



Youth Justice Improvement Board

**16/17 year old – cross system
working group
Closure Report –September 2021**

1. Background Information

- 1.1 In November 2019 a joint meeting of the Justice Board and Youth Justice Improvement Board agreed to the establishment of a small working group to undertake some cross system planning and preparation ahead of a wide range of potential policy and practice changes which are likely to impact on the Childrens Hearings system/youth justice system.
- 1.2 Since then the group, involving a number of key agencies has met to begin the process of information gathering and analysis.
- 1.3 The work has focussed on 4 main themes:-
 - i. Data and throughput of 16/17 year olds subject to prosecution – with an examination of data, offence profiles and disposals in relation to young people in this age range (see appendix B)
 - ii. Current assessment of the range of supports, services and interventions available to young people who may in future be referred to the Principal Reporter/Childrens Hearing and the extent to which we have gaps issues and need for both service and workforce development
 - iii. The current provision of support and advice to victims of crime/offending across the criminal justice and Childrens Hearings domains, with an emphasis on identifying differences in approach (reflecting the different purposes of the criminal and welfare systems), gaps and areas which need further development
 - iv. Understanding the profile, needs and background of young people currently on remand/sentences at HMYOI Polmont and across the Secure estate, to identify similarities and any divergences

2. High Level Themes and areas for further development

- 2.1 The group quickly recognised that the children's and criminal systems operate in entirely separate ways, have different histories and purpose. There are significant compatibility issues with the sanction based approach in open court of the criminal system and the welfare based system conducted in private of the Childrens Hearings. Many of our discussions so far have focussed on:-
 - If the welfare based approach of the hearing system is to be expanded to 16/17 year olds then it should be expanded in a way that ensures necessary developments/strengthening are consistent with that welfare ethos. We must guard against inadvertently designing in elements of the criminal system.
 - If there are gaps which we need to fill arising from concerns about, for example public safety, then we need to debate these and include as compatible or indeed preclude as not compatible with the welfare based approach
 - We need to be honest about needs and risks and how we intend to manage these as part of this change/transition and how the current Childrens Hearing System is performing in this regard. This needs to include all aspects – the referrers (Police/LA's/NHS etc.) the investigative functioning (Reporter), the decision making function (the Panel) and the implementation function (the Local Authority)

- There needs to be a corresponding resource shift and investment commensurate with the needs and issues of this population and the corresponding requirement to ensure that effective interventions to address needs and behaviour are available consistently across Scotland
- The focus of this groups work so far has been on offending/young people in conflict with the law. There is an urgent need to understand the circumstances of children under 18 who are vulnerable and at risk in other ways – such as those subject to adult support and protection and where data is very limited.
- The imminent UNCRC incorporation into Scottish domestic law, in advance of raising the age of referral, potentially creates a significant system compatibility issue that must be addressed. Young persons aged 16/17 year olds are precluded from a rights based welfare approach and necessarily exposed to the prospect of prosecution.
- The inability of the Hearing system to offer appropriate disposals and support to young persons beyond attaining 18 creates a “cliff edge” for young people, impacting on the system response to young person’s approaching the age of 18 and risking their artificial escalation to the criminal justice system.
- We may need a more nuanced approach in relation to the powers of the Hearing and Court and in particular in the management of certain offence types (e.g. sexual offences, Road Traffic offences) or where support, intervention and supervision may be required beyond attaining 18 years. Could we for example look at a model where the courts retain some powers and the opportunity for the Hearing to refer to the courts for consideration of reserved disposals, albeit compatible with UNCRC, if this is considered this necessary? Would this represent a flip over of the referral mechanism from Courts to Hearing that currently exists for advice?

2.2 Areas that need to be explored further for change, improvement and increased capacity are suggested, principally to Scottish Government, who have the lead responsibility for advancing this work to the next stage, but also to other partners in the children and families/youth justice arena who have an important contribution to make in planning a preparation for the next period. These are shown in detail at [appendix A](#) and include:-

- Extending measures within the Hearing system to protect, support and improve information sharing with victims, whilst retaining the overarching welfare approach and principles of the hearing system
- Improving the range of supports and interventions to children age 16 and 17, to intervene earlier and more effectively, to divert away from formal measures where possible and to enhance restorative justice as a comprehensive offering in Scotland where it is appropriate to do so.
- Invest in the children and families Social Work and wider GIRFEC workforce to ensure sustainability, to promote innovation and to secure a skilled, confident and competent approach in supporting this group of children and young people.
- Ways of changing the language of compulsion and to strengthen the duties of corporate parents to develop high quality and responsive partnerships, critically including the 3rd/voluntary sector.

- Reviewing the capacity and status of our secure estate in Scotland to ensure it can accommodate and adequately support all 16 and 17 year olds – including those currently on remand or convicted
- Expanding alternatives to secure accommodation whilst comprehensively meeting the needs of those children age 16/17 who have significant support needs and promoting much more individualised, bespoke, trauma informed and therapeutic interventions with this group
- More effective support during transitions between secure accommodation and the community in line with the new national secure care standards so that all children can successfully make the transition out of secure and into positive destinations

3. Raising the Age of Referral to the Principal Reporter – outcome of public consultation.

3.1 The report of the consultation on raising the age of referral was published on December 2020¹.

3.2 The main general implications of the proposal for Children’s Hearings Scotland (CHS), the Scottish Children’s Reporter Administration (SCRA) and partner organisations were seen as:-

- Increased workloads (brought about by more referrals and more complex referrals), greater demand on support services and the need, therefore, for increased resources to support the change.
- Need for better understanding age appropriate risks for those aged 16 and 17 and increased familiarity with ACEs and the impact of trauma-histories on offending behaviours.
- Sufficient access to information and support for victims harmed by children.
- Restorative justice approaches were widely supported, with victims given an opportunity to have their views and experiences heard. Greater education among the public to raise awareness of the benefits of restorative justice may, however, be needed.

3.3 The views of young people who took part in the consultation events largely mirrored those of the main (agency) consultation respondents. Increasing the age of referral would give young people an opportunity to be heard and engage with support to help make positive life choices, as well as providing an opportunity to explore and address previous offending and trauma histories.

3.4 Most respondents viewed the existing grounds of referral as sufficient, although it was seen as necessary to amend some to recognise the evolving capacities and growing autonomy of children and young people aged 16+. Some responses sought the addition of specific grounds linked to sexual exploitation or trafficking and criminal exploitation.

