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Children who have been deprived of their liberty: Learning from their journeys

Debbie Nolan, CYCJ

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Contents

Introduction.....	3
1. Methods.....	3
2. The children and their journeys.....	4
2.1 Complexity of need and level of adversity experienced.....	4
2.2 Types of offences and interventions	5
2.3 Issues of capacity	5
2.4 The Children's Hearings System	5
2.5 Court processes	6
2.6 Accessing secure care.....	6
2.7 Custody in YOIs.....	7
2.8 The impact of delays	7
2.9 Children's rights.....	8
3. Learning for Improvement.....	8
3.1 Complexity of need and level of adversity experienced.....	8
3.2 Types of offences and interventions	10
3.3 Issues of capacity	13
3.4 The Children's Hearing System	14
3.5 Court processes	15
3.6 Accessing secure care.....	16
3.7 Custody	17
3.8 The impact of delays	18
3.9 Children's rights.....	18
4. Conclusion	19
4.1 Summary of recommendations	19
5. References	24

Introduction

Through the Children and Young People's Centre for Justice's (CYCJ) practitioner support service, we regularly receive requests for case specific advice and support. During 2020 and 2021 we identified common themes in three cases where support had been requested as children had been deprived of their liberty. While in each case support was provided and information shared with relevant agencies as appropriate, including the Scottish Government, the Independent Care Review and the Children and Young People's Commissioner Scotland (CYPSC), these children's experiences illuminated broader challenges across the totality of their journeys, from which learning could be shared. In doing so, we worked in partnership with the local authority and other agencies supporting each child to develop brief case studies, which we agreed, in order to protect anonymity, would not be shared in full, but from which key issues and learning for improvement would be identified. This process therefore involved professionals not only describing or narrating the child's journey and experiences but also capturing their reflections about children's experiences and what could or should be different for other children.

The purpose of this paper is to provide a summary of this information to stimulate wider professional reflection. It will be relevant for anyone involved in making decisions about depriving children of their liberty, practitioners who support children in conflict with the law, and those who contribute to the context within which such decisions and practice takes place, including legislation and policy makers. It should be noted that the information contained in this report is based on that shared by professionals working with these three children and our analysis has been sense checked with them. Unfortunately, CYCJ has not spoken with the children involved or undertaken any case file analysis.

1. Methods

In each case, the child was identified to CYCJ by the professionals involved in their care. In doing so, the writer worked with the team around each child to develop not just a case study of that child's journey and experience through their involvement with agencies and the justice system, as described or narrated by those professionals, but also sought to capture the reflections and professional wisdom of those workers. Both the use of case studies and capturing of practitioner narration and reflection as evidence are recognised methods. By utilising a case-study approach, insights into aspects of individual cases can be identified (particularly when cases are complex or multi-faceted as these children's experiences are) and, in doing so, illustrate broader lessons that may be learnt (Yin, 2009). Case studies enable researchers to "investigate contemporary phenomena within its real-life context" (Yin, 2009, p.4). In addition, the case study approach lends itself well to capturing information on more explanatory 'how', 'what' and 'why' questions, such as "how is the [intervention or service] being implemented and received on the ground?", aligning with what this paper was seeking to achieve (Crow et al., 2011). CYCJ has not previously been able to capture the totality of children's experiences and journeys through the justice system as narrated by the professionals who support them in this way. All children's experiences must be respected and given legitimacy, which this paper seeks to do. It may however be argued that because these are three individual children's cases, it is difficult to identify wider learning. However,

we would dispute this and deem these three specific children's cases should stimulate wider professional reflection. The experiences of these children at different stages of the justice system echo what we hear time and time again from children, young people, their families and practitioners (see for example the [Independent Care Review](#) (2020); [McEwan et al \(2020\)](#); [Lightowler \(2020\)](#); [CYPCS \(2020\)](#); [Nolan, 2020](#)). What is unique is our ability to capture these children's experiences throughout the justice system as a whole, to illuminate the particular challenges at each stage of the journey, and for children who transition from children to adult processes, as well as to do so within the context of the pandemic.

Reflective practice is well established in social work and social care, with the reflection, narration, practice-based evidence and the lived experience of practitioners having been recognised as crucial knowledge and evidence sources, that can complement other research evidence, while reinforcing, adding additional strength and providing local relevance to wider themes and findings ([Stocks-Rankin, 2020](#); [Wales, 2017](#)). By capturing both this case study information and professional reflection, we have sought to address information silos - by making this available beyond the individual children, practitioners, local authorities or agencies involved; and knowledge silos - by formalising this professional narration and reflection on these children's journeys and experiences into this report (Stocks-Rankin, 2020). This also recognises the differing forms of knowledge and the importance of capturing practice wisdom, professional reflection and children's lived experiences (albeit in these cases from professionals' description and narration), with the need for a combination of knowledge and CYCJ's role in bringing together different forms of knowledge as highlighted in our evaluation (Stocks-Rankin, 2020). This is also consistent with CYCJ's role as an intermediary, boundary-spanning organisation, with this piece an example of our work across information, relationship and translation work and system development (Stocks-Rankin, 2020). There were further benefits from this approach for the professionals involved who spoke positively about the opportunity to reflect on these children's experiences and to see the totality of these children's journeys documented in this way.

2. The children and their journeys

In each case, the child was aged 17 at the point of initial contact with CYCJ. Two of the children were boys and one a girl. All children were on remand either in secure care or Young Offenders Institutions (YOIs). The children lived in three different local authority areas across Scotland, although all had involvement of services across geographic areas. Each child experienced a complex journey to and/or through the justice system, involving different agencies, systems and processes, often simultaneously.

2.1 Complexity of need and level of adversity experienced

Two of the three children had experienced significant adversity during their childhoods, which had resulted in both children being known to services prior to coming into conflict with the law. Both children had been cared for outwith their family. For one child, their journey through the care system involved multiple placements across almost every care type, while the other child had experienced more stability in one care placement. Both children had experienced being the victims of offences and abuse. The impact of these experiences and subsequent court processes for the children were significant. These children were deemed often simultaneously to be at risk of serious harm from others, to themselves through self-



harming behaviours, and towards others through parts of their behaviours. For the other child however, they were not known to services prior to their involvement in serious offending. One child also had their own children.

