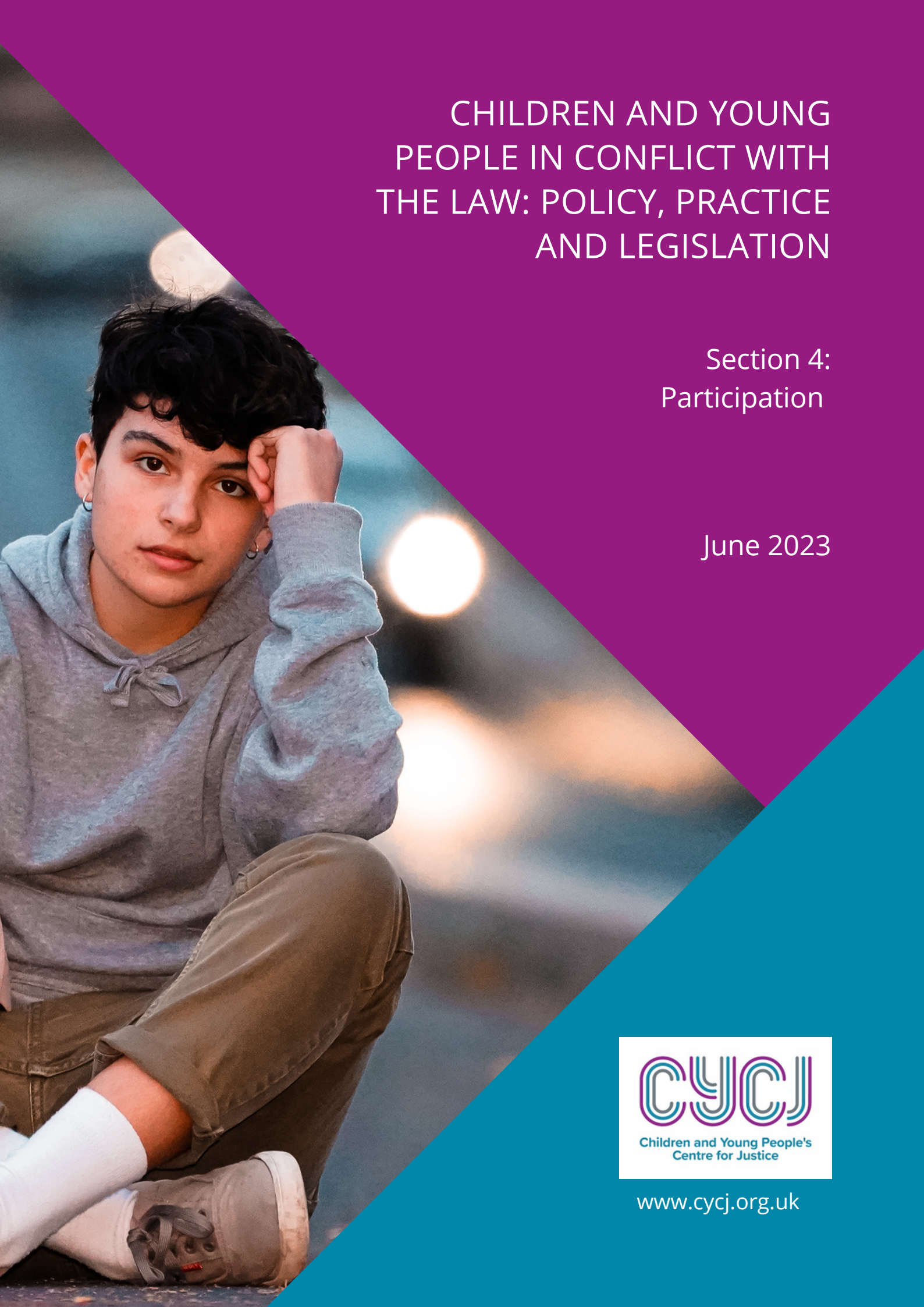


# CHILDREN AND YOUNG PEOPLE IN CONFLICT WITH THE LAW: POLICY, PRACTICE AND LEGISLATION

Section 4:  
Participation

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## Introduction

Having received minimal attention for a number of years, participation is gradually becoming a key tenet of Scotland's response to children and young people in conflict with the law. It is not only a moral and ethical right, but a means by which children and young people can develop as individuals (Morrison & Gibson, 2017) whilst shaping public policy and other decisions affecting their lives (Byrne & Lundy, 2019).

Rooted in community education and learning and development, the participation of individuals within their community - be that communities of identity or geography - has been adopted in a variety of settings in order to aid democracy and public empowerment. Moreover, it is "recognized as a means of tackling poverty, inequality and discrimination, empowering citizens, building strong communities and achieving social change" (Packham, 2008).

In Scotland, the work of '1000 Voices' during the [Independent Care Review](#) involved seeking out and listening to the voices of those who sought to share their views with the review. The membership of the ten workgroups included a large proportion of children, young people and adults who had experience of the care systems and a number who had experience of Scotland's justice systems. Their contributions were invaluable, changing the perspective of debate that had often been dominated by practitioners. This process led the Independent Care Review to conclude that:

"Scotland must listen to care experienced children and young adults in the delivery, inspection and continuous improvement of services and of care. Scotland must never again have to commission a review or a Judicial Inquiry on this scale because participation and listening must form part of everything within Scotland's system of care."

(Independent Care Review, 2020, p. 37)

Participation should not be thought of as an 'add-on' or an additional piece of work, but rather as a key component of ethical and effective service provision (Haines & Case, 2015; Weaver, Lightowler, & Moodie, 2019). However, participation across the youth justice sector is yet to fully mature and embed itself (Smithson & Jones, 2021); making participation a routine element of practice requires a significant change to the culture of Scotland's workforce and organisations (Independent Care Review, 2020) with particular skills required in order to actively and effectively facilitate such practices. [The Promise](#) may well affect that change in time. Whilst some local authorities and organisations have made tentative steps in that journey through reporting on successes and sharing learning, the need for greater urgency in making significant progress has been highlighted (The Promise, 2022). To support practitioners to make similar strides this section highlights research, ideas and literature relating to participation - along with commentary relating to experience from [STARR](#) and [Youth Justice Voices](#) - to support the establishment of effective, ethical and meaningful participation across Scotland.

