

# **Analysis of consultation responses for: Raising the Age of Referral to the Principal Reporter**

**Final Report**

**December 2020**

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# Executive Summary

## Background

The Scottish Government launched a consultation to gather views on the principle of raising the age at which children can be referred to the Children's Reporter to include all under 18s - whether on care, protection or offence grounds. This includes those who come to the attention of agencies for vulnerability such as those at risk of exploitation, abuse or harm due to their own behaviour or the behaviour of others.

The consultation opened on 17 June 2020 and closed on 7 October 2020. An independent analysis of consultation responses was commissioned, and this report presents the findings from that analysis.

## Methodology

The consultation was open to both individuals and organisations and feedback was gathered via:

- a main online consultation questionnaire - containing seven substantive questions (three with both open and closed components) focussing mainly on the general principle of raising the age as well as the grounds for referral and potential implications of any changes for agencies involved in the youth justice system. Views on consequences of the change for victims harmed by children were also sought, focused on if/how victims should be better supported in the event of legislative change;
- a shorter Easy Read online consultation questionnaire - containing three substantive questions (two with both open and closed components) focussed mainly on the perceived fairness and equality of the proposals; and
- a series of qualitative engagement events to canvass the views of children and young people, including those with lived experience of the care and justice systems in Scotland.

The majority of responses were submitted via Citizen Space, the Scottish Government's online consultation platform. All responses were read and logged into a database for analysis purposes. Closed question responses were quantified to ascertain the number and percentage of respondents who agreed/disagreed with each proposal or question statement, and open question data were analysed thematically to provide an overview of the main feelings expressed by participants.

## Number and Nature of Responses Received

A total of 277 unique responses were received to the online consultation questionnaires, including 124 (45%) for the main consultation and 153 (55%) for the Easy Read version. The majority of responses came from individuals (n=202; 73%) compared to organisations (n=75; 27%). Among the organisations that responded,

there was a reasonable split between public sector and other organisations, including those in the third sector, legal system representatives and academia as well as a number of child and adult care and protection committees.

There were nine separate submissions including feedback from sessions with children and young people.

## **Main Findings**

### **Support in Principle**

There was overwhelming support to raise the maximum age of referral with the large majority of respondents indicating that the age should be raised to 18 for care, protection and offence cases.

Respondents' support for the proposal centred mainly around the need for equality, such that all young people up to 18 years of age had equal opportunities to access the appropriate care, assistance and support that they needed. The proposal was welcomed as a way of providing greater protection for the most vulnerable young people as well as potentially avoiding unnecessary custodial sentences/criminal records which may hinder future life prospects.

Raising the age would also remove the anomaly that, currently, a child turning 16 who is not already subject to a compulsory supervision order (CSO) or an open referral to the Reporter cannot be referred to the children's hearings system, unless by the court following guilt being accepted or established (which many viewed as discriminatory). The importance of harmonising definitions of a 'child' in legislation was also a central feature of supportive responses.

### **Main Arguments Against the Proposal**

Among the minority of (mainly individuals) who were against the proposal, the main reason given was that young people should be treated as adults once they passed 16 years of age, consistent with them enjoying other adult privileges such as voting, marriage, consensual sexual activity, etc. Some young people may not wish to be retained within a system designed for children, it was felt, and to do so was potentially over-protecting, patronising and may undermine responsibility and independence for some young people.

A small number (including young people themselves) also suggested that the children's hearings system may not be a sufficient deterrent to young people or may be seen as a 'soft option', offering a non-satisfactory response for victims as well as potentially doing nothing constructive to prevent re-offending or to enable desistance. This was seen as especially relevant in cases where young people were prolific or high tariff offenders.

Importantly, even those who disagreed with the proposal overall suggested that cases should be dealt with on their individual merits as some young people may benefit from the wider support (including rehabilitation) afforded by the youth justice

system. Young people who responded to the consultation also seemed to stress that responding to individuals' unique needs was key.

## **Grounds for Referral**

The majority of respondents felt that the existing grounds for referral to a children's hearing were sufficient, however, there was some perceived inconsistent use of referral grounds between agencies and some differences in interpretation of their meaning. Greater clarity and precision on the existing grounds was encouraged (including making them appropriate to the extended age range) as well as making them more easily understood for panel members and young people alike. This would also give the grounds greater legitimacy amongst the young people whom the proposed change seeks to support, it was felt.

A number of potential new grounds were mentioned which would better reflect the wide range of Adverse Childhood Experiences (ACEs). There was particularly strong encouragement for new grounds linked to those who have experienced or are at risk of sexual exploitation or trafficking as well as those at risk of criminal exploitation (including being targeted, groomed and forced into participation in criminal activity). Those aged 16 and 17 were seen as being particularly at risk in both of these regards.

## **Potential Implications**

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. Extra costs would be offset by better outcomes for young people and society in the long term, it was felt.

The likely need to increase numbers of panel members and SCRA support staff to respond to the change (i.e. increased capacity) as well as the possible need to review panel member recruitment criteria to ensure better representation and diversity were both frequently mentioned. The need for potential specialisation of staff and panel members, to ensure a wider range of expertise, also featured often in responses as did the possible need to consider the professionalisation of the national children's panel to ensure consistent, competent decision making. Existing challenges with recruitment and retention of sufficient numbers of panel members was also raised as something which may be exacerbated by the change in legislation, with potentially even fewer volunteers coming forward (because of a perceived increase in complexity of the role).

Training was also seen as a key need that would result from the change with specific suggestions including increasing panel members awareness of local services and supports available to young people, 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.

## **Support for Victims and Witnesses**

The majority of respondents felt that, if the age of referral to the Reporter was increased, amendments would be required to ensure 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.

A robust, clear and transparent communications strategy was encouraged to provide victims with information regarding the process change and what it means for victims, including information about what support would be available within a new system. Information would need to be accessible and made available in a wide range of formats to meet communication preferences and needs, it was stressed. A separate more detailed and focused consultation may be required to better understand victims' needs in light of the proposed change.

Only a small number of respondents indicated that amendments would not be required on the basis that victim support is an important but separate issue and the privacy rights of the child and the child's safety/protection should be the primary focus of the change. Managing victims' expectations around what can be shared was also noted as important when dealing with children and young people referred to the Reporter. Overall, however, there was support for a justice system that ensures all decisions are made in the best interest of the child whilst also being transparent and fair to victims (including young victims).

## **Views of Young People**

The views of young people who took part in the consultation events largely mirrored those of the main consultation respondents. Increasing the age of referral would give young people an opportunity to be heard and engage with support to make positive life choices, as well as providing an opportunity to explore and address previous offending and trauma histories. Wider benefits included helping young people to better understand the seriousness of their actions while upholding their rights, as children. Young people highlighted that those aged 16 and 17 were still developing (cognitively and emotionally) and may lack maturity to be managed effectively in the adult criminal justice system. This view was echoed by some of the main consultation respondents.

## **Conclusions**

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 and how justice stakeholders would respond to increasing demand for support for young people, both practical and emotional. Despite the recognised challenges, however, the consultation highlighted a clear majority support for the proposal which would be embraced by most as ensuring that children and young people get the right support at the right time to enhance wellbeing and maximise opportunities for better life outcomes.

# Introduction

## Background

The Scottish Government launched a consultation to gather views on the principle of raising the age at which children can be referred to the Children's Reporter to include all under 18s - whether on care, protection or offence grounds. This includes those who come to the attention of agencies for vulnerability such as those at risk of exploitation, abuse or harm due to their own behaviour or the behaviour of others.

Currently, a child turning 16 who is not already subject to a compulsory supervision order (CSO) or an open referral to the Reporter cannot be referred to the children's hearings system, unless by the court following guilt being accepted or established. A child subject to conditions of a CSO or open referral can be referred until their 18<sup>th</sup> birthday. Removing these conditions for 16 and 17 year olds would enable agencies to provide child-centred responses for all under 18s.

The consultation also sought views on the structural, resourcing, service design and practice implications of the proposed changes for those working in or alongside children's hearings and the youth justice system more broadly. Feedback was also sought on whether additional protections would be necessary to facilitate information for victims, safeguarding and access to supports, should the change be introduced.

An independent analysis of consultation responses was commissioned, and this report presents the findings from that analysis.

## Consultation Process

The consultation opened on 17 June 2020 and closed on 7 October 2020. It was open to both individuals and organisations. The Scottish Government actively encouraged responses from organisations working in the adult and youth care and justice systems, from victim support organisations and from young people themselves (including those with lived experience of the children's hearings system).

Feedback was gathered via three main means:

- Main consultation questionnaire - a total of seven substantive questions were asked (three with both open and closed components) which focused on the general principle of raising the age as well as the grounds for referral and potential implications of any changes for agencies involved in the youth justice system. Views on consequences of the change for victims harmed by children were also sought, focused on if/how victims should be better supported in the event of legislative change. Three impact assessment

questions linked to data protection, children's rights and wellbeing and equality were also included.

- Easy Read version of the questionnaire - containing three substantive questions (two with both open and closed components) and focusing mainly on the perceived fairness of the proposal and whether all 16 and 17 year olds should be considered by the Children's Reporter and by children's hearings. Impact and implications questions were not included.
- Qualitative engagement events - Youth Justice Visionaries (YJV) led a number of one to one and group consultations on behalf of the Scottish Government to help canvass the views of children and young people. This entailed young people with lived experience leading the project with the support of YJV staff, sharing their own responses as well as developing and facilitating online workshops with other young people. A conversational topic guide was developed by YJV and the Scottish Government to facilitate discussions with questions largely mirroring those in the Easy Read questions, but with some small variations between groups. In addition, a series of focus groups were held at HMP & YOI Polmont to capture views of the young people there.

The majority of responses were submitted via Citizen Space, the Scottish Government's online consultation platform, and were automatically collated into a database, downloadable to Excel. A small number (n=7) who submitted online responses also sent complementary emails containing further detail or supporting documents directly to the Scottish Government to supplement their online response.

## Number and Nature of Responses Received

A total of 277 unique responses were received to the online consultation questionnaires, including 124 (45%) for the main consultation and 153 (55%) for the Easy Read version<sup>1</sup>.

	Number	%
Main Consultation	124	45%
Easy Read	153	55%
<b>Total</b>	<b>277</b>	<b>100%</b>

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<sup>1</sup> Two individuals answered both the Easy Read and main consultation questions and these were treated as separate responses to allow their contributions to the different sets of questions to be included.

The majority of responses came from individuals (n=202; 73%) compared to organisations (n=75; 27%). Among the organisations that responded, there was a reasonable split between public sector and other organisations, including those in the third sector, legal system representatives and academia as well as a number of child and adult care and protection committees. The table below shows the breakdown of responses by organisation type.

	Number	%
Public sector organisations	37	50%
Non-government organisations (NGOs) and Third Sector	15	20%
Membership organisations	13	17%
Other (including academia)	10	13%
<b>Total</b>	<b>75</b>	<b>100%</b>

Respondents to the main and Easy Read consultations were asked if they or their organisation worked directly with children who are in the children’s hearings or criminal justice systems. A total of 146 (53%) said yes, including 99 individuals and 47 organisations.

