



# Improving Justice in Child Contact

## PARTICIPATION BRIEFING

January 2021

### KEY MESSAGES

This briefing has been produced by the Improving Justice in Child Contact project. It sets out the findings and learning from the project in terms of involving children and young people in contested child contact, when they have experienced domestic abuse. The report concentrates on children and young people's influence on policy and practice. See the IJCC Participation Report for more information.

# PARTICIPATION BRIEFING

## Key findings

- *Despite different systems, processes, and legal contexts across countries, similar systemic issues exist for children and women in relation to domestic violence and child contact, increasing their risk of harm. To ensure effective change, children with experience of domestic abuse must be involved in identifying the solutions.*
- *While children's rights remain constant, their involvement needs to be tailored to the opportunities and challenges for change; participation processes and achievements therefore look different across contexts.*
- *Bringing together children's rights and women's rights organisations provides productive and powerful alliances.*
- *It can be difficult to challenge pre-existing dynamics of a system and to engage stakeholders who often have diverse motivations for getting involved. Stakeholders can be motivated through partnerships and by sharing international examples of improving child contact systems in the context of domestic violence.*
- *When they support the participation of children and young people with experience of domestic violence, organisations increase their professional understanding, learn new approaches and manage risks associated with supporting victims of domestic violence.*
- *The participation of children and young people with experience of domestic violence can provide relevance, credibility and impact for policy-making. In due course, this increases public awareness of domestic violence and positive outcomes for children and young people.*
- *Involving children and young people safely and with a children's rights approach can support their recovery from domestic violence.*



## Background

[Improving Justice in Child Contact](#) (IJCC) aimed to address the issues around child contact and domestic violence by testing out models to better uphold children's rights in child contact systems and enhance children and young people's participation in decision-making. The project - undertaken by women's and children's rights organisations in Bulgaria, Cyprus, Portugal, Romania, and Scotland - used approaches piloted in Scotland on system mapping and children and young people's participation as a 'blueprint' for the other partners to adapt to their own country contexts.

### *Systemic issues in relation to domestic violence and child contact*

Domestic violence perpetrators often use child contact proceedings as a tool to continue exerting power and control over women and children after divorce or separation.<sup>1</sup> This is exacerbated by systemic issues, including:

- A lack of understanding about how children are harmed beyond witnessing physical violence to their mothers;
- Separating a perpetrator's abuse from their parenting;
- Different and sometimes contradictory understandings of, and responses to, domestic violence across agencies; and
- Ineffective implementation in family courts of children's right to express their views about matters affecting them and for those views to be given due weight in decision-making.<sup>2</sup>

The very systems designed to protect children and women therefore end up enabling perpetrators to exert harm. Systemic change is needed to address this.

### *What do we mean by participation?*

Children's participation rights are increasingly on the agendas of legislators, policy makers and practitioners.<sup>3</sup> Participation is not just about listening to children's views, but about ensuring these views actively influence processes, decisions, and activities that affect their lives. This requires ongoing dialogue between adults and children that recognises and respects children as social actors alongside the duties on adults to keep children safe. Taking a holistic approach to children's rights can be challenging, especially when it comes to the participation of potentially vulnerable groups such as children affected by domestic violence.

<sup>1</sup> Bancroft, L., Silverman, J., & Ritchie, D. (2012) *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics*. 2<sup>nd</sup> Edition. Thousand Oaks, CA: Sage.

<sup>2</sup> Morrison, F., Callaghan, J., & Tisdall, E.K.M. (2020) 'Manipulation and Domestic Abuse in Contested Contact - Threats to Children's Participation Rights', *Family Court Review*, 58 (2), pp.403-416; Tisdall, E.K.M. (2016) 'Subjects with agency? Children's participation in family law proceedings', *Journal of Social Welfare and Family Law*, 38 (4), pp.362-379.

<sup>3</sup> Birnbaum, R. and Saini, M. (2012) 'A scoping review of qualitative studies on the voice of the child in child custody disputes', *Childhood*, 20 (2), pp.260-282.



The UNCRC groups together a number of Articles as participation rights. These include Article 13 (freedom of expression), Article 14 (freedom of thought, conscience and religion), Article 15 (freedom of association and peaceful assembly) and Article 17 (access to information). Further, the UN Committee on the Rights of the Child has identified Article 12 as a General Principle of the UNCRC. Article 12's precise wording is:

1. *States Parties shall assure to the child who is capable of forming his or her own views, the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.*
2. *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.*

The UN Committee on the Rights of the Child's General Comment on Article 12 provides an expansive understanding of capacity. Rather than a child having to prove their capacity, the child should be presumed to have capacity to form a view.<sup>4</sup> There is no age limit on a child's right to express a view and they need not have comprehensive knowledge to be considered capable.

