

## UK Parliamentary Inquiry Children and Young People in Custody

### Executive Summary

- There is a growing body of evidence which shows that children involved in a pattern of offending, or who are involved in more serious offences, are almost always our most vulnerable, victimised and traumatised children in society.
- In 2018 37% of children across the secure estate in Scotland had been placed there by an English local authority
- The transitions to and from secure care or custody are major, often traumatic, life events for children and young people, which in addition to the negative effects this experience in itself can bring, may exacerbate pre-existing vulnerabilities and disadvantage
- More research is needed to evaluate and evidence the effectiveness of the alternative services available to children
- The UN Committee on the Rights of the Child has recommended a minimum age of criminal responsibility of 14
- Therapeutic environments and interventions have been shown internationally to reduce reoffending
- Where children are deprived of their liberty, they should be provided with:
  - 1) Therapeutic trauma and attachment informed support;
  - 2) Care in small settings, that provide high staffing ratios and relationship-based support;
  - 3) Provided in child-care establishment that promote wellbeing and longer-term development in age-appropriate environments (Harris et al., 2016);
  - 4) Benefit from a holistic range of services and supports to address need and risk.

### Written submission by the [Centre for Youth & Criminal Justice \(CYCJ\)](http://www.cycj.org.uk)

CYCJ is dedicated to supporting improvements in youth justice, contributing to better lives for individuals, families and communities. Our vision is a Scotland where all individuals and communities are safe and flourish; and where Scottish youth justice practice, policy and research are internationally renowned and respected. We contribute to this by developing, supporting and understanding youth justice practice, policy and research in Scotland, and through seeking and sharing learning internationally. CYCJ have chosen to make a written submission to the Justice Committee Inquiry into Children and young people in custody, to share information on the position in Scotland and regarding cross-border placements of children into secure care in Scotland. CYCJ hosted the [secure care national project](#); were a member of the [HMIPS Expert Review of the Provision of Mental Health Services for Young people Entering and in Custody at HMP&YOI Polmont](#); have undertaken the Scottish secure care census in 2018 and 2019; chairs a six monthly Scottish Prison Service (SPS) partners meeting; provided evidence to the Scottish Parliament Justice Committee [Review of secure care places for children and young people in Scotland](#); and supported extensive work on [adverse childhood experiences](#) and [trauma, bereavement and loss](#).

CYCJ is primarily funded by the Scottish Government and hosted by the University of Strathclyde.

## 1. The Youth Justice Population and entering the system

How has the young offender population changed and what are the challenges in managing this group?

- a) What are the characteristics of those entering the youth justice system and how has the mix of offences committed by young people changed?

There is a growing body of evidence which shows that children involved in a pattern of offending, or who are involved in more serious offences, are almost always our most vulnerable, victimised and traumatised children ([CYCJ, 2016](#)). The link between vulnerability and offending is retrospective not predictive, in that most children who experience adverse childhood experiences and trauma do not go on to seriously offend, but children who are involved in serious offending or frequent offending almost always have experienced trauma (CYCJ, 2016). Whilst in Scotland the number of children entering the youth justice system is reducing, there is a sense amongst practitioners of growing complexity within the youth justice population. In addition to offending behaviours, there are higher levels of bereavement, mental ill-health, ASD, speech communication and language needs, neurodevelopmental trauma, child sexual exploitation and of homelessness (see CYCJ, 2016; [CYCJ, 2019](#)). This is particularly acute for our children in secure care and custody.

Findings from the CYCJ 2018 secure care census (as yet unpublished), completed on one day and gathering information about all of the children in secure care on that date, showed that: 37% of children across the estate had been placed there by an English local authority. This equates to 32 children in total. Of this 32, 75% (24 children) were female and 25% (8 children) were male. Amongst the children from English local authorities, 78% were of White British ethnicity, 9% Black and 13% Mixed ethnicity. 71.9% of children came from families experiencing relative poverty, with a further 15% defined as 'unknown'. These children predominantly came from the most deprived areas within England, with 53.2% having previously resided with the 40% most deprived postcodes, as defined by the English Index of Multiple Deprivation.

