

# Minister for Victims and Community Safety

## submission of 2 April 2024

### PE1947/F: Address Scotland's culture of youth violence

Thank you for your letter of 11 March 2024 regarding petition PE1947 in which the Committee has sought information on a number of points, following its consideration of this Petition at a meeting on 6 March. I also note that the Committee has recently considered a new petition PE2064: Ensure that under 16s charged with rape are treated as adults in the Criminal justice system.

Please find below information on each of the points raised in your letter:

#### **Whole System Approach ('WSA')**

I note that the Committee is aware of our policy position but feels there are questions around what happens where serious violence and sexual offences have been committed by a young person and is looking for information of what a whole system approach (WSA) to preventing offending looks like in practice for serious offending.

Whilst the aim is to keep children out of the criminal justice system, we are clear that in some cases this will not be possible or appropriate. This particularly applies where the offence is of a serious nature. We recognise the devastating impact serious offences have on victims, their families and the wider community.

The WSA seeks to address the needs of those under the age of 18 who are involved in, or at risk of becoming involved in, offending. It delivers responses through a multi-agency partnership approach through availability and use of services, to divert children from the criminal justice system, and from custody and secure accommodation where possible. An example would be through early and effective multi-agency meetings which take place to discuss children and consider their needs and plan for next steps. Those meetings can include local Police, Youth Justice lead from the Local Authority, Health, Community Safety and Education representatives. The intention is to ensure that young people get the right support at the right time while providing better outcomes for the child, young person, victims and communities.

Through our Children (Care and Justice) (Scotland) Bill currently progressing in Parliament we are looking to ensure that needs, welfare and best interests of children are considered alongside the safety of the public and the needs of victims when decisions are made. In particular, the deprivation of a child's liberty should be a last resort and if a period of detention is required then this should be in small trauma-informed and child friendly settings such as secure accommodation.

## **Details of the various pathways for responding to repeat perpetrators and what investigation, charging, sentencing rehabilitation and diversion looks like in these pathways**

The WSA is a multi-agency partnership approach to preventing offending. Delivery is based on bespoke packages of support to meet individual children's needs, along with attending to any risks that their conduct may represent there what is delivered in one area of the country may be different to another. This bespoke approach maintains a consistent approach to the principles of early intervention, prevention and diversion.

The Criminal Justice (Scotland) Act 2016 has brought significant reform to the criminal justice system, protecting the rights of suspects, whilst also equipping the police with the necessary powers to carry out their role of investigating and detecting crime. Sections 50, 51 and 52 of the 2016 Act provide a duty to consider a child's (that is, all persons under 18s') wellbeing in respect of arrest, holding in police custody, interviewing and charging with an offence.

Officers must treat the need to safeguard and promote the wellbeing of the child as a primary consideration. However, these considerations must be balanced against the need to fully investigate crimes, the requirement for ethical recording of crime in line with the Scottish Crime Recording Standards and the needs and rights of victims.

Article 37(b) of the UNCRC states that arrest, detention or imprisonment of a child should only be used as a measure of last resort and for the shortest period of time. The severity of a crime will influence whether it is proportionate to arrest a child and present them at a Police Custody Centre. In this respect, officers must take due cognisance of the Lord Advocate's guidelines on offences committed by children.

When an arrest is necessary, then section 4 of the 2016 Act requires police to take all arrested persons (there is no distinction between a child or an adult) to a Police Custody Centre. Any arrested person must also be afforded their rights to having a reasonable named person and a Solicitor informed of their arrest, with further solicitor access requirements/options if a Police interview is required.

Section 48(5) of the Scotland Act 1998 provides that any decision taken by the Lord Advocate as head of our system of prosecution in Scotland shall be taken by her, acting independently of any other person. Decisions around whether to prosecute a child are taken by The Crown Office and Procurator Fiscal Service (COPFS). Where children's offence cases are jointly reported to COPFS and the Principal Reporter, then COPFS will make the ultimate decision – having considered a range of factors such as, for example, the seriousness of the alleged offence and prior pattern of offending. The Lord Advocate has

[instructed a review](#) of prosecutors' current approach to the prosecution of a range of cases, including children accused of rape.

Operating as part of our wider Whole System Approach to youth justice, Scotland's children's hearings system is the long-established forum for addressing concerns about children and young people, including where they may have committed a serious offence and the COPFS have decided to remit the case to the Principal Reporter. This is a welfare based system that treats offending and harmful behaviour by children in different ways from the criminal justice system.