Respondents to the main and Easy Read consultations were also asked if they, or their organisation, worked directly with victims. A total of 88 (32%) said yes, including 51 individuals and 37 organisations.

A total of 80 respondents (29%) indicated that they worked with both children and victims.

There were nine separate submissions including feedback from sessions with children and young people. These varied significantly in terms of length, complexity and detail and it was not possible from the returns to know exactly how many children and young people’s voices were represented across the sessions. In most cases, these followed the format of the main consultation, with responses provided to core questions. In other cases, more general comments were made reflecting the young person’s experience or opinions in relation to raising the age.

All who contributed written responses were asked to submit a Respondent Information Form (RIF) alongside their consultation response, indicating if they were willing for their response to be published (or not), either with or without their name. Just over half of respondents (n=160; 58%) indicated that they were content for their response to be published (without their name), a third (n=90; 32%) were content for their response to be published alongside their name and the remainder (n=27; 10%) indicated that they did not wish their response to be published.

## **Analysis of Responses**

All responses were read and logged into a database, and all were screened to ensure that they were appropriate/valid. Three duplicates (all Easy Read) which had been submitted in error were removed for analysis purposes. Although some responses to individual questions were not appropriate/did not directly address the questions being asked, all feedback was analysed and is presented under the appropriate sections below.

Closed question responses were quantified and the number of respondents who agreed/disagreed with each proposal or question statement is reported below.

Comments given at each open question were examined and, where questions elicited a positive or negative response, they were categorised as such. The main reasons presented by respondents both for and against the content included in the consultation were reviewed, alongside specific examples or explanations, alternative suggestions, caveats to support and other related comments. Verbatim quotes were extracted in some cases to highlight the main themes that emerged. Only extracts where the respondent indicated that they were content for their response to be published were used and a decision was made to anonymise all responses as part of the reporting process.

## **Report Presentation and Research Caveats**

Due to the large number of Easy Read responses, many of the questions in the main consultation were answered by only a small proportion of the overall sample. The tables below show the number and proportion of respondents who concurred with the different response options presented, but in many cases, large numbers of 'non-responses' are noted. In all cases, therefore, the 'valid percent' has also been shown (i.e. the proportion who said 'yes' or 'no' once the non-responses were removed). This gives a more accurate account of the strength of feeling among those who did answer the set questions.

For qualitative data, as a guide, where reference is made in the report to 'few' respondents, this relates to five or less respondents. The term 'several' refers to more than five, but typically less than ten. Any views that were expressed by large numbers of respondents (i.e. ten or more) are highlighted throughout.

As demographic data were not captured as part of the consultation, it is not possible to ascertain which or how many of the views presented in the main and Easy Read consultations represent those of young people themselves. While the qualitative data from engagement and focus groups events does provide an indication of the views of this group, there is no way of disaggregating the other findings to understand if the views expressed by young people were different from those expressed by adults or the professional stakeholders who took part.

While it was possible to carry out disaggregate analysis of the data based on whether the respondent was replying as an individual or on behalf of an

organisation, the analysis suggested that there were no notable differences in the main themes to emerge between the two respondent 'types'. This may be, in part, due to the fact that many of the individual respondents were replying on a personal level but worked in a professional capacity either with victims or with children and young people involved in the youth justice system (for example, several responses from panel members were received and these did not differ significantly from the views offered by the Children's Hearings Scotland (CHS) organisational response).

Similarly, it is worth noting that just under a third of respondents indicated that they worked with both children and with victims (including, for example, panel members and support service providers who will have had experience of working with young people as both perpetrators and victims). This provides useful context when considering some of the views presented.

Further, it should be noted that the data generated suggests that some individuals interpreted the Easy Read questions very differently from one another. In particular, when asked if people should be treated 'differently', some indicated that they should and others indicated that they should not, but the same justifications were given by both groups i.e. that people should be treated 'individually' and based on their own personal circumstances. This led to some anomalies in comparing the closed response data alongside the open responses and this is reported, where relevant, below.

Finally, although a reasonably large number of responses were received overall, it is worth stressing that the views presented here should not be taken as representative of the wide range of stakeholders invited to respond to this consultation, nor should they be generalised too broadly. They simply reflect the views of those individuals and organisations who chose to respond.

The remainder of this report presents the findings from the analysis.

# Main Findings

## Agreement with the Principle

**Q1. Do you agree that the maximum age of referral to the Reporter should be increased to 18?**

Across the main consultation, there was overwhelming support to raise the maximum age of referral. Among those who answered the question, 91% agreed with raising the age in all cases.

	Number	Percent	Valid %
Yes - All cases	109	39%	91%
Yes - Care and protection cases only	5	2%	4%
Yes - Offence cases only	1	-	1%
No change - the existing age criteria should remain	5	2%	4%
No response	157	57%	-
<b>Total</b>	<b>277</b>	<b>100%</b>	<b>100%</b>

The main reasons given by those who supported the change **in all cases** included:

- that all young people up to 18 years of age should be treated equally and so all be under the same system, i.e. the change would bring about greater consistency in the treatment of all 16 and 17 year olds. This was seen as particularly beneficial for those with lower levels of developmental maturity and several respondents expressed that young people may in fact lack adult maturity (and understanding of social responsibilities) until into their mid-20s;
- raising the age would remove the anomaly that, currently, a child turning 16 who is not already subject to a compulsory supervision order (CSO) or an open referral to the Reporter cannot be referred to the children's hearings system, unless by the court following guilt being accepted or established (which many viewed as discriminatory);
- the importance of harmonising definitions of a 'child' in legislation and making it consistent/better aligned with:
  - the United Nations Convention on the Rights of the Child (UNCRC);
  - Getting it Right for Every Child (GIRFEC);
  - the principles of the Kilbrandon Report;

- the Whole System Approach (WSA) to youth justice;
  - the Children and Young People (Scotland) Act 2014 (including legislation on corporate parenting duties);
  - the National Guidance for Child Protection in Scotland (2014);
  - Human Trafficking and Exploitation (Scotland) Act 2015;
  - Scottish Sentencing Council draft guideline on the sentencing of young people; and
  - Council on Europe Guidelines on Child Friendly Justice.
- the value of keeping young people, especially those under 18 years, out of the adult court system (which can be traumatic and emotionally harmful) and, where at all possible, avoiding unnecessary custodial sentences/criminal records which may hinder future life prospects;
  - the change would provide greater opportunities for young people to access appropriate care, assistance and support, resulting in fewer young people “falling through the cracks”; and
  - the need to provide greater protection for the most vulnerable young people and provide a better way of addressing previous adversity/offending behaviour, trauma histories and Adverse Childhood Experiences (ACEs) as well as greater opportunity to review and respond to a child’s personal circumstances:

“For too long those that should be regarded as children have fallen through the cracks and missed out on the legal protections and obligations of support and care that they need, which can be successfully delivered within the hearings system.”

The proposal was also seen as potentially removing what was currently seen as wide geographical disparity in how young people are managed in the adult and youth justice systems, with suggestions that use of joint reporting mechanisms varied across the country (with varying levels of efficiency and timeous practice):

“We have seen cases locally, and nationally, of jointly reported young people waiting extended periods (sometimes years) to find out how their charge will be disposed of. Decision making for young people needs to be done timeously and with proportionality...The workforce needs to understand how, when and what to communicate to the Procurator Fiscal to ensure they have all the relevant information to inform their decision making.”

Obtaining advice from children’s hearings for cases calling in court could be more systematically dealt with across the country, it was suggested, with current approaches described as piecemeal.

Such **consistency** was seen as long overdue. Moving more offence cases from the adult to youth justice system was also seen as potentially leading to greater efficiency in the administration of justice for victims, with the children’s hearings

system seen as offering swifter resolutions in most cases. This would have benefits for the victims, as well as the young person.

Also featuring in several responses was the notion that there was a current ‘abyss’ between child and adult services and that the proposal would help to better bridge the gap, ensuring **smoother transitions** for young people turning 18. In particular, the proposal would bring about better alignment to other services such as Child and Adolescent Mental Health Services and include young people still being supported through leaving care services via social work, it was noted:

“It would allow for extension of the transition periods between children’s and adult services and would increase opportunities for community-based support and intervention.”

For the most vulnerable young people in need of long-term support, the proposal was also welcomed on the basis that the children’s hearings system and local authorities can continue to provide Throughcare and Aftercare support (as well as Continuing Care) for those 18+ and that, by diverting more young people into the children’s hearings system, this provision would become more accessible. It may also remove some of the challenges faced by young people subject to Permanence Orders (PO), transitioning from local authority care to supported living arrangements. Better alignment of care experience age thresholds was welcomed:

“Young people to whom the state is a corporate parent are entitled to additional support up to the age of 26. Fulfilling the State’s corporate parenting responsibilities should be a key consideration in plans to raise the age of referral.”

Improving transitions between adult and youth services was seen as especially important for the most vulnerable children whose developmental needs have been affected by experiences of trauma.

Another key argument for not differentiating rights of referral on offence or care and protection grounds was that that some young people who demonstrate harmful behaviours may be victims of circumstance and so be in need of support as victims as well as perpetrators (i.e. with offending behaviour often reflecting an expression of an **unmet need**). To have different processes in place based on this dichotomy was seen as illusory (and potentially judgemental) and an approach that takes a more holistic view of young people’s circumstances was therefore welcomed:

“There is such a strong interplay between vulnerability, deprivation, and criminality in young people, and I think there needs to be more emphasis on addressing underlying issues of vulnerability for teenagers rather than dealing with criminal behaviour in the more traditional criminal justice way.”

While there was overwhelming support for the proposal, some supporters did also caveat their responses by suggesting that the scale of the challenge with implementation should not be underestimated, including the impact on criminal and

youth justice partner workloads and public and third sector **support services capacity** (discussed more below). Raising the age of referral in legislation was also seen as only one part of the solution with wider systemic change also being required, including cultural shifts in thinking among stakeholders in both the adult and youth justice and care systems. Systematic collection and monitoring of data was also viewed as integral to effective implementation, and this too must be planned for from the outset, it was suggested.

A further caveat raised was that, whilst the increase in age of referral was welcomed, the seriousness of offending and risk of serious harm/public safety presented by some young people must be carefully monitored. If it was deemed that a young person had exhausted all youth justice system options (for example, due to persistent and/or high-risk offending behaviours which cannot be managed in the children's hearings system), these children should not be continually referred, it was suggested. **Proportionate disposals** were welcomed by a number of respondents, with sufficient options to allow for the most serious offences to be addressed by fair but appropriate consequences.

A final caveat to supporting the principle was that the proposal must be accompanied by increasing the levels of **participation of young people** such that their involvement becomes a central feature of any measures that are taken (including making sure that children and young people, their parents and carers are aware of the new processes and understand them sufficiently well to know their rights). It was stressed that this should go hand in hand with an extension of resourcing for independent children's advocacy services in order to cover the extending age range, to ensure that every child has access to advocacy and that the system is holistic and fair to all. All communication about the changes must also be inclusive and accessible, it was argued.

