

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

## **Section 2: Youth Justice in Scotland - The roles and responsibilities of key partners**

June 2024



Children and Young People's  
Centre for Justice

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## 1. Introduction

Supporting children and young people in conflict with the law in Scotland involves many professionals, agencies, and organisations. This section gives an overview of who is involved, in what capacity, and how they work.

## 2. Child Protection

It is important to recognise at the outset of this section, that all professionals, regardless of their organisation, have a role in, and responsibility for child protection and children's rights. Children who come into conflict with the law are children first and foremost. Their welfare and protection must be the paramount concern for all agencies involved with the child and their family. The needs of children and young people who come into conflict with the law are now well understood and can often be complex. There is growing evidence that many children who come into conflict with the law have histories of high levels of childhood adversity that can lead to trauma responses (Gibson, 2020, 2021; Murphy, 2018; Vaswani, 2018). They also have higher rates of neurodevelopmental issues than would be expected from rates evident in the general population (Williams et al., 2021). This is reiterated further by recent research from the Scottish Children's Reporter Administration ([SCRA \(2022\)](#)) which found those 12 to 15 years olds referred to the Children's Reporter or the Crown Office and Procurator Fiscal Service (COPFS), due to allegations of offending, are likely to have experienced neglect, trauma, abuse, victimisation and poverty.

The Scottish Government is responsible for child protection in Scotland. It sets out policy, legislation, and statutory guidance on how the child protection system should work. Child Protection Committees (CPCs) are responsible for multi-agency child protection policy, procedure, guidance, and practice. Within each local authority, CPCs work with local agencies, such as children's social work, health services, education, and the police, to protect children. Each local authority, and its relevant health board, are required to jointly prepare a [Children's Services Plan](#) for each three-year period. This relates to services which have a significant effect on the wellbeing of, or are of benefit to, children and young people.

The [National Guidance for Child Protection in Scotland](#) was updated in 2023, and reinforces the need to assess children holistically, placing a responsibility on professionals to consider all aspects of a child and family's circumstances. This includes offending behaviour, and the importance of considering how structural factors such as poverty and poor housing can impact on a child's safety and wellbeing. Therefore, all practitioners involved with children and young people in conflict with the law should be trained in their agency's child protection procedures. The updated National Guidance for Child Protection has a focus on children's rights and human rights, with experiences and views gathered from children and their families/carers informing the guidance.

'Managing Risk of Serious Harm' is the focus of [Section 15](#) of this Practice Guide. The updated National Guidance emphasises when Care and Risk Management (CARM) processes can be applied if a child aged between 12 - 17 has been involved in an incident of a serious nature. The guidance reiterates that "those children who harm may have been harmed themselves" (Scottish Government, 2021, p. 170). It is essential that all practitioners working with children in conflict with the law are mindful of this when determining whether a child is at risk of significant harm and therefore in need of child protection measures.

### 3. Children's Rights

All professionals should be familiar with key policy and legislative developments with regards to children and young people's rights - as detailed in [Section 1](#) - and should understand their responsibility to uphold these rights (see [Section 3](#)). Children who are involved in justice processes and systems often face considerable challenges in having their rights respected, due a wide range of factors (Claire Lightowler, 2020). Since 2004 there has been a [Commissioner for Children and Young People in Scotland](#). Their role includes: the protection of children and young people's rights; supporting children and young people's understanding of their rights; and increasing awareness of what they can do if their rights are not being upheld. Under the [Children and Young People \(Scotland\) Act 2014](#), the Commissioner can investigate whether, by what means, and to what extent, these rights have been upheld by service providers. For example, the Commissioner has powers to consider whether the rights, interests and views of children have been given due weight when such bodies have made decisions or taken actions that affect them. This includes children and young people who have come into conflict with the law and underlines the responsibilities of all agencies to uphold children's rights.

On March 16, 2021, [The United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Bill](#) was unanimously passed by the Scottish Parliament. However, [a subsequent challenge](#) by the UK Government in the Supreme Court in relation to sections 6, 19-21 of the Act was [upheld](#). After some time to consider how to progress, the Scottish Government brought forward the necessary amendments, leading to the Bill being [approved](#) on 7<sup>th</sup> December 2023, and becoming an [Act](#) on 16<sup>th</sup> January 2024. Incorporation of the UNCRC will make significant changes to the way in which Scotland responds to children and young people who come into conflict with the law.

