



Victims, Witnesses, and Justice Reform (Scotland) Bill

Response from Barnardo's Scotland: September 2023

About Barnardo's Scotland

Barnardo's is the UK's largest national children's charity. Barnardo's Scotland works with thousands of children, young people, and families each year in over 100 services. We deliver a wide range of services which include provision of family support and early intervention, supporting children, young people and families through fostering and adoption services, helping children affected by sexual abuse and exploitation, helping young people entering employment, education, and training, and supporting young people and families affected by drug and alcohol use.

We use information and experience from our services across Scotland, and from the children and young people we work with, to seek positive change in policy and practice based on what matters to the people who use our services and what we see working in communities. We work collaboratively across all sectors and political parties to achieve the best outcomes for children and young people.

We have consulted with frontline service managers in Barnardo's Scotland to gather views on proposals for the Victims, Witnesses and Justice Reform Bill, and we have answered only the specific questions where we have relevant expertise and where we believe we can add value to legislative considerations. The following responses are therefore a reflection of work undertaken by our services in the following areas:

1. Childhood harms (child sexual abuse and child sexual exploitation)
2. Children and young people in conflict with the law
3. Domestic abuse
4. Women in conflict with the law

Barnardo's Scotland supports children, young people, and families across a range of different areas, and we have a select number of services which are specifically focused on tackling gender-based violence and domestic abuse.

Some examples of work include involvement in 'Equally Safe Falkirk' - a partnership between Barnardo's, Aberlour and Falkirk Council. This partnership provides early intervention and preventative support to reduce instances and impact of domestic abuse within families. The work involves partnering with survivors and, where relevant, working with those who have caused harm to improve family functioning; supporting families to develop a plan and strategies to stay safe, and together, if appropriate; and supporting changes in attitude and practice in relation to domestic abuse through provision of Safe and Together training for professionals and partner agencies.

Barnardo's Scotland additionally operates a child and family support service in Dundee which works with women and children who are experiencing or have experienced domestic abuse. This service works in partnership with Police Scotland and operates within Police premises in each Police Scotland division within Tayside: Dundee (Central), Angus (Eastern), Perth (Western). Work involves providing information, empowerment, and support to victims of domestic abuse and their children, information to assist planning for children who have experienced domestic abuse, and consultation and training to other professionals around domestic abuse-related issues.

1. What are your views on Part 1 of the Bill which establishes a Victims and Witnesses Commissioner for Scotland?

Barnardo's Scotland welcomes the establishment of a Victims and Witnesses Commissioner for Scotland.

Victims of crime are highly likely to have experienced trauma in some form – whether through the crime itself, or within the wider context of their lived experience. Furthermore, the process of reporting a crime and engaging with court processes holds strong potential to be a re-traumatising experience.

The establishment of a Victims and Witnesses Commissioner for Scotland could be a positive step towards ensuring the criminal justice processes are more trauma-informed and able to appropriately safeguard victims and witnesses from avoidable harm. This is particularly poignant in relation to children and young people, who may find it even more difficult to navigate and understand these systems and their role within them.

The establishment of a Victims and Witnesses Commissioner for Scotland could additionally help support staff within the court system to better understand potential conflicts between the competing rights of victims and witnesses, and those of accused persons. At present there is a distinct lack of advocacy and support on the part of victims, and they may be subject to repetitive and potentially invasive questioning by lawyers working on behalf of the accused.

Barnardo's Scotland supports measures within this Bill to introduce legal representation for victims in circumstances where evidence is introduced regarding their character. Consultation with practitioners within Barnardo's Scotland has revealed that this may be particularly relevant in circumstances where victims have themselves previously come into conflict with the law. Legal representation in these instances may help ensure that the impacts of trauma on these individuals is better understood by juries – reducing emphasis on crimes which may have resulted from the use of drugs or alcohol as a coping mechanism for example.

Finally, Barnardo's Scotland hopes that the establishment of a Victims and Witnesses Commissioner for Scotland can help introduce greater transparency around criminal justice processes for child victims and witnesses. This includes information about how to access support, relevant contact information, advocacy services – and importantly, how to report grievances when things go wrong.

2. What are your views on Part 2 of the Bill which deals with trauma-informed practice in criminal and civil courts?

Barnardo's is the UK's largest children's charity, and across Scotland we work with thousands of children, young people, and their families every year. Many of the children, young people,

families, and women we work with have experienced trauma and abuse, often multiple and severe¹.

For a child who is already suffering with depression, self-harming, suicidal thoughts, or PTSD, the drawn-out process of waiting for a trial to start, let alone come to completion, can be extremely distressing and can compound the significant impacts of crime on mental health. Specialist support services for children and young people are therefore needed to recognise support them to cope throughout and following their engagement with the criminal justice system.

The impact of trauma on children and young people in particular may present differently than in adults, holding potential to make participation within criminal justice processes more distressing and otherwise challenging than it would otherwise be. Children have yet to fully develop the emotional regulation skills that they will utilise throughout their lifetimes, and distress or fear may instead manifest as behaviour which appears confrontational or angry. This may subsequently impact on a jury's perception of a child in circumstances where the jury is not sufficiently trauma informed and able to understand these behaviours. Achieving an appropriate level of trauma-informed practice in this regard is particularly challenging when a jury engages with the court system for only a short period of time.

Nonetheless, we feel that an important step in improving trauma-informed practice within criminal and civil courts would be to begin with mandatory and robust trauma training for jury members. This has proven to be effective for Police Scotland and could greatly improve jury awareness of the impacts of trauma for victims, witnesses, and accused persons alike. Furthermore, we recognise that the process of participating as a jury member can in itself be a traumatic experience. Stronger supports are needed following trial proceedings to help jury members process their experiences.