2.2 Types of offences and interventions

All three children had allegedly committed serious offences that resulted in them being deprived of their liberty. These included violent and/or sexual offences. In all cases, the child had committed offences of varying frequency and severity. For each child, often multiple multi-agency risk management and care planning approaches were being implemented (for example Care and Risk Management, Looked After and Accommodated Children and Adult Support and Protection). In each case a range of creative, flexible and innovative strategies, interventions and supports were evident to meet each child's needs, promote their wellbeing, uphold their rights, and manage and ultimately reduce the risk this child was at and to others. For each child, there was a level of involvement across local authority boundaries, be this when the child was younger and in care, the child being in secure care or custody outwith their home area, or owing to justice services being in one area and the home local authority another. Where a child's "home" and "host" local authorities differed, accessing mental health supports was reported to be particularly challenging.

2.3 Issues of capacity

In two cases, significant concerns were expressed about the child's additional support needs, developmental stage and potential experiencing of neurodevelopmental disorders. As such, for both children concerns were expressed about their ability and capacity to participate in the court process (which it should be noted were in addition to the concerns expressed about all children's ability to do so by virtue of their age and maturity).

Assessments were instructed by the court, which were completed in order to determine if the child could be brought to trial and enter a plea. For both children, significant difficulties were reported owing to the child's age with there appearing to be lack of clarity of responsibility in who should assess 16 to 18 year olds; having assessments completed while a child is in custody; and where the child's home local authority differs from where they are placed. One child has subsequently been assessed to inform applications under the Adults with Incapacity (Scotland) Act 2020, with similar challenges noted.

2.4 The Children's Hearings System

All three children had different levels of involvement with the Children's Hearings System (CHS). Prior to entering secure care or custody, only one child had previously been made subject to a Compulsory Supervision Order (CSO) via the CHS. This child had previously been referred to the Children's Reporter on a number of occasions for offence grounds and had multiple offences being dealt with through this system. At this child's final hearing, which was delayed owing to the pandemic, the child was on remand and had a number of offences outstanding. The child's CSO was terminated, as was the child's wish and as advocated by their solicitor. This was contrary to the assessment of the team around the child, that the child remained in need of the care and protection a CSO could afford. They believed the child was at significant risk of harm should they enter custody and that the court assessment had concluded that they were unfit to stand trial and lacked the ability to consider consequences.



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One child had their initial offence jointly reported by the police to the Procurator Fiscal and the Children's Reporter, with it determined the Procurator Fiscal would prosecute. The child was simultaneously referred to the CHS on welfare grounds but the Reporter did not arrange a Hearing, with the child referred to the relevant local authority for advice, guidance and assistance.

The third child was made subject to a CSO, having had their case remitted to the CHS for disposal from court and having pled guilty to an offence - in spite of a capacity assessment concluding the child was unfit to do so. Various offences were dealt with via the CHS until the child turned 18.

2.5 Court processes

In two cases, difficulties with information sharing from the court were reported, including the child's social worker not being informed of court dates, children's appearances and the outcome of this. It would appear whilst COVID-19 brought some benefits in terms of the use of virtual courts, this also detrimentally (further) impacted on the availability and extent of court support when children were appearing in person and may have affected the child's capacity to understand and engage with the process. All children had previous experiences of being placed on bail. The length of bail varied, with each child having breached their bail conditions.

2.6 Accessing secure care

All three children were remanded at some stage to secure care through the courts under section 51 of the [Criminal Procedure \(Scotland\) Act 1995](#). All children had different legal statuses but all were legally defined as a child and/or a looked after child. There was variation in whether when committed to the local authority, the court required that the child be remanded to secure accommodation or a suitable place of safety chosen by the authority. The time the children spent on remand varied from a few weeks to 19 months.

In all cases there were barriers to the child accessing and remaining in secure care. For one child, there was disparity of views about whether they met the secure care criteria, the necessity of secure care and their looked after status, which resulted in the child only being in secure care for a short period, with subsequent periods of remand being spent in custody. For this child, turning 18 also impacted on the length of time they could spend in secure care once sentenced. For another child, their CSO was terminated prior to sentence, meaning that on sentence they could no longer remain in secure care. For the final child, as they turned 16 during the period of remand and had not been made subject to a CSO, when they received a custodial sentence, they were unable to remain in secure care and instead were transferred to a YOI. In both cases, this was in spite of the child remaining in secure being deemed in their best interests, which would enable them to benefit from the continuity of relationships with staff and peers and opportunities, such as education, specialist interventions, and support. Both children were reported to be anxious and distressed by this situation. These legal disparities were also challenging for the staff supporting these children to understand and explain, and caused significant concern for staff who believed a placement in secure care was in these children's best interests but were legally prevented from actioning this. It was reported that for all children there were clear benefits of the intensive and therapeutic supports, high ratio of staff, child-centred provision, and small



house units provided within secure care that would not be available in custody. For one child, difficulties in accessing secure transport was identified.

2.7 Custody in YOIs

For each child, significant concerns were reported about the appropriateness of a placement in custody. This was for various reasons including their age; developmental stage (which was often significantly lower than their chronological age); level and complexity of need; specific vulnerabilities related to their capacity; mental health and wellbeing; and history of, and potential for further incidents of, serious self-harming behaviour. As detailed above, two children owing to their legal status could not serve their sentences in secure care. The other child was repeatedly remanded and latterly sentenced to custody as it was deemed there was no legal route to secure care. While these children were in custody, significant efforts were made by Scottish Prison Service (SPS) staff to look after these children, to adapt provision, to access advice on how this could be achieved, and provide all additional support they could within the parameters that are available to them. However, for all these children there was agreement by the team around the child that custody was not the right place for them, yet these children were placed there. This proved extremely challenging for not just these children but also the team around them, particularly the SPS staff who were responsible for meeting their needs and maintaining their safety on a daily basis. Challenges were noted regarding the ability to meet each individual child's need. This included communication by social work staff with the child and their personal officer, the organisation and completion of custody reviews, and planning for and securing accommodation on release. It would appear COVID-19 has exacerbated these challenges.

2.8 The impact of delays

There were delays in each child's case at every stage of the justice process. These included delays with cases being reported to the Police and a decision being made in how cases will proceed. For example, one child had an alleged historical offence reported two years ago that it has yet to be determined how or when this will proceed. Children had experienced delays in reviews of CSOs, in court process, and lengthy periods of remand with one child - having been found guilty of no offence - being deprived of their liberty for 19 months. One child had also experienced similar delays but in the context of being the alleged victim in this case. These challenges appear to have been exacerbated by COVID-19.

