

Response from Children 1st to the consultation on improving victims' experiences of the justice system

July 2022

Children 1st is Scotland's national children's charity. We have over 135 years of experience of working alongside families to prevent problems from escalating to the point or crisis, to protect children from harm and to help children and families to recover from the trauma associated with childhood adversity by providing relationship- based practical, financial and emotional support. We are responding to this consultation based on the experiences of children and families we work alongside in our dedicated domestic abuse recovery service in the Scottish Borders and in our family support services across Scotland, where we work directly alongside children and families who have experienced abuse and harm. This includes supporting child and adult victims and witnesses through civil and criminal court proceedings and supporting children and their families during Children's Hearings. Children 1st also operates the Safeguarders Panel on behalf of the Scottish Government.

We welcome the Scottish Government's commitment to implementing the recommendations from Lady Dorrian's review.

Our response is shaped by our experience piloting Scotland's first Bairns Hoose through a test, learn and develop approach in East Renfrewshire. We are deeply disappointed that there appears to be no reference at all in the entire document to the Scottish Government's clear commitment to embed Bairns Hoose across Scotland. The 2022 Scottish Government Vision for Justice and the 2021/22 Programme for Government clearly states:

"As the next significant step in furthering and strengthening children's rights, all children in Scotland who have been victims or witnesses of abuse or violence, as well as children under the minimum age of criminal responsibility whose behaviour has caused significant harm, will have access to a "Bairns' Hoose" by 2025: a child-friendly environment providing them with trauma informed recovery, improving their experience of the criminal justice system, and aiming to prevent them being retraumatised.

The Bairns' Hoose approach sits at the heart of our wider work to take a rights-based, trauma informed approach for vulnerable children."

Although we can see that the document states that the 'improving victims experiences' work is part of an "extensive programme of work (being progressed) to modernise our justice system," we are extremely concerned that there is no specific acknowledgement of the significant transformation that Bairns Hoose will mean for child victims and witnesses. The consultation document fails to take into account the role of the Bairns Hoose in improving victims' experiences of the justice system, the importance of Bairns Hoose as a transformational change for child victims and witnesses, the potential link between a Victims Commissioner and a Bairns Hoose and the way in which a Bairns Hoose would interact with the changes contained within these proposals. This indicates that this work is being considered very separately to Bairns Hoose for child victims. We have highlighted this throughout our response, and hope that the resulting Bill and the policy memorandum and supporting documents and impact assessments will take into account the impact a Bairns Hoose will make. The commitment to Bairns Hoose must be more than words on a page. Children 1st has more detail on Bairns Hoose available here: [Bairns Hoose | Children 1st | Children 1st](#).

We also note that significant and encouraging changes were made to civil justice processes for children through the Children (Scotland) Act 2020 relating to listening to children and

ensuring that their participation rights are upheld. Much of the progressive ambitions set out in that Act have not yet been implemented and we wish to be clear that more legislation is only effective if there are resources to match the ambition. These new proposals must have a clear implementation plan and allocated resources and sit firmly alongside all the other progressive reforms that have been passed and legislated for.

Finally, the resulting Bill must be compatible with the UNCRC, given the commitment made by the Scottish Government to incorporate the UNCRC into Scots Law, to the maximum extent possible. In particular, this means that a 'child' is defined in Article 1 of the UNCRC as anyone under the age of 18.

Q1: To what extent do you agree or disagree that the Victims' Commissioner should be independent of the Scottish Government?

Strongly agree

Children 1st's view is that it would be helpful for a Victims Commissioner to be independent of the Scottish Government so that he or she can speak out freely on issues affecting victims and witnesses, without feeling compromised. We think that victims and witnesses may be more likely to engage with a Commissioner that is independent from Scottish Government and statutory organisations.

Q2: To what extent do you agree or disagree that the Victims' Commissioner should be a statutory role?

Somewhat agree

In our view a statutory role for a Victims Commissioner would be helpful to ensure accountability and clear lines of responsibility. It will be important to discuss a clear remit, especially where there may be potential for overlapping areas of work with the Children and Young People's Commissioner for Scotland, to manage the expectations of victims and witnesses and stakeholders in terms of the Commissioner's potential powers and to understand the interaction between a Commissioner and the Bairns Hoose.

Q3: To what extent do you agree or disagree that the Victims' Commissioner should be accountable to the Scottish Parliament?

Somewhat agree

We agree that it seems a sensible option for the Commissioner to be held accountable to the Scottish Parliament.

Q4: How do you think the Victims' Commissioner should be held accountable?

c) Other

In our view, it would be helpful for a Victims Commissioner to publish a strategic plan and lay regular reports before Parliament for them to be scrutinised. It would also be important for the Victims Commissioner to publish information in a way that is accessible to victims and witnesses, including child victims and witnesses.

