

Bairns' Hoose Collaborative Learning Event - 29 April 2025
“Justice Myths”



Bairns' Hoose

At the Bairns' Hoose Collaborative Learning Event on 29 April, justice partners from the Scottish Courts and Tribunals Service (SCTS), the Crown Office and Procurator Fiscal Service (COPFS), and the Scottish Children's Reporter Administration (SCRA) facilitated a session focused on dispelling common myths about the justice sector. The discussion aimed to clarify misconceptions, promote transparency, and strengthen understanding of how justice services engage with children and young people. The following write-up captures the key insights and learning shared.

Myth 1: The court (Scottish Courts and Tribunals Service) cites witnesses to attend court trials/evidential hearings.

Fact:

- The party wishing to take a witness's evidence is responsible for 'citing' the witness. Typically this is a solicitor, in criminal cases it might be the Procurator Fiscal.
- This is done via a written citation form, which includes a formal warning that failure to attend without lawful excuse may lead to the court ordering their apprehension. This might explain the potential confusion that the document has been issued by a court.
- If the person who has received the citation has any questions or queries regarding the citation they should contact the person named on the document citing them.

Myth 2: The court is responsible for providing or arranging transport for witnesses and administering witness expenses.

Fact:

- **Travel:** Witnesses are responsible for arranging their own transport. If they face challenges attending, they should contact the party who cited them as soon as possible.
- In some instances it may be possible for the party citing them to pre-arrange the booking of train tickets or other arrangements. Such an arrangement is exceptional and cannot always be guaranteed. It is best to discuss what options might be available with the party in question.
- **Expenses:** The party citing the witness is responsible for the witness's reasonable expenses, and relevant forms will be included with the citation. Witnesses should check with the citing party about what can be claimed, as there are limitations.
- Useful resources are available to assist witnesses with expenses, including the [COPFS website](#) and Victim Support Scotland (VSS), who can help with form submission (See [Joint Protocol for victims and witnesses](#)).

Myth 3: The court (a judge) will decide on special measures without an application/input from the prosecution or defence.

Fact:

- Special measures are available to support witnesses, such as giving evidence via video link to the court proceedings. An application must be made to the court asking for them.

- The judge requires both the prosecution and defence (or the applicable solicitors or parties in civil proceedings) to inform them of any special needs of, and legislative requirements applicable to, the witness.
- Some measures are automatic (eg. standard special measures like a video link), while others are non-standard and require a further discussion by the parties involved with the judge before they are granted (e.g. evidence by commissioner).
- A witness can benefit from a combination of special measures.

Myth 4: There are no court procedures (i.e. Evidence by Commissioner) that allow a child's full evidence to be fully captured/pre-recorded in advance of a court indictment being served.

Fact:

- The [Vulnerable Witnesses \(Criminal Evidence\) \(Scotland\) Act 2019](#) embeds in law a presumption that where children or vulnerable adult witnesses are giving evidence in the most serious cases, their evidence should be pre-recorded ahead of trial, except in specific circumstances. That presumption has been rolled out in focused phases to support the most vulnerable witnesses, to give the criminal justice system time to prepare, and to make sure the right facilities are in place for witnesses. Since 20 January 2020 it has applied to child witnesses in the High Court. The presumption will be extended to witnesses aged under 16 in the most serious sheriff and jury cases by April 2026 (see [Vulnerable Witnesses \(Criminal Evidence\) \(Scotland\) Act 2019: implementation plan - gov.scot](#))
- The 2019 Act requires that this evidence must be recorded in advance of trial at an Evidence by Commissioner (EBC) hearing, given in the form of a prior statement, or via a combination of the two. A prior statement will usually take the form of a JII/SCIM interview.
- In an EBC hearing, a witness's evidence including cross-examination is recorded before trial by a judge sitting as a commissioner, with both the prosecution and defence allowed to question the witness.
- Ahead of the EBC hearing a 'Ground Rules' hearing takes place to discuss how the EBC will be conducted, including the mechanics of the EBC and the needs of the witness.
- There is guidance in the High Court as to how both the EBC and Ground Rules hearing proceedings should be conducted and what the judge/commissioner may expect of the parties, e.g. [PN 1 of 2024](#) and [PN 1 of 2019](#).
- Since 20 January 2020, the 2019 Act has allowed parties to make an application for EBC proceedings prior to service of the indictment. The use of such proceedings before service of the indictment will not be appropriate in every case and in most cases it will be necessary to wait until the indictment is served. Whether to use the provision will be carefully considered in detail by the party who needs the witness's evidence with reference to a number of factors including the witness's needs.