¹ Scottish Government (2020) [Analysis of consultation responses for: Raising the Age of Referral to the Principal Reporter. Final Report](#)

3.5 Many challenges in implementing the proposed change were identified, including:-

- managing 'non-compliant' behaviour of older young people,
- ensuring smooth transitions between child and adult services
- how justice stakeholders would respond to increasing demand for support for young people, both practical and emotional.

4. Recommended Areas of Focus on Victim information sharing, protection and support in the Hearing System

4.1 Consideration of the needs and rights of victims is a current area of development in the Children's Hearing System, supported by recommendations in the report by Lady Dorrian on Improving the Management of Sexual Offence Cases². It is recognised that the ability to refer all 16 and 17 year olds to the Reporter will lead to an increase in the number of cases being dealt with by the hearing system resulting in an increase in the number of victims (and their families) who will come into contact with the hearing system.

4.2 Protection of victims.

4.2.1 The Criminal Justice System (CJS) can offer protective measures for victims and witnesses in the form of bail conditions imposed upon an accused under section 24 of the Criminal Procedure (Scotland) Act 1995. The Hearing System does have existing measures that can be used to restrict the movement or actions of a young person alleged to have committed an offence, however the consequence of breaching those measures is very different from the CJS.

4.2.2 Potential Considerations for Scottish Government and partners:-

- Should the existing measures available to the Hearing system be examined to consider how they might be better utilised and to raise awareness of them?
- Do the existing measures require to be amended/enhanced? If so, how could this be achieved without changing/eroding the fundamental principles of the Hearing system - a welfare-based system that is non-punitive?

4.2.3 It is recognised that certain categories of cases will still require to be dealt with by the CJS supported, for example, by the need for protective measures or disposals available only to the CJS – bail conditions, detention, non-harassment orders, sexual offences registration etc. Such measures and disposals are not available and cannot be replicated by the Hearing system without significantly changing and therefore impacting on the ethos of the system.

4.3 Young Persons on Edge of Attainment of 18 – Powers of Hearing system

4.3.1 At present, any disposal imposed by the Hearing system cannot continue beyond a child/young person's 18th birthday. The CJS currently deals with

² [Lord Justice Clerk's Review \(2021\) 'Improving the Management of Sexual Offence Cases'. SCTS](#)

cases where the disposal imposed by the court extends beyond the child/young person's 18th birthday, for example, a period of detention, a non-harassment order, or registration on the Sex Offenders Register. This potentially impacts on the considerations of those young persons close to attaining the age of 18 and it also emphasises the restrictions on the Hearing system in terms of imposing appropriate disposals for children/young persons who offend and providing appropriate support and protection for victims of crime.

4.3.2 Potential considerations for Scottish Government:-

- Do the powers/disposals available to the Hearing system require to be expanded, allowing the system to deal with children/young persons beyond their 18th birthday?
- Currently the court (under the CJS) has the power to remit cases to the Hearing. Should the courts retain certain powers in respect of cases where a disposal requires to be imposed beyond the young person's 18th birthday or should the Hearing system be granted powers to remit cases back to the CJS?
- If so, what would the courts role be in terms of transitional management? By its very nature would this contaminate the ethos of the Hearing system?

4.4 Information Sharing for victims

4.4.1 In the Hearing system there are tight parameters around what information is shared with victims. If appropriate to do so, the Reporter can tell the victim what decision has been made (but no detail), and the outcome of a hearing if the specific offence has been referred to during a hearing. There is no other circumstance in which information will be shared.

4.4.2 In the CJS a victim will be notified if there are bail conditions in place and of the outcome/disposal in a case, for example, if a non-harassment order is imposed by the court post-conviction.

4.4.3 If a children's hearing attaches a condition to a CSO or ICSO to restrict movement or restrict contact with an individual, the victim will not be aware of such conditions as there is currently no authority to share this information with them. Therefore, the victim will not be aware if the conditions have been breached. These tight parameters on information sharing are due to the need to balance the needs of the victim with the child's right to privacy.

4.4.4 Potential Considerations for Scottish Government:-

- Should the process for information sharing with victims under the Hearing system be reconsidered: -
 - (a) is the balance currently correct between the right of the child to privacy and the needs of the victim to know and understand what has happened in relation to the offence committed against them?
 - (b) are there any circumstances beyond the current provisions where it would be appropriate to share information for the purposes of protecting a victim?

4.5 Support for victims:

- 4.5.1 All victims should have consistent and universal access to support no matter which system deals with the offence. This consistency needs to occur right from the very start of the victim's contact with justice services, which will most likely be the police in the first instance. There is a need to manage expectations and ensure that victims have a full understanding of the CJS and the Hearing system.
- 4.5.2 Relevant persons within justice services who may come into contact with victims should be trauma informed, and any interaction with victims and their family's needs to be sensitive, empathetic, and avoid adding to their distress or re-traumatising them (as per the recommendations made within in Lady Dorrian's report).
- 4.5.3 There is a need for Scottish Government and justice partners to enhance both public and victim confidence in the Hearing system. Governments have consistently endorsed the Kilbrandon principles for over 50 years, and all recent policy intentions have continued in that direction (raising the age of referral, raising the age of criminal responsibility, changes to disclosure provisions, incorporation of UNCRC). Better understanding of the role, remit, powers and principles of the Hearing system is fundamental to promote public confidence and belief in the system.
- 4.5.4 We also recognise that restorative justice services can, in appropriate circumstances, greatly help and support victims. These services have reduced over the last few years and an increase and consistency in their availability would be extremely helpful.
- 4.5.5 Potential Considerations for Scottish Government and partners:-
- What resources and materials need to be available to ensure that victims have the same level and quality of support across both the CJS and Hearing system?
 - What support needs to be in place to promote public and victim confidence in the efficacy of the approach by the Hearing system to children who offend (particularly if the age of referral is raised)?

5. Interventions, support and workforce

- 5.1 This section examines the potential implications such a change in age of referral could have upon the interventions and support required, as well as any material difference to the workforce required to ensure effective delivery and outcomes. This section examines the most prescient issues, and suggests issues that may require consideration in the months ahead.

