

## Key messages from the Centre for Youth & Criminal Justice

In 2016, we published our first [key messages](#) document, summarising findings and themes from CYCJ's work so far. Whilst policy and practice has progressed during the preceding years, the evidence we have gathered and the voices we have listened to have left us pondering some important questions that go right to the heart of what youth justice means today. In essence we are left wondering:

### ***Are Children's Rights protected and upheld by Scotland's Youth Justice systems?***

Whilst acknowledging well-intentioned policies and excellent examples of good practice in relation to "making Scotland the best place to grown up", our reflection is that [since Kilbrandon](#), change has been slow and incremental rather than radical and dynamic. Progress *is* being made, but we must not simply assume that the presence of the Children's Hearings System means we are '*getting it right*' for all children in conflict with the law. Our collective failure to maximise the potential of the Children's Hearings System (CHS) for all children to age 18 has major implications for Scotland's aim of making itself compliant with the United Nations Convention on the Rights of the Child.

Scotland still detains an average of 46 children within a Young Offender's Institution on any given day. Children aged 12 and over can still be prosecuted in an adult court. Just under 800 children were strip searched in police custody in the past year, and in 96% of cases nothing was found. Scotland's children's homes, secure units and custodial environments are disproportionately populated by young people from the most disadvantaged and impoverished communities. Why do these discrepancies continue? How can we address this? We pose the following questions, and present the associated evidence to inform thinking and generate debate.

### **Do we genuinely seek out, listen to and act upon the voice of lived experience, including children, young people and their families?**

- Children who participated in our [2018 Stakeholder Survey](#) described feeling disrespected, not listened to and powerless. Similar views were reported in our [previous research](#) with boys in HMP & YOI Polmont, and in the [1000 voices report](#) produced to supplement the work of the Independent Care Review.
- Children within secure settings have [commented](#) on feeling excluded from meaningful participation in the decisions that are made about their lives, [as have young people](#) involved in the wider youth justice systems who reported feeling misunderstood, judged and not listened to.
- Parents and carers of children in the justice system [told us](#) that they often feel excluded and stigmatised by the process, while observing that parents and carers are often the first and most important point of support and guidance. Yet parents and carers clearly found contact with the justice systems to be a very distressing experience, depicting their experiences as frightening, overwhelming and disempowering. At times they found the system to be discriminatory.

### **Do we invest in our children properly?**

- We are still not acknowledging that the responsibility for children's behaviour is shared between the child, their family, society, professionals, services and systems. There remains a culture of blaming children for the behaviours they have displayed, without apportioning responsibility more broadly.

- Too many children live in poverty or are socially excluded. Children in our [stakeholder survey](#) described the positive side of the justice and care systems as being afforded the opportunity for activities, education, qualifications and even food and other essentials: “you get a clothing allowance and Christmas money.” These are basic human rights that *every* child should be able to receive and the inequality in our society is a fundamental contributor to offending behaviour.
- Our research into [Adverse Childhood Experiences](#) and [childhood bereavement](#) show an exceptionally high exposure to adversity amongst young people who are involved in a sustained pattern of offending. We may now as a society understand the impact of this adversity much more clearly, but universal and preventative supports must be adequately resourced and skilled to support *all* young people better. We also know that service provision to support emotional health and well-being, or mental health issues in children and young people is under-resourced, patchy and at times [not designed around the needs of children](#).
- There is an extremely high prevalence of additional support needs within the youth justice system. For example, Speech, Language and Communication Needs (SLCN) are extremely common in youth justice populations, with major studies having found 50% to 70% of young males in this population have significant difficulties with language function ([CYCJ, 2018](#)). However, too often these needs go unidentified, their impact unrecognised and unsupported ([CYCJ, 2018](#)).
- Young people can also face marginalisation and discrimination within our systems. For example, despite progress in Scotland’s attitudes towards LGBT+ issues, [prison remains a challenging environment](#) for those who fall outwith heteronormative, binary identities.
- We know that, even with the best supports, some children and young people will need to enter the care and justice systems. Our [research](#) has raised questions about whether there is more that the care system can do to prevent offending and the role that community based resources play in ensuring young people do not need to enter custody as a means of addressing needs and accessing services ([Tata, 2016](#)). This is essential in order to address the pervasive sense of hopelessness amongst some young people who believe that ending up in [custody is inevitable](#), rather than a tragic failure of the system.

