

June 7, 2022

Dear Cabinet Secretary for Justice and Veterans and Minister for Children and Young People
(cc Val de Souza, Chair)

Re: Bairns' Hoose

We are writing as organisations with a strong commitment to the aspirations of Bairns' Hoose to urge the Scottish Government to work towards the inclusion of all children in the programme, regardless of whether they are child victims, child witnesses or children accused of offending behaviour.

Scotland has a long tradition of responding to children in trouble in the same justice system, no matter the reason for the need for intervention in their lives. Both the Children's Hearing System and our system of secure care support children who are victims, witnesses, accused and involved in offending behaviours. Evidence presented by countries who have introduced Barnahus highlighted that its success was because of its close alignment with the policies and culture that already existed. One example of this is the zero tolerance of violence against children and a longstanding commitment to keeping children out of formal courts. The evidence suggests that in establishing Barnahus in other European countries, it was most likely to be successful if aligned to existing practice, policies and culture.

From a Scottish perspective, we are developing a more progressive, [rights-based approach to youth justice](#) building on the Kilbrandon principles of needs not deeds, and the national assessment and planning framework of Getting It Right For Every Child (GIRFEC). Having a system or approach that views children who offend differently, stigmatising them as 'bad children,' rather than being viewed as victims themselves who also require care and protection, would fail the very children that need our care and support. It is essential that Bairns' Hoose approach strengthens this long tradition of focusing on the child, their needs and rights, regardless of their actions.

The inclusion of any child under the age of 18 who requires the services and supports of Bairns' Hoose, would be in line with Scotland's commitment to deliver a '[revolution in children's rights](#)' through the incorporation of the UN Convention on the Rights of the Child (UNCRC) into Scots law. Children who are accused of offending behaviour are often in the most vulnerable situations and are often victims and witnesses themselves, having experienced abuse, neglect or trauma and adversity in their childhoods. The UN Committee's [General Comment on children's rights in the child justice system](#) is clear that States should "safeguard children's rights from the moment of contact with the [justice] system". [The Council of Europe Guidelines on Child Friendly Justice](#) are clear that all children, "be they a party to proceedings, a victim, a witness or an offender" should benefit from a

“children first” approach which fosters “a holistic approach to the child, based on concerted multidisciplinary working methods”. The guidelines provide a clear rights-based framework that gives full consideration of the rights of children as victims, witnesses or accused of offending, across all systems of administrative, civil and criminal justice that children are involved in. This means the Bairns’ Hoose, as part of the civil and criminal justice systems under Scots law, must afford all children parity of human rights safeguards and meet the standards of child-friendly justice.

There is a potential for injustice or discrimination if we support some children through the Scottish justice systems by enabling them to access Bairns’ Hoose, whilst others are potentially denied their right to support and guidance, and left to do so in the context of the adult criminal court system with insufficient recognition or adjustments made to respect their status and special rights as children. In 2019/20, there were 1,208 children prosecuted in court with very little or no support or cognisance of their status as a child. Furthermore, given that the victims of children who offend are usually other children, you will potentially have in the same case one child who is being supported through Bairns’ Hoose and another giving evidence in a court, a clearly inequitable and unjust state of affairs - which may be open to legal challenge around fair trial (UNCRC Article 40(2)¹ ECHR Article 6). This is particularly concerning given what we know about the level of trauma, adversity, victimisation and poverty experienced by children who come into contact with the justice system, and where the majority have a speech, language or communication needs, making it extremely difficult for them to understand - let alone meaningfully participate - in adult justice processes.

In many cases, these children’s childhoods are characterised by overwhelmingly negative circumstances and events. There is growing recognition too, that children who are involved in offending, particularly children who may be committing more serious and/or violent offences, are themselves in vulnerable situations, have complex needs and suffer social adversity (Burnam & McVie; 2017; Nolan et al., 2018). As a result, these children need to be recognised as children first and foremost and have all their human rights upheld. To not do this would be in conflict with the Scottish Government’s unreserved commitment to GIRFEC, keeping *the promise*, and to the incorporation of a framework of human rights treaties into Scots law, and specifically, the requirements of the UNCRC. To achieve the outcomes of the Promise Plan, Scotland must treat all children equitably and fairly by ending the ‘disproportionate criminalisation of care experienced children and young people... through services and structures that provide genuine support and rights-based, trauma-informed practice.’²

¹ Article 40(2)(b)(iii) UNCRC requires that the right to a fair trial must be ‘ensured’, thus imposing an affirmative obligation “to take whatever measures are necessary” to enable all children to enjoy and exercise it.¹⁶³ A fundamental aspect of this is the right to effectively participate in proceedings (Articles 12(2) and 40(2)(b)(iv) UNCRC), requiring that children be enabled to express their views freely throughout all stages of the justice process and that such views be given due weight according to their age and maturity.

² See The Promise and the recent [Oversight Board Report published 26 May 2022](#).

We realise that introducing Bairns' Hoose into Scotland has been motivated by positive intentions, and is an exciting, much-welcomed development, which has the potential to significantly improve children's experiences of justice.

However, if it is not extended to support children who are accused of harmful or offending behaviour, we believe that there will be an unintentional undermining of justice, and Scotland will do a disservice to these highly vulnerable and marginalised children, if they are excluded from this service.

We would appreciate if there could be consideration of these concerns, and we would welcome an opportunity to discuss this further with you or your colleagues.

The organisations below give their support to a Barnahus in Scotland, a Bairns' Hoose, being available to all children.

Regards



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Director



Fiona McFarlane
Head of Public Affairs



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Principal Reporter/Chief
Executive



Elliot Jackson
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EQUALITY | RESPECT | LOVE
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