The Guideline on the Sentencing of Young People was developed by the independent Scottish Sentencing Council, following extensive research and analysis of relevant evidence, engagement with members of the judiciary and other stakeholders as well as a public consultation. Whilst the guidelines focus on rehabilitation as a primary purpose of sentencing when sentencing a young person, other factors can be taken into account, including protection of the public; punishment; and expressing disapproval of the offending behaviour. The guidelines ensure that a period of detention remains an option for the court, where it considers that to be appropriate following consideration of all the facts in any given case. As with all sentences, and as an important check and balance, the Crown Office still has the option to appeal the sentence if they consider it is unduly lenient.

There are a small but significant number of children and young people in Scotland who present a risk of serious harm to themselves and others as a result of their involvement in harmful sexual behaviour or serious acts of violence.

### **How a history of violent behaviour is considered when addressing youth offending**

The above approach can be taken where a child or young person has a history of violent or harmful sexual behaviour. Many of those who are involved with offending of a serious nature will have complex needs and may have experienced multiple traumas in their lives.

Young people aged 12 to 17 years who have committed a serious sexual offence or are considered a serious risk of harm, can be managed in various ways, including under child protection procedures, Care and Risk Management (CARM) or Multi-agency Public Protection Arrangements (MAPPA) if they have been convicted of the offence in a criminal court.

Where there is consideration that the risks posed by a child's behaviour present significant harm to others and formal risk management processes are required, the Care and Risk Management (CARM) process supports the multi-agency

management of risk and is applicable irrespective of whether the child is subject to the children's hearings system or the criminal justice system. CARM provides local authorities and practitioners with a template for child-centred practice in risk assessment, management and reduction with children who present a risk of serious harm to others within the context of GIRFEC and the Whole System Approach.

In a small number of cases, children convicted of a sexual offence in the adult courts and not remitted to the children's hearings system will be overseen by Multi-Agency Public Protection Arrangements (MAPPA) which are governed by Sections 10 and 11 of the Management of Offenders (Scotland) Act 2005. Any child who is subject to notification requirements under the Sexual Offences Act 2003 will be managed via MAPPA. Inclusion of a child in MAPPA may also occur if they have been convicted of a crime which suggests that they may pose a risk of serious harm, are subject to statutory supervision in the community and where active multi-agency management is necessary to protect the public.

If this is the case, appropriate risk assessment tools, which take account of the young person's age and stage of development, should be used. These include AIM2, SAVRY, START:AV or ERASOR. Within MAPPA meetings for young people, where possible, representatives from childcare/youth justice agencies should be present to ensure that processes adopted are suited to young people in terms of managing their risk and meeting their needs. These requirements include:

- Explaining processes in language they understand on an on-going basis throughout the MAPPA process
- Ensuring that meetings understand young people's development and treat them differently from adults
- Risk management strategies should be systemic and involve others such as families/ carers until the young person is able to self-manage given their age and stage of development
- Restrictions/conditions should be necessary and proportionate to manage the risk presented
- Restrictions/conditions should be reviewed when adhered to successfully, so the young person sees progress and continues to adhere to conditions
- Consistency in worker to support the young person where possible

Where the young person is being prosecuted but proceedings have not yet commenced/concluded or if a young person has been convicted but is not subject to MAPPA; or if a young person has been remitted back to the children's hearings system to deal with the offence, then any risk should be managed under CARM procedures. This ensures that any risk presented is assessed and managed effectively across appropriate agencies. Any risk

management measures in place will be individualised, in the best interest of the child as well as their physical and mental wellbeing and development and particular circumstances of their case.

## **How policies and procedures across the mental health, education, social care and justice systems work together to put perpetrators on a positive path while protecting victims in their communities**

The WSA is a partnership approach to meeting the needs of children. This includes working together across various systems and agencies including mental health, education, social care and justice to meet the individual needs of the child. These multi-agency partnerships are central to tackling offending by children and creating safer communities.

The Scottish Government Youth Justice and Children's Hearings Unit and the Children, Young People, Relationships and Families Mental Health Unit jointly fund the Interventions for Vulnerable Youth (IVY) project. The national project promotes best practice in forensic mental health risk assessment and management for young people up to the age of 19 who present a risk of harm to others. It uses a multi-disciplinary, tiered approach to provide risk assessment, formulation and management for those who present with complex needs and high risk, violent behaviour.

