

Children and Young People’s Centre for Justice dated 18 December 2023

Stage 2 of Children (Care and Justice) (Scotland) Bill

We write to you in order to provide further analysis and commentary on the Children (Care and Justice) (Scotland) Bill which is now scheduled to enter stage 2 in early 2024. We are aware that there have been a number of personnel changes within the committee, and thus hope that this submission will assist those members who did not previously attend our evidence session. For the longer standing members of committee, we hope that the contents of this submission provide reflection on recent evidence sessions and thus assist them in their deliberations.

We approach our analysis with a lens firmly focused on ensuring all children’s human rights are protected when they are in need of care and protection, be they victims, witnesses, or having come into conflict with the law. The recent passing of the UNCRC (Incorporation) (Scotland) Bill is a significant step forward in protecting children’s human rights but must be accompanied by concrete action to support those children whose rights are most at risk. In June 2023, the UN Committee on the Rights of the Child set out its deep concern about the “draconian and punitive nature” of the child justice system, particularly highlighting that children aged 16-17 years old are not always treated as children.ⁱ As the Committee prepares for stage 2, we offer our commitment to support the Committee ensure the Children (Care and Justice) (Scotland) Bill realises its potential in cultivating a genuinely child-friendly care and justice system that protects the rights of all children in line with our commitment to the UNCRC. As set out in the Council of Europe Guidelines on Child-Friendly Justice which provide guideline to help governments operationalise the UNCRC within care and justice systems:

“A child-friendly justice system brings relief and redress; it does not inflict additional pain and hardship and it does not violate children’s rights. Above all, children between birth and the age of 17 – be they a party to proceedings, a victim, a witness or an offender – should benefit from the “children first” approach”ⁱⁱ

Moreover, this Bill is an important step towards realising the ambitions set out within *The Promise* which reached a number of conclusions about Scotland’s response to children in conflict with the law, and to children in need. *The Promise* made specific reference to the care provided to 16- and 17-year-old children, explicitly stating that they should not be placed in Young Offender Institutions or custodial settings, whilst secure care must deliver care that upholds their rights and addresses the underlying need within that cohort.

Within this context – of seeking to protect children’s human rights and to improve the care provided to children in Scotland -, there are numerous aspects of the Bill as it is currently constituted that we wish to offer comment on.

Support to victims

This Bill is an excellent opportunity to improve the way Scotland responds to children who have been victims of crime, abuse and harm. The changes proposed by this Bill offer access to support to a cohort of children who, until now, have fallen between existing support services. This includes children who are currently excluded from consideration by the Children’s Hearings System on account of them being over the age of 16, and not

currently being subject to a Compulsory Supervision Order (CSO)/other measures, or an open case to SCRA.

As a result of the proposed increase to the upper age of referral, it will be possible for all children aged 16 and 17 to be considered for compulsory measures of supervision via the Hearings System. This addresses an existing procedural anomaly: namely, that certain children are currently being excluded from the very mechanisms and structures that were designed for their care and protection. Children who currently fall into this category include 16- and 17-year-olds who are the victims of child trafficking and those who have been subjected to harm, such as sexual abuse, by a parent. In instances such as these it has been impossible, up until now, for this cohort of children to have recourse to the Hearings System. Increasing the age of referral will therefore have the effect of ensuring equality and equity amongst this age group, removing the perverse disparity that leaves some children with access to a range of supports whilst others are excluded.

Such an approach is not only apposite due to its moral and ethical groundings (assisting Scotland's efforts to honour its commitment to children's rights) but is also an effective tool in reducing subsequent harm by those that have been harmed. Whilst most victims do not go on to harm others, evidence highlights that children who offend have almost always been victims of harm, a lack of parental care and/or have experienced significant isolation and deprivation. The correlation between victimhood and harming others is further motivation to ensure that all children who may need compulsory measures of supervision (and the tailored support that is associated with it) should fall within the scope of the Hearings System. Providing support to children who have been harmed thus helps to prevent further acts of harm being inflicted upon othersⁱⁱⁱ ^{iv} and is in keeping with a public health approach to reducing harm.