Many of the women in conflict with the law that Barnardo's Scotland supports have themselves been victims of trauma – whether through domestic abuse, assault, or other circumstances. These women may become dependent on drugs and alcohol as a coping mechanism, resulting in related crimes. Often their experiences as victims within the criminal justice are impeded by criminal histories, without recognising the broader issues which underpin these crimes. Stronger support systems for the women are required, providing intervention at a much earlier stage to help better understand and utilise healthy coping mechanisms.

Further work is needed to de-stigmatise and remove barriers to reporting for victims. This should involve creating a system that is increasingly trauma-informed, and where robust safeguards are established to provide support at every stage of the reporting and subsequent court process.

Finally, in 2020, the Scottish Government admitted that "child criminal exploitation is often unrecognised, and this can mean that children are more likely to be prosecuted for offending behaviour, rather than being recognised as victims of exploitation." A Barnardo's practitioner at a missing service in Scotland told us that they had recently supported a 17-year-old, who had not previously been known to services, and yet was charged with 19 offences all committed within a 3-day period. All these charges were a result of being exploited and forced into stealing to order. Being criminalised, rather than treated as a victim of crime and trauma, can prevent children from being given access to support which will help them to

¹ 'Briefing for Members Debate on Adverse Childhood Experiences', Barnardo's Scotland: 19 January 2018
<https://www.barnardos.org.uk/sites/default/files/uploads/Briefing%20for%20Members%20Debate%20on%20Adverse%20Childhood%20Experiences%20%28PDF%29%20January%202018.pdf>

recognise and accept that they have been victims of exploitation - which can in turn support and safeguard them.

7. What are your views on the proposals in Part 6 of the Bill relating to the anonymity of victims?

Barnardo's Scotland supports provisions within the Bill which uphold and strengthen rights to privacy for children engaging with the criminal justice system as victims. These provisions are particularly relevant in relation to ensuring that obligations under Article 16 of the United Nations Convention on the Rights of the Child are met.

At the same time, we feel that strong consideration of the best interest principle is required in determining whether to grant permission for information to be released. Within this, it is important to recognise that, while for a small number of children engagement with public media provides a feeling of agency over the narrative of their lived experience - this will not be true in the majority of cases.

While we broadly support privacy provisions within the Bill, we do note with some concern that these do not extend to deceased children, particularly when a child has died as consequence of a crime.

10. Are there provisions which are not in the Bill which you think should be?

While the Child Rights Impact Assessment is a starting point from which to begin evaluating potential impact of this Bill on children, there are few provisions within the Bill that specifically relate to children. Further exploration of real impact this will partially lie in the hands of the future Commissioner at a later date, however it is important to recognise that children have unique needs which may differ from those of adults. These should be considered from the outset of legislative and policy changes and continually evaluated as these changes progress (e.g. throughout the establishment of a specialist sexual offences court).

Further detail and explanation is needed regarding distribution of powers between the proposed Victims and Witnesses Commissioner and the Children and Young People's Commissioner. This is particularly relevant in relation to progression of the Bairn's Hoose model.

Barnardo's has, both in Scotland and across the UK, a strong history of implementing trauma-informed practice. We recognise the impact that trauma and adverse experiences (such as physical or sexual abuse, neglect, mental illness, alcohol and/or drug abuse, parental separation, and domestic abuse) can have on the mental health and wellbeing of the children, young people, families, and the adults we support. We work in a strengths-based way and recognise that negative outcomes for children who experience adversity and trauma are not inevitable². We feel that, while consultation surrounding this Bill has touched on the topic of trauma-informed practice, detail surrounding proposed implementation of this is lacking at present. Further elaboration of proposals to establish and refine a trauma-informed justice system will be required in advance of any formal legislative changes.

Further detail is required in the Bill surrounding the complexities of cases where perpetrators and victims are part of the same household or family. Current principles and approaches are

² *'Becoming and Sustaining an Adversity, Trauma and Culturally Informed and Responsive Barnardo's'*, Barnardo's: 2019 <https://www.barnardos.org.uk/sites/default/files/uploads/Becoming%20and%20sustaining%20an%20adversity%2C%20trauma%20and%20culturally%20informed%20and%20responsive%20Barnardo%27s%20-%202019%20%28PDF%29.pdf>

much more aligned with assault by unknown persons, despite this being comparatively rare. Greater emphasis on restorative justice is also required.

Finally, there is a need for greater transparency around court processes for victims and witnesses. Individuals are not always kept up to date with necessary information, and complaints processes when things go wrong remain opaque and hard to navigate. We propose that designing a “route-map” of potential avenues for case progression for victims and witnesses may be a helpful development. This should include a list of contacts such as victim support, Procurator Fiscal staff, and any other relevant resources. It should also detail the different stages of court involvement, including opportunities to plead and any areas where there may be personal involvement (e.g. when victims are required to attend in-person or provide further statements to the Procurator Fiscal). Specific consideration is required regarding how to make this information child friendly and accessible.

11. Do you have any additional comments on the Bill?

Overall, this Bill is a step in the right direction regarding protections for victims and witnesses within the Scottish criminal justice system. However, the complexity of the work that is required going forward should not be underestimated and must be properly resourced.

It is of critical importance that the rights of children and young people are considered and upheld within all aspects of relevant policy and legislative changes, and that appropriate safeguards are concurrently established and strengthened.