

# **Criminal Advice and Remittals to the Children's Hearings System**

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## Executive summary

The Children's Hearings System mainly deals with children under the age of 16. However, some young people aged 16 and 17 are also involved in the Hearings System. This may happen where they are still subject to Compulsory Supervision Orders (CSOs), or where their case is remitted to the Hearings System for disposal following conviction by a court.

Scotland's Youth Justice Strategy for 2015 to 2020 aims to support young people in the transition to adult services and for diversion from prosecution and custody, including that more cases are remitted from the criminal courts to Children's Hearings.

This research was carried out to provide evidence to inform the implementation of the Youth Justice Strategy, by examining:

- Life experiences of young people who have had requests for advice to Children's Hearings from the criminal courts, and/or remittals from courts to Children's Hearings. This includes their histories in the Hearings System, offending histories, experience of trauma, and service intervention;
- Types of offences and proceedings where criminal courts requested advice or remitted to Children's Hearings; and
- Children's Hearings' advice provided to criminal courts, and decisions on remittals from courts

It looks at the cases of all young people with advice requested from criminal courts and Children's Hearings held in 2015-16 and any remittals following this advice; and those cases remitted from courts in 2015-16 where there was no previous advice request. There are 111 such cases in total:

- Advice requests and Children's Hearings held – 104 young people (includes 42 cases remitted following advice provided to the courts)
- Remittals with no prior advice requested or provided – nine young people.

## Research findings

This research raises a number of questions for policy and practice on preventative interventions and support for young people involved in offending.

The young people in this study had childhoods characterised by trauma and involvement in the Hearings System. Almost all (98%) had some involvement in the Hearings System before the advice request or remittal from a criminal court. Almost half (48%) were first referred to the Children's Reporter as young children and most (87%) had histories of offending. Almost half (48%) had been exposed to violence in the family home or by family members and over a third (35%) had experienced significant bereavement. A third had been separated from their main care giver, most often because they'd been abandoned or rejected by them.

How can services and the Children's Hearings System more effectively target interventions to not only protect children from harm but help prevent adverse early experiences impacting on development into adulthood?

Almost a quarter of the young people were recorded in social work or police reports as having a disability. Despite this level of need, 41% of them did not appear to be receiving support for their disabilities.

What are the constraints on provision of support for young people with disabilities and how can they be addressed?

### *Criminal advice requests and remittals to Children's Hearings*

There were 152 requests which covered 269 offences, and 24 of these requests were for solemn proceedings. The most common types of offences<sup>1</sup> were 'miscellaneous' offences (49 young people), 'other crimes' (40 young people), 'non-sexual crimes of violence' (29 young people) and 'crimes of dishonesty' (22 young people). Almost all requests (97%) were from Sheriff courts.

There were 132 Children's Hearings held to provide **criminal advice**, and 58% advised the case be remitted to the Hearings System for disposal. It was evident that Children's Hearings were considering recommendations from social work and young people's views in making their advice. For 40 young people (36%) the support provided *via* the Hearings System was the reason that Children's Hearings advised that the offence(s) be remitted. But there were 28 young people (25%) where their disengagement with supports led Hearings to advise that they should be dealt with by the courts.

Are Children's Hearings always considering the best interests of those young people whose attitudes and levels of engagement are rejecting of services and the Hearings System?

There were 60 **remittals** for 49 young people, and eight were for solemn proceedings. The most common types of offences were 'other crimes' (24 young people) and 'miscellaneous offences' (21 young people). Few young people were remitted from the courts for violent crimes, fire raising/ vandalism crimes and motor vehicle offences, and none for sexual crimes. This suggests that more serious crimes are not being remitted by the courts to Children's Hearings. For 47 of the remittals, the court had followed the Children's Hearing's advice and remitted the case to a Children's Hearing for disposal, and there were 12 remittals where there had not been prior advice Children's Hearings held.

<sup>1</sup> Scottish Government (2017). Classification of crimes and offences. <http://www.gov.scot/Topics/Statistics/Browse/Crime-Justice/PubRecordedCrime/Classification>

Geographical differences were found in the numbers of young people with criminal advice requests and these follow the pattern of joint reports and prosecutions for 16 and 17 year olds. It was not within the scope of this research to explore the reasons behind this but these findings strongly suggest that there are differences in practice by justice services in how they respond to young people who offend.

Is there is a need for further data and research on practice by justice services in relation to young people who offend, to explore differences in their response to and outcomes for these young people?

Remittal from criminal court to the Hearings System provides a route by which more young people could be diverted from the adult criminal justice system and its disposals. This would go some way towards meeting the aims of Scotland's Youth Justice Strategy. This research has found that this disposal is being used appropriately by courts and Children's Hearings but perhaps not yet to the extent that it could be.

Could the Children's Hearings System be used more for dealing with young people who commit offences?



## 1. Introduction

### Sixteen and 17 year olds and the Children's Hearings System

The Children's Hearings System mainly deals with children under the age of 16. However, some young people aged 16 and 17 are also involved in the Hearings System. This may happen where they are still subject to Compulsory Supervision Orders (CSOs) made by Children's Hearings, or where their case is remitted to the Hearings System for disposal following conviction by a criminal court.

For ease of reference, in this report, those aged 16 and 17 are referred to as 'young people' and those aged under 16 as 'children'.

In 2015-16<sup>2</sup>, there were 10,379 children and young people with CSOs (SCRA, 2016), and 783 (8%) of them were aged 16 and 17<sup>3</sup>. For the latter, the most common accepted or established grounds that led to Children's Hearings first making their CSOs were related to lack of parental care or to the child or young person's behaviour (Table 1).

**Table 1: Most common accepted or established grounds linked to first CSOs for young people with CSOs in 2015-16<sup>3</sup>.**

Accepted/established ground*	Number of young people with CSOs in 2015-16		
	Female	Male	Total
Lack of parental care	166	169	355
Beyond control of a relevant person	50	90	140
Child's conduct risk to self or others	59	47	102
Not attending school	47	54	101
Committed an offence	18	70	88
<i>All other grounds</i>	<i>102</i>	<i>83</i>	<i>169</i>
<b>Total**</b>	<b>354</b>	<b>411</b>	<b>783</b>

\*Includes grounds under s52(2) of the Children (Scotland) Act 1995 and s67(2) of the Children's Hearings (Scotland) Act 2011.

\*\*The sum does not equal the total as some young people had more than one accepted/established ground.

<sup>2</sup> 1 April 2015 to 31 March 2016

<sup>3</sup> Source: SCRA's Data Warehouse

Also in 2015-16, there were a total of 15,329 children and young people referred to the Children's Reporter (on all referral grounds), and 578 (4%) of them were aged 16 and 17 (SCRA, 2016).

### Young people who commit offences

In most cases, the legal definition of a 'child' in Scotland is someone under 16. The majority of children under 16 who commit offences are dealt with within the Hearings System<sup>4</sup>. Most 16 and 17 year olds are legally defined as adults. However, there are certain circumstances where a young person prosecuted for an offence(s) in a criminal court, and who has pled or been found guilty, can be legally regarded as a child and have their case dealt with by a Children's Hearing:

1. If a young person is subject to a CSO they are legally a child for the purposes of the Hearings System, and the Sheriff **must** (a Judge in the High Court **may**) request the advice of a Children's Hearing before disposing of their case. If the Sheriff (or Judge) considers it appropriate the young person's case can be remitted to a Children's Hearing for disposal.<sup>5</sup>
2. Young people who are not subject to CSOs and are under 17 years and six months can be remitted by the criminal court to a Children's Hearing for advice on how the court should dispose of the case. Following receipt of that advice the court can remit the young person's case to a Children's Hearing for disposal<sup>6</sup>.

Relatively few young people who commit offences are dealt with in the Hearings System; in 2015-16:

- 384 (14%) of the 2,761 children and young people referred to the Reporter for offending were aged 16 or 17 (SCRA, 2016).
- There were 1,626 joint reports<sup>7</sup> from the police to the Reporter and Procurator Fiscal (PF) for young people who were subject to a CSO - 927 (57%) of these reports were

<sup>4</sup> Children (Scotland) Act 1995 (s93), Criminal Procedures (Scotland) Act 1995 (s307) and Children's Hearing (Scotland) Act 2011 (s199)

<sup>5</sup> Criminal Procedures (Scotland) Act 1995(s49(3)).

<sup>6</sup> Criminal Procedure (Scotland) Act 1995 (s49(1))

<sup>7</sup> Lord Advocate (Lord Advocate's Guidelines to the Chief Constable on the reporting to Procurators Fiscal of offences alleged to have been committed by children: revised categories of offence which require to be jointly reported (2014).

[http://www.copfs.gov.uk/images/Documents/Prosecution\\_Policy\\_Guidance/Lord\\_Advocates\\_Guidelines/Lord%20Advocates%20Guidelines%20offences%20committed%20by%20children.pdf](http://www.copfs.gov.uk/images/Documents/Prosecution_Policy_Guidance/Lord_Advocates_Guidelines/Lord%20Advocates%20Guidelines%20offences%20committed%20by%20children.pdf)

retained by the Reporter and dealt with in the Hearings System and 699 (43%) were retained by the PF<sup>8</sup>.

