

**Education, Children & Young People Committee
Children (Care and Justice) (Scotland) Bill
Supplementary Evidence of the Children and Young People's
Commissioner Scotland.**

October 2023

Established by the Commissioner for Children and Young People (Scotland) Act 2003, the Commissioner is responsible for promoting and safeguarding the rights of all children and young people in Scotland, giving particular attention to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner has powers to review law, policy and practice and to take action to promote and protect rights.

The Commissioner is fully independent of the Scottish Government.

This evidence supplements our previous written evidence to the Education, Children & Young People Committee in March 2023¹.

Rights of children involved in judicial proceedings

In our response to the Scottish Government's consultation on Improving Victims' Experiences of the Justice System², we outlined the importance of strengthening the realisation of the rights of child victims and witnesses, including the right to an effective remedy, the rights to recovery (Article 39 UNCRC) and privacy and family life (Article 16 UNCRC and Article 8 ECHR).

In both that consultation response and in our Stage 1 evidence to this Committee, we highlighted the Guidelines of the Committee of Ministers of the Council of Europe on Child Friendly Justice ("CoE Guidelines")³ which provide a comprehensive analysis of children's rights when they engage with the justice system. The guidelines' fundamental principles are participation; best interests of the child; dignity; protection from discrimination and rule of law.

In the section on Protection of Private and Family Life, the guidelines outline the comprehensive protections required to protect the privacy rights of **all** children involved in judicial or non-judicial proceedings, without discrimination - whether they are victims, witnesses or in conflict with the law and whether they are involved civil or criminal proceedings. These include protections against the publication of information that could lead to a child directly or inadvertently being identified in the press.

However, we agree that these protections have not always adequately been afforded to child victims and witnesses and welcome the improvements proposed in both this

¹ CYPCS, 2023. *Children (Care and Justice) (Scotland) Bill Stage 1 evidence*.
<https://www.cypcs.org.uk/resources/children-care-justice-scotland-bill/>

² CYPCS, 2022. *Improving Victims' Experience of the Justice System*.
<https://www.cypcs.org.uk/resources/victims-consultation/>

³ Council of Europe, 2010. *Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice*. https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804b2cf3 page 22

bill and the Victims, Witnesses and Justice Reform (Scotland) Bill. However, there is a need to consider holistically the different supports that a child victim and/or witness will require throughout their contact with the justice system. That will require culture change and leadership across the justice system, supported by adequate resourcing. Whilst we welcome the development of the Bairn's Hoose model in Scotland, this must be accompanied by sufficient funding to ensure all children can access support.

Anonymity

We have been in discussions with Victim Support Scotland and Scottish Government over ensuring the protections offered are as broad as necessary, including alternative means of protecting the privacy of child siblings after the death of a child victim. This would more explicitly recognise siblings as secondary victims and go some way to mitigating the harm that can be done by continued press attention to parents and surviving siblings.

Information Sharing

It is important to consider the possibility of provision of information to victims on a confidential basis, where a child has caused harm to another child or an adult, separately from general measures around anonymity. Information sharing inevitably engages with the need to balance the rights of victims – to effective remedy, to recovery and to be safe - with the rights of the child in conflict with law to rehabilitation and re-integration (Articles 37 and 40 UNCRC) as well as the right to privacy of all involved (Article 16 UNCRC and Article 8 ECHR).

Our view is that it may, in some situations, be appropriate to share information about outcomes with the victim, confidentially, for example to facilitate safety planning. However, any decisions to do so must be carefully considered, taking into account the individual circumstances as well as the rights of both children. Information should only be shared, where lawful, necessary and proportionate, with the victim and those involved in their support on a limited basis. It should be made clear to anyone receiving such information that they should not share this information further and that to do so would potentially be a criminal offence.

As we said in our response to the Scottish Government and to this committee⁴, it is not appropriate to attempt to replicate victim notification schemes which are in operation for adult offenders, as children are entitled to additional protections which recognise their rights as a child. This would be at odds with the Kilbrandon principles and international human rights law.

We have provided detailed information on our position on sections 12 and 13 of the Bill, including an analysis of the relevant human rights framework, on pages 5-8 of our Stage 1 evidence on this bill⁵.

Age of referral to Children's Hearings

We would like to take this opportunity to reiterate our support for the changes made by section 1 of the bill, which introduces the possibility of any child up to the age of

⁴ CYPSC, 2023. *Children (Care and Justice) (Scotland) Bill Stage 1 evidence*. <https://www.cypsc.org.uk/resources/children-care-justice-scotland-bill/>

⁵ CYPSC, 2023. *Children (Care and Justice) (Scotland) Bill Stage 1 evidence*. <https://www.cypsc.org.uk/resources/children-care-justice-scotland-bill/>

18 being referred to a Children's Hearing. We note that this does not preclude a child being referred to COPFS for prosecution in the courts. However, as CYCJ point out in their evidence on this bill, in the vast majority of cases are for offence types already routinely dealt with by the Children's Hearing System⁶.

Remand, Committal and Detention of Children

We likewise support the changes made by sections 16-19 (detention of children in prisons). This will prevent any further children being remanded or sentence to prison in Scotland. This is a major step forward in realising the rights of children in conflict with the law to rehabilitation and re-integration in society. We would, in particular, draw the Committee's attention to Claire Lightowler's report *Right's Respecting? Scotland's approach to children in conflict with the law* which comprehensive outlines the risks, to the child and to the community, of imprisonment of children⁷.

Over the last 6 months we have engaged with secure care providers across Scotland, as part of the follow up to our investigation on children's rights in secure care⁸ and as part of our engagement on this bill. Our view is that although individual providers may face particular issues, the sector as a whole have reassured us of their capacity to accommodate the small number of additional children placed in secure care and we therefore call for this provision to be brought into force immediately upon royal assent. We note that this would not require the immediate transfer of children already in prison, but in any case this needs to be carefully planned on an individual basis.

For further information, please contact Megan Farr, Policy Officer at megan.farr@cypcs.org.uk or 07803 874 774

⁶ CYCJ, 2023. <https://www.cycj.org.uk/wp-content/uploads/2023/03/CCJ-Bill-evidence-from-CYCJ.pdf> page 6

⁷ Lightowler, C. *Right's Respecting? Scotland's approach to children in conflict with the law* <https://www.cycj.org.uk/resource/rights-respecting-scotlands-approach-to-children-in-conflict-with-the-law/>

⁸ CYPCS, 2021. *Statutory Duties in Secure Accommodation: Unlocking Children's Rights*. <https://www.cypcs.org.uk/investigation-secure-accommodation/>