

Children and young people in conflict with the law: policy, practice and legislation

Section 2: Youth Justice in Scotland The roles and responsibilities of key partners

June 2022

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1. Introduction

Youth justice in Scotland involves many professionals, agencies and organisations. This section gives an overview of who is involved, in what capacity, and how they work.

2. Child Protection

At the outset of this section it is recognised that all professionals, regardless of their organisation, have roles and responsibilities in respect of child protection and children's rights. Children who come into conflict with the law are first and foremost, children. Their welfare and protection must be the paramount concern for all agencies involved with the child and their family. Children who come into conflict with the law are more likely than the general population to have experienced child abuse (Bunch, Iratzoqui, & Watts, 2018) and to have been in local authority care (Smith, Dyer, & Connelly, 2014). The Edinburgh Study of Youth Transitions and Crime (McAra & McVie, 2010) has identified that children involved in violent offences are more likely than those who do not offend violently to have been victims of crime and adult harassment and have more problematic family backgrounds. Research has also revealed that 88% of children under the age of 12 who are referred to the Scottish Children's Reporter Administration (SCRA) due to a pattern of offending, have parents who pose a risk to them (Henderson, Kurlus, & McNiven, 2016). These findings suggest that if the emotional, physical, developmental and social needs of children are met and they are protected from abuse and neglect, they are less likely to offend (Arthur, 2004).

The [National Guidance for Child Protection in Scotland](#) was updated from 2014 in 2021, and reinforces the need to assess children holistically, placing a responsibility on professionals to consider all aspects of a child and family's circumstances, including offending behaviour, and the importance of considering how structural factors such as poverty and poor housing can impact on a child's safety and wellbeing. Therefore, all practitioners involved with children and young people in conflict with the law should be trained in their agency's child protection procedures. The updated guidance has a focus on children's rights and human rights, with experiences and views gathered from children and their families/carers informing the guidance.

'Managing Risk of Serious Harm' is the focus of [Section 6](#) on this guide; however, the updated guidance emphasises when Care and Risk Management (CARM) processes can be applied if a child aged between the age of 12-17 years has been involved in an incident of a serious nature. The guidance reiterates that "those children who harm may have been harmed themselves" (Scottish Government, 2021, p. 170) and it is therefore essential that all practitioners working with children in conflict with the law are mindful of this when determining whether a child is at risk of significant harm and therefore in need of child protection measures.

3. Children's Rights

All professionals should be familiar with key policy and legislative developments in respect of children and young people's rights as detailed in [Section 1](#), and should understand their responsibilities in upholding these rights. Children who are involved in the youth justice

system often face considerable challenges in having their rights respected due a wide range of factors (Lightowler, 2020). Since 2004, there has been a [Commissioner for Children and Young People in Scotland](#), whose role includes the protection of children and young people's rights, supporting children and young people's understanding of their rights, and awareness of what they can do if these are not being upheld. Under the [Children and Young People \(Scotland\) Act 2014](#), the Commissioner can investigate whether, by what means, and to what extent, these rights have been upheld by service providers. For example, the Commissioner has powers to consider whether the rights, interests and views of children have been given due weight when such bodies have made decisions or taken actions that affect those young people. This includes young people who have come into conflict with the law and underlines the responsibilities of all agencies to uphold children's rights.

Scotland's progress towards becoming a rights-respecting nation has been aided by the passing of the [United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Bill](#) which, when granted Royal Assent, will mandate that children's rights are privileged and protected in a way that has not been the case thus far. In time, incorporation of the UNCRC is likely to make significant changes to the way in which Scotland responds to children and young people who come into conflict with the law.

4. The Scottish Government

The Scottish Government holds strategic policy and legislative responsibility for key devolved areas of activity that affect day-to-day life in Scotland. Responsibility for youth justice in the Scottish Government lies with the Care and Justice Division. This division is responsible for the development and implementation of national policy through civil servants reporting to Scottish Ministers and the Scottish Parliament. Policy is progressed through the multi-agency [Youth Justice Improvement Board](#), set up in 2015 in order to provide a strategic focus on offending by children and young people. The Care and Justice Division works closely with youth justice professionals through the Youth Justice Implementation Groups, the Children and Young People's Centre for Justice (CYCJ) and the [National Youth Justice Advisory Group \(NYJAG\)](#).