On balance, those who supported the proposal for all referrals agreed that the shift in age of referral would offer greater protection for children and young people of all ages. The uniqueness of the Children's Hearing System in Scotland was seen as something to be proud of and the proposal would offer an opportunity to even better address the needs of vulnerable young people - further aligning justice systems with Scotland's wider legislative commitments.

Views given by those who indicated that it was appropriate for **care and protection cases only** included:

- that panel members are not currently sufficiently well trained to deal with offence cases (but that if appropriate robust training was introduced, the age limit should be increased for all types of referral);
- that most young people aged 16 and above have capacity to understand that criminal activity is wrong and so should be treated the same as adults; and
- that, for offence cases, the Procurator Fiscal already has the option to refer back to the Reporter with options already in place for the adult courts to impose alternative sentencing.

The one person who felt it was appropriate **for offence cases only** indicated that it was anomalous that the case of a 16 or 17 year old alleged offender cannot be dealt with in the children’s hearings system unless that person is already subject to a Compulsory Supervision Order (CSO) and this was a strong factor supporting an increase to 18 in offence cases.

Those who indicated that **change was not necessary** and that the existing criteria should remain, mainly expressed that:

- young people should be treated as adults at age 16 as they enjoy other adult/social privileges at that age (such as voting, marriage, consensual sexual activity, etc.);
- for offence related referrals, youth justice support can be provided regardless of where the offences are reported;
- for care and welfare, unless the young person is cooperative and engaging, compulsion may not be effective for this age group;
- the children’s hearings system may not be a sufficient deterrent to young people/may be seen as a soft option by offenders as well as being seen as a non-satisfactory response for victims; and
- treating an adult like a child is not conducive to them recognising themselves as adults and behaving as such.

It is worth noting that, across the consultation, a small number of respondents also sought clarity on how the default for cases involving young people under the age of 18 being referred to a children's hearing rather an adult criminal court would be monitored/upheld (if the Procurator Fiscal still had the determining voice). This was something that they felt needed to be more clearly set out.

**Easy Read Q1: Is it fair that some 16 and 17 year olds are treated differently?**

	Number	%	Valid %
Yes	41	27%	27%
No	109	71%	73%
No response	3	2%	-
<b>Total</b>	<b>153</b>	<b>100%</b>	<b>100%</b>

A large majority (73%) of respondents to the Easy Read consultation indicated that it was not fair for some 16 and 17 year olds to be treated differently. Around one in four felt that it was fair.

It should be noted, however, that this question was misinterpreted by a handful of respondents with some providing a 'yes' response with follow-up qualifying responses indicating that they believed all should be treated equally. Similarly, some said 'no' and then suggested that 16 and 17 year olds should be treated differently.

The majority of respondents who said 'no' provided explanations that focused on **equality** as a fundamental human right which they felt was not addressed in the current legislation, and should be changed. Regardless of background, it was felt that treating people the same and giving them the same opportunities was key.

Several also stressed that young people aged 16 and 17 may be equally at risk and as vulnerable as those aged under 16, and should therefore be covered by the same legislation and provided with appropriate levels of help, guidance, care, protection and support. Giving all young people the same opportunities to be heard also featured in several responses.

Many also stressed that young people aged 16 and 17 are no more mature than those aged in their earlier teens and are, in fact, of a similar developmental age and stage. It is not possible to determine 'adulthood' based on chronological age alone, it was felt (with some 16 and 17 year olds still being very 'young'):

“No, I believe it is arbitrary to make a definition based on such a short gap in age given the capacity of all children varies according to not only them as individuals but the experiences they have been exposed or subjected to.”

Less frequently mentioned justifications for treating people equally (but views that mirrored those from the main consultation) included:

- potential negative outcomes associated with criminalising and institutionalising young people aged 16 and 17 (and needing to break the cycle of criminal behaviour early);
- lack of access to appropriate help and support for young people placed in the adult criminal justice system; and
- that treating all young people as children until the age of 18 would reduce any subjectivity in the way that young people are supported and managed in the system.

Several responses referenced the fact that treating 16 and 17 year olds differently in this regard was counter to more general social rules which treat all under 18s as children, and suggested that there was a blurring of the lines around the definition of adulthood in current legislation. A small number of respondents again pointed towards the UNCRC, GIRFEC and the national curriculum which all treat people as children up to the age of 18, and indicated that the referral legislation should therefore do the same.

Only one respondent who felt that 16 and 17 year olds should be treated the same raised the issue of potential resistance from young people against being managed in the children's hearings system (i.e. some may not wish to be managed as a child). Overall, however, 16 and 17 year olds were still considered as children by most respondents who said 'no' and should be treated as such with equal terms to those under 16.

The main reason given in support of treating children differently was **diversity** i.e. that different individuals have different needs and life circumstances that merit different responses. Several also stressed that young people have varying levels of vulnerability (including some with trauma histories) and that there was also huge variation in the support available to different young people.

Other reasons given in defence of different treatment again included differing levels of maturity among young people (requiring different responses tailored to individuals' respective life skills), differing levels of severity of criminal/irresponsible behaviour that bring young people to the authorities' attention (requiring different levels of punitive/remedial response) and differing levels of motivation for involvement in crime or anti-social behaviour (with some reasons perhaps being more justifiable than others, e.g. if the perpetrator is also a victim).

Only a handful of respondents felt that it was fair to treat some 16 and 17 year olds differently from under 16s because they were 'adults' and should be considered as criminally responsible (this included both people who said 'yes' and 'no'). For this group, the change was seen as a possible backwards step.

This was countered by a small number who stressed that treating people differently was fair because some may lack understanding of criminal responsibility (or have other learning/development impairments).

Overall, treating young people appropriately and according to their personal needs and circumstances, rather than based on age alone, seemed to underpin most qualifying responses among both those who viewed different treatment as fair and those who did not.

<b>Easy Read Q2. Should all 16 and 17 year olds be considered by the Children's Reporter and the children's hearing?</b>
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The majority of respondents indicated agreement that all 16 and 17 year olds should be considered by the Children's Reporter and the children's hearing either in all cases (62%) or only in some cases (27%).

	Number	Percent	Valid %
Yes	95	62%	62%
Yes, but only in some cases	41	27%	27%
No	16	10%	11%
No response	1	1%	-
<b>Total</b>	<b>153</b>	<b>100%</b>	<b>100%</b>

The main justifications given by those who felt that **all cases** should be considered were very similar to those offered in response to the earlier question and included:

- ensuring that all children are treated equally and fairly/all children are given the same support regardless of the circumstances of referral;
- that young people of this age are still emotionally/cognitively immature and should be treated as children with the reasons for their offending explored and addressed;
- children who have broken the law should be considered as children in need (and as potential victims themselves);
- that raising the age would give additional safeguarding rights and 16 and 17 year olds would have access to a Safeguarder; and
- referrals and intervention would reduce inequalities and reduce the chances of continued poor life choices in the future.

Overall, comments reflect that children and young people could be better supported via the children's hearings system than in the criminal justice system.

Those who felt that referral should only be considered **in some cases** based this mainly on:

- seriousness of offences committed (where relevant) with the most serious/violent cases always being remitted to the adult system (especially those that would otherwise be heard in the High Court and would likely result in a custodial sentence if tried in the adult system);
- mental health/emotional needs of the young person, including any issues linked to depression, suicide and self-harm as well as the level of cognitive function/development of the young person in question. Where impairment or poor mental health exists, referrals to the youth justice system were seen as more acceptable;
- whether the young person is already known to social work and other services and is likely to be in need of wider support due to personal vulnerabilities; and

- whether the young person is willing/able/ready to discuss and address their actions (including impacts on victims).

One respondent indicated that it would only be appropriate to make referrals in criminal cases with victims' consent and another suggested that, for the most serious crimes, there should possibly be a two-stage referral involving the adult justice system and the children's hearings system (although it was not clear how this should differ from the existing system).

Among respondents who provided **conditional support** for this proposal the main view was that serious crimes committed by over 16s without mental health problems should perhaps not be dealt with by the Reporter unless the young people themselves were notably vulnerable or at risk.

Among the 11% of respondents who felt that all 16 and 17 year olds **should not be considered** by the Children's Reporter and the children's hearings system, the main reasons given were similar to those of the main consultation respondents, and included that:

- those aged 16 and over were criminally responsible (unless they had additional learning or support needs);
- the children's hearings system may not be taken seriously by some young people (and not be seen as a deterrent), i.e. a "soft touch";
- young people aged 16 and 17 are afforded social privileges and so should be treated as adults in the justice system too; and
- it may be demeaning and patronising to those aged over 16 to be referred to a system for 'children'<sup>2</sup> and that retaining them in the children's hearings system would not adequately prepare them for adulthood;

"This age group is credited with sufficient responsibility for purposes of voting, marriage, consent and sexual activity and so accountability for these and other actions would be the same as that of an adult exercising the same rights with the same responsibilities."

Some again felt that individual circumstances should always determine the referral route and, in particular, the seriousness of the crime and previous offence history of those in question. Collaborative working with the police and social work was suggested as being appropriate to identify who should/should not be referred and in which cases compulsory measures may be required.

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<sup>2</sup> In response to an earlier question, one respondent suggested that, if legislation changed, the children's hearings system should be renamed the 'children and young people's hearings system' to counter this stigma.

## Grounds for Referral

**Q2. If the age of referral is increased to 18, are the existing grounds of referral to a Children's Hearing sufficient?**

Roughly two thirds (68%) of respondents to the main consultation agreed that, if the age of referral was increased, the existing grounds for referral to a Children's Hearing were sufficient.

	Number	Percent	Valid %
Yes	75	27%	68%
No	36	13%	32%
No response	166	60%	-
<b>Total</b>	<b>277</b>	<b>100%</b>	<b>100%</b>

The main view expressed by those who felt that existing grounds were **sufficient** included that the list was already detailed and comprehensive, covering most eventualities and categories of vulnerability and need. Others felt that they were sufficient on the basis that the needs and vulnerabilities of those aged 16 and 17 were not dissimilar to those of younger children already covered by the Children's Hearings (Scotland) Act.

The other main comments included that the existing grounds, although sufficient, may not be being used appropriately or as readily as they should be with some perceived **inconsistent use of referral grounds** between agencies and some differences in interpretation of their meaning. More awareness of these grounds should be given to those agencies involved with children and young people in the justice system, it was suggested, as well as considering making some of the grounds easier to understand/interpret. Grounds linked to sexual exploitation and abuse, child trafficking and harmful or problematic sexual behaviour in children and young people in particular were seen as potentially those requiring greatest re-consideration for this age group (when a young person has reached the age of consent).

Given that the proposed changes may result in an increase in the complexity of referrals for this age group, the requirement for developing training in relation to the meaning and application of the current grounds of referral for 16 and 17 years olds also featured strongly (and is discussed more below). Ongoing monitoring and practice development provided to agencies to deepen understanding of existing (and any new) grounds was recommended.

