



Briefing for MSPs: Sibling Provisions of Children (Scotland) Bill - 9th June 2020

Stand Up For Siblings [SUFS] is a coalition of child welfare, children's rights, advocacy and legal organisations and academics within Scotland. SUFS cover 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/>).

The SUFS movement has received high level support for our aims. At our launch in March 2018 First Minister Nicola Sturgeon, 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."*

This has been echoed by the Independent Care Review's report 'The Promise'^[1]:

"Overcoming trauma requires a foundation of stable, nurturing, loving relationships. Scotland's focus and understanding of risk must shift to understand the risk of not having stable, loving, safe relationships. For above all else the Care Review has heard it is that children want to be loved, and recovery from trauma is often built on a foundation of loving, caring relationships."

This briefing has been prepared to inform MSPs of the SUFS position on the use of the term 'practicable' in Section 10 of the Children (Scotland) Bill [the Bill] and of other related concerns the partnership has around implementation of the new duties on local authorities to ensure sibling relationships are protected. We have also submitted evidence to the Justice Committee, which we recommend MSPs engage with to further understand our position on the Bill. ^{[2] [3]}

Our asks are:

1. Remove 'practicable' from the Section 10 provision in the Bill as it relates to sibling contact
2. There must be clear statutory guidance and national sharing of good practice
3. Ensure siblings are placed together, where appropriate, to avoid the need for contact arrangements
4. Create comprehensive national data on sibling placements and contact

1. Remove 'practicable' from Section 10

The current wording within Section 10 of the Bill states that a local authority has a duty to "...take such steps to promote, on a regular basis, personal relations and direct contact between the child and [their sibling where] both **practicable and appropriate**." In previous evidence SUFS has suggested that greater clarity is needed regarding these terms as they are often conflated. Issues of appropriateness of contact are presented as issues of practicability. ^[3]

We do not envisage any situations where practical obstacles should be allowed to completely prevent direct contact between siblings where such contact has been assessed as appropriate. Therefore, we strongly advocate for 'practicable' to be removed from the Bill. Without removal, there is a danger that contact decisions will be resource-led rather than needs-led.

Failure to maintain contact on the grounds of practicability runs the risk of causing further trauma to children and denying them the support and care available from a sibling throughout adulthood. Moreover, allowing contact decisions to be made on such grounds raises questions in terms of the right to family life protected by the European Convention of Human Rights and United Nations Convention on the Rights of the Child.

We acknowledge that direct contact will be challenging to maintain where children are geographically distant. This may be because of unavoidable family circumstances but may also result from problems within the care system, such as a lack of local availability of suitable placements that can accommodate siblings together. These systemic problems should not be an excuse to further stigmatize children and deny their right to maintain relationships with their siblings.

"I was separated from my sister when I was taken into care after looking after her for so long, we then didn't see each other for 18 months. I took this separation as a loss, somewhat of a death. I then went through the grieving process, but it never ended, I was stuck in this constant loop of blaming myself thinking it was my fault that we were separated, it was my fault I wasn't good enough for her. But what seven-year-old would be a good parent? I was so confused, frustrated and angry at the fact that I was taken into care without her, I felt isolated and like I was managing these emotions alone."

- Oisín King, Care Experienced Member of Who Cares? Scotland

We are aware of existing examples in both the statutory and voluntary sectors where creative and sensitive solutions have been found to overcome such practical challenges. Often these are most successful when 'ordinary' family models are followed. For example, if we live far from a sibling we may see them in person two or three times a year, but stay in touch regularly through social media. When we meet them in person we may meet at their home or perhaps take a holiday together. We are aware of similar practices that have worked successfully for separated siblings. We are also aware of siblings separated by great distance (UK and Australia) who see each other in person very infrequently but have managed to maintain their relationship through Skype. While digital contact should never replace direct contact, it can help to maintain closeness between visits^[4].

Case study – Positive practice of promoting contact and sibling relationships

Five siblings went into care and eventually were split into different placements, due to assessed needs of the children at the time. At first, contact between some of them was not considered to be in all the siblings' best interests. However, when one child from the sibling group had to move placement, a decision was made to reunite them with another sibling, as both their needs had changed and carers with the skill to support two of the siblings together were found. These carers had also been providing short breaks for another sibling in the group and therefore three of the siblings now began to spend more quality time together. The carers looking after two of the sibling group arranged short holidays with the carers of a third sibling, so that they could continue to maintain contact.

If the importance and quality of this contact was not a regular consideration as the children developed, it is feasible that they would have lost their sense of family identity. These three children continue to have sibling squabbles and rivalries but their carers accept this as a normal part of growing up and their times of conflict are no longer detrimental to each other, despite it still be considered that it would not be in their best interests for all three to live together on a permanent basis. The other two siblings age and ability at the time of coming into care meant they had limited understanding of being part of this sibling group but despite this, they also enjoy regular contact with their siblings and have also developed a close bond. It would have been easy for them to have lost their sense of identity from this family if contact was not a regular consideration.

This practice was achieved because the five children in the sibling group were placed within one agency and they were consistently recognised as part of a sibling group with each stage of planning informing decisions about their ability to enjoy quality contact. In addition, all the carers maintained regular contact so the

occasional trip to the park or a day trip away or a birthday celebration could all be experienced and enjoyed by all the siblings together, without social workers being present and time restrictions being a significant issue.