Q5: In your view, what should the main functions of the Victims' Commissioner be? Please select all that apply.

a) raising awareness/promotion of victims' interests and rights

b) monitoring compliance with the Victims' Code for Scotland, the Standards of Service for Victims and Witnesses and any relevant legislation

c) promoting best practice by the criminal justice agencies and those providing services to victims, including championing a trauma-informed approach

d) undertaking and/or commissioning research, in order to produce reports and make recommendations to the Scottish Government, criminal justice agencies and those providing services to victims

e) other – please provide details Please give reasons for your answer.

e) Other

Children 1st's view is that all of these functions should be considered together with victims and witnesses and those organisations that work alongside them. It would be helpful to consider whether the Victims Commissioner should have a role in monitoring compliance with the Bairns Hoose Standards.

It is important that the Victims Commissioner is not just a 'figure head' with an expensive team. There should be a clear framework to understand what actions the Commissioner can take to address when it is found that Standards are not being upheld, rights are not being promoted and best practice is not being promoted. For children, we would welcome consideration of methods of redress and how issues raised with the Commissioner could be resolved.

Q6: What do you think should be within the remit of a Victims' Commissioner for Scotland? Please select all that apply.

a) the experience of victims in the criminal justice system

b) the experience of victims in the civil justice system

c) the experience of victims in relation to the Children's Hearings system

d) the experience of victims resident in Scotland, but where the crime has taken place outwith Scotland

e) other – please provide details Please give reasons for your answer.

a) b) c) d)

Children 1st's view is that all of these areas could be within the remit of the Victims Commissioner. In our experience, victims may concurrently experience processes within each of these systems and it is important that the Victims Commissioner views the system as a whole, in the same way that victims do.

We would welcome clarity on how the role of the Victims Commissioner would link to the operationalisation of Bairns Hoose and also how it would work in practice with the Children's Hearings system, given that the review of the Hearings is still ongoing.

Children 1st also considers it important that the Commissioner is able to have clear oversight of the various different pieces of legislation that have been enacted—and are in progress—relating to victims. We are extremely concerned that vast swathes of progressive legislation and policies are being introduced without any clear mechanisms, intention or resources to implement in full. The recent progressive changes for children outlined in the Children (Scotland) Act 2020 is one example. Keeping a clear eye on these changes and ensuring that there are mechanisms for highlighting and addressing where policies and legislation are not being enacted or where victims' rights are not being protected, due to a failure to utilise existing legal frameworks, would be particularly useful.

We would also welcome discussion about how the Commissioner would be able to highlight incompatibilities with the UNCRC in advance of or following incorporation of the UNCRC and what mechanisms would be at the Commissioner's disposal to address these.

Many issues that would come to a Commissioner's attention will need to be addressed through additional training and resources and it would be helpful to understand how this would work in practice. Additionally, we would welcome consideration of how the Commissioner will work with the Lord Advocate and the judicial system where there is a need for changes but an inability for the Scottish Government to directly intervene or create new policy.

Q7: What powers do you think the Victims' Commissioner should have? Please select all that apply.

- a) the power to carry out investigations into systemic issues affecting victims of crime**
- b) the power to require persons to give evidence in the course of an investigation**
- c) the power to make recommendations to the Scottish Government, criminal justice agencies and those providing services to victims**
- d) the power to require persons to respond to any recommendations made to them (by the Victims' Commissioner)**
- e) other – please provide details**
- e) other**

Our view is that each of these options needs further consideration about how they would work in practice, particularly given the role of the Children's Commissioner in undertaking investigations. We would welcome discussion about how an investigation would work and what options would be available following an investigation, particularly when this involves children. Given the considerable work ongoing to ensure that victims do not need to re-tell their stories and to reduce systemic trauma currently ingrained in each of these systems, it would be important to ensure that any investigatory processes are trauma-informed and do not cause unintentional further harm.

We would also welcome further detail about how the suggested accountability mechanisms would operate and what measures could be put in place to oversee implementation. In a Bairns Hoose if recommendations to improve standards were made who would be responsible for making these, given the multi-disciplinary nature of the service, for example?

Additionally, we think it would be important to fully consider what methods of redress and feedback would be available for victims to engage in these processes—how would feedback loops be closed in a timely fashion, for example, so that victims are not re-traumatised by investigations still ongoing many years or months later.

**Q8: To what extent do you agree or disagree that the Victims' Commissioner should be required to consult with victims on the work to be undertaken by the Commissioner?
Strongly agree**

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

Strongly agree

Our view is that the role and remit of the Commissioner should take into full consideration the views of victims and victims organisations, including the views already expressed over many years. Extensive consultation has already been undertaken over many years, and views

gathered, it will be important not to duplicate existing work. Engagement with victims must be rights- based, meaningful and follow clear principles of participation.

