

Children and Young People's Centre for Justice

Consultation response on raising the age of referral to the Children's Hearing System

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

a) Yes – All cases

b) Yes - Care and protection cases only

c) Yes - Offence cases only

d) No change – The existing age criteria should remain

The Children and Young People's Centre for Justice (CYCJ) agree that the maximum age that a child - by which we mean all who are under the age of 18 - can be referred to the Principal Reporter should be raised. We have some queries over the practicalities of increasing the age **to** 18, and wonder whether any legislative change should merely relate to those aged 16 and 17, with 18 remaining the chronological age at which the Children's Hearing System ends its relationship with children

Nevertheless, CYCJ supports the move towards including 16 and 17 year old children within the Children's Hearing System. There are a variety of reasons for this answer, many of which are interrelated and compound one another. These can be summarised as follows:

UNCRC compliance

Adoption of this change would reflect Scotland's progress towards a rights respecting nation, and in particular would honour Article 1 which defines a child as anyone under the age of 18. CYCJ notes reference within 'The Promise' to affording everyone under the age of 18 the rights associated with childhood. This change, therefore, is one way that Scotland's Parliament could strive to 'Keep The Promise'.

Justice, fairness and rights

The role of the Children's Hearing System for those aged 16 or 17 is well established, and each year large numbers of children have their Compulsory Supervision Order (CSO) extended beyond their 16th birthday. Indeed, Henderson (2017a) suggests that this occurs in the majority of cases where children approach their 16th birthday.

It therefore unfair that this support mechanism is only available to some children, and that their peers who encounter identical situations, scenarios and risks are left in a far more precarious situation which lacks the support that the Children's Hearing System can offer.

Not only is the current scenario inequitable, unjust and unfair, but it fails to honour the rights of the child to be provided with equal treatment to their contemporaries. This divergent system, based purely on the child's date of birth, does not appear to respect the rights of the child.

Direction of travel

Raising the age at which a child can be referred to the Principal Reporter would reflect the general direction of travel that Scotland has taken in recent years, including the raising of the age of criminal responsibility and extension of continuing care qualification and aftercare entitlements. As Scotland has recognised the need to both lift children out of the criminal sphere and also to offer support into early adulthood, raising the age at which a child can be referred to the Principal Reporter would appear to be a further step towards creating and providing

increased support to children aged 16 or 17 who encounter risk. It further reinforces the view of childhood being more than a distinct period of time that ends upon a certain date, but rather appreciating that childhood is subjective, unique to each individual and is more fluid than has been suggested previously.

Brain development

As CYCJ highlighted in our recent response to the consultation on sentencing guidelines, policy decisions relating to young people must bear in mind that brain development continues until the individual reaches their mid-20s (McEwan, 2017). Apportioning culpability, responsibility and comprehension to someone prior to that would fail to take full cognisance of this fact.

The change to the age of referral would therefore acknowledge that the 16 or 17 year old child is not always fully equipped to make the best decisions, and indeed this may have contributed to the grounds which have brought them to the attention of the Principal Reporter in the first instance.

Premature creation or terminations of Compulsory Supervision Orders

In the knowledge that a child cannot be referred to the Principal Reporter after their 16th birthday, there is the potential for practitioners and panel members to impose a CSO 'just in case'; as a means of extending the potential access to the Children's Hearing System and the supports associated with it. This decision - whilst made under the best of intentions - is not in keeping with the minimum intervention principle and one could argue that it is an infringement upon the child's right to private life. The current 'cut off' date of a child's 16th birthday creates a system that some stakeholders feel they ought to circumnavigate by adopting a cautious, risk averse approach that leads to children being made subject to compulsory measures of supervision in order to ensure protection and support remains available.

For those children who have been supported to address risk factors in their life, the termination of a CSO may lead to reduced support later if, after they have turned 16, new or renewed concerns arise. Practitioners, children and families may attempt to avoid this risk by advocating for the continuation of a CSO when the level of risk and need for compulsion had dropped.

Likewise, the financial obligations and duties that are placed upon local authorities creates a perverse disincentive to terminate a Compulsory Supervision Order prior to the child's 16th birthday. Whilst Social Work Scotland have issued clear guidance that this should not take place without clear grounds to do so, the reality of an era of austerity, placement shortages and rationed provisions must have some bearing on the conscious and subconscious logic applied by practitioners and panel members.

