



View of the Stand Up For Siblings coalition on the Children (Scotland) Bill and Family Justice Modernisation Strategy – November 2019

Introduction

Stand Up For Siblings (SUFS) welcomes the proposals in the Children (Scotland) Bill (hereafter 'the Bill') and Family Justice Modernisation Strategy (hereafter 'the Strategy') to change the law to protect relationships between brothers and sisters. Our views expressed below are limited to those aspects of the Bill and strategy relating to sibling relationships, and build on [our response](#) to the public consultation on the Review of Part 1 of the Children (Scotland) Act 1995 and creation of a Family Justice Modernisation Strategy.

SUFS is a voluntary collaboration between a large number of child welfare, children's rights, advocacy and legal organisations and academics within Scotland covering a range of expertise in the promotion and protection of sibling relationships, particularly for those with care experience (for a full list of members see <https://www.standupforsiblings.co.uk/about/our-members/>). Our joint website contains further information, research and other resources, including a pledge wall and a blog with news of developments in Scotland in this area. Our work relies on the generosity of partner organisations committing their own time and resources to the collaboration. The SUFS movement has received high level support for our aims. At our launch in March 2018 First Minister Nicola Sturgeon MSP, talking of sibling separation, 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 there is 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 care¹. This is in spite of care experienced people consistently raising concerns about the issue for decades²:

"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 stuff – playing football in the park, asking each other how their day was."³

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 within organisations, in addition to listening to children and young people and understanding the importance of their relationships. Our agenda is informed both by a children's

¹ Ashley, C and Roth, D. (2015). *What happens to siblings in the care system?* London, Family Rights Group; Jones, C., Henderson, G., & Woods, R. (2019). Relative strangers: Sibling estrangements experienced by children in out-of-home care and moving towards permanence. *Children and Youth Services Review*, [103](#), pp 226-235

² Who Cares? Scotland (2017) [Sibling Separation and Contact: Young Radicals Report](#). Glasgow: Who Cares? Scotland

³ *ibid*

rights approach and an increasingly robust evidence-base concerning the protective nature of sibling relationships of children in care where these are safe to maintain⁴.

The Bill and Strategy are an important recognition of the lived experience of adults and children who have faced sibling separation when cared for by the state and their rights to family life as protected by the European Convention on Human Rights and the United Nations Convention on the Rights of the Child. The changes proposed within the Bill, together with associated actions within the Strategy, will strengthen the law for brothers and sisters who are care experienced. The current legal situation in relation to siblings in the care system is outlined in the publication “[Prioritising Sibling Relationships for Looked After Children](#)” (Jones and Jones, 2018).

We support and welcome the legislative improvements proposed, which represent a significant milestone in the work to improve the rights and wellbeing of care experienced siblings across Scotland. Based on the views of siblings and professionals, and robust evidence on the importance of maintaining sibling relationships, legal change is something we have been campaigning for since SUFS’ inception. In addition to legal changes, a range of implementation measures are also required to ensure legislative advancement translates into positive changes in practice, culture, and ultimately the experiences of children. The onus 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. In addition to legislative change, strengthened statutory and practice guidance is required, alongside measures (including awareness raising, provision and prioritisation of resources, policy alignment and leadership) to ensure new legislation and guidance is understood, adhered to and embedded across the whole system.

Legislative changes proposed in the Children (Scotland) Bill

Section 10

We support the introduction of a duty on local authorities to promote, on a regular basis, personal relations and direct contact between a looked after child and their siblings. Currently, a duty under the Looked After Children (Scotland) Regulations 2009 (the 2009 Regs) requires local authorities to assess contact arrangements with family members where they are considering placing a child away from home. This is a duty to assess, not to promote contact, and experience across SUFS partners is that attention to sibling contact is not always given or maintained. The proposed change is a necessary and significant improvement, extending existing duties on local authorities in relation to promoting contact with parents, to siblings. This ensures greater priority is placed on the sibling relationship, and where they cannot live together, will give brothers and sisters the best possible opportunity to maintain their relationship throughout their lives. Importantly, the change provides a legal mechanism through which looked after children can challenge and address issues of sibling estrangement. We recognise the wording of the legislation involves the language of ‘contact’, which has meaning within the law. However, building, promoting and maintaining relationships is about more than simply ‘contact’, and it is important to reflect these wider intentions and meanings within guidance. Furthermore, we would wish to highlight the potentially stigmatising effect of professionalised language on children, where children are expected to refer to “sibling contact”, as opposed to spending time with their brother or sister.

⁴ Wojciak, A. S., McWey, L. M., & Waid, J. (2018). Sibling relationships of youth in foster care: A predictor of resilience. *Children and Youth Services Review, 84*, 247-254.

