

**Social Fieldwork Research**  
**Child Participation in Justice Report**  
**United Kingdom, 2012**

FRANET contractor: Human Rights Law Centre, University of Nottingham

Authors: Cooper D., Harris D., Weatherburn A.

This document was commissioned under contract as background material for comparative analysis by the European Union Agency for Fundamental Rights (FRA) for the [project children and justice](#). The information and views contained in the document do not necessarily reflect the views or the official position of the FRA. The document is made publicly available for transparency and information purposes only and does not constitute legal advice or legal opinion.

## **Table of Contents**

### **EXECUTIVE SUMMARY**

#### **1. BACKGROUND**

##### **1.1 Research Methodology**

##### **1.2 Sample**

##### **1.3 Legal Context**

#### **2. FINDINGS**

##### **2.1 Right to be heard**

2.1.1 Right to be heard in criminal justice

2.1.2 Right to be heard in civil justice

2.1.3 Concluding assessment on right to be heard

##### **2.2 Right to information**

2.2.1 Right to information in criminal justice

2.2.2 Right to information in civil justice

2.2.3 Concluding assessment on right to information

##### **2.3 Training and co-operation of professionals**

2.3.1 Training and co-operation of professionals in criminal justice

2.3.2 Training and co-operation of professionals in civil justice

2.3.3 Concluding assessment on training and co-operation of professionals

##### **2.4 Horizontal issues**

2.4.1 Discrimination

2.4.2 Best interest of the child

2.4.3 Differences and similarities in regional, national, international context

##### **2.5 CoE Guidelines**

#### **3. CONCLUSIONS**

##### **3.1 Overarching issues**

##### **3.2 Research**

##### **3.3 Any other issues not covered in previous sections**

#### **ANNEX 1 –Documentation**

#### **ANNEX 2 - Resources**

#### **ANNEX 3 -Tables**

## EXECUTIVE SUMMARY

- This report represents the findings of a qualitative research project which looked at the views of legal and social professionals on the extent and quality of children's participation in criminal and civil justice proceedings. It is one of a number of contributions that will contribute to a comparative overview on EU compliance with the C of E guidelines on child friendly justice.
- So-called 'special measures' are the primary means of facilitating child witness' involvement in criminal justice proceedings, though non-statutory measures and adaptations to traditional questioning techniques also play an important role. In practice a restricted range of measures are available to all child witnesses with further measures available only to the extremely young or those with particular vulnerabilities over and above their youth. Criminal justice professionals in general are supportive of children's special measures use and recognise that without them few child witnesses would have a voice within the criminal justice system. Although available for around 25 years, it is only within the last decade that their acceptance has gained a significant foothold. Nevertheless, there are significant local variations in use and funding pressures threaten consistency of practice. There is also some way to go before special measures support is fully and routinely available to all young witnesses who fit the statutory definition of a child.
- Children participate indirectly in family law proceedings in the civil courts with the exception of the Children's Hearing system in Scotland. In England & Wales the CAFCASS guardian is primarily responsible for determining and reporting to the court the child's wishes and feelings, and this system is widely applauded. In the Children's Hearing system, the child participates directly in a court hearing but one which is designed to be less formal and more child friendly than the normal court setting. At a broad level, professionals felt that both systems allow children a voice whilst making decisions in the child's best interests. Both face challenges in achieving children's active participation whilst also ensuring the quality of their voices. The emphasis on negotiated agreements in private law proceedings means that children are rarely heard regarding the agreements that parents make over their children's future care arrangements.
- The formal provision of information to children on the judicial process and the child's role within it is good for both criminal and civil justice systems. However, professionals recognise the limits of written materials and the benefits that are achieved when a professional is able to provide personal and tailored explanations to a child.
- Training on dealing with children involved in judicial proceedings is available but not extensive. Most focuses on legal rules and court procedures though social professionals have access to training on communication techniques that many legal professionals would also like to access. Almost all professionals value inter-disciplinary methods of training and sharing good practice.
- A child's background or individual circumstances should not be a barrier to his/her effective participation in judicial proceedings as it should always be possible to access the appropriate support services. Interviewees had experience of supporting ethnically and culturally diverse children as well as those with physical or learning disabilities and language support needs.
- Family law proceedings are well designed to work in the best interests of children. In criminal proceedings the best interests of child witnesses are never the paramount consideration, which is to respect the fair trial rights of the defendant. Nevertheless it is possible to give a higher priority to children's needs than was previously considered possible.

## 1. BACKGROUND

### 1.1 Research Methodology

The objective of this research is to assess the ways in which children participate in criminal and civil justice proceedings in the UK, with a specific focus on the extent and quality of children's involvement in judicial hearings. The research will contribute, together with the outputs of similar research projects in other EU member states, to a comparative overview of how, and to what extent, the Council of Europe guidelines on child-friendly justice are applied across the European Union. In the UK, the research project comprised a small-scale, qualitative study of the views of legal and social professionals working with children involved in justice proceedings. It therefore provides data on the perspectives of professionals on children's experiences. Its scope is restricted to the experiences of children involved with the criminal justice system as victims or witnesses or directly involved in family proceedings in the civil courts. The primary research methods employed are desk-based research to produce a legal overview of the rules regarding children's participation in judicial proceedings and semi-structured interviews and focus groups to produce qualitative data regarding the practices and procedures in place to support that participation.

The research team sought fifty participants, twenty-five legal professionals and twenty-five social professionals, for individual interview. In addition we sought to run four focus groups (two criminal and two civil) comprising a mix of legal and social professionals. As a first step, the project team identified the type of legal and social professionals involved in the relevant justice proceedings in the UK. These were:

- Criminal legal professionals: judges; barristers; solicitors; prosecutors; police officers.
- Criminal social professionals: intermediaries and witness service staff.
- Civil legal professionals: judges; barristers; solicitors
- Civil social professionals: CAFCASS guardians; social workers and child psychologists.

The intention was to recruit broadly equal numbers of participants from each professional group. The research team used a number of approaches to the recruitment of participants. Requests for academic research with government agencies in the UK are now sufficiently frequent that almost all have in place approval procedures that must be negotiated before access to individual research participants is granted. To this end the research team submitted applications to, and received access approval from, the following agencies:

- The judicial office
- The Crown Prosecution Service (CPS)
- CAFCASS (Child and Family Court Advisory & Support Service)
- One major City Council
- One major County Council

The time to prepare and submit an application and receive approval varied from one to three months. Once approval at an agency level was obtained, a number of methods were used to secure the participation of individual professionals. Two agencies provided the research team with lists of potential participants. Three others used internal mechanisms to advertise the project and request volunteers. A further two City Councils and the Ministry of Justice (who facilitated access to the centrally held list of registered intermediaries) did not require formal research applications and they too advertised internally for volunteers. Unfortunately, of the three, only the Ministry of Justice

proved able to recruit any individual participants. More informal, direct, approaches were made to legal and social professionals not employed by government agencies. The research team contacted barristers and solicitors either known to have the relevant expertise or identified from legal directories as working in the relevant area. We also contacted Victim Support Witness Service providers in a number of court areas where efforts were being made to recruit other professionals. Once a list of potential participants had been compiled, a written invitation to take part in the project was sent to each one. Invitations were largely accepted by professionals employed by government agencies. The acceptance rate was lower amongst self-employed professionals or those employed by a partnership or private company, e.g. solicitors.

This approach to recruitment was not entirely satisfactory. Firstly, the period available to the UK research team in which to secure participants' agreement was very short. The lead researcher was not recruited until the beginning of June 2012 and interviews were scheduled to commence at the beginning of July 2012, which meant that the recruitment of participants continued after the first interviews commenced. The pressure to recruit participants quickly resulted in an interviewee population largely shaped by individuals' willingness to participate, albeit that earlier attempts had been made to balance the professional backgrounds of those canvassed. Ideally the balance of professions and geographical locations within the interview population would have been reviewed and adjusted prior to the commencement of interviews, but this proved not to be practical. In addition to these time pressures the UK research team experienced difficulties in recruiting local authority social workers, despite the clear support of the local authorities for the project. We can only speculate as to the causes of social workers' reticence, but it is likely that very heavy case loads since the 'Baby P' case<sup>1</sup> and a resulting natural reluctance to expose their practice to anticipated criticism played a role. Furthermore criminal proceedings involving child victims and witnesses in the UK provide limited roles for social professionals. As a result, the UK research team interviewed unequal numbers of legal and social professionals.

Secondly, the methods of selection used are likely to have skewed the interviewee population towards professionals who engage in or endorse best practice. Whilst this is beneficial in terms of identifying good practice and encouraging reflection upon how systems and procedures might be improved, it runs the risk of misrepresenting the routine level of support provided to children in judicial proceedings. Lastly, the UK research team experienced significant problems persuading interviewees to attend focus groups. Interviewees were reluctant to give more time to the project, particularly to discuss in group format issues they had discussed individually. Those based at some distance from the focus group location were the least likely to agree. Accordingly, slightly more than half of the focus group participants were new to the project and, as with the initial pool of interviewees, social professionals proved to be the most difficult to recruit, particularly in Scotland.

Interviews were conducted by two British interviewers. The lead interviewer is female, aged between 45 and 65 and holds a PhD in law (University of Nottingham). She has experience of empirical research on the treatment of child witnesses in the criminal justice system of England and Wales. The second interviewer is also female, aged between 18 and 25, and holds an LLM in law (University of Nottingham). She is employed as a research assistant within the Human Rights Law Centre at the University of Nottingham. Neither researcher experienced difficulties that could be

---

<sup>1</sup> Haringey Local Safeguarding Children Board, *Serious Case Review: Baby Peter* (2009) available at <[www.haringeyslscb.org/executive\\_summary\\_peter\\_final.pdf](http://www.haringeyslscb.org/executive_summary_peter_final.pdf)>.

attributed to the relationship between interviewer and interviewee. However, this project was the second interviewer's first experience of empirical research and as such the quality of the interviews improved with experience. Interviews conducted by the first interviewer tended to exceed the FRA guideline of forty-five to sixty minutes, generally because the interviewer used follow up questions to uncover the underlying meaning of interviewees' initial comments.

Both interviewers experienced difficulties with the common interview schedule for criminal and civil justice systems and for all professional roles. Few professionals were able to give an equal perspective on all issues raised in the schedule and the interviewers felt that questions tailored to the individual's role would have been a more efficient use of interviewees' time and have allowed more insight into each interviewee's area of expertise. In addition, both interviewers conducted interviews where the interviewee expressed strong views on the impact of substantive rules of law on children's lives. Although outside the scope of the project, researchers allowed interviewees some latitude in this to ensure continued cooperation with outstanding research questions. Following interview, the researchers excluded three participants from the sample, one because the audio quality was too poor to allow accurate transcription and two because the interviewees were not directly involved with children's hearings. All remaining interviews were transcribed and the transcript used to complete an FRA proscribed reporting template. The UK research team had limited success in generating the reporting templates in parallel with the interviewing phase of the project. The team was still engaged in seeking and securing the agreement of potential interviewees, resources were reduced as the interviewing phase coincided with the summer holiday period and lastly the analysis of each interview transcript and generation of the associated reporting template was a resource intensive task that took around seven hours to complete.

Data analysis comprised two main streams. Firstly information regarding the research was recorded and manipulated in spreadsheets to generate an analysis of the sample characteristics. This data is described in section 1.2 below. Secondly the contents of each reporting template were reviewed and categorised to identify both recurring themes and particularly notable perspectives amongst the interviewees. A summary of the key findings together with the research team's observations on the interviewees' perspectives is described in sections 2 and 3 below.

## **1.2 Sample**

The UK sample included 66 interviewees (including focus group participants). As a result of recruitment difficulties (see 1.1 above) it comprised fewer social professionals (25) than legal professionals (41). When split by type of justice system, it included 30 criminal justice professionals (18 legal and 12 social), 29 civil justice professionals (17 legal and 12 social) and 7 who worked within both the criminal and civil justice systems (6 legal and 1 social). Of the total 66 participants, 44 were interviewed individually; 8 were both interviewed individually and participated in a focus group; and 14 participated in a focus group only. In total 52 professionals took part in 50 one-to-one interviews (two involved joint interviewees) and 23 professionals took part in 3 focus groups. Although the FRA requested that we conduct 4 focus groups,<sup>2</sup> we experienced particular problems recruiting interviewees in Scotland (see 1.1. above) and so conducted two focus groups in England but only one (civil) in Scotland. Furthermore, the Scottish focus group comprised solely legal professionals. See Table 5 in the annex for details of the breakdown between professional groups.

---

<sup>2</sup> We interpreted the Guidelines as requiring only two focus group meetings for the UK as it is not a federal state (see Guidelines, p.6). When requested midway through the fieldwork to hold focus group meetings for Scotland, we were able to arrange a focus group for civil proceedings, but were not able to organise and report on a criminal proceedings focus group meeting for Scotland in the time available.

The total sample comprised 20 male and 46 female interviewees. The gender imbalance was most marked amongst social professionals. Overall, 4 times as many social professionals were female as male. For social professionals involved in criminal proceedings, the participants were almost exclusively female (11 out of 12) whilst in civil proceedings the bias was less pronounced (twice as many females as males). A gender imbalance also existed amongst legal professionals (26 out of 41 were female) but a preponderance of male judges acted to counter the female dominance amongst lawyers and prosecutors. Although attempts were made to recruit more male participants, the UK experience was that, on the whole, female legal and social professionals dominate in judicial proceedings concerning children. All participants were aged over 25 and only 2 were aged over 65. The majority (37), for varying reasons, fell within the age range 45 – 65. Certain positions, for example judges, CAFCASS guardians, and Registered Intermediaries tended towards the more mature professional because of the requirement for prior experience as a legal or social work practitioner. It is also possible that in approaching lawyers (solicitors and barristers) known to be specialist in the field, the research methods incorporated a bias towards older professionals.

The distribution amongst the FRA defined professional groups is shown in Table 4 of the Annex. A number of points must be made. In the UK the role of guardian is fulfilled by a social professional with a social work qualification and thus these professionals are included within the social worker category. Mediators in the UK were judged to have insufficient contact with the children involved in family proceedings to merit inclusion in the sample. Attempts at securing interviews with court staff (such as court ushers) were unsuccessful. Legal professionals categorised as ‘other’ included two civilian staff from a police operated ‘Witness Care Unit’ and two Scottish Children’s Reporters whose role is described in section 1.3 below. Social professionals interviewed comprised largely social workers, either working for local authorities in child protection roles or working for the Child and Family Court Advisory and Support Service (CAFCASS) in the role of guardians. Victim Support staff do play a role in supporting victims and witnesses at court in criminal proceedings and so were included but NGO staff have no direct role in judicial proceedings involving children in the UK and so were excluded. Registered intermediaries play a central role in supporting children with communication difficulties in justice proceedings and so were included in preference to interpreters and are categorised as ‘other’ social professionals.