Some policy and legislative issues remain the responsibility of the UK Government. Those with most relevance to youth justice are welfare and benefits legislation, and policy decisions on the level of funding provided through the block grant to Scotland.

Through agreement between the Scottish Government and local authorities, responsibility for the development of services lies with each local authority and is driven forward through their respective [Community Planning Partnerships](#). Through the introduction of a [National Performance Framework](#) in 2018, local authorities must devise strategies which seek to:

- create a more successful country
- give opportunities to all people living in Scotland
- increase the wellbeing of people living in Scotland
- create sustainable and inclusive growth.

The Scottish Government's youth justice strategy - [Preventing Offending: Getting it Right for Children and Young People](#) was published in June 2015, and ran until 2020. It identified three key themes for further work, all of which were supported through working groups consisting of a broad range of partners:

- Advancing the Whole System Approach
- Improving Life Chances
- Developing Capacity and Improvement.

The strategy built on previous frameworks including [Preventing Offending by Young People: A Framework for Action \(2008\)](#) which identified the future priorities for youth justice in Scotland as:

- Whole System Approach
- Victims and Community Confidence
- Extension of Early and Effective Intervention
- Young Women
- Employment
- Reintegration and Transitions
- Managing High Risk.

A new [youth justice vision and action plan](#) was published by the Scottish Government in June 2021. There are two main Implementation Groups as part of this vision (see below).

In 2022 the Scottish Government published '[The Vision for Justice in Scotland](#)', building on the previous vision from 2017, in relation to children and young people in conflict with the law. The Scottish Government aims over the coming four years to include "children and young people who have committed crimes are not held in young offenders institutions" and "children and young people have the appropriate support as they transition to adult services" (Scottish Government, 2022a, p. 28). These aims are welcomed given the high percentage of 16/17 year olds regularly on remand in Polmont YOI (HMIPS, 2021).

In September 2021, the Scottish Government published [A Fairer, Greener Scotland: Programme for Government 2021-22](#), highlighting that all eligible children who are victims or witnesses to abuse or violence will have access to a 'Bairns' Hoose' by 2025. The model will ensure that child protection, justice, health and recovery services are all available under one roof with the objective of co-ordinating and supporting the needs of the child. The overall [vision](#) being:

"All children in Scotland who have been victims or witnesses to abuse or violence, as well as children under the age of criminal responsibility whose behaviour has caused significant harm or abuse will have access to trauma-informed recovery, support and justice." (Scottish Government, 2022a, p. 1).

5. Youth Justice Improvement Board (YJIB)

The [Youth Justice Improvement Board](#) is responsible for overseeing and driving the delivery of the youth justice strategy. The Board is chaired by the Scottish Government and includes senior representation from a wide range of organisations including Police Scotland, COSLA, Scottish Children's Reporters Administration (SCRA), Crown Office and Procurator Fiscal Service, CYCJ, Education Scotland, health and third sector partners. The first meeting of the Board took place in October 2015 and the Board meets at least four times a year.

6. Youth Justice Implementation Groups

The Youth Justice Implementation Groups were multi-agency groups focusing on identifying and promoting effective youth justice practice within the key priorities set out by the Youth Justice Improvement Board. The implementation groups aligned to the Scottish Government strategy and action plan.

Following the publication of the new youth justice vision, [Justice for children and young people - a rights-respecting approach: vision and priorities](#) (2021), the YJIB established two new Implementation Groups to build on the work of the previous strategy, [Preventing offending: getting it right for children and young people](#), which concluded in 2020. Their remits include:

Advancing the Whole System Approach Implementation Group

- Continuing to deliver a reinforced and reinvigorated whole system approach to under 18s - with cohesion and integrity in all its elements, supporting development of the workforce to deliver effective multi-agency partnerships and creating lasting systems and culture change.
- Ensuring that no under 18s, to the extent possible and appropriate, are in Young Offender Institutions, including those on remand, with secure care and intensive residential and community-based alternatives being used when therapeutic trauma-informed approaches are required for the safety of the child or those around them and where community alternatives are available for those who require additional support.
- Extending WSA to those beyond the age of 18, providing access to support up to age 26 where possible and appropriate.
- Raising the age of referral to the Principal Reporter to 18 for all children with a presumption against under 18s in the Criminal Justice System, consistent with the Lord Advocate's prosecution policy. Where this is not possible or appropriate, they must be treated in a way that is trauma-informed and recognises their age and stage of development.