## 1. So what is participation?

The term participation is both nebulous and vague. This contributes to confusion and uncertainty over what participation is across the workforce (Sinclair, Vieira, & Zufelt, 2019); despite a general agreement that this sort of practice is the right thing to do, there is limited confidence amongst the workforce as to what it actually is (Collins, Sinclair, & Zufelt, 2020). Moreover, practitioners within the youth justice sector often lack the required skills and confidence to practice in a participatory and creative manner (Creaney, 2014).

Practitioners may rightly point to children's space and opportunity to express their views at children's hearings or review processes, where important decisions are made regarding care planning and interventions, as examples of a child's right to express oneself being honoured. However, these scenarios are at the individual, micro level. Not only that, research suggests that children's right to express their opinions, and have those opinions be given due weight, is not always honoured as it ought to be (Porter, 2019), thus hindering their ability to participate.

True participation is not merely the presence of the child's views in these formal fora; it has the potential to lead to greater opportunities for enacting agency and power over the structural, organisational and systemic decisions that impact upon the lives of children. Yet participation does not mean that children are placed in a position of complete authority or are responsible for making final decision on policy or organisational practice. Rather, true participation involves the opportunity for children and young people to influence change, to contribute to debate, to affect decision making processes and to achieve a degree of power in otherwise marginalised situations (Kosher & Ben-Arieh, 2020). With the support of a skilled facilitator, participation is the means by which children and young people are assisted to shape and influence decisions at a macro level.

This can take many forms (as will be described in this section) but can include one-to-one conversations, group work, art, sport, music or opportunities for children and young people to join decision making bodies and contribute to their deliberations.

Children who are engaged in risky behaviours (Gazit & Perry-Hazan, 2020) and those in conflict with the law, are often denied this opportunity, suffering the double-bind of being excluded due to their age, in addition to their involvement in behaviour that has been deemed illegal by society (Byrne & Lundy, 2019). Paradoxically, whilst youth justice practice has often veered towards responsibilisation, there is a reluctance to respect the agency of children once they have come into conflict with the law (Kosher & Ben-Arieh, 2020). This is within the context of public attitudes which regard adolescent children as menacing, risky and difficult, and thus not yet 'worthy' of having their rights respected (Nugent Brown, 2017; Valentine, 2019).

## 2. Voice

Traditional youth justice interventions and support have been described as something that is done *to* a child or young person, rather than *with* them (Case & Haines, 2014). Participation, on the other hand, seeks to put the child at the centre of structures that support them to express their opinion, to articulate beliefs and - should they wish - influence decisions.



Whilst the voice of a child is central to the act of participation, it is not the act of enabling a child to have a voice. As [Maloney](#) states:

“Participation is not about giving young people a voice. They already have that. Participation is about letting children and young people’s voices have real weight. It is about recognising that every young person has the right to be actively engaged in the making of decisions that will influence their lives.” (Maloney, 2018: para 8)

Echoing that, one former member of the Children and Young People’s Human Rights Defenders group says:

“Ah yes, the old ‘giving [group] a voice’ chestnut. Spoiler alert: people with lived experience (of anything) already have a voice! You don’t give us a voice! Your job is to help us get that voice to the right people!”

This, in its purest and most simple form, is the essence of participation. It concerns itself not with the act of giving voice, but rather of listening, echoing and amplifying. It is then for those in positions of power to listen, and to act.

### 3. Legislation and policy drivers

As Scotland strives to “Keep The Promise”, to address [legislative hurdles](#) regarding the implementation of UNCRC and to become a [rights-respecting](#) nation, greater attention and focus has been given to the role that Article 12 plays in the lives of children. Article 12 of the [UNCRC](#) states the following:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

The [Children and Young People’s Commissioner’s office](#) summarise this succinctly, stating that children “have the human right to have opinions and for these opinions to be heard and taken seriously.”

There are other international agreements which relate to children and young people’s participation in decision making processes. Amongst these is the [United Nations Guidelines for the Prevention of Juvenile Delinquency \(The Riyadh Guidelines\)](#), Article 50 of which calls for voluntary participation in programmes and plans, and states that “Young persons themselves should be involved in their formulation, development and implementation”.

The importance of participation as a distinct component of Scotland’s response to The Promise and UNCRC incorporation is illustrated by its prominent position within the 2021

[standards](#) for those working with children in conflict with the law, and the creation of a [Participation and Engagement Strategy](#) by the Children and Young People's Centre for Justice (CYCJ). Similarly, the Scottish Government [commissioned a group of young people](#) to help shape and define the 2021 [Youth Justice Vision and Action Plan](#), whilst the [Secure Care Pathway and Standards Scotland](#) were co-produced by children, young people and adults who had experience of secure care.

Participation has featured in Welsh youth justice practice for close to two decades (Haines & Case, 2015) and is slowly becoming a feature of youth justice practice in England, reflecting greater attention and appreciation of children's rights (Case & Hampson, 2019; Smithson & Jones, 2021). That being said, there are still considerable challenges across the British Isles (Smithson, Gray, & Jones, 2020). These include competing demands and priorities in a landscape contoured by managerialist and KPI-driven practice (Smithson & Jones, 2021), and a lack of structure (Smith & Gray, 2019).

For many practitioners in social work the concept of participation may sound familiar – similar to existing terminology such as client-centred practice service user voice and other such terms. However, including a child's views within Children's Hearing paperwork is, whilst essential, not a meaningful form of participation; it does little to address the macro and structural factors that impact upon the child's life, nor is it an effective way to ensure their voice is listened to, as Porter (2019) has shown.