We support the clarification that siblings' views are amongst those which should be ascertained by a local authority when making decisions with respect to a child they are looking after, or proposing to look after. This leaves no doubt that siblings' views in relation to matters which could impact on the sibling relationship (such as separation and contact) must be sought at the earliest stage, and revisited regularly. In addition to seeking their views, it is critical that siblings' views are clearly recorded in official records, and that children are supported to understand how decisions have been made. Evidence indicates that children's views in relation to contact with their siblings are poorly documented in case files, and (where recorded) levels of contact reduce over time.⁵

We welcome the proposed wording defining who is considered to be a sibling for the purposes of the Bill. The broad definition recognises the diversity in modern families, and the range of relationships care experienced children may have which may have the character of a sibling relationship. The definition would benefit from removal of references to biological connections between siblings as 'half-blood' and 'full-blood', which are alienating terms that can be re-phrased.

We feel it is important to emphasise the range of circumstances of children covered by section 10. It must be clear in accompanying guidance that the provisions in the Bill apply equally to **all** looked after children, including those subject to Compulsory Supervision Orders through the Children's Hearing System; children who are looked after without compulsory measures under section 25 of the Children (Scotland) Act 1995 (the 1995 Act); children who are looked after and are unaccompanied and seeking asylum; children living in kinship care, at home with their birth parent(s), in foster care, residential care, secure care, and children who are looked after and for whom adoption or permanence is planned, or those already subject to Permanence Orders. An appreciation is also needed of particular pathways to sibling estrangement and how risks of estrangement can be mitigated. For example, evidence suggests that children identified for adoption are at particular risk of their sibling relationships being overlooked⁶.

We acknowledge the possibility that in a very small minority of cases, sibling contact will not be helpful. Amending the law in the manner proposed keeps existing safeguards in section 17 of the 1995 Act, which ensure that contact would only be promoted between looked after children and siblings, and views of siblings only sought, where this is in the child's best interests. In practice, this will be dependent on the assessments made by local authorities in individual cases, which highlights the need for additional implementation measures to ensure the strengthened legislation translates into meaningful change for brothers and sisters. Practice guidance must clearly set out how decisions in relation to best interests should be made.

A result of amending section 17 of the 1995 Act as proposed is that the legislation retains the qualification that the new duties apply only where practicable and appropriate. We have some concerns that 'where practicable' could be interpreted loosely, and used to justify decisions which are made for reasons other than what is best for the child and the sibling relationship, and would therefore prefer it was not included as a condition. Our experience is that decision making on the basis of resources, rather than the needs and rights of siblings, is often a reality, and through loose interpretation of 'where practicable', there is a high risk that the proposed legal changes will be

⁵ Jones, C., Henderson, G., & Woods, R. (2019). Relative strangers: Sibling estrangements experienced by children in out-of-home care and moving towards permanence. *Children and Youth Services Review*, [103](#), pp 226-235

⁶ *ibid*

ineffective. Clear recording and accountability measures are needed where a decision is taken that direct contact between siblings is not practicable. In addition, greater use could be made of communication methods such as Skype, social media or the exchange of information via other family members or professionals in order to promote personal relations. These should be used to enhance, rather than replace, face-to-face contact.

Case study: Maintaining personal relations

A sibling group of six children were placed in the care of the Local Authority. This group consisted of two teenage girls and four young boys. The oldest girl moved to live with her mother and chose to limit her contact with her younger siblings, the second girl was in a foster placement alone, and the four boys were initially placed together. The boys struggled with the dynamics of their relationships and after a lengthy assessment were placed separately into three placements.

All the boys wanted to see their older sister, who was also keen to maintain regular contact in person and via phone and digital media. While the boys did not wish to see one another the social worker was aware of their need to be kept up to date of each other's whereabouts and how they are doing. The Social Worker has been a consistent link between all of these children, ensuring the boys get to see their sister at differing times, maintaining the quality of the contact and ensuring there is ongoing consideration of the possibility of the boys meeting up at some point in the future.

As long as it is safe and appropriate, it is difficult to conceive of a situation whereby the promotion of personal relations, and some form of contact, would not be practicable. This said, the amendments are clear that duties relate to the promotion of direct contact between siblings, which should not be diluted. Promoting indirect contact does not fulfil these duties, nor should it be used as a half-measure when direct contact would better facilitate positive sibling relationships. Clear detail on what is expected of a local authority when making decisions and promoting and facilitating sibling contact should be outlined in guidance, and attention given to the implementation of the law and such guidance. For example, there could be an expectation that in every local authority high-level/senior sign-off is required where there are decisions to limit or deny contact. Decisions taken, for example in emergency situations, need to be timeously reviewed in order to ensure ongoing attention to the continued best interests of siblings. Sibling contact will often rely on the co-operation, understanding and support of birth parents, adoptive parents or carers. Information, training and ongoing support for parents and carers to enable them to understand the benefits of contact and respond to any emerging risks is also required. As in most families, there may at times be challenges in sibling relationships, or differing interests depending on siblings' ages and stages of development. But these issues must not be used as a basis to deny or reduce contact, rather the developing sibling relationship should be supported by carers and professionals in the best way to meet the unique needs of the siblings in each particular situation. Without changes to culture and practice, there is a risk that the legislative improvements proposed will not result in positive change to the experiences of brothers and sisters.

