



Children and Young People's Right to Justice: Child Witnesses Briefing for SNP Conference

October 2015

Children 1st, NSPCC Scotland and Victim Support Scotland have produced the following paper to highlight key issues relating to child witnesses in advance of our fringe event at the SNP Conference on 16th October 2015.

Children 1st has campaigned for reform of the Scottish criminal justice system to better meet the needs of child victims and witnesses for nearly 15 years. They provide 12 abuse and trauma recovery services in Aberdeenshire, Glasgow, Highland, Inverclyde, Midlothian, Moray, Renfrewshire and the Scottish Borders and some of our staff support children and young people throughout court processes and appearances, many of whom have been sexually abused. Children 1st's experience is that current arrangements for child witnesses are often unnecessarily complex and can be traumatic and damaging to children and young people. They are concerned that children's rights are often lost in these processes and that their voices are not heard and their best interests are not upheld.

NSPCC Scotland is building a better future for Scotland's children through working with local services and communities and influencing national policy developments and political processes. They use the information and learning gathered through their direct services with children and families to inform decision-making and encourage wider change to protect Scotland's children from abuse and neglect. They have been campaigning to ensure that Scotland leads the UK in ensuring our criminal justice system truly operates in the best interests of children.

Victim Support Scotland is the largest organisation supporting people affected by crime in Scotland. Their Victim and Witness Services provide practical help, emotional support and essential information to victims, witnesses and others affected by crime within each local authority and every Sheriff and High Court in Scotland. Over the last 30 years, Victim Support Scotland has been campaigning for the rights of victims and witnesses, helping to improve their experiences of the criminal justice system.

We are all members of Justice for Children, a child witness reform group that calls for the interests of children to be compatible with and enhanced by the Scottish justice system.

Background to the existing provisions for child witnesses

Provisions for child witnesses were set out in the Criminal Procedure (Scotland) Act 1995, and subsequent amendments to the Vulnerable Witnesses (Scotland) Act 2004, the Criminal Justice and Licensing (Scotland) Act 2010 and the Victims and Witnesses (Scotland) Act, 2014. These included a number of positive changes which awarded children and young people and other vulnerable witnesses the right to special measures when giving evidence, such as use of a screen, supporter or giving evidence via video link. However, Scottish Court Service research highlighted that there has been limited use of some of the special measures¹ and Justice for Children continues to raise concerns that there needs to be serious reform of the arrangements for children and young people who have been abused or victims of a crime, and who must interact with the criminal justice system.

Although we are encouraged by these changes, we remain convinced of the need for serious reform of the arrangements for children and young people who have been abused or victims of a crime, and who must interact with the criminal justice system. We believe that in Scotland

¹ Evidence and Procedure Review report 2015, Scottish Court Service

children and young people, many of whom have witnessed or been victims of serious crime or sexual abuse, are asked to engage with a criminal justice system that is designed for, and by, adults, which does not have adequate protections for them, largely resulting in a negative impact on their wellbeing. This is out of step with recent positive policy changes such as GIRFEC, that place children's rights at the centre and with the ambitions of 'Equally Safe', which recognises the key role of the criminal justice system in keeping women and girls safe from violence and abuse and in supporting their recovery. Children 1st, NSPCC Scotland and Victim Support Scotland encourage political parties to consider how they can best address the following key concerns relating to child witnesses, as part of a wider review of the child protection system in Scotland. Change is also necessary in order for Scotland to meet the EU Directive 2012² on establishing minimum standards on the rights, support and protection of victims of crime.

Within each party's manifesto, we would welcome commitment to address the following concerns:

1. The process of disclosing abuse is driven by systems rather than being child-centred

We know from experience that many children and young people are fearful of disclosing abuse and do not come forward for the protection they need and deserve. Others tentatively explore what might happen if they do begin to speak about abuse and police rarely obtain a complete disclosure in the timescale that they currently need to help the Crown pursue a case. Scotland needs an effective early disclosure system for children that adopts a rights-based, child centred approach to supporting children and young people who have been sexually abused and exploited. Children should be able to talk about abuse at their own pace and in a way that is not bureaucratic or process-driven. They should be supported to do so by people who are highly trained and who are able to ensure that evidence is as complete and accurate as possible so that they do not have to repeat the experience.