The impact of delays in the children's cases were significant. These included the detrimental impact on the mental health and wellbeing of the child involved, their family (including their own children), victims of the offences and their families, and the wider community. The children were described as feeling "hopeless", "desolate", and "distressed", particularly related to the unknown implications for their future and "when this would end", whilst simultaneously "optimistic that this had gone away" and that the "significance" of the incidents had been lost. There were also impacts on the interventions, supports and services that could be undertaken while cases were outstanding. Staff expressed challenges in their ability to sustain meaningful engagement with the child throughout such lengthy periods, as well as the risks that the time lapse would limit the child's options, for example of remittal to the CHS and the disclosure implications of cases not being addressed until a child was 18. It was also reported to be difficult for those in the system, and making decisions to hold the status of child as they had been a much younger child at the time of the offence.



2.9 Children's rights

Throughout these children's cases there are a range of areas where the upholding of children's rights was extremely difficult. The practitioners involved in these children's care were acutely aware of this but often felt that the system itself was not conducive to the achievement of this in practice.

3. Learning for Improvement

Children who are deprived of their liberty are thankfully comparatively small in number. Over the last 12 years there's been a 93% reduction in 16- and 17-year-olds being sentenced to custody ([Scottish Government, 2021a](#)). These are however often our most vulnerable, victimised and traumatised children, for whom the potential for their rights to be violated is greatest; and for them and wider society, the costs of not meeting their needs and getting the right support is greatest ([CYCJ, 2016](#)). In a Scotland where we want to get it right for every child and make "Scotland the best place in the world to grow up" ([Scottish Government, 2019](#), p.3), we must ensure the experiences of the children in this piece do not continue to be repeated. To achieve this, based on the above case studies, professional narration and reflection, clear areas of learning for improvement are identifiable, which have been differentiated as practice, training, policy and legislation. Where these children's experiences provide further evidence for the recommendations of other reports or reviews, this has been highlighted. Some of these areas of learning are currently seeking to be addressed through existing policy change or implementation (for example the Scottish Government (2021a) and Scottish Sentencing Council (2021)), the activity to respond to the conclusions of reviews (such as the Independent Care Review), or forthcoming legislative change (including the Children's Care and Justice Bill and UNCRC incorporation). While this has been highlighted where possible, many of these issues have been longstanding and as the impact of such change on children's experiences and journeys remains to be seen, they remain relevant for inclusion in this piece. In doing so, this paper should stimulate wider professional reflection, which should include local and national attention as to what else might be preventing efforts to change these children's experiences currently, which may include things like resource, capacity, confidence, skills, interagency working, and leadership.

3.1 Complexity of need and level of adversity experienced

For both children where there has been a history of service involvement, staff were able to identify that historically, if staff had been equipped with the knowledge and understanding of adversity and trauma that they have now, they would have understood the child's experiences, the impact of these experiences, and how to respond differently. Having a skilled, competent, trained and supported workforce is fundamental in improving outcomes for children (Independent Care Review, 2020):

- **Training:** All professionals working with children, young people and families within children and adult services, across the care and justice system should have knowledge and understanding of child development, the impact of adversity and trauma, and how to practice in a relational and trauma informed manner, that upholds child's rights. In particular, training regarding mental health and wellbeing, capacity,

neurodiversity and neurodevelopmental disorders, and speech, language and communication needs should also be available ([Scottish Government, 2021b](#)).

Alongside such training, staff require support to develop skills, confidence and competence, echoing the findings of the Independent Care Review (2020). This should include lawyers and panel members.

- **Practice:** As agencies, reflection on how relational based and trauma-informed practice can be made a reality for every child is important, as is the identification of barriers to doing so and seeking to address these. Sharing this learning and journey across services would be beneficial. This could build upon the findings of work taken within residential care, secure care and YOIs.

Practitioners noted the crucial importance of having a range of services involved in the child's lives, consistency of the team around the child and individual workers, and adoption of consistent relational approaches and strategies. This echoes guidance for working with children where parts of their behaviour may present risk of serious harm (see for example [Murphy, Nolan and Moodie, 2020](#)). It was recognised this could be challenging to achieve in practice. Ensuring all agencies who needed to be involved in a child's life were involved at the right time was noted as important, with the particular challenges in accessing mental health services echoed elsewhere (see [CYCJ, 2021a](#)). Keeping children in the right educational and care placements, and maintaining stability of the team as individual workers, changed. Services must ensure that their structures and set ups enable such practice to be made a reality for every child.

- **Practice:** Given the well-established risks of contact with the justice system, the support provided by universal services (health, education, welfare) is crucial (CYCJ, 2016). The role and involvement of education and mental health is particularly important (Scottish Government, 2021a). In accordance with GIRFEC, the right support should be provided at the right time. Stickability of this support and professionals within agencies, as well as the ability of supports and professionals to follow children through their journey, is important. Agency structure must support this.
- **Practice:** Across agencies support should be joined up and take a consistent approach focusing on building relationships, strengths, skills, developmentally appropriate opportunities and hope. To achieve this, good information sharing, within agency and interagency partnership working, and having agreed Child's Plans and approaches, is important. In particular, building relationships takes time and it is crucial that workers are given the time and capacity to do so within their caseloads and by managers.
- **Practice:** While professionals will move on from positions, in particular in cases where there are high levels of complexity, efforts should be made to maintain a consistent team around the child. Where professionals change, robust handover arrangements should be in place. Decisions about children transferring between teams within agencies should be made on a case-by-case basis as opposed to fixed criteria such as age.

Having a range of placements, services and supports available locally or that can be commissioned to meet the range of needs presented by children, is critical. As detailed elsewhere, the provision for these children was the "best available" as opposed to being the "most appropriate". Practitioners highlighted the importance of regular review of the impact of care plans, services and interventions in meeting the child's needs, addressing vulnerabilities, building capacity and promoting resilience as well as managing and reducing potential risk of harm. These children's experiences highlight again the often dual status



children hold as having been harmed and causing harm to others (CYCJ, 2016). This is at the heart of Scotland's welfare-based approach but as we have seen for these children, too often they are not given the opportunity to benefit from this approach and are instead dealt with via the courts as discussed below. In addition, it would appear that where these children are alleged to have committed the most serious harms and offences, holding and understanding this dual status by everyone involved in the child's life and throughout the justice system can be challenging (Lightowler, 2020). Children who are victims must have their rights to support and recovery upheld and have access to information, supports and opportunities to access restorative justice, where appropriate (Scottish Government, 2021b).

