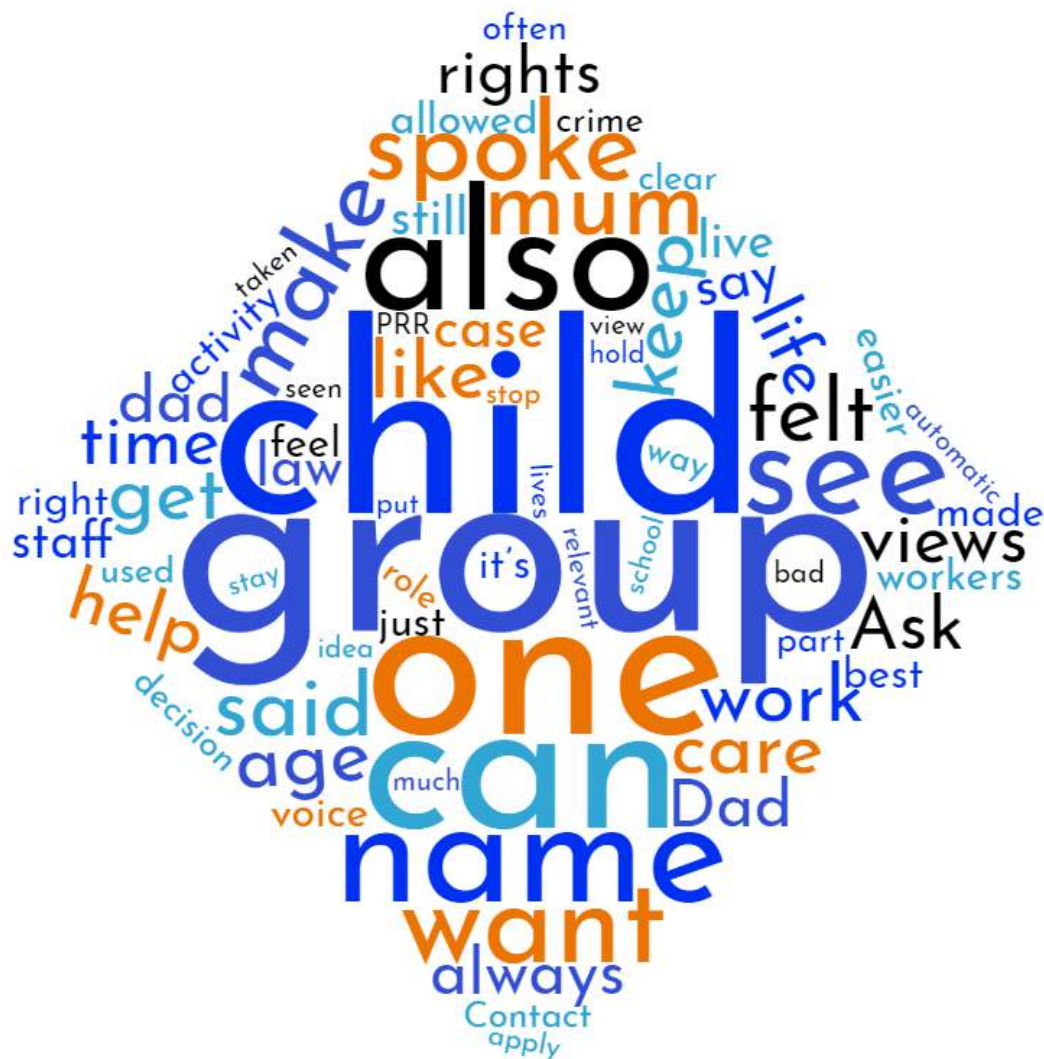


# Who Cares? Scotland's Response to the Review of Part 1 of the Children (Scotland) Act 1995 and creation of a Family Justice Modernisation Strategy

September 2018



Who Cares? Scotland [WC?S] is an independent advocacy and influencing organisation working with care experienced people. We provide direct advocacy to care experienced children and young people, as well as opportunities for local and national participation. WC?S aims to provide looked-after children and young people in Scotland with knowledge of their rights. We strive to empower them to positively participate in the formal structures and processes they are often subject to solely because of their care experience. At WC?S we utilise the voice of the care experienced population of Scotland to inform everything we do



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# Introduction

Who Cares? Scotland welcomes the chance to review a key piece of family law. This is an opportunity to modernise the Children (Scotland) Act 1995 and the court process, so that they reflect the realities of family life across Scotland for care experienced people. Our focus is to ensure that children's rights are upheld, and voices are heard, in a piece of legislation that currently prioritises the needs and rights of adults.

Care experienced people often lack control over how they interact with their family and the people that are important in their lives. Although the Children's Hearing System is the most common formal decision-making process a young person in care will engage with, the civil courts also often make important and life-changing decisions about care experienced peoples' lives.

From our advocacy work, we know that there can be a lack of consistent and high-quality practice in how courts involve children and young people in their formal processes and this means they are often not listened to or included in decision making. Key to fulfilling Article 12 of the United Nations Convention on the Rights of the Child, children must be able to participate meaningfully in the kinds of formal processes this consultation seeks to review.

We also have evidence through our advocacy work that care experienced young people are impacted by consequences of the decisions made in relation to the Children (Scotland) Act 1995. For example, young people experience difficulties travelling abroad when parental rights do not sit with their current carers and their birth family is hard to reach or refuses to consent to them going on holiday with their care families.

If Scotland is to become the best place in the world to grow up and truly fulfil the values of *Getting It Right For Every Child*, our legislation must adapt to the real needs of children in our society – especially those who are the most vulnerable. This is a report of the varying views of our care experienced members from across Scotland, on key parts of the consultation. Their views and opinions are diverse, complex and have initiated much debate, reflecting the fact that each person in care is unique, with different needs and perspectives. This proves the need for courts to be able to adapt to individual cases, to consider the full context of a situation when making decisions and most importantly, to always listen to and value what the child or young person has to say.

## Methodology

We engaged our membership with this consultation by focusing on four key areas:

### **1. Obtaining the views of a child (Part 2)**

Question 1): Should the presumption that a child aged 12 or over is of sufficient age and maturity to form a view be removed from sections 11(10) and 6(1) of the 1995 Act and section 27 of the Children's Hearings (Scotland) Act 2011?

Question 2): How can we best ensure children's views are heard in court cases? Please select as many answers as you want.

Question 3): How should the court's decision best be explained to a child?

### **2. Contact (Part 4)**

Question 7): What steps should be taken to help ensure children continue to have relationships with family members, other than parents, who are important to them?

Question 8): Should there be a presumption in law that children benefit from contact with their grandparents?

Question 9): Should the 1995 Act be clarified to make it clear that siblings, including those under the age of 16, can apply for contact without being granted PRRs?

Question 10): What do you think would strengthen the existing guidance to help a looked after child to keep in touch with other children they have shared family life with?

### **3. Parental Rights and Responsibilities (Part 7)**

Question 19): Should all fathers be granted PRRs?

Question 23): Should there be a presumption in law that a child benefits from both parents being involved in their life?

Question 29): Should a person convicted of a serious criminal offence have their PRRs removed by the criminal court? Please select only one answer.

### **4. Birth Registration (Part 12)**

Question 45): Should a person under the age of 16 with capacity be able to apply to record a change of their name in the birth register?

These questions were selected from the original consultation document as topics that could be discussed sensitively and safely. A case study about two fictional young people, Holly and Callum, was also created to facilitate discussion. Their story is based on a WC?S Advocacy and Participation Worker's (APW) experience supporting young people through a court process and ensured those taking part were able to express their views without pressure to share personal information. However, as this report shows, many members chose to talk about their own life stories, drawing from their experience and directly discussing these issues without utilising the case study.

Two methods were used by WC?S staff, to help our members express their views:

#### **Option 1 - Workshops**

WC?S groups across Scotland ran workshops with WC?S members and gathered their views on key parts of this consultation. The groups were either already established youth work spaces or one-off events organised with members who hold relationships with staff.

A set of four activities were designed, which were all optional to take part in. Each workshop was tailored based on the needs and interests of the members involved. As a result, there were varying levels of engagement with each of the four key areas (see Appendix 2 for workshop design). This was important to ensure the workshops were safe spaces, in which members could opt-in or out of discussion.

#### **Option 2 - Individual Workbook**

WC?S recognises that group work is not always the best option for every member of our organisation. Therefore, we created a workbook which could be completed with the support of an APW. Only one young person chose to use this method, instead of attending a workshop. The APW involved was informed of the consultation and trained in how to support the young person to fill in the workbook (see Appendix 3 for workbook design).

# Demographics

## Type of Engagement (Figure 1)

- 39 young people took part in workshops.
- 1 young person filled in an individual workbook.
- A total of 40 WC?S members engaged with this consultation.

## Age Range (Figure 2)

- 20 young people aged 12 - 16 took part and 20 over 16s.
- The age range was 12 - 23 years old.

## Gender (Figure 3)

- 23 female participants and 17 male participants

## Local Authority of Participants (Figure 4)

- Each member who took part has a recorded local authority, which shows where they were/are in care, or are currently living.
- The majority of those who took part, had a local authority based in the central belt, South East and South West of Scotland.

