Children and Young People's Centre for Justice

Consultation on the draft Code of Practice on interviewing

CYCJ response

November 2026

Collaborating for rights-respecting justice
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Introduction

The Children and Young People's Centre for Justice (CYCJ) welcomes the opportunity to review the Draft Code of Practice for interviewing (hereafter the Code). CYCJ works towards ensuring that Scotland's approach to children and young people in conflict with the law is rights respecting, contributing to better outcomes for our children, young people and communities. Our response draws from our practice knowledge, research evidence, policy understanding and participation work.

CYCJ has also been heavily involved at all stages of the Children (Care and Justice) Act 2024, from its conception, right through to the ongoing implementation of the remaining parts which are still to be enacted. This includes the recently published guidance on police custody (YJIB 2026) (hereafter the CCJ Police Custody Guidance), which we have made reference to in our evaluation of the Code.

Unfortunately, due to the short timescales, we were unable to consult with children and young people with justice experience when preparing this response. We fear this may be the case for other organisations as well and would request in future that more time is made available where possible to ensure lived experience is also captured.

CYCJ response

General principles

We welcome the focus in the Code on rights and protections, including both the Human Rights Act 1998 and the UNCRC, as well as the Equality Act. We also commend the commitment in the code to safeguard and promote the wellbeing of the child as a primary consideration. This is particularly important given that children accused of having committed serious offences may have significant vulnerability, over and above that of being a child, as well as display distressing and challenging behaviour.

That said, we believe that greater detail on certain aspects of the Code would more likely lead to those rights and protections being better realised in practice. For example, more clarity on how UNCRC Article 3 on best interests of the child, as stated at point 3.4, would be applied in practical terms. Further to this, we would welcome the publication of any Child Rights and Wellbeing Impact Assessment which has been carried out in relation to this, as set out under the UNCRC Act. We note point 3.5 which states it is "highly desirable" that interviewing constables be appropriately trained in relation to interviewing children. Whilst we welcome the intention, we would suggest this is changed to it being essential, except in unavoidable or exceptional circumstances. Although this may be too specific a point to be included in the code, we would also like to emphasise the benefits for constables and duty solicitors of training in speech, language and communication needs as well as neurodivergence.

Appropriate adult

We welcome the inclusion of, and level detail provided for, the term 'appropriate adult' in the code of practice. That said, here, as in elsewhere, we believe it is vital that this code of practice is monitored to see how effectively it is being applied. We think that is particularly important given the prevalence of speech, language and communication needs and neurodivergence amongst children in conflict with the law and the additional communication pressures they will all have in comparison to adults in this setting, by virtue of age (CYCJ, 2026). Access to support should not be determined by the skills of the parent and/or named person.

We believe this section of the Code could be further strengthened through inclusion of sections from the CCJ Police Custody Guidance. This includes: "where a child has a parent/named adult present but also meet the above legal criteria for an appropriate adult, an Appropriate Adult should still be sought as the two have different roles and responsibilities, with the Appropriate Adult also having specific training"; as well as "At the discretion of the police, the child could also have a parent or named adult present within the police interview". This would enhance the rights of the child, including UNCRC Article 12 on participation and Article 9 on a child's right not to be separated from a parent.

Alongside this, we believe there is the potential for confusion over terminology and suggest a clarification. Alongside appropriate adult, the Code mentions 'appropriate person', and this will sit alongside 'named adult' in the CCJ guidance. We would suggest 'appropriate person' is replaced with 'named adult' to ease confusion and ensure greater alignment between the Code and the CCJ guidance. We think 'named adult' should also replace 'adult reasonably named' mentioned at point 3.8.

Vulnerable suspect

We welcome the statement that in "absence of any clear evidence to the contrary to dispel that suspicion, the suspect shall be considered as vulnerable.". That said, we believe that further inclusion of CCJ Police Custody Guidance in the Code would strengthen the rights of vulnerable children. For example, for those under 16 who would not qualify for an appropriate adult, we believe this section from the guidance should be included: "Another adult should be present within the police interview, such as a parent, named adult or social worker. It is recognised that these individual's may not be trained in recognising and supporting communication needs in the way an Appropriate Adult would be."

