A Guide to Youth Justice in Scotland: policy, practice and legislation

Early and Effective Intervention

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1. Introduction

This section focuses on Early and Effective Intervention (EEI) with children and young people who are at the early stages of being involved in low to moderate level offending behaviour. EEI is considered within the context of the legal frameworks for children and criminal justice services relating to single and multi-agency work with eight to 18 year olds in Scotland.

EEI should fulfil the aspirations of the United Nations Convention on the Rights of the Child, which promotes a child-centred approach to offending and the maximisation of opportunities to be diverted from formal judicial processes. EEI is a voluntary process in which children, young people, and families should make informed decisions about their involvement. It should not lead to unnecessary interventions into the lives of children and young people and where possible identified needs should always be met through universal services including education, health and employment/training. Given the potential impact that offending can have on the lives of young people, their families and the wider community, it is important that EEI strives to provide a clear, consistent and credible response to such behaviour.

Ultimately, it should lead to improved outcomes in the lives of the children and young people which promote their development into being confident individuals, effective contributors, successful learners and responsible citizens.

Definition

There is a degree of overlap between the terms prevention and early intervention. For the purpose of the Practice Guidance the distinction between prevention and early intervention is based on the following definitions, from Moira Walker (2005) and from the Framework for Action (2008):

- Prevention refers to activities which stop a social or psychological problem arising in the first place
- Prevention services are available as part of universal provision
- Early intervention is activity aimed at halting the development of a problem which is already evident
- Early intervention is targeted assistance for vulnerability towards offending

2. Legislation and Policy

EEI practice with its focus on wellbeing is at the heart of Scottish policy and legislation relating to children and young people. For example:

- The Kilbrandon Report 1964 underpinned the Social Work (Scotland) Act 1968 and established the Children’s Hearing System in Scotland, which emphasised the importance of early intervention to prevent the development of future problems, linking these needs of children and young people who offend and those in need of care.
- There is an underlying theme of EEI within the Children’s (Scotland) Act 1995 with its focus on minimum intervention and focus on providing support to children in need.
- Scotland’s Action Programme to Reduce Crime 2002 encompassed EEI and prevention as an opportunity to address the underlying problems of children and young people who offend at the earliest stage.
- The Getting It Right For Ever Child (GIRFEC) programme which has been developed since 2006 emphasises the ethos of Kilbrandon within current youth justice policy. It states that intervention should be appropriate, proportionate and timely, and prioritises acting early on concerns or in response to a crisis to prevent escalation or deterioration, recognising children and family pressures, and building on strengths. It emphasises that there should only be one plan for each child which links support and activities to positive outcomes for the child.
- Preventing Offending by Young People: a Framework for Action 2008 emphasises that support from universal provision through to specialist targeted provision most effectively meets the needs of children, young people and families at different ages and stages across the life course. Equal weighting is given to EEI as to the other three themes of Prevention, Managing High Risk and Victims and Community Confidence.

3. Back to basics

Knowledge about children’s physical and emotional development and theories about the impact of this on their personalities, behaviour and ultimately their life chances has become more complex over the decades. Practitioners working with children and families with emotional and behavioural difficulties and/or offending behaviour seek to understand the reasons as to why some children from similar backgrounds appear to have no problems within family, school, and community settings while other children struggle to cope. Children who struggle to cope at home, school and in the community often display difficult and challenging behaviour which can impact negatively on themselves and other people.

Awareness and understanding of different child development theories can provide the practitioner with insight into the possible underlying roots of individual strengths and vulnerabilities, and thereby help identify the most appropriate supports and services, and assist the development of a constructive and pro-social professional relationship with individual children and families. Practitioners involved in EEI should be familiar with a range of social work theories including resilience, attachment, brain development and desistence.