Figure 1:

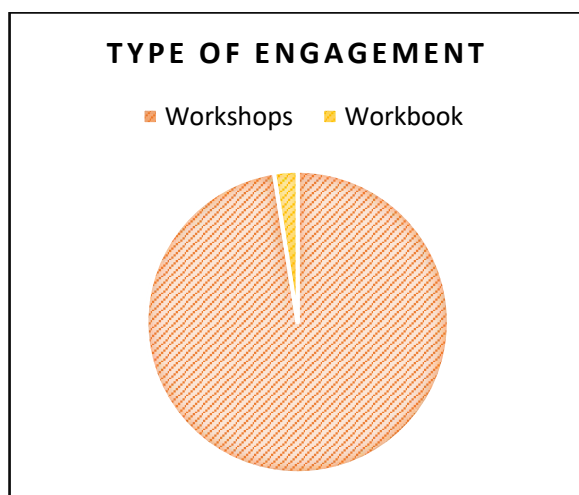


Figure 2:

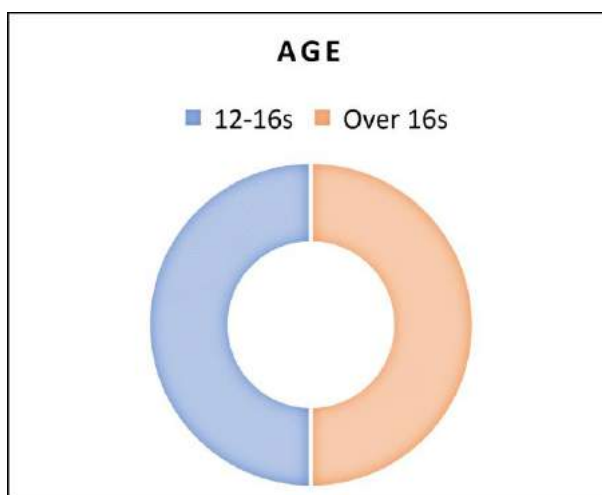


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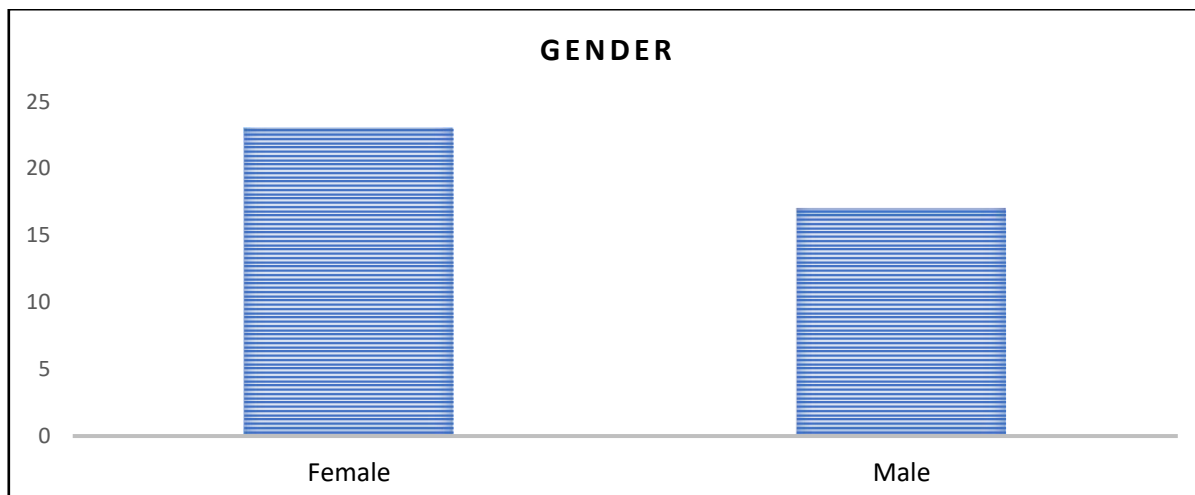
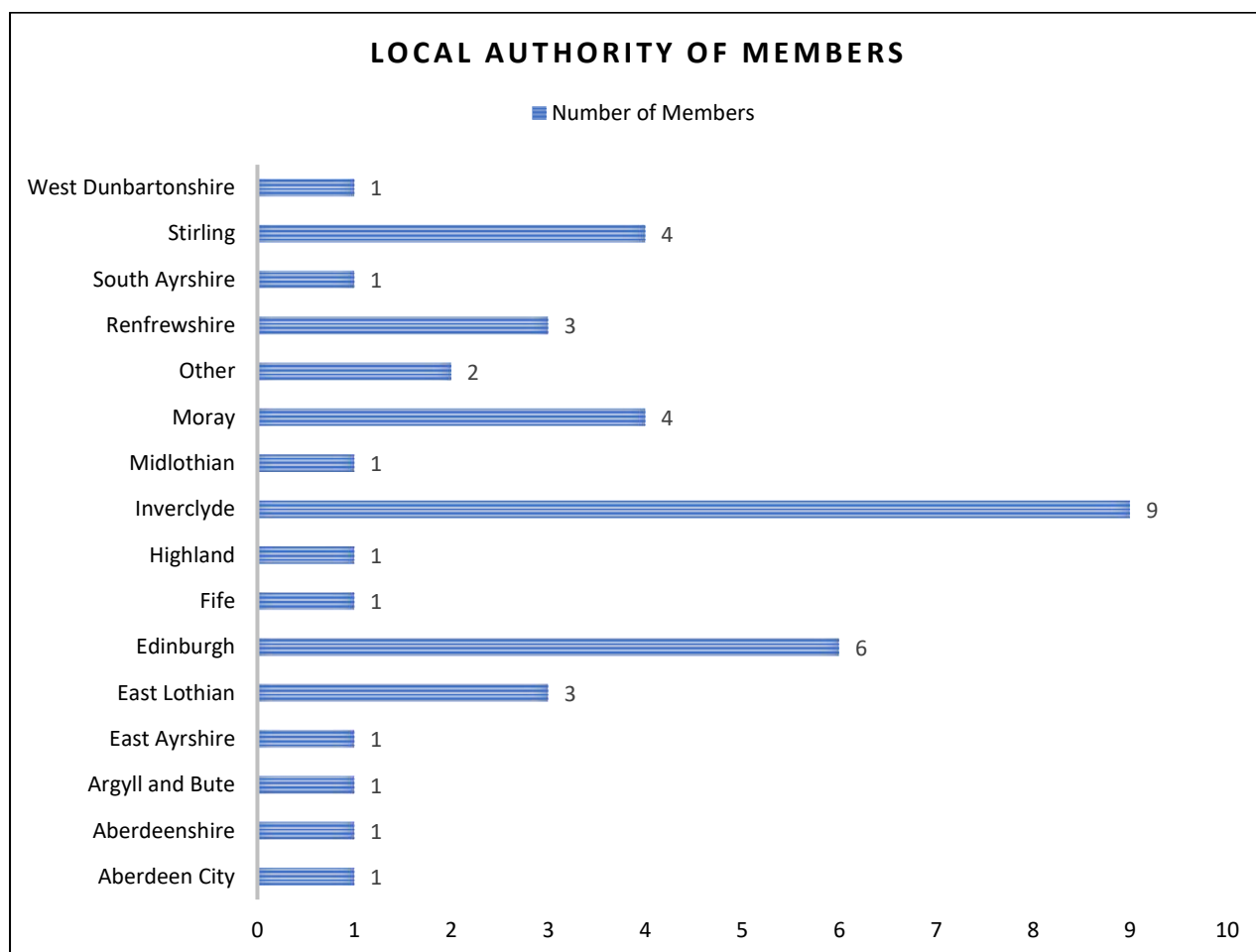


Figure 4:



## Obtaining the views of a child (Part 2)

**Engagement: 27/40 participants engaged with this activity.**

*Introductory Activity: Read out the case study about Holly and Callum and show the storyboard to the group. Give the group a few minutes to decide ‘what should happen next’- should the young person be allowed to give their views in court, or not?*

As explained in the methodology section, a case study was used to explain certain questions in the consultation (see Appendix 1). This introduced the court process and why young people under 12 were potentially involved in an issue of family law.

Q1 - Should the presumption that a child aged 12 or over is of sufficient age and maturity to form a view be removed from sections 11(10) and 6(1) of the 1995 Act and section 27 of the Children’s Hearings (Scotland) Act 2011?

*Activity: Ask young people to stand in the middle of the room. Explain that one half of the room is now to represent ‘YES’ and the other is to represent ‘NO’. Ask the group “Right now only a child aged 12 or over is assumed to be of age and maturity to form a view in court, should this part be removed?”, and ask them to answer by moving to the appropriate side of the room. Ask young people if they would like to share their reasons for choosing their answer.*

In three of the groups that engaged with this section, they recorded that they were all unanimous in favour of removing the presumption and that all under 12s should have their voice listened to. Therefore, this was the majority opinion of the 27 participants. Many young people related their answers to their experience in Looked After Children Reviews and Children's Hearings, where hearing the voice of the child can be a difficult process.

*"Court should ask young people what they think."*<sup>1</sup>

*"Children know their feelings. They would feel relief that they were listened to."*

Discussions in favour of removing the presumption centred around the fact that *"children should always be consulted and have their views heard in court"* and that *"regardless of age, should have a view of what happens in your life."* One young person stated that *"they should have a say but be able to change their minds"*, recognising that views can change and develop over time.

In one of the groups, they discussed the example of a baby, where one young person said that because they had no literal voice, *"the court should look at interactions of the child with the parent. How the child feels matters."*

There was one young person who agreed under 12s should have a say, however, was concerned that under 12s could be easily *"bribed"* or influenced by parents.