Attendance by local authority

We request that point 3.19 be rephrased to ensure it matches exactly with the CCJ Police Custody guidance. As written, 3.19 states "If a local authority arranges for someone to visit the younger child, then this is the person who must have access to the younger child, rather than anyone else chosen by the younger child". The CCJ guidance, however, notes that the "child's views should however be sought by police and taken into account in informing

decision making". The Code also does not address the issue of two local authorities being involved and we would suggest an insertion into the Code replicating what is contained in the CCJ Police Custody guidance would also be beneficial: "intimation will go to the child's home local authority which might be different to the area within which the child has been arrested. Where these two areas differ, and particularly where issues could make the home local authority visiting the child in police custody difficult e.g. geographical distance, discussions should take place across the areas to ensure the child's needs are met."

Legal representation

Greater clarity would be welcome over point 3.25: "In most circumstances a suspect is entitled to waive their right to have a solicitor present during the interview, however a child may not consent to being interviewed without solicitor present." This is especially important given that further on in the Code there is a specific point about the ability of an older child to waive this right. The CCJ Police Custody Guidance provides more detail, stating that a child can only be interviewed without legal representation in "exceptional circumstances".

This is particularly important given the findings from research conducted by CYCJ on children's experiences of police custody. Findings included that at times it appeared that children did not have sufficient knowledge to know if due process had been followed or not, or to understand the consequences of their decisions. A number of children reported that they were allowed to waive their right to a solicitor, despite not fully understanding the implications of this or naively trusting the system: "They asked me if I wanted a lawyer and I said no, I didn't think I was going to need one. I just answered everything truthfully and didn't think I needed one. . .I found out afterwards that at my age I shouldn't have been interviewed by myself and I should have had a lawyer with me." (Vaswani et al, 2024)

As found in other research, the most common reason given by children for waiving their right to legal advice was simply that they did not want to prolong their stay in custody any longer, even if the delay in accessing a solicitor might mean only an additional 45 minutes in custody (Bevan, 2021; Forde and Kilkelly, 2023). Even when legal representation was received, children understood that adult-led ideas of promoting the child's best interests did not always match their own needs and wants.

Interpreter

Also at point 5.9 it states that a suspect can waive the right to have an interpreter – but there is not a child specific policy to this. It would be welcome to have more child specific guidance, particularly for under 16s and recognising the overrepresentation of speech, language and communication needs and neurodiversity amongst children in conflict with the law.

Participation and deprivation of liberty

We understand the stipulation in accordance with that section 11(4) of the 2016 Act that a child suspect is given the opportunity to make verbal or written representations in relation to being kept in custody beyond the 12-hour limit. However, this seems a limited application of the right of the child to participate (UNCRC Article 12).

We also believe this to be an insufficient mitigation of depriving children of their liberty for the shortest possible time (UNCRC Article 37b). As stated in the CCJ guidance "When a child is in police custody, custody supervisors and inspectors review the child's case at least every 4 hours, which will include the suitability of the child remaining in custody, the child's circumstances, that the child's needs are being met and legal responsibilities are being fulfilled." We would welcome inclusion of this in the code of practice and a sharper focus on the need to reduce, where possible, the amount of time a child spends in police custody.

All under 18s as children

As elsewhere, including the CCJ Police Custody guidance, there continues to be a distinction made between children under and over 16. We appreciate as it is written in the Code relates exactly to the 2016 Act, and is in keeping with the Children (Care and Justice) Act. However, the CCJ Act reduced this distinction to ensure all children benefit from the necessary safeguards. We fundamentally believe referring to older and younger children creates an artificial distinction between two groups whom, under UNCRC, are both recognised as children. Where legislative differences persist, these of course need to be stated, however we do believe it necessary to also note the overarching requirements for all children in respect of children's rights and recognising all children as requiring additional safeguards is beneficial. Where discretion exists, for example in terms of allowing the child to have a parent or named adult present during the police interview, considerations should be consistent and include the view of the child and assessment of impact on their wellbeing and rights.

Contact

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