### **Do we support children properly who enter the youth justice system adequately?**

- While [Kilbrandon](#) recognised that the needs of children in conflict with the law and those in need of care and protection were similar, there is still a specific knowledge and skillset that is necessary to underpin effective youth justice practice. However, for a variety of reasons, specialised youth justice provision has become [less common across Scotland](#). This has led to a dilution of expertise, a conflict in priorities and infrequent exposure to the most complex issues that often occur within the youth justice field.
- Whilst reducing in numbers, there is a sense amongst practitioners of growing complexity within the youth justice population. In addition to offending behaviours, there are higher levels of [bereavement](#), [mental ill-health](#), [ASD](#), [speech communication and language needs](#), [neurodevelopmental trauma](#), [child sexual exploitation](#) and of [homelessness](#).
- There is often a disconnect between well-intentioned policies, legislation and practice. Our [research](#) has identified a gap between the Whole System Approach’s intention that all young people should be included, informed and supported through the youth justice system, and what they subsequently report. And while Early and Effective Intervention prevents children from coming into contact with the youth justice system, in doing so it has created an additional layer of ‘informal’ system that can [net widen and stigmatise](#) at an even earlier stage.

- Our stakeholder survey and [previous work](#) has taught us that regardless of where in the system they found themselves, young people described a lack of information about the process. Where information was provided it was not always readily available nor understandable. Young people often relied on the advice of other people who had experience of the process.
- Children under 18, and as young as 12, can still appear in adult courts. Young people have [reported](#) difficulties in understanding, engaging and participating in the adult court process. This has crucial implications for procedural fairness; something that's of particular importance to young people in respecting the court's decision. Recent developments focus on improving the experience of children giving evidence as victims or witnesses — such as the Barnahus model - but there does not appear to be the same appetite to provide such support to those young people who may have caused harm.
- When children do attend court [we also find](#) that many are not being remitted back to the CHS for advice or disposal even though [legislation provides for this](#). More than half of young people in our [research](#) noted that their Compulsory Supervision Order (CSO) had been terminated just prior to, or following, their 16th birthday and in many instances offence cases were still outstanding or a serious offence was committed very quickly after this order was terminated.
- Importantly, as we know that young people's brains [do not fully mature](#) until the mid-twenties, we can and should be doing better to [support young people aged 18-21](#) (and beyond). Furthermore, we understand the impact that childhood experiences of adversity and exclusion can have on typical development and it is not in a young person's best interests to transition straight from the CHS to an adult court simply by virtue of attaining age 18.

### **Do we treat children as children, even when their behaviour challenges us, or when times are hard?**

- There's [still a mindset](#) that maintains the dichotomy of deserving and undeserving children. We continue to criminalise children due to their circumstances, be that poverty, living within [residential children's homes](#) or the behaviour of others. They are continually excluded; from [school](#), from relationships, from opportunities and from economic security.
- Whilst plans to raise the Age of Criminal responsibility are to be welcomed, our knowledge of child development, maturity, brain development and the impact of adversity during childhood indicates that the age of 12 remains too low at which to set the age of criminal responsibility. Given the Scottish Government's commitment to incorporate UNCRC into domestic law, it is of particular note that the United Nations Committee on the Rights of the Child is [currently seeking comments](#) on [draft text](#) regarding the rights of young people in conflict with the law. Within this is specific reference to the age of criminal responsibility, with the Committee on the Rights of the Child promulgating their view that the age of 14 ought to be considered the absolute minimum standard, and Scotland's European contemporaries [often set theirs at 14](#) or older.
- Arbitrary boundaries that exclude some children from the Children's Hearing System results in an unfair treatment of those young people who come into conflict with the law and who are not already subject to a CSO. This impacts upon young people who - after turning 16 - face drug addiction, experience mental ill-health, become homeless or encounter any other of the difficulties that could have previously resulted in referral to the Principal Reporter. As highlighted by a [recent thematic review](#) of the prosecution of young people, this leads to 16 and 17 year olds being prosecuted in court at a higher frequency than their peers who are subject to a CSO, and entering the criminal justice system prematurely.
- Although the number of children involved in offending has reduced significantly over the past 10 years, there is still a small but substantial cohort who present a risk of harm to others. [Our research](#) suggests

a clear need to reframe how we conceptualise risk of violence and shift to considering it as a response to distress, taking a rights-based approach to addressing the needs underlying violent behaviour.

- There continues to be large numbers of young people under the age of 18 held within Young Offenders Institutions, often on remand. Simultaneously, around 30% to 40% (and sometimes higher) of all children within some units in the secure estate have been [placed there by English local authorities](#) as a consequence of their own lack of resources. We also [know](#) that there are sometimes perverse incentives that can mean that young people enter the custodial rather than secure estate due to financial or other reasons and not because it is a decision in their best interests. If we truly believe that children under 18 are children then it [follows](#) that no child under the age of 18 should enter a Young Offenders Institution.

