



Briefing for MSPs: Sibling Provisions of Children (Scotland) Bill - 8th June 2020

Stand Up For Siblings (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/>).

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."

This has been echoed in the by the [Independent Care Review's report 'The Promise'](#):

"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 position of partners of Stand Up For Sibling partnership on the use of the term 'practicable' in the wording of 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. Our key messages are:

1. Remove 'practicable' from the Section 10 provision in the Bill around 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. Actively consider the impact of adoption on sibling relationships
5. Create comprehensive national data on sibling placements and contact

1. Remove 'practicable' from Section 10

The current wording of 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.

We do not envisage any situations where practical obstacles should be allowed to completely preclude 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.

Any 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 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^[1].

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 of 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 was found. These carers had also been providing short break 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 and each stage of planning informed 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 Stand Up For Siblings 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 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.

Advocacy Case Study for Sibling Contact

An advocacy worker from Who Cares? Scotland was supporting a young person in foster care. The young person explained that they had three younger siblings, each living in different foster placements across Scotland. The young person did see one of his younger siblings once every couple of months, but they hadn't seen the other two siblings in five years and wished to do so. The advocacy worker then started advocating for the young person to meet his other two siblings. This was raised with the social worker and then a review was held, where the young person could express their views about wishing to see their siblings.

The professionals involved in the meeting gave several reasons as to why the siblings hadn't seen each other in five years. Reasons given were: breakdown in placements meant the children were unsettled so it wouldn't be in their best interest to meet at that time and that the younger siblings hadn't expressed an interest in seeing their older sibling.

During this time, the advocacy worker was also asked to support one of the younger siblings involved, and this young person also asked to see all his siblings. At the time of meeting the advocacy worker, this young person did not see any of the sibling group.

The advocacy worker was able to advocate on behalf of both the young people in the sibling group. Two of the four siblings finally met each other for the first time in five years and a couple months later, the initial young person met his youngest sibling. The arrangement currently in place for the four siblings is that they each see one sibling once a month. This means they see each other four times in total, over a year long period.

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

The introduction of Section 10's new legal duty has the potential to have a positive impact on related areas of practice such as sibling placement decisions. Placing siblings in different households and placements presents the greatest risk to the continuity of sibling relationships. Where placements are geographically distant this increases risk of estrangement.

The Care Inspectorate^[2] has reported that 20% of sibling groups in *foster care* were split upon placement. 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). 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."

- Chloe, Care Experienced Member of Who Cares? Scotland

4. Actively consider the impact of adoption on sibling relationships

The Children (Scotland) Bill provisions do not currently cover the rights of adopted siblings to maintain contact with their brothers and sisters who are not adopted alongside them. There must be consistency across proceedings taking decisions about children. For a sibling whose brother or sister is about to be adopted, it is vital they have the opportunity to be part of those proceedings. This is a particular risk point for siblings, as when adoption takes place, the birth family no longer have rights and so there is no guarantee they will be able to keep in touch. Very often siblings lose touch when siblings are adopted. Indeed the new Section 17 duty, if passed, would only mean the local authority had a duty to take steps to promote contact on behalf of a child in its care, but it could not force this to happen with adopted siblings, as that would be at the discretion of the adoptive parents with whom parental rights and responsibilities.

This is why we support amending the Adoption and Children (Scotland) Act 2007 to introduce explicit rights for siblings to be notified of permanence proceedings, to make representations,

to make application for contact with their sibling, and to appeal against any decision, and to place a duty on the court to consider sibling contact. It is essential that siblings should receive intimation in adoption and permanence cases. This is particularly so because in such cases when an order is made, the legal status of the child subject to the order changes, and the opportunity for a sibling or other person to seek contact at a later stage is lost.

5. 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) 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^[3].
- 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^[4].
- Recent research undertaken in Scotland by University of Strathclyde and SCRA^[5] 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] 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.

^[2] Care Inspectorate (2017) *Fostering and adoption 2016–17 statistical bulletin*. Dundee, Care Inspectorate.

^[3] 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.

^[4] 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.

^[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*.