

Covid-19 Children and Families Collective Leadership Group: Short-Life Group on Under-18s in custody

Recommendations and Report from Short-Life Group on Under-18s in Custody

July 2022

RECOMMENDATIONS AND REPORT FROM SHORT-LIFE GROUP ON UNDER-18S IN CUSTODY

Contents

The Role and Remit of the Short-Life Group	Pages 2-3
The work undertaken by the Short-Life Group to deliver improvements in the experience for under-18s in custody; and reduce the number of 18 year olds in Young Offender Institutions (YOIs).	Pages 4-6
Recommendations for the Covid-19 Children and Families Collective Leadership Group (CLG)	Pages 6-9
Vision, Aims and Priorities for Safeguarding Young People in the Youth Justice System	Pages 10-11
Context Briefing - Trauma and Adverse Childhood Experiences (ACEs) and Justice System	Pages 12-13
Annex 1 - Terms of Reference for Short-Life Group	Pages 14-15
Annex 2 – Scottish Prison Service - Key Issues from data and evidence about young people in custody presented to the Short-Life Group in January 2022	Pages 16-18
Annex 3 - Expert Review on Mental Health and Young Offenders: Opportunities to share information	Pages 19-24

RECOMMENDATIONS AND REPORT FROM SHORT-LIFE GROUP ON UNDER-18S IN CUSTODY

Summary of Report

This report sets out:

- The Role and Remit of the Short-Life Group
- The work undertaken by the Short-Life Group to deliver improvements in the experience for under-18s in custody; and reduce the number of 18 year olds in Young Offender Institutions (YOIs).
- Recommendations for the Covid-19 Children and Families Collective Leadership Group (CLG) to consider. These are:

- **Recommendation 1: Undertake a Trauma Informed Review of the Young Persons Pathway to YOI**
- **Recommendation 2: Recognising the needs and rights of the young person and support their understanding of court processes to ensure meaningful participation**
- **Recommendation 3. Assess and review key policies through the lens of UNCRC and other human rights treaties**
- **Recommendation 4: Identify and remove legal impediments to alternatives to remand and take immediate action where possible to remove under-18s from custody**

- Context Briefing - Trauma and Adverse Childhood Experiences (ACEs) and Justice System
- Annex 1 - Terms of Reference for Short-Life Group
- Annex 2 – Scottish Prison Service - Key Issues from data and evidence about young people in custody presented to the Short-Life Group in January 2022
- Annex 3 - Expert Review on Mental Health and Young Offenders: Opportunities to share information

Role and Remit of Short-Life Group

The Covid-19 Children and Families Collective Leadership Group (CLG) agreed at its meeting on 4 November 2021 to establish a short-life group to urgently review the cases of under-18s currently in Young Offenders Institutions.

This was in response to issues raised in the *HMIPS – Year of Childhood Pre-Inspection Survey 2021*¹ and CLG's role in supporting UNCRC Implementation and maintaining momentum on work to Keep The Promise by removing all children from Young Offenders Institutions. In addition HMIPS submitted a proposal to deliver the Promise commitment.

CLG agreed the Short-life Group should focus on two areas:

- Addressing the issue of under-18 year olds being isolated in Polmont YOI using information provided by the Scottish Prison Service.
- Understanding key decision points and opportunities to provide additional support and alternative approaches to custody. This could include a short guidance note/flow chart to help facilitate better multi-agency working and complement National Child Protection and GIRFEC guidance.

(Note of 9 December meeting - [Coronavirus \(COVID-19\) Children and Families Collective Leadership Group minutes - 9 December 2021 - gov.scot \(www.gov.scot\)](#))

The Group was tasked with delivering a Report and Recommendations to key groups by end of February 2022. The Group met on three occasions in December 2021, January 2022 and February 2022. The membership was self-selecting from CLG with Scottish Government support from relevant Policy Units. The Governor of Polmont attended the Group for the second and third meetings.

Terms of Reference were agreed at the first meeting and actions to enable fuller understanding of the factors contributing to under-18s being in YOIs and scoping of work already underway to deliver improvements. (The full Terms of Reference are in the annex to this report).

The Short-Life Group has expanded the request from CLG as follows:

1. Identify what actions can be taken now to deliver improvements in the experience for under-18s in YOIs (Young Offender Institutions) and reduce the number of under-18s in YOIs.
2. With a clear focus on supporting UNCRC Implementation and examining issues relating to the number of hours spent without access to activities outwith rooms, review key policies including the Youth Justice: Whole System Approach to Preventing Offending by Young People², to identify any gaps and improvements that can be made. The Group should take particular account of opportunities for improvement that become available through the new Justice Strategy³ and Review of Continuing Care.
3. Consider what improvements can be made to professional practices at key decision points for children and young people, including through the GIRFEC National Practice Model⁴, to divert from YOIs by maximising prevention, early intervention and other support and help to ensure that detention is the last resort.