These are key Standards for those working with children in conflict with the law (Scottish Government, 2021b):

- **Policy:** Support must be provided to implement the above Standards in practice.
- **Practice:** A range of community options must be available to meet identified risk and support the management and reduction of risk (Murphy, Nolan and Moodie, 2020). Collating information, including from reviews, to understand local need, recording and identify areas of unmet need or where additional services are required, and seeking to remedy this through the provision, resourcing or commissioning of services is key to ensuring appropriate levels and types of service provision (Murphy, Nolan and Moodie, 2020). Service managers and local leaders have a crucial role in doing so.
- **Practice:** Professionals across agencies and public understanding and awareness of the needs and rights of children and young people in conflict with the law and the systems in place to support them should be promoted ([Scottish Government, 2021c](#)). This should include understanding of children's often dual status and stress this includes the small number of children who commit serious offences. This could be achieved through the co-production of awareness raising materials, which reinforce positive truths and shift negative perceptions; positive media campaigns around rights; engagement with communities; and building community confidence (Scottish Government, 2021c).

3.2 Types of offences and interventions

For each child, there was serious concern about their offending behaviour and the risk of harm this behaviour could result in, to themselves or others. Good quality risk assessment, formulation and intervention was crucial. Formulation has a key role in understanding the origins, development and maintenance of harmful behaviour, while providing a crucial link between assessment, management and intervention (Lewis and Doyle, as cited by [Murphy, 2018](#)). For each of these children, this was clearly evident but it is recognised that ensuring this is consistently available for all children can be challenging on various levels, including ensuring staff are trained and supported; confident and competent; shared multi-agency understanding of formulation; and that staff have the time and capacity to undertake such work (see Murphy, 2018). Similarly, it includes the creation of developmental opportunities for children to learn and practice new skills and knowledge in a safe way for them and others. Interventions, restrictions and strategies that are proportionate and appropriate to the assessed and evidenced risk of harm that address needs, and the involvement of the right professionals as needed (such as psychologist input), can be further challenges. In addition, assessing, managing and reducing risk of harm could be particularly difficult when there are gaps in information, types of behaviours and victim profiles are diverse, and where it is unclear how cases will progress through the justice system or remain outstanding (with delays discussed further below).



- **Training:** Multi-agency training in risk practice should be provided, along with post-training support and evaluation of the application of learning to practice as required (Gailey, as cited by Murphy, 2018; Scottish Government, 2021a; [2021d](#)). CYCJ has developed a suite of materials to support the assessment, management and reduction of the risk of harm including on risk formulation, intervention planning approach and risk of harm in the community, with training having also been funded by the Scottish Government. We will continue to hear from practitioners and explore what more support is needed.
- **Practice:** Practitioners need to be supported by managers to have the time and capacity to undertake formulations; to ensure multi-agency involvement; and to access additional supports as necessary.
- **Practice:** Limitations to available information, attempts to gather information, and inconsistencies must be noted within any assessment and formulation and recorded within the Child's Plan, as necessary (Scottish Government, 2021d).
- **Training:** All practitioners need to be able to understand the justice system in order to impart this information to children and their families and support them throughout their journey through the justice system. They also need to understand the unique position, needs, rights and entitlements that children have within this system (Scottish Government, 2021a). A shared understanding needs to be developed across the broad workforce supporting children who are on the cusp of or are in conflict with the law. This includes universal services, decision makers (including panel members and the judiciary), children's representatives (including lawyers and advocates), residential childcare workers, social workers, police and so on. Materials such as the [Journey Through Justice](#) and [The child's journey: A Guide to the Scottish Justice System](#) provide online guides.

Multi-agency risk management processes had a clear role in supporting the identification, assessment and management of risk of harm, as well as ensuring the involvement of all key agencies in the care and planning for each child. While children may be subject to different processes, each having a different focus and remit, this could cause challenges and tensions for staff in understanding the different processes, duplication of information and membership, and ensuring consistency and join-up of different actions. If this is a challenge for professionals, then we must consider how children who are the subject of these meetings, and their families, experience and understand the process.

- **Policy:** Standard 7 of the Standards for those working with children in conflict with the law - assessing, reducing and managing the risk of harm must be implemented in practice (Scottish Government, 2021b).
- **Practice:** Local partnerships should have clear protocols in place for identifying, responding and reducing risk of harm to a child or from aspects of their behaviour towards others, which all multi-agency partners should understand and be trained in as necessary. These protocols should also make reference to other risk management and care planning processes that children may be involved in and have clear interface between these. Local child protection committees (CPCs) and community planning partnerships have a key role (Scottish Government, 2021c).
- **Practice:** Where children are being supported through multiple processes, these should be aligned and efforts made to ensure these compliment each other, with the lead professional having a key role in coordinating supports and the child's planning process enabling a single plan for each child. Clear communication of these plans to everyone involved in a child's life is critical. Local barriers to achieving this should be explored and addressed as necessary.



- **Practice:** Children and their families must be included in, and supported through, any such multi-agency processes.

As above, having a range of placements, services and supports available locally or that can be commissioned to meet the range of needs presented by children, is particularly crucial where parts of a child's behaviour presents risk of harm to others. Managing a child's case across geographic and local authority boundaries was common for each child and brought particular challenges.

- **Practice:** Where a child's case crosses local authority boundaries, good communication, prompt agreement of which agency and area is responsible for the child and their support, and joining up of support is important. While these agreements take place, children must not be left unsupported.
- **Policy:** The challenges in particular of accessing mental health support appear to be magnified in such cases (CYCJ, 2021a). Implementation of the Child and Adolescent Mental Health Services (CAMHS) NHS Scotland National Service Specification ([Scottish Government, 2020a](#)) should help to support this. Particular attention should be paid to the needs of children in conflict with the law and in or on the edges of secure care. Monitoring the impact of the implementation of the specification on children's journeys and experiences to ensure this is resulting in positive change will be essential.

For each child it was clear that a range of interventions and strategies had been attempted but that at times, even high levels of support and extremely restrictive interventions could not prevent future offences taking place or harm being experienced. Such experiences had significant impacts not just for the individual child involved and victims, but also in terms of the narrative around the child and concerns about their (at times) perceived "unmanageability".

- **Policy:** Under Framework for Risk Assessment Management and Evaluation (FRAME) for children aged 12-17, "When a child subject to CARM process has been involved in an incident where further harm has resulted from their behaviour the CARM chair must notify the CPC for consideration about whether a Learning Review is required" (Scottish Government, 2021d, p.50). It is crucial that where any child is being intensively supported and serious harm occurs or could have occurred that such a review takes place. Given the vital importance of this learning, national collation of such information is important."

