FOR EVERY CHILD

unicef
UNITED KINGDOM

A RIGHTS-BASED ANALYSIS OF YOUTH JUSTICE IN THE UNITED KINGDOM

REPORT AND RECOMMENDATIONS

Figures and tables

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ACKNOWLEDGEMENTS

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FOREWORD

This most welcome report comes at the beginning of a periodic review (2021–22) by the UN Committee on the Rights of the Child of the UK State Party's implementation of the Convention on the Rights of the Child. In past periodic reviews, it has already been seen that devolution within the UK has enabled differences to emerge in approaches to and extent of implementation. There are benefits in this, but it brings complexity in terms of accountability. Unicef UK's support for non-governmental reporting within the UK has been pivotal in navigating this complexity, and this report makes a further, important contribution.

Wales and Scotland have, unlike Northern Ireland, enjoyed uninterrupted devolved government for over two decades, and in both countries, explicit promotion of the Convention is a consistent theme in public policy and law reform. This is evident in relation to strategies on children's social services, education, care, child poverty and structures for civic participation as well the area with which this report is concerned: youth justice.

Efforts to protect, respect and fulfil the human rights of children must recognise the interdependence and connectedness of these several fields. Links between socio-economic deprivation, exclusion from education, family instability and offending are very well established. Applying to this fact the lens of the Convention's requirements, we can see that where children's rights to protection, care, inclusive education, adequate accommodation, social security and voice are delivered, there will be fewer children involved in the youth justice system. Within the youth justice system, they will be treated as 'children first, offenders second'. This report delivers a much-needed, in-depth and up to date account of how the systems of youth justice within the UK are performing against that standard.

The report evidences many encouraging developments and will be a valuable resource for learning from the different progressive experiences and approaches. There remain, however, some glaring contradictions, most notably in the persistence of low minimum ages of criminal responsibility which are out of step with the way in which children are treated in civil and administrative proceedings in the UK, with minimum ages of criminal responsibility in comparable European countries and of course, with the requirements of the Convention.

The report will undoubtedly assist in efforts to hold the governments of the UK to account for their implementation of the Convention. It is to be hoped that it will be embraced by duty-bearers at all levels as a solid foundation to inform future programmes of work.

Professor Jane Williams
Observatory on Human Rights of Children
Hillary Rodham Clinton School of Law
Swansea University, October 22, 2020

UNICEF UK AND YOUTH JUSTICE IN THE UK

Youth justice processes and practices should never operate to undermine children's rights, but instead, should always seek to empower and uphold them.

It is Unicef UK's belief that a youth justice system that consistently works in children's best interests and actively promotes their rights will lead to better, fairer and more beneficial outcomes for children and wider society.

This report represents Unicef UK's first examination of youth justice issues to date and offers a series of recommendations outlining the changes Unicef UK believes are required to ensure that the rights of children who are in contact with the law are properly protected and upheld. The report undertakes a rights-based literature review of youth justice process and practice in Scotland, Wales, England, Northern Ireland and Jersey[1] – which is supplemented by the views of children and young people and key stakeholders. The report identifies examples of innovation and progress in each of these locations, but also draws critical attention to areas of concern where currently children's rights are not sufficiently upheld or could be enhanced further.

1 Jersey is briefly analysed within the report because of its recent ratification of the UNCRC.

EXECUTIVE SUMMARY

Key areas of concern

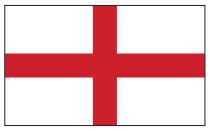
SCOTLAND

- The minimum age of criminal responsibility set at 12 years old
- The lack of routine direct child participation within the Early and Effective Intervention approach
- The appearance of children under 18 years of age in adult courts in Scotland (particularly in respect of 16- and 17-year-olds)
- The identification in the media of children under 18 years of age who have committed criminal offences
- The potential for tasers to be used on children in Scotland
- The welfare of children who are on remand in young offender institutions
- The use of solitary confinement in young offender institutions
- The impacts of Covid-19 on children held in youth detention
- The practice of placing children from outside Scotland in Scottish secure care accommodation – away from their home locations, and with an associated impact on secure care provision for Scottish children
- The lack of robust, publicly available statistical data relating to children's interaction with specific stages of the youth justice system

WALES

- The minimum age of criminal responsibility set at 10 years old
- The potential for tasers to be used on children in Wales
- The lack of data, knowledge and understanding around the impact of youth diversion on specific groups of children
- The identification in the media of children under 18 years of age who have committed criminal offences
- The practice of regularly placing Welsh children in youth detention facilities away from their home locations (and, correspondingly, English children routinely being placed in Welsh youth detention settings)
- The rise in numbers of permanent school exclusions
- The lack of robust, publicly available Wales-only (rather than England and Wales) statistical data relating to children's interaction with specific stages of the youth justice system

Key areas of concern

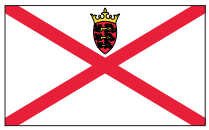


ENGLAND[2]

- The minimum age of criminal responsibility set at 10 years old
- The lack of data, knowledge and understanding around the impact of youth diversion for specific groups of children
- The use of tasers and spit-hoods on children under 18 years of age and their disproportionate use on Black, Asian and Minority Ethnic (BAME) children
- The overnight detention of children in police custody and the lack of available suitable local authority accommodation or provision
- The identification in the media of children under 18 years of age who have committed criminal offences
- The fact that certain children still feel unable to participate effectively in Youth Court proceedings, and legal professionals at times still lack specific youth justice and children's rights expertise when working in this setting
- The conditions experienced by children in young offender institutions – for example, the high numbers of children on remand, high levels of violence and use of segregation and solitary confinement[3]
- The impacts of Covid-19 on children held in youth detention
- The over-representation of BAME children in the youth justice system
- The current rate of permanent school exclusions and use of "off-rolling", which can leave children vulnerable to criminal exploitation

NORTHERN IRELAND

- The minimum age of criminal responsibility set at 10 years old
- The potential use of tasers and attenuating energy projectiles on children under 18 years of age
- The lack of up-take of legal representation when children are involved with Youth Engagement Clinics
- The high proportion of care-experienced children appearing at Youth Conferences
- The routine use of the Police and Criminal Evidence (PACE, Northern Ireland) to admit children to the Juvenile Justice Centre (JJC), rather than using this facility only as a last resort
- The consistently high number of children in the JJC who are subject to a care order



JERSEY

- The minimum age of criminal responsibility set at 10 years old

2 A number of these points also apply to Wales, as they do not come under the devolved responsibility of the Welsh Government.
3 There are also significant challenges within secure training centres.

INTRODUCTION

The Context

Children[4] who come into contact with the law are frequently overlooked, and are among the most vulnerable, marginalised and hidden groups within society. For children in contact with the law their label as an offender regularly supersedes their status as a child so that they are viewed as offenders first and foremost. When they are routinely viewed in this way there is an associated danger that their rights as children, rather than being understood as fundamental and intrinsic, are instead circumvented, ignored and disregarded. Amid the unique challenges currently facing society, it is more important than ever that the rights of children who are engaged in youth justice processes are recognised, protected and championed.

About this Report

This report aims to outline, via a series of recommendations, the changes Unicef UK believes are needed to ensure that the rights of children who are in contact with the law are properly recognised, upheld and protected. The report takes a qualitative multi-methods approach – a literature review, semi-structured interviews and a focus group – to examine the devolved and non-devolved policy contexts in which youth justice functions across the United Kingdom and Jersey and the processes and structures that children in contact with the law routinely encounter within each country.

A focus on child rights[5] provided the overarching framework for surveying the existing literature and identifying both positive, progressive and innovative practice taking place in each country; and, equally, where the rights of children who come into contact with the law are being undermined. The literature analysis was complemented by insights gained from semi-structured interviews and a focus group bringing together children and young people from Unicef UK's Youth Advisory Board and the Scottish Youth Parliament,[6] all aged between 16 and 20 years old. Unfortunately, it was not possible to include direct contributions from children with first-hand experience of the youth justice system, because of restrictions implemented during the coronavirus pandemic which coincided with the period of research (end of January to October 2020). Talking directly with children who have such first-hand experience of the system should form the cornerstone of any future work Unicef UK undertakes in this area. However, it was possible to communicate with and include the perspectives of an experienced Youth Offending Team social worker; and the National Police Chiefs' Council (NPCC), whose remit extends across the United Kingdom and who view child-centred policing as a key strategic priority area.

The Aim of the Report

The report constitutes a starting point in Unicef UK's examination of youth justice issues in the United Kingdom and Jersey. It provides a detailed child-rights based analysis of current youth justice processes and practices and outlines the actions in each location that Unicef UK believes are necessary to ensure that the rights of children who are in contact with the law are properly recognised and upheld.

4 The use of the term 'children' in this report refers to persons under 18 years old.
5 Using the UNCRC, Concluding Observations and General Comments, along with other international children's rights standards pertaining to youth/juvenile justice.
6 The views given are those of individual MSYPs and may not reflect the position of the organisation as a whole.

CHAPTER ONE

YOUTH JUSTICE IN SCOTLAND

Since the passing of the Scotland Act in 1998, and the subsequent creation of the Scottish Parliament a year later, the Scottish Government has held devolved power in respect of matters of justice – powers which also extend to the area of youth justice.

Scotland's approach to children in contact with the law has been characterised by a Kilbrandon philosophy that prioritises the welfare and needs of the child, rather than adopting a punitive and narrow focus on the offence that they have committed.[7] This approach, combined with a commitment to upholding children's rights – in line with the UN Convention on the Rights of the Child (UNCRC) 1989 – has underpinned the Scottish Government's vision to make "Scotland the best place in the world to grow up for all of its children."[8] The announcement on 1 September 2020 that the Scottish Government will introduce the UNCRC (Scotland) (Incorporation) Bill and will fully and directly incorporate the UNCRC into Scots law to the maximum extent of the Scottish Parliament's powers before the end of the current parliament is the most important and progressive step yet on Scotland's children's rights journey; but one which brings with it clear responsibilities.[9]

The chapter adopts a rights-focus to examine the extent to which Scotland is currently upholding the rights of children who come into contact with the law. It reviews a number of specific policy areas and structures that intersect with children as they both encounter and find themselves situated within the Scottish youth justice system. The analysis provides the basis for a series of recommendations for actions Unicef UK believes necessary to ensure the rights of children who are in contact with the law are properly recognised, upheld and protected.

UNCRC 1989 ARTICLE 40, 3 (A)

States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.

7 Scottish Home and Health Department, Scottish Education Department (1964). *Children and Young Persons Scotland, Report by the Committee Appointed by the Secretary of State for Scotland*. Edinburgh: HMSO. For an overview of the development of Scottish youth justice, see McVie, S. (2011). 'Alternative models of youth justice: Lessons from Scotland and Northern Ireland'. Journal of Children's Services, 6, 2, pp.106–114.

8 Scottish Government (2015). *Preventing Offending: Getting it Right for Children and Young People. Our Youth Justice Strategy for Scotland, for 2015 to 2020*. Edinburgh: Scottish Government.

9 See: https://www.gov.scot/news/un-convention-on-the-rights-of-the-child/.

THE MINIMUM AGE OF CRIMINAL RESPONSIBILITY

In Scotland, following on from its devolutionary settlement in 1998, fully devolved powers on justice have rested with Scottish Ministers, and this remit has encompassed youth justice matters. The Scottish Government has recently used its devolved powers to reform Scots law and upwardly amend the country's minimum age of criminal responsibility (MACR) to 12 years of age, via the Age of Criminal Responsibility (Scotland) Act,[10] which gained Royal Assent on 11 June 2019. Up until that time, Scotland's criminal responsibility age threshold was 8 years old, as originally laid out in Section 14 of the Children and Young Persons (Scotland) Act, 1932, and among the lowest MACRs in Europe.[11]

A number of milestones are worth explicitly highlighting in charting the arrival of this change.[12] In 2012 the Scottish Government published *Do the Right Thing: children's rights progress report*[13] in which it made a clear commitment to consider raising the MACR. Next the Government established an Advisory Group on the minimum age of criminal responsibility to investigate raising the threshold to 12 years of age. The Advisory Group was made up of professionals working with children and child victims, as well as Police Scotland and the Crown Office and Procurator Fiscal Service. Then, in March 2016, the Advisory Group:

> *" ... concluded that the age of criminal responsibility in Scotland can and should be raised to 12 years old, and that any change should happen at the earliest opportunity."*[14]

These recommendations were quickly followed by a public consultation, in which the majority – 95 per cent – of respondents considered that the MACR threshold should be raised to 12 years or older. This, in turn, led in March 2018 to the presentation of the Age of Criminal Responsibility (Scotland) Bill in the Scottish Parliament to grant legal effect to raising the MACR to 12 years (Part 1, lines 10–13). In May 2019, MSPs overwhelmingly voted in favour of the Bill, and the following month it was passed into law as an Act. The Children and Young People's Commissioner Scotland has however highlighted that this provision has not yet been brought into force and called the situation unacceptable.[15]

In understanding why Scotland alone of the constituent nations of the United Kingdom has made this reform, a number of factors are significant. At an international level, the recommendations of the UN Committee on the Rights of the Child outlined in *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* (see UNCRC, 2002, UNCRC, 2008, UNCRC, 2016) have ensured that the UK Government and, by extension, the Scottish Government have repeatedly been reminded of their responsibilities (and deficiencies) towards children in respect of the administration of juvenile justice. These responsibilities have also been reiterated within the youth justice-specific General Comment No.10 (2007). This monitoring process, it is suggested, has helped hold the Scottish Government to account and so motivated it to increase its MACR. The views of children and young people themselves have also played their part. The Scottish Government made an explicit decision to consult children and young people on the issue – a move which corresponds strongly with the provisions of Article 12 of the UNCRC 1989 – as well as seeking the views of professionals involved in the youth justice sector.[16]

In philosophical and cultural terms, post Kilbrandon, Scotland's strong welfare approach to children and young people in contact with the law has been in direct contradiction with its extremely low MACR. This contradiction was arguably intensified in the wake of devolution, as Scotland has since 2011 promoted a whole-systems approach to addressing children and young people's needs holistically in order to achieve progressive and pro-social outcomes.

10 Scottish Government (2019). *Age of Criminal Responsibility (Scotland) Act 2019*. Edinburgh: Scottish Government.
11 Scottish Parliament (2018). *Age of Criminal Responsibility (Scotland) Bill Policy Memorandum 2018*. Edinburgh: Scottish Parliament.
12 Brown, A., and Charles, A. (2019). 'The Minimum Age of Criminal Responsibility: The Need for a Holistic Approach'. Youth Justice, doi: 10.1177/1473225419893782, provides a helpful overview of MACR developments in Scotland.
13 Scottish Government (2012). *Do the Right Thing: children's rights progress report. A progress report on our response to the 2008 concluding observations from the UN Committee on the Rights of the Child*. Edinburgh: Scottish Government.
14 Scottish Government (2016). *The Report of the Advisory Group on the Minimum Age of Criminal Responsibility To Michael Matheson, MSP, Cabinet Secretary for Justice and Angela Constance, MSP, Cabinet Secretary for Education and Lifelong Learning*. Edinburgh: Scottish Government, p.48.
15 https://cypcs.org.uk/positions/age-of-criminal-responsibility/.
16 Scottish Government (2016). *The Report of the Advisory Group on the Minimum Age of Criminal Responsibility To Michael Matheson, MSP, Cabinet Secretary for Justice and Angela Constance, MSP, Cabinet Secretary for Education and Lifelong Learning.*

It seems that the Scottish Government may also have recognised elements of academic research demonstrating the value of raising the MACR – see generally, for example: Arthur, 2012; Bateman, 2012, 2014, 2015; Goldson, 2009, 2013; as well as longitudinal research undertaken within a specifically Scottish context: McAra and McVie's *Edinburgh Study of Youth Transitions and Crime.* The latter emphasises in particular the criminogenic and stigmatising nature of early system-contact with formal agencies. As the Policy Memorandum accompanying the Age of Criminal Responsibility Bill made clear at the time:

> *"We know that responding to childhood behaviour in a criminalising, stigmatising manner serves only to promote escalation and further harm. Scotland has proven approaches to confronting and correcting this childhood behaviour that do not need a criminal justice response."*[17]

However, while the Scottish Government in its reform journey has acknowledged aspects of research, the views of professionals in the area, the opinions of children and young people, as well as international guidelines and standards, and raised the MACR, it is the case that the newly passed legislation fails to meet the minimum requirements of General Comment No. 24 (2019) from the UN Committee on the Rights of the Child, which states:

> *"States parties are encouraged to take note of recent scientific findings, and to increase their minimum age accordingly, to at least 14 years of age."*[18]

General Comment No. 24 (2019) outlines in Paragraph 22 the relevant "recent scientific findings" in the fields of child development and neuroscience. Age, capacity and development are increasingly acknowledged as a core argument in favour of raising the MACR. At an international level, in addition to General Comment No. 24, both the Beijing Rules and Riyadh Guidelines stipulate that in any legal system the MACR should take account of a child or young person's capacity, maturity and development:

> *"In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity."*[19]

> *"... youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood."*[20]

These international recommendations reflect the growing body of academic research (see Arthur, 2012, Delmage, 2013, McDiarmid, 2013) which underscores that children and young people differ from adults in their development, and which concludes that:

> *"...there is a strong base of emerging evidence highlighting consistent and universal differences in the judgment and consequential thinking processes between children and young people and adults."*[21]

Neuroscience and neuroimaging have offered particularly important insights, revealing that executive functioning, consequential thinking abilities and the capacity to form judgements improve as a young person transitions from adolescence into adulthood. Such findings cannot be transposed in an unsophisticated and reductionist way to legal issues, but the scientific evidence is clearly relevant when deciding how children and young people in contact with the law should be treated by the criminal justice system (CJS) and its actors.[22] There are legitimate concerns, too, about how well certain children and young people understand – and so possess the ability to fully participate in – complex legal processes or activities: for example, being questioned by and responding to law enforcement

17 Scottish Parliament (2018). *Age of Criminal Responsibility (Scotland) Bill Policy Memorandum 2018*. Edinburgh: Scottish Parliament, p.2.
18 UN Committee on the Rights of the Child (2019). *General Comment No. 24 (2019) on children's rights in the child justice system*. Paragraph 22. CRC/C/GC/24. Geneva: UN.
19 Office of the High Commissioner on Human Rights (1985). *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (The Beijing Rules). Geneva: OHCHR.
20 Office of the High Commissioner on Human Rights (1990). *United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)*. Geneva: OHCHR.
21 Delmage, E. (2013). 'The minimum age of criminal responsibility: A medico-legal perspective'. Youth Justice, 13, 2, p.108.
22 Ibid.

authorities, seeking legal advice or appearing in court.[23] Farmer, among others, has highlighted:

> *"... many young people who come into contact with the CJS are those least competent to engage with it."*[24]

In extension of this argument, an examination of wider society within a UK and Scottish setting also reveals a clear discrepancy between how children and young people's capacity and maturity are viewed in relation to criminal behaviour, in contrast to other areas of their everyday lives. For example, a young person can only begin driving aged 17 (16 if claiming mobility benefit) and purchase alcohol or apply for a mortgage to buy a house aged 18.[25] Jury service is perhaps the most revealing example, where a young person can only qualify and serve when aged 18.[26] Yet much younger children and young people are routinely subjected to the full force of the criminal justice system.

