

Hearing the Voice of the Child in Family Actions –Form F9 review

Together (Scottish Alliance for Children’s Rights) submission

25th January 2016



About Together

Together (Scottish Alliance for Children’s Rights) is an alliance of children’s organisations seeking to raise awareness and understanding and full implementation of the UN Convention on the Rights of the Child (UNCRC) in Scotland. Together has over 300 members, ranging from children's charities, to small local playgroups through to large international charities, alongside individuals, academics and professionals with an interest in children’s rights. We work to progress children’s rights at a local and national level through the provision of support and expertise and are an informed voice advocating for children’s rights in Scotland.

The views expressed in this submission are based on the UNCRC and do not necessarily reflect the specific views of every one of our member organisations.

Introduction

Together welcomes the opportunity to provide comments and suggestions to inform the Scottish Civil Justice Council Family Law Committee (FLC) review of the Form F9. The commitment being made by the FLC to undertake a step-by-step approach to the review of the ways in which the voice of the child is heard in family actions is both encouraging and timely.

Key recommendations

- 1) Facilitate the meaningful and ongoing participation of children and young people in the review and implementation process.**
- 2) Ensure the use of child-friendly language appropriate to the maturity and capacity of individual children, develop creative methods of communication as necessary and provide accessible information relating to the participation activities and wider court process.**
- 3) Any replacement to the existing Form F9 needs to be accompanied by training for those adults involved in explaining the participatory process to the child, as well as the sheriff who is reading the form and interpreting the views of the child.**

- 1) Participation and accountability
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As outlined in Article 12 of the UNCRC, a child who is capable of forming his or her own views has the right to express those views freely in all matters affecting them, with such views being given due weight in accordance with the age and maturity of the child.

The Article then goes on to state *“For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either*

directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”¹

In order to ensure that Form F9 is fit for purpose, it is fundamental that the FLC ensures that views and experiences of children and young people informs and influences the review. The UN Committee on the Rights of the Child has listed a set of Basic Requirements for all processes in which a child or children are heard and participate in decisions affecting them,² which Together suggests the FLC uses as the framework with which to review Form F9 (please see Appendix 1). Central to the requirements is that participation is inclusive of **all** children, child-friendly and transparent.

A commitment to follow-up and evaluation is essential. In any research or consultative process the FLC undertakes, children must be informed as to how their views have been interpreted and used and, where necessary, provided with the opportunity to challenge and influence the analysis of the findings. Children should be provided with clear feedback on how their participation has influenced any outcomes of the Form F9. Wherever appropriate, children should be given the opportunity to participate in follow-up processes or activities.

Together recommends that the FLC refers to the work of Children’s Hearing Scotland^{3 4} and Scottish Children’s Reporter Administration (SCRA)⁵ for examples of good practice in meaningful and effective child participation in administrative proceedings. There are also other fantastic examples of creative, safe, meaningful and fun ways in which children can be involved in decision-making processes that should be given consideration.⁶ Together recommends that the FLC draws from the expertise of organisations such as the Children’s Parliament and the Children and Young People’s Commissioner for Scotland discuss how best to involve children and young people in the review in an ethical and sensitive manner.

The FLC should be accountable to children and young people both in the review process of Form F9 as well as the implementation of any new procedure. The FLC should consider how to encourage feedback and communications from children and young people in relation to their experience of family actions, as well as ensure their involvement in the monitoring and evaluation of child participation procedures.

2) Accessible and child-friendly

Method(s) of communication

There may be alternative means through which children and young people might feel most comfortable expressing their views to the sheriff court. This might, for example, take the form of

¹ <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

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<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsqlkirKQZLK2M58RF%2f5F0vHKTUsoHNPBW0noZpSp5d6MSKiT09ePYFY4cH5tmyyvq4tVAP%2fSH9%2bBtZWkhEtAmUXeyPIFduGREUMQJZh%2fHpLV>

³ See: <http://www.chscotland.gov.uk/media/68051/Views-and-Experiences-of-the-Childrens-Hearings-System-v1-0.pdf>

⁴ <http://www.chscotland.gov.uk/media/90786/chs-framework-for-participation-of-children-and-young-people-v10.pdf>

⁵ See various examples at <http://www.scra.gov.uk/publications/research.cfm>

⁶ See Scottish Women’s Aid ‘Learn to Listen’ report

http://www.scottishwomensaid.org.uk/sites/www.scottishwomensaid.org.uk/files/SWA_Ears_Wide_Open_report.pdf and a variety of examples at www.childrensparliament.org.uk

communication via phone call, online, on paper in an updated format or in person. Ways in which Form F9 is revised should take the form of a creative and innovative process led by children and young people.