We are also taking a wide range of steps to strengthen how victims and witnesses, including complainers in sexual offence cases, are supported and informed through the justice system. This work has identified support for victims, particularly child victims and their families, as a key priority within the Youth Justice Vision. Further, the Children (Care and Justice) (Scotland) Bill has outlined measures which will, if passed, enhance support for victims.

## **Reporting and Victim Support**

### **Information on what victims can expect by way of transparent communications and trauma informed support at each stage of the process**

The Victims' Code for Scotland sets out victims rights, including the right to get information: how victims will be updated about a case and what they can ask about. The key criminal justice agencies (COPFS, Police Scotland, Scottish Courts and Tribunal service (SCTS), the Scottish Prison Service and the Parole Board for Scotland have a statutory duty to publish [Standards of Service for Victims and Witnesses](#) so that victims and witnesses know what to expect during their interaction with these agencies. The Standards of Service document seeks to explain what happens at each stage of the criminal justice process, the standards of service that can be expected, and who can be

contacted for help or advice. It also contain information on what victims can do if these standards have not been met.

### **Reflections on whether you recognise the challenges to reporting noted by the petitioner**

The petitioner raised a number of challenges to reporting, including from PE1947/E; that there are fewer police in all areas of policing, opening hours / availability of police stations; waiting times when calling 101; lack of guarantee that a case will go to court; the length of time for court cases; and sentencing. Whilst the Scottish Government is unable to comment on operational decisions by Police Scotland, the Scottish Government recognises the need to improve victims' and witnesses' experience of the criminal justice system. The Victims, Witnesses and Justice Reform (Scotland) Bill is part of a wider programme of work set within the context of the [Vision for Justice in Scotland](#), which was published in February 2022 and outlines the aims and priorities for the justice system over the next four years. The provisions in the Bill progress the Vision's transformation priority of a person-centred and trauma-informed justice system and take forward the priority actions of hearing victims' voices and ensuring women and girls are better served by our approaches to justice.

The Bill aims to (i) ensure victims are treated with compassion and their voices are heard; (ii) ensure justice meets the needs of survivors of sexual offences, the majority of whom are women and girls; and (iii) ensure our laws and legal processes meet the needs of modern Scotland and enable public confidence in the justice system.

### **Whether you recognise the petitioner's concern that recorded crime statistics may reflect low reporting rates rather than giving an accurate picture of levels of youth violence**

We have always made it clear that recorded crime statistics do not reveal the incidence of all crime committed, as not all crimes are reported to the police. As such it's important to consider a range of evidence when assessing trends in crime across Scotland. A complementary source of information to recorded crime is the Scottish Crime & Justice Survey (SCJS).

The SCJS is a large-scale household survey that asks adults about their experiences of crime, including those that aren't reported to the police. The latest published results for 2021/22 (which includes fieldwork up to December

2022) found that 1.7% of adults in Scotland experienced at least one violent crime, and that 34% of those crimes were reported to the police. When looking at the long term trend (both reported and unreported crimes), the SCJS demonstrates that encouraging progress has been made in tackling violent offending by younger people. Between 2008/09 and 2021/22 the overall volume of violent crime fell by 58%, and during that time the proportion of violent crime which involved an offender age 24 or under fell from 61% to 31%. Over the same time period the proportion of adults who reported feeling safe walking alone after dark in their local area increased from 66% to 76%, and the proportion who were worried about being physically assaulted or attacked in the street or other public place fell from 31% to 17%.

## **Social Media**

### **What the Scottish Government is doing to address young people using social media to threaten violence or encourage participation in violence**

We take online safety very seriously and we continue to liaise with law enforcement agencies to ensure that they have the powers and resources to tackle any incidents of criminality.

We are refreshing the 2013 guidance to schools on the use of mobile phones as part of the joint action plan to respond to the Behaviour in Scottish Schools Research. This guidance will be developed in consultation with the Scottish Advisory Group on Relationships and Behaviour in Schools and will be published in the Spring.