- 554 young people aged 16 were prosecuted in courts with 96 (17%) found not guilty, and there were 1,602 young people aged 17 who were prosecuted with 297 (18%) found not guilty<sup>9</sup>.
- There were 109 young people where the courts had requested criminal advice from Children's Hearings; and 49 young people whose cases were remitted by courts to Hearings for disposal (total of 119 young people)<sup>8</sup>. This research report is about this group of young people.

## Policy on young people who commit offences

'A Guide to Youth Justice in Scotland: policy, practice and legislation' ([www.cycj.org.uk](http://www.cycj.org.uk)) should be referred to for a comprehensive overview of the youth justice system; only a brief summary is provided below.

The Hearings System has, since it began operating in 1971, been central in dealing with children who are accused of committing offences. The founding ethos of the Hearings System was based on the principle that children who had committed offences, and those who were in need of protection, had common needs. Support for this underpinning welfare principle has endured throughout the many changes in government, legislation and society since 1971 (Fraser, 2016).

It has been recognised, since the time of the Kilbrandon Report (1964), that many children and young people who commit offences have experienced adversities in their lives and often from a young age (SCRA, 2003). Research has found that the main contributory factors for children and young people involved in offending are:

*Loss:* This can include loss of family, relationships, friends and stability. Many young people in custody have experienced significant bereavement and family trauma.

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Agreement in relation to the cases of children jointly reported to the Procurator Fiscal and Children's Reporter (2015) [http://www.copfs.gov.uk/images/Documents/Prosecution\\_Policy\\_Guidance/Protocols\\_and\\_Memorandum\\_of\\_Understanding/Decision%20making%20in%20cases%20of%20children%20jointly%20reported%20to%20the%20Procurator%20Fiscal%20and%20Childrens%20Reporter%20-%20Jan%202016.pdf](http://www.copfs.gov.uk/images/Documents/Prosecution_Policy_Guidance/Protocols_and_Memorandum_of_Understanding/Decision%20making%20in%20cases%20of%20children%20jointly%20reported%20to%20the%20Procurator%20Fiscal%20and%20Childrens%20Reporter%20-%20Jan%202016.pdf)

<sup>8</sup> Source: SCRA's Data Warehouse

<sup>9</sup> Source: Scottish Government Criminal Proceedings Database. Data quoted refer to High, Sheriff and Justice of the Peace courts.

*Family:* Poor parenting and experiences of neglect are risk factors associated with poor self-control and aggression in young people. Factors such as domestic violence and significant health problems can also be associated with offending by young people.

*Education:* Factors that may impede a young person's ability to desist from offending behaviour include: experience of school exclusions, low attainment and poor attendance.

*Individual:* Low self-esteem, low resilience, substance misuse, poor social skills, early evidence of aggressive behaviour, cognitive and moral development.

*Community:* Victimisation, poverty, deprivation and community stability.

(From: 'A Guide to Youth Justice in Scotland: policy, practice and legislation' and references therein: [www.cycj.org.uk/resource/youth-justice-in-scotland-guide/](http://www.cycj.org.uk/resource/youth-justice-in-scotland-guide/)).

The 'Whole System Approach for Young People who Offend' was introduced in 2011<sup>10</sup>. It takes forward the welfare principle of the Hearings System by aiming to put in place tailored support and management based on the needs of each individual; and to try to ensure that only those under 18 who really need formal measures - such as compulsory supervision by the Hearings System, prosecution, secure care or custody - are taken through these processes (Murray et al, 2015).

Scotland's Youth Justice Strategy for 2015 to 2020 sets out actions to reduce offending and improve the life chances of young people (Scottish Government, 2015). It aims to support young people in the transition to adult services and for diversion from prosecution and custody. Those actions of particular relevance to young people involved in the Hearings System are:

- Explore opportunities with the Judiciary, Crown Office Procurator Fiscal Service, the Scottish Courts and Tribunal Service, and Scottish Children's Reporter Administration (SCRA) to deliver on the Council of Europe Directive on child-friendly justice to enable more cases to be remitted from courts to Hearings.
- Continue to seek to reduce the number of children in secure care and custody, including through safe community-based alternatives

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<sup>10</sup> Further information on the Whole System Approach is available from the Scottish Government's web site - <http://www.gov.scot/Topics/Justice/policies/young-offending/whole-system-approach>

- Support young people and families during all periods of transition, especially within the crossover between child and adult services.
- Improve transitions between children's and adult justice systems, where needed.

Over the past 10 years there has been a significant reduction in the numbers of young people with proceedings in the criminal courts, and those reductions in recent years have largely been attributed to the success of the Whole System Approach (Murray et al, 2015). However, there has been little change in the proportion of criminal proceedings where the outcome was to remit to a Children's Hearing (Table 2). In addition, there is a similar pattern in the proportion of requests for advice from criminal courts to Children's Hearings, with this being around 10% of proceedings each year since 2009-10 (Dyer, 2016).

**Table 2: Proceedings against young people in the criminal courts where the outcome was remittal to a Children's Hearing**

Year	Proceedings against 16 and 17 year olds	Outcome - remittal to Children's Hearing	% remittals
2005-06	9,202	202	2%
2006-07	9,666	263	3%
2007-08	8,980	200	2%
2008-09	2,648	146	2%
2009-10	6,108	131	2%
2010-11	4,828	152	3%
2011-12	4,100	119	3%
2012-13	3,110	120	4%
2013-14	2,517	85	3%
2014-15	2,229	62	3%
2015-16	2,146*	49**	2%

From: Fraser (2016); and \*Scottish Government's Criminal Proceedings Database and \*\*SCRA's Data Warehouse

## Research aims

The Youth Justice Strategy and its action to increase the numbers of remittals from the criminal courts to Children's Hearings has been in place for under two years. It is therefore perhaps too early to evaluate its impact.

Despite the policy focus on young people in the transition between the Hearings System and the adult criminal justice system, there is little information on this group of young people.

This means that there is a gap in the evidence on which policies and practice can be developed and implemented. This research aims to help address this gap by examining the:

- Life experiences of young people subject to requests for advice to Children's Hearings from the criminal courts, and/or remittals from courts to Hearings. This

includes their histories in the Hearings System, offending histories, experience of trauma, and service intervention;

- Types of offences and proceedings where criminal courts requested advice or remitted to Children's Hearings; and
- Children's Hearings' advice provided to criminal courts, and decisions on remittals from courts.

This research looks at the following types of cases:

1. All young people where advice was requested by criminal courts and advice Children's Hearings were held in 2015-16; and
2. Those cases remitted from courts in 2015-16 where there was no previous advice request.

There are 111 such cases in total:

- Advice requests and Children's Hearings held – 104 young people (includes 42 cases remitted following advice provided to the courts);
- Remittals with no prior advice requested or provided – nine young people (includes two who had separate advice requested and remittals).

## 2. Methods

A list of all the 119 young people who had Children's Hearings held to provide criminal advice and/or consider remittals from the criminal courts between April 1, 2015 and March 31, 2016 was produced from SCRA's Data Warehouse. Those where the advice request was made outwith this period were removed from the sample, leaving 111 young people.

Each young person's case was separately examined using the information held by SCRA in its Case Management System (CMS). The CMS is a secure system which only trained and authorised SCRA staff are permitted to access.

The research variables covered three areas:

1. Young person's background
2. Advice request and Children's Hearing
3. Remittal and Children's Hearing.

The full research variables are provided at Appendix 1.

Information was collected from the CMS between July and November 2016, and was recorded in an anonymous format and held on secure encrypted systems to which only the SCRA Research Team have access. The researcher is a PVG Scheme member in respect of regulated work with children<sup>11</sup>. The information was collated and analysed using MS Excel.

Further data were obtained from SCRA's Data Warehouse and the Scottish Government Justice Analytical Services provided data from its Criminal Proceedings Database.

Numbers less than five are not given in most of the tables in this report to help ensure anonymity.

### ***Limitations of this research***

Most of the information for this research was obtained from the documents held in the CMS. These include social work reports, police reports, requests from court including complaints and indictments, reports of Children's Hearings proceedings, etc. It does not include information held by the courts and verbal discussions and decision making, for example in Children's Hearings. In some cases information was missing from the CMS files; for example, for 27 of the 152 requests for advice the complaint or indictment was not on CMS and this meant that information on the types of court proceedings and types of offence were not always available.

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<sup>11</sup> Section 52 of the Protection of Vulnerable Groups (Scotland) Act 2007



### 3. Young people's backgrounds

This section examines the backgrounds and adversities experienced by the 111 young people.

#### Protected characteristics

Gender: - 92 (83%) male and 19 (17%) female

Ethnicity – 105 white Scottish/British; four mixed; two not stated

Disability: – 27 (24%) recorded in social work or police reports as having a recognised/diagnosed disability<sup>12</sup>. The most common recorded disability was social, emotional and behavioural difficulties (15 young people). The other types of disabilities were language and communication disorder; autistic spectrum disorder; mental health problem; multiple disabilities; and other chronic illness/disability (all less than five young people each).

