

Child Accused Roundtable: September 6, 2018 - Key themes

The [Vulnerable Witnesses \(Criminal Evidence\) \(Scotland\) Bill](#) was introduced to the Scottish Parliament on June 12, 2018. The Bill creates a presumption that children under 18 in the most serious cases will have their evidence pre-recorded. The Scottish Government did consider whether this presumption should apply to child accused but concluded that there were legal and practical difficulties in doing so - not least the accused's right to legal representation and having the choice about whether or not to give evidence at all. There is also a risk that a child accused giving pre-recorded evidence before all the evidence in the case against them has been led could ultimately undermine their defence. It is of note that the vision of [Lady Dorrian's working group](#) did not extend to vulnerable accused under 18, but they did consider that further work should be undertaken.

On September 6, 2018, the [Centre for Youth & Criminal Justice \(CYCJ\)](#) and the Scottish Government brought together a range of stakeholders to discuss the position of child accused in the justice system as well as what services are currently available and what further support could be provided. The event was attended by stakeholders and practitioners from across justice, health, social work, third sector and legal profession. A full list of organisations in attendance can be seen in Annex A.

Stakeholders were split into two groups, both of which focused on two key areas:

- 1) The legal and practical considerations that would need to be taken into account should the evidence of child accused be pre-recorded.
- 2) The alternative support that is available for child accused (including local variability and what else *should* be available).

The following provides a summary of the key themes from these discussions. Further details can be made available on request.

Discussion Session 1 - The legal and practical considerations that would need to be taken into account should the evidence of child accused be pre-recorded

Pre-recording for child accused

The pre-recording of the evidence of child accused can currently take place however, **no participants at the roundtable were aware of any cases where a child accused's evidence had been pre-recorded**. It was queried whether the failure to pre-record thus far was the result of lack of knowledge and understanding, failure to be convinced of the benefit this could bring, or the various legal and practical difficulties related to the differences between vulnerable witnesses and child accused, such as:

- **Child accused have a right to silence** and their decision to give evidence is often based on hearing the evidence against them. This can render it very difficult to decide whether the accused should give evidence prior to the crown case having been heard;
- **Child accused are obliged to attend court**. As a result, the child will have been in court for the duration of the trial so attendees questioned the value of pausing the trial, or leaving the room to record their evidence if they had been present throughout.
- One option to address this issue with minimal disruption could be for child accused to stay in court to see the case against them and then **elect to give their evidence by CCTV link**. However, delegates were unclear how much value there would be in this, especially since the additional resources involved could be used more effectively on other services for the child accused.

This led to a wider discussion about the perceived impact on evidence when the individual providing such evidence was not physically present within the courtroom. In one group it was highlighted that research evidence had found no detrimental impact provided a clear explanation is given for why the individual is not present. This led to discussion around the potential for a cultural shift away from the ongoing presumption that physically giving evidence is the norm.

- **Practical matters** (such as those raised by Lady Hale¹) including who would conduct the interview and how would it be done? What skills and abilities would be needed by the interviewer, with it suggested these could replicate those needed for joint investigative interviews? What safeguards would there be against repeated interviews? Who would own and/or control the recording? How to ensure the crown/sheriff did not have access to the pre-recording before the trial, with it suggested the defence would require to retain the right to use or not the recording?

For the above reasons, **the consensus was that there should not be a presumption or legal requirement of pre-recording of evidence for child accused.** It was however acknowledged that, despite the above challenges, there could conceivably be situations in which pre-recording may be appropriate for child accused, as long as the child elected to do so and the decision was made after the crown had made their case.

Length of proceedings

The importance of minimising the length of time between the offence and the trial was highlighted as crucial for two main reasons:-

- 1) There can be a big difference in how a child looks to the jury if, for example, the offence is committed while they are 11 but by the time of the trial they are 14. This could be the difference between whether they look like a child or a young adult which could impact the jury's deliberations.
- 2) It is not reasonable to ask a child to clearly remember what happened years previously.

To speed up how quickly cases progress may require additional resources. An additional £1.1 million extra funding to COPFS and SCTS has been awarded by the Scottish Government to improve how sexual offences cases are handled and improve communication with victims.

¹ In Regina (D) v Camberwell Green Youth Court [2005] UKHL 4.

Discussion Session 2: The alternative support that is available for child accused (including local variability and what else *should* be available)

The needs of child accused

Both groups welcomed the discussion sessions on child accused, agreed that it was important that the needs of child accused were considered, and highlighted a range of concerns to be addressed.

