



Victims, Witnesses and Justice Reform (Scotland) Bill

Criminal Justice Committee Call for Views

Submitted: September 2023

About us section:

At Children 1st our ambition is for every child in Scotland to be safe, loved and well, together with their family. As a charity we offer emotional, practical, and financial support to help families to put children first and campaign to uphold the rights of every child.

We support the whole family when they need it, for as long as they need it. We offer help to prevent families reaching crisis point, to keep children safe and to support children and families to recover from trauma and harm.

Our Children 1st response to this consultation is informed by our experience of working alongside child victims and witnesses and survivors of abuse and harm. Thanks to players of People's Postcode Lottery, we are working with our partners Victim Support Scotland, University of Edinburgh and Children England and opened Scotland's first Bairns Hoose in North Strathclyde in August 2023. Our hope is that this Bairns Hoose model will be available to child victims and witnesses across Scotland. This would mean that the needs and rights of children and young people are at the centre of all child protection and justice processes, and their journey heals, rather than harms.

The scale of violence and harm children and young people in Scotland experience is significant. Children's experiences as victims and witnesses must be properly understood in this Bill. While this scale of harm is not always well documented through statistical reporting on crime for victims and witnesses, at least 37% of the 14,602 Sexual crimes recorded in 2022-23 by the police related to a victim under the age of 18.¹

More widely, during 2021-22 there were 11,473 Child Protection Investigations conducted in Scotland. 4,058 initial and pre-birth Case Conferences were held during that year, which are an inter-agency meetings held when there are concerns that a child might be or is at risk of significant harm. The most common concerns identified at Case Conferences of children registered during the year were: domestic abuse, neglect, parental substance misuse and parental mental health problems.²

Our Children 1st response brings together the expertise of our trauma recovery work with victims and witnesses in our dedicated services, and a significant amount of participation and research work conducted to inform the development of Scotland's first Bairns Hoose. This involved Children 1st

¹ Recorded Crime in Scotland Statistics, 2022-23 [Recorded Crime in Scotland, 2022-23 \(www.gov.scot\)](https://www.gov.scot/resources/consultations-petitions-and-statements/recorded-crime-in-scotland-2022-23/)

² Children's Social Work Statistics 2021-22 [Supporting documents - Children's Social Work Statistics Scotland: 2021 to 2022 - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/consultations-petitions-and-statements/supporting-documents-childrens-social-work-statistics-scotland-2021-to-2022/)

[Changemakers](#), creative workshops involving over 70 children and family members across Scotland, our [Sharing Stories for Change](#) report, and work to inform the development of the [Bairns Hoose Standards](#), which provide guidance on how to support child victims and witnesses in Scotland in line with international best practice.

1. What are your views on Part 1 of the Bill which establishes a Victims and Witnesses Commissioner for Scotland?

“Just because we’re children, doesn’t mean we don’t have strong feelings and don’t understand things.”

Girl, age 8, [Sharing Stories for Change Report](#) for Children 1st Bairns Hoose Project

Children 1st support the proposal to establish a Victims and Witnesses Commissioner for Scotland, as children experience extremely distressing experiences as victims or witnesses. However, children and young people need to have their experiences fully understood by this role, and a Commissioner should not be brought in – at considerable expense – to act as a substitute for real action in improving the experiences of victims and witnesses, such as consistently scaling up the Bairns Hoose model following the opening of Scotland’s first Bairns Hoose by Children 1st and our partners in North Strathclyde.

Article 12 of the United Nations Convention on the Rights of the Child (the UNCRC) says that children have the right to be listened to and taken seriously. Article 13 of the UNCRC sets out a right to receive information, as part of freedom of expression. However, children and young people who are victims or witnesses often report not feeling heard – either by the people they meet or by the system overall. The UNCRC underpins the Barnahus model, and the European Barnahus Quality Standards informed [Scotland’s Bairns Hoose Standards](#), which were published in May 2023. These set out the rights-respecting approach that should be taken towards child victims and witnesses in Scotland. The Victims and Witnesses Commissioner for Scotland must have all this work – the UNCRC, the European Barnahus Standards and the Scottish Bairns Hoose Standards – right at the centre of their work.

Children and young people account for a significant proportion of people who are victims and witnesses, but this is not always recognised. Often, children are overlooked or forgotten, or fall between different definitions of a child, with children aged 16 and 17 overlooked far too often as they are categorised as adults. For example, the Scottish Crime and Justice Survey reports on experiences “after the age of 16”, and the Recorded Crime in Scotland statistics say that “The specific age of the victim cannot generally be determined from the data supplied by Police Scotland.” The UNCRC is clear that a child is defined as someone under the age of 18, and that children are entitled to special protections on account of their age.

