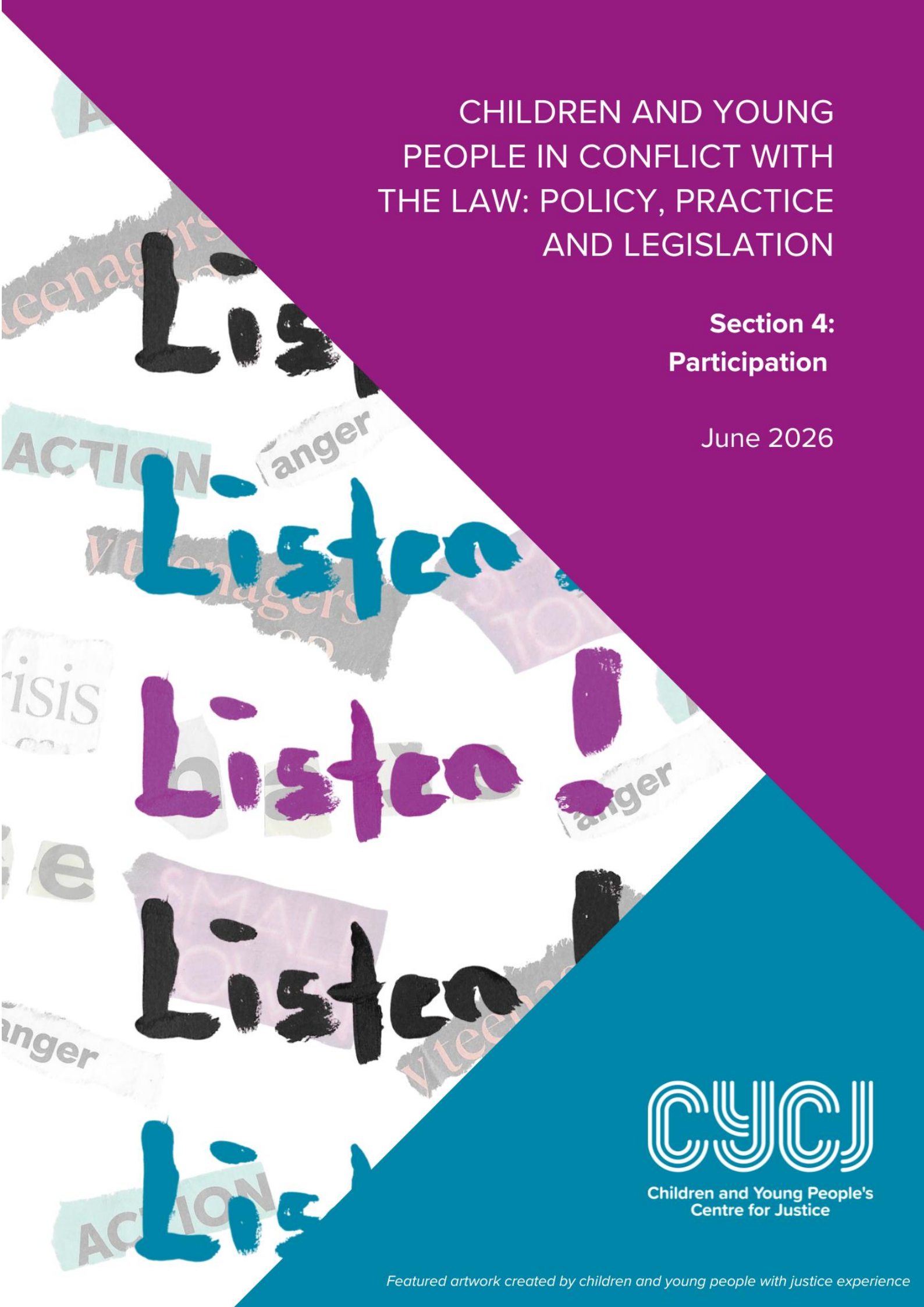


CHILDREN AND YOUNG  
PEOPLE IN CONFLICT WITH  
THE LAW: POLICY, PRACTICE  
AND LEGISLATION

**Section 4:  
Participation**

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## 1. Introduction

After receiving minimal attention for a number of years, participation has gradually become embedded within Scotland's approach to transforming policy and practice relating to children and young people. 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, experience 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. This work 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)

Despite much development of participatory approaches to policy-making, legislation, and practice change throughout Scotland, children who come into contact with the law or who are involved in justice systems remain frequently excluded from such opportunities. 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 et al., 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.

