

## Notes from the 'Rights Respecting' Symposium

A Symposium to mark the publication of the Centre for Youth & Criminal Justice's '[Rights Respecting? Scotland's approach to children in conflict with the law](#)' report took place at the University of Strathclyde on January 31, 2020.

CYCJ's director and report author Claire Lightowler was joined by a panel of [leading youth justice professionals](#) who shared their thoughts on Claire's report, from the perspective of their respective sectors:

- Professor Manfred Nowak, Human Rights Lawyer and Lead for the Global Study on Children Deprived of Liberty
- Bruce Adamson, Children and Young People's Commissioner Scotland
- Professor Jennifer Davidson, Executive Director of the Institute for Inspiring Children's Futures
- DCC Malcom Graham, Deputy Chief Constable Crime and Operational Support, Police Scotland
- Tom McNamara, Unit Head for Youth Justice and Children's Hearings, Scottish Government
- Lynne McNiven, Interim Director of Public Health, NHS Ayrshire & Arran

Professor Kathleen Marshall, former Children's Commissioner and Chair of the Institute for Inspiring Children's Futures, acted as Symposium Chair.

The following summarises what was discussed, key themes covered and the challenges, learning points and next steps that need to be taken to bring about [future-proof](#) and lasting change to how we do youth justice in Scotland. We hope that you will find this to be a useful and inspiring read.

### **Praise and passion for change**

All speakers (and delegates) were in firm agreement that this is a much needed and welcome report.

"I can't praise you highly enough for how ground-breaking, how amazing this report is. It's one of the most powerful rights-based reports I have ever read. It starts with an action plan and that's important - it means we can all take responsibility for this. The 24 young people who lost their lives because of our failure to protect them comes through really powerfully" (Bruce Adamson, Children and Young People's Commissioner Scotland).

"That (Claire's presentation) was so powerful, it was really brave, courageous as well as very passionate" (Professor Jennifer Davidson, Institute for Inspiring Children's Futures).

"No one can doubt your passion and commitment" (DCC Malcolm Graham, Police Scotland).

"There's a very methodical, realistic and business like and non-accusatory tone to it. It's absolutely outstanding. If I'd had the chance, time, guts and talent, Claire's report is what I would have pitched for, if I'd had a year to go on!" (Tom McNamara, Scottish Government).

"A phenomenal start...this is such an important document" (Lynne McNiven, NHS Ayrshire & Arran).

"It's a pleasure to give a few reflections on Claire's very emotional presentation - it's difficult for me to disagree with anything" (Professor Manfred Nowak, Lead for the Global Study on Children Deprived of Liberty).

## The time is now

*“It’s an important moment - the beginning of sharing this report and not the end and the start of a lot of hard work that I need, we need, children need us to do and it’s about all of us. I need you to act on this”*  
(Claire Lightowler, CYCJ).

‘Rights Respecting? Scotland’s approach to children in conflict with the law’ was written by Claire Lightowler during a year’s sabbatical from CYCJ, which she undertook to dedicate herself to exploring the complex and often emotive issues around offending by children, based on CYCJ’s belief that youth justice in Scotland requires a reconfiguration on a scale not seen since Kilbrandon. The report calls for Scotland to ensure its youth justice system is truly ‘rights-respecting’, if it is to uphold the terms of the United Nations Convention on the Rights of the Child (UNCRC). It is the first of its kind to translate the UNCRC into Scottish specific actions to improve policy, practice and experience in youth justice.

What made 2019 the right time for this report?

Referring to CYCJ’s [2014 report on the state of youth justice](#), which focused on making ‘home improvements’ to Scottish youth justice, Claire pointed out that since then, CYCJ had been hearing a level of alarm/concern “that was being expressed to us that we didn’t know what to do with...there was something that felt fundamentally wrong with what we were doing”.

Claire stressed that her 2020 report “wasn’t commissioned or requested by anyone. We felt there was something that needed paying attention to, and we would devote the resources to doing it. There’s no one to implement it, no one who can be held accountable...other than all of us”. She added: “It’s not about home improvements anymore, it’s about strengthening our foundations.”

Bruce Adamson agreed that “the timing is absolutely essential. We’ve made a lot of progress, with commitments to incorporate the UNCRC and implement the Care Review recommendations. But we’re struggling in many human rights areas...now is the time to put in place the building blocks to ensure things change”.

Describing the report as “super, super timely” Tom McNamara said: “The question mark in ‘Rights Respecting?’ was critical to me. We’re neither complacent, nor condemning, but we’re staying a wee bit humble. With the current youth justice strategy coming to an end, if we’re wise, we’ll be paying attention to Claire’s report and recommendations.”