Children's Rights Implementation Group.

- Providing services to children and their families to uphold their rights through all aspects of work, in line with UNCRC requirements and Scottish Government legislation, and monitoring services to ensure rights are being upheld.
- Offering support to children and their families to understand and know their rights so they can exercise them
- Promoting better 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.
- Ensuring that, for those who go through the Criminal Justice System, their experience is meaningful and participative, one which educates, improves, understands and upholds the rights of children and young people.
- Enabling all children and young people to access services to address trauma, abuse, neglect and communication needs.
- Ensuring that professionals/services are taking into account additional support needs, including Speech, Language and Communication Needs (SLCN), to improve their life chances.
- Providing activities and opportunities for children and young people to engage in education, gain employment and to have stable housing options as a necessity
- Improving participation and engagement of children and young people, making sure that they have developmentally appropriate participation opportunities to help shape the decisions, services and supports that affect them. This will include addressing barriers to engagement, providing access to information and processes in language that they understand and taking account of cultural differences or disabilities and any communication needs.

The Children's Rights Implementation Group agreed to the formation of two subgroups to support the remit of the wider group:

1. Speech Language Communication Needs (SLCN)
2. Participation

Minutes from the implementation group meetings can be accessed [here](#). CYCJ provides support for the work of the Implementation Groups, and coordinates the meetings

7. Children and Young People's Centre for Justice (CYCJ)

CYCJ is a [national centre](#) which is primarily funded by the Scottish Government and based at the University of Strathclyde. CYCJ focuses on improving the experiences and outcomes of children and young people in contact with the justice system, working towards ensuring that Scotland's approach to children and young people in conflict with the law is [rights-respecting](#). CYCJ produces research, supports the participation and engagement of children and young people, and undertakes work to improve policy and practice. The team provides direct support and guidance to those involved in the delivery of youth justice services, on issues ranging from early and effective intervention through to high risk cases. CYCJ's team consists of three workstreams: practice and policy development; research; and participation and engagement.

CYCJ is actively involved in the Scottish Government's youth justice priority areas and is tasked with taking forward a number of initiatives to help identify and promote good practice when working with children and young people in conflict with the law. These include:

- Engagement with practitioners and managers from a wide range of backgrounds, to support, further develop and improve youth justice practice
- Supporting a variety of working groups set up by the Scottish Government and other partners in order to drive forward improvement and development in the youth justice sector.
- Delivering a range of training, events and conferences across Scotland, including the annual National Youth Justice Conference and delivering the Postgraduate Certificate on Children and Young People with the Law at the University of Strathclyde
- Ensuring good communication with the Scottish Government, Social Work Scotland and research institutions
- Developing existing links between youth justice policy, research, training and practice
- Production of regular news bulletins, blogs, Information Sheets and research papers to communicate youth justice developments across the country

CYCJ's focus includes supporting the 2021 rights-based vision, with the key outcomes they are working towards involving:

- No under 18s in custody - supported in the community or in secure care (design of new pathways, services and implementation)
- Improved professional awareness and response to Child Criminal Exploitation
- Successful implementation of the Youth Justice and Secure Care Standards
- Improved participation of children, young people and families in justice policy and practice
- Improved participation of and support for child victims in justice processes
- Greater availability of high quality Restorative Justice in education
- Improved responses to 16/17 year olds in hearing system and court
- Improved mental health access and support
- Effective child friendly justice processes and practices for children in conflict with the law across Scotland
- Improved awareness of children's rights across justice contexts/journeys
- Improved understanding of provision to address SLCN for children in conflict with the law
- Greater access to the data and evidence needed to support system improvements.

8. National Youth Justice Advisory Group (NYJAG)

This is a national forum for local authority and third sector managers with responsibility for youth justice to support the development and promotion of effective youth justice practice. Representatives are also invited from SCRA, Police Scotland, COPFS and Community Justice Scotland. The membership of the group reflects the varied approaches of how services are delivered across Scotland, and provides a strategic link between local youth justice representatives and the government to provide policy and strategic direction. NYJAG is guided by an Executive Group made up of representatives from the Advisory Group, Scottish Government and CYCJ. The chair of the NYJAG Executive is a member of the Scottish Government Youth Justice Improvement Board.

