



## **Youth Justice Standards Consultation**

**28 January 2020**

Giving all children in Scotland an equal chance to flourish is at the heart of everything we do.

By bringing together a network of people working with and for children, alongside children and young people themselves, we offer a broad, balanced and independent voice. We create solutions, provide support and develop positive change across all areas affecting children in Scotland.

We do this by listening, gathering evidence, and applying and sharing our learning, while always working to uphold children's rights. Our range of knowledge and expertise means we can provide trusted support on issues as diverse as the people we work with and the varied lives of children and families in Scotland.

Children in Scotland is pleased to be able to respond to this consultation. We are interested in the Youth Justice Standards from a range of perspectives including prevention and early intervention, support for families, children's rights, United Nations Convention on the Rights of the Child incorporation and children's experiences of the court process. Over the past few years, Children in Scotland has responded to a number of consultations relating to youth justice, including the Age of Criminal Responsibility (Scotland) Bill and consultations relating to children and young people's experiences of court and the Children's Hearing System.

We have decided to focus on each of the standards individually rather than directly respond to the consultation questions. Our consultation response draws on evidence and recommendations from across the sector, our views and experience in relation to youth justice and feedback from our members. Throughout this response we use the term 'children' to refer to those under 18 years old – this is in keeping with Youth Justice Standards consultation document and the UNCRC.

### **General Comments**

Children in Scotland welcomes the revised Youth Justice Standards which set out minimum standards for delivering youth justice services in Scotland. These standards will be important in ensuring effective and timely interventions to support children at risk of offending or who become involved in the justice system.

We know that many children and young people become involved in crime because of vulnerable family circumstances and the impact of childhood trauma. The complexity of youth offending and its link to children's upbringing was highlighted as far back as 1964 in the Kilbrandon Report.

There is a growing body of evidence that children involved in offending behaviour are some of the most vulnerable in our society. Data from the Scottish Children's Reporter Administration<sup>1</sup> shows that most young people who become involved in offending behaviour have experienced adversity early on in their lives. The challenges experienced include exposure to violence, neglect and parental substance misuse, and there is a higher likelihood of additional support needs and problems with education. Additional research shows a strong link between living in poverty and violence by young people.<sup>2</sup>

For this reason, it is important that a holistic, individualised and person-centred approach is taken to support children early on in order to improve their life chances. Prevention and early intervention as part of a whole system approach incorporating appropriate support services are key to breaking the cycle of poor outcomes in relation to youth justice.

An important aspect of the core principles for the new Youth Justice Standards is the expectation that school exclusions should only be used as a last resort. Children in Scotland supports this approach and would like to refer a report we produced in partnership with Scottish Autism and the National Autistic Society Scotland on the experiences of autistic children missing school. The *Not Included, Not Engaged, Not Involved* (NINENI) report identified the worrying scale of unlawful exclusions within Scottish schools. The Edinburgh Study of Youth Transitions and Crime has highlighted that exclusion from school is one of the most significant predictors of involvement with the criminal justice system<sup>3</sup>, so we believe clear action must be taken to address this issue.<sup>4</sup> Our NINENI research reminds us that it is not just formal exclusions that can have a detrimental impact on children and young people's educational outcomes and mental health.

## **Standard 1 – Prevention and Early Intervention**

Scotland has seen a significant reduction in the number of reported offences committed by children over the past ten years. Children in Scotland recognises and celebrates this achievement, however the cycle of youth offending continues to dominate the lives of some of our most vulnerable children.

Prevention and early intervention aims to prevent a child's troubling or harmful behaviour from escalating, ensuring that there is a proportionate intervention in a child's life at the appropriate stage. This is fully aligned with the Scottish Government's Getting It Right For Every Child approach, ensuring that children in need of support receive the right help at the right time from the right people.

