

A Guide to Youth Justice in Scotland: policy, practice and legislation

Reintegration and Transitions: Youth justice practice at the interface of the Children's Hearings System and the Criminal Justice System

Contents

1. Introduction.....	page 1
2. Policy context.....	page 1
3. Maximising the potential of the Children's Hearing System.....	page 2
4. Diversion from Prosecution.....	page 5
5. Bibliography.....	page 7

1. Introduction

This section concerns youth justice practice at the interface between the Children's Hearings System (CHS) and the Criminal Justice System (CJS) and the challenges faced by children and young people in the community, in secure care and in prison settings. Youth justice practice with eight to 18 year olds in Scotland is influenced by a plethora of different pieces of legislation, policies and guidance; some primarily related to children, young people and their families and others focussed more specifically on adults in conflict with the law. Policy and practice discussions in this area are often captured under the umbrella term 'Reintegration and Transitions'. The practice landscape for young people at the interface of these two systems is complex and the purpose of this chapter is to highlight how it might be navigated successfully by youth justice practitioners, to deliver the best possible outcomes for young people.

Before embarking on an overview of some of the key themes relating to Reintegration and Transitions it is important to define clearly what the two words are understood to mean in the context of this chapter. To take the latter of the two terms first, 'Transitions' in this section refer to:

- Children and young people moving from the CHS to the Criminal Justice System
- Children and young people moving from children's to adult services
- Children and young people moving from secure care to custody
- Children and young people moving from school to employment, training and/or further/higher education
- Children and young people moving from childhood into adolescence in developmental terms

Meanwhile, the term 'Reintegration' concerns:

- Children and young people returning from secure care to the community
- Children and young people returning from prison to the community
- Children and young people moving from being 'looked after' to no longer being "looked after" following the termination of a Compulsory Supervision Order (CSO)
- Children and young people moving from being subject to a Community Payback Order (CPO) to having no legal order in place

2. Policy context

In Scotland's Choice: Report of the Scottish Prisons Commission (2008: 30), McLeish and colleagues noted that "unlike in most other countries, at the age of 16, many young people who commit offences face a very abrupt transition from the Hearings System, where the emphasis is on helping them to develop and change, to the adult courts, where the emphasis is on punishing them". The report noted that young people can have a series of unmet needs on entry to the CJS and observed that while they may present a risk to their communities, failing to support them through the criminal justice process and failing to address their risks and needs can lock them into a cycle of reoffending.

The report recommended that the Scottish Government re-examine how 16 and 17 year olds who offend were dealt with. This was one of the key triggers which led to the development of

the Whole System Approach (WSA). WSA encourages agencies and services to work together to offer a consistent approach to prevent and reduce offending by young people. The approach covers six core areas:

- Early and Effective Intervention (EEI);
- Opportunities to divert young people from prosecution;
- Court support;
- Community alternatives to secure care and custody;
- Changing behaviour of those in secure care and custody; and,
- Improving reintegration back into the community.

Related to each of these themes, specific guidance and toolkits have already been published to support the realisation of WSA in practice. These include the:

- Alternative to Secure Care and Custody Guidance;
- Reintegration and Transitions Guidance;
- Framework for Risk Assessment, Management and Evaluation (Frame): For children and young people under 18 Guidance;
- Diversion from Prosecution Toolkit;
- Youth Justice Programme; and
- Assisting young people aged 17 and 17 in Court Guidance.

Youth justice practitioners will also need to be conversant with a range of guidelines and documents pertaining to work with individuals in the CJS. The National Outcomes and Standards for Social Work Services in the Criminal Justice System provide the practice framework for criminal justice social work. Such work is required to focus on the realisation of three principal outcomes:

- Community Safety;
- Reduction of Reoffending; and
- Social Inclusion to support desistance from offending.

Meanwhile, the Criminal Justice Social Work Reports and Court Based Services Guidance (2010) is primarily directed towards report writers and their managers. It provides practical direction on how to complete reports for the Court. Finally the Community Payback Orders Practice Guidance outlines the manner in which social workers and other professionals ought to support those subject to community orders to complete them successfully and to move towards desistence from offending. Each of these documents emphasises that young people under the age of 18 will present with particular needs specific to their age and stage of development that ought to be taken into account and managed in a sensitive fashion.