“If there’s one thing to take from it, it’s just the timeliness and importance of it in this minute and in taking it forward, because one year, two years, five years in the lives of these young people is a huge amount of time,” said Lynne McNiven.

## A shift in our thinking

Claire Lightowler described her report as “a different way of thinking about youth justice. Traditionally youth justice has been characterised as a balance between welfare and control. Rights challenge both, there are questions about whether with well-meaning intent we intervene in children’s lives, and sometimes don’t pay attention to what we are doing in that interaction - worse if we are doing this under the lens of welfare.

“It’s a shift from thinking about children as troubled, vulnerable, risky, as victims, to children as rights-holders - and that way of thinking encourages a very different kind of response.”

Bruce Adamson agreed: “It’s not about the litigation, it’s about the changes in culture, the way people think, the time they give to children.”

Referring to the history of policing in Scotland as an example of what a change in thinking can achieve, DCC Malcolm Graham said: “The creation of Police Scotland wasn’t just redrawing the lines of the map and merging divisions. It was a fundamental recalibration of the mission of policing. It became about improving the safety and wellbeing of people, places and communities - through prevention and in partnership with others. We are now firmly aware that we have an explicit commitment to a rights-based approach to policing, and we continue to develop this.”

Tom McNamara commented: “The rights-based approach obliges us to move past the idea of complacency, and away from an approach that a focus on children’s rights is an altruistic thing, rather than an absolute obligation.”

### **The Age of Criminal Responsibility - how high we can we go?**

Scotland’s decision to raise the age of criminal responsibility from eight to 12 is still an ongoing topic of discussion, with many believing this should be higher.

“Everyone knows my view - it’s an absolute outrage that we’ve ended up with 12,” said Bruce Adamson. “The idea that 12 year olds should be criminally responsible is wrong and it goes against all international principles. It needs to be addressed, not in five years’ time but now.”

### **Poverty - ‘a dreadful mistress’**

Poverty - and its impact on young lives - was a major point of discussion.

“People working in youth justice have waited for others to solve poverty, but poverty discrimination goes throughout our approach to children in conflict with the law,” said Claire Lightowler. “We treat more economically deprived children in the system differently - they’re more likely to go into care, more likely to be stopped by the Police. We need to understand what is happening in this interaction, what is the basis of this - no matter how unintended?”

Professor Manfred Nowak commented: “Poverty is the most important place to start and a global phenomenon. Economic inequality has been skyrocketing since the 1980s. We are now at a point of economic inequality in Britain that is similar to what it was at the end of the 19<sup>th</sup> century.”

“Poverty...is the biggest human rights issue facing children in Scotland,” said Bruce Adamson. “Taking a rights-based approach to justice means starting by addressing poverty.”

Lynne McNiven pointed out: “Poverty tells you where to live, what school to go to, what you can eat, where you can go. And it tells you what you can expect in the future. There are a lot of policies in place, but how do we get down to the grassroots and actually support young people?’ Describing the conditions some young people are living in as ‘Dickensian’, she added: “It’s 2020 - how can that be real?”

## Focus on health

*“It’s the brain that pulls the trigger - not the finger” (Lynne McNiven, NHS Ayrshire & Arran)*

Health (physical and mental, with a focus on trauma and adversity) was also under the spotlight, with Bruce Adamson saying: “Mental health is a huge and growing concern amongst the young people who contact my office. We need to do better in relation to children’s health. And children need to be fully participating in all the decisions we make. The UNCRC sets the groundwork but we need to make that real.”

Lynne McNiven pointed out that “trauma and adversity are absolutely central to all of this. Losing a loved one is catastrophic, as is parental imprisonment. On any given day there are about 16,000-16,500 young people who have parents in prison. That impact is huge.”

Lynne also discussed Fetal Alcohol Spectral Disorders and the link to offending behaviour. “These have a big impact on brain development, affecting children very differently. We still don’t know the levels of alcohol in pregnancy that are safe, and it crosses our social spectrum. The figure of those diagnosed with FAS is very small - although it’s higher than autism (but not talked about as much); we know they’re out there and we know that they are impacted. Key studies shown that 35% of young adults who have been diagnosed with FAS have experienced incarceration; 60% have been involved with the police; and 45% have engaged in inappropriate sexual behaviour.”

## Learning from an international perspective

The UNCRC shows the importance of learning from the examples of other countries.

Professor Davidson said: “We compare ourselves to other countries, and think we’re not that bad...but with 61% on remand, we are fooling ourselves if we think we are doing as well as we think we are!”

