatives*. London: BAAF; Selwyn, J., Sturgess, W., Quinton, D. and Baxter, C. (2006) *Costs and outcomes of non-infant adoptions*. London: BAAF.

¹³ Who Cares? Scotland (2017) *Sibling Separation and Contact: Young Radicals Report*. Glasgow, Who Cares? Scotland.

Recent research undertaken in Scotland by University of Strathclyde and SCRA¹⁴ confirms these high rates of separation and low rates of direct contact particularly amongst children who move into permanent placements. The study estimates that around 7 in every 10 sibling relationships of children who move into permanence are either estranged or have had no opportunity to establish family life. For example, a biological sibling may be born after a child enters a permanent placement and the siblings never meet. In some cases they do not know of each other's existence. There are currently no statistics in Scotland on numbers of looked-after and accommodated children who have siblings also in care, how many are living apart from them, and how many have no contact. The latest statistical report from the Care Inspectorate¹⁵ reported that, in 2016, 20% of sibling groups in *foster care* were split upon placement. However, this is likely to be an underestimate of the rates of separation overall as it only covers children who enter foster care concurrently within one year, and not children in other types of care (e.g. kinship or residential).

The University of Strathclyde and SCRA research found that sibling group size of children involved in the Children's Hearing System ranged from two to nine biological siblings and networks increased in size when non-biological siblings such as adopted siblings, step siblings and foster siblings were taken into account. Biological siblings often entered care at different times and were growing up across multiple households and placement types. This inevitably created challenges for the agencies, family members and carers in maintaining these relationships.

The case for legislative and practice change

Article 8 of the [European Convention for the Protection of Human Rights and Fundamental Freedoms](#) (the ECHR) recognises the right to respect for family life. Four key relationships have been observed to amount to family life, one of which is the relationship between siblings. Core to the Outer House of the Court of Session's recent judgment in *ACB v Principal Reporter and others*, which concerned a sibling's participation in children's hearings, was recognition that the article 8 rights of those with established family life including siblings must be respected¹⁶. However, the research evidence strongly indicates that urgent change is needed to uphold this fundamental human right for children in care. The need for change is also acknowledged in the twelve intentions of the current Independent Care Review, one of which states:

“Relationships which are significant to infants, children and young people will be protected and supported to continue unless it is not safe to do so. This recognises the importance of brothers and sisters, parents, extended family and trusted adults.”
([Intention 3](#), announced June 2018)

We are mindful of the scale of the challenge and sensitivities involved. As the consultation document points out, many children have complex family structures that can include full, half and step siblings. This complexity can be even greater in sibling networks of children who enter the care system. Despite these challenges, we must work together to ensure that siblings staying together, and enjoying healthy and

¹⁴ Jones, C. & Henderson, G. (2017). *Supporting Sibling Relationships of Children in Permanent Fostering and Adoptive Families: Research Briefing*. Glasgow, University of Strathclyde.

¹⁵ Care Inspectorate (2017) *Fostering and adoption 2016–17 statistical bulletin*. Dundee, Care Inspectorate.

¹⁶ Petition of ABC against the Principal Reporter and others [2018] CSOH 81.

loving relationships with each other, becomes the norm for those experiencing state interventions in their family life.

Question 7):

What steps should be taken to help ensure children continue to have relationships with family members, other than parents, who are important to them?

Children who come into contact with the care system may also be children of divorced or separated parents or experience other family disruptions resulting in siblings living separately with limited or no contact. Together, these circumstances can create an increased risk of estrangement from siblings¹⁷. We, therefore, call for greater vigilance in private family law disputes in relation to the potential impact of proceedings on sibling relationships and the right of a child to maintain these relationships, as long as it is safe for them to do so. In order to minimise the risk of important sibling relationships being overlooked in the court process, we support the changes proposed by Clan Childlaw:

1. Clarifying section 11 of the Children (Scotland) Act 1995 to make it clear that court orders under that section may relate to sibling contact and that siblings, including those under the age of 16, can apply for contact (see also question 9).
2. Introducing duties on courts in family actions to:
 - (a) consider a child's sibling relationships, as identified by the child;
 - (b) seek and have regard to the views of the child in respect of those relationships; and
 - (c) intimate to such persons, and to seek and have regard to such views as they express.

Question 9):

Should the 1995 Act be clarified to make it clear that siblings, including those under the age of 16, can apply for contact without being granted PRRs?

Yes

No

Why did you select the answer above?

Our experience of assessment, planning and decision-making regarding contact arrangements for children across agencies suggests that a hierarchy operates which tends to privilege parental contact over contact with other family members. While it is possible for a person to have contact with a sibling by seeking an order from a court under section 11(2)(d) of the 1995 Act, the reality is that this is sought very infrequently. We believe that clarification in the law that PRRs are not a prerequisite for an application for contact would help to address this imbalance.