### 4. The Scottish Government

The Scottish Government holds strategic policy and legislative responsibility for key devolved areas of activity that affect day-to-day life in Scotland. Responsibility for youth justice in the Scottish Government lies with the Care and Justice Division. This division is responsible for the development and implementation of national policy, through civil servants reporting to Scottish Ministers and the Scottish Parliament. Policy is progressed through the multi-agency [Youth Justice Improvement Board](#) (YJIB), set up in 2015 to provide a strategic focus on offending by children and young people. The Youth Justice & Children's Hearings Unit, Care, Protection and Justice Division, works closely with professionals through the Youth Justice Implementation Groups, the Children and Young People's Centre for Justice (CYCJ) and the [National Youth Justice Advisory Group \(NYJAG\)](#).

Some policy and legislative issues remain the responsibility of the UK Government. Those with most relevance to children and young people in conflict with the law are welfare and benefits legislation, and policy decisions re. the level of funding provided to Scotland via the block grant.

Through agreement between the Scottish Government and local authorities, responsibility for the development of services lies with each local authority and is driven forward through their

respective [Community Planning Partnerships](#). Following the introduction of a [National Performance Framework](#) in 2018, local authorities must devise strategies which seek to:

- create a more successful country,
- give opportunities to all people living in Scotland,
- increase the wellbeing of people living in Scotland,
- create sustainable and inclusive growth.

The Scottish Government's youth justice strategy - [Preventing Offending: Getting it Right for Children and Young People](#) - was published in June 2015, and ran until 2020. It identified three key themes for further work, all of which were supported through working groups consisting of a broad range of partners:

- Advancing the Whole System Approach (WSA)
- Improving Life Chances
- Developing Capacity and Improvement.

The strategy built on previous frameworks, including [Preventing Offending by Young People: A Framework for Action \(2015\)](#) which identified the future priorities for youth justice in Scotland as:

- WSA
- Victims and Community Confidence
- Extension of Early and Effective Intervention (EEI)
- Young Women
- Employment
- Reintegration and Transitions
- Managing High Risk.

A new [youth justice vision and priorities](#) was published by the Scottish Government in June 2021. There are two main Implementation Groups as part of this vision (see below).

In 2022 the Scottish Government published '[The Vision for Justice in Scotland](#)', building on the previous vision from 2017, which included children and young people in conflict with the law. Over the next four years, the Scottish Government aims include that:

- Children and young people who have committed crimes are not held in young offender's institutions,
- Children and young people have the appropriate support as they transition to adult services (Scottish Government, 2022a, p. 28).

These aims are welcome, given the high percentage of 16/17-year-olds regularly held on remand in Polmont YOI (HMIPS, 2021). As aims, they align with the [Promise](#) recommendations, [UNCRC](#), and are reflected in the [Scottish Programme for Government](#), and the [Children \(Care and Justice\) \(Scotland\) Act](#).

In September 2021, the Scottish Government published [A Fairer, Greener Scotland: Programme for Government 2021-22](#), highlighting that all eligible children who are victims or witnesses to abuse or violence will have access to a 'Bairns' Hoose' by 2025. The model will ensure that child protection, justice, health, and recovery services are all available under one roof with the objective of co-ordinating responses, avoiding re-traumatising children and supporting their needs. The overall [vision](#) is that:

“All children in Scotland who have been victims or witnesses to abuse or violence, as well as children under the age of criminal responsibility whose behaviour has caused significant harm or abuse will have access to trauma-informed recovery, support and justice.” (Scottish Government, 2022a, p. 1).

In October 2023, the Minister for Keeping the Promise, [revealed](#) the six locations that would become Bairns' Hoose test sites – Fife, North Strathclyde, Aberdeenshire, Aberdeen City, Tayside and the Outer Hebrides.

## 5. Youth Justice Improvement Board (YJIB)

The [Youth Justice Improvement Board](#) is responsible for overseeing and driving the delivery of the youth justice strategy. The Board is chaired by the Scottish Government and includes senior representation from a wide range of organisations, including: Police Scotland; the Convention of Scottish Local Authorities (COSLA); Education Scotland (ES); SCRA; COPFS; CYCJ; and health and third sector partners. The Board meets at least four times a year and met for the first time in October 2015.

## 6. Youth Justice Implementation Groups

The Youth Justice Implementation Groups were multi-agency groups focusing on identifying and promoting effective youth justice practice within the key priorities set out by the Youth Justice Improvement Board (YJIB). The implementation groups aligned to the Scottish Government strategy and action plan, although were discontinued following the publication of the 2021 vision, [Justice for children and young people - a rights-respecting approach: vision and priorities](#).