Q9: How do you think that engagement with victims should take place? Please select all that apply.

a) advisory board, including victim representatives

b) victims' reference group

c) focussed consultations with victims

d) ad hoc engagement with victims

e) other – please provide details

Please give reasons for your answer.

e) other

In order to comment more fully it would be helpful for us to understand what kind of engagement is required and how we can engage with victims to ask their views in a way that is meaningful. Engagement with victims should not be tokenistic and should involve mechanisms where their views are not just sought, but are taken into account and directly influence policy and practice.

Q10: Are there any specific groups of victims who you think the Victims' Commissioner should have a specific duty to engage with? If so, who are they and how should that engagement take place?

Yes – please provide details

No

Unsure

Please give reasons for your answer.

Yes

We suggest ensuring the views of children and of survivors of domestic abuse are fully incorporated into planning and discussions about the role and remit of the Commissioner.

Q11: To what extent do you agree or disagree that the Victims' Commissioner should be required to consult with organisations that work with victims, on the work to be undertaken by the Commissioner?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

Strongly agree.

Third sector organisations such as Children 1st work alongside survivors every day and are often best placed to share expertise and information.

Q12: Are there any other relevant bodies or organisations that may have an interest in the work to be undertaken by the Victims' Commissioner?

The Children and Young People's Commissioner for Scotland will have a particular interest, with regard to potentially overlapping remits and investigatory powers.

It will be vital to engage with the Scottish Government's National Governance Group on Bairns Hoose and the statutory agencies and third sector organisations, including Children 1st, involved in piloting Bairns Hoose and developing a national approach to Bairns Hoose.

Q13: To what extent do you agree or disagree that the Victims' Commissioner should not have the power to champion or intervene in individual cases?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

Somewhat disagree

We believe that this requires further consideration. Although we recognise that criminal justice agencies have established complaint procedures, the remit of the Commissioner may extend beyond criminal justice. We are concerned, as we expressed in our response to the Children (Scotland) Act 2020, that complaint procedures are not particularly robust, especially for children, and that there are not adequate options for redress. We would welcome the potential to explore how an option for a Commissioner to intervene in individual cases when there is a concern that a victims' rights are not being upheld, would work in practice.

However, we underline the importance of intervening based on human- rights and the need for a Commissioner to have a clear understanding of legal processes, human rights and trauma. Any powers of intervention must fit with existing appeals and complaints processes and consideration should be given to how the Commissioner would work alongside the judiciary, Crown, police, legal professionals, SPSO etc.

Q14: Are there any other matters relating to the proposal to create a Victims' Commissioner for Scotland you would like to offer your views on?

This consultation has not discussed the importance of ensuring that the Victims Commissioner adds value to an already complex landscape for victims, rather than adding an additional layer of complexity or duplicating the work of already working alongside victims, such as the Children's Commissioner and victims organisations. Many victims organisations have been working for many years to amplify the voices and experiences of victims, including child victims, and it will be important for the Commissioner to take into account the role of these organisations and how this new role can uplift and add value, rather than draining resources from the system.

The consultation has also not discussed the importance of ensuring a Commissioner is someone who is aware of the complexities of the existing system, and the ongoing transformational change currently in progress. We are keen to ensure that this role is held by someone with an understanding of the importance of a gender- based approach, of trauma and domestic abuse and a familiarity with the UNCRC—particularly in light of incorporation—and children's rights more broadly.

Finally, we think it is important to be clear that many child victims are also suspected or accused of causing harm themselves. It is important that the Commissioner takes this into account and considers how that complex dynamic may be part of their work.

Q15: Bearing in mind the general principles which are already set out in the 2014 Act, to what extent do you agree or disagree that a specific legislative reference to 'trauma-informed practice' as an additional general principle would be helpful and meaningful?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

Somewhat agree.

Children 1st are supportive of any measures to underpin trauma-informed practice and person-centred approaches. We have highlighted a considerable number of times the way in which the current civil and criminal justice processes contribute to re-traumatising victims and witnesses and to preventing or stalling recovery. For example: [Children and the justice system | Children 1st](#). As we have consistently stated, in our view, the development of a Bairns Hoose model across Scotland where all children can access what they need to uphold their justice, care, protection and recovery rights is the most important way of reducing trauma.