In speaking with staff working with these children across all settings, their level of concern, compassion and desire for better outcomes was abundantly clear. It was also evident how challenging it was for staff to manage the complexity within these children's lives and their fear that catastrophic harm would come either to or from the child. Some of the features identified that could help staff in managing such cases were: having well developed multi-agency partnerships; procedures, policies and processes surrounding risk management, understood across agencies and worked effectively in practice; a shared approach to risk; defensible decision-making; effective supervision; managerial support; and support of external agencies for advice, signposting and to escalate concerns nationally. This echoes the recommendations made by the Independent Care review (2020) related to people, scaffolding and risk.

- **Policy:** The recommendations of the Independent Care Review should be implemented.



- **Practice/Training:** In achieving the features that have been identified to support staff, effective interagency working; the availability of internal and external support; having clear local protocols in place, which all multi-agency partners should understand and be trained in as necessary; and shared training and approaches related to risk practice, is important. Managers within agencies, local child protection committees and community planning partnerships have a key role (Scottish Government, 2021b).
- **Practice:** Curated, safe spaces for regular multi-agency reflective practice and analysis should be provided, the focus of which should include identifying what support the team around the child requires to most effectively support the child.

3.3 Issues of capacity

In both cases where concerns about a child's capacity were evident, education was noted as having an important role in the early identification of concern about children's learning and developmental needs while at school, as opposed to this only being identified once a child was already within the justice system.

- **Practice:** Concerns about the additional support needs a child may have and the impact this may have on their ability to participate in the justice system, as well as any adaptations or special measures that they may require must be identified early (see [CYCJ, 2021b](#)).
- **Practice:** Where agencies (social work, education, health) hold information about such needs, this information must be promptly shared with the police, social work, the child's defence agent, Children's Reporter and/or Procurator Fiscal, and secure care centre or YOI (CYCJ, 2021b).
- **Practice:** Children must be supported to understand their rights as well as all aspects of the court and justice system (CYCJ, 2021b). This support must be tailored to each child's needs, including any additional support needs.
- **Practice:** Independent advocacy should be sought where there are concerns about an individual's capacity.

The challenges in accessing assessments for children outlined above echo the challenges in accessing psychiatric and psychological reports to the courts, highlighted by the Independent Review into the Delivery of Forensic Mental Health Services ([Scottish Government, 2021e](#)). For these children, such difficulties contributed to delays to children's cases being dealt with and in one case, on the child's return to the community from custody. In both cases, it was reported that there was a lack of understanding throughout the justice system of the impact of the outcome of such assessment and what this meant for the progression of the child's case. Moreover, when assessments were concluded, staff reported difficulty in understanding what these conclusions meant, which was compounded for one child where different reports reached two different conclusions. As a result, professionals found it difficult to inform and support children in respect of this part of the justice process.

- **Policy:** Activity as recommended by the Independent Review into the Delivery of Forensic Mental Health Services (Scottish Government, 2021e) should include a focus on the specific needs of children and challenges in accessing assessments and services without delay.
- **Policy:** Nationally it would be beneficial to understand how many children in the justice system have concerns about their capacity and how these children are currently being supported. Further understanding of these children's experiences would be beneficial.



- **Training:** Professionals working across justice services require information, training and support to understand the process, conclusion and options for the progression of cases where there are concerns about an individual's capacity or fitness for trial. Information published by the [SOLD network](#) is useful. The need for further information and support should be explored by CYCJ and partners.

3.4 The Children's Hearing System

The above cases indicate the crucial role of the CHS in ensuring children can benefit from the care and protection, welfare-based and needs-led system this provides. However, they highlight the real challenges in ensuring all children are able to benefit from this system. Each case highlights different practice challenges: the termination of CSOs; limited legislative routes to the CHS where children are aged over 16 and beyond 18; challenges in accessing the CHS; and of making decisions when faced with competing views.

- **Policy:** Standard 3 of the Standards for those working with children in conflict with the law must be implemented (Scottish Government, 2021b).
- **Practice:** Offending behaviour should be understood in the context of what it is telling us about a child and their experiences to understand what may be underpinning the behaviours (Delahooke, 2019). Understanding these behaviours in the context of the child and their support systems allows understanding as to whether the behaviours are indicative of potential needs and therefore concern about the child's wellbeing (Delahooke, 2019). As appropriate, a referral to the CHS should be considered and discussion take place with SCRA as required.
- **Practice:** Children often state, as in one of these cases, that they want to be treated as an adult, believe they have outgrown the CHS and emphasise that their views must be given due consideration. When faced with competing views, while the child's views should always be taken into consideration, as per [United Nations Convention on the Rights of the Child](#) and domestic legislation, their best interests and ability to manage risky situations during adolescence and to make wise decisions should be considered. For children who are already looked after, this is likely to be as limited as that of children who are not "looked after" and who rely on their parents and carers for support and advice for many years ([McEwan, 2017](#)). In particular, it should be recognised that 16 and 17 year olds are children, not mature adults, with adolescence recognised as a critical period in brain development and an opportunity for new learning (McEwan, 2017). It is clear that the children involved in these cases are vulnerable and their behaviours indicate that their ability to make positive choices for themselves is compromised. In making any assessment and recommendation, all Corporate Parents have a duty to weigh up the child's desire to be treated as a "grown up" in the "adult system" with the significant negative consequences which may stem from their non-compliance with court ([CYCJ, 2021c](#)).
- **Practice:** Children should continue to be supported on a CSO between the ages of 16 and 18 years, when this is in their best interests ([Social Work Scotland, 2019](#)). It is not appropriate to base a recommendation of termination of a CSO solely if the child has outstanding offences as this will likely lead to them being fast tracked into the justice system and often into the prison system (SWS, 2019; Scottish Government, 2021a) nor simply because the child expresses the view that they wish it to be terminated. It must be a balanced decision taken in the child's best interests which considers all views based on evidence and reasoning. Particular consideration should be given to the child's outstanding offences in each case where a CSO is due to be terminated.

