



Includem Consultation:

Improving victims' experiences of the justice system

Includem welcomes the opportunity to respond to the consultation on Improving Victims Experiences of the Justice System. Fundamental to our response is the insight from children and young people that have been victims of offences and their experiences of making a complaint. While court processes are not within our core expertise, trauma informed practice and bringing the voices of those we support to the heart of decision making is central to our work. All quotes are from young people supported by includem.

A Victims' Commissioner for Scotland

Questions 1-4 and 6

For any independent Victim's Commissioner for Scotland to allow for the voices, experiences and views of those affected by crime to be heard, it must have **remit over the entire victim's journey**. To truly meet the needs of victims, it must be able to hold justice authorities to **account** and advocate for victims, particularly under-supported young people. **This must start from the beginning, such as when they make a complaint**, as this is often the most challenging point for victims to feel heard.

"I felt they had made a judgement before they even started..."

There should be no limit to the 'type' of victim (criminal justice or civil justice) that are deemed worthy of support and advocacy. This includes victims in relation to the Children's Hearing System, as arbitrary division between child victims of harm by children or by adults will create unnecessary barriers – particularly for those with experiences of both systems. Such limitations could lead to practice that can limit victim's access to justice.

"The CP officer advised me not to talk about it until I was 16 years old because it would be dealt with differently..."

The Commissioner must recognise that often children who have engaged in offending behaviour have themselves been victims of crime. Victim support and advocacy should not be lost in these more complex circumstances.

"If you have a bad experience with the police in the past, they treat you different even when you are the victim."

There is a danger in limiting its remit to the representation of victims in these systems – as many can't reach them. For example, what consideration is given to the experiences of children and young people who enter the child protection system who are victims of harm?

Further, how does the Commissioner's remit limit or overlap with the scope of the Children and Young Peoples Commissioner?

Questions 4, 8, 10 and 12



No matter what accountability structure is settled on for the Commissioner, this **must include accountability to and engagement with those with lived experience** of navigating the justice system to report a crime / as a victim. This will help ensure that the Commissioner's central purpose – to represent victims – is maintained. It should have a specific duty to engage with children and young people, whose experiences and ability to advocate for themselves will be vastly different to that of adults. This must include young victims who have also engaged in offending behaviour, as they are often discounted due to their past.

“Everyone needs help – they have all been traumatised by the experience.”

The failure to recognise their needs and take complaints seriously can lead to re-traumatisation and an escalation in new or existing offending behaviour, leading to further victims. Engagement could be linked with community-based organisations undertaking restorative justice support programmes - allowing for outreach activity through trusted relationships to help address distrust in public services and authorities.

Question 13

Includem strongly disagrees that the Commissioner should not have the power to champion or intervene in individual cases. In situations of complex needs for those seldom heard in practice and proceedings, there must be an avenue to support victims when serious misconduct is putting their physical or mental health at risk.

“This will be one of the most traumatic times of our lives so can't afford for you to get it wrong. Complaints aren't enough.”

This is particularly the case for under-supported young people, child victims of family members and in situations of children's rights violations. In these cases, the Commissioner could provide a valuable and time sensitive safety net for those who do not have the support or the ability to advocate for themselves.

“If you are the victim and have an undiagnosed condition you get no help.”

“My dad manipulated them when it came to the investigation.”

Options to underpin trauma-informed practice and person-centred approaches

Questions 15-18

Includem wholeheartedly agrees that a requirement to operate in a trauma-informed manner as a general principle is crucial to ensure victims needs are met and to safeguard from re-traumatisation. While legislative precedence in the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 is of value, (while we recognise this will not have had full effect in this short period of time) these settings are still experienced by victims as clinical.

“The lack of dignity in the physical examination might tip you over the edge.”



Any legislative mention and specific reference in Standards of Service to shift this in criminal justice agencies must be backed by thorough implementation at the practice level that is continuously and independently vetted. While guidance is helpful, this must come alongside accountability. All those who come into contact with victims should be expected to take a trauma informed approach.