We do not object to specific reference to 'trauma-informed practice' being referred to in either Standards or legislation, but we wish to highlight the importance of not just legislating for things but also ensuring that there is adequate resource allocated to implementation. Simply adding in some additional text to policy or legislation does not mean that this will happen in practice and we would be keen to see a full implementation plan to ensure that the ambition for this change will match the reality. In our view being 'trauma-informed' is not enough: we must move towards significant culture change where our systems and processes are trauma-sensitive and those people who work alongside children and families who have experienced trauma are aware of the actions that they can take and the changes they can make. Rather than simply being 'informed' we need to ensure a supportive environment that enables systems and processes to respond sensitively and compassionately to those who have experienced trauma and harm. Those working within these systems need to know what to do with the information they have gained—so that they can become trauma-responsive.

There is a vast body of evidence from victims and witnesses and those working alongside them that tell us that processes need to change—from small things like the physical spaces for waiting, to being called over a tannoy to give evidence, to safe spaces to have a break or use the toilet, to the way that victims and witnesses are greeted. Many witnesses tell us that they do not feel safe.

For children, much of this can be addressed by the development of Bairns Hoose—and we would welcome clarity as this Bill progresses to understand whether these proposed changes will include Bairns Hoose and how the Scottish Government envisages trauma-informed practice within Courts to link to the Bairns Hoose.

We also note the significant amount of other ongoing work relating to trauma and ACEs (including the ACEs Strategy, Trauma training, the development of Mental Health and Self-Harm Strategies etc.) that are linked to this agenda. Often the people for whom these policies and strategies are developed are the same—we must be more cohesive in our approach to ensure systems are streamlined and victims and witnesses experience a clear and easy pathway between services to support their recovery.

We also highlight the response from Scottish Women's Aid which is clear about the different between being 'trauma- informed' and 'domestic- abuse informed'.

Q16: To what extent do you agree or disagree that a specific reference to trauma-informed practice within the current legislative framework for the Standards of Service would be useful and meaningful?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

Somewhat agree

Please refer to our response to Question 15.

Q17: To what extent do you agree or disagree that a legislative basis for the production of guidance on taking a trauma-informed approach would be useful and meaningful?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

Somewhat agree

Please refer to our response to Question 15.

Q18: To what extent do you agree or disagree that the Court should have a duty to take such measures as it considers appropriate to direct legal professionals to consider a trauma-informed approach in respect of clients and witnesses?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

Somewhat agree.

Please refer to our response to Question 15. It would be helpful to understand a little bit more detail about how this would work in practice and what the expectations would be on legal professionals. Children 1st remain concerned that the existing tools at the Court's disposal, such as special measures and the use of pre-recorded evidence, are not consistently and regularly utilised. Our expectation, in line with the European PROMISE Barnahus Standards,

and the Scottish Government's broad ambition that no child should be going to Court (for example in 2016 the Cabinet Secretary for Justice said "*I want to eliminate the need for children to attend court at all during the trial*": [Getting it right for child witnesses - gov.scot \(www.gov.scot\)](http://www.gov.scot)), is that the use of pre-recorded evidence and special measures should significantly increase and that children should be able to provide pre-recorded or videoed live-link evidence in a Bairns Hoose.

We are keen to understand the methods for redress envisaged or complaints mechanism and procedures available to victims and witnesses, including children, if these new proposals are not followed up on and they feel that their experience has not been trauma- informed.

Finally, as stated above, we highlight the list set out in the 2014 Act that, in our experience, is not yet being fully implemented. We are unsure that new provisions in legislation will translate to action and urge the Scottish Government to consider what resources are needed in order to ensure compliance with pre-existing measures as well as these new proposals. This includes significant training around domestic abuse, coercive control and trauma.

Q19: Should virtual summary trials be a permanent feature of the criminal justice system?

Yes

No

Unsure

Please give reasons for your answer.

Yes.

Children 1st is fully supportive of all approaches to reduce trauma in justice system. As stated above, our view is that, in line with the European PROMISE Standards and the Scottish Government's stated ambition that no child should attend Court, all children should be able to pre-record their evidence and/or appear through a live- link to Court or to Evidence by Commissioner in a Bairns Hoose.

Q20: If you answered yes to the previous question, in what types of criminal cases do you think virtual summary trials should be used? Please give reasons for your answer.

As stated above, for children we believe that pre-recorded evidence and/ or live- link to Court or Evidence by Commissioner should be available in a Bairns Hoose in all cases.

Q21: To what extent do you agree or disagree with the recommendation of the Virtual Trials National Project Board that there should be a presumption in favour of virtual trials for all domestic abuse cases in the Scottish summary courts?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

Strongly agree.

As stated previously, we strongly agree with all proposals to reduce trauma for victims and witnesses. For children, pre-recorded evidence and/or live- link to Court or to Evidence- by Commissioner should take place in a Bairns Hoose.

Q22: While removing vulnerable victims from the physical court setting is beneficial in the vast majority of cases, to what extent do you agree or disagree that virtual trials offer additional benefits to the ability to give evidence remotely by live TV link?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

Strongly agree.