- **Practice:** The use of remittal from court should be maximised ([Scottish Government, 2010](#); Scottish Government, 2021a).
- **Practice:** Children require good quality, well informed legal advice and representation, that considers their needs and takes into account their developmental capacity and ability, as well as any neurodevelopmental disorders and speech, language and communication needs which may impact the child's participation and understanding of their situation ([Dyer and Beaton, 2021](#)).
- **Practice:** Independent advocacy should be made available to every child accused as an additional support throughout the justice process.
- **Policy:** The age of referral to the Principal Reporter should be increased to 18 for all children with a presumption against under-18s in the justice system, consistent with the Lord Advocate's prosecution policy (as per Scottish Government, 2021c). Where this is not possible, children must be treated in a way that is trauma-informed and recognises their age and stage of development (Scottish Government, 2021c).
- **Practice:** Significant work has been undertaken via the cross-system working group on 16/17 year olds under the [Youth Justice Improvement Board](#). This has highlighted in addition to legislative change: workforce development; training, skills and competence; resource shift and investment; and capacity. All require attention to support this legislative change.

3.5 Court processes

These experiences again highlight children's negative experiences of the court process, lack of understanding and support and the detrimental impact of this, including the failure to uphold children's rights which has been repeatedly identified (see for example [McEwan et al., 2020](#); [Lightowler, 2020](#); [Whiting, 2020](#)). The Sentencing Council (2021) [Guideline on Sentencing Young People](#) is welcomed, with the importance of information and advice to assess the maturity of the young person and to identify and impose the most appropriate sentence going to become even more critical, with the challenges to this as outlined above requiring further efforts to be addressed. Court support is a key domain of the Whole System Approach (WSA). Challenges with information sharing and the completion of assessments regarding capacity adversely affected these children's ability to be supported through and in respect of the court process.

- **Policy:** Standard 4 and 5 of the Standards for those working with children in conflict with the law (Scottish Government, 2021b) relating to alternatives to prosecution, court and judicial proceedings should be implemented in full.
- **Policy:** As necessary support to implement the Sentencing Council (2021) should be provided and the impact of this change in guidance monitored.
- **Practice:** Addressing barriers to multi-agency working and information sharing in respect of children at court should be prioritised.
- **Policy:** Further understanding of children's experiences, the opportunities and challenges of virtual courts would be beneficial in informing future approaches and practice.

These cases provide further evidence of the challenges experienced by children in complying with bail conditions. While children's voices and experiences were not included in this piece, those of children and their families have been detailed by McEwan et al. (2020).

- **Practice:** The recommendations made by McEwan et al. (2020) related to keeping children out of court, the development of a child-friendly justice arena for children who committed the most serious offences, and bail, should be implemented in full.
- **Legislation:** The changes proposed by Whiting (2020) should be considered and implemented as necessary.

3.6 Accessing secure care

Wherever possible, the remand of children should be avoided, with the impacts of even short periods of children being deprived of their liberty having been well established (see for example [Nowak, 2019](#)). Where this does take place, this should be for the shortest time possible, which these cases severely question with one child on remand for 19 months. The Scottish Government's policy of the WSA is that wherever possible, where a child is to be remanded or sentenced, that secure care should be used as opposed to custody (Scottish Government, 2011). This has been furthered by the conclusion of the [Scottish Parliament Justice Committee](#) (2019, p. 37) that "...unless there is strong evidence to the contrary, no young person under the age of 18 should be placed in HMP&YOI Polmont when a place in a secure care unit would be more suitable". Similarly, the Independent Care Review (2020) stated that in line with the UNCRC, 16/17 year olds who are remanded or sentenced must be accommodated within secure care rather than a YOI. However, as the above cases indicate, Scottish legislation is not enabling this to be a reality for every child, with change needed and underway.

- **Legislation:** Scotland needs to define a child as being under 18 across all legislation in keeping with the United Nations Convention on the Rights of the Child and associated rules and guidelines. This would have wider benefits (see Whiting, 2020).
- **Legislation:** Legislative change is needed to enable all children under the age of 18 to access secure care. The above change would support this, as increasing the age of referral to the Principal Reporter may enable this but the challenges with gaining access to the CHS have been detailed elsewhere.
- **Legislation:** Explore the options for increasing the age in which children can stay in secure care so that they do not need to transfer to custody solely based on age as per the recommendation of the Justice Committee (2019).
- **Policy:** The [Secure Care Pathway and Standards Scotland](#) (2020b) should be implemented in full.
- **Policy:** The financial and practice barriers to the use of secure care where children are placed on remand should be reviewed and addressed where possible (see Lightowler, 2020). The challenges relating to secure transport should be addressed, with activity underway via the [Secure Care Group](#).
- **Policy:** Currently there is no easily accessible centralised monitoring system for the number of places and referrals in the secure care system, nor are there always beds available for Scottish children when they require one (Justice Committee, 2019). With regards to commissioning, the Justice Committee (2019, p.38) concluded they were "unconvinced that this is a viable model beyond the current contractual period" and that all alternative models should be explored. This is a complex area and one that requires to be addressed if we are to ensure it is never "...the case that a child or young person is sent to HMP&YOI Polmont when a secure care unit would be more appropriate to their needs". Both issues require to be addressed.
- **Training:** In the interim, across professions, support is needed to understand the currently complex routes to secure care. This includes the interface between criminal

legalisation, that related to the CHS, and the [Secure Accommodation \(Scotland\) Regulations](#).

- **Practice:** Across services a shared understanding of what secure care is, when it should be used and what can be provided should be developed. Training, awareness raising, developing relationships across the workforce supporting children in conflict with the law and secure care centres, and promoting resources about secure care, such as is being done on the Secure Care Pathway and Standards Scotland [website](#) should support this.

3.7 Custody

The Independent Care Review (2020, p.82) is the latest to conclude that:

“Scotland must recognise that 16 and 17 year olds are children in line with the UNCRC and must be accommodated within Secure Care rather than within Young Offenders Institutes and the prison estate. This must include children who are on remand and those who have been sentenced. Being placed in prison like settings is deeply inappropriate for children”.

These children’s experiences further contribute to this evidence base, highlighting that in spite of the best efforts of SPS staff, custody was not deemed to be an appropriate environment for these children. The particular challenges related to supporting children in YOIs and transitions which have been exacerbated by COVID-19 have been highlighted. There is now consensus that this practice needs to stop as far as possible and action is needed to make this a reality, with activity around this underway.