2. Create clear statutory guidance and national sharing of good practice

We do not underestimate the practical challenges that the duty of local authorities to promote contact of siblings in Section 10 will bring, even when children are not geographically spread. However, based on the professional expertise and experience of partner organisations in SUFS, and our contact with other agencies, we are optimistic that creative solutions can be found. To ensure equity across Scotland, there will be a need for clear statutory guidance. It is particularly important that efforts to make contact ‘practicable’ do not reduce the quality of the child’s experience of direct contact with their siblings. There are already many examples of good practice in relation to supporting sibling relationships of children in care and we would recommend that a national mechanism for documenting, disseminating, and developing these practices is put in place.

Case study - Resource-led decision-making regarding sibling contact

Who Cares? Scotland provides independent advocacy to children and young people living in care across Scotland. We have recently been made aware of a case where a local authority has stopped contact between siblings due to a lack of resources. This case illustrates how resource-led decisions are happening when contact arrangements are being managed by local authorities and why it is extremely important to change the culture and practice of how relationships between siblings are protected and maintained.

A young person receiving advocacy support has contact with three of their siblings and this contact was taking place at weekends. However, the advocacy worker was made aware by the young person’s support worker that the local authority responsible for their care has advised they are no longer able to support weekend contact due to budget restrictions.

This young person’s situation is not a one-off within WC?S’s advocacy work and sibling contact was raised as an advocacy issue by 163 care experienced people between 1st January and 31st December in 2019.

3. Ensure siblings are placed together, where appropriate, to avoid the need for contact arrangements

Section 10 of the Bill’s new legal duty is for local authorities to “...take such steps to promote, on a regular basis, personal relations and direct contact between the child and [their sibling where] both practicable and appropriate.” This new duty on local authorities to promote sibling contact in the Bill is welcomed by SUFS, as a positive step in protecting sibling relationships.

However, it is important to focus on how we can avoid separation of siblings when they are in care and how we improve sibling placement decisions. Placing siblings in different households presents the greatest risk to the continuity of sibling relationships. Where placements are geographically distant this increases risk of estrangement.

This is why we also **welcome the commitment made by Scottish Government to amend the Looked After Children (Scotland) Regulations 2009**, 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. Successful implementation of these changes will require a co-ordinated effort across key agencies and sectors.

The Care Inspectorate^{[51](#)} has reported that 20% of sibling groups in *foster care* were split upon placement. This is likely to be a significant 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). As a first line of protection we would strongly advocate placing siblings together, whenever it is appropriate

to do so, and where this is not possible placing them near each other. There are also advantages to placing siblings within the same agency to ensure that efforts to maintain contact are coordinated.

“Lots of us know what it’s like to be a sibling. ‘Borrowing’ each other’s clothes and watching your favourite TV shows together. I missed a lot of that. I want to make sure that when sibling groups are taken into care, everyone around them can honestly say that they did everything possible to keep them together.”

- Care Experienced Member of Who Cares? Scotland^{[6] [7]}

4. Create comprehensive national data on sibling placements and contact

There are no comprehensive national data sets on sibling placements and contact arrangements, rendering the scale of the problem of sibling estrangement near invisible. The information we do have available is extremely concerning and includes the following:

- 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). Additionally, 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^[8].
- 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 siblings^[9].
- Recent research undertaken in Scotland by University of Strathclyde and SCRA^[10] estimates that around 7 in every 10 sibling relationships of children who move into permanence are estranged.

We recommend national data is systematically collected to measure current practice on sibling placements and contact and going forward to measure the impact of the Bill’s implementation.

References

^[1] The Independent Care Review (2020). The Promise.

^[2] Stand Up For Siblings (2020). View of the Stand Up For Siblings coalition on the Children (Scotland) Bill and Family Justice Modernisation Strategy.

^[3] Stand Up For Siblings (2020). Further evidence submission to the Justice Committee on the Children (Scotland) Bill in response to Justice Committee meeting on Tuesday 25th February 2020.

^[4] Iyer, P., Albakri, M., Burridge, H., Mayer, M. and Gill, V. (2020). The effects of digital contact on children’s wellbeing: evidence from public and private law contexts. Rapid evidence review. London: Nuffield Family Justice Observatory.

^[5] Care Inspectorate (2017). *Fostering and adoption 2016–17 statistical bulletin*. Dundee, Care Inspectorate.

^[6] Who Cares? Scotland (2018). *Being The Best Sister I Can, In Care*.

^[7] Stand Up For Siblings (2018). *Chloe and Danielle’s Story*.

^[8] 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; Woods, R. and Henderson, G. (2018). Changes in out of home care and permanence planning among young children in Scotland, 2003 to 2017. *Adoption & Fostering* 42(3), 282-294.

^[9] Neil, E., Beek, M., & Ward, E. (2013). *Contact after adoption: a follow-up in late adolescence*. Norwich: the Centre for Research on Children and Families, University of East Anglia. Available from: https://ueaeprints.uea.ac.uk/50763/1/Neil_et_al_2013_contact_after_adoption_full_report.pdf; Morgan, R. (2009). *Keeping in touch. A report of children’s experience by the Children’s Rights Director for England*. Manchester: Ofsted.

^[10] 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*.