In addition to these areas of focus, the Group discussed legislative changes that could help to deliver the remit of the Group and remove under 18s from YOIs.

¹ [HMIPS - Year of Childhood Pre-inspection Survey 2021 | HMIPS \(prisonsinspectoratescotland.gov.uk\)](#)

² [Youth justice: Whole system approach to young offending - gov.scot \(www.gov.scot\)](#)

³ [The Vision for Justice in Scotland - gov.scot \(www.gov.scot\)](#)

⁴ [Getting it right for every child \(GIRFEC\): GIRFEC planning - gov.scot \(www.gov.scot\)](#)

The following work is underway:

- Discussions and drafting towards a Children's Care and Justice Bill, including a 12 week public consultation expected in spring 2022.
- Ongoing discussions with key partners including COSLA, Scotland Excel, secure care providers, Social Work Scotland to consider funding of secure care placements from summer 2022, allowing priority capacity for young person and young people living in Scotland.
- Quarterly Youth Justice Improvement Board meetings. The Board oversees the delivery of the Youth Justice Vision. The priorities within the vision are being delivered through the Advancing Whole System Approach (WSA) implementation group chaired by Neil Hunter SCRA and John Trainer SWS and the Young Person's Rights group chaired by Fiona Dyer CYCJ and Juliet Harris Together Scotland. Both groups have met twice.
- The Advancing Whole System Approach (WSA) implementation group is focused on delivering the actions within the Youth Justice vision including reinforcing the reinvigorating the WSA to under 18s, developing a consistency of approach to Early and Effective Intervention, creating lasting systems and supporting culture change. This group are also looking at extending WSA beyond 18, supporting the raising of the age of referral to the Reporter to 18 for all young person and supporting the agenda of no under 18s in YOI.
- A Community Alternatives Working Group chaired by John Trainer has been set up to look at community alternatives across Scotland with the view to publishing a framework for practitioners on community alternatives to remand by September 2022. This group sits under the Advancing WSA group.
- The Community Alternatives Working Group has met on one occasion and has requested specific information from all 32 local authority areas on what the current alternative provision across the country looks like. An assessment of gaps is being undertaken and good practice shared. The group is prioritising this work with a timeframe of end of April 2022 for publication of updated framework for alternative to custody and secure care.
- Review and address the outstanding considerations of the Cross System Group on 16/17 year olds in the hearings system, which reported in September 2021, before any legislative change commences.
- The Young Person's Hearing System Working Group to report on current practice with future work to enact the recommendations.
- Work with SPS, Secure providers and other key partners to consider the needs of the current YOI population to ensure the supports, opportunities and mechanisms are in place to meet the needs and address the risks of all under 18s in alternative provision in the future.
- Work progressing on providing confidence of Judiciary and prosecutors in secure care, Young Person's Hearings System and community alternatives.

Emergency release of prisoners powers

A consideration for the Short-Life Group was the potential for regulations to be used to reduce number of under-18s in Polmont. However, these were focussed on release only and cannot stop courts sending under 18s to Polmont. The powers were also only for those who had been sentenced and could not be used for children on remand.

This is because the court has specifically decided an accused person requires to be remanded for the purpose of an ongoing court process, and that decision can be reviewed at any time. The regulation making power does not allow provision to be made for such children to be held elsewhere if released.

The Scottish Government's position is that amendments to Regulation 2 removing the Governor's veto could mean the provision would fall foul of Article 3 of the ECHR, which requires the State to actively protect identified persons to whom an offender would pose a risk of harm. The Scottish Government consider that given the complexities involved in the legal changes required, it is important that these matters are considered against all the competing and intersecting issues and not in isolation. This is to ensure that the legislative barriers are addressed appropriately without detrimental impacts on other parts of the system.

It should be noted that this is not a view shared by all members of the group and some feel that the use of emergency powers must be considered. There was disappointment that the Scottish Government were not prepared to agree to the amendment of the Governor's regulations. In addition some members expressed frustration and disappointment about the delay in this decision being made.

Legislation

The planned Children's Care and Justice Bill will set out proposals to help meet the asks from the Promise that 16/17 year olds should no longer be placed in YOI and that children who need to have their liberty deprived should be cared for in small, secure, safe, trauma informed environments in a manner that upholds their rights.

Engagement is taking place ahead of consultation and will continue, looking at these matters in-depth with a range of interested parties, as provisions are shaped ahead of introduction.

With Parliament's backing, Scottish Government hope to raise the age of referral to the Principal Reporter to 18 for all children, with a presumption against under 18s in the Criminal Justice System, as far as consistent with the Lord Advocate's prosecution policy. The Short Life Working Group are supportive of these proposals.