#### Experience of trauma

##### ***Bereavement***

Over a third (39 young people, 35%) had experienced significant bereavements (two young people are counted twice below):

- 19 young people (17%) had parents who had died - 16 young people had lost one of their parents. Two young people's fathers had been murdered. Another three young people had lost both of their parents.
- Four (4%) had lost their long-term carer (either kin or foster/adoptive)
- 11 (10%) had lost a grandparent
- Five (4%) had siblings who had died
- Two (2%) had friends who had died – both by suicide

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<sup>12</sup>. It is not possible to compare this with general population in this age group in Scotland as there is not currently published information on disability in relation to children and families in Scotland.  
<http://www.gov.scot/Topics/People/Equality/Equalities/DataGrid/Disability>

These levels of bereavement are higher than those found in a previous study of young men in custody (e.g. 10% had lost a parent, 7% siblings or other relatives) (Smith et al, 2014) and are lower than the 77% of young men in custody who had a traumatic bereavement reported in Vaswani's research (2014).

### ***Separation from main care giver***

A third (37 young people, 33%) had experienced long-term or permanent separation from their main care giver (five young people had experienced two separate separations and are counted twice below):

- 33 (30%) had been separated from both parents or the parent who was their main carer - 16 (14%) had been separated from their mothers, 11 (10%) from both parents and six (5%) from their fathers.
- Five (4%) had been separated from kinship carers (grandparent or sibling)
- Four (4%) had been separated from long-term foster or adoptive carers

The main reason for these separations was that the young person had been rejected by their parent or carer (e.g. the carer terminating any contact/relationship, young person put out of family home, parent or carer moves away without young person, etc.), and this had happened to 21 young people (19%). The next most common reason was that the parent or carer had died - nine young people (8%) had experienced this. Five (4%) young people's parent(s)' addictions and chaotic lifestyles were the main reason for separation from them. Legal orders resulted in four (4%) young people having no contact with their parents. Three (3%) young people were separated from parents who were serving lengthy custodial sentences.

### ***Exposure to violence***

Almost half (53 young people, 48%) had been exposed to violence in the family home or to violence by family members in the community (14 young people, 13%, had been exposed to more than one type of violence and are counted twice below):

- 25 young people (22%) had witnessed domestic violence in their homes
- 17 (15%) had witnessed a violent offence (that was not domestic violence related and included murder and attempted murder) or a sudden death in their homes

- 12 young people (11%) were victims of physical assaults by family members
- Six young people (5%) had been sexually assaulted by family members or close associates
- Five young people (5%) had witnessed physical or sexual assaults by family members in the community
- Two young people (2%) lived in homes characterised by inter-familial violence

## History in the Children's Hearings System

### ***Referral history***

All except two young people had at least one referral to the Reporter (prior to the request for criminal advice or the remittal), and 97 (87%) had grounds that had been accepted or established (Table 3).

Almost half (48%) had first been referred to the Reporter before they were six years old. Over half (56%) of those with accepted or established grounds were over 12 years when grounds were first accepted or established. Almost all of the young people had further referrals with 91% being referred between the ages of 15 and 17 (Table 3).

**Table 3: Ages at key stages in the Children's Hearings System**

Age (years)	No. young people		
	1 <sup>st</sup> referral	1 <sup>st</sup> accepted or established ground	Latest referral before advice request or remittal
Under 3*	17 (16%)	12 (12%)	0
3 - <6	35 (32%)	11 (11%)	0
6 - <9	20 (18%)	11 (11%)	3 (3%)
9 - <12	17 (16%)	9 (9%)	0
12 - <15	17 (16%)	31 (32%)	7 (6%)
15 - 17	3 (3%)	23 (24%)	99 (91%)
<b>Total with grounds</b>	<b>109</b>	<b>97</b>	<b>109</b>
Never referred	2 (2%)	2 (2%)	2 (2%)
No accepted or established grounds	n/a	12 (11%)	n/a
<b>Total</b>	<b>111</b>	<b>111</b>	<b>111</b>

*\*The dates of these referrals were before the introduction of SCRA's Referrals Administration Database in 2002 and in most cases were not available. These young people would have been first referred before they were three years old.*

The most common first referrals related to grounds of 'lack of parental care' (35%) or 'victim of a schedule 1 offence' (27%). There were 11 young people (10%) who had first been referred on offence grounds. The most common accepted or established grounds were 'beyond control of a relevant person' or 'has committed an offence' (both 22%). The latest referral to the Reporter before the criminal advice request or remittal for 68% of the young people was that they had committed an offence, and 11% because their conduct was likely to harm themselves or others. Details of the referral histories are given in Appendix 2.

### **Offence referral history**

Fourteen young people (13%) had no offence referrals to the Reporter, and eight of them had never been subject to a CSO (includes two who were never referred to the Reporter).

Most (97 young people, 87%) had been referred to the Reporter on offence grounds at some point (excludes jointly reported offences retained by the PF). The majority (67 young people, 60%) had been referred on offence grounds ten or more times. Seven young people (6%) had had one offence referral. Another seven young people (6%) had had over 50 offence referrals, with the maximum being one young person who had 99 offence referrals to the Reporter (Table 4).

**Table 4. Offence referral history**

No. offence referrals to the Reporter*	No. young people	%
None	14	13%
<5	16	14%
5 - <10	14	13%
10 - <20	33	30%
20 - <30	18	16%
30 - <40	6	5%
40 - <50	<5	3%
50 or more	7	6%
<b>Total young people</b>	<b>111</b>	

\*excludes jointly reported offences retained by PF

## Residence and service involvement at time of criminal advice request or remittal and Children's Hearing

### **CSO status**

- 78 young people (70%) were subject to CSOs at time of advice request or remittal (if no prior advice request)
- 98 young people (88%) had at some time in their lives been on CSOs (includes the 78 (70%) currently subject to CSOs)
- 13 young people (12%) had never been subject to CSOs

### **Residence**

At the time of the Children's Hearing, almost half of the young people (47%) were accommodated, with 25 (22%) being in a secure unit or in custody; 41% were living at home with one or both of their parents (Table 5).

**Table 5: Place of residence at time of advice Children's Hearing or remittal**

Residence at time at Advice Hearing or remittal	Number of young people	%
<b>Home – parent(s) total</b>	<b>46</b>	<b>41%</b>
Accommodated:		
Secure unit	15	14%
Children's Unit	10	9%
In custody	10	9%
Residential school	7	6%
Kinship care	5	4%
Foster care	<5	4%
Supported carer placement	<5	1%
<b>Accommodated total</b>	<b>52</b>	<b>47%</b>
Other:		
Own tenancy - independent	<5	4%
Own tenancy – supported	<5	4%
Homeless	5	4%
<b>Other total</b>	<b>13</b>	<b>12%</b>
<b>Total young people</b>	<b>111</b>	

The young people were from the following local authority areas:

- Glasgow (22 young people, 20%); Aberdeen City (13 young people, 12%); Edinburgh (11 young people, 10%); East Ayrshire (nine young people, 8%); South Ayrshire (nine young people, 8%); North Ayrshire (eight young people, 7%); and Dumfries & Galloway (five young people, 4%).
- There were less than five young people from each of: Dundee; Fife; Highland; Falkirk; Inverclyde; Midlothian; Renfrewshire; East Renfrewshire; Stirling; North Lanarkshire; East Lothian; South Lanarkshire; West Lothian; Argyll & Bute; East Dunbartonshire; and Scottish Borders.
- There were none from Aberdeenshire; Moray; Clackmannanshire; Orkney; Shetland; Eilean Siar; Angus; and West Dunbartonshire.

***Services working with the young people at time of criminal advice request or remittal***

The types of service input that the young people were receiving at the time of the request for advice or remittal were gathered (this excludes residential provision) from the reports provided to Children's Hearings. For the purposes of this analysis services are classed as 'social work' or 'specialist' services that support specific aspects of the young people's lives. What this analysis cannot show is the level of service provision and/or the young people's engagement with it. It only shows what services were recorded in reports as being provided (Table 6).

- There were three young people who were not involved with any services (3%). These were the two young people who had never been referred to the Reporter and one who had totally disengaged from services.
- Five young people were not involved with social work, were not on CSOs, and had input from other services (4%).
- Ten young people had social work involvement only (9%).
- Most (93 young people, 84%) were receiving support from social work and at least one specialist service. The most common types of specialist services were related to training and employment (34 young people, 31%), transition from being in care (31

young people), addressing offending (28 young people, 25%) and support for mental health or behavioural difficulties (24 young people, 22%).

