



Lewis Macdonald MSP
Convener, Health and Sport Committee
T3.40
The Scottish Parliament
Edinburgh
EH99 1SP
Response via email to healthandsport@parliament.scot

3rd June 2020

Dear Convener,

Re: Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill

Thank you very much for your letter dated 21st May 2020 and for the opportunity to provide written and oral evidence on the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill. The Committee may be aware that we also responded to the Scottish Government's consultation on the clinical pathway for children and young people who have disclosed sexual abuse.

In your letter, the Committee asked whether Children 1st would prefer children to be included in the Forensic Medical Services (Victims of Sexual Offences (Scotland) Bill or addressed in separate legislation. **Our response below reiterates the view we expressed during the evidence session that we do not believe it is helpful to compartmentalise different aspects of a child's experience of the health and justice system. Given the wider policy and practice context and the ongoing work to pilot a Barnahus and develop National Standards to progress a holistic, multi-agency approach we are not convinced at this point that, for children, legislation that stands on its own specifically about forensic medical examinations, and an accompanying Pathway is the best approach.**

We wish to be absolutely clear that we strongly support the principles of this Bill insofar as they apply to adult victims and recognise the need to urgently address the issues with the current model of provision of forensic medical services to victims of sexual offences identified in the HMCIS report. We believe that the introduction of a statutory duty on Health Boards and the provisions set out in this Bill will be an important step forward for adult victims of sexual offences. As we stated in our written evidence, we agree with Rape Crisis Scotland and other organisations that there is a need for continued leadership and significant, ongoing investment to bring services in Scotland up to the standards which meet the needs and rights of survivors.

The children and young people that Children 1st work alongside have consistently told us that Scotland's justice system—designed for adults and rooted in the Victorian era—causes them greater trauma and harm. As we have [stated a number of times](#), it has become overwhelmingly evident that Scotland's traditional approach to justice is the least effective for eliciting consistent, reliable accounts from child victims and witnesses and fails to help children to recover from their experiences.¹ Our current system retraumatises children, asks them to repeatedly tell their story to a number of different professionals, involves complex and confusing procedures and long delays and compounds their trauma and distress. As we highlighted during our evidence session, it is our

¹ <https://www.scotcourts.gov.uk/evidence-and-procedure-review>



belief that this should be the starting point from which discussions should focus- why very few children have forensic medical examinations, rather than focusing on issues relating to self-referral.

Some strides are being made to improve different aspects of the current system in recognition of this—including the facilities children give evidence in, processes for Joint Investigative Interviews and additional protections for vulnerable witnesses. However, as the Committee is aware, Children 1st's view is that the way to realising children's rights in our justice system is by developing a child-friendly, trauma-sensitive, multidisciplinary and interagency response whereby children's needs are met holistically: a [Barnahus or Child's House](#). European best practice in the delivery of forensic medical examinations integrates examinations for children into a single process of assessing and examining child victims and witnesses. This is supported by a clear set of [European Standards](#) that incorporate all the different aspects of the justice system to realise children's right to access justice, to have their best interests taken into account and their voices heard and make real their right to recovery.

Although the Child Rights and Wellbeing Impact Assessment states that "the Bill supports multi-agency working and is therefore 'Barnahus ready' and can "support the Scottish Government's wider moves towards developing a Scottish version of the Barnahus concept" we are not clear how the Bill, or related guidance or a Pathway will, in practice, support multi-agency working and therefore align to Barnahus. For example, our understanding is that some Health Boards are looking at significant investment into new forensic examination suites for both adults and children who have experienced sexual assault. However, delivery of Barnahus will require forensic examination facilities within the Barnahus for child victims of all forms of abuse. It is not clear how this will be reconciled.

Of course, a statutory duty placed on Health Boards relating to forensic medical examinations may be necessary or compatible with this ambition, as set out in the Child Rights and Wellbeing Impact Assessment—but **this must be in conjunction with the development of clear National Standards and a multidisciplinary approach for all children, not just those who have experienced sexual abuse**. Although we do not yet have a nationwide Barnahus approach in Scotland there is strong political commitment to undertake the necessary preparatory work to begin steps towards implementation. As you are aware, Children 1st has received funding from the People's Postcode Lottery to begin a test, learn and develop pilot project in partnership with Edinburgh University and Victim Support Scotland, while we also work alongside Healthcare Improvement Scotland and the Care Inspectorate to draft Standards for the Scottish Barnahus.

It is important to point out that the existing and developing policy and practice framework for child victims and witnesses differs significantly to the framework for adults. As we discussed during our evidence session, the national child protection guidance is currently being updated and this year a Bill will be introduced which incorporates the UNCRC into Scots Law. The publication of the Independent Care Review recommendations are currently being considered by the Scottish Government and the resulting Implementation Plan is likely to impact on all aspects of policy and practice relating to children in Scotland.

Children 1st recognises the good intentions behind including children in the Forensic Medical Services (Victims of Sexual Offences) Bill and warmly welcome the publication of the Child Rights Impact Assessment. However, while work to progress a Barnahus is ongoing, in terms of this Bill (and any others that may seek to legislate in a similar way) our view is that it is not helpful to work in siloed ways to compartmentalise different aspects of a child's care, justice and recovery experience in legislation, policy or indeed in practice. Our preference is to develop policy and practice and, if



necessary, legislation in a way that views the child's experience as a whole (including forensic medical examinations) and does not create different provisions, duties and rights for children who have experienced different types of abuse. Indeed, the UNCRC is clear that those rights are universal (for every child), interrelated, interdependent and indivisible. All the articles of the UNCRC are linked and should be read alongside each other to provide the full range of a child's entitlement to dignity. They are also inalienable and inviolable—children's rights cannot be given or taken away.

As we work towards a multi-disciplinary Barnahus approach we are therefore not convinced that legislation for forensic medical examinations, but only where they are carried out in response to a sexual offence, is helpful at this point, for children. It may be useful to consider whether it is possible or advisable at this stage to consider whether a separate policy or legislative approach would be more appropriate for children under the age of 16. We would also welcome discussions about the possibility of working collaboratively to produce a multidisciplinary Pathway or guidance document that encompasses a broad understanding of a child's journey through the justice system to ensure their rights are protected. This could be developed in line with the UNCRC and the Council of Europe's Guidelines on Child-Friendly Justice, which was ratified by the UK in 2010.

For young people over the age of 16, as discussed during our evidence session, there are specific considerations for both removing and including 16 and 17 year olds within this Bill that would need to be fully considered, particularly in terms of links to existing and updated child protection guidance and practice. We remind the Committee that the UNCRC defines a child as under the age of 18 and given the upcoming legislation to incorporate the UNCRC into Scots Law much of our existing legislation and child protection guidance will need to be reviewed, which is likely to impact upon this Bill.

As options regarding the Bill explored are further, we strongly suggest the Child Rights and Wellbeing Impact Assessment is updated to assess the different options and a full consideration of any unintended consequences. We also strongly recommend that the Committee and the Scottish Government continue to consult with a wide range of stakeholders in order to discuss how a child-friendly, multidisciplinary approach is achieved both in terms of provision for forensic medical examinations and the wider elements of children's experiences of justice, care, protection and recovery. Children 1st is able to share our own experiences from the children and families we work alongside, but we appreciate and value the expertise of our partners in health, social work, education, the police and other third sector colleagues who have important roles to play in protecting and realising children's rights in this area.

We would be happy to discuss our comments further, please do not hesitate to get in touch if you require any further information or have any additional questions.

Best wishes,

Chloe

Chloe Riddell
Policy Manager
Children 1st