- **Child accused have often experienced adversity, victimisation and trauma**, presenting with a range of needs, vulnerabilities and complexities and lacking positive support and role models. These children are often the most vulnerable in our society. It is therefore critical that these issues are considered both within and separately to the criminal matter being addressed if outcomes for children are to be improved and repeated contact with the criminal justice system is to be avoided.
- **Attendance at court can be a difficult, stressful, traumatic and poorly understood process** for children and their families. This can include difficulties in understanding the concepts, formality, jargon, terminology and specialist language used at court; roles and responsibilities of those present; and expectations, including of appropriate behaviour, all of which could be exacerbated for children with additional support needs, learning disabilities, autistic spectrum disorder and speech, language and communication needs (SLCNs). This can make it difficult to ensure the child accused understands what is going on, is able to fully participate, and could result in additional charges being accrued or harsher decision being made as the child's presentation may impact on decision making. It was felt additional focus was needed to understand the experiences of child accused in court.
- A number of **age-related concerns** were raised, for example related to the particular vulnerabilities of young children being held and transported with adults; the differences between the Children's Hearings System and the criminal court; and the position of child accused who were aged 16/17 and considered "between systems". Maturity levels were also discussed, with one delegate commenting on the apparent arbitrariness of age given the variety of capabilities and vulnerabilities presented by children at different ages.

Support for child accused in court

There was discussion around some of the supports that are currently available for child accused. Delegates felt that **the role of the defence is critical**. The defence inform themselves about the child's vulnerability and request psychiatric or social work reports where appropriate.

Stakeholders commented that there has been a seismic change since the Jamie Bulger case and now defence will regularly request measures from the judge to assist the child accused, such as:-

- Slowing down the trial e.g. breaking it into 30 minute segments with breaks;
- Considering whether the child should be in the dock or at the table;
- Clearing the public gallery;
- Using straight-forward, simple language;
- Considering whether court dress is appropriate;
- Providing snacks.

The groups made further suggestions for support in court such as:-

- Making a modified court day for child accused that facilitates their participation a presumption, including shorter day, more time to process information and questions and frequent breaks;
- Given the high prevalence of language difficulties in youth justice populations, with it estimated 50% to 70% of males in this group found to have significant difficulties with

language function often hidden and undiagnosed, it was suggested that it should be assumed that children will always have additional communication needs and would benefit from different approaches. Such approaches include the use and support of communication/speech and language specialists in the court process and trial; the use of communication aids such as talking mats, drama, visuals, and cartoons visuals; and really checking the child's understanding.

- Enabling real time communication during the trial e.g. via text messaging with their solicitor so they can ask questions, raise issues or matters they do not understand in real time.
- Drawing on the experience of improvements made elsewhere in the UK and for vulnerable victims and witnesses and adult accused. This could include intermediaries trained in communicating with vulnerable people and identifying/addressing their needs who could potentially play a valuable role in framing questions, but they are not currently used in Scotland.

Support for child accused outwith court

Under the "[Whole System Approach](#)" **every child should be supported on their journey through the youth and criminal justice system**, including at court. However, significant variation was highlighted in terms of what support is available to child accused; what *should* be available; the roles and responsibilities of different parties; and **who is responsible** for co-ordinating and providing support to child accused.

It was agreed that a child-centred, coordinated approach involving a range of professionals to support child accused is essential. It is critical that this support can be provided by practitioners who can build relationships with children and their families, who have the time and skills to gain their trust, and are consistently available. Ideally, this support should extend from "end to end" of the process including during the police interview, preparing for attendance at court and giving evidence, managing the time before the trial, support at court, and following the case being concluded and any sentence or disposals being given. In doing so, various professionals were cited as having roles, such as social workers, named persons, defence solicitors, appropriate adults, responsible adults, third sector staff, intermediaries and advocacy workers.

Training

Training for all practitioners was highlighted as essential, which should include understanding of the legal process, the potential impacts of this on children, including the risk of re-traumatisation, and children's needs, child development and communication. The need for such training for the judiciary was also stressed, to ensure this knowledge and understanding can be brought to trials and to inform how these could take place in a manner that ensures the best interests of the child are upheld (for example in terms of approaches used and questions that are allowed). The ongoing work of the Scottish Sentencing Council was noted.

Annex A

List of organisations in attendance:

Scottish Government

City of Edinburgh Council

Faculty of Advocates

Law Society

Scottish Courts and Tribunals Service (SCTS)

Crown Office and Procurator Fiscal Service (COPFS)

Liam Robertson Solicitors

Public Defence Solicitors' Office (PDSO)

Aberlour

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Children 1st

Action for Children

Children and Young People Commissioner Scotland

Centre for Youth & Criminal Justice (CYCJ)

Queen Margaret University

SACRO

Community Justice Scotland

Social Work Scotland