**Table 6: Services provided to young people**

Service type	No. young people	Organisations/ services
Social work	101 (91%)	Children & Families; Youth Justice; Criminal Justice; Young People's Service
Training/ employment	34 (31%)	Care Leavers Employment Service; Action for Children Youth Build Course; First4skills; Prince's Trust; Aberdeen Foyer; Jobs & Business Glasgow; H20 course; Employability & Skills service; Skills Development Scotland; Keen4work; Connect Services; Skills Through Employment Project; More Choices More Chances; Employment Enterprise; Midlothian Training Service; Tomorrow People; TIGERS; Access to construction course; Discover Opportunities
Transitions/ throughcare	31 (28%)	Throughcare worker/team; Young People's transition & support; Aftercare; Transition pathways; Young people's support and transitions; Throughcare & Aftercare; Pathways Process; Leaving care worker
Offending	28 (25%)	Intensive Support and Monitoring Services; Community Payback Order; STARS project; Structured Deferred Sentence Team; IVY project; SACRO; Youth offending service; CYCJ Girls Group; Apex; Street League; Freagarroch; Right Track; RAMPS support worker; CHOICE project; Right Track; Includem
Mental health/ behaviour	24 (22%)	CAMHS; ISSU18 Mental Health Nurse; clinical psychologist; Behaviour counsellor; Multisystemic therapy team; Community Psychiatric services; educational psychologist; ADHD clinic; VSA Counselling
Other	24 (22%)	Family mediation; family support practitioners; Quarriers;



		Barnardo's; Action for Children; SHMU; STEP project; Radical Services
Addictions	15 (14%)	Youth addiction; Addaction; Drugs Action; Rosemount services; Young People's Addiction Worker; Addiction Services; Penumbra; RADAR addictions worker; Drugs/addictions Support Worker; Adolescent Substance Abuse Service
Intensive support	11 (10%)	Intensive support service; ISS foster carer; Intensive Community Support & Learning Service; intensive foster care; Youth Intensive Services
Housing	6 (5%)	Homeless young people's project; Alternative family placement; Residential officer; Housing Association; Housing support officer; Homeless officer
None	3 (3%)	

Of the 27 young people with disabilities, 16 (59%) were receiving a service to help them with their disabilities and this was usually related to mental health or behavioural difficulties. The 11 other young people (41%) did not appear to be receiving support for their disabilities.

## 4. Criminal advice requests and Children's Hearings

### ***Criminal Advice Hearings***

Where a court requires a Children's Hearing to provide advice under sections 49(1)(b), (3) or (6) of the Criminal Procedure (Scotland) Act 1995, the Reporter must arrange an Advice Children's Hearing.

The purpose of the Advice Hearing is to examine the young person's circumstances and to prepare a report for the court on its advice. The court must consider the advice and can either dispose of the case itself or remit back to a Children's Hearing for disposal, whether this is the advice of the Hearing or not.

Most advice requests from criminal courts are on young people. In 2015-16, there were only 11 Hearings held to provide criminal advice on children under 16<sup>13</sup>. The 104 young people and 132 Children's Hearings discussed in this section therefore represent the majority of such cases in 2015-16.

### **Criminal advice requests**

Of the 104 young people with requests for criminal advice, 27 (26%) were not on CSOs at the time of the advice request.

Almost a third (32 young people, 31%) were on bail at the time of at least one of the offences included in the advice request(s).

For most (101 young people, 97%) the advice request(s) were from Sheriff courts, for two it was Justice of the Peace courts, and three had requests from the High court (two of them also had requests from Sheriff courts). The numbers of advice requests from each court are shown in Table 7.

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<sup>13</sup> From: SCRA (produced February 2017). Data report for the Advancing the Whole Systems Approach Group. Unpublished

**Table 7: Criminal advice requests in 2015-16 by Sheriffdom and court<sup>14</sup>**

Sheriffdom	*Court	No. young people	No. requests
<b>Glasgow &amp; Strathkelvin</b>	Glasgow	<b>21 (20%)</b>	<b>35</b>
<b>South Strathclyde, Dumfries &amp; Galloway</b>	Ayr	10	13
	Hamilton	5	5
	Airdrie	<5	<5
	Dumfries	<5	<5
	<b>Total</b>	<b>20 (19%)</b>	<b>23</b>
<b>North Strathclyde</b>	Kilmarnock	11	13
	Paisley	11	17
	Greenock	<5	6
	<b>Total</b>	<b>25 (24%)</b>	<b>36</b>
<b>Grampian, Highland &amp; Islands</b>	Aberdeen	13	22
	Inverness	<5	<5
	Tain	<5	<5
	<b>Total</b>	<b>15 (14%)</b>	<b>24</b>
<b>Lothian &amp; Borders</b>	Edinburgh	12	15
	Livingston	<5	<5
	Jedburgh	<5	<5
	Selkirk	<5	<5
	<b>Total</b>	<b>16 (15%)</b>	<b>21</b>
<b>Tayside, Central &amp; Fife</b>	Kirkcaldy	<5	<5
	Stirling	<5	<5
	Falkirk	<5	<5
	Alloa	<5	<5
	Dundee	<5	<5
	<b>Total</b>	<b>9 (9%)</b>	<b>12</b>
<b>Total</b>		<b>104**</b>	<b>152</b>

\*No criminal advice requests were received from the following Sheriff Courts: Kirkwall, Wick, Stornoway, Lerwick, Lochmaddy, Portree, Elgin, Banff, Peterhead, Fort William, Forfar, Perth, Oban, Dunfermline, Dunoon, Cambeltown, Lanark, Stranraer and Dumbarton.

<sup>14</sup> Further information on locations of courts is available from the Scottish Courts and Tribunals Service - <https://www.scotcourts.gov.uk/docs/default-source/default-document-library/locations-map.pdf?sfvrsn=0>

*\*\*Two young people had criminal advice requests from two different courts and are counted twice in the table.*

The numbers of advice requests do not follow the population sizes of the areas covered by individual courts; for example there were few requests from courts in Fife and Dundee, and higher numbers from courts in Aberdeen and Paisley. Fife has 8,251 16 and 17 year olds in its population, and Dundee has 3,074. In contrast, Aberdeen City has 3,924 16 and 17 year olds and Renfrewshire has 3,982<sup>15</sup>. Following population size it could be expected that there would be more young people with criminal advice requests from the Tayside, Central and Fife area or less from Aberdeen City and North Strathclyde areas.

The pattern of criminal advice requests is in line with the number of joint reports for young people and the number retained by the PF in different local authority areas in 2015-16: Fife - 34 joint reports, nine retained by PF; Dundee - 43 joint reports, 10 retained by PF; Aberdeen - 123 joint reports, 70 retained by PF; Renfrewshire - 149 joint reports, 42 retained by PF<sup>16</sup> (Appendix 3 gives a full list of numbers of joint reports in each local authority area in 2015-16). It is also in line with the numbers of young people prosecuted in courts in each local authority area (Appendix 4).

### ***Types of court proceedings***

There were a total of 152 requests for advice for the 104 young people - 24 (16%) were for solemn proceeding and 101 (66%) for summary proceedings. There were 27 requests (18%) where there was no complaint or indictment on CMS and the types of proceedings were therefore not available to the researcher.

## Offences

The 152 requests covered 269 offences. These have been grouped according to the Scottish Government's Classification of Crimes and Offences (2017), and are summarised in Table 8. The full list and classifications of these 269 offences are given at Appendix 5.

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<sup>15</sup> National Records of Scotland. Mid-2015 population estimates Scotland.  
<https://www.nrscotland.gov.uk/files/statistics/population-estimates/mid-15-cor-12-13-14/15mype-cahb-tab2.pdf>

<sup>16</sup> Data produced from SCRA's Data Warehouse on 27<sup>th</sup> February 2017

The most common types were 'miscellaneous offences' (30%) and 'other crimes' (24%), and these were committed by 49 and 40 young people respectively; 29 young people had committed 35 violent crimes, and 22 young people had committed 39 crimes of dishonesty (Table 8).

**Table 8: Types of offences in requests for advice to Children's Hearings from criminal courts**

Crime and offence classification group	No. crimes and offences and proceedings type				No. requests*	No. young people*
	Summary	Solemn	Not known	Total		
Non-sexual crimes of violence	12	15	8	35 (13%)	31 (20%)	29 (28%)
Sexual crimes	5	0	0	5 (2%)	<5	<5
Crimes of dishonesty	27	6	6	39 (14%)	29 (19%)	22 (21%)
Fire-raising, vandalism, etc.	15	<5	<5	21 (8%)	17 (11%)	13 (12%)
Other crimes	51	8	7	66 (24%)	55 (36%)	40 (38%)
Miscellaneous offences	57	12	13	82 (30%)	57 (38%)	49 (47%)
Motor vehicle offences	15	<5	<5	21 (8%)	11 (7%)	9 (9%)
<b>Totals</b>	<b>182</b>	<b>45</b>	<b>42</b>	<b>269</b>	<b>152</b>	<b>104*</b>

\* The sum does not equal the total as some young people had committed offences from more than one classification group (Scottish Government Classification of Crimes and Offences, 2017)

## Children's Hearings held to provide criminal advice

132 Children's Hearings were held to provide criminal advice for the 104 young people following the 152 requests. These Hearings provided the following advice:

- To remit the case to the Hearings System for disposal - 77 Hearings (58%).
  - That the case should be dealt with by the court - 46 Hearings (35%).
- (in addition, there were five Children's Hearings where it was not clear what the advice was and four where the Hearing's advice was not on CMS).

There were seven young people who had separate Children's Hearings which provided different advice to each other (and are counted in both above).

One of the 132 Children's Hearings decided to appoint a safeguarder and three Hearings were continued.

### ***Children's Hearings reasons***

Hearings gave a number of reasons for their advice to court to either remit the case to a Hearing or to dispose of it, and the most common are shown in Table 9.