5.2 Multiple pathways to support

- 5.2.1 Not every instance of concerns raised over a child of this age should result in a Children's Hearing being convened, the principle of best interests of the child and a sliding scale of need and risk should continue to be applied in the

determination over when to convene a Hearing. Appropriate supports should be available to all children, with referral to the Reporter utilised when it is most appropriate, including opportunities for the Reporter to make direct referral to support agencies who can offer the desired support on a voluntary basis. Failure to have these avenues will result in young people being sucked into formal systems unnecessarily as we have experienced in the past. The range and adequacy of supports needs to be in place at a very local level to ensure that diversionary, swift support is in place for this age group.

5.2.2 One such example is the role of Early and Effective Intervention (EEI). There is a need for consistent availability of EEI across all 32 local authorities, with enhanced partnership between 3rd sector and statutory partners including the NHS to ensure the needs of 16/17 year olds can be met. The group noted the completion of a refresh of EEI core principles in 2019/20 under the auspices of the Whole System Approach implementation group. The pandemic had prohibited extensive promotion of these at local level and this needs to be refocussed and relaunched. In order for over 16 and 17 year olds to have access to EEI, a further review of the current list of eligible offences by the Lord Advocate may be necessary, so that all young people that could benefit from EEI can be referred under that framework. The group noted the national Police and COPFS commitment to review eligible offences.

5.2.3 Another example of this is existing mechanisms through Diversion from Prosecution. The 2019 alteration to prosecution policy³ was noted with a renewed focus on Diversion from Prosecution for 16 and 17 year olds and an increase in the use of this disposal⁴. The group were of the mind that consideration was required as to what role Diversion from Prosecution could play in future, but felt it imperative that there was not creation of a 'two tier' system which replicates the confusing and – at times complex and burdensome processes which respond to children in conflict with the law.

5.2.4 There is a renewed interest in Scotland in restorative justice and restorative practice for those in conflict with the law. There should be significant expansion in access to restorative approaches for all young people in conflict with the law, primarily and principally as a diversionary option, but also included where necessary (and where the child has agreed to participate) in any order that a hearing may consider appropriate based on the young person's circumstances and best interests. Similarly children who have been harmed should be given opportunities to take part in restorative justice processes. Both these options can provide timely and more appropriate responses to the presenting need.

5.2.5 Potential considerations for Scottish Government and partners:-

- How best can a range of supports be made available to children of this age without the need to route them into the formal Children's Hearing System? The

³ Gibson, Ross (2019) Policy Refocus at COPFS. Available at <https://www.cycj.org.uk/wp-content/uploads/2019/12/Info-Sheet-86-1.pdf>

⁴ Scottish Government (2021) Criminal justice social work statistics: 2019 to 2020; table 5. Available at <https://www.gov.scot/publications/criminal-justice-social-work-statistics-scotland-2019-20/pages/17/>

need for consistent delivery of Early and Effective Interventions across Scotland, around the refreshed core elements is key.

- How can recent developments around Diversion from Prosecution be built upon to ensure that the right support is made available to children at the right time, and without detriment to their potential contact with the justice system?
- What role can Restorative Justice play in providing alternative responses to incidents where harm has been caused?
- How can the current complex landscape be simplified so that children better understand the process and system through which they pass?

5.3 Resources, interventions and responses to risk

5.3.1 The group were mindful that there are already a large number of 16 and 17 year olds subject to Compulsory Supervision Orders⁵, and that this change would increase this number further, potentially significantly. This may reshape the nature of the work undertaken by practitioners with a larger number of children for whom concerns over housing, homelessness, economic deprivation and access to training and employment may exist.

5.3.2 Whilst these issues are already germane for those 16 and 17 year olds subject to a CSO, this increased prevalence may require practitioners to expand their expertise in these areas in order to respond accordingly. It is likely to be necessary to ensure that a range of solutions to resolve these issues were available. These include local youth housing and accommodation initiatives, more co-ordinated action by corporate parents on training and employability in order to ensure that such basic provision and support alone does not become a driver for consideration of compulsory measures. Where the need for compulsory measures is established under defined grounds, the issues of income and accommodation must be prioritised by implementation authorities under local protocols.

5.3.3 Electronic monitoring in the form of Movement Restriction Conditions (MRC) are rarely used in Scotland as an alternative to other forms of restriction of liberty. For young people where the need for compulsory measures has been established (and the additional conditions in the legislation met), consideration of MRC as a viable alternative, alongside intensive wrap-around supports, needs to be much more widespread. The group agreed that greater use of this option could be one way of reducing the use of other forms of restriction of liberty, alongside giving greater public confidence in manner in which children who pose a significant risk of harm to others are supported. In order for this to change to take place, existing legislation – which restricts the use of an MRC in only those circumstances where it is a direct alternative to secure care - may need to be amended. Decoupling use of an MRC from the secure care criteria could lead to wider use of the resource and prevent longer exposure to significant risk. Care must be taken to ensure that such restrictions are not misapplied, so there will need to be clear parameters to the appropriate use of

⁵ SCRA (2020) SCRA Statistical Analysis 2019/20 (Table 5.1). Available at <https://www.scra.gov.uk/wp-content/uploads/2020/10/SCRA-Full-Statistical-Analysis-2019-20.pdf>

MRCs, regular reviews on the exercise of such powers, and clear justification in terms of it still being in the best interest of the young person, as well as managing risk of harm to others. Training on any expansion of the use of MRCs should also be mandatory for those staff who utilise them, with an emphasis on developing wrap around supports which supplement the use of MRC.

5.3.4 There is a need to maximise the relevance and resonance of what compulsory measures might look like, feel like and mean to young people age 16 and 17. It is clear that the knowledge, skills and the ability of the workforce to build open, positive, responsive relationships is key. We know from the work of the Independent Care Review that language which has slipped into the daily lexicon of the care system can be both stigmatising, challenging and confusing. The concept of 'compulsion' was an area that does prove challenging amongst the older children who are supported within the Children's Hearing System, and on occasion results in children not receiving the support that they require. The connotations and impact of the word 'compulsory' was also highlighted. Alternative language may aid in the process of defining the nature and purpose of a CSO when supporting children of this age and who encounter a substantial degree of risk. To reflect the intended nature of the legal order, and to reframe it in a more accurate light, the group suggested that renaming the order with an emphasis on 'Support' as well as 'Supervision'.