We also recognise the concerns raised by other organisations such as Scottish Women’s Aid³, on the basis that there is already a confident and experienced network of organisations who provide advocacy at an individual and national level. The role of the new Commissioner will have clear crossover with the

³ [SWA-Improving-Victims-Experiences-of-the-Justice-System-Consultation-Response.pdf \(womensaid.scot\)](#)

existing post of the Commissioner for Children and Young People in Scotland. The Victims and Witnesses Commissioner for Scotland must add value to this existing work and provide value for money. This is particularly important given that system improvements are often not implemented effectively because of a lack of resource. The Commissioner should not absorb funds at the expense of practical improvements that will directly improve victims and witnesses' experiences.

We would note that victim support organisations are missing from the list of specific 'persons' outlined in Section 6, who the Commissioner may work with in exercising their functions. Including victim support organisations in this list, as well as ensuring their inclusion in the advisory group, would be a sensible start to ensuring respect and collaboration is there from the outset. The development of the Strategic Plan outlined in Section 9, and the annual plan outlined in Section 16 should include consultation with victim support organisations, to ensure that the Commissioner's work is fully informed by the sector at large and with recognition that children represent a substantial proportion of victims.

While it may not be possible for a Commissioner to intervene or advocate in specific cases while they are working through due process, there should be a role for the Commissioner to offer clear and accessible information that will help victims and witnesses and their families to navigate whichever system is relevant to them. The lack of readily available or understandable information is one of the most frustrating parts of victims and witnesses current experience. This is out of step with Article 13 of the UNCRC, and the Bairns Hoose Standards that were published this year. The criminal and civil justice systems are full of language that is difficult to understand for adults as much as for children, confusing processes and unanswered questions. While the children's hearing system is currently being considered for redesign, it can also feel similar. Supporting work to address this information gap needs to be a priority for the Commissioner.

Children 1st also believe that it is important that the Commissioner has clear oversight of legislation that has been enacted relating to victims. We are extremely concerned that large amounts of important legislation and policies are being introduced without any clear mechanisms, intention, or resources to implement in full. Changes for children outlined in the Children (Scotland) Act 2020 offer one example where significant portions of that Bill remain unimplemented. Indeed, Part 3 of the Victims, Witnesses and Justice Reform (Scotland) Bill seeks to extend sections of the Children (Scotland) Act 2020 that are not yet in force meaning layers of unimplemented legislation are now building on top of each other. The Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 makes way for crucial improvements in the availability of the option for children to pre-recorded evidence (such as Evidence on Commission), but this is still only at the early stages of being phased in. Without implementing legislation, we do not help victims and witnesses.

On this point more widely, while we are aware of a number of areas of law that have been passed but not brought into force through our own work, we would support the Scottish Parliament or the Scottish Government taking forward a review of legislation not in force to understand the true scale of this backlog.

The Bill proposes that the Victims and Witnesses Commissioner's remit is limited to the criminal justice system. While the Policy Memorandum does set out that it is the Scottish Government's intention that in future this remit could be extended to cover those involved in civil proceedings and those whose case is to be managed by the children's hearing system, we believe the remit should cover all these systems from the outset. The reality is many victims' experience justice through the civil justice system or the children's hearing system. This is not because their experience is particularly different to someone whose case might be pursued through the criminal justice system, but because the consequence of a case being heard by the criminal justice system is significant, barriers to criminal processes can be high and decisions are often (rightly) made to divert cases away from it. This feels particularly important considering the Children (Care and Justice) (Scotland) Bill that is currently working its way through parliament which will result in a significant extension of the remit of children's hearings. From the perspective of victims and witnesses, limiting the remit of the Victims and Witnesses Commissioner would only serve to underline the hierarchy.

2. What are your views on Part 2 of the Bill which deals with trauma-informed practice in criminal and civil courts?

"When I went to court, I had to sit in an empty box room with no windows, no sweets or anything and a few broken toys. I was 9 years old. If you're coming from dealing with something terrible you don't want to come to somewhere broken when you already feel broken. It's good to know kids and come to the Bairns Hoose and it's a safe place."

Jasmin, age 18, visiting Scotland's first Bairns Hoose in North Strathclyde.

Bairns Hoose as trauma-informed justice

Children have for far too long told us that the systems of child protection and justice that were designed to protect them often caused more distress and harm.

Scotland's first Bairns Hoose opened in August 2023, as a place where children can experience trauma-informed justice and protection 'under one roof'. While the Bairns Hoose model is set out in more detail below, a tour of the Bairns Hoose, guided by the voices of the children and young people we support and who have influenced the way in which the Hoose was built, can be found [here](#).