These strands, when synthesised, suggest that subjecting very young children to the criminal law is inconsistent with current evidence around maturity, capacity and development. However, in respect of "scientific findings", when the Scottish Government introduced the Age of Criminal Responsibility (Scotland) Bill, it stated explicitly that:

> *"The policy of the Bill is focused on protecting children, reducing stigma and ensuring better future life chances, rather than reflecting a particular understanding of when an individual child in fact has the capacity to understand their actions, or the consequences that could result from those actions – either for them or for the people they may have harmed."*[27]

The desire to reduce stigma and labelling and promote future life-chances for children and young people is clearly encouraging (and itself founded in evidence), while determining MACR on the basis of scientific evidence alone is arguably simplistic. But the reality is that Scotland's MACR remains out of sync with current international recommendations.[28]

In light of this fact, certain members of the Scottish Parliament (MSPs) have described the limitations of the Act as a "missed opportunity". Responding to the Minister for Children and Young People, Maree Todd, Liberal Democrat MSP Alex Cole-Hamilton expressed frustration at the legislation, stating:

> *"The minister has used words such as "radical", "historic" and "bold", but the bill is none of those things. In fact, this is a dismal day for us all: for the Scottish Parliament and for Scotland's children and young people. I find it hard to put into words the anger and disappointment that I feel at the missed opportunity in the bill and at the realisation that we are living in a far more socially conservative country than I had hoped – the scales have fallen from my eyes."*[29]

In reflecting on the above analysis and assessing the current MACR in Scotland, it is clear that the progress so far made is, from a children's rights perspective, inadequate, particularly considering that the Government has announced that Scotland will "incorporate the rights set out in the UNCRC in full and directly in every case possible – using the language of the Convention."[30] There is then an urgent need for the Scottish Government to reassess the current MACR threshold at the earliest opportunity – something which the Scottish Government has taken initial steps towards via the creation of the Age of Criminal Responsibility Advisory Group.

23 Bateman, T. (2012). *Criminalising Children for No Good Purpose: The Age of Criminal Responsibility in England and Wales*. London: NAYJ.
24 Farmer, E. (2011). 'The age of criminal responsibility: Developmental science and human rights perspectives'. Journal of Children's Services, 6, 2, p.89.
25 Bateman, T. (2012). *Criminalising Children for No Good Purpose: The Age of Criminal Responsibility in England and Wales*. London: NAYJ.
26 McDiarmid, C. (2013). 'An age of complexity: Children and criminal responsibility in law'. Youth Justice 13, 2, pp.145–160.
27 Scottish Parliament (2018). *Age of Criminal Responsibility (Scotland) Bill, Policy Memorandum*. SB18-49, p.13. Retrieved from: https://beta.parliament.scot/-/media/files/legislation/bills/previous-bills/age-of-criminal-responsibility-scotland-bill/introduced/policy-memorandum-age-of-criminal-responsibility-scotland-bill.pdf.
28 See UN Committee Against Torture (2019). *Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland*, Paragraph 22. Geneva: United Nations.
29 http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12079&i=109282.
30 See Scottish Government (2019). *Progressing the Human Rights of Children in Scotland: An Action Plan 2018-2021 Progress Report 2019*. Edinburgh: Scottish Government, p.2.

RECOMMENDATION 1

Unicef UK recognises that progress has been made in respect of the minimum age of criminal responsibility (MACR) in Scotland. However, Scotland's current MACR does not meet the standard of at least 14 years of age outlined in General Comment No.24.

Unicef UK recommends that the Scottish Government amend MACR to at least 14 years of age in line with General Comment No.24 at the earliest opportunity. This would strongly correspond with the intentions of the UNCRC (Scotland) (Incorporation) Bill to prioritise the rights of children in domestic legislature.

MEMBERS OF THE SCOTTISH YOUTH PARLIAMENT

VIEWS ON MACR

"As a bare minimum I think it should be 14 and that is because it is in line with the guidance, but I would preferably have it pushed up to 16 ... "

"Article 3 [UNCRC] has got to be the main priority in every decision ... and making MACR 12, or even 14, doesn't really do that."

MSYP A

"People are saying 14, but I think we shouldn't just do the bare minimum, we should always strive to do more, so I am pushing for at least 16."

"It's also about thinking about the victims of crime ... we need to think about that clearly ... how do we do that [raise the MACR] in the safest way possible so that children and young people are supported, but also, the victims as well."

MSYP B

"Putting it to 16 I think is a bit high ... I think 14 would be a good age."

MSYP C

"In Scotland, 12 is about the age that you are going up to secondary school at, it's a time when you have a lot of maturing to do, and we've all been through secondary school and we know how much growing up 1st and 2nd years had to do. So, I would definitely push for the MACR to be increased to 16."

MSYP D

"Not all children are at the same stage in development at the same age, so one 12-year-old could be really understanding about crimes, but the other may not be."

MSYP E

UNCRC 1989 ARTICLE 40, 3 (B)

States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

EARLY AND EFFECTIVE INTERVENTION

Scotland's approach to reducing and addressing children's offending has evolved out of a combination of two initiatives, Getting it Right for Every Child (GIRFEC) and the Whole Systems Approach (WSA). Both of these have taken shape since devolution.

Together with the Children & Young People (Scotland) Act 2014, the 2008 *Preventing Offending by Young People Framework* and 2015 *Preventing Offending: Getting it Right for Every Child* policy documents laid the groundwork for Scotland's prevention plan; with a key priority of the latter document being the advancement of the WSA. The WSA, which emerged in 2011, pivots on multi-agency partners working together to keep children out of the formal system, i.e. formal measures – something which has become a key policy ambition in light of the growing body of evidence highlighting the criminogenic consequences of formal system-contact and labelling for children.[31] A key pillar of the WSA approach is early and effective intervention (EEI).

EEI works by means of multi-agency partnerships to engage children who have committed low-level criminal acts and to help them stop offending, via appropriate and targeted professional and practitioner expertise and support ('interventions'). Successively, EEI seeks to reduce unnecessary referrals to the Children's Hearings System (and so prevent children from entering into the formal youth justice system). Within Scotland the approach has mainly taken two forms: a multi-agency meeting model and a co-ordinator model.[32] The multi-agency meeting model involves key representatives from local agencies including police, health, education and social work, who meet on a routine basis. Children are referred to them by the police and for each child the representatives gather relevant information from their respective professional networks. They then combine and discuss the information at a meeting and decide upon a 'joint outcome' for the particular child; the meeting in this format is chaired by a co-ordinator. However, in the co-ordinator model it is the co-ordinator alone who receives the referrals from the police and the relevant information concerning the child from the various agencies and then makes the 'outcome decision' autonomously – that is, without any multi-agency involvement in the decision-making.

The 2015 *Early and Effective Intervention – Framework of Core Elements* guidance states that primary outcomes within the approach can include:

- *No further action*
- *Police direct measures*
- *Single agency support – through social work, education, health*
- *Referral for a targeted intervention – restorative justice, substance misuse work etc*
- *Referral to the Children's Reporter – this is not an alternative to offering support through EEI but an option in addition to it, where a compulsory supervision order might be necessary to support the young person.*[33]

As explained, a clear ambition of EEI is to filter children away from formal measures and the Children's Hearings System wherever possible. Its success in doing this is demonstrated in statistical terms by a reduction of 77 per cent in the number of referrals to the system over the period 2006/07 to 2018/19.

31 See for example, Petrosino A., Turpin-Petrosino C., Guckenburg, S. (2010). *Formal system processing of juveniles: Effects on delinquency*. Oslo: Norway: Campbell Systematic Reviews. pp.1-88; see also, McAra and McVie's 'Edinburgh Study of Youth Transitions and Crime'.

32 See Gillon, F. (2018). *Early and Effective Intervention (EEI) in Scottish Youth Justice: Benevolent Principles and Unintended Consequence*. Unpublished PhD Thesis. Glasgow: University of Strathclyde. It provides more detail on EEI and the types of models currently in practice in Scotland.

33 See Scottish Government (2015). *Early and Effective Intervention – Framework of Core Elements*. Retrieved from: https://www2.gov.scot/Publications/2015/03/6818/1

Paragraph 16 of General Comment No. 24 (2019) makes clear that diverting children away from formal judicial measures and proceedings is an important component of a rights-based child justice system:

> *"Diversion should be the preferred manner of dealing with children in the majority of cases ... Opportunities for diversion should be available from as early as possible after contact with the system, and at various stages throughout the process. Diversion should be an integral part of the child justice system ... "*[34]

EEI has become an increasingly important element of Scotland's child justice system and efforts to divert children away from the Children's Hearings System (and police direct measures are clearly positive). However, research suggests that there are a number of areas where EEI practice could be improved. Gillon in her research into the scheme has identified that there is often a lack of "strategic leadership" due to the loss of WSA leads who previously oversaw the process within their local authority. Equally – and in part because it is still relatively new – it doesn't yet have a robust evidence-base and, finally, Gillon found that children's rights need to be more centrally embedded within the EEI process. From a children's rights perspective this last point is particularly important, with Gillon making clear that:

> *"Children were not directly involved in EEI decision making in any of the locations in this study or in any of the locations involved in the scoping study. It can be said with certainty that the practice of inviting or involving young people in decision making is not common practice within Scotland at the level of EEI."*[35]

Paragraphs 45 and 46 of General Comment No. 24 (2019) state that within a rights-based child justice system children's voices should be heard within processes that intimately affect them (see also James and Prout, 1990 and the "new sociology of childhood"; see also, Christensen and Prout, 2002).

> *"Children have the right to be heard directly, and not only through a representative, at all stages of the process, starting from the moment of contact."*[36]

If EEI is to align fully with Paragraphs 45 and 46 of General Comment No. 24, and similarly Article 12 of the UNCRC 1989, there is a need for children's voices, directly and in their own words, to be heard within its workings (see Creaney, 2014; Hart and Thompson, 2009). Interestingly, there are currently examples of post offence, but pre-court youth diversionary models existing elsewhere in the UK which directly include children's voices in their proceedings. The Welsh bureau model (see Haines et al. 2013; Haines and Case, 2015; Brown, 2019; see also, **Chapter Two**) is one such progressive example including children's voices that has received global attention. Within Scotland, the Children's Hearings System also includes contributions from children, and so may also serve as a domestic example of enshrining child participation within the EEI process.

RECOMMENDATION 2

Unicef UK recognises that Early and Effective Intervention (EEI) is an important diversionary mechanism for filtering children away from the Children's Hearings System (and formal measures). However, we note that there is a lack of 'direct' child participation within the process.

Unicef UK therefore recommends that the Scottish Government revise future EEI guidance to 'directly' include contributions from children (UNCRC 1989 Article 12) within the workings of the EEI process.

34 UN Committee on the Rights of the Child (2019). *General Comment No. 24 (2019) on children's rights in the child justice system*. Paragraph 16. CRC/C/GC/24. Geneva: UNCRC.
35 Gillon, F. (2018). *Early and Effective Intervention (EEI) in Scottish Youth Justice: Benevolent Principles and Unintended Consequence.* Unpublished PhD Thesis. Glasgow: University of Strathclyde, p.211.
36 United Nations Committee on the Rights of the Child (2019). *General Comment No. 24 (2019) on children's rights in the child justice system*. Paragraph 45. CRC/C/GC/24. Geneva: UN.

MEMBERS OF THE SCOTTISH YOUTH PARLIAMENT

VIEWS ON EARLY AND EFFECTIVE INTERVENTION

"Quite a lot of the time a child will commit an offence again and again, but I think largely the reason why is because of the lack of the children's view in it. If a child makes their own decisions about how they are going to recover from a decision they've made or a crime committed, then if it's their route, they may be more likely to follow it, as opposed to somebody else telling them."

"If it is child-led, then it is more likely to be followed."

MSYP A

THE CHILDREN'S HEARINGS SYSTEM

The Children's Hearings System was first established in Scotland in 1971 following on from the recommendations made in the Kilbrandon Report (1964) and enacted in the Social Work (Scotland) Act 1968. The Report made clear in its Principal Recommendations that:

> *"(19)(1) (a) Subject to the overriding discretion of the Crown (to be exercised exceptionally and for grave reasons of public policy) to prosecute in the Sheriff Court or the High Court of Justiciary, all juveniles under 16 should in principle be removed from the jurisdiction of the criminal courts; (b) instead, juvenile panels should have power, on the grounds set out in paragraph 138, to assume jurisdiction over juveniles under16..."*[37]

Prior to the creation of these "juvenile panels" that constitute the Children's Hearings System, children and young people who committed criminal offences – and those with welfare and wellbeing needs – were dealt with by the juvenile court. Since 1971, and the implementation of Kilbrandon, the Children's Hearings System has supplanted the courts and catered both for children and young people who require care or protection, and those who have been engaged in offending behaviour. The principal aim of the Children's Hearings System has therefore been to make decisions in the best interest of the child or young person in order to support them, protect them and meet their needs.

Currently, children and young people from birth to the age of 16 years old can be referred to the Children's Hearings System on welfare grounds, and from 12 to 16 years old if they have committed a criminal offence. Additionally, children and young people aged 16 and 17 years who have compulsory supervision orders continued from when they were 15 or who are referred by the Sheriff Court are also dealt with by the Children's Hearings System.

A child or young person can be referred to the Children's Hearings System by anybody (including children and young people themselves, parents and carers, neighbours, health professionals, youth workers), but most referrals are made by the police, social work departments and schools and can include both "offence" and "non-offence" grounds. In 2019/20, 12,849 children (1.4 per cent of all children in Scotland) were referred to the Children's Reporter; 5,505 were female and 7,338 were male.[38] Since the year 2006/07, there have been year-on-year decreases in the number of children referred to the Children's Reporter in Scotland. In 2006/07, the number was 55,863, falling year-on-year to 12,849 in 2019/20 – a reduction of 77 per cent over the period (see **Figure 1**).

37 Scottish Home and Health Department, Scottish Education Department (1964). *Children and Young Persons Scotland, Report by the Committee Appointed by the Secretary of State for Scotland*. Edinburgh: HMSO.
38 Six children had no gender recorded on the case management system.

FIGURE 1: Number of Children Referred to the Children's Reporter in Scotland – 2006/07 to 2019/20[39]

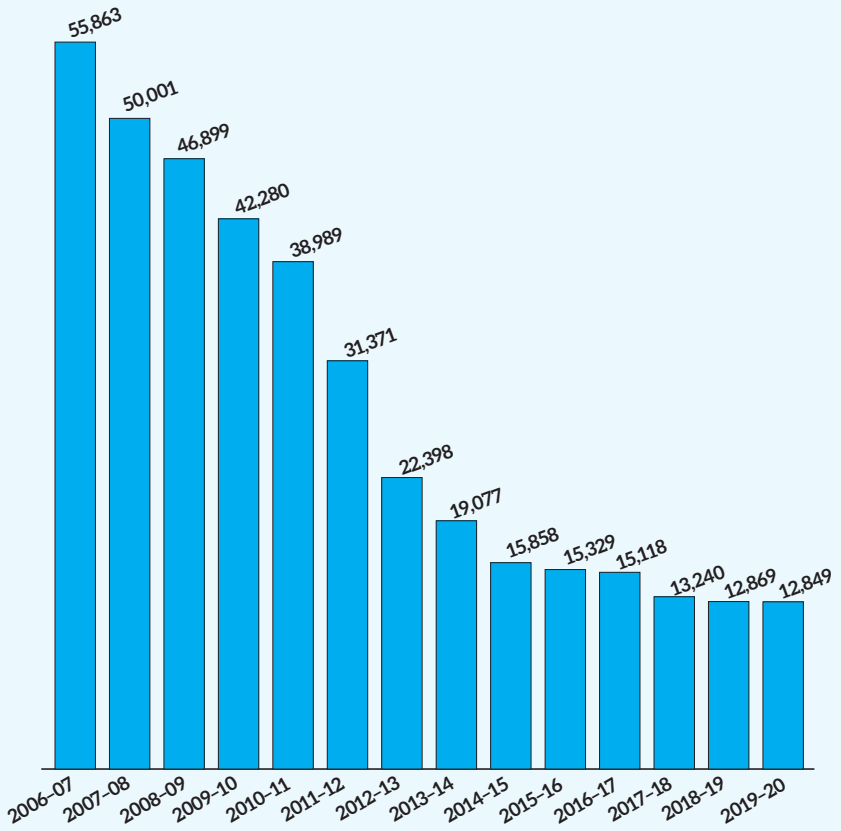


TABLE 1: Children's Reporter Decisions in Scotland – 2019/20[40,41]

REPORTER DECISION	NON-OFFENCE	OFFENCE	TOTAL
Arrange a Children's Hearing (on new grounds)	3,366	155	3,468
No indication of a need for compulsory measures	3,120	1,093	4,098
No Hearing – refer to local authority	3,403	696	3,931
No Hearing – measures already in place	1,433	1,158	2,188
No Hearing – insufficient evidence to proceed	760	178	929
No Hearing – family have taken action	499	94	587
No Hearing – diversion to other measures	7	32	35
TOTAL	**11,100**	**2,844**	**13,011**[42]

39 Data retrieved from: Scottish Children's Reporter Administration (SCRA) website: http://www.scra.gov.uk/stats/?=undefined&areas%5B%5D=Scotland&measures%5B%5D=Children%20referred.

40 Data in table, as appears in Scottish Children's Reporter Administration (2020). *SCRA Statistical Analysis 2019/2020* – https://www.scra.gov.uk/wp-content/uploads/2020/07/SCRA-Full-Statistical-Analysis-2019-20.pdf.

41 Data in the table relates to cases decided in 2019/20, as opposed to referrals received in 2019/20.

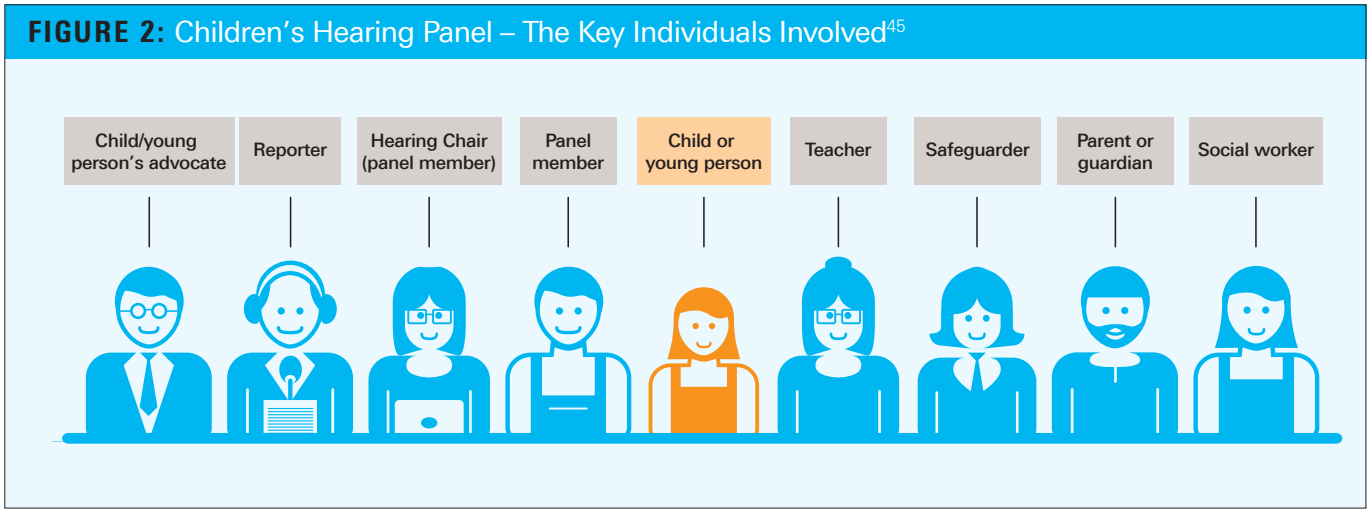
42 The totals do not equal the sums as children and young people can be referred more than once in the year and may have multiple Reporter decisions. The totals count each child or young person once.

