



Victims, Witnesses and Justice Reform (Scotland) Bill

Stage 1 Briefing, April 2024

“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 can come to the Bairns Hoose and it’s a safe place.”

Jasmine, age 18

Summary

At Children 1st, our ambition is for every child in Scotland to be safe, loved and well with their family. For decades, we have worked alongside children and their families who are survivors of abuse, trauma and other adversities, to support them through their justice, care and protection journeys and to recover from their experience.

We have been told by children and families time after time that the experiences of the care and justice systems built to protect them are worse than their experience of harm itself. Our work to introduce the Barnahus model to Scotland, opening Scotland’s first Bairns Hoose in August 2023, is central to how we believe this could be changed, so that rather than causing them more harm, their journey can help heal.

Children continue to experience appalling levels of harm. At least 37% of the 14,602 sexual crimes [recorded in 2022-23](#) by the police related to a victim under 18. This harm continues to be made worse by a system that is unable to listen and support both children and their families. Children’s UNCRC rights to access information ([Article 17](#)), to be heard and have their views taken seriously ([Article 12](#)), to be protected from violence ([Article 19](#)) and to recover from harm ([Article 39](#)) are repeatedly unmet.

The problem isn’t just the new trauma and exacerbating harm that has already occurred – it’s also incredibly inefficient. Poor quality evidence, gathered in traumatising conditions, leads to a lower likelihood of conviction, with prosecutions failing and children and families feeling let down and unsafe.

We do see a growing recognition that change is needed, and lots of support from those who work in the police, courts, social work and prosecution services. Our work opening the Bairns Hoose has shown determination from partners across the justice sector to make change happen, and through the Bairns Hoose we are starting to see that become a reality. However, the barriers to change run deep and modernising ancient systems remains hugely challenging.

This Bill includes some measures that could help make progress. We are strongly supportive of the principle of a trauma-informed practice duty, the proposal to improve access to special measures and to introduce specialist training for through a new sexual offences court.

We do worry that some elements of this Bill will be all statement and no substance. Children, young people and their families desperately need practical changes now – some through legislation, some through better resourcing. This Bill could help make a real difference to children’s journeys, if more is done to strengthen it. Our response is focussed on issues where we have direct experience supporting children and young people, and it is with those voices in mind that we call on the government and parliament to make the improvements needed for the best chance of real change.

Victims and Witnesses Commissioner

We have said before that a new 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.

Changes that could make a real difference to children's experience of the justice system, like the remaining provisions of the Children (Scotland) Act 2020, are being stalled because money is not available to bring them through.¹ We also see budget pressures in the work to roll out the Bairns Hoose, and recovery support services like those Children 1st help deliver.

Therefore, while we recognise and appreciate why a Victims and Witnesses Commissioner has been proposed, we believe that now is not the time to introduce this role. We need to concentrate on the reforms that will make a difference in practice now.

Recommendation: The provisions on a new Commissioner should not be taken forward at this point in time. Instead, resource should be focussed on urgently bringing forward the implementation of the Children (Scotland) Act 2020 and the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 so that all legislation passed by the former parliament is implemented by the end of this parliament (March 2026).

Trauma Informed Justice

We're strongly supportive of the intention. However, we remain worried that the duty will be too easily sidelined, because the system is overwhelmed and under resourced.

Basic steps, like ensuring that children and families can meet with prosecutors before trial, are often impossible simply because there are not enough people with enough time.² The training proposed will be some help, but offering training without any of the resource needed to make practical improvements would mean little difference to the experiences of children, young people and their families.

The policy intention will only be achieved by targeted action around issue such as delays, adjournments, consistent access to pre-recording options and other special measures, improvements in communication and links to recovery support from the point of disclosure to post-trial.

Children should not have to attend court unless absolutely and unavoidably necessary. The [Vulnerable Witnesses \(Criminal Evidence\) \(Scotland\) Act 2019](#) included a presumption that children should be able

¹ The Cabinet Secretary for Justice confirmed the “there are budgetary pressures in relation to implementing the Act in full” [here](#). Further statements about expected timescales around some sections of the Children (Scotland) Act 2020 were included in the Scottish Government's response to the Criminal Justice Committee's Stage 1 Report, which is welcome. However, it is not yet clear if these timescales cover all remaining provisions of the Children (Scotland) Act 2020.

² This was acknowledged by the Lord Advocate in evidence to Committee, where the steps taken to try and improve this in High Court trials were outlined. These are extremely welcome. The point remains though, that there is still not enough capacity to do this as often as children and their families need.

to pre-record their evidence, but this is only partly in force. We know that this is partly due to the availability of spaces to pre-record evidence, and to bring this into effect there needs to be a massive increase in the availability of pre-recording capacity. Existing spaces, such as the Vulnerable Witness Suite at Atlantic Quay, in Glasgow, are oversubscribed and often double-booked. A [Phase One Evaluation](#) of the Bairns Hoose (published prior to its opening, in March last year) by the University of Edinburgh found that for children “the requirement [to attend court] remained in almost all cases”.

