

NSPCC Scotland response to the Justice Committee's Call for Evidence on the Victims and Witnesses (Scotland) Bill

April 2013

NSPCC Scotland welcomes the opportunity to respond to the Victims and Witnesses (Scotland) Bill. We support the aspirations of the Bill to strengthen support for victims and witnesses in Scotland. We believe that the Bill contains a number of proposals which have the potential to improve the experiences of children and young people who become involved with the criminal justice system.

The Children (Scotland) Act 1995 enshrines the principle that a child's welfare is paramount. This principle is supported by Articles in the UN Convention of the Rights of the Child: the best interests of the child must be a top priority (Article 3); that government must do all they can to ensure that children are protected from abuse, neglect and maltreatment (Article 19); and that children receive special help to enable them to recover (Article 39).

These principles need to underpin the proposals in the Bill and inform the guidance on how we work with children and young people who are victims and witnesses. They also highlight the need for children and young people to be identified as a priority group in their own right within the legislative proposals.

About NSPCC Scotland

The NSPCC aims to end cruelty to children. Our vision is of a society where all children are loved, valued and able to fulfil their potential. We are working with partners to introduce new child protection services to help some of the most vulnerable and at-risk children in Scotland. We are testing the very best intervention models from around the world, alongside our universal services such as ChildLine, and the NSPCC Helpline. Based on the learning from all our services we seek to achieve cultural, social and political change – influencing legislation, policy, practice, attitudes and behaviours so that all children in Scotland have the best protection from cruelty.

NSPCC Scotland response

There have been a number of developments in legislation and policy in Scotland pertaining to both victims and witnesses. These include *The Protection from Abuse (Scotland) Act 2001*; *The Sexual Offences (Procedures and Evidence) (Scotland) Act 2002*; *The Criminal Justice (Scotland) Act 2003*; *The Vulnerable Witnesses (Scotland) Act 2004*; *The Criminal Justice and Licensing (Scotland) Act 2010*.

The Victims and Witnesses (Scotland) Bill is intended to comply with the requirements of the EU Directive establishing minimum standards on the rights, support and protection of victims of crime ("the EU Directive")¹. The UK as a Member State, and thus, the Scottish Government too, has 3 years to translate the requirements into law/procedure or ensure

¹ DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2012 - establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA"

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF>

that existing law and procedure complies. NSPCC Scotland recognises that much of the detail pertaining to these duties and procedures will be set out in secondary legislation. We would urge the Government to ensure that a single, separate and specific code of practice is set out for organisations and agencies working with children and young people who are victims and witnesses. We would also encourage the Government to publish, to support the legislation, age specific guidance for children and young people about the impact and nature of the provisions being introduced. Children and young people have different needs to adults and those needs must be communicated in language that recognises their different age, stage and levels of maturity.

Children and young people are also uniquely vulnerable when appearing as victims of crime and/or as witnesses at court. They are disproportionately victims of crime² and it can have a profound impact, affecting them deeply, making school a place of fear, limiting their ability and willingness to access facilities, preventing them from going to certain areas for fear of attack, and potentially limiting their life opportunities. These impacts are often more significant for children and young people than for older people and, critically, vary greatly depending on a range of issues including age and maturity – the younger and/or more immature the victim the greater the need is likely to be. These differing types and levels of need must be reflected in the skills of people delivering support services. The necessity for very specialised services, which recognise and respond to the distinct needs of children and young people, in their own right is essential. Therefore we believe the current Bill would be strengthened by the inclusion of a measure similar to Article 8 of the EU Directive (Right to access victim support services) which promotes awareness raising in relation to rights and the promotion of specialist services. This is particularly important in relation to the promotion for special measures (as outlined below).

Special Measures

NSPCC Scotland believes that the accessibility of special measures is potentially strengthened by the extension of the definition of a child to mean any person who is under 18 years of age. To encourage utilisation of special measures, where appropriate, we believe that the full range should be proactively explained to children and young people to support them in making an informed decision about whether or not to use special measures and, if they decide to do so, which options best meet their particular needs. The needs of a vulnerable adult and those of a child will be very different and require a distinct skills set (communication, assessment, support) in order to meet those needs. If children and young people are included in a more generalised definition of vulnerable victims and witnesses of crime, their needs will be overlooked. Therefore, it is not sufficient to assume that children and young people will receive appropriate services simply by virtue of age. Children and young people need to be considered as a priority group, as they have different needs and require support from individuals who are trained and skilled in communicating, assessing and helping them.

Intermediaries

² The Guardian (10th October 2007), Almost all children aged 10-15 are victims of crime. From a survey by the Howard League for Penal Reform

Children do not approach communication in the same way as adults and across all age ranges ability can vary considerably. Research has shown that at least half of young witnesses reported being unable to understand some of the questions they were asked in court³. Therefore NSPCC believes that every vulnerable child witness in abuse cases should be assessed by an Intermediary at the earliest stage and a report produced outlining their capacity to communicate during trial and their needs is provided to the court. The judge should then direct Advocates and other legal professional on appropriate questioning. NSPCC Scotland acknowledges that the Scottish Executive committed to evaluate the piloting of intermediaries in England and Wales in 2007 as part of their consideration of their applicability in Scotland. In spite of positive findings⁴, intermediaries were not rolled-out in Scotland. NSPCC Scotland recognises the successful use of intermediaries⁵ in a number of recent child abuse cases in England and Wales and greatly welcomes Ministers' intentions to pilot their use more thoroughly in Scotland.