“We are sick of putting our faith in things that fall through because their priorities change.”

Question 27

We welcome the commitment to delivering person-centred and trauma informed practices across the justice system. The aim to strengthen rights and improve experiences of victims of crimes as they engage with the process of justice is critical. However, these proposals are missing key factors in their approach.

While there is a general recognition of the need for a Whole Systems Approach, at no point in the consultation document is there a reference to current work underway in the development of ‘Bairns’ Hoose’. Especially due to the focus on child victims, there needs to be a much clearer link to the current Scottish Government visions that by 2025, “*all children in Scotland who have been victims or witnesses to abuse or violence... will have access to trauma-informed recovery, support and justice*” in one space in a co-ordinated approach ([Bairns’ Hoose – Scottish Barnahus: vision, values and approach, 2022](#)) . With the view of preventing retraumatisation of children and plans to reduce the number of times they have to recount their experiences; we call on greater clarity in how their accounts in Bairns’ Hoose will be used and considered in courts.

“You can tell them that the questions are making you suicidal and they just keep asking them.”

Additionally, greater clarity is needed on how this will align with the Scottish Child Interview Model, currently being rolled out. The challenges it is facing in being rolled out in remote or smaller authorities could provide useful learning on the challenges to implement changes to improve victims’ experiences in a homogenous way across vastly different areas. If the intention is to ensure that child victims are supported to give their best evidence, we must ensure the justice system works alongside these developing measures.

“They take a statement from you and then they ask about that statement over and over. Even then they sometimes don’t give you the time to say what you want to.”

However, the focus on interactions with courts does not acknowledge that for many young people, reaching past point of complaint can be incredibly difficult. Currently the system fails to deliver a person-centred approach from first point of contact, and legal terms used during interviews can have unintentional effects of discouraging victims.

“...Repeatedly asking the same question over and over again made me feel like I wasn’t believed.”

“Using words like allegation makes me feel like you don’t believe me from the very start”



This leaves young people desperately trying to seek justice and help, only to cause them more distress and growing distrust in the justice system.

“I just don’t have the trust these things will happen because I have had so many negative experiences.”

We agree that it is vital to ensure a system that is gender responsive and effectively challenges men’s offending behaviour. However, there is a lack of recognition and protection when these perpetrators are family members or known to the victim. This must be considered in any victims support and advocacy to ensure children and young people are not put back in harm’s way when trying to make a complaint.

“...not being believed and then being sent back home to the people they weren’t believed about.”

Any legislation seeking to improve victim’s experiences must include a right to mental health and wellbeing support - directly offered when victims begin their journey in seeking justice and routinely checked.

“Referral for mental health support should be automatic – don’t wait until it actually becomes a problem.”

This should include support after proceedings and any judicial process – no matter if it has resulted in prosecution or conviction. We must recognise that in the experiences of victims, justice in the current system is not always guaranteed and that legal rulings are focused on the legal status of the case, rather than fully representative of a victim’s real-life experience.

This support must be flexible to needs – whether through a trusted person to provide comfort during witness statements or in more official routes. This must however recognise the gaps in existing public support systems, and how they may not provide fitting support in these circumstances.

“I want someone to make me comfortable.”

“It took me at least 6 months to get to the right support.”

“CAHMS advice is the worst – it is the same advice all the time even when it isn’t working.”

Anonymity for complainers in sexual offence cases

Questions 34 and 35

Particularly for young victims, an automatic right to anonymity should take effect from the moment an allegation for sexual offence is made. This should include all sexual offences, including in relation to photography or film showing a person in an intimate situation and offences in the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005. This is necessary in recognition that in today’s world, young people experience heightened online sexual harassment and grooming, and recounting these experiences and unwanted publicity can have considerable damage to their mental and physical health and their future.



