

Children (Care and Justice) (Scotland) Bill

Education, Children and Young People Committee – evidence

October 2023

Scottish Women's Aid (SWA) is the lead organisation in Scotland working to end domestic abuse. We are a national intermediary, and as such we act as a critical friend to Parliament and engage in research and campaigning. We are also the umbrella organisation for a 34 local Women's Aid organisations across Scotland; each organisation providing front-line, grass-roots services that deliver specialised practical and emotional support to women, children and young people who experience domestic abuse, acting in partnership with national and local stakeholders. The extensive range of services offered by members include crisis intervention, advocacy, counselling, outreach, follow-on support and temporary refuge accommodation.

We welcome the opportunity to provide written and verbal evidence ahead of Stage 2 of the Children (Care and Justice) (Scotland) Bill. SWA recognises the important role the Children's Hearing system plays in its approach to protecting the wellbeing and upholding the rights of children. In a recent letter¹ to the Education, Children & Young People Committee, the Minister for Children & Young People and Keeping the Promise stated that the Bill '*proposes enhanced protections for victims.*' However, SWA alongside colleagues in the victim support sector remain concerned that the Bill falls short in upholding the rights of victims, particularly young victims of domestic abuse within their own relationships.

Our key points outlined within this submission:

- It is a significant omission that the Bill does not propose provisions to protect victims in response to the increase of the maximum age of referral. Given the likely increase in serious cases, including domestic abuse cases, being rerouted from the Criminal Justice System to the Children's Hearings System we urge the Scottish Government to acknowledge the significant gap in support pathways for victims affected by a child's offending behaviour.
- Appropriate resources and investment are needed to ensure that the Children's Hearing system and related workforce are equipped to respond to an increase in domestic abuse related offences as a result of amending the age of referral. The most recent projected financial costs provided by the Minister do not demonstrate a commitment to ensure the Children's Hearing system workforce is resourced, skilled and domestic abuse competent.
- Greater clarity is needed, through additional or amended guidance on how Compulsory Supervision Orders (CSOs) and Movement Restriction Conditions (MRCs) will be appropriately risk assessed, implemented and monitored to ensure victim safety. In particular detail is needed on how non-compliance will be robustly dealt with.

¹ <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-education-children-and-young-people-committee/correspondence/2023/children-care-and-justice-scotland-bill>

- The Bill must go further in ensuring the availability of accessible child-friendly information for victims. Information should seek to support victims to understand what to expect, timeframes, potential implications and where necessary onward referral to appropriate support agencies.
- It is disappointing to note that within both the Children (Care and Justice) (Scotland) Bill and the Victim, Witnesses and Reform Bill that the principles of victim centred trauma informed practice do not extend to Children's Hearings. The impact of domestic abuse on young women is no less traumatic than that experienced by adults, yet young victims are offered limited information, support and protection when their case is referred to a children's hearing.
- Further, the lack of substantial provisions to protect victims is disappointing given the Scottish Government's commitment to eradicate violence against women and girls through the Equally Safe Strategy². This Bill fails to demonstrate how it aligns with a whole system approach of tackling gender-based violence, and fails to consider the provisions needed to protect young women affected by domestic abuse.

Ensuring system readiness and domestic abuse competence

Proposed age changes

SWA notes the Bill's proposed increase in the maximum age of referral to the Principal Reporter to 18 years old as an important step in Scotland's compliance with the UNCRC. This increase also marks a shift towards addressing the current inconsistencies in the system, as access to age-appropriate justice is fundamental to protecting children's rights.

However, raising the age of referral will likely result in more children and young people being referred to the Children's Hearings System on more serious offence grounds, including domestic abuse-related offences. We note the updated projections from SCRA³ estimating an additional 3,900 – 5,100 children referred to the Children's Hearing System as a result of the age extension, with approximately 1,850 – 3,435 leading to a hearing.