5.3.5 Consideration ought to be given to reframing the legal test for compulsion, and even whether the phrase could be altered to better reflect the difficult balance between higher risk and greater agency amongst this older group of children. This was particularly germane in instances where a child and their family fully cooperated with those delivering support – and thus not meeting the test for compulsion that a CSO involves – but for whom risks continued to be present. Similarly, the current nature of a CSO principally relates to requirements placed on the child and the duties placed on the implementation authority to give effect to and supervise this. This may be too narrow an approach for the future and to meet the needs of this population of young people. Consideration should be given to a review of the focus, breadth and parameters of a CSO, for example the ability to place more explicit duties on public authorities to support or make provision for a child/young person, an ability to place duties on other people to protect or cease contact or influence with a young person. At very least this discussion needs to be opened up and is in line with the recommendations of The Promise. A similar discussion on the use of any emergency powers to protect a young person from immediate significant harm should also be undertaken. Both of these aspects of review will require to be fully compliant and in line with UNCRC.

5.3.6 Potential Considerations for Scottish Government and partners:-

- Are the range of resources, interventions and responses to need and risk as comprehensive as they need to be in order to support this cohort of children and young people?
- Do the aforementioned factors require additional funding in order to support an enlarged population of children subject to CSOs?

- Is the test – and language – around compulsion a barrier to implementation and cooperation, and does support need to be reframed as something which reflects the duties incumbent upon corporate parents, such as a ‘Support and Supervision Order’?
- Does any such order need to include revised legislative powers that shift the duties and responsibility away from solely being on the child, and to include the duties and responsibilities that are the dominion of corporate parents?

5.4 Workforce

- 5.4.1 The group acknowledged that the workforce who support for 16 and 17 year olds who come into conflict with the law via Community Payback Orders already possess many of the skills, theoretical understanding and expertise required. Specialised knowledge, confidence and competence in areas such as emotional, psychological and mental wellbeing, substance use, housing and homelessness would appear to be paramount when supporting children of this age. Skills in wider psycho-social interventions would continue to be essential amongst staff who respond to offending, risk taking behaviour, vulnerability and needs of this age group. However we also believe that in some areas of the country these attributes may be located in different sections of the social work workforce. It may be that there is a need for local service leaders to reconsider how we configure and resource services, reflecting the expected reduction in work activity caused by removing most 16 and 17 year olds from the adult justice system and reinvest this resource, experience and skills within the wider children and families workforce, without de-stabilising either aspect of service provision and in light of our earlier comments on the need for investment in this area.
- 5.4.2 The need for a comprehensive programme of workforce skills audit and review - linked to learning and skills development interventions - will be necessary over the next three to four years, including the statutory and voluntary/3rd sectors. This needs to build on the start we have made in relation to a trauma informed workforce, with a particular attention on accelerating our ability to identify and address trauma within this particular cohort of children.
- 5.4.3 We are acutely aware that this expertise is not solely required within the Social Work role, but across partner agencies; none more so than Panel Members. Support to develop understanding amongst those attending hearings will be required in order to assist them to make the best possible decisions for this group of children/young people.
- 5.4.4 The forthcoming post graduate certificate in supporting children in conflict with the law may be one such opportunity to advance our workforce learning programme⁶. Promisingly this course has at its core young people’s rights, lived experience, relationship based practice and an understanding of the broader, ecological factors that may impact upon 16 and 17 year olds in need of

⁶ CYCJ (2021) CYCJ’s Practice & Policy Strategy. Available at <http://www.cycj.org.uk/wp-content/uploads/2021/03/Practice-Policy-strategy.pdf>

compulsory measures of supervision. This specialist learning could ensure a proper balance between policy context and skills development and be potentially front loaded to reflect the immediate challenges of the expansion of referral to the Reporter. It is envisioned that a course of this nature would be offered to practitioners across the entire spectrum of the workforce including social workers, residential workers, secure care staff, teachers, reporters and psychologists. This course – or others like it – could go some way towards boosting confidence and capabilities amongst this section of the workforce, and in turn provide confidence amongst the wider public and civic society over their ability to meet the needs of these children. Similarly, the existing social work qualifying courses could be approached with a particular request to help develop the understanding and expertise of social work students and in post qualifying programmes.

5.4.5 Potential Considerations for Scottish Government and partners:-

- Is there a need to invest and deploy provision within social work services in order to ensure that the required expertise is situated within the most relevant and appropriate service to meet the needs of 16/17 year olds?
- What changes are needed to existing training and post qualifying pathways for both paid and unpaid members of the workforce in order that they are fully equipped to respond to the needs of this cohort of children?
- How do we ensure investment in this aspect of workforce development can be delivered in timely preparation for possible legislative change

5.5 Corporate Parenting

5.5.1 There is a need for clearer, more explicit guidance and direction from Scottish Government to statutory bodies on how to interpret and deliver their duties and responsibilities as corporate parents across the whole spectrum of their services and resources. It was felt that greater presence of a culture of support for young people within adult care, mental health and acute services by these bodies was required in order to maximise the efficacy of an increased number of 16 and 17 year olds who may be subject to a CSO. This needs to happen in a context and culture of recognised interdependencies and mutual confidence between agencies and decision makers, and with responsibility for supporting children of this age being shared across and between entire organisations, not merely Local Authority social work services.

5.5.2 Potential Considerations for Scottish Government and partners:-

- How can the wide spectrum of corporate parents respond to children who are involved in the Children’s Hearing System?
- What resources and governmental assistance is required in order to ensure the robustness of this support?

6. Young People in Secure Care/YOI

- 6.1 The purpose of this section of the report is to contribute to the thinking that will be required to achieve the Scottish Government's intention that, 'to the extent possible and appropriate, no under 18's are remanded or sentenced to detention in a young offenders institution⁷. The Promise⁸ goes further and calls for no children of these ages to be held in a custodial setting on remand or by virtue of a custodial sentence. The Scottish Parliament and Scottish Ministers have agreed to fully implement the recommendations of The Promise.
- 6.2 An examination of case histories was undertaken and data gathered on the profile, needs and background of young people on remand and sentenced at HMYOI Polmont and in the Secure estate. This section describes the profile and complex needs of the children who are in secure care and custody, possible implications if these children are to be placed in secure care as an alternative to YOIs in future, issues of transitions, and points for possible consideration by Scottish Government and partners.
- 6.3 The range of proposals for changes and improvement considered in this paper and elsewhere should ultimately lead to fewer 16 and 17 year olds being given custodial sentences. That diversionary, preventative approach will be one most important factors in the ambition to remove 16 and 17 year olds from YOIs.