Vulnerable 16 and 17 year olds

CYCJ are mindful of the gap in provision relating to children aged 16 or 17 who experience abuse, with the 1937 Children and Young Persons (Scotland) Act not only being somewhat outdated, but limiting its attention only to those who are aged under 16. This has the effect of stymieing attempts to provide statutory responses to those in need.

Moreover, existing Adult Support and Protection legislation - which relates to anyone over the age of 16 - is particularly narrow and it is often difficult to meet each of the three points of the test that is required in order to engage the relevant powers associated with the 2007 Act. Given the reluctance to diagnose children with mental health disorders at such a young age, it is often impossible to demonstrate evidence of a condition that impairs and affects the wellbeing a 16 or 17 year old who is taking significant risk. The level of protection offered by this piece of legislation is therefore far less than their younger peers would encounter through child protection procedures.

Taken in concert, these legislative positions - and indeed local protocols - are incongruous, leaving vulnerable 16 and 17 year olds in the insidious, precarious position of falling between two systems which themselves feature

arbitrary yet significant boundaries. Whilst this proposed change would not necessarily address all of these shortcomings (although CYCJ would hope that this could be considered in the near future) it would create a greater degree of safety and protection for those oldest children in our communities who come up against adversities. Their lives could be improved through the mechanism of the Children's Hearing System, and the suite of services and supports that are accessed as a consequence of this.

Just as reaching their 16th birthday does not imbibe a child with wisdom and foresight that their younger peers do not enjoy, that milestone does not serve to protect the child from the myriad disadvantages and vulnerabilities that affect children throughout Scotland. To assume otherwise fails to recognise the significant concerns that relate to this older group of children, which include - but are not limited to - issues such as human trafficking, mental ill-health, suicidal and para-suicidal behaviours, self-injurious behaviours, organ harvesting, child criminal exploitation, child sexual exploitation, domestic servitude, forced marriage, financial exploitation and homelessness. These of course are not unique to children of this age, but are more likely to be encountered given their increased age, agency and physical maturity. Of note is recent data from The Home Office which shows that referrals to their National Referral Mechanism has risen year on year since 2014, with the most recent data showing for the first time that children account for more victims of human trafficking than adults.

The response that the state makes to each of these concerns would be far greater, and far more child centred, were it to take place within the framework and mechanisms of the Children's Hearing System. This change therefore opens up a well-established, child welfare orientated decision-making forum that can be used to ensure that compulsory intervention - with a legal basis - is put in place as and when required for a cohort of very vulnerable children.

Sixteen and 17 year olds in court

Whilst mindful that the implications of this change extend well beyond the justice system, such a change could result in significant alterations to the way in which children who were in conflict with the law are dealt with.

Providing Police Scotland the powers to refer children aged 16 and 17 who were not already subject to a Compulsory Supervision Order to the Principal Reporter could lift a considerable number of children out of the court system, providing them with the support and assistance available from the Children's Hearing System. This would be advantageous for a number of reasons.

Firstly, it would provide a far swifter response to the offending behaviour than would be available from court. The length of time between the commission of the offence, appearance at court, a period of bail, trial and then sentencing could stretch well over a year. During that time, the child may miss out on educational opportunities as a consequence of the pending matters and their situation may deteriorate, becoming more concerning. By comparison the delay from commission of the offence and social work becoming involved in the life of the child is far shorter— although not without its own delays at times - resulting in children and their families receiving support much quicker. This swifter response therefore increases its ultimate efficacy, as well as being more holistic and child-centred due to the nature of the Children's Hearing System.

This is not to say that all 16 and 17 year olds who come into conflict with the law ought to have their circumstances discussed formally at a Children's Hearing. Indeed, CYCJ hopes that Early and Effective Intervention (EEI) mechanisms across the country could be enhanced to ensure it is available to all children, of all ages regardless of their location. Similarly, the severity of the offence may not justify consideration of compulsory measures, so it should not be assumed that each case of a 16 or 17 year old in court would necessarily result in a Hearing being convened.