It is imperative that the system is equipped with the investment and skills to respond to an increase of offence-based referrals, including domestic abuse related offences. Data from the Police Scotland Domestic Abuse Scotland Statistics 2021-22^{4 5} show that there were 302 domestic abuse incidents recorded by Police Scotland where both the victim and the accused were aged 16 or under. This figure increases to 1,105 where both the victim and the accused are under the age of 19 years old. Further, statistics relating to domestic abuse and stalking charges in Scotland for 2022-23⁶ indicate that there were 445 charges with a domestic abuse identifier where the age of the accused was 17 and under, with 1,493 similar charges where the accused was aged 17- 20 years.

As a result of provisions within this Bill, it is likely that domestic abuse cases will be rerouted from the Criminal Justice system to the Children's Hearings system. Whilst the Children's Hearing System is

² <https://www.gov.scot/policies/violence-against-women-and-girls/equally-safe-strategy/>

³ Minister for Children, Young People and Keeping the Promise (parliament.scot)

⁴ <https://www.gov.scot/collections/domestic-abuse-in-scotland-statistics/>

⁵ <https://www.cycj.org.uk/wp-content/uploads/2023/02/February-2023-Children-in-conflict-with-the-law-and-data.pdf>

⁶ <https://www.copfs.gov.uk/about-copfs/news/domestic-abuse-and-stalking-charges-in-scotland-2022-23/#:~:text=In%202022%2D23%2C%2030%2C139%20charges,of%20charges%20in%202022%2D23.>

equipped to provide wrap around support for the subject child, there is a significant gap in support available to young victims of domestic abuse.

Children's Hearing System and the Criminal Justice system

We echo concerns raised at stage one by Rape Crisis Scotland and Victim Support Scotland regarding how well equipped the Children's Hearing System is to deal with the likely increase in serious offences without mechanisms to safeguard victims. In criminal cases prosecuted within the criminal justice system, there is access to support from the dedicated COPFS VIA service and provision of special measures when giving evidence, in addition to the availability of information from the Victim Notification Scheme for a relevant custodial offence. However, no such provisions exist within the Children's Hearings system.

The support available to a victim is often offered within the parameters of the system the case sits within, which leads to inconsistent and disjointed approaches within, and between, the criminal, civil justice systems and Children's Hearings. We note concerns raised during stage one⁷ that provisions around victim safeguarding are out with the remit of the Children's Hearings system, due to the fact that its primary role is meeting the welfare needs of the subject child. With this in mind, we urge the Scottish Government to acknowledge the significant gap in support pathways for victims affected by a child's offending behaviour. Steps must be taken to build robust protections for victims of domestic abuse regardless of which part of the system they engage with.

To bridge the gaps in victim support and protections it is imperative that this Bill aligns with the Victims, Witnesses and Justice Reform (Scotland) Bill. We have noted, in our written submission, some of the inconsistencies within the proposed provisions seeking to extend existing vulnerable witness provisions, including the duty to adhere to trauma informed principles only applying to a limited group and not extending to Children's Hearings. For both Bills, provisions around embedding and extending trauma-based practices require strengthening, with clarification on the detail of how this will happen; monitoring and enforcement processes and provision of training and domestic abuse is required.

Resourcing

We welcome the recent recommendations from the Hearing System Working Group redesign report⁸ calling for an evidence-based understanding of domestic abuse throughout the Children's Hearing system, including Chairs and panel members who have had training on the dynamics of domestic abuse. The report includes consideration on the importance of safety planning and consistently protecting the rights of victims as they navigate the system from the point of referral onwards. As well as this, the report provides a useful indicator on the level of resource needed to ensure the system supports all children, particularly when one has caused harm to another.