We are also currently reviewing our national anti-bullying guidance 'Respect for All: The National Approach to Anti-bullying for Scotland's Children and Young People'. This guidance provides the overarching framework for all adults working with children and young people to address all types of bullying including online bullying. Given the changes that have taken place since the guidance was last updated in terms of young people's use of phones and social media, we are currently considering the guidance around online bullying. We expect the updated guidance to be published by the end of the year.

The safe use of the internet by Scotland's children and young people is a priority and we are working with partners to encourage safe and responsible use of the internet. Education Scotland published Experiences and Outcomes for the Technologies area of the Curriculum including internet safety and cyber resilience.

There are clear links between internet safety and Personal and Social Education (PSE)/health and wellbeing and these statements will help teachers to know what to teach. Children and young people will learn about the safe and responsible use of different technologies, including the internet and social media, as part of their broad general education under the Curriculum for

Excellence. Furthermore, we are committed to ensuring that all pupils receive high quality relationships, sexual health and parenthood (RSHP) education.

The Scottish Government published A [Violence Prevention Framework for Scotland](#) in May 2023. One of the actions of the Framework, that is being taken forward by our funded partners including the Scottish Violence Reduction Unit (SVRU) and No Knives Better Lives (NKBL), is to develop a collaborative plan with actions for harm reduction and violence prevention specifically targeting the effects of social media on violence. I understand that research is currently being undertaken by both SVRU and NKBL, and a campaign will be launched later this year. I would be happy to update the Committee on this work as it progresses.

Internet safety is a reserved matter and falls to the UK Government. The UK Government's [Online Safety Act 2023](#) ("the Act") gained Royal Assent last October. The Act establishes a regulatory regime aimed at ensuring that internet services and search engines have systems and processes in place to deal with illegal and harmful content and their associated risk, particularly to children and young people. The Act includes a duty on social media platforms and tech companies to keep children safe online. They will need to develop systems for detecting and removing harmful content and to enforce stricter age limits.

On 9 May 2023, the First Minister wrote to Chloe Smith MP, Secretary of State for Science, Innovation and Technology, urging her to ensure the Online Safety Bill contains the powers to hold social media companies to account which the UK Government took on board.

**What levers the Scottish Government feels it has to address issues with social media and, for those issues where it does not have the ability to enact change, where does that responsibility lay and how can the Scottish Government be an active participant in driving change forward**

The Scottish Government continues to engage with the UK Government and Ofcom, the new online safety regulator, on the implementation of the legislation in Scotland. This includes responding to relevant consultations on the Act and pressing for stronger protections for children and vulnerable people online.

### **Third Sector**

**What is being done to ensure that the work being done by the third sector, particularly small grass-roots organisations, is adequately funded with long-term sustainability in mind?**

The Scottish Government Third Sector Unit is focussed on creating the best conditions for the Third Sector to operate, thrive and contribute to improved outcomes, ensuring proper regulatory function and maintaining public trust and

confidence in services. We recognise that the third sector needs clarity and stability to secure its resilience and to grow its capacity. We are therefore committed to developing a Fairer Funding approach for the sector. Our Fairer Funding principles build upon the long standing issues relating to single year grants, lack of uplifts, late notification of grants and inflexible grant conditions. It builds upon learning from the pandemic that showed that flexible grant conditions, good relationships and proportional reporting measures ensured third sector stakeholders could pivot quickly to support communities. The Unit also directs funding towards the Young Start programme which awards grants of between £10,000 and £100,000 to community projects that help young Scots to become more confident, gain new skills and realise their potential. In 2022/23 76% of Young Start grants were awarded on a multi-year basis.

CashBack for Communities funding was mentioned in the evidence for this petition. CashBack Phase 6 is delivering a range of trauma-informed and person-centred services and activities that support young people aged 10 -25. The programme focusses on helping young people most at risk of being involved in antisocial behaviour, offending or reoffending to progress into positive destinations, among other life enhancing outcomes.. Phase 6 will run from April 2023 to March 2026, providing a 3 year funding period to successful organisations. Although many (but not all) of the organisations funded in Phase 6 are “national organisations”, all work at grassroots local level. Key examples of this are the Scottish Football Association (SFA) who work with both league and community football clubs and Youth Scotland who support uniformed organisations (Brownies, Guides, Scouts, Boys Brigade) across Scotland. The Scottish Government also provides funding for youth work in a variety of ways including grant funding, special initiatives and programmes which support national and grassroots organisations.

I hope this is helpful.

**SIQBHIAN BROWN**