Section 11

We welcome the clarification that a person (including a person under age 16) can seek and be granted a contact order without automatically being given parental responsibilities and rights. While section 11 is already used to seek contact with a sibling there has been an element of confusion around this.⁷ Clarification on this point of law is also welcome to ensure consistency of children's access to legal aid.

⁷ Jones, F. & Jones, C. (2018) *Prioritising Sibling Relationships for Looked After Children*. Edinburgh: Community Law Advice Network

In addition to any change in the law, we 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.

Section 12

We welcome the principle that when making section 11 orders the courts must consider the effect of an order on the child's important relationships with other people. This should lead to 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. The child's views in respect of their sibling relationships should be among those sought by the court and had regard to pursuant to the proposed Section 11ZB (section 1(4) of the Bill).

We are concerned about an imbalance in the Bill in respect of seeking the views of a child's siblings in relation to decisions about the child. Section 10 of the Bill clarifies that siblings' views are amongst those which should be ascertained by a local authority when making decisions with respect to a child they are looking after, or proposing to look after. Yet the Bill does not propose courts seek or have regard to siblings' views, or intimate to persons identified by the child as their siblings, in Section 11 actions. Neither does the Bill propose any changes to the Children's Hearings (Scotland) Act 2011 or the Adoption and Children (Scotland) Act 2007 to ensure children's sibling relationships are prioritised, as we called for in our consultation response. The Supreme Court's judgment in two live cases relating to sibling rights in the Children's Hearing System will be important in relation to shaping changes in this regard.⁸

Family Justice Modernisation Strategy

Amendments to the Looked After Children (Scotland) Regulations 2009

Amendments proposed under the Bill relate to sibling contact and views. These changes are crucial, however taken alone without amendments to strengthen the law in relation to sibling separation, are insufficient. Separation from siblings is a common experience for brothers and sisters in the care system in Scotland. Evidence indicates that 40% of children in adoptive or permanent fostering families are living apart from all of their birth siblings, and around 70% are separated from at least one of their birth siblings.⁹ In its 2016 Concluding Observations on the UK, the UN Committee on the Rights of the Child expressed its concern about "*Children placed at a distance from their biological families which prevents them from keeping in contact, and siblings being separated from each other without proper reason*"¹⁰.

While current provisions in the 2009 Regs require local authorities to take the need for sibling co-placement into account, there are no enforceable duties and attention to sibling co-placement is not always given. Without recourse available to looked-after children if a local authority does not

⁸ UKSC 2019/0134 *In the matter of XY (AP) (Appellant) (Scotland) and UKSC 2019/0063 ABC (AP) (Appellant) v Principal Reporter and another (Respondents) (Scotland)* (<https://www.supremecourt.uk/current-cases/index.html>).

⁹ Jones, C. & Henderson, G. (2017) *Supporting Sibling Relationships of Children in Permanent Fostering and Adoptive Families*, Glasgow: University of Strathclyde

¹⁰ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/GBR/CO/5&Lang=En

prioritise sibling co-placement, it can be impossible for looked-after children to challenge the issue of sibling separation. Care experienced people have told us about the long-term consequences these decisions of separation have on their lives:

“When I was brought into care, overnight I was shipped all the way from Barrhead to Fife. That pulled the first straw out the relationship with my family. When I was in care, every so often I’d go months with no contact with my brothers at all. Every time you’re apart, the relationship is weakened.”¹¹

We therefore welcome the actions contained within Part 10 of the Strategy, particularly the commitment to amend the 2009 Regs to introduce a duty of local authorities to place siblings under the age of 18 together when they are looked after away from home when it is in their best interests. This is a significant strengthening of the law, recognising the needs and rights of siblings to share family life.

It is important that these amendments come into force at the same time as Section 10 of the Bill, and we are pleased to see the commitment that this will be the case within the Strategy. The effect will be such that, at the point of considering reception into care and at all subsequent reviews, local authorities will 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 on an ongoing, regular basis to ensure these relationships are not lost.