6.4 Profile of children in Secure Estate

- 6.4.1 Young people can be placed in Scotland's secure accommodation on welfare grounds through the Children's Hearing System or through the Scottish courts on remand or sentence. Young people from across the UK can also be placed in Scotland's secure accommodation on a court order. The age of the full population within secure care estate is between 12 and 18 years old. A younger person can be placed in secure care if agreement is sought via the Care Inspectorate.
- 6.4.2 Secure accommodation is a form of residential care that restricts the freedom of children under the age of 18. It is for the small number of children who may be a significant risk to themselves or others in the community, whose needs and risks can only be managed in secure care's controlled settings. Secure care aims to provide intensive support and safe boundaries to help these highly vulnerable children re-engage and move forward positively in their communities.
- 6.4.3 The current legislation provides that only those sentenced 16 and 17 year olds with a current CSO or an open referral can be placed by Scottish Ministers in the secure estate.

⁷ [Justice for children and young people - a rights-respecting approach: vision and priorities - gov.scot \(www.gov.scot\)](https://www.gov.scot/Justices-for-children-and-young-people-a-rights-respecting-approach-vision-and-priorities)

⁸ [Plan 21-24; Youth Justice](#)

- 6.4.4 Of those who were sentenced, the numbers of children across the secure estate over a 4-year review period fluctuated between 3 and 11, and their ages were between 15 and 17 years. Overall this is an extremely low percentage of the Scottish under 18 population. What is not known is the number of under 18's placed in secure care on remand as these figures are not reported in the same manner as the YOI population. The offences of those sentenced and placed in secure are of a high tariff and relate to either serious violent or serious sexual assaults.
- 6.4.5 The review also noted that of those released on licence conditions – which is automatic once a period has been reached based on length of sentence – 50% were recalled as they were unable to either manage in the community and engaged in further episodes of offending behaviour, or because the strictness of the licence conditions were too difficult to sustain.
- 6.4.6 It is clear that a high percentage of this population have suspected and diagnosed mental health conditions, they have drug and alcohol dependencies, they have had difficult childhoods being in multiple care placements and they have been subject to a high number and range of adverse childhood experiences.^{9 10}

6.5 Profile of young people in YOIs

- 6.5.1 Almost all children aged 16 or 17 who are sentenced to detention or placed on remand by a court will live in HMYOI Polmont. HMYOI Cornton Vale and Grampian may also accommodate girls of this age. In the last ten years there has been a remarkable reduction in the number of children aged 16 and 17 who are resident in YOIs on any one day, from over 120 in 2011 to around or below 20 for most of the last year¹¹. The pattern includes peaks and troughs, however, and daily numbers rose above 60 as recently as 2018. The numbers of children currently in custody (17 on 24 August 2021) are of a similar order to the numbers resident within the secure estate, although in the recent past the numbers in YOIs have been higher.
- 6.5.2 Over recent years there have most frequently been no girls aged 16 or 17 in YOIs. It has been very rare for there to be more than one girl under 18 in custody at any time.¹⁰
- 6.5.3 As an illustration of the number of children coming into custody in a year, 115 individual children aged 16 or 17 were admitted to a YOI in 2019-20 and 92 in 2020-21.¹²
- 6.5.4 The numbers of children on remand have not reduced to quite the same extent as those who have been sentenced, and in the last two years the proportion of

⁹ Gibson, Ross (2021) '[ACEs, Distance and Sources of Resilience](#)' Children and Young People's Centre for Justice

¹⁰ Gibson, Ross (2020) '[ACEs, Places and Status: Results from the 2018 Scottish Secure Care Census](#)' Children and Young People's Centre for Justice

¹¹ Robinson, GN, Leishman & Lightowler, C (2018) [Children and Young People in Custody in Scotland: Looking Behind the Data \(Revised June 2018\) - Children's and Young People's Centre for Justice \(cycj.org.uk\)](#)

¹² Provisional Scottish Government cellwise population figures

the young people who are on remand has often been well above 50%. The high proportion of children on remand, for whom planning and meeting needs are much more challenging, is of concern.

- 6.5.5 There have tended to be more admissions of children aged 17 than 16 and the age profile of the children in YOIs is weighted towards the upper end of the age range. At any one time, most are typically within a few months of their 18th birthday.
- 6.5.6 The offences for which the young people in YOI serve sentences or are on remand in YOI are very serious violent and/or sexual offences, including the gravest of offences, and/or multiple offences and multiple breaches of orders. The sentences being served range from five months to life sentences. Individuals under 18 who may have been trafficked have been placed in YOI, both on remand and sentenced.
- 6.5.7 Considerations for Scottish Government and partners relating to the profile of children in the secure estate and YOIs:-
- Are there implications for the capacity of secure facilities to work with around an additional 100 children ages 16 and 17 over the course of a year, based on current figures, and to accommodate a currently small but fluctuating total population of children, both remand and convicted, who would presently be placed in YOIs?
 - Can more be done to reduce the number of children who are on remand?
 - What role could movement restriction order supported by electronic monitoring play in achieving this aim?
 - What can be done to improve the transitional support and mechanisms for assisting a young person's return to their community and enabling them to meet conditions which may be placed upon them?
 - What might be the implications for a secure care setting of having a community that has a majority of older children, nearing age 18: for example for other residents, for the culture and atmosphere within the setting, for the safety of the community?

6.6 Life experiences, needs and risks of children in YOI

- 6.6.1 The reduction in the numbers of children in custody has been associated with an increase in the complexity and extent of their needs and risks amongst those who are held there.
- 6.6.2 Over half of the children in YOI lived in the 20% most deprived communities in Scotland. A recent review of records indicated that around half of the 16 and 17 year olds in custody were care experienced.
- 6.6.3 It is well established that children in custody and in secure care have commonly experienced bereavement, trauma and multiple adverse childhood experiences. Their attendance at school has frequently been disrupted. They

are likely to have needs associated with mental health, drugs and alcohol, and additional needs including speech, language and communication needs (SLCN). The group's review of evidence indicates that the children who are resident in secure care have similar wide-ranging and complex needs to those who are resident in YOI.