Recommendations for Covid-19 Collective Leadership Group

In addition to current activity underway detailed earlier in this Report, the following 4 Recommendations are made to the Covid-19 Collective Leadership Group for Children and Families:

- **Recommendation 1: Undertake a Trauma Informed Review of the Young Persons Pathway to YOI**
- **Recommendation 2: Recognising the needs and rights of the young person and support their understanding of court processes to ensure meaningful participation**
- **Recommendation 3. Assess and review key policies through the lens of UNCRC and other human rights treaties**

- **Recommendation 4: Identify and remove legal impediments to alternatives to remand and take immediate action where possible to remove under-18s from custody**

RECOMMENDATIONS IN DETAIL

Recommendation 1: Undertake a Trauma Informed Review of the Young Persons Pathway to YOI

HMIPS, HMICS, Care Inspectorate and Inspector of Prosecutions have already started work on this area across the age range. It is recommended that other stakeholders join this work representing the services and systems young person come into contact with, from the point of arrest, will come together to review a young person's pathway to custody. This work will identify the key decision-making stages from arrest to custody and map out the alternative, developmentally-appropriate courses of action which could divert the young person from progressing further at each stage

It's important that Advocacy for the young person is provided throughout their journey and ensuring the young person understands what is happening and also has their voice and views heard

Recommendation 2: Recognising the needs and rights of the young person and support their understanding of court processes to ensure meaningful participation

There is a need to make sure our services are responsive with appropriate support and understanding of all relevant aspects of UNCRC and the role of advocacy in supporting the young person through the availability of bail supervision, other services as appropriate e.g. mental health services, and where necessary alternative accommodation and link in with work undertaken by the Youth Justice Improvement Board and its sub groups.

Recommendation 3: Assess and review key policies through the lens of UNCRC and other human rights treaties

Including the Youth Justice: *Whole System Approach to Preventing Offending by Young People*, to identify any gaps and improvements that can be made including through the new Justice Strategy and Review of Continuing Care.

Further suggestions for follow-up activity include drawing on wider work by the Centre for Youth and Criminal Justice on Scotland's approach to children in conflict with the law⁶ and Clan Childlaw's proposals on creating a more child-friendly and accessible legal aid system⁷. This would help to ensure that children's rights, their dignity and respect are central to the ethos, practice and delivery of services with appropriate support and understanding of UNCRC and the role of advocacy.

Recommendation 4: Identify and remove legal impediments to alternatives to remand and take immediate action where possible to remove under-18s from custody

- Access to secure accommodation is determined by the person's legal status as a child (under 16 or 16/17 and subject to a compulsory supervision order or interim compulsory supervision order), all other 16/17 year olds are classed as adults and, therefore, there is no legal route in to secure accommodation should they be required to be deprived of their liberty.

⁶ [Rights-Respecting-Summary.pdf \(cycj.org.uk\)](#)

⁷ [Clan Childlaw calls for a child-friendly legal aid system | Clan Childlaw](#)

- An alternative to remand may require more and different community supervision packages and secure accommodation to be consistently available to the courts at all times - or the capacity to remit to the hearing system for disposal.

CONCLUSION

A key driver for improvement is the commitment within The Promise Change Programme One⁸ that by 2024 16 and 17 year-olds will no longer be placed in YOIs for sentence or on remand. This is also a commitment within the Programme for Government⁹.

Addressing the issue of under-18 year olds being isolated in Polmont YOI using information provided by the Scottish Prison Service.

The Short-life Group recognises the significant work that has been undertaken within Polmont and across the system to engage stakeholders in progressing improvements. The *HMIPS – Year of Childhood Pre-Inspection Survey 2021* has noted that staff helped individuals to feel safe in custody. The Short-life Group agreed that it was essential the focus is now on what can be changed now to prevent under 18s coming into Polmont, potentially including under emergency legislation, and ensure that the wider parts of the system are prepared for when longer term legislative change is made.

Understanding key decision points and opportunities to provide additional support and alternative approaches to custody.

This Report includes work currently underway and recommendations for further work. It is critical that UNCRC and the Promise are embedded within a systematic approach that engages with the young person and respects their rights and choices. A number of members of the group have strongly recommended that, in addition to the action proposed under the Children's Care and Justice Bill, Coronavirus Emergency Legislation is used to take more immediate action to remove under-18 year olds from YOIs and place them in secure care provision. There was strong disappointment from group members that the Scottish Government were not prepared to agree to the amendment of the Governor's regulations. The Children and Young People's Commissioner Scotland does not consider the recommendations reflect the urgency of the changes required and does not agree that working to 2024 is sufficient.

The impact of trauma and the desire to reduce this was a strong commitment demonstrated throughout the Short-life Group meetings. It was agreed all work to improve the experience of the young person must consider the impact of trauma throughout all the processes and decision making at each crucial point in a young person's journey.

It is requested that every effort is made to ensure all actions and potential new processes, services, procedures and systemic approaches proactively divert young people away from custody including through improving information and notification between police, courts, legal representatives and custody settings.