Questions 37, 39, 40 and 41

Includem somewhat disagrees that it should be possible to set aside right to anonymity during childhood (up to age 18 as defined in the UNCRC). Particularly in recognition of the impact that adverse childhood experiences can have on brain development, we cannot expect children and young people to know or understand the full scope of the long-term implications of publicly sharing their identifying information in connection to sexual offences. To ensure there are protections from media exploitation, there must be official routes, such as an application to the courts, to ensure oversight and consider the complex balance between their right to protection in their best interest and their right to have a say in matters affecting them, including judicial processes.

Introduction of independent legal representation for complainers in sexual offence cases

Question 55

While includem recognises that we do not have expertise in legal representation, it is clear from accounts of children and young people that they need individual advocacy and support during their journey through the justice system. This is not only to ensure they are protected from wrongful oversight and their needs are recognised, but also to ensure they are continuously receiving information in a way that is understandable to them.

“This needs to be given to me every step of the way not just at the start!”

“The right to be regularly updated on the process/steps/decisions.”

“The right information in a format that works for me.”

“This needs to be given to me in a way that I understand, not lots of words, or pressure to just agree.”

“To genuinely feel involved and to know all the things that are happening in the background.”

There must be greater clarity on how this will interact with or support work underway to Keep the Promise regarding child centred legal advocacy and representation.

Impact Assessments

Question 79

These proposals could have major impacts on children’s rights, and greater information is needed of their implementation and their interaction with existing measures being rolled out. For example, there are a number of UNCRC articles that must be considered:

- **Article 2** (non-discrimination): the Victims Commissioner must include representation of those who are both victims harm and who have harmed others or



- those who have not been able to access the formal justice system, particularly considering experiences of stigma some young people experience.
- **Article 3, 16 & 36** (best interests of a child; right to privacy; and other forms of exploitation): any decisions on setting aside anonymity must be in the best interest of the child, ensure it protects their privacy and prevents media exploitation.
 - **Article 12** (respect for the views of the child): a young person must be supported to share their views, and these must be respected and taken seriously throughout their journey in the justice system if a person-centred approach is to be achieved. As shown from accounts of not being believed, representation and advocacy from the Victims Commissioner must include all types of young victims.
 - **Article 13, 17 & 42** (freedom of expression; access to information; and knowledge of rights): young people must be supported to access information on their case, in a way that is understandable to them. They must have independent advocacy and support to ensure they have full knowledge of their rights throughout their journey through the justice system. This must be considered to achieve a person-centred approach and the inclusion of individual representation.
 - **Article 19 & 34** (protection from violence, abuse and neglect and sexual exploitation): particularly in cases where the perpetrator is known to the victim, we must ensure children and young people are not sent back into potential situations of harm due to not having their experiences fully heard and considered. The Victim's commissioner must have powers to intervene in individual cases where a child or young person has been unable to advocate for their own safety.
 - **Article 39** (recovery from trauma and reintegration): all young victims, no matter the result of their judicial proceedings, have the right to recovery from trauma. A guarantee for adequate and fit for purpose mental health and wellbeing support is critical to improve victim's experiences.

In spirit of **Article 4**, children's rights, and considering impacts on them, should not be an afterthought in decision making. Children's rights should be considered with greater depth before, during and after development of proposals and their consultation (rather than post consultation) for experts and representative organisation to comment adequately.

In conclusion...

For children and young people who have been harmed to have confidence in the justice system, they must be supported throughout their journey – from complaint to recovery from trauma. We must be able to recognise that previous failures to believe victims or ensuring that their needs are adequately met have led to greater distrust and contributed to long term poor outcomes including being in conflict with the law, challenges with addictions and mental illness.. All these proposals require consideration of a Whole Systems Approach in recognising links to measures already being undertaken, in particular with the development of Bairns' Hoose. There must be a greater emphasis on implementation and accountability to ensure change is truly felt for those most at risk of retraumatisation when seeking justice. Without a strong commitment to children's rights at each point of development to improve victims' experiences, children and young people will



continue to be deterred from reporting crime, be retraumatised and lack faith in the justice system and its ability to protect them.