3. Maximising the potential of the Children's Hearing System

The premature transition of children and young people from the CHS to the CJS can stem from oversight or intended action on the part of lead professionals. They may have neglected to utilise or chosen not to utilise the full extent of the powers of the CHS to continue to manage assessed risks and needs in a child-friendly and age appropriate forum. CSO may be continued until a young person reaches the age of 18. Unfortunately, it remains the case that the number of CPOs being terminated on or around a young person's 16th

birthday is higher than would be desired and retention of young people on CPOs is more often the exception rather the norm.

Responding to concerns that the CSOs of some vulnerable young people were being terminated prematurely and new or subsequent offending was being dealt with within the CJS, the Association of Directors of Social Work (ADSW), now Social Work Scotland, in conjunction with the Scottish Government issued the Position Statement Young People aged between 15 and 17 in the CHS. It stresses the following underlying principles which ought to influence decision-making:

- Action must include a consideration of a young person's wider emotional, developmental and family needs
- Alternatives to custody must be considered in each case by the report writer and court social worker
- Young people should continue to be supported on a compulsory supervision order between the ages of 16 and 18 when this is in their best interests

Moreover, it states that it is not appropriate to base a recommendation for termination of a CSO solely on the basis of:

- The young person's outstanding offences;
- The age of the person (unless approaching 18);
- The young person's failure to engage with services that are assessed as necessary; and
- The fact that the young person is in the adult court system or has been given a custodial sentence.

The capacity of Sheriffs and Judges to remit to a Children's Hearing for advice and/or disposal in cases involving young people under the age of 18 is another power that lead professionals ought to consider and to maximise when preparing Criminal Justice Social Work reports. The guidance to report writers is explicit on this point stating clearly that "The report writer must **always** comment on the option of remittal back to the children's hearing, (where the subject of the report meets the criteria of being under 17 years and six months) **but** it is critical to be clear that remittal is being considered with a view to work being undertaken which will address both the needs and risks already identified as well as being tailored to the young person's stage of development" (2010: 52). The Criminal Procedure (Scotland) Act 1995 outlines in detail at s.49 the circumstances whereby young people found guilty of an offence in an adult Court may have their cases remitted back to a Children's Hearing for advice and/or disposal. It is important to note that the extent to which these legal provisions apply to different young people is contingent upon:

- the severity of their offence (specifically whether they have been charged under summary or solemn procedures);
- their age (specifically whether they are under the age of 16 or aged over 16 but not yet 18); and
- whether or not they were subject to a CSO at the time of the offence

At this juncture, it is appropriate to tackle a number of the arguments proffered on occasion as the basis for termination of a CSO including:

- The young person is not engaging with services;
- The young person is more likely to engage if supervised under the auspices of a CPO;
- The young person has already been made subject to a CPO, therefore the CSO has become redundant;
- The young person is in custody;
- The young person will not be able to obtain supported accommodation if they are subject to a CSO; and/or
- The young person wants to be treated as an adult, believes he/she has outgrown the CHS and emphasises that his/her views must be given due consideration

While there may be some substance to all of these claims it is also possible to identify counter-arguments:

- Children and young people are placed on CSOs if they meet the test for compulsion outlined in detail in the Framework for Decision Making By Reporters (2011). The framework highlights that “The lesser the motivation to change, or the willingness to co-operate, the more likely that compulsory measures are required” (2011: 8). Ultimately 16 and 17 year olds are adolescents, not mature adults. They are frequently vulnerable and have already demonstrated their difficulty in making positive choices for themselves by dint of being made subject to CSOs. They may quickly reoffend, and end up in the revolving door of remands and short sentences with limited opportunity for intervention within the custodial setting as a result of premature termination.
- The focus of any assessment and intervention work with young people involved in offending behaviour ought to be informed by a holistic assessment of risk and need, drawing on the GIRFEC National Practice Model, an ASSET or YLS/CMI assessment and any other relevant specialist assessments. From this assessment, the Child’s Plan will be shaped and regularly reviewed influencing the activities, interventions and supports offered through the CSO. CSOs are extremely flexible in nature and it would be surprising if a young person with Offender Supervision Requirement if imposed in its place would be able to provide a form of service provision that was significantly different in focus or more robust. Both a CSO and a CPO are statutory orders and young people subject to either must have an allocated social worker who they meet with for purposeful contact on a regular basis.
- Where a young person already subject to a CSO is also made subject to a CPO, this dual status may prove beneficial. Depending on the age of the young person and length of any CPO imposed, if the CSO is terminated and the young person subsequently breaches the CPO, or the order ends before the young person is 18, they may lose the support services provided within the CHS including the possibility that further offences might be considered by a Hearing rather than the Court.
- When a young person under the age of 18 and subject to a CSO is detained in custody or in secure care the length of time for which they are detained will vary depending on whether they have been remanded or sentenced. A 72 hour review meeting should be arranged to take place in the YOI or secure unit for all young people other than those on remand. It is also good practice to hold a planning meeting within 72 hours for all young people on remand as outlined in CYCJ Fact Sheet 1 and Fact Sheet 24. Ultimately the length of detention may well be short and premature termination of a CSO would lead to a situation whereby instead of a duty

to provide a service to the young person under the auspices of a CSO being in place, a local authority would simply have the power to do so if the young person wished to engage on a voluntary basis. One might also make the argument that a young person who was “looked after” at the point of entering the custodial or secure environment becomes a “child in need” following the thinking of the Honourable Mr. Justice Munby in his judgement in the Howard League case on the Children Act 1989 in England and Wales.

- The ADSW position statement makes it explicitly clear that being subject to a CSO ought not to be a factor which influences negatively a young Person’s right to access supported accommodation.
- While the young persons’ views should always be taken into consideration, their ability to manage risky situations during adolescence and to make wise decisions is likely to be as limited as that of young people who are not “looked after” and who rely on their parents and carers for support and advice for many years. In making any assessment and recommendation, a responsible Corporate Parent must weigh up the young person’s desire to be treated as a “grown up” in the “adult system” with the negative consequences which may stem from the their non-compliance with Court orders.

4. Diversion from Prosecution

In Scotland the decision to prosecute an individual for a criminal offence rests with the Crown Office and Procurator Fiscal Service (COPFS). There are often cases where a minor offence has been committed or exceptional circumstances exist, and the Procurator Fiscal (PF) may consider that it would not be in the public interest to take the case to court. In such cases, the PF has the option to utilise diversion from prosecution schemes in order that a meaningful intervention can be delivered to address the identified concerns for that young person. The COPFS Prosecution Code stipulates the factors to be taken into account when making any decision in relation to prosecution.

Following four successful diversion pilots, diversion from prosecution for 16 and 17 year olds is being rolled out nationally. It targets young people who are charged by the police for minor offences prescribed by COPFS. Diversion from prosecution is no longer restricted to young people already subject to a Compulsory Supervision Order (CSO) and can incorporate any 16 or 17 year old who has been involved in offending behaviour of a relatively low level nature. Diversion from prosecution constitutes a form of early intervention which aims to address unmet needs and reduce the prospect of further offending behaviour. In the Lord Advocate's Guidelines to the Chief Constable on the Reporting to Procurators Fiscal of offences alleged to have been committed by children, specific reference is made to the Framework on the use of Police Direct Measures and Early and Effective Intervention for 16 and 17 year olds.

The Diversion from Prosecution Toolkit offers guidance to service providers and decision makers on what they need to do to provide a more effective, tailored and appropriate intervention for young people who offend. In Diversion from Prosecution to Social Work in Scotland, Bradford and MacQueen (2011:3) found that although PFs viewed alternatives to prosecution as “useful and desirable” the extent to which such schemes flourished or failed depended upon “informal working relationships between individual Fiscal offices and Criminal Justice Social Work departments”. Recent data outlined in Criminal Justice Social

Work Statistics highlights that 379 young people under the age of 18 were diverted from prosecution in 2012/13, albeit a mere four local authorities accounted for nearly half of all such diversion cases.

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