Among those who felt that the existing grounds were **insufficient**, the main views were that young people aged 16 and 17 would present with different lifestyles and

face different challenges (including complex histories) and that the list would need to be broadened to reflect this.

At present, the list only covers some of the Adverse Childhood Experiences (ACEs) and that should also be addressed, it was felt. Suggestions for additions included homelessness, malicious harm, concerning online behaviour and exploitation, mental illness/mental ill-health (including that of the child or young person as well as their parent/carer), having a parent treated violently, having a household member in prison, having complex needs/learning difficulties/disability linked to inappropriate behaviour (and lack of capacity), bullying behaviours, emotional and physical pressuring (including being forced into a marriage), hate crime victimisation (linked to gender and race) and having previously been looked after and accommodated and needing to be referred back into care. Young people with learning and communication difficulties were seen as particularly at risk.

A large number again questioned if the existing grounds were adequate to meet the needs of children who have experienced or are at risk of **sexual exploitation** or trafficking and suggested that new very specific grounds may need to be added in this regard. On a related note, it was suggested that there may need to be an amendment of grounds for referral to recognise that some young people aged 16 to 18 may choose to enter into and maintain a relationship with a person as a result of which they may be abused or harmed, or their health or safety seriously adversely affected. One organisation suggested that consideration should be given to the approach to be taken if a young person aged 16 to 18 chooses to maintain a relationship with a person who has committed a Schedule 1 offence, has carried out domestic abuse, or committed an offence under Part 1, 4 or 5 of the Sexual Offences (Scotland) Act 2009:

“A young person may have been criminally exploited even if the activity appears consensual. It may be helpful, and would be congruent with the UNCRC, to provide flexibility to refer in relation to these sorts of concerns.”

The notion of **criminal exploitation** also featured strongly in responses here (and elsewhere) including being targeted, groomed and forced into participation in criminal activity. This was an area where there was an increasing body of evidence, it was felt, and was also an area where those aged 16 and 17 were likely to be at particularly high risk. Criminal exploitation as an explicit ground for referral was therefore welcomed.

Another very specific comment was made regarding the potential need to amend the grounds linked to “close connection” with a person for the purposes of referral grounds. As currently worded in existing grounds, this may have wide applicability especially for over 16s experiencing homeless and temporary accommodation who are likely to have little control over the level of contact they have with other people who occupy the same accommodation, it was felt.

A general point was also flagged in relation to parental rights and responsibilities (which end when a young person reaches 16) and compulsion (insofar as a young

person aged 16 acquires full legal capacity/is able to act for themselves/make their own decisions). One specific suggestion was made that a broader protection could be afforded to all children who have or are likely to suffer as a result of lack of care, if Section 67(2)(a) was amended to delete 'parental'. This would mean that children would be protected from the risk of harm and get the support they need to recover, irrespective of who had failed to fulfil the duty of care.

Careful thought was also needed, it was suggested, to the role, nature and extent of compulsory intervention in the lives of 16 and 17 year olds and their families with any extension of the application of compulsion being clearly justified and proportionate:

“16 and 17 year olds should not be subject to compulsory measures of supervision without good reason where their circumstances would not justify compulsory state intervention if the young person were over 18 years with legal capacity...By simply extending existing grounds to older young people agencies risk lowering the threshold for compulsory state intervention and drawing many more young people into the net of compulsion.”

More general comments included that some of the existing grounds would need to be redefined to include 'young people' as well as 'the child' if the age was raised and that some grounds would need to be revised to take account of legal difference, for example, around the right to buy and consume drugs and alcohol for those aged over and under 16. Similarly, references to school would need to be adjusted to take into account that it is not mandatory for those aged 16+ to attend full-time education. Grounds linked to being "beyond the control of a relevant person" may also lose some relevance in light of it being possible for a young person to live independently at this age. Linked to this, imposition of residence orders may also need to be reconsidered in light of the fact that young people aged 16 and over are able to own or rent their own property/accommodation (i.e. could a children's hearing mandate these individuals to reside elsewhere?)

One organisation also explicitly questioned what the status of a young person's spouse or partner will be if that young person is aged 16 or 17 and is asked to attend a hearing.

Some respondents (both in response to this question and elsewhere in the consultation) urged greater clarity and precision on the existing grounds *per se*, making them more easily understood for panel members and young people alike. This would also give the grounds greater legitimacy amongst the young people whom the proposed change seeks to support, it was felt. Indeed, one organisation that suggested that adding grounds for referral could confuse rather than improve the landscape concurred that a review of clarity of existing grounds may still be desirable.

It should be noted that a handful of respondents indicated that they felt insufficiently qualified or knowledgeable to comment on whether the existing list of grounds was sufficient.

## Potential Implications for Partner Organisations

**Q3. What are your views on the potential implications, including resource, of increasing the age of referral to the Reporter for local authorities, Police and other service providers/organisations?**

A total of 113 respondents provided a substantive response to this question.

Most respondents generally felt that there would be an increased workload and longer-term involvement with young people and their families for most services, including local authorities, social work, the Reporter and children's panels, the youth justice system generally, continuing and aftercare services, mental health services, and other support services such as employment, money matters, housing, etc. As such, it was largely agreed that this would require **increased resources, training and guidance** to deal with the change. It was also felt there would be a knock-on effect for multi-agency practice:

“There will be significant resource, training, and financial implications. These changes must therefore be supported by sufficient investment in Children's, Youth and Throughcare Services.”

Some organisations also highlighted the potential impact of this change on **accommodation provision**. For example, it was suggested that there may be increased demand for suitable (i.e. not YOI) secure placements, (which were already considered stretched/to have insufficient capacity), as well as increased demand for more intensive family support and/or supported accommodation options to keep young people in their communities (should this change result in greater numbers of looked after and accommodated young people). Again, these were considered to have resource implications for services which would require support and additional funding to provide such additional/expanded services. Further, the potential to have an increase in the number of 'looked after' children/young people was expected to have knock on effects for local authorities in the need to provide throughcare and aftercare support to additional numbers of young people, again, with additional resources being required for such services in order to cope with demand.

Other possible impacts and implications suggested by organisations included:

- implications for the availability of (or the need to create and/or redesign) suitable 'interventions' and programmes for older young people, the need for clear guidance and training for panel members and service providers in this respect (both public and commissioned/third sector partners), and for consistent provision to be provided across the country;
- a possible increase in the need/demand for legal aid, legal advice and/or advocacy support (including local authorities, SCRA and CHS which are all likely to see an increased need for advocacy services); the need to establish

clear and well-planned transition routes from youth to adult services, where needed;

- potential for transfer of resources from adult to youth justice partners (i.e. it was noted that currently a Sheriff can direct resources while a panel cannot); and
- that a review of the operation of the panel system may be required to suitably accommodate those aged 16 and 17, including communication issues, that the standard 'relevant people' (such as parents) may be inappropriate to involve, and consideration of privacy and confidentiality rights, as well as rights to representation.

A few also identified challenges and inconsistencies between the definition of a 'child' versus an 'adult' across different services, both in relation to justice services and more widely. In particular, it was noted that the police treat young people aged 16+ as adults and, as such, can hold them in custody, while those under 16 need to be held in a 'place of safety' which is not (usually) a police station - therefore the change would have practical implications for the police:

“The police would also need to change their approach - currently the police regard and treat a 16 and 17 year old as an adult, but would then be taking them to a children's panel.”

Also in relation to the police, opinions were mixed among individuals, with a few suggesting the change would have a positive impact by requiring less police time, action and involvement, and a few felt they would/should retain similar levels of involvement and be able to contribute to hearings, while a few others expected this could make the police job more difficult as it would worsen the [mis]perception that people under the age of 18 are 'untouchable'. A few individuals agreed more generally that this change could result in some young people and members of the public feeling that perpetrators can get away with more, and that there will be minimal consequences for their actions:

“However, raising the age limit to 18 will further perpetuate the idea that teenagers are untouchable, that any consequences for their actions will be minimal.”

There were mixed views around the impact this would have on the courts. While several individuals and organisations suggested that court time should be saved by moving young people to the children's system, a few organisations noted areas where court involvement could increase and where tight timescales are required, including proof hearings on disputed offence grounds, proof hearings for historic abuse, an increase in cases being referred to the courts by the Principal Reporter, and appeals.

It was suggested by some that there could/would be reductions in the workload/input required, and therefore cost savings from the adult justice system and adult services which could be re-directed towards the youth system/services,

with a few suggesting that the change might be cost-neutral overall. Specifically, it was felt that there would be cost savings in the court system, adult based criminal justice social work, and the prison and parole system. A few organisations also suggested that there may also be a neutral impact on the time input for professional staff as the increase in youth justice cases could be offset by not having to attend court, prepare court reports, and not having to support/supervise young people within the adult criminal justice system.

A few suggested that a **cultural shift**, re-evaluation of services and costs, and a review of the current budgeting systems would be required in order to accommodate this change.

Some were keen to express, however, that despite the expectation of potential cost and resource increases for those within and supporting the youth justice system, this was outweighed by the potential benefits for the young people themselves. It was also considered important that any changes are properly resourced so that supply can meet demand, and to avoid the creation of/exacerbation of long waiting lists for the reporter, intervention programmes or other support services:

“I think this is an argument that should not be a reason for not changing. We always worry about changes causing increased work or expense when in actual fact the changes can often reduce expense/work in other ways. We should be considering the wellbeing of the young people and promoting better outcomes for them.”

Overall, more detail was urged on the proposed **timing for implementation** as well as more discussion of exactly how the structure, resourcing, service design and practice implications of these proposed changes would be addressed.

## **Potential Implications for SCRA**

**Q4. What are your views on the potential implications, including resource, of increasing the age of referral to the Reporter for SCRA (the public body which operates the Reporter service)?**

A total of 105 respondents provided a response to this question although several of these simply cross-referenced or repeated the same points made in relation to Question 3 above.

While panel member recruitment is a CHS role rather than SCRA, this was nonetheless one of the main themes raised in relation to SCRA (perhaps reflecting some misunderstanding among respondents). The likely need to increase numbers of panel members as well as SCRA support staff to respond to the change (i.e. increased capacity) as well as the possible need to review panel member recruitment criteria to ensure better representation were both mentioned.

The need for more **training** and potential **specialisation** of SCRA staff and panel members, to ensure a wider range of expertise beyond safeguarding, was also a prominent theme in responses. This was seen as especially important given the increased autonomy of young people aged 16 and 17 compared to younger children. Ensuring that Reporters and panel members are adequately equipped to understand and support the particular vulnerabilities of this age group may require training around such things as Adverse Childhood Experiences (ACEs), trauma and PTSD, moral and cognitive development, education, training and employment programmes, poverty, disabilities (Including complex disabilities), stigma and discrimination, online harm, criminal exploitation (including sexual exploitation), child trafficking, harmful sexual behaviour from young people, mental health and neuro-diversity, suicide and self-harm, substance use and children's rights. Reporters and panel members may also require additional joint training in relation to the interlocking legislation which may be applicable to young people aged 16 and 17, including legislation tied to adult support and protection and transition to adult services.