Within these categories of profession, the sample included a diverse range of job titles/functions. Legal professionals were as follows: district judge; circuit judge; sheriff; Children’s Hearing panel member; barrister/counsel in family law; barrister/counsel in criminal law; youth court solicitor; family law solicitor; solicitor-advocate; senior crown prosecutor; legal adviser; children’s reporter; police officer; Witness Care Unit manager/staff member. Social professionals were employed as: social worker; family court advisor/guardian; psychologist; registered intermediary; witness service delivery manager/volunteer; trauma care worker. Interviewees came from a range of public organisations, independent statutory bodies, private organisations and charities. Almost all interviewees were judged to be ‘actors’ in proceedings (52 out of 66), with almost all supporters taking part in criminal proceedings.

The majority of interviewees (46) worked or practiced in urban areas or large cities. The remaining 20 interviewees were located in smaller cities or towns and none was located in a genuinely rural setting. This reflected the tendency of the legal firms and government agencies involved with child related proceedings to be located close to court centres, although the children involved in such proceedings may reside at a distance from those court centres in rural locations. Reflecting its

position as the most populous country within the UK,<sup>3</sup> most participants were from England (51 out of 66). Furthermore, as England and Wales share a common legal and judicial system, only a small number of Welsh interviewees (3) were included in the sample. On the basis of its population and the similarity of its legal and judicial system to that in England and Wales, no interviewees from Northern Ireland were included. Scotland, however, has a distinct and legal and judicial system and therefore the sample included 12 interviewees from Scotland.

During interview criminal justice professionals, if they commented on specific offences against children, tended to focus on sexual and physical assault. Around half, typically those involved with offences tried in the lower courts, claimed no specialism and discussed children as victims of or witnesses to any criminal offence, including property offences. Within the civil justice system, professionals tended to work in both public law care proceedings (child protection proceedings initiated by the state) or private family law disputes (residence, contact or specific issue disputes), though care proceedings formed the bulk of most interviewee's case loads. Domestic violence did not emerge as a prominent theme amongst interviewees. In criminal terms it seemed that prosecutors tried to avoid calling children as witnesses in such cases and in civil terms domestic violence was frequently but one of the issues leading to the initiation of care proceedings

All interviewees had a good knowledge of the way children participate in the type of proceedings with which they were connected and took a reflective approach to their practice. Each interviewee's contribution is of course shaped by his/her personal as well as professional ethics and values, though we might make some (limited) generalisations about specific professional groups. As might be expected, legal professionals on the whole demonstrated greater knowledge of court procedure whilst social professionals spoke in greater detail about their interactions with children outside of formal court hearings. Social professionals tended to be more aware of children's family situations and their possible impact on child's ability to speak freely, though criminal legal professionals discussed the role that family play in encouraging children to take part as witnesses. Legal professionals focussed on how to ensure that children's voices can be heard whilst social professionals, in particular children's guardians, tended to focus on the quality of children's voices. Lawyers and judges raised the due process rights of other parties to proceedings more frequently than any other professional group. Social professionals showed greater awareness of cultural needs in determining how to interact with a child. Interviewees' knowledge about wider research was related more to the extent of their personal interest in children's issues than their professional background. Almost all felt limited in their abilities to assess how children's hearings impact upon children, feeling that children are best placed to speak for themselves on the matter.

Overall, the average length of each interview was 1 hours 20 minutes, with a minimum of 40 minutes and a maximum of 2 hours 17 minutes. The average length of the interviews conducted by the lead researcher was 1 hour 27 minutes, with a minimum of 45 minutes and a maximum of 2 hours 17 minutes. The average length of the interviews conducted by the second researcher was 1 hour 8 minutes, with a minimum of 40 minutes and a maximum of 1 hour 37 minutes. Both interviewers experienced high levels of confidence and confidentiality in all of their interviews. The majority attracted low levels of interruptions, but 14 were categorised as medium and 1 as high.

---

<sup>3</sup> Approximately 84% of the UK population live in England, 8% in Scotland, 5% in Wales and 3% in Northern Ireland. The population of London exceeds the population of each of Scotland, Wales and Northern Ireland. See <<http://www.ons.gov.uk/ons/rel/census/2011-census/population-and-household-estimates-for-the-united-kingdom/index.html>>.



Three focus groups were held: two in England (civil and criminal) and one in Scotland (civil). In general the discussions were very balanced and the moderator ensured that all made a broadly equal contribution to the discussion. In the Scottish group, though all participants contributed equally, discussion points tended to be split between the group of professionals who work in the Children's Hearing system and the group of professionals who work in the normal court setting. All focus groups demonstrated a high level of confidence and a high level of confidentiality. Both English focus groups attracted a medium level of interruptions but that in the Scottish focus group was low.

### **1.3 Legal context**

#### England and Wales: Criminal proceedings:

The Youth Justice and Criminal Evidence Act 1999 (YJCEA 1999) lays down a framework for hearing from child victims and witnesses in criminal proceedings which aims to keep them out of the courtroom. This is achieved through two primary 'special measures', video-recorded evidence and live TV link. Additional special measures are available to be used, if necessary, in combination with those primary special measures, the most common of which is an intermediary to assist during interview and/or examination in court and screens where a child declines the opportunity to use a live TV link. No differentiation is made between victims and witnesses in terms of the level of special measures support available.

Child victims' and witnesses' first contact with the criminal justice system is with the police. Best practice for police interviewing of children is laid down in Ministry of Justice guidelines (2011), *Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses and guidance on using special measures* (ABE). Children's ABE interviews may be video-recorded and shown at the later trial in place of the child's evidence-in-chief, provided that the child agrees, and is available to attend the trial for cross-examination, and that the video is 'likely to maximise the quality' of the child's evidence. Cross-examination, or the child's evidence-in-chief if video is not used, is conducted either using a live TV link which allows the child to be questioned from outside the courtroom or from a screened witness box. If a child, by reason of his/her extreme youth or specific communication difficulties requires it, a registered intermediary may be used to advise and assist the police on appropriate questioning techniques and to assist in communicating questions/answers during the police interview.

The Crown Prosecution Service (CPS) makes pre-trial special measures applications to the court based upon information contained in the police file or provided by the Witness Care Unit. At trial, a young person's video-recorded ABE interview stands in place of his/her evidence-in-chief. Alternatively, if no video exists, the child gives evidence via the live TV link, unless the child has expressed the wish to testify from the witness box in the court room, behind screens. Cross-examination currently takes place orally at trial, again either via the live TV link or from the witness box behind screens, though proposals are in place to pilot an as yet unimplemented provision of the YJCEA 1999 for pre-recorded cross-examination. This provision would allow for a child to be cross-examined at a pre-trial hearing, which would be video-recorded and then shown at trial. A supporter from the Witness Service accompanies the child at court and depending upon local rules may also accompany the child in the live TV link room along with a court usher. If a registered intermediary is to be used in court, 'ground rules' for the type of questions to be put to a child are agreed at a pre-trial hearing and the intermediary appears at the trial to assist the judge in determining whether counsel are complying with the ground rules.

There are no legal rules regarding the provision of information on criminal proceedings to children. The police and Witness Care Units share responsibility for explaining the legal process to children, their role in it and the special measures which have been granted. The CPS takes responsibility for communicating any significant decisions regarding the prosecution to the child and/or parents. The Witness Service offers the child a pre-trial court familiarisation visit and counsel and advocates meet all child witnesses immediately prior to their testimony.

#### England and Wales: Family Proceedings

Courts do not routinely hear directly from children in either public (local authority applications for care or supervision orders) or private (residence, contact or specific issue disputes) family law proceedings. However, a requirement to listen to children is enshrined in statute. Under s.1 of the Children Act 1989, in any decision regarding a child the court must have regard to the 'Welfare Checklist' which includes the ascertainable wishes and feelings of the child (considered in light of his/her age and understanding). The mechanism to determine those wishes and feelings differs between public and private law proceedings. In all public law cases the child is a party to the case but is allocated a CAFCASS guardian to conduct the proceedings on the child's behalf. The guardian appoints a solicitor to provide legal representation for the child in what is known as the 'tandem model' of representation. The CAFCASS guardian is responsible for ascertaining and reporting on the child's wishes and feelings as part of his/her duty to make recommendations to the court on what future care arrangements are in the child's best interests. Where the guardian's view of future care arrangements is in conflict with the child's view, it is possible for the child to be separately represented. The child's solicitor assesses (i) whether the child is (*Gillick*)<sup>4</sup> competent to give instructions and (ii) whether the issues warrant separate representation. If separate representation is necessary, the guardian will appoint a second solicitor to represent him/her in court, though in Wales the guardian may be represented by the Welsh Government Legal Service.

In private law cases the child is not routinely a party to the case. However, the Family Procedures Rules allow for a child to be made a party in particularly difficult or complex cases. Then, as in public law proceedings, the child is represented by a CAFCASS guardian and solicitor and the child's voice is heard through the guardian's report. Where the child is not a party to the case, the court may request that a welfare report is prepared by a CAFCASS Family Court Advisor which should contain the child's wishes and feelings. Alternatively the court may rely on a CAFCASS letter which presents a preliminary assessment of the parents' views of the issues in the case and background checks (police and social services) on the family. If the court is satisfied that the parents have been able to reach an agreement which is in the best interests of the child, it may endorse that agreement with no further enquiries and in such cases the child is given no opportunity to express his/her views to the court.

It is for the judge in each family law case to decide whether to meet a child who has asked to meet him/her. Such meetings are generally held in chambers, are fully documented and disclosed to the parties in the case, and are additional to the standard mechanisms for seeking the child's views on his/her future care arrangements. There are two situations in which a child may participate in a family court hearing. Firstly, though infrequently, it may be necessary to hold a finding of fact hearing as part of a public or private law case at which a child may be required to give evidence. The

---

<sup>4</sup> A legal definition in English case law derived from *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] AC 112. A child will be regarded as 'Gillick competent' when he/she has sufficient understanding and intelligence to be capable of making up his or her own mind on the matter in question (*per* Lord Scarman) see 2.1.a of UK Lot 27\_Child Participation in Justice Legal Overview

Court of Appeal laid down guidelines for when a child should be called to give evidence in family proceedings in *Re W* [2010] UKSC 12 and the Family Justice Council Guidelines are to similar effect. Where there are concurrent criminal proceedings a child's video-recorded ABE interview may be shown in place of live oral evidence. At the discretion of the court, the child may be cross-examined which may, depending upon the facilities available at the specific court, take place over the live TV link. Additionally children who are the subject of secure accommodation hearings are brought to court. As a matter of principle, it is important that children are able to attend and take part in such deprivation of liberty hearings and on a more practical level their attendance also facilitates their potential removal to secure accommodation.

There is no set process or procedure for informing a child about the family law proceedings with which he or she is concerned. In public law cases, the CAFCASS guardian takes responsibility for explaining the legal process and also for keeping the child informed about the progress of the case and the final decision made. In private law proceedings, if one has been appointed, the CAFCASS guardian or Family Court Advisor fulfils the information giving role; otherwise it is for the parents to inform children about the proceedings and explain the final decision of the court.

#### Scotland: Criminal Proceedings

Scotland has a special measures regime similar to that in England and Wales intended to keep child victims and witnesses out of the criminal courts when testifying against adult, though there are differences in the precise nature of the measures available. The Criminal Procedure (Scotland) Act 1995 provides standard and non-standard special measures and the Vulnerable Witness (Scotland) Act 2004 creates a presumption that all children under 16 years-of-age will use standard measures unless they are not necessary in the individual case. Standard measures are live TV link, screens and witness supporters. Non-standard measures, including the taking of a child's evidence by a commissioner in a pre-trial hearing and the use of a (video-recorded) prior statement, are rarely used. Special measures support is equally available to victims and witnesses.

Child offenders are generally not brought before the courts in Scotland, which uses a Children's Hearing system to combine the considerations of welfare and justice for children who are referred to the Scottish Children's Reporters Administration on offence and/or care and protection grounds. A Children's Reporter investigates the case using welfare and police reports (including police interviews with any child witness) and decides if compulsory supervision measures are required. If so, a hearing before a Children's Panel is arranged. Child witnesses do not appear as witnesses before a Children's Panel unless the panel decides that the issues in the case are contested and so refers it to a court, when a sheriff will decide on the contested issues and refer the case back to the Children's Hearing for disposal. When child witnesses give evidence before a sheriff they may use the same special measures as are available to children giving evidence in an adult court.

The police are responsible for investigating cases involving child victims or witnesses and best practice for interviewing them is laid down in Scottish Executive guidelines (2011), *Guidelines on Joint Investigative Interviewing of Child Witnesses in Scotland*. These guidelines proscribe joint, visually-recorded, interviews by special trained police officers and social workers. Although such interviews may stand in place of the child's evidence-in-chief at court, standard practice is for the child to give live oral evidence (both evidence-in-chief and cross-examination) over the live TV link or from a screened witness box in the courtroom. A witness supporter may accompany the child in both the live TV link room and the courtroom. Prior to their appearance at court, the party calling

the witness must serve a notice either detailing the special measures or stating that none are required. The Children's Reporters Administration sends written information about the Children's hearing system and the child's role within it to child witnesses. The Crown Office and Procurator Fiscal Service fulfil the same role for child witnesses in the Sheriff Court.

### Scotland: Family Proceedings

Private family law proceedings are heard in the Scottish courts system. As in England, the courts in family law cases do not hear directly from the child. In all private law cases the courts send the child a form (Form F9) asking for the child's views on his/her future care arrangements. The court may also take further steps to hear the views of the child. Most commonly the court appoints a Reporter, who is usually an experienced family lawyer but may also be a social worker, to compile a welfare report. Alternatively the Sheriff may speak to the child in chambers or invite the child to address the Child Welfare hearing which is held in every case. A child aged 12 or over is presumed to have sufficient maturity to express a view and may also, in exceptional cases, become a party to the case and instruct legal representation. Exceptionally, the court may hold a proof hearing to resolve a disputed issue of fact to which a child may be called to give evidence. At such hearings children may use the same range of special measures as are available to children in criminal proceedings.