Secondly, removing the majority of children of this age from the court processes could have benefits for the victims, with a swifter resolution to matters being reached. Whilst the victim may still require to provide evidence in a proof hearing should the child deny any grounds that are put to them, this is likely to occur far less often than

through court proceedings due to there likely being fewer hearings. Given that a large number of victims of the children in question are themselves children, this could have a beneficial impact on their own wellbeing. Likewise, they themselves could be referred to the Principal Reporter in some instances, thus adding to the support offered by existing victim services. This change could see an increase in the use of restorative justice practices across the country, including for children who themselves have been harmed by a 16 or 17 year old. This would expedite access to a service that is known to provide satisfactory results, and which is in keeping with the Scottish Government's drive towards greater use of this model.

Thirdly, research has found that the outcomes realised for those children who appear in court are not particularly positive. CYCJ is aware that a large proportion of children who come into conflict with the law experience Speech, Language and Communication Needs (SLCN). The adversarial environment of the court system is not conducive to affording the child - particularly one who encounters SLCN - the opportunity to participate in the various processes. The vulnerable nature of this cohort of children, who are often affected by significant adversities including mental ill-health and disrupted childhood, also makes the court process intimidating, daunting and traumatising.

Harmonisation

The legislative framework that defines childhood is complex and contradictory, and serves as a barrier to those seeking and providing support. Multiple pieces of Scottish legislation refer to childhood in terms of chronological age of either 16 or 18, whilst the Whole System Approach has been extended to the age of 21 in some local authorities (Lightowler & Nolan, 2017).

This results in a confusing and contradictory landscape for this cohort of children, riddled with gaps and anomalies. In practice, this means that children can be left without recourse to the support which the Children's Hearings System may offer (Lightowler, 2020). They are often inappropriately and unnecessarily subjected to prosecution in court - thus running contrary to Kilbrandon's welfare ethos - or fall between (or are squeezed within) a range of other legislation not designed for the purpose of ensuring child welfare.

Making this change would therefore go some small way towards harmonising the legislative framework relating to children of this age. It would be in keeping not only with Article 1 on the UNCRC, but would reflect the spirit and content of the 2014 Children and Young People (Scotland) Act, whilst providing greater consistency in the way the state responds to those who are in need. In doing so, it would move Scotland towards a position of defining childhood as the period of time until the 18th birthday.

2. If the age of referral is increased to 18, are the existing grounds of referral to a Children's Hearing sufficient (see pages 11-12 for existing grounds)?

a) Yes

b) No

Whilst the concerns that may be raised with regards to the welfare and actions of 16 and 17 year old are likely to be covered by the existing grounds, CYCJ feels that this opportunity should be taken to refresh and revise them.

Given the range of concerns that have been highlighted within this submission, there should be consideration of introducing wording to the effect of:

“the child has been, is being, or is likely to be, groomed, trafficked, exploited, coerced or subjected to physical, emotional or other pressure to engage in sexual or criminal activity.”

Introducing wording of this nature is more likely to reflect the circumstances that a child aged 16 or 17 may encounter, and as such would have greater legitimacy amongst the young people whom this change would seek to support.

Whilst the existing ground (e) comes close to achieving this task (the child is being, or is likely to be, exposed to persons whose conduct is (or has been) such that it is likely that- (i) the child will be abused or harmed, or, (ii) the child's health, safety or development will be seriously adversely affected), CYCJ does not believe that this wording in its current form would sufficiently capture the broader concerns about children aged 16 or 17.

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

Legislation

CYCJ believes that a range of legislative knock-on effects could be caused by this change. This includes, but is not limited to, the following:

- Schedule 1 to the Criminal Procedure (Scotland) Act 1995
- Criminal Justice (Scotland) Act 2016
- Adult Support and Protection (Scotland) Act 2007
- Lord Advocate's guidelines on the use of Antisocial Behaviour Fixed Penalty Tickets
- Guidance relating to Police Scotland presence during Children's Hearings
- Rehabilitation of Offenders Act 1974
- Protection of Vulnerable Groups (Scotland) Act 2007

Secure care

The option to refer a child to the Principal Reporter after their 16th birthday could lead to further increased use of secure care, either through implementation of an order with secure authorisation, the court electing to remand a child into secure care, or the child being detained following conviction.