This follows change that started more than 10 years ago when a review of justice led by Lord Carloway highlighted the unacceptable suffering of children and young people within justice and called for "clear sky thinking" and the modernisation of a system that failed to protect children from brutal cross examination, disjointed and delayed processes. The Evidence and Procedure Review that followed, published in 2015, said that "It is now widely accepted that taking the evidence of young and vulnerable witnesses requires special care, and that subjecting them to the traditional adversarial form of examination and cross-examination is no longer acceptable." This review said this is because

“recounting traumatic events is especially distressing for children, and can cause long-term damage”, and traditional methods used in court are not a good way to elicit clear, accurate evidence.⁴

Therefore, it is through our experience, alongside the overwhelming research evidence, that we believe children should not have to attend criminal and civil courts unless absolutely and unavoidably necessary. Children should be included in the planning and decision making for how they share their experience. They should also be spared the trauma of repeating their stories over and over, should have co-ordinated support in one place and should be supported to avoid having to go to frightening and overwhelming courts. All children should have someone to support them through the process and to explain what is going to happen. This is what a Bairns Hoose will offer.

The system as it stands

We still regularly see evidence that current civil and criminal justice processes create additional trauma and delays recovery. It's important to note, this experience extends right throughout the system from the moment of disclosure to after a trial concludes. At the moment, children are processed through a complex system that asks them to share their trauma over and over – sometimes [up to 14 times](#).

We continue to see examples of children and young people experiencing real distress because of the system.

One young person who had been sexually assaulted had to give evidence at High Court and shared her experience of being cross examined. It was highly traumatic, as well as having to see the man in court, and have her name called over a tannoy system as “a witness”. She also was unprepared for hearing his name on the tannoy and this caused anxiety and flashbacks. She was accused by the defence agent of being promiscuous and asked, “why didn’t you scream and run out of the house?” Afterwards she reflected on being made to feel that she was guilty and questioned at what stage was she allowed to be the victim, not the witness.

Sharing Stories for Change report, September 2021

Our [Sharing Stories for Change](#) research shows that the place in which ‘talking’ takes place is very important to children and young people, and had a significant impact on whether they were able to talk. Sometimes it was surprising how the basic needs of families were overlooked: for example, not having anything to eat or drink, being cold and uncomfortable. From the name of the accused ringing out around court buildings over a tannoy when cases are called, to the complete inability of most court buildings to confidently offer separate exits and entrances to victims so that they do not have to run into the accused, children and families tell us that court buildings feel unsafe and untrustworthy.

⁴ [evidence-and-procedure-full-report---publication-version-pdf.pdf \(scotcourts.gov.uk\)](#)

Exhausting delays mean that fear and anticipation surrounding a victims or witnesses' experience lasts years, and repeated adjournments mean that anxiety and stress build repeatedly up to a court date, only to be sent away without any progress having been made.

This has a long-term impact on children's lives, and can lead to a lack of sleep, anxiety, fear, flashbacks, missing school. Limited and sporadic changes will not be enough to change this, however well intentioned. This is why we need transformational change for children.

If we had really thought about giving children the best possible opportunity to give their evidence, we would never have designed what we have now. The key principles of trauma-informed practice, as outlined in the [Care Inspectorate's Trauma-informed Practice Toolkit](#), are safety, trustworthiness, choice, collaboration and empowerment. As it stands, the justice system falls short on all fronts.

Duties to be trauma-informed

Children 1st are supportive of any measures that increase awareness and understanding of trauma and its impact in the justice system. We welcome the Scottish Government's recognition that trauma is a significant issue for the justice system to consider. However, with our experience to hand, we would strongly argue that trauma informed practice will not happen through surface level wording. Change must go to the very core of Scotland's justice system. It also cannot be delivered through legislation alone – resource, and political will are also needed. X

One of the challenges for creating a trauma sensitive process for victims and witnesses is that the spaces and places used for courts have been designed specifically to embody a sense of 'the weight of the law', with symbols of power and formal processes.