Since the publication of [the promise](#), Scotland has seen a move towards embedding participation in services working with children and young people, and several local authorities and organisations have made tentative steps in that journey through reporting on successes and sharing learning. To help practitioners continue to support participation, this section highlights research, ideas and literature relating to participation with a focus on youth justice - along with commentary relating to experience from [STARR](#) and [Youth Justice Voices](#) - to support the establishment of effective, ethical and meaningful participation across Scotland.

## 2. What is Participation?

The term participation is somewhat vague and is often used as an umbrella term for various levels of activity and involvement, contributing to confusion and uncertainty over what participation is across the workforce (Sinclair et al., 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 et al., 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).

In order to effectively ascertain the meaning of participation, it is perhaps helpful to begin by addressing some common misconceptions. Practitioners may rightly point to children's 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 upheld. Whilst this is not entirely incorrect, these scenarios exist at the individual, micro level. Though opportunities like this are both crucial to effective and individualised care and a legal right in Scotland, the right to participation also extends to influencing the wider structural, organisational and systemic mechanisms that impact children's lives. Such mechanisms include legislation, policy, and practice standards throughout the justice field, as well as overarching systemic factors such as public perception and inclusion. Expanding on this example further, it is important to point out that opportunity does not always equate to access. One might offer an opportunity for micro-level participation such as feedback on care provision, and assume that if a child doesn't participate it is out of choice – it may in fact be the case that the format of this opportunity is not accessible, or that a child does not feel empowered to share their views. It is not enough for us as practitioners to create opportunities without considering the very real and often deeply entrenched barriers to meaningful participation. This chapter will explore barriers in more depth in Section 10.5.

Though participation serves as a catch-all term for a whole host of approaches and activities, there are common features which underpin all of these and can help us to define what participation really means. Accessible opportunities for participation should empower children to shape and influence decisions that directly impact their lives, as well as macro-level decisions that change the way children experience the world around them. Through these opportunities children should feel heard, valued, and be informed of the impact of their contributions.

Rather than a sequential model or linear process, participation is perhaps best thought of as an ethos which should underpin our approach to working. This ethos in essence is that children's perceptions and views are valid, that they matter, and that they should - at the very least - be genuinely considered within all aspects of the systems that impact their lives, from individual interactions with practitioners to national legislation.

This ethos does not mean that children are placed in a position of complete authority nor are responsible for making final decisions on policy or organisational practice. Nor does it mean that children's perceptions and views trump the needs for individual and collective safety and wellbeing. Rather, true participation involves the accessible opportunity for children to influence change, to contribute to debate, to affect decision-making processes, and to feel genuine empowerment in situations where they are frequently disempowered, disenfranchised, and marginalised (Kosher & Ben-Arieh, 2020). In care and justice systems,

this approach of course sits within the context of safety, protection, and practitioners making informed decisions in the best interests of the child. What is crucial is that a child's ability to feel empowered and involved in the decisions made in their lives is considered an integral part of these assessments and judgements, as well as an integral part of supporting healthy social and emotional development.

### 3. Thinking beyond '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 seeks to put the child at the centre of structures that support them to express their opinion, to articulate beliefs, and influence decisions.

A frequently heard statement is that participation involves the process of 'giving children a voice' - a misconception rooted in the assumption that children are inherently passive or silent. As 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!"

The term 'voice' is a prominent feature of participation, indeed the two terms are often understood as synonymous with one another. Whilst voice (as well as both listening to and acting upon it) is absolutely integral to effective participation, it is helpful to think beyond one's initial understanding of what 'voice' means. When we expand our understanding beyond the explicit (and formally facilitated) vocalisation of views, it is evident that children's views are being shared through their actions, beliefs, and attitudes. Amongst children who come into contact with justice systems, this is often seen in actions such as 'disengagement' from statutory services or 'anti-social behaviour' - two examples frequently rooted in expressions of disempowerment, a lack of trust in services, and feeling excluded or alienated from the spaces and communities around them. Whilst there is undoubtedly a need for formal participation and engagement, not least as a means of upholding children's rights under UNCRC, it is equally important that the participation practitioner is conscious of the informal and non-vocal ways in which children express their views and experiences. Whilst these expressions may not fit neatly within formal spaces or agreed approaches to engagement, they are just as valid, and it is incumbent on practitioners to be open, sensitive, and responsive to these.