2. There are often long waits and lengthy delays

It can be as long as two years until a case is over, often with delays in proceedings. This can cause considerable anxiety to children and their families—one child whose case was delayed 18 months told us that she had nightmares every single night. Some children also have difficulty recalling their initial statement when they arrive to give evidence, due to the length of time between their initial statement and the court date.

In some cases, children and young people are required to wait several hours before giving evidence on the day or are kept waiting and asked to return on another day. This can lead to high levels of anxiety, missed time at school and can increase the chance of the child seeing the accused during a trip to the canteen or the toilet if they are giving evidence in the court building.

3. There is a lack of communication with the child or young person and their family

Long waits are often made worse by the lack of communication with the family about the progress of their case. Children have told us they often do not receive adequate information regarding the case including what to expect in court and how to prepare for being cross examined. In one case the child was worried that the accused would come and attack her in court by jumping over the screen. One father of a child who was sexually abused told us: "*After she gave her statement to the police, for two months there was no contact. We had no idea – is this going to court? I had to harass people for one and a half years for any information.... We felt shunted from one person to another.*"

² DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2002/220/JHA

4. There is little access to therapeutic support and trauma recovery

Children who have been abused have a right to high-quality recovery services, but we know that therapeutic support following the disclosure of a crime is not always available or accessible. Trauma recovery support has significant benefits to children who are witnesses in terms of improving their overall confidence and wellbeing, building self esteem, exploring feelings through play and art and through the support provided by a key project worker, all without discussing the specifics of the case. In our experience children who receive therapeutic support throughout the process are better equipped to give evidence confidently. All child witnesses should be given the option to receive trauma recovery work as part of the support they and their family receive during their interaction with the criminal justice system, but this is currently a significant gap that should be urgently addressed.

5. Questioners are not adequately trained and questions posed are not easily understandable or developed with children in mind.

Our experience is that children often do not understand the questions being posed to them in court—but they report feeling too intimidated to ask for clarification and do not know how to ask, or feel uncomfortable asking, for a break. This has been demonstrated by recent research on the adversarial nature of the cross examination process.³

In 2013 a five-year old child who had suffered sexual abuse gave evidence via TV link over two days, without a supporter or other special measures,⁴ leading appeal judges to comment on how the child appeared incapable of giving appropriate evidence. The film showed the child's attention had wandered and they became restless. This would not have happened in many other jurisdictions including England and Wales, which has trained intermediaries to help communication with child witnesses and uses the "Pigot" model for child witnesses.

We are concerned that people with little, or no, training on child protection and communicating with a child are asking questions and examining child witnesses. In particular Scotland is lacking behind the progress that is being made in other countries.

Recommendations to address these concerns

In March 2015 Lord Carloway published the findings of his review (the Evidence and Procedure Review Report), which explored the use of pre-recorded evidence and use of new technologies to improve the quality and accessibility of justice. The report stated that Scotland should move to the forefront of law and practice in relation to children and vulnerable witnesses. It points towards experience in England and Wales and Australia and Norway, which suggests that Scotland can go further to protect children and vulnerable witnesses in advance of trial. The Scottish Court Service's reference group into the Evidence and Procedure review discussed the findings and a number of workshops and consultations were held to ascertain how Lord Carloway's recommendations can be put into practice. The Court Service is currently writing a report which will consider the practicalities of implementing the 'Barnehus' or the 'Full Pigot' model in Scotland.