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<sup>1</sup> <http://www.scra.gov.uk/wp-content/uploads/2016/03/Backgrounds-and-outcomes-for-children-aged-8-11-years-old-who-have-been-referred-for-offending.pdf>

<sup>2</sup> [http://scottishjusticematters.com/wp-content/uploads/SJM\\_3-3\\_November2015-Complete.pdf](http://scottishjusticematters.com/wp-content/uploads/SJM_3-3_November2015-Complete.pdf)

<sup>3</sup> [http://www.parliament.scot/S4\\_JusticeCommittee/Inquiries/Edinburgh\\_Study\\_of\\_Youth\\_Transitions\\_and\\_Crime.pdf](http://www.parliament.scot/S4_JusticeCommittee/Inquiries/Edinburgh_Study_of_Youth_Transitions_and_Crime.pdf)

<sup>4</sup> <https://www.notengaged.com/>

As highlighted in Standard 1.1, a key element to Early and Effective Intervention is effective local multi-agency partnership working with 'lawful and proportionate' information sharing. Children in Scotland wishes to highlight concerns around clarity of this issue following the Scottish Government's September 2019 announcement on the Children and Young People (Information Sharing) Bill and named person provisions.<sup>5</sup>

The Scottish Government has committed to developing practical guidance for professionals to support them to share wellbeing concerns in a lawful way. This guidance will be essential in building practitioner confidence and supporting local agencies to work together effectively to respond to children's needs. It is worth highlighting that information sharing based on the informed knowledge and consent of children and young people (and parents/carers as appropriate) and as part of a supportive relationship with key professionals will always be the most appropriate method.

We agree that support services must be available on a voluntary basis, to ensure that appropriate support is available to children and their families before they are referred to the formal system and before problems escalate.

Funding is also a critical issue here. In order to facilitate effective prevention and early intervention, sufficient financial resources must be made available. A recent report by the Youth Justice Improvement Board identified that 'we still have a way to go to make services child-centred and needs-led. Referral and access criteria for, and availability of, services can be inconsistent across areas'.<sup>6</sup>

Anecdotal evidence from our members highlights concerns about resourcing issues. Particular areas of concern include the high caseload for social workers, children's access to mental health services and funding challenges for the third sector who, in many cases, provide vital support services for children and families.

In addition, a reduction in youth work funding has resulted in fewer opportunities for community-based activities for children and young people, limiting their opportunities to learn new skills and build supportive and positive relationships. A 2016 report by Hall Aitken<sup>7</sup> identified the economic value of youth work in Scotland. The findings estimated a social return of £7 for every £1 spent, clearly demonstrating the positive impact of investment in community-based youth activities.

Children in Scotland strongly believes that prevention and early intervention approaches must be underpinned by the United Nations Convention on the Rights of the Child (UNCRC), GIRFEC and Child Protection and/or Care and Risk Management (CaRM). This ensures consistency in line with other Scottish Government policy areas relating to children and families. The Scottish Government's recent commitment to incorporate the Convention<sup>8</sup> means that all support strategies must adopt a rights-based approach and align with the UNCRC to ensure that it is compliant with future legislation.

Enshrined in Article 12 of the UNCRC is the right for children to have a say in decisions

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<sup>5</sup> <https://www.gov.scot/news/children-and-young-people-information-sharing-bill/>

<sup>6</sup> <https://cycj.org.uk/wp-content/uploads/2019/09/ILC-Common-Factors-paper.pdf>

<sup>7</sup> <https://www.youthlinkscotland.org/media/1254/full-report-social-and-economic-value-of-youth-work-in-scotland.pdf>

<sup>8</sup> <https://www.gov.scot/news/strengthening-childrens-rights/>

which affect them. As part of this, the voice of the child must be recognised as part of any intervention strategies including, if appropriate, through a child's plan.

It is worth identifying here that Children in Scotland is supportive of increasing the age of criminal responsibility to at least 14 and believes serious consideration should be given to raising this to 16. Our position echoes the revised recommendations from the United Nations Committee on the Rights of the Child.<sup>9</sup> It is our belief that further increasing the age of criminal responsibility would reassert the Scottish Government's ambition to be identified as a world leader when it comes to recognising and realising children's rights.

We agree that systems should be in place locally and nationally to collect and measure data in order to identify effective support strategies and measure the scale of youth offending (1.6 and 1.7).

## **Standard 2 – Children's Hearing System**

We agree that children referred to the Children's Reporter should receive support at the earliest opportunity and those who are subject to a Compulsory Supervision Order should have a child's plan in place which is reviewed at regular intervals and supported by appropriate risk assessment tools.