By expanding our understanding of how 'voice' is expressed we can go some way to ensuring that all children have their right to be heard upheld equally. In taking this approach we can also extend opportunities for influencing to children who may feel unable to participate in formal engagement spaces, thus creating a more accessible and inclusive culture of participation.

## 4. 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).

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 et al., 2014) thus giving rise to disadvantageous and 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, referred to as the *7 Ps*. Lundy (2019) also queries whether there is a role - at times - for approaches that may appear tokenistic, but which may have longer term benefits.

In their Participation and Engagement Strategy, CYCJ have primarily adopted [Lundy's model of participation](#) (Lundy, 2007).



Image replicated from [Department of Children and Youth Affairs, 2015](#).

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, to give children and young people power 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.

### SPACE

**Consider:**

Do children feel welcome? Is it accessible to all? Any territorial concerns? Can they opt in and out?

**How to address this:**

Use a space that is not associated with one group or another, such as a sports hall or community centre in a neutral location. The venue should be welcoming, with facilities, food, and activities available to help children and young people feel at ease.

### VOICE

**Consider:**

Do children know the purpose of the event or project? Have they been supported to have the information they need? Do they feel comfortable expressing their opinion? Who is setting the agenda?

**How to address this:**

Prepare ahead of the event(s). Relationships might need to be developed and should be maintained. Everyone should be provided with an unbiased overview of the issues at hand to help them feel comfortable sharing their views.

### AUDIENCE

**Consider:**

Will decision makers be present? Who will listen to the views expressed? Are they in a position to influence decisions?

**How to address this:**

Making sure decision makers have 'bought in' to participation might require persuasion and encouragement (UNCRC incorporation and The Promise will support this). Consider how best to convey children and young people's views to decision makers.

### INFLUENCE

**Consider:**

How can you ensure the views expressed are considered? How will the decision be conveyed to the children and young people?

**How to address this:**

Those in power to commit to consider the views expressed from the outset. Ensure feedback on what influence their views had on the decision-making process ('feedback loop'). The process for this should be agreed in advance.

The degree to which these endeavours are merely tokenistic, or achieve the levels of influence and inclusion that are 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. Support from senior management and leaders in organisations can ensure that spaces are created where children and young people can be meaningfully involved. Furthermore, it can mean that those in positions of authority (and often with strong connections to people and spaces with wider political power) are willing to bridge common gaps between children and young people, and those who hold power over policy and practice changes.

## 5. Legislation and Policy Drivers

As Scotland strives to comply with the [United Nations Convention on the Rights of the Child \(UNCRC\)](#) (which was incorporated into Scots Law in 2024), and to become a [rights-respecting](#) nation, greater attention and focus has been given to the ways in which children's rights are upheld in the policies, processes, and structures that surround them. Within participation and engagement, [Article 12](#) is often cited as a driver for much of the work that aims to uphold children's rights. Sometimes referred to as the 'participation right', 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." It is important to note that all rights under UNCRC are "universal, inalienable, indivisible, and interdependent" (Scottish Government, 2022) - whilst Article 12 pertains to voice and participation, it is imperative that this is considered within the context of the full Convention. This is particularly important to bear in mind to avoid participation opportunities which may fail to uphold other rights, such as the right to accessible information, recovery from trauma, or leisure and play.

There are other international agreements which also relate to children and young people's participation in decision making processes. For example, the [United Nations Guidelines for the Prevention of Juvenile Delinquency \(The Riyadh Guidelines\)](#), para. 50, 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 [standards](#) produced in 2021 for those working with children in conflict with the law, and also, 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. More widely, the Scottish Government have also developed a [Participation Handbook](#) to guide good practice in participation across government.

For many practitioners in social work, the concept of participation may sound reminiscent of 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 (Porter, 2020). Whilst such steps are important, they are fairly limited in their impact and their engagement of the child.

Rap et al. (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 et al. (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 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](#) also created 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.

