

EXPLORING JUSTICE INEQUALITIES

for children in conflict with the law

Preliminary Scoping Review

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INTRODUCTION

Children in conflict with the law are often some of the most vulnerable or disadvantaged in society. They have often faced significant adversity during childhood, including abuse, loss, bereavement and trauma, as well as inequality, discrimination and disadvantage. The Equality Act (2010) sets out a number of protected characteristics which are:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

It is unlawful to discriminate against someone because of a protected characteristic. We also know that these characteristics can affect how children engage with justice systems. However, there is little research or data published in Scotland about children in conflict with the law and protected characteristics and so the extent and understanding of the issue for children in conflict with the law is limited.

This project was funded by internal Faculty funds at the University of Strathclyde. The funding was used to recruit a PhD student to undertake a brief scoping review. The purpose of this preliminary review was to explore and consider the existing data and research literature in relation to inequalities in the justice system for children in conflict with the law who possess protected characteristics. This aim was to help identify any knowledge gaps and to shape future research priorities.



METHOD



This review was, by necessity, a brief, rapid and preliminary review of the literature that exists in relation to protected characteristics. It does not purport to be systematic or fully complete review of the literature. The original intention was to review only the previous five years in order to provide an up-to-date snapshot of research published about children (aged under 18) in Scotland, or the UK. However, due to limitations in the literature, this search was at times expanded in scope to include young people (aged up to 25), literature that was more than five years old, or relevant research from outside of the UK.

For the review, only seven of the protected characteristics have been explored. The protected characteristics not included were marriage and civil partnership and pregnancy and maternity as these were deemed less likely to apply to children under 18 in conflict with the law. For pragmatic reasons, each protected characteristic has been dealt with in-turn. However, it is acknowledged that these characteristics do not exist independently of each other and will intersect with each other for young people in conflict with the law. We also recognise that people are not a homogenous group within characteristics. Furthermore, poverty is not a protected characteristic, yet from our experience we acknowledge it as a significant issue for children in conflict with the law. As such, we returned to the review at the end to consider and incorporate issues related to intersectionality and the experience of poverty, as well as relevant international human rights treaty articles under the United Nations Convention on the Rights of the child (UNCRC).

AGE

UNCRC Article 1: For the purposes of the present Convention, a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.

UNCRC Article 3.1: In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

UNCRC Article 40.1: States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

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- Current age thresholds relating to children in conflict with the law in Scotland have been identified as a clear child rights concern across multiple domains. The Age of Criminal Responsibility (Scotland) Act 2019 came into force in December 2021 – raising Scotland's age of criminal responsibility from 8 to 12 years old. However, the current age is still below the 'at least 14 years old' recommended by the United Nations – see General Comment No.24 (2019).
 - There has also been particular concern in Scotland around the number of 16- and 17-year-olds appearing in adult criminal court settings, due to legislative disparities for children according to their age (Independent Care Review, 2020, p. 41; Unicef UK, 2020). Lightowler (2020, p. 57) highlights that: "For those 16- and 17-year-olds who are not subject to a Compulsory Supervision Order, yet still defined as a child under Article 1 of UNCRC, there remains the anomaly that they do not have access to the Children's Hearing System."
 - Most children, as a result of their age and stage of development, will face additional challenges in accessing and participating in justice, yet effective participation is seen as a core component of a fair trial (Liefwaard & Kilkelly, 2018).

Intersectionality / Links with poverty and other protected characteristics

- Children in Scotland, and around the world, are more likely to live in poverty than adults and are more vulnerable to its effects (Unicef, 2022). In Scotland, around one-in-four children are estimated to live in poverty, and the proportion has risen over the course of the COVID-19 pandemic and is predicted to increase further (Scottish Government, 2022a).
- Children in conflict with the law are disproportionately likely to live in deprived areas. Almost two-thirds (63%) of children aged 12-15 who were referred to the Children's Reporter on offence grounds in 2018-2019 were identified as living in the most deprived areas in Scotland (SCRA, 2022).
- Children from socioeconomically disadvantaged backgrounds are more likely to be visible in public spaces, are more likely to come to the attention of police and are more likely to be criminalised compared to their less disadvantaged peers, even for similar behaviours and offences (McAra & McVie, 2005, 2015).