Use of secure care by children aged 16 or 17 has increased over the preceding 15 years or so, perhaps driven by the introduction of the Whole System Approach which promotes the continuation of CSOs for as long as necessary and the use of secure care as the preference where a child is to be deprived of their ability, as opposed to custody. Whilst the use of secure care in Scotland by Scottish local authorities has diminished over preceding years, the continued use of cross border placements often mean that secure care is over, or close to, capacity. Indeed, the 2018 census of secure care found that three emergency placements were being used on that day (Gibson, 2020) and there have only been a small number of places available throughout August (CYCJ, 2020). At any one time around 30% of the secure care population are placed there from outwith Scotland, equating to approximately 25 placements.

The population within Scotland Young Offenders' Institutions fluctuates, but over the course of 2020 it has ranged from 15 to 22 (CYCJ, 2020). Ostensibly there is no reason why these children ought not be placed within a secure environment rather than a YOI, however their lack of CSO provides a barrier to this at present. As a consequence of this, vulnerable children aged 16 and 17 are currently held within a YOI, when their needs could more appropriately be met within Scotland's secure estate.

Were this change to come into force, the logical assumption would be that children otherwise detained in a YOI could be cared for in secure care, and that - in turn - could have legal and financial implications for local authorities,

secure care providers and children from outwith Scotland. It would be a further step toward 'Keeping The Promise' as outlined by the Independent Care Review.

Secure care is an arena that primarily provides care to children who require its most restrictive form. Interventions are delivered in a very different manner to that provided within the custodial estate, including a greater focus on relationship based practice and attachment informed support (Nolan, Dyer, & Vaswani, 2017). Given the broader range of interventions, supports and resources available within the secure estate, this change ought to be seen as a positive and further step towards the rights of children being respected.

Corporate Parents

Existing provision under the 2014 Children and Young People (Scotland) Act regulates the scope and breadth of Corporate Parenting responsibilities. Extending the age of referral may lead to an increase in the number of children who are deemed to be 'looked after', who are entitled to aftercare provision, and therefore an increase in the number of children for whom various bodies possess Corporate Parenting duties and powers.

Given the vulnerable nature of the children in question, this is a clear benefit to their welfare. At an organisational level, this may have a small impact upon the manner in which they undertake participation exercises, with a new cohort of children being deemed to be looked after. Existing provisions could therefore be extended to this new group.

Court

Whilst this change would not alter the existing power of the Lord Advocate to pursue criminal matters through the court system, there is a likelihood that a significant number of matters would be left in the hands of the Principal Reporter rather than the Procurator Fiscal. Lightowler (2020) highlights data from 2017/18, where 384 16 year olds and 1,381 17 year olds appeared in court. The nature of the offences in some cases were such that court may have been deemed the most viable option, however the vast majority of these matters were for similar sorts of offences as are already being dealt with by the Children's Hearing System, and indeed Lightowler queries whether the balance of cases being dealt with by COPFS rather than SCRA is in keeping with a rights-respecting agenda. Greater use of the Children's Hearing System may also go some way towards addressing the very low rates of remittal for 16 and 17 year olds, which tend to sit at around 2% of all cases (Henderson, 2017b)

Data shows that only 4% of cases of under 18s prosecuted by COPFS appear before High Court, with a further 35% appearing in Sheriff Court (Inspectorate of Prosecution in Scotland, 2018) meaning that the majority of cases dealt with by COPFS are either disposed of through alternative provisions, or not taken forward at all. The Inspectorate of Prosecution in Scotland provide a case example of one such case, with the child's imminent 16th birthday resulting in referral to the Principal Reporter not being possible (Inspectorate of Prosecution in Scotland, 2018). This change would both result in only the most serious cases appearing before court, and would provide COPFS and SCRA greater scope to use the Children's Hearing System as a forum to consider the best interests of children who have come into conflict with the law.

Shifting such numbers of cases - with the associated proof hearings, paperwork and so on - from COPFS to SCRA would have implications on the workload of children's reporters and would lead to an increase in hearings on offence-based grounds for this cohort of children. With that would come resourcing implications and the need to increase capacity, albeit EEI could provide an alternative.

Early and Effective Intervention (EEI)

The nature of offending by 16 and 17 year olds is fairly diverse, and whilst there are episodes of significant violence that may be retained by the COPFS there may also be a number of offences that could be more appropriately dealt with through EEI. In order to ensure that only the most pressing cases are dealt with by the Children's Hearing System, a robust EEI process is therefore required.

