



Children and Young People's
Centre for Justice

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CYCJ summary briefing on the court experiences of children accused

Collaborating for rights-respecting justice
cycj.org.uk | cycj@strath.ac.uk

CYCJ overview

The Children and Young People's Centre for Justice (CYCJ) works towards ensuring that Scotland's approach to children and young people in conflict with the law is [rights-respecting](#), contributing to better outcomes for our children, young people and communities. This short briefing draws from our practice knowledge, research evidence, policy understanding and participation work.

Introduction

Scotland has made significant progress in recent years to create a more trauma-informed, rights-based system for children in conflict with the law. In 2024 Scotland incorporated the United Nations Convention on the Rights of the Child into Scots Law. In the same year, the Children (Care and Justice) Act was passed, which included the ability to refer 16 and 17 year olds to the Children's Hearings System, as well as enhanced duties around the participation of the child at court and the ability or legal requirement, dependent on the circumstances of the case, for courts to use a different room and day and/or closed courts for a child accused. These provisions are incrementally commencing but many of the court-related provisions came into force on 1 March 2026.

However, despite this significant progress, the Children and Young People's Centre for Justice (CYCJ) is concerned that, in some instances, children's rights are not being translated into practice in court settings. The complete picture on this is hindered by the lack of robust data gathering and monitoring but, as set out below, we believe there are gaps between the UNCRC and the experiences of children accused in court. We consider these omissions to be a significant cause for concern as they could, fundamentally, threaten the delivery of a fair trial. We conclude with two options for the committee to consider in order to create a more rights-based, trauma-informed response.

Gaps between UNCRC and experiences in court

Identification of needs

Integral to the realisation of a child's rights in a court setting is the early identification of their needs and the subsequent effective response to this by the court. Each child's needs and views will vary, requiring an individualised and tailored, rights-based approach for every child, at every court appearance, as recognised in the Scottish Government standards 2021 on [Working with children in conflict with the law](#). This includes speech, language and communication needs (SLCN) and cognitive, processing, social and sensory needs to promote the child's participation. Evidence shows that there is a high prevalence of neurodevelopmental conditions, learning disabilities and SLCN amongst children in conflict with the law and this needs to be recognised by the court (CYCJ, 2026). These are additional to the vulnerabilities experienced by all children by virtue of age (Day et al, 2024). This is required to enhance their ability to follow, and participate in, a trial and is directly

linked to several articles of the UNCRC, including Article 3 on the best interests of the child, and Article 12 on the right to participate.

However, from what we have heard from children and young people and those supporting them to attend court, we are concerned that this identification process is not consistent and often comes down to the quality of local cross disciplinary relationships and communication processes. There is also a lack of justice specialist services to promote communication needs in the court environment and, even where needs are identified, appropriate adaptations and services are not routinely being provided.

Response to meet needs and fulfil rights

Whilst recognising that there are challenges with adapting both the current physical infrastructure of certain courts and how court business is conducted, what we have heard from our participation team and from practitioners highlights, at times, shortcomings in the responses to the needs and rights of children accused and sentenced.

Practitioners have informed us that the information regarding a child's needs does not always follow that child, meaning it may not appear in every court setting in which they are called to appear.

Despite recent changes, the judiciary still have the option to conduct a child's trial in an open court. This is most likely in solemn proceedings which arguably incur a higher level of public interest which can more significantly impact the child's participation and their experience of other rights, such as that to privacy and a fair trial. At CYCJ we do not see how an open court could fully promote a child's right to participation as outlined by the UNCRC. It also contradicts General Comment 24 which states children have the right to have their privacy fully respected through all stages of proceedings and that child justice hearings take place behind closed doors, save in very limited exceptions clearly stated in law (UNCRC, 2019). We welcome the changes which the implementation of the Children (Care and Justice) Act 2024 has brought in respect to enhancing the safeguards for children. But if a child accused needs to walk past those members of the public attending the trial in order to get to a child specific waiting room away from adults waiting area, for example, it could be a distressing experience for them, undermining the benefit of a separate area and provision of additional breaks in proceedings that may otherwise be deemed in their best interests, required to support processing of events and enhance their participation.

Due to the independence of the judiciary, much of the legislation and guidance around children's rights at court is permissive. There is an absence of a transparent communications process on the decision making for the court process to be followed for a child scheduled to appear, including modifications. Alongside this is a lack of clear structure in place for concerns that the UNCRC is not being complied with to be raised. The right to participate under Article 12 of the UNCRC does not just cover a child's right to communicate during their case hearing, but includes their collective ability to communicate their views on the court system and to be heard in decision making around this. There is also currently no provision in place for independent advocacy for a child accused in the court system, despite a similar provision existing for a child appearing before a children's hearing panel.

UNCRC General Comment 24 is clear that States Parties must ensure that a child is not compelled to give testimony or to confess to or acknowledge guilt, highlighting that the term 'compelled' should be interpreted broadly, noting the risk of false confession is increased by the child's age and development, lack of understanding, and fear of unknown consequence, including the suggestion of loss of liberty, as well as by the length and circumstances of the questioning (UNCRC, 2019). The lack of an effective response to a child's needs and rights will ultimately reduce their ability to participate meaningfully, which ultimately questions the ability to deliver a fair trial.

Recommendations

To begin to address these challenges, CYCJ proposes the Committee considers the following two recommendations

1. Conduct robust data gathering and monitoring, including the place of UNCRC in the decision making of the court.
2. Establish a national process across agencies to improve communication, enhance participation and improve practice. This would involve establishing information sharing protocols requiring reciprocal dialogue between those involved in gathering information about the child and those responsible for determining the court process and any required modifications. A more open and transparent space would allow for good practice to be adopted across the country and could lead, for example, to the identification and use of certain courts as specialised child courts, in keeping with the recommendations of the UNCRC.

Contact

If you would like to discuss this briefing, then please contact: allan.young@strath.ac.uk

07976 863749

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