Training for SCRA and panel members should also include increasing **awareness of local services and supports available to young people**, including Early and Effective Interventions as well as training in relation to the range of assessment tools used to assess risk. Others indicated that there was likely to be significant training implications for panel members both in terms of the transition to adult services and adult protection legislation. It was felt that, irrespective of content, training must also be comprehensive and regularly reviewed and one respondent indicated that there may be a sound basis for consulting young people on what the training should encompass.

Overall, as with other services, respondents stressed that adequate resources would need to be made available to allow the system to react timeously to the potential increase in referrals (and associated workloads) from the increased age demographic:

“There are already a number of pressures on the children's hearings system and we cannot expect an organisation to cope with an increase in referrals, particularly as these are likely to include some very complex cases and issues, without sufficient resources being put in place to support this.”

This was essential in ensuring that the **quality of support** given to those currently supported by SCRA is maintained and is not negatively impacted by additional demand. Increased resources were also urged in the interests of avoiding a situation of backlogs or waiting lists for referrals. Monitoring the timeframes involved from referral receipt to hearing decision could assist in tracking any fluctuation of demand to allow mitigating measures to be put in place.

**Increase in workloads** brought about by more referrals (and more complex referrals) were seen as being mainly linked to an increase in resource to initially assess, investigate, draft grounds and hold hearings where compulsory measures

are considered to be necessary as well as to manage an anticipated rise in court activity around proofs, appeals, and potentially a greater number of vulnerable witness applications around these new entrants to the system. Specifically, the number of more serious offence referrals may also increase and these would require a much higher level of resource input by SCRA to manage successfully, it was expressed.

The potential for a resultant increase in the presence of **legal representation** at hearings also featured in many responses with suggestions that this may require additional support to panel members and SCRA staff. Specifically, the increased presence of solicitors in hearings may create a more adversarial court like atmosphere, it was suggested, and Reporters would need to be sufficiently well trained to manage that to ensure that a child friendly environment is sustained:

“...there is a potential for an increase in legal representation at children’s hearings which may lead to the unintended consequences of some hearings becoming adversarial in nature. This may require further consideration given the differences in the burden of proof between the court and hearings systems.”

Reporters, some of whom are not legally qualified, may also need substantial training in respect of substantive criminal law to ensure they are sufficiently equipped to handle the wide variation and complexity of cases referred and the evidence base around various disposal options. Similarly, legal and judicial workforces (including solicitors) may need more training in the law as it applies to children as well as young people’s needs.

The changing interface between child and adult justice services (including SCRA) also featured in several responses, with the need for clear and accessible guidance, not only for SCRA and Children’s Hearings Scotland but for relevant practitioners too, around joint reporting of young people.

One very specific point was raised regarding the proposal to enable the police to report to the Principal Reporter - or jointly report to the Crown Office and Procurator Fiscal Service and the Principal Reporter - any person up to the age of 18 years who is charged with an offence will lead to fewer 16 and 17 year olds being prosecuted in court. Those who are prosecuted will have had their case jointly reported, and COPFS will have decided that it is in the public interest to proceed with prosecution and this raised the question for one organisation as to whether the guideline should place an expectation on the court to refer such cases for advice, given that they have already been deemed unsuitable for referral. Greater clarity was sought.

Provision of information to young people about the **role of the Reporter** was again mentioned by some (although it was not clear if it was felt that this should be provided by SCRA or another source). Specific, robust guidance on the role and responsibility of parents and their (dis)entitlement to be involved in cases where the child has left home and/or the parents no longer accept legal responsibilities should also be developed, it was suggested.

Finally, one respondent queried if additional buildings/facilities for SCRA would be needed to accommodate any increase in referrals and hearings, as well as the need to ensure that the spaces used are appropriate for young people. Two others highlighted that enhanced technology would enable more children and young people to be involved via remote links but would also result in demand for IT resources while not necessarily meeting the needs of all young people (i.e. virtual hearings may assist in being more flexible and responsive, but some young people may feel less supported using this mechanism).

## Potential Implications for Children's Hearings Scotland

**Q5. What are your views on the potential implications, including resource, of increasing the age of referral to the Reporter for Children's Hearings Scotland (the body which operates the national children's panel)?**

A total of 109 respondents provided a response to this question although, again, many simply referred to or repeated their previous responses to Questions 3 and 4 above with the main points being that:

- more financial and staff resources would be needed to support CHS in meeting increased workload demands brought about by the change (including recruitment of more panel members and from a wider range of personal backgrounds);
- more specialist training would be required for panel members to allow them to respond appropriately to an increase in 'higher tariff' referrals made on offence grounds, in particular. Training needs analysis will be critical, along with ongoing support for panel members, it was suggested; and
- more thought be given to the availability and capacity of statutory and voluntary support service provision and how panel members can best access/make appropriate use of this.

The main unique feature of responses to this question was the possible need to consider the **professionalisation** of the national children's panel to ensure consistent, competent decision making. Several respondents suggested that the role of the 'volunteer' panel member needed to be reviewed in light of the changing complexity of situations that would be presented to children's panel members in hearings. Lay people may lack the technical and professional expertise required to make such significant decisions, it was felt and professionalising the role may also lead to improved consistency in decision making in different jurisdictions:

"I think the structure needs to change and a change to the statu[t]e regarding only lay people. The system struggles just now and the variation of quality of decisions causes concern...The panel volunteers are amazing but in a system which literally decides a child's future, investment in paid professional staff is needed...I think it's too important not to have qualified professionals."

Linked to this was the idea (mentioned by just a handful of respondents) that lay members may lack **credibility and trust** in the eyes of the public (including children and their families and victims of crime) and that this may undermine confidence in the system (especially for people referred on offence grounds):

“The Reporter [at SCRA] will need to find ways to reassure the public and victims that they are equipped to deal with serious offences, to counteract possible accusations of 'soft justice.’”

Existing challenges with **recruitment and retention** of sufficient numbers of panel members was also raised as something which may be exacerbated by the change in legislation, with potentially even fewer volunteers coming forward (because of a perceived increase in complexity of the role). Potential barriers to volunteering may include:

- lack of confidence in engaging with older young people;
- lack of understanding of the range of behaviours exhibited by some young people;
- the potential for evening and weekend hearings, to avoid disruption to young people in work, school or college;
- feeling intimidated by the prospect of solicitors' presence in hearings and/or being challenged and seen as non-credible by legal professionals; and
- inadequate recompense of expenses.

These same variables may also apply to existing panel members, it was stressed:

“We would envisage that greater training may be required in order to equip panel members with the confidence to make decisions concerning this age group, including greater understanding of the particular challenges that this age group encounter.”

Increasing the **diversity of panel members** was encouraged with particular value attached to the recruitment of members with lived experience of the care and justice systems:

“This could be the ideal opportunity to ensure that the panel reflect the same social background and diversity of most of the children and parents who come before them.”

One organisation suggested the identification of a volunteer pool for panel members from the third sector as an interim measure who, to avoid a conflict of interest, would work in panels outwith their usual geographical area of work. This could help to ensure more volunteers have the skills and lived experiences that can relate not only to the young people but also their needs, it was suggested.

One organisation highlighted a perceived lack of **continuity of panel members** from one hearing to another in the existing system, with no requirement for panel members from a previous hearing to attend subsequent hearings, even where the

same referral is continued and where substantial discussion has taken place. This was something that they felt should be reviewed as part of the legislative change.

A small number of respondents referenced **risk** in their response with a perception that panel members can often be risk adverse and more punitive in their decision making than the court, which may result in an increase in residential placements and secure care. One respondent questioned if there was perhaps a need for a presumption against secure care to be written into legislation. Others suggested specific additional training for panel members around decision making for an older age group and placing in context their age-appropriate risk taking compared to that of a younger child.

Overall, the need for professionalisation and specialisation of panel members was the key message to emerge from this consultation question with the need to also ensure necessary resources to recruit, train, monitor and support them to make evidence- and rights-based trauma-sensitive decisions that are always in the best interests of the young person, regardless of age.

Finally, it should also be noted that, although several respondents stressed the need for more resources (financial and staff) to respond to the increased numbers and complexity of cases (both for SCRA and CHS), many also again directly expressed that the immediate extra costs/work would be offset by the better outcomes for young people and society in the long term. Their overall support for the change, therefore, remained.

## Information and Support for Victims

**Q6. If the age of referral to the Reporter was increased, are amendments required to ensure sufficient access to information and support for victims harmed by children?**

Among those who responded to this question, the majority (77%) indicated that amendments would be required to ensure sufficient access to information and support for victims harmed by children.

	Number	Percent	Valid %
Yes	73	26%	77%
No	22	8%	23%
No response	182	66%	-
<b>Total</b>	<b>277</b>	<b>100%</b>	<b>100%</b>

The main themes to emerge from respondents who said '**yes**' were that victims deserved access to appropriate information to assist with recovery and that the changes proposed would necessitate the development of a strategy to ensure that

victims, as well as the public, understood the rationale and implications of the change.

Among those who stressed the importance of suitable information for the purposes of **recovery**, restorative justice approaches were supported, with victims given an opportunity to have their views and experiences heard. Some stressed that there would be value in victims being able to give reports to the hearing setting out their own perspective (similar to a victim impact statement or witness testimony), although it was recognised that this may be difficult to implement (and would have cost and other resource implications). Among those who encouraged a restorative justice approach, the mutual benefits for victims and young people were cited as being key:

“We believe that a balance needs to [be] struck between the privacy rights of the child referred to the SCRA and the sharing of some information with victims of crime in a way that would, on the one hand, allow one child to get the help and support needed, to address any offending behaviour, and improve their outcomes and, on the other hand, reassure the victim that the offending behaviour reported by them was taken seriously.”

On **communication**, a clear and transparent strategy was encouraged to provide victims with information regarding the process change and what it means for victims, including information about what support is available within a new system. Information would need to be accessible and made available in a wide range of formats to meet communication preferences and needs.

The types of information that were seen as relevant for victims included:

- more background information about why young people are referred to a children’s panel, including how the panel works;
- the outcome of the hearing and the resulting plan put in place (with proportionate disclosure that would not place the young person at harm or violate their own privacy rights);
- information of the effectiveness of the support provided to the young person referred, including perhaps statements from the young person on how they had learnt from the experience;
- acknowledgement of the harm that was caused to victims which may involve sharing some information about the actions taken in respect of the offending behaviour they were subjected to:

“Victims deserve to know what actions have occurred for that young person who affected their life. Having this would allow victims a sense of closure and support from the justice system so that they [can] move on with their lives.”

A small number of respondents pointed to lessons having already been learnt from implementation of the Age of Criminal Responsibility (Scotland) Act 2019 which could be transferred to the current policy change. Experience from that legislative change had shown that communication and information needs of victims was an area of great sensitivity, requiring very careful preparation and transparent explanation in order to prevent secondary distress to victims and loss of trust in the justice system as being robust, fair, purposeful and effective.

The need for youth justice partners to familiarise themselves with and adhere to the principles of the Victims' Code for Scotland<sup>3</sup> was stressed, to ensure that victims' interests remain at the heart of the criminal justice system and that victims feel supported and informed at every stage of the process.