It is disappointing to note that the updated financial projections do not detail forecasted training costs for reporters, panels members and the wider workforce associated with Children's Hearings to ensure system readiness. The paper outlines some expected costs for social work training and secure care but does not demonstrate a clear commitment to embedding trauma and domestic abuse informed practice into the system. Anticipating the increase of offence-based referrals to the Children's Hearings system should be matched with thorough planning to consider the provisions needed to fully support the victims affected by a child's offending behaviour. This foresight to uphold a child's right

⁷ <https://digitalpublications.parliament.scot/Committees/Report/ECYP/2023/6/13/74e6e33e-cf67-4711-8f94-7de62ac54595#13ec465f-4301-4173-a8bd-f51695a05193.dita>

⁸ <https://thepromise.scot/the-promise-scotland/what-the-promise-scotland-does/change-projects/hearings-system-working-group/>

to recovery (Article 39 of the UNCRC) as well as a victim's rights under the Victims Code Scotland⁹ is not visible within this Bill and accompanying memorandums.

Clear governance and practical monitoring arrangements for CSOs and MRCs to enhance victim protection and recovery.

Welcomed proposals

We welcome proposals within section 3 of the Bill that set out a greater range of measures for protection of victims that could be included in a CSO, including a prohibition on the offending child or young person entering a specified place. In addition to this, we welcome the prohibition on the subject child communicating with victims to prevent harassment, which explicitly includes communicating with a victim via social media.

Non-compliance governance, protocols and arrangements

As reflected in our evidence submission¹⁰ we have concerns about how conditions within CSOs and MRCs will be assessed and imposed. The Bill lacks detail on how non-compliance with CSOs and MRCs will be dealt with. We note a consensus from stakeholders at Stage one that successful MRC implementation requires an intensive support package to be in place for the subject child. We would therefore ask that there is further consideration of how the development of a support package will consider the safety needs of victims as well as inclusion of appropriate governance, protocols, and practical arrangements for monitoring compliance to avoid unnecessary risk or harm.

In cases of domestic abuse, the accused child should not be made aware of where the victim is living or frequenting (e.g. a school or college) as part of their conditions, as this could heighten the risk to the victim. On the other hand, however, the victim must know precisely where the offender can and cannot go and restrictions on contact and actions they cannot take in relation to the victim. This reinforces the need for a system that cognisant of domestic abuse and builds in robust safeguard provisions for victims. It is also unclear if and how a victim would be able to report a suspected breach of conditions.

Imposing a non-harassment order

Colleagues in the Scottish Government Bill team have informed partners within victim support organisations that they are exploring amendments where in some instances a court could impose a non-harassment order under the Criminal Procedure (Scotland) Act 1995 whilst also being able to remit to a Children's Hearing. This would allow for a bespoke approach to child's offending in cases of domestic abuse. We welcome the consideration into the different protective orders that could be imposed to safeguard victims of domestic abuse. In any approach to enhancing victim safety, domestic abuse informed practice must be in place. This will be particularly important for young victims of domestic abuse. Currently, to obtain a civil non-harassment order a victim must apply to the court via a solicitor. Extending this current system to young victims of domestic abuse would require a commitment to develop trauma informed child-friendly pathways.

We will continue to engage with the Scottish Government and partners in victims support organisations to explore what this provision would look like and how it could be implemented to enhance victim's rights.

⁹ <https://www.gov.scot/publications/victims-code-for-scotland/>

¹⁰ <https://womensaid.scot/wp-content/uploads/2023/03/170323-SWA-Childrens-Care-and-Justice-Bill-call-for-views.pdf>

Improve the provision of information to person(s) affected by a child's offence or behaviour

Victim's Safety

During Stage one, the Committee heard from various stakeholders relating to the complexity of information sharing when one child has caused harm to another. In particular, concerns were raised about protecting the privacy of the referred child whilst offering information to a victim.