Public law proceedings are dealt with in the Children's Hearing system (see Criminal proceedings above) provided both the child and the child's parents accept the grounds for the referral. If the grounds for referral are not accepted, or if the child is not of sufficient age and understanding to consent, the case is referred to the Sheriff who determines whether the grounds are made out before sending the case back to the children's panel. Children appearing before the Sheriff have the right to legal representation and are eligible for legal aid.

The Children's Hearing Panel consists of three lay members drawn from the local community. The child is a party to proceedings but is not generally legally represented. All children referred to a panel are obliged to attend the hearing unless excused by the panel, which is rare. Children's views are expressed directly to panel members who, if they feel that the child's voice cannot be properly heard, can order that all adults and professionals vacate the room whilst the child speaks. Where children are unable to express themselves sufficiently well, or where there are issues of conflict, the panel may appoint a Safeguarder to ascertain the child's views and communicate them to the panel. In limited circumstances, such as where the child has no understanding of the process, has mental health difficulties or is at risk of being placed in secure accommodation, the panel may approve legal representation for the child.

The Children's Reporters Administration sends written information about the Children's hearing system to the child when they issue the grounds for referral. The child's social worker is responsible for explaining this written information to the child and ensuring that they understand both the process and the grounds for their referral to the Children's Hearing.

The Children's Hearing (Scotland) Act 2011 introduces two changes to the Children's Hearing system that have yet to be implemented: (i) the provision of advocacy support to children in advance of the hearing to enable their better preparation and (ii) the centralisation of the Scottish Children's Hearing Association which is currently locally organised to ensure the consistent administration and operation of Children's Hearings and consistent practice across Panels.

## 2. FINDINGS

### 2.1 Right to be heard

#### 2.1.1 Right to be heard in the criminal justice field

Current Practices, England & Wales: The police exercise discretion in how to take a child's initial statement but almost all victims of sexual assault and any type of familial abuse are interviewed by a specialist police unit where video recording under the ABE guidelines is standard practice. The treatment of children who are the victims of less serious offences is much more variable and children interviewed by non-specialists officers very often give a written statement.

*Quote: "Specialist teams are pretty aware of [video-interviews] because it's their everyday bread and butter... Frontline officers, [video-interviews] are a world that's not everyday for them, but they are dealing with children every day."*

Video recorded ABE interviews are conducted in specially appointed, informally furnished, rooms approved by Her Majesty's Inspector of Constabulary and designed to put the child at ease. One police officer conducts the interview, usually alone but in the presence of an intermediary if the child has communication difficulties. Another officer and a supporter (a family member or social worker) observe the interview from an adjacent room, the officer to ensure all relevant matters are covered and the supporter to reassure and comfort the child. There is no minimum age for an ABE interview; it is for the officer in the case to decide if the child is sufficiently mature to understand the questions put and be understood in return. Children under three years-old are unlikely to be able to take part in a criminal prosecution and in practice most children are over the age of seven or eight. During the interview young children may use toys or action figures to describe their experiences. Where a video-recorded interview has taken place, it is almost always used to replace the child's evidence-in-chief at court, barring technical difficulties. Live evidence given orally at court is generally through the live TV link but a significant number of older children choose to give evidence from the witness box whilst screened from the defendant. Registered intermediaries are increasingly used to support very young children or children with a specific disability that makes communication difficult. An intermediary can assist in planning and executing the police interview, provide a written report to the court on the child's communication capabilities and advise during the child's evidence if questioning is inappropriate. Nevertheless, only a minority of children are supported by intermediaries and other special measures. Judges almost always ask children if they would like wigs removed, but many prefer judges and counsel to conform to their TV and film inspired expectations. Modern judicial practice with child witnesses is more interventionist than in the past and judicial expectation is that advocates adapt their questioning techniques to ensure children are given a fair opportunity to answer questions. Thus questions must be short, linguistically and structurally simple and use appropriate language. The length of questioning should be appropriate to the child's age and ability to concentrate and regular breaks should be allowed.

Although the Crown Prosecution Service is responsible for making special measures applications to the courts, prosecutors have no personal contact with witnesses prior to trial and rely on the police and the Witness Care Units (WCUs) to provide information on the child's wishes and needs regarding special measures support. The court grants special measures applications at a pre-trial hearing and the WCUs liaise with court staff to arrange those statutory measures. The WCUs also liaise with the court based Witness Service to arrange non-statutory support measures such as pre-trial familiarisation visits, arrival at a separate entrance from the public and defendant, and the use of separate waiting areas.

The prosecuting advocate meets the child at court prior to trial, as do some judges, though then both prosecuting and defence advocates are likely to be present to reassure themselves that judicial impartiality is not compromised. When a child uses the live TV link he/she is accompanied by a Witness Service volunteer whilst waiting to give evidence and a court usher, an intermediary if appointed, and possibly, depending upon local practice, a Witness Service volunteer during the televised testimony. Only those professionals conversing with the child, the judge and prosecuting and defending advocates, are visible on the TV screen. If the child appears in court to give evidence from behind a screen further people are present, including the defendant, prison or security staff, a jury if the trial is in the Crown Court, legal representatives, social workers, court staff and the public.

Current Practices, Scotland: The broad structure of children's appearance before the criminal courts in Scotland is similar to that in England & Wales, though the detail of the special measures available differs. The experience of practitioners in this study is that video recording is a relatively recent innovation and that fewer children in Scotland are video-interviewed than in England & Wales. Practice differs from England & Wales in that video-interviews are joint investigative interviews conducted by a specialist child protection police officer and a social worker according to the *Guidance on Joint Investigative Interviewing of Child Witnesses in Scotland* (2011). City based social workers trained to conduct joint investigative interviews work on a rota and are co-located with police officers to allow a quick response to requests for interview. Interviews are usually conducted in a monitoring suite furnished with sofas, toys and books for children and cameras equipment. Where children have difficulty accessing the monitoring suite, interviewers may use mobile recording equipment, though interviewers do not favour the child's home because of the possibility of inappropriate interruptions. Despite the possibility of using a video-recorded joint investigative interview in court in place of the child's evidence in chief, the experience of criminal justice professionals in the research sample was that it rarely occurred. By far the most common special measure used is live TV link, though, as in England & Wales, some, particularly older, children chose not to do so and appear, screened, in court. Intermediaries are not formally available to witnesses in Scotland though a judge in the research sample described using a speech therapist to assist a child witness with communication difficulties. Whilst using the TV link a child is accompanied by a supporter and a member of court staff. If the child gives evidence from the witness box, the Sheriff, crown prosecutor, defendant, defence counsel, court staff, and, if requested, a supporter will also be present as may a jury, depending upon the seriousness of the offence.

#### Overall assessment of practices with regard to impact on child and proceedings

All criminal justice professionals in the research felt that the support provided to children through the system of special measures was (i) effective in easing the worst aspects of participating as a witness in criminal proceedings and (ii) for most children, the determining factor in giving the child a voice in criminal justice proceedings. Several legal professionals identified as a critical factor the early identification of children's eligibility for specialised support but felt that the systems in place to do so are not always effective, in either England & Wales or Scotland.

Quote: *"While the law is super, we're still working on embedding it in practice."*

Problems in recognising the youth of a witness are most commonly caused by poor communication between agencies and poor recording of data. However, more than one professional highlighted the failure of certain legal professionals – particularly the police but also some advocates - to accept vulnerability of older, teenage, children. The failure in an individual case to initially identify children's

support needs has implications for putting special measures in place later in the criminal justice process and additionally hinders active judicial case management of children's needs.

Support for the most commonly used special measure, live TV link, was widespread. The prime benefit cited was that the live TV link protects the child from seeing both the defendant and the public. However, televised testimony is not without its problems, in particular the restricted view of the questioner that the television screen offers the child. A small number of respondents highlighted that for some, though not all, children the 'talking head scenario' can be unsettling.

Quote: *"They just thought it was weird to speak to a sort of disembodied head."*

For this reason, those professionals who expressed a view supported the use of screens as an alternative for children who feel more comfortable interacting in person with their questioner. Indeed it seems that for older children, the child's wishes in terms of the way they give evidence will carry significant weight and will generally be determinative.

Quote: *"If the child says or the parent of a child says my child will not be videoed, do you allow that suspect not to be prosecuted or go with the victim's wishes and obtain a statement? Really it's the better of the two evils."*

Professionals, both legal and social, with experience of video-recorded interviews recognised that in principle they are a good way of presenting children's evidence to a court. They allow the child's contemporaneous account – or at least one given as soon as possible after the incident in question – to be put before the court and at the same time minimise distress to the child who is not required to repeat his/her account. Nevertheless, the experience of the prosecutors in this research is that video-recorded evidence is generally reserved for children who have been a witness to a serious offence investigated by a specialist police unit and that child witnesses to lower level offences or offences against other children are unlikely to be video-interviewed.

Judicial activism in controlling advocates' questioning techniques appears to have played an important role in improving the experience of child witnesses. Judges' greater willingness to intervene to stop inappropriate questioning has been encouraged by their own experience of intermediaries and by support from the Court of Appeal for the adaptation of adversarial process for child witnesses. Intermediaries are a relatively recent addition to the range of support measures available to children and currently are formally available only in England & Wales. Criminal justice professionals in this study widely supported their use and acknowledged the contribution they make to improving the suitability of advocates' questioning techniques for children, both in the individual case and in general. Nevertheless, it is plain that cost and operational convenience make intermediary involvement the exception rather than the rule. Police officers in particular are apt to consider whether the witness's need fully justifies the delay that seeking out an intermediary involves. So, the limited availability of intermediaries, and of video-recorded evidence, demonstrates that good practice in terms of hearing children in the criminal courts is not universally applied. It would appear that the special measures with the most potential to impact upon a child's experience at trial are available only to those who suffer the most serious crimes or have additional vulnerabilities over and above their youth.

Quote: *"At the top end of the scale ... I think the system is fantastic, really good. I can't think that it could be that much better... The area I think we fail on is lower level offences... I think that's a*

*weakness in the process. The courts aren't geared up to do it, because of the massive volumes of cases going through."*

Non-statutory support for children was also praised, including good provision of information (see 2.2.1 below) but also sympathetic support at court. Legal professionals universally complemented the work of Witness Service staff who arrange and conduct pre-trial familiarisation visits and give moral and emotional support during children's time at court. Separate waiting rooms and entrances to ensure that children do not encounter the defendant or his/her associates are also highly valued.

Legal and social professionals in the sample seemed to agree that children's evidence carries no more, but no less, weight than an adult's testimony. The important thing is not to refuse to listen to a child. Thereafter the credibility of the evidence is assessed on its individual merits.

Quote: *"Evidence is evidence; you've got to weigh it"*.

Nevertheless, there was a definite sense of increased receptiveness to children's evidence, both amongst criminal justice professionals and juries. Several interviewees speculated that this is a product of a society which has become more cognisant the prevalence of sexual abuse, both generally and within the family. Hand in hand with goes an increased recognition within society that young children are capable of giving accurate accounts of their experiences. Some interviewees suggested that in fact children's evidence can be highly persuasive.

Quote: *"A seven year old, to give really enormous detail about a sexual act including where and when and what actions were performed and so on; it's almost like – well, there's only one way she could have got this, because it happened."*

However, as one judge pointed out, weight is a matter for juries and is something that criminal justice professionals cannot control

Quote: *"I think that there are a lot of people in society who are sceptical about whether children will tell you the truth about certain things... That of course feed into verdicts that you get from juries."*

#### Comparative assessment of practices by professional groups

A noticeable distinction between legal and social professionals was the increased emphasis that judges and counsel placed upon the quality of the evidence placed before the court. Accordingly, the majority of these professionals were critical of prescriptive special measures use for children. Although all broadly accepted that the majority require special support to testify at all, they asserted that where a child is sufficiently mature to cope with court process he/she should do so on the ground that live evidence is more compelling than televised testimony. Counsel, some judges and also some Witness Service staff agreed that televised testimony flattens or deadens the impact of a witness's evidence. Counsel, in particular, tend to take the view that some personal contact between the witness and fact-finder is necessary for an accurate assessment of veracity and accordingly they feel that removing the child from the courtroom should be a last resort.

Quote: *"TV link is like watching TV., even then it's not good TV, because children... are fidgety, moving in and out of the camera shot. The camera is fixed; the audio is not always great. [Live evidence] is much more compelling for the prosecution."*



However, most professionals other than counsel, even those who described a qualitative difference between live and televised testimony, believed that a slight detriment to the impact of the evidence is justified to ease the trauma of testifying. There are also differences between different legal professionals. Although in the round video-recorded interviews are well respected, and despite the existence of clear and detailed guidelines, advocates (solicitors and counsel) and judges were critical of the police interviewing techniques they have seen. Criticism in the main is that interviews are too long, not consistently edited and that questions should be better focused on issues in the case. Almost all counsel and judiciary interviewed felt that they could contribute to training to improve standards.

Social professionals placed more emphasis than legal professionals on the quality of the child's experience during their time at court. Witness Service staff observed that poor treatment whilst waiting to testify can be as emotionally damaging as the experience of testifying itself. All were critical of the amount of time children are kept waiting before they are called to give evidence and the facilities available during that waiting period. Issues can be very simple to address. For example, although toilets and drinks are available, witnesses are required to bring their own food.

*Quote: "There is nowhere to get anything to eat, which isn't good. But if I've had the opportunity to speak to the parents before they come I tell them to bring sandwiches, sweets, biscuits and fruit. Because they get bored and they eat because they get bored."*

Furthermore, the waiting areas tend to be poorly equipped to entertain children from a wide age range and older children in particular are neglected. Most significantly, these social professionals felt that the financial implications for families of children appearing as witnesses, such as transport costs and subsistence whilst at court, are not acknowledged.

#### Comparative assessment of practices by any other background variables and roles of interviewees

There were two noticeable differences in practice between England & Wales and Scotland. Firstly, Scottish professionals suggested that there is less recognition of the need to adapt the questioning techniques used for children during cross-examination.

*Quote: "[W]e don't make any particular bow to children in terms of cross-examination, exam in chief, re-examination...the usual process unfolds."*

Further, Scotland makes no formal accommodation for the use of intermediaries though one Scottish respondent highlighted that their introduction, albeit under a different model from England, is under consideration. Finally, Scotland has a statutorily defined presumption of the age at which a child is sufficiently mature to testify, which in practice tends to be applied as something of a rule.