A very specific issues was raised in relation to people aged under 18 who are victims of sexual violence perpetrated by other young people. The current system was considered as not having adequate protections for such victims and so there was concern that this would only be extended to more people if the age of referral was increased:

“In the current system survivors of sexual violence perpetrated by children have less access to information, safety measures and support than under the adult criminal justice system...Survivors often feel the system is weighted towards the wellbeing of the accused and that their needs are side-lined if they do not meet the criteria for referral into the hearing system themselves...Amendments are require to allow greater transparency in the system for survivors, greater access to information regarding what is happening with the case and greater protective measures for victims addressing both their safety in general and their wellbeing should they be required to give evidence at a hearing.

Others argued for a more general review of victims' needs for such cases and urged **more detailed and focused consultation and engagement** to ascertain what types of information and support victims would need in cases where a young person is referred to the Reporter on offence grounds. This would ensure that victims needs are met following any changes that are introduced:

“Extensive consultation and engagement would be required to ensure victims' rights are met by the potential change. This would require an accompanying communications strategy for the general public but specific to victims' groups and agencies to ensure that the balance of rights is understood.”

Other comments included that information should always be 'given' and not just 'offered' and that victims' mental health support needs should always be considered

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<sup>3</sup> The Victims' Code for Scotland sets out the rights of victims of crime as well as detailing who victims can contact for help and advice. See: <https://www.mygov.scot/victims-code-for-scotland/>

to ensure that what information is given is appropriate. Increasing opportunities for victims to access counselling and support in the community were also mentioned by a small number of respondents.

Other practical measures that were mentioned to support victims included the potential for introducing specific measures to enable restriction of a young person's movement and access to particular areas or perhaps specific people, beyond what is currently available in the youth justice system. Others suggested that it was important to consider and set out how compensation for criminal damage for victims of youth crime would be managed and if/how this would differ to what would have been offered if the young person was referred to the adult justice system (i.e. would an equivalent to a compensation order be available?)

The main themes to emerge from respondents who said 'no' included that:

- the existing systems in place appeared sufficient/ allow the children's hearings system to focus its work on the best interests of the referred child;
- victim support is an important but separate issue and the privacy rights of the child and the child's safety/protection should be the primary focus of the change; and
- it may be more useful to build and promote public confidence in supporting communities to understand the role, purpose and positive impact of referrals regarding 16 and 17 year olds to the Children's Reporter, particularly in relation to young people referred on offence grounds. In particular, reassuring the general public around how serious cases are dealt with was seen as key.

**Managing victims' expectations** around what can be shared was also noted as important when dealing with children and young people referred to the Reporter.

Again, some who said 'no' went on to provide responses which seemed to support the development of a new victims' code or set of principles that apply to instances where children who offend are dealt with through the children's hearings system. Others indicated that agencies should engage more effectively with existing victim support groups to ensure that victims understand the decision-making process.

Several respondents again supported the use of restorative justice measures as a meaningful and effective approach to support recovery and rehabilitation for both the victim and the person responsible for harm. Greater education among the public to raise awareness of the benefits of restorative justice may be needed to accompany the change, it was felt:

"There will need to be considerable education of the general public and children and young people to help them understand that a punitive approach does not work, and restorative approaches have the best long-term outcome. It would require the system to recognise perpetrators as potential victims themselves which the system may not yet be ready for."

Others used this question to stress more generally that the proposed change may lead to some concerns from the wider community that young people are being ‘let off lightly’ and so a clear and transparent communications strategy to educate the general public on the change was again urged:

“It is essential that irrespective of the decision-making system in which young people find themselves, those who are adversely affected by a young person’s harmful behaviour receive an empathetic and healing response, and that the public are confident that that decision-making system will be effective in reducing the risk that the victim or anyone else will be harmed again.”

Finally, a small number of respondents again indicated that they lacked the expertise or experience to be able to comment on this question and/or suggested that a specific dedicated consultation on this matter be held which would include input from organisations providing advice and support to victims.

## Other Comments

Both the main and Easy Read consultations invited respondents to provide any additional comments that they wanted to make in relation to the proposal. Although several additional comments were provided, many of the points raised reiterated those that had already been given in response to other questions.

The main ‘new’ issues that were raised were that:

- there may be a need for broader societal dialogue and increased understanding around the benefits of conceptualising 16 and 17 year olds as children rather than fully fledged adults (including the evidence around how adolescents’ neurodevelopment affects their functioning);
- further discussions would be useful regarding how increasing the age of referral may impact on Safeguarders;
- more thought may also be needed to cases where the absence of family engagement may undermine the normal way of working of a Children’s Hearing (i.e. a case involving a 17 year old with no family support would be very different from the current family centred ethos of children’s hearings); and
- more thought may be needed to how young people made subject to a CSO access suitable accommodation, including removing some of the barriers that currently exist for young people who live independently of their family.

A small number of respondents also questioned if/how well young people would respond to the changes, and whether the **notion of compulsion** was realistic for young people aged 16 and 17. Compelling a younger child to adhere to orders was seen as a much easier prospect and some queried if the aspirations of access to more guidance and support could be fully realised for older young people, despite best intentions:

“The children’s hearings system can struggle to deal with the presence of older young people including 16 and 17 year olds who are not willing to comply with orders and can often fail them, it is sometimes put in the anomalous position of being asked to remove a compulsory measure because it is not being complied with. Raising the profile of this group of young people and the particular difficulties they face within the hearings and care system will give the hearings system an opportunity to reimagine how we support older young people whatever the reason they need support.”

Not being able to enforce orders may weaken credibility and result in a system that does not succeed in providing the same protection for 16 and 17 years olds, it was suggested. Giving more consideration to non-compliance with CSOs was urged and a ‘voluntary’ element to care disposals was presented as a possible option to provide appropriate care for 16 and 17 year olds.

Similarly, a point was also raised that the proposal, although much welcomed, would not provide a solution for all vulnerable young people and that there would be some who would still refuse to take advantage of the help offered. These young people were seen as potentially requiring a more radical approach unless agencies are prepared to accept that they will inevitably descend into a life of crime and/or violence, it was suggested.

Comments were also made that, although welcomed, care was needed that age 18 does not become “a cliff-edge for services”. The purpose of extending the age of referral to 18 is to ensure that the needs of young people are met in a way that takes account of their developmental needs. Proper transition arrangements with adult care, health, justice, and other services would also need to be appropriately managed to ensure the effectiveness of the proposal for young people throughout their adult life, it was stressed.

Several respondents also urged more detailed scoping and consultation as part of the preparation for any forthcoming legislation and this should include more consultation with young people to ask them directly what impact the changes would have on them. Failing to ask specifically what the impact of increasing the age of referral to the Reporter would be for young people (rather than the agencies involved) was seen as an oversight of the current consultation exercise.

One organisation queried that the consultation paper did not suggest that any ancillary change would be made to the age limit specified at Section 49(6)(c) of the Criminal Procedure (Scotland) Act 1995 (i.e. the part of existing legislation that sets out that the court may request the Principal Reporter to arrange a children’s hearing for the purpose of obtaining their advice as to the treatment of a young person charged summarily with an offence who pleads guilty to, or has been found guilty of, the offence) This organisation felt that it would be helpful if the Scottish Government were to set out the reasons why.

A small number also indicated that they felt improving and strengthening the existing system should be prioritised over making changes to or extending the children's hearings system.

Finally, one organisation stressed that there would be a considerable impact of the COVID-19 pandemic on the various organisations affected by this change and that this disruption could be expected to last for some time. This would be an important factor in how any changes in legislation and practice are implemented, it was felt.

# Impact Assessment

As part of the main consultation, respondents were asked the following impact assessment questions:

- Are there any data protection related issues that you feel could arise from the proposals set out in this paper?
- Are there any children's rights and wellbeing issues that you feel could arise from the proposals set out in this paper?
- Are there any equality related issues that you feel could arise from the proposals set out in this paper?

There were very few responses to these questions overall, and several people commented that they felt insufficiently qualified to comment. Others reiterated points already made in response to the main consultation questions, covered above.

## Data Protection

The majority of respondents who answered this question either noted that existing legislation on data sharing was already adequate (and so no change was required) or expressed that any new policies and legislation should follow and adhere to existing guidelines that are in place for data protection (including GDPR). One organisation expressed that there was an assumption that the same data protection rights and guidance in relation to those presently under 16 would automatically be expanded to include all children under 18 through the implementation of raising the age. Consent from young people to share information was also seen as key, especially with regards to information shared between service providers.

The small number of specific concerns that were raised included:

- whether young people aged 16 and 17 would have sufficient capacity to understand and provide necessary consents required to share information;
- reluctance of some young people aged 16 and 17 to allow access to key information via GPs, employers, or other agencies given their rights for data protection;
- potential challenges for health services and sharing information without consent, including health and mental health details that the young person may refuse consent to be discussed;
- the need for clarity around what information significant adults in the lives of young people are entitled to know, including their parents (including respecting the young person's right to confidentiality when parents may be attending their hearings); and

- that further thought would also be needed around what data (if any) were available to others after a young person turns 18 and, in particular, whether information about their involvement in the children's hearings system may be shared with anyone which may hinder their adult life prospects (employment, etc.). One respondent suggested destroying any child records unless something in that record requires to be heard in a court of law.

Clear data sharing arrangements would need to be in place regarding information given to victims about young people who had perpetrated against them, as well as clear guideline on what information about the child/and or victim should be shared, for what purpose and to whom.

Others felt that there would be no major concerns as long as individual data were only ever shared or used in aggregate form, and never shared or released at an individual level or in a way that would make individuals identifiable (for example, in compiling national comparative reports).

A small number indicated that a full assessment related to data sharing and retentions would need to be undertaken, or that information sharing protocols would need to be updated in consultation with the Information Commissioner's Office, but offered no further insight.

## **Children's Rights and Wellbeing**

Again, many respondents who answered this question repeated earlier comments that the proposal would bring Scottish legislation and definitions of adulthood in line with the UNCRC and would improve children's rights and wellbeing overall, with no negative consequences, as long as referrals are made in the best interests of the child:

“Fundamentally, this change has the potential to enhance children's rights in Scotland and to create equality of provision and protection amongst all children.”

Potentially negative impacts included young people having decisions taken out of their hands, feeling patronised by the children's hearings system, being treated less favourably than in the adult system or feeling a loss of autonomy/self-determination (compared to having previously been treated as adults). These views of young people having their rights to be treated as adults removed, were, however, expressed by only a small number of respondents.

One very specific issued raised by an organisation related to advocacy and the need to ensure that even when people have a right to access independent advocacy (e.g. through the Mental Health (Scotland) Act 2003), other barriers are also removed. Specifically, for young people (especially those with mental health challenges) this may include ensuring that there are no barriers linked to lack of knowledge and understanding about their right to advocacy, as well as ensuring that adequate funding is available for independent advocacy organisations to be

able to deliver at the necessary capacity. Others similarly caveated that children's rights and wellbeing would only be improved by the proposals if sufficient resource for additional support/services was also made available, including more young people's advocates.

