

Youth Justice Improvement Board

Minute of Meeting

13 October 2022

2:00 – 3:30pm

- Attendees: Gita Sharkey, SG (Chair)
Liz Murdoch, SG
Jenny Ward, SG (Minutes)
Cat Dalrymple, SG Community Justice
Kenny Donnelly, COPFS
Fiona Dyer, CYCJ
Rod Finan, SG OCSWA/GIRFEC
Bill Fitzpatrick, Community Justice Scotland
Grace Fletcher, NYJAG
Lisa Hay, SG
Alistair Hogg, SCRA
Lily Humphreys, Children's Hearings Scotland (attending in place of Elliot Jackson)
Tamar Jamieson, Police Scotland (attending in place of Ian McKinnon)
Ranald McTaggart, NYJAG
Gerald Michie, SPS
Debbie Nolan, SG
Brendan Rooney, SG
John Trainer, Social Work Scotland
Megan Wharton, SG
- Apologies: Paul Carberry, Action for Children
Laura Caven, COSLA
Juliet Harris, Together Scotland
Neil Hunter, SCRA
Elliot Jackson, Children's Hearings Scotland
Janine McCullough, Education Scotland
Ian McKinnon, Police Scotland
Ross McLaughlin, SOLACE
Tom McNamara, SG
Gill Robinson, SPS
Lynsey Smith, Includem

1. Welcome and Introduction

Gita introduced herself as Interim Head of Youth Justice and Children's Hearings Unit, welcomed attendees and invited members to introduce themselves. The group was advised that the focus of the meeting would be an update on the Children's Care and Justice Bill by Scottish Government Youth Justice colleagues Brendan Rooney and Debbie Nolan, followed by an opportunity for group discussion and questions. There would also be updates from the two implementation groups, Children's Rights and Whole System Approach, as well as an update on the UNCRC, CHIP and NYJAG.

2. Agree minute of the previous (June) meeting

Gita advised that changes from Elaine Walker had been incorporated after circulating the June minute,

The following actions were identified from June's meeting.

- **Action: SG officials to consider a joint meeting between the Justice Board and YJIB to consider common issues across both portfolios now that the Justice strategy has been published.**

Jenny advised that this is currently in progress and we are awaiting a response from Justice colleagues about a suggested joint meeting. If a meeting goes ahead it will be next year. It was also noted that Children's Hearings colleagues have been in contact about a potential joint meeting with CHIP. This is something which will also take place in 2023.

- **Action: SG colleagues to set up separate conversation about Barnahus.**

Gita suggested that colleagues leading on this work could attend a future meeting to discuss this in detail. ***It was agreed that this action would be rolled forward and a meeting with colleagues leading on this work would be beneficial.***

Action: SG to invite colleagues to a future meeting.

- **Action: SPS colleagues to share Barnardos research on young people and their experience of courts.**

SPS colleagues confirmed that they had shared the research with the Children's Rights implementation group and are content for it to be shared more widely among YJIB members. ***It was agreed this action would be rolled forward and the research shared with the note from this meeting.***

3. Updates from Implementation Groups

John Trainer provided an update from the previous Advancing the Whole System Approach implementation group meeting which took place on 5 October, and the Community Alternatives sub-group.

Advancing WSA implementation group update: Colleagues have been looking at the guidance around alternatives to remand for local authorities and partners. There are some tensions – not every local authority is able to protect their youth justice service as a WSA service. Donna McEwan has prepared a draft of this guidance which will be circulated soon. The main WSA meeting took place last week. The next meeting will focus on the work plan and action plan, and work out whether actions are appropriate or need amending. Colleagues are conscious that this is a rolling programme which needs to be updated as a priority. Fiona advised that a group of justice experienced young people are working on a draft of the WSA guidance for young people. A link to this will be included with the minute of this meeting. Discussion also took place with the IVY Project and Foxgrove at the group's meeting.

Action: Jenny to circulate a link to the WSA guidance for young people.

Fiona Dyer provided an update of progress made in the Children's Rights Implementation Group, which took place on 12 May, and the working groups which sit under that group addressing speech, language and communication needs and participation.

Children's Rights Implementation Group update: the most recent meeting discussed how to be more UNCRC-compliant and where changes need to be made. A paper on UNCRC compliance has been drafted and will be shared with SG once finalised. One area for initial discussion is bail and release and so the paper has been shared with Jennifer Stoddart in Justice as it was felt this was a priority given the Bail and Release from Custody (Scotland) Bill going through Parliament. Fiona is due to meet with Jennifer the week commencing 17 October. There are other areas of legislation which the group feel need to be looked at, these will be discussed with the relevant SG colleagues leading on UNCRC.