9. Local authorities

Children and young people who come into conflict with the law, or who are at risk of doing so, are likely to be known to a range of local authority services. Local authorities may directly provide services for these young people or commission services from third sector agencies.

Local authorities have a statutory responsibility to local communities in relation to working with people who are involved in offending through the Concordat and Single Outcome Agreements. For every child the local authority has a responsibility to ensure that the [Getting it Right for Every Child \(GIRFEC\)](#) core components, values and principles are implemented to promote the wellbeing of every child and support them to reach their full potential. The [Children \(Scotland\) Act \(1995\)](#), [Children's Hearing \(Scotland\) Act 2011](#) and [Children and Young People \(Scotland\) Act 2014](#) enshrine the specific powers and duties of local authorities to protect and promote the welfare of children and young people who are "in need", looked after and care leavers (see also [Section 1](#)). The following sections on social work, education and health detail the roles and responsibilities of these different parts of the local authority.

10. Social Work

[Social Work Scotland](#) is the leadership organisation for social work established in 2014, building on the previous Association of Directors of Social Work. Social Work Scotland represents social workers and other professionals who lead and support social work across sectors. Their vision is for a social work profession across Scotland which is led effectively and creatively; is responsive to the needs of the people they support and protect; is accessible and accountable; and promotes social justice. Social Work Scotland facilitates Children and Families and Criminal Justice Standing Committees.

Local authorities vary in their practice and delivery of youth justice social work services, doing so through specialist youth justice, children and families or criminal justice teams. The continuum of services and range of interventions available for children and young people in conflict with the law in each local authority will differ depending upon local needs, types and patterns of youth offending.

Services include early and effective intervention processes, diversion from prosecution schemes, and alternatives to secure care and custody. Regardless of how services are delivered, there is a need for all staff to have the necessary knowledge, skills and competencies in order to deliver appropriate services and understand the needs of children and young people in conflict with the law. It is also fundamental that all local authority staff understand, and their practice with children and young people is informed by, the GIRFEC approach and Whole System Approach. Staff should also be familiar with the practice framework provided by the [National Outcomes and Standards for Social Work Services in the Criminal Justice System](#).

Youth justice social workers fulfil the local authority's statutory responsibilities for children and young people in need of assessment and supervision in respect of offences, as specified in legislation through the Children's Hearing and Criminal Justice Systems. Within the GIRFEC structure, the youth justice social worker will often be the Lead Professional.

Every child aged under 18 years referred to a Children's Hearing or court on offence grounds should undergo a comprehensive assessment, guided by GIRFEC principles. Assessments and subsequent reports to the court or Children's Hearing should be completed by practitioners working with children involved in offending behaviour, normally the youth justice social worker. The youth justice social worker should liaise with other agencies, including children and family workers as appropriate, to complete a holistic assessment and establish whether there are other relevant factors that should be taken into account and may impact on the child's capacity to engage in offending interventions - for example learning disability, communication needs or mental health issues.

Assessments in respect of offending behaviour should include a structured risk assessment completed using recognised tools and other specialist structured risk assessments as appropriate. There is a move towards a more structured professional judgement (SPJ) approach, such as the use of the Short Term Assessment of Risk and Treatability: Adolescent Version (START:AV). Details of different risk assessment tools can be found in the Risk Management Authority's (RMA) [Risk Assessment Tools Evaluation Directory](#) (RATED). This requires teams working with children and young people involved in offending behaviour to have a sufficient number of practitioners trained in the use of risk assessment tools. Risk assessment forms a central function for youth justice practitioners when supporting children and young people who may pose a risk of harm to others, or themselves. This function is not only relevant when producing Criminal Justice Social Work Reports and reports to SCRA, but in scenario planning for children and young people as their circumstances and environment change. The RMA have provided [guidance](#) regarding this which practitioners may find helpful. Further [guidance](#) on completing Criminal Justice Social Work Reports for Court is also available from the Scottish Government.