Whilst these steps are important, they are fairly limited in their impact, and their engagement of the child. Rap, Verkroost, and Bruning (2019) point to a variety of practical and organisational issues that hinder true participatory measures being adopted within child protection and welfare assessments. Included within these are uncertainty over legal rights, practitioners' capacity, and gatekeeping by adults. In a study of practice in formal reviews, Roesch-Marsh, Gillies, and Green (2017) report that children felt more able to participate in such meetings: when they were comfortable that those attending had been informed of what to expect; when they had some degree of authority over who attended and where it took place; and when they had received support following previous meetings to understand the decisions that had been reached. As those authors stress, children's participation in meetings such as this is built upon on relationships, and practitioners should strive to develop these in order to encourage the child's participation.

The developments noted above are set against a backdrop of greater policy and legislative attention to the role of citizens in the decision-making processes which affect them. The [Christie Commission](#), for example, made a number of recommendations regarding the greater role of community participation in the design of services. The [Community Empowerment \(Scotland\) Act 2015](#) creates more opportunities for citizens to engage in debate over local matters, leading to the creation of [National Standards for Community Engagement](#) which applies to people of all ages.

## 4. Benefits of participation

The benefits of adopting a participatory approach which incorporates the views of those engaging with justice systems are many and varied. Amongst these are the promotion of inclusion and social justice, increased credibility and efficacy of the service, and an aid to the process of desistance (Weaver et al., 2019). It is an approach which can improve the

planning and organisation of youth justice services and thus improve their efficacy (Haines & Case, 2015). That in turn can support youth justice teams to deliver support which assists children and young people to avoid reoffending (Deering & Evans, 2020).

At an individual level the process of desistance is aided not only by introducing new social networks, but by facilitating opportunities for personal growth and supporting a change in both personal and social identity (Weaver et al., 2019), whilst research has shown that involvement in participation projects has led to greater engagement and compliance with legal orders (Haines & Case, 2015). Jump and Smithson (2020), for example, describe the positive impact that sport-based participatory activities have upon groups of young people, including aiding in the process of desistance. Smith and Gray (2019) similarly note the benefits of participatory approaches in addressing offending behaviours. Whilst desistance and prosocial behaviours are not an aim of participation projects and efforts, they are a welcome by-product (Haines & Case, 2015) and can lead to increased self-confidence and self-esteem (Creaney, 2014).

The case for creating opportunities for people involved in the justice system to voice their opinion and influence change is therefore manifest, serving the interests of all involved.

## 5. Forms of participation

Participation work can take many forms, with children exercising greater or lesser degrees of influence over the process itself, and the resultant decision making. The approach adopted will depend on the aims of the activity and the particular needs of those taking part.

### 5.1 Groups and individuals

Whilst much of the literature relating to participatory practice refers to groupwork, it is likely that some children and young people will choose to opt-in on an individual basis due to a number of reasons. This should be welcomed. It could be the starting point for them joining a larger group, or it may be the most appropriate and desired option for that individual. Use of social media, messaging services and digital communication should also be considered in order to make participation activities as accessible as possible. There are no definite 'rules' in this regard so it is therefore incumbent upon practitioners and organisations to adapt their practice to that which best suits the children and young people in question (Morrison & Gibson, 2017).

### 5.2 Consultation

Public consultation is another means through which children and young people can attempt to influence decisions. Cook (2015) warns of the overuse of consultation, with children and young people desiring to see change happen, and to influence practice directly. Experience from the Youth Justice Voices project has shown that once established, repeated requests are made of the group from external organisations. This should be welcomed and used as an opportunity for the members to influence these organisations if they choose. However there needs to be a meaningful purpose behind these endeavours, an expectation that feedback loops will be closed, and remuneration or benefit exchanged for the expertise of the members involved. Youth Justice Voices have therefore produced [a brief guide](#) which

has been used to inform organisations as to how best to frame their requests, and which may prove useful for those wishing to create their own project.

### 5.3 Child/young person-led

Creating a plan for participation projects can be something of a chicken and egg situation: without a group with whom to create a plan it won't be possible to adopt that approach, whilst a plan that is not rooted in the views and opinions of the target audience may fail to garner the necessary attention and uptake.

Ultimately the direction that a participation project takes ought to be decided by the children and young people themselves. Cook (2015) highlights a variety of approaches suggested by children and young people with experience of the care and justice systems. Amongst these are peer support, peer education, youth groups and involving children and young people in a variety of organisational roles and opportunities.

Citing examples of youth-led projects in England, Smithson and Jones (2021) note that participatory workshops and events could incorporate music, art, sport and other activities. A similar approach has been adopted here in Scotland through the Youth Justice Voices project (Kerracher, 2020), whilst Weaver et al. (2019) provide further discussion on this subject that may help practitioners.

### 5.4 Participatory Budgeting

Another means by which people can be provided with an opportunity to directly influence decision making is through Participatory Budgeting, with participants put in a position to decide which project or funding application is successful. Whilst the uptake of the approach has been limited across Scotland, it does offer a democratic and participatory approach to public finance that varies greatly from the approach traditionally taken by elected officials (O'Hagan, MacRae, O'Connor, & Teedon, 2020). Participatory Budgeting approaches have recently been adopted when working with children and young people in North Ayrshire, leading to a [number of recommendations](#) on how to make such an approach succeed. This could prove a simple means by which members of a community are able to directly influence decisions; however, preparatory work is essential in order to first engage the target audience or community.