Consequently, the YJIB established two new Implementation Groups to build on the work of the previous strategy, [Preventing offending: getting it right for children and young people](#), which concluded in 2020. Their remits include:

### Advancing the Whole System Approach Implementation Group

- Continuing to deliver a reinforced and reinvigorated WSA to under 18s, with cohesion and integrity in all its elements, supporting development of the workforce to deliver effective multi-agency partnerships, creating lasting systems and culture change.

- Ensuring that no under 18s, to the extent possible and appropriate, are in Young Offender Institutions (YOIs), including those on remand, with secure care and intensive residential and community-based alternatives being used when therapeutic trauma-informed approaches are required for the safety of the child or those around them and where community alternatives are available for those who require additional support.
- Extending [WSA](#) to those beyond the age of 18, providing access to support up to the age of 26 where possible and appropriate.
- Raising the age of referral to the Principal Reporter to 18 for all children with a presumption against under 18s in the Criminal Justice System, consistent with the Lord Advocate's prosecution policy. Where this is not possible or appropriate, children must be treated in a way that is trauma-informed and recognises their age and stage of development.

### **Children's Rights Implementation Group.**

- Providing services to children and their families to uphold their rights through all aspects of work, in line with UNCRC requirements and Scottish Government legislation; monitoring services to ensure rights are being upheld.
- Offering support to children and their families to understand and know their rights, so that they can exercise them.
- Promoting better public understanding and awareness of the needs and rights of children and young people in conflict with the law and the systems in place to support them.
- Ensuring that those who go through the criminal justice system have meaningful and participative experiences; these experiences should be educational, improving their understanding of the rights of children and young people whilst upholding those same rights.
- Enabling all children and young people to access services to address trauma, abuse, neglect, and communication needs.
- Ensuring that professionals/services are considering additional support needs, including Speech, Language and Communication Needs (SLCN), to improve the life chances of those with these needs.
- Providing activities and opportunities for children and young people to engage in education, gain employment and secure stable housing options as a necessity.
- Improving participation and engagement of children and young people, making sure that they have developmentally appropriate participation opportunities to help shape the decisions, services and supports that affect them. This includes addressing barriers to engagement, providing access to information and processes in language that they understand and taking account of cultural differences, disabilities, and communication needs.

The Children's Rights Implementation Group (CRIG) agreed to the formation of an SLCN subgroup to support the remit of the wider group. The CYCJ director co-chairs CRIG, with CYCJ providing project management support for both the groups and associated sub-groups. Minutes from the meetings are available [here](#).

## 7. Children and Young People's Centre for Justice (CYCJ)

CYCJ is a [national centre for excellence](#) which is primarily funded by the Scottish Government and based at the University of Strathclyde. CYCJ focuses on improving the experiences and outcomes of children and young people in contact with the justice system, working to ensure that Scotland's approach to children and young people in conflict with the law is [rights-respecting](#). CYCJ produces research, supports the participation and engagement of children and young people, and undertakes work to improve policy and practice. The team provides direct support and guidance to those involved in the delivery of services for children and young people in conflict with the law, supporting matters ranging from EEI to significant risk of harm. CYCJ's team consists of three workstreams: practice and policy development; research; and participation and engagement.

CYCJ is actively involved in the Scottish Government's youth justice priority areas, and is tasked with taking forward several initiatives, to help identify and promote good practice when working with children and young people in conflict with the law. These include:

- Engagement with practitioners and managers from a wide range of backgrounds to support, further develop and improve practice relating to children and young people in conflict with the law.
- Supporting a variety of working groups set up by the Scottish Government and other partners to drive forward improvement and development in the sector.
- Delivering a range of training, events, and conferences across Scotland, including the annual National Youth Justice Conference and the Postgraduate Certificate on Children and Young People with the Law at the University of Strathclyde.
- Ensuring good communication with the Scottish Government, Social Work Scotland, and research institutions.
- Developing existing links between policy, research, training, and practice.
- Producing regular bulletins, blogs, podcasts, webinars, information sheets and research papers to communicate developments across the country.

[CYCJ's focus includes supporting the 2021 rights-based vision](#), with the key outcomes for 2023/2024 incorporating:

- Support children under 18 to be removed from adult justice processes, including YOI.
- Across Scotland we have effective child friendly justice processes and practices for children in conflict with the law.
- Improve awareness of children's rights across justice contexts/journeys.
- Support implementation of Youth Justice Vision and Action Plan, Standards, and other relevant Government policies.
- Successful implementation of Secure Care Pathway and Standards.
- Improved participation of children, young people and families in justice policy and practice.