We note that the Bill contains provision that will widen the range of measures available to the Children's Hearings System that can be utilised to ensure the safety of victims, including information sharing notifications, specific measures to prohibit contact with victims, and the expansion of existing movement restriction conditions. Whilst the enforcement of these measures differs from those imposed by Police Scotland or court, they do provide a level of protection that goes some way towards preventing repeat victimisation. Moreover, local authorities and their partners can make use of existing Care and Risk Management (CARM) procedures which are currently used across Scotland to facilitate multi-agency risk management strategies as a means of devising individualised safety plans, to protect victims and reduce harm.^v In these situations, information can be shared with victims as part of victim safety planning measures, and when incorporated into risk management strategies outlined later in this submission provides a level of information that facilitates robust safety plans. We trust that this will provide greater confidence in the capacity of the Hearings System to prevent repeat victimisation.

We further note the Government's consideration of a Single Point of Contact for victims and reiterate our support for this measure. Whilst not every individual who has experienced harm will make use of this support, CYCJ believe that a Single Point of Contact should be offered to all those who have been the victims of crime; that Point of Contact would then coordinate the required support.

We also want to take this opportunity to comment on potential changes to the nature and volume of information that is shared with those who have been harmed. In our earlier submission to Parliament we argued that this task must always be done in a rights-respecting manner, mindful of Articles 19 and 39 of the UNCRC which relate to the child's right to protection from violence, abuse and neglect; and their right to recover from such

issues respectively. Should any changes be made to information sharing protocols then this ought to be on a limited basis. Any sharing of information needs to be proportionate and in accordance with existing legal protections with regards to human rights, including privacy and data protection. Information should only be shared in those circumstances where protective measures directly involving the person harmed are necessary, for example where there is a condition for the child not to approach the harmed person's house. We are mindful of the need to maintain and respect the privacy of children, including in cases where they are accused of causing harm to others.

Ethos of the Children's Hearings System

CYJC believe that it is important to re-emphasise the distinct functions and roles of the justice and Hearings systems. Whilst the Children's Hearings System – by its very design and underpinning ethos – focuses on the welfare of the child, the justice system is one which places greater emphasis upon deterrence and punishment. In order to fulfil Scotland's ambition of UNCRC incorporation and compliance – as well as adherence to the Beijing Rules^{vi}, Havana Rules^{vii} and the Riyadh Guidelines^{viii} - we, as a nation, are required to adopt a response to episodes of harm which, whilst protecting victims, also affords additional consideration to the short- and long-term effects of contact with the justice system.

Echoing the above point, the ethos of the Children's Hearings System is one which focuses on the welfare of the child, and in which the best interests of the child are of paramount importance. This is the case for both children who have been harmed, and those who may have harmed others, or themselves. The Hearings System also seeks to adopt the minimum intervention principle, only making formal, statutory orders when it is necessary to achieve the desired change. However, that does not prevent the Hearing from making decisions which deprive or restrict a child's liberty.

This ethos, and the Children's Hearings System itself, have received widespread support. Significant endorsements have come from: the Hearings System Working group chaired by Sheriff David Mackie^{ix}; the cross system working group which considered how best to support 16- and 17-year-olds in need^x; and the Whole System Approach Implementation Group. The support for this approach is broad, stemming from both an ethical and empirical foundation.

Readiness of secure care centres

Since its inception secure care has provided support, supervision and care to children who have both been harmed, and who have caused harm. Those who cause harm to others have, almost without exception, been exposed to complex and widespread adversities throughout their childhood.