Once a child or young person has been referred, it is the role of the Children's Reporter (employed by the Scottish Children's Reporter Association, SCRA) to decide whether compulsory measures of supervision are required. This involves the Children's Reporter undertaking an investigation, which routinely involves gathering additional information from a variety of sources, for example, schools, police, health agencies or social work departments. Based upon the information gathered and the grounds for referral, the Children's Reporter will decide if the child or young person should appear at a Children's Hearing or alternatively will choose from a range of other options. **Table 1** reveals that for Children's Reporter decisions made in Scotland in 2019/20, "No indication of a need for compulsory measures" was the most frequent decision, followed by "No Hearing – refer to local authority" and "Arrange a Children's Hearing (on new grounds)".

Operationally, the Children's Hearing meeting involves contributions from a number of different individuals. Central to the Children's Hearing are Panel Members, who are supported by Children's Hearing Scotland (CHS).[43] They are members of the public – volunteers – who undertake training prior to taking up their role and are key to its effective functioning. There are normally three Panel Members at the hearing, with one chairing proceedings. They are the decision-makers at the meeting and, as part of their role, they read prepared documents relating to the child or young person, outline the grounds of referral, listen to the child speak (or read the All About Me form submitted by the child or young person if they find this an easier way of expressing their views) and decide upon an outcome at the end of the hearing. In addition to the child or young person and the Panel Members, a parent and carer, Children's Reporter, safeguarder, social worker, teacher and advocate can also be present at the Hearing (see **Figure 2**).

The intervention most commonly decided upon at a Children's Hearing is a compulsory supervision order (CSO). The latest statistics for Children's Hearings reveal that 2,806 children and young people had a new CSO made in 2019/20, with 1 per cent of all children and young people in Scotland currently in receipt of one. Most of those receiving a CSO are aged between 14 and 15 years old.[44] Once a CSO has been administered, the local authority is under a duty to facilitate it in respect of the child or young person. A CSO can in certain circumstances also be supplemented with an authorisation to place a child or young person in secure accommodation.

FIGURE 2: Children's Hearing Panel – The Key Individuals Involved[45]



The Children's Hearings System has frequently been commended, even internationally, for adopting a welfare-based approach to children and young people, rather than focusing on the offence and punishment. Despite positivity around its basic tenets and ethos, some have nonetheless voiced misgivings about aspects of the system's workings. A frequent criticism is that many children and young people in Scotland – notably those aged 16 to 17 years old – are sent to adult criminal courts and are therefore treated as adults rather than children (see, for example, Lightowler, 2020). Paragraph 30 of

43 The Children's Hearings (Scotland) Act 2011 introduced reforms to the Children's Hearings System, including the creation of Children's Hearings Scotland, along with Pre-Hearing Panels.
44 Scottish Children's Reporter Administration (2020). *SCRA Statistical Analysis 2019/2020.* Retrieved from: https://www.scra.gov.uk/wp-content/uploads/2020/07/SCRA-Full-Statistical-Analysis-2019-20.pdf.
45 Diagram as appears in: http://www.chscotland.gov.uk/the-childrens-hearings-system/scotlands-childrens-panel/.

General Comment No. 24 (2019) makes clear that:

> *"States parties that limit the applicability of their child justice system to children under the age of 16 years (or lower), or that allow by way of exception that certain children are treated as adult offenders (for example, because of the offence category), change their laws to ensure a non-discriminatory full application of their child justice system to all persons below the age of 18 years at the time of the offence."*[46]

Lightowler, in her recent analysis of the role of children's rights in the Scottish youth justice system, established:

> *"In the financial year 2017/18, 1,776 children aged 13-18 were prosecuted in adult Courts, compared to 3,060 referrals made to the Children's Hearing System due to offending behaviours. This means that 37% of children coming into contact with the formal justice system in Scotland in 2017/18 came into contact with the courts and not the hearing system."*[47]

The Independent Care Review in its foundational document *The Promise* has also identified the clear tension that exists between the current workings of the Children's Hearings System and the appearance of children and young people in criminal courts:

> *"Despite the principles of Kilbrandon that aimed to ensure a welfare-based approach to offending, a significant number of children involved in offending behaviour are dealt with in Criminal Courts rather than through The Children's Hearing System. To ensure that all children benefit from the Kilbrandon approach to youth justice, there must be more efforts to ensure children stay within The Children's Hearing System."*[48]

The Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice also stipulates that specialist child courts should be established (Paragraph 125).[49] So it is clearly concerning that in Scotland children and young people are being dealt with in an adult criminal justice system and in adult courts where their rights may be diminished or insufficiently met, rather than within the Children's Hearings System, where their needs can be appropriately addressed.

There have also been concerns raised about the practical workings of Children's Hearings, in particular about the role and competence of the Panel Members. One concern is that, while many referrals are on non-offence grounds, Panel Members do also require expertise in the offence-based matters which make up a much smaller proportion of referrals. It has been contended that there may be discrepancies in Panel Member decision-making or gaps in their knowledge and understanding. It is also the case that Children's Hearings sometimes have to deal with very young children, who present additional challenges around participation (see Article 12 UNCRC 1989) as ensuring children's own voices are heard is key to the process.[50]

The above analysis suggests that the Kilbrandon approach adopted by Scotland has helped to create a Children's Hearings System free of the overtly punitive and offence-focused aspects of youth justice traditionally evident in its policy and practice (see Goldson, 2000).[51] The Children's Hearings System has therefore been viewed by many observers as offering a progressive process for engaging with children and young people in contact with the law. There is clearly merit in an approach that rejects a punitive, offence-focused philosophy, yet the same analysis has also identified practical challenges within the workings of Children's Hearings System which may infringe upon the rights of the children and young people who come into contact with it – in particular in relation to levels of Panel Member expertise and ensuring full participation for all age groups. More broadly, an overarching area of concern – voiced repeatedly in various reports – relates to the interplay between the Children's Hearings System and the courts. The fact that children and young people under the age of

46 UN Committee on the Rights of the Child (2019). *General Comment No. 24 (2019) on children's rights in the child justice system.* Paragraph 30. CRC/C/GC/24Geneva: UN. (C.f. Paragraph 29 and UK *Concluding Observations* Paragraph 78, b).
47 Lightowler, C. (2020). *Rights Respecting? Scotland's approach to children in conflict with the law*. Glasgow: CYCJ, p.55.
48 Independent Care Review (2020). *The Promise*. Edinburgh: The Independent Care Review, p.41. See also, Scottish Government (2018). *Inspectorate of Prosecution in Scotland, Thematic Report on the Prosecution of Young People.* Edinburgh: Scottish Government, p.10.
49 Council of Europe (2010). *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*, Paragraph 125. Strasbourg: Council of Europe.
50 Independent Care Review's *The Promise* (pp.39-40) provides an up-to-date and useful summary of key challenges within the Children's Hearings System.
51 Notwithstanding criticisms of welfare approaches to children in conflict with the law; see Thorpe et. al. (1980). *Out of Care: The Community Support of Juvenile Offenders*. London: Allen and Unwin.

18 years old are appearing in adult criminal courts, rather than in Children's Hearings, undermines rights. Treating children under the age of 18 as adults does not adhere to Paragraphs 29 (and 30) of General Comment No. 24 (2019) which states that the child justice system should apply to all children above the MACR and under the age of 18 years at the time of the administration of the offence. This is a practice that urgently needs to be reviewed and re-examined, given Scotland's commitment to taking a rights-based approach towards children.[52] It is therefore encouraging that the Scottish Government is currently consulting on raising the age at which a young person can be referred to a Children's Hearing from 16 to 18 years old. The result of the consultation, which closed October 2020, and any follow-on actions, should be carefully analysed to ensure that any proposed changes are sufficient to uphold the rights of children who come into contact with the law. For example, clarity is needed on whether these proposed changes mean the most serious crimes committed by this age group will always be heard within the Children's Hearings System or will continue to be sent to adult courts.

RECOMMENDATION 3

Unicef UK is concerned that the Children's Hearings System approach is currently being undermined by the appearance of children under 18 years of age within the adult justice system and courts in Scotland.

Unicef UK recommends that all children under 18 years of age should be treated as children and should be situated in a child justice system which is specifically designed to cater for their needs.

52 In respect of the Convention, the Scottish law may not be in violation on this issue, but it is suggested that this is not in the spirit of its approach to strengthening protection of children.

MEMBERS OF THE SCOTTISH YOUTH PARLIAMENT

CHILDREN'S HEARINGS SYSTEM

"People might be at different stage of maturity at different points in their lives. Some 16- and 17-year olds might be quite mature and might be ready to go into an adult court. However, some may not have the fortitude to do so and may need to go through a different system. Children's Hearings can provide that, and they can do that in a more friendly, less intimidating manner."

MSYP D

"I think we are treading in dangerous waters by saying we should do a test [around maturity] and send some through the adult criminal justice system and some through the Children's Hearings System – there's that issue of 'where do you draw the line?' I would much rather have no child go through the adult system, than any."

MSYP A

UNCRC 1989 ARTICLE 3,1 /ARTICLE 37 (A)/ ARTICLE 40,1

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

POLICING – TASERS, POLICE CUSTODY

Tasers are devices designed to incapacitate an individual posing a threat via a high-voltage electrical discharge and are employed by Police Scotland officers who have been specially trained in their usage. The use of tasers by police officers on children under 18 years of age has repeatedly been subject to criticism on international children's rights grounds. For example, the UN Committee on the Rights of the Child has frequently chastised the UK Government, including Scotland, in regard to their usage (see UNCRC, 2008, 2016), making clear in the 2016 *Concluding Observations* that:

> *"The Committee is concerned about: (a) The use by the police of Tasers and, in the case of Northern Ireland, attenuating energy projectiles, against children in the four devolved administrations."*[53]

Although the use of tasers in Scotland on children is not routine, it is nonetheless the case that there is nothing to prohibit their use on children under 18 years old. Given the possibility of more Police Scotland officers being deployed with tasers in the near future, there is clearly a risk that greater numbers of children will be exposed to their impact.

A key setting that certain children who come into contact with the law in Scotland may experience is police custody. There is currently a lack of detailed data publicly available relating to how children's rights are upheld when they are in police custody. General Comment No. 24 (2019), Paragraph 41, makes clear that:

> *"States parties should enact legislation and ensure practices that safeguard children's rights from the moment of contact with the system, including at the stopping, warning or arrest stage, while in custody of police or other law enforcement agencies, during transfers to and from police stations, places of detention and courts, and during questioning, searches and the taking of evidentiary samples. Records should be kept on the location and condition of the child in all phases and processes."*[54]

53 UN Committee on the Rights of the Child (2016). *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*. Paragraph 39.CRC/C/GBR/CO/5. Geneva: UN.

54 UN Committee on the Rights of the Child (2019). *General Comment No. 24 (2019) on children's rights in the child justice system,* Paragraph 41. CRC/C/GC/24. Geneva: UN.

The most recent Scotland-focused report undertaken by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)[55] has highlighted significant concerns around "excessive use of force" in police custody and also identified that "material conditions" were not considered suitable for anyone in police custody for periods longer than 24 hours. Although the focus of the report was not explicitly on children in contact with the law, it is clearly concerning that police custody settings in Scotland, where children can potentially be detained, have been criticised by the CPT. More specifically, in relation to strip-searching of children in police custody, a recent publication by the alliance of Scottish children's charities, Together – *State of Children's Rights Scotland* – reported:

> *"Police Scotland stated that 788 strip-searches were conducted on children in police custody between 1st August 2017 and 31st August 2018. Of these, 753 were negative and 35 were positive. Three of these searches were intimate searches, of which all three were negative."*[56]

In light of such data, questions have been raised as to whether the strip-searching of children in custody is becoming a routine practice, rather than one that is led by specific information concerning the circumstances surrounding the child.[57]

RECOMMENDATION 4

Unicef UK recommends that the following actions in relation to the use of tasers and police custody be carried out:

1. **The Scottish Government should prohibit the use of tasers on children in Scotland who are under 18 years of age.**
2. **Police Scotland should make statistical data (disaggregated by age, gender and ethnicity) publicly and consistently available relating to the number of children subjected to use of force, use of restraint and strip-searching when in police custody.**

55 Council of Europe (2019). *Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 17 to 25 October 2018*. Strasbourg: Council of Europe.
56 Together (2020). *State of Children's Rights in Scotland 2019*. Edinburgh: Together, p.48
57 See Lightowler, C. (2020). *Rights Respecting? Scotland's approach to children in conflict with the law*. Glasgow: CYCJ, p.61.

COURTS AND JUDICIARY – PRIVACY

Section 47 of the Criminal Procedure (Scotland) Act 1995 states that any child who is either accused, a victim or a witness in criminal trials should have their personal details – name, address, school or identifying characteristics – kept private. The damaging impact that labelling has on children who come into contact with the law is widely acknowledged within the criminological literature (Tannenbaum, 1938; Becker, 1963). It is therefore extremely important that children are not stigmatised unduly as a consequence of their offending behaviour, regardless of the type of offence committed, and that they are given every chance to rehabilitate successfully back into society at the end of their sentence.

However, at present the Criminal Procedure (Scotland) Act 1995 allows media organisations to apply to have court reporting restrictions lifted via a court motion or by lodging a formal minute. For example, media organisations asked for restrictions to be lifted in the case of a Scottish boy[58] who was 16 years old at the time he was convicted of murder and, after consideration by the Judge, the boy's name was made public.

The decision was made on the grounds of "public interest". Although releasing the details of a child who is appearing at court in Scotland is not common practice, the example above demonstrates that it can happen. From a children's rights perspective this is troubling. General Comment No. 24 (2019), Paragraph 70, explicitly states:

> *"In the Committee's view, there should be lifelong protection from publication regarding crimes committed by children. The rationale for the non-publication rule, and for its continuation after the child reaches the age of 18, is that publication causes ongoing stigmatization, which is likely to have a negative impact on access to education, work, housing or safety. This impedes the child's reintegration and assumption of a constructive role in society. States parties should thus ensure that the general rule is lifelong privacy protection pertaining to all types of media, including social media."*[59]

Additionally, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice – "the Beijing Rules" – states under the section "Protection of Privacy":

> *"8.1 The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling.*
>
> *"8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published."*[60]

Consolidating the above guidance and recommendations, Hart, in her report for the Standing Committee for Youth Justice, *What's in a name? The identification of children in trouble with the law*, put forward the following key arguments for why revealing children's identities in criminal proceedings is problematic. Firstly, the identity of family members will often be revealed in the process, despite their not having committed a criminal offence; secondly, the child in question could face physical and mental harm as a result of their identity being revealed; and thirdly, the possibility of the child being rehabilitated is reduced as they acquire a negative "public label" that can work against them as they seek to reintegrate into law-abiding society.[61] Hart concludes her report, which considers the arguments both for and against public disclosure, by strongly arguing that there is:

> *" ... no good reason for naming child defendants. Not only is it in contravention of the international standards on children's rights that the UK has agreed to uphold, but the arguments about 'public interest' do not stand up to scrutiny."*[62]

58 Keeping to the standard being advocated, a decision has been made to not name the child involved in the case.
59 UN Committee on the Rights of the Child (2019). *General Comment No. 24 (2019) on children's rights in the child justice system,* Paragraph 70. CRC/C/GC/24. Geneva: UN.
60 Office of the High Commissioner on Human Rights (1985). *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)*. Geneva: OHCHR. 8, 8.1/8.2.
61 Hart, D. (2014). *What's in a name? The identification of children in trouble with the law'*. London: SCYJ, pp.23–26.
62 Ibid., p.27.

UNCRC 1989 ARTICLE 40, 2. (B) VII

Every child alleged as or accused of having infringed the penal law has at least the following guarantees: (vii) To have his or her privacy fully respected at all stages of the proceedings.

RECOMMENDATION 5

Unicef UK recommends that the following action be undertaken in relation to children's anonymity:

The Scottish Government should commit to ensuring the anonymity of all children under 18 years of age who come into contact with the law and appear at Scottish courts - regardless of the offence they have committed. This anonymity should not cease at 18 years of age but instead should last a lifetime.

MEMBERS OF THE SCOTTISH YOUTH PARLIAMENT

VIEWS ON CHILDREN'S PRIVACY

"I think people shouldn't be named if they are under 18 ... people should be allowed to learn from their past ... the past shouldn't follow you forever."

MSYP B

"Should having your name being put out there and people being able to see you and condemn you – should that be a consequence of justice in addition to the sentence you are given, or, should justice purely be the sentence that the Judge gives you?"

MSYP D

COURTS AND JUDICIARY – PARTICIPATION, PROCESS AND PRACTICE

Children in Scotland who come into contact with the law, in certain cases, can find themselves appearing before adult courts (see the Children's Hearings System section). Lightowler has established that in Scotland 1,776 children aged between 13 and 18 were prosecuted in adult courts (for the year 2017/18).[63] As already emphasised, from a children's rights perspective these statistics are concerning. International standards require that children be treated differently to adults when appearing at a court. *Guidelines of the Committee of Ministers of the Council of Europe on Child Friendly Justice* stipulates in Paragraph 125:

> *"As far as possible, any referral of children to adult courts, adult procedures or adult sentencing should not be allowed."*[64]

General Comment No. 24 (2019), Paragraph 107, endorses this guideline and makes clear that, within a child-friendly youth justice system, children should be appearing in a child (not adult) court setting. A key reason for ensuring that children appear within a child-specific court setting is to enable them to participate meaningfully in proceedings and make their voice heard. Article 12 of the UNCRC 1989 states explicitly that children have "a right to express their views freely in all matters that affect them". But participating and communicating effectively within an adult court setting is a challenging task for any child. As Lynch and Liefaard have argued:

> *"The effect of an adult trial on children is harsh, even where protective measures such as intermediaries and special procedures are used. Opportunities for effective and meaningful participation are likely to be limited, and timeframes between charge and resolution are not likely to be in line with a child's sense of time."*[65]

This difficulty is further amplified if a child has particular speech, language and communication needs (SLCN). The Centre for Youth and Criminal Justice[66] argues in its publication, *A Guide to Youth Justice in Scotland: policy, practice and legislation*, that:

> *"A court appearance presents communication challenges for any individual, regardless of communication ability. For young people with SLCN these challenges are intensified, endangering their ability to fully participate in proceedings."*[67]

Although exact statistics relating to the SLCN of children appearing in Scottish courts are difficult to obtain, it is estimated that at a UK level the percentage of children who interact with youth justice services who have SLCN could be as high as 60 per cent (Bryan et al., 2015). This figure would suggest that there will be a certain number of children currently engaging with adult courts in Scotland who possess SLCN – and who therefore risk being "seen and not heard". Reflecting this point, Kilkelly has written:

> *" ... it is clear from international standards of children's rights that young people have the right to be tried by a tribunal which takes their age and maturity into account, which protects their right to privacy and which facilitates their ability to understand and participate in the court process."*[68]

The current position in Scotland of children appearing in adult courts, particularly in relation to 16- to 17-year olds, undermines children's ability to participate in proceedings effectively. From a children's rights perspective, it makes sense for children, wherever possible, to appear within the

63 Lightowler, C. (2020). *Rights Respecting? Scotland's approach to children in conflict with the law*. Glasgow: CYCJ., p.55.
64 Council of Europe (2010). *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*. Paragraph 125. Strasbourg: Council of Europe.
65 Lynch, N. and Liefaard, T. (2020). 'What is Left in the "Too Hard Basket"? Developments and Challenges for the Rights of Children in Conflict with the Law'. *International Journal of Children's Rights*, 28, p.99.
66 This has now become the Children and Young People's Centre for Justice.
67 Centre for Youth and Criminal Justice (2018). *A Guide to Youth Justice in Scotland: policy, practice and legislation*'. Glasgow: CYCJ, p.20. See also, Rap, S. (2016). 'A Children's Rights Perspective on the Participation of Juvenile Defendants in the Youth Court'. *International Journal of Children's Rights*, 24, pp.93–112.
68 Kilkelly, U. (2008). 'Youth Courts and Children's Rights: The Irish Experience'. *Youth Justice*, 8, p.45.