In our view being 'trauma- informed' is not enough: we must move towards significant culture change where our systems and processes are trauma sensitive and those people who work alongside children and families are aware of the actions that they can take and the changes they can make. Rather than simply being 'informed' we need to create a supportive environment that means systems and processes can respond sensitively and compassionately to those who have experienced trauma and harm. Those working within these systems need to know what to do with the information they have gained by being trauma-aware, so that they can become trauma responsive. As one Mum told us:

*“Like they could dae it fae another room like they put the weans in another room, you don't have to actually be in the court room. I think they should get a different way to deal with it but everybody is different, some people want to face the person that's done this to them and be that strong person so each to their own **but I think they should have a more versatile way of doing it.**”*

Sharing Stories for Change report, September 2021

The court system was never designed to be trauma-informed, and the infrastructure right through to the buildings themselves create a sense of disempowerment and fear, which is a big part of why victims

report the experience of going to court can be worse than experiencing the original harm. A trauma-informed system must involve infrastructure including buildings, processes, roles and responsibilities. One young woman told us:

“I think I’d make it more like relaxing, as much as it’s you’re not going to be relaxed, even if it’s something small, you’re not going to be relaxed. And I think making that room more, as comfortable as you can make it, or so comfortable, as comfortable as you can make it for people so that they don’t feel as like cold.”

Sharing Stories for Change report, September 2021

Consistently scaling up the Bairns Hoose model right across Scotland would support the level of system change we believe is required to see trauma-informed justice and care and protection.

Benefits of trauma-informed practice

The current timescales for court cases are unacceptable, and a clear barrier to a trauma-informed approach. The court case backlog existed long before the pandemic but delays lasting years have now been normalised. Audit Scotland report that “Average waiting times for the most serious cases have more than doubled since the pandemic. They currently stand at between 43 and 53 weeks. Some of these crimes disproportionately affect women and children.”⁵ These delays have a destabilising and traumatising impact for children and families involved. One family we supported told us:

“Basically, from start to finish, it was January 2019 when it was reported, and it was July this year [2021] he was found guilty. That’s a long time. You know walking about, she saw him in the town once and that kind of, you could see the physical impact as we drove along the street. She burst into tears, she absolutely burst into tears. Totally lost it. She was like “I cannae cope with this. I cannae cope that he’s standin’ there, looking like a normal life” and she is trying to grab all these little pieces of her life and try and pull them all together so she can be stable again. So yeah, it’s a been a long, long journey. It could have been a short story. It could have been a very short journey.”

Aileen - a parent’s story from December 2021

It is important to recognise that improving trauma-informed practice will, in many cases, involve improving the efficiency of the justice system overall. For example, delays to court trials mean that in-person testimony is taken long after the events in question. This often means that memories are less clear, and testimony can become confused. While this is no fault of the person giving evidence, it increases feeling of self-blame, and worries about getting questions “wrong”. Pre-recording evidence for trial can mean that testimony is taken closer to the time of relevant events and is not eroded by the impact of time.

⁵ [Criminal courts backlog \(audit-scotland.gov.uk\)](https://www.audit-scotland.gov.uk)

Avoiding undue delay is a key tenant of trauma-informed approach to a Bairns Hoose. As set out in the European PROMISE Barnahus Quality Standards:

“avoiding undue delay between reporting and the forensic interview can make it easier for a child to tell their story and remember details, thus improving the quality and value of the child’s testimony. It may also reduce risk that the child is exposed to pressure to withdraw statements. It also enables an early assessment of potential protection needs without contaminating the evidential value of the child’s statement. This in turn ensures that there is no delay in protecting the child from further exposure to violence. A medical exam done in a timely manner may help physical findings of violence be recognized and documented to guide both treatment processes and judiciary proceedings. It may also allow therapeutic services to start earlier.”

Right to Recovery

A trauma-informed response also means upholding children’s right to recovery, as set out in Article 39 of the UNCRC. This states that:

“States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.”

Too often, the right to recovery is forgotten, and children and young people and their families are not properly supported to process what happened, and to move forward. Making sure children and young people have direct access to recovery support during and after their justice process is just as important to trauma-informed justice as making changes to avoid additional hurt through the court experience.

Our Sharing Stories for Change research found that:

“For many children and young people supported by Children 1st workers and Women’s Aid workers, they described the kindness and emotional support provided as being very important for their recovery. Feeling safe, being listened to and feeling in control were especially valued amongst children and young people in support services. The ‘being there’ whenever this was needed by families was especially important. There were key milestones for families when a child or young person had been hurt, harmed or witnessed a crime and support was required: for example, at the start of the very complex process, when decisions were made by police and COPFS, when people may have been arrested and bailed, when court proceedings were underway, when verdicts were reached.

“However, in learning from children and families there could be many different events that required additional support– for example, returning to school, any community knowledge about what has happened, moving home, changing family relationships and friendships. It was

emphasized that for many families, having someone they trust who they can turn to at any stage was critical.”

Bairns Hoose for child victims and witnesses

Our work to build and co-ordinate Scotland’s first Bairns Hoose demonstrates the level of transformational system change we believe is required to genuinely improve child victims and witnesses’ experiences and achieve trauma-informed practice throughout the justice system. The Bairns Hoose is a purpose-built venue for children and young people who are victims or witnesses of crime.⁶ It is designed to reduce feelings of anxiousness, fear and a lack of support and control that are so often associated with victims and witnesses’ experiences of justice. It has been built with children and young people, and for them.