- Improved participation of and support for child victims in justice processes.
- Greater availability of high-quality Restorative Justice services and approaches for children and young people.
- Improved provision to address mental health, neurodevelopmental needs and SLCN for children in conflict with the law.
- Greater access to the data and evidence needed to support system improvements.
- Improved partnership working and learning across Scottish Care & Justice Stakeholders and Services.
- Improved professional awareness of, and response to, Child Criminal Exploitation.
- Challenging structural and societal inequality experienced by children and young people in conflict with the law.
- Promoting an ecological understanding of children and young people in conflict with the law.

## 8. National Youth Justice Advisory Group (NYJAG)

This is a national forum for local authority and third sector managers with responsibility for youth justice to support the development and promotion of effective practice with children and young people in conflict with the law. Representatives are also invited from SCRA, Police Scotland, COPFS and Community Justice Scotland. The membership of the group reflects the varied approaches to service delivery across Scotland; it provides a strategic link between local youth justice representatives and the government re. policy and strategic direction. NYJAG is guided by an Executive Group made up of representatives from the Advisory Group, Scottish Government and CYCJ. The chair of the NYJAG Executive is a member of the Scottish Government Youth Justice Improvement Board.

## 9. Local Authorities

Children and young people who come into conflict with the law, or who are at risk of doing so, are likely to be known to a range of local authority services. Local authorities may directly provide services or commission services from third sector agencies.

Local authorities have a statutory responsibility to local communities in relation to working with people who are involved in offending through the Concordat and Single Outcome Agreements. For every child the local authority has a responsibility to ensure that the [Getting it Right for Every Child \(GIRFEC\)](#) core components, values and principles are implemented to promote the wellbeing of every child and support them to reach their full potential. The [Children \(Scotland\) Act \(1995\)](#), [Children's Hearing \(Scotland\) Act 2011](#) and [Children and Young People \(Scotland\) Act 2014](#) enshrine the specific powers and duties of local authorities to protect and promote the welfare of children and young people who are "in need", looked after

and care leavers (see also [Section 1](#)). The following sections on social work, education, and health detail the roles and responsibilities of these different parts of the local authority.

## 10. Social Work

[Social Work Scotland](#) is the leadership organisation for social work established in 2014, building on the previous Association of Directors of Social Work. Social Work Scotland represents social workers and other professionals who lead and support social work across sectors. Their vision is for a social work profession across Scotland which is: led effectively and creatively; responsive to the needs of the people it supports and protects; accessible and accountable; and promotes social justice. Social Work Scotland facilitates Children and Families and Criminal Justice Standing Committees.

Local authorities vary in their practice and delivery of social work services for children and young people in conflict with law, doing so through specialist youth justice, children and families or criminal justice teams. The continuum of services and range of interventions available for children and young people in conflict with the law in each local authority will differ depending upon local need, resources, types, and patterns of harmful behaviour.

Services include early and effective intervention processes, diversion from prosecution schemes, and alternatives to secure care and custody. Regardless of how services are delivered, there is a need for practitioners to have the necessary knowledge, skills, and competencies to deliver appropriate services; they must also understand the needs of children and young people in conflict with the law. It is also fundamental that all local authority staff understand the GIRFEC approach and the WSA; these should inform their practice with children and young people. Staff should also be familiar with the practice framework provided by the [National Outcomes and Standards for Social Work Services in the Criminal Justice System](#). (All available Scottish Government Justice Social Work Guidance can be accessed [here](#)).

Social workers fulfil the local authority's statutory responsibilities for children and young people in need of assessment and supervision in respect of offences, as specified in legislation through the Children's Hearings and Criminal Justice Systems. Within the GIRFEC structure, the social worker will often be the Lead Professional.

Every child aged under 18 referred to a Children's Hearing or court on offence grounds should undergo a comprehensive assessment, guided by GIRFEC principles. Assessments and subsequent reports to the court or Children's Hearing should be completed by practitioners working with children involved in offending behaviour. The social worker will liaise with other agencies, to complete a holistic assessment and establish whether there are other relevant factors that should be considered, that may impact on the child's capacity to engage in offending interventions - for example learning disability, SLCN, or mental health issues.

Assessments in respect of offending behaviour should include a structured risk assessment, to be completed using recognised tools and other specialist structured risk assessments as appropriate. There is a move towards a more structured professional judgement (SPJ) approach, such as the use of the Short-Term Assessment of Risk and Treatability: Adolescent Version (START: AV). Details of different risk assessment tools can be found in the Risk Management Authority's (RMA) Risk Assessment Tools Evaluation Directory ([RATED](#)). This

requires teams working with children and young people in conflict with the law to have practitioners trained in the use of risk assessment tools. Risk assessment forms a central function for practitioners when supporting children and young people who may pose a risk of harm to others, or themselves. This function is not only relevant when producing Justice Social Work Reports and reports to SCRA, but in scenario planning for children and young people as their circumstances and environment change. The RMA have provided [guidance](#) regarding this, which practitioners may find helpful. Further [guidance](#) on completing Justice Social Work Reports for Court is also available from the Scottish Government.