Each area of Scotland operates EEI in a slightly different manner, with access to EEI for 16 and 17 year olds being available across most, but not all, local authorities. However, the range of offences within the scope of EEI is limited following the introduction of new guidance on the use of Recorded Police Warnings. In order to avoid unnecessary referrals to SCRA for lower level matters, it may be necessary for this guidance to be reviewed in order to absorb a wider variety of more serious offences.

Diversion from Prosecution

Diversion from prosecution is currently used as an alternative to prosecutorial action for some 16 and 17 year olds. Since 2019 it has been the rebuttable presumption that all 16 and 17 year olds subject to a CSO, and who are referred to COPFS, be dealt with by SCRA. This change would therefore have no effect in those cases.

Currently in instances where the accused is under the age of 18 (and not subject to a CSO) there is a rebuttable presumption that an alternative to prosecution will be in the public interest and, in cases where an identifiable need has contributed to the offending, active consideration should be given to referring the case for diversion (Gibson, 2019). This option could remain open to the Procurator Fiscal should the proposed change be made; joint reporting could continue to take place, with discussion between SCRA and COPFS leading to a course of action being set. This would add to the suite of options available to the Children's Reporter and Procurator Fiscal and could lead to offence-based grounds - or indeed welfare-based grounds dependant on the nature of the information received - being brought before a hearing. CYCJ believes that discussion between the Procurator Fiscal and Children's Reporter should consider which option is best placed to respond to the particular needs of the child. Should the case be diverted from prosecution, and thereafter receive the support of the local authority and their providers? Or are the details of the case of such a nature that compulsory measures of supervision are required? Each approach has its own merits, and in order for greater flexibility both options should remain available to the two bodies.

This may result in a drop in cases being diverted for children of this age. For those local authorities who operate dedicated youth justice diversion teams, this may require realignment of services and practitioners. CYCJ estimates that less than one quarter of local authorities operate such a model, with the remainder of cases being dealt with by generic children and families teams, adult justice social work, or commissioned to third sector partners.

The recent publication of revised diversion from prosecution guidance (Community Justice Scotland, 2020), allied to the expansion of diversion as a disposal to address offences by individuals with more complex needs (Gibson, 2019) should see an increased number of diversion cases overall.

Impact on Social Work

This change could potentially lead to an increase in open social work cases, with a larger number of reports being requested by SCRA. Report writing, and the assessment process that accompanies and underpins it, can be a time consuming endeavour, particularly for reports for the Children's Hearing System in comparison to those for court. At a time when the social work profession attempts to move away from spending 80% of the day sitting at a desk, and only 20% with children, there is a risk that any progress that has been made is lost.

To counter this, local authorities and SCRA may wish to use this opportunity to further progress ongoing trials of abbreviated, concise reports that provide the necessary context, but avoid overly laborious administration tasks. This would have additional benefits of providing a report that is in keeping with The Promise, which calls for consideration on the way such reports are produced.

There is perhaps a culture shift required within some social work bodies, where the age of 16 is deemed to impart adulthood, increased resilience and less need for protection.

This change could also result in children and families or youth justice social work becoming involved in issues that are more commonly experienced by adults. Human trafficking, sexual exploitation, modern slavery and so on are

occasionally issues that affect under 16s, but an increase in age of referral would result in a greater number of referrals related to those concerns. Expertise in these matters does already exist within social work services, but this is limited. It may be that additional training is required, or the commissioning of specialist services that undertake this piece of work.

It is likely that there would be a fairly substantial reduction in the number of Criminal Justice Social Work Reports that are requested. This would naturally lead to fewer Community Payback Orders being made which, due to the age of the child, automatically includes an Offender Supervision Requirement (OSR). The OSR closely mirrors the older Probation Order, requiring regular, face-to-face contact between the child and their supervising officer. It also requires the completion of one or more risk assessments and often leads to a programme of work being undertaken by the child. These are all tasks that are fairly labour intensive - and not particularly child friendly - and therefore this could lead to a change in the nature of the work that social workers undertake. In those local authorities that operate youth justice teams who currently carry out supervision both through the Children's Hearing System and the court process, this shift should not prove challenging. For adult justice workers, this is perhaps more of an issue, and consideration ought to be given to a) creation of a youth justice service, b) allocation to a children and families social worker or c) co-working between children and families and youth or adult justice services. The net effect of this may therefore be a realignment of services away from adult justice towards youth justice, which themselves are delivered in a number of forms.