Participation of children should be facilitated in line with the maturity and capacity of individual children. An example the FLC might refer to are the SCRA 'All About Me' forms.⁷ Continuing a 'one-size-fits-all' procedure is likely to risk some children and young people feeling unable or unwilling to contribute their views.

The means through which children participate in family actions should take into account any additional support and/or communication needs of individual children. The FLC must ensure that additional support needs do not act as a barrier which discriminates against vulnerable children and young people from being meaningfully involved. This includes deaf children, children with visual impairment and children whose first language is not English.

Language

The language used in the current Form F9 is vague and assumes knowledge of the court process: who is the sheriff and the sheriff clerk, what does a solicitor do and what happens at a court? A review of Form F9 should take into consideration the importance of using child-friendly and accessible language detailing key information. In line with the above, any changes to the language used by the FLC should be led by the views and experiences of children and young people.

The term 'your future' which is referred to throughout Form F9 for obtaining children and young people's views could be overwhelming or perceived as all-encompassing and potentially off-putting. This broad term could be replaced with alternative and more child-friendly language, such as what is used in the SCRA 'All about me' forms⁸ (e.g.: How have things been going for you lately; are you happy with your situation; is there anything you would like to change or stay the same; tell us what is good just now and why?).

Accessible information

There may be many questions that children and young people have in relation to the sheriff court, the processes they are involved in and the ways in which they can assert their views. In addition, they may want to know who will be able to access the information they submit; how it will be used; why it is important that they take part.⁹

Together suggests that the FLC considers alternative communication methods through which to offer support and accessible information to children and young people surrounding their involvement in family actions. For example, this might take the form of DVDs, short videos, podcasts, pictures, case studies of children varying in capacity. Again, any decisions regarding how information is communicated should be led by the suggestions by children and young people.

Advocacy

The current Form F9 reads: "WOULD YOU LIKE A FRIEND, RELATIVE OR OTHER PERSON TO TELL THE SHERIFF YOUR VIEWS ABOUT YOUR FUTURE? (PLEASE TICK BOX)"

⁷ http://www.scra.gov.uk/home/all_about_me_form.cfm

⁸ See http://www.scra.gov.uk/home/all_about_me_form.cfm

⁹ See <http://www.chscotland.gov.uk/media/68051/Views-and-Experiences-of-the-Childrens-Hearings-System-v1-0.pdf> for examples regarding children's views on their participation in the children's hearing system.

The form lacks any reference to the right of the child or young person to access advocacy support, or an option to communicate information both personally and through an advocate. Referring to 'other person' is unclear: It is crucial that children and young people are informed of their right to an independent advocate, the role such an advocate would play and how they can access such support. Furthermore, the use of capitalisation may be seen to be intimidating.

Appearance

The current Form F9 is highly bureaucratic and may be overwhelming to adults unused to court processes, let alone children. Thought needs to be given to the appearance of the form, with consideration given to the use of pictures, child-friendly fonts and suitable use of capitalisation.

3) Training

Any replacement to the existing Form F9 needs to be accompanied by training for all adults involved in the participatory process. This includes professionals who will be explaining the method(s) of participation (for example, filling in a form) with the child, advocates for the child and the sheriff (and all relevant professionals involved in court actions) who will be interpreting the views of the child. It is crucial that all adults are aware of the right of all children to have their voices heard in decisions affecting them, and are supported to remove any barriers which may prevent more vulnerable children (such as disabled children, children with communication needs and younger children with less capacity) from being able to participate fully. Together recommends that the FLC refers to the Scottish Government 'Common Core of Skills, Knowledge & Understanding and Values for the "Children's Workforce" In Scotland' to support training for those working with children and young people.¹⁰