- **Legislation:** In order for Scotland to respect the rights of all children and stop the practice of detaining children under 18 in YOIs altogether, while ensuring that detention in other settings is always a last resort, various legislative changes are needed as outlined by Whiting (2020). These should be explored and implemented where necessary.
- **Policy:** The Standards for those working with children in conflict with the law related to transitions and children who are deprived of their liberty must be implemented (Scottish Government, 2021b).
- **Policy:** There seems to be a gap, be this of resource, availability, alternatives or knowledge, in the options available where it has been assessed that a child or young person (over 18 years) requires to be deprived of their liberty, and there are concerns about the individual’s capacity and/or mental health and wellbeing. This gap, the extent of these issues and how this can be addressed should be explored further.
- **Practice:** We need to ensure community-based alternatives to remand that meet the full range of needs of children are available and that the recommendations of McEwan et al. (2020) regarding remand are implemented in full.
- **Practice:** In addition to legislative change, further work is underway to identify what other supports are needed to remove children from custody, such as resources; capacity within secure care centres; workforce development; training, skills and competence. These factors must be addressed to support legislative change.

3.8 The impact of delays

These children's experiences highlight the significant impacts delays can have for the child and more widely. The findings echo the experiences of children as detailed by McEwan et al. (2020, p.8):

“...long waits and delays had an additional bearing on children who were in a rapid phase of development, with children often maturing significantly in the period between their initial arrest and eventual court date. Thus, the person the Sheriff is meeting and sentencing can be a “completely different person” than the one who committed the original offence and might be very unlikely to engage in the risk-taking behaviours they once did”.

Moreover, it is recognised that for children to associate the sentence with their offending behaviour, it is particularly important that prosecutions be dealt with as quickly as possible (Scottish Government, 2011).

- **Policy:** Cases involving children should be dealt with as a priority throughout the justice system ([Inspectorate of Prosecution in Scotland, 2017](#)). This should be monitored locally and nationally, and as necessary action taken to ensure this is being achieved in practice.
- **Policy:** COVID-19 has further exacerbated delays in the justice system. Clarity is required on how children's needs and rights have been considered or prioritised within the Justice recovery model Renew, Reform, Transform Programme ([Scottish Government, 2021f](#)).
- **Practice:** Children should be fully supported throughout the justice process, including during any delays. Having adults and professionals to advocate on their behalf and to help everyone involved in the child's journey to hold the child's status as a child now and at the time of their alleged offending is crucial. National forums to raise and escalate such concerns, such as the [National Youth Justice Advisory Group](#) and [Youth Justice Improvement Board](#), should continue.

3.9 Children's rights

These children's experiences illuminate particular barriers to the upholding of children's rights. These include system barriers to be treated as a child under the age of 18, not to be discriminated against and to be able to express their views and participate in matters that affect them, with this most apparent in their position within the court system. The centrality of children's best interests and right to have matters determined without delay are further issues. Moreover, the rights of the child to be deprived of their liberty as a measure of last resort and for the shortest appropriate period of time, and in a manner which takes into account the child's needs and age, are questionable. When children are held in a custodial environment that it is agreed is unsuitable to meeting their needs, it is difficult to conceive how their rights to recovery and reintegration can be met. These challenges echo those highlighted by Lightowler (2020, p.2), who concluded "...Scotland would benefit from thinking about children in conflict with the law from the perspective of rights". We need to ensure that children's rights can be fully upheld for every child and that barriers to this, be these practice, service, strategic, system, or legislative, can be addressed.

- **Legislation:** In addition to the changes highlighted elsewhere in this paper and by Whiting (2020), UNCRC needs to be incorporated into Scots law.

- **Practice:** Full analysis of what UNCRC incorporation means in practice in respect of all children in conflict with the law needs to be undertaken, along with addressing barriers to this.
- **Policy:** The recommendations of Lightowler (2020) should be implemented.
- **Practice:** We need to continue to hear from children about their lives, experiences and journeys through the justice system, as well as the professionals who support them.

4. Conclusion

The experiences of these three children starkly highlight the challenges children and those supporting them face in navigating the justice system. The ongoing collation of children's experiences and the narration and reflection of the professionals supporting them is important in providing details of the impact of the system on the totality of children's journeys; illustrating broader lessons and stimulating professional reflection; and capturing these different knowledge and evidence sources. Scotland needs to improve our approaches to children in conflict with the law, with these children's experiences highlighting why this is necessary and echoing previously identified changes as well as further suggestions for learning and improvement. Without this, it is difficult to see how Scotland can get it right for every child.

4.1 Summary of recommendations

Policy:

- Support must be provided to implement the Standards for those working with children in conflict with the law (Scottish Government, 2021b) in practice.
- The Child and Adolescent Mental Health Services (CAMHS) NHS Scotland National Service Specification (Scottish Government, 2020a) should be implemented.
- Where any child is being intensively supported and serious harm occurs or could have occurred, cases should be reviewed and information collated nationally.
- The recommendations of the Independent Care Review should be implemented in full.
- Activity as recommended by the Independent Review into the Delivery of Forensic Mental Health Services (Scottish Government, 2021e) should include a focus on the specific needs of children and challenges in accessing assessments and services without delay.
- Nationally it would be beneficial to understand more about children in the justice system where there are concerns about the child's capacity.
- The age of referral to the Principal Reporter should be increased to 18 for all children with a presumption against under-18s in the adult justice system, consistent with the Lord Advocate's prosecution policy (Scottish Government, 2021c). Where this is not possible, children must be treated in a way that is trauma-informed and recognises their age and stage of development (Scottish Government, 2021c).
- Further understanding of children's experiences, the opportunities and challenges of virtual courts would be beneficial in informing future approaches and practice.
- The Secure Care Pathway and Standards Scotland (2020b) should be implemented in full.



- The financial and practice barriers to the use of secure care where children are placed on remand should be reviewed and addressed where possible (see Lightowler, 2020). The challenges relating to secure transport should be addressed, with activity underway via the Secure Care Group.
- Approaches to placement, availability and commissioning of secure care should be addressed.
- There seems to be a gap, be this of resource, availability, alternatives or knowledge, in the options available where it has been assessed that a child or young person (over 18 years) requires to be deprived of their liberty, and there are concerns about the individual's capacity and/or mental health and wellbeing. This gap, the extent of these issues and how this can be addressed, should be explored further.
- Cases involving children should be dealt with as a priority throughout the justice system (Inspectorate of Prosecution in Scotland, 2017). This should be monitored locally and nationally, and as necessary action taken to ensure this is being achieved in practice.
- COVID-19 has further exacerbated delays in the justice system. Clarity is required on how children's needs and rights have been considered or prioritised within the Justice recovery model Renew, Reform, Transform Programme (Scottish Government, 2021f).
- The recommendations of Lightowler (2020) should be implemented.

