

CYCJ's response to the Scottish Mental Health Law Review Consultation

The Children and Young People's Centre for Justice (CYCJ) works towards ensuring that Scotland's approach to children and young people in conflict with the law is [rights-respecting](#), contributing to better outcomes for our children, young people and communities.

We produce robust internationally ground-breaking work, bringing together children and young people's contributions, research evidence, practice wisdom and system know-how to operate as a leader for child and youth justice thinking in Scotland and beyond. CYCJ's contribution to the youth justice sector in Scotland was defined in our 2020 evaluation as three-fold:

"...it produces information which is of use, and robust, for its audience; it offers boundary-spanning linkages to break down the silos between organisations, services, and kinds of practice; and it maintains a focus on seemingly intractable issues in the sector, providing a multi-pronged approach to untangling and unsettling the barriers to change" ([Stocks-Rankin, 2020](#), p.2).

In doing so, our focus is on three key activities:

- Participation and engagement: amplifying the voices of children and young people
- Practice and policy development: developing, supporting and improving justice for children and young people
- Research: Improving our understanding of justice for children and young people.

These activities are underpinned and connected by communication and knowledge exchange work, which is focused on improving awareness of evidence in different forms, and supporting dialogue between different perspectives, types of knowledge and viewpoints.

Uniquely we provide support to individual practitioners and, for service development, to develop the vision of youth justice in Scotland and across a resource level, relationship level, and system development level. It is recognised that it is "...the ability to work at the highest echelons on policy making and governance and into the depth and detail of day-to-day practice that makes CYCJ effective" ([Stocks-Rankin, 2020](#), p.2).

CYCJ is primarily funded by the Scottish Government and based within the [University of Strathclyde](#). Our position both within a University and the additionality of funding beyond the Scottish Government are features that support our autonomy.

The team comprises a range of professional roles including social workers, psychologists and researchers, who have fulfilled frontline and managerial positions in social work and social care. Team members have also had experience of receiving, or a close family member or friend having received, social care or social work support. We welcome the opportunity to comment on this important consultation.

This is our response to the [Scottish Mental Health Review consultation](#).

Do you think the current 2003 Act principle for children is still needed? Should it be replaced by a wider principle of respecting all the rights of the child under the UNCRC in any intervention – or something else?

We agree that a specific principle in relation to children should be retained because of their vulnerability and dependence on adults to meet their needs. However, we believe that this should be replaced with a wider principle of respecting all the rights of the child under the UNCRC in any intervention, as suggested. Too often, a wide range of children's rights are impacted as a result of their mental health. This new principle would ensure that these rights are taken into consideration when developing intervention plans.

What do you think about having a statutory duty on Scottish Ministers and health and care agencies to provide for children the minimum standards needed to secure the human rights set out in international treaties such as the UNCRC?

CYCJ believes that having a statutory duty on Scottish Ministers and health and care agencies to provide the minimum standards required would help to ensure delivery of these rights for children. We are also in agreement that this should be extended to all children, whether they are being supported in hospital or at home in the community. In addition, the statutory duty should be extended to ensure those children deprived of their liberty in custody or secure care centres also have the minimum standards met. Evidence is clear that holistic and systemic supports deliver the best outcomes. Therefore, we would recommend consideration of how different agencies and professionals can work together as well as resourcing and staffing to ensure these minimum standards can be met in practice.

Section 260 should be extended so that all children are aware of their rights in relation to the revised mental health legislation in line with Article 42 of the UNCRC.

What are your views on reforming crisis services for children and young people experiencing acute mental distress, and about safeguards for emergency detention?

We agree with the proposal of reforming crisis services. We also agree that there should be provision of safe and child-centred alternatives to admission to psychiatric care. However, these are also required for many children who are deprived of their liberty within secure care centres due to experiencing acute distress and mental health issues (including trauma, attachment difficulties and self-harming behaviours) and a lack of appropriate community alternatives (Moodie & Gough, 2017). A recent 2018 census of children who were placed in secure care in Scotland highlighted that in the year prior to admission to secure care, 30.6% had experienced physical abuse, 28% sexual abuse, 35% emotional abuse, 33% physical neglect, 39% emotional neglect, 9% domestic violence and 30% had witnessed domestic violence. In the year prior to placement 61% had engaged in self-harming behaviour, 30% had attempted suicide and 47% had displayed suicidal ideation (Gibson, unpublished).