Additional questions for the FLC to consider:

- How does Form F9 work in partnership with other elements of hearing children in family actions?
- Should there be a choice of participatory processes dependent on the age of the child, recognising capacity and maturity and following the example of SCRA 'all about me' forms?¹¹
- How can we tackle the issue of the assumption that children and young people are necessarily being influenced/manipulated by their parent (particularly in the case of disputed contact) – how can we ensure that the voice of the child is still heard?
- How are parents and carers informed on the importance of children and young people having their voices heard? This was a key finding in the CHS report that parents often felt that adequate information had already been gathered or that children were too young to assert their views.¹²

¹⁰ See: <http://www.gov.scot/Resource/0039/00395179.pdf>

¹¹ Download here: http://www.scra.gov.uk/home/all_about_me_form.cfm

¹² See: <http://www.chscotland.gov.uk/media/68051/Views-and-Experiences-of-the-Childrens-Hearings-System-v1-0.pdf>

Appendix 1

All processes in which a child or children are heard and participate, must be:

(a) Transparent and informative - children must be provided with full, accessible, diversity-sensitive and age-appropriate information about their right to express their views freely and their views to be given due weight, and how this participation will take place, its scope, purpose and potential impact;

(b) Voluntary - children should never be coerced into expressing views against their wishes and they should be informed that they can cease involvement at any stage;

(c) Respectful - children's views have to be treated with respect and they should be provided with opportunities to initiate ideas and activities. Adults working with children should acknowledge, respect and build on good examples of children's participation, for instance, in their contributions to the family, school, culture and the work environment. They also need an understanding of the socio-economic, environmental and cultural context of children's lives. Persons and organizations working for and with children should also respect children's views with regard to participation in public events;

(d) Relevant - the issues on which children have the right to express their views must be of real relevance to their lives and enable them to draw on their knowledge, skills and abilities. In addition, space needs to be created to enable children to highlight and address the issues they themselves identify as relevant and important;

(e) Child-friendly - environments and working methods should be adapted to children's capacities. Adequate time and resources should be made available to ensure that children are adequately prepared and have the confidence and opportunity to contribute their views. Consideration needs to be given to the fact that children will need differing levels of support and forms of involvement according to their age and evolving capacities;

(f) Inclusive - participation must be inclusive, avoid existing patterns of discrimination, and encourage opportunities for marginalized children, including both girls and boys, to be involved (see also para. 88 above). Children are not a homogenous group and participation needs to provide for equality of opportunity for all, without discrimination on any grounds. Programmes also need to ensure that they are culturally sensitive to children from all communities;

(g) Supported by training - adults need preparation, skills and support to facilitate children's participation effectively, to provide them, for example, with skills in listening, working jointly with children and engaging children effectively in accordance with their evolving capacities. Children themselves can be involved as trainers and facilitators on how to promote effective participation; they require capacity-building to strengthen their skills in, for example, effective participation awareness of their rights, and training in organizing meetings, raising funds, dealing with the media, public speaking and advocacy;

(h) Safe and sensitive to risk - in certain situations, expression of views may involve risks. Adults have a responsibility towards the children with whom they work and must take every precaution to minimize the risk to children of violence, exploitation or any other negative consequence of their participation. Action necessary to provide appropriate protection will include the development of a clear child-protection strategy which recognizes the particular risks faced by some groups of children, and the extra barriers they face in obtaining help. Children must be aware of their right to be protected from harm and know where to go for help if needed. Investment in

working with families and communities is important in order to build understanding of the value and implications of participation, and to minimize the risks to which children may otherwise be exposed;

(i) **Accountable** - a commitment to follow-up and evaluation is essential. For example, in any research or consultative process, children must be informed as to how their views have been interpreted and used and, where necessary, provided with the opportunity to challenge and influence the analysis of the findings. Children are also entitled to be provided with clear feedback on how their participation has influenced any outcomes. Wherever appropriate, children should be given the opportunity to participate in follow-up processes or activities. Monitoring and evaluation of children's participation needs to be undertaken, where possible, with children themselves.