Children from English local authorities had experienced multiple placements, with each child experiencing an average of 9.2 placements in the year prior to admission alone. These children had experienced up to 35 placements in total, with an average of 16.2 placement moves since birth.

Significant prevalence of mental ill-health, distress and traumatic life experiences were found amongst this population. In the year prior to admission, 61.3% had experienced mental ill-health, 58.1% drug abuse, 78.5% had engaged in self harm, 43.8% had attempted to end their life through suicide, 62.5% had experienced suicidal ideation, 90.6% had absconded and 55.2% had been sexually exploited. Exposure to Adverse Childhood Experiences was significantly higher than amongst the general population, with 71.9% of children having encountered four or more ACEs.

Despite these - and heightened levels of risk in various other domains in the year prior to admission - only 40.6% of this population had been subject to child protection registration.

In addition to the above noted welfare concerns, children placed within Scottish secure units by English local authorities have engaged in criminal behaviours. In the year prior to admission, 9.7% had been subject to some form of criminal justice supervision. Over that time frame, 55.2% had accrued at least one charge of assault, with 12.8% having accrued five or more such charges. Other charges include possession of a weapon (22.6%), assault using a weapon (12.9%), theft (12.9%) and firesetting (3.2%). These children were all placed within secure care through welfare orientated legal decisions, rather than a consequence of being remanded or sentenced, of course. In terms of young people in custody in Scotland, [Nolan et al.](#) (2017) research with 14 young men in one Scottish YOI, representing almost one-quarter of the YOI's under 18 population on that date, found that 11 respondents reported a history of social work involvement, for many dating back to their early years. Nearly all of the young people interviewed reported multiple experiences of loss; bereavement; abuse; trauma; family breakdown;

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parental ill health; parental inability to cope; homelessness; mental health difficulties; substance misuse; and sibling involvement in offending. Eight young people reported that they had been removed from their parent's care as a result of the above issues. Moreover, over half of those interviewed appeared to display comprehension and understanding difficulties, and speech, language and communication needs, in some cases at a level that the researchers deemed to be substantial. The majority of participants described experiencing disrupted education, movements between schools, truanting and lack of support. These young people had been excluded from school which they linked, along with inadequate alternative education provision, to their offending, citing the subsequent loss of opportunities, education and qualifications, as well as the unstructured use of time, as key issues. These findings echo those made in the 2017 [SPS Prisoner Survey](#) and by the [Youth Justice Improvement Board](#) (2018). The transitions to and from secure care or custody are major, often traumatic, life events for children and young people, which in addition to the negative effects this experience in itself can bring, may exacerbate pre-existing vulnerabilities and disadvantage, rendering children and young people susceptible to a range of (further) negative outcomes on return to the community ([Bateman, Hazel, & Wright, 2013](#)).

- b) How effective is the youth justice system in diverting children and young people away from custody and what more needs to be done?

[Our research](#) has identified a gap between Scottish policies and the Whole System Approach, with the intention that all young people should be included, informed and supported through the youth justice system, and what they subsequently report. Dyer (2016) has highlighted that too many children continue to be prosecuted as adults in court, being treated as fully responsible for their behaviours and punished as such, bringing lifelong consequences such as criminal records that can persist into adulthood. Around 40% of children who come into contact with the formal justice system in Scotland are prosecuted in an adult court with little, if any, changes made to court proceedings.

In the 2018 secure care census, six of the 32 children placed by an English local authority had previously spent time within secure care; this ranged from three weeks to 20 months.

While Diversion is of course the right approach, as evidenced by [ESYTC](#) there is very little evidence that says the interventions we have for Diversion are effective. More research is needed to evaluate and evidence the alternative services available to children.

- c) Is the current minimum age of criminal responsibility too low and should it be raised?

Yes. To be in line with the recommended European minimum, this should be increased to 14. The age of criminal responsibility (ACR) in Scotland has recently increased to 12 via the [Age of Criminal Responsibility \(Scotland\) Act 2019](#). [CYCJ's position is that this does not go far enough](#) (for more information see our [consultation response](#)) and we welcome the Scottish Government's establishment of an [advisory group](#) to consider increasing this.

