

Response to the Scottish Government's Family Law Review

Submission from the Scottish Youth Parliament
September 2018



Introduction

The Scottish Youth Parliament (SYP) represents Scotland's young people. Our vision for Scotland is of a nation that actively listens to and values the meaningful participation of its children and young people. Our goal is to make this vision a reality, in order to ensure Scotland is the best place in the world to grow up.

We are a fundamentally rights-based organisation, and our mission, vision and values are grounded in the United Nations Convention on the Rights of the Child (UNCRC). In particular, our purpose embodies Article 12: that young people have the right to express their views freely and have their opinions listened to in all matters affecting them. As a completely youth-led organisation, the words and sentiment of Article 12 have a profound importance for our work.

Our democratically elected members listen to and recognise the issues that are most important to young people, ensuring that their voices are heard by decision-makers. We exist to provide a national platform for young people to discuss the issues that are important to them, and campaign to effect the change they wish to see.

SYP's values are:

Democracy - We are youth-led and accountable to young people aged 12 to 25. Our democratic structure, and the scale of our engagement across Scotland, gives us a mandate that sets us apart from other organisations.

Rights - We are a fundamentally rights-based organisation. We are passionate about making young people aware of their rights, and ensuring that local and national government deliver policies that allow those rights to be upheld.

Inclusion - We are committed to being truly inclusive and work tirelessly to ensure the voices of every young person from every community and background in Scotland are heard.

Political Impartiality - We are independent from all political parties. By working with all stakeholders, groups, and individuals who share our values, we can deliver the policies that are most important to young people.

Summary of SYP's recommendations

- Mothers and fathers should have equal parental responsibilities and rights.
- Young people want options for communication to tell a judge what they think about who they should live with, speak to and visit - which suit the child or young person's age, ability to understand, and personal preference.
- Young people want access to information about their rights around giving their views (or not) to a judge in family law proceedings.
- Young people have the right to access independent advocacy to support their participation if they are too nervous to take part alone, with sufficient time built in to establish relationships of trust.
- Young people want to have the opportunity to share their views with the judge confidentially, including the option of participation without parents in the room.
- Young people want to be able to access counselling before, during and after family law proceedings.
- Court decisions should be informally explained to children and young people by an adult they know and trust (e.g. a youth support worker), and in a manner according to their preference. For example, in a safe place and in an age and capability appropriate way using clear and simple terms without rushing; and the adult should follow-up and further support the child or young person once the decision has been implemented.
- There should be no specific age at which you should be able to give your views to a judge. It should depend on the maturity, capability and understanding of the child or young person, and their mental preparedness.
- It is essential that children and young people's right to family life is upheld, including regular parental and sibling contact, where it is safe to do so.
- Children and young people's views must be meaningfully taken into account in decisions around family contact including consideration of what's in their best interests, and incorporation of the UNCRC into Scots law (e.g. Article 12) would make this right to participation binding, not guiding.

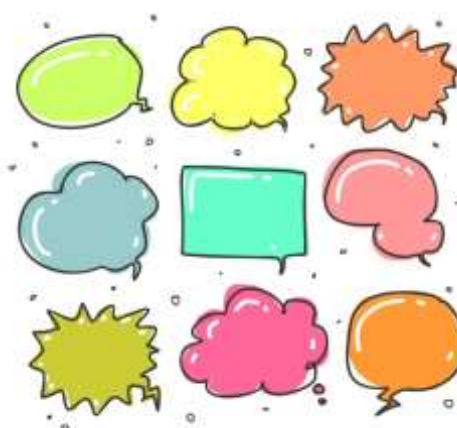
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Our approach

SYP welcomes the opportunity to respond to the Scottish Government's consultation on the Review of Part 1 of the Children (Scotland) Act 1995 and creation of a Family Justice Modernisation Strategy (hereinafter referred to as 'the Family Law review'). SYP wishes to respond as part of its *Right Here, Right Now* national campaign on young people's rights, which launched in October 2017 after MSYPs voted to focus on this topic at the 63rd National Sitting in West Dunbartonshire in June 2017. This was following consultation with over 5,000 young people across Scotland.