Practice:

- As agencies, reflection on how relational based and trauma-informed practice can be made a reality for every child is important, as is the identification of barriers to doing so and seeking to address these.
- Given the well-established risks of contact with the justice system, the support provided by universal services (health, education, welfare) is crucial (CYCJ, 2016). The right support should be provided at the right time and follow the child.
- Across agencies support should be joined up and take a consistent approach focusing on building relationships, strengths, skills, developmentally appropriate opportunities and hope. To achieve this, good information sharing, within agency and interagency partnership working, and having agreed Child's Plans and approaches is important. In particular, building relationships takes time and it is crucial that workers are given the time and capacity to do so within their caseloads and by managers.
- Efforts should be made to maintain a consistent team around the child. Where professionals change, robust handover arrangements should be in place. Decisions about children transferring between teams within agencies should be made on a case-by-case basis as opposed to fixed criteria such as age.
- A range of community options must be available to meet identified risk and support the management and reduction of risk (Murphy, Nolan and Moodie, 2020). Collating information, including from reviews, to understand local need, recording and identifying areas of unmet need or where additional services are required, and seeking to remedy this through the provision/commissioning of services is key to ensuring appropriate levels and types of service provision (Murphy, Nolan and Moodie, 2020). Service managers and local leaders have a crucial role in doing so.
- Promote public understanding and awareness of the needs and rights of children and young people in conflict with the law and the systems in place to support them (Scottish Government, 2021c).

- Practitioners need to be supported by managers to have the time and capacity to undertake formulations; to be able to ensure multi-agency involvement; and to access additional supports as necessary.
- Limitations to available information, attempts to gather information, and inconsistencies must be noted within any assessment and formulation and recorded within the Child's Plan, as necessary (Scottish Government, 2021d).
- Local partnerships should have clear protocols in place for different processes, which all multi-agency partners should understand and be trained in as necessary.
- Where children are being supported through multiple processes, these should be aligned and efforts made to ensure these complement each other, with the lead professional having a key role.
- Children and their families must be included in, and supported through, any such multi-agency processes.
- Where a child's case crosses local authority boundaries, good communication, prompt agreement of what agency and area is responsible for the child and their support, and joining up of support, is important.
- Effective interagency working; the availability of internal and external support; having clear local protocols local in place, which all multi-agency partners should understand and be trained in as necessary; and shared training related to risk is important.
- Curated, safe spaces for regular multi-agency reflective practice and analysis should be provided, the focus of which should include identifying what support the team around the child requires to most effectively support the child.
- Concerns about the additional support needs a child may have and the impact this may have on their ability to participate in the justice system, as well as any adaptations or special measures that they may require must be identified early (see CYCJ, 2021b).
- Where agencies (social work, education, health) hold information about such needs, this information must be promptly shared.
- Children must be supported to understand their rights, as well as all aspects of the court and justice system (CYCJ, 2021b).
- Offending behaviour should be understood in the context of what it is telling us about a child and their experiences to understand what may be underpinning the behaviours (Delahooke, 2019). As appropriate, a referral to the CHS should be considered and discussion take place with SCRA as required.
- Decisions should take account of children's views but also their best interests, ability to manage risky situations during adolescence and to make wise decisions. In making any assessment and recommendation, all Corporate Parents have a duty to weigh up the child's desire to be treated as a "grown up" in the "adult system" with the significant negative consequences which may stem from their non-compliance with court (CYCJ, 2021c).
- Children should continue to be supported on a Compulsory Supervision Order between the ages of 16 and 18 years, when this is in their best interests (Social Work Scotland, 2019).
- The use of remittal from court should be maximised (Scottish Government, 2010).
- Children require good quality, well informed legal advice and representation, that considers the needs of the child (Dyer and Beaton, 2021).
- Independent advocacy should be made available to every child accused as an additional support throughout the justice process.



- Significant work has been undertaken via the cross-system working group on 16/17 year olds under the Youth Justice Improvement Board. This has highlighted in addition to legislative change, workforce development; training, skills and competence; resource shift and investment; and capacity, all require attention to support this legislative change.
- Addressing barriers to multi-agency working and information sharing in respect of children at court should be prioritised.
- The recommendations made by McEwan et al. (2020) should be implemented in full.
- Across services a shared understanding of what secure care is, when it should be used and what can be provided should be developed.
- In addition to legislative change, further work is underway to identify what other supports are needed to remove children from custody, such as resources, capacity within secure care, addressing financial barriers, workforce development; training, skills and competence.
- Children should be fully supported throughout the justice process, including during any delays.
- Full analysis of what UNCRC incorporation means in practice in respect of all children in conflict with the law needs to be undertaken, along with addressing of barriers to this.

Legislation:

- The changes proposed by Whiting (2020) should be considered and implemented as necessary.
- Scotland needs to define a child as being under 18 across all legislation.
- Legislative change is needed to enable all children under the age of 18 to access secure care.
- Explore the options for increasing the age in which children can stay in secure care.
- In order for Scotland to respect the rights of all children and stop the practice of detaining children under 18 in YOIs altogether, while ensuring that detention in other settings is always a last resort, various legislative changes are needed.
- UNCRC needs to be incorporated into Scots law.

Training:

- All professionals working with children, young people and families within children and adult services across the care and justice system should have knowledge and understanding of child development, the impact of adversity and trauma, and how to practice in a relational and trauma-informed manner that upholds children's rights. In particular, training regarding mental health and wellbeing, capacity, neurodiversity and neurodevelopmental disorders, and speech, language and communication needs should also be available (Scottish Government, 2021c).
- Multi-agency training in risk practice should be provided, along with post-training support and evaluation of the application of learning to practice as required (Gailey, as cited by Murphy, 2018; Scottish Government, 2021d).
- All practitioners need to be able to understand the justice system in order to impart this information to children and their families and support them throughout their journey through the justice system. They also need to understand the unique position, needs, rights and entitlements that children have within this system. A shared understanding needs to be developed across the broad workforce, supporting children who are on the cusp of or are in conflict with the law.



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- Professionals working across justice services require information, training and support to understand the process, conclusion and options for the progression of cases where there are concerns about an individual's capacity or fitness for trial.
- Across professions, support is needed to understand the currently complex routes to secure care. This includes the interface between criminal legalisation that related to the Children's Hearing System, and the Secure Accommodation (Scotland) Regulations.

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