## 6. 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). Here, 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 is generally one of the main objectives of justice processes, and is a welcome by-product of participation (Haines & Case, 2015), involvement can also support children and young people to develop positive identities, build supportive relationships with peers and participation practitioners, and develop a wide range of skills which can in turn increase confidence and self-esteem (Creaney, 2014) and benefit wellbeing. As practitioners it is

important that the value of this is given due weight, regardless of desistance or continued conflict with the law. For some children involved in justice systems participation may not lead to desistance, for others it may take place within the context of lengthy custodial sentences. Meaningful participation should be centred around how it can improve the experiences of the children and young people involved, both on a personal and systemic level. Ultimately one of the main benefits of participation is that children's rights are upheld. This is especially pertinent to secure and custodial settings in which children's views often have limited influence, are crowded out by risk-aversion, and are considered as less worthy due to the stigma associated with conflict with the law.

## 7. Forms of Participation

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

### 7.1 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, and practitioners should be supported to facilitate this. 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).

Especially pertinent to the context of participation in youth justice is the importance of place when it comes to group work. Children in or close to formal justice systems may feel particularly anxious about specific locations, and may be less likely to want to travel to take part in participation opportunities. Careful consideration of this should be given when planning the location of opportunities, and offering activities through trusted local services such as community organisations or youth projects can enhance accessibility for many children.

### 7.2 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 rather desiring to influence practice directly and see change happen. 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. By their nature, many public consultations' supporting documents are often lengthy, detailed, and complex. Ideally, child-friendly and/or accessible documents should be developed and included alongside consultations prior to their launch. Participation practitioners are often tasked with the additional challenge of developing these versions in short timeframes to enable children to take part. To combat this and ensure that children's rights can be upheld, organisations or government directorates leading consultations should be encouraged to build these resources alongside consultations and seek guidance from experienced participation practitioners as needed.

### 7.3 Child/Young Person-Led

Creating a plan for participation projects can be something of a chicken and egg situation: a group must be gathered to develop a plan, but some initial preparation (generally by professionals) is required in order to publicise the opportunity and encourage participation. Practitioners can take direction from existing evidence (or identifiable gaps in evidence) in order to ascertain what opportunities children might like to be involved in, and what issues are important to them.

Ultimately, the direction that a child-led 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.

### 7.4 Co-Production

The term co-production is sometimes erroneously used to describe work which is participatory but does not involve children equally throughout. Whilst co-production cannot be succinctly defined, it must be built on a mutual commitment to openly address and challenge the power differential between the children and adults involved. As described by (Cullingworth et al., 2022) co-production aims to challenge (and flatten) hierarchies as a means of changing power relationships and decision-making structures. The (SCIE, 2022) outline key features of co-production including:

- Breaking down barriers between professionals and non-professionals
- Enhancing existing skills and building on existing capabilities
- Including reciprocity and mutuality (i.e. both parties benefiting from the process and/or outcomes)

Building and maintaining a project that meets these defining characteristics requires flexibility and reflexivity. Participation practitioners must be continuously and consistently reflexive of their own practice and their inherent power as professionals. Those who hold practitioners to account – organisations, funders, and stakeholders – must also be flexible to changes in direction and pace. All adults involved, either directly or through oversight, must be flexible to changes in power and hierarchy. It is not uncommon for lack of flexibility on these issues to lead to pressure to meet deadlines, produce satisfactory outputs, or sanitise the views of children and young people to better fit existing organisational and political agendas. This in turn can divert projects away from a co-production model into other forms of participation. Whilst movement away from co-production isn't inherently negative (many forms of participation are equally valid), it does require practitioners to be transparent with everyone involved. Children must be informed of these limitations and constraints, and practitioners must be prepared to position their work under an alternative participatory method which better reflects the reality of what has been carried out.

With these challenges in mind, developing co-produced projects or activities can seem daunting, intimidating, or simply too difficult to operationalise. It requires a commitment, from the point of conception, to give equitable weighting to children and young people's views, ideas, and perspectives. This may be difficult to embark on for organisations or groups without existing relationships with children and young people - without children and young people's views already present, even the early planning stages of co-production cannot begin. As in the case of child-led participation, opportunities for co-production can be identified by assessing existing evidence. If a new group of children is being formed in order to carry out the co-produced work, it can be helpful to work in partnership with organisations who have existing, trusting relationships with children. Through pre-co-production exploratory work, the views and experiences of children can be meaningfully included from the beginning.