Although the majority of young people we spoke to were in favour of removing the presumption, some felt that certain children and young people might struggle with court situations or not be mature enough:

*"A 12-year-old shouldn't necessarily be put in that position, it's about maturity, can they manage it?"*

*"If a child can't hold a conversation, how can they properly express an opinion?"*

A few young people felt that at a certain age, a child wasn't able to express a view:

*"Why should a child's view be taken into account when all they know is their parents?"*

*"Young people have to be a certain age to be mature enough to have a say, 6, 7, 8 is too young."*

*"A 6-year olds brain is like a 'sponge'."*

*"Whatever a 6-year-old is taught, that's all they know."*

Q2 - How can we best ensure children's views are heard in court cases? Please select as many answers as you want.

*Ask the group what they think is the best way for a child or young person's voice to be heard in a court case.*

Many of the answers focused on an individual or relationship that would help a child or young person's voice to be heard:

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<sup>1</sup> All direct quotes from young people that participated are anonymised and are italicised throughout this report.

*“Before going to court, someone should get to know the child and get their views over time – like advocacy.”*

*“Should be able to share your views with people you can trust.”*

*“When taking everything into consideration – maybe a child psychologist would be helpful?”*

There was also emphasis on the professionals working in court to do more to understand:

*“Court should go into background of parents and do research into the situation.”*

*“Sheriff needs to have a deeper understanding of what it’s like to be that child, rather than just listening to the parents.”*

*“Every child deserves to be heard. They could have people from Who Cares? or the judge could talk to children separately and explain things in a way they can understand. “*

Some of the groups discussed the emotions the child might be going through and that they should be supported in the process, potentially by not physically being in the court room:

*“It’s scary going to court, maybe someone could go for them to share their views.”*

*“Can be traumatizing for children going to court, they need to be protected from this.”*

*“Children shouldn’t need to go to court. They could write down their views and opinions.”*

*“Having to say in front of your parents that you don’t want to see them is really difficult.”*

One young person highlighted that disability might be a barrier to communication but if that was the case, then *“there should be someone who understands and knows about disability to help the young person.”*

Others suggested methods to help a child’s voice be heard in court:

- |   |  |
|---|--|
| - Cosy, safe, comfortable environment   | - Police support, who were known to young people |
| - Art                                   | - Via video                                      |
| - Speaking to a judge                   | - Typing up your views on a computer             |
| - Having a Safeguarder                  | - Using a lawyer                                 |
| - Having an Independent Advocacy Worker | - Email  |
|   | - Voice recording                                |
|   | - Emoji sheet                                    |

### Q3 - How should the court’s decision best be explained to a child?

This was covered by answers to question 2. The only specific comment on court decisions was from one young person who said:

*“Children should be able to appeal a decision after it has been made if they don’t agree.”*



## Contact (Part 4)

**Engagement: 36/40 participants engaged with this activity.**

Q7- What steps should be taken to help ensure children continue to have relationships with family members, other than parents, who are important to them?

The subject of 'contact' was broken down to understand who is involved, how it happens or could happen and finally, what steps could be taken to make sure contact happens in the right way for young people.

*Activity: Ask the young people to think of a family member or carer, who they do not live with, who means a lot to them, and the words they may use to describe them. While discussing with the group, encourage young people to write as many of these words inside the shape of the person that has been drawn (see Appendix 2 for full activity).*

Discussions in workshops centred around what makes a person special that young people keep in contact with, but that they don't live with. Many young people spoke about how a person they were thinking of was *"supportive with family problems"* and included *"people who are there for you."* One young person described that they were thinking of someone who *"took the role of a parent in a hard time."* The idea of support and reliability was mentioned a few times and one young person said having contact for them meant *"not being let down all the time"*, whilst others spoke about trust and feeling safe.

In one of the groups, young people discussed who they would most like to have contact with and family members and friends were the most weighted answers. However, overall the person different groups described ranged from a mum, brother or sister, cousin, gran, *"pals"*, people they grew up with and that they have a *"shared history"* with. It was also mentioned that *"pets are family too!"*

As one young person described it *"family doesn't just mean one thing"* and it was clear throughout the workshops that these relationships are different for each young person and are not always biological.

Discussions also focused around *"belonging"*, fitting in and feeling happiness. Being loved was mentioned several times as important. Others spoke about the qualities they admired in the person they were describing, such as being *"loving, lively and cool"* or that they were *"funny, caring and uplifting"*, potentially providing a role model. However, these emotions and reactions to the person they described were sometimes more complex and one group spoke about *"loathing"* and experiencing *"hate and love."* For some young people, it was *"difficult to explain"* who these people might be and how they felt about them, whilst others spoke about missing these people or that they didn't remember some of the family members discussed, because they had lost relationships with them.

*Activity: Ask the young people to think about all the ways they stay in contact with their chosen person. Write or draw these on the outside of the person shape.*

Methods of communication were discussed in detail, with the use of phones, social media and face-to-face contact, as the most common forms described. This ranged from phoning and texting, to facetimeing, using WhatsApp, snapchat and messenger. Contact was also described as *"arranged"* and *"organised"* rather than something which happened spontaneously.

The instability and frequency of the types of contact they had experienced came through significantly, for example: *"I only see him face to face every three months".*

One young person said, *"it always changes"* and that they needed to *"chase it"* to make sure it happened. It was also said that it should be *"down to the child or young person"* but other young people shared that they thought *"it should be agreed by everyone"* and should *"suit everyone"* involved.

This discussion prompted one young person to share their story: *"I had to go to church to have contact with my wee brother."* This was not formally arranged contact through the courts, but some young people speaking in the sessions saw 'contact' as communication, maintaining relationships and keeping in touch with people more generally – rather than being part a formal process. As one young person put it: *"a facetime call more often can mean a lot to a person."*



*Photo from workshop activity on contact.*

**Activity:** Ask the young people if there is anything that would make keeping in contact with this person easier/ better.

Young people we spoke to mainly discussed the barriers that existed when trying to see the people that they wanted to have or already have contact with. There was a shared sense that it should be easier than it is currently and that more effort on all sides was needed to make it happen the way they wanted it to:

*At the moment, "only arrange contact when it suits other people..."*

*"Contact is stupid", it should be "when you want it."*

The role of staff and social work in contact processes was commented on in most of the groups. One young person said: *"lack of staff should not be used as an excuse, staff is not an excuse."* There was a perception across several groups that arranging and supporting contact is an additional expectation for staff that, with one person sharing that they felt professionals *"just care about getting stuff done."* One young person said there should be *"more expectations on social workers to facilitate contact."* Yet, social workers were also perceived as having *"too many cases, so contact is pushed aside and not a priority"* and again, as the key professionals in whether contact happened or not. This created a sense of not being valued and that *"kids are seen as just a number."*

In one group discussion, the lack of confidence in how staff support contact processes became apparent. The young people in this group spoke about how when they were allowed more contact with family members, that's when they knew bad news was coming from social work or the professionals in their lives. They perceived contact being used as tool by professionals: *"extra contact is used as a way to break bad news."*

Another young person stated there should be altogether *"less social work involvement!"*, whilst another mentioned that *"lawyers are not helpful"* in these types of situations. However, there was also acknowledgement in one of the discussions that certain

professionals can play a positive role in supporting young people to maintain important relationships: *“Children’s Rights Officers, Staff, Carers, Advocacy workers, can all support.”*

A young person’s choice and opinion on contact was mentioned several times in different workshops as important:

*“Ask the child what they want.”*

*“We should keep in contact with whoever we want.”*

*“Young people should see who they want through choice.”*

*“As long as a kid speaks in sentences – they can give an opinion.”*

In some groups, there was acknowledgement of the need for contact to be supervised by a safe person if necessary. However, there was emphasis on the choice of the young person that they should identify who that could be and that *“it helps for someone to mediate contact, but we should dictate it.”* One young person summarised that it *“depends on what the child is comfortable with... the child should get priority. Contact may need to be supervised.”*

Communication about contact was also seen as an issue, with one person stating there should be *“better communication from everyone.”* Stories were shared where there had been confusion in how contact happens, with one young person saying everyone should *“pick a time and stick to it.”*

*“Mam gets priority”* – one group we spoke to, disagreed about this statement that had been shared by a young person taking part and this led to a debate over whether there is a preference in how a mum or dad gets contact. One young person felt it was biased against Dad’s and that they should be given the option for contact, another said it wasn’t like that, as she knew of a case where a Dad applied for contact through the court and was granted it. This shows the perception of contact can be very different depending on the child or young person.



Photo from workshop activity on contact.

This debate also led to a young person from the same group stating: *“Children should not be used as a weapon”*, which related to the fact we had been talking about parents trying to stop or gain contact with the child.

Another important point made, was how relationships can change suddenly throughout someone’s care journey as circumstances change and this is significantly influenced by how contact changes:

*“If she was still my social worker, but now she’s not, she was told we couldn’t keep in contact. But she still does. Relationships are seen as important, but how can we do it if there’s a timeline on that relationship.”*

*“When I left care, I didn’t see my younger brothers and sisters. It would have helped if social work had made more of an effort and didn’t stop me coming to contact because I was a care leaver.”*

## Contact Case Studies:

In one of the workshops, each young person drew their own picture to explore the questions around contact discussed above. They provide insight into some more detailed examples of what contact can feel like for young people in care.