The Bairns Hoose model needs to be introduced across Scotland to support capacity for pre-recording evidence. However, this needs to be carefully managed and properly resourced. The Bairns Hoose, opened by Children 1st last August, is beginning to demonstrate the difference that the Barnahus model could make to children’s experiences of pre-recording evidence, where implemented to full effect. We are seriously concerned that the Bairns Hoose model will be diluted over time, if resource and commitment to the model does not follow through. Increasing resource for Bairns Hoose will in turn increase the capacity for pre-recording evidence, the ability to implement the 2019 presumption and the overall ability of the system to operate more in lined with trauma-informed practice.

We also feel that the changes to Standards of Practice need to become more stringent, and more closely linked with how standards are being met in practice. A helpful step would be extending the Standards to include key information and data on what’s happened in practice. This should include reports on the number of children called into court, the use of special measures, whether Evidence on Commission is being used in trial, the number of adjournments and how long those cases take.

At the moment, there is no clear national data, and without this it is immensely challenging to plan system improvements. 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. More accountability is needed about whether and when children are being asked to attend court, and why.

Recommendation:

The wording around the duty should be strengthened, so that it is strong enough to stand against wider system pressures. We suggest at least upgrading to “due regard” but would be open to options.

This should be accompanied by more resources for pre-recording evidence, including the Bairns Hoose Pathfinder programme, and the full implementation of the presumption on pre-recording evidence in the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019.

Standards of Service should be revised so as to enable better data collection around victims' experiences of the system as it stands, with a particular focus on disaggregating data around children which are too often lost in reporting on the system more widely, despite the extra protections children are entitled to under the United Nations Convention on the Rights of the Child.

Special Measures in Civil Cases

Special measures should be available to all who need them, and children should have access by default. However, we often see barriers to this, as well as instances where special measures have been arranged, but are not ready. Extending sections of the Children (Scotland) Act 2020 that are not yet in force means layers of unimplemented legislation are building, and children are left waiting.

In criminal cases, many of these arrangements rely on the Crown Office Victim Information and Advice service (VIA). We are seriously concerned by reports by the [HM Inspectorate of Prosecution](#), published last week, that VIA sometimes act as “gatekeepers” to special measures, as opposed to facilitators.

“Some VIA officers acted as a ‘gatekeeper’ to special measures rather than a facilitator. There appeared to be an effort – deliberately by some and unconsciously by others – to ensure victims in summary cases only had the default special measures. Some VIA officers said they would not offer alternatives unless they were requested by the victim and sometimes only when the victim had a ‘good reason’ or was somehow perceived as more deserving. We also heard that some VIA officers would resist any requests for a change to the default measures that were made close to the trial diet, saying that they were ‘out of time’. Unless VIA explains the full range of special measures available to a victim and is willing to take forward the victim’s preference, the victim is not making an informed and free choice.”

The report states “This is not the person-centred and trauma-informed approach to justice to which COPFS aspires.” We agree with this, and are aware of, and have contributed to, an existing plan to improve systems around special measures, through the VIA Modernisation programme. However, with the findings of the HM Inspectorate of Prosecution report we are not assured that this goes far enough. We think a full review of the VIA service, and the delivery of special measures across criminal and civil cases, would support more effective implementation.

Recommendation:

A full review of the VIA service and delivery of special measures across criminal and civil cases should be undertaken, to understand why children and their families continue to struggle to access special measures even where they are entitled to them, and identify what needs done to improve access across the system.

Sexual Offence Courts

Improved training and specialisation around sexual offence cases will be welcome, and we’re supportive of this work. However, we’re worried that the scale of harm against children in this context is not fully appreciated, and further changes could help make sure this is addressed. We know that 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. Further understanding around child

development, children's rights, and the way in which offences impact children and their evidence would hugely benefit the delivery of justice in these cases.

More widely, we have questioned if a separate court would be necessary if pre-recorded evidence, options to take Evidence by Commissioner and access to recovery support were routinely available as they are supposed to be. We recognise the proposal for Sexual Offence Courts follows [a recognition](#) that "previous attempts at reforming practice in existing courts have failed to secure the transformational change needed" and appreciate the intention. However, we do feel that existing reforms like the Bairns Hoose and presumptions in favour of pre-recording evidence that could make a real difference, and our worry is that a new court might detract from that work.

It is proposed that Sexual Offence Courts should be a way to improve case management and reduce overall delays. We agree that the impact of delays can be severe, and work to address this is urgent. 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

However, we know that this impact goes beyond sexual offence cases. We would be interested in exploring other options, like target timeframes and whether this could add understanding, accountability and ultimately help reduce the delays that weigh down the justice system.

Recommendation:

In recognition of the significant proportion of children and young people who are affected by sexual offences, we would be interested in supporting ways for further specialisation in relation to children, for example to create a role for specialist children's Procurator Fiscal.

To help address particular challenges we know exist around delays and adjournments, we would also like to explore options around target timescales for proceedings, in particular for child victims and witnesses. Where cases take longer, there should be a duty to report this and account for the delay.

For more information, please contact our Policy Manager Lily Humphreys, at lily.humphreys@children1st.org.uk.