Right Here, Right Now works to ensure that Scotland's young people are aware of and understand their own rights, and are empowered to take action to defend their own rights and those of others. Furthermore, *Right Here, Right Now* calls for Scotland's decision-makers to take a human rights-based approach to all policy-making, service provision, and planning, ensuring young people's voices are at the heart of decisions affecting them.

One of the objectives of this campaign is to influence law, policy, and practice in order to strengthen the protection of young people's rights, and as this consultation provides the opportunity for young people to give their views on rights and family relationships. Moreover, SYP strongly believes that the United Nations Convention on the Rights of the Child (UNCRC) should be incorporated into Scots law to make children's rights binding and not guiding to Scottish decision-makers; as per the *Lead the Way* Manifesto Commitment passed on 12th March 2016 with 79% agreement.

These commitments form the basis of this response, as well as findings from a Consultation Workshop SYP undertook with the Scottish Government's Family and Property Law Team at our 66th National Sitting in Stranraer, Dumfries and Galloway.

This was called, 'Family Matters - have your say!'



Photo taken by Belinda Robertson of the workshop participants at the Sitting on 9th June 2018, Stranraer.

SYP's findings comprise of 189 responses from young people aged 12-25 to an online survey called #WhatsYourTake, and recommendations from the workshop attended by a group of around 17 MSYPs from across Scotland (for more information on the demographic of SYP's current membership, please see [here](#)).

The survey questions were co-designed and the session was co-facilitated by Sanna Aziz former MSYP for Midlothian South Tweeddale and Lauderdale and former Convener of SYP's Equalities and Human Rights Committee, and the Scottish Government's Family Law Team.

The #WhatsYourTake Survey was open from 11th May 2018 until 12th June 2018. The 189 responses were received from 28 of all 32 Local Authorities across Scotland. Responses came mostly from young people currently in school and full-time or part-time work, for example, 54.49% of responses came from young people in school. A relatively high percentage of respondents (6.8%) identified as members of Who Cares? Scotland - having experience of the care system.

SYP's Conveners Group, a group of ten democratically elected young people who lead on policy and campaigning at SYP and their respective ten Subject Committees, decided to respond to this public consultation through a youth-led process at their last meeting in April 2018. The newly elected Conveners Group following the 66th National Sitting and AGM have approved this response.

MSYPs consulted widely with the young people they represent in their constituencies and NVOs before the workshop, using their unique democratic mandate to ensure they represented the views of as wide a cross-section of young people in Scotland as possible. Therefore, our comments are fundamentally shaped by the genuine views of young people. Furthermore, the workshop respondents had an accessible briefing prepared by the Scottish Government on key terms including contact, parental responsibilities and rights and the views of the child in relation to contact.

However, as our membership represents young people aged 12-25, SYP's response is not representative of children below the age of 12, or of adults over 26, and its scope and reach was limited to issues raised by the questions asked and the lead-in time given. It therefore did not extend to the full range of questions asked in the Family Law review, for example, how children and victims of domestic abuse can be protected and how we can improve the process for children and young people. Nevertheless, these SYP has policy on these issues as follows:

- *There should be more after-care support and protection for survivors of sexual violence and abuse, female genital mutilation (FGM), forced marriage, human trafficking, and domestic abuse. Lead the Way Manifesto (2016-2021) Commitment passed with 85% agreement on 12th March 2016.*
- *The Scottish Youth Parliament supports the work of organisations like "Abused Men in Scotland" (AMIS); and believes that there should be increased assistance to male victims of domestic abuse. Policy statement passed 14th April 2018 with 95% agreement (Joint Members' Motion by Huw Sherrard MSYP and Kai Green MSYP).*
- *The Scottish Youth Parliament believes that in order to tackle domestic abuse in Scotland, schools should provide gender and LGBT-inclusive Relationship, Sexual Health and Parenthood Education (RSHPE) that covers the principles of equality, the signs of abuse, how to report abuse and where to seek help. Policy statement passed 1st July 2016 with 80% agreement, Members' Motion by Kirsty McCahill MSYP.*

Our response is structured around the following questions:

Asked online and at the workshop:

- 1) Should mothers and fathers have equal responsibilities and rights?
- 2) What is the best way for a child or young person to tell a judge what they think about who they should live with, speak to and visit?
 - Fill in a child/young person-friendly form.
 - Have the judge choose a person to speak to the child/young person and then tell the judge what they think is in the child/young person's best interests (a child welfare reporter).
 - Tell the judge what they think themselves, pre-record a video for the judge or write a letter for the judge to read.
 - Have a person at court whose job it is to help the child or young person give their views (a child support worker).
 - Have options for communication, which suit the child or young person's age and ability to understand.