### Case Study 1:

*One young person drew their previous social worker. They shared that this is an important relationship, because they continue to support the young person.*

*However, the young person shared that the social worker has been discouraged from keeping in touch by senior staff because they have now moved into a different role. The young person highlighted that they notice that relationship-based practice is often promoted but that this is no good if the relationship has a time limit.*



Drawing from Case Study 1



Drawing from Case Study 2

### Case Study 2:

*Another young person chose her older sister who she does not live with. She preferred to work independently on this and recorded her views on the picture rather than participating in discussion.*

### Case Study 3:

*One young person drew her younger sister who she doesn't get to spend as much time with as she would like. The young person was visibly upset by this, and therefore didn't want to share much in terms of discussion.*



*Drawing from Case Study 3*

Q8 - Should there be a presumption in law that children benefit from contact with their grandparents?

*Activity: Ask the group if anyone's chosen person was their grandparent.*

*Explain that the consultation specifically wants to know whether it should be written in law that children should automatically have contact with their grandparents (as that is not currently the case). Ask their opinions on this.*

In one workshop, young people spoke about how they valued contact with grandparents and acknowledged this was not always easy to make happen. They explained it often had to be specifically requested.

Another group discussed whether the presumption would help keep relationships, as sometimes young people have lived with their grandparents and have strong relationships with them before going into care.

Several young people also described the positive feelings they had towards grandparents, such as contact with them meaning: an "escape route from parents, quality time and good meals", also that "grandparents usually spoil them rotten." One young person commented that they "do raise you completely differently, it can feel nicer" and that "if you grow up with them you should" be able to have contact.

One group spoke about how they "should have the option" to see them, that they had experienced how they "weren't considered in meetings" and that professionals "didn't listen to grandparents."

*"Grandparents weren't considered, mum was priority"*



The positive comments often came from young people who had relationships with their grandparents or who had been close to them before coming into care.

There were also strong opinions against a presumption for contact with grandparents.

*"Grandparent's shouldn't automatically get to see grandkids, it is circumstantial."*

*"Young people might not get on with their grandparents."*

One group of young people were concerned about the fact it would be automatic for grandparents to be considered for contact and did not think that a presumption should be added in law. To several individuals, it felt as if the choice of child was taken away:

*"Don't think it's fair that the child doesn't have as much of a say"*

*"Should be up to child."*

*"Only if they want to."*

This was supported in another group, where one young person said that if they had grandparents, they *"should be allowed"* to have contact. However, when asked if it should be automatic, they suggested that it should be in law, but it should ultimately be the child or young person's choice.

Q9 -Should the 1995 Act be clarified to make it clear that siblings, including those under the age of 16, can apply for contact without being granted PRRs?

Activity: Open a discussion around the question, "If you cannot stay with your family, should you still be able to see or contact some of your family members?"

Some young people thought that this should happen:

*"Yes! It would be hard at first but with help and advice from carers, school and social work, WCS and mum, it would get easier."*

*"Yes, it's important to maintain relationships."*

*"If young people want to see their family, they should be able to see their family."*

*"Sometimes other family members were more reliable and valuable than parents."*

However, again the views of the child were seen as vital by other young people:

*"Only if you want to, sometimes young people might not see them."*

*"Sometimes young people put themselves into care and don't want to see their family."*

Activity: Explain that the law currently makes it difficult for brothers and sisters to apply for contact using the court. The consultation specifically wants to know whether they should make this easier. Ask the group's opinions on this.

Only a couple of groups engaged with this question specifically, all of them saw sibling contact as very important and in need of more support:

*"Siblings should be able to use courts for contact"*

*"Young people should be able to arrange sibling contact themselves, not through social work."*

*"Children should have the right to see their siblings as often as they want."*

*“Family is family” “it should be a right and a law”*

*“Siblings can have closer relationships than ‘parent-child’ relationships.”*

*Social workers should stop “pushing sibling contact aside”*

*“Should be the choice of the young person if they see their siblings or not, shouldn’t be dictated by parents.”*

WC?S are part of the Stand Up For Siblings (SUFS) collaborative, in which we have submitted previous evidence around the importance of sibling relationships. We recommend [the response submitted by SUFS](#) is also referenced when analysing these comments.

Q10 - What do you think would strengthen the existing guidance to help a looked after child to keep in touch with other children they have shared family life with?

When considering the comments below, please also refer to Question 7 from the consultation, which includes detail on how to better support children and young people to maintain important relationships.

*Activity: Open a discussion around sharing a home with other children and young people. Explore their opinions on keeping in contact with young people they have previously lived with. What would make it easier to keep in touch with other children they have shared family life with?*

The young people that engaged with this activity, all felt more could be done to strengthen contact with other children and young people they had shared family life with:

*“You should still get to see foster/step siblings.”*

Facebook, phone calls, emails and regular visits were suggested by one young person as methods to help children keep in touch with each other.

One person stated they had found it difficult to maintain relationships with other young people they had lived with because the residential unit put barriers in place to stop this. The group they were discussing this with, agreed that this was unfair and that a young person should be able to choose who they keep in touch with:

*“We have been told we can’t see staff or other young people from units we used to live in- this isn’t fair.”*

In one of the groups, there was a discussion about how WC?S groups can be a great opportunity for contact between children and young people who have shared family life. However, young people reflected that this happens by accident, and that it isn’t the responsibility of WC?S to make sure that people keep in touch. They thought that more opportunities should be created for young people to meet up and that they should be allowed to visit old residential and foster placements. They thought the responsibility for arranging all of this should lie with social workers, residential houses and foster carers.

This links to another comment made by a young person on how to help children and young people keep in touch: *“social workers understanding importance of contact and valuing it.”*

Although talking about contact in the court system, young people commented on the need for siblings to be involved in Children’s Hearings. This relates to **Question 48** of this consultation: ‘Do you think the Principal Reporter should be given the right to appeal against a sheriff’s decision in relation to deemed relevant person status?’ We have not

answered this question directly, but would refer the comments below as relevant evidence, of how children that have shared family life can keep in touch with each other:

*“If siblings can be ‘relevant persons’ at hearings for each other.”*

*“Being able to be a relevant person at sister/brother’s hearings to give a view on contact.”*

These discussions show how certain young people we spoke to want siblings more involved in the decisions made about contact and other important issues related to their lives.

## Parental Responsibilities and Rights (Part 7)

**Engagement: 24/40 participants engaged with this activity.**

Q19 –Should all fathers be granted PRRs?

*Activity: Show the storyboard and case study provided, about the story of two young people, Holly and Callum. Ask the group if they think the character’s dad should have PRR’s? (See Appendix 1 for full storyboard).*

### **Responding to Holly and Callum’s Case Study:**

*Holly is 7 and her brother Callum is 8, they are looked after at home with mum, who has parental rights and responsibilities. They have recently been moved to their Dad and Step mum’s house by social work, but Dad does not have parental rights and responsibilities. Social work think it would be a good idea to move them to a school close to Dad’s house. Holly and Callum have told their social worker they like living at Dad’s and don’t mind changing schools. The Mum and Dad are going to court as they disagree about who Holly and Callum should live with and Dad wants to have parental rights and responsibilities. They also disagree about where the children should go to school.*

*Should Holly and Callum’s Dad be given PRRs? Why?*

One group of three young people that responded to the case study, all agreed the father should be granted PRRs, because the children are living with him. However, one young person thought that both the mum and dad should have PRRs and possibly the step-mum too, as Holly and Callum live with her. There was disagreement over this, as another young person thought that mum maybe shouldn’t have PRRs, depending on the reasons why social work have decided her children can no longer live with her and depending on how involved she still is in their lives.

This in-depth discussion about the example of Holly and Callum’s family, shows the complexity of understanding why someone should or should not have PRRs – especially if more than one or two adults could potentially hold PRRs at the same time. However, it was clear the group thought that the father should be granted PRRs, because the children now resided with him.

Other young people’s responses to whether Holly and Callum’s father should be granted PRRs, are listed below:

*“Mum and dad should sit with social work, make agreement.”*

*“Too young to make such a decision.”*



*"Yes, because they are all happy with the arrangements. BUT Dad's name isn't on birth certificate which makes things difficult/complicated."*

*Should all fathers be granted PRRs, no matter what? Why?*

In one group, young people agreed that fathers should automatically have PRRs. They felt that both parents should have PRRs automatically, however they could be removed in certain circumstances, such as not being involved in the child's life anymore. However, there was also a strong sense from the group that young people should be able to choose who has PRRs and that other people could also hold PRRs:

*"Dad's should have parental rights automatically"*

*"As soon as you are able to understand, YOU should choose who has parental rights."*

*"Parental rights could be held by both parents until you are old enough, then other people can hold them too."*

One young person explained that they struggled to get consent forms signed for school trips because their foster parents don't have PRRs and their mother is difficult to contact. Other group members shared similar experiences and agreed that that had been difficult for them also. This demonstrates the impact PRR decisions can have on care experienced young people's daily lives.