Children 1st believes that removing victims from the physical court setting reduces their level of anxiety, helps to provide better- quality evidence, removes the fear that they may physically see the accused and ensures optimum conditions to uphold justice, care, protection and recovery rights.

Q23: The existing powers in the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 can be used to expand the categories of witnesses who are eligible under the Act to benefit from the presumption that their evidence be pre-recorded in advance of the trial. This includes evidence by commission and the use of a prior statement as evidence-in-chief, such as a Visually Recorded Interview. To what extent do you agree or disagree that these existing powers are sufficient to expand the use the pre-recording of evidence of complainers of serious sexual offences?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer, including, if you disagree, what legislative change you consider is necessary.

Strongly agree.

Please refer to our previous comments about the ambitions of the Scottish Government relating to children not attending Court and the transformational change that a Bairns Hoose will bring.

Q24: To what extent do you agree or disagree that Ground Rules Hearings should be extended to all child and vulnerable witnesses required to give evidence in the High Court, irrespective of the method in which their evidence is to be provided to the court?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer

Strongly agree.

Please refer to our previous comments about the ambitions of the Scottish Government relating to children not attending Court and the transformational change that a Bairns Hoose will bring.

Q25: To what extent do you agree or disagree that the current legislative basis for court scheduling, as managed through the existing powers of the Lord President, is sufficient to inform trauma-informed practice?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer. If you disagree, what legislative provision would you like to see?

Neutral.

Children 1st are unsure about whether the existing powers of the Lord President are sufficient in this regard, but we are aware of significant delays impacting on children and families and support all measures to reduce the impact of these delays as quickly as possible.

Q26: Are you aware of any specific legislative changes which would assist in addressing the issues discussed around information sharing? If so, please detail these.

No response.

Q27: Are there any other matters relating to the options to underpin trauma-informed practice and person-centred approaches in the justice system you would like to offer your views on?

As stated previously, Children 1st have advocated for a number of years for a Barnahus approach in Scotland for child victims and witnesses. We are deeply disappointed that there appears to be no reference at all in the entire document to the Scottish Government's clear commitment to embed Bairns Hoose across Scotland. The 2022 Scottish Government Vision for Justice and the 2021/22 Programme for Government clearly states:

"As the next significant step in furthering and strengthening children's rights, all children in Scotland who have been victims or witnesses of abuse or violence, as well as children under the minimum age of criminal responsibility whose behaviour has caused significant harm, will have access to a "Bairns Hoose" by 2025: a child friendly environment providing them with trauma informed recovery, improving their experience of the criminal justice system, and aiming to prevent them being retraumatised.

The Bairns Hoose approach sits at the heart of our wider work to take a rights based, trauma informed approach for vulnerable children."

Although we can see that the document states that this work is part of an “extensive programme of work (being progressed) to modernise our justice system” we are extremely concerned that there is no specific acknowledgement of the significant transformation that Bairns Hoose will mean for child victims and witnesses. The consultation document fails to take into account the role of the Bairns Hoose in improving victims’ experiences of the justice system, the importance of Bairns Hoose as a transformational change for child victims and witnesses, the potential link between a Victims Commissioner and a Bairns Hoose and the way in which a Bairns Hoose would interact with the changes contained within these proposals. We have highlighted this throughout our response, and hope that the resulting Bill and the policy memorandum and resulting supporting documents and impact assessments will take into account the impact a Bairns Hoose will make. The commitment to Bairns Hoose must be more than words on a page.

Q28: To what extent do you agree or disagree that the courts should have the power to prohibit personal cross-examination in civil proceedings when the circumstances in a particular case require this measure to be taken?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

Strongly agree.

This is particularly important with regard to domestic abuse and sexual assault cases.

Q29: To what extent do you agree or disagree that special measures should be available when required for all civil court hearings in Scotland, whether the hearings are evidential or not?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

Strongly agree.

Q30: Are there any other matters relating to special measures in civil cases that you would like to offer your views on?

Children 1st refers to the response of our colleagues in Scottish Women’s Aid who have shared views about the meaningful extension of the provisions of the Vulnerable Witness (Scotland) Act 2004 and subsequent 2014 Act, to be automatically available to vulnerable parties and witnesses in civil proceedings involving domestic abuse.

Q31: Do you support undertaking a review of the use of defence statements?

Yes

No

Unsure

Please give reasons for your answer.

Yes.

We refer to the response of our colleagues in Rape Crisis Scotland.

Q32: If you answered yes to the previous question, how do you think this should be progressed to address the issues identified by Lady Dorrian's Review?

We would encourage the Scottish Government to discuss this issue with organisations representing victims who have had experience of defence statements, including Rape Crisis Scotland.