Asked only at the workshop:

- 3) How should a decision in a court case be explained to you?
- 4) How old should you be to give a view to a judge on who you live with, speak to and visit?
- 5) Who and what matters to you if you don't want to live with both parents?
- 6) Who is it essential that you see and keep in touch with?
- 7) Who should have a say about who you should see?



1) Should mothers and fathers have equal responsibilities and rights?

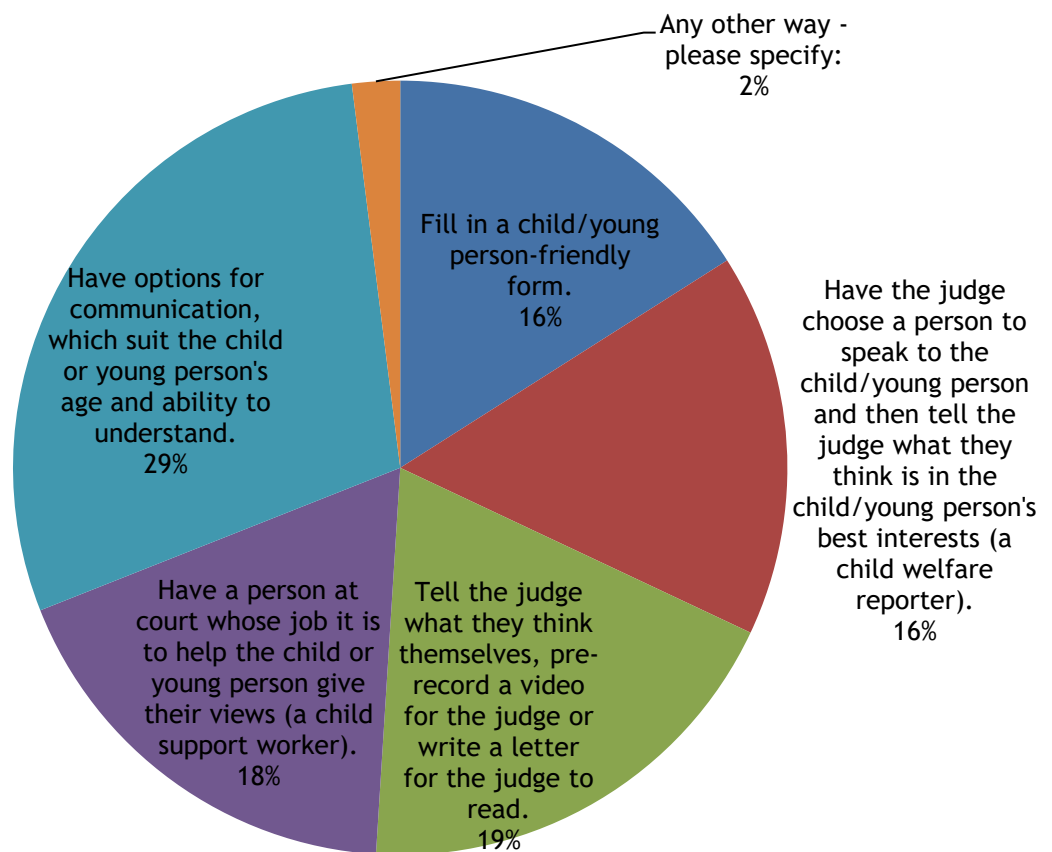
A large majority of young people (95%) who responded to the #WhatsYourTake survey thought that mothers and fathers should have equal responsibilities and rights.