Literature and guidance relating to the operationalisation of co-production is constantly developing, even more so in relation to the field of youth justice where power (or lack thereof) has particular pertinence. Whilst 'doing' co-production requires time, reflexivity, flexibility, and a willingness to challenge hierarchies, the process of being meaningfully involved in co-production can be greatly empowering for children. The underpinning values of supporting children to recognise and harness their insight and expertise, and empowering them to be active in democratic processes, can set strong foundations for children's awareness of their rights and benefit their development in the face of adversity (Burns & Creaney, 2023).

## 7.5 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 et al., 2020). Examples of this approach can be seen in the work of [Future Change](#), a youth-led participatory budgeting project based in HMPYOI Polmont and facilitated by CYCJ, the [National Leadership Network](#), and in Corra Foundation's [You're Only Young Once Fund](#), facilitated by Scottish Families Affected by Alcohol and Drugs.

## 7.6 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 and attitudes (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 also led to personal growth and change (Creaney, 2020a).

## 8. Overarching 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.

### 8.1 The Importance of Time

Ross et al. (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 event or deadline is therefore important, and the more time allocated to doing so the better.

### 8.2 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 (YOI). 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 they 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 et al., 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 decision-making fora such as meetings and conferences – though the desire and ability to do so should not be a prerequisite for participation.
5. **Feedback loop:** Mindful that children and young people with experience of the justice system 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).

### 8.3 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.

## 9. 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 sometimes 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 et al. (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 YOI. 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. (Yin, 2024) highlights adult-driven narratives relating to children in conflict with the law – namely that these children are perceived as “risky”, “self-interested” and “vulnerable”, perceptions which can result in diminished agency and influence both in their own lives and in the wider youth justice domain. Children and young people within prison or YOI 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.

## 10.1 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.

## 10.2 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 utmost importance (Sinclair et al., 2019). In addition to these skills and values, effective participation work often requires an understanding of a range of issues affecting children, not least children in conflict with the law. These can include issues such as neurodevelopment, neurodiversity, SLCNs, and the impact of growing up with marginalised identities. Understanding and empathising with the often complex intersections of identity, including experience of conflict with the law, is essential to compassionate and inclusive participation work.

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.

### 10.3 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.

## 10.4 Acknowledging the range and diversity of 'justice experience'

As discussed above, many children in justice settings face limited access to meaningful participation opportunities as a result of risk averse practice or lack of trust in practitioners. In contrast to this, particularly following the incorporation of UNCRC into Scots Law, children in close proximity to justice systems (i.e. those in secure or custodial settings, or subject to continued youth justice social work involvement) may be at risk of being perceived as a 'captive audience', sometimes literally, by which organisations and services come to expect involvement in opportunities for participation. For many children living in such proximity to formal justice processes, particularly those deprived of their liberty, the non-voluntary nature of even the most fundamental activities such as when to eat and when to go to bed, can mean that children assume that participation is also non-voluntary. Similarly, 'gatekeeper' practitioners working in secure environments may encourage children to take part in opportunities to protect their own working relationships with external practitioners such as researchers or participation workers.

Whilst children living in secure environments or subject to frequent engagement with social work may be 'over-consulted', there are many children with lived and living experience of justice systems who go unnoticed. For example, children may face frequent and repeated contact with Police but not enter formal justice processes, therefore existing in a 'hidden realm' of what we imagine when we think of children in conflict with the law. Whilst there are

evidently persistent barriers to meaningful, ethical participation for the children that are more 'visible' through the intensity of their contact with statutory services, it is important that participation practitioners consider the range and diversity of what constitutes as 'justice experience' or 'conflict with the law', and strive to include all children who are impacted by justice policy and practice.

## 10.5 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. 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 responsabilisation (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 comply with 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 needs 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. Outwith those who have identified or identifiable support needs, it is important to keep in mind that there are individual differences in learning styles and communication preferences. 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).

## 11. Conclusion

Attention to participation in youth justice will likely continue to evolve in the coming years as Scotland adapts to the Promise, UNCRC incorporation, and significant legislative changes. In concert, they create an 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. In recent years there has been an increase in research which focusses on operationalising participation for children in conflict with the law, however this remains limited and additional reading is recommended within sister disciplines such as education and childhood studies, 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.

## 12. 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/X. 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.

**Consider With Care** A report produced in partnership with people who have shared their lived experience for campaigning and social change. This resource provides important context of some of the risks and challenges associated with the inclusion of lived experience in influencing change.

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