DISABILITY

UNCRC Article 23.1: States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

UNCRC Article 40.1: States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society. 2.b.vii Every child should have the free assistance of an interpreter if the child cannot understand or speak the language used

General Comment No.24: "Children with developmental delays or neurodevelopmental disorders or disabilities...should not be in the child justice system at all, even if they have reached the minimum age of criminal responsibility. If not automatically excluded, such children should be individually assessed." (para. 28).

- There was more data and guidance in relation to supporting children in conflict with the law with disabilities, than for many of the other protected characteristics. However, disability statistics for children in conflict with the law tended to focus on learning disabilities, or difficulties associated with neurodiversity, such as Autism Spectrum Disorder, or ADHD, rather than other forms of disability. Data does suggest an overrepresentation of children with these disabilities in justice systems. At least one-in-three of children in the justice system are estimated to have neurodiversities, compared to around one-in-six of the general population (Kirby, 2021). Almost one-in-five (19%) of children aged 12-15 and referred to the Children's Reporter of offence grounds were recorded as having a disability, with social, emotional and behavioural disability being the most common type of disability (SCRA, 2022)
- The Criminal Justice Disability Project – Final Report (Scottish Government, 2018) outlines key recommendations for improving standards for disabled people within the justice system – but it does not reference children specifically. While the report does mention autism and learning difficulties, it is heavily focused on hearing difficulties. It does not consider or acknowledge the wide spectrum of physical and learning disabilities, as well as speech, language and communication needs (SLCN), which are experienced by those involved in the CJS. There was a discussion of access issues for those with physical disabilities, but this tended to be for accessing courts with no mention of other aspects of the justice system. Throughout the report, there was a lack of service user voices and opinions, and a lean towards improving the experiences of victims of crime based on disability, access for reporting crime and safeguarding of staff.
- In Scotland, there is guidance on 'Supporting Disabled Children, Young People and their Families' (Scottish Government, 2019), which has a section on justice. Again the emphasis is on victims of bullying or hate crime and how to report it. While there is some reference to children who have offended there is no specific guidance on how to best support access to and participation in justice.

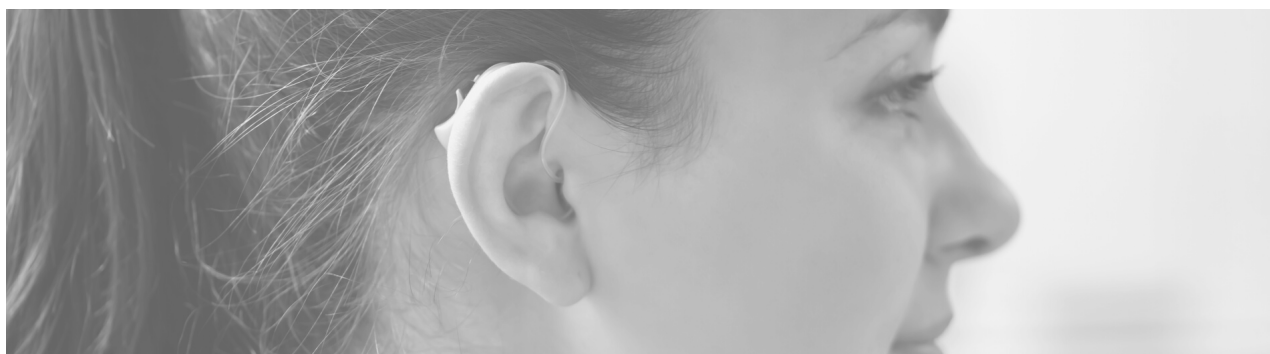


Speech, Language and Communication Needs

- SLCN is very common among children in conflict with the law, with upwards of 60% of young people in justice settings having SLCN (RCSLT, 2023). Often going unnoticed or undiagnosed, SLCN can result in reduced ability to engage in settings and supports that prevent contact with the justice system in the first place - i.e. school or support interventions which are often verbally based - and actively increases the risk of criminalisation due to a difficulties in constructing a coherent narrative, remembering details, or making eye contact (Vaswani, 2014) as well as participating in justice. Important for justice inequalities, difficulties in processing and following the requirements of court orders can lead to an increased likelihood of imprisonment.
- Supporting disabled children, young people and their families (Scottish Government, 2019) contains information and resources to help explain to young people how the Criminal Justice System works and what to expect, but these are generic and not tailored to young people with learning disabilities or difficulties, neurodivergence or SLCN. Guidance in relation to SLCN appears limited to advising how those who are deaf and hard of hearing can contact the emergency services.