Role of education providers

CYCJ is aware that attendance at hearings by education staff is limited at times. This may also be the case for children who are at college, taking part in apprenticeships, or in employment. Forging improved links between Further Education providers or bodies such as Skills Development Scotland may be necessary in that regard.

Due to their education, training or employment status there may also be a need to consider hearings on days and times that are most appropriate for the child. This could involve evening or weekend hearings, or in some cases use of virtual technology. The balance must be found between attendance at hearings, and avoidable disruption to a child's education or employment. Adult justice social workers have endeavoured to find alternative solutions to this issue wherever possible; it may be necessary to adopt a similar position for older children.

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

There are a number of implications for SCRA were this change to be made. These include the following:

Sliding scale of thresholds

Acknowledging the greater agency, resilience and capacity enjoyed by children as they age, practitioners from both social work, SCRA and other agencies will need to take into consideration the sliding scale of thresholds that govern and influence the various stages of the decision making process. In short, there may be similar situations that result in a children's hearing for a younger child, yet no further action is taken for their older contemporary.

This already happens in practice today, but this change will now include older children in that deliberation. This process will be more challenging given the social, cultural, biological and cognitive differences between a younger child (under 16), and one who is 16 or 17 years old. This process is of course entirely subjective and relies on a combination of experience, knowledge and access to supervisory support (Roesch-Marsh, 2018; Sánchez-Díaz, 2019).

Impact on Reporter

Just as not every referral of a 15 year old results in a hearing being called, nor would every instance related to a 16 and 17 year old. It may be the case that the reporter is able to satisfy themselves that existing supports are in place that negate the need for compulsory measures of supervision, or they may themselves act as sign-poster and gatekeeper to a range of resources that can address the underlying needs of the child.

In practice, this may result in the reporter acquainting themselves with the range of services and supports in their jurisdiction that cater for the concerns and issues that are most often experienced by these older children.

The increased number and severity of offence-based grounds may mean that additional training and support is provided to those reporters who are less familiar with the processes involved. This is particularly true in those instances when offence based grounds have been denied, leading to a proof hearing before a Sheriff. Training exists for such an occurrence, but the increase in volume and nature could require greater capacity to be sought.

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

Role of panel members

This change will see panel members grapple with a greater number of complex cases, with the added dimensions of addressing the role of agency and freewill that comes with being 16 or 17 years old. Whilst the panel members are likely to have experienced situations involving children of this age previously, this is likely to occur more frequently should this change be enacted.

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

These issues could include the following:

- Child trafficking
- Child criminal exploitation
- Child sexual exploitation
- Mental illness

In the case of those children who engage in harmful behaviours, there may be a greater need for panel members to consider the wider duty of public protection. Associated with this would be issues such as contextual safeguarding, and the use of CSOs to implement a range of broader supports and interventions.

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

a) Yes

b) No

Whilst mindful and cautious that any changes to the existing mechanisms must not be to the detriment to the children who are thought to have caused harm to others, CYCJ believes that there is scope to consider provision of additional information to those who have been harmed.

CYCJ is aware of the discrepancy that exists in the scale and volume of information that is provided to victims when a matter has been prosecuted within the court system. A simple replication of this within the Children's Hearing System would not be appropriate, and would serve to reveal information about a child's life and circumstances that could be to their detriment and is unlikely to bring solace or comfort to a victim in any case.

However, a third position could be found which provides a summary of what action police, COPFS and SCRA have taken. Information in broad and generic terms could be provided which explains what sort of outcomes are available to the Children's Hearing but does not disclose the deliberations and decision of that particular Hearing.

Perhaps more importantly, CYCJ believes that victims' confidence and satisfaction would be better increased through greater use of Restorative Justice approaches, where appropriate.

7. If there are any further comments you would like to make, which have not been addressed in the questions above, please use the space below to provide more detail.

About you

1. What is your name? Ross Gibson

2. What is your e-mail address? (free text) cycj@strath.ac.uk

3. Are you responding as a: (select relevant)

a) Public sector organisation

b) Private sector organisation

c) Non-government organisation (NGO)

d) Social enterprise

e) Membership organisation

f) Private individual

g) Other (please detail) Practice development, research and knowledge exchange centre primarily funded by the Scottish Government.