All children involved in Children's Hearings or court should have a Single Plan which incorporates any current single agency plans and should directly address needs and risks, including criminogenic needs. The Lead Professional will be responsible for ensuring an agreed multi-agency Single Plan is produced and that agencies have specific roles in respect of this plan (Scottish Government, 2011b).

In respect of Children's Hearings, the youth justice social worker's role will also include attending hearings and implementing the decisions of hearings. In terms of court, this role will include supporting children and young people to understand court processes,

implementing court disposals and may also include supporting the child/young person at court.

There may also be a court-based support worker or social worker, the roles and responsibilities of whom are detailed in the Scottish Government [guidance](#).

11. Education Services

Education services are a key partner in respect of children and young people who are in conflict with the law. The [Education \(Additional Support for Learning\) Act 2004](#) and [2009](#) provides direction for, and places duties on, local authorities to meet the learning needs of all children and young people, including those who offend or are at risk of offending. This is underpinned by the [Curriculum for Excellence](#).

Research has indicated that children and young people who offend into adulthood generally have poor educational outcomes and lack basic literacy, numeracy and reading skills. They are likely to have truanted or been excluded from school, with school exclusion found in The Edinburgh Study of Youth Transitions and Crime (McAra & McVie, 2010) to be a key moment impacting adversely on future offending trajectories. However, positive school experiences and quality attachments to teachers and other educational staff, can play a pivotal role in preventing and reducing the likelihood of offending (Smith, 2006).

The role of educational staff in reducing offending will include:

- Prevention - for example in developing positive relationships, providing appropriate education and meeting additional support needs
- EEI - providing information to EEI multi-agency processes and participating fully in the decision making in terms of appropriate support for the child
- Where the child's main needs lie within education, the Named Person has duties and responsibilities for initiating and developing the Child's Plan, sharing information and coordinating the delivery of support where additional targeted help is needed ([Children and Young People \(Scotland\) Act 2014](#)).
- Being a partner in respect of the Child's Plan where a child is subject to a compulsory supervision order due to offence grounds
- Contributing to assessment and management of risk for children and young people who cause harm to others or who present high risk behaviour or vulnerability.

12. Health Services

The NHS is a key partner in the GIRFEC approach, responding to children's general health and wellbeing needs and more specific needs, such as mental health treatment. In respect of children and young people who are in conflict with the law or are at risk of offending, their roles may include:

- Prevention through the provision of universal health services which are accessible to all children and their families

- Availability of and support to access specialised health services which may address specific difficulties such as mental health issues, substance misuse problems or parenting difficulties associated with youth offending (Scottish Government, 2011a).
- Information sharing - making information available to EEI multi-agency processes and to SCRA which could inform decision making in respect of offending behaviour.
- Ensuring that assessment and appropriate intervention is available for children and young people who are looked after and accommodated
- Contributing to assessment and management of risk for children and young people who commit violent or sexual offences or who present with high risk behaviour or vulnerability.

13. Police Scotland

The police have a duty to protect the public, uphold and enforce the law, and to investigate on behalf of the Procurator Fiscal (PF) where they believe that a criminal offence may have been committed. In respect of young people: “as gatekeepers to the care and justice systems, and as the principal agency which first encounters many problematic children, the police have a key role to play in the delivery of justice for children” (McAra & McVie, 2010:23). This includes ensuring that children and young people involved in anti-social or offending behaviour receive the right supports at the right time provided by the most appropriate service, consistent with the Whole System Approach (WSA). To support this and in keeping with the flexible approach within the GIRFEC framework, the police can offer a range of approaches including direct police measures, making referrals to the local EEI multi-agency processes, and reporting to the Children’s Reporter if the police believe the child needs compulsory measures of supervision or to the PF (Scottish Government, 2011c). This requires close working relationships between the police and a number of other key professionals including the PF, Children’s Reporter, Named Persons and Lead Professionals. Police Scotland is also seeking to collaborate with young people and improve communication and dialogue, such as through the Youth Volunteers Project and Youth Advisory Panel. The Carloway Review (Carloway, 2011) into criminal law and practice made a number of recommendations in respect of child suspects which practitioners should be familiar with.