Another group mostly agreed that fathers should gain automatic PRRs, however this should not be instead of the mother having PRRs:

*"There is currently too much power with one parent and mum shouldn't always get more of a say."*

*"Both Mum and Dad should automatically have PRRs - problem with this is, how do you know who is the dad?"*

*"Fathers should have PRRs, but not remove them from mum."*

*"Might be the case that mum shouldn't always have PRRs."*

*"PRRs can cause difficulties for contact/visitation."*

Another group of young people we spoke to, all agreed that no parent should be granted PRRs automatically and decisions on who gets PRRs should be based on what is in the best interest of the child. However, this group did think it was unfair that mothers are automatically granted PRRs, but fathers aren't:

*"No as a dad they have to prove themselves"*

*"Not fathers who abuse their children or are unable to look after them or have suitable place for them to stay."*

*"Same for mums. People always expect the Dad to do wrong – but it could be Dad bringing up the weans and mum is off the rails."*

*"It's what's in the best interest of the child that matters"*

A different group also questioned whether automatic rights are ever a good thing:

*"The individual situation needs to be looked at rather than automatically giving someone PRR."*

*"The child should have a say on who has parental rights/can make decisions about them."*

*"As a child you should be able to take PRR off a parent."*

*"Depends if they can manage"*

One young person also suggested that your PRRs should follow you to your different placements when you are in care, to avoid these issues. The group they were discussing this in, all agreed that this would be a good idea:

*"Parental rights and responsibilities should stay on the child (come with them), i.e. if you move to foster care the parental rights should move to whoever is looking after you."*

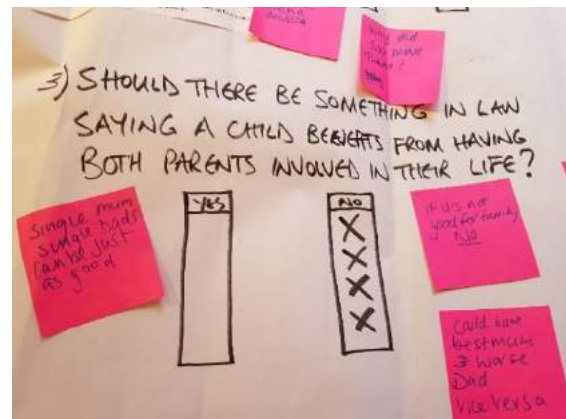
Q23 - Should there be a presumption in law that a child benefits from both parents being involved in their life?

*Activity: swap round the position of the character's mum and dad. Ask the group if this makes a difference. Do they still feel the same about who has PRR's?*

One young person agreed with the presumption: *"Yes, because every child has the right to see both of their parents."*

Another young person felt that they could see an argument for and against this and so felt that it should be dependent on the individual situation.

However, the majority who engaged with this question, felt this presumption was not a good idea:



*"Not necessarily, they might not want to see them and might not benefit from seeing them. It depends on who the parents are and their situation"*

*"It depends on the child's age and maturity, you would need to ask them"*

*"If it's not good for family – NO."*

*"Single mum and single dads can be just as good."*

*"Could have best mum and worst dad, vice versa."*

Q29 - Should a person convicted of a serious criminal offence have their PRRs removed by the criminal court? Please select only one answer.

*Activity: Return to the storyboard and ask them to imagine that one of the family members has been convicted of a serious offence. Open discussion about whether the family members PRR's should be removed.*

One group were clear that PRRs should be removed from someone who has been convicted of a serious offence. However, within this group one young person said they should have the chance to get PRRs back if they show they have changed:

*"Should be removed if there is a serious offence."*

*"Taken off them until the child decides they deserve them again."*

In other groups, there was support for this but only in certain situations. In one group, young people felt that it would really depend on what the offence was:

*"If it is crimes against their children, yes."*

*"Only if child's welfare is compromised."*

*"Depends on crime, if its murder, fair enough."*

*"It's circumstantial, it depends on the crime/ offence."*

*"Depends on seriousness/nature of crime e.g. was this against a child?"*

There were also many young people we spoke to, who were against this proposal:

*"Doesn't always mean they are a bad person because they have committed a crime."*

*"Should be able to retain PRR and be involved in decisions whilst still in prison."*

*"What if parent is innocent?"*

*"Taking PR away could cause significant trauma (for the child) – not their fault."*

*There is a "basic right to have a family."*

One group also discussed that some serious criminal offences, for example manslaughter, doesn't always involve an intention of seriously harming someone. They discussed a situation where a parent could be involved in a drunken altercation and could punch someone once, but this could result in the other person dying. They thought that in this case PRRs shouldn't be removed, even though the consequence of their action is a serious criminal offence. The overall feeling was that it should be decided on an individual basis, based on the crime itself.

## Birth Registration (Part 12)

**Engagement: 23/40 participants engaged with this activity.**

Q45 - Should a person under the age of 16 with capacity be able to apply to record a change of their name in the birth register?

Some groups started off by exploring the reasons why someone might want to change their name:

- |  |  |
|--|--|
| - Transgender, if you identify with a different gender.  | - "You've been living with a different name."                            |
| - Issue with family e.g. divorce.  | - Can create barriers to getting a bank account.                         |
| - "Just because they want to..."   | - "A name is your identity."   |
| - Anonymity.   | - "Because it's too long/hard to pronounce! Because they don't like it." |
| - Stops confusion – like passports for travel (if you have different name to the rest of your family). |  |

**Activity Question: At the moment, someone under 16 is not allowed to officially change their name – should this be allowed?**

In one of the discussions, a couple of young people shared how the relationship with the parent whose name they had, changed whether they wanted the same name as them:

*“What if you don’t know your father and you have his name? I changed mine at 13.”*

*“Never had an issue with my name until I met my dad”*

This group also spoke about how changing a name below the age of 16 would make life easier when gaining official documents in later life, such as passports and a driving licence. They made the point that once someone is over 16 and changes their name, they would then have to change all their official documentation – which could be costly and take time.

Another group explored the positives and negatives around changing a name, stating that people should be able to choose what they want to be called. Everyone in this group agreed that under 16s should be able to apply to change their name. However, they did not feel like there should be any age set, but that the person should be ‘mature’ enough to make the decision.

*“If you are mature enough, you should be able to change your name.”*

*“It should be my choice to change my name.”*

*“There should not be an age attached to changing your name.”*

The third group who took part in this activity, all agreed that under 16s should be allowed to change their name:

*“Who’s to say what is a good name or bad name?”*

*“Each person should be treated individually, and individual circumstances looked at. This is something that is personal and there may be a good reason for it.”*

One young person discussing this within a group said: *“issue I have with it is – someone under 16, they could, in a fit of emotion, change it and have regrets... I think when you are younger, your thought process is different? At 14, more emotional? Have to be completely certain.”* This then created debate within the group, as other young people challenged their thoughts on this, saying *“your identity at that age is a big deal”* and *“what if it will help them feel comfortable with who they are?”* One person in the group then ended this discussion by stating *“I don’t think there should be an age, it should depend on the child.”*

The concerns this young person had were shared in another group discussion where they said: *“people might just change their name because they can.”* However, the clear majority of those engaging with this question, were in favour of changing this part of the law.

## Summary:

### Obtaining the Views of the Child (Part 2)

The majority of the children and young people we engaged, within this consultation, were in **favour of removing the presumption that a child aged 12 or over is of sufficient age and maturity** to form a view.

The view was that age shouldn’t be a barrier to obtaining views and that each situation should be considered individually.

**Relationships with key individuals** were seen as a good way to support children to have their views heard in court.

Also **having alternative methods for children to contribute their views, like the support of an independent advocacy worker**, was important, to avoid them having to go to court in person.

**Professionals working in court** were viewed as playing an important role in ensuring that children can express a view. They need to create the conditions for this to happen.

**As an organisation, our experience highlights the important and unique role independent advocacy can play to obtain the views of the child within formal and legal decision-making processes.**

#### Contact (Part 4)

Contact with a person, **does not have to mean a biological family member** but is about sharing a connection and relationship with an individual.

Improvements to contact ranged **from resourcing more staff** to facilitate higher levels of contact, to **ensuring the child's views were listened to** in contact decisions.

The **prioritisation of different types of family members** was a key theme, where a mum or dad were perceived as being given priority for contact.

**Lack of contact with brothers and sisters** was also another important area young people discussed in detail.

There were **mixed views around whether there should be a presumption in law that children benefit from contact with their grandparents**. The views of the child were discussed again as an important factor.

**All young people agreed that the 1995 Act should be clarified** to make it clear that siblings, including those under the age of 16, can apply for contact without being granted PRRs.

There **should be a way for children to see their foster or step siblings and other children they have been in care placements with**. The responsibility for this should be with professionals and carers in the care system.

Young people also requested that **siblings should be able to be a 'relevant person' at a Children's Hearing**.

#### Parental Rights and Responsibilities (Part 7)

There were **mixed views on whether all fathers should be granted PRRs**, with many young people making the point that the child should get a say in this decision and that it depended on different factors.

One young person suggested that **for care experienced children, PRRs should go with the child** and the PRRs transfer to whoever is looking after them.

The **majority of young people disagreed with the presumption that a child benefits from both parents being involved in their life**.

Whether a person who commits a serious criminal offence should have their PRRs removed by a criminal court, received a mixed response. The overall message was that it **depended on the severity of the crime and if it had involved the children in the adult's care**.