Children 1st, NSPCC Scotland and Victim Support Scotland believe that Scotland is in urgent need of whole- system change in order to fully address the deficits in the existing criminal justice system, which is wholly unsuitable for vulnerable children and young people. Whilst we acknowledge that court practitioners and legal professionals have had to adapt and respond to a number of legislative changes to provisions for victims and witnesses over the past 10 years, we are clear that the existing situation for children and young people engaging in the criminal justice system is a violation of their rights and must be urgently addressed. We therefore make the following recommendations:

³ Plotnikoff, J., Woolfson, R., "Kicking and Screaming": the slow road to best evidence in Spencer, J., Lamb, M., *Children and Cross Examination: Time to change the Rules*, 2012; Plotnikoff, J., Woolfson, R *Measuring Up Evaluating implementation of Government commitments to young witnesses in criminal proceedings*.

⁴ <http://www.dailyrecord.co.uk/news/scottish-news/killer-sex-attacker-mohammed-akram-2900333>

1. The Scottish Government and political parties make a clear commitment to addressing injustices for child victims and witnesses as a matter of priority following the 2016 elections.
2. Although we recognise that wholesale change of the system will take time there are a number of immediate steps that can be taken to improve the situation for child victims and witnesses. The first of these is the introduction of intermediaries as an interim step that can be implemented relatively quickly. These are highly-trained individuals in child communication who relay questions to children from advocates and lawyers during cross-examination to ensure that children can understand what they are being asked. Intermediaries are currently used in differing models in England and Wales and other jurisdictions such as South Africa. Scotland is notably behind many other areas of the world due to the lack of intermediaries in the current criminal justice system.
3. Full consideration of how child-centred and child focused models can be adapted for implementation in Scotland, such as elements of the 'Barnehus model' used with child victims and witnesses in Norway, with the aim of seeing real change to access to justice and improvements in the experiences of child victims and witnesses in Scotland.

We believe that a Scottish model should incorporate the following elements:

- A custom built, child-friendly centre making the experience less traumatic for children, and more focused on their needs.
- A process for initially speaking out about abuse and a professional response that is child-centred and at the child's own pace.
- Highly trained interviewers, familiar with child communication and protection best practice, who take into account children's rights and their individual needs and make efforts to ensure that evidence is collected at the start and used later, without the need for the child to repeat their experiences.
- A child attends just one forensic interview hearing which is observed and guided by a judge and legal representatives for the defence, prosecution and victim.
- The interview consists of a structured approach according to established protocols. The interviewer is the only person who questions child witness and all other people are in another room watching via video link.
- The hearing happens as soon as possible following the child's complaint.
- Steps are taken to consider how an inquisitorial approach could be used with children and young people (contrary to the current Scottish adversarial approach). At the very least cross-examination should be kept to a minimum, with any questions reviewed for suitability beforehand.
- Reduction of waiting times and delays for children and families.
- Access to family support and advocacy workers to keep children and young people and their families informed throughout the process.
- Access to therapeutic and medical support as required that includes intensive trauma recovery support. Medical examinations and support services should be located in one place and should take into account the overall wellbeing of the child or young person.

We favour an approach where the child is only questioned once by a highly-trained interviewer in child communication and the child's needs and rights are placed at the centre of the system. This will ensure the child will not have to retell their evidence to different people and they will not have to wait for years for completion of their part in the case because of trial delays. We also favour an approach whereby children and young people and their families are fully supported in terms of family support and trauma recovery services, but we are clear that these options are not mutually

exclusive—the key aspect of the approach outlined above is that all of the elements work together to improve the experiences of children and young people.

Children 1st, NSPCC Scotland and Victim Support Scotland are aware that some of the changes that we are calling for will be challenging in the Scottish context as some of the existing approaches are well entrenched into the existing criminal justice system. However we are confident that, as part of a comprehensive review of our child protection system, which examines how children talk about abuse and how we can ensure children's best interests are at the centre, these changes will improve the lives of some of the most vulnerable children and young people in our society.

For more information please do not hesitate to contact Sarah Vernon sarah.vernon@children1st.org.uk; Joanna Barrett joanna.barrett@nspcc.org.uk and Nicola Merrin Nicola.Merrin@victimssupportsco.org.uk in the first instance.