6.6.4 A review of case histories of a small group of the children recently resident in HMYOI Polmont confirmed the patterns of complex need and identified common themes in the lives of these children, including:

- early distress or neglect and/or parental alcohol misuse
- previous contact with Children's Hearings system/Social Work for care and protection and/or with the justice system for multiple offences prior to the offence for which the young person had been sentenced to detention
- periods of residence in secure care, residential care or homeless provision
- increasing severity and frequency of offences and harm over time. This included cases of extreme violence and/or prolonged dangerous behaviour in custody.
- mental health concerns, both diagnosed and not previously identified

6.6.5 There are instances when particularly vulnerable young people with serious mental health and/or additional support needs are placed in YOI or secure care on remand or with a custodial sentence. It is likely that these young people would have benefited from placement in a specialist health facility but that option is not currently available. This situation of concern extends to cases of where the young person has reached the age of 18. Young people with such needs would benefit from specialist advocacy and escalation routes to ensure that they are placed in the most appropriate setting for their needs without undue delay.

6.6.6 If children are no longer to be placed within a YOI but in a secure care or some alternative placement, there will be a number of important implications for those settings. In addition to capacity and the implications of a change in the age profile, the complexity and severity of needs and risks, including issues of public safety, may have implications, for example, for:

- staff skills, knowledge and confidence to work safely with older young people to understand, meet and address their needs
- arrangements to ensure safety and protection for all residents, given the acute issues of safety that individuals within the group are likely to present, including approaches to de-escalation and interventions where there is risk of harm
- access to comprehensive, timely assessment, planning and multi-agency case management and support for each individual during and after custody
- for particularly vulnerable young people with acute or additional needs, access to specialist support and escalation routes to ensure that they are placed without delay in the most appropriate setting for their needs
- capacity to provide access to the wide range of supports and services for the needs these children have, such as mental health, speech, language and

communication needs (SLCN), learning disability, and tailored programmes to address particular needs, in partnership with statutory and third sector partners before, during and after custody.

- the need for these older children to have access to relevant developmentally- and stage-appropriate learning and work-related opportunities and facilities such as youth work and vocational learning, to enable each to progress in their learning and move successfully into work or education after their sentence.
- overall preparation for transition and re-integration back to communities ensuring a safe regime is in place to least likelihood of re-offending.

6.6.7 Staff in secure care settings are already experienced in caring for a small number of 16 and 17 year olds who have been sentenced and so these challenges will not necessarily be new for them. Increasing the daily population of 16 and 17-year-old children by around 20 (or more, if numbers were to revert to those in 2019) would, however, undoubtedly change the dynamics of the centres.

6.6.8 A further consideration is that there are rare occasions when it has been necessary, after full consideration, to move a young person from secure care to YOI. Access to a safe alternative placement in such rare situations is likely to remain necessary.

6.6.9 Considerations for Scottish Government and partners relating to complexity of needs and risk:

- For this relatively small number of children, (currently around 100 individuals over the course of a year), whose needs are complex and who may present high risk of harm, how can we best provide, with safety for all concerned, an individualised approach to enable them to have access to the services, opportunities and support they require, on the basis of need and stage of development, not age?
- How can we satisfy ourselves that children's mental health is fully assessed, interventions are in place and other necessary support is available before, during and after a placement?
- Is there scope to explore new kinds of partnership between different forms of secure settings and with, for example, education and training providers, to enable access to intensive support where necessary and relevant opportunities for development and skills for life and work?
- What arrangements can be put in place for safe alternative placements in the rare cases where this may be necessary?

6.7 Transitions and structural issues

6.7.1 Throughcare presents particular challenges for 16 and 17-year-old children leaving custody. Currently the Whole System Approach (WSA) provides multi-agency support but there are particular challenges, for example, in ensuring safe and supported housing for all who need it. There is often a need for extended support within the community for the young person, who may be

learning to live independently of others for the first time¹³. Experience shows the vital importance of continuity of support across age boundaries for those young people who require it.

- 6.7.2 There are known inconsistencies in the support available for children leaving a secure care unit or YOI and returning to the community. For example, some are provided with looked after child status and the resources this generates while other do not receive this support and are disproportionately disadvantaged. It is crucial that all should receive the best possible opportunities and support to reintegrate successfully back into society.
- 6.7.3 For those whose sentence to detention extends beyond their 18th birthday there are issues to be considered about transitions into the 18-21 custodial estate. For young people who are close to age 18 when they begin a period of detention, a transition to a different setting a short time later when they reach 18 would be very likely to hinder their progress. It will be important in each case to have flexibility when deciding on the most appropriate setting for the young person and to plan transitions to a YOI in ways that provide continuity and progression and that are in the best interests of the individual. This might include the possibility of a young person remaining within a secure care setting beyond the age of 18 if appropriate. There have been recent cases where young people have had to transfer for less than a week before release with the only option available is to seek early release by the Parole Board for Scotland based on risk and relevant support.
- 6.7.4 Another factor which requires careful risk assessment and management is that some high risk young people have engaged in particularly dangerous behaviour in order, as they described the situation, to hasten a move to the next stage of custody (YOI or adult prison estate), perceiving that the more adult setting would be more appropriate to their self-image and level of maturity.
- 6.7.5 In supporting those transitioning between secure care and YOI the Scottish Prison Service (SPS) and Scottish Government have a protocol in place that manages the transition. More should be done, however, to support what young people can see as a traumatic event as the culture and regimes significantly differ.
- 6.7.6 Considerations for Scottish Government and partners relating to transitions and structural issues:-
- How can we build and support partnerships to ensure that each young person has the support her or she needs for a successful return to the community, for as long as required?

¹³ [Principles of Good Transitions 3](#) Children and Young People in Conflict With the Law Supplement(2021 CYCJ and ARC

- Are there improvements that can be made to the resources available to those transitioning back to communities and identify and remove barriers to a successful transition?
- How can we avoid new age-related ‘cliff edges’ (at which point, for example, services become no longer available even when sorely needed)? Is there an argument for extending the upper age limit for the secure estate beyond 18 years?
- Is there scope for greater flexibility for those who are deciding upon disposals to consider the most appropriate setting for each young person as an individual, regardless of his or her age, including, importantly, those few very vulnerable young people over the age of 18 with additional needs who come into custody?