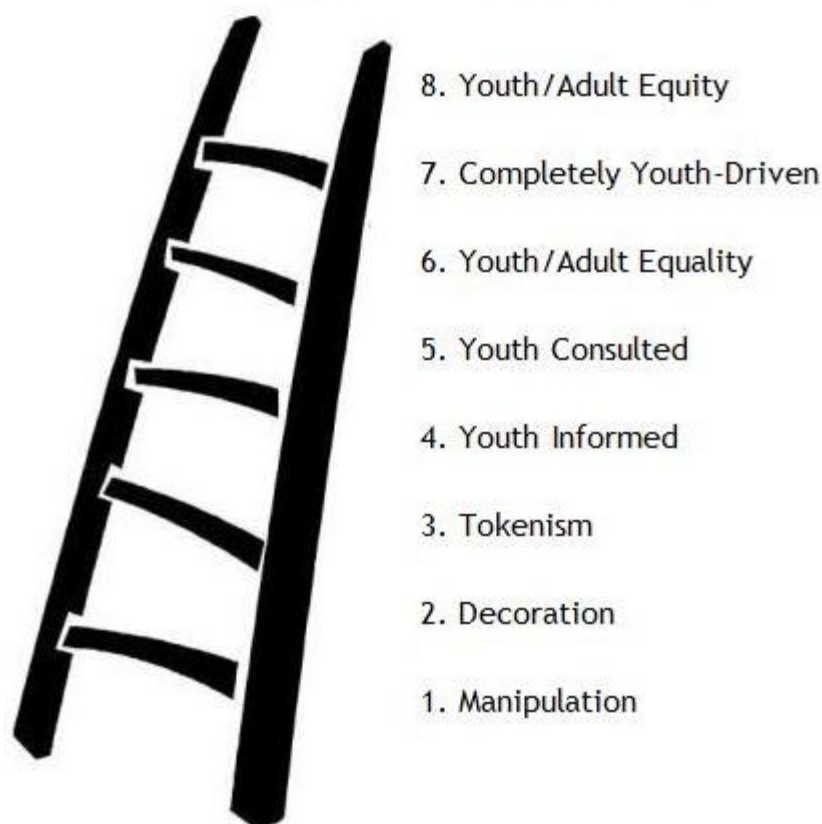
### 5.5 Peer Mentoring

Peer mentoring provides opportunities for children or young people to develop relationships with one another, learning from one another and acting as a support. The mentor's conduct and attitude can make them positive role models, thus supporting the mentee to develop pro-social lifestyles, attitudes and so on (O'Connor & Waddell, 2015). Opportunities to link with someone who has themselves been involved in the justice system has been shown to be particularly effective within the youth justice arena. Not only does it provide opportunities for influence, but it has led to personal growth and change (Creaney, 2020a). Training to become a peer mentor is available, with [Move On](#) recently linking with members of Youth Justice Voices to provide training.



## 6. Theories of participation

Predominant theories within the field include Hart's (1992) ladder of participation. Building on Arnstein's theoretical framework, the model has clear parallels with the UNCRC, stating that participation is a "fundamental right of citizenship" (1992, p. 7) and offers a theory through which to develop child participation by introducing a contextual ladder. Hart's ladder categorises participation into distinct areas; these can be easily distinguished as either meaningful or merely decorative, non-participatory and tokenistic (Shier, 2010).



Hart's theory suggest that participatory approaches can take one of the above noted forms, with the lower rungs (1-3) deemed non-participatory and thus to be avoided.

Arnstein (1969, p. 216) stresses the unequivocal need for a "redistribution of power" as a prerequisite for participation; without such, children cannot be seen to bear equal value in decision-making processes (Lundy, 2019). Devoid of power redistribution, children may be given opportunities to contribute and have their voice heard but will not have the opportunity to influence the subject matter or outcomes (Arnstein, 1969; Larkins, Kiili, & Palsanen, 2014) thus giving rise to disadvantageous, non-participatory practices such as manipulation, decoration and tokenism (Hart, 1992).

Cahill and Dadvand (2018) note that Hart's model may lead practitioners to view the 'higher' rungs of the ladder as superior to those at the bottom, yet this linear view of progression does not consider the social and cultural factors that can impact upon the process. The

authors therefore advocate for a broader consideration of the dynamics involved in participatory work, namely: purpose, positioning, perspective, power relations, protection, place and process. Lundy (2019) also queries whether there is a role - at times - for approaches that may appear tokenistic, but which may have longer terms benefits.

One model which CYCJ adopted in their Participation and Engagement Strategy is [Lundy's model of participation](#) (Lundy, 2007).