#### Good practices on individual and structural level

At a structural level, almost all professionals with experience of them believed intermediaries to be a significant source of support to children, both in the police station and at trial. Judges particularly liked intermediaries' reports detailing the child's individual needs, though two felt that intermediaries' presence in court will become less necessary as judges become more skilled and experienced. One legal professional described intermediaries as having the greatest potential of all measures to transform the experience of child witnesses, and another advocated an intermediary's report for every child under 11. Several judges and all intermediaries provided specific examples of cases where an intermediary impacted on the way a child was questioned. Many interviewees also

noted the wider contribution of intermediaries in educating legal professionals about the abilities of children and the most appropriate ways to obtain accurate information.

There were also a number of examples of good practice at an individual level. One police officer respondent described adding subtitles to a video recording of a child with a severe speech impediment so that the court could better understand his/her account. Intermediaries described various props to assist witnesses in using non-verbal means of communicating such as models of the child's home, time lines, and flash cards to use to indicate phrases such as "I don't know", "I can't remember" or "I don't understand." These techniques assist not only those children with limited verbal communication but also those who lack the confidence to assert themselves before an authoritative adult. Judges gave a number of examples of accommodations to the trial process that make the experience more tolerable for a child, such as arranging for the child to see the video in advance of the trial and managing the case so that the child is questioned in the morning.

*Quote: "The younger the child, the more important it is that they are cross-examined when they are fresh... There is a reason in primary school why you do maths in the morning, and art and crafts in the afternoon."*

One judge made it a rule to ensure that children meet all of those who will interact with them over the live TV link before the trial commences to reduce their fear of the 'talking head'. And another suggested that merely thanking a child after he/she has testified can transform a child's perception of the experience.

*Quote: "I think it's going down to see them afterwards, for them to see the judge as a human being... and for them to realise that they've played an important role in the process - whatever the outcome – is probably the best part of the experience for them."*

#### Areas of improvement

Several of the Scottish participants felt that intermediaries would be a valuable addition to the special measures they are able to use.

Social professionals in particular, though some legal professionals too, felt that the environment of live TV link rooms could be vastly improved at relatively little cost. The décor of the rooms is all too frequently aimed at young children, giving older, teenage, children the sense that they are not being treated seriously. In addition, children are often wait for long periods at court and so better facilities such as televisions and games consoles in the waiting rooms would be a great improvement.

The main statutory improvement that both legal and social professionals suggested was the implementation of pre-recorded, pre-trial, cross examination which is later shown to the jury during the trial. This has the advantage that, if for any reason a re-trial takes place, both the video-recorded evidence and the pre-recorded cross-examination are available to relieve the child of the need to testify a second time. It also ensures that the child's exposure to the criminal justice process is collapsed into as short a period as possible.

Prosecutors and solicitors advocated better pre-trial interaction with child witnesses to accurately determine their special measures needs and wishes. Prosecutors raised as a particularly troublesome issue in this respect the lack of case ownership in cases involving young and vulnerable witnesses.

Quote: *"I think this case management of having a lawyer from beginning to end on a case is a critical factor in quality of care for witnesses. If a case passes through 25 lawyers hands you will get [one] result, if the cases passes through one experienced lawyer you will get another result."*

### Ambivalent, open and challenging issues

Interviewees raised a number of intractable issues and concerns that have proved difficult to resolve. Many are related to funding cuts and resource constraints which have become more troublesome in the current economic climate. The limited use of intermediaries in children's ABE interviews is one such issue. This is problematic not simply in terms of the child's experience of the police interview, but also because it tends to set the expectation that an intermediary is not required in court. Respondents also highlighted underfunding of equipment and its maintenance and lack of investment in new facilities such as remote TV links. One interviewee described how a separate entrance for children at court could not be used because of insufficient security personnel to staff it.

A further issue raised by almost all of the interviewees was delay and the impact that it has both upon the quality of the child's evidence and his/her emotional health.

Quote: *"It's bordering on abuse.... I put it that strongly... A child being asked, a year, 18 months, 2 years later, about what's happened; it means they can't properly move on."*

Finally in practice there is unequal access to special measures support for all children. Provision tends to vary along three dimensions: the seriousness of the offence; the child's age; and whether the child is appearing for the prosecution or the defence. The tendency for a two-tier level of provision depending upon the type of offence that the child has witnessed has already been noted. However, it also seems clear that a significant number of professionals within the criminal justice system fail to recognise the vulnerability of children at the very top of the statutory age range.

Quote: *"I think there'll be a lot of 16 and 17 year olds who won't be considered as vulnerable and they should be considered."*

Defence witnesses rarely get access to the full range of special measures, particularly, video-recorded evidence and intermediaries.

### **2.1.2 Right to be heard in the civil justice field**

Current Practices, England & Wales: Although a party to the proceedings, children rarely participate directly in public law proceedings. This is a deliberate policy which envisages that children's interests are protected through the dual appointment of a guardian and legal representative. The guardian may be appointed pre or post first hearing and instructs the solicitor on the child's behalf, usually from an approved children's panel of solicitors. The guardian is under a duty to report the child's wishes and feelings to the court and so meets with the child to ascertain his/her wishes and feelings and to assess the child's needs. The guardian also assesses the child's level of understanding of the issues in the case to allow the court to decide how much weight to accord to the child's views. The extent to and mechanisms by which the guardian interacts with a child vary according to the child's age. With younger children interaction is predominantly play based, using games to uncover children's feelings about important issues. With older children discussion can be more direct, and guardians often seek out informal settings to encourage children's disclosure.

Quote: *“Often when you are taking people in your car to another venue they will begin a conversation... there is not that face to face [element].”*

CAFCASS has developed a range of materials that guardians may use to support their discussions with children. A ‘How it Looks to Me’ booklet allows the guardian to work with children to document their feelings about their family life, relationships, fears and worries, hopes for the future and the types of decisions they would like the court to make. Alternatively guardians may use a ‘My Needs, Wishes and Feelings Pack’ which contains a series of forms allowing children to express their thoughts on similar matters. In practice guardians choose from these or materials they devise themselves according to their perception of the needs of the child. Guardians also have flexibility about how they represent the child’s views in their reports. Quotes may be included in the report and children are encouraged to communicate with the judge in more direct fashion by writing a letter, sending an email, doing a drawing, sending a photograph or visiting the judge in person at court. Most judges agree to meet with children who express a wish to see them, though they have the discretion to refuse. At the final hearing the guardian may give evidence in court on his/her report and be cross-examined on its contents by the legal representatives of the other parties to the case, including the child’s legal representative if he/she is separately represented.

In private law proceedings children are almost never made a party to the case. One social professional with knowledge of research in the area commented that a child is made a party in around 4% of cases. Thus children in private law cases almost never have the representation of a guardian. Social professionals also agreed that in most cases the court neither orders a full welfare report, relying instead on the short CAFCASS letter for information about the child. Where parents can be encouraged to negotiate an agreement, the focus of CAFCASS is the safety of the child.

Quote: *“The bottom line for us is ‘is this child safe?’ it is not is the voice of the child being heard.”*

A CAFCASS officer working as a guardian in a private law case follows the same practices and procedures as if it were a public law case. A CAFCASS officer appointed as a Family Court Reporter takes a similar approach, though his/her role differs in that he/she is not specifically representing the interests of the child.

Generally, children are interviewed in their own homes. If a child meets with the judge in chambers, the guardian or judge’s clerk may also be present. On the rare occasions when children appear at a court hearing, in either public or private law cases, it is almost always a finding of fact hearing. Although in some court areas children may use special measures such as screens or live TV link, this depends upon local availability and many children appear in open court. Court rooms are designed to be less formal than a criminal courtroom and parties either sit around a table or in rows. The local authority and their legal representative, the parents and their legal representative, the guardian and his/her legal representative, the judge, the legal clerk and potentially any other intervening party such as a grandparent and his/her legal representative will all be in the courtroom.

Current Practices, Scotland: Scottish public law proceedings are generally heard in the Children’s Hearing system, though questions of proof and appeals are heard in the Sheriff Court. Children directly participate in these proceedings and, if they are of an age to be able to communicate, almost always appear in person before the panel. Thus Children’s Panels stand apart from other Scottish judicial proceedings in that there is no presumption as to the minimum age at which a child is sufficiently mature to be heard. Children also participate to give their views prior to the hearing. The Children’s Reporter, whilst preparing the ‘Grounds for Referral’, tasks the child’s social worker

with obtaining his/her views. The Children's Reporter sends the child an 'All About Me' form and a 'Having your Say' form which is completed with assistance from the social worker. Different versions of these forms are available for different age groups. In line with the status of the child as a party to proceedings, the 'Grounds for Referral' once drafted are sent to the child directly if he/she is aged 12 or over or to the child's parents for younger children. Children under twelve receive a letter explaining that a social worker will meet with them to discuss the reason for the hearing, though clearly those children who cannot read are dependent upon their parents or carers reading the letter to them. These notifications allow the child to prepare for the hearing and decide if he/she accepts the grounds. The panel cannot proceed unless the child and the parents accept the grounds as drafted. If they do not, the panel refers the case to the Sheriff Court for proof, though the Children's Reporter seeks to avoid a court hearing by negotiating a more acceptable form of wording with the parents.

Hearings take place before a three lay member panel and are attended by the child, the parents and the Children's Reporter. No formal dress is worn. Although not compulsory it is good practice for the child's social worker to attend. Depending on the child's circumstances, any of the following may also be present: foster carers or other family members, legal representatives (if approved), a safeguarder, a police officer (if the child is alleged to have committed a crime), education or health professionals, or other supporters (such as a children's advocate). Children's Hearing Centres generally comprises a hearing room and (at least one) waiting room. The waiting area is furnished with toys and reading materials. The hearing room is arranged like a boardroom with chairs around a large, oval, table at which the parties sit. In some hearing rooms there is a smaller table for children to sit and play at. At the hearing, which lasts between 45 minutes and an hour, the panel considers the social worker's recommendations and the parent's views but is also obliged to ascertain the child's views. The panel may question a child directly or seek to establish his/her views indirectly, for example whilst playing with toys. If, however, the panel feels that the child cannot adequately express his/her views, or if there are issues of conflict which require consideration of the child's best interests, the panel appoints a safeguarder who may, but is not required to, have a legal or social work background. At the conclusion of the hearing the panel may issue a supervision order, which details matters such as residence and parental contact. Supervision orders last a maximum of 12 months and must be reviewed by a Children's panel upon expiry.

In Scottish private law cases, Rules of Court require 'intimation' to inform the child that an important decision is to be made and that he/she has the right to express a view on that decision. The initial mechanism for ascertaining children's views is the Form F9, though the experience of the advocates in the research was that only a minority of children complete and return the forms. One of the advocates referred to research that indicated the rate of return is as low as 25%.

*Quote: "Maybe it is indicative in the rules that children's views must always be heard [but] in reality..."*

In addition to the Form F9, the Sheriff may appoint a Reporter to ascertain and report on the child's views or may wish to hear from the child directly at court. Again, however, the experience of the advocates in the research was that Sheriffs are reluctant to question children either in chambers or in court through fear that it may cast doubt on their impartiality. Those Sheriffs who are willing to meet children attempt to overcome that concern by recording and disclosing discussions to the other parties in the case. If a child does appear at court, he/she is entitled to use standard special measures. The professionals present when a child is heard in civil proceedings vary according to how

the child makes his/her views known. No professionals are present when the child completes the Form F9. If a Sheriff sees a child in chambers, the Sheriff's clerk is also present to make a note of the discussions. If a child appears in open court then a number of professionals may be there in addition to the parents and the child: the judge, the legal representatives of the parties, any experts; and other witnesses. If the child gives evidence using the live TV link then he/she is accompanied by a member of court staff and will see only the image of the questioner on the television screen.

#### Overall assessment of practices with regard to impact on child and proceedings

The extent to which children can actively participate in judicial proceedings depends upon their age. Very young children who have yet to acquire communication skills, and who comprise the larger proportion of children in care proceedings, cannot participate at all. For children capable of expressing a view, however, professionals across both jurisdictions agreed that in general terms the family justice process gives good opportunities for them to make their voices heard.

In England and Wales the system of indirect participation in public law proceedings was generally supported, as was the tandem system of representation. The role of guardians in providing independent assessment of the child's best interests was particularly praised, though experienced legal professionals questioned whether the voices of younger children who disagree with their guardians, but who are unlikely to achieve separate representation, can be heard above that of the guardian. In private law family proceedings children's voices are far less prominent, which gives cause for concern.

*Quote: "If the child has not been consulted about that agreement, and it has effectively been drawn up between adults, then where is the voice of the child in that process?"*

A number of social professionals, however, had concerns that though indirect participation allows children to be heard, for a minority of largely older children it does not allow them to feel sufficiently involved in the processes which decide their futures. These professionals did not advocate that children should be directly involved in court hearings, however. Rather they suggested that increased contact between the child and the judge in the case would almost always satisfy children's need for further involvement.

In Scotland, professionals by and large approved of the principles underpinning the Children's Hearing system but were split, and not along professional group lines, as to whether direct participation is the best way to elicit children's views. Furthermore, almost all Scottish interviewees acknowledged that most children would prefer not to attend. They agreed that despite attempts to make it less formal, a Children's Hearing remains a public forum dominated by adults.

*Quote: "It's very strongly focused on children's participation but the room is full of adults and adults very quickly take over... it can be very confusing for the child... [it] quickly becomes very difficult for the child's voice to have the prominence that it should."*

Younger children find it difficult to engage with the hearing at all. One social professional went so far as to suggest that the Children's Hearing system treats children as if they are adults and expects them to deal with an inappropriate volume of information about their lives.

*Quote: "There is too much pressure. It's almost as though we expect children to... behave in these situations as though they were adults; to be able to answer questions and discuss how they are"*

*feeling, risks and consequences, and think about best interests as if they were independent people, living independently. They are not treated as children.”*

Scottish Children’s Reporters Association research bears this out. It found that many children felt that the system was an alien environment and they did not know what was happening. However, interviewees felt that much depends on individual panel members’ practice and in particular their skills at communicating with children and creating a comfortable environment for them to speak.