Learning Disabilities and learning difficulties

- Almost a quarter of the children (23%) referred to the Scottish Children's Reporter had a learning difficulty, with attention deficit disorder (ADD) being the most common. Boys were twice as likely to have a learning difficulty than girls (13% girls; 26% boys) (SCRA, 2022).
- Loucks (2007) estimated that between 20% and 30% of prisoners had a learning difficulty or disability which negatively impacted their experience within the CJS. People with learning difficulties or disabilities are less likely to be able to understand criminal justice proceedings, and, therefore, unable to fully participate in interviews and court hearings (Marshall-Tate, 2019). People with learning difficulties and disabilities may have trouble understanding, and therefore complying with community orders, resulting in poorer outcomes and an increased risk of a prison sentence for breach of order (Loucks, 2007).



Mental Health

- A mental health condition is deemed a disability under the Equality Act 2010, if it interferes with daily functioning or quality of life.
- Research with children attending a Youth Offending Service in England found high levels of self-reported and unmet mental health needs, and significant barriers to accessing mental health supports (Walsh, Scaife, Notley, Dodsworth, & Schofield, 2011).
- Research exploring the mental health needs of children at a high risk of harm to themselves or others found that “on average children, although not formally diagnosed, displayed symptoms of four psychiatric diagnoses per person, with 64% of children displaying four or more. Symptoms of attachment disorder (92%) and post-traumatic stress disorder (75%) were overwhelmingly represented in this group” (CYCJ, 2022, p. 4).
- An expert review into mental health provision at HMP&YOI Polmont (HMIPS, 2019) concluded that there were high levels of mental health needs, higher levels of self-harm and suicide than in the community, and a lack of proactive attention to the needs, risks and vulnerabilities of those on remand and in early days of custody. There were also systemic interagency shortcoming in information sharing across the justice system, which comprised the care provided to children and young people in relation to their health and wellbeing needs.
- However, a later Pre-Inspection Health and Wellbeing Survey (HMIPS, 2021) developed for under 18s at Polmont, found that: nearly half of respondents reported feeling stressed and anxious all of the time and one-third reported feeling always concerned about their mental health, with one-quarter reporting concerns some of the time. Most respondents did not have enough to do to keep themselves busy. This was one of the children’s biggest concerns, with children feeling that being restricted to their cells for long periods had a detrimental effect on their health and wellbeing.
- The report 'Understanding the Mental Health Needs of Scotland’s Prison Population' (Scottish Government, 2022b) reported a notable evidence gap in relation to understanding the extent and scale of mental health needs in young people under the age of 21 in prison.

Intersectionality / Links with poverty and other protected characteristics

- Over 30% of people with SLCN who receive no treatment have been found to develop mental health problems later in life, compounding the level of adversity they experience (Heritage, Virag, & McCuaig, 2011)
- Communicative competence occupies a unique place in the lives of children, as it is of interest both as a predictor variable and an outcome variable with respect to mental health (Law, Reilly, & Snow, 2013).
- A 2005 study into the Pupil Level Annual School Census for 6.5 million students aged 5 to 16 years in England found that poverty and gender had strong associations with the overall prevalence of Special Educational Needs (Strand & Lindsay, 2009).
- Poverty rates are consistently higher for people with disabilities (Joseph Rowntree Foundation, 2020), than without, whilst a recent report from Scotland (Joseph Rowntree Foundation, 2022, p. 30) has found that “Families where someone is disabled have little leeway to cover rising costs.”
- Adjei et al., (2022), using longitudinal data from the UK Millennium Cohort study which followed 11564 children to age 14 years, found that compared with children exposed to low poverty and adversity, children in the persistent adversity trajectory groups experienced worse outcomes; those exposed to persistent poor parental mental health and poverty were particularly at increased risk of socioemotional behavioural problems.
- In Scotland, there is a notably higher prevalence of additional support needs (ASN) among children living in the most deprived 20% of families. For example, six times as many children in the most deprived families are identified as having social, emotional and behavioural difficulties compared with the least deprived families (Joseph Rowntree Foundation, 2016).
- The link between the criminal justice system and poor mental health is particularly strong for those who were raised in areas of social disadvantage (Sugie & Turney, 2017).