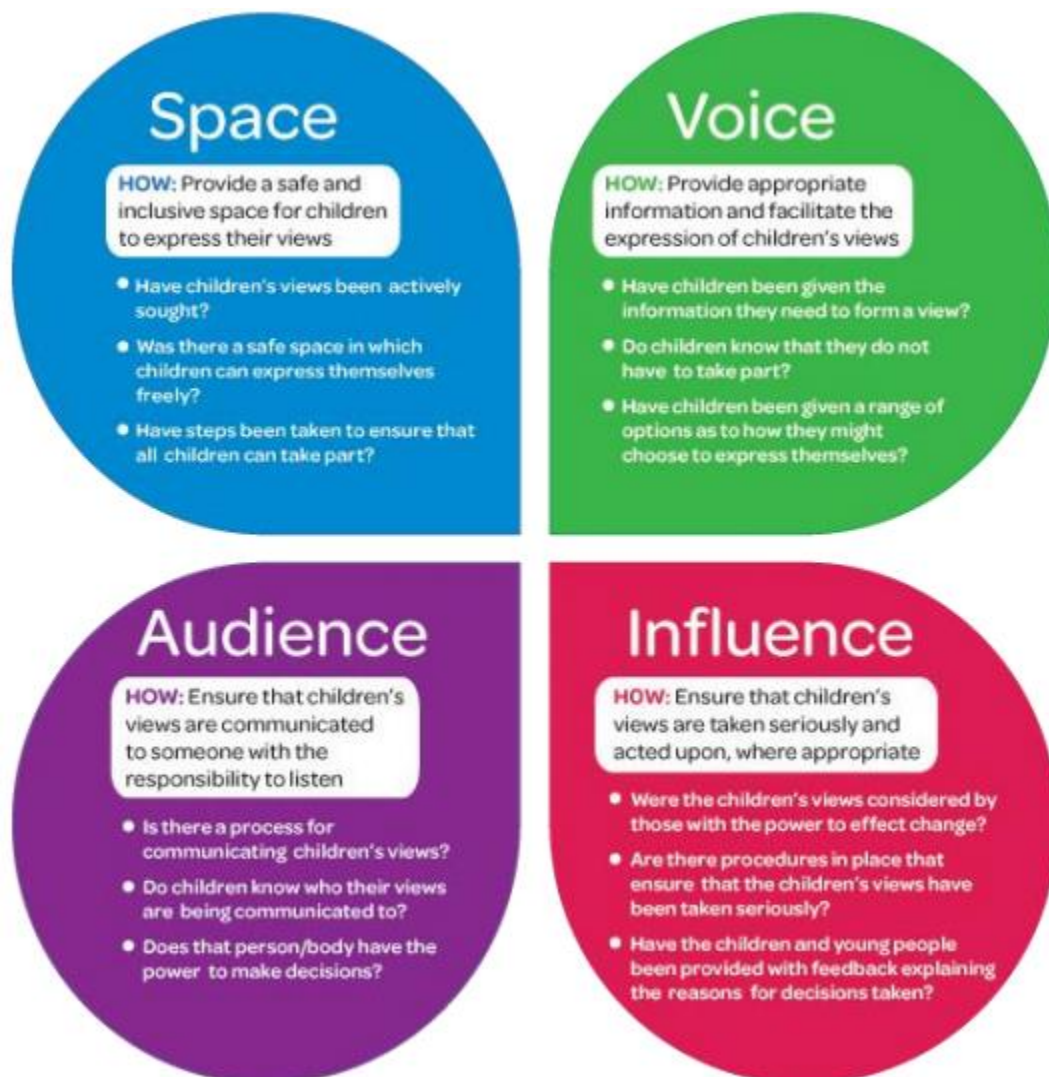


Image replicated from [here](#).

Building on the recognition that children and young people *already* have a voice, the model calls on adults to create a safe space where the child feels comfortable and capable of expressing their opinion. Not only that, but an audience of those with a degree of power should be brought together to hear this voice, and the opinions expressed should be given due weight and respect in order to influence the decisions that are reached. Sinclair et al.

(2019) note that the impact of participation activities can be even more profound when opportunities are found to include those in positions of power in the audience - the children then have the opportunity to speak directly to those who wield power and make decisions that affect their lives.

As an example of how this may work in practice, the four components of Lundy's model could be adopted in order to help a local authority devise a strategy over community resources through a participatory event with children who come into conflict with the law.

Component	Things to consider	How this could be addressed
Space	<p>Do children feel welcome in the venue where this will take place?</p> <p>Is the event accessible to all children?</p> <p>Have territorial concerns been considered?</p> <p>Do they have the option of opting in and out as they choose?</p>	<p>Use a space that is not associated with one group or another, such as a community hall, sports hall or perhaps a school. The venue should be made welcoming, with facilities, food, and activities that will make the children and young people feel at ease.</p>
Voice	<p>Do the children know what the purpose of the event or project is?</p> <p>Have they been supported to have the necessary information about the topic?</p> <p>Do they feel comfortable expressing their opinion?</p> <p>Who is setting the agenda of the event?</p>	<p>A one-off event is unlikely to achieve what is desired, so preparatory work in the weeks prior to the event should be undertaken. Relationships may need to be developed and maintained. Through this, a non-partisan account of the various issues should be provided which educates the children and young people.</p>
Audience	<p>Will decision makers be present?</p> <p>Who will listen to the views expressed?</p> <p>Are they in a position to influence decisions?</p>	<p>Ensuring that decision makers have 'bought in' to the concept of participation may require persuasion and encouragement, although incorporation and adherence to The Promise ought to assist in this regard.</p> <p>If not physically 'in the room', facilitators should consider how best to convey the message from the children and young people to decision makers.</p>
Influence	<p>How can you ensure that the views expressed are considered?</p>	<p>A commitment from those in power to consider the views</p>

	How will the decision be conveyed to the children and young people?	<p>expressed at the event should be given at the outset.</p> <p>Ensuring that feedback on what influence their views had upon the decision-making process is essential. A process through which this is undertaken should be agreed in advance.</p>
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The degree to which these endeavours are merely tokenistic, or achieve the levels of co-production and co-design that is to be aspired to, greatly depends on the political will of those in power (Collins et al., 2020). As such, securing buy-in from senior management and leaders within the organisation seeking to develop their participatory practice is of paramount importance.

## 7. Participation principles

Those facilitating participation projects and events should consider the following principles during all stages. In doing so, the practitioner may be able to avoid the myriad issues that prevent children and young people from feeling included and listened to.

### 7.1 The importance of time

Ross, Kerridge, and Woodhouse (2018) note that short timescales, amongst other things, are a limiting factor in opportunities to engage with children and young people. This is particularly true for those whose voices are 'seldom heard', specifically younger children, young men and children and young people with additional support needs such as communication difficulties. Not only do children and young people with experience of the justice systems fall within this category of seldom heard voices, but there is an ever-increasing awareness of the prevalence of Speech, Language and Communication Needs (SLCNs) amongst this population (Fitzsimons & Clark, 2021)

Whilst short timescales are recognised as a barrier to participation and engagement with all groups, they are likely to have a disproportionate impact upon groups whose members require additional time to build relationships and trust. Planning well in advance of any particular event or deadline is therefore important, and the more time allocated to doing so the better.