4. General Principles

EEI focuses on the wellbeing needs of children and young people aged eight to 18 years using the principles of GIRFEC:
- Assessments and supports offered should take account of the age and developmental stage of each individual, building up the young person’s protective factors, and where appropriate promoting supports for young people and their families which can be universally accessed.
- Children and young people who start to offend come from a range of social backgrounds and cultures, and possess a wide range of both personal difficulties and individual strengths requiring a range of responses.
- The majority of anti-social behaviour and youth offending takes place in areas of economic and social deprivation, where there are fewer opportunities for pro-social activity than in wealthier areas, and where social controls are frequently poor.
What can sometimes be described as anti-social behaviour by a young person may fall within the parameters of normal adolescent behaviour, rather than intentional criminal behaviour.

Many young people who are charged with an offence never commit any further offences. This can be due to family’s parenting skills, emotional support, pro-social values, and maturation of the young person.

Unnecessary involvement in formal systems such as the Children’s Hearings System and social work can result in continued anti-social behaviour through labelling and stigmatisation.

Some children and young people who start to offend will, without the appropriate intervention and services, continue to offend.

5. Messages from Research

Predictive Factors

Many research studies stress the importance of age and stage in determining likelihood of future serious offending. There may be significant offending trajectories for children who start to offend at the pre/early adolescence stage, and those who start in their teenage years. Moffitt (1993) differentiates between early onset, life course, persistent and adolescent limited anti-social behaviour.

Features of the early onset group include neuro-cognitive deficits, adverse parenting, family and environment and uncontrolled temperament. Significant features of those who start offending in adolescence are social factors including the influence of deviant peers. It is not always easy to distinguish between the two types in adolescence, but their histories and adult outcomes are different.

Lipsey and Derzon (1998) rank predictive characteristics of violent or serious offending. For six to 11 year olds, the highest predictors are general offences, substance use, being male, family socio economic status and anti-social behaviour. For 12 to 14 year olds the highest ranking is social ties and anti-social peers, followed by general offences. Slightly weaker predictors include aggression, school related issues, IQ and psychological conditions.

McAra and McVie (2010) note both similarities and differences in respect of early and late onset of offending. In particular early onset children are more likely to live in a broken home, in a deprived area. They are more likely to be known to agencies by age five. They are eventually more likely to truant or be excluded from school and become more frequent serious offenders.

Early onset offenders

Children who start offending or demonstrating significant emotional and behavioural difficulties under 12 years are two or three times more likely to become involved in long term persistent and serious or violent offending than their peers (McGarrell 2001). Clusters of risk factors have significance: a 10 year old exposed to six or more risk factors is 10 times more likely to commit a violent act by age 18 than a 10 year old exposed to one risk factor (Herrenkohl et al 2000).
Findings indicate that children under 12 who possess a cluster of risk factors are much more likely to go on to become serious, persistent, violent or sexual offenders: than those who start offending later on in adolescence. Not all however will go on to offend in adulthood, and support in identified areas of vulnerability can increase the likelihood of a positive adulthood.

Exposure to early trauma can predispose children to future violent offending. Ford J et al (2007) specifically consider children and young people’s exposure to traumatic events in respect of levels of subsequent offending. They note a strong link between the witnessing of trauma in early childhood, internal problems (e.g. depression and anxiety), and externalised difficulties (e.g. aggression, conduct problems, oppositional defiant behaviour). This is linked with increased risk of involvement in child welfare and juvenile justice systems. It suggests an early onset trajectory for offending.

Fraser et al (2010) provide a comprehensive consideration on factors that predispose towards violent offending. Research with adult offenders with a long term pattern of serious and violent offending frequently highlights a background of childhood abuse or neglect, domestic abuse, poor parental attachments, a higher than average experience of being in the care system, behavioural problems, truancy and poor educational outcomes.

Late Onset Offending

Young people who start offending later in adolescence fall into different groups in terms of risk factors, offending patterns and desistance. Some will be involved in relatively minor offending over a few years and stop around 16 or 17. Others may continue, often into their early 20s, to commit serious or violent offences. The Edinburgh Study of Youth Transitions in Scotland provides a Scottish perspective on predictive factors, outcomes in respect of offending.