A point made by interviewees across both jurisdictions was that children appreciate some form of direct communication with the decision maker in their case, though due process concerns in both jurisdictions mean that no private discussions are held with children. Direct communication between child and decision maker is obviously a key feature of the Scottish Children’s hearing system but is also welcomed by many judges in England & Wales. However, almost all interviewees pointed out that active engagement in the judicial process leads children to believe that their views may be acted upon. Particularly in public law proceedings, this is unlikely to be the case. More often than not children’s views are in conflict with what’s in their best interests and so it is vital that children’s expectations are carefully managed. Although equally an issue in England & Wales, the Scottish system of canvassing the child’s views in a public forum may make that task all the more difficult.

*Quote: “My view is why ask a child if they want to go home when you have read that... they can’t because they are being sexually abused? Why would you put a child in that position?”*

Furthermore, a significant number of interviewees highlighted the fine balance between making children feel involved in the process and over-burdening them with the responsibilities of decision making.

Professionals were less happy that children are adequately heard and consulted in private law proceedings. In both jurisdictions parents have ample opportunity to drown out their children’s voices. In England & Wales social professionals felt that in the absence of a welfare report request, parents are able to block access to the child and in Scotland parents can easily intercept or influence the completion of the form F9. The onus then is on the court to seek the child’s views.

#### Comparative assessment of practices by professional groups

In Scotland, legal and social professionals felt that the lay character of Children’s Hearing panel members can be problematic, though panel members themselves viewed it as a strength. Interviewees suggested that some panel members lack skills to interact with children and are insufficiently assertive in managing the professionals in the room to ensure that children’s voices are not drowned out.

*Quote: “... it surprised me how often panels didn’t take charge of the Children’s Hearing system, particularly when things got difficult.”*

Social professionals in England & Wales also had concerns about the quality of the child’s voice. Interviewees in both jurisdictions stressed the importance of finding techniques that (i) genuinely and accurately uncover children’s feelings and (ii) give children the opportunity to check that they have been properly represented. Social professionals in particular were aware that children in care proceedings are often so damaged by familial experiences that they are disinclined to engage with adults at all. Accordingly it is unwise to underestimate the amount of time and effort required to encourage such children to disclose their true wishes and feelings about future care arrangements.

Judges in England & Wales were particularly strong in their endorsement of the guardian system. They felt that it allowed for children's wishes and feeling to be accurately identified and reported, and valued the objective view of the child's best interests that an independent social work professional brings.

Quote: *"I think that [the child's voice] is well documented. I have much faith in the guardianship system."*

By contrast, social and legal professionals in Scotland had concerns about using Safeguarders with no professional social work qualifications to represent a child's best interests.

#### Comparative assessment of practices by any other background variables and roles of interviewees

Scottish and English private law proceedings stand apart in that in Scotland attempts are made to obtain the views of all children involved in the case whereas in England the system is, in the majority of cases, content to focus on the safety of parentally negotiated settlements and overlook the child's views. However, professionals observed that practice is not completely effective in Scotland. Not only is the response rate from children poor, so too is the way that the Scottish Form F9 is drafted.

Quote: *"... there are bits and pieces in capitals without realising that children see that as shouting."*

Furthermore, there was considerable doubt amongst Scottish legal professionals about the extent to which the courts seek out children's views in the absence of a returned form F9. The provision for children in Scottish private law proceedings also differs in the extent of special measures availability, which is good in Scottish civil courts but patchy in England & Wales.

#### Good practices on individual and structural level

Despite concerns about the detail of some aspects of the systems, interviewees in the relevant jurisdiction considered both the guardian system and the Children's Hearing system to be examples of good practice in engaging with the children subject to their proceedings. Interviewees felt that both gave considerable, but necessary, flexibility in allowing professionals to interact and communicate with children according to their individual needs.

At an individual level, social professionals suggested a number of good practices that practitioners might adopt to ensure children are properly heard, including attaching a photograph to the guardian's report so that judges can identify with children whose futures they are determining. A guardian also described an 'island game' that is highly effective in uncovering children's feelings about their family situation. The game has three islands each of which has a key. The child is asked to explain who occupies each island and the conditions in which they can move between islands. Children's responses indicate the parent (or family member) with whom the child feels most secure.

#### Areas of improvement

Professionals in the Children's Hearing system raised the possibility of independent children's advocates to enable children to better prepare for and participate in hearings, a reform (as yet unimplemented) included in the Children's Hearings (Scotland) Act 2011. A parallel might be drawn between this role and that of the guardian in England & Wales, though there are questions over the professional qualifications (if any) for this role and its introduction would require additional funding.



All of the professionals involved with Children's Hearings in Scotland had severe reservations about the practice of sending the 'Grounds for Referral' and all of the documentation on which those grounds have been based to children aged twelve or over. This material is sent to allow the child to make an informed decision on whether or not he/she accepts the grounds. Professionals had concerns not only about the ability of the child to understand such adult oriented documents, but also because it inappropriately exposes the child to the reality of the wider family's problems.

Quote: *"They get about 700 pages of quite detailed reports containing often quite distressing information. Everything about them, their school reports, what everyone has said about them."*

Quote: *"... sometimes, we don't want to be the person to tell the child that they were born out of incest, that your parents are drug addicts... I would say that is probably one area of concern, the social work reports. There is such depth, and they contain ideas and concepts that a child of 12 cannot be expected to understand."*

In England & Wales, whilst most interviewees were broadly happy with the current model of family proceedings, almost all felt that its operation and ability to listen to children effectively would be much improved with increased levels of funding.

#### Ambivalent, open and challenging issues

As with interviewees involved with criminal proceedings, those working in civil proceedings raised a number of issues and concerns related to funding cuts and resource constraints. In Scotland interviewees expressed concern over legal aid reforms which they expect to lead to the loss of experienced family lawyers which will have real impact on the quality of representation for children. Legal aid cuts are also an issue in England & Wales, where interviewees were fearful that the withdrawal of legal aid for family law cases will lead to an increase in litigants in person and so inappropriate parental reliance on the guardian for assistance. Additional pressure in England & Wales to enforce mediation in private law cases led to concern amongst participants that the child's voice will almost entirely be lost in proceedings where the child is already marginalised. At the same time resource cuts and increased referrals to the courts following the 'Baby P' case<sup>5</sup> are leading to increased caseloads for guardians in public law cases. Guardians amongst the research sample suggested that they are forced to spend less time with each child, running the risk that they will not be able to fulfil their primary objectives of assessing the child's needs and ascertain his/her wishes and feelings.

#### **2.1.3 Concluding assessments on the right to be heard**

Very many professionals doubted whether it is possible to make criminal judicial proceedings child friendly in absolute terms given the overriding objective of the criminal justice system to provide a fair and just process by which to determine a defendant's guilt or innocence. Although witnesses too have a just claim to be treated fairly, legal professionals in particular stressed that the defendant's fair trial rights ultimately have to take precedence.

Quote: *"You do have to remember that the defendant has to have a fair trial at the end of the day and if your case is that this child has come along to make the whole thing up, you actually do have to say it and in a reasonably convincing way, which can be upsetting to someone who isn't lying. There's no way around it really."*

---

<sup>5</sup> See note 1 above.

The challenge, therefore, becomes how to make proceedings as child friendly as possible within those due process constraints.

*Quote: "It will always be fairly traumatic. There's nothing you can do to avoid that.... All you can do really is make it as easy for them as possible... There's no way to avoid the issue that it is never going to be a pleasant experience for any witness."*

The general view amongst interviewees is that though statutory special measures support for children is longstanding, criminal justice professionals have been slow to accept children's need to be treated differently and that such treatment can be accommodated within the adversarial system without compromising defendants' fair trial rights. Nevertheless, good practice has become much more prevalent in the past decade:

*Quote: "I look back and hang my head in shame when I think of some of the cross-examinations I allowed ten years ago. [I did that] because I wasn't familiar with the research and I thought they were being done quite well [but] now... I'm far more interventionist if I need to be."*

*Quote: "I think we do have a history of hearing children, I think we have had a problem in the past in that we have tended to treat them as mini adults, we haven't made concessions in relation to children's understanding and ability to participate in the process, [but] we do hear them."*

Forward thinking interviewees felt that more could be done to temper the worst aspects of the adversarial process, for example interviewing children in a more child friendly environment than a police station and making wider use live TV links remote from the court building. No interviewees, however, felt that it would be acceptable to remove children altogether from the adversarial process in order to allow for their evidence to be taken in a completely child friendly manner.

By contrast, due process concerns, whilst present, played a far less prominent role in considerations of how best to hear from children in civil proceedings. In England & Wales and in Scottish private law cases the favoured approach is to retain an explicitly judicial system but keep children out of the courtroom whenever possible. In Scottish public law cases the predominant approach is to involve children in the judicial process but change the format of the hearing to accommodate their needs. Both approaches have claims to promoting children's participation but both raise issues. Children's Hearings probably provide the most child friendly format for a formal hearing, but some Scottish civil justice professionals argue that attendance does not equate to engagement with what essentially remains a judicial process. The guardian system in England & Wales purports to fully engage children by giving them an advocate to whom they may make their feelings known in out of court, relaxed, surroundings. However, English civil justice professionals point to the complaints of some children that they are excluded from the process.

*Quote: "I think what a lot of young people would say [is that] we had these people come and talk to us and listen to us, but still felt as if there was this process going on and we were completely excluded from it. Even though there were people spending time with them, listening to them, there are young people who still think, 'yeah, but I wasn't part of it'."*

Interviewees suggested improvements in both jurisdictions. Scottish interviewees pointed out that Children's Hearings must retain a judicial character: there are other parties with rights that have to be respected. A step forward then may be to recognise the judicial nature of the proceedings and

assist children to deal with that. Thus, in fact, allowing a child a legal representative – or, as legislation envisages, another form of advocate - might make the process more rather than less child friendly.

*Quote: “It is a legal process, you can’t trick the child into thinking that it’s not, but having someone advocate only for them... is a huge advantage for the child and for equality of arms and the child has more confidence if they have a lawyer.”*

In England & Wales, where guardians do advocate for children, interviewees recommended additional, direct interaction with the decision maker, though falling short of direct participation in court hearings. English civil justice professionals felt that even children who would like more involvement than expressing their views via the guardian do not wish to directly participate in court hearings or listen to the evidence of other parties and experts. But some personal contact with the person who is making the decision about their future seems to be the key to making children feel that their voices are better heard.

The value of an advocate for the child is perhaps a common lesson for the criminal and civil justice systems. Although child witnesses are not recognised as parties to criminal proceedings and so are not legally represented, intermediaries together with the witness service volunteers are the closest thing that the criminal justice process has to a (non-legal) advocate for the child. The interviewees in this research suggested that this limited form of advocacy assists not only in helping the child to be heard in the criminal justice process but also in supporting the child’s emotional recovery from trauma.

*Quote: “Our experience has been that where the intermediaries are engaged, the support has been incredible ... Between the intermediaries and witness service, you end up with victims and witnesses who have come to terms with the crime and are able to move on. That’s a massive step forward.”*

## **2.2 Right to information**

### **2.2.1 Right to be informed in the criminal justice field**

#### Current Practices:

Although there are differences in detailed procedure, the structure of information provision to children in England & Wales and Scotland is broadly similar. Firstly the child is sent written information on the criminal justice process and his/her role in it. Secondly the child is invited to a pre-trial familiarisation visit. In combination, these two methods explain court procedures to the child, and familiarise him/her with the court environment. Witness Care Units in England & Wales and Victim Information and Advice (VIA) staff from the Scottish Crown Office are responsible for sending written information to child witnesses in criminal proceedings (and their parents). The Children’s Reporter sends this information to children appearing in the Sheriff Court in a Children’s Hearing case which has gone to proof. The Scottish Executive and Ministry of Justice also make these booklets available on their respective websites.

The Scottish Executive publishes two set of booklets, one concerning child witnesses in criminal proceedings and another concerning child witnesses in Children’s Hearing court proceedings:

- Being a Witness: A Booklet for Children

- Your Child is a witness: A Booklet for Parents and Carers

These booklets are available in English and also online in a number of other languages: Arabic, Bengali, Cantonese, Gaelic, Hindi, Punjabi and Urdu. The same booklet is used for children of all ages. The Ministry of Justice publishes a range of booklets for children appearing as witnesses in criminal proceedings in England and Wales which are based on a series of Young Witness Packs originally published by the National Society for the Prevention of Cruelty to Children (NSPCC).

- Being a Witness: A Booklet for Young Witnesses Going to Court (age 14-17)
- Going to magistrates' courts (age 5-9)
- Going to Crown Court (age 5-9)
- Going to Court (age 10-13)
- Going to Court (age 10-13) – Welsh version
- Your child is a Witness (for parents)

Apart from the booklet aimed at 10-13 year-olds, which is available in Welsh, none is available in any language other than English. Some limited information regarding court facilities is available on the government public information website in different languages. The Court Service in England and Wales also produce a DVD, *Going to Court: A Step by Step Guide to Being a Witness*.

Age related materials have broadly the same content, but use age-appropriate language and styles of communication. Booklets for younger children are highly pictorial and use puzzles and games to engage the child's interest. Booklets for older children use fewer and more realistic images or diagrams and give information in greater detail. Each booklet provides information regarding: what a witness does; who will be at and what happens at court; special measures available; what happens after trial. Materials are usually posted to the child (or parents) but if a police officer wishes to do so, he/she may deliver them in person. In general, parents are expected to explain the materials to their children but in some situations criminal justice professionals may engage verbally with children to (i) give personalised information on how the child is likely to be involved in proceedings; and/or (ii) explain the written information that has been sent to them. Police officers (and, in Scotland, social workers) explain the video-recording procedures and, depending on the child's age and maturity, may also describe the later court process. Intermediaries may also play an additional role in explaining court processes to the child using materials appropriate to the witness's needs, e.g. symbols, pictures, charts, models, verbal explanations. At court the judge explains how the live TV link process will work and introduces the professionals who will question the child.

Referrals to the Witness Service for pre-trial familiarisation visits are made by the Witness Care Units in England & Wales and VIA staff or the Children's Reporter in Scotland. The Witness Service in the relevant court makes arrangements for children to visit to the court where they will give evidence in advance of the scheduled trial date. During the visit, children are shown the separate child's entrance, an empty court room, the witness waiting area and the live link room. They meet the court staff, practice with the live TV equipment and ask any further questions. Some areas offer a specialised Young Witness Service whose staff are able to visit the child at home in addition to conducting the pre-trial familiarisation visit. Specialised Young Witness Services have an enhanced toolkit of materials to explain the court process which is tailored to the age of the child and which also includes CPS produced leaflets describing the experience of being a victim of crime from the perspectives of two young people, one younger and one older.