⁸ [Change Programme ONE - The Promise](#)

⁹ [A Fairer, Greener Scotland: Programme for Government 2021-22 - gov.scot \(www.gov.scot\)](#)

The recommendations within this Report reflect strong commitment to build on work already underway and fully embed UNCRC recognising the impact of trauma on the young person and that improvements in policies, procedures and responses can reduce re-traumatising and can be life changing for young people.

The Short-life Group seeks endorsement of the recommendations by CLG on 3 March 2022 with this Report forwarded to Ministers for their response.

Joanna Macdonald
Chair of SLG
3 March 2022

Update (31 March) - CLG endorsed the recommendations at its meeting on 3 March and the report was subsequently forwarded to Ministers. The Cabinet Secretary for Justice and Veterans wrote on 31 March to the Conveners of the Education, Children and Young People; Covid-19 Recovery Committee; and Criminal Justice Committee setting out the action that the Scottish Government is taking to reduce offending by children and young people and safeguarding them within the youth justice system with a view to keeping under 18s out of YOIs. The Cabinet Secretary highlighted the recommendations of the sub-group and how these will be taken forward through legislative and other action including the forthcoming Children's Care and Justice Bill and work to Keep The Promise.

VISION. AIMS AND PRIORITIES FOR SAFEGUARDING YOUNG PEOPLE IN THE YOUTH JUSTICE SYSTEM

Vision

Safeguard young people in the Youth Justice System, supporting a presumption against under 18s in the Criminal Justice System, keeping them out of YOI where possible and appropriate

Aims

Funding will be in place and services will be ready for transformational changes to Secure Care provision and a reduction in the number of under 18s in YOI - (final changes by March 2024)

Services, organisations and children will be ready for the introduction of a Children's Care and Justice Bill which will increase the age of referrals to the Reporter to 18 for all – Subject to Parliamentary process by March 2024 (Commencement)

Priorities to achieve the vision

Meet Scottish need through transformational change to secure care – Supporting no under 18s in YOI (where possible/appropriate) by 2024:

1. Improving community and family support to reduce the use of secure care.
2. Increase capacity in secure care through funding to reduce the need for cross border placements (during financial year 2022-23).
3. Ensure the required capacity, supports and mechanisms are in place to meet the needs of all under 18s in secure care (by Dec 2022)

Implementation of the Youth Justice Vision between 2022-2024. Including increasing the age of referral to the reporter in line with legislation and increasing alternatives to remand

Review and update Legislation through a new Children's Care and Justice Bill - Subject to Parliamentary process

Actions

Work with Secure Care providers and SPS to evaluate the needs of the current YOI population and ensure further supports are in place by December 2022

Ensure confidence of Judiciary in alternatives by December 2022

Capacity of Children's Hearings System, Social Work and Secure Care to support an increase in referrals by December 2022

Through the Community alternatives working group - Investigate community initiatives to reduce the number of children who are on remand January-April. Develop a Framework for practitioners by September 2022

Care and Justice Bill team established (December 2021). 12 week public consultation (Expected spring 2022)

Drafting of key policy instructions from February 2022 to enable implementation across the legal system in Scotland.

Investigate the funding requirements with all delivery partners for placing young people in secure care. Talks are ongoing to finalise a new funding model and a new commissioning approach (Incremental with initial funding from summer 2022)

Address the outstanding considerations of the Cross System Group on 16/17 year olds in the hearings system by September 2022. A rapid review group has been established including COPFS, SCRA, CHS, Police Scotland to develop options

Through the Children's Hearing System Working Group, support SCRA and the Children's Hearings System to assess current practices and produce a comprehensive report by December 2022.

Prep for introduction (Expected end 2022 - subject to Parliamentary agreement and process)

Continue to review the Vision action plan and trackers for the Whole System Approach Implementation group and the Children's Rights group, driving forward actions under the group to meet the priorities of the Youth Justice Vision published in June 2021 including consistency of approach to Early and Effective Intervention, extending WSA beyond 18 and supporting raising the age of referral to the reporter to 18 for all children and young people.

Increase public confidence and awareness raising, and ensuring continued partnership buy in and commitment through Ministerial events, media, newsletters, meetings - Ongoing

Measures

Number of under 18s:

- In The Hearings System
- Prosecuted in court
- In Secure care
- In Custody
- In Community alternatives

Governance and Delivery Leads

Led by Scottish Government Youth Justice and Children's Hearings Unit in partnership with stakeholders including the Youth Justice Improvement Board (YJIB) members, Implementation Groups, Secure Care Group, Children's Hearings Working Group. Governance through the YJIB and the Promise Board

Background Context – Trauma and Adverse Childhood Experiences (ACEs) and Justice System

ACEs and traumatic life experiences (in young personhood or adulthood) increase the risk of poorer physical and mental health and poorer social, educational and criminal justice outcomes. In particular, adversity and trauma in young personhood have been found to be linked to increasing likelihood to commit crime, be a victim of crime and spend time in prison. We also know that Covid-19 is likely to have led to an increase in ACEs and trauma.