14. The Scottish Children's Reporter Administration (SCRA)

The Scottish Children's Reporter Administration (SCRA) is a national body focused on children most at risk. SCRA's role and purpose includes making effective decisions about the need to refer a child to a Children’s Hearing, enabling children and families to participate in hearings, and disseminating information and data to inform and influence improved outcomes for children and young people. The Children’s Reporter receives referrals for children and young people who may require compulsory measures of supervision and on doing so, has a legal duty to carry out an investigation to ascertain the nature and substance of the concerns. This will require obtaining reports from schools, social work or other

agencies involved with the child or their family, such as health visitors. The Reporter will then use this information to determine whether there are grounds for referral, which ground is the most appropriate, and highlight the main concern(s) regarding the child.

Grounds for referral are detailed in section 67 of the [Children's Hearings \(Scotland\) Act 2011](#) and more than one ground of referral may be appropriate. On non-offence (care and protection) grounds, the evidential standard is the civil standard of balance of probabilities. For offence grounds, the CHS operates on the same evidential standard as the criminal justice system: beyond reasonable doubt. If there is insufficient evidence with regard to the concerns raised, the Reporter is unable to intervene on a statutory level, although there remain a variety of options such as Restorative Justice and voluntary interventions. If there is sufficient evidence and there is a need for compulsory measures of supervision in order to protect the child, and/or address their behaviour, the child can be referred to a hearing.

15. The Crown Office and Procurator Fiscal Service (COPFS)

COPFS is responsible for the prosecution of crime. The PF considers all crime reports submitted by the police and/or other specialist reporting agencies. The PF will make a decision on whether to take action based on a range of factors including sufficiency of evidence, seriousness of offence, interest of victims and witnesses, age and conviction history of the offender, and whether prosecution is in the public interest. The PF has a duty to ensure effective and consistent use is made of the range of prosecuting options and alternatives to prosecution including issuing a warning, fine, or use of diversion from prosecution including reparation and mediation. These factors and the range of prosecuting options are set out in the COPFS 2001 [Prosecution Code](#). The Code recognises that for cases involving children accused of committing an offence, the UNCRC is relevant and that in all such cases the best interests of the child shall be a primary consideration.

There are various categories of offences that, if alleged to have been committed by a child, require to be "jointly reported" to the Procurator Fiscal and the Children's Reporter by the police, as specified in the [Lord Advocates' Guidelines](#). Under the [Joint Agreement in Relation to the Cases of Children Jointly Reported to the Procurator Fiscal and the Children's Reporter](#) the presumption is that children aged under 16 years will be referred to the Children's Reporter in relation to the offence. This is also the position for those aged 16-17 and who are subject to a CSO. If COPFS consider it is in the public interest to prosecute the child, in overriding this presumption, COPFS require to consider a range of factors, such as sufficiency of evidence, the gravity of the offence, pattern of offending and whether services within the Children's Hearings System (CHS) could work with the child in relation to their offending behaviour or offending related needs.

In 2019 COPFS issued internal guidance which made a number of changes in the manner in which they respond to criminal matters (Gibson, 2019). These have been summarised in a [CYCJ Info Sheet](#).

For young people aged 16 or 17 - and not on a CSO - it is the rebuttable presumption that the PF will deal with the case by way of offering a Diversion from Prosecution service. For

those aged 18 and over, diversion from prosecution will now be considered as an option should the merits of the care warrant it. Fuller details can be found in [this guidance](#).

In January 2022, the Scottish Sentencing Council published the [sentencing young people guideline](#) which states that rehabilitation should be a primary consideration when sentencing a young person aged 25 years or below. Therefore, sentencers need to now consider the intellectual and emotional maturity of the child or young person at the time the offence was committed, given that children/young people are more susceptible to peer pressure, less able to make good judgements, take more risks and be less able to consider consequences of their actions in comparison to think about the consequences of their actions, compared with an older person.

16. Community Justice Scotland (CJS)

[Community Justice Scotland](#) is the national organisation responsible for community justice across Scotland that formally launched in April 2017. Community Justice Scotland's role is to identify and promote best practice and work closely with a range of partners to develop expertise, provide advice and support improvements to prevent and reduce offending in Scotland.