4. What is your organisation's name? (free text) Children and Young People's Centre for Justice

5. Do you or your organisation work directly with children who are in the children's hearings or criminal justice system?

a) Yes

b) No

In partnership with the Scottish Throughcare and Aftercare Forum, CYCJ deliver a range of participation projects under the umbrella Youth Justice Voices project. This seeks to amplify the voice of care and justice experienced young people, using CYCJ's links to formal decision making processes, and Staff's established links to the voluntary and third sector providers.

The possibility of this change being made has been raised with the members of the Youth Justice Voices groups and they themselves have submitted a response to this consultation. CYCJ is eager that the Scottish Government pays due attention to the views of those who have lived experience of the very system that this consultation relates to.

6. Do you or your organisation work directly with victims?

a) Yes

b) No

Whilst CYCJ does not specifically or purposely undertake work with victims, it should be acknowledged that members of the Youth Justice Voices project are likely to have encountered a range of criminal and abusive acts. The distinction between those who harm, and those who cause harm is therefore a subjective, temporal and arbitrary one.

Impact Assessments

We propose to carry out impact assessments alongside the development of any new legislation which would be required to implement changes to the Children's Hearings System. These include a Data Protection Impact Assessment, Child Rights and Wellbeing Impact Assessment, Equality Impact Assessment (related to the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation). We would be interested in your views on these areas to help us in developing these assessments.

1. Are there any data protection related issues that you feel could arise from the proposals set out in this paper?

No

2. Are there any children's rights and wellbeing issues that you feel could arise from the proposals set out in this paper?

Yes, many of which have been highlighted within this response. Fundamentally, this change has the potential to enhance children's rights in Scotland and to create equality of provision and protection amongst all children.

3. Are there any equality related issues that you feel could arise from the proposals set out in this paper?

Implementation of this change could result in greater equality for all children.

References

- Gibson, R. (2019). *Policy Refocus at COPFS*. Centre for Youth and Criminal Justice Retrieved from <https://www.cycj.org.uk/wp-content/uploads/2019/12/Info-Sheet-86-1.pdf>
- Gibson, R. (2020). *ACEs, Places and Status: Results from the 2018 Scottish Secure Care Census*. Glasgow: Centre for Youth and Criminal Justice Retrieved from <https://www.cycj.org.uk/wp-content/uploads/2020/07/ACEs-Places-and-Status.pdf>
- Henderson, G. (2017a). *16 and 17 year olds in the Children's Hearings System*. Retrieved from <https://www.scra.gov.uk/wp-content/uploads/2017/08/16-and-17-year-olds-in-the-Children%E2%80%99s-Hearings-System.pdf>
- Henderson, G. (2017b). *Criminal Advice and Remittals to the Children's Hearings System*. Glasgow: Centre for Youth and Criminal Justice Retrieved from <https://cycj.org.uk/wp-content/uploads/2017/06/Criminal-advice-and-remittals-to-the-Childrens-Hearings-System-1.pdf>
- Lightowler, C. (2020). *Rights Respecting? Scotland's approach to children in conflict with the law*. Glasgow: Centre for Youth and Criminal Justice Retrieved from <https://cycj.org.uk/wp-content/uploads/2020/01/Rights-Respecting-Scotlands-approach-to-children-in-conflict-with-the-law.pdf>

- Lightowler, C., & Nolan, D. (2017). The Whole System Approach: Responding to Complexity and Lessons Learned.
- McEwan, D. (2017). *Understanding the Relationship Between Brain Development and Offending Behaviour*. Glasgow
- Nolan, D., Dyer, F., & Vaswani, N. (2017). 'Just a wee boy not cut out for prison': Policy and reality in children and young people's journeys through justice in Scotland. *Criminology & Criminal Justice*, 1748895817745347.
- Roesch-Marsh, A. (2018). Professional relationships and decision making in social work: Lessons from a Scottish case study of secure accommodation decision making. *Qualitative Social Work*, 17(3), 405-422.
- Sánchez-Díaz, J. (2019). Children's reporters' attitudes toward young offenders. *Journal of Applied Psychology and Social Science*, 4(2), 25-51.