At the workshop, participants were given a flipchart per sub-group with a spectrum from 'Yes' to 'No', on which they discussed the question and put sticky dots down to represent their individual views on this question. 41% of participants put their sticky dots nearest 'Yes', and 59% put their sticky dots in the middle. No participants put their sticky dots near 'No'.

It is likely that the online results vary from the workshop results given that there was no option other than 'Yes' or 'No' to the online question, and at the workshop, group discussions affected individual views.

Nevertheless, the overall conclusion from those asked was that mothers and fathers should have equal responsibilities and rights as regards family relationships. This reflects SYP's value of inclusion and progressive understanding of gender in today's society.

2) What is the best way for a child or young person to tell a judge what they think about who they should live with, speak to and visit?



Workshop respondents' discussion notes:

(On the suggested ways for a child or young person to tell a judge what they think about who they should live with, speak to and visit).

Suggested options	Young people's views
Fill in a child/young person-friendly form.	<ul style="list-style-type: none"> • Some people don't cope well with forms, and 'not every situation fits into a form...' • Someone the child knows and trusts should talk them through it, e.g. an advocacy worker.
Have the judge choose a person to speak to the child/young person and then tell the judge what they think is in the child/young person's best interests (a child welfare reporter).	<ul style="list-style-type: none"> • This should be a last resort as it can feel 'patronising', 'biased' and 'things can get lost in translations.' • The person making the decision is not the child.
Tell the judge what they think themselves, pre-record a video for the judge or write a letter for the judge to read.	<ul style="list-style-type: none"> • This would give them a chance to make their own decisions. • It depends on the age of the child and what they feel comfortable with. • There should be guidance and support from a professional to help.
Have a person at court whose job it is to help the child or young person give their views (a child support worker).	<ul style="list-style-type: none"> • It would have to be someone they know and trust - this should be an advocacy worker.
Have options for communication, which suit the child or young person's age and ability to understand.	<ul style="list-style-type: none"> • This is the best idea - but support should still be available to help, whatever option the child chooses. • The child should decide: <ul style="list-style-type: none"> ○ This depends on the child and how they are feeling in terms of readiness and stability. ○ Having options for communication shouldn't be dependent on age. ○ They might not want another person to relay their views for them. ○ They may reflect later that they were too young to have been involved. ○ The child might not want to so they need information about their rights not to speak to the judge too.

Having options for communication, which suit the child or young person's age and ability to understand, was the most preferred option for both online and workshop respondents, closely followed by 'tell the judge what they think themselves, pre-record a video for the judge or write a letter for the judge to read.' The child welfare officer option was the least preferred, and there was support for having a child support worker, or as explicitly preferred, an independent advocacy worker.

Ideas for other ways for children and young people to tell a judge what they think about who they should live with, speak to and visit:

The ideas given by online respondents can be grouped into the following themes:

Independent advocacy:

- *'An independent advocate with a relationship based approach to be used to gather the child's views and then help share them if the child is too nervous/intimidated [sic.] to speak in court/to strangers: in front of the parents.'*
- **Having a comfortable, child/young person friendly environment**, which encourages voluntary participation:

'The child can communicate themselves. There is no need for a "middle person" to communicate.'

'Different environment but not children's hearing - too formal.'

Confidentiality:

- *'Have someone who works with children to privately talk about it ... and confidentially and for it only to be shown to the judge.'*
- *'Speak to the judge directly or through a video or write a letter to the judge that cannot be seen by the parents and make sure the child or young person knows that.'*

Time for trust

- There needs to be **more time for the child to be prepared**.
- There needs to be **sufficient time allocated to establish a rapport trust**.
 - *'Talk about other things first e.g. build up trust.'*