¹⁷ Jones, C. & Henderson, G. (2017). *Supporting Sibling Relationships of Children in Permanent Fostering and Adoptive Families: Research Briefing*. Glasgow, University of Strathclyde.

We support the amendments to section 11 of the Children (Scotland) Act 1995 proposed by Clan Childlaw as follows:

11. Court orders relating to parental responsibilities etc.

(1) In the relevant circumstances in proceedings in the Court of Session or sheriff court, whether those proceedings are or are not independent of any other action, an order may be made under this subsection in relation to—

(a) parental responsibilities;

(b) parental rights;

(ba) *contact with siblings*;

(c) guardianship; or

(d) subject to section 14(1) and (2) of this Act, the administration of a child's property.

While we are satisfied that section 11(7)(b) as currently worded requires the court to have regard to the child's views on contact with siblings among other things, we would point out that in our experience this is often not the case in practice.

The duty on courts we propose in our response to question 7 to seek and have regard to the views of siblings should be reflected in the wording of section 11.

Children can also experience difficulties in obtaining legal aid to seek a court order for sibling contact. Clarification on this point of law is required to ensure consistency of children's access to their rights. Consistent access to legal advice and representation ensures the individual has support when seeking to realise their rights through complex legal processes.

In addition to any change in the law, we would also recommend a number of educative measures. For example, there would be value in the provision of information about siblings' rights and the benefits of maintaining sibling relationships to solicitors, courts, local authorities and decision makers, and clear information about sibling's rights and legal mechanisms for redress, which is accessible and readily available to children and the adults supporting them.

When sibling contact is between children, this will often rely on the co-operation and support of birth parents, adoptive parents or carers. We would wish to see information, education, training and ongoing support for parents and carers, to enable them to understand the benefits of contact and respond to any emerging risks.

Question 10):

What do you think would strengthen the existing guidance to help a looked after child to keep in touch with other children they have shared family life with?

Existing Scottish guidance, namely the Guidance on Looked After Children (Scotland) Regulations 2009 and the Adoption and Children (Scotland) Act 2007, recognises the need to prioritise and nurture sibling relationships for children and young people with care experience, but statutory duties to promote contact extend only to those with parental responsibilities. In our view, without changes to primary

legislation, strengthened guidance alone would be insufficient to bring about the required changes to ensure continued contact between children who have shared family life. Stand Up For Siblings supports the changes proposed by Clan Childlaw who have suggested the following amendments:

Add a new section 17(1)(ba) and amend section 17(1)(c) of the Children (Scotland) Act 1995 as follows:

“(1) Where a child is looked after by a local authority they shall, in such manner as the Secretary of State may prescribe—

...

(ba) consider placing siblings together; and

(c) take such steps to (i) promote, on a regular basis, personal relations and direct contact between the child and any person with parental responsibilities in relation to him (ii) promote and facilitate, on a regular basis, personal relations and direct contact between the child and any siblings of the child, as appear to them to be, having regard to their duty to him under paragraph (a) above, both practicable and appropriate.”

Add a new section 17(8) as follows:

“(8) Any reference in this section to a sibling includes any full sibling, half sibling, step sibling by virtue of marriage or civil partnership, sibling by virtue of adoption, and any other person the child regards as their sibling and with whom they have an established family life.”

Extending the duties on local authorities in this way would mean that, at the point of considering reception into care and at all subsequent reviews, local authorities would have to first of all consider placing siblings together, and where such placement is not in the best interests of the siblings, promote and facilitate contact between looked after children and their separated siblings, except where such contact is not in the best interests of the siblings.

Keeping the existing safeguards in section 17 will ensure that co-placement or contact would only be promoted between looked after children and siblings where it is suitable and in the child’s best interests. Local authorities will have to make an assessment as to the suitability of sibling co-placement or contact. By introducing a relatively small change to the current law, a significant number of looked after children could benefit from a statutory requirement for local authorities to consider co-placement and to promote and facilitate sibling contact, leading to more positive outcomes for them in both their sibling relationships and their health and wellbeing. Further detail on what is expected of a local authority when promoting and facilitating sibling contact could be outlined in guidance.

At present, there is no recourse available to looked-after children if a local authority does not prioritise sibling co-placement or contact. This can make it impossible for looked-after children to address the issue of sibling separation.