### 7.2 What is this time for?

- 1. Identification:** Children and young people with experience of the justice systems are not restricted to secure care or Young Offenders Institutions. There are issues around particular groups being missed out of consultation, or finding themselves over-consulted, or only consulted on issues seen as specific to 'their group'. In order to give children and young people with justice experience the chance to be involved in participatory processes - see Golden Rule 3 below - they must first be identified



within community settings. This can be challenging, but is certainly achievable with adequate time.

2. **Informed consent:** It is essential that children and young people are given the chance to be involved, but also that they understand what they are getting involved in, as articulated in Golden Rule 4 below. Transparency, through the sharing of developmentally appropriate and accessible information about the purpose and process they are being asked to participate in, as well as the anticipated impact their views may have, is essential. The better-informed people are about a process, the more equipped they are to decide whether or not they want to be involved.
3. **Relationship building and establishing trust:** Meaningful and successful participation is more achievable when grounded in trusting, respectful relationships (van Bijleveld, Bunders-Aelen, & Dedding, 2020), a view echoed by the authors of CYCJ's Participation and Engagement Strategy. Dedicating time to relationship building as a core and routine step in any participatory process can yield profoundly positive results, both in terms of overall outcomes, and perceived experience. Consistency and continuity in terms of both engagement and approach are also highlighted by children and young people as core to developing effective, open and honest relationships (Kerracher, 2021; van Bijleveld et al., 2020).
4. **Overcoming personal barriers:** As human beings we seldom excel at something the first time we try it. For children and young people who are engaging in these processes for the first time, they may have some barriers to overcome, or need to practice their participation skills. Things like low self-esteem or lack of confidence can be critical barriers to participation; it can take time for children and young people to develop trust in themselves and their own voices, as well as those of the supporting adults (Ross et al., 2018). Children and young people may also require time and support to develop the skills and confidence to engage in more traditional meetings, conferences and similar platforms.
5. **Feedback loop:** Mindful that children and young people with experience of the justice systems may be mistrusting of those in authority, practitioners should foster and encourage trust through open and honest communication. This includes advising participants of what impact their views have had on decisions, conveying messages from decision makers to the participants and encouraging dialogue between them (Ross et al., 2018).

### 7.3 Seven Golden Rules of participation

The Children and Young People's Commissioner's Office have published material to explain the '[7 Golden Rules of Participation](#)' which might prove useful in shaping practice. Whilst the document provides far greater detail, in summary the rules are as follows:

1. **Understand my rights:** it is incumbent upon the adults supporting the child that they understand and protect children's rights and provide opportunities to inform and educate the child about their rights.

2. **A chance to be involved:** provide a welcoming, non-judgemental and inclusive space for children to express their views whilst offering the additional support that may be required for them to do so.
3. **Remember - it's my choice:** be honest and open about what difference or impact the child's views may have and provide opportunities for them to opt in or out as they choose.
4. **Value me:** respect the views of the child and ensure that they are not put in positions where their opinion is ignored or silenced. Provide honest feedback about the impact that their contributions might have and ensure that they feel listened to.
5. **Support me:** communicate clearly and regularly check in with the child to make sure that they understand what is happening; never assume that they do. Help the child to communicate in their preferred manner.
6. **Work together:** participative processes should be respectful, collaborative endeavours with knowledge flowing in both directions. Children should be free to say whatever they want and free from pressure.
7. **Keep in touch:** ensure that children can contact you after any activities have ended and that feedback regarding what influence their input has had is provided.

These rules ought to form the bedrock of any participation work undertaken. As well as offering broad-stroke guidance on how to support children to shape and influence the systems around them, they can be seen to establish minimum expectations of the ways in which those seeking to engage children and young people in participatory processes should behave and operate.

## 8. Participation within justice settings

Opportunities for children with experience of the justice systems to contribute to the decision making processes which shape the world around them are rare (Collins et al., 2020; Lightowler, 2020), resulting in children from this cohort feeling powerless, disempowered and ignored (Cook, 2015; Smithson & Jones, 2021; Vaswani & Gillon, 2018). The same can be said for those children who are in contact with child protection and welfare systems (Toros, 2021; van Bijleveld et al., 2020), with social work practitioners failing to truly listen to children (Roesch-Marsh et al., 2017).

Reluctance to offer these opportunities to children who have been in conflict with the law may stem from the traditionally punitive nature of justice interventions, where those who are under the gaze of organisational supervision are stripped of rights (Creaney, 2014; Creaney & Case, 2020). Similarly, Nolan, Dyer, and Vaswani (2018) and Gough (2017) highlight the particular challenges faced by children in locked environments, with participants in their studies lamenting their lack of involvement in the mechanisms that led to their being placed in secure care or a Young Offenders Institution. Those who are deprived of their liberty face challenges in having their rights respected, suffering the double-bind of a loss of freedom and deprivation of human rights (Byrne & Lundy, 2019). As Creaney and Smith (2020) note, there are cultural and attitudinal factors at play within this dynamic. Children and young people within prison or Young Offenders Institutions may also feel anxious about expressing

their opinion regarding their care, in case it impacts upon their future parole proceedings. They may also feel obliged and compelled to engage in opportunities due to the non-voluntary nature of the environment they find themselves in. Practitioners must avoid this situation, stressing the voluntary nature of participation. Professor Laura Lundy has provided [this webinar](#) for CYCJ which discusses these issues in far more depth, and charts the challenges and solutions that are encountered in this area.

## 8.1 Participation for children in conflict with the law

Standard 1 of the [2021 Standards for those working with children in conflict with the law](#) calls on those supporting children to provide opportunities for them and their families to help shape the direction of services. It also highlights the responsibility of stakeholders to honour and uphold the rights of children in conflict with the law, including making sure that information is provided in an accessible manner.