The current population within secure care are no different. One recent study reported that children accommodated within the secure setting – the vast majority of whom were placed there due to welfare-based concerns – were also responsible for a variety of acts of harm. For example, in the year prior to admission 56% of children had accrued a charge of assault, with 12% having done so five times or more. Some 22% of children had been accused of using a weapon to assault another person, 6% had been accused of a contact sexual offence, whilst 3% had faced charges of non-contact sexual offences. Within the same study, an analysis of the profile of children held within YOI highlighted a similarly diverse range of vulnerabilities: 21% were survivors of domestic violence; 29% had been the victim of knife crime; 60% had witnessed domestic violence; and across the group there had been widespread exposure to multiple Adverse Childhood Experiences. Such findings

led the authors of the report to conclude that not only are the needs of children within YOI and within secure care similar, “but their deeds are likewise analogous”.^{xi}

Similar findings can be found amongst studies of children aged 12-15 who engage in harmful behaviour. Data demonstrates the multiple adversities encountered by this cohort with substantial levels of neglect, abuse, deprivation, disability and parental vulnerability all present. Whilst now causing harm to others, data shows that this cohort had very often been involved in the Children’s Hearings System at an earlier stage of their life and required the protection it offers.^{xii} The offender / victim dichotomy is therefore a false one, and fails to reflect the complex, multifaceted nature of children’s lives.

Furthermore, CYCJ note that secure care providers already support and accommodate a significant number of children aged 16 and 17 who are placed there by the court due to remand or conviction, or placed there by the Hearings System due to the child meeting the secure care criteria. During the year 2021-22 some 36%^{xiii} of Scottish based children placed within secure care were within this age bracket, whilst in the preceding year that figure was 51%^{xiv}. This demonstrates a significant shift in the profile of children accommodated within secure care over the past two decades; a study from 2005 highlighted the rarity of children over 16 being accommodated within secure care at that point.^{xv} As such, we can be confident that secure care providers have the skills and experience to support children aged 16 and 17, including those who have both engaged in the most acute levels of harm and/or been exposed to high levels of harm by others.

In responding to the combination of children who have both been harmed, and caused harm, secure care providers have developed multi-disciplinary teams^{xvi} which provide integrated, round-the-clock care^{xvii}. This change in legislation will merely allow those children previously detained within a custodial setting to receive the care and supervision available to their peers within secure care settings.

With *The Promise* calling for Whole Family Support, secure care is well equipped to provide the support and family time that is necessary when a child has been deprived of their liberty. Secure care provides far greater opportunity to repair and resolve family conflict that may have been contributory factors to the child’s loss of liberty, thus serving to resolve personal challenges and preparing a child for their subsequent return to the community.

At the time of writing, there is only one child detained within a custodial setting, whilst there is capacity to accommodate a further 11 children within Scotland’s four secure care settings. Those children who *are* held within custodial settings are there by virtue of the complex legal landscape, which denies some children access to the Hearings System, rather than as a consequence of the offence in question. Indeed, it is very often the case that children within the custodial estate are there due to fairly low-level matters such as breach of Bail conditions which – due to their age, immaturity and brain development – can prove challenging for children to adhere to.

In our opinion, any suggestion that secure care is not capable of delivering care to, and responding to risks posed by, 16- and 17-year-olds who meet the secure care criteria or are placed within that setting by court, does not reflect the reality of existing practice. It is common practice for Scotland’s secure care providers to accommodate children who have caused the death of others, inflicted significant sexual harm and engaged in other acts of violence. The physical layout of secure care permits opportunities to distance children from other individuals or groups. This is not uncommon in certain situations in order to prevent harm to either party. Such practices may well give the committee further confidence that any contact between particular individuals can be managed in a safe, age-appropriate

manner. A potential increase in the number of 16- and 17-year-old children within the secure arena may make it necessary to consider how best to meet the needs of residents, and for consideration to be given to the resourcing and funding of such provision. However, the committee can feel assured that secure care can – and indeed already does – provide both supervision and care to this cohort of children.

Views of children

Over the course of the past few months CYCJ have spoken to 34 children currently resident within secure care. Of that number, none raised concerns over an increase in 16- and 17-year-olds entering secure, and none stated that they were unsafe within their current setting.^{xviii} By comparison, some 75% of children and young people within custody reported being fearful of peers^{xix}, whilst an earlier study highlighted the distress that such settings can cause.^{xx}

It is inaccurate to suggest that children are not supportive of the proposal to end the use of Young Offenders Institutions for under 18s, as was the conclusion of the Independent Care Review and which was subsequently accepted by the Scottish Parliament.