UN Committee on the Rights of the Child set out 9 requirements for participation. Processes should be:

1. Transparent and informative
2. Voluntary
3. Respectful
4. Relevant
5. Child-friendly
6. Inclusive
7. Supported by training
8. Safe and sensitive to risk
9. Accountable (which involves feedback to children and evaluation)<sup>5</sup>

A rights-based approach helps build the capacity of rights-holders (children) to claim their rights. If children are not aware of what their rights are, they cannot claim them. Therefore, before asking for children's views on how to improve systems, children need

<sup>4</sup> UN Committee on the Rights of the Child (2012) *General Comment No. 12: the right of the child to be heard*, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f12&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f12&Lang=en), para 20.

<sup>5</sup> UN Committee on the Rights of the Child (2009) *General Comment No. 12: the right of the child to be heard*, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f12&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f12&Lang=en), p. 5.



knowledge and understanding of their rights, in order to be able to evaluate how these rights are currently being met.

## Participation model: Young Expert Group (Yello!)

Yello! are a group of young people with lived experience of domestic violence who work alongside adult partners on the IJCC project. They have previously taken part in participation projects; they use this experience and lived experiences of domestic violence to advise the development of IJCC project activities, identify and take forward priorities for influencing national policy, and hold adults taking part in the IJCC project accountable.

*“Being part of the participation projects means we get to speak to people in power. When you talk to people in power you know that something is going to get done because they can get things done quicker.” Yello! member.*

### *Yello! and political influence*

The Children (Scotland) Bill updated the Children (Scotland) Act 1995 and contained a range of provisions that would impact children’s rights in Scotland. Yello! (the project’s young expert group) submitted written evidence to the Scottish Parliament’s Justice Committee during Stage One. They were subsequently invited to provide oral evidence in a private session at the Parliament.

The young experts spoke specifically about the need for: trained specialised advocates for children and young people who have experienced domestic violence; the views of children to be listened to regardless of age; increased confidentiality of children’s personal information in court proceedings; and improved safety in contact centres.

Yello! took part in all 3 stages of the Bill and, during the debates and discussions among the committees and Members of the Scottish Parliament (MSPs), their written and oral evidence was referred to frequently. Parliamentarians described the evidence as powerful, compelling and moving. For example, Rona Mackay MSP said in the Stage 3 Debate of the Bill:

*One of the most memorable parts of our journey in getting the bill to Stage 3 was the evidence that the committee heard in private from young people from Yello!, which was an expert group advising the Improving Justice in Child Contact project [...] One by one, we heard of the traumatic and unhappy experiences of court-ordered contact in which the young people had felt powerless to express what they really wanted. I was in awe of their bravery in telling their stories to a room*



*full of adults. They have helped to shape the bill so that future generations will not have to endure their experience.<sup>6</sup>*

## Conclusion

Children and young people's participation is an essential part of influencing change. Involving children and young people with lived experiences ensures that developments adequately reflect children and young people's realities and galvanises stakeholders to engage in processes of change and to take children and young people's views into account. IJCC has evidenced that participation projects can be successful in different contexts when a children's rights approach is taken. Each country encountered difficulties in engaging support from stakeholders but all successfully managed to make impact on policy and practice when working with children and young people.

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<sup>6</sup> Scottish Parliament (2020) *Stage 3 Proceedings: Children (Scotland) Bill* [Online]. 25th August 2020, Scottish Parliament, Edinburgh. Available at: <https://www.scottishparliament.tv/meeting/stage-3-proceedings-children-scotland-bill-august-25-2020>



## ABOUT IJCC

Improving Justice in Child Contact (IJCC) aims to improve children and young people's participation in decision-making around child contact for families affected by domestic violence.

- By 'child contact' we mean communication (such as phone calls or spending time) between a child and a parent who are not regularly living together.
- By 'participation' we refer to children's human rights under the United Nations Convention on the Rights of the Child (UNCRC). Children have a range of participation rights, including the right to express their views freely in matters that affect them and for those views to be considered seriously.

Improving Justice in Child Contact is a project across five European countries (Bulgaria, Cyprus, Portugal, Romania and Scotland) running from November 2018 to November 2020. Each country is exploring models for children and young people to participate and working with stakeholders to eliminate the barriers for, and enhance the mechanisms that support, children and young people's participation.

More information is available on our website.

[www.ed.ac.uk/education/ijcc](http://www.ed.ac.uk/education/ijcc)

## Our Young Advisers

Improving Justice in Child Contact is advised by a group of young experts, called Yello!, who have previous experience of participation work. The young people are aged between 12 and 18 and have experience of domestic violence.



## SUPPORT

If you are looking for advice or information about domestic violence, help is available. Women Against Violence Europe have information on specialist services across Europe at [www.wave-network.org/find-help](http://www.wave-network.org/find-help)

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