All children involved in Children's Hearings or court should have a Single Plan which incorporates any current single agency plans, and should directly address needs and risks, including criminogenic needs. The Lead Professional will be responsible for ensuring an agreed multi-agency Single Plan is produced and that agencies have specific roles in respect of this plan (Scottish Government, 2011b).

With regards to Children's Hearings, the social worker's role will also include attending hearings and implementing the decisions of hearings. In terms of court, this role will include supporting children and young people to understand court processes, implementing court disposals and potentially also supporting the child/young person at court.

There may also be a court-based support worker or social worker, the roles and responsibilities of whom are detailed in the Scottish Government [guidance](#).

## 11. Education Services

Education services are a key partner in respect of children and young people who are in conflict with the law. The [Education \(Additional Support for Learning\) Act 2004](#) and [2009](#) provide direction for, and place duties on, local authorities to meet the learning needs of all children and young people, including those who are in conflict with the law, and is underpinned by the [Curriculum for Excellence](#).

Research has indicated that children and young people who offend into adulthood generally have poor educational outcomes and lack basic literacy, numeracy and reading skills. They are likely to have truanted or been excluded from school, with school exclusion found in The Edinburgh Study of Youth Transitions and Crime (McAra & McVie, 2010) to be a key factor impacting adversely on future offending trajectories. However, positive school experiences and quality attachments to teachers and other educational staff can play a pivotal role in preventing, and reducing the likelihood of, offending (Smith, 2006).

The role of educational staff in reducing offending, will include:

- Prevention - for example in developing positive relationships, providing appropriate education, and meeting additional support needs.
- EEI - providing information to EEI multi-agency processes and participating fully in the decision making in terms of appropriate support for the child.
- Where the child's main needs lie within education, the Named Person has duties and responsibilities for initiating and developing the Child's Plan, sharing information, and coordinating the delivery of support where additional targeted help is needed ([Children and Young People \(Scotland\) Act 2014](#)).

- Being a partner in respect of the Child's Plan where a child is subject to a Compulsory Supervision Order (CSO) on offence grounds.
- Contributing to assessment and management of risk for children and young people who cause harm to others or who present high risk behaviour or vulnerability.

## 12. Health Services

The NHS is a key partner in the GIRFEC approach, responding to children's general health and wellbeing needs and more specific needs, such as mental health treatment. In respect of children and young people who are in conflict with the law, or at risk of offending, their roles may include:

- Prevention through the provision of universal health services which are accessible to all children and their families.
- Support to access specialised health services including SLCN, mental health issues, substance misuse problems or parenting difficulties associated with offending behaviour (Scottish Government, 2011a).
- Information sharing - making information available to EEI multi-agency processes and to SCRA which could inform decision making in respect of offending behaviour.
- Ensuring that assessment and appropriate intervention is available for children and young people who are looked after and accommodated.
- Contributing to assessment and management of risk for children and young people who pose significant harm to themselves or others, and/or those who present with significant vulnerability.

## 13. Police Scotland

The police have a duty to protect the public, uphold and enforce the law, and to investigate on behalf of the Procurator Fiscal (PF) where they believe that a criminal offence may have been committed. In respect of children and young people: "as gatekeepers to the care and justice systems, and as the principal agency which first encounters many problematic children, the police have a key role to play in the delivery of justice for children" (McAra & McVie, 2010:23). This includes ensuring that children and young people involved in anti-social or offending behaviour receive the right supports at the right time provided by the most appropriate service, consistent with the WSA. To support this, and in keeping with the flexible approach within the GIRFEC framework, the police can offer a range of approaches including: direct police measures; making referrals to the local EEI multi-agency processes; and reporting to the Children's Reporter if they believe the child needs compulsory measures of supervision, or to the PF (Scottish Government, 2011c). This requires close working relationships between the police and several other key professionals, including the PF, Children's Reporter, Named Persons and Lead Professionals. Police Scotland is also seeking to collaborate with young people and improve communication and dialogue, e.g., through the Youth Volunteers Project and Youth Advisory Panel. The Carloway Review (Carloway, 2011) into criminal law and practice made a number of recommendations in respect of child suspects which practitioners should be familiar with.