**Table 9: Children's Hearings' reasons for the criminal advice provided**

Hearing's reason	Number of Hearings – advice*	
	Hearings System should deal	Court should deal
Young person is engaging with services/supports	45	8
Support/ care plan being provided by Hearings System	40	<5
Young person is NOT engaging with services/supports or states that they will not	0	28
Future prospects – employability/ training	24	5
Disability or mental health	20	5
Young person's vulnerability	21	2
Young person expresses remorse	21	<5
Adult system/ disposals would be detrimental to young person	14	0
Seriousness of crime or history of offending	<5	19
Reduction or cessation of offending	14	<5
Address offending – specific intervention	<5	9
Positive change in behaviour/maturity	11	<5
Addictions	7	<5
Age – approaching 18 <sup>th</sup> birthday	<5	7
Change away from negative peer group	7	<5

\*Some Hearings gave more than one reason.

In most cases Children's Hearings' advice followed the recommendations from social work:

- At 61 Advice Children's Hearings the social work recommendation was that the young person should remain in the Hearings System; 55 Hearings (90%) agreed with this. Six Hearings (10%) did not agree and provided advice that the case be dealt with by the court.

- At 40 Advice Children's Hearings the social work recommendation was that the case be dealt with by the court; 32 Hearings (80%) agreed with this. Eight Hearings (20%) did not agree and provided advice that the case be dealt with in the Hearings System.

In addition, there were 31 Children's Hearings where either the Hearings' advice was not clear/available or the social work recommendation was not available.

### **Young people's views**

There were 93 Children's Hearings where young people's views were available from the Hearing's reasons, All About Me forms, or reports. Those views that were raised in five or more Children's Hearings are shown in Table 10 along with the Hearings' advice.

**Table 10: Young people's views at Advice Children's Hearing**

Young people's views	Number of Hearings - advice	
	Hearings System should deal	Court should deal
Accepts responsibility/ remorseful	28	9
Minimises actions/ does not accept responsibility	6	3
Was under influence of drugs/alcohol	5	<5
Wants to change behaviour/ move on in life	10	<5
Wants to remain on CSO and/or will engage with supports/services	15	<5
Does not want to be involved in criminal justice system/ scared of consequences	9	<5
Wants to be dealt with in adult criminal justice system	0	10
Was influenced by others	<5	<5

*Some young people had more than one view.*



## 5. Remittals to Children's Hearings

### ***Remit Hearings***

Where a court remits a case for disposal under section 49 of the Criminal Procedure (Scotland) Act 1995, and the child **is** subject to a CSO, section 130 of the Children's Hearings (Scotland) Act 2011 Act requires the Reporter to arrange a review Hearing under section 137. The remitted offence is treated as an established section 67(2)(j) ground.

Where a court remits a case for disposal under section 49 of the Criminal Procedure (Scotland) Act 1995, and the child is **not** subject to a CSO, section 71 of the Children's Hearings (Scotland) Act 2011 Act requires the Reporter to arrange a Hearing under section 119 as if a section 67(2)(j) ground had been established.

When a case is remitted from a criminal court to a Hearing for disposal, the jurisdiction of the court ceases and the Children's Hearing can discharge the referral, defer making a decision, make a CSO, or continue a CSO with or without variation.

### **Remits received**

There were a total of 60 remittals for 49 young people. Eight (13%) were for solemn proceedings and 44 (73%) were for summary proceedings. There were eight remittals where there was no complaint or indictment on CMS and the types of proceedings were therefore not available to the researcher.

Fifty eight remittals (97%) were from Sheriff Courts and two (3%) were from Justice of the Peace courts. There were none from the High Court. The number of remittals from each court is shown in Table 11.

**Table 11: Remittals to Children's Hearings in 2015-16 by Sheriffdom and court**

Sheriffdom	Court	No. young people	No. remittals
<b>Glasgow &amp; Strathkelvin</b>	Glasgow	<b>8 (16%)</b>	<b>8</b>
<b>South Strathclyde, Dumfries &amp; Galloway</b>	Ayr	8	9
	Hamilton	<5	<5
	Dumfries	<5	<5
	Stranraer	<5	<5
	<b>Total</b>	<b>15 (31%)</b>	<b>16</b>
<b>North Strathclyde</b>	Kilmarnock	<5	<5
	Paisley	<5	<5
	Greenock	<5	<5
	<b>Total</b>	<b>7 (14%)</b>	<b>9</b>
<b>Grampian, Highland &amp; Islands</b>	Aberdeen	*	<b>5</b>
<b>Lothian &amp; Borders</b>	Edinburgh	9	7
	Jedburgh	<5	<5
	<b>Total</b>	*	*
<b>Tayside, Central &amp; Fife</b>	Stirling	<5	<5
	Falkirk	<5	6
	Alloa	<5	<5
	Dundee	<5	<5
	<b>Total</b>	<b>8 (16%)</b>	<b>11</b>
<b>Total</b>		<b>49</b>	<b>60</b>

\*Suppressed due to low numbers

For 47 of the 60 remittals (78%) the court had followed the Children's Hearing's advice and remitted the case to Hearing for disposal. There was one case where the court did not follow the Children's Hearing's advice that the court should deal with the case and remitted the case to a Hearing<sup>17</sup>.

<sup>17</sup> For the remaining case it is not known if the court followed the Hearing's advice as there is no advice on CMS.

There were 12 remittals (20%), for nine young people, where there did not appear to have been prior advice Children's Hearings held (two of these young people also had separate remits that followed advice from Hearings). These nine young people were remitted from Edinburgh, Falkirk, Stranraer, Aberdeen, Ayr and Dumfries Sheriff Courts.

Children's Hearings made decisions to:

- Discharge the referral - 17 remittals
- Continue the CSO - 12 remittals
- Defer decision - eight remittals
- Terminate the CSO - seven remittals
- Make a CSO - six remittals
- Make an Interim CSO - <5 remittals

(No Children's Hearings appear to have been held for four remittals and for another four the decision wasn't evident).

## Offences

The 60 remittals covered 108 offences and these are summarised in Table 12. The full list and classifications of these offences are given at Appendix 6.

**Table 12: Types of crimes and offences remitted to Children's Hearings**

Crime and offence classification group	No. crimes and offences and proceedings type				No. remits*	No. young people*
	Summary	Solemn	Not known	Total		
Non-sexual crimes of violence	5	<5	<5	9 (8%)	7 (12%)	7 (14%)
Sexual crimes	0	0	0	0	0	0
Crimes of dishonesty	13	<5	<5	16 (15%)	11 (18%)	10 (20%)
Fire-raising, vandalism, etc.	5	<5	0	6 (6%)	<5	<5
Other crimes	31	<5	6	40 (37%)	29 (48%)	24 (49%)
Miscellaneous offences	24	6	5	35 (32%)	24 (40%)	21 (43%)
Motor vehicle offences	<5	0	0	<5	<5	<5
<b>Totals</b>	<b>80</b>	<b>15</b>	<b>13</b>	<b>108</b>	<b>60</b>	<b>49*</b>

\* The sum does not equal the total as some young people had committed offences from more than one classification group (Scottish Government Classification of Crimes and Offences, 2017)

The most common types of crimes and offences remitted to Children's Hearings were 'other crimes' (37%) and 'miscellaneous offences' (32%). Few young people were remitted from the courts for violent crimes, fire raising/ vandalism crimes and motor vehicle offences.

There were no remittals for sexual crimes. This suggests that more serious crimes are not being remitted by the courts to Hearings.

## 6. Discussion

There is a body of evidence that shows that care leavers can experience poorer outcomes than their peers, and that they are overrepresented in the prison population (Scottish Government, 2011).

Young people who have been looked after and/or involved in the Hearings System are disproportionately represented amongst those serving custodial sentences. A study of the files of 125 young men aged 16 and 17 who were serving sentences in HMYOI Polmont

found that 63% of them had been involved in the Hearings System (Smith et al, 2014). In 2015, a third of young men in HMYOI Polmont reported being in care as a child, and a quarter had been in care at age 16 (Broderick & Carrie, 2016). The Edinburgh Study of Youth Transitions and Crime found that young people with court convictions by the age of 17 generally had long histories of agency contact, including with the Hearings System (McAra & McVie, 2013).

Young people in custody are likely to have experienced significant childhood trauma. A recent study found that young men in HMYOI Polmont had experienced a wide range of loss, bereavement and other adverse childhood experiences (Vaswani et al, 2016). Previous studies found a high level of bereavement and a link between 'difficult' bereavements and mental health difficulties in such young men (Vaswani, 2014), and that over half of young men in custody had experienced significant past trauma (Smith et al, 2014).

The young people in this study are no different in having childhoods characterised by trauma and involvement in the Hearings System. Almost all (98%) had some involvement in the Hearings System before the advice request or remittal from a criminal court. Almost half (48%) were first referred to the Reporter as young children and most (88%) had been subject to a CSO at some time in their lives. Almost half (48%) had been exposed to violence in the family home or by family members and over a third (35%) had experienced significant bereavement. A third had been separated from their main care giver, most often because they'd been abandoned or rejected by them.

Many had experienced inadequate parenting and/or exposure to abuse or violence. Parenting that is neglectful or abusive is known to be associated with a range of negative outcomes for young people in the longer term, including: poor mental health and well-being; behaviours that present heightened risk to health (e.g. drug and alcohol misuse); poor academic achievement; antisocial behaviour; offending; and suicide or self-harm. A number of studies have shown that there may be distinctive outcomes depending on the age at which maltreatment occurs - with earlier experiences leading to internalisation of problems; and later experiences potentially leading to a wider range of negative outcomes, including behaviour towards others (Wilkinson & Bowyer, 2017). This pattern was apparent in the young people in this study, many of whom were referred first because of concerns around

their care by their parents and who then went on to have grounds established in their teenage years related to their behaviour or offending.