GENDER REASSIGNMENT

UNCRC Article 2.1: States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. 2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members

UNCRC Article 24.1: States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

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- The placement of transgender people in prisons has become somewhat of a controversial topic in the UK, with high profile political, public and media debate. In Scotland, the SPS decides the placement of transgender people based upon an individual risk assessment, rather than on the possession of a GRC or any blanket policy. Maycock (2022) acknowledges that the SPS policy has been subject to some criticism, in particular in relation to the impact on cisgender females, he also notes that this is not based on empirical engagement with transgender people or other people living or working in custody.
 - Maycock (2022) notes that the stigma, discrimination and exclusion experienced by many transgender people in the community is experienced even more deeply in prison, and that there were specific pains of imprisonment due to their transgender status. At the time of his writing a small number, but a sizeable proportion of transgender prisoners were not held within the estate that aligned with their lived gender. Transgender prisoners found it harder to continue on their transition journey, which was at times viewed with suspicion, or even prevented from transitioning by prison officers.
 - Research and debate has mainly centred on adult prisons, and it is not possible to ascertain the number of transgender children in Scottish YOI. In the US, research suggests that young people who identify as transgender or gender-expansive are disproportionately incarcerated and are treated differently from their non-trans peers (Mallon and Perez, 2020).

- There is very little research that explores transgender children’s experiences of the justice system prior to entering the prison estate, or policy and practice guidance that supports transgender children through the justice system more generally. However, it has been noted that transgender children often report poor experiences within health and social care settings (Hudson-Sharp, 2018).

Intersectionality / Links with poverty and other protected characteristics

- Stonewall (2022) reported significantly higher rates of mental health issues in people who identify as LGBTQ+, including depression, anxiety, self-harm, suicidal ideation and suicide. The rates of mental health issues were highest in transgender and non-binary children. The reasons for this were often attributed to bullying, discrimination, stigma, hate crime, or rejection. The same report found that children who were LGBTQ+ and disabled, or from minority ethnic backgrounds, experienced even poorer mental health.
- While there was limited research that explored intersectionality and justice in the transgender community, the Stonewall report (2022) found higher rates of school exclusion or truancy among transgender children, and young people felt that their experiences affected their academic attainment and future prospects. These experiences therefore likely increase the chance of contact with the justice system and lower income in adulthood.



RACE

UNCRC Article 2.1: States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. 2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

- An increasing body of literature exists within England and Wales concerning disproportionality within the youth justice system for children from racialised communities. An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System (Lammy, 2017) identified the youth justice system as being the biggest area of concern, and that disproportionality occurred throughout all stages of the justice process, from pre-justice pathways such as school exclusions, throughout to stop-and-search, arrest, prosecution and rates of imprisonment. This racial disparity deepened over the course of the COVID-19 pandemic (Lympferopoulou, 2022).
- In 2021, the Youth Justice Board for England & Wales found that “even when taking into account all available information (demographics, offence-related factors, remand status and practitioner assessments) we are unable to explain all of the disproportionality seen for Black children. Black children are still more likely to receive harsher sentences” (YJB, 2021, p. 10).
- The unfair treatment of Black youth in the justice system can be clearly seen using the example of Stop and Search by police. Black identifying individuals are almost ten times more likely than White people to be stopped and searched by police and Black children aged 10-17 are four times more likely to be arrested than White counterparts (Robertson & Wainwright, 2020).
- Children from racialised communities are over-represented in the justice system in England and Wales, as 18% of the general population can be classified as from a minorities racial group, compared to 52% of children in custody. Overall, White children experience the criminal justice system more positively than children from BAME backgrounds (JUSTICE, 2021).
- Gypsy and Roma Traveller children are over-represented in the criminal justice system as they make up 0.1% of the population but 7% of YOIs and 12% of Secure Training Centres (JUSTICE, 2021).

- There are few studies which explore race and justice specifically in a Scottish context, with most of the work published in a UK or English context, and even fewer studies focused on children (Scottish Government, 2021). There are also gaps around sentencing outcomes and the courts meaning there is significant scope for more research to be done in these areas.