## 14. The Scottish Children's Reporter Administration (SCRA)

SCRA is a national body focused on children most at risk. SCRA's role and purpose includes making effective decisions about the need to refer a child to a Children's Hearing; enabling children and families to participate in hearings; and disseminating information and data to inform and influence improved outcomes for children and young people. The Children's Reporter receives referrals for children and young people who may require compulsory measures of supervision; upon doing so, it has a legal duty to carry out an investigation to ascertain the nature and substance of the concerns. This requires obtaining reports from schools, social work or other agencies involved with the child or their family, such as health visitors. The Reporter will then use this information to determine whether there are grounds for referral, which ground is the most appropriate, and highlight the main concern(s) regarding the child.

Grounds for referral are detailed in section 67 of the [Children's Hearings \(Scotland\) Act 2011](#) and more than one ground of referral may be appropriate. On non-offence (care and protection) grounds, the evidential standard is the civil standard of balance of probabilities. For offence grounds, the CHS operates on the same evidential standard as the criminal justice system: beyond reasonable doubt. If there is insufficient evidence regarding the concerns raised, the Reporter is unable to intervene on a statutory level, although there remains a variety of options such as Restorative Justice and voluntary interventions. If there is sufficient evidence and there is a need for compulsory measures of supervision to protect the child, and/or address their behaviour, the child can be referred to a hearing.

## 15. The Crown Office and Procurator Fiscal Service (COPFS)

COPFS is responsible for the prosecution of crime. The Procurator Fiscal (PF) considers all crime reports submitted by the police and/or other specialist reporting agencies. The PF will make a decision on whether to take action based on a range of factors, including sufficiency of evidence; seriousness of offence; interest of victims and witnesses; age and conviction history of the offender; and whether prosecution is in the public interest. The PF has a duty to ensure effective and consistent use is made of the range of prosecuting options and alternatives to prosecution, including issuing a warning, fine, or use of diversion from prosecution including reparation and mediation. These factors and the range of prosecuting options are set out in the COPFS 2001 [Prosecution Code](#). The Code recognises that for cases involving children accused of committing an offence, the UNCRC is relevant and that in all such cases the best interests of the child shall be a primary consideration.

There are various categories of offences that, if alleged to have been committed by a child, require to be "jointly reported" to the PF and the Children's Reporter by the police, as specified in the [Lord Advocates' Guidelines](#). Under the [Joint Agreement in Relation to the Cases of Children Jointly Reported to the Procurator Fiscal and the Children's Reporter](#) the presumption is that children aged under 16 will be referred to the Children's Reporter in relation to the offence. This is also the position for those aged 16-17 and those who are subject to a CSO.

For children aged 16 or 17 – who are not on a CSO - it is the rebuttable presumption that the PF will deal with the case by way of offering a diversion from prosecution service. For those

aged 18 and over, diversion from prosecution will now be considered as an option should the merits of the case warrant it. More details can be found in [this guidance](#).

If COPFS consider that it is in the public interest to prosecute the child, COPFS are required to consider a range of factors, such as sufficiency of evidence, the gravity of the offence, pattern of offending and whether services within the CHS could work with the child in relation to their offending behaviour or offending-related needs. In 2019, COPFS issued internal guidance which made several changes to the way they respond to criminal matters (Gibson, 2019). These have been summarised in a [CYCJ Info Sheet](#).

The Lord Advocates Guidelines and associated guidance will be updated in light of the Children (Care and Justice) (Scotland) Act (see also [Section 1](#)), which when commenced will define a child as under 18 and will enable all children under the age of 18 to be referred to the Principal Reporter where necessary.

In January 2022, the Scottish Sentencing Council published the [sentencing young people guideline](#) which states that rehabilitation should be a primary consideration when sentencing a young person aged 25 years or below. Therefore, sentencers need to consider the intellectual and emotional maturity of the child or young person at the time the offence was committed, given that children/young people are more susceptible to peer pressure; less able to make good judgements; take more risks; and are less able to consider the consequences of their actions in comparison to an older person. However, as previously stated within this guide, these guidelines are again under review.

## 16. Community Justice Scotland (CJS)

[Community Justice Scotland](#) is the national organisation responsible for community justice across Scotland that formally launched in April 2017. Community Justice Scotland's role is to identify and promote best practice and work closely with a range of partners to develop expertise, provide advice and support improvements to prevent and reduce offending in Scotland.

