

Before we talk more about children's experience of bail and remand there are some important things to say about what it is like to be in an adult court.

First of all, should children be prosecuted in court or should there be different ways to deal with them?

When the Procurator Fiscal is told that a crime may have happened, and that a child is suspected of doing it, they can decide whether to go to court or not. When they decide not to go to court this is called diverting the child - so they can send the case back to the Children's Hearings or try to do something else.

The Lord Advocate is the top lawyer in Scotland and they say that under 18s should be diverted from court whenever possible. Procurator Fiscals think about things like whether the child might commit the offence again, or whether the victim of a crime wants to see the child prosecuted in court, before deciding whether a child is diverted.

A Procurator Fiscal told us: *If I know there are needs and divert and they don't comply then what does that leave, only prosecution. Also there are victims to be aware of, people require justice, we can't do nothing just because someone has needs, some people want to have their day in court.*

Another Procurator Fiscal told us: *Now I think we treat more under 18s as children so the presumption has now gone very more towards under 18s whether they're on supervision or not, we'll either try to give you back to the Reporter or to try to do an alternative to prosecution.*

Do children and their families understand what is happening when the child is in court?

When we spoke to children and parents and carers one of the things they told us was that it was sometimes difficult to understand what was going on, what was happening and when - often this was because of the words people used.

The professional language that is used in the courts means that if you are just an ordinary person you might not understand - even though what is happening is about you or will affect you. Children said that the less they understood, the more stressed they got.

A child told us: *It was easy to understand in certain parts, harder in the rest...obviously when they're in court they use the full lingo and it's just hard to pick up on if you've never been in court before, so they're saying things that are maybe not bad but it's making me freak out because I don't know what they mean, which was difficult.*

A parent told us: *Maybe if someone was able to guide me on the law and say to me this is allowed, this isn't allowed this is what will happen... I'm now in panic mode and he feels that panic as well as his own panic; if I don't understand it how do you expect a 13yr old to understand it?*

So, who should help? Sheriffs said that they know it is important that children understand what is going on, but only some of them said they try to use simpler language. Some Sheriffs think that it is up to the child's solicitor to explain things to them.

A Sheriff told us: *I suppose being as clear and as straightforward in your words as possible, not using words that ... checking who's spoken to them before and you are putting a lot of trust in the solicitors or at least you are giving them the responsibility that the solicitors can and do explain things clearly to young people.*

A Solicitor told us: *It's very important we explain to them the process because they don't have a clue of the process that they're going through, they just don't understand it at all, if you've got a 16/17 year old kid in you're going to spend a bit longer with them than you will with a 35 year old.*

But sometimes the explanations are not good enough. Children told us this means they are confused about what is going on, or they don't understand when or why a decision has been made.

A child told us: *Some things should change because when I got charged, a big charge, I never really got told anything, it was mostly my dad and my lawyer and he says well expect this and don't worry about this but when I was going to court I wasn't being told what was happening.*

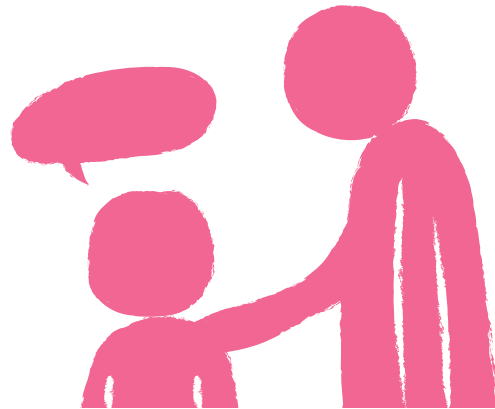
Are children able to have their say in court?

If you don't understand what is going on in court it makes it hard for you to have your say. When you feel you don't have the right words yourself, you might feel you just have to keep quiet.

A solicitor told us: *For children under 18, it is a worry whether they actually get to participate because they don't understand the language, it is lawyers talking riddles, the prosecutor talking riddles and the Sheriff talking riddles and they are excluded from that - sometimes that happens with adults as well but children are particularly susceptible to being left out in the court setting.*

When we spoke to solicitors and Sheriffs they reminded us that even when an adult is in court they don't have much chance to say things, it is their solicitor who represents them. But even so, the children, parents and carers we spoke to said they really wanted the child to have their say in court, because having their say felt like the fair thing to do.

A parent told us: *The court should be asking as well - how are you feeling now? Do you regret it? How do you feel within yourself about it? But she didn't get asked that... Especially young persons, they are too feart to ask someone in shirt and tie or robes, they feel they don't have a voice or they lose that voice.*



PART 4 BAIL

Bail is when the Court decides that you can stay at home or in a place that is agreed until your court case takes place. There will be things you have to agree to if you get bail - these are called **conditions** and they are like the rules you have to follow. If you don't agree or you break the conditions of your bail then you can be put on remand (more about that later).

The length of time children are given bail for - so that's the time between going to court and then having their case heard - can be different for each child. The conditions that a child is given for their bail are also important to think about.

What conditions can there be if you are on bail?

The things that children need to agree to, their conditions, can be things like not being allowed to go to a certain street or area, or not being allowed to make contact with a certain person. Sometimes a condition is like a curfew when you can't be outside at certain times of the day, for example you have to be at home from 5pm to 7am the next morning.

What kinds of problems can bail conditions cause?

We heard stories like these:

- A child who was told they had to keep away from a particular street but they needed to go that way to get to their Gran's house.