Intersectionality / Links with poverty and other protected characteristics

- Almost half (46%) of all children from racialised communities in Britain are living in poverty (Runnymede Trust, 2023). This figure rises to 48% in Scotland (Cebula & Evans, 2021)
- HM Inspectorate of Probation (2021) produced a report 'The experiences of black and mixed heritage boys in the youth justice system'. Of the cases examined in the report, where black or mixed heritage boys were sentenced to court, 60% had been excluded from school, a third had suffered from criminal exploitation and a quarter (where this was recorded) possessed a disability.
- Police Officers are more likely to be based in schools in deprived areas or where there are high numbers of children from a minorities ethnic background. This increases the likelihood of being criminalised in school, including stop and search (Runnymede, 2023).
- Whereas 98% of Scottish school leavers complete their education with at least one qualification at SCQF Level 3, only 76% of Gypsy/Traveller pupils reach this basic level. (Riddell, 2022). These experiences will have an impact on future opportunities and prosperity.
- In England, the Department for Education (2022) found that rates of free school meals eligibility in 2022 were highest among pupils in the Traveller of Irish heritage ethnic group (63.3%) and Gypsy/Roma ethnic group (51.9%). Rates were lowest among pupils of Indian (7.5%) and Chinese ethnic groups (7.8%).



RELIGION OR BELIEF

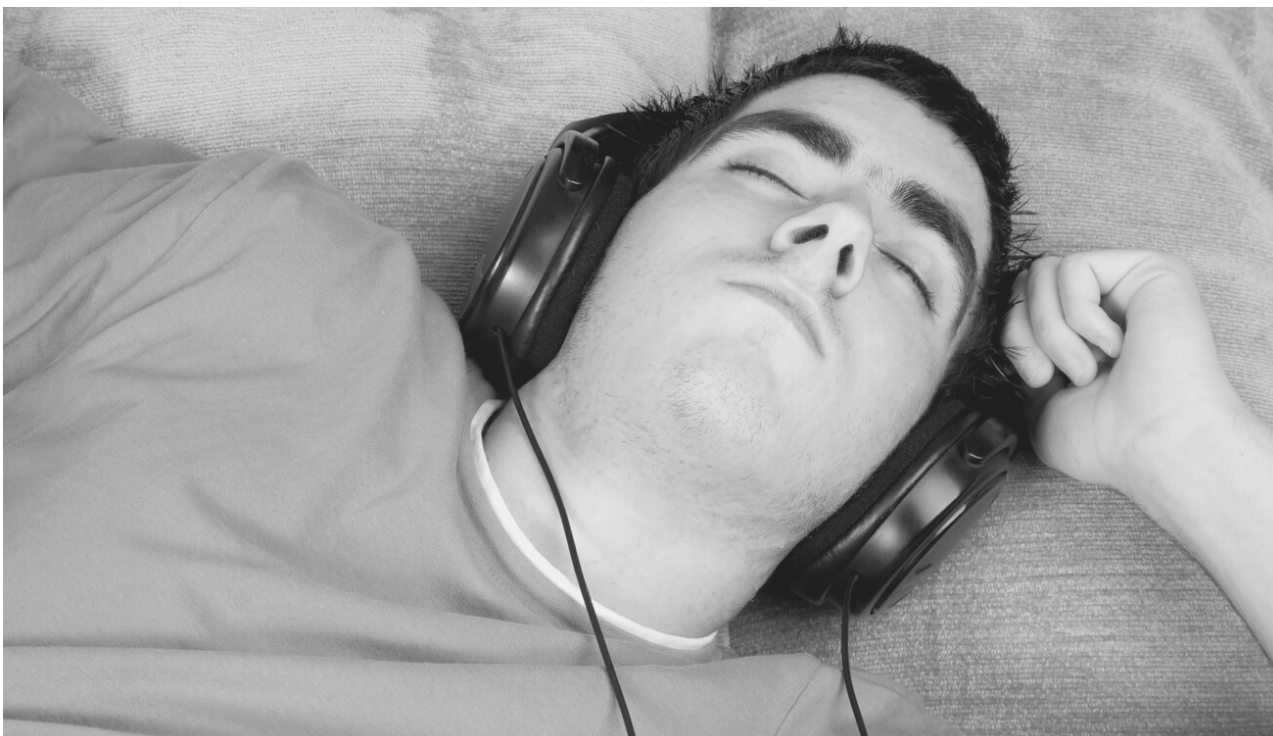
UNCRC Article 14.1: States Parties shall respect the right of the child to freedom of thought, conscience and religion. 2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child. 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