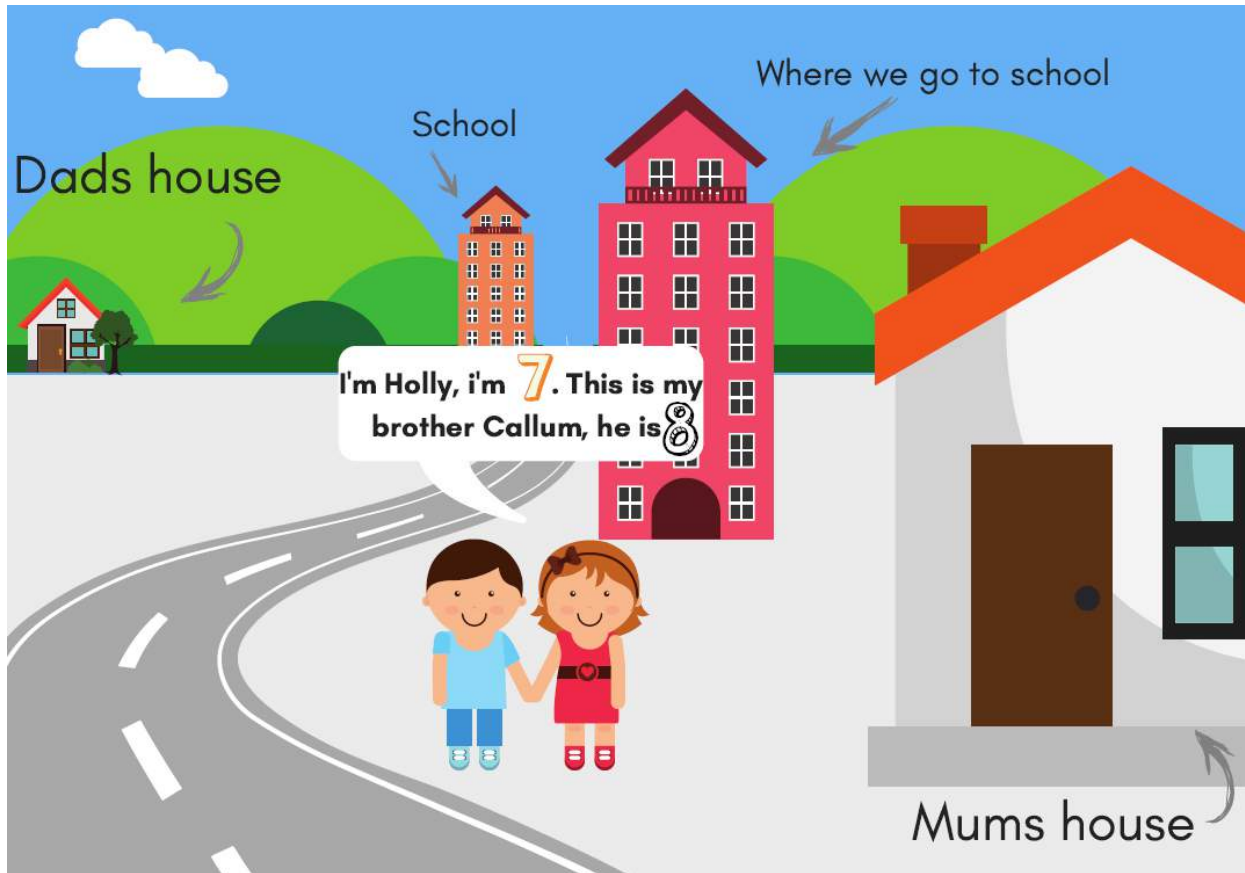
## Birth Registration (Part 12)

The **majority of young people we spoke to were in favour** of a person under the age of 16 being able to change their name in the birth register.

If you wish to discuss this consultation, please get in touch:  
Lucy Hughes, Policy Officer: [lhughes@whocaresscotland.org](mailto:lhughes@whocaresscotland.org)

## Appendices:

### Appendix 1: Storyboard and Case Study





## CASE STUDY - Facilitator reference

**When reading out case study please ensure correct image is displayed for each statement. Please use below as reference.**

Holly is 7 and her brother Callum is 8, they are looked after at home with mum, who has parental rights and responsibilities.

They have recently been moved to their Dad and Step mum's house by social work, but Dad does not have parental rights and responsibilities.



Social work think it would be a good idea to move them to a school close to Dad's house.

Holly and Callum have told their social worker they like living at Dad's and don't mind changing schools.



The Mum and Dad are going to court as they disagree about who Holly and Callum should live with and Dad wants to have parental rights and responsibilities. They also disagree about where the children should go to school.



**Should the court hear our thoughts?**

[ Begin Activity 1 ]





## Appendix 2: Workshop Design

### Activity One- Storyboard

 **Focus: Children's Views in Court**


 **Time:** Approx. 20 minutes

 **Resources:** Storyboard, pens, paper, post its, case study



#### CONTEXT:

Sometimes when a family needs to work out a decision about something important, they want to go to court to get help to decide what should happen. At the moment, children are not included very well in courts and often don't get a say. This activity looks at how a court should listen better to what the child wants and how any decisions made should be explained to the child (kind of like advocacy!)

There is also something in the law which says at aged 12, this is when a child is able to have a view which the court will listen to. But this means children younger than 12 don't have to be asked what they think. Do your group think that there should be an age limit on when someone can know what they want to happen in their lives and with their family?

- 1** Read the above blurb aloud to the group to set the context of the activity.
- 2** Read out the case study and show the storyboard (both provided) to the group.
- 3** Give the group a few minutes to decide 'what should happen next' - should the young person be allowed to give their views in court, or not? 

*\*The discussion no longer needs to relate to the case study and can be based on the young people's own experiences and opinions, if appropriate.\**

- 4** Ask the group what they think is the best way for a child or young person's voice to be heard in a court case. 
- 5** Ask young people to stand in the middle of the room. Explain that one half of the room is now to represent 'YES' and the other is to represent 'NO'. Ask the group **"Right now only a child aged 12 or over is assumed to be of age and maturity to form a view in court, should this part be removed?"**, and ask them to answer by moving to the appropriate side of the room. 

Emphasise that the young people in the case study are under 12, so would not currently be assumed to be of sufficient age and maturity to form a view.

What would the possible repercussions of this choice be?  
How would that make the young person feel?  
What would the impact be on the young person?  
Is there an alternative option?

Write down number of young people who voted each way.  
Ask young people if they would like to share their reasons for choosing their answer.  
Is this something they feel is important to them?

## Activity Two- Lifesize Drawing

**? Focus: Contact**

**🕒 Time:** Approx. 25 minutes

**✂️ Resources:** Large roll of paper, pens, post its



### CONTEXT:

Contact is an official way of organising when a child can see people who are important to them. Courts can decide how this should happen and with who and at the moment, it's mainly mum and dad who get contact. This is different to how contact happens when you are looked after.

In this activity, the group can look at how a child should be supported to keep a relationship with people in their family who are not their parents. This includes whether courts should always think it's a good idea to have contact with grandparents and if they should make it easier for brothers and sisters to have contact with each other.


This is also a chance to talk about how we can all support children and young people in care to keep in touch with other children they have shared family life with (e.g. foster siblings).

**1** Read the above blurb aloud to the group to set the context of the activity.

**2** Ask the young people to draw around one member of the group on a large piece of paper.

**3** Ask the young people to think of a family member or carer, who they do not live with, who means a lot to them, and the words they may use to describe them. While discussing with the group, encourage young people to write as many of these words inside the shape of the person that has been drawn.


**4** Ask the young people to think about all the ways they stay in contact with their chosen person. Write or draw these on the outside of the person shape.

**5** Ask the young people if there is anything that would make keeping in contact with this person easier/ better. 


Examples: grandparent, brother, sister, carer, family, friend etc  
Why do these people mean a lot to them?  
What makes them special?

Examples: Face to face, online, phone calls, letters  
How often are they in contact?

Who do they think can help this?

- 6** Ask the group if anyone's chosen person was their grandparent.  
Explain that the consultation specifically wants to know whether it should be written in law that children should automatically have contact with their grandparents (as that is not currently the case). Ask their opinions on this. 

What do they think the positives/ negatives would be?  
Would their answer always be yes/ no?

- 7** Explain that this section is particularly relevant to people with care experience.  
Read out the case study (provided). Open a discussion around the question, "If you cannot stay with your family, should you still be able to see or contact some of your family members?" 

Do they think this is important? Why?  
Who should make this decision?

- 8** Ask the group if anyone's chosen person was their grandparent.  
Explain that the law currently makes it difficult for brothers and sisters to apply for contact using the court.  
The consultation specifically wants to know whether they should make this easier.  
Ask the group's opinions on this.

How important do the group think this is?  
Who do the group consider to be their siblings? Are they just biological?  
Is it important to see your siblings?

- 9** Open a discussion around sharing a home with other children and young people. Explore their opinions on keeping in contact with young people they have previously lived with. What would make it easier to keep in touch with other children they have shared family life with?

Some may have lived with other young people in residential care, foster care, secure etc

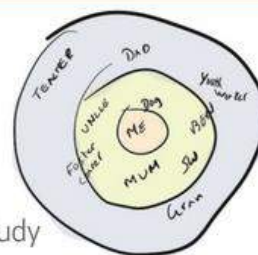


## Activity Three- Proximity Chart

### ? Focus: Parental Rights and Responsibilities

🕒 Time: Approx. 15 minutes

✂️ Resources: Storyboard, paper, pens, proximity chart, case study





#### CONTEXT:

Parental rights and responsibilities (PRRs) are what parents must have so they can look after their child. For example, it means they can go on holiday abroad together and make important decisions about the child's life.

When a child is born, the dad of the child doesn't always get PRRs – they have to be married to the mum or sign the birth certificate. Dads can also try to get parental rights and responsibilities in other ways through the court. What do your group think about dads always getting parental responsibilities, no matter what?

This activity also asks if it is always a good idea for a child to have both their parents involved in their life and if a parent who has a criminal record should be able to have their PRRs removed by a court.

- 1 Read the above blurb aloud to the group to set the context of the activity.
- 2 Show the storyboard and case study (provided) to the group.
- 3 Ask the group to complete a relationship proximity chart (chart and guidance provided) based on the storyboard and case study.
- 4 Referring back to the blurb, ask the group if they think the character's dad should have PRR's? 
- 5 On the proximity chart, swap round the position of the character's mum and dad. Ask the group if this makes a difference. Do they still feel the same about who has PRR's?
- 6 Return to the storyboard and ask them to imagine that one of the family members has been convicted of a serious offence. Open discussion about whether the family members PRR's should be removed. 