As previously highlighted, practitioners may lack confidence to undertake this task (Collins et al., 2020). The following section may offer some guidance as to how to tailor a participatory approach when working with children and young people in a justice context.

## 8.2 Participation practitioners

To ensure that children and young people in conflict with the law are provided with support and opportunities to participate in decision making fora, organisations should ensure that staff are adequately skilled and confident. It is not merely a case of asking anyone to deliver participation; it must be respected, and thought of as the skilled role that it is (Lightowler, 2020). Participation is not an easy task (Lightowler, 2020) and has been described as “messy”, “fluid” and “relational” (Larkins et al., 2014, p. 725).

The interpersonal skills and qualities of the adult supporting participatory activities are essential to the success - or otherwise - of the endeavour. Relationships form the foundation stone of all practice in this regard, and those undertaking this role must spend sufficient time and effort developing them (Weaver et al., 2019). Practitioners must hold the correct values, attitudes and understanding (Kerracher, 2020), with the qualities of the individual in question of upmost importance (Sinclair et al., 2019).

Not only does the role need a skilled and dedicated individual, but there must be an ethos and willingness amongst the organisation to open itself up to participatory practice. This is required in order to create a culture where decisions are shaped by those experiencing services.

## 8.3 Key features of participation in justice settings

Research shows that children and young people value and appreciate relationships over programmes, and interpersonal skills over technical diagnostic approaches (Haines & Case, 2015); this approach aligns better with the rights-based approach to children in conflict with the law which has developed in Wales in recent years (Deering & Evans, 2020) and to which Scotland ought to aspire.

Amongst the skills required in the role is an ability and willingness to listen to the views of participants, including in the design of the participatory event or project itself (Weaver et al., 2019). Kerracher (2021) [highlights some issues to consider](#) when delivering participation projects. Citing the views of members from [Youth Justice Voices](#) and [STARR](#) she notes the personal qualities and service features that a participation project should aspire to.

During the process of co-producing CYCJ's Participation and Engagement Strategy, young adults with experience of justice systems stated that the following features and skills were key to participation work:

**Relationships:** Building relationships is key to any participatory experience and this should be at the heart of any practice.

**Honesty:** Being honest needs to be the golden thread running through any participation strategy. Facilitators must be clear about what can be achieved in the short term and what may need some work in the medium to long term to be fully achieved and implemented.

**Bravery:** People who are leading sessions should welcome challenge and a different lens through which to view the world. "Don't be scared to hear the truth."

**Mutual benefit:** Participation should not only be about 'listening', but also provide opportunities for children to gain skills, knowledge, confidence; it should be organised to support people with lived experience to carry out different pieces of work across the organisation.

**Flexibility:** Sessions should also have a loose structure with the autonomy to make changes to fit the needs of the group. Participation projects should include 1:1, group and other formats depending on the wishes and needs of attendees.

**Fun:** Sessions should be fun, engaging and non-judgemental. A level of emotional intelligence is required to understand and support your audience. As one member says "just be human".

**Inclusive:** Practitioners should "widen the net out" in order to include people with lived experience who haven't been involved before. This ensures that services are not relying on the same individuals all the time. A meet-up beforehand would be beneficial as new participants can get to know you and have a connection with you prior to attending sessions or carrying out any work.

**Personal qualities:** Qualities that facilitators should have include being kind and genuine. They should be trustworthy and have trust, respect and empathy as core values. Facilitators should be compassionate and have an understanding of the audience and different experiences.

**Proactive:** Facilitators should be proactive in seeking out opportunities. This will ensure that the children's engagement in activities is meaningful.

**Cost neutral:** Reimbursing people for their time should be key to participation as everyone's time is of value and this should be respected going forward.



**Food:** To help break down barriers and to create a positive atmosphere, providing food offers the chance for the child to bond over a meal with peers or the facilitator and was viewed as good practice.

**Modern technology:** COVID-19 changed the way in which we undertake participation recently. Drawing on modern technology enables members to stay connected and feel that their opinion matters. Members should be offered a variety of methods of participation allowing them to take part in ways that are comfortable for them.

**Safe relationships:** Those supporting children should provide a confidential, safe, respectful and trustworthy space where children can speak openly and without fear of judgement. They should also be aware of - and respond to - the power imbalance that exists. The relationship between the child and adult was felt to be one of the most essential components of successful participation.

**Staff with lived experience:** Although not a prerequisite to undertaking work in this area, organisations should actively encourage and welcome applications from those with experience of the justice system.

## 8.4 Challenges and barriers to participation

A range of challenges exist when attempting to undertake participatory practice with people who are involved in justice systems. Amongst these are the involuntary nature of the relationship and the associated bureaucracy if statutory orders are involved; this obstacle could be overcome by working with voluntary organisations (Weaver et al., 2019). Similarly, power imbalances are highlighted by Smithson and Jones (2021) who query whether the institutional and structural imbalances can adequately be addressed by any particular theory or practice model. Lamentably, research in England has suggested that the expertise and knowledge of children with experience of the justice system was not valued by practitioners (Creaney, 2020b); there is work that remains to be done in order to shift attitudes. Sinclair et al. (2019) report that a lack of respect of the child's autonomy and agency can hinder attempts to influence change.

Smithson and Jones (2021) articulate a further challenge to participation, with a hierarchical, risk-focussed approach by youth justice practitioners leading to gate-keeping; this hampers access to children and young people who could benefit from the opportunities provided by a less rigid environment. Creaney and Case (2020) echo this, joining Haines and Case (2015) in pointing to cultural and organisational barriers, such as a tendency towards risk aversion, which hinder progress in this area. This overly cautious, neo-liberal turn from the 1990s onwards led to a workforce overly focused on deficits, risk and responsibilisation (Creaney, 2014). In light of this, a lack of confidence - and a reluctance to engage - in less formal models of support is perhaps unsurprising.