### Overall assessment of practices with regard to impact on child and proceedings

Interviewees were generally positive about the quality of the materials available for children, but local experience in some areas was that pressure on public finances had reduced the availability of the hard copies of leaflets specifically targeted at children. Consequently standard, adult oriented information was sent leaving children and their families to access age appropriate materials on-line. Whilst the Scottish criminal justice system made good provision for information in languages other than English, similar provision in England & Wales is poor. There is an assumption that non-English speaking parents will arrange for someone to read the information to them, possibly a police officer with the appropriate language skills. In general, parents are relied upon to explain information to their children. The opportunity for professionals to provide tailored explanations occurs only in the few cases when police have engaged an intermediary.

Interviewees overwhelmingly agreed that it is essential for children to be properly informed and given a realistic description of their likely experiences if they are to be able to negotiate the criminal justice process. However, both social and legal professionals pointed out that children are individual in their needs. The content and timing of information must be carefully judged.

*Quote: "All they're bothered about sometimes is I'm here to tell them about my father raping me repeatedly for 10 years, last thing on their mind is how this is going to be translated to the court. Let the brain compute one thing at a time."*

*Quote: "Some children...want a full explanation, some would just like the bare bones, some would rather just next to nothing... Some want to be drip fed information, some want a great big bucket of it."*

*Quote: "Little children... [I] wonder how easy it is to explain to a very small child what the whole court process is about, and whether in fact it is in their interests to explain an awful lot... If they don't know an awful lot then, there's not a great deal to be scared of."*

Pre-trial familiarisation was also universally recognised as an essential part of the support offered to children in that those who attend court with some knowledge of what they might expect are less fearful and more confident in their testimony.

### Comparative assessment of practices

Social and legal professionals observed that children's opportunities to make express choices about which special measures they use are limited in some way. All interviewees described a system that assumes a standard set of measures unless a child speaks up to opt out and select an alternative. Some legal professionals, primarily counsel, asserted that more children would opt out of live TV link had they been given the opportunity to make an informed choice. Social professionals in witness support roles, in contrast, suggested that in practice counsel override children's choices to give effect to their own preference for live rather than televised testimony. Both perspectives raise the question of whether the criminal justice system is properly set up to canvass and communicate children's choices in a way which would allow them to be properly respected by the courts.

Social professionals were more likely than legal professionals to comment on the types of information they considered vital for children, particularly those who are also the victim of the offence. Two issues stood out. Firstly, someone must explain that though a child using the live TV link can only see the questioner's image on the TV screen, the child's image can be seen by everyone

in the courtroom, particularly the defendant. Social professionals consistently highlighted the distress children experience at trial when this had not previously been made clear. Secondly, effort must be invested pre-trial to prepare the child for the possibility that the defendant will be acquitted. The majority of interviewees felt that where children are properly assisted in understanding the burden and standard of proof issues in criminal proceedings, and that acquittal should not be equated to a lack of belief in their evidence, additional trauma can be avoided.

#### Good practices on individual and structural level

Interviewees cited a number of good practices relating to the provision of information. Several highlighted the value of tailoring information to the age of the child.

Quote: *“Sixteen year olds wouldn’t want to be popping out cardboard cut outs and six year olds wouldn’t be able to do a word search.”*

Almost all interviewees in a witness support role praised the opportunity provided during the pre-trial familiarisation visit to practice using the live TV link equipment. Interviewees in witness support roles also suggested two simple but effective practices that assisted in opening up a channel of communication and building a relationship of trust with the child. Firstly, to send a child a letter containing the supporter’s picture detailing when she will see the child next and secondly to make specific efforts to find a common point of reference with the child.

Quote: *“What I do sometimes... if there is something on the TV, like X Factor and Strictly come Dancing and they are of an age to watch that, I will ask them and say ‘did you watch it last week, who do you want to win?’ Personalising the conversation.”*

Finally, a Young Witness Service supporter gave an example of an ‘Outcomes Jigsaw’ that assists in preparing a child victim for the possible acquittal of the defendant.

Quote: *“... each piece of the jigsaw is somebody’s evidence... and when you put it together you can see exactly what that picture is and if the magistrates or the jury... can say that the person was guilty because it’s very clear... The other picture however, has a blurry bit, the umbrella. The shape of the umbrella is such that it could be a big blown up beach ball ... So the blurry bit shows that the jury or the magistrates don’t get a clear picture, and if they don’t get a clear picture then they have to say that that person hasn’t broken the law because it’s not absolutely clear. And they get it, and the parents get it and everyone gets it. This is a really good tool.”*

Guidelines suggest that a special measures meetings between the child, the prosecutor, the police officer and any intermediary in the case should be held before trial to improve the quality of special measures decision making. Though pressures on time and resource pressures makes these meetings the exception rather than the rule, a prosecutor in the research sample found them to be extremely useful in ensuring that the child’s voice is properly heard. Wider use of such meetings would allay the concern of other criminal justice professionals that children do not understand all of the options open to them and so do not make a properly informed choice.

#### Areas of improvement

In addition to widespread adoption of the good practices outlined above, the main improvement in information provision mentioned in England and Wales was to make all information leaflets available in foreign languages.

Quote: *“Generally, language is something that we’re not very good at and we’re very conscious of as well.”*

Quote: *“[Foreign language leaflets?] No there isn’t actually, how bad is that?”*

## **2.2.2 Right to be informed in the civil justice field**

### Current Practices

In England & Wales guardians (or family court advisers) take primary responsibility for informing the child about the family law process. They become involved with older children at a very early stage in the process to explain proceedings and how and why adults will be making decisions about their future. The extent to and mechanisms by which guardians interact with a child vary according to the child’s age. For younger children, those under 3 years old, it is impractical to engage in an information giving process but older children are sent leaflets explaining the relevant judicial process and the role of the children’s guardian. CAFCASS have developed a range of factsheets that are also published on the CAFCASS website.

- Younger Children's Private Law Factsheet
- Younger Children's Public Law Factsheet
- Older Children's Private Law Factsheet
- Older Children's Public Law Factsheet
- My Family’s Changing Leaflet (Younger child)
- My Family’s Changing Leaflet (Older child)

After the initial contact, and whilst interacting with the child to determine his/her needs and wishes and feelings, the guardian provides further verbal information in response to individuals’ questions. Judges, if they meet with the child, also explain their role and how they make a decision in the case. Towards the end of the proceedings, the guardian meets the child to explain his/her recommendations to the court, the local authority’s plan for the child’s care and the court’s final decision. Again, the judge may also see the child to explain his/her decision. In private law cases, where there is no-ongoing CAFCASS involvement, CAFCASS sends all children written information about the family court process but parents are left to explain that material <http://www.cafcass.gov.uk/media/2918/Younger childrens Private Law factsheet FINAL 0112.pdf> to their children.

In Scotland, both the Children’s Reporter and the social worker play a role in informing the child about the Children’s Hearing process. The Scottish Children’s Reporter Association (SCRA) has developed a range of leaflets for children about the Children’s Hearing system and their role in it which are available for different age groups: 5-8, 8-12 and 12+. The Children’s Reporter sends these leaflets to the child (or, for under 12s to the child’s parents) at the same time as he/she sends the ‘Grounds for Referral’. The social worker uses these materials as the basis for discussions with the child to explain what will happen at the hearing and to answer any questions. Depending on the child’s age and abilities the social worker may engage in play therapy. The Chair of the Children’s Panel is responsible for explaining the panel’s decision to the child.

### Overall assessment of practices with regard to impact on child and proceedings

Within the family law process, interviewees generally judged the written materials available to give children to be of high quality. However, almost all interviewees recognised that written materials have only limited impact. For children to gain real understanding someone else, preferably an adult, must go through the fact sheets and leaflets with them. In this there is a potential problem relying on families, particularly where children are involved with public law care proceedings.

*Quote: "One hopes that the parents would go through this with the child and talk to the children about them, but we're talking about dysfunctional families that don't provide a good level of child support."*

In addition, almost all children need to have information personalised to their particular situation. One interviewee described the point at which the materials are presented to a child as being 'a point of crisis' and as such children and their families are rarely prepared to take time to examine such general information. Where professionals are able to explain information to the child there is more confidence that children are well informed.

All interviewees involved in the civil justice process emphasised the need to explain to a child the likelihood that the guardian may disagree with the child view's on his/her future care arrangement.

*Quote: "You always have to have the conversation [about] when you disagree with their view, because you feel they are going to be unsafe, and I am going to have to tell the judge what I think is best for you."*

There was also broad agreement that even where parents are in a position to explain the court's decision to a child, it is helpful for children to also hear that information from a neutral party.

All respondents felt it important for the child to be well-informed about the legal process they are involved in. There was general recognition that the value in informing children is that they are then better able to participate in and deal with the judicial process, though the extent of the information given must be judged according to individual needs of the child. Interviewees also felt that information about the process and the child's role in it helps children to accept the final decision in a case. For this reason it is vital to be completely open with children throughout the process and to be clear about what happens at each stage, including how their views are taken into account.

*Quote: "Even if a child doesn't get what they want, information will help them make sense of what has happened to them and to understand that [we] are there to help them."*

*Quote: "They felt mightily relieved to be able to communicate their views one to one and felt the better for it whatever the result. They just felt better that their voice was heard."*

Indeed, the majority of interviewees commented that this is particularly important in situations where the decision in the case runs counter to the child's expressed views (see further 2.4.2 below)

#### Comparative assessment of practices by professional groups

Social professionals are far more involved than legal professionals in informing children and so made much more detailed comments on how that should be done. Social professionals recognised that early in the process children are concerned only about their immediate future. Careful judgements need to be made about the most appropriate point in the process to give out information and to gauge how frequently the issues need to be revisited to ensure children's full understanding. Social



professionals also recognised the difficulties inherent in explaining to children that the court cannot comply with their wishes and feelings.

*Quote: "I would say 85-95% of the time children will want to go home to an abusive parent so it is about... revisiting the issue... that is the way children come to understand why a decision is made... You would explain, 'I know very much that you want to go home and you love mum and dad and that is understandable but the court has decided that is not going to be safe for you and I agree with that'... Those sorts of conversations, judging it as best you can... trying to develop a trusting relationship with the child."*

In Scotland social workers play the major role in informing children about the Children's Hearing process and their role in it. However, Scottish legal professionals expressed concern that social workers are not sufficiently independent to objectively explain the process.

*Quote: "[Social workers] see no good at all in this hearing system and given that it's their responsibility to prepare the child for the hearing, it may go some way to explain why it is often not done very well!"*

*Quote: "That's why we do rely a lot on social work to prepare a child for a hearing. Sometimes they do so really well sometimes it's absolutely abysmal, children turn up thinking they are going to be taken away from their parents, that's awful and it's where the system fails."*

However, the social workers in the research sample had no concerns about their abilities in this area and indeed felt that they were the most objective of all professionals involved.

#### Good practices on individual and structural level

A number of interviewees suggested that it is particularly helpful when professionals make separate provision to explain adult issues to children. In Scotland, one legal professional spoke of drafting an additional 'grounds for referral' document especially for the child. Taking a similar approach in England & Wales, a social professional praised a judge who held a special hearing for the children in the case (following the formal dispute resolutions hearing) to explain in child friendly terms the decision in the case and the reasons for it.

The Scottish Children's Reporters Administration takes a reflective approach to the provision of information. Following its own research (Big Words, Big Tables) which found children that were not given enough information, it devised a project to revise its materials with input from children with experience of system (modern apprentices).

### **2.2.3 Concluding assessments on right to information**

Interviewees in both criminal and civil justice systems agreed that though limited in what they can achieve the written materials made available to explain to children the judicial process and their role in it are of a good standard contain child friendly and age appropriate information. Though there are some issues regarding materials in languages other than English, materials are generally broadly and easily accessed. However, the experience across all regions and all types of justice process is that children's understanding of the process is vastly improved when a professional independent of the family takes responsibility for it.

## 2.3 Training and co-operation of professionals

### 2.3.1 Training and co-operation of professionals in the criminal justice field

The interviewees working in the criminal justice field had received some training related to child witnesses. For both legal and social professionals the main focus was on the methods and procedures for questioning children, either during court proceedings or at the ABE interview. Judges, victim support and witness service staff, police officers and social workers provided greater detail about the training available than other professional groups. The Judicial College in England & Wales devises and delivers training for judges, though there are no compulsory courses for dealing with child witnesses or victims. Judges who specialise in sex offences are obliged to attend courses on managing vulnerable witnesses in court proceedings including the implementation of special measures. Legal and social professionals involved with interviewing children at the point of disclosure undertake a specialised two week training course which covers issues such as communicating with children, the development of the child, theories of attachment and other cognitive concepts. Training for intermediaries and witness support staff includes information on the legal process and supporting children with communication difficulties. Participants in the criminal focus group endorsed an inter-disciplinary approach to training and highlighted the value of engagement with expert professionals such as psychiatrists. All interviewees stressed the importance of training in the skills necessary to interact and communicate with the child and saw a particular need for judges to be trained in these skills given the increasing number of situations in which judges meet children outside of formal hearings. Whilst all interviewees valued the importance of training, many highlighted that professional skills may equally be developed in other ways. Collaboration amongst colleagues to share best practice and attendance at conferences or workshops were considered valuable ways to learn about and adopt legal or procedural change.

*Quote: "Jointly attended conferences and seminars are really good... There might be some good formal presentations then there's opportunity for workshops and people can get together. It's a lot easier to learn from small groups of people."*

Such an interdisciplinary approach underpins plans by academics in consultation with registered intermediaries to launch an internet based 'advocates gateway' to share good practice on how best to interact with vulnerable witnesses (and defendants). However, experienced interviewees suggested that personal disposition and natural aptitude for communicating with children is key to successful engagement with children and, therefore training, that is not always the most suitable way of acquiring relevant skills.

Interviewees in the criminal justice field saw interaction and cooperation amongst legal and social professionals as essential to the creation of positive perceptions of the justice system amongst children. A clear model of co-operation emerged amongst all professionals which was particularly evident within specialist units or multi-disciplinary teams. Interviewees focused on good channels of communication and effective information sharing to ensure that cases involving children are prioritised and special measures implemented. They identified interactions between police officers, registered intermediaries and the CPS during the investigative stage of a case and pre-trial interactions between Witness Service and Court staff as pivotal moments for the delivery of quality support to children. The need for good liaison within multi-disciplinary teams was also highlighted, for example Joint Investigative interviewing teams comprised of social workers and police officers. Those professionals, such as Registered Intermediaries, who work independently from the main criminal justice agencies, put additional efforts into liaising with other criminal justice professionals

such as police officers, Witness Service staff and counsel. Collaboration and cooperation between professionals is achieved through case conference meetings and regular email and telephone contact. The professionals also interact during proceedings at court.