How can services and the Children's Hearings System more effectively target interventions to not only protect children from harm but help prevent adverse early experiences impacting on development into adulthood?

Almost a quarter of the young people were recorded in social work or police reports as having a disability. There is limited comparable data on disability in this age group in Scotland, however, it has been estimated that 11.2% of looked after 16 and 17 year olds in England have disabilities (Bywater et al, 2014). The prevalence of disability among the young people in this study is therefore likely to be more than twice than that of their peers. Despite this level of need, 41% of them did not appear to be receiving support for their disabilities.

What are the constraints on provision of support for young people with disabilities and how can they be addressed?

Most of the young people in this study had CSOs at some time in their lives and 70% were still subject to CSOs at the time of the advice request or remittal, with almost a half in care. The transition period towards independence is when looked after young people and care leavers are at their most vulnerable. The Staying Put Scotland approach aims for looked after young people to enjoy a transition from care to adult independence that more closely resembles that experienced by other young people (Scottish Government, 2013)<sup>18</sup>. The Hearings System provides a means by which young people can be supported in the transition to adulthood through the statutory intervention of a CSO. For 40 young people (36%) the support provided via the Hearings System was the reason that Children's Hearings advised that the offence(s) be remitted. But there were 28 young people (25%) where their disengagement with supports led Hearings to advise that they should be dealt with by the courts. Is this sufficient reason for them not to be provided with opportunity to be dealt with in the Hearings System rather than the adult criminal justice system?

<sup>18</sup> The Children and Young People (Scotland) Act 2014 (Part 11) introduced reforms around continuing care and aftercare that support the aims of Staying Put Scotland.

Are Children's Hearings always considering the best interests of those young people whose attitudes and levels of engagement are rejecting of services and the Hearings System?

This research shows that where criminal courts did request the advice of Children's Hearings, that Hearings were considering the young person's wider circumstances, social work recommendations and the young person's views in preparing their advice. This is supported by a recent study on young men serving custodial sentences who felt that Children's Hearings took both positive and negative aspects of their lives into account and allowed them to give their views, compared to what they felt was a 'harsher', more negative experience in court (Dyer & Nolan, forthcoming).

There were only ten young people in this study who said they wanted to be dealt with by the courts. However, just over a half of Children's Hearings (58%) advised that the young person should be remitted to the Hearings System. Less than half of cases where advice had been requested were remitted by the courts to Children's Hearings for disposal, and there were only nine young people in 2015-16 who were remitted without prior advice being requested. The proportion of criminal proceedings against young people where the disposal was remittal to a Children's Hearing has not changed in 10 years. Other research has highlighted that there is an apparent '*failure to utilise remittal to the Children's Hearings System*' (Dyer & Nolan, forthcoming).

Actions, such as that by the Scottish Sentencing Council (2016) to prepare a Guideline on sentencing young people that will specifically consider the personal circumstances of young people, may lead to greater consideration of remittal to Children's Hearings as a disposal by the criminal courts. However, this is not only a matter for the courts. Children's Hearings too could perhaps more often look beyond a young person's non-engagement with services and consider other supports that the Hearings System could offer them. This could result in more Children's Hearings providing advice to criminal courts to remit young people to the Hearings System.

Could the Children's Hearings System be used more for dealing with young people who commit offences?

Geographical differences were found in the numbers of young people with criminal advice requests and these follow the pattern of joint reports and prosecutions for 16 and 17 year olds. Some areas with higher populations in this age group had lower numbers of young people with criminal advice requests and joint reports than areas with much lower populations. A similar trend has also been observed for young men in prison (Smith et al, 2014). It was not within the scope of this research to explore the reasons behind this but these findings strongly suggest that there are differences in practice by justice services in how they respond to young people who offend. There are also important implications for young people as these findings imply that where you live may have a bearing on if you are prosecuted.

Is there is a need for further data and research on practice by justice services in relation to young people who offend, to explore differences in their response to and outcomes for these young people?

Most (87%) of the young people had histories of offending and 29 (26%) had committed violent offences that resulted in prosecution and criminal advice requests. Criminal courts were not only seeking Children's Hearings' advice on more minor offences but also on serious offences being dealt with under solemn procedures. The seriousness of the offences was a reason for 19 Hearings (17%) to advise they be dealt with by the courts. Those offences remitted to Children's Hearings tended to be less serious, with few violent offences remitted.

Several commentators have recommended that all young people aged under 18 who commit offences should be dealt with in the Hearings System with only the most serious cases dealt with by the courts (Dyer & Nolan, forthcoming; Harris et al, 2016). This is to bring Scotland in line with the UNCRC's<sup>19</sup> recommendation (2007): '*Ensure that children in conflict with the law are always dealt with within the juvenile justice system up to the age of 18 years*'.

<sup>19</sup> United National Convention on Rights of the Child



Remittal from criminal court to the Hearings System provides a route by which more young people could be diverted from the adult criminal justice system and its disposals. This would go some way towards meeting the UNCRC's recommendation and the aims of Scotland's Youth Justice Strategy. This research has found that the disposal of remittal to Children's Hearings is mostly being used appropriately by courts and Hearings but perhaps not yet to the extent that it could be.

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## 8. Glossary of terms

**Children's Reporter** - is the first contact that a child and family will have with the Children's Hearings System. Children are referred to the Reporter if it is considered that they may need compulsory measures of supervision. The Reporter investigates each referral and then makes a decision as to whether the child should be referred to a Children's Hearing.

**Children's Hearing** - is a tribunal and is made up of three Children's Panel Members who are volunteers from the local community.

**Complaint** - In summary criminal proceedings the document setting out the offence an individual is alleged to have committed.

**Compulsory Supervision Order (CSO)** - Made by a Children's Hearing under section 91(3)(a) or section 119(3) of the Children's Hearings (Scotland) Act 2011. It specifies which local authority requires to implement the Order. It will also contain one or more measures. These measures may regulate where the child is to reside, what contact is to take place with parents or other family members, or a range of other measures. (Note that in 2013 CSOs replaced Supervision Requirements which were of a similar nature but were under the legislation previously in place, i.e. the Children (Scotland) Act 1995).

**Grounds of referral to the Children's Reporter** - The reasons for the referral to the Reporter as listed in section 67(2) of the Children's Hearings (Scotland) Act 2011 (previously in section 52(2) of the Children (Scotland) Act 1995).

**High Court** - The High Court of Justiciary is Scotland's supreme criminal court. It hears the most serious criminal cases, such as murder and rape. A single judge hears cases with a jury of 15 people.

**Indictment** - In solemn criminal proceedings the document setting out the offence an individual is alleged to have committed.

**Justice of the Peace Court** - A justice of the peace is a lay magistrate, appointed from within the local community and trained in criminal law and procedure. Justices sit either alone, or in a bench of three, and deal with the less serious summary crimes, such as speeding, careless driving and breach of the peace.

**Scottish Children's Reporter Administration (SCRA)** - was formed under the Local Government (Scotland) Act 1994 and became fully operational on April 1, 1996. Its main responsibilities are now set out in the Children's Hearings (Scotland) Act 2011:

- To facilitate the work of Children's Reporters
- To deploy and manage staff to carry out that work
- To provide suitable accommodation for Children's Hearings.

**Sheriff Court** - The majority of civil and criminal cases are dealt with in the Sheriff Courts. Criminal cases are heard by a sheriff and a jury (solemn procedure), but can be heard by a sheriff alone (summary procedure).



[www.cycj.org.uk](http://www.cycj.org.uk)



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**Solemn procedure** - for serious offences, these cases are heard by a Sheriff and a jury or by the High Court.

**Summary procedure** – for less serious offences, cases are heard by a Sheriff alone.

## Appendix 1

### Research Variables

Young person's background	Advice request and Hearing	Remittal and Hearing
Gender	Offence(s) type(s) and date(s)	Did remittal follow Advice Hearing?
Local authority area	Court name	Offence(s) type(s) and date(s)
Ethnicity	Court type	Court name
Disability	Proceedings type	Court type
1 <sup>st</sup> referral date and type	Date advice requested	Proceedings type
1 <sup>st</sup> accepted/established grounds date and type	Hearing date	Date of remit
Most recent referral date and type	Hearing decision	Hearing date
If offence - type	Hearing advice	Hearing decision
Current CSO	Social work recommendation	Did court follow the Hearing's advice?
Previous CSO	Safeguarder appointed?	Young person's views
Never on CSO	Hearing continued?	Parent/ relevant person's views
Offence history – no. referrals	Young person's views	Social work recommendation
Services working with young person	Parent/ relevant person's views	
Residence type	Young person on bail at time of offence?	
Experience of bereavement		
Separation from main care giver		
Exposure to violence		