## **Standard 3 – Alternatives to Prosecutorial Action**

Children in Scotland agrees that, where possible, children should be dealt with outwith the formal criminal justice systems.

Children in Scotland would like to highlight the benefits of a Restorative Justice approach in dealing with conflicts in the community and supporting offenders to discuss their feelings and recognise the impact of their actions. We are pleased to see that impact of Restorative Justice has been recognised by Scottish Government and we welcome the Government's action plan to ensure Restorative Justice services are widely available across Scotland by 2023.<sup>10</sup>

Delays and uncertainty can be incredibly challenging for children's mental health so we agree with 3.2 that all decisions about criminal proceedings involving children should be dealt with a swiftly and efficiently as possible. This also aligns with the Council of Europe's Guidelines on Child-friendly Justice.<sup>11</sup>

## **Standard 4 – Court**

The court process can be incredibly traumatising for children, whether they are the victim or the accused. As identified above, given that many children accused of offences are likely to have experienced some form of childhood adversity, it is essential that children in these circumstances receive appropriate support when going through the court process.

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<sup>9</sup> <https://www.ohchr.org/Documents/HRBodies/CRC/GC24/GeneralComment24.pdf>

<sup>10</sup> <https://www.gov.scot/publications/restorative-justice-action-plan/>

<sup>11</sup> <https://www.coe.int/en/web/children/child-friendly-justice>

A recent Youth Justice Improvement Board report<sup>12</sup> highlights the importance of supportive relationships for children involved with the criminal justice system:

*'The most consistently cited factor in improving the life chances of a child who is at risk of, or involved in, offending behaviour is a positive relationship. For these children, the importance of relationships within their families and with professionals working with them cannot be overestimated'*

Section 4 of the proposed standards states the need for a 'holistic, individualised response' to support children in the court process. However, it does not fully recognise the importance of professional relationships and the impact a trusted adult can have in improving outcomes for a child. Consistency of support is incredibly important in this context, allowing the child the time and space to build a positive and secure relationship with a trusted adult, rather than experiencing input from multiple professionals.

If a case does go to court, it is essential as part of a rights-based approach that children are informed, empowered and supported to fully participate. Advocacy or support workers are therefore crucial to safeguarding children's right to a fair trial. We recommend that Standard 4.4 be reworded to reflect the importance of practical supports to facilitate effective participation.

#### **Standard 5 – Secure Care and Young Offenders Institution (YOI)**

#### **Standard 6 – Risk Assessment and Care and Risk Management**

We agree with Standards 5 and 6 and have no additional comments about these sections.

#### **Standard 7 – Transitions**

Transitions can be challenging and unsettling. We acknowledge the importance of positive transitions in achieving the best possible outcomes for children with experience of the justice system. If managed well, positive transitions can result in a reduced likelihood of reoffending and improved health and wellbeing for the child in question.

Careful planning is essential to mitigate risks and ensure a child-centred approach to managing transitions. We support the use of a single plan for children transitioning back to the community to ensure clear supports across a range of areas (including housing, employment, education, addiction support, etc).

As previously highlighted, secure relationships can have a significant positive impact on children. As such, Children in Scotland supports Standard 7.3 which ensures that children transitioning to adult services must have an identified professional contact to ensure appropriate support mechanisms are in place.

Given the importance of transitions, it is essential that mechanisms for facilitating positive transitions are identified and shared to inform best practice.

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<sup>12</sup> <https://cyci.org.uk/wp-content/uploads/2019/09/ILC-Common-Factors-paper.pdf>

## **Standard 8 – Improving Outcomes**

Standard 8 focuses on improving outcomes for children involved in or at risk of offending. Quality data from a range of sources (including both local and national partners) is essential in supporting evaluation of youth justice interventions.

Local partnerships including Community Planning, Children's Services Planning and Community Justice must provide appropriate support for victims regardless of age and we support the opportunity for community partnerships to explore a range of interventions including Restorative Justice.

It is also important that young people are given the opportunity to discuss what a good outcome would look like from their perspective, and that this information is used to inform support and as a measure of success.

### **For more information please contact;**

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