Children's Hearings System which is set up to meet their requirements (as noted, the Scottish Government is currently consulting on this issue). However, without adaptation, a Children's Hearing may not be a suitable setting for those children who have committed the most serious crimes such as murder and sexual offences. Here, there would be merit in developing a Youth Court specifically designed to meet the needs of children, taking into account their development, level of maturity and age.

UNCRC 1989 ARTICLE 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

RECOMMENDATION 6

Unicef UK believes that no child under 18 years of age should be tried in adult courts in Scotland, regardless of the offence they have committed.

Unicef UK recommends that, wherever possible, children are engaged within the Children's Hearings System (CHS). Where children have committed the most serious offences and may not be suitable for the CHS, appropriate alternatives should be explored and developed, which are specifically designed to cater for and recognise children's particular needs.[69]

69 For example, the creation of a child-centric Youth Court.

YOUNG OFFENDER INSTITUTIONS

As of August 2020, there were 24 children in youth custody in Scotland (of whom 15 were untried and three were convicted and awaiting sentence).[70] Her Majesty's Young Offender Institution (HMYOI) Polmont, Falkirk, is Scotland's main criminal detention facility for children, holding male and female children between the ages of 16 and 21; all courts admit to the facility.

In 2019, Her Majesty's Inspectorate of Prisons for Scotland (HMIPS), at the request of Cabinet Secretary for Justice, Humza Yousaf MSP, reviewed mental health provision at HMYOI Polmont. The backdrop to the review was the death of a 16-year-old in 2018 who committed suicide while on remand there – that is to say, accused of a crime, he had been placed in the HMYOI, but had not yet been tried or sentenced. The review highlighted serious concerns around the situation of prisoners on remand within Polmont, identifying that they were the most vulnerable to episodes of self-harm or suicide.[71] The review cited "social isolation" as the key reason for their vulnerability. Social isolation can occur through being in segregation, confined in a cell for long periods, not joining in organised activities, or because of a lack of communication with friends and family. A concern voiced repeatedly in the review, and also in Polmont's most recent HMIPS full inspection report, was that children on remand did not take part in the range of purposeful and wellbeing activities on offer, which compounded their social isolation at an extremely vulnerable phase in their custody experience.[72]

In the context of self-harm and suicide this culture of isolation for children at HMYOI Polmont is clearly concerning. Existing research already suggests that within prison settings younger people's rate of suicide in prison in Scotland is much higher than that of older cohorts.[73] The findings from both the mental health review and full inspection report raise crucial questions concerning the experiences and vulnerability of children on remand in HMYOI settings.

More broadly, in addition to these specific concerns about remand, a number of influential domestic reports have questioned the suitability of any child in Scotland residing in an HMYOI. For example, in its recommendations the HMIPS full inspection report on HMYOI Polmont challenged the Scottish Government to review whether that facility constitutes an appropriate setting for detained children:

> *"Recommendation: HMIPS urge the Scottish Government to review the appropriate location for the removal of liberty for children in detention. HMP YOI Polmont has the architecture and staffing appropriate to an adult prison. Best practice in child-centred thinking argues a different approach, nearer to the secure care system."*[74]

HMIPS went on to suggest within the report that a "hybrid alternative" somewhere between an HMYOI and secure care setting could be a possible alternative.

The Independent Care Review in its document *The Promise* has also questioned the validity of holding children in Scotland in HMYOI settings, arguing:

> *"Young Offenders Institutions are not appropriate places for children and only serve to perpetuate the pain that many of them have experienced. There are times where it is right for children to have their liberty restricted, but that must only be done when other options have been fully explored and for the shortest time possible and in small, secure, safe, trauma informed environments that uphold the totality of their rights."*[75]

Lightowler, in her recent report, *Rights Respecting? Scotland's approach to children in conflict with law*, has likewise argued from a children's rights perspective that no one under 18 years of age should be placed in an HMYOI setting and that secure care

70 Scottish Prison Service (2020). *SPS Prison Population*: Retrieved from: https://www.sps.gov.uk/Corporate/Information/SPSPopulation.aspx.
71 The review also identified those in the early stages of their prison sentence as sharing similar levels of vulnerability to suicide and self-harm.
72 Her Majesty's Inspectorate of Prisons for Scotland (2018). *Summary Report on HMP YOI Polmont*. Edinburgh: HMIPS.
73 Armstrong, S. and McGhee, J. (2019). *Mental Health and Wellbeing of Young People in Custody: Evidence Review.* Glasgow: University of Glasgow/ The Scottish Centre for Crime and Justice Research.
74 Her Majesty's Inspectorate of Prisons for Scotland (2018). *Summary Report on HMP YOI Polmont*. Edinburgh: HMIPS, p.33.
75 Independent Care Review (2020). *The Promise*. Edinburgh: The Independent Care Review, p.91.

may be a more suitable option. As these quotations powerfully illustrate, the validity of incarcerating children in HMYOI settings is currently being questioned within Scotland at a number of different levels.

RECOMMENDATION 7

Unicef UK recommends that the following actions in relation to young offender institutions be carried out:

1. **The Scottish Government should explore appropriate alternatives to young offender institutions for children under 18 years of age.**

2. **The Scottish Government should prohibit the use of solitary confinement in youth detention settings.**

Although the analysis above identifies certain areas of concern within Scottish youth custody (specifically, HMYOI), there are other areas which remain obscured. This is largely due to a lack of publicly available, up-to-date, consistent statistical data – for example, relating to behaviour management, such as incidents of self-harm, use of searches and use of force/restraint within Scottish HMYOI, and also in relation to secure care. General Comment No. 24 (2019) Paragraph 95 recommends that:

> *"States should record, monitor and evaluate all incidents of restraint or use of force and ensure that it is reduced to a minimum."*[76]

Clearly, there are resource issues involved in recording such incidents and compiling datasets, but from a children's rights perspective, up-to-date and publicly available data on the nature and prevalence of such incidents is essential for monitoring and transparency.

RECOMMENDATION 8

Unicef UK recommends that the Scottish Government and Scottish Prison Service record and make publicly and consistently available statistical data relating to:

1. **The prevalence and type of behaviour management incidents occurring in young offender institutions (and secure care) disaggregated by age, gender and ethnicity.**

2. **The number of care-experienced, BAME and school-excluded children situated in young offender institutions (and secure care) in Scotland.**

UNCRC 1989 ARTICLE 37 (C)

States Parties shall ensure that (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.

76 UN Committee on the Rights of the Child (2019). *General Comment No. 24 (2019) on children's rights in the child justice system,* Paragraph 95. CRC/C/GC/24. Geneva: UN.

SECURE CARE

In Scotland, children can also be placed within secure care settings via the Children's Hearings System on welfare grounds or through the courts on sentence or remand. Secure care accommodation is residential care that restricts the freedom of a small number of children who may be a considerable risk to themselves, or others, if living within the community. The Secure Care Accommodation (Scotland) Regulations 2013 state that children can be placed in secure care for the following reasons:

> *"(a) that the child has previously absconded and is likely to abscond again and, if the child were to abscond, it is likely that the child's physical, mental or moral welfare would be at risk;*
> *(b) that the child is likely to engage in self-harming conduct; or*
> *(c) that the child is likely to cause injury to another person."*[77]

There are currently five secure care establishments operating in Scotland, as listed in **Table 2**.

TABLE 2: Secure Care Provision in Scotland[78]

CENTRE	CURRENT OCCUPANCY
Good Shepherd Centre Secure Unit (Bishopton)	18
Kibble Education and Care Centre (Paisley)	19
Rossie Secure Accommodation Services (Montrose)	18
St Mary's Kenmure (Bishopbriggs)	24
Edinburgh Secure Services (Edinburgh)	6

77 See: *Secure Care Accommodation (Scotland) Regulations 2013.*
78 Data retrieved from: http://www.sanscotland.org/ (Data accurate as of September 2020).

FIGURE 3: Key Demographic Data of Children in Scottish Secure Care - 2019[79]	
Average number of residents (August 2018–July 2019)	79
Gender	
Males	60 (71%)
Females	24 (29%)
Age	
13 years or under	n/a
14 years	n/a
15 years	21 (25%)
16 years or over	55 (65%)
Residents with a disability	
Yes	27 (32%)
No/Unknown	57 (68%)

As the current occupancy figures in **Table 2** demonstrate, the numbers of secure care places available in Scotland are relatively few. As a result, scrutiny has increased of the number of across-borders placements, when local authorities in England and Wales buy Scottish secure care places for their children.[80] Between 2015 and 2018 children from outside Scotland constituted more than a quarter of the secure care population (33 per cent).[81]

Children in Scotland who require secure care are among the most vulnerable in Scottish society. Yet, because of a shortage in secure care places, children with profound needs are in certain instances being placed in young offender institutions instead, often on remand. Significantly, a recent Secure Care Strategic Board report to Scottish Ministers highlighted the tensions inherent in this position, noting:

> *"The cross-border situation will remain a factor for consideration as the Scottish Government further develops a strategic approach to responses to children and young people in and on the edges of secure care in Scotland. The numbers of placements from outside Scotland is one of a number of complicating factors, which lie alongside a rapidly changing domestic landscape. Our growing understanding of the needs and vulnerabilities of these young people, including mental health and wellbeing needs, whether they are secured through the CHS, or the Justice system, needs to be reflected in policy and practice."*[82]

The Independent Care Review also made clear that the selling of care placements to local authorities outside Scotland is disadvantageous and not in the best interests of any of the children involved:

> *"Scotland must stop selling care placements to Local Authorities outside of Scotland. Whilst this review is focused on children in Scotland there must be acknowledgement that accepting children from outside Scotland is a breach of their fundamental human rights. It denies those children access to their family support networks and services. It also skews the landscape for Scotland so that there is a lack of strategic planning for children, meaning that children can be put in inappropriate settings if demand has spiked."*[83]

The Scottish Parliament Justice Committee has also recently examined the issue of "secure care and prison places for children and young people in Scotland" and outlined in their report the financial reality and demands of secure care provision:

> *"29. The demand and supply of secure care is recognised to be a complex and shifting landscape, and it is widely accepted the current funding model for secure units in Scotland is not sustainable in the long term.*
>
> *30. Secure units are funded almost exclusively from their bed rate; if units are not operating at 90% capacity or above then they are not meeting their business plan objective for income. If units are consistently under-occupied*

79 Scottish Government (2020). *Children's Social Work Statistics 2018-19*. Edinburgh: Scottish Government.
80 Gough, A. (2018). Secure Care in Scotland: Cross border placements. Glasgow: CYCJ.
81 Scottish Government (2019). *Children's Social Work Statistics 2018–19*. Edinburgh: Scottish Government.
82 Secure Care Strategic Board (2019). *Secure Care in Scotland Report of the Secure Care Strategic Board to Scottish Ministers,* p.6. Retrieved from: https://www.gov.scot/groups/secure-care-strategic-board/.
83 Independent Care Review (2020). *The Promise*. Edinburgh: Independent Care Review, p.110; see also, Together (2020). *State of Children's Rights in Scotland 2019*. Edinburgh: Together, p.147.

there is always the risk of an unplanned closure.

31. Recently, the high number of cross-border placements from England has been sustaining three of the four independent charitable secure units in Scotland. Without the cross-border placements three units would be in financial difficulty and at risk of unplanned closure."[84]

Significantly, based on the evidence received during its inquiry, in its conclusions the Committee called upon the Scottish Government:

" ... to look at alternative models, such as national commissioning or the use of blockfunding of places. It should never be the case that a child or young person is sent to HMP YOI Polmont when a secure care unit would be more appropriate to their needs."[85]

The current situation is not simply a problem for Scottish children unable to gain access to secure care places, but also for those children from outside Scotland whose local authorities have bought up the places on their behalf. The data suggests that a large number of children are regularly being placed in secure care within another country (i.e. Scotland), This is something which the UN Committee on the Rights of the Child identified in its 2016 report on child rights in the UK as a worrying practice that required immediate attention:

"The Committee is nevertheless concerned that: Children with mental health conditions are often treated far away from home (England and Scotland)."[86]

Finally, domestic reports have identified that children's knowledge and understanding within secure care settings also require improvement. For example, a 2017 review by Gough for the Centre for Youth and Criminal Justice, which gathered the views of children in secure care in Scotland, reported:

"More needs to be done to ensure that young people's views and opinions are always sought and taken into account when secure care centres are reviewing policies and general approaches to practice standards and day to day 'rules', and every young person should have access to children's rights services and information."[87]

More recently, in their 2020 report the Secure Care Strategic Board, reflecting on the findings of the Secure Care National Project, identified:

" ... evidence of considerable variation in approach regarding young people's participation in day to day operational policy and practice development, for example when services are reviewing 'whole school/centre' policies, including those relating to restrictive practice. Similarly, there was variance in how each secure care centre, and each placing team, ensures young people's ongoing meaningful participation and equitable access to advocacy and children's rights services."[88]

These quotations indicate that children's rights approaches within secure care settings are sometimes insufficiently robust, with the result that children in those settings do not always feel that they are adequately listened to when decisions are being made concerning them. Reflecting this theme, in its 2016 report on the UK the UN Committee on the Rights of the Child expressed concern that children's views were still not sufficiently recognised by professionals. Accordingly, it recommended that the State Party – the UK:

"Ensure that children are not only heard but also listened to and their views given due weight by all professionals working with children."[89]

84 The Scottish Parliament Justice Committee (2019). *Secure care and prison places for children and young people in Scotland.* Edinburgh: Scottish Parliament, p.6.
85 Ibid. p.38.
86 UN Committee on the Rights of the Child (2016). *UNCRC Concluding Observations on the fifth periodic report of the United Kingdom and Great Britain and Northern Ireland.* CRC/C/GBR/CO/5. Geneva: UN, p.14.
87 Gough, A. (2017). *Secure Care in Scotland: Young People's Voices*. Glasgow: CYCJ, p.9.
88 Secure Care Strategic Board (2020). *Secure Care in Scotland: Report of the Secure Care Strategic Board to Scottish Ministers*, p.12. Retrieved from: https://hub.careinspectorate.com/media/3468/secure-care-strategic-board-report-to-scottish-ministers.pdf.
89 UN Committee on the Rights of the Child (2016). *UNCRC Concluding Observations on the fifth periodic report of the United Kingdom and Great*

In light of the above concerns, it is encouraging that children and young people with knowledge and experience of the secure care system had significant input into the standards launched in October 2020 – Secure Care Pathway and Standards Scotland.[90] Positively, the standards, which cover before, during and after care, place a central emphasis on promoting children's rights.

Ultimately, secure care plays a crucial role for some of Scotland's most vulnerable children. Notwithstanding the progressive potential of these new standards, the preceding analysis has identified a number of challenges which require immediate action.

RECOMMENDATION 9

Unicef UK recommends that the following actions be carried out in relation to secure care:

1. **The Scottish Government should reconsider the practice of placing 'children from outside of Scotland' in Scottish secure care accommodation. Unicef UK is particularly concerned that because of this practice children are being placed in secure care settings away from their home location.**

2. **The Scottish Government should explore the benefits of 'centrally funding' secure care provision in order to address supply and demand issues and reduce the incentive of Scottish secure care providers securing finance from external local authorities. This move would free up additional capacity within the secure care estate and would reduce the threat of secure care units having to close due to a lack of adequate financial resource.**

3. **The Scottish Government should work closely together with key stakeholders to ensure the *Secure Care Pathway and Standards Scotland* are successfully implemented as intended (particularly where these relate to the promotion of children's rights).**

UNCRC 1989 ARTICLE 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

*Britain and Northern Ireland. CRC/C/GBR/CO/5*Geneva: United Nations, p.6.

90 See: https://www.cycj.org.uk/news/secure-care-standards/.

CHILDREN IN CARE SETTINGS

In Scotland, there are approximately 15,000 children who are currently situated in care,[91] but there is little detailed, up-to-date statistical data available to reveal the specific relationship between children who have this experience of care and their presence within the youth justice system. More broadly, the most recent (2017) Scottish Prison Service Prisoner Survey has established:

> *"One quarter of prisoners indicated that during their up-bringing they had been in care (26%) and over half had been in care at the age of sixteen (56%)".*[92]

Despite the overrepresentation of children who have experienced care within the wider prison population, as the Independent Care Review has identified:

> *"There is no evidence that care-experienced children engage in more offending behaviour than their peers, but the consequences of their behaviour whilst in care are much more likely to result in criminalisation."*[93]

In explaining why children in care settings may experience disproportionate levels of criminalisation, research undertaken by the Scottish organisation Who Cares? revealed a number of possible reasons. It found that a key reason for police interaction with care-experienced children was their running away – for example, from a children's home or other residential care. In such instances, the child becomes known to police who are then more likely to stop them subsequently when in public – on wellbeing grounds. It is also the case that police are frequently called to care settings on account of minor wrongdoing by a child – something which would be far less likely within a family context, where calling the police is usually considered to be an action of last resort. In addition, when the police are deciding how to respond to this or other misbehaviour, they often do not appreciate that children in care may possess complex needs as a result of trauma experienced in their early years ("adverse childhood experiences"). The collective impact of these dynamics can leave care-experienced children feeling labelled or discriminated against by police and law enforcement agencies (see Article 2 of UNCRC 1989). As a report from the care-focused organisation Who Cares? states:

> *"From speaking to young people who have experience of being in care, we know that often they feel they are targeted by police officers due to simply being known through the care system. Many tell us that they do not have a good relationship with the police, and often feel that they are judged negatively due to their care experienced status."*[94]

Against this backdrop, and wider challenges within the care sector, in October 2016 the Scottish First Minister Nicola Sturgeon announced an Independent Care Review which gathered the views and experiences of 5,500 people, including children who had directly experienced care. In its conclusions, the review laid out a progressive and bold agenda based around five "foundations": Voice, Family, Care, People, Scaffolding. Its core document, *The Promise,* called for wholesale reform of the Scottish care system:

> *"It is clear that Scotland must not aim to fix a broken system but set a higher collective ambition that enables loving, supportive and nurturing relationships as a basis on which to thrive."*[95]

Although possessing a remit much broader than simply care-experienced children who have come into contact with the law, the review contained progressive proposals in respect of care and youth justice. For example, it identified that Scotland should stop selling secure care places to external local authorities; that HMYOI are not appropriate settings in which to detain children; and that all those under 18 would be better served by being engaged within the Children's Hearings System, rather than the adult criminal justice system and courts.