Aspects of parenting are good predictors of juvenile delinquency at age 13. Important factors include parents’ tracking and monitoring behaviour, the child’s willingness to disclose information to their parent, parental consistency, reduced parent/child conflict and excessive punishment. There is an overall correlation between levels of offending and poor neighbourhoods (Smith 2004). Offending at age 15 to 16 is associated with school truancy and exclusion at age 13 and 14 (Smith 2006). Ford et al (2007) found an association between children and adolescents who witness or become victims of violence, experience traumatic stress and are involved in offending. They consider how the stress of the juvenile justice system of court hearings, detention and imprisonment can exacerbate an already underlying trauma and thereby increase the risks of violent offending.

6. Models of EEI

The majority of local authorities have developed multi-agency EEI processes as an early intervention response to offence charges which might otherwise have automatically resulted in a referral to the Children’s Reporter. There are two main EEI models across the country:

- A multi-agency group decision making forum
- A lead contact who screens referrals, making some individual decisions and referring other young people to an EEI group
The models across the country vary with respect to the nature of the referrals which are discussed. In some areas the multiagency group consider antisocial behaviour referrals alongside offending, and in other areas low level wellbeing concerns are also discussed. Many models are developing in anticipation of the implementation of the Children and Young People (Scotland) Act 2014 expected in August 2016. This will require EEI models to take account of the function and responsibility of the named person in terms of information sharing, decision making and planning. Local authorities who have merged their EEI group with other screening groups have done so under the premise that the partner agencies around the table tend to be the same and reducing the number of different groups and agencies required to attend will likely improve attendance. This is particularly important for named person representatives in education, given the number of young people they will be responsible for.

The most important feature in any EEI model is that decisions are made on the basis of all available and appropriate information, decisions are timely and proportionate to the wellbeing need identified and wherever appropriate young people are diverted away from formal processes and supported within their community.

The agencies involved in EEI models tend to vary depending on local arrangements although most have representatives from social work, police and education. Many areas also have representatives from health, community safety, housing and third sector partners e.g. (SACRO, YMCA, Action for Children, Barnardos).

As part of the work of the EEI Champions Group, a short life working group was created in July 2013 to look at the variety of EEI disposals across the country in response to practitioner anxiety that the support offered to young people referred through EEI was inconsistent. Despite the variety of models, agencies involved and support offered, the group concluded that the decisions available to all local authorities were consistent in the broadest terms:

- Police direct measures
- Current support is appropriate, no additional measures are required
- Single agency support – through social work, education, health
- Referral for a targeted intervention – restorative justice, substance misuse work.
- No further action - for a number of reasons it may be appropriate to take no further action in response to an offence.
- Referral to SCRA - this is not an alternative to offering support through EEI but an option where compulsory measures of care may be necessary.
- In exceptional circumstances it may be appropriate to refer a young person to Crown Office and Procurator Fiscal Service (COPFS); however, this is unlikely if agencies are working together to identify the right young people for EEI.

The group highlighted that the specific agencies providing support were not as important as the ability for all areas to have access to the type of support for young people when required. The full report, written by the menu of options short life working group, can be found on the CYCJ website.
7. Core Elements

For EEI to be effective it should be aligned with the principles of GIRFEC. It should enable timely and proportionate responses to offending behaviour by children and young people that places this behaviour in the holistic context of the child or young person’s world. It should complement the statutory responsibilities of the named person when these come into effect, and provide an effective multi-agency information sharing, assessment, and decision making forum, that focuses primarily on the needs of the child or young person.

In July 2013 a second short life working group was created by the EEI Champions Group to look at minimum standards for EEI practice in Scotland. The group comprised of representatives from social work, police, SCRA and third sector. Based on the overarching principles of EEI the group produced a report setting out an aspired standard of practice for all EEI processes:

**Sufficiency of evidence:** Police Scotland are responsible for the examination of the evidence in each case and ensuring that there is sufficient evidence to proceed with a case. This does not mean that there must be an admission from the child. However, it must be remembered that EEI is a voluntary process where the young person agrees to participate in whichever form of intervention is identified to meet their needs.

