

Briefing on the Stage 1 debate of the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill: children's right to care, protection, justice & recovery

September 2020

Children 1st is Scotland's national children's charity. The children and young people that we 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,¹ 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—as set out in the findings from the [Evidence and Procedure Review](#).

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 on the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill, it is Children 1st's belief that this should be the starting point from which discussions about children's experiences of criminal justice should focus. **We must not continue to 'tinker' around the edges of a justice system that does not uphold children's rights, but be ambitious enough to aim to deliver transformational system change.**

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

Children 1st recognises the issues with the current model provision of forensic medical services to victims of sexual offences identified in the HMCIS report. We welcome the Chief Medical Officer's commitment to developing consistent, person centred, trauma informed healthcare and forensic medical services and access to recovery for anyone who has experienced rape or sexual assault in Scotland.

We strongly support the introduction of the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill to improve the provision of forensic medical services to victims of sexual offences. We believe that the introduction of a statutory duty on Health Boards and the provisions set out in the Bill will be an important step forward for adult victims of sexual offences. 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 survivors need and deserve.

However, as we have expressed repeatedly to the Health Committee and to Scottish Government colleagues, Children 1st has significant concerns about the implementation of these provisions with respect to children and children's services and how they relate to our broader ambitions for transformative change. As Members may be aware, the Chief Medical Officer's Taskforce is also developing a Clinical Pathway for children and young people who have disclosed sexual abuse, referencing the role of police, social work and healthcare professionals and children's recovery rights. With this in mind, we wish to highlight to Members the following concerns with this approach:

1. A siloed approach to meeting children's care, protection, justice and recovery needs.

Through our work alongside children and families it is clear that children's recovery needs, once they have been a victim of or a witness to a crime, are very different to those of adults.

¹ <https://www.children1st.org.uk/who-we-are/speaking-up-for-scotlands-children/children-and-the-justice-system/>

The development of a Clinical Pathway that is unique to children's experiences is in clear recognition of this. Our understanding is that the Pathway aims to take a holistic view of the child or young person's needs within the context of a child protection process. However, as we have consistently expressed in our evidence and our response to the draft Pathway, the driver for the change set out in the draft Pathway is improving the medical examination for children and young people who have disclosed sexual abuse, as identified in the HMCIS report, and the primary audience of the Pathway remains health professionals.

Although we strongly support the work of the CMO Taskforce to consider how to ensure sustainable improvements to children's experiences Children 1st does not believe it is helpful to compartmentalise different aspects of a child's experience of the health, child protection and justice systems in this way.

While the Bill in and of itself does not explicitly do this, we are concerned that an unintended consequence of the passing of the Bill and the implementation of the Pathway will be that parallel processes are being developed in health, child protection and justice. **We believe that rather than focusing on a Pathway with a very narrow remit it would be more appropriate to consider a multi-disciplinary approach to children's care, protection, justice and recovery needs once they have experienced or witnessed a crime.** This approach would much better align with our broader ambitions for a nationwide approach to Barnahus (see below).

As Children 1st highlighted in our evidence to the Health Committee, children do not easily compartmentalise their experiences in the way that policy sometimes does. We therefore encourage Members to seek assurance from the Scottish Government that the implementation of this Bill will link clearly to the other ongoing and related work to improve the justice system for children (including Joint Investigative Interviews, the updated child protection guidance, improvements to vulnerable witness suites, special measures and work to secure children's recovery rights). We also believe it should clearly link to the ongoing improvements in the Children's Hearings System and the civil courts (through the Children (Scotland) Bill, to the incorporation of the UNCRC and—crucially—to the implementation of the calls to action set out in the report from the independent care review, *The Promise*).

We remind Members that the HMICS report stated (para. 279) "*it is vital that the work being led by Justice in relation to improving the support for child witnesses in court, is joined up with the work the National Network Board and the Managed Clinical Networks are doing to improve the forensic medical examinations of children.*"

In Scotland we often, accidentally, develop parallel policy and practice processes for the **same children** and families—thereby adding complexities to their already challenging experiences.

Children 1st's recommendation is that this Bill must be implemented in a way which realises children's rights set out in a multi-disciplinary Pathway.