Q33: Are there any other matters relating to a review of defence statements that you would like to offer your views on?

No response.

Q34: Which one of the following best describes your view on the point in the criminal justice process when any automatic right to anonymity should take effect?

- a) when an allegation of a sexual offence is made
- b) when a person reports an alleged sexual offence to a police constable
- c) when an accused person is formally charged by the police with a sexual offence
- d) when criminal proceedings for a sexual offence first call in court
- e) other – please provide details

Please give reasons for your answer.

- a) **When an allegation of a sexual offence is made.**

Protection should be available at the earliest opportunity, especially for children. Children 1st work alongside many children for whom peer- on- peer abuse is a particular issue. We are particularly concerned about children telling us that details of allegations have been disclosed on social media.

Q35: Which of the following options describes the offences that you consider any automatic right of anonymity should apply to?

Please select all that apply.

- a) offences contained at section 288C of the Criminal Procedure (Scotland) Act 1995
- b) intimate images offence contained at section 2 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016
- c) offences contained in the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005
- d) other – please provide details

Please give reasons for your answer

a) b) c)

Q36: Which one of the following best reflects your view on when any automatic right of complainer anonymity should end?

- a) upon the death of the complainer
- b) no automatic end point
- c) other - please provide details

Please give reasons for your answer.

No response.

Q37: To what extent do you agree or disagree that the complainer should be able to set their anonymity aside?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

Somewhat agree.

Adults should be supported to make informed decisions about when and how to set their anonymity aside. See our response to Question 39 regarding children.

Q38: If complainers are to be given the power to set their anonymity aside, which one of the following best reflects your view on how they should be able to do this?

- a) unilaterally by consent of the complainer
- b) following an application to the court by the complainer
- c) other – please provide details

Please give reasons for your answer.

No response.

Q39: To what extent do you agree or disagree that children should be able to set any right to anonymity aside?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

Somewhat disagree.

A rights- based approach should be taken to determine how to approach this proposal, and how to ensure there are appropriate safeguards in place to balance children's best interests and the concept of evolving capacity.

The supporting role of a Bairns Hoose will be particularly important in terms of helping children to understand their rights, including with respect to anonymity. For older children it may mean that support workers can discuss anonymity with them and the potential consequences of setting anonymity aside.

Q40: If children are to be given a power to set any right of anonymity aside, to what extent do you agree or disagree that additional protections should be required prior to doing so, for example an application to the court to ensure there is judicial oversight?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

See our response to Question 39.

Q41: If children are to be given a power to set any right of anonymity aside, to what extent do you agree or disagree that there should be minimum age below which a child cannot set their anonymity aside?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer, including (if you agree) what you think this age should be.

Somewhat agree.

See our response to Question 39 regarding the concept of evolving capacity. A child is defined by the UNCRC (Article 1) as being under the age of 18.

Q42: To what extent do you agree or disagree that the court should have a power to override any right of anonymity in individual cases?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer, including (if you agree) your view on the circumstances in which this power should be available.

Strongly disagree.

We support RCS' position that anonymity should not be set aside by the court for the purposes of securing defence evidence, nor should it be set aside if the survivor withdraws from proceedings or there is a not guilty/proven verdict.

Q43: To what extent do you agree or disagree that any right of anonymity should expire upon conviction of the complainer for an offence against public justice?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

Strongly disagree.

We advise extreme caution about anonymity expiring in these circumstances, in line with the response from Rape Crisis Scotland.

Q44: Which one of the following best reflects your view of the level of maximum penalty that should apply to a breach of any right of anonymity?

a) up to 2 years' imprisonment and/or an unlimited fine

b) an unlimited fine

c) up to 12 months' imprisonment and/or a fine of up to £10,000

d) other - please provide details

Please give reasons for your answer.

No response.

Q45: To what extent do you agree or disagree that there should be statutory defence(s) to breaches of anonymity?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

No response.

Q46: If you agree that there should be statutory defence(s) to breaches of anonymity, which of the following best reflects your view of the defence(s) that should operate? Please select all that apply.

a) adopt the model of the 1992 Act in England, Wales and Northern Ireland

b) a 'reasonable belief' defence

c) other – please provide details Please give reasons for your answer.

No response.

Q47: Are there any other matters relating to anonymity for complainers in sexual offence cases that you would like to offer your views on?

No response.

Q48: To what extent do you agree or disagree that there should be an automatic right to independent legal representation for complainers when applications under section 275 to lead sexual history or character evidence are made in sexual offence cases?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

Strongly agree.

We agree that it is important that victims are able to access free or low- cost legal representation and to ensure that the system operates in a non- traumatising way.

Q49: To what extent do you agree or disagree that the complainer should have the right to appeal a decision on a section 275 application?