91 Scottish Government (2019). *Children's Social Work Statistics 2017–2018*. Edinburgh: Scottish Government.
92 Carnie, J., Broderick, R., Cameron, J., Downie, D, and Williams, G. (2017). *Prisoner Survey 2017*. Scottish Prison Service Research Strategy and Innovation Unit. Scotland, p.24.
93 Independent Care Review (2020). *The Promise*. Edinburgh: The Independent Care Review, p.91.
94 Who Cares? (2018). *Who Cares? Scotland's Report on the Criminalisation of Care Experienced People*. Glasgow: Who Cares?
95 Independent Care Review (2020). *The Promise*. Edinburgh: Independent Care Review, p.6.

RECOMMENDATION 10

Unicef UK welcomes the progressive recommendations – particularly as they relate to youth justice - outlined in the Independent Care Review.

Unicef UK encourages all stakeholders to work closely together to help deliver 'The Plan' as outlined in the Independent Care Review.

MEMBERS OF THE SCOTTISH YOUTH PARLIAMENT

VIEWS ON CHILDREN'S VOICES AND PARTICIPATION

"I think luckily, when the processes are going through, the Government are starting to be a lot more conscious of young people's views ... but it needs to be a more comprehensive and guaranteed thing where young people's views are heard and actioned on."

MSYP A

"A lot of people have a view that 'young people don't have a view' ... I think sometimes we make more sense than the adults do. The Care Review was powerful and spoke to 5,000 people, and over half of them were care-experienced children. I think it can't be used as an excuse anymore 'young people don't have a view' because we wouldn't have spent three and a bit years speaking to young people about their views on the care system."

MSYP B

"They [children and young people] should be listened to and their views should be taken into account, but their views shouldn't be the final decision on that process."

MSYP C

"Articles 1 and 2 make it very clear that every young person, no matter what situation they find themselves in, the rights within the UNCRC apply to them. Article 12 says that you have a right to a voice in matters that are affecting you ... so then it follows on logically that young people should absolutely have a say in the criminal justice system. Criminal justice can affect anyone at any point in their lives and it can come up unexpectedly; say if you are a victim of crime. It is paramount that as many voices of young people are heard as possible, and it is also key to get the view of young people who are going through the criminal justice system or have been through it, since they are one of the most seldom heard groups of young people in Scotland."

MSYP D

CHILDREN EXCLUDED FROM SCHOOL

The link between school exclusion and children's involvement in offending behaviour (and interaction with the formal justice system and its agencies) has been acknowledged within the criminological literature. Within Scotland, McAra and McVie's influential study of youth transitions and crime in Edinburgh identified that for early- to mid-teenage years children:

> *" ... school exclusion is a key moment impacting adversely on subsequent conviction trajectories."*[96]

Additionally, research carried out at HMYOI Polmont by the Centre for Youth and Criminal Justice – *Young Men in Custody* – found that at least 80 per cent of the young men had been excluded from school.[97] In its 2016 report on child rights in the UK, the UN Committee on the Rights of the Child recommended that:

> *" ... the State party: Use the disciplinary measure of permanent or temporary exclusion as a means of last resort only, forbid and abolish the practice of "informal" exclusions and further reduce the number of exclusions by working closely with social workers and educational psychologists in school and using mediation and restorative justice."*[98]

In recent years, the Scottish Government has sought to address the issue of school exclusion via a number of policy documents (see McCluskey et. al., 2019 for an overview of policy development in the area). To date, perhaps the most significant of these has been *Included, Engaged and Involved Part 2: A Positive Approach to Preventing and Managing School Exclusions*, which explicitly states that school exclusion should only be deployed as a last resort. The report also recognises the relationship between school exclusions and children's interaction with the formal youth justice system. In 2018/19 there were 14,987 pupils temporarily excluded from schools in Scotland along with three who were permanently excluded (that is, removed from the school's register altogether). The statistics show a pattern of reductions over a number of years. Earlier data reveals (see **Table 3**) that over the 10-year period 2006/07 to 2018/19 there has been a 99 per cent decrease in children being "removed from the register".

TABLE 3: Scottish School Exclusions (2006/07-2018/19)[99]

	2006–07	2007–08	2008–09	2009–10	2010–11	2012–13	2014–15	2016–17	2018–19
Exclusions in total	**44,794**	**39,717**	**33,917**	**30,211**	**26,844**	**21,955**	**18,430**	**18,381**	**14,990**
Temporary exclusions	44,546	39,553	33,830	30,144	26,784	21,934	18,425	18,376	14,987
Removed from register	248	164	87	67	60	21	5	5	3

96 McAra, L. and McVie, S. (2010). 'Youth crime and justice: Key messages from the Edinburgh Study of Youth Transitions and Crime'. *Youth Justice*, 10, 2, p.201.
97 Smith, S., Dyer, F. and Connelly, G. (2014). *Young Men in Custody: A report on the pathways into and out of prison of young men aged 16 and 17*. Glasgow: CYCJ, p.3
98 UN Committee on the Rights of the Child (2016). *UNCRC Concluding Observations on the fifth periodic report of the United Kingdom and Great Britain and Northern Ireland. Geneva*: United Nations, p.19.
99 Data retrieved from: Scottish Government (2019). *Summary Statistics for Schools in Scotland no.10: 2019 Edition* – https://www.gov.scot/publications/summary-statistics-schools-scotland-no-10-2019-edition/pages/8/

There are clearly encouraging signs in both "removed from the register" and "temporary exclusions" figures. However, the pupils in Scotland most likely to be excluded from school remain those with an extra support need and living in an area with relatively more deprivation.

RECOMMENDATION 11

Unicef UK welcomes the Scottish Government's commitment to reducing the use of school exclusions and the progress that has been made in this area.

Unicef UK recommends that the following actions be carried out in relation to school exclusions:

1. **The Scottish Government should outline what steps it is currently taking to address the link between school exclusions and children possessing an additional support need or living in an area with relatively more deprivation.**

2. **The Scottish Government should outline what steps it is currently taking to explore the link between children being outside of mainstream education and enhanced vulnerability to criminal exploitation.**

COVID-19 IMPACT

(a) Covid-19 – policing

Children in Scotland may be particularly adversely affected by the Covid-19 (Scotland) police powers. The Scottish Government is using powers from the UK Coronavirus Bill to make it an offence to contravene the strict public health guidelines. The powers, as they relate to Scotland, are outlined in Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020, which was laid before the Scottish Parliament on 27 March 2020. Significantly, PART 5 Interpretation and Expiry states:

> *"In these Regulations – 'child' means a person under 16 years of age."*[100]

From a children's rights perspective this is clearly concerning (see General Comment No. 24 (2019), paragraphs 29 and 30),[101] as it means that under the regulations in Scotland anyone 16 years or older will be treated as an adult. Therefore, under these rules 16- to 17-year olds could potentially receive a fixed penalty notice – and the monetary implications associated with such a fine:

> *"9.—(1) A constable may issue a fixed penalty notice to a person that the constable reasonably believes—*
>
> *(a) has committed an offence under these Regulations, and*
>
> *(b) is aged 16 years or over."*[102]

However, on 19 May 2020, following support from the Children and Young People's Commissioner Scotland, an amendment put forward by Ross Greer MSP was passed by the Scottish Parliament which prevents children being issued with a fixed penalty notice.

RECOMMENDATION 12

Unicef UK welcomes the fact that the Scottish Parliament has passed Amendment 3[103] which prevents children over 16-years-old (e.g. aged 16/17 years old) being treated as adults and issued with a Fixed Penalty Notice.

Unicef UK urges the Scottish Government and Police Scotland to confirm that any child who received a Fixed Penalty Notice following the introduction of the Regulations and up until the passing of the Amendment will have it removed from their record.

(note: Police Scotland can keep Fixed Penalty Notice information for 2 years).

UNCRC 1989 ARTICLE 1

For the purposes of the present Convention, a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.

UNCRC 1989 ARTICLE 37 (C)

States Parties shall ensure that (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.

100 The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020. Retrieved from http://www.legislation.gov.uk/ssi/2020/103/contents.
101 The issue of disparity in definitions of 'child' across the UK was identified as far back as 2015 in the '*Report of the UK Children's Commissioners: UN Committee on the Rights of the Child, Examination of the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland*', p.8.
102 The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020
103 Put forward by Ross Greer MSP.

(b) Covid-19 – youth detention

The ongoing impact of Covid-19, and the requirement for self-isolation, mean that children held in young offender institutions in Scotland may potentially be locked in their cells for long periods of time. From a children's rights perspective this is clearly problematic, with General Comment No. 24 (2019) stating that due regard should be given to children's need for:

> *"95. ... sensory stimuli and for opportunities to associate with their peers and to participate in sports, physical exercise, arts and leisure-time activities ... "*[104]

Additionally, Article 37 of the UNCRC 1989 states that children in detention or deprived of their liberty should be treated with humanity and respect for the inherent dignity of the human person. Here, children with existing mental health and wellbeing conditions may be particularly badly affected by spending large periods of time in self-isolation in their cells. There is also a possibility that increasing numbers of staff in the secure estate may contract Covid-19, resulting in their need to self-isolate, leading to a reduction in workforce capacity – this could potentially have an impact on safety within these settings to the detriment of the children.

In relation to the provision of and access to support within youth detention facilities, General Comment No. 24 (2019) states "that every child has the right to receive adequate physical and mental health care throughout his or her stay in the facility."[105] (see also Article 24 UNCRC 1989). In the context of Covid-19, it is extremely important that children held in youth detention facilities in Scotland are able to access hand sanitiser, tissues and other hygiene products, and are given opportunities to shower and wash regularly. They should also be able to access physical and mental health support services if needed.

Many of these concerns have already been highlighted in detail in a Scotland-specific Child Rights Impact Assessment (CRIA) produced by the Centre for Youth and Criminal Justice (CYCJ).[106] The Children and Young People's Commissioner has also highlighted that children in youth detention in Scotland are being held in solitary confinement for up to 23 hours a day and that those with symptoms of coronavirus are isolated in their cells for 24 hours a day.[107] Practically, the Alliance for Child Protection in Humanitarian Action and UNICEF have issued a Technical Note[108] outlining practical steps to be undertaken by State Parties to protect the wellbeing of young people in detention during the pandemic. Using this as guidance, governments should act as follows:

- In light of (potential) restrictions on visits, ensure children are given adequate means to interact and communicate with family members – for example, via written correspondence, phone-calls, video-link, etc. Equally, ensure that there are sufficient methods for children of prisoners to maintain contact with their parents.
- Wherever possible, ensure there is an increased emphasis on using youth diversion schemes/out-of-court disposals, in order to reduce pressure on the Youth Courts and youth detention.
- Ensure that judges and magistrates refrain from remanding children in custody/youth detention (unless there are exceptional reasons for doing so).
- Ensure that children in youth detention settings are always able to easily access hand sanitiser, tissues and other hygiene products, and are given opportunities to shower and wash regularly. Children should also be able to easily access physical and mental health support services when needed.
- Ensure that children are released from youth detention facilities[109] – but with robust, tailored and detailed support frameworks in place for them, so as not to compound their vulnerability or expose them to harm.
- Ensure that there are clear contingency plans in place to cater for potential shortages of staff working in the youth detention sector.

104 UN Committee on the Rights of the Child (2019). *General Comment No. 24 (2019) on children's rights in the child justice system,* Paragraph 95 b. CRC/C/GC/24. Geneva: UN
105 Ibid. Paragraph 95 d.
106 Centre for Youth and Criminal Justice (2020). *Appendix 9: Children in Conflict with the Law and Children in Secure Care: Children's Rights Impact Assessment (CRIA*). Retrieved from: https://cypcs.org.uk/wpcypcs/wp-content/uploads/2020/07/CRIA-appendix-conflict-law.pdf.
107 See: https://cypcs.org.uk/news-and-stories/convener-justice-committee-letter-young-offenders-institutions-prisons/.
108 The Alliance for Child Protection in Humanitarian Action and UNICEF (2020). *Technical Note: Covid-19 and Children Deprived of their Liberty*. Retrieved from: https://alliancecpha.org/en/child-protection-online-library/technical-note-covid-19-and-children-deprived-their-liberty.
109 The Alliance for Child Protection in Humanitarian Action and UNICEF Technical Note in Section 3.1 identifies the children who should be prioritised for immediate release.

- Ensure that the rights of all children residing in youth detention settings are upheld in line with current international children's rights standards.

RECOMMENDATION 13

Unicef UK is concerned that children in youth detention in Scotland are extremely vulnerable to the short and long-term impacts of Covid-19.

Unicef UK recommends that the Scottish Government take immediate action in line with the steps identified in *The Alliance for Child Protection in Humanitarian Action and UNICEF Technical Note on Children Deprived of their Liberty*.

Chapter One Summary

This chapter has examined youth justice practice in Scotland and has identified both a number of progressive features and areas of concern where the rights of children in contact with the law are undermined.

AREAS OF PROGRESS

Post Kilbrandon and devolution, a distinctive philosophical approach to engaging with children in contact with the law has taken shape. Many aspects of this approach are positive and place a priority on children's welfare and needs – as illustrated by the workings of the Children's Hearings System - rather than focusing on the offence committed and children's wrongdoing. The Whole Systems Approach (WSA) and Getting it Right For Every Child (GIRFEC) put a growing and progressive emphasis on prevention and diversion demonstrated by efforts to reduce the numbers of pupils excluded from school, as well as the setting up of Early and Effective Intervention. The recent publication of Secure Care Pathway and Standards Scotland, with its strong focus on rights, is also clearly an encouraging development.

There also appears to be a concrete acknowledgement from the Scottish Government that further reform of the youth justice system is required, particularly in the context of the UNCRC (Scotland) (Incorporation) Bill which will fully and directly incorporate the UNCRC into Scots law, to the maximum extent of the Scottish Parliament's powers, before the end of the current Parliament. Significantly, reports by Lightowler (*Rights Respecting?*) and the Independent Care Review (*The Promise*) – as well as this report – all provide strategic blueprints and innovative recommendations that can improve youth justice policy and practice in Scotland and ensure its compatibility with the UNCRC 1989.

AREAS FOR DEVELOPMENT

Despite these progressive intentions and evidence of existing positive practice, there remain aspects of Scottish youth justice practice which undermine the rights of children who come into contact with the law. For example, the existing MACR is still lower than that recommended in General Comment No. 24 (2019) and the Early and Effective Intervention programme does not enable children to exercise their right to participate. The definition of the child in Scotland remains problematic: 16- and 17-year-olds frequently appear in adult courts rather than at a Children's Hearing which is more suitable for their needs (although it is positive that the Scottish Government is actively consulting on this issue). Furthermore, children's right to privacy – particularly when they have committed serious crimes – is not always respected in Scottish courts, while police use of tasers on children has not yet been prohibited, despite the repeated recommendations of the UN Committee on the Rights of the Child.

Concerns remain about the welfare of children in young offender institutions in Scotland – in particular, children held on remand – along with challenges around provision and capacity in secure care, exacerbated by the selling of places to local authorities beyond Scotland. Significantly, this has a knock-on effect on the rights of children who the purchasing authorities then place away from their home locations, and also, those in Scotland who are accommodated in young offender institutions because of a lack of available secure care. Finally, as repeatedly shown, a lack of publicly available, detailed, disaggregated and consistent data concerning children's interaction with the youth justice system in Scotland makes analysis and scrutiny challenging.

CHAPTER TWO

YOUTH JUSTICE IN WALES

Following on from its devolutionary settlement at the turn of the 21st century, the Welsh Government has partnered with the Youth Justice Board[110] to develop a number of key youth justice policy documents – *All Wales Youth Offending Strategy, Children and Young People First, Youth Justice Blueprint for Wales* – all aimed at upholding the rights of children in contact with the law and treating them as children first, offenders second.

This partnership between the Welsh Government (WG) and the Youth Justice Board (YJB) offers an insight into how youth justice policy and practice have developed within the country post devolution. Fundamentally, this development has occurred on a conferred or joint basis, principally because youth justice constitutes a non-devolved matter with its policy decided in Westminster for England and Wales together, while education, social welfare, health and housing (among other areas) are the prerogative of the Welsh Government.

The chapter adopts a rights-focus to examine the extent to which the rights of children who come into contact with the law are being upheld in Wales. It reviews a number of specific policy areas and structures that intersect with children as they both encounter and find themselves situated within the youth justice system in Wales. The analysis provides the basis for a series of recommendations for actions Unicef UK believes necessary to ensure the rights of children who are in contact with the law are properly recognised, upheld and protected.

UNCRC 1989 ARTICLE 40, 3 (A)

States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.

110 And the Ministry of Justice.

THE MINIMUM AGE OF CRIMINAL RESPONSIBILITY

In Wales, responsibility for setting the minimum age of criminal responsibility (MACR) resides with the UK Government (at Westminster). This means that the Welsh Government at present has no autonomous legislative ability to amend MACR in Wales. Currently, the MACR in Wales (and England and Northern Ireland) is 10 years old, which means that a child who is 10 years or older can be arrested for committing a criminal offence, be sent to court and potentially end up in youth custody. At 10 years of age, the MACR for Wales is among the lowest in Europe, sitting well below the acceptable threshold stipulated in international children's rights standards and four years below the age recommended in General Comment No. 24 (2019) on children's rights in the child justice system (14 years or higher). Accordingly, the UK Government has been consistently reprimanded (see, for example: UNCRC, 2002, 2008, 2016) for its position – criticism that has necessarily also extended to Wales. At a domestic level, similar concerns over MACR have been routinely voiced by the Wales UNCRC Monitoring Group as part of its role in monitoring and promoting UNCRC in Wales. For example, in 2015 the group recommended that the Welsh Government:

> *"Take action to influence UK Government to comply with the recommendations of the Committee on the Rights of the Child, including raising the minimum age of criminal responsibility ... "*[111]

In philosophical terms, the current Welsh MACR of 10 years sits uneasily alongside Wales's (and the Welsh Government's) broader post-devolution ambition to uphold and promote the rights and entitlements of all its children. This commitment has been demonstrated in the production of a series of robust child-centred policy documents and pieces of legislation over the past two decades, including: *Extending Entitlement: supporting young people* (National Assembly Policy Unit, 2000); *Children and Young People: Rights to Action* (WAG, 2004); and *Rights of Children and Young Persons* (Wales) Measure 2011 (WG, 2011). In relation to youth justice in particular, the *All-Wales Youth Offending Strategy* (WAG and YJB, 2004); *Children and Young People First* (WG and YJB, 2014); and, most recently, *Youth Justice Blueprint for Wales* (WG, 2019) have all emphasised a rights-based, child-first approach to children in conflict with the law. Wales's MACR is also out of step with the growing body of maturation and developmental evidence that provides support for raising the MACR (see **Chapter One** for more detail on this evidence). Significantly, despite Wales's inability to independently legislate in respect of MACR, recent political developments have placed MACR back at the centre of political debate in Wales. In 2017, the then Welsh First Minister, Carwyn Jones, launched a Commission on Justice in Wales. The remit of the Commission covered criminal justice and policing; civil, commercial, family and administrative justice; legal education and training; the legal professions and the economy; and the legal jurisdiction. The Commission's terms of reference were to:

> *" ... review the operation of the justice system in Wales and set a long term vision for its future, with a view to:*
>
> *• promoting better outcomes in terms of access to justice, reducing crime and promoting rehabilitation;*
>
> *• ensuring that the jurisdictional arrangements and legal education address and reflect the role of justice in the governance and prosperity of Wales as well as distinct issues that arise in Wales;*
>
> *• promoting the strength and sustainability of the Welsh legal services sector and maximising its contribution to the prosperity of Wales."*[112]

The commission's findings were published in 2019 in the report *Justice in Wales for the People of Wales*. Key among its recommendations were the following:

> *"Building on the reducing numbers of children and young people in custody and those entering*

111 Croke, R. and Williams, J. (2015). *Wales UNCRC Monitoring Group: Report to the United Nations Committee on the Rights of the Child*. Cardiff: Children in Wales, p.62.
112 Welsh Government (2018). *Terms of Reference for the Justice Commission for Wales*. Cardiff: Welsh Government.

the criminal justice system, youth justice policy should be determined and delivered in Wales."[113]

"The age of criminal responsibility should be raised to at least 12 years old in Wales."[114]

If youth justice policy were devolved to Wales – as recommended by the Commission on Justice in Wales and also the earlier Silk Commission[115] – there might be opportunity for Wales to raise its MACR on its own terms (see Brown and Charles, 2019, for more detail concerning this argument). However, the Ministry of Justice's response to the recommendations of the Commission on Justice is that the current MACR works and should remain in place. Echoing the Commission on Justice's recommendations, the Children's Commissioner for Wales has also explicitly stated that she would support devolution of youth justice powers to Wales, along with raising the MACR.[116]

" ... I believe there is a solid foundation for youth justice services here in Wales to support a movement towards increasing the age of criminal responsibility to 16 years of age, or at the very least the recommended age of 14. Alongside this I would also support the devolution of youth justice matters."[117]

It is clear that from a children's rights perspective the current MACR in Wales of 10 years is unacceptable. Given that further devolution of powers in respect of justice will be required for the Welsh Government to be able to instigate its own reform of MACR, it should in the meantime take action at every possible opportunity to influence the UK Government to raise the MACR for England and Wales.