The UN Committee Against Torture concluded in May 2019 that an ACR of 12 is not in accordance with international standards. The UN Committee on the Rights of the Child has recommended a minimum ACR of 14.

## 2. Suitability of the Secure Estate

Is the secure estate a fit and proper place to hold children and young people?

Secure accommodation is among the most intensive and restrictive "alternative form" of care available to children. The [Secure Accommodation \(Scotland\) Regulations 2013](#) and [Public Service Reform \(Scotland\) Act 2010](#) define secure accommodation as accommodation provided for the purpose of restricting the liberty of children in a

residential establishment, where care services are provided. Secure care aims to provide intensive support, care and education to keep these children safe and to meet the extremely high levels of need and vulnerability experienced by these children.

Secure care establishments provide a more therapeutic trauma and attachment informed support ([Gough, 2016](#)). There is a well-established evidence base in Scotland highlighting the common and multiple difficulties and experiences a high proportion of the children entering secure care and custody have experienced (such as neglect, trauma, adversity, loss, bereavement and abuse), often resulting in significant mental and emotional needs, requiring therapeutic, psychologically and trauma informed responses ([CYCJ, 2019](#)). Failure to do so has the potential to compound the impact of previous traumatic experiences or re-traumatise (CYCJ, 2019). Therapeutic environments and interventions have been shown internationally to reduce reoffending. A study of juvenile institutions in Norway, Finland, Sweden and Germany demonstrated the benefits of the institutions being set up as “social therapeutic communities” where young people were assessed by their needs above their potential risks (Kidson, H, 2013). Recent work by Vaswani et al. (2019, p.9) has highlighted the challenges in implementing trauma-informed practice and expressed “...caution about whether sites such as prison can fully meet the criteria... The clash between organisational culture, values and attitudes and trauma-informed practice may be felt most strongly within the prison and criminal justice systems. Unfavourable attitudes towards the treatment and care of those who offend or harm others can be a complicating factor, despite organisational policy and examples of good practice to the contrary”.

The higher staffing ratio within secure care and the ability therefore to provide more relationship-based support. Building successful and supportive relationships with practitioners is also particularly important for children and can make the difference in relation to behaviour. It is the “relationship formed between the professional and young person” rather than the particular content of an intervention that ensures progress in the prevention of future offending (McNeill, F., 2006).

Secure care is first and foremost a form of care and not punishment. It is regulated and inspected as such, offering a more developmentally and age-appropriate environment for children and arguably promotes the upholding of children’s rights (CYCJ, 2019).

a) What impact has the changing nature of the population had on the management of the secure estate?  
CYCJ understand that the complexity of the needs of children entering secure care and custody in Scotland is increasing, which may be mirrored elsewhere in the UK. This presents challenges in ensuring these children can be appropriately supported, although this is achieved most of the time. We are aware since 2015 there have been a small number of children in secure care who have displayed extreme violence and troubling behaviours towards others including serious threats of, and actual, physical harm resulting in injury ([CYCJ, 2019](#)).

The increase of cross border placements has - on occasion - led to children from Scotland being placed within the custodial setting due to lack of capacity within our secure estate. [Gough \(2018\)](#) has highlighted many of the reasons for this. Through checking the [Secure Accommodation Network Scotland](#) one can ascertain the number of vacancies in secure care in Scotland on a daily basis. This year there have been multiple occasions when no beds have been available (see [GCHSCP, 2019](#)).

b) What does a good quality custodial place for a child or young person look like and is there sufficient provision across England and Wales?

Based on the available evidence, where children are deprived of their liberty, they should be provided with:

- Therapeutic trauma and attachment informed support;
- Care in small settings, that provide high staffing ratios and relationship-based support;

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- Provided in child-care establishments that promote wellbeing and longer-term development in age-appropriate environments (Harris et al., 2016);
- Benefit from a holistic range of services and supports to address need and risk.