## 17. Secure Care

Secure care provides locked facilities for children who present risks to their own safety and/or the safety of others, that cannot be managed within the community. The routes into secure care can be complex, as outlined by Nolan (2019). Children can enter secure care through the CHS if they meet the requirements stipulated in section 83 of the [Children's Hearings \(Scotland\) Act 2011](#) or through court, either on remand or having been sentenced. Whilst the ambition must be to have no child in Scotland in secure care, for the very small number of children whose needs can only be met in secure care, a high quality and nurturing environment that meets their needs and improves their outcomes must be provided. Under current funding arrangements, the cost of placing a sentenced child in secure care is met by the Scottish Government, but if a child is placed on remand or through the CHS, this cost is the responsibility of the child's local authority, although this is likely to change when the use of YOI for children ceases in 2024. Section 83(5)(c) of the [Children's Hearings \(Scotland\) Act](#)

[2011](#) specifies that all other available options, including a [Movement Restriction Condition](#), must have been considered prior to secure accommodation being utilised. In Scotland, secure care is provided and managed by third sector providers. Further information on specific services provided by different secure care centres and how they are inspected can be found on the [Care Inspectorate](#) website.

Secure care can offer clear benefits in affording children a safe, secure environment in which their needs can be met via a full range of services. It facilitates assessment and care planning and provides the opportunity for a range of interventions that support behavioural changes for children (Scottish Government, 2011a). Historically, research indicated outcomes for children leaving secure care were poor (Kendrick et al., 2008), which led to an enhanced focus on outcomes for these children (Scottish Government, 2011a). This included efforts to ensure agreed outcomes for a child in secure care upon admission - via Individual Placement Agreements - and at the initial 72-hour review meeting, with outcomes being recorded (Scottish Government, 2011a). Moreover, in recognising that children leaving secure care should have the best opportunity to succeed when returning to their community, additional focus has been placed on planning for a child's move out of secure care as soon as they enter; individual needs and risks are assessed, and holistic and tailored interventions are provided in order to improve transition and reintegration back into the community (Scottish Government, 2011a). The Head of Secure Care will be the child's Named Person during their time there, with the responsible local authority retaining the role of Lead Professional.

In 2020 the [Secure Care Pathways and Standards Scotland](#) were launched, having been co-produced by children and adults with experience of secure care and other stakeholders in the sector. It charts the support that ought to be provided before, during and after a period within secure care. As such, it is also relevant to children who do not enter secure care at all, but whom practitioners and others may hold in significant concern.

## 18. Children in Custody

Should a child aged 16 or 17 who is not subject to a CSO be remanded or sentenced to a period of custody, they may be held in a YOI, rather than secure care, although in order to Keep the Promise the use of YOIs for children under 18 should end in 2024 via the commencement of the provisions in the Children (Care and Justice) (Scotland) Act. There is also an option for a Chief Social Work officer to accommodate a child on a voluntary basis in secure care as opposed to YOI until the legislation is enacted. Decisions about where a child is placed should take full account of the child's needs and circumstances, although it is generally agreed that secure care is a more age-appropriate environment for children under the age of 18 than a YOI. However, cost differences are significant and have been found to adversely influence decisions (C Lightowler, Orr, & Vaswani, 2014). Under [Article 37\(c\) of the UNCRC](#), children under the age of 18 years should be detained separately to adult offenders in recognition of their unique needs and stage of development. Children in YOIs who are on remand should also be kept in a separate environment to those who have been sentenced, given that they remain innocent until proven guilty (Office of the Commissioner of Human Rights of the Council of Europe (OCHR), 2009).

[The Prisons and Young Offenders Institutions \(Scotland\) Rules 2011](#) apply to prisons and YOIs and those detained in any such facility. All prisons and YOIs are inspected [by Her Majesty's Inspectorate of Prisons for Scotland](#), and copies of inspection reports can be found

on their website. Outcomes for children who have been detained in custody tend to be poor. For this reason, the Scottish Prison Service (SPS) committed to change in a new Vision for Young People in Custody (Scottish Prison Service, 2014) and more broadly within Unlocking Potential: Report of the Scottish Prison Service Organisational Review (Scottish Prison Service, 2013). Planning and undertaking work to address the causes of offending behaviour while children are in a YOI, and upon release, is crucial. As with secure care, the responsible local authority should maintain the role of Lead Professional during the child's period in custody (Scottish Government, 2011a). Practitioners should also consider the content of [Section 16](#) when supporting a child or young person involved in a transition from one setting to another.

## 19. Third Sector Organisations

The third sector comprises various voluntary and community organisations, charities, social enterprises, co-operatives and mutuals who undertake a range of activities on both a national and local basis. They are non-governmental, value-driven organisations, who principally reinvest any financial surpluses to further social, environmental, or cultural objectives.