RECOMMENDATION 14

Unicef UK recommends the following actions be undertaken in relation to the minimum age of criminal responsibility (MACR):

1. **The Welsh Government should take action to influence the UK Government at every opportunity to progressively amend MACR to at least 14 years of age in line with General Comment No.24.**

2. **The Welsh Government should ask the UK Government to commit to ensuring that children's views (UNCRC 1989 Article 12) in Wales are recognised in any future legislative processes aimed at raising MACR.**

UNCRC 1989 ARTICLE 40, 3 (B)

States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

113 Commission on Justice in Wales (2019). *Justice in Wales for the People of Wales*. Cardiff: Commission on Justice in Wales, p.19.
114 Ibid., p.19.
115 Commission on Devolution in Wales (2014). *Empowerment and Responsibility: Legislative Powers to Strengthen Wales*. Cardiff: Commission on Devolution in Wales, p.116.
116 Although to a higher age than the Commission on Justice in Wales recommended.
117 Excerpt from a Letter to the Commission on Justice in Wales from the Children's Commissioner for Wales.

THE BUREAU MODEL

Post devolution, diverting children away from the formal processes of the youth justice system and their accompanying criminogenic labelling and stigma has become an increasingly important tenet of Wales's approach to children in contact with the law (see Haines et al., 2013; WG and YJB, 2014; Smith, 2014; Brown, 2019; WG, 2019). The 2014 youth justice strategy drawn up by the Welsh Government and Youth Justice Board is set out in the document *Children and Young People First.* It commits to ensuring that:

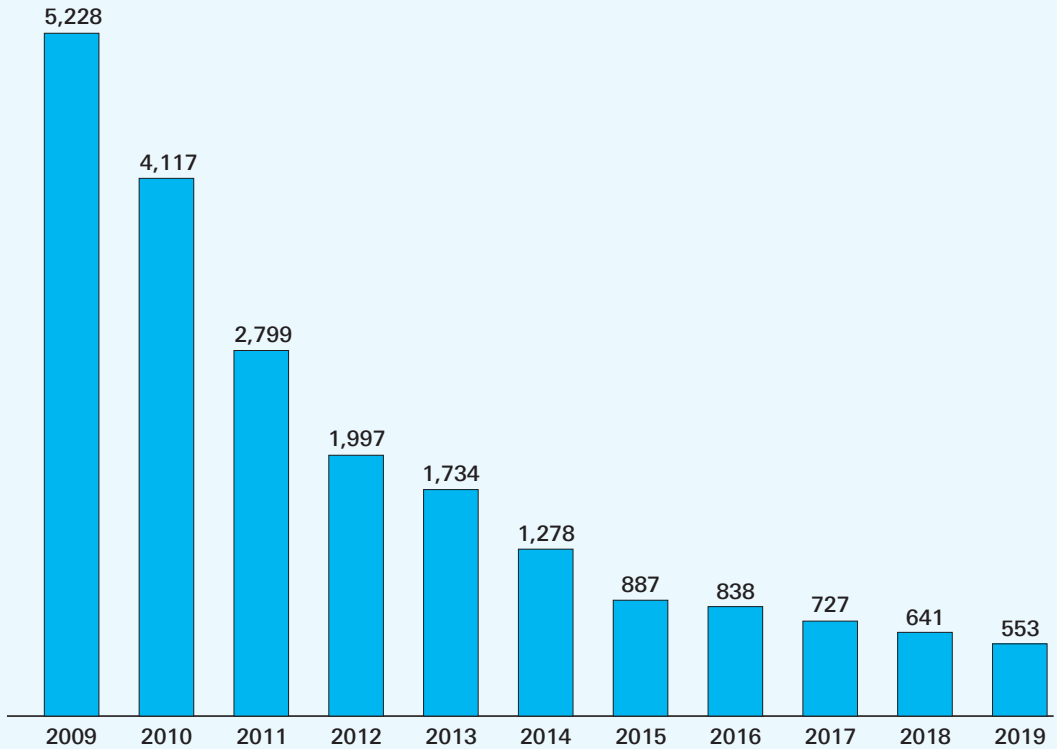
> *"Children and young people are not unnecessarily brought into the youth justice system and are diverted into services which are accountable for and able to meet their needs."*[118]

Reflecting the key finding of McAra and McVie's *Edinburgh Study of Youth Transitions and Crime*, the Welsh strategy acknowledges that children are made vulnerable by contact with the criminal justice system. More recently, the *Youth Justice Blueprint for Wales* has stated that a principal aspiration is to:

> *"Reduce the number of children in the youth justice system through effective diversion ... "*[119]

Although precise statistics relating to the numbers of children who have been diverted at a Welsh national level are not centrally collated and published, "numbers" and "rates" of recorded first time entrants (FTEs)[120] into the justice system in Wales do offer some insight into the overall impact of youth diversion policy and schemes. **Figure 4** shows that numbers of FTEs in Wales fell year-on-year from 5,228 in 2009 to 553 in 2019 – a fall of 4,675 FTEs and a percentage decrease of 99 per cent over the 10-year period.

FIGURE 4: Number of First Time Entrants (FTEs) in Wales: 2009-2019[121]



118 Welsh Government and Youth Justice Board (2014). *Children and Young People First: Welsh Government/Youth Justice Board Joint Strategy to Improve Services for Young People from Wales at Risk of Becoming Involved In, or In, the Youth Justice System*. Cardiff: Welsh Assembly Government /Youth Justice Board, p.4.
119 Ministry of Justice and Welsh Government (2019). *Youth Justice Blueprint for Wales*. Cardiff: Welsh Government.
120 An FTE (first time entrant) is an offender who has received their first reprimand, warning, caution or conviction for an offence processed by a police force in England or Wales or by the British Transport Police.
121 Ministry of Justice and Youth Justice Board (2020). *Youth Justice Statistics: 2018 to 2019*. London: Ministry of Justice and Youth Justice Board. Table 2.8

Figure 5 depicts rates of FTEs in Wales falling year-on-year from a high of 1,711 in 2009 to a low of 200 in 2019 – a percentage decrease of 88 per cent over the 10-year period.

FIGURE 5: Rates of First Time Entrants (FTEs) in Wales: 2009-2019[122]

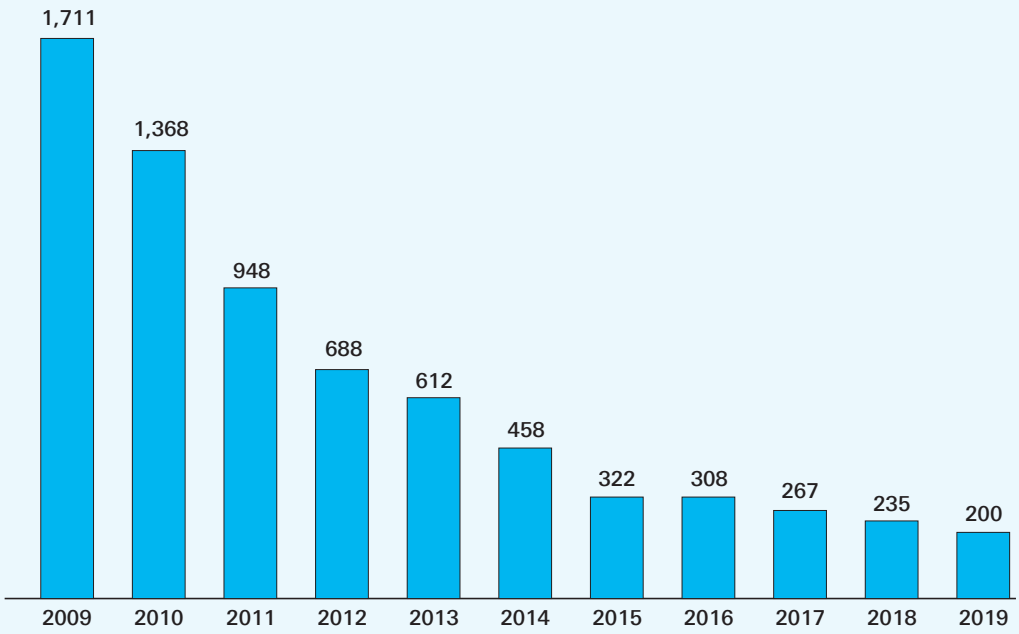


Figure 4 and **Figure 5** both show that there has been a sharp reduction in FTEs in Wales over the past decade, a statistical trend that is clearly encouraging, as it means that fewer children are entering the formal youth justice system. Although it is impossible to know the precise contribution made by diversion policy and schemes to these steep reductions,[123] the notion of diversion has become firmly embedded within Welsh youth justice practice and is now used wherever possible to keep children out of the formal youth justice system. Paragraph 16 of General Comment No. 24 (2019) denotes diversion as a central pillar of a rights-respecting child justice system. In their recent analysis of the rights of children in contact with the law, Lynch and Liefaard have similarly stated:

> *"A principled, consensual and well-delivered diversion process can have considerable advantages for children's rights and interests, delivering a resolution in line with a child's sense of time, and providing a re-integrative outcome that addresses the child's needs."*[124]

The bureau model is among the most prominent and widely researched youth diversionary schemes to have emerged in Wales over the past decade (see Haines and Charles, 2010; Haines et al., 2013; Brown, 2019). The model was originally developed in 2009 in the South Wales city of Swansea, the product of a collaboration between South Wales Police and the Swansea Youth Offending Service. Its design took inspiration and best practice from a variety of youth justice schemes and approaches, both past and present, including the Northampton Juvenile Liaison Bureau,[125] European family orientated schemes and the Scottish Children's Hearings System. Practically, the Swansea bureau model is a rights-based, post offence, but pre-court youth crime diversion model for boys and girls aged

122 Ministry of Justice and Youth Justice Board (2020). *Youth Justice Statistics: 2018 to 2019*. London: Ministry of Justice and Youth Justice Board. Table 2.9

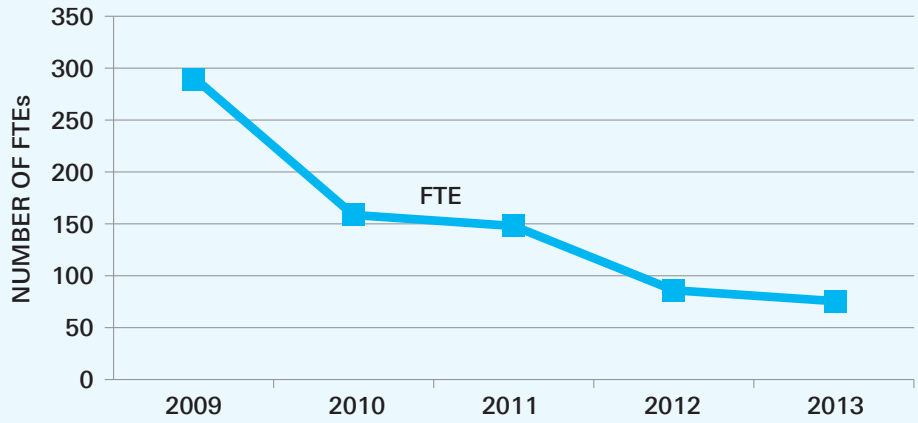
123 In policy terms, the removal of the Offences Brought to Justice (OBTJ) target and corresponding introduction of an FTE reduction target in the Youth Crime Action Plan 2008 have also been significant.

124 Lynch, N. and Liefaard, T. (2020). What is Left in the "Too Hard Basket"? Developments and Challenges for the Rights of Children in Conflict with the Law. *International Journal of Children's Rights*, 28, p.96.

125 The Northampton Liaison Bureau was an effective youth diversion scheme operational in England during the 1980s – a period termed the "decade of diversion", where a new-orthodoxy approach centred around, diversion, decriminalisation and decarceration led to reductions in youth custody.

10 to 17 years old. It consists of two key elements: diversion and support. Initially, it aims to divert children who have committed a low-level offence away from the formal youth justice system via an out-of-court disposal, so reducing the possibility of a child acquiring a criminal record, a label and stigma that can shut down avenues to education and employment and damage their future life trajectory. However, the model encompasses what could be termed 'dual-diversion.' It not only seeks to divert children away from the criminogenic formal youth justice system, but – dependent on the needs of the individual child – also to divert them into positive, appropriate interventions designed to support, to promote pro-social behaviour and to prevent re-offending (see Haines et al., 2013 for an overview of the process). Crucially, the model is child-centric in its structure and workings, striving to include children's contributions within its proceedings and providing meaningful opportunities for participation (cf. Article 12 UNCRC 1989). The model also includes contributions from parents and carers, members of the public (volunteers) and victims within its workings. Academics at Swansea University examined the empirical effectiveness of the Swansea bureau model between 2009 and 2013, largely with respect to FTEs and re-arrest/conviction rates (see Haines and Charles, 2010; Haines et al., 2013; Haines and Case, 2015). Employing secondary-data analysis of Swansea Youth Offending Service data (see **Figure 6**), the numbers suggest that, after the introduction of the Swansea bureau model, locally the number of FTEs fell in from 289 to 159 in 2009/10, from 159 to 147 in 2010/11, from 147 to 86 in 2011/2012, down to 75 in 2012/2013.

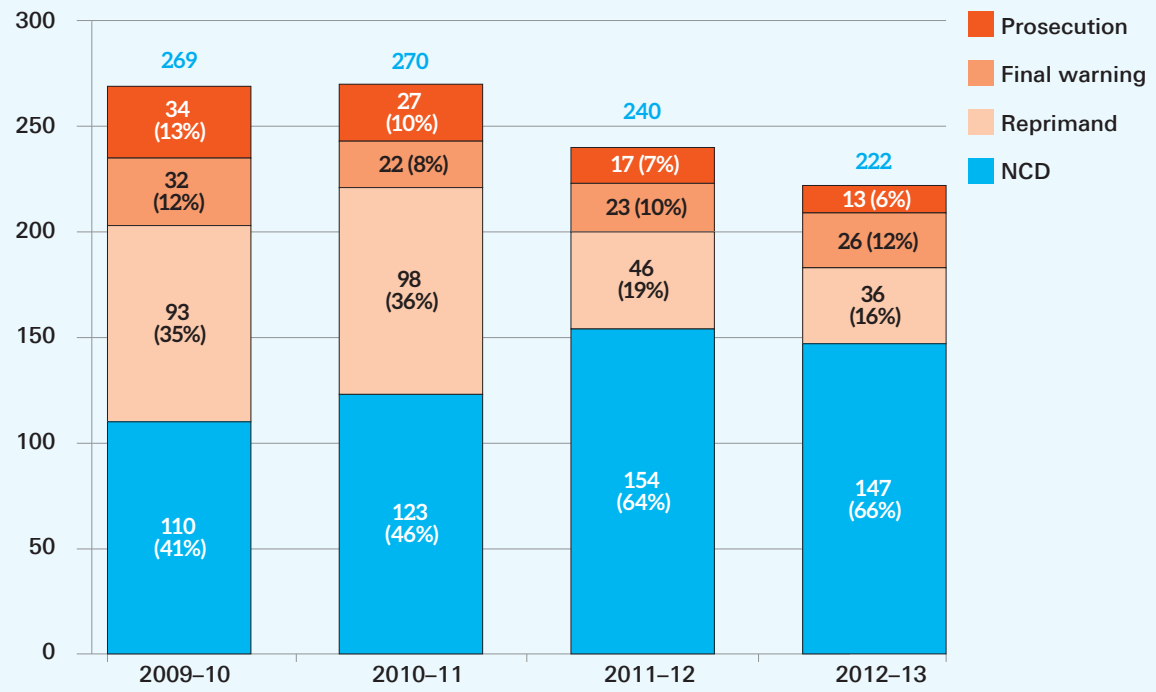
FIGURE 6: Swansea Number of First Time Entrants (FTEs) - Year Ending March 2009 to 2013.[126]



126 Brown, A. (2019). *Examining the Multiple Impacts of Welsh Town Bureaux*. Unpublished PhD Thesis. Swansea: Swansea University.

As a means to analyse further the relationship between the Swansea bureau model and the reduction in number of FTEs, the researchers also looked at the numbers of non-criminal disposals (NCDs)[127] being dispensed – see **Figure 7**. NCDs were given to young people who then entered into the bureau model and as a proportion of all disposals they saw a year-on-year growth in percentage terms. In 2009/10 the number of NCDs dispensed was 110 (41 per cent of all disposals, in comparison to 35 per cent reprimand, 12 per cent final warning, 13 per cent prosecution), rising to 123 (46 per cent) in the following year, and reaching 152 in 2011/12 (64 per cent); in 2012/13 NCDs dipped in number to 147, but still made up the majority of total disposals (66 per cent).

FIGURE 7: Non-Criminal Disposals (NCDs) as a Proportion of All Swansea Bureau Model Disposals. Administered 2009/10 to 2012/13[128]



127 The non-criminal disposal (NCD) was the locally developed out-of-court disposal (without the child acquiring a formal criminal record) used by the Swansea bureau model during this period.
128 Brown, A. (2019). *Examining the Multiple Impacts of Welsh Town Bureaux*. Unpublished PhD Thesis. Swansea: Swansea University.

Likewise, a comparably favourable general pattern was found when measuring data for NCDs and re-arrest/conviction rates. Analysis of the data for the period 2003–2013 indicates that the lowest rates of re-conviction (in percentage terms) resulted from NCDs, followed by reprimands, then final warnings and finally prosecution.

