

Community Justice Scotland – Response to the Scottish Government Consultation “Child Care and Justice: Consultation on Raising The Age of Referral to The Principal Reporter” - October 2020

In June 2020, Scottish Government opened a consultation on proposals to increase the age at which a child can be referred to the Principal Reporter. The following sets out the full consultation response submitted by Community Justice Scotland in October 2020.

Consultation Questions:

Based on our engagement with stakeholders there is evidence of support for the age of referral to the Reporter to be increased for those 16 and 17 year olds who might require a compulsory supervision order, including the joint reporting of those who offend.

We would welcome your views on increasing the maximum age of referral to the Children’s Reporter.

1. Do you agree that the maximum age of referral to the Reporter should be increased to 18?

- a) Yes – All cases**
- b) Yes - Care and protection cases only**
- c) Yes - Offence cases only**
- d) No change – The existing age criteria should remain**

Please provide reason(s) for your answer (free text).

a) Yes – All cases

We support the view that children and young people under the age of 18 should all be afforded every opportunity for enhanced wellbeing, support and protection. We recognise and support the proposed change as commensurate with the principles underlying the Whole Systems Approach, Early & Effective Intervention, Getting It Right For Every Child, and the United Nations Convention on the Rights of the Child, as well as in line with the National Strategy for Community Justice. In particular, we would highlight the following from the Scottish Government’s Vision for Community Justice:

“Scotland is a safer, fairer and more inclusive nation where we:

- prevent and reduce further offending by addressing its underlying causes; and
- safely and effectively manage and support those who have committed offences to help them reintegrate into the community and realise their potential for the benefit of all citizens.”

From a community justice perspective, we feel the proposed adjustment is appropriate and necessary. It is at the very least inconsistent that some (not all) 16 and 17 year olds who commit an offence are referred to the Procurator Fiscal and not the Children’s Hearing System and are therefore at increased risk of being channelled down a criminal justice pathway. Evidence indicates that this group is in many cases very vulnerable and often present with multiple and complex needs which have not always been identified prior to their offending. For this group, the

criminal justice system is not best equipped to respond to these needs. It seems to us common sense to make this change, in order to have the most significant potential beneficial impact on those most in need of care, protection and support to their wellbeing and that this should include those children accused of offending.

2. If the age of referral is increased to 18, are the existing grounds of referral to a Children's Hearing sufficient (see pages 11-12 for existing grounds)?

a) Yes

b) No

Please provide reason(s) for your answer (free text).

a) Yes

The existing grounds seem to us to be sufficiently comprehensive.

3. What are your views on the potential implications, including resource, of increasing the age of referral to the Reporter for local authorities, Police and other service providers/organisations?

For these agencies, the proposed change will represent a potentially significant modification to practice and in some cases with a commensurate increase in required resources. It is likely that there will be training requirements in order to successfully implement the policy, so that practitioners are sufficiently aware of their ability and duty to make referrals to the Children's Reporter in relation to this group. Local authorities in particular are likely to experience an increase in demand on their resources, for example, in relation to social work and associated support. Local community planning, via structures like Community Safety and Community Justice Partnerships, will need to consider this policy change in their planning and resource allocation and they may require support in accessing and analysing appropriate data.

It follows logically that increasing the age of referral will have additional resource implications for those with associated duties for assessment, supervision, and provision of support, in this case primarily agencies involved in the Children's Hearing System, Local Authority social work, and third sector bodies involved in support of children and families (including those involved in the justice system).

At this time however, we have limited data on which to base a more detailed analysis of the resource implications. We would highlight the work done by the Children's and Young People's Centre for Justice (CYCJ) in developing this picture further. We would support a commitment to monitoring and evaluating impact of this policy on practice and resources, as well as on outcomes for young people.

In the justice sphere, the proposed change posits a wider culture shift already underway, another set of circumstances where 16 and 17 year olds who previously may have been treated as de facto adults are now to be recognised as children. We would suggest awareness raising campaigns and work with specialist agencies may be a route to supporting wider public engagement with this concept, as well as supporting professionals in discharging their duties. This may be something to develop further with other ongoing related work related to the UNCRC (Integration) (Scotland) Bill currently progressing through Scottish Parliament.

4. What are your views on the potential implications, including resource, of increasing the age of referral to the Reporter for SCRA (the public body which operates the Reporter service)?

We would expect this change would result in significant increase in referrals to the Reporter, which would of course carry resource implications, though as above we do not hold information about the degree of that increase and associated resource. Given a potential likelihood for an increase in referrals for children on offence grounds, it may be the case that additional training would support implementation. Children who offend are at risk of being stigmatised and discriminated against. It is key that agencies involved are supported in understanding the often complex and challenging circumstances around children involved in offending.

5. What are your views on the potential implications, including resource, of increasing the age of referral to the Reporter for Children's Hearings Scotland (the body which operates the national children's panel)?

As in our answer to Question 4, we would expect an increase in volume. We would again highlight the potential training need, in this case for Panel members, in relation to older children being referred on offence grounds.

6. If the age of referral to the Reporter was increased, are amendments required to ensure sufficient access to information and support for victims harmed by children?

a) Yes

b) No

Please provide further details for your answer, including any extensions or amendments you would wish to see (free text).

b) No

We recognise the proposed change may raise concerns from victims of harm by children. Support for victims is essential and of critical importance, and it is vital this is maintained even though the justice process for a child accused of an offence may change.

The rights of the accused in the criminal justice system are well established and defined, as are those of victims. We are unclear on what grounds the rights of children accused of offending and being dealt with within the children's hearing system may require additional amendment, but we would underline the importance of not inadvertently according them weakened legal protections than those that apply within the criminal justice system.

We strongly support the use of restorative justice measures where possible and appropriate, as a meaningful and effective approach to support recovery and rehabilitation for both victim and the person responsible for harm.

7. If there are any further comments you would like to make, which have not

been addressed in the questions above, please use the space below to provide more detail.

Community Justice Scotland is the national body for community justice and sits on the Youth Justice Improvement Board and works with partners to take forward delivery of the Youth Justice Strategy. We hold that prevention and needs-based support are the most effective methods of reducing offending and we believe this proposal will serve those aims. We also believe the approach outlined sits well alongside Scottish Government's commitment to developing restorative justice across Scotland as outlined in the Restorative Justice Action Plan and we would recommend this is considered as part of any implementation plans.

We look forward to working through the wider implications of this reform with our partners in justice and the wider sector.