*May need to refresh their understanding of PRR's*

Why do they think this?  
Do they think this is the case for all dads?  
Who should decide this?

Should mum's always have PRR's?  
Should both parents automatically have PRR's?  
Who should decide this?

Do they think the conviction is important?  
Is there an alternative to removing PRR's?

# FAMILY LAW REVIEW

Part 1 of the Children (Scotland) Act 1995

September 2018

## What is Part 1 of the Children (Scotland) Act 1995?

It is a law in Scotland which is based on the needs of children and their families and tells us what parental responsibilities and rights are in relation to children.

## What is the purpose of this consultation?

Scottish Government want to know how this law can be changed to be more up-to-date with family life and help improve how it works. We want you to have your say by filling in this workbook!

# WORKBOOK

1. Parental Rights and Responsibilities
2. Views of the Child
3. Contact
4. Birth Registration





# 1. Parental Rights and Responsibilities



Parental rights and responsibilities (PRRs) are what parents must have so they can look after their child. For example, it means they can go on holiday abroad together and make important decisions about the child's life.

When a child is born, the dad of the child doesn't always get PRRs – they have to be married to the mum or sign the birth certificate. Dads can also try to get parental rights and responsibilities in other ways through the court.

## Official Definition of Parental Responsibilities and Rights:

Section 1 of the 1995 Act provides that so long as this is practicable and in the interests of the child, **parents have the responsibility to:**

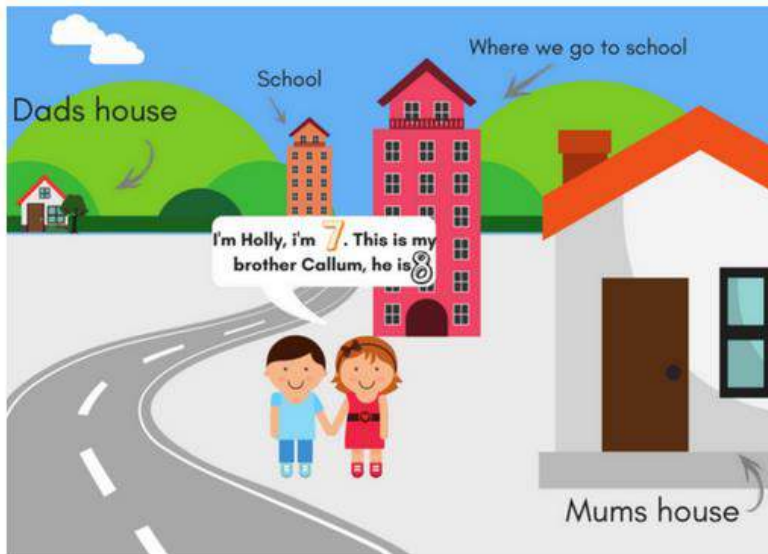
- Safeguard and promote the child's health, development and welfare;
- Provide direction and guidance to the child;
- Maintain personal relationships and direct contact with the child on a regular basis if a child is not living with their parent; and
- Act as the child's legal representative.



In order to meet their responsibilities towards their children, **parents have the right to:**

- Have the child living with them or otherwise regulate the child's residence;
- Control, direct or guide the child's upbringing;
- Maintain personal relations and direct contact with the child on a regular basis if a child is not living with their parent; and
- Act as the child's legal representative.

# 1. Parental Rights and Responsibilities



## Read Holly and Callum's Story:

Holly is 7 and her brother Callum is 8, they are looked after at home with mum, who has parental rights and responsibilities.

They have recently been moved to their Dad and Stepnum's house by social work, but Dad does not have parental rights and responsibilities.



Social work think it would be a good idea to move them to a school close to Dad's house.

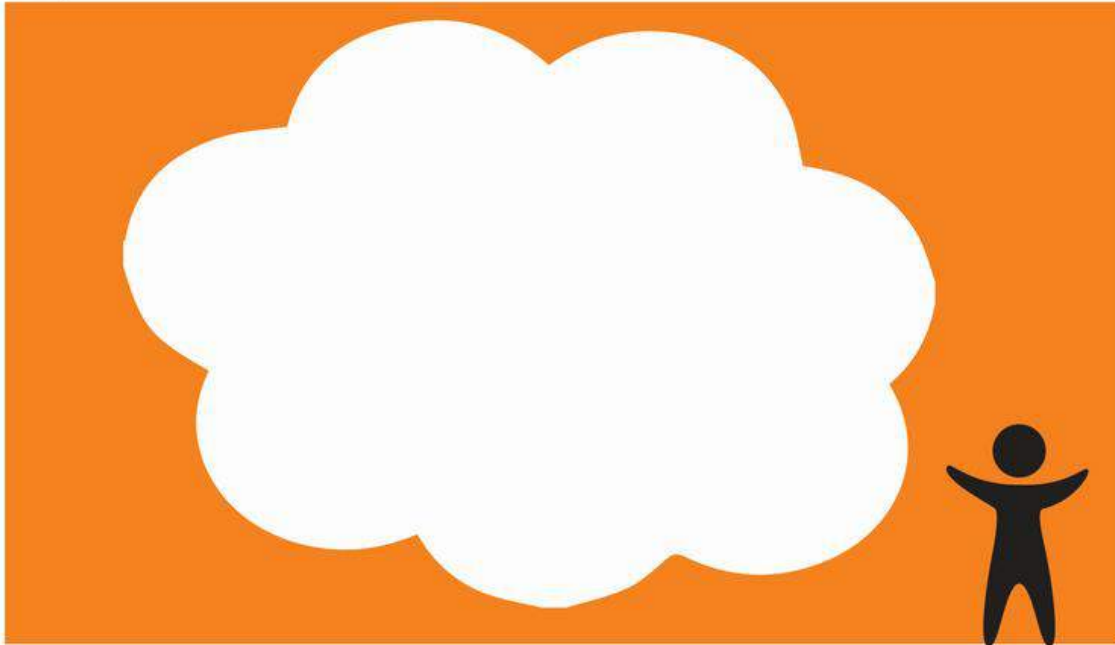
Their Dad and Stepnum also want this, as they want Holly and Callum to live with them.

Holly and Callum have told their social worker they like living at Dad's and don't mind changing schools.

# Parental Rights and Responsibilities

**Read Holly and Callum's story again and look over again what**

**PRRs mean:** Should their dad be given parental rights and responsibilities?



**Should ALL fathers be granted Parental Rights and Responsibilities, no matter what?**

YES ☐

NO ☐

Tell us why you think that

A large empty rectangular box with an orange border, intended for writing a response.



# Parental Rights and Responsibilities

## What do you think?

Should there be something in the law that says a child benefits from **both** parents being involved in their life?

YES ☐

NO ☐



Why?



If a parent has committed a serious criminal offence, should they have Parental Rights and Responsibilities removed by the criminal court?

YES ☐

NO ☐

Why?

A large rectangular area enclosed by a hand-drawn orange border, intended for writing answers to the 'Why?' questions. An arrow points from the 'YES' radio button to the top-left corner of this box.

## 2. Views of the Child

**i**

Children's views can sometimes not be heard when important decisions about their lives are being decided in courts. Think about how a court should listen better to children and how decisions made should then be explained to them. The law also says that when a child is 12 years old (with 'capacity'), then they are able to have a view which the court must listen to. But this means children younger than 12 don't have to be asked what they think!

Read Callum and Holly's story again. They have now been told they have to go to court and we want your opinion on what you think should happen next.



The Mum and Dad disagree about who Holly and Callum should live with and Dad wants to have parental rights and responsibilities. They also disagree about where the children should go to school... Now they are going to court, so the judge can decide what happens.

