

Justice for Children

An alliance of organisations and individuals in Scotland seeking reform of the justice system so that child witnesses are respected and justice is delivered

Intermediaries and vulnerable child witnesses: “They made me feel that I was telling lies”

Giving evidence in court is a nerve racking experience for anyone. For children and young people who have experienced traumatic events such as sexual abuse and domestic violence, being questioned in court can add considerably to that trauma. Justice for Children believes that the best way to allow children to give their best evidence in court is through the introduction of intermediaries into the Scottish court system. This briefing sets out the case for intermediaries, and outlines Justice for Children’s perspective on the current consultation on the issue.

Summary

- The nature of questioning children in court continues to impact adversely on children’s ability to give their best evidence
- Special measures introduced under the Vulnerable Witnesses (Scotland) Act 2004 do not address the issue of inappropriate or intimidating questioning in court
- Intermediaries, who act as “interpreters” on behalf of vulnerable child witnesses are already used in a number of jurisdictions to allow children to give their best evidence
- Justice for Children welcomes the Scottish government’s consultation on the use of intermediaries as a “special measure” under the Vulnerable Witnesses Act, and urges all MSPs to call for the introduction of intermediaries as an option for all children giving evidence in court

Questioning child witnesses in court

Despite the welcome introduction of special measures to improve children’s experience of the court process, the issue of inappropriate questioning in court has not yet been adequately addressed under the Vulnerable Witnesses (Scotland) Act.

Confusing language and questioning

Children being questioned in court may experience confusing language (non age appropriate language or court specific language) and confusing forms of questioning (complex syntax, double negatives), which can prevent them from understanding the questions being put to them. Recent research by the NSPCC found that out of fifty child witnesses, twenty-five said that they did not understand some words or questions, or found some questions confusing.

Repetitive questioning and unrealistic demands on memory

Children are also challenged by repetitive questioning in court, and by unrealistic demands on their memory. According to one young witness surveyed by the NSPCC *“They asked me what my mobile phone number was from two years ago and because I hadn’t got a clue I felt somehow that that made me look guilty”*.

Questions incorporating comment or disbelief

Children are also asked questions incorporating comment or disbelief, and they highlight that telling the truth but not being believed is one of life’s most stressful events. Much questioning

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is still characterised by aggression, sarcasm and interruption, and many children, particularly younger ones, do not fully understand why they are being questioned in such a way.

“They were aggressive- shouting at me and saying ‘are you telling us the truth? Why should we believe you?’” (Caller to ChildLine)

A potential solution: Intermediaries

Justice for Children firmly believes that the current situation of questioning children in court cannot continue. We recommend that the Scottish Government introduce, through secondary legislation to the Vulnerable Witnesses (Scotland) Act, a system of intermediaries whereby all questions put to the child are “interpreted” by an intermediary.

The South African model

As all children have to potential to suffer from difficulties in communicating in court, and not just those with an identified communication problem, Justice for Children recommends a system of intermediary based upon that used in South Africa, where the intermediary acts as interpreter, rather than that used in England and Wales, where the intermediary interprets only when the child struggles with comprehension or communication.

An intermediary would sit out of the court room with the child, who would be visible by television link or one-way mirror. The intermediary would wear headphones and hear all questions to the child. The child would only hear questions put to them by the intermediary, but their answers would be heard by the whole court.

Personnel, Costs and Training

Intermediaries would be people who have proven experience in working with children and young people, and in understanding their needs. We believe it would be necessary to build up a list of competent intermediaries. They would receive a formal training package, and costs would be borne by the Scottish Court Service. It would be essential, as with the other special measures, for intermediaries to be sufficiently resourced in order to prevent further delays to the court process.

It has been suggested that training and guidance alone could solve the problem of inappropriate questioning. However, Justice for Children considers that the nature of questioning witnesses is a product of the adversarial court system in Scotland, and we do not believe that training and guidance would alleviate the excesses of this system.

Further information

Justice for Children, along with the Judicial Studies Committee, has produced a DVD role play, which demonstrates how the South African model of intermediary might work in practice. To arrange a viewing of this DVD, please contact Mhairi Snowden on 0131 446 2393.