We would suggest that the use of cross-border placements indicates that there is insufficient provision across England and Wales. Statistics gathered over summer 2018 found that English local authorities have been the third highest user of Scottish secure care between 2012 and 2018 (behind Glasgow City Council and City of Edinburgh Council), having purchased 12% of places used during that time frame ([Gough, 2018](#)). Recent publications by [Williams et al](#) (2019) have highlighted the impact that this can have, with children from Wales placed outwith their home nation.

The 2017-18 Children's Social Work Statistics report an average of 81 residents in secure care accommodation between August 1, 2017 and July 31, 2018, an increase from an average of 76 in the previous year. There was an 18% decline in the average number of residents from within Scotland and an increase of 89% in the average number of residents from outside Scotland, most of whom were from England. An average of 43% of Scottish secure care beds were used for cross-border children in 2018. The ethical issues and tensions in relation to children's fundamental rights and state and Corporate Parents' responsibilities to meet children's needs and ensure their safety and wellbeing and that of others in respect of cross-border placements, are detailed at length elsewhere (see for example responses to [UNCAT submissions](#)).

f) Is the use of force in the secure estate proportionate and properly monitored?

The arrangements in respect of restrictive practices differ between secure care and YOIs (see Scottish Government, 2017). The use of physical restraint is permitted in secure care and custody, although pain compliance techniques are not utilised in secure care, only in YOIs. As detailed in Together Scotland's (2019) UNCAT response, it is unclear how such techniques are being measured and monitored.

g) How does the experience of children and young adults differ across types of secure custody and what lessons can be learnt ahead of the opening of the new secure schools?

In CYCJ's most recent stakeholder survey, the young people told us that their experiences with the 'youth justice system' were mostly negative and they felt like the system was mostly concerned with "punishment" rather than welfare. From first contact with the Police who "talk down to you", or "take their power for granted" and "abuse their power" young people felt disrespected, not listened to and powerless.

However, in research by Nolan et al. (2017) with the young people in a YOI who had experience of secure care, the majority reflected positively and spoke fondly about the environment provided and relationships with, and supports from, staff; increased freedoms and material provisions; and better contact and links with family, education provision and preparation for release, stating they would prefer a placement in secure care to custody. These findings have been echoed in a number of other as yet unpublished pieces of work undertaken by CYCJ, with young people speaking favourably of their time within the secure estate when compared to time within the prison setting. They recounted better education, support from staff, contact with family, personal safety and range of activities amongst reasons for this. In addition, HMCIP, in the recent Report on Expert Review of Provision of Mental Health Services at HMP&YOI Polmont (2019) states that "the inspection team felt that there might be merit in an alternative model that combined the expertise of the SPS and secure care providers for young people". This built on the recommendation from HMIPS Inspection of Polmont in 2018 that:

"HMIPS urge the Scottish Government to review the appropriate location for the removal of liberty for children in detention. HMP&YOI Polmont has the architecture and staffing appropriate to an adult prison. Best practice in child-centred thinking argues a different approach, nearer to the secure care system. HMIPS would like the Scottish CYCJ is primarily funded by the Scottish Government and hosted by the University of Strathclyde.

Government and the SPS to consider a hybrid model of secure care for children, which would include a range of choices for children with challenging behaviour, who are currently unable to be managed in the secure system. This would provide the space to remove children from HMP&YOI Polmont”.

### 3. Resettlement and rehabilitation children and young people

Is sufficient support available in the secure estate and community to ensure that children and young people do not reoffend and if not, what more should be done?

- a) Are children and young people able to access purposeful activity, education, healthcare and other support as needed whilst in custody?

In Scotland, HMP&YOI Polmont have developed a range of opportunities for learning, education, work and support services to children. There is evidence of good partnership working to provide opportunities to address identified needs, including with a wide range of third sector organisations. However, as detailed in the recent HMIPS Inspection Reports and the recent mental health review, engagement and participation in these activities could be improved. This is particularly the case for children on remand for whom the Prisons and Young Offenders Institutions (Scotland) Rules 2011 state: an untried prisoner is not required to work in prison but may, if the prisoner so chooses and with the agreement of the Governor, undertake work or an educational class. As such, many children on remand do not take up this opportunity.