6.8 Wider policy, planning and resource implications

6.8.1 Although the current size of the population across both secure care and YOI would suggest that, in terms of numbers, all could be probably placed within secure care, a number of prior steps are required in order to achieve the changes that are signalled by the Scottish Government’s commitment and The Promise. The timeline for change will depend upon several different elements. It will be essential that proposed changes are developed through participation with children and young people and the staff who will be involved in all aspects of the changes. Ongoing research and data gathering, overview of current provision, scenario planning, evaluation of options and planning for the logistics of transition to new arrangements will be important underpinnings of this work. In particular, there will be much to be learned from experience in Scotland and elsewhere and reflection on previous complex cases. Some of the issues that an overall route map will need to address are outlined below.

6.8.2 To support this direction of travel it will be necessary to address some aspects of policy or legislation, for example the potential development of alternatives to custodial sentencing including wider use of movement restrictions, the specification of who may be accommodated within secure care, and the respective roles of the Hearings System and Court when detention will continue beyond the age of 18. There will be a need to alter legislation and, for example, determine whether the present registration criteria for secure units with the Care Inspectorate require to be adjusted.

6.8.3 Consideration will need to be given to the practical implications for the secure estate of the change in age profile of the young people they care for, and associated needs and risks, including matters of public safety. Some of these aspects are listed in paragraph 6.6.6 above. They include implications for the environment, culture, staff, ensuring the safety of all, provision of services such as CAMHS and intervention programmes, availability of age- and stage-appropriate opportunities, support for transition and development of sustainable community support packages. All of these should be aimed at enabling each individual young person to have a positive future.

6.8.4 Consideration of governance and resources will be an important part of the next stage of development of the arrangements for detention of 16 and 17 year-old children. As part of the backdrop to these considerations, the planned cessation

of placements within secure care by local authorities from outwith Scotland¹⁴ would have the effect of creating additional capacity and reduce significant adverse outcomes for the four secure care providers who are reliant upon revenue in order to sustain their service. As this report has highlighted, not every child who is currently held within custody would be better supported within secure care, but the migration of a number of these into secure care would have the added, but secondary, benefit of somewhat mitigating the potential for existing secure care providers to encounter financial challenges.

6.8.5 The move to the new arrangements might offer opportunities for SPS to use some of its expertise and resources differently to benefit young people who are sentenced to detention. This will merit further consideration in the next stage of development.

6.8.6 Considerations for Scottish Government and partners:

- What steps are required to develop and implement a route map which will plan and safely deliver the necessary stages towards reducing custodial remand and sentencing of 16 and 17 year olds, improving outcomes for these children and supporting positive transitions from secure care and YOI?
- In order to make the conclusion of The Promise - and Plan 21-24 - a reality, how best can the government support the existing secure care providers?
- What steps are required in order to make best use of the expertise and capacity within secure care and custodial settings to provide safe and nurturing environments for all?

¹⁴ This conclusion was also highlighted within Plan 21-24.

Appendix A

Summary of recommendations/ considerations for Scottish Government and partners

1. Victims
(a) Protection of victims.
<ul style="list-style-type: none">• Should the existing measures available to the HEARING SYSTEM be examined to consider how they might be better utilised and to raise awareness of them?• Do the existing measures require to be amended/enhanced? If so, how could this be achieved without changing/eroding the fundamental principles of the Hearing system - a welfare-based system that is non-punitive?
(b) Powers of the Hearing System in relation to Victims
<ul style="list-style-type: none">• Do the powers/disposals available to the HEARING SYSTEM require to be expanded, allowing the system to deal with children/young persons beyond their 18th birthday?• Currently the court (under the CJS) has the power to remit cases to the Hearing system. Should the courts retain certain powers in respect of cases where a disposal requires to be imposed beyond the young person's 18th birthday or should the Hearing system be granted powers to remit cases back to the CJS?• If so, what would the courts role be in terms of transitional management? By its very nature would this contaminate the ethos of the Hearing system?
(c) Information Sharing for Victims in the Hearing system
Should the process for information sharing with victims under the Hearing system be reconsidered: - (a) is the balance currently correct between the right of the child to privacy and the needs of the victim to know and understand what has happened in relation to the offence committed against them? (b) are there any circumstances beyond the current provisions where it would be appropriate to share information for the purposes of protecting a victim?
(d) Support for Victims
<ul style="list-style-type: none">• What resources and materials need to be available to ensure that victims have the same level and quality of support across both the CJS and Hearing system?• What support needs to be in place to promote public and victim confidence in the efficacy of the approach by the Hearing system to children who offend (particularly if the age of referral is raised)?
2. Interventions, support and workforce
(a) Pathways to support
<ul style="list-style-type: none">• How best can a range of supports be made available to children of this age without the need to route them into the formal Children's Hearing System?

The need for consistent delivery of Early and Effective Interventions across Scotland, around the refreshed core elements is key.

- What steps can be taken to revise existing Lord Advocate’s guidance over the role of EEI for children who come into the conflict with the law?
- How can recent developments around Diversion from Prosecution be built upon to ensure that the right support is made available to children at the right time, and without detriment to their potential contact with the justice system?
- What role can Restorative Justice play in providing alternative responses to incidents where harm has been caused?
- How can the current complex landscape be simplified so that children better understand the process and system through which they pass?

(b) Resources, interventions and responses to risk

- Are the range of resources, interventions and responses to risk as comprehensive as they need to be in order to support this cohort of children?
- Do the aforementioned factors require additional funding in order to support an enlarged population of children subject to CSOs?
- Is the test – and language – around compulsion a barrier to implementation and cooperation, and does support need to be reframed as something which reflects the duties incumbent upon corporate parents, such as a ‘Support and Supervision Order’?
- Does any such order need to include revised legislative powers that shift the duties and responsibility away from solely being on the child, and to include the duties and responsibilities that are the dominion of corporate parents?