The Rights Group have been considering lessons learned from a pilot in Dumfries and Galloway around criminalisation of young people in care. This is also being delivered in Glasgow, and some other LAs are looking to develop their own model. Lessons learned from Glasgow and Dumfries and Galloway will be helpful, but a formal evaluation of Glasgow has not yet been commissioned. Tamar advised that the pilot continues to run in the Greater Glasgow area. There are difficulties around recording of crimes through the scheme, which is an area Police Scotland are progressing. An evaluation of the Youth Court in Glasgow is due to publish in January. Fiona highlighted the willingness from Sheriff Principals for a youth court approach but a likely need for resources to help with a wider roll out.

Sub-group updates

Speech Language and Communication Needs (SLCN) sub-group update: There is a SLCN webinar planned, and CYCJ and speech therapists are writing a 2 day training course which will start in December. Participation and engagement sub-group update: the participation and engagement sub-group are looking at how to engage children and young people in a meaningful way to ensure they know their rights. The group is looking at a bank of resources and imaginative ways of doing this rather than just guidance or papers. The next meeting of the sub-group will look at education and children's rights in relation to that, especially children who are excluded.

Alistair advised that the UNCRC paper could be very valuable but needs to be carefully handled with regard to any views contained which may be perceived as subjective. Kenny felt that the views of COPFS would be helpful and agreed to help with this.

NYJAG update

Grace Fletcher provided an update from the last National Youth Justice Advisory Group (NYJAG) meeting which took place on 7 September.

NYJAG now have SCRA/COPFS representation. Grace is an attendee on the advisory group around mental health pathways. Some concerns have been expressed in the group around the very young age of children in secure care. On further discussion with a colleague in SCRA this did not appear to be a trend. NYJAG are going to send a response to the Bairns' Hoose consultation. The group sometimes struggle to respond to the high number of consultations.

NYJAG have also contributed to the consultation on the Foxgrove inpatient care facility, highlighting that children in such settings should have different rights to adults.

5. Children (Care and Justice) Bill

Brendan Rooney presented an update on the Children (Care and Justice)(Scotland) Bill consultation which closed on 22 June.

The Bill consultation has now concluded and the analysis published in September. Internal SG work is ongoing as the Bill moves towards Parliamentary introduction. The Bill reflects some of the technical and legal complexities in the policy area. Some simple things have turned out to be rather complicated due to the various pieces of interwoven legislation around children's care and justice which will be affected by Bill provisions. Extensive engagement with partners has taken place and discussions are continuing with COPFS, CHS, SCRA and others around the impact of the Bill. COPFS prosecutorial discretion means it is not possible to have binary forecasts of how many children will go to hearings on offence grounds rather than being prosecuted in court. Estimations are being made however for accompanying documents.

Brendan reflected on the responses to the consultation and analysis, and mentioned some of the concerns expressed around under 18s in Polmont, and the knock-on effect on secure care.

It was highlighted to the group that there are areas of interest around secure care and under 18s in Polmont. Responses to the consultation were mainly in favour of the direction of travel but raised concerns around the need for alternatives and contingencies to be in place. There were caveats in some of the responses to the consultation, suggesting that many agreed with Bill proposals in principle but were not in full agreement around implementation of these measures. There will possibly be a push to go beyond the age of 18 with some of the measures once the Bill is through Parliament, and consideration around a reduction in the use of secure care in the future, in line with the Promise.

The consultation analysis highlighted mixed support around enhancing existing measures and whether the hearings system should go beyond 18, which it has become clear will not be possible. There is a need for balance between the rights of the young person and those of the victim. Many responses to the consultation are supportive of all children having a route to secure care, but if there is a total prohibition on the use of YOI for under 18s, then questions arise around how secure can support this. Questions around policy and practice resource and the necessary changes required – do we delay legislative change until systems and services have changed, or do both at the same time?

Liz reflected that the Bill can only go so far and there are questions to be asked about the older age range and the supports for those (older) young people. If we remove young people from YOI then attention could turn to whether under 21s should be in YOI.

John asked what was the consensus view with regard to the consultation on cross-border placements. He has experienced pressures at Renfrewshire Council in relation to cross-border placements due to the knock on impact on resources, in particular CAMHS, which are already pressured enough with children living in Scotland on a more permanent basis.

Debbie advised that the consultation received consensus support for cross-border placement requirements, but there are some difficulties. The level of control in Scotland over decision-making in this area is limited, and broader cultural issues are also having an impact. In terms of strategic needs assessment, it is important for local authorities to have more knowledge and involvement where new provision is being set up. To ensure greater clarity around secure care, the Bill will be keen to stress that secure care is deprivation of liberty. It is envisaged that further discussions will take place on children who are not in secure settings. Detailed

conversations are needed around what is 'deprivation' and what is 'restriction', as this will have a knock on impact on the Care Inspectorate and those not in secure care. The issue of restraint is a much more mixed picture.