Support from CYCJ

The realisation of this Bill will make significant and much needed changes to Scotland's response to children who face, make or take the highest level of risk, or who come into conflict with the law. To support stakeholders to respond to this change, and to fulfil the ambitions of *The Promise*, CYCJ are involved a number of initiatives. These include:

- Our Reimagining Secure Care^{xxi} project which will redesign secure care provision to meet the needs of all children, meeting the requirements of legislation and a rights-upholding approach to justice for children in Scotland.
- Continuing to project lead the Whole System Approach Implementation Group and Children's Rights Implementation Group, both of which contribute to the work of the Youth Justice Improvement Board and, ultimately, seek to achieve the ambitions of Scotland's Vision and Action Plan^{xxii} for children in conflict with the law. Relevant work within these forums includes a focus on CARM, children's rights and the use of MRCs.
- Supporting colleagues from Children's Hearings Scotland to devise a new training package for panel members which focuses on supporting the needs of older children in the hearing system. This will equip them with the knowledge required to respond to a greater number of 16- and 17-year-olds accessing the Hearings System.
- Continued delivery of various participation projects which provide opportunities for children and young people with experience of the justice system, secure care or custody to influence policy and practice.
- CYCJ will have a dedicated member of staff to support the implementation of the Bill and Act when enacted. Work associated with the Bill will form a substantial portion of the work undertaken by CYCJ in the years ahead.

Yours sincerely,

Fiona Dyer

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CC: Audrey Nicoll, Convenor, Scottish Parliament Justice Committee