## **Equalities**

Again, the majority of respondents either did not answer this question or felt that there would be no equalities issues to arise from the proposals.

Consistent with other consultation questions, most who did answer felt that all young people should be treated the same regardless of age, gender, disability or other protected characteristics and that the proposals would go some way to ensuring that all children (aged under 18) are treated equally.

Supportive comments were again made that the proposal would be more beneficial for young people affected by trauma, ensuring that they in particular were not disadvantaged by their past experiences.

Issues which were mentioned (by just one or two respondents) as potentially requiring further thought and attention in implementing the proposals included:

- whether some cultural/ethnic communities may regard young people as adults at aged 16 and therefore be resistant to the change (with one respondent indicating that it was important that Scottish laws not be circumvented on the grounds of different race or ethnicity);
- how existing systemic inequalities, including where they intersect, should be considered where there is disproportionate representation of groups in the youth justice system (for example, Black Asian and Minority Ethnic (BAME) groups, people with learning disabilities and mental health conditions);
- how issues such as pregnancy and sexual abuse may need to be handled differently for those aged under and over the legal age of consent;
- that issues in equality around the rights to marry and form civil partnerships may arise (although it was suggested that these may just need to be considered as part of the grounds considerations rather than via a specific equality impact assessment);
- ensuring that adolescent mental health and cognitive development is sufficiently well understood and appropriately handled so as not to discriminate against individuals;
- making the Children's Reporter better aware that people with a learning disability may be more likely to lack capacity in some areas of decision-making capacity issues (although this is not always the case) and ensuring that people with a learning disability have the same supports or consequences as their peers providing they have capacity regarding the decision to commit the offence;

- ensuring that communications policies are reviewed in relation to specific protected characteristics including the need for increased supports to ensure that children with Speech, Language and Communication Needs (SLCN) and their families have optional access to targeted, developmentally appropriate legal advice and representation. Increased formal support being made available for children with SLCN to ensure fair and effective participation within the CHS was also raised; and
- that there may be greater impact of the change on those with disabilities and that it is important that this be monitored to ensure that there are no inequalities arising as a result.

Other comments included that training should be offered to professionals to ensure consistent practice when dealing with young people from different backgrounds and to ensure there was no unintentional discrimination. This may include general training on current equalities legislation as well as training to understand equalities issues affecting specific groups of young people, e.g. gender identity. One respondent reiterated that it would be important to ensure a balanced composition of panel members, and to manage this appropriately, in the interests of equality and representation:

“Care must be taken to respect individuality and to ensure that legal measures do not impact negatively on a young person at this stage in their lives.”

Views were expressed that a full equality and diversity impact assessment taking into account the views of young people would be important to undertake and that all proposals should be sense checked by appropriate equality experts.

Finally, a small number of comments were again made (here and elsewhere in the consultation) that equality should be considered alongside fairness in implementing the proposals:

“The care system can never be made on equality alone. It needs to be on equality and fairness. Fairness being that they are given what they need to succeed the same as everyone else. Not that they are given the same as everyone else. If they need more, professionals need to support that. If they need less professionals need to acknowledge how well they are achieving and celebrate that with the young person. Not take ownership of it.”

# Feedback from Children and Young People

Feedback from children and young people was separately analysed and is presented below.

Roughly 45 young people contributed via texts, emails, phone calls and online workshops, all of whom had experience of the care and justice systems in Scotland. The young people ranged in age from 14 to 28 with an even mix of males and females.

For the HMP & YOI focus groups, a total of 52 young people took part including remand, convicted, male and female prisoners. Most (41) were over 18 and the remaining 11 were under 18. Of the 41, seven were young females.

The nature of the data collected from young people via direct engagement activities varied widely depending on source, with some individuals providing just a single line of feedback and others providing more detailed narrative. Some of the questions asked of different groups also varied to a certain degree and so data were analysed thematically, rather than by question, with findings assigned to the appropriate subheadings below.

## General Feedback

The main findings from the engagement activities largely mirrored those reported in the online consultation, with general support for the principle of all 16 and 17 year olds being referred to the Reporter.

Insights offered by young people included that referral to the Reporter may:

- give young people an opportunity to be heard and engage in support to make positive changes;
- provide equality of opportunity for those who are referred on offence grounds or welfare grounds and better meet the needs of those referred on both (e.g., “splitting children into ‘welfare’ or ‘justice’ is judgemental”);
- provide an opportunity to better understand and explore current life challenges and address personal histories (including previous offending, trauma, etc.);
- help young people to better understand the seriousness of their actions;
- assist young people in avoiding criminal records that may affect them and their life prospects long term;
- provide support for young people who do not have the support of family members and need someone to step in and provide that support;
- protect the young person to make sure that their rights are being upheld and protect the individual from their rights not being met;
- prevent young people being overlooked/falling through the gaps; and

- help young people to more easily access the services that they need.

Again, young people consulted in this way echoed the thoughts of online respondents insofar as young people aged 16 and 17 were still developing and may not be sufficiently mature to be managed in the adult system:

“We need to get rid of the assumption that everyone by age 18 is able to make good decisions about their life. Some people don’t have that capacity due to past trauma or drugs or alcohol or things.”

Several of the comments made by young people also mirrored the main consultation findings that each individual deserves to be treated fairly and based on their own personal circumstances:

“My older sister is 21 and is supposed to be taking care of herself, but because she was in the system for so long, she is now institutionalised. If the age of referral was older, she might have had more support. At 18 everyone is at different stages of life and maturity and still need support. I was ready to live, myself at 18 but my sister wasn’t. Everyone is different and needs different support.”

Understanding individual’s backgrounds and the possible reasons for their offending or other behaviour was seen as key.

The Polmont focus group participants provided slightly different feedback with mixed views - some thought that young people should be treated fairly and based on their individual circumstances and so this inevitably can mean that they get treated differently. While some felt that all 16 and 17 year olds should be referred, some did not (the exception being those with learning disabilities, for whom the children’s hearings system was seen to be more appropriate).

A key issue for this group was that there should be consistency across treatment, sentences/punishment for co-accused involved in the same crime even if they are of different ages with no-one being treated more or less harshly based on their age. Everyone should be given “a fair chance”.

There was also less evidence of perceived positive impacts of referral to the children’s hearings system among this group, with some suggesting that young people may not like how people on the panel can read about their case and make judgements prior to meeting the individual involved. This may impact their case negatively, it was felt.

Another potentially negative consequence of referring 16 and 17 year olds to the children’s hearings system was that they may be placed in secure accommodation rather than prison, and that this may make secure units less safe for younger children, i.e. it would not be appropriate to have younger children in a secure unit for their own safety with offenders.

This was countered by others in the Polmont group who expressed that the children's hearings system would be more beneficial to young offenders than the adult system as it would make them feel safer and be more appropriate to their level of cognitive development/emotional maturity:

"I was put in prison at 16, it was far too young. It's affected my mental health, it's not the right place for under 18[s]. You're just not mature enough to cope with this place [prison]."

"I was protected and treated as a child when I was on a supervision order but as soon as I was taken off, I wasn't protected...I realise I was far too young to be left with no one looking after me."

"Under 18s need protected...Being put into the cells was scary. I actually cried the full night and no one came to see me. I had only turned 16 a few weeks before. That just wasn't right."

Panel members were also perceived to care more about children's rights and to consider an individual's entire circumstances rather than just the offence (with people punished more harshly in court). The opportunity to be heard and to have punishments/sanctions explained more clearly was also seen as a benefit of referral to the children's hearings system compared to the adult system:

"I went to court at the age of 14. It was never explained to me why this was the case I feel that if I went to Children's Hearing instead then I would have been given support instead of a custodial sentence."

"In the Children's Hearing, professionals are more supportive and fought my case. I felt like my point of view was considered more in the children's hearing than in the courts."

"Children are treated more fairly but, in a court, the judge doesn't care."

Again, it should be noted that these views were not unanimous among the Polmont group, with some disregard for panel members also expressed i.e. perceptions that panels were made up of "posh old folk" who try to get young people to react or who provoke them.

As with some main consultation respondents, the Polmont focus group participants expressed that those committing the most serious crimes should remain in the adult system (although there was perceived inconsistency in the way that decisions are currently made about levels of seriousness). They also expressed that those who tried to manipulate the system should be referred back into the adult system and there was some suggestion that children's hearings would be ineffective for some (i.e. perceived as "just a slap on the wrist" that does not teach young people anything).

## Grounds for Referral

One group of young people expressed that, although negative, the current reasons for referral were appropriate but that others could be added. This included homelessness, mental health and drug and alcohol safety. Being referred because you might need 'more support' *per se* was also seen as appropriate and this same group suggested that a ground based on having been vulnerable before and/or having been on a supervision order in the past may allow young people to be able to request being referred back to the hearings system if they felt that they needed support at a later date (e.g. for moving into their first tenancy).

Another group provided a more comprehensive list of other grounds including:

- mental health/capacity;
- influences related to drugs, alcohol, addictions;
- trauma;
- past circumstances;
- advocacy;
- safeguarding; and
- lack of services/engagement.

Another group reported that, if the change was made, new reasons for referral to the Reporter would be needed, but offered no further explanation.

In one session, it was reported that the language around grounds was not liked by young people (although no further detail was offered) and this same group (and one other) discussed how some young people may not understand the referral grounds fully. Young people need more information to understand what a Reporter does, it was suggested, including knowing that they can decide whether the referral makes it to a children's hearing.

It was recommended that information and guidance is created so that young people better understand panels and referral implications. For example, one young person queried what impact being referred at age 16/17 would have on the rest of someone's life.

## Potential Impacts of the Changes

Again, responses largely mirrored those of the main consultation with perceived impacts of the changes including benefitting children and young people by giving them more hope and opportunities (including help staying at school) as well as making young people feel safe and that they have "a second chance".

There was a perceived need for service capacity to be increased and to receive more funding, and perceptions that existing services may become overstretched (including local authority services) if the change was made. One group questioned

if existing support services for children as well as secure centres would have capacity to manage additional referrals, both of which were considered to already be working at capacity/to have no space. A caution raised by one group of young people was the prospect of the system becoming overloaded if the changes resulted in too many referrals, which may have unintended negative consequences of creating shortfalls for other children in care.

Workload implications for Reporters and panel members, as well as potential for less patience (e.g. if they see a returning young person) were raised as other possible negative outcomes of the changes.

The need for more panel members to be recruited to respond to any increase in numbers of hearings required as well as more community-based services being readily available to help was also raised. Recruiting more panel members with youth justice service user experience themselves and/or from more diverse backgrounds was urged by one group with better recruitment to encourage people with lived experience to become panel members (with the secondary benefit that these individuals may act as role models to young people who are referred).

Panel members may find it more challenging to work with older young people, it was felt, and should be equipped to deal with this group and understand that they can still be vulnerable. Additional training for Reporters and panel members was also seen as necessary to enable them to listen and respond effectively to older young people. Other training/knowledge increase for Reporters and panel members mentioned by one group included topics such as drugs and alcohol misuse, homelessness, mental and physical health, sexual health, autism, education, employment, PTSD, disability, trauma and understanding about the law and serious offences. Ensuring that panel members and Reporters are non-judgemental was also raised in two separate sessions.