## Appendix 2

### Referral history in the Children's Hearings System

**Table 1: First referral grounds**

Grounds for referral*	No. young people		%
	Ground 1	Ground 2	
Beyond control of a relevant person (1995(a) and 2011(n))	10	<5	10%
Drug/alcohol/ misuse (1995(j))	<5		1%
Failure to attend school (1995(h))	<5	<5	4%
Lack of parental care (1995(c))	38	<5	35%
Victim schedule 1 offence (1995(d))	24	6	27%
Member of same household as victim of schedule 1 offence (1995(e))	<5	<5	3%
Member of same household/ close connection with schedule 1 offender (1995(f))	<5	<5	3%
Has committed an offence (1995(i) and 2011(j))**	11		10%
Bad associations/ moral danger (1995(b))	<5		4%
Child's conduct harmful to self or others (2011(m))	<5		2%
Referred pre-2002 (no record of ground)	13		12%
Never referred to the Reporter	<5		2%
<b>Total young people</b>	<b>111</b>	<b>12</b>	<b>111</b>

\*Grounds from the 1995 and 2011 Acts are combined where they are similar

\*\*excludes jointly reported offences retained by the PF



**Table 2: First established or accepted grounds**

Grounds for referral*	No. young people			%
	Ground 1	Ground 2	Ground 3	
Beyond control of a relevant person (1995(a) and 2011(n))	21	<5	<5	22%
Drug or alcohol misuse (2011(k) and (l))	<5	<5		4%
Failure to attend school (1995(h) and 2011(o))	7			6%
Lack of parental care (1995(c) and 2011(a))	18	<5		17%
Victim schedule 1 offence (1995(d))	5	8	<5	13%
Member of same household as schedule 1 offender (1995(f))	<5	<5		2%
Has committed an offence (1995(i) and 2011(j))**	23	<5		22%
Bad associations/ moral danger (1995(b))	<5			1%
Permanence Order and special measures (2011(i))	<5	<5		2%
Child's conduct harmful to self or others (2011(m))	6	<5		6%
Established/accepted pre-2002 (no record of ground)	12			11%
No established/accepted grounds	12			11%
Never referred to the Reporter	<5			2%
<b>Total young people</b>	<b>111</b>	<b>17</b>	<b>&lt;5</b>	<b>111</b>

\*Grounds from the 1995 and 2011 Acts are combined where they are similar

\*\*excludes jointly reported offences retained by the PF

**Table 3: Most recent referral before criminal advice request or remit**

Grounds for referral	No. young people
Has committed an offence (2011(j))** (for types of offences see Table 4 below)	75 (68%)
Child's conduct harmful to self or others (2011(m))	12 (11%)
Beyond control of a relevant person (2011(n))	9 (8%)
Bad associations/ moral danger (1995(b))	<5 (1%)
Failure to attend school (1995(h) and 2011(o))	<5 (2%)
Lack of parental care (1995(c))	<5 (2%)
Victim schedule 1 offence (1995(d)) and 2011(b))	<5 (3%)
Accommodated under s25 of the 1995 Act and special measures needed (2011(h))	<5 (2%)
Close connection with a person who has carried out domestic abuse (2011(f))	<5 (1%)
Exposed to person(s) harm child or seriously adversely affect them (2011(e))	<5 (1%)
Same household as victim of schedule 1 offence (2011(d))	<5 (1%)
Never referred to the Reporter	<5 (2%)
<b>Total young people</b>	<b>111</b>

\*Grounds from the 1995 and 2011 Acts are combined where they are similar

\*\*excludes jointly reported offences retained by the PF

**Table 4: Most recent referral to Reporter before criminal advice request or remit where that was an offence referral – offence types**

Offence type*	No. young people
S38(1) Criminal Justice & Licensing (Scotland) Act	19
Breach of the Peace	<5
S52(1)&(3) Criminal Law Consolidation Act – vandalism	10
Assault	10
S5(2) Misuse of Drugs Act	6
S90 Police & Fire Reform Act	<5
S27(1) Criminal Procedure Act	<5
Road Traffic Act offences	<5
S201, 202 & 203 Local Government (Scotland) Act – consuming alcohol in a public place	<5
Bylaw on consuming alcohol in public/designated place	<5
S47(1) Criminal Law Consolidation Act – offensive weapon	<5
Theft – shoplifting	<5
Theft – housebreaking	<5
Theft	<5
Theft – other	<5
Theft – motor vehicle	<5
Wilful fire raising	<5
S28 Sexual Offences (Scotland) Act	<5
Wasting police time	<5
S85(1) Fire Act	<5
S57 Civic Government Act	<5
Force open lockfast van with intent to steal	<5
Force open lockfast motor vehicle and steal	<5
<b>Total young people</b>	<b>75</b>

*Some young people had more than one offence included the referral*

*\*excludes jointly reported offences retained by the PF*

## Appendix 3

### Joint reports for 16 and 17 year olds in 2015-16

Local authority area	Total		
	Joint Reports Referred to Reporter	Joint Reports Retained by PF	Total reports
Aberdeen City	60	70	130
Aberdeenshire	<5	<5	5
Angus	22	7	29
Argyll & Bute	<5	<5	5
Clackmannanshire	<5	<5	<5
Dumfries & Galloway	65	30	95
Dundee	33	10	43
East Ayrshire	35	19	54
East Dunbartonshire	16	6	22
East Lothian	11	5	16
East Renfrewshire	13	6	19
Edinburgh, City of	64	65	129
Eilean Siar	7	<5	9
Falkirk	24	10	34
Fife	25	9	34
Glasgow	153	239	392
Highland	32	5	37
Inverclyde	18	16	34
Midlothian	6	<5	9
Moray	<5	0	<5
North Ayrshire	15	42	57
North Lanarkshire	29	17	46
Orkney	<5	<5	<5
Renfrewshire	107	42	149
Scottish Borders	16	<5	19
South Ayrshire	63	29	92
South Lanarkshire	60	17	77
Stirling	29	23	52
West Dunbartonshire	10	11	21
West Lothian	8	<5	10
<b>Total</b>	<b>927</b>	<b>699</b>	<b>1,626</b>

Data produced by SCRA from its Data Warehouse on 27<sup>th</sup> February 2017

## Appendix 4

### People aged 16 and 17 years prosecuted in Scottish Sheriff and Justice of the Peace courts, by Local Authority area in 2015-16

**Table 1: Total proceeded against**

Local authority area	Sheriff – solemn		Sheriff – summary		Justice of the Peace	
	16	17	16	17	16	17
Aberdeen City	<5	6	34	96	6	22
Aberdeenshire	-	-	10	7	-	<5
Angus	-	-	<5	10	5	5
Argyll & Bute	<5	-	<5	7	-	<5
Clackmannanshire	-	<5	<5	5	<5	-
Dumfries & Galloway	-	<5	11	32	<5	5
Dundee City	<5	<5	22	50	6	10
East Ayrshire	<5	8	25	98	<5	9
East Lothian	-	-	-	<5	-	-
Edinburgh, City of	8	15	58	160	<5	26
Falkirk	<5	-	14	40	-	5
Fife	-	5	15	76	5	14
Glasgow City	18	41	56	164	6	27
Highland	<5	<5	9	39	<5	6
Inverclyde	<5	-	3	11	<5	<5
Moray	<5	<5	5	8	<5	6
Na h-Eileanan Siar	-	-	<5	<5	-	-
North Lanarkshire	<5	8	23	59	-	10
Not Known	-	-	-	-	-	<5
Orkney Islands	-	-	<5	<5	-	-
Perth & Kinross	-	-	7	25	<5	6
Renfrewshire	<5	<5	14	46	-	11
Scottish Borders	-	-	6	21	<5	<5
Shetland Islands	-	-	<5	6	-	-
South Ayrshire	<5	<5	17	37	-	9
South Lanarkshire	6	8	56	152	5	22
Stirling	-	-	<5	26	-	<5
West Dunbartonshire	<5	<5	13	11	<5	<5
West Lothian	<5	<5	13	39	<5	14

Source: Scottish Government Criminal Proceedings Database

**Table 2: People aged 16 and 17 years prosecuted in Scottish High courts, 2015-16**

	Age	
	16	17
Not Guilty	6	13
Custody	<5	9
Community sentence	5	5
Other	<5	-
<b>Total proceeded against</b>	<b>15</b>	<b>27</b>