Survivors routinely highlight the importance of having access to information about what to expect when reporting domestic abuse, why something is happening, who is involved, reasons for the decisions made, and how they will be implemented.¹¹ They also want to have information as early on as possible in the process, a finding supported by Lady Dorrian's Review into the management of sexual offence cases.¹²

Access to information is particularly important when the child who has caused harm lives in close proximity to the victim. For children and young people who have experienced domestic abuse in their own relationships, it is highly likely they live in the same community and attend the same school as the child who has harmed; information on the outcome of a Children's Hearing or any subsequent orders made are essential to support victim's day-to-day safety planning.

The Policy Memorandum paragraph 315 states that *'The provisions in respect of information sharing by the Children's Reporter; bolstering the ability for measures to be placed on a child through compulsory orders where necessary for the protection of the child and others.'* However, as it stands the terms of the CSO are not disclosed to the victim. This undermines a victim's day-to-day safety planning and risks prolonging the impacts of fear as a consequence of abuse they may have faced.

We echo concerns raised by Victim Support Scotland and Rape Crisis Scotland that the current process does not support victims' understanding of, or engagement with, the Children's Hearings system. The information currently available for victims, whose case is likely to proceed in the Children's Hearings system, is limited and often not child-friendly.

We have welcomed recent dialogue with colleagues in Scottish Government on how to support more contextualised information sharing as well as developing robust referral pathways to relevant victim support agencies including local Women's Aid services, Rape Crisis, Children 1st. To be trauma informed, processes must be in place to ensure victims of a child's offending can access the support they need when they need it.

Within the recent financial projections paper¹³ the Minister references positive conversations with organisations in victim support organisations with regard to how best to approach information sharing, however the Minister also states *"we do not consider statutory provisions is required"*. It is important that protections for victims are fully considered within the context of their right to recovery and not simply an add on to the existing structures. Without clear processes and guidance on information sharing within the context of the Children's Hearing System we are concerned that victims will continue to be overlooked and denied the vital information that could support their safeguarding and recovery.

¹¹ Everyday Heroes Justice report (2018) <https://everydayheroes.sps.ed.ac.uk/wp-content/uploads/2018/11/everyday-heroes-briefing2-Justice.pdf>

¹² Improving the Management of Sexual Offence Cases: Final Report from the Lord Justice Clerk's Review Group. (2021) <https://www.scotcourts.gov.uk/docs/default-source/default-document-library/reports-and-data/Improving-the-management-of-Sexual-Offence-Cases.pdf?sfvrsn=6>

¹³ <https://www.parliament.scot/-/media/files/committees/education-children-and-young-people-committee/correspondence/2023/children-care-and-justice-scotland-bill-financial-projections.pdf>

Proposals ahead of stage 2:

One of our key concerns regarding the appropriateness of the Children's Hearing System to manage serious offences is that the system does not have the appropriate mechanisms to effectively safeguard victims. We ask that the Committee considers the following ahead of stage 2:

- The financial memorandum must fully consider the necessary workforce investment and resource to respond to the anticipated increase in referrals to the Children's Hearings system, in particular the likely increase of domestic abuse cases within young people's relationship. Greater scrutiny on the budgets is needed to ensure that resources are dedicated to domestic abuse and trauma informed training that would benefit all children referred and victims of harm when navigating the Children's Hearing System.
- We ask that the Bill be amended at Stage 2, placing a more robust duty on the Principal Reporter to proactively ensure that victims have access to information relevant to their safety and recovery, particularly around protective conditions imposed in CSOs and MRCs.
- We would welcome a Scottish Government Stage two amendment addressing the concerns on how CSOs will be monitored. We also call for a commitment to introduce refreshed guidance and training in response to the amendments in the MRC criteria. It is paramount that the Bill, and subsequent guidance, reflect the impact and rights of victims at risk of harm.

Publishing Details

Please note, Scottish Women's Aid is happy for our organisation and names to be used in all relevant publishing of this response.

Contact Details

Ffyona Taylor ffyona.taylor@womensaid.scot

Jules Oldham jules.oldham@womensaid.scot

Tel: 0131 226 6606

Charity No. SC001099 Company No. 128433