

But being on remand really is difficult for some children. The fears they had about being lonely and having no support can turn out to be true. Their mental health can get worse. Social workers said that when a child who has been in care ends up on remand it can be really tough because they might not have family to check-in and support them through a difficult time.

*A Social Worker told us: I've found from doing 72 hour reviews in [YOI] you can almost gauge if someone's a care leaver just by the first 5 or 10 minutes of speaking to them because they do seem to have this, they're always quite hectic, quite agitated, a lot more animated because I suppose there is that, they're totally on their own they don't have anyone that's going to come and visit them, that kind of thing...*

*A child told us: It's hard in there [YOI]...people shouting...I felt I had nobody there...at least I had my co-accused...I started greetin' and that...need young people to be checked up on, people self-harm in there.*

### **Are there things to do when you are on remand?**

One of the problems with being on remand is that you don't get the opportunity to work or study or

take part in many leisure activities - all things you can do if you are found guilty and get a custodial sentence after your trial. So, when you are on remand, it can be boring and a child can be in their room for up to 23 hours a day. All that time can leave you feeling lonely and more worried about what comes next.

*A Social Worker told us: Nothing, just sitting there, I've had one or two young people who have done work parties in Polmont while on remand but again you kind of have to push for it...other than you end up just sitting there for months waiting... it's not making any impact of any sort on the issues he had in the community that have led to this.*

*A child told us: I can get one job [on remand] the cooks but once am sentenced I can get a good job. [On remand it's] 23hrs a day, 45 mins out to go for a shower, shot of the phone and game of pool an that...brutal...*

*Another child told us: When I was on remand I was locked up 23 hours a day it's not good...then when I got convicted I'm out all the time, I'm never in my room, only at night... remand's boring, you only get the gym and rec and that's it, or a visit, there's no work parties, there's no nothing.*

## **PART 6**

# **MAKING DECISIONS ABOUT COURT, BAIL AND REMAND**

We have told you a bit about remand and bail so far. There are other questions we need to ask about how decisions are made about going to court or getting bail or being put on remand.

### **What helps decide whether a child is put on remand or given bail?**

Most Sheriffs told us that remand should only be used in very serious circumstances. But the main problem is that when someone reaches 16 then some Sheriffs stop seeing them as a child and are more likely to treat them like an adult and use remand.

*A child told us: Because it was my first time up in court my social worker said a bed was available in secure and if it wasn't here it would have been secure and that but because obviously of how serious it was the judge just overruled it and said look he's 16 now man just get treated as an adult so I got took up. Got treated like an adult now innit.*

When a decision is made about bail or remand, it is up to the Sheriff who asks the opinion of the child's lawyer and the Procurator Fiscal.

Some things that Sheriffs told us they would consider before deciding would be things like: Does the child have a place to stay? Has offending got worse since the crime being considered? Has the child broken a court order before? Will the child interfere with witnesses? Is the child a risk to other people? Is the crime they are charged with really serious? Does the child have support in the community?

The decisions made by the Sheriff about using remand are due to their interpretation of the circumstances of individual cases.

A child told us: *I feel like I should have got more of an explanation why I wasn't getting diversion, one of my friends was accused of the same thing at 17 and was found with no evidence of anything and he was given a diversion and let off, he was older than me at the time.*

When a child is in court the Procurator Fiscal can say if they think that bail should be given, and what conditions there should be (we explained about *conditions* earlier). It is the Sheriff that decides about giving bail and the conditions there might be. Sheriffs told us that if there are conditions these should be in place to stop the child from offending again or harming others. One condition is that a child can be given a curfew, Sheriffs said they try to not use these but when they do they try to make them fair.

### **Does everyone have the information they need to make the best decisions?**

Procurator Fiscals told us that they decide what to ask the court for - so bail or remand - depending on what the Police report says. But Procurator Fiscals also said that Police reports might not have enough good information in them.

A Procurator Fiscal told us: *We have been arguing to get greater detail from the police, in some cases there is more background about the needs of the individual but in others they are more empty.*

Procurator Fiscals might also have information from a Social Worker. This can be really helpful.