Children and young people told us about how their senses made a big difference to their experience, reduce trauma and support their emotional regulation so that they could share their story. They told us that thinking about this could help reduce stress, and this has been thought about throughout the Bairns Hoose. They told us they wanted to see a soft, comfortable textures like cushions, blankets and rugs to help them feel comfortable in the space. The space includes soft colours, and lighting with views to the garden, with calming smells, and drinks and snacks available whenever families want. There is a water fountain outside, and sound proofing throughout, so that the space doesn’t feel overwhelming.

As well as the environment created by the actual building, the Bairns Hoose seeks to provide a trauma-informed response through focussed multi-agency working that means the number of times children have to re-tell and re-live their experiences is reduced as far as possible, and they are able to move forwards through recovery work. Children 1st believe that this is a clear example of what trauma-informed practice really means. **While we can’t always stop bad things happening to children and young people, we can do everything in our power to help them to recover.**

The Scottish Government have made a commitment to the Bairns Hoose model, through Pathfinders which will be launched in Autumn 2023.⁷ However, this Bill seems to overlook the experiences of children, and the work to introduce Bairns Hoose across Scotland. The lack of clear connection to legislation and financing for the Bairns Hoose approach within this Bill is disappointing, as we are clear that Bairns Hoose is essential to ensuring children experience a true trauma-informed approach.

While we are encouraged by the Scottish Government’s recent announcement that a programme of Pathfinders will soon be funded, the work to introduce Bairns Hoose to Scotland is still in its infancy. Moving this model beyond North Strathclyde, where Children 1st now offer and operate a high quality Hoose which is the first of its kind in Scotland and scaling it with consistency will take real resource and leadership.

⁶ More detail about the Bairns Hoose can be found here: [Bairns Hoose | Children 1st | Children 1st](#).

⁷ [Programme for Government 2023 to 2024 - gov.scot \(www.gov.scot\)](#).

Legislation Already Passed

The legislative backdrop to the Bairns Hoose model in Scotland offers a good example of why a combination of legislation, resource and practice change are needed to create meaningful change towards being trauma informed. We are clear that legislation has an important part to play, but alone it is not enough. The key legal requirements for a Bairns Hoose - the ability to pre-record evidence - is already technically possible. Yet despite being technically possible, this option is significantly underused, even for children and young people - who are well recognised as some of the most vulnerable participants of the justice system.

This is deeply frustrating, given the widespread, cross-party agreement that pre-recording evidence should be available to children. Children 1st have long argued that children should not be required to attend court, unless absolutely and unavoidably necessary. In 2016, former Justice Secretary Michael Matheson said “children should be spared the trauma of giving evidence in a formal court environment. Indeed, I want to eliminate the need for all children to attend court at all during the trial.”⁸ During the passage of the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019, the Scottish Parliament’s former Justice Committee said that enabling children to provide their evidence in advance of the trial “is an important step forward in increasing the greater use of pre-recording, which the Committee agrees will reduce the distress and trauma caused to child witnesses as well as improve the quality of justice.”⁹ Legislation was passed to “enable all of the child witness’s evidence to be given in advance of the hearing”, unless specific exemptions applied¹⁰.

This should have resulted in a significant expansion in the use of pre-recorded evidence for child victims and witnesses. Yet research conducted by the University of Edinburgh evaluating Bairns Hoose published in March 2023 clearly shows that despite pre-recorded evidence being technically available to ensure children do not have to attend court, and while some improvement might be recognised in High Court cases, **“the requirement [to attend court] remained in almost all cases”**.¹¹ Sometimes, evidence is pre-recorded and the impression is created that the child will not need to attend court. Later, for reasons that are not clear, children are told they still need to give evidence in court. This can create even more distress and confusion.

Allowing children to pre-record their evidence and avoid the need for attending court has widespread support - from the Scottish Government, across political parties and the general public, as well as in legislation. It is therefore difficult to see why evidence shows that children are still being asked to attend court. It is clear that fully embedding trauma-informed practice will take much more time, resource and possibly further legislative developments to make practical improvements, including the Bairns Hoose, a reality. Legislation is only ever part of the picture, and we would welcome a greater interrogation of the

⁸ [Getting it right for child witnesses - gov.scot \(www.gov.scot\)](http://www.gov.scot).

⁹ [Stage 1 Report on the Vulnerable Witnesses \(Criminal Evidence\) \(Scotland\) Bill \(azureedge.net\)](http://azureedge.net).