The Looked After Children (Scotland) Regulations 2009 impose a duty on a local authority to assess the child’s need for contact with family members where the local

authority is considering placing a child away from the birth parents, with kinship carers, foster carers or in a residential unit. This is a duty to assess, not to promote contact. Attention to sibling co-placement or contact is, in our experience, not always given. Extending the section 17 duty would raise the importance of the sibling relationship, allow for assessment of that at an early stage, and carry a continued obligation to place the sibling relationship on the same footing as the parental relationship. This would give children the best possible opportunity to maintain their relationship in a positive manner throughout their lives, in turn providing them with more resilience and coping skills as they grow and develop. Changes should also be made to the Children's Hearings (Scotland) Act 2011 and the Adoption and Children (Scotland) Act 2007 to ensure children's sibling relationships are prioritised and sibling contact facilitated.

In addition to the legislative changes proposed above, strengthened statutory and practice guidance is required to help a looked after child to keep in touch with other children with whom they have shared family life. Consideration of the range of implementation measures necessary to ensure new guidance is understood, adhered to and embedded across the whole system is critical. Such measures include awareness raising, provision and prioritisation of resources, policy alignment and leadership. The system as a whole should be aligned to facilitate brothers and sisters staying together as a default position, and spending quality time together where this is not possible. The pressure should not be on children and young people to fight for their right to see their siblings, rather maintaining and developing positive sibling relationships should be seen as a central element of wellbeing and prioritised for all children. The following should be included in statutory and practice guidance to embed a rights-based culture and achieve practice change:

1. Recognition of the immense importance of life-long sibling relationships and supporting children to maintain this consistency in their lives. Preserving relationships that are important to a child is as important as building attachments with new carers and family and is key to equipping a child to grow up with the necessary skills to develop and maintain healthy adult relationships.
2. Including protecting sibling relationships in corporate parenting plans and activities.
3. Including protecting sibling relationships in Care Inspectorate assessments.
4. Recording of children's sibling relationships in social work and SCRA systems to help enable cross-referencing and ensure that records of siblings accommodated are linked.
5. A requirement for consistent recording of children's views regarding sibling placements, direct contact and information exchange as part of the Children's Hearings, looked after reviews, and court processes. Children and young people must be supported to understand the decisions that are made.
6. Acknowledgement that the nature of sibling relationships change as children develop and mature and flexible support is needed to accommodate these changes.

7. Universal access to lifestory work for children permanently separated from birth siblings throughout childhood and early adulthood, to promote emotional and relational wellbeing.
8. Balancing the best interests of all siblings when assessing whether contact is appropriate.
9. Ensuring risk assessment of sibling contact is separate from that of parental contact, to avoid conflation of risks.
10. Where there are emergency situations requiring children to be separated from their siblings, once safety is secured in the short term, the long-term needs of the child must be considered without undue delay, including the need to maintain relationships the child considers important and to reunite siblings at the first available opportunity.
11. Provision of developmental and age appropriate support to sibling relationships, to help maintain and restore these over the long term. This support should take account of both the normal ups and downs of sibling relationships and the need of children who have experienced trauma for particular support to address this and move forward. This will often require input from professionals in relation to how to communicate and sustain relationships with one another.
12. Facilitation of contact with siblings of all ages, including when one sibling is an adult, and irrespective of whether the siblings were known to each other before they became looked after.
13. A range of support, both practical and financial, should be available to carers and adoptive parents to allow them to facilitate sibling contact. Contact will often rely on the co-operation and support of parents or carers. Information, education, training and ongoing support for parents and carers may be required to enable them to understand the benefits of contact and respond to any emerging risks.
14. Removal or interruption of contact should never be a sanction, or method of punishment.
15. Emphasis should be given to the quality of children's experiences of sibling contact. This should as far as possible mirror typical family practices in terms of timing, location, activities and supporting risk. Brothers and sisters should not be expected to spend time together in unwelcoming office rooms. This is not a family-like environment, and does not allow brothers and sisters to relax, play, talk, re-connect, and spend quality time together. They should also have the opportunity to spend time together without a parent being present, and be provided with a setting where only one sibling group is present at a time. As far as possible venues should be neutral and away from previous negative experiences and association and supervised by staff able to promote positive relationships and assist children in developing such relationships. The facility for high quality direct sibling contact provided by Siblings Reunited (STAR) is unique in Scotland and we would like to see more children benefit from similar experiences across Scotland.
16. Recognition that contact between siblings can take many different forms, not just direct contact. For example, communication via social media or mediated information exchanges can be safer in certain circumstances and can meet particular needs. Simply receiving information about the existence and progress of a sibling may be

sufficient in some cases to reassure a child or help with identity issues. Therefore, proper assessment of the purpose and appropriate form of contact is necessary as part of care planning.

17. A lack of information is highly distressing for children and young people. Effort is needed to support children to understand why decisions have been made, especially where contact is not able to happen.

Queries regarding this response paper should be directed in the first instance to:

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