**Suitability of Offence for EEI:** It is the responsibility of Police Scotland to identify cases suitable for referral to EEI. All offences should be considered for EEI unless they are excluded under: Lord Advocates Guidelines for young people under 16 years, COPFS guidelines for 16 and 17 year olds (the categories of offence eligible for EEI for 16/17 year olds is generally offences which can be dealt with by Police direct measures) and police guidelines for immediate referral to the reporter. Decisions made as to the suitability for EEI are primarily based on the gravity of offence.

**Notification:** The police should explain to child and parent (where appropriate) that cases may be referred to EEI, what this involves, how long it should take and what information may be shared.
- Young people must be charged in person if over 16 years
- If under 16 parent/carer must be notified
- Consent to an EEI referral is not required but is preferable
- Initial denial of the offence should not prevent the offence being referred to EEI
- Attitude of the child to police/parents should be recorded where possible
- The young person should understand what EEI entails
- The named person will be notified by the police as to the details of the alleged offence
- If the young person is subject to a compulsory supervision order (CSO) the lead professional must be notified of the EEI referral

**SCRA check:** The police will confirm with SCRA if the young person is on a CSO or if there is an open referral being investigated. When requesting information about the legal status of a young person the police must only request information on young people where wellbeing needs have been identified, for example a criminal charge. If the child or young person is the subject of an open referral the police should submit the referral to SCRA.
If a child is subject to a CSO, there is a presumption that the child will be referred to the children’s reporter in relation to the offence. However, this presumption may be rebutted if the offence is very minor and it is likely that either no further action or a police intervention only (e.g. a police warning) is the appropriate response. This applies to all young people under 18 years.

**Multi-Agency Group:** Where multi-agency meetings are in operation, these should be held at minimum fortnightly in order to fulfil the aims and objectives of EEI (15 working days from child being charged to meeting). Each local EEI arrangement should ensure that a range of core agencies are represented at the multi-agency meeting stage. Those in attendance at these meetings should have the necessary level of authority to both provide agency information to the meeting and to receive referrals from the meeting.

Practitioners must use their professional judgement when sharing information between agencies and ensure that the information shared is proportionate and relevant to the identified wellbeing concern. Examples of information which can be shared:

**Police**
- Details of alleged offending incident including relevant info re. victim
- Response from child/young person and their family
- History of previous offending and disposals
- Outstanding charges
- Relevant intelligence
- Any other relevant concerns

**Social Work**
- Whether child or young person is currently an open case and if so on what statutory basis
- Details of current care plan if relevant
- Family background and current caring arrangements
- Previous support provided and its effectiveness
- Previous/current concerns and areas of risk
- Previous level of engagement from the child/young person and their family
- Response to any previous EEI interventions

**Education**
- Current level of attendance, and any previous attendance issues
- Number/nature of exclusions
- Additional support needs
- Previous/current concerns
- Knowledge of family/carers and any concerns over attitudes or engagement with school staff
- Response to any previous EEI interventions

**Health**
- Any relevant mental or physical health diagnoses
- Details of any previous or current treatment or support required – in particular relating to mental health or substance abuse
Community Safety/ Antisocial behaviour services

- Any historical concerns regarding child or young person
- Response by child/young person and their family to services
- Any current and relevant intelligence re. community issues
- Response to any previous EEI interventions

**Decision Making:** Decisions regarding children who offend must be made timeously if they are to be effective. The assessment of the child/young person should be based on the GIRFEC national practice model. It should be holistic and needs led, while also being proportionate to the gravity of the alleged offence and level of concerns over the child/young person.

If compulsory measures of care may be required for a young person, a referral to SCRA should be made within five working days. A decision to refer to SCRA does not mean that EEI support should not be offered if appropriate.