ACEs¹⁰ can create harmful levels of stress which impact on healthy brain and emotional development. This can result in long-term, negative effects on behaviour such as poorer decision making and emotional regulation and poorer life outcomes, including anti-social and criminal behaviour. It is not pre-determined that ACEs will cause these negative outcomes, but without effective support, people with ACEs are at increased risk. Public Health Wales have found that people with 4 or more ACEs (compared to those with no ACEs) are:

- 15 times more likely to have committed violence;
- 14 times more likely to have been victim of violence in the last 12 months; and
- 20 times more likely to have been incarcerated at any point in their life.

As a result, many young people who come into contact with the justice system do so because of the impact of ACEs and trauma experienced in young personhood and they need our help and support not punishment.

Trauma Informed Practice

There is a need for organisations and the workforce involved in the justice system to be trauma-informed at every stage including, in communities, on arrest and initial custody, in the courts/sentencing process, imprisonment, rehabilitation and release from prison, etc. As part of this, we are working with SPS to support its recent drive to become a trauma informed organisation.

Being 'Trauma Informed' means being able to recognise when someone may be affected by trauma (including ACEs) and responding in ways that supports recovery, does no harm and supports people's resilience. Trauma informed services are ones which are built on safe, trusted relationships which offer choice, empowerment and compassion and active power sharing with people with lived experience.

A key part of a trauma-informed approach is supporting staff wellbeing, which is particularly critical in the context of the Covid pandemic and in the justice sector where many members of the workforce will experience trauma and be in contact with people affected by trauma as part of their day-to-day roles.

¹⁰ ACEs encompass a wide-range of adverse experiences which can negatively impact on young person's healthy development; including the experiences commonly included in ACE population surveys (physical abuse, sexual abuse, verbal abuse, emotional neglect, physical neglect, parental separation, household domestic violence, and growing-up in a household in which there are adults: experiencing alcohol and drug use problems; mental health difficulties; or imprisonment); as well as many other experiences (e.g. bullying, bereavement, coercive control, homelessness, and community violence).

The development of trauma-informed workforces and services (across all sectors) in Scotland is being supported by the [National Trauma Training Programme \(NTTP\)](#), which is underpinned by the NHS Education for Scotland (2017) [Knowledge and Skills Framework for Psychological Trauma](#). As part of the NTTP specific work is underway to develop a knowledge and skills framework for justice services (led by NES) as part of the work of the Victims and Witnesses Taskforce.

Wider Evidence Sources

The most useful summary of the links between ACEs and Justice is in the SG paper [Understanding Childhood Adversity, Resilience and Crime \(www.gov.scot\)](#)

- The wider evidence base is summarised on our webpages here [Adverse Childhood Experiences \(ACEs\) and Trauma - gov.scot \(www.gov.scot\)](#) including the most recent findings from the Scottish Health Survey 2019. This provided data about the proportion of adults who report experiencing adversity in their young personhood and how this relates to their current health. It found that substantial proportions of the Scottish adult population suffered some form of abuse, neglect or other adverse experiences during their young personhood, with 71% reporting having experienced at least one ACE and 15% experiencing four or more ACEs. As with other ACE surveys, the results highlight the risks of early life adversity for poorer outcome in adulthood.
- We know that people who offend are more likely to have experienced traumatic young personhoods than the general population. Prison surveys in the UK and in Scotland report high rates of young personhood abuse, family violence, experience of being in care and school exclusion in people in prison. The [2017 Scottish Prison Survey](#) asked people in prison a series of questions regarding their young personhood and found that significant proportions reported adverse and traumatic experiences. Research in Wales¹¹ found a high prevalence of ACEs within the offender population and that multiple ACEs can increase the risk of being charged with a violent offence, serving a sentence in a young offender institute and becoming a prolific offender.

¹¹ [Understanding the prevalence of adverse childhood experiences \(ACEs\) in a male offender population in Wales: the Prisoner ACE Survey - World Health Organization Collaborating Centre On Investment for Health and Well-being \(phwwhocc.co.uk\)](#)

Annex 1

Terms of Reference for Short Life Working Group

The Covid-19 Children and Families Collective Leadership Group (CLG) agreed at its meeting on 4 November 2021 to establish a short-life group to urgently review the cases of under-18 year olds currently in Young Offenders Institutions (YOI) to identify the main factors that led to their imprisonment; consider what support or other interventions could have created different, better outcomes; and recommend improvements to policy and practice to the relevant groups and organisations to achieve this. It is important that the Group's work supports rather than duplicates the work of existing groups and organisations.