John explained that Renfrewshire Council had developed a form which would be part of the residential units' admission processes to ensure that the local authority is informed should a unit wish to open. It was noted this practice would be helpful across the country.

Action: John to share with SG once the form is finalised.

Kenny advised that there are a number of challenges to be discussed. There may be issues around the raising of the age of referral to the Children's Reporter to 18. Some potential conflict may arise with regard to children who are 17 and a half/three quarters and the timing of the system – what would be the actual deadline in terms of referrals? It is important to consider this if the view is that a referral can't be made beyond 18.

We also need to consider certain types of offending where punitive elements are required e.g. sexual offences, and all offences where there is a public interest in registration requirements. Other potential offences to consider relate to driving offences – neither sit within the remit of the Reporter. This issue becomes more acute as 17 year olds become eligible to drive.

There is a final point to be made around serious offending. The older children get, the greater the volume and seriousness of offending witnessed by COPFS. Looking at data from 16/17 year olds, the severity increases and becomes more of a challenge.

Alistair advised that there will be another meeting next week to explore some of these issues. We need to discuss what is the point at which referral to the Reporter isn't realistic as there won't be time to offer support to the young person. Discussion around this is needed, and perhaps the answer is not to have a clearly defined age but a memorandum of understanding and flexible measures in place. SCRA have done some modelling work with CHS around what this might look like. Around 17 and half is the age at which we would expect to stop referrals currently. The final decision will be for Ministers.

At the moment CYCJ are looking at summary/structured deferred sentences, and at how young people can engage meaningfully in a court of law. One possible model would be to have children sitting around a table, in discussion with a Sheriff. This does not always mean they won't be prosecuted but aspects such as losing the formalities with fewer formal rooms, no wigs and gowns, etc. would be helpful. It was noted some issues with the options outlined in the consultation were noted by respondents.

With regard to the issue of two different systems interacting, and the challenges arising from this, the Bill team have approached this following UNCRC principles and are taking care not to encroach on the Crown and Judiciary. They are considering the fundamental shift required in the CHS and whether that is possible in the context of the Bill.

Gerry advised that with smaller numbers of young people in Polmont it becomes more difficult to provide a holistic experience. Only 2 out of the 7 under 18s in their care are under the age of 17 and a half. The possibility of keeping one young person on their own is untenable. Although we have moved a huge distance, how do we care for the people left in YOIs? The Scottish Government has a clear commitment to ending YOI for under 18s We are looking at a 2023-

2024 timeline with taking into account Parliament timings and recess. It is likely to be this time next year with regard to the impact of the Act on the ground.

Others agreed that the matter would need to be raised to Ministers when numbers get smaller as young people could effectively be in isolation. This is especially important in context of the Mental Health Review. The Government cannot, however, intervene in decisions around where to place young people, but some young people could have a route into secure care.

The Bill team is giving thought to an implementation group for the Bill.

6. UNCRC update

Gita Sharkey provided an update on recent developments relating to the UNCRC.

Amendments have been drafted to resolve the Supreme Court judgement. SG officials are engaging with the UK Government lawyers on the proposed amendments. It is hoped that engagement will work through any concerns the UK Government have to reduce the risk of a further reference to the Supreme Court. SG are also engaging with Parliament around whether proposed amendments to the Bill are admissible. Timescales are currently unknown but everything that can be done is being done in preparation.

7. CHIP update

Fiona Dyer offered an update on the last work of the Children's Hearings Improvement Partnership (CHIP) which took place on 11 August.

CHIP are looking forward to a joint meeting with YJIB in the future. The group have been developing a paper on CHS recovery based around workforce resilience and capacity, and have been linking up with Our Hearings Our Voices (OHOV). OHOV gave a presentation to CHIP on a campaign from young people around use of language, which it is hoped will start soon. Elsewhere, the group received an update on the Hearings System Working Group which sits under The Promise and which is chaired by Sheriff Mackie. It is hoped that a report on the work of the HSWG will be published next year. The group has considered links with the Children's Care and Justice Bill and potential links with a future Promise Bill.

Alistair Hogg is a member of the HSWG. SG participates in this group as an observer. Task to make recommendations on redesign of CHS.

AOB

- It was agreed that the meeting on 30 November would be cancelled due to the delay to the September meeting being held in October. New dates for 2023 will be circulated in due course.