



There for young people 24/7

Includem 

Pre-Recording Evidence of Child and Other Vulnerable Witnesses

Consultation Response from Includem

Background

Includem is a specialist Scottish charity which provides intensive, personalised support for vulnerable young people and their families. We believe that no young person is beyond help and that with a responsive, consistent service at the time of most need we can rebuild relationships and deliver positive, sustainable outcomes.

Our practice experience is in supporting young people to live safely in the community. We provide young people with support at times of greatest need, including supporting young people through court processes. We encourage all young people we work with to be aware of their rights deriving from the United Nations Convention on the Rights of the Child.

Overview of Consultation Response

We welcome the opportunity to respond to this consultation on the ways in which children and other vulnerable witnesses can be safe and protected, and where and children and young people can be supported in reliving traumatic experiences.

The paper gives a good overview of the strategic context in which the consultation has been developed, in particular with relation to the Barnahus concept, and in detailing the types of special measures already in place to support children and other vulnerable witnesses.

Our position is that children should not have to give evidence in a formal court environment, and that they should be protected from potential trauma invoked in such an environment.

This is reinforced by the strong evidence base which exists regarding the merits of pre-recording evidence and the long-term benefits such an approach has for the wellbeing of a young person involved.

Firstly, pre-recording evidence has been demonstrated to reduce levels of stress and trauma for children and vulnerable witnesses, by avoiding a situation wherein they have to wait to testify and wherein their levels of stress and discomfort are exacerbated by delays.

This is of particular benefit for children, for who memories are shorter-lived and who have a lesser developed sense of recall. Any delays can hinder this ability, potentially impacting on the ability of a child or other vulnerable witness to access and secure justice.

Such delays can be a long time in the life of a child, and can affect their emotional and intellectual development. Pre-recording evidence removes the burden of evidence from a child, enabling them to move on from the incident, and protects them from potentially having to provide evidence in a trial setting, and in front of an environment potentially involving a defendant or accused.

Pre-recording improves the quality of evidence, with research strongly indicating that when child and other vulnerable witnesses have their evidence taken after an incident and in advance of a criminal trial, the evidence is of such a high quality it benefits the judiciary process, leading to improving decision making. (*Spencer JR and Flin RH, The Evidence of Children: The Law and Psychology (2nd ed, Blackstone, 1993)*).

Additionally research conducted in Australia and New Zealand has indicated that it is rare for children and young people to be recalled to give further evidence, because of the quality of accounts provided in a non-court setting, enabling them to exit the process at an early stage and avoid any trauma incurred through having to attend and testify in a trial setting. (*Hanna K, Davies E, Henderson E, Crothers C and Rotherham C, Child Witnesses in the Criminal Courts: A Review of Practice and Implications for Policy (The Law Foundation, Auckland, 2010)*).

With this evidence in mind we would strongly agree that there should be a future presumption that child and other vulnerable witnesses have all their evidence taken in advance of a criminal trial. Accordingly we are pleased to see the emphasis on ensuring that in future all child witnesses in Scotland have their evidence recorded as early as possible in the process.

As part of this process we would expect that the rights of children derived from the UNCRC are fully acknowledged and incorporated, as the rights of the child must always be paramount when they are involved in a criminal trial, irrespective of their status within the context of that trial.

We would also emphasise the positive statement such a change makes to how children and other vulnerable witnesses are seen in Scotland. In particular it would be an important and progressive statement about how Scotland views children and young people and their wellbeing, building upon the progress made in committing to raise the age of criminal responsibility from 8 to 12 years of age.

For more information on Includem or our services please contact Michael Shanks, Policy Manager on 0141 427 0523 or email michael.shanks@includem.co.uk