Reliving traumatic events

Reliving the trauma of sexual abuse in court is very difficult for children. Failure to provide sufficient support to young witnesses when giving evidence in court makes victims of abuse vulnerable to suffering further trauma. Delay, aggressive cross-examination and the anxiety of seeing their abusers may have lasting effects on vulnerable witnesses, and can affect the quality of evidence that they give. Special court measures afford young witnesses support in order to ensure that they are adequately prepared and protected from further harm.

The NSPCC believes that having specialist court sittings for children who have been sexually abused will help to address the above problems. Having trained judges, Advocates, solicitors and other legal professionals offering the full range of support will help children and young people give better evidence, avoid further trauma and achieve justice against their abusers.

ChildLine

ChildLine is the free 24 hour helpline and on-line service for any child or young person with any problem. Children and young people contact ChildLine with a range of concerns, but most commonly family relationship problems, bullying, physical and sexual abuse and self-harm. Most children and young people using the service are between the ages of 12 – 15. The majority do not contact the service about a single issue but rather talk about multiple, or „layered“ concerns. ChildLine works with these children, who in many cases are reluctant to seek help from the adult world for a range of complex reasons, to listen, advice and safeguard, as well as acting as a bridge to allowing children to access the range of help and support they need.

³ 1 Measuring Up? Evaluating implementation of Government commitments to young witnesses in criminal proceedings. NSPCC/Nuffield Foundation 2009

⁴ Scottish Executive (2008) Report on the Analysis of Responses to the Consultation on Intermediaries as a Special Measure for Vulnerable Witnesses, Edinburgh

⁵ 23,758 in the 12 months to February 2011 in England and Wales ; Joint Inspection Report on the Experience of Young Victims and Witnesses in the Criminal Justice System, HMCPSI/HMIC, February 2012 .

In the year 2011/ 2012, 1006 children and young people across the UK talked to the service about being involved in court cases (past or present), children's hearing and custody cases⁶. 242 children were counselled at Scottish bases about these issues, although not all of these children will be living in Scotland⁷. It is imperative to set this relatively small number of children talking *specifically* about „court cases“ in the context of the far wider numbers of young people who contact ChildLine about all forms of abuse and other deeply traumatic life events which seriously impact on their mental, emotional and social development and their engagement with children's services and the adult world in general. ChildLine hear consistently from these young people about the complexity of their feelings about abusers - not least fear and love; the deeply entrenched feelings of guilt and self-blame they experience; the range of impacts on their own behaviour, their reticence in seeking support from the adult world and their reliance on friends and peers for guidance.

Child victims and witnesses

Some of these issues are illustrated in contacts from young people who talk to the service about being involved in court cases, as follows:

There's no way I'm going to tell anyone. I couldn't talk in front of all those people.

I've no one to talk to about it. It's been ages since it happened and it still hasn't gone to court. My social worker said something about lack of evidence, but I don't understand. I wish I had never told anyone.

I'm in a really bad situation. I was sexually abused by my Dad's friend. I'm so worried about going to court that I can't sleep. I can't sleep with this hanging over me.

My mum and dad split up. Dad hurt mum. Dad has a court case – I'm going to court on February 16th I'm terrified. I don't want to go against my dad.

I'm nervous about going to court. If my neighbour gets put away, I'll get a kicking. His family don't believe me. Cutting myself makes me feel better.

What is most apparent from the substantial number of calls ChildLine receive is the complexity of issues that young people are facing, and subsequent fears and concerns about giving evidence – real or perceived. These are young people whose lives have been turned upside down, who are intensely vulnerable, who often can lack support, who must give accounts of what has happened to them to an adult world they may have no trust in. These are young people whose behaviour can be erratic, who in many cases have not started to make sense of what has happened to them, who even long serving professionals can struggle, at times, to communicate with effectively. These are young people who may not even be perceived as „victims“ – as recent sexual exploitation cases have made us all so painfully aware.

⁶ ChildLine summary statistics 2011/12; Key facts and figures April 2011- March 2012

⁷ ChildLine summary statistics 2011/12; Key facts and figures April 2011- March 2012

We believe that the experiences of children and young people, as set out above, highlights the need for a range of special court measures to improve the quality of evidence and reduce the risk of further trauma being suffered by young victims of abuse.

Additional information

We would also welcome greater consideration of the types of support available to children and young people after their involvement in court proceedings. NSPCC Northern Ireland runs a Young Witness Service which is a free, independent and confidential service offered to children and young people who are under 18 years old, their families, friends and supporters who have to attend court as witnesses. The service is provided by a combination of social work staff, other qualified staff and trained volunteers. It aims to assist children and young people and their parents or careers before, during and after any trial so that they can give the best evidence to the court and prevent any further trauma caused by their experience. NSPCC Scotland believes that the proposals outlined within the Victims and Witnesses (Scotland) Bill highlights the need for a similar child witness service in Scotland to ensure that children and young people receive appropriate levels and types of support before, during and after giving evidence.

Conclusion

NSPCC Scotland greatly welcomes the Scottish Government's commitment to strengthen support for victims and witnesses in Scotland. We believe that the Bill contains a number of proposals which have the potential to improve the experiences of children and young people who become involved with the criminal justice system. Ultimately, it is our view that a range of special court measures are required to improve the quality of evidence and reduce the risk of further trauma being suffered by young victims of abuse. It is vital this happens throughout the court process. Better evidence means justice is far more likely to be secured for victims.

For further information, please contact:

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