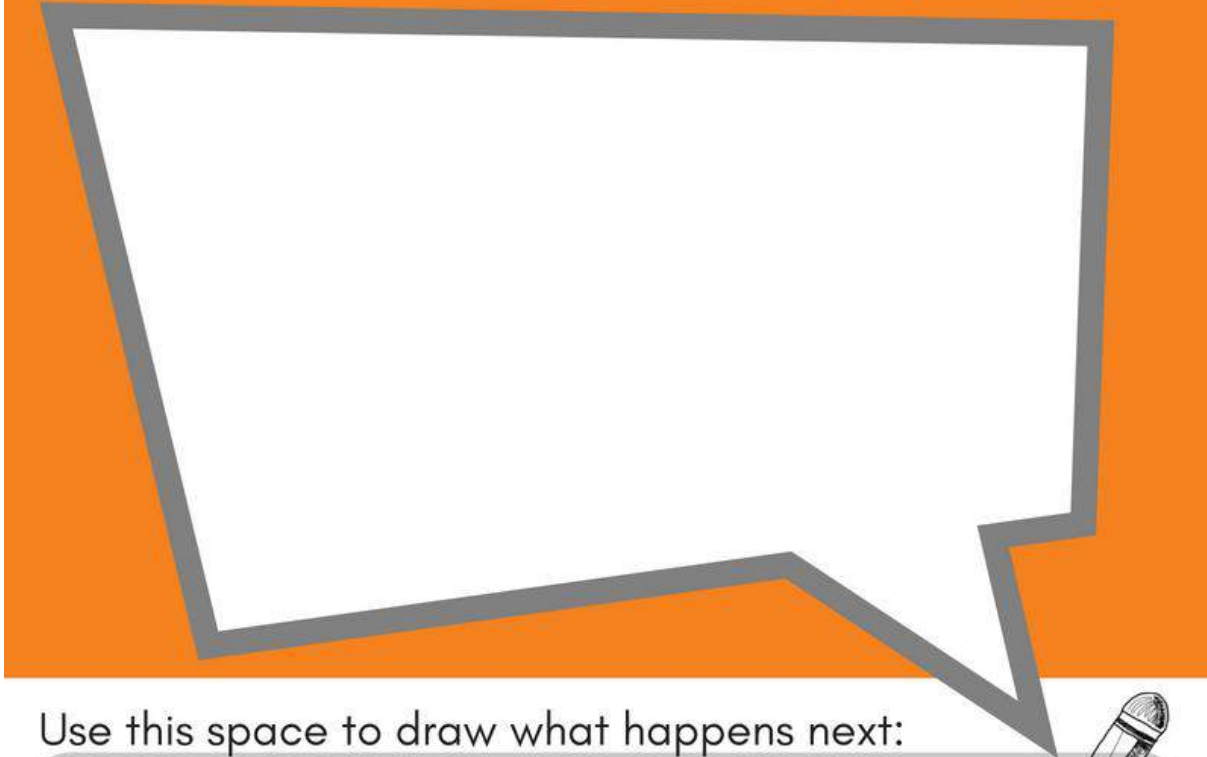
## Views of the Child

**Should Holly and Callum be allowed to share their views in court?**

**Use the space below to help finish the story.**

**If you would like to you can draw what happens next.**

(Remember there is no right or wrong answer we want your opinion.)



Use this space to draw what happens next:



## Views of the Child

**What other ways can the voice of children be heard in court?**



**Which way do you think is best and why?**



**Right now in court, only a child aged 12 or over (with 'capacity') is seen as old enough to have their own view, should this be removed?**



YES ☐  
NO ☐

### 3. Contact

**i**

Contact is an official way of organising when a child can see people who are important to them. Courts can decide how this should happen and with who. At the moment, it's mainly mum and dad who get contact but siblings can also do this.

**This is different to how contact happens when you are in care.**

In this bit, think about how a child should be supported to keep a relationship with people in their family who are not their parents.

This is also a chance to talk about how we can all support children in care to keep in touch with other children they have shared family life with (e.g. foster siblings).



**1**

Use the space below to draw an outline of a person.

**2**

Think about a positive relationship with someone who you don't live with. What is it that makes them special? Write down all of the things you like about that person on the inside of the person you have just drawn.

**3**

Next, on the outside of the person, now write how you stay in contact with that person and how often you get to see them.



A large empty rectangular box with a blue border, intended for drawing and writing.

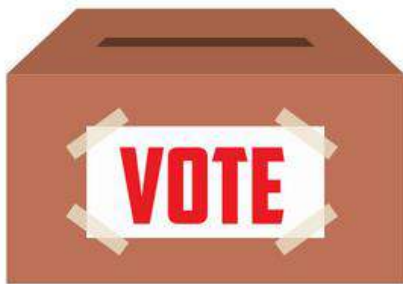


# Contact

Is there anything that would make keeping in contact with the people you thought about easier or better?



**Should it always be the opinion in law that children benefit from contact with their grandparents?**



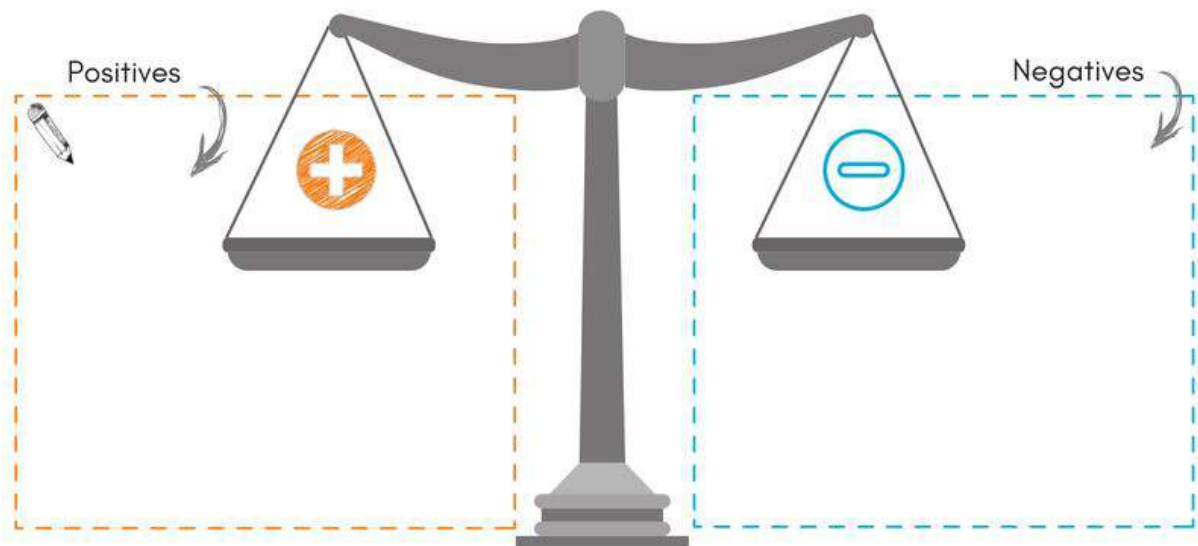
**YES**

☐

**NO**

☐

**What could some of the positives and negatives be?**



## Contact

**If you cannot stay with your family, should you still be able to see or contact some of your family members?**

Tell us what you think

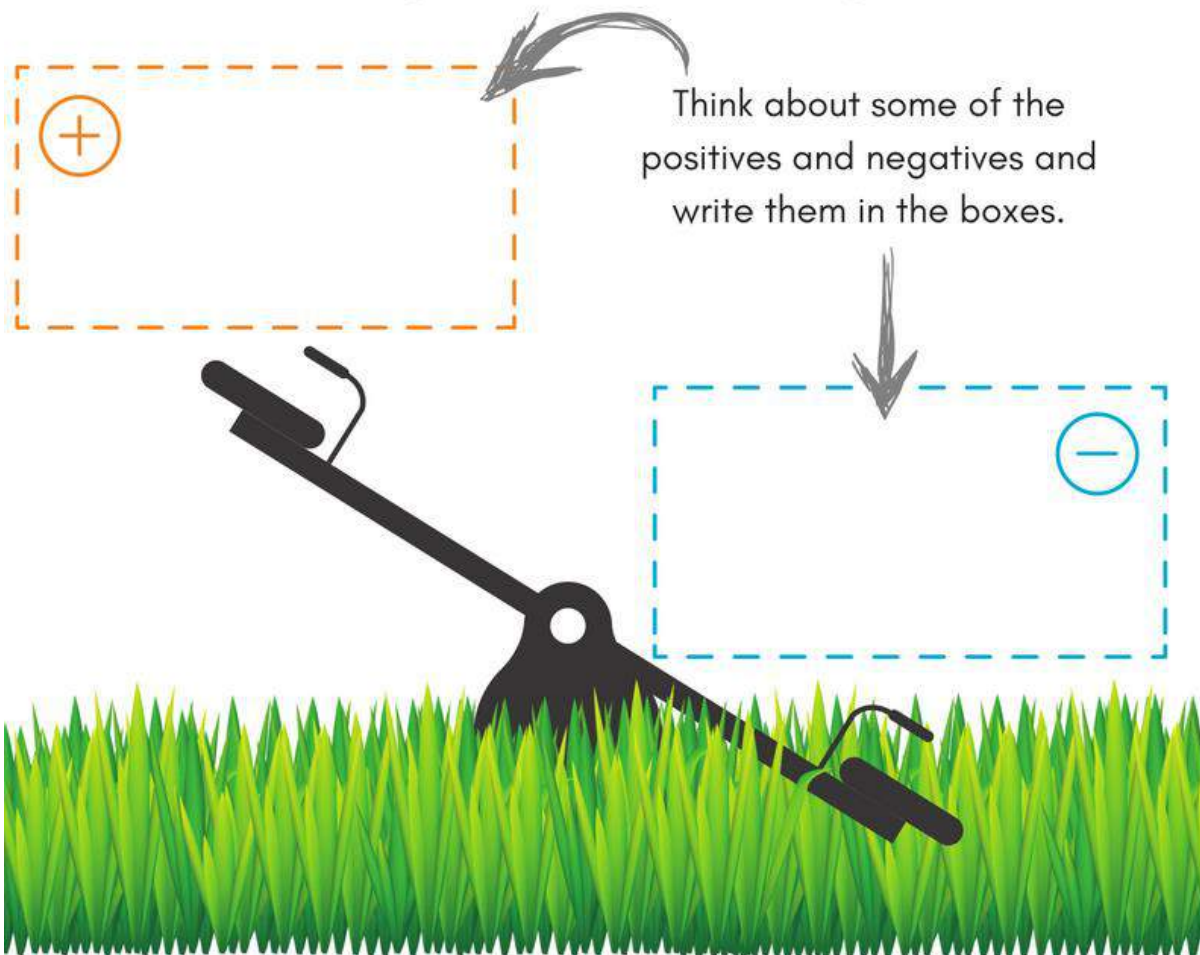


**What would make it easier to keep in touch with other children that you have shared family life with? e.g. your brothers and sisters, foster family...**



# Birth Registration

**Should a person under the age of 16 with capacity be able to apply to record a change of their name in the birth register?**



**Do you think a person under the age of 16, should be able to apply to record a change of their name in the birth register?**



**YES** ☐

**NO** ☐