Similar issues have been encountered by Youth Justice Voices, with local authority practitioners reluctant to introduce a new service when the young person in question is perhaps dealing with a range of challenges. There exists a great deal of risk averse practice that prohibits children from having the opportunities that are available to them through participation, particularly when the children in question may have a history of engagement in 'risky' behaviours (Sinclair et al., 2019). The fear of children and young people with a history of offending behaviour *meeting* together, and subsequently *offending* together seems to be a

dominant concern amongst the youth justice workforce. If Scotland is to honour its commitment to incorporating the UNCRC, attitudes and practice such as this need to change.

Haines and Case (2015) point to further challenges including young people's distrust of adults, communication difficulties, and prior experiences of being excluded from decision making. Beyond Youth Custody (2014) echoes this, stating that given their experiences of punishment and social exclusion, it ought not be surprising that a lack of trust exists between them and an organisation who has been responsible for performing the duties associated with community supervision. Voluntary organisations may therefore be best placed to deliver participation projects, given the likelihood that they are viewed more positively and less punitively than statutory bodies. That being said, the involvement of third sector partners should not lead to a dilution of the power that is being ceded to those with lived experience; any practice by non-statutory bodies must be underpinned and backed by the authority and power of the relevant local authority. At the very least specialist participation staff - replete with the desired training and qualifications - should be tasked with the responsibility of undertaking this role given the particular skills and expertise required.

Finally, it is also imperative to ensure that communication difficulties of all kinds are considered so that the views of *all* children are sought out and listened to (Creaney & Case, 2020). The high rates of SLCN needs amongst these populations can mean that a variety of additional barriers are in place that must be overcome. Providing a range of opportunities which reflect the disparate needs of the individual in question is one way of achieving that (Weaver et al., 2019).

## 9. Conclusion

Attention to participation will likely continue to grow in the coming years following the publication of The Promise and the eventual incorporation of the UNCRC. In concert, they create a legislative and policy imperative to change the way services function and organise themselves, enhancing the attention focussed on the views of those with lived experience of the relevant field.

Literature relating to participation and its approaches can be found at the fringes of justice social work scholarship, with research relating to children who come into conflict with the law rarely focussing on participation. Additional reading is recommended within sister disciplines where the expertise and rigour to critique practice can be found.

Participation within justice settings is at its early stages of development, although some projects are making attempts to address that. The benefits of participation are numerous, yet achieving the genuine, meaningful participatory experience necessary to realise this is not an easy task; it ought not to be thought of as an additional responsibility to add to the already busy workload of frontline practitioners who seek to support children in conflict with the law. Instead, it should be seen as a key component of practice with time, resources and expertise dedicated to the process.

This section has highlighted both the benefits and barriers to participation and suggested a theoretical model that has grown in stature and use which may assist organisations and practitioners to create meaningful opportunities for children and young people to influence

decisions. Introduction to some underlying principles has also been offered in the hope that those supporting children in conflict with the law can push forward in their own participatory practice. CYCJ is well positioned to assist local authorities and organisations to consider how best to develop their own skills and services.

## 10. Resources

**The following resources may prove useful in designing, planning or undertaking participation activities.**

**Just the Right Space:** This accessible website was co-created by CYCJ and young people with the aim of helping people of all ages and backgrounds to better understand the justice system. It includes information and advice on children's rights, stories and experiences, and places that can offer support.

**Youth Justice Voices** A joint project of CYCJ and Staf, Youth Justice Voices seek to provide opportunities for 16–25-year-olds with experience of the justice and care systems to influence change. [This webpage](#) provides lots of information about the impact they have made since 2019. It also hosts a number of blogs by members of the groups.

**STARR** Supported by CYCJ, this project seeks to provide opportunities for those who have encountered secure care to influence policy and practice.

**Participation Practitioners' Forum** Hosted by [Ruth Kerracher](#) of the Youth Justice Voices project, this forum brings practitioners together to share ideas, learn from one another, collaborate and hear about successful practice. Contact [ruth@staf.scot](mailto:ruth@staf.scot) to get more details.

**The Participation Network** Created through a collaboration of various organisations, the Participation Network delivers events which highlight various issues relating to participation of children and adults. Further details can be [found here](#) and through #Participation on Twitter. The network has also created a range of resources which can be [found here](#).

**Our Hearings, Our Voice** Set up to provide children aged eight to 18 with the opportunity to influence various aspects of the Children's Hearings System, this project's website details some of its activity to date.

**Inclusive Justice** Drawing on experiences from service user inclusion projects in Ayrshire, this report by Professor Beth Weaver, Dr Claire Lightowler and Kristina Moodie offers practical advice on creating similar schemes.

**What are the benefits of participation?** The content of this infographic was created by young people and practitioners through the Participation Network and is a good visual aide.

**What helps encourage participation?** Factors that can help create positive participation are identified here.

**What gets in the way of participation?** This infographic may help in identifying barriers to participation.

**Participation Toolkit** Designed with social workers and early-year workers in mind, this toolkit provides a range of activities and games that can be used with children to better enable adults to listen to the views of children.

**Co-production planner** This IRISS resource provides practical planning tools which can support organisations to undertake co-productive exercises.

**Decision-making: children and young people's participation** This Scottish Government resource highlights some of the ways in which they have sought out the views of children and young people.

**Scottish Community Development Centre** This organisation seeks to enhance community involvement in various forms. Their website contains resources and evidence that can help organisations to undertake participatory activities and similar projects.

**Iriss summary of participation for children and young people** This summary highlights alternative models of participation, and points to a range of publications which might prove useful.

**Scottish mentoring network** For organisations adopting a peer mentoring approach, this resource provides a range of materials and reading that can help develop projects.

**Peer Power** A collective of young people and adults who have lived experience of various issues, this organisation provides a range of literature regarding the challenges and solutions involved in participation for children who are in conflict with the law, or who have encountered adversity.



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