Strongly agree

Slightly agree

Neutral

Slightly disagree

Strongly disagree

Please give reasons for your answer

Strongly agree.

Q50: To what extent do you agree or disagree that a right to independent legal representation for complainers should apply during any aspect of criminal proceedings in respect of applications under section 275 (including where an appeal is made)?

Strongly agree

Slightly agree

Neutral

Slightly disagree

Strongly disagree

Please give reasons for your answer.

No response.

Q51: In exceptional cases, section 275B(2) provides that an application may be dealt with after the start of the trial. To what extent do you agree that independent legal representation should apply during this aspect of the proceedings?

Strongly agree

Slightly agree

Neutral

Slightly disagree

Strongly disagree

Please give reasons for your answer.

No response.

Q52: To what extent do you agree that independent legal representation for complainers in respect of the applications under section 275 should be funded by legal aid?

Strongly agree

Slightly agree

Neutral

Slightly disagree

Strongly disagree

Please give reasons for your answer.

Strongly agree.

Q53: If you agree that independent legal representation for complainers in respect of the applications under section 275 should be funded by legal aid, how should this be provided?

a) under civil ABWOR

b) under criminal ABWOR

c) other – please provide details

Please give reasons for your answer.

No response.

Q54: To what extent do you agree or disagree that these time periods should be adjusted to provide additional time for the complainer to consider the application and effectively implement their right to independent legal representation prior to trial?

Strongly agree

Slightly agree

Neutral

Slightly disagree

Strongly disagree

Please give reasons for your answer.

Strongly agree.

It is important to ensure that the timings work with Evidence by Commissioner processes and there is clear alignment with special measures.

Q55: Are there any other matters relating to independent legal representation for complainers in sexual offence cases that you would like to offer your views on?

No response.

Q56: To what extent do you agree or disagree that a specialist sexual offences court should be created to deal with serious sexual offences including rape and attempted rape?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

Somewhat agree.

Children 1st agrees with the principles behind the idea of a specialist sexual offences court, however we wonder if it would be necessary if the existing provisions relating to pre-recorded evidence, taking Evidence by Commissioner and the special measures were implemented consistently and in a trauma- informed way.

We think it should be made clear that a specialist court will not be necessary for children given the provisions included in a Bairns Hoose.

Q57: To what extent do you agree or disagree that, if a new specialist sexual offences court is created, it should be - as recommended by Lady Dorrian's Review - a new court for Scotland, separate from the High Court or the Sheriff Court?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer

No response.

Q58: If you disagree that the specialist court should be a new separate court for Scotland, where do you consider it should sit?

- a) within the High Court
- b) within both the High Court and the Sheriff and Jury Court
- c) other – please provide details

Please give reasons for your answer.

No response.

Q59: To what extent do you agree or disagree that, if a specialist court is to be created, it should have jurisdiction to hear cases involving charges of serious sexual offences including rape as well as non-sexual offences which appear on the same indictment (for example, assault)?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

Somewhat agree.

Please refer to our response to Question 56.

Q60: If a specialist sexual offences court distinct from the High Court or the Sheriff Court were to be created, to what extent do you agree or disagree with Lady Dorrian's Review that it should have a maximum sentencing power of 10 years' imprisonment and the ability to remit cases to the High Court for consideration of sentences longer than 10 years?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

No response.

Q61: If you disagree that a specialist court should have a sentencing limit of 10 years' imprisonment, what do you consider the limit should be?

a) unlimited

b) other – please provide details

Please give reasons for your answer.

No response.

Q62: If a specialist sexual offences court distinct from the High Court or the Sheriff Court were to be created, to what extent do you agree or disagree that it should be presided over by sheriffs and High Court judges?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

No response.

Q63: If you answered disagree to the previous question, who do you think should preside over the court?

a) sheriffs only

b) High Court judges only

c) other – please provide details

Please give reasons for your answer.

No response.

Q64: If a specialist sexual offences court distinct from the High Court and Sheriff Court were to be created, to what extent do you agree or disagree that the requirements on legal practitioners involved in the specialist court should be match those of the High Court?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

No response.

Q65: To what extent do you consider that legislation should require that legal professionals working in a specialist court should be specially trained and trauma informed?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer, including any specific training requirements that you think should be introduced.

Strongly agree.

Please refer to our previous answers about the importance of training and culture change and the need for resources to implement measures beyond being 'trauma informed'. We are keen to ensure the conditions are created whereby victims and witnesses experiences of the justice system are as non- traumatising as possible.

Q66: Are there any other matters relating to the potential creation of a specialist court for serious sexual offences you would like to offer your views on?

No response.