The Group's work is time-limited but will help to inform key elements of the new Justice Strategy and the requirements in The Promise Plan 21-24¹² that:

- The disproportionate criminalisation of care experienced children and young people will end.
- 16- and 17-year-olds will no longer be placed in Young Offenders Institutes for sentence or on remand.
- There will be sufficient community-based alternatives so that detention is a last resort.
- Children who do need to have their liberty restricted will be cared for in small, secure, safe, trauma-informed environments that uphold their rights.

The Group's work will also help to meet the commitment in the Programme for Government that "we'll safeguard young people within the youth justice system, supporting a presumption against under 18s in the Criminal Justice System, keeping them out of young offenders' institutes where possible and appropriate, while ensuring that victims receive the support they need."¹³

The Short-Life Group will focus on the following tasks:

- Identify what actions can be taken now to reduce the number of hours that under 18s in YOIs spend in isolation.
- Develop a preventative mechanism showing the key decision points and opportunities that exist to provide additional support and guidance on alternatives to custody
- Consider what improvements can be made to professional practices at key decision points for children and young people, including through the GIRFEC National Practice Model, to maximise prevention, early intervention and other support and help ensure that detention is a last resort.

The Group's membership is noted below.

The Group will deliver a report and recommendations by February 2022 to relevant groups and organisations to help meet the requirements on Youth Justice in The Promise Plan 21-24.

Meetings of the Group will take place in December, January and February.

¹² [Plan 21-24 - The Promise](#)

¹³ [A Fairer, Greener Scotland: Programme for Government 2021-22 - gov.scot \(www.gov.scot\)](#)

MEMBERSHIP

Name	Organisation
Joanna MacDonald	Chair and Deputy Chief Social Work Advisor, Scottish Government
Fiona Dyer	Children and Young People's Centre for Justice
Peter Macleod	Care Inspectorate
Jillian Ingram	COSLA
Neil Hunter	Scottish Children's Reporter Administration
Tam Baillie	Child Protection Committees Scotland
Thomas Carlton	The Promise
Sheila Gordon	Coalition of Care and Support Providers in Scotland
Samantha Faulds	Police Scotland
Jennifer Davidson	Inspiring Children's Futures
Gina Wilson	Children and Young People's Commissioner Scotland
Gill Robinson	Scottish Prison Service
Wendy Sinclair-Gieben	HM Chief Inspector of Prisons, Scotland
Jenny Hamilton	Crown Officer and Procurator Fiscal Service
Tom McNamara, Liz Murdoch Jess Rees, Kirsty Pate Lucy Gibbons Peter Donachie, Holly Ferguson	Scottish Government Support

Annex 2 – Scottish Prison Service - Key Issues from data and evidence about young people in custody presented to the Short-Life Group in January 2022

This paper summarises issues which are relevant to the implementation of alternatives to custody, as well as to the work that the Scottish Prison Service (SPS) currently undertakes with children who are in Polmont. The issues are drawn from experience and from analyses which have been undertaken as part of SPS's contribution to the planning of alternatives to custody so that under 18s will no longer be sent to YOIs, an intention to which SPS is fully committed. In the meantime, SPS work with children in its care is guided by the SPS Vision for Young People in Custody¹⁴ which was refreshed in 2021.

Key issues from data and evidence about children in custody

Numbers of children aged 16 and 17 experiencing custody are reducing but still substantial

In the last ten years there has been a remarkable reduction (nearly 90%)¹⁵ in the number of children aged 16 and 17 who are in YOIs on any one day. As we know, however, children are still falling through the net. There are currently 14 children in custody but the scale of children's experience of custody in Scotland is best seen from the total number of children who experience custody in a year, each needing to be known as an individual with his or her specific needs for planning and support. There is considerable flux as children arrive in custody and either return to the community or reach their 18th birthday while in custody. The total number of children who experienced custody in 2020-21 was 92¹⁶ and we expect the number to be similar in 2021-22.

Most children in custody are closer to age 18 than 16

The age profile of children on arrival into YOIs tends to be weighted towards the upper end of the 16/17 age range¹⁷ although there are some exceptions. At any time, most are typically within a few months of their 18th birthday. The age profile has implications for the planning of alternatives to custody, since a predominantly older group is likely to have an influence on the culture and atmosphere within a setting, and there may be safety considerations where younger children are also present. There are also implications for the planning and timing of transitions, to ensure that any placement is long enough to become established and productive and that there is continuity of learning and support across the transition to the next stage of custody.

The vast majority of children in custody are on remand

Currently only three of the children in SPS custody have been sentenced. Over the past year the number of children on remand has consistently far outweighed the number who have been sentenced. Because of the uncertainty of their situation it can be harder to assess, plan and provide for the needs of children on remand: for example, it may be more difficult to motivate a young person to engage in activities and develop

¹⁴ [Vision for Young People in Custody \(sps.gov.uk\)](https://www.sps.gov.uk/vision-for-young-people-in-custody)

¹⁵ SPS population figures

¹⁶ Provisional Scottish Government cellwise population figures

¹⁷ SPS data over a period of a year

comprehensive support plans and/or throughcare plans for their return to the community. The uncertainty can add to a sense of hopelessness expressed by many of these young people in their conversations with staff. There is a great need for the fruits of the work that is now being undertaken to reduce the number of children on remand.