2. Pilot and upscaling of Barnahus

A Barnahus is a Child's House: a place where child victims and witnesses' justice, care, protection and recovery needs are met in one place. This includes forensic medical examinations and acute medical needs.

The 2018-19 Programme for Government committed the Scottish Government to exploring how the [Barnahus concept](#) could operate within the context of Scotland's child protection, justice and health systems. The Cabinet Secretary for Justice and the Minister for Community Safety have reiterated the Government's support for Barnahus, being clear that it is the Government's '[intended direction of travel.](#)' As Members may be aware, Children 1st has recently secured funding along with partners to pilot Scotland's very first Barnahus (the 'House for Healing') in the West of Scotland. It is not a pipe dream—it will be operational in Autumn next year.

The Scottish Government has been clear that it considers the Forensic Medical Services Bill to be 'Barnahus ready'. Children 1st accepts that there is nothing in the Bill that directly contradicts a Barnahus approach. However, as we expressed to the Committee, we are not clear how the Bill, or related guidance or Clinical 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.

Crucially, the work to develop a Clinical Pathway for children and integrate a holistic, multiagency response to children impacted by abuse and violence is the core task of the development and piloting of a Barnahus model for Scotland. It is not helpful for there to be two separate but parallel processes with similar aims and ambitions, one of which is multi-disciplinary, the other driven by health requirements.

We recognise that the Health Committee has been clear that it does not consider the Bill needs amending with respect to children, but we encourage Members to seek assurance that the implementation of the Bill—and the related funding—will not cut across the broader ambition for a national Barnahus approach for all children. In particular, it would be helpful to understand how the Pathway will specifically link to the Barnahus pilot in the West of Scotland and also to be explicit that it is a stepping stone towards a Barnahus to avoid any confusion amongst our colleagues in healthcare across Scotland.

Finally, as referenced above, the Scottish Government has been clear that a Barnahus is the 'intended direction of travel' for child victims and witnesses in Scotland. **As this Bill progresses it would be extremely helpful for Members to seek clarification from the Scottish Government about how a nationwide approach to Barnahus will be progressed following the test and learn pilot in the West of Scotland, funded by the People's Postcode Lottery.** Children 1st would, for example, be keen to hear the timeframe that the Scottish Government has in mind for realising this ambition and how we can begin to consider what funding model might be appropriate to ensure sustainability of a Barnahus approach in Scotland.

3. Support for children who have experienced other types of abuse.

Children 1st remains concerned that this Bill and the related Clinical Pathway only applies to children and young people who have disclosed sexual abuse. It is clear that children require consistent high-quality provision of forensic medical examinations and to have their recovery needs met for other purposes, including when they have experienced physical or domestic abuse.

While we welcome the reassurances from the Scottish Government that they do not consider this will end up with a 'two-tier' approach to children's services, we wonder whether it may be incompatible with the UNCRC to develop a specific Clinical Pathway for children who have experienced one type of abuse but not others.

Children 1st's 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.

The Barnahus pilot will include children who have experienced all types of abuse. Indeed, giving all child victims and witnesses of violence support through Barnahus is the way that

Scotland will achieve the Scottish Government's clearly stated aim that 'no child should give evidence in Court'.

Once again, we reiterate that we do not think it is helpful to compartmentalise children's experiences into siloed approaches. Although we appreciate the undoubtedly sound intentions to resolve the issues identified in the HMICS report, Children 1st's view is that in order to achieve the type of wholesale system change that we know is needed we must improve care, justice and recovery for ALL children. If, as the Government, has stated, there will be no practical difference in meeting the needs of children who have experienced sexual abuse and those who have experienced other types of abuse it is not clear to Children 1st why the duty and Clinical Pathway is required in the first place.

Our view is that any Pathways that are developed must set out how it will meet the forensic medical and recovery and justice rights of ALL children.

Finally, we wish to be **absolutely clear** that we strongly support the principles of this Bill and recognise the need to urgently address the issues identified by the HMICS report. Our concerns are specifically about the way that the implementation of this Bill, and the related Clinical Pathway, will impact on Scotland's broader ambitions for the transformational change that is so urgently required to uphold children's rights to care, protection, justice and recovery.

We would welcome Members' support in seeking clarification with respect to the areas we have raised.

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