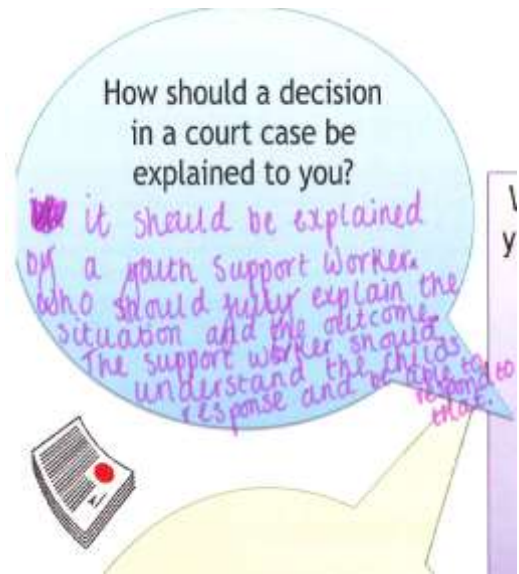
Extra support

- There should be **counselling** available for the child involved - *'as it is difficult for a child'*.
- *'For family custody, the child could be encouraged to put pros and cons ideas into a list to help.'*

Other questions asked at the workshop:

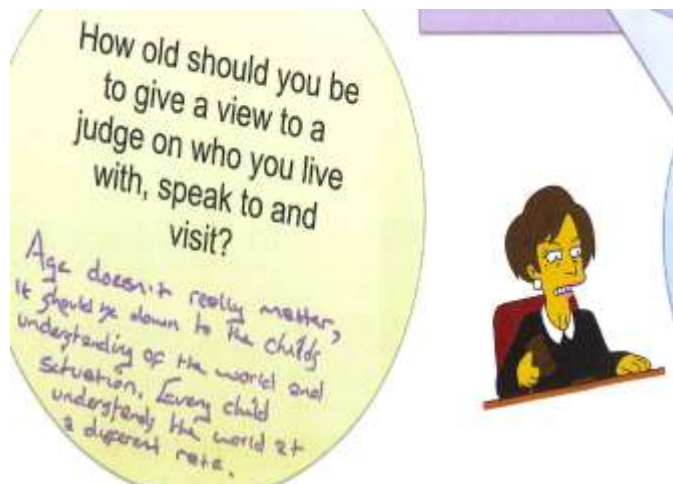
8) How should a decision in a court case be explained to you?

- By a youth support worker (some also responded ‘counsellor’ and ‘social worker’).
- By an adult you know and trust - ‘We may not pay attention or listen to a stranger.’
- By someone who will follow-up with you and further support you once the decision is implemented.
- In an age and capability appropriate way.
- In a comfortable, safe place.
- ‘Informally’.
- ‘Don’t rush it’
- In a way best for the individual child or young person - ‘In a way tailored to me. So ask me!!!’ ‘As long as it’s made clear to you and you know what is happening.’
- Clearly and in simple terms which you can easily understand - ‘Don’t be intimidating.’ Key points, straight to the point, prior knowledge check.



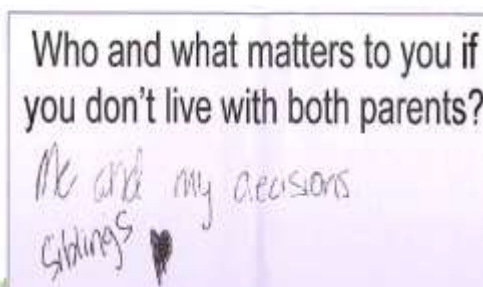
9) How old should you be to give a view to a judge on who you live with, speak to and visit?

The majority of MSYPs thought that there was no specific age at which you should be able to give your views to a judge, but that it should depend on the maturity, capability and understanding of the child, and their mental preparedness of the situation.



10) Who and what matters to you if you don't want to live with both parents?

Regular family contact (if safe), sibling contact, seeing your home, pets and friends, remaining at the school you attend and ‘my decisions’ were all listed.



11) Who is it essential that you see and keep in touch with?

'Whoever matters to you' including family and friends you trust and are safe in the company of. Parents, grandparents, siblings, pets and extended family were all listed. Support workers, counsellors, youth workers, advocacy workers and social workers were all also mentioned.



Who is it essential/
important that you see
and keep in touch with?
It is important to
keep contact with
both parents, it is important
to see parent that you don't
live with so that
relationship is maintained

12) Who should have a say about who you should see?

The young person themselves was listed primarily, followed by close family members, carers and friends you trust, judges, youth workers, support workers, family, social workers and advocacy workers.

Who should have a say
about who you should
see?
you!
unless your decision
will negatively impact
you and you can't
see it.