The reduction in the numbers of children in custody has been associated with an increase in the complexity and extent of their needs

It is well established that children in custody have commonly experienced bereavement, trauma and multiple adverse childhood experiences¹⁸. In recent snapshots¹⁹ based on SPS records, half of the children lived in the 20% most deprived communities in Scotland and around half were care experienced. The children have needs associated with mental health, drugs and alcohol, and additional needs including speech, language and communication needs (SLCN). These children have often been the most marginalised and excluded, with disrupted school attendance and major and often unrecognised gaps in, for example, their literacy, communication, comprehension, numeracy and life skills.

A review of case histories of a group of children²⁰ recently resident in HMYOI Polmont confirmed these patterns of complex need and identified common themes in the lives of these children, including:

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

The pattern of complex need has significant implications for the range and kinds of specialist support that needs to be available for these children (such as for their mental health, SLCN, learning disability, support for trauma and bereavement) together with tailored educational provision, all to improve their likelihood of a positive future. This includes, in some cases, individual support to engage with learning of any kind and to engage with peers.

The most important contribution to these young person's sense of safety and wellbeing can often be that somebody cares about them. The quality of the relationships between the children and members of staff is therefore particularly important, especially given that some of these children do not have contact with anyone in the community²¹.

¹⁸ [Children and Young People in Custody in Scotland: Looking Behind the Data \(Revised June 2018\) - Children's and Young People's Centre for Justice \(cycj.org.uk\)](#)

¹⁹ Analysis of data from SPS records

²⁰ Case studies drawn from Polmont records

²¹ Polmont Barnardos team

The reduction in numbers of children in custody is associated with an increase in severity of risk, including risks to other young people and to public safety

The offences for which children serve sentences or are on remand in YOI are predominantly very serious violent and/or sexual offences, including the most grave of offences, and/or multiple offences and multiple breaches of orders²². Given the acute issues of safety that individuals within the group are likely to present not only within the community but while they are detained, these risks have implications across a range of aspects of provision and practice, including:

- ensuring that staff have the skills, knowledge and confidence to work safely with these young people to understand, meet and address their needs
- having in place arrangements to ensure safety and protection for all residents, including approaches to de-escalation and interventions where there is risk of harm (SPS is placing an emphasis on restraint reduction and non-aversive strategies for managing children and young people who may display distressed behaviours. Central to this work is the identification and implementation of non-pain inducing restraint techniques, in line with UNCRC and The Promise.)
- having access to specialist support and escalation routes for particularly vulnerable young people with acute or additional needs, to ensure that they are placed without delay in the most appropriate setting for their needs

The return to the community presents particular challenges for children and young people leaving custody

The Whole System Approach (WSA) provides multi-agency support for children leaving custody but there are particular challenges, for example, in ensuring safe and supported housing for all who need it. Young people leaving custody, who may be learning to live independently for the first time, will often need extended support within the community²³. Experience shows that continuity of support is vital and may well need to continue across age boundaries. This has implications for all partners who have responsibility to provide the support, services and opportunities that these young people need to integrate successfully, and safely, into their communities.

²² SPS records

²³ [Principles of Good Transitions 3](#) Children and Young People in Conflict With the Law Supplement(2021 CYCJ and ARC

Annex 3 - Expert Review on Mental Health and Young Offenders: Opportunities to share information - Draft Matrix

Stage	Lead Body	Information routinely available	Information sporadically available	Opportunity to Divert	What should we aspire to?	Gaps/Issues
Point of arrest and initial detention	Police Scotland	<p>Legal Status of child/young person Subject to CSO – via SCRA</p> <p>Previous disposals</p> <p>Circumstances of arrest and alleged offence</p> <p>Information from a Local Authority following notification of a child in custody (CJ(S)A 2016 S.24/41)</p> <p>Previous concern forms and VPD information</p>	<p>Subject to MHC&T(S) Act-</p> <p>Social circumstances of child/young person</p> <p>Known vulnerabilities/risk factors</p> <p>Known to local support services</p>	<p>Specific crime types via PRW or fixed penalty only</p> <p>EI – typically first/early low level offences</p>	<p>All Children/Young people are considered for EEI or referral to Childrens Reporter as per established protocol</p>	<p>Police access to systematic information about a young person’s wellbeing during any detention</p> <p>Duties under 2016 Act on police to inform LA in certain circumstances provided opportunity for information flow</p> <p>Inconsistent identification of care leavers</p>
Reporting to the PF	Police Scotland	<p>Legal Status of child/young person Subject to CSO – via SCRA</p> <p>Previous disposals</p> <p>Circumstances of</p>		<p>Police to Jointly Report to COPFS/SCRA in line with national protocol and LAG (age dependent)</p>	<p>SPR2 is informed by VPD information</p> <p>PF to apply existing protocol with SCRA where</p>	