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- ⁱ Concluding observations on the combined sixth and seventh periodic reports of the United Kingdom of Great Britain and Northern Ireland (2023) Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGBR%2FCO%2F6-7&Lang=en
- ⁱⁱ Council of Europe. (2021). Guidelines on child-friendly justice Available from <https://www.coe.int/en/web/children/child-friendly-justice>
- ⁱⁱⁱ Vaswani, N. (2019). *Bullying behaviours: adverse experiences for all involved?* Glasgow: Centre for Youth & Criminal Justice Retrieved from <https://cycj.org.uk/wp-content/uploads/2019/06/Bullying-adverse-experiences.pdf>
- ^{iv} Batchelor, S. A., & Gormley, C. (2023). *Repeat Violence in Scotland: A Qualitative Approach*. (1835212123). Glasgow: Scottish Centre for Crime and Justice Research Retrieved from <https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2023/09/repeat-violence-scotland-qualitative-approach/documents/repeat-violence-scotland-qualitative-approach/repeat-violence-scotland-qualitative-approach/govscot%3Adocument/repeat-violence-scotland-qualitative-approach.pdf>
- ^v Scottish Government (2021) Care and Risk Management Available at <https://www.gov.scot/publications/framework-risk-assessment-management-evaluation-guidance/pages/2/>
- ^{vi} United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") (1985) Available at <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/beijingrules.pdf>
- ^{vii} United Nations Rules for the Protection of Juveniles Deprived of their Liberty ("The Havana Rules") (1990) Available at https://www.ohchr.org/sites/default/files/res45_113.pdf
- ^{viii} United Nations Guidelines for the Prevention of Juvenile Delinquency ("The Riyadh Guidelines") (1990) Available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-guidelines-prevention-juvenile-delinquency-riyadh>
- ^{ix} Mackie, D. (2023) *Hearings for Children* Promise Scotland, Edinburgh Available at <https://thepromise.scot/resources/2023/hearings-for-children-the-redesign-report.pdf>
- ^x Youth Justice Improvement Board *16/17 year old cross system working group – Closure Report* (2021) Available at <https://usercontent.one/wp/www.yjib.co.uk/wp-content/uploads/2022/06/16-and-17-year-olds-closure-report-submitted-to-YJIB.pdf?media=1629890533>
- ^{xi} Whitelaw, R., & Gibson, R. (2023). *Preparing to Keep The Promise: A Comparative Study of Secure Care and Young Offender Institutions in Scotland*. Glasgow: Children and Young People's Centre for Justice Available at https://pure.strath.ac.uk/ws/portalfiles/portal/161958099/Whitelaw_Gibson_CYCJ_2023_A_comparative_study_of_secure_care_and_young_offender_institutions.pdf
- ^{xii} McGarrol, S., Henderson, G., Deacon, K., McNiven, G., Baird, N., & Cairns, C. (2022). *Children aged 12 to 15 years involved in offending and referred to the Children's Reporter and Procurator Fiscal in Scotland*. Stirling: Scottish Children's Reporter Administration Available at <https://www.scra.gov.uk/wp-content/uploads/2022/06/Children-aged-12-to-15-years-offending.pdf>
- ^{xiii} Children's Social Work Statistics Scotland: 2021 to 2022 (2023) Available at <https://www.gov.scot/publications/childrens-social-work-statistics-scotland-2021-22/documents/>
- ^{xiv} Children's Social Work Statistics, Scotland 2020-21 (2022) Available at <https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2022/03/childrens-social-work-statistics-scotland-2020-21/documents/childrens-social-work-statistics-2020-21/childrens-social-work-statistics-2020-21/govscot%3Adocument/childrens-social-work-statistics-2020-21.pdf>
- ^{xv} Walker, M., Barclay, A., Hunter, L., Kendrick, A., Malloch, M., Hill, M., & McIvor, G. (2005). *Secure Accommodation in Scotland: Its Role and Relationship with 'Alternative' Services*. Scottish Executive. <https://dspace.stir.ac.uk/bitstream/1893/15845/1/secure%20accommodation.pdf>
- ^{xvi} Johnson, D., & Steckley, L. (2023). Residential Care for Children and Youth in Scotland. *Revitalizing Residential Care for Children and Youth: Cross-National Trends and Challenges*, 57
- ^{xvii} Gough, A., & Lightowler, C. (2019). Children's Lives, Education, and Secure Care in Scotland. In D. Gallard, K. Evans, & J. Millington (Eds.), *Children and Their Education in Secure Accommodation: Interdisciplinary Perspectives of Education, Health and Youth Justice*.
- ^{xviii} Reimaging Secure Care: Interim Report (2023) Available at https://www.cycj.org.uk/wp-content/uploads/2023/12/RSC-Interim-Report-FINAL_.pdf
- ^{xix} Broderick, R., & Carnie, J. (2019). *Young People In Custody 2019*. Edinburgh: Scottish Prison Service Retrieved from <http://www.sps.gov.uk/Corporate/Publications/Publication-7199.aspx>
- ^{xx} Nolan, D., Dyer, F., & Vaswani, N. (2018). 'Just a wee boy not cut out for prison': Policy and reality in children and young people's journeys through justice in Scotland. *Criminology & Criminal Justice*, 18(5), 533-547. <https://doi.org/https://journals.sagepub.com/doi/10.1177/1748895817745347>
- ^{xxi} Reimaging Secure Care: Interim Report (2023) Available at https://www.cycj.org.uk/wp-content/uploads/2023/12/RSC-Interim-Report-FINAL_.pdf

^{xxii} Scotland's Vision and Priorities – Action Plan 2021-2022 (2021) Available at <https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2021/06/rights-respecting-approach-justice-children-young-people-scotlands-vision-priorities-action-plan/documents/rights-respecting-approach-justice-children-young-people-scotlands-vision-priorities-action-plan-2021-2022/rights-respecting-approach-justice-children-young-people-scotlands-vision-priorities-action-plan-2021-2022/govscot%3Adocument/rights-respecting-approach-justice-children-young-people-scotlands-vision-priorities-action-plan-2021-2022.pdf>