Sentenced children can also access supports and programmes to address their offending behaviour. Such programmes can include for example Substance Related Offending Behaviour Programme; Controlling Anger Regulating Emotions; Constructs (problem solving); Youth Justice Programme; and Female Offending Behaviour Programme. With the exception of the Youth Justice Programme, the other programmes mentioned were initially designed for adults. As part of the work of the expert group to prevent sexual re-offending, it was highlighted that HMP&YOI Polmont did not offer any age appropriate specialist interventions for children under 18 who had committed sexual offences. Moreover, accessing services can be challenging, determined on a case-by-case basis taking into account factors such as length of sentence; resource capacity of the psychology team; reasons underpinning behaviour; level of risk and proportionality. If such supports and services cannot be accessed, the implications for reintegration and transitions and future life chances are significant, particularly where children have received a custodial, as opposed to community-based sentence, specifically for such work to be undertaken. At different times, CYCJ has raised issues regarding the access to health care for children in custody in Scotland. This has included when services are available only on a self-referral basis. When children have low self-esteem and self-worth, combined with a lack of knowledge of available services and previous experiences of accessing services, self-referral can be difficult and often impossible, particularly without the support of others to advocate on their behalf.

We are concerned that published SPS data indicates that from 2014-2018, 134 people died in SPS custody, with many of the causes of death of these individuals unclear. We note that during this time frame some children under the age of 18 took their own life, and query whether the use of secure care might have been more appropriate in those instances.

In secure care in Scotland, there have been innovative initiatives over recent years including the introduction of accredited trauma recovery training programmes and therapies. There has also been considerable investment in developing specialist intervention services and the promotion of whole system approaches, in recognition that responding to trauma and promoting positive mental and emotional wellbeing has to be a whole environment and service approach. The Mental Welfare Commission (2015) although identifying gaps in transition support in the interface with CAMHS services, reported that secure care centres were meeting the needs of children with diagnosed mental health problems well.

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c) Is there effective planning to ensure that children and young people have access to accommodation, training and education upon release and what more can be done to ensure they do not reoffend?

A number of characteristics for all throughcare support have been identified as crucial for an effective transition and to sustain gains made while the child or young person has been in secure care or custody. N. Hazel et al. (2017) state the likelihood of effectiveness of individual components of support and overall support can be judged on whether it demonstrates five characteristics, each of which will be discussed in turn:

- Constructive - Focused on identity shift, future orientated, motivating, strengths- based, and empowering
- Co-created - Inclusive of the young person and their supporters
- Customised - Individual and diverse wraparound support
- Consistent - Throughout the journey, seamless, enhanced at transitions, and based on stable relationships
- Coordinated - Managed widespread partnerships across organisations

Current guidance by Beyond Youth Custody states that such support should include personal and structural support (including in respect of accommodation, education, training and employment, health and substance misuse, involvement of families and financial stability) (CYCJ, 2019). There are clearly established practical arrangements that aim to support the provision of support to a young person when they enter secure care or custody, during this period, and on release (see CYCJ, 2019). There are various challenges in ensuring that children and young people can access accommodation, training and education on release including differential policy and legislative framework and service provision for those young people who turn 18 while in custody; accessing suitable and supported accommodation; providing the right opportunity/course/job, at the right time, with appropriate, ongoing, coordinated, flexible and wraparound support to sustain this; partnership working and the 'constantly changing landscape' of service provision, funding arrangements, and varying availability of services across local authorities; and the current disclosure regime.

Research findings on the extent to which these arrangements are implemented in practice vary. For example, Smith et al. (2014) found in 91% of cases reports did not make it clear whether social work support was being provided while the young person was in custody and there was no specific reference to throughcare support being in place in 59% of cases. In research by Gray (2011) in England and Wales, young people report post-release support was often irrelevant, repetitive and risk focused, as well as being let down by promised support not being available, which resulted in a range of negative outcomes. Poor outcomes have also been reported recently by [Williams et al \(2019\)](#).