Any alternatives should be designed for children and age appropriate. They should be flexible, responsive, available when required and provide the required support for families during crisis times. They should take account of the views of children and families that were involved in the Independent Care Review and align with the resulting Promise Plan.

No child should be admitted to adult or non-specialist wards. The detention should be approved by a mental health officer and reviewed within 24 hours to ensure that detention is in line with Article 37 of the UNCRC and that it is proportionate. Provisions should be built in to monitor the minimum standards.

What you think about law reform to ensure access to CAMH services up to at least the person's 18th birthday, and to ensure age appropriate services more generally?

We fully support law reform to ensure access to CAMHS up until the child's 18th birthday. This would bring the provision in line with Article 1 of the UNCRC. However, we believe that there should be provision made for

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

transitions to be in the best interests of the child and not simply based on a child turning 18. Some children will benefit from longer transition periods or may be coming to the end of their need for support shortly after their 18th birthday - there therefore needs to be some flexibility, especially in relation to those individuals in aftercare and continuing care.

What are your views on our ideas about relatives and families?

The needs of parents and families should be provided for so that they can in turn provide the best support possible for children. As well as this being relevant to ensure Article 5 is respected, it also encompasses Article 18 which states that 'Governments must support parents by creating services for children and giving parents the help they need to raise their children'. Where children have the capacity and are well enough to be able to choose their named person then they should be able to in line with Article 12 of the UNCRC. As previously indicated, supports should be aligned with the Independent Care Review findings and the Promise Plan.

What are your thoughts on how supported decision making, human rights enablement and the autonomous decision making test in chapters 3, 5 and 6 might apply to children and young people?

Supported decision making should absolutely apply to children to ensure their rights under Article 12 of the UNCRC are being upheld and that their views are given due weight in accordance with their age and maturity. This will need to be undertaken in a manner that takes account of the child's development and communication skills and will require professionals to be appropriately trained.

What do you think about our proposals on advocacy, and on accountability?

In relation to advocacy, we agree that every child should be made aware of their right to independent advocacy and that they are able to access this as required. There are some issues in the Children's Hearing System (CHS) where children are not provided with this service as they are unable to opt in due to being incapable, distressed or non-verbal. CHS have established a working group to consider this nationally. A more consistent and joined up approach across the country is required to ensure all children are provided with advocacy and with workers who can support their needs.

We agree that more consistent and coherent oversight and accountability across service provision for children is required. This should fundamentally be based on monitoring whether the minimum standards are being delivered to ensure children's rights are being upheld.

What are your views on autism, learning disability and neurodiversity, and the possible law reforms for children and young people?

We believe that others are better placed to provide views on whether diagnostic criteria within mental health law should include learning disability or neurodiversity. However, we strongly believe that neurodiverse children need to have better access to services appropriate to their needs. Services need to be available to neurodiverse children who come into conflict with the law and be able to respond timeously to any assessment needs where it is thought a child might be neurodiverse, so that children are supported appropriately to understand formal processes and procedures. Appropriate Adults do not provide support for children under the age of 16. Support in these circumstances is provided by a Responsible Adult. The role of a Responsible Adult is defined under the Children (Scotland) Act 1995 as any adult who has legal responsibility for a child, for example a parent, carer or officer of the local authority. Responsible Adults therefore do not necessarily have the knowledge and skills to be able to facilitate effective communication with the police, support children to understand what is happening and be understood during proceedings. This is a significant gap in service provision for children in conflict with the law and could have serious repercussions for outcomes.

What do you think about our proposals on safeguards for treatment, and on services and safeguards to protect the relationships between children and parents?

We are supportive of improved safeguards and the reduction of any coercive/restrictive practices as these can be traumatising and/or re-traumatising and have a greater impact on children due to their age and physical size. There are similar discussions underway in relation to custody, secure care, residential care and educational settings. This work should be aligned to ensure consistent standards across settings.

We would agree that parents and children should never be separated by hospital detention because of inadequate resources in the community. As the Independent Care Review states that “Where children are safe in their families and feel loved they must stay - and families must be given support together to nurture that love and overcome the difficulties which get in the way”.

At this time, Scotland’s mental health law applies to compulsory mental health treatment at all ages. Do you have views on the idea of moving mental health law for children to connect it with other law for children, to apply across health, education and social care?

We agree that there should be better connections across all aspects that impact on a child’s life as they are children first and foremost, and should be responded to as such.