At this stage, the exact wording of amendments to the 2009 Regs is not known. If similar qualifications to those contained within section 17 of the 1995 Act (specifically: ‘where practicable and appropriate’) are to be included, the concerns raised regarding the possible impact of these qualifications on practice, and children’s experiences, also apply here. Placing (sometimes large) sibling groups together presents very real challenges, in a context of limited availability of placements suitable for sibling groups. Care Inspectorate figures indicate that last year, 24% of the 1,042 sibling groups in foster care were separated upon placement. The most common reason cited by local authorities for separating sibling groups was due to lack of resource¹², and it is recognised that recruitment of carers who can accommodate sibling groups is required. However, for the proposed changes to legislation to translate into practice change, it is critical that decisions to separate brothers and sisters are also not driven by financial resources or limitations, and creative ways to ensure siblings can continue to live together are explored, resourced and implemented. This could include, for example, adaptations to foster carers homes to create additional space to enable children to be placed together.

Implementation measures

The recognition within the Strategy that legislative change alone is not sufficient to ensure all looked after children are placed with their siblings, and all siblings are supported to maintain contact, is welcome, as are the commitments that the Scottish Government will take forward the Independent Care Review’s recommendations on siblings issues, and engage with Stand Up For Siblings and others to assist implementation.

The additional implementation measures required to ensure meaningful, positive change in the experience of siblings in the care system are many and varied. They include:

¹¹ Who Cares? Scotland (2017) [Sibling Separation and Contact: Young Radicals Report](#). Glasgow: Who Cares? Scotland

¹² Care Inspectorate (2019) [Fostering and adoption 2018–19 A statistical bulletin](#). Dundee: Care Inspectorate

- working with care experienced people to develop robust national guidance on matters such as decision-making, ensuring quality contact, and considering and recording views;
- analysing systemic barriers which inhibit sibling co-placement and positive relationships (such as prevailing culture, capacity within the system to accommodate large sibling groups, difficulties protecting placements for sibling groups, etc.);
- collaboration, innovation, and implementation of solutions to overcome such barriers; and
- providing sufficient resources to develop and sustain the skills and capacity of the workforce, and of those who care for children, to support and promote sibling relationships in complex circumstances.

These are complex and challenging issues, and Stand Up for Siblings are pleased to continue to engage with the Scottish Government and others to explore solutions.

Financial Memorandum

Whilst we recognise that the financial memorandum accompanying the Bill applies only to the provisions of the Bill and not the Strategy (relating to contact and views, as opposed to co-placement), we note with concern that no cost implications for the new duties on local authorities under Section 10 of the Bill are anticipated. The reason for this appears to be that local authorities already have a duty under Human Rights legislation to protect children's rights to family life, which should include promoting contact. However, this argument fails to hold, as by virtue of the legislative advancements proposed, it is clearly recognised that the current protection of siblings' rights to contact are not being upheld satisfactorily.

The aspiration of Stand Up for Siblings is that contact between brothers and sisters who cannot live together in a care placement is as natural as possible, and therefore is not generally associated with high costs. Brothers and sisters should be able to spend time together playing, watching TV, enjoying time in the park, sharing a meal, and other day-to-day activities. However, some sibling relationships can be complex, and depending on their circumstances, a minority of siblings will require specialist and therapeutic support to re-establish or maintain their relationship.

Case Study: Therapeutic contact

**Robert and *Martin are brothers who reside with foster carers. Initially, the relationship between the two boys was difficult, as they struggled being away from their home environment and their two younger sisters. Both Robert and Martin struggled to regulate their emotions when they met with their sisters and often found the contact difficult as the girls were going back to the kinship care of their family.*

It was recognised that seeing their siblings was often re-traumatising Robert and Martin. A specialist intervention service was consulted and through Systemic Family Therapy sessions with the wider family, individual sessions with each brother, and then building time up with the girls, they were able to have more meaningful and positive times together as a family. The Systemic Family Therapist also supported the wider care team through meetings which gave the foster carers and keyworkers a safe, therapeutic space to share their thoughts and feelings and encourage collaborative practice.

Without the additional therapeutic models, the sibling relationship between both brothers and the wider dynamic of all the siblings would have been more difficult to maintain and could have continued to be potentially damaging to each of them without support.

*(*names have been changed)*

In some circumstances, promoting and supporting sibling relationships will involve additional resource, and this is an area we suggest is further scrutinised by the Committee.

Conclusion

We support the legislative changes proposed under the Bill, and the additional actions within the Strategy. Whilst taken alone they do not hold all of the solutions, together with a robust range of implementation measures, and commensurate resourcing, as well as changes to other legislation as identified, Scotland can achieve the culture and necessary practice change to ensure the rights of siblings with care experience to family life are fully respected and upheld.