¹⁰ [Vulnerable Witnesses \(Criminal Evidence\) \(Scotland\) Act 2019 \(legislation.gov.uk\)](http://legislation.gov.uk).

¹¹ [North Strathclyde Bairns Hoose Evaluation Phase One Report, March 2023 \(ed.ac.uk\)](http://ed.ac.uk).

planned resourcing for trauma-informed practice from the Scottish Government and other relevant agencies.

We would also point to the research conducted through the University of Edinburgh into victims' and witnesses experiences of court in relation to domestic abuse, which showed that most participants felt that new laws (that are in force) were underused.¹² This also showed that "most parents/child witnesses reported that harm to children was insufficiently recognised; they felt perpetrators were not held accountable for the impact that domestic abuse had on children and that children's safety and specific needs/vulnerabilities were inadequately addressed. Many victims felt that abuse of a third party – for example, family and friends – had not been taken account of adequately throughout the process." Attention and energy needs to be directed towards getting legislation that has already been passed implemented to make the intended difference.

Using pre-recorded evidence more often and reducing the overall timeframe cases take to be processed through courts are essential to the system's overall ability to embed trauma-informed practice, and to the success of the work in the Bairns Hoose. This could be addressed more specifically in this Bill, as well as by fully implementing the provisions of the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 relating to the presumption for pre-recorded evidence. Out of court options to pre-record or live link evidence are essential to a trauma-informed approach.

Other system changes:

Other system level changes that we believe are necessary to realise trauma-informed practice include:

- Bureaucratic issues like legal aid and representation should be in place before the day of trial but often lead to last minute adjournments. Cases should not fail or be adjourned because of failures to submit evidence or make disclosures. Mechanisms should be in place with both the COPFS and the SCTS to ensure that where paperwork means a case cannot progress forward, victims and witnesses are told in good time, and well before they have travelled to a court building.
- Children and their families should not be asked to attend court, unless absolutely and unavoidably necessary. Pre-recording evidence should be available **without the need for applications for specific measures**, for all under the age of 18.
- If court attendance ever is required, or is the preference of those involved, more attention must be given to making sure that victims and witnesses feel safe attending. With the best will in the world, and even despite the best efforts from Victims Information and Advice (VIA) services or Victim Support Scotland, it is often impossible for people guarantee an exit or entry into the building that means they feel safe from the accused or their family. It's possible to request a separate entrance to the accused, but many court buildings are simply unable to facilitate that – either with any separate entrance at all, or with separate entrances being easily identifiable and

¹² [Domestic Abuse Court Experience Project | School of Social and Political Science \(ed.ac.uk\)](#)

in close proximity to the main entrance. This is best avoided by ensuring that pre-recording evidence is available to more victims and witnesses, but where victims and witnesses feel unsafe and do need to attend court, there should be specific arrangements in place – agreed and shared with the family in advance – that ensure victims and witnesses are confident in their safety.

- When parents are required to give evidence in court, families may need to arrange childcare. When children are required to give evidence alongside their carer, it is often not anticipated that after they testify, they will be unable to join their parent or carer until after they themselves have testified. The lack of consideration of childcare requirements – or the emotional impact of being separated from loved ones while others testify - creates difficult situations for children and families. This should be factored into court scheduling, and families should be supported to ensure that safe childcare arrangements are available at all times.
- Court-related correspondence and communication is delivered in a way that is often incomprehensible for adults, never mind children, and there are rarely opportunities to ask questions about what happened and why. We are aware of efforts to review COPFS correspondence with the aim of making these child-friendly. Despite these well-intentioned efforts, the correspondence remains retraumatising in its style and wording. While the effort to improve correspondence is welcome, in our view this work to develop victim and witness friendly and centred, easy read correspondence is better led by organisations with expertise in creating trauma sensitive care and support, with the ability to ensure that victims and witnesses can participate, give feedback and be supported to help develop new, improved process, in a person centred and trauma sensitive way.

The proposals in the Bill

In terms of the specific proposals contained in the Bill, Children 1st would favour a stronger framing of the duty to have regard to trauma-informed practice, and for this to apply more extensively than the list of organisations included by virtue of Section 24. We note that the duty to have regard to trauma-informed practice only applies to the Lord Advocate, Scottish Ministers, the chief constable of the Police Service of Scotland, the Scottish Court Service and the Parole Board for Scotland.¹³ This does not include the judiciary, or the children’s hearing system. We would favour a clear, shared and equal duty to be applicable for all those involved in the justice system. This is particularly important given the expanding remit of the Children’s Hearing System, currently in legislation in the Scottish Parliament. The need to only “have regard” is also, in our view, too limited and easy to set aside in the face of other considerations like capacity, resource and existing practice. We would favour a stronger framing, such as a duty to “have due regard”, and for this to extend to all agencies involved in the provision of justice services.