17. Secure Care

Secure accommodation provides locked facilities for children who present risks to their own safety and/or others, that cannot be managed within the community. The routes into secure care can be complex, as outlined by Nolan (2019). Children can enter secure care through the CHS if they meet the requirements as stipulated in section 83 [Children's Hearings \(Scotland\) Act 2011](#) or through court, either on remand or having been sentenced. Whilst the ambition must be to have no child in Scotland in secure care, for the very small number of children whose needs can only be met in secure care, a high quality and nurturing environment that meets their needs and improves their outcomes must be provided. Under current funding arrangements, the cost of placing a sentenced child in secure care is met by the Scottish Government but if a child is placed on remand or through the CHS, this cost is the responsibility of the child's local authority. Section 83(5)(c) of the [Children's Hearings \(Scotland\) Act 2011](#) specifies that all other options available, including a [Movement Restriction Condition](#), must have been considered prior to secure accommodation being utilised. In Scotland, secure care is provided and managed by third sector providers, with the exception of Edinburgh City Council which operates its own secure accommodation. Further information on specific services provided by different units and how secure care establishments are inspected can be found on the [Care Inspectorate](#) website.

Secure care can offer clear benefits in affording children a safe, secure environment with a full range of services provided to ensure needs can be met, which facilitates assessment and care planning, and the opportunity for a range of interventions to be provided to support behavioural changes for children (Scottish Government, 2011a). Historically research indicated outcomes for children leaving secure care were poor (Kendrick et al., 2008), which has led to an enhanced focus on outcomes for these children (Scottish Government, 2011a). This has included efforts to ensure outcomes to be worked on while a child is in secure care are agreed on admission via Individual Placement Agreements and at the initial 72 hour

review meeting, with outcomes being recorded (Scottish Government, 2011a). Moreover, in recognising that children leaving secure care should have the best opportunity to succeed when returning to their community, additional focus has been paid to planning for a child's move out of secure care as soon as they enter, to ensure individual needs and risks are assessed and holistic and tailored interventions are provided, as well as to improve transitions and reintegration back into the community (Scottish Government, 2011a). The Head of Unit will be the child's Named Person during their period in secure care, with the responsible local authority retaining the role of Lead Professional. Further issues to consider are detailed within [Section 6](#) of this practice guide.

In 2020 the [Secure Care Pathways and Standards Scotland](#) were launched, having been co-produced by children and adults with experience of secure care, and other stakeholders in the sector. It charts the support that ought to be provided before, during and after a period of time within secure care. As such, it is relevant to children who do not enter secure care at all, but for whom practitioners and others may hold significant concern.

18. Children in Custody

Should a child aged 16 and 17 who is not subject to a Compulsory Supervision Order (CSO) be remanded or sentenced to a period of custody, they may be held in a YOI, rather than secure care. Decisions about where a child is placed should take full account of the child's needs and circumstances, although it is generally agreed secure care is a more age-appropriate placement facility for children under the age of 18 years than a YOI. However, cost differences are significant and have been found to adversely influence decisions (Lightowler, Orr, & Vaswani, 2014). Under [Article 37\(c\) of the UNCRC](#), children under the age of 18 years should be detained separately to adult offenders in recognition of their unique needs and stage of development. Children who are on remand should also be kept in a separate environment to sentenced young people, given that they remain innocent until proven guilty (Office of the Commissioner of Human Rights of the Council of Europe (OCHR), 2009).

[The Prisons and Young Offenders Institutions \(Scotland\) Rules 2011](#) apply to prisons and Young Offenders Institutions (YOIs) and those detained in any such facility. All prisons and YOIs are inspected [by Her Majesty's Inspectorate of Prisons for Scotland](#), and copies of inspection reports can be found on their website. Outcomes for children who have been detained in custody tend to be poor. For this reason, the Scottish Prison Service (SPS) has committed to a new Vision for Young People in Custody (Scottish Prison Service, 2014) and more broadly Unlocking Potential: Report of the Scottish Prison Service Organisational Review (Scottish Prison Service, 2013). Planning and undertaking work to address the causes of offending behaviour while children are in a YOI and on release is crucial. As with secure care, the responsible local authority should maintain the role as Lead Professional during the child's period in custody (Scottish Government, 2011a). Practitioners should also consider the content of [Section 6](#) when supporting a child or young person involved in a transition from one setting to another.