(c) Workforce

- Is there a need to invest and deploy provision within social work services in order to ensure that the required expertise is situated within the most relevant and appropriate service to meet the needs of 16/17 year olds?
- What changes are needed to existing training and post qualifying pathways for both paid and unpaid members of the workforce in order that they are fully equipped to respond to the needs of this cohort of children?
- How do we ensure investment in this aspect of workforce development can be delivered in timely preparation for possible legislative change

(d) Corporate Parenting

- How can the wide spectrum of corporate parents respond to children who are involved in the Children’s Hearing System?
- What resources and governmental assistance is required in order to ensure the robustness of this support?

3. Young People in secure care/YOI

(a) Profile of children in the Secure Estate

- Are there implications for the capacity of secure facilities to work with around an additional 100 children ages 16 and 17 over the course of a year, based on current figures, and to accommodate a currently small but fluctuating total population of children, both remand and convicted, who would presently be placed in YOI's?
- Can more be done to reduce the number of children who are on remand?
- What role could movement restriction order supported by electronic monitoring play in achieving this aim?
- What can be done to improve the transitional support and mechanisms for assisting a young person's return to their community and enabling them to meet conditions which may be placed upon them?
- What might be the implications for a secure care setting of having a community that has a majority of older children, nearing age 18: for example for other residents, for the culture and atmosphere within the setting, for the safety of the community?

(b) Life experiences, needs and risks of children in YOI

- For this relatively small number of children, whose needs are complex and who may present high risk of harm, how can we best provide, with safety for all concerned, an individualised approach to enable them to have access to the services, opportunities and support they require, on the basis of need and stage of development, not age?
- How can we satisfy ourselves that children's mental health is fully assessed, interventions are in place and other necessary support is available before, during and after a placement?
- Is there scope to explore new kinds of partnership between different forms of secure settings and with, for example, education and training providers, to enable access to intensive support where necessary and relevant opportunities for development and skills for life and work?
- What arrangements can be put in place for safe alternative placements in the rare cases where this may be necessary?

(c) Transitions and structural issues

- How can we build and support partnerships to ensure that each young person has the support her or she needs for a successful return to the community, for as long as required?
- Are there improvements that can be made to the resources available to those transitioning back to communities and identify and remove barriers to a successful transition?
- How can we avoid new age-related 'cliff edges' (at which point, for example, services become no longer available even when sorely needed)? Is there an argument for extending the upper age limit for the secure estate beyond 18 years?
- Is there scope for greater flexibility for those who are deciding upon disposals to consider the most appropriate setting for each young person as an individual, regardless of his or her age, including, importantly, those few very vulnerable young people over the age of 18 with additional needs who come into custody?

(d) Wider policy and resource implications

- What steps are required to develop and implement a route map which will plan and safely deliver the necessary stages towards reducing custodial remand and sentencing of 16 and 17 year olds, improving outcomes for these children and supporting positive transitions from secure care and YOI?
- In order to make the conclusion of The Promise - and Plan 21-24 - a reality, how best can the government support the existing secure care providers?
- What steps are required in order to make best use of the expertise and capacity within secure care and custodial settings to provide safe and nurturing environments for all?

Appendix B

Data on volumes and profile – 208/19

In order to understand more about the volumes of 16/17 year olds currently being dealt with in the criminal justice system a report on the profile of charges reported to COPFS and an indication of marking outcomes was commissioned.

The data-set reports describe both the number of accused by age and the number of cases by age of the accused. However a degree of caution is required in interpretation.

- Firstly, the data-set only considers the number of charges reported to COPFS for 16/17 year olds broken down by marking decision. The data-set does not provide an analysis of the final charge disposal.
- Secondly, where a case has been reported with more than one accused within the 16/17 year old age bracket and where there are different marking decisions for each accused, the “highest level” of marking decision is reflected within the data-set, meaning the accused with the highest level of marking in the case is counted.
- Finally, the charges within the data-set may result from a case involving multiple accused of different ages and multiple charges. The data-set is based on the “highest level” charge, therefore some of the charges in the data-set may be the headline charge against one of the accused only. For example, a headline charge against an adult accused in a case in which there were related child accused. The charge in respect of the adult accused may have resulted in a marking decision for solemn proceedings, but the related charges against any 16/17 year olds will have resulted in a different marking decision, given the data-set only considers summary level charges.

The data relates to the financial year 2018/19 period and counts:

- 3816 16/17 year old accused reported to COPFS, of which
- 1,583 were 16 years
- 2,233 were 17 years
- Approximately 49% of 16 year olds were dealt with through the sheriff summary courts
- Approximately 8% via JP courts and
- Approximately 43% via direct measures (not including cases referred to the Reporter)
- Approximately 53% of 17 year olds were dealt with through the sheriff summary courts
- Approximately 14% via JP courts
- Approximately 33% via direct measures (not including cases referred to the reporter)

The most common charges for 16/17 year olds for sheriff summary proceedings were:

- Threatening and abusive behaviour (s.38)– 18% of both 16 and 17 year olds

- Assault – 8% of both 16 and 17 year olds
- Assault to injury – 9% of 16 year olds and 7% of 17 year olds
- Breach of bail – 5% of 16 year olds and 8% of 17 year olds

The most common charges for 16/17 year olds for JP proceedings were:-

- Threatening and abusive behaviour – 11% of 16 year olds and 8% of 17 year olds
- Driving with no insurance – 9.5% of 16 year olds and 12% of 17 year olds
- Theft by shoplifting – 7% of 16 year olds and 6% of 17 year olds
- Vandalism – 9% of 16 year olds and 5% of 17 year olds
- Careless driving – 7% of 17 year olds

Appendix C

Group members

- Fiona Dyer – Children and Young Peoples Centre for Justice
- Ross Gibson - Children and Young Peoples Centre for Justice
- Jackie MacRae – Childrens Hearings Scotland (until December 2020)
- Anne Geery – Childrens Hearings Scotland (from August 2021)
- Gemma Fraser – Community Justice Scotland
- Kyrsten Buist – Crown Office and Procurator Fiscal Service
- Anthony McGeehan - Crown Office and Procurator Fiscal Service
- John Urquhart – Convention of Scottish Local Authorities
- Ranald MacTaggart – National Youth Justice Advisory Group
- Colin Convery – Police Scotland
- Alistair Hogg – Scottish Childrens Reporter Administration
- Neil Hunter – Scottish Childrens Reporter Administration (Chair)
- Iain Fitheridge – Scottish Government
- Alison Melville – Scottish Government
- Gill Robinson – Scottish Prison Service
- John Trainer – Social Work Scotland