Most interviewees described good working relationships with their criminal justice colleagues but acknowledged that relations come under pressure when professionals are working to differing objectives and agendas. For example, when interviewing children police officers prioritise the evidence gathering process and its later admissibility in court whilst social professionals such as intermediaries and workers may prioritise the best interests of the child. Equally, counsel and advocates must balance their duty to present their clients' (or the crown's) case against the welfare needs of the child witness being cross-examined. Almost all interviewees commented on the inevitable breakdown in communication and information sharing occurs when limits on resources and funding result in reduced staffing levels and a defensive stance towards working practices. Interviewees whose role within the criminal justice system had been relatively recently introduced, such as registered intermediaries and specialist young witness services, found some initial resistance to their professional involvement. They reported the need to make significant efforts to establish their credibility with other professionals.

*Quote: "A huge number of [our] cases are with someone who perhaps has never used an intermediary before, so you are having to start [again] with all the information and all the building up of relations."*

### **2.3.2 Training and co-operation of professionals in the civil justice field**

In contrast to the criminal justice field, fewer civil justice participants had received any training relating to the participation of children in justice. Social professionals had attended courses relating to methods and techniques to aid in communicating with children, more often provided by professional associations than employers. Legal professionals who found it difficult to access any training relating to children in the justice process felt that access to some of the training available to legal professionals in the criminal justice field would be very valuable.

*Quote: "There has been a substantial emphasis on criminal training in the region and I don't think there has been sufficient on family training....I think regional training should be expanded to include training in civil law and also family law."*

Again, the participants in the civil justice field emphasised the value and importance of developing their practice not just through training but through sharing best practice and attending workshops, seminars and conferences with other professionals who work in the same area. They also saw a benefit in collaborating with more experienced colleagues with expertise in the area.

*Quote: "If juniors in chambers came across a situation where a child was going to come and give evidence, they would automatically come and find somebody senior in chambers."*

In contrast to collaboration between professionals, one participant raised the importance of including children in the design, implementation and review of training that is provided to legal professionals. This reflects a general appreciation in the civil justice field of a collaborative approach to working. Interaction between legal and social professionals appeared much more evident in the civil field where children are less directly involved with court proceedings. As a result, liaison

between social and legal professionals is vital in ensuring that the views of the child are made known court.

*Quote: "You are in an adversarial system but at the same time it is a collaborative process and I don't know of any legal practitioner around here who doesn't work in that sort of framework. It is collaborative."*

In general, respondents spoke of well-established working relationships but also the need to ensure consistency in the professionals assigned to a particular case to avoid breakdowns in communication and information sharing.

*Quote: "It works best when there has been continuity of judge, advocates, social worker... Where there has been that continuity there is a level of understanding between everybody."*

Interviewees in Scotland suggested that the level of cooperation between social and legal professionals can sometimes be strained, perhaps revealing underlying professional differences on how children should be involved in the judicial process.

*Quote: "I would want the children's hearing system and the court system to take more notice of social works' view of how things should operate."*

Moreover, one respondent suggested that differences between social and legal professionals reflect an underlying tension as to which type of professional is best placed to ascertain children's views.

### **2.3.3 Concluding assessments on training and cooperation of professionals**

Current training for criminal justice professionals is heavily focused on legal process and methods for questioning children. By contrast, training for civil justice professionals, particularly social professionals, is concentrated upon the skills necessary to communicate effectively with children. Legal professionals in both fields suggested that, despite advances, there remains a need for more training for judges, counsel and lawyers in how best to interact with and question children. Nevertheless, legal and social professionals across both judicial systems emphasised the significant contribution that sharing best practice amongst colleagues and inter-disciplinary forums, such as conferences, workshops and seminars, make to developing good quality support for children.

All interviewees recognised the value of developing and maintaining good working relationships, which requires good communication and information sharing. Furthermore, interviewees recognised the need for professionals to share a common commitment to working towards the best interests of the child, albeit within the limits that the criminal justice process, at least, imposes. However the current difficult financial climate threatens their potential for success.

*Quote: "I think there are a lot of very good committed professionals, I think that I have worries about the way the system is going, the pressures on the system it think it is going to the children's voices are not going to be heard as effectively."*

## **2.4 Horizontal issues**

### **2.4.1 Discrimination**

Few interviewees in this research felt that the background or individual circumstances of a child of should or would be a barrier to his/her effective involvement child in judicial proceedings. Interviewees most frequently discussed the issue in the context of mental health issues and learning or communication difficulties and suggested that it is usually a question of finding and being able to access the appropriate support agencies. However, there was also good awareness of the needs of culturally and ethnically diverse children.

Criminal justice professionals agreed that it should always be possible, within the measures and services available, to meet a child's individual support needs, though the majority of respondents had limited experience of diverse requirements. An example of good practice identified during the research was the addition of sub-titles to a video-recorded interview with a witness with a severe speech impediment. A number of legal professionals commented that migrant children generally have good English skills as a result of being in school in the UK. Where an interpreter is required, however, few foresaw any difficulties, though one respondent in a culturally diverse area commented on the practical difficulties of obtaining the services of a suitably qualified interpreter with a suitable demeanour for working with children who can be available both for the police interview and later for the child's cross-examination in court. All professionals felt that an intermediary is the appropriate response for a child with learning difficulties, problems arising only when the police fail to identify the child's specific disability sufficiently early in the proceedings. Judges highlighted the availability of the Equal-Treatment-Bench-Book to assist in ensuring all aspects of equality of treatment are considered, including cultural issues. A minority of criminal justice professionals had experience of diverse cultural needs amongst children but those with personal contact displayed an awareness of the importance of research to understand cultural norms and customs.

Similarly, if not more so, in civil proceedings practitioners were comfortable that facilities and services are available to meet children's individual needs. CAF/CASS materials are available in a wide range of different languages and formats (Braille and large print) and there appeared to be good access to local authority support services for children with learning difficulties. Interviewees in this field displayed more experience of working with ethnically and culturally diverse children and in urban areas at least demonstrated creative approaches to improving understanding, such as contact with academic experts in the relevant field. Social professionals in particular stressed that cultural knowledge and understanding is vital when engaging with particular families and children.

*Quote: "Well to me in terms of engagement I need to have the culture because if I don't I might walk all over someone's culture and lose them."*

However, a number of social professionals raised the danger of an overly deferential approach to cultural differences and were concerned that cultural issues are not allowed to justify abusive behaviour towards children. Several interviewees expressed concern that professionals' attempts to avoid discrimination can work against children's best interests when certain practices (such as forced genital mutilation) that would normally be regarded as unacceptable go unchallenged as aspects of a particular cultural. Similarly, other interviewees suggested that class may inappropriately impact upon the credibility attached to children's views and that children from educated backgrounds are treated more favourably when the decision maker in the case is also from the middle classes.

#### **2.4.2 Best interest of the child**

Without exception, legal professionals felt that the extent to which a child's best interests can be taken into account in criminal proceedings is limited by the primary objective of the criminal justice system, which is to decide on the guilt or innocence of the defendant. In these circumstances the child witness's best interests are not the main focus of the process, though it is still possible to support a child.

Quote: *"You can't subjugate everything else to the welfare of your child witness, but you can bump them up a lot higher up the list than they've been in the past."*

Quote: *"We do have to balance not just the child's needs but those of the defendant. We can't just approach everything from the viewpoint of the child, but we can try and make it the best possible experience we can in the awful circumstances that they are."*

However, it is not simply a question of subjugating the child's interests to the defendant's. Almost all criminal justice legal professionals felt that for the majority of children seeing that justice has been done for their experiences is an important part of their emotional well-being. Several social professionals who had contact with children after the proceedings reported that appearing as a witness can have a therapeutic aspect.

Quote: *"When they've actually been [at court giving evidence] I think it is easier for them to move on. People believe them. I think it is a huge part ... to have taken part."*

Quote: *"She felt better for having faced it... It's because it's the end. 'They've hurt me, I'm telling this and then they'll be punished', it was a closure for her."*

Social professionals, though mindful of the fair trial requirements within criminal justice proceedings, tended to place more emphasis on the best interests of the child and even legal professionals were able to envisage some situations (either where the case involves a less serious offence, a serious threat to child's safety or no possibility of conviction) where the child's best interests should outweigh the public interest in a prosecution.

In contrast, in all family proceedings the child's best interests are paramount and the whole of the family law process is geared around making decisions that further those interests. To that extent, a child's voice can never be determinative, though for an older child it more likely that the child's view on what is in his/her own best interests will be respected. Despite concerns about operational aspects of the family law system, all interviews agreed that the judicial process succeeds in making decisions in which are in children's best interests. However, more than one social professional made the point that a child-centred system which decides what is in that child's best interest is very different from a child-led system which allows the child to make the decision.

Quote: *"What young people want is to know that the person making the decision was aware of their views at the point they made the decision. A lot of young people they don't want to make the decision themselves, they understand that it's not for them to make it, they don't want that pressure. But they want to feel that the person making the decision has heard their voice in the process."*

### **2.4.3 Differences and similarities in regional, national, international context**

None mentioned by interviewees.

## 2.5 Coe Guidelines

The majority of legal and social professionals across all types of judicial proceedings were unaware of the Council of Europe Guidelines on Child Friendly Justice. The few who declared familiarity with the guidelines were all legal professionals, but even this group gave no indication of the extent to which the guidelines were applied in the daily professional working environment. One interviewee indicated that other Council of Europe publications and recommendations are considered useful.

*Quote: "We don't use them that often I must say, but we do use a lot of Council of Europe materials on children and I generally find we rely on their various recommendations and publications a lot."*

A further participant from Scotland demonstrated an awareness of the State's obligations under Article 12 of the United Nations Convention on the Rights of the Child and the consequent obligation to involve children in the judicial process, hear their views and give reasons for decisions which do not accord with those views.

### **3. CONCLUSIONS**

#### **3.1 Overarching issues**

Within the criminal justice system the full and effective participation of child witnesses is facilitated through a regime of special measures intended to allow children to better negotiate those aspects of adversarial procedure that children find challenging. This special measures regime has developed over the past twenty-five years to the point where it is generally seen as providing good levels of support for children. The biggest gap is in the reach of the system. The use of live TV link is widespread but it would appear that fully comprehensive support in the form of video-recorded evidence and intermediaries is provided only to children who experience serious criminal offences, who have specific communication difficulties or to the very young. We can expect special measures to continue to be targeted at the most vulnerable children. In Scotland, though statute makes possible the use of video-recorded joint investigative interviews at trial and the pre-trial taking of a child's evidence by commissioner, neither measure is widely used. Intermediary assistance is currently only just being considered. In England & Wales the still restricted use of intermediaries and the expected rationing to children under eleven of pre-recorded cross-examination demonstrate that there is still some way to go before all children are considered sufficiently vulnerable to qualify for additional support. Nevertheless, the progress made to date is evidence of a developing awareness of children's particular difficulties when participating in criminal proceedings. Most criticism relates to implementation rather than statutory provision. The contribution of non-statutory methods of support is increasingly recognised and a far more reflective approach to the issue which perhaps above all others has caused difficulties for children, cross-examination, can be seen. Judicial activism to control inappropriate questioning shows that judges are taking the lead in improving legal professionals' dealings with children. The greater involvement of social professionals is an acknowledgement that children cannot participate without professional support. Both illustrate that, in the round, the criminal justice system is making significant efforts to listen to children. This research suggests that one of the biggest failings in the provision for children is that no one person takes overall responsibility for a child witness's experiences. There are a number of points in the system when responsibility for supporting children changes hands, and it is at these points that we are most likely to see attempts to provide that support break down.

The family law system takes a different approach. Rather than attempt to make a child's appearance at court more comfortable, it endeavours to keep children out of court hearings altogether. Children are heard, but indirectly. The one exception, Scottish Children's Hearings, operates on the basis that hearings are specially tailored towards children's participation. On the whole, this protective approach to hearing from children is applauded. The main complaint is that the private law system is too quick to accept that parents' negotiated agreements reflect the wishes and feelings of the children who are the subject of those agreements. Pressures on funding and resources mean that in both Scotland and England & Wales the State will intervene only where there are child protection concerns and in other circumstances parents have ample opportunity, if they so desire, to drown out the voices of their children. In public law proceedings, however, the general view is that children's voices are routinely and loudly heard. Scotland and England & Wales take different approaches and the strengths of one tend to be the weaknesses of the other. The Scottish Children's Hearing system purports to allow children's full and direct participation, but its critics suggest that attendance does not necessarily guarantee participation and the quality of the child's voice is therefore put in some doubt. In England & Wales strenuous efforts are made to fully and accurately ascertain the child's views, but children complain that lack of direct contact with the decision maker makes them feel



excluded and unheard. The challenge would appear to be how to achieve both accuracy in children's wishes and feelings and a sense of active participation in the judicial process. In Scotland there is increasing recognition that children need an advocate of some sort to assist them in making their views known. In England & Wales there is increasing recognition that children need some form of contact with the decision maker to feel involved with the judicial process. In both jurisdictions however, there was no doubt amongst interviewees that the family law systems in place are very well placed to make decisions that are in the best interests of the child.

Interviewees suggested that across both types of judicial system the main threat to children's effective participation comes not from a lack of commitment on the part of the professionals who work within them, but from pressures on funding which threaten existing levels of support. However, if there is a common issue between justice fields, it is perhaps that children are best supported when they have some form of advocate – be it a legal or social professional - to support and assist them. Where there is one person in a position to advocate on their behalf, children appear to both understand and better participate in judicial proceedings.

### **3.2 Research**

Almost all interviewees felt that further research with children would be a feasible project. Many felt that children would welcome the opportunity to discuss their views of the systems and processes they experienced. Some suggested that research would need to be phased as children might change their perspectives as they had time to reflect on their experiences. Most felt unqualified to advise on how best to conduct academic research, but were willing to offer some observations.