19. Third Sector Organisations

The third sector comprises various voluntary and community organisations, charities, social enterprises, co-operatives and mutuals who undertake a range of activities on both a national and local basis. They are non-governmental, value-driven organisations, who principally reinvest any financial surpluses to further social, environmental or cultural objectives.

In Scotland, a wide range of third sector organisations work with children and young people to provide a diverse spectrum of services and programmes for young people who are in conflict with the law, or who are at risk of being so. Services and support can be provided through a range of methods including group work, one-to-one support and mentoring, and include:

- Information, support and services as part of early intervention packages
- Supporting diversion from the youth and criminal justice systems
- Specialised assessments and interventions with young people who present significant risks in the community
- Secure care provision
- Throughcare support on release from custody
- Addressing issues that are recognised to impact on future reoffending such as housing, employability and substance misuse
- Advocacy
- Family support
- Participation projects
- Restorative Justice
- Specific services to support young people from minority ethnic backgrounds, with learning support needs and girls and young women (Criminal Justice Voluntary Sector Forum, 2014; The Robertson Trust, 2012).

In doing so, third sector organisations aim to contribute to improving outcomes for children and young people reducing reoffending, providing holistic support, addressing equality issues and working effectively in partnership with other agencies. In recognition of the difficulties in awareness and identifying appropriate services, the Scottish Government is further developing a web based 'national directory of services for offenders' (Criminal Justice Voluntary Sector Forum, 2014). Third sector organisations and statutory agencies, including local authorities, the police and health services, have worked to develop effective relationships at both strategic and operational levels. Public Social Partnerships (PSPs) developed under the Reducing Reoffending Change Fund between third and public sector organisations to provide offenders with one-to-one support through mentoring schemes, are one example of such joint working (Clark, Simpson, & Shipway, 2013). In Reducing Reoffending Change Fund PSPs, the partnerships are led by a third sector organisation and an evaluation has been completed of how Development Funding has been used by each PSP in the first year to develop plans for service delivery in years two and three (Clark et al., 2013).

The third sector can pilot new approaches, identify and provide services which meet needs unmet by the public sector, provide additional support to improve the effectiveness of work done by public sector agencies and contribute to joined-up, holistic support (The Robertson

Trust, 2012). However, factors including lack of long-term funding, competition for funding between third sector organisations, and the unequal relationship between the public and third sector are challenges that can negatively impact on the effectiveness of third sector organisations in achieving their goals (The Robertson Trust, 2012).

20. The Promise

Following the conclusion of the Independent Care Review in 2020, [The Promise](#) implementation body was set up in order to drive forward the changes outlined and mandated within the Independent Care Review's final report (also named [the promise](#)). With an expected lifespan of ten years, The Promise aims to support varied actors across Scotland to promote practice, policy and culture in order that Scotland's children and young people grow up in a country that is loving, safe and respectful, and which allows them to realise their full potential.

Published in 2021, the [first plan](#) highlighted a number of priorities that it seeks to achieve over the years 2021-24. These are as follows:

- The right to a childhood
- Whole family support
- Supporting the workforce
- Planning
- Building capacity

Whilst the work of The Promise encompasses a broad range of activities that do not directly impact upon children and young people who come into conflict with the law, at times it will make a direct impact upon the youth justice landscape, with the redesign of Children's Hearings, secure care, court and the unnecessary criminalisation of children in the care system all featuring within the conclusions of the promise.

Within the field of justice settings, The Plan 21-24 seeks to address the following:

- The disproportionate criminalisation of care experienced children and young people will end
- Sixteen and 17 year olds will no longer be placed in YOIs for sentence or on remand
- There will be sufficient community-based alternatives so that detention is a last resort
- Children who do need to have their liberty restricted will be cared for in small, secure, safe, trauma-informed environments that uphold their rights

The Promise Change Programme ONE considers the work undertaken and any progress made to reaching the five priority areas of change which must be completed by 2024. In June 2021, Change Programme One reiterated the need for investment in community-based support for children and young people in conflict with the law. [Keeping the Promise Implementation Plan](#), published in March 2022, reiterated this in its key actions: "We will end the placement of 16 and 17 year olds in YOIs without delay. We will fund care-based alternatives to custody and consult on new legislation in Spring 2022. This will provide the support children need in very difficult circumstances, shifting the approach from one of punishment to one of love and support" (Scottish Government, 2022b, p. 6).

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