Another group suggested that it would be essential for services (police, local authorities and other service provider organisations) to ensure they were “singing from the same hymn sheet” with set guidelines about support, people’s roles, responsibilities, etc. to ensure consistency across services. Services should be held accountable for ensuring that young people are heard, it was suggested, and better communication between the adult and youth justice systems was also urged.

One group discussed the need to ensure some kind of continuity or handover of care for those turning 18 and still in need of support and another view was offered that there should be more community support for young people living on their own. Polmont focus group participants also discussed that there should be more community support available to young people.

It was recognised that some of the positive impacts may take time to be seen and, overall, there was consensus that more financial support (and support from the Scottish Government in general) would be needed if the changes came into existence.

## Perceptions of Victims' Needs

Three groups provided direct feedback on whether the changes would also require additional support and information to be developed for victims.

One group agreed that changes to information would be needed to help victims better understand outcomes for young offenders, to achieve closure and access the support that they themselves need. This group also suggested that restorative justice could be an option for victims to get closure.

The second group provided a more cautious response and suggested that changes to allow victims more information should be conditional and be decided on a case-by-case basis. Agreeing to more information being disclosed would depend on what information would be provided and why, and also if the provision of information may place the young person at risk (for example, of retribution):

“I don't think we should put someone into danger by exposing their information. I think it's putting them at risk. I understand a victim would want to know that justice has been served but it is just putting the offender more at risk.”

This same group included individuals who expressed that victims should be notified of action taken in relation to the young person, but not the details, i.e. brief information about what has happened as a consequence of the young persons' actions.

The third group concurred that, while victims should receive information to let them know that they are safe, they would not wish to see victims given an opportunity to attend hearings (in the same way that victims can attend court) nor should victims receive personal information about a young person (especially in cases where victims and offenders live in the same community/close proximity and/or may be known to one another). This same group expressed that giving information about a child to victims may make it appear that the system is one of punishment rather than one that supports young people.

While one individual who took part in one of the sessions felt strongly that there should be a universal system so a victim receives the same information whether a case is referred to court or the children's hearings system, most did not.

Ensuring that information for victims was delivered in a safe and supportive way was raised in two sessions, as well as information being available in young person friendly language (i.e. to make it accessible to both young victims as well as young offenders). One group discussed the possibility of a non-case specific letter or leaflet being made available to victims about what the children's hearings system is and does, what powers they/the Reporter has and what potential outcomes may occur.

## Other Comments

The only other comments received from engagement events were that the Scottish Government needed to be mindful that not everyone has the capacity to make good decisions or advocate for themselves by the age of 16 and that assessments should therefore be made before hearings to ensure that young people have capacity.

Similarly, the system should be more patient and understanding of teenagers in general, it was expressed, as well as ensuring that young people are involved in decision making wherever appropriate and are given a chance to speak and be heard. This includes giving young people more of a say in the outcomes, recommendations and orders, including what needs to happen and what sort of support they receive:

“Most of the time we don’t have a choice or say in the decisions that are made regarding their care plan/placements. We should see our social workers more and be involved/have an opinion on any decisions made regarding our care.”

One young person felt that 16 and 17 year olds who choose not to engage with services at the time of referral should be allowed to change their mind and re-engage later. Another group commented that it should not be a systemic approach, but that it should be a relationship-based approach.

Overall, some groups expressed sentiments that raising the age to 18 was not enough and involvement in the children’s hearings system should be based on a number of variables, rather than age alone (including circumstances, lifestyle, wellbeing, mentality and maturity).

One respondent suggested that the age should be raised higher to 21 or 26 for care experienced young people, one group suggested 25 and another simply noted that under 18s should not be in prison and referrals to the Reporter should be extended beyond 18:

“CHS needs to extend beyond 18. Not solving the problem if it stops there - I just got a bundle of paperwork when I was 18 and no support, no phone call. The letter made me feel vulnerable and there was also no support for my family. I lost all my services too. There are a lot of dangers when you get to 18 drugs, alcohol, homelessness, violence but you are still vulnerable.”

Finally, one group suggested that the legislation surrounding young people in the justice system should be consistent across all countries of the United Kingdom as existing rules were “confusing”.

# Summary and Conclusions

The consultation attracted a strong response with a good mix in the backgrounds, experience and interests of those who took part. The feedback from individuals and organisations was largely similar, and the young people who took part also echoed many of the sentiments raised by justice partners and service providers.

## Support in Principle

There was widespread support for the principle of raising the age of referral to the Children's Reporter and this was evidenced among both individuals and professionals representing a broad range of interests.

Respondents to both the main and Easy Read consultations, as well as young people who took part, agreed that the proposal would:

- simplify and clarify the procedure for dealing with children and young people under the age of 18 who are charged with a criminal offence;
- remove perceived inconsistencies in the use and application of CSOs to ensure that support can be provided to more young people when they need it most;
- be a significant development and lend itself to securing better and more meaningful outcomes for many young people, especially the most vulnerable;
- provide the opportunity for young people to change their behaviour and to stop them entering the criminal justice system/ avoid criminalisation and potential custodial sentences;
- protect young people who are often victims as well as perpetrators; and
- make legislation more consistent with the UNCRC.

Overall, the proposal was seen as being better aligned with other Scottish legislation designed to protect young people up to the age of 18 (and older) and was also seen as being congruent with the general direction of travel that Scotland has taken in recent years, including the raising of the age of criminal responsibility.

## Existing and Additional Grounds

The majority of respondents viewed the existing grounds as sufficient, although it was seen as necessary to amend certain grounds for referral to recognise the evolving capacities and autonomy of children and young people aged 16+.

The addition of specific grounds linked to sexual and criminal exploitation was prominent among responses, as well as ensuring that trauma histories can be factored into referral mechanisms. A number of nuanced challenges for making existing grounds relevant to those aged 16+ were also highlighted as well as challenges around compulsion for this age group.

There was evidence of some perceived inconsistent use of existing referral grounds between agencies and some differences in interpretation of their meaning. Consequently, dedicating time to a wider review of existing grounds was encouraged to add clarity. Ensuring that children, young people and their families understand grounds for referral was seen as essential as well as ensuring that Reporters and panel members (current and future) have a clear understanding and awareness of applicability and relevance for older young people living complex lifestyles.

## **Main Concerns About the Proposal**

There was a minority view across the consultation that 16 and 17 year olds should not be treated as children but rather as adults, and that they should be encouraged and expected to take responsibility for their own actions. These views, however, were mainly expressed by individuals rather than organisations and perhaps a more support-oriented view (shared by a small number of organisations and individuals) was that more thought should be given to how to respond to young people who do not want to be identified as children. Steps such as renaming the children's hearings system to include 'young people' and/or having flexibility in the system that affords some people the right to be treated as adults could be considered, it was suggested, in order to maximise engagement (and improve outcomes) for as many young people as possible.

The main dissenters again stressed that the proposal may be seen as a 'soft option', may be too lenient (especially for those who commit serious offences) and thus be unfair to victims. Others again stressed that the proposals may over-protect some young people who are otherwise enjoying living independent adult lives. For this group, some degree of flexibility and discretion needed to be retained in the system to allow cases to be handled differently based on their own merits.

## **Cross-Cutting Themes**

A number of cross-cutting themes also emerged across the various consultation methods and from responses given to different questions.

A key theme to emerge was support for children and young people to be heard, i.e. to have the opportunity to express their views freely in all matters affecting them and to have their views taken into account. Clear and transparent communications with children and young people and consistency in the provision of independent advocacy were seen as crucial in ensuring the success of the proposal.

Central to many responses was support for a justice system that ensures all decisions are made in the best interest of the child whilst also being transparent and fair to victims (including young victims). The proposal was generally seen as adopting and promoting the principles of care and protection rather than punishment, and this was welcomed. Several suggested, however, that more work was needed to educate and raise awareness among the general public of the

benefits of restorative rather than punitive approaches. To a lesser (but still present) degree, a cultural shift in thinking among some professional justice stakeholders was seen as necessary. What the consultation did indicate is that the success of raising the age of referral, if implemented, will be dependent on the change being accompanied by clear, evidence based, public and agency-based endorsement of the principles and the approach of the children's hearing system.

Also featuring in several responses was the need for smoother transitions between youth and adult services as a whole, not only in justice. For many, raising the age of referral would go some way to addressing this. Mental health support as well as practical support around housing/accommodation were perhaps the two most commonly cited areas where there was a perceived lack of continuity and planning at present.

Finally, recognising and responding to diversity featured as a cross-cutting theme in responses, and this included embracing the broad range of different histories and experiences of young people referred as well as the potential of harnessing the expertise of those with lived experience of the care and justice systems, either through direct involvement in the system (e.g. as panel members) or to inform system change.

## **Implications**

It was evident from responses that the challenges anticipated with implementing the proposal were numerous and should not be underestimated, with particular concerns around the impact on criminal and youth justice partner workloads and public and third sector support services capacity. The need for significant financial support to assist implementation was predicted.

Upskilling of existing Reporters and panel members and robust, ongoing training for SCRA and CHS staff were seen as key to ensuring that both quality and consistency in decision making is achieved. There was notable support for professionalising the role of panel members and/or developing specialist skills within the workforce to allow them to meet the challenges that may come with a change in the volume and complexity of cases referred.

Although many respondents recognised that there would be significant financial and other resource challenges as a result of the proposed change, all saw this outlay as necessary and preventative spending, with the long-term benefits for young people and society far outweighing the costs. Many agreed with the sentiment that adjustments to legislation should be made in the best interests of the child, rather than viewed from a resource base.

There was some split in opinion around whether amendments would be required to ensure sufficient access to information and support for victims harmed by children and young people. Some felt that the young person's right to privacy should always take precedence over the needs of victims, while others felt that victims of youth crime deserved to be treated the same as those perpetrated against by adults.

Both those who supported and were less persuaded by the need for more information and support being made available to victims acknowledged that the impact of crime can be huge for victims and that there was a need for continuous learning among justice partners to better understand and respond to these needs.

Restorative justice was a popular mechanism discussed by both groups of respondents and was encouraged more widely for the youth justice system, moving forwards. Both groups also asserted that clear communication and transparency is required regarding the process change and associated implications (targeted at both victims and the general public) as well as what support would be available within the new system, to ensure confidence in the change.

## **Conclusions and Next Steps**

The findings presented above will be used, alongside a range of other available information and evidence, to inform the ongoing decision-making process around potential legislative change. If the change is made, the challenge of implementation was recognised by many, in particular balancing the risk, needs and vulnerability of some of the hardest to reach young people alongside ensuring support, guidance and protection for victims, young and old. While the consultation forms just one part of this wider decision-making and implementation process, it has nonetheless been important in highlighting a clear majority support for the proposal which would be embraced by most, it seems, in ensuring that children and young people get the right support at the right time to enhance wellbeing and maximise opportunities for better life outcomes.



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