It is also concerning that many of the most significant changes required from the Scottish Courts and Tribunals Service, the Crown Office and Procurator Fiscal Service and Police Scotland appear without

¹³ [Victims and Witnesses \(Scotland\) Act 2014 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2014/12/section/24)

clear commitments and costings in the financial memorandum. We appreciate that a level of independence is required in the way that these decisions are made, but it is entirely possible that this Bill will pass without any clear understanding of what will follow and how much this will cost. Changes to the SCTS estate and to COPFS processes “cannot be quantified”. We believe this Bill is the right opportunity to offer parliament some sense of how and when public funding might be needed to support the changes needed in this Bill, and this should be clarified further as the Bill goes forward.

As well as urgently implementing the full provisions from the Victims and Witnesses (Criminal Evidence) (Scotland) Act 2019, we believe that more accountability is needed about whether and when children are being asked to attend court, and why. We believe that too often, children are being asked to attend court because of system habits rather than because it’s actually needed in that case. Robust accountability is needed around this, including regular reporting on how often pre-recorded options are offered to children and young people, and what pre-recording options actually look like. Children should always be able to pre-record their evidence in a Bairns Hoose.

3. What are your views on Part 3 of the Bill which deals with special measures in civil cases?

As outlined in our response to Part 2 on trauma-informed practice, it is frustrating to see an extension of measures that have not yet appeared in practice for children and young people following the Children (Scotland) Act 2020. It is important that children and young people do not see further delay to the implementation of provisions that are already in law for them.

When special measures are discretionary, we find that often there is a high bar to access them. We have supported people who have been asked to provide evidence – such as a letter from CAMHS or their GP - to justify why they need special measures. This means judgements are being made about their ‘vulnerableness’, based on what might be an arbitrary detail.

In our view, special measures should be available to those who need them. Creating barriers to accessing special measures can mean the system misses opportunities to support victims and witnesses in a trauma-informed way.

4. What are your views on the proposal in Part 4 of the Bill to abolish the not proven verdict and move to either a guilty or not guilty verdict?

Children 1st would support the abolition of the not proven verdict.

5. What are your views on the changes in Part 4 of the Bill to the size of criminal juries and the majority required for conviction?

It is difficult to assess the potential impact of this change for children and families we support, not least because of the range of other changes that are proposed in this Bill which will have connected impacts.

We would refer to the response submitted by VOCFS, of which we are a member.

6. What are your views on Part 5 of the Bill which establishes a Sexual Offences Court?

Children are victim to a significant portion of sexual offences recorded - 37% of the 14,602 Sexual crimes recorded in 2022-23 by the police related to a victim under the age of 18.¹⁴ This needs to be better acknowledged in the Bill, not least through a clear link to the government plans for Bairns Hoose.

We support the recognition that much more needs to be done to address the specific vulnerabilities and sensitivities in sexual offence cases. We also welcome the Scottish Government's acknowledgement that "previous attempts at reforming practice in existing courts have failed to secure the transformational change needed"¹⁵.

However, as we have already queried in earlier consultation responses¹⁶, we wonder if a separate court would be necessary if the existing provisions relating to pre-recorded evidence, taking Evidence by Commissioner and the special measures were implemented consistently and in a trauma-informed way. We are concerned about whether the creation of a new court, and the time and resources that this will need to involve, will distract from efforts to make the clear practical changes that victims and witnesses consistently tell us would make things better, like increasing the ability to pre-record evidence, and for children to provide their evidence through a Bairns Hoose. The changes we outlined in our response to Question 2 are, we believe, the best route to improving victims and witnesses' experiences of the justice system.

As the intention is for Sexual Offence Courts to be set up through the existing court estate, we would continue to strongly argue that children should still not be asked to appear in a sexual offence court unless absolutely and unavoidably necessary. Increased training for those involved in these cases will not be enough to reduce the trauma children experience through being asked to attend court.

We are also concerned about the view that Sexual Offence Courts should be a way to improve case management and reduce overall delays, as it is clear to us that the vulnerability of victims and witnesses cannot be neatly divided by case type. It's important that victims and witnesses who are vulnerable in other cases, such as domestic abuse, are not deprived of system improvements while Sexual Offence Courts are set up. There is a risk of multi-tiered systems creating different experiences of justice.