A Procurator Fiscal told us: *I think with children it's really important to speak to social work and things like that to see what they think they can do because they are often quite keen that they're not remanded in custody and they'll be quite proactive in saying oh we could do this or that you know, we could have meetings with them or make sure that he does this or that and at least you've got somebody taking responsibility for that.*

But we were told that the Procurator Fiscal sometimes doesn't speak to Social Workers. In fact, they don't have to. Social Workers also told us they don't know what the rules are for talking to a Procurator Fiscal.

A Social Worker told us: *We have problems being able to do this as communication with the PF is not easy. This is not written into guidance so we have a point of contact if we know when a young person is in.*

So, the Procurator Fiscal will have an opinion on whether a child gets bail or remand, but it is the Sheriff that makes the decision. But, do they have the information they need?

**"IT WAS EASY TO UNDERSTAND IN CERTAIN PARTS, HARDER IN THE REST... OBVIOUSLY WHEN THEY'RE IN COURT THEY USE THE FULL LINGO AND IT'S JUST HARD TO PICK UP ON IF YOU'VE NEVER BEEN IN COURT BEFORE, SO THEY'RE SAYING THINGS THAT ARE MAYBE NOT BAD BUT IT'S MAKING ME FREAK OUT BECAUSE I DON'T KNOW WHAT THEY MEAN, WHICH WAS DIFFICULT"**

**(YOUNG PERSON)**

When a child appears in court and the Sheriff makes a decision about bail or remand this might happen *in just a few minutes*. The Sheriff will have just one page of information about the charges and what the Procurator Fiscal thinks should happen about bail or remand. Then the Sheriff will listen to the Procurator Fiscal and the child's solicitor. If the child is under 16 and on a compulsory supervision order (CSO) the Sheriff will probably have information from the child's Social Worker, but maybe not, because the Police might not have told the Social Worker about the child being in custody. Social Workers and Sheriffs told us all this needs to be clearer, so that Social Workers find out about a child being in court and so information could be provided to the Sheriff about the child's needs.

A Sheriff told us: *I had a boy who was 15 who appeared in the petition court ...now because I knew he was coming through, somehow I had got wind of it, maybe I had seen something in the press the night before that somebody had been arrested. I don't know if this happens routinely, I actually got the Clerk to contact the social work department and ask them to prepare a bail report for me to see what they could actually offer.*

A Social Worker told us: *I sat on the steps of the court and hand wrote stuff...it was all about he's had a hard life, external things, he's really vulnerable, he's on the CARM register...if I didn't go through that there's no really any clear way like how do we get this information to the right people?*

### Are there practical problems about timing when children appear in court?

If a child is to go to court then they are not treated differently from adults who are there - so they might have to wait a long time before they are seen. Because everyone is told to be there for 10am it could mean waiting all day. Another problem with this is that if the Sheriff decides that the child should be put on remand in a YOI or secure place this might mean travelling there at night. Having to do this when you are tired, upset and confused makes the whole thing even more stressful.

A Social Worker told us: *We were being told he was going to be seen at 2pm and by twenty to 5 there was still no outcome and my phone was ringing pretty relentlessly with [transport provider] saying we need to know because our teams is three hours away so had he been remanded it would have been a disaster.*

## PART 7

# THE MAIN PROBLEMS WITH USING BAIL AND REMAND FOR CHILDREN

- In Scotland today children from the age of 12 can still appear in an adult court.
- Children and families often don't understand what is happening when they appear in court. They feel they aren't heard. The system doesn't feel fair.
- The support or help that a child can get depends on where they live, it isn't the same everywhere.
- Children who are care-experienced often don't have the same supports as other children.
- It is often difficult for children to keep to the conditions of bail.
- 16 and 17 year olds put on remand can be put in HMP&YOI Polmont. This is not the best place for them. If they are given remand they should be where they can be best supported and that is in secure care.
- Although it should be the case that most 16 and 17 year olds are diverted away from courts and to the Children's Hearings System, this still isn't working for everyone.