A child or young person should not be re-referred to the multi-agency group for the same alleged offence, even if they have refused to engage with services offered. If the relevant agency has concerns over the wellbeing of the child or young person then these should be reported to the named person and SCRA if compulsory measures of care may be necessary.

**Communication:** Child/parents or young person should be notified in writing the outcome of the EEI referral within five working days of the decision. The outcome of the EEI process should be reported to the victim unless the provision of the information would be detrimental to the best interests of the child concerned in, or any other child connected (in any way) with, the case. This requires timely information being fed back to the Reporting Officer.

If the named person and or lead professional is not directly involved in the decision making process, they should be notified of any outcome as soon as practicable.

**8. 16 and 17 year olds**

16 and 17 year olds who become involved in offending behaviour can be dealt with in the Children’s Hearing System or the adult criminal justice system depending on whether or not the young person is subject to a compulsory supervision order (CSO). If a young person is not subject to a CSO and they are charged with a crime after their 16th birthday, the Sheriff can request advice from the Children’s Hearing System regarding the most appropriate disposal for the young person and if minded to do so, can remit the young person to the Children’s Hearing System for disposal of the case. In these circumstances the young person will likely be placed on a CSO to support their wellbeing needs. The Sheriff can however choose to deal with the young person in the adult Criminal Justice System.

Under the principles of the Whole System Approach (WSA), social workers and panel members are encouraged to keep young people on CSO for as long as the young person requires support to make positive life decisions, and emphasise to practitioners that non-compliance with the young person’s care plan does not suggest that they are making good decisions and therefore termination of the young person’s CSO would not be considered in their best interests.
With regard to EEI for this age group, COPFS guidelines states that the categories of offence eligible for EEI are generally offences which can be dealt with by police direct measures. This is a significantly smaller number of offences that those considered for the under-16 age group and likely explains the low numbers of 16 and 17 year olds being referred to EEI. For 16 and 17 year olds who are subject to CSO and commit offences out with the COPFS guidelines for EEI, these cases will be jointly discussed by the Prosecutor Fiscal and Children's Reporter to decide the most appropriate system and support for the young person. For 16 and 17 year olds who are not subject to CSO and commit an offence out with the COPFS guidelines for EEI, these young people will be referred directly to the Prosecutor Fiscal where diversion from prosecution may be an option.

9. Diversion

There can be confusion between the terms early intervention and diversion. In this guidance the term diversion means diversion from formal proceedings (Whyte 2008), specifically the Children's Hearing System and the Criminal Justice System.

The national Diversion from Prosecution scheme, rolled out in 2000/2001, applies to offenders of all ages and 16 and 17 year olds are one of the target groups. The approach is designed to prevent a person, who has committed a relatively minor crime and does not represent a significant risk of harm to the public, from being prematurely dealt with through the criminal justice system. Diversion is a ‘direct measure’ as an alternative to prosecution, available to the Procurator Fiscal in all areas where there are diversion schemes. Procurators Fiscal are responsible for identifying which of the accused reported to them by the police are potentially suitable for diversion into social work interventions. Procurators anticipate this will have more beneficial impact on future offending behaviour than a prosecution.

Diversion can be a useful intervention with positive outcomes in respect of reoffending. Many current youth justice diversion schemes adopt a deferred prosecution model and prosecution is suspended until the young person has successfully completed the diversion programme. An agency such as social work, addiction services or restorative justice manages the diversion programme. Normally a young person is involved in individual and/or group work sessions which cover a range of areas such as offending behaviour, alcohol and drug use, social skills, education, employment and training and problem solving. A report on progress is then submitted to the Procurator Fiscal.

A national Toolkit for Diversion from Prosecution has been devised by the Crown Office and Procurator Fiscal Service (COPFS), local authorities, the police and the third sector, which will offer detailed guidance on establishing and maintaining a youth justice diversion scheme.
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