The national remit of the proposed Sexual Offence Court provides some assurance that those we support in rural areas will have the same access to any improvements that come with this new court. However, learning from the use of Domestic Abuse Courts, which have existed in some form for around 20 years, establishing specialism within the court system is most impactful when there is consistency in those who work there. This might be more difficult in a floating court system with national jurisdiction. Children and families tell us that every single person who has a role in the court system can have a significant impact on their experience – from the security personnel who work at the door, to those

¹⁴ [Recorded Crime in Scotland, 2022-23 \(www.gov.scot\)](https://www.gov.scot)

¹⁵ [Policy Memorandum accessible \(parliament.scot\)](https://parliament.scot), para 274.

¹⁶ [children-1st-response-to-improving-victims-experiences-consultation.pdf \(children1st.org.uk\)](https://children1st.org.uk)

working in in-court canteens. This is, in part, why we believe that the duties around trauma-informed practice should be shared between everyone involved.

7. What are your views on the proposals in Part 6 of the Bill relating to the anonymity of victims?

In general, making rights to anonymity clearer would be something that we would support. Article 16 of the United Nations Convention on the Rights of the Child is clear that “No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.”, and that “The child has the right to the protection of the law against such interference or attacks.”

It would be helpful to understand more about the process children would be asked to go through should they wish to pursue a court order to waive their anonymity. As we’ve made clear throughout our response, we believe that no child should be required to attend court unless absolutely and unavoidably necessary. It is not clear whether this order could be sought via remote evidence, or whether appearance in court would be expected. We appreciate that the Scottish Government’s view is that this would only happen relatively rarely, and that it is necessary for additional safeguards to be in place for this given the significant impact of sharing such sensitive information, but it is important that these safeguards do not have unintended consequences.

8. What are your views on the proposals in Part 6 of the Bill relating to the right to independent legal representation for complainers?

We would strongly support these proposals.

9. What are your views on the proposals in Part 6 of the Bill relating to a pilot of single judge rape trials with no jury?

We agree with Lady Dorian’s view that the long-term trend showing a stark difference in conviction rates for these offences compared to others cannot “simply be explained away by poor prosecutorial decision making, rogue cases or the like”¹⁷. It may be that it cannot either be explained just through the presence or absence of a jury, however we support considering the evidence further and the likely impact this would have on improving trauma- sensitive justice. A pilot would help further our understanding of why conviction rates are so low, and so is something we would likely support.

However, there is very little detail about how this pilot would be constructed at an operational level. While it is welcome that the Scottish Government wish to undertake “further collaborative work on design and development”¹⁸, this means that analysing the full implications of this proposal are difficult at this stage.

¹⁷ Improving the Management of Sexual Offence Cases, Final Report from the Lord Justice Clerk’s Review Group at para 5.6

¹⁸ [Policy Memorandum accessible \(parliament.scot\)](#)

We would therefore strongly disagree with the conclusion made in the Children's Rights and Wellbeing Impact Assessment¹⁹ that no further impact assessment is needed in relation to the likely impacts on children be required to take this forward. Child victims of serious sexual offences are extremely vulnerable and potential impacts need to be explored in full.

We would also be keen to hear further about how this would impact on proceedings involving children, and how this potential change would be operationalised in the context of a Bairns Hoose.

10. Are there provisions which are not in the Bill which you think should be?

As we have already outlined, we are frustrated by the lack of clear links to the work to develop the Bairns Hoose model in Scotland.

11. Do you have any additional comments on the Bill?

We are deeply disappointed that there appears to be no direct connection to the Scottish Government's clear commitment to embed Bairns Hoose across Scotland. This is concerning, given the direct impact we believe this work will have on the experiences of child victims and witnesses. In response to the Scottish Government's consultation on improving victims' experiences, we said "This indicates that this work is being considered very separately to Bairns Hoose for child victims." This still seems to be the case.

We are also concerned by the general lack of acknowledgement of the experiences of children and young people. Children and young people account for a significant volume of victims and witnesses – for example, we know that at least 37% of the 14,602 Sexual crimes recorded in 2022-23 by the police related to a victim under the age of 18²⁰. However, much of the data reporting on crime and justice in Scotland fails to disaggregate this properly. Clear data and reporting on the impact of crime and the justice system on children and young people is essential to ensure the debate on this Bill is properly informed, and we would encourage the Committee to seek more information about the impact on children and young people from the relevant agencies during the course of this Bill. We would also urge the Scottish Government to make sure that the impact of children is properly represented in all regular reporting tools like the Recorded Crime Statistics.

¹⁹ [Child Rights and Wellbeing Impact Assessment \(CRWIA\): Victims, Witnesses, and Justice Reform \(Scotland\) Bill \(www.gov.scot\)](http://www.gov.scot), page 8.

²⁰ [Recorded Crime in Scotland, 2022-23 \(www.gov.scot\)](http://www.gov.scot)