A number of agencies may be able to facilitate access to child participants. Interviewees suggested NGOs and organisations that advocate for children, or agencies such as CAFCASS, witness support, or the CPS. However, many interviewees warned that access to child participants could be problematic. For example, justice agencies may have privacy concerns about providing identifying details of potential research participants. Others suggested that it may be difficult to avoid a process whereby interviewees are self-selecting, creating problems in shaping a representative research sample. There would also be issues surrounding the parties who would need to provide consent and how to ensure that consent is fully informed. Interviewees also raised ethical issues with regard to such research which largely concerned the need to avoid causing the child any additional trauma through detailed scrutiny of his/her experiences. Most interviewees felt that it would be important to have some rigorous means of screening children suitable for inclusion and that only suitably qualified professionals should be involved in questioning children, almost all of whom are likely to be vulnerable. Nevertheless, the majority of interviewees felt that research with children would be valuable and would give practitioners insight into a child's perspective on judicial proceedings. Advice on how to improve processes and materials would be an important research output.

There is already research in the UK which has looked at children's attitudes to both the criminal justice and family law process (see Annex 2). Without a thorough review of this literature it is not possible to identify specific gaps in the research.

### **3.3 Any other issues not covered in previous sections**

There are no further issues not covered in previous sections.

## ANNEX 1

### Documentation

#### Quotes

- “Specialist teams are pretty aware of [video-interviews] because it’s their everyday bread and butter... Frontline officers, [video-interviews] are a world that’s not everyday for them, but they are dealing with children every day.”
- “While the law is super, we’re still working on embedding it in practice.”
- “They just thought it was weird to speak to a sort of disembodied head.”
- “If the child says or the parent of a child says my child will not be videoed, do you allow that suspect not to be prosecuted or go with the victim’s wishes and obtain a statement? Really it’s the better of the two evils.”
- “At the top end of the scale ... I think the system is fantastic, really good. I can’t think that it could be that much better... The area I think we fail on is lower level offences... I think that’s a weakness in the process. The courts aren’t geared up to do it, because of the massive volumes of cases going through.”
- “TV link is like watching TV., even then it’s not good TV, because children... are fidgety, moving in and out of the camera shot. The camera is fixed; the audio is not always great. [Live evidence] is much more compelling for the prosecution.”
- There is nowhere to get anything to eat, which isn’t good. But if I’ve had the opportunity to speak to the parents before they come I tell them to bring sandwiches, sweets, biscuits and fruit. Because they get bored and they eat because they get bored.”
- “[W]e don’t make any particular bow to children in terms of cross-examination, exam in chief, re-examination...the usual process unfolds.”
- “The younger the child, the more important it is that they are cross-examined when they are fresh... There is a reason in primary school why you do maths in the morning, and art and crafts in the afternoon.”
- “I think it’s going down to see them afterwards, for them to see the judge as a human being... and for them to realise that they’ve played an important role in the process - whatever the outcome – is probably the best part of the experience for them.”
- “It’s bordering on abuse.... I put it that strongly... A child being asked, a year, 18 months, 2 years later, about what’s happened; it means they can’t properly move on.”
- “I think there’ll be a lot of 16 and 17 year olds who won’t be considered as vulnerable and they should be considered.”
- “Evidence is evidence; you’ve got to weigh it”.

- “A seven year old, to give really enormous detail about a sexual act including where and when and what actions were performed and so on; it’s almost like – well, there’s only one way she could have got this, because it happened.”
- “I think that there are a lot of people in society who are sceptical about whether children will tell you the truth about certain things... That of course feed into verdicts that you get from juries.”
- “Often when you are taking people in your car to another venue they will begin a conversation... there is not that face to face [element].”
- “[In private law cases] the bottom line for us is ‘is this child safe?’ it is not is the voice of the child being heard.”
- “Maybe it is indicative in the rules that children’s views must always be heard [but] in reality...”
- “If the child has not been consulted about that agreement, and it has effectively been drawn up between adults, then where is the voice of the child in that process?”
- “It’s very strongly focused on children’s participation but the room is full of adults and adults very quickly take over... it can be very confusing for the child... [it] quickly becomes very difficult for the child’s voice to have the prominence that it should.”
- “There is too much pressure. It’s almost as though we expect children to... behave in these situations as though they were adults; to be able to answer questions and discuss how they are feeling, risks and consequences, and think about best interests as if they were independent people, living independently. They are not treated as children.”
- “My view is why ask a child if they want to go home when you have read that... they can’t because they are being sexually abused? Why would you put a child in that position?”
- “... it surprised me how often panels didn’t take charge of the Children’s Hearing system, particularly when things got difficult.”
- “I think that [the child’s voice] is well documented. I have much faith in the guardianship system.”
- “There are bits and pieces in capitals without realising that children see that as shouting.”
- “They get about 700 pages of quite detailed reports containing often quite distressing information. Everything about them, their school reports, what everyone has said about them.”
- “... sometimes, we don’t want to be the person to tell the child that they were born out of incest, that your parents are drug addicts... I would say that is probably one area of concern, the social work reports. There is such depth, and they contain ideas and concepts that a child of 12 cannot be expected to understand.”
- “You do have to remember that the defendant has to have a fair trial at the end of the day and if your case is that this child has come along to make the whole thing up, you actually do

have to say it and in a reasonably convincing way, which can be upsetting to someone who isn't lying. There's no way around it really."

- "It will always be fairly traumatic. There's nothing you can do to avoid that.... All you can do really is make it as easy for them as possible... There's no way to avoid the issue that it is never going to be a pleasant experience for any witness."
- "I look back and hang my head in shame when I think of some of the cross-examinations I allowed ten years ago. [I did that] because I wasn't familiar with the research and I thought they were being done quite well [but] now... I'm far more interventionist if I need to be."
- "I think we do have a history of hearing children, I think we have had a problem in the past in that we have tended to treat them as mini adults, we haven't made concessions in relation to children's understanding and ability to participate in the process, [but] we do hear them."
- "I think what a lot of young people would say [is that] we had these people come and talk to us and listen to us, but still felt as if there was this process going on and we were completely excluded from it. Even though there were people spending time with them, listening to them, there are young people who still think, 'yeah, but I wasn't part of it'."
- "It is a legal process, you can't trick the child into thinking that it's not, but having someone advocate only for them... is a huge advantage for the child and for equality of arms and the child has more confidence if they have a lawyer."
- "Our experience has been that where the intermediaries are engaged, the support has been incredible ... Between the intermediaries and witness service, you end up with victims and witnesses who have come to terms with the crime and are able to move on. That's a massive step forward."
- "All they're bothered about sometimes is I'm here to tell them about my father raping me repeatedly for 10 years, last thing on their mind is how this is going to be translated to the court. Let the brain compute one thing at a time."
- "Some children... want a full explanation, some would just like the bare bones, some would rather just next to nothing... Some want to be drip fed information, some want a great big bucket of it."
- "Little children... [I] wonder how easy it is to explain to a very small child what the whole court process is about, and whether in fact it is in their interests to explain an awful lot... If they don't know an awful lot then, there's not a great deal to be scared of."
- "Sixteen year olds wouldn't want to be popping out cardboard cut outs and six year olds wouldn't be able to do a word search."
- "What I do sometimes... if there is something on the TV, like X Factor and Strictly come Dancing and they are of an age to watch that, I will ask them and say 'did you watch it last week, who do you want to win?' Personalising the conversation."

- “... each piece of the jigsaw is somebody’s evidence... and when you put it together you can see exactly what that picture is and if the magistrates or the jury... can say that the person was guilty because it’s very clear... The other picture however, has a blurry bit, the umbrella. The shape of the umbrella is such that it could be a big blown up beach ball ... So the blurry bit shows that the jury or the magistrates don’t get a clear picture, and if they don’t get a clear picture then they have to say that that person hasn’t broken the law because it’s not absolutely clear. And they get it, and the parents get it and everyone gets it. This is a really good tool.”
- “Generally, language is something that we’re not very good at and we’re very conscious of as well.”
- “[Foreign language leaflets?] No there isn’t actually, how bad is that?”
- “One hopes that the parents would go through this with the child and talk to the children about them, but we’re talking about dysfunctional families that don’t provide a good level of child support.”
- “You always have to have the conversation [about] when you disagree with their view, because you feel they are going to be unsafe, and I am going to have to tell the judge what I think is best for you.”
- “Even if a child doesn’t get what they want, information will help them make sense of what has happened to them and to understand that [we] are there to help them.”
- “They felt mightily relieved to be able to communicate their views one to one and felt the better for it whatever the result. They just felt better that their voice was heard.”
- “I would say 85-95% of the time children will want to go home to an abusive parent so it is about... revisiting the issue... that is the way children come to understand why a decision is made... You would explain, ‘I know very much that you want to go home and you love mum and dad and that is understandable but the court has decided that is not going to be safe for you and I agree with that’... Those sorts of conversations, judging it as best you can... trying to develop a trusting relationship with the child.”
- “[Social workers] see no good at all in this hearing system and given that it’s their responsibility to prepare the child for the hearing, it may go some way to explain why it is often not done very well!”
- “That’s why we do rely a lot on social work to prepare a child for a hearing. Sometimes they do so really well sometimes it’s absolutely abysmal, children turn up thinking they are going to be taken away from their parents, that’s awful and it’s where the system fails.”
- “Jointly attended conferences and seminars are really good... There might be some good formal presentations then there’s opportunity for workshops and people can get together. It’s a lot easier to learn from small groups of people.”
- “A huge number of [our] cases are with someone who perhaps has never used an intermediary before, so you are having to start [again] with all the information and all the building up of relations.”

- “There has been a substantial emphasis on criminal training in the region and I don’t think there has been sufficient on family training....I think regional training should be expanded to include training in civil law and also family law.”
- “If juniors in chambers came across a situation where a child was going to come and give evidence, they would automatically come and find somebody senior in chambers.”
- “You are in an adversarial system but at the same time it is a collaborative process and I don’t know of any legal practitioner around here who doesn’t work in that sort of framework. It is collaborative.”
- “It works best when there has been continuity of judge, advocates, social worker... Where there has been that continuity there is a level of understanding between everybody.”
- “I would want the children’s hearing system and the court system to take more notice of social works’ view of how things should operate.”
- “I think there are a lot of very good committed professionals, I think that I have worries about the way the system is going, the pressures on the system it think it is going to the children’s voices are not going to be heard as effectively.”
- “Well to me in terms of engagement I need to have the culture because if I don’t I might walk all over someone’s culture and lose them.”
- “When they’ve actually been [at court giving evidence] I think it is easier for them to move on. People believe them. I think it is a huge part ... to have taken part.”
- “She felt better for having faced it... It’s because it’s the end. ‘They’ve hurt me, I’m telling this and then they’ll be punished’, it was a closure for her.”
- “You can’t subjugate everything else to the welfare of your child witness, but you can bump them up a lot higher up the list than they’ve been in the past.”
- “We do have to balance not just the child’s needs but those of the defendant. We can’t just approach everything from the viewpoint of the child, but we can try and make it the best possible experience we can in the awful circumstances that they are.”
- “What young people want is to know that the person making the decision was aware of their views at the point they made the decision. A lot of young people they don’t want to make the decision themselves, they understand that it’s not for them to make it, they don’t want that pressure. But they want to feel that the person making the decision has heard their voice in the process.”
- “I think that there are a lot of people in society who are sceptical about whether children will tell you the truth about certain things... That of course feed into verdicts that you get from juries.”

### ANNEX 3: Tables

**Table 1: Sample:**

Professional Group	Gender		Location		Age Group			Total
	Male	Female	Rural/small municipality	Urban/big cities	< 45	45-65	> 65	
<b>Legal</b>								
Criminal	11	7	9	9	9	9	0	18
Civil	5	12	1	16	6	10	1	17
Both areas	3	3	0	6	3	3	0	6
<b>Social</b>								
Criminal	1	11	5	7	5	6	1	12
Civil	4	8	4	8	4	8		12
Both areas	0	1	1	0	0	1	0	1
<b>Mixed</b>								
Criminal	0	0	0	0	0	0	0	0
Civil	0	0	0	0	0	0	0	0
Both areas	0	0	0	0	0	0	0	0
<b>All professionals</b>	24	42	20	46	27	37	2	66

**Table 2: Council of Europe Guidelines:**

Profession	Familiarity with Guidelines			Total
	Familiar with CoE guidelines	Just heard of them/somehow familiar	Never heard/not familiar	
<b>Legal</b>				
Civil	2	0	6	8
Criminal	1	1	12	12
Both areas	2	0	4	6
<b>Social</b>				
Civil	0	2	10	12
Criminal	0	2	7	9
Both areas	0	0	1	1
<b>Mixed</b>				
Civil	0	0	0	0
Criminal	0	0	0	0
Both areas	0	0	0	0
<b>All professionals</b>	5	5	40	50

**Table 3: Training:**

Profession	Training Participation		Total
	no	yes	
<b>Legal</b>			
Civil	5	3	8
Criminal	1	13	14
Both areas	1	5	6

<b>Social</b>			
<b>Civil</b>	3	9	12
<b>Criminal</b>	0	9	9
<b>Both areas</b>	0	1	1
<b>Mixed</b>			
<b>Civil</b>	0	0	0
<b>Criminal</b>	0	0	0
<b>Both areas</b>	0	0	0
<b>All professionals</b>	10	40	50

<b>Professional Group</b>	<b>Type of Training</b>				
	Legal	Social/ psychological	Specific justice issues	Specific child issues	Methods/ procedures
<b>Legal</b>	14	2	6	3	17
<b>Social</b>	15	10	2	3	18
<b>Mixed</b>	0	0	0	0	0
<b>All professionals</b>	29	12	8	6	35

**Table 4: Professional Groups:**

<b>Legal Professional</b>		<b>Social Professional:</b>	
Judge	10	Social Worker	14
Prosecutor	4	Interpreter	0
Lawyer	19	Psychologist	2
Guardian	0	Staff of Victim Support Organisation	5
Court Staff	0	Staff of NGO	0
Mediator	0	Other	4
Law Enforcement Official	4		
Other	4		

**Table 5: Focus Group Participation:**

	<b>LP</b>	<b>SP</b>	<b>All Professionals</b>	<b>Level of Group Participation</b>
<b>England</b>				
Civil Justice: <sup>6</sup>	5	2	7	Balanced
Criminal Justice	4	4	8	Balanced
<b>Scotland</b>				
Civil Justice	7	0	7	Split by court type

<sup>6</sup> 1 social professional withdrew immediately prior to the meeting.