Source: Scottish Government Criminal Proceedings Database

## Appendix 5

### Classification and types of crimes and offences included in advice requests on young people in 2015-16

Crime and offence classification group and type	No. crimes and offences and proceedings type			
	Summary	Solemn	Not available	Total
<b>Non-sexual crimes of violence</b>				
assault to severe injury, permanent disfigurement and permanent impairment		<5	<5	<5
assault to injury	11	<5	<5	16
assault disability		<5		<5
assault & injury & danger to life		<5		<5
assault & robbery		<5	<5	<5
assault to danger of life			<5	<5
assault and robbery sexual orientation		<5		<5
assault to severe injury		<5		<5
assault & robbery/ disability			<5	<5
assault to injury racial prejudice		<5		<5
assault to injury bail, child	<5	<5		<5
assault to severe injury child		<5		<5
hamesucken & assault to severe injury		<5		<5
assault to severe injury, permanent disfigurement and robbery			<5	<5
assault to severe injury and disfigurement bail			<5	<5
<b>Non-sexual crimes of violence total</b>	<b>12</b>	<b>15</b>	<b>8</b>	<b>35</b>
<b>Sexual crimes</b>				
s23 Sexual Offences (Scotland) Act - child	<5			<5
s3 Sexual Offences (Scotland) Act - child	<5			<5
s34 & s35 Sexual Offences (Scotland) Act-child	<5			<5
<b>Sexual crimes total</b>	<b>5</b>	<b>0</b>	<b>0</b>	<b>5</b>
<b>Crimes of dishonesty</b>				
s57(1) Civic Government (Scotland) Act 1982 - being in or on building etc. with intent to commit theft.	<5	<5		<5
theft	<5	<5		<5
theft BAIL	<5	<5		<5
open lockfast motor vehicle with intent BAIL	<5			<5
open lockfast motor vehicle + theft bail	<5			<5
theft by housebreaking	<5	<5		<5
theft by shoplifting	<5		<5	<5
theft by shoplifting bail	<5			<5
theft by housebreaking bail	<5	<5		<5
theft of motor vehicle	5			5
theft motor vehicle bail	<5		<5	<5

theft from motor vehicle bail	<5		<5	<5
attempted theft of a motor vehicle	<5			<5
theft by OLP bail	<5			<5
attempted robbery		<5		<5
house breaking with intent to steal bail	<5			<5
housebreaking with intent to steal	<5		<5	<5
house breaking and OPL bail	<5			<5
Reset	<5			<5
<b>Crimes of dishonesty total</b>	<b>27</b>	<b>6</b>	<b>6</b>	<b>39</b>
<b>Fire-raising vandalism, etc.</b>				
wilful fireraising	<5		<5	<5
s52(1)&(3) Criminal Law (Consolidation) (Scotland) Act 1995 - vandalism	10	<5	<5	13
s52(1)+(3) Criminal Law (Consolidation) (Scotland) Act 1995 BAIL	<5		<5	<5
<b>Fire-raising vandalism, etc. total</b>	<b>15</b>	<b>&lt;5</b>	<b>&lt;5</b>	<b>21</b>
<b>Other crimes</b>				
s47(1) Criminal Law Consolidation (Scotland) Act 1995 - carrying knife	<5	<5		<5
carrying an offensive weapon	<5			<5
Misuse of Drugs Act 1971			<5	<5
s5(2) Misuse of Drugs Act 1971	<5			<5
s4(3)(b) Misuse of Drugs Act 1971	<5			<5
s49(1) Criminal Law Consolidation (Scotland) Act 1995 - Offence of having in public place article with blade or point	<5	<5		<5
s49(1) Criminal Law Consolidation (Scotland) Act 1995 bail	<5		<5	<5
s27(1)(b) Criminal Procedure (Scotland) Act 1995 – breach of bail	21	<5	<5	27
s27(1)(b) Criminal Procedure (Scotland) Act 1995 Bail	6			6
S2291C(a)+22Z(1)(a) Criminal Procedure (Scotland) Act 1995			<5	<5
s1(1) Emergency Workers Act bail	<5			<5
s1(1) Emergency Workers Act	<5			<5
s90(2)(a) Police & Fire Reform (Scotland) Act 2012 bail	<5			<5
wasting police time bail	<5			<5
s90(1)(a) Police & Fire Reform (Scotland) Act 2012	9	<5	<5	12
<b>Other crimes total</b>	<b>51</b>	<b>8</b>	<b>7</b>	<b>66</b>
<b>Miscellaneous offences</b>				
assault	7	<5	<5	10
assault domestic	<5	<5		3
s38(1) Criminal Justice & Licensing (Scotland) Act 2010 - threatening or	24	<5	5	33



abusive behaviour				
s38(1) Criminal Justice & Licensing (Scotland) Act 2010 bail	14			14
s38(1) Criminal Justice & Licensing (Scotland) Act 2010 - domestic			<5	<5
Breach of the Peace - disability		<5		<5
Breach of the Peace - racial prejudice	<5			<5
Breach of the Peace	<5	<5		<5
s39(2) Criminal Justice & Licensing (Scotland) Act 2010 - stalking	<5			<5
s50(1) Civic Government (Scotland) Act 1982 - drunkenness	<5			<5
s50A(1)(B)+(5) Criminal Law Consolidation (Scotland) Act 1995 – racially aggravated harassment	<5	<5	<5	6
s50A(1)(B)+(5) Criminal Law Consolidation (Scotland) Act 1995 - racial prejudice	<5			<5
s201, s202, s203 Local Government (Scotland) Act 1973 – consuming alcohol in a public place			<5	<5
culpable & reckless conduct	<5		<5	<5
s127(1)(a) Communications Act	<5			<5
s127(1)(a) Communications Act bail	<5			<5
<b>Miscellaneous offences total</b>	<b>57</b>	<b>12</b>	<b>13</b>	<b>82</b>
<b>Motor vehicle offences</b>				
s103(1)(b) Road Traffic Act bail			<5	<5
s143(1)+(2) Road Traffic Act bail			<5	<5
s103(1)(b) Road Traffic Act bail			<5	<5
s2 Road Traffic Act	<5			<5
s5(1)A Road Traffic Act	<5			<5
s143(1)+(2) Road Traffic Act	6			6
s87(1) Road Traffic Act	6			6
S164(4) Road Traffic Act	<5			<5
s178(1)(B) Road Traffic Act		<5		<5
<b>Motor vehicle offences total</b>	<b>15</b>	<b>&lt;5</b>	<b>&lt;5</b>	<b>21</b>
<b>Total crimes and offences</b>	<b>182</b>	<b>45</b>	<b>42</b>	<b>269</b>

## Appendix 6

### *Classification and types of crimes and offences included in remittals to Children's Hearings for young people in 2015-16*

Crime and offence classification group and type	No. crimes and offences and proceedings type			
	Summary	Solemn	Not available	Total
<b>Non-sexual crimes of violence</b>				
assault to injury	5		<5	6
assault & robbery		<5		<5
<b>Non-sexual crimes of violence total</b>	<b>5</b>	<b>&lt;5</b>	<b>&lt;5</b>	<b>9</b>
<b>Sexual crimes total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Crimes of dishonesty</b>				
theft	<5		<5	<5
open lockfast motor vehicle with intent bail	<5			<5
theft by housebreaking	<5	<5		<5
theft by shoplifting	<5			<5
theft from motor vehicle	<5			<5
theft from motor vehicle bail	<5			<5
attempted theft of a motor vehicle	<5			<5
theft by OLP	<5			<5
attempted robbery		<5		<5
housebreaking with intent to steal	<5			<5
Reset	<5			<5
<b>Crimes of dishonesty total</b>	<b>13</b>	<b>&lt;5</b>	<b>&lt;5</b>	<b>16</b>
<b>Fire-raising vandalism, etc.</b>				
wilful fireraising	<5			<5
s52(1)&(3) Criminal Law (Consolidation) (Scotland) Act 1995 - vandalism	<5	<5		<5
s52(1)+(3) Criminal Law (Consolidation) (Scotland) Act 1995 BAIL	<5			<5
<b>Fire-raising vandalism, etc. total</b>	<b>5</b>	<b>&lt;5</b>	<b>0</b>	<b>6</b>
<b>Other crimes</b>				
s47(1) Criminal Law Consolidation (Scotland) Act 1995 - carrying knife	<5			<5
s5(2) Misuse of Drugs Act 1971	<5			<5
s49(1) Criminal Law Consolidation (Scotland) Act 1995 - Offence of having in public place article with blade or point	<5	<5		<5
s49(1) Criminal Law Consolidation (Scotland) Act 1995 bail	<5			<5
s27(1)(b) Criminal Procedure (Scotland) Act 1995 – breach of bail	10	<5		11
s27(1)(b) Criminal Procedure (Scotland) Act 1995	<5			<5

Bail				
s90(2)(a) Police & Fire Reform (Scotland) Act 2012	<5		<5	<5
s90(1)(a) Police & Fire Reform (Scotland) Act 2012	10	<5	5	16
<b>Other crimes total</b>	<b>31</b>	<b>&lt;5</b>	<b>6</b>	<b>40</b>
<b>Miscellaneous offences</b>				
assault	<5	<5	<5	9
s38(1) Criminal Justice & Licensing (Scotland) Act 2010 - threatening or abusive behaviour	13	<5	<5	17
s38(1) Criminal Justice & Licensing (Scotland) Act 2010 - domestic	<5			<5
Breach of the Peace - racial prejudice	<5			<5
Breach of the Peace	<5			<5
s50(1) Civic Government (Scotland) Act 1982 - drunkenness	<5			<5
s50A(1)(B)+(5) Criminal Law Consolidation (Scotland) Act 1995 – racially aggravated harassment	<5	<5		<5
s50A(1)(B)+(5) Criminal Law Consolidation (Scotland) Act 1995 bail	<5			<5
s127(1)(a) Communications Act	<5			<5
<b>Miscellaneous offences total</b>	<b>24</b>	<b>6</b>	<b>5</b>	<b>35</b>
<b>Motor vehicle offences</b>				
s143(1)+(2) Road Traffic Act	<5			<5
s87(1) Road Traffic Act	<5			<5
<b>Motor vehicle offences total</b>	<b>&lt;5</b>	<b>0</b>	<b>0</b>	<b>&lt;5</b>
<b>Total crimes and offences</b>	<b>80</b>	<b>15</b>	<b>13</b>	<b>108</b>