In regard to qualitative analysis, semi-structured interviews were carried out with key stakeholders to better understand why they considered the Swansea bureau model made such a positive impact, particularly in statistical terms. Based on an analysis of these interviews, attention was given to three crucial themes:

1. Stakeholders highlighted the way in which the bureau model embodies Article 12 of the UNCRC 1989 by allowing children in conflict with the law to meaningfully participate in proceedings and be heard.

2. Stakeholders thought that the model benefited from pursuing a child-first agenda, particularly with regard to professional and practitioner expertise and support, as opposed to the retributive and stigmatising measures often favoured.

3. Stakeholders underlined the vital function that parents and carers play within the model, particularly the way in which parents and carers frequently used the "golden fortnight" (the two-week duration of the process) to take measures to address their children's behaviour.

More recent research has examined the impact and effectiveness of bureau models elsewhere in Wales, examining how the model worked across three localities.[129] Taking the three areas together over a ten-year period – the year ending March the 10 years from 2007 to 2017, their FTEs reduced by a total of 91 per cent over that time, compared to an England and Wales total of 85 per cent and a Wales total of 88 per cent over the same period. Additionally, disposal outcome data for all three localities revealed that over a three-year period (2015/16 to 2017/18), for all three Bureaux being examined, the youth restorative disposal (the post LASPOA[130] equivalent to the NCD) was administered as an outcome more frequently than either the youth caution or youth conditional caution (which are situated higher up the out-of-court disposal tariff).

Interviews undertaken with children as part of the research revealed that that there was a consensus among the children and young people interviewed that they "had a voice" in proceedings and "were able to fully participate" in the discussions that took place as part of the process. In respect of the diversionary intentions and underpinnings of the process (the model's "away from" aspect), the children and young people valued the commitment to mitigate the impact of labelling and so keep their future pathways open. In relation to the inclusion of interventions in the process (the "into" aspect), the children and young people generally saw these as a positive and constructive feature of the process, while emphasising that careful monitoring was required of how the interventions were made.

There were challenges within the process, however. These included: a lack of communication between the police and youth offending teams in relation to the use of on-street police community resolutions;[131] difficulties in recruiting volunteer members of the public for the process and differing opinions on their function within it; insufficient information about the workings of the model provided to children and parents and carers at the outset of the process; and the potential need for more gender-specific interventions. More broadly – and this is the case in other youth diversion schemes, too – data recording practices were frequently arbitrary and patchy, which makes robust and demographically detailed analysis challenging. In part, data collection is patchy because at national level youth offending services are not statutorily required to send pre-court diversion figures to the Youth Justice Board and Ministry of Justice to feature in centralised publications and reports. This weakness was

129 Brown, A. (2019). *Examining the Multiple Impacts of Welsh Town Bureaux*. Unpublished PhD Thesis. Swansea: Swansea University. Versions of the Bureau Model now operate across Wales.
130 The 'Legal Aid Sentencing and Punishment of Offenders Act 2012' (LASPO) – This piece of legislation introduced a new set of out-of-court disposals in England and Wales (e.g. youth restorative disposal, youth caution and youth conditional caution).
131 The "police community resolution" is an on-street disposal used by the Police for low-level offences. It can act as a diversionary filter a stage before a child comes into contact with the bureau model.

highlighted recently in a criminal justice joint inspection report, which noted:

> *"Work to divert children from entering the criminal justice system is commonly recognised to be a success story. Our inspection supports that view. It is difficult to prove the success empirically however, since there is little systematic monitoring, beyond knowing that the number of new entrants has fallen considerably and consistently over many years."*[132]

On the same theme, in a submission to the Commission on Justice in Wales, Youth Offending Team Managers Cymru (YMC)[133] argued:

> *"YJB Key Performance Indicators focus on a reduced statutory cohort and needs to acknowledge the work that goes on with the growing cohort of children and young people who are diverted away from the system which results in the reduction of first time entrants."*[134]

Ultimately, the existing evidence suggests that the bureau model, despite certain limitations in its workings, has emerged as a key pillar in Wales's youth diversionary and rights-respecting approach towards children in contact with the law.

TRIAGE

Alongside the bureau model, another youth diversionary scheme that functions in Wales is triage. Broadly, triage, as delivered across England and Wales, has borrowed a framework more commonly associated with emergency hospital treatment to try and speed up the youth justice process. It places youth offending services staff or provider teams within custody suites at the point of criminal processing in order to rapidly evaluate children's requirements (see Smith, 2014; Haines and Case, 2015). Once assessed, the child is sent one of three ways: they are "diverted", they are "committed to interventions", or they are "advanced" through the system. In Wales, and specifically Cardiff and the Vale of Glamorgan, a triage scheme for 10- to 17-year-olds is delivered by Media Academy Cardiff, in conjunction with South Wales Police. The scheme is designed to keep children from receiving a criminal record, ensure that they have support, while also offering them the opportunity to engage in restorative actions.[135]

RECOMMENDATION 15

Unicef UK welcomes the growing emphasis that has been placed on youth diversion policy and practice in Wales. However, Unicef UK is concerned that the full impact of diversion is not yet fully understood because data-recording practices are inconsistent which makes robust and demographically detailed analysis challenging.

Unicef UK recommends that the Welsh Government and Youth Justice Board Cymru invest in research to better understand the true impact of diversion and particularly how it relates to girls, BAME, school-excluded and care-experienced children.[136]

132 HM Inspectorate of Probation and HM Inspectorate of Constabulary and Fire & Rescue Services (2018). *Out of Court Disposal Work in Youth Offending Teams. An Inspection by HM Inspectorate of Probation and HM Inspectorate of Constabulary and Fire and Rescue Services*. Manchester: HMIP and HMICFRS.
133 Youth Offending Team Managers Cymru (YMC) is a forum consisting of 17 of the 18 youth offending teams in Wales.
134 See: https://gov.wales/sites/default/files/publications/2018-06/Submission-yot-managers-cymru.pdf.
135 For more detail on the Media Academy Cardiff and the Vale Triage scheme, see: http://www.mediaacademycardiff.org/triage-3/.
136 See General Comment No.24, Paragraph 113 on this point.

POLICING – CHILD ARRESTS, STOP AND SEARCH, TASERS

As highlighted, youth diversion schemes have taken root in Wales post devolution that are designed to divert children away from the formal youth justice system and the labelling and stigma that can follow. Alongside established youth diversionary schemes, policing activity – and particularly whether a child is arrested and how they are subsequently dealt with – can also have important repercussions for whether a child is accelerated into the formal youth justice system and a potential appearance at court (and a criminal record/sentence); or alternatively, is kept out of the system.

Historically within youth justice in England and Wales there have been periods where police activity and actions have either minimised or exacerbated the possibility of children being unnecessarily criminalised. For example, during the "decade of diversion" in the 1980s, police cautioning – via Home Office Circulars 14/1985 and 59/1990 – was used to deal with children who had committed low-level offences. The effectiveness of this approach was illustrated by the fact that by: "… 1990 some three-quarters of male offenders under 17 and almost nine out of ten female offenders under 17 were cautioned rather than prosecuted."[137]

Conversely, during the New Labour years in office, the "offences brought to justice" target (OBTJ) had the effect of criminalising large numbers of children and pushing them into court. This centralised target pressurised police forces into an unhealthy preoccupation with pursuing performance objectives, leading the Youth Justice Board (YJB) Chair at the time, Rod Morgan, to bemoan the fact that the police were "picking low-hanging fruit" – for example, children.[138] Bearing this point out statistically, Newburn has stated that: "Whereas between 2002 and 2006 there had been an approximately 10 per cent increase in adult OBJT cautions and convictions, the increase was well over 25 per cent in relation to young offenders."[139]

More recently, however, and supported by pivotal research around the dangers of "system-contact,"[140] there has been another shift, this time once again towards preventing the criminalisation of children who come into contact with the law. In 2010, the Howard League for Penal Reform launched a programme working side-by-side with police forces which was aimed at reducing the high number of child arrests occurring in England and Wales. Statistics for the period 2010–2018 demonstrate that every police force in England and Wales arrested fewer children, with 18 police forces achieving reductions in child arrests of over 75 per cent over the eight-year period.

TABLE 4: Number of Arrests 2010-2018 by Welsh Police Service Area.[141]

POLICE FORCE	2010	2011	2012	2013	2014	2015	2016	2017	2018
South Wales Police	5,659	2,551	3,166	3,245	2,978	2,854	2,499	1,820	1,728
Gwent Police	2,503	2,163	1,698	1,569	980	1,172	930	747	466
Dyfed Powys Police	2,307	1,643	1,584	1,165	687	625	501	341	398
North Wales Police	3,420	2,596	2,022	1,780	1,554	1,577	1,532	1,040	791

137 Ashford, A. (2001). 'The decline of English Sentencing and Other Stories'. In M. Tonry and R. S. Frase (Eds) *Sentencing and Sanctions in Western Countries*. Oxford: OUP, p.66.
138 Morgan, R. (2007). 'A temporary respite: Jailing young people in ever larger numbers is not the answer to tackling youth crime'. *Letter to the Guardian newspaper*, 19 February.
139 Newburn, T. (2011). Policing youth anti-social behaviour and crime: time for reform. *Journal of Children's Services*, 6, 2, p.5.
140 McAra, L. and McVie, S. (2007) 'Youth justice?: The impact of system contact on patterns of desistance from offending'. *European Journal of Criminology 4, 3, pp.315–345.*
141 Table adapted from Howard League for Penal Reform data appearing in the document: *'Child arrests in England and Wales 2018: Research Briefing'.* Retrieved from: https://howardleague.org/publications/child-arrests-in-england-and-wales-2018/.

Table 4 demonstrates that each of Wales's police forces have achieved significant reductions in child arrests. Over the period 2010–2018, South Wales Police achieved a 69 per cent reduction; Gwent Police achieved an 81 per cent reduction; Dyfed-Powys police achieved an 83 per cent reduction; and North Wales Police achieved a 70 per cent reduction. These numbers are clearly encouraging and significantly have been supported and underpinned by specific guidance such as the *National Strategy for the Policing of Children & Young People*. The 2016 strategy states:

> *"Getting it wrong, especially when it results in the unnecessary criminalisation of C&YP, can mean heavy costs to the individual for life and the wider society."*[142]

UNCRC 1989 ARTICLE 37 (A)

States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

There are other areas that also require careful monitoring to ensure that policing activity remains child-centred – for example, the area of stop and search. Recently published freedom of information (FOI) request data demonstrates that the volume of stop searches undertaken by South Wales Police sharply increased from 815 in 2016/17 to 1,265 in 2017/18 and 1,978 in 2018/2019. Similarly, Gwent Police's stop searches of children increased from 201 in 2017/18 to 410 in 2018/19. Additionally, FOI data from North Wales Police demonstrates that in 2018/19 there were 274 children under the age of 18 years old stopped and searched resulting in only 17 arrests,[143] while FOI data from Dyfed-Powys Police shows that over the same period a total of 562 children were stopped and searched, of whom none were arrested.[144] In light of these figures, legitimate concerns can been raised about the frequency with which children are being stopped and searched across Wales and whether this is promoting avoidable "system-contact" – which can produce net-widening and up-tariffing impacts.

The use of tasers by police officers on children under 18 years of age (including in Wales) has repeatedly been subject to criticism on international children's rights grounds (see UNCRC, 2008 and 2016). In March 2020, it was announced by the Home Office that police forces in England and Wales would receive £6.7 million pounds to purchase 8,155 devices. A number of police forces in Wales submitted bids and were allocated the full funding they requested: Dyfed-Powys received £99,000 in funding to purchase 120 tasers; South Wales received £273,075 to purchase 331 tasers; North Wales received £137,775 to purchase 167 tasers and Gwent received £66,000 to purchase 80 tasers. These figures suggest that greater numbers of police officers in Wales will have the capability to deploy tasers and, despite the call by the UN Committee on the Rights of the Child for their use to be prohibited, there is nothing to stop tasers being used on children, as evidenced by the latest statistics for "police use of force".

142 National Police Chiefs' Council (2016). *National Strategy for the Policing of Children & Young People*. London: NPCC, p.4.
143 https://www.north-wales.police.uk/previous-foi-requests?query=search&x=26&y=20.
144 https://www.dyfed-powys.police.uk/en/accessing-information/how-to-access-information/freedom-of-information-act/requests-and-responses-disclosure-log/?categoryId=84839.

RECOMMENDATION 16

Unicef UK welcomes the fact that Howard League for Penal Reform data suggests that every police force in Wales over the 2010-2018 period has achieved sizeable (percentage) reductions in child arrests. Unicef UK urges the Home Office and Welsh police forces to maintain their efforts in reducing numbers of child arrests, with the ambition of keeping children out of the formal youth justice system.

Unicef UK recommends the following actions be carried out in relation to the use of tasers:

1. **The UK Government should prohibit the use of tasers on children in Wales who are under 18 years of age.**
2. **The Home Office should review the impact on children's rights presented by increasing numbers of police officers in Wales being equipped with a taser.**

UNCRC 1989 ARTICLE 40,1

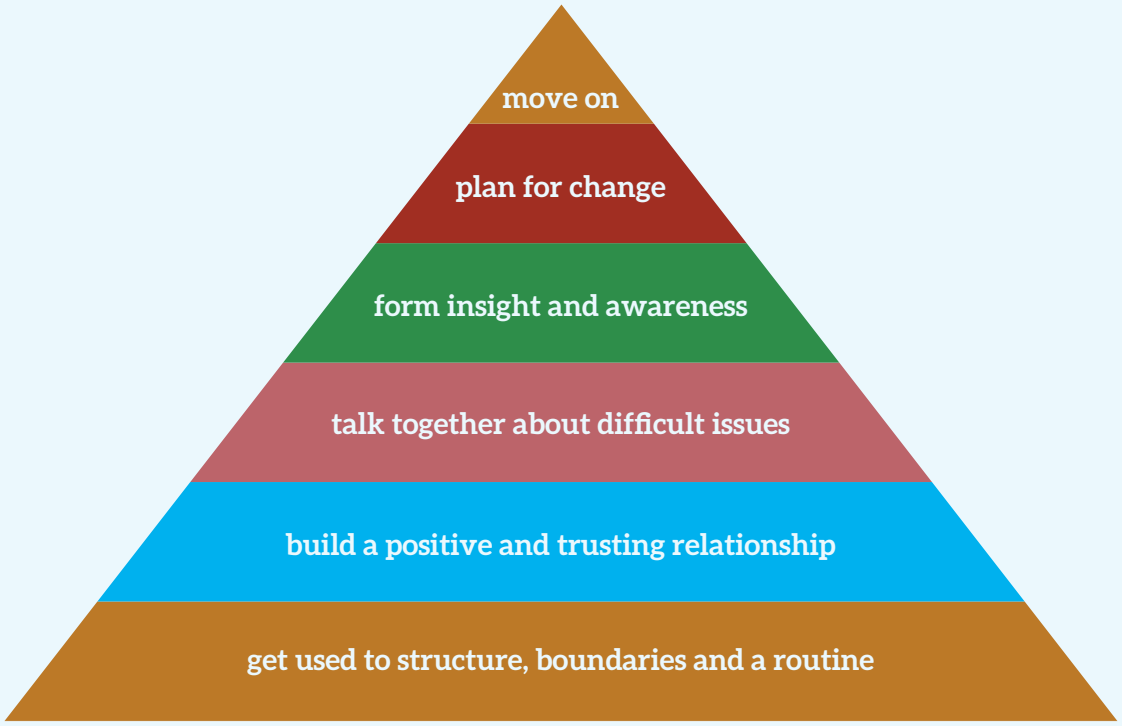
States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

ENHANCED CASE MANAGEMENT (ECM)

The growing emphasis on prevention and diversion activities in Wales has resulted in fewer children entering into the formal youth justice system, ending up in court and successively youth custody. It has been suggested that this filtering process, although clearly positive, has meant that those children who remain engaged with the youth justice system in Wales are often those who possess the most complex needs, have the greatest vulnerabilities and who are routinely engaged in offending behaviour. Analysis by YJB Cymru into the case files of the most prolific offending children in Wales in 2009 found that this cohort were: "a very troubled and troublesome group; vulnerable with a high degree of complexity."[145] Specifically YJB Cymru's analysis uncovered that within this cohort: 48 per cent has witnessed family violence; 55 per cent were abused or neglected; 62 per cent were coming to terms with trauma; 79 per cent had social services involvement; 81 per cent did not have any formal qualifications and 95 per cent had substance misuse issues.[146] Ultimately, the research determined that little progress can be made in reducing re-offending rates (currently 38.4 per cent in England and Wales) unless there is an appreciation of the vulnerabilities and trauma that many children in the youth justice system possess and a fresh approach developed which reflects this understanding. In Wales, this new approach has been termed enhanced case management (ECM) and is underpinned by the trauma recovery model (TRM) developed by Skuse and Matthew which draws upon child developmental and neurological theory and evidence.[147] TRM was originally used within the secure children's home sector in Wales and recognises that children with complex backgrounds and trauma require a specialist approach that takes account of their vulnerability and incrementally builds their capability to engage positively with interventions. Practically, the TRM involves a number of distinct phases or levels (see **Figure 8**) through which the child progresses (supported by practitioners) before they reach a stage where they can achieve behaviour change and move away from offending behaviour.

145 Youth Justice Board and Welsh Government (PowerPoint) *Enhanced Case Management: Developing our approach to complex cases in youth offending teams*. Retrieved from: https://wccsj.ac.uk/hwb-doeth/images/documents/ECM/ECMa.pdf.
146 Ibid.
147 Skuse, T. and Matthew, J. (2015). 'The Trauma Recovery Model: Sequencing Youth Justice Interventions for Young People with Complex Needs'. *Prison Service Journal,* pp.16-25.

FIGURE 8: The Stages of the Trauma Recovery Model[148]



ECM has modified the TRM for use in youth offending teams in Wales to offer a framework for the delivery of assessments and interventions. Practically, the ECM approach involves the development of a genogram (a graphic/pictorial family tree); this is then expanded upon in a session led by a clinical psychologist where a timeline of the child's life journey is created; the resultant data is then used by the clinical psychologist to produce an 'initial case formulation' which provides an account of the challenges in the child's developmental journey which have played a role in their offending behaviour; the information is then filtered through the TRM and used to discern how best to arrange intervention in a way that fits with each child's needs and developmental experiences.

In 2017, an evaluation commissioned by the Youth Justice Board Cymru and Welsh Government was undertaken by CordisBright[149] into the ECM approach, which at the time was being trialled in three youth offending teams in Wales. The evaluation found that there was robust stakeholder engagement with the ECM approach in the youth offending teams in which it was trialled and a belief that it should be extended. Equally, both qualitative and quantitative data appeared to demonstrate that the ECM approach had positively impacted on children's lives. The evaluation concluded by recommending further implementation of the ECM approach in youth offending team settings.

148 Diagram as appears in: Youth Justice Board and Welsh Government (PowerPoint) *Enhanced Case Management Developing our approach to complex cases in youth offending teams*. Retrieved from: https://wccsj.ac.uk/hwb-doeth/images/documents/ECM/ECMa.pdf.
149 Cordis Bright (2017). *Evaluation of the Enhanced Case Management approach: final report*. GSR report number 16/2017. Cardiff: Welsh Government.