Q67: To what extent do you agree or disagree that the existing procedure of trial by jury continues to be suitable for the prosecution of serious sexual offences including rape and attempted rape?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

Somewhat disagree.

Children 1st refer to the responses of Rape Crisis Scotland and Scottish Women's Aid, who highlight Lady Dorrian's findings that juries seem to return a significantly higher rate of acquittal than other crimes. We support considering the evidence further around removing juries for serious sexual offences and the likely impact this would have on improving trauma- sensitive justice. We would be keen to hear further about how this would impact on proceedings involving children, and how this potential change would be operationalised in the context of a Bairns Hoose.

Q68: If you have answered 'neutral' to the previous question, what further evidence, research or information would assist you?

Q69: To what extent do you agree or disagree that trial before a single judge, without a jury, would be suitable for the prosecution of serious sexual offences including rape and attempted rape?

Strongly agree

Somewhat agree

Neutral

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

Please refer to our response to Question 67.

Q70: If you have answered 'neutral' to the previous question, what further evidence, research or information would assist you?

Q71: What do you consider to be the key potential benefits of single judge trials for serious sexual offences? Please select all that apply.

- a) removal of potential bias of the jury
- b) removal of concerns around rape myths
- c) greater efficiency of court process including reduced trial length
- d) improved court experience of the complainer
- e) greater public confidence in the decision making, including the application of legal principles
- f) other – please provide details
- g) I do not believe that judge-only trials convey any benefits for serious sexual offences

Please give reasons for your answer.

No response.

Q72: What do you consider to be the key concerns and challenges of single judge trials for serious sexual offences? Please select all that apply.

- a) less public confidence in the justice system
- b) lack of diversity reflected in the pool of decision makers
- c) removal of civic participation in the criminal justice system
- d) undermining the use of juries for non-sexual offences
- e) other – please provide detail
- f) I do not have any concerns

Please give reasons for your answer.

No response.

Q73: If you highlighted concerns and challenges in the previous question, which of the following safeguards do you think could be put in place to mitigate these. Please select all that apply.

- a) evaluation of requirement for written judgments to be prepared
- b) specific training for judges
- c) other – please provide details
- d) none, I don't think there are any safeguards that could be put in place

Please give reasons for your answer.

No response.

Q74: What additional evidence and information do you think would be useful to assess the question of the role of juries in the prosecution of serious sexual offence cases?

No response.

Q75: Lady Dorrian's Review recommended consideration of a time limited pilot of single judge trials for offences of rape, do you have any views on how such a pilot could operate?

Children 1st would be happy to discuss with the Scottish Government the details and practicalities of how a pilot approach would work in an operational Bairns Hoose.

Q76: Are there any other matters relating to single judge trials that you would like to offer your views on?

No response.

Q77: Do you have any views on potential impacts of the proposals in the chapters of this consultation on human rights?

Yes

No

Unsure

Please provide details, making reference to the specific proposal or proposals to which your comments relate.

Yes.

A Child Rights and Wellbeing Impact Assessment should be published to set out the impacts of these proposals on children.

Q78: Do you have any views on potential impacts of the proposals in the chapters of this consultation on equalities and the protected characteristics set out above?

Yes

No

Unsure

Please provide details, making reference to the specific proposal or proposals to which your comments relate.

No response.

Q79: Do you have any views on potential impacts of the proposals in the chapters of this consultation on children and young people as set out in the UN Convention on the Rights of the Child (UNCRC)?

Yes

No

Unsure

Please provide details, making reference to the specific proposal or proposals to which your comments relate.

Yes.

Please refer to our response to Question 77.

Q80: Do you have any views on potential impacts of the proposals in the chapters of this consultation on socio-economic equality?

Yes

No

Unsure

Please provide details, making reference to the specific proposal or proposals to which your comments relate.

No response.

Q81: Do you have any views on potential impacts of the proposals in the chapters of this consultation on communities on the Scottish islands?

Yes

No

Unsure

Please provide details, making reference to the specific proposal or proposals to which your comments relate.

No response.

Q82: Do you have any views on potential impacts of the proposals in the chapters of this consultation on privacy and data protection?

Yes

No

Unsure

Please provide details, making reference to the specific proposal or proposals to which your comments relate.

No response.

Q83: Do you have any views on potential impacts of the proposals in the chapters of this consultation on businesses and the third sector?

Yes

No

Unsure

Please provide details, making reference to the specific proposal or proposals to which your comments relate.

No response.

Q84: Do you have any views on potential impacts of the proposals in the chapters of this consultation on the environment?

Yes

No

Unsure

Please provide details, making reference to the specific proposal or proposals to which your comments relate.

No response.

If you have any questions or comments about our response please contact our Head of Evidence and Impact, Louise Hill, at louise.hill@children1st.org.uk.