Myth 5: If there is not enough evidence to prosecute someone then that is the end of the matter.

Fact:

- Even if a criminal prosecution cannot proceed, measures can still be taken to protect the child, and the case may continue in a civil context.
- In civil cases, the standard of proof is based on the "balance of probabilities", and hearsay evidence is allowed.
- The Reporter may use a child's Joint Investigative Interview (JII) as evidence without calling the child, though the defence may choose to call them.
- Civil cases also do not require corroboration, so evidence that might not meet criminal standards could still be used.
- Also, if there are other children who have a close connection to the harmed child, e.g. brothers and sisters, then they can also be protected. Further, any children who have a close connection to the person who caused the harm can be protected.
- The child may still need support to aid recovery, whether or not any proceedings are brought.

Myth 6: If a child takes part in a JII, their involvement in criminal proceedings is concluded.

Fact:

- While a JII aims to collect reliable evidence in a child-friendly manner and prioritise the child's welfare, it does not exempt the child from future legal involvement if further evidence or testimony is required.
- JII is a part of the investigative process and does not determine the entirety of legal proceedings or future involvement.
- Prosecutors and defence lawyers assess the evidence which can result in supplementary questions.
- The best interests of the child are one of a range of key factors for prosecutors when assessing the child's involvement in justice proceedings. Prosecutorial presumption is to not cite a child witness unless deemed necessary.

Myth 7: Prosecutors select court dates too far in advance and take as long as needed to prepare a case.

Fact:

- Court dates are set by the Scottish Courts and Tribunals Service (SCTS), not the prosecutor.
- While there are laws governing the timeframes within which complaints and indictments must be served, delays can occur for various reasons, including issues with the accused's appearance or with the attendance of witnesses.
- Prosecutors can request earlier court dates if a child witness is involved.

Myth 8: All child witnesses cited for court must give evidence.

Fact:

- Whilst we recognise the emotional impact of receiving a citation, because of the nature and dynamics of court proceedings it does not necessarily mean that a child will be called to give evidence.
- In a recent [evaluation of SCIM](#) for which COPFS provided statistics on a number of cases, many children cited to court did not end up needing to give evidence. A large number of these resulted in guilty pleas after the child had been cited. While the number of cases looked at was relatively small (44) and other evidence remains limited at this time, some factors to consider are:
 - That the citation of witnesses is reviewed throughout the case, with a presumption against citing child witnesses unless necessary.
 - That early agreement from the defence on whether or not the JII can be agreed as evidence can also help avoid the need for a child be cited.

Myth 9: Once a case is reported to COPFS, the next steps of what prosecutors do with the cases is unknown.

Fact:

- The [Prosecution Code](#) outlines how prosecutors handle cases, and this is publicly available online.
- Cases can follow various paths with multiple decision points.
- Prosecutors must first assess whether there is sufficient evidence before deciding how to proceed. They also consider the admissibility, reliability, and credibility of evidence.
- Prosecutors balance the interests of the victim, accused, and the public interest when making decisions.
- For cases involving children, their best interests are a primary consideration alongside other relevant factors.
- Prosecutors may instruct further investigations and continuously review evidence throughout the case's lifetime, not just at the beginning.

Myth 10: Victims have no influence in the prosecution once a case is reported to COPFS.

Fact:

- The interests of the victim are a crucial factor in assessing the public interest. Prosecutors balance the victim's interests with those of the accused and the wider community when deciding on the appropriate course of action.
- COPFS offers victims advice and information about their rights and on their case and may consult with victims to understand their views. This feedback can inform decision making by prosecutors.

Myth 11: The prosecutor's decision is final and unchangeable

Fact:

- Prosecutors make independent decisions, but these are subject to review and in some circumstances can be revisited if new evidence or information becomes available.

- Where the decision has been taken to commence criminal proceedings, prosecutors remain under a duty to ensure that the decision remains appropriate in the public interest
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- Where prosecutors have decided to take no action at the outset or to stop or discontinue a case after it has started in court, victims or in some cases their family members, parents or carers, have a right to ask for a review of that decision.
- However, where the prosecutor has advised an accused person, or has stated publicly, that no proceedings will be taken, they have no power to reverse that decision.