UNCRC Article 30: In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

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- Transition to adulthood (T2A Alliance, 2016) note that people who identify as Muslim make up 4.4% of the population in England and Wales, but 13% of those in prison and 22% in Young Offender Institutions (YOIs).
 - Wright et al. (2015) that Muslim prisoners – Black and Mixed origin Muslims in particular – consistently report the least positive experiences of prison life. T2A (2016, p. 7) also found that young Muslim men experienced negative experiences at every level of the justice system. “Many recognise that subconscious or otherwise, there is a problem with unconscious bias and stereotyping towards Muslim men on the part of criminal justice agencies. There is also a recognition that the different aspects of an individual’s life are not understood especially in the case of a young Muslim man. These will include the nature of family and community relations, mental health, culture and religion.” .
 - The Young Review (2014, p. 33) Improving outcomes for Black and Muslim men in the criminal justice system found that Muslim prisoners reported experiences “that were clearly the result of, at best, a lack of cultural competence and at worst prejudice and racist stereotyping.”
 - Qasim (2018) highlights sociostructural factors and religious discrimination that can account, in part, for high levels of criminalisation of young Muslim men in the UK. Qasim also found that young Muslim men in custody experienced hostility and racism, but also that their devotion to their religion intensified in custody and played an important role in terms of providing structure to their day as well as comfort.

Intersectionality / Links with poverty and other protected characteristics

- As Parmar (2016) observes "...despite the salience of religion in discourses about crime and terrorism, analyses about the intersection between racism, Islamophobia and criminalization are largely missing in mainstream criminological debate". There is even less research in relation to children and the intersection between their belief systems and other protected characteristics.
- In comparison with the relationship between ethnicity and poverty, there has been very little research focusing specifically on religion (Crisp et al., 2014). Although their research did not consider children, Crisp et al., found that Muslims, after taking account of their ethnic background, are more likely to be in poverty than are members of other religions or those with no religious affiliation. The increased risk was 18 percentage points compared to those with no religion. Access to employment and low pay were key factors. The study did not look at children, but reported that the number of dependent children was linked to poverty in all households, and accounted for a small element of the increased poverty risk in Muslim and Catholic households.
- Stonewall (2022) report that LGBTQ+ children of faith are more likely to have attempted suicide compared to LGBTQ+ children of no faith.



SEX

UNCRC Article 2.1: States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. 2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

UNCRC Article 24.1: States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services. 2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: (d) To ensure appropriate pre-natal and post-natal health care for mothers.

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- The Commission on Women Offenders Report (2012), highlighted that prison was not meeting the needs of women in custody, many of whom were vulnerable, and on short-sentences that disrupted their family life and limited their future prospects. The report concluded that (p5) “historically, the criminal justice system has developed around the characteristics of male offenders due to their larger numbers and higher risk profiles. We found that services which target the offending and rehabilitative features and characteristics of women offenders are not consistently provided throughout Scotland.” Recommendations included: better mental health provision, problem-solving courts, smaller community-based and specialist units, and gender responsive services.
 - However, there is also an over-representation of boys and men in justice systems, with around 95% of the prison population in the UK comprised of cis-gender males (Ministry of Justice, 2021; Scottish Prison Service, 2020). In relation to children, there are often no girls held in the prison estate in Scotland (CYCJ, 2022). This suggests that the welfare and justice systems are not meeting the needs of boys and young men either.

- When looking at the impact of trauma on justice experienced people, the majority of research tends to focus on girls and women, instead of boys and men (Vaswani, Cesaroni, & Maycock, 2021), resulting in a lack of data and understanding around the causes and consequences of trauma for males in the justice system. There are no gender-specific services for boys and young men in prison, despite masculinities being implicated in higher rates of violence and lower success with health, wellbeing and rehabilitative services (De Viggiani, 2012), thereby increasing the risk of further criminalisation.
- Although there are the concerns about the moral policing of girls and women, an analysis of sentencing patterns for assault, burglary and drug offences in England and Wales found that males were twice as likely as females to receive a custodial sentence for a similar offence (Pina Sanchez and Harris, 2020). The report did not look at children specifically.

Intersectionality / Links with poverty and other protected characteristics

- Scottish school exclusion statistics for 2020-21 (Scottish Government, 2021b) reveal that the exclusion rate is more than three times higher for male pupils (18.2 cases of exclusion per 1,000) than female pupils (5.3 cases of exclusion per 1,000).
- Official criminal justice statistics treat gender separately so there is little means to understand how gender and ethnicity intersect in criminal justice statistics (Parmar, 2017).
- Poverty is a gendered issue. Globally women are significantly more affected by poverty than men and the gender pay gap in Scotland is 15%. However, UK data highlights that boys are more affected by the poverty related attainment gap than girls, with reduced attainment and entrance to university (Education Scotland). However, this does not necessarily translate into increased poverty in adulthood.