		<p>arrest and alleged offence</p> <p>Any other relevant information gathered in course of detention</p>			<p>appropriate. Children and young people should always be considered for a welfare based intervention via Hearings System (within existing legislative constraints)</p>	
PF assessment and decision making	COPFS	<p>Legal Status of child/young person Subject to CSO – via SCRA</p> <p>Previous disposals</p> <p>Circumstances of arrest and alleged offence</p> <p>Any other relevant information gathered</p>	<p>Existing contact with local services</p> <p>Known risks and vulnerabilities</p> <p>Wider social and familial circumstances</p>	<p>Yes</p> <p>(a) Via COPFS/SCRA joint protocol (age dependent)</p> <p>(b) via established Diversion from Prosecution with Local Authorities</p> <p>(c) Fiscal direct measures</p> <p>(In future b and c will be prosecutorial</p>	<p>Maximum use of diversion</p> <p>Where remand/imprisonment is unavoidable, the risks/issues in doing so are flagged early with sentencers Where specific mental health concerns, and risks are identified diversion can be used to support the young person to access appropriate</p>	<p>PF's access to information about risk/vulnerability to inform a) need for prosecution b) approach to prosecution c) approach to bail/remand/sentencing. Access will likely depend on young person meeting eligibility criteria for MH services and support (potentially via</p>

				actions)	support (where available)	adult services)
Court Hearing (Remand/Bail)	SCTS/ Judiciary	<p>Full assessment of social circumstances and background/risk/social and psychological functioning and mental health concerns/issues (although extent varies)</p> <p>Advice on options to Sheriff (including bail supervision and risk management processes)– from Court SW Team or WSA/Youth Justice Team</p> <p>Need for special measures</p>	<p>Specific risks and vulnerabilities which Sheriff may wish to consider.</p> <p>Wider social and familial circumstances</p> <p>Advice on further diversionary opportunities</p> <p>Child’s plan</p> <p>Focus on which is the most appropriate system to address offending.</p>	<p>Yes – via (a) established Diversion from Prosecution/ Imprisonment arrangements with Local Authorities</p> <p>(b) Bail (with appropriate conditions)</p>	<p>Every under 18 attending court is identified at point of police arrest and charge and local authority is notified.</p> <p>Court support as per WSA to be available across SCTS estate to every under 18 for the purposes of information sharing, gathering and provision of support to individual and their family (if young person agrees).</p> <p>Information is shared via court notes with PF, Sheriff, defence solicitor and court social</p>	<p>All available information is available to enable diversion from remand.</p> <p>Consistency of access to, and level of, court support varies as WSA is policy rather than service provision being a legislative requirement.</p> <p>Gaining information on young people appearing and access to young people has reportedly become more challenging due to GDPR and local court practice.</p> <p>Information</p>

					<p>work, particularly highlighting risks, needs and concerns.</p> <p>Pro-actively seek diversion and rapid provision of support for young people.</p> <p>COPFS notify LA of subsequent court dates.</p> <p>No under 18s are remanded to custody</p>	<p>often gathered in short timeframes.</p> <p>Credible and available alternatives to remand vary locally</p>
Court Hearing (Sentence)	SCTS/Judiciary	Full CJSWR from Local Authority giving advice to Sheriff		<p>Yes – via</p> <p>(a) Community sentence</p> <p>(b)deferred sentence or other bespoke approach</p> <p>c) remittal to a</p>	<p>Court support as per WSA to be available across SCTS estate and to pro-actively seek diversion and rapid provision of support for young people</p>	

		Advice from a Children's Hearing.		Childrens hearing for disposal d) Use of secure care rather than YOI	CHS best placed in dealing with child's behaviour and welfare. Increase the number of children remitted to the CHS for advice and disposal. Robust community alternatives are available to meet need and manage risk. No under 18s in custody.	
Admission to Remand/ Custody	SPS	As per SPS agreements Risk alert completed and sent from court SW to receiving establishment At initial custody review (timescales vary) information on:	CJSWR (if sentenced) Child's plan (where developed)		Minimum agreed national information set	Documents may not be developed e.g. if unknown to services previously child's plan will not be developed; CJSWR will not be developed

		<p>Health & Wellbeing; Family/Personal Relationships & Contact; Structure, Routine & Opportunities in custody; Legal; Exit Planning, Positive Supports & Protective Factors; contingency planning should be shared and discussed.</p>				<p>for those on remand or convicted awaiting sentence; and information may not be up to date if developed previously</p> <p>Difficult to quantify if/when reports are being shared and the quality of information</p>
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