### What can we do?

The evidence that we have gathered indicates to us that our justice system is far from compliant with UNCRC and does not fully protect and uphold children's rights. While there are some positive policies, and examples of excellent practice that we can build upon, there is still much more that we must do. The following points touch on some of the actions that could be taken on a national or local basis in order to respond to the issues we have highlighted.

#### Address structural inequalities

Whilst organisations supporting vulnerable young people need awareness of the issues that result in negative outcomes for children and of the impact that trauma can have on those we seek to support, a truly preventative approach would seek to address structural inequalities within society. Poverty, social exclusion, disadvantage, poor housing, lack of community cohesion, discrimination and interminable other factors contribute to parents, families and communities leading lives featuring limited human agency. An approach that seeks to address these issues, whilst promoting and building resilience amongst its citizens and communities, is in closer alignment to a rights-based approach to social provision than one focussing on risks and deficits.

#### Inclusion as prevention

Change and support is still needed earlier on in the system, prior to contact with justice services. Inclusion rather than prevention should be our default position. By focusing on inclusion, we can potentially avoid any negative labelling or stigmatising effects. In order to do this we need to consider enhanced universal and community-based services, and the role that third sector partners could play in the provision of such services. It is important that inclusion continues to apply even when young people's behaviour challenges us.

#### Equality

We need more detailed research into [gendered responses](#) to adversity, bereavement and trauma and understand the interaction between these experiences and societal and system responses. Numbers of young people who identify as LGBT and are involved in justice services have increased over recent years, yet is an area that has received very little attention. We need to share good practice and [develop our understanding](#) of the impact of gender and sexual identity upon criminal behaviour.

#### Keeping children out of court

If there is to be real commitment to addressing the issue of young people in adult courts, there must be legislative change to define under 18s as children, enabling them to remain within CHS until their 18<sup>th</sup> year

CYCJ is primarily funded by the Scottish Government and hosted by the University of Strathclyde.

and changing the presumption that in all but the most serious of cases under 18s are dealt with through the CHS or through diversion from prosecution. For those critical few who require to have their offending behaviour addressed through court, wide improvements to the court process could be made, such as making courts more 'child-friendly'; or developing youth hearings/problem solving courts. Further investment in developing, supporting and sustaining the knowledge, understanding and skills of the workforce would assist in navigating young people around this difficult terrain.

### **Responding to young adults**

Young people aged 18-21 still have a limited understanding of the Criminal Justice System, their brains are not fully developed and we cannot expect them to fully understand an adult system. [Legislation](#) has recognised that the needs of care experienced young people extend into adulthood, and the justice system should recognise the vulnerability of young adults in the justice system and afford them the same support and protections.

### **Responding to high risk of harm**

Priority should be given to ensuring that everyone working directly with children involved in, or at risk of, violent behaviour are skilled, or have enhanced skills, in responding in a trauma informed manner as per the [NES framework](#). Actuarial risk assessment tools should be replaced with more holistic, Structured Professional Judgement tools such as START:AV and SAVRY. For those children who pose a high risk of harm, Care and Risk Management (CARM) protocols ought to be utilised in order to ascertain how best to meet children's behavioural, systemic, psychological and mental health needs.

### **Care should mean care**

For those who enter residential care, greater attempts ought to be taken to prevent their unnecessary criminalisation. [Successes in some areas](#) could be rolled out nationally. We need further research into the short and long-term outcomes for young people who have resided within the secure estate and YOI, and to address [calls for action](#) made in recent reviews of secure care. We need the establishment of the secure care board's replacement to ensure the focus and drive continues on the National Standards, and review our use of YOI's for children and take lessons from [colleagues](#) south of the border who are working towards all under 18s being sentenced to secure schools instead of custody - contributing to a [75% reduction](#) in use of YOI for under 18s.

### **Independent Care Review**

An opportunity to affect positive change to the youth justice systems has presented itself through the establishment of the [Independent Care Review](#), with its Justice & Care, Components of Care, Rights and Health & Wellbeing working groups. This is unlikely to arise again for some time, with political will and capital invested into a movement seeking to improve the life opportunities of Scotland's children and young people.

### **How can we help?**

CYCJ offers support and advice to the youth justice workforce, as well as training opportunities, events and resources. If you'd like to work with us or could use our help, please get in touch via [cycj@strath.ac.uk](mailto:cycj@strath.ac.uk) or 0141 444 8622. Fiona Dyer is our Interim Director and she and the team would be happy to hear from you.