In Scotland, a wide range of third sector organisations provide a diverse spectrum of services and programmes for children and young people who are in conflict with the law (and their families/carers), or who are at risk of being so. Services and support can be provided through a range of methods, including group work, one-to-one support, and mentoring, and include:

- Information, support, and services as part of early intervention packages
- Supporting diversion from the youth and criminal justice systems
- Specialised assessments and interventions with young people who present significant risks in the community,
- Secure care provision
- Throughcare support on release from custody
- Addressing issues that are recognised as impacting on future reoffending such as housing, employability, and substance misuse
- Advocacy
- Family support
- Participation projects
- Restorative Justice
- Specific services to support children and young people from minority ethnic backgrounds, girls and young women and those with learning support needs (Criminal Justice Voluntary Sector Forum, 2014; The Robertson Trust, 2012).

In doing so, third sector organisations aim to contribute to improving outcomes for children and young people, reducing reoffending, providing holistic support, addressing equality issues, and working effectively in partnership with other agencies. Recognising the difficulties around awareness and signposting, the Scottish Government developed a [web based](#) 'national directory of services for offenders' (Criminal Justice Voluntary Sector Forum, 2014) Third sector organisations and statutory agencies, including local authorities, the police and health services, have also worked to develop effective relationships at both strategic and operational levels. Public Social Partnerships (PSPs) are one example of such joint working; developed under the Reducing Reoffending Change Fund between third and public sector



organisations, they provide offenders with one-to-one support through mentoring schemes (Clark, Simpson, & Shipway, 2013). In Reducing Reoffending Change Fund PSPs, the partnerships are led by a third sector organisation, and an evaluation has been completed of how Development Funding has been used by each PSP in the first year to develop plans for service delivery in years two and three (Clark et al., 2013).

The third sector can pilot new approaches, identify and provide services which meet needs unmet by the public sector, provide additional support to improve the effectiveness of work done by public sector agencies and contribute to joined-up, holistic support (The Robertson Trust, 2012). However, factors including lack of long-term funding, competition for funding between third sector organisations, and the unequal relationship between the public and third sector are challenges that can negatively impact on the effectiveness of third sector organisations in achieving their goals (The Robertson Trust, 2012).

## 20. The Promise

Following the conclusion of the Independent Care Review in 2020, [The Promise](#) implementation body was set up to drive the changes outlined and mandated within the Independent Care Review's final report (also named [the promise](#)). With an expected lifespan of ten years, The Promise aims to support varied actors across Scotland to promote practice, policy and culture, in order that Scotland's children and young people grow up in a country that is loving, safe and respectful, and which allows them to realise their full potential.

Published in 2021, the [first plan](#) highlighted several priorities that it seeks to achieve over the years 2021-24. These are as follows:

- The right to a childhood
- Whole family support
- Supporting the workforce
- Planning
- Building capacity.

Whilst the work of The Promise encompasses a broad range of activities that do not directly impact upon children and young people who come into conflict with the law, at times it will make a direct impact upon the youth justice landscape, with the redesign of Children's Hearings, secure care, court, and the unnecessary criminalisation of children in the care system all featuring within the conclusions of the promise.

Within justice settings, Plan 21-24 seeks to address the following:

- The disproportionate criminalisation of care experienced children and young people will end,
- Sixteen- and 17-year-olds will no longer be placed in YOIs for sentence or on remand,
- There will be sufficient community-based alternatives so that detention is a last resort,
- Children who do need to have their liberty restricted will be cared for in small, secure, safe, trauma-informed environments that uphold their rights.

The Promise Change Programme ONE considers the work undertaken and any progress made to reaching the five priority areas of change which must be completed by 2024. In June

2021, Change Programme One reiterated the need for investment in community-based support for children and young people in conflict with the law. The [Keeping the Promise Implementation Plan](#), published in March 2022, reiterated this in its key actions: “We will end the placement of 16- and 17-year-olds in YOIs without delay. We will fund care-based alternatives to custody and consult on new legislation in Spring 2022. This will provide the support children need in very difficult circumstances, shifting the approach from one of punishment to one of love and support” (Scottish Government, 2022b, p. 6).

In May 2023, The Promise Scotland published the [Hearings for Children](#) redesign report calling for transformational change to the CHS, which, if accepted by the Scottish Government, will also require legislative change. Recommendations include:

- A salaried and professional Chair who will oversee each hearing a child attends to avoid them having to repeat their experiences each time,
- Panel members receiving payment and receiving specialist training in trauma, child development and communication,
- Reporter seeking views of children and their families prior to a Hearing and other more streamlined processes.

In June 2023 The Promise Oversight Board published report [TWO](#). This report is clear that the Oversight Board does not expect the timescales initially laid out in the Plan 21-24 to be met.

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