SEXUAL ORIENTATION

UNCRC Article 2.1: States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. 2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

- Data from the US suggests that people who identify as LGBTQ+ (lesbian, gay, bisexual, transgender, queer) are over-represented at each stage of the US criminal justice system, including the youth justice system (Jones, 2021). This is hypothesised to be as a result of their experiences of discrimination, bullying, hate crime or their need to flee abuse and rejection from family and the subsequent adoption of survival behaviours.
- The UK lags behind when it comes to capturing data on LGBTQ+ people who offend, disadvantaging this population due to lack of understanding and visibility of their paths into criminality (Woods, 2014). Knight and Wilson (2016, p. 85) state: "There are a number of problems when looking at LGBT people as offenders, the first being the almost complete absence of data." Benoit, Jansson, Millar, and Phillips (2005) have theorised that the hidden nature of this population could go some way to explaining why there is so little research into LGBT people as offenders.
- HM Inspectorate of Prisons (2018, p. 67) found that young offender institutions were a "...hostile environment for gay and bisexual boys..." who reported bullying from staff and other prisoners because of their sexual orientation.
- Fernandes, Kaufmann, and Kaufmann (2020) conclude that prison is dehumanising, traumatising and at times dangerous for people who are LGBTQ+ and that their needs are frequently not met. They also observe that more research is required on the experiences of LGBTQ+ prisoners in youth offending institutions to be better prepared to support LGBTQ+ young people in environments where trust can be fostered between young people and staff.

Intersectionality / Links with poverty and other protected characteristics

- LGBT Youth Scotland (2022) produced a report Life in Scotland for LGBT Young People - 1279 participants took part in the research (13 -25 years old). 77% of participants said they suffered from anxiety, 54% from depression, 50% had suicidal thoughts or actions.
- England and Wales Census 2021 statistics (ONS, 2023) reveal that: those aged 16-24 were the most likely to identify as lesbian, gay, bisexual or another minority sexual orientation (6.9%).
- LGBTQ+ youth are over-represented when it comes to homelessness in the UK (Nugent et al., 2022).



POVERTY

UNCRC Article 27.1: States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development

- Poverty is not a protected characteristic and did not initially form part of this review. key poverty-related factors have been presented alongside the individual protected characteristics. However, some additional data of relevance is listed below.
- Scottish school exclusion statistics for 2020-21 (Scottish Government, 2021b) reveal that rates of exclusions per 1,000 pupils were almost four times greater for pupils living in the most deprived 20% of areas, compared with pupils living in the least deprived 20% of areas, as defined by the Scottish Index of Multiple Deprivation.
- A study into ACEs, places and inequality (Jahanshahi, Murray, & McVie, 2021, p. 767) concluded: "that, in the presence of ACEs, the direct impact of poverty at the household level on childhood offending is difficult to detect; however, living in persistent poverty at the neighbourhood level remains a key predictor of childhood offending, and has an interdependent relationship with some types of ACEs that deserves further attention."
- Gibson (2020, p. 41) concluded that "put bluntly, it is generally the poorest and most socio-economically disadvantaged children who enter the secure estate." following his research which showed that 80% of children placed in secure care by a Scottish Local Authority experienced relative poverty and often come from homes within the most deprived areas of the country.
- A report for the Youth Justice Improvement Board (Robinson, Leishman & Lightowler, 2017) found that two-thirds of children in prison came from the most deprived 20% of communities in Scotland.
- Analysis of Police Scotland use of Fixed Penalty Notices during the COVID-19 pandemic found that they were disproportionately issued to children and young people, with one-fifth issued to people aged under 21, and were twelve times more likely to be issued to people living in the most deprived communities compared to the least deprived (McVie, 2020).

GAPS

- An absence of research concerned with children in conflict with the law, and in particular that which documents children's voices and perspectives.
- There is almost no research that explores protected characteristics and children's experiences of community-based justice, despite the vast majority of children in conflict with the law never entering the prison estate.
- An absence of Scottish data and research.
- Limited research that explores protected characteristics through an intersectional lens. There is some research that considers overlaps between characteristics but none that approaches this using intersectionality to explore interactions and interfaces with justice.
- Few researchers have advanced knowledge about how intersectionality can be applied to the research process or to understanding how and why identities connect in the way they do (Parmar, 2017).



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