Echoing Professor Kathleen Marshall’s introduction, she reiterated the “need to exploit every opportunity mercilessly and every lever for change that exists in every way possible...this is where Justice for Children has come from.” The ‘Justice for Children, Justice for All: The Challenge to Achieve SDG16+’ initiative was commissioned by Pathfinders for Peaceful, Just and Inclusive Societies’ Task Force on Justice to inform the implementation of the UN Sustainable Development Goal (SDG) 16.

Professor Davidson explained that a huge amount of energy is going into the SDGs internationally. This is the first time children have been named in the SDGs and the first time these goals are addressing all countries.

“This [call to action](#) has had so many supporters - and not just the ‘usual suspects’. An international perspective is so helpful for us to rethink where we need to make change happen,” she concluded.

## Proving that we care

Scotland’s [Independent Care Review](#), due to be published five days later (February 5) was unsurprisingly another talking point.

Lynne McNiven said “The Care Review is so needed and warranted. We know that care experienced young people have much worse education, social and health outcomes than any other young people who are not care experienced. About a third of our prison population see themselves as being care experienced. Yet only 2% of our population fall into the description of being care experienced - so there’s a huge discrepancy there.”

## **We're better together**

*"This isn't rocket science. It's far more difficult" (Lynne McNiven, NHS Ayrshire & Arran)*

It may be an obvious point but all speakers were firmly in agreement that working together is the only way to achieve the results we want to see.

"Exciting opportunities lie ahead with full incorporation of the UNCRC and we are fully engaged in that work and delighted to see it progressing. Most importantly, we're promoting policing as a protective factor in people's lives when they need it most," said DCC Malcolm Graham.

"We need a paradigm shift - we can't do things in isolation," pointed out Lynne McNiven. "If you have an iceberg of a problem, you can put a plaster on it. But to dig down into the iceberg and start making real changes, we have to start sharing things and giving things up - power, budget, responsibility...it's not easy but it's perfectly possible."

## **Deprivation of liberty**

A child does not belong behind bars, everyone agreed.

"When I was appointed (as Lead for the Global Deprivation of Liberty study) I felt that children behind bars was a highly controversial topic everyone is interested in," said Professor Manfred Nowak. "There is this general attitude of, as soon as you are deprived of liberty, there must be something wrong with you. These are the most vulnerable people - and if children this young are committing this kind of crime, then we as a society must have made a mistake.

"Children, whatever they have done, should never be sentenced to more than ten years of prison. My honest feeling is that children...should be treated and given a fair chance and still live a meaningful life when they finally get out of prison."

Then there's the serious issue of physical torture and deaths in custody - and the availability and accuracy of this information. "I always want to say the names but I never can," Claire said during her presentation, referring to the children who have died in remand and custody. "Children die because we don't find alternatives for them. They die in secure care, they die coming out of having their liberty deprived - we don't even know...but we do know 24 young people under the age of 25 have died in prison between 2009-2019. It's uncomfortable, it's painful - but we should feel this."

Tom McNamara commented: "There's hidden practice, issues around data - how open are we about children being strip-searched? We only know bits. What's the balance between what is needed for safety and what is needed to respect rights? There is not a need for pain inducing restraints."

## **Know your rights**

"Children struggle to understand, let alone participate in, a range of justice processes," said Claire. "Research from HMP YOI Polmont showed the children did not know what was happening to them or why they were there. That's before you take into account the 50-70% affected by a SLCN. So if they don't understand, how can they have justice in any meaningful sense?"

Tom McNamara agreed. “I’m very conscious of the over-representation of young people with SLCN challenges, being bounced about like seaweed at low tide, bewildered, not knowing what is happening to them - that’s just something that can’t continue.”

Victims’ rights were also discussed. “We ignore the child victim - we don’t take account of their views, they don’t participate in our processes,” said Tom McNamara. “We need to prevent this ‘either/or’ - it’s about all children’s rights, and all children. It is complicated and we need to really think about it.”

### **Concluding thoughts**

What this Symposium and Claire’s report have clearly highlighted is that this is just the beginning of a long-term change process, which will only work if everyone is committed and on board. Please get in touch with Claire and the CYCJ team with your thoughts and feedback, and where you think we can go next.

After all, as Bruce Adamson said: “I don’t think it should be 50 years until we look back on your report Claire. We need to be looking back in five years’ time...the Commissioner who follows me should be standing here saying ‘we were bold, we were courageous, and we changed things.’”

*Join the conversation on social media via #Rights Respecting. You can sign up to receive monthly updates from CYCJ [here](#).*