RECOMMENDATION 17

Unicef UK recommends the following actions be undertaken in respect of enhanced case management (ECM):

1. **The Welsh Government and Youth Justice Board Cymru should carry out further evaluations of the ECM approach.**
2. **The Welsh Government and Youth Justice Board Cymru should specifically evaluate the extent to which the ECM approach recognises children's views and promotes their participation within its workings (UNCRC 1989 Article 12).**

UNCRC 1989 ARTICLE 40, 2 (B) VII

Every child alleged as or accused of having infringed the penal law has at least the following guarantees: (vii) To have his or her privacy fully respected at all stages of the proceedings.

COURTS AND JUDICIARY – PRIVACY

The Children and Young Person's Act 1933[150] prohibits the identification of defendant children – for example, their name, address, school – appearing at Youth Courts in Wales[151]. It is therefore a criminal offence to breach Section 49 reporting restrictions. This automatic anonymity does not apply to children who appear before adult courts in Wales. However, adult courts can – and often do – impose a restriction order under Section 45 of the Youth Justice and Criminal Evidence Act 1999 which specifically affords children and young people involved in proceedings anonymity until the age of 18.

International children's rights standards (see for example: Article 40 UNCRC 1989; General Comment No. 24 (2019), the Beijing Rules) make clear that all children who appear at court should have their identity and personal details kept confidential: revealing children's identities in legal proceedings can increase the possibility of their experiencing physical and mental harm; can negatively impact upon their wider family; and can also reduce the chance of their successfully reintegrating back into wider society at the end of their sentence (see **Chapter One** for more detail).

In Wales, there have been a number of occasions where children have had their names and personal details revealed by judges overseeing court cases. For example, the identity of a 16-year-old who was convicted of manslaughter at Swansea Crown Court for the death of a pub landlord was revealed by the judge in the case following a written challenge put forward by a Welsh media outlet. There have also been other high-profile cases of children's names being revealed in Welsh courts, such as a 17-year-old who was convicted of murder at Swansea Crown Court and whose identity was revealed by the judge in the case following a challenge by the media.[152] Charlie Taylor (chair of the Youth Justice Board 2017–2020), reviewing the youth justice system in England and Wales in 2016, highlighted the need for reform of reporting restrictions in respect of children appearing in court and recommended that:

150 Specifically, Section 49 of the Act.
151 And England.
152 Keeping to the standard being advocated, a decision has been made not to name the children involved in these cases.

"Further consideration should be given by the Ministry of Justice to whether the law on youth reporting restrictions should be amended to provide for them to apply automatically in the Crown Court (as they currently do in the Youth Court), to children involved in criminal investigations and for the lifetime of young defendants."[153]

However, since justice – and by extension the workings of the law courts – is not currently a policy area for which the Welsh Government has devolved responsibility, any legislative change or reform in this area would need to be enacted by the UK Government.

RECOMMENDATION 18

Unicef UK recommends the following action be undertaken in relation to children's anonymity:

The Welsh Government should urge the UK Government to commit to ensuring the anonymity of all children under 18 years old who come into contact with the law and appear at court in Wales - regardless of the offence they have committed. This anonymity should not cease at 18 years of age but instead should last a lifetime.

UNCRC 1989 ARTICLE 37 (C)

States Parties shall ensure that (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.

YOUNG OFFENDER INSTITUTIONS AND SECURE CHILDREN'S HOMES

At an England and Wales level, examination of youth custody data reveals that, as of the year ending March 2019, there were a total of 832 children residing within the youth secure estate.[154] This estate comprises secure children's homes, secure training centres and young offender institutions. In respect of Wales, the average monthly youth custody population aged under 18 years old for the year ending March 2019 was 26 children.[155] Further analysis of the data reveals that there have been year-on-year decreases in the average monthly youth custody population in Wales over the past 10 years from a high of 136 in the year ending March 2010 to a low of 26 in 2019 – representing a decrease of 81 per cent. Wales's youth secure estate provision currently includes one young offender institution, one secure children's home and no secure training centres.

Her Majesty's Young Offender Institution (HMYOI) Parc, situated in Bridgend, South Wales, is Wales's only young offender institution (YOI). It is run privately by G4S, and is on the same site as, but removed from, a category B men's training prison. The YOI unit has capacity for 64 boys aged between 15 and 17 years old who are either on remand or convicted of a crime. In 2019, HMYOI Parc was subjected to an unannounced inspection by Her Majesty's Chief Inspector of Prisons (HMIP).[156] The inspection described Parc "as easily the best-performing YOI in England and Wales." It highlighted that Parc was deemed to be "reasonably good" in respect of safety and resettlement and "good" in terms of care and purposeful activity. Specifically, the report identified that the unit was particularly strong in relation to education provision and the processes for new arrivals. However, despite this overall upbeat assessment, there were also causes for concern identified. Two particularly concerning findings were that, although levels of violence had reduced since the previous inspection, they "remained high" and that "the level of use of force had reduced marginally but remained higher than at other young offender institutions"[157] (see General Comment No.

153 Taylor, C. (2016). *Review of the Youth Justice System in England and Wales*. London: Ministry of Justice, p.32.
154 Ministry of Justice and Youth Justice Board (2020). *Youth Justice Statistics: 2018 to 2019*. London: Ministry of Justice and Youth Justice Board.
155 Ibid.
156 HMIP (2019). *Report on an unannounced inspection of HMYOI Parc by HM Chief Inspector of Prisons*. London: HMIP.
157 Ibid., p.13

24 (2019), Paragraph f). Significantly, in 2017, the Wales Governance Centre at Cardiff University, via a freedom of information request found that Parc "had the highest rate of self-harm among youth jails in Wales and England that house children between 15 and 17."[158] Given the vulnerability of children detained at Parc, including on remand, this is a concerning statistic that urgently requires addressing.

A broader, but equally significant concern, relates to the information in the 2019 HMIP inspection report that only 30 per cent of children in the unit were Welsh. Worryingly, the inspection also established that "62 per cent of children were over 50 miles from home and half of these were more than 100 miles from home."[159] This is because in 2013/14 the court attachment area for HMYOI Parc extended beyond Wales to encompass parts of South West England. This is not a new trend, with a HMIP inspection in 2017 finding that 20 children in the unit were over 50 miles from their home location, of whom eight were over 100 miles from home.[160] Consolidating this finding, an FOI request by the Wales Governance Centre established:

> *"In Wales, 45% of all Welsh children in custody in 2017 were sent to establishments in England. The remaining 55% of children were being held in custodial institutions in Wales."*[161]

Routinely placing English children in detention large distances away from their home is clearly of concern from a children's rights perspective. An investigation by HMIP in 2016 found that "children who were held further away from home had fewer visits than those who were close to home" and "analysis of data for 595 children showed that children who were further away from home received significantly fewer visits from professionals."[162] Recognising the impact that distance can make in respect to visits to a child in youth detention, General Comment No. 24 (2019), Paragraph 94 states:

> *"To facilitate visits, the child should be placed in a facility as close as possible to his or her family's place of residence."*[163]

However, it would be incorrect to see this as an issue that affects English children only. HMYOI Parc is situated in South East Wales and there is currently no YOI facility in the north or west of the country. Youth Offending Team Managers Cymru (YMC) highlighted this issue in its submission to the Commission on Justice in Wales, emphasising that:

> *"There is no secure facility for young people in North Wales or in Dyfed-Powys. Places in HMPYOI Parc cannot be guaranteed for Welsh young people even though they are a priority. The majority of young people in HMPYOI Parc are not Welsh, statistics are gathered by HMPYOI Parc supporting this month on month."*[164]

What this means is that Welsh children (particularly from North Wales) are frequently placed in detention facilities in England, and specifically within HMYOI Werrington in Staffordshire. This is clearly challenging for every Welsh child who is placed in detention there, far from their home, but as Hughes and Madoc-Jones identified, can pose specific challenges for those who are first-language Welsh speaking. A key finding from their research, which used a questionnaire to examine the situation of imprisoned first-language Welsh speakers, was that respondents identified that:

> *" ... young people placed in the secure estate in England are unable to access services in their first language."*[165]

There is, then, a specific cultural and linguistic disadvantage to first-language Welsh speaking children being placed in youth custody away from

158 See: https://www.bbc.co.uk/news/uk-wales-46186664.
159 HMIP (2020). *Report on an unannounced inspection of HMYOI Parc by HM Chief Inspector of Prisons*. London: HMIP, p.7.
160 HMIP (2018). *Report on an unannounced inspection of HMYOI Parc by HM Chief Inspector of Prisons*. London: HMIP, p.47.
161 Jones, R. (2018). *Imprisonment in Wales: A Factfile*. Cardiff: Wales Governance Centre at Cardiff University & University of South Wales, p.31.
162 HMIP (2016). *The Impact of distance from home on children in custody. A thematic review by HM Inspectorate of Prisons*. London: HMIP, p.9.
163 UN Committee on the Rights of the Child (2019). *General Comment No. 24 (2019) on children's rights in the child justice system*, Paragraph 94. Geneva: UNCRC.
164 YOT Managers Cymru (2018). *Response to Commission on Justice in Wales - call for evidence*. Retrieved from: https://gov.wales/sites/default/files/publications/2018-06/Submission-yot-managers-cymru.pdf.
165 Hughes, C. and Madoc-Jones, I. (2005). 'Meeting the Needs of Welsh Speaking Young People in Custody'. *The Howard Journal*, 44, 4, p.380.

their home communities. Article 2 and Article 30 of the UNCRC 1989 state respectively:

> *"States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status."*[166]

> *"In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language."*[167]

As the above analysis has highlighted, from a children's rights perspective there are challenges around children from Wales being placed in youth detention facilities many miles from their home communities. Equally, children from England are also being placed in youth detention facilities in Wales. This can have a profound impact on the visits they receive but also, in respect of first-language Welsh speakers, can affect children's cultural and linguistic identity. Ultimately, these concerns are long-standing and need addressing urgently. The Welsh Parliament's Communities and Culture Committee identified as far back as 2010 that:

> *"Amongst witnesses there was almost universal acknowledgement that Welsh juvenile offenders should be held closer to home, and preferably within Wales."*[168]

In addition to HMYOI Parc, Wales also has a secure children's home (SCH), Hillside SCH, situated in Neath in South East Wales. Hillside SCH began operating in 1996 and is a key part of social services children's provision. It can accommodate 18 boys or girls between 12- and 17-years-old. Children can be accommodated at Hillside on offence grounds (post court) or because they place a significant risk to themselves or the community. It is part of Neath Port Talbot's social services children's department (although has distinct funding arrangements).

Hillside SCH was subject to two inspections in 2016 (the most recent undertaken); one by the Care and Social Services Inspectorate Wales (CSSIW) and the other by Her Majesty's Inspectorate for Education and Training in Wales (Estyn). The CSSIW inspection findings were largely positive, reporting that: "The service continues to evolve to meet the complex and changing needs of the young people living in the home" and that "There was no requirement to issue any non-compliance notices following this inspection."[169] The Estyn inspection found that outcomes in respect of education were "adequate"; the home's provision and its leadership and management were both deemed to be "good."

166 UN Committee on the Rights of the Child (1989). *UN Convention on the Rights of the Child*, Article 2. Geneva: Switzerland.
167 Ibid.
168 National Assembly for Wales, Communities and Culture Committee (2010). *Youth Justice: The experience of Welsh children in the Secure Estate*. Cardiff: NAW, p.65.
169 Care and Social Services Inspectorate Wales (2016). *Inspection Report*. Merthyr Tydfil: CSSIW.

RECOMMENDATION 19

Unicef UK recommends the following actions be undertaken in relation to young offender institutions (YOI) and secure children's homes (SCH):

1. **The UK Government should prohibit the use of solitary confinement in youth detention settings in Wales.**
2. **End the practice of Welsh children regularly being placed in youth detention facilities far away from their home locations (and correspondingly English children being placed in Welsh youth detention) and consider how Welsh children who have committed offences can be better provided for within Wales – potentially through the creation of additional well-staffed, rights-focused SCH.**[170] [171]
3. **An assessment and analysis exercise should be carried out to determine whether there is sufficient SCH provision currently in place across Wales.**

UNCRC 1989 ARTICLE 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

CHILDREN EXCLUDED FROM SCHOOL

Post devolution, education has been the responsibility of the Welsh Government. Analysis of statistical data reveals that there has been an increase in the number of children permanently excluded from schools in Wales in recent years (removed from their school's register altogether). **Figure 9** illustrates that, following a reduction and then a plateau, numbers of children being permanently excluded have risen year-on-year since 2015/16. In respect of fixed term exclusions (over five days) there have been fluctuations in numbers – but a marked increase in the year 2016/17 (see **Figure 10**). Research suggests that many children who experience permanent exclusion from school already possess vulnerabilities that can be compounded by their removal from mainstream education. A recent study undertaken into school exclusion in Wales concluded:

> *"The findings from this research reveal that children with special needs and others facing multiple disadvantage continue to experience both official and hidden exclusion from school at disproportionately high levels."*[172]

School exclusion can therefore have a significant effect on the most vulnerable children within society and damage their future life trajectories. Children who are excluded from school are more likely to experience low educational attainment, lack of employment opportunities, vulnerability to criminogenic influences and stigmatisation and labelling (see De Friend, 2019).

170 This is especially necessary in the North and West Wales, where no SCH provision currently exists.
171 Unicef UK does not believe that Young Offender Institutions (YOIs) are appropriate settings for children. The Welsh Government should not seek to add to YOI capacity in Wales in attempting to address this problem.
172 McCluskey, G., Riddell, S., Weedon, E., Fordyce, M. (2016). Exclusion from School and Recognition of Difference. *Discourse: Studies in the Cultural Politics of Education*. 37, 4, p.11.

FIGURE 9: Permanent School Exclusions in Wales[173]

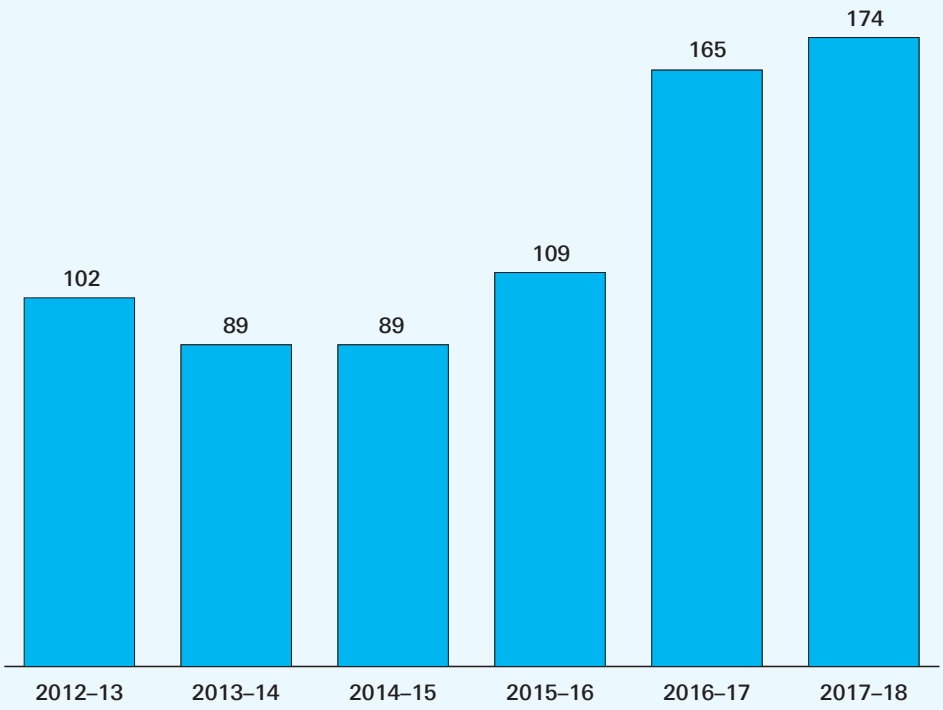
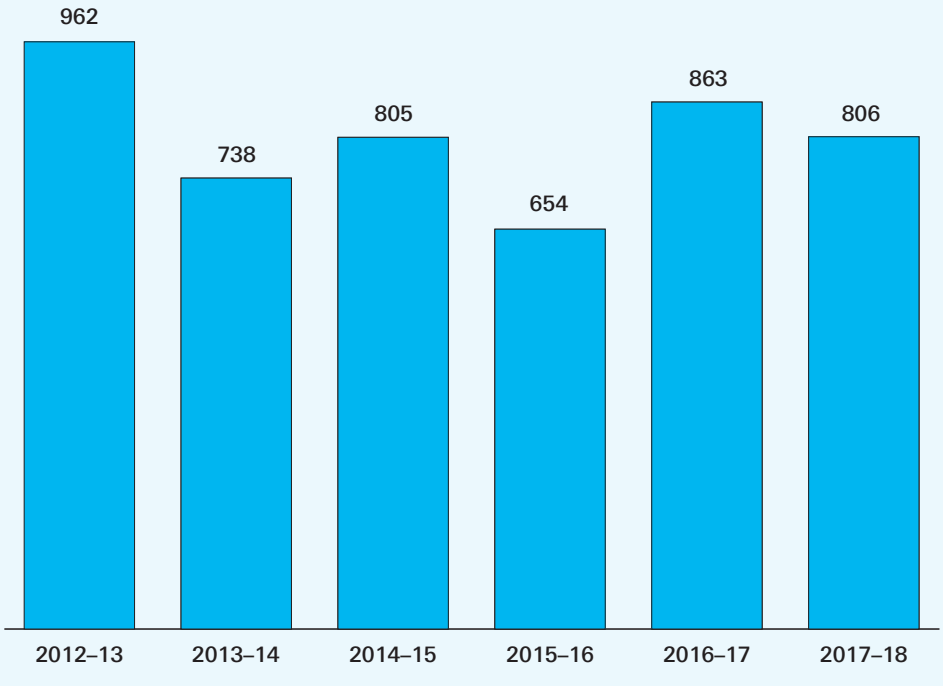


FIGURE 10: Fixed Term Exclusions (Over 5 Days) in Wales[174]



173 Data retrieved from: https://gov.wales/permanent-and-fixed-term-exclusions-schools-september-2017-august-2018.
174 Ibid.

In 2015 the Welsh Government issued guidance entitled *Exclusion from Schools and Pupil Referral Units*. It reminded schools:

> *"A decision to exclude a learner permanently is a serious one. It will usually be the final step in a process for dealing with disciplinary offences following a wide range of other strategies, which have been tried without success."*[175]

Given this national level guidance, it is clearly disappointing that in the years following its publication increases occurred in permanent exclusions from schools in Wales (see **Figure 9**, with data for 2015–2018). The precise reasons for these increases are difficult to specify, but the current trajectory is concerning. The UNCRC's 2016 report on children's rights in the UK made clear that school exclusions should only be used as a last resort and work undertaken to reduce their use. In the light of McCluskey et al.'s earlier research into school exclusions, children possessing vulnerabilities are likely to have been most affected by these recent increases. Ultimately, there is a need to understand more fully why these increases have occurred, who has been most affected, and what can be done to bring about future reductions.

RECOMMENDATION 20

Unicef UK is concerned by the increasing numbers of children being permanently excluded from schools in Wales, and particularly, the impact this is having on some of Wales's most vulnerable children.

Unicef UK recommends the following actions be carried out in relation to school-exclusions:

1. **The Welsh Government should urgently review the reasons behind these increases, as well as identify which children are being the most impacted by them and why this is the case.**
2. **The Welsh Government should outline what steps it is currently taking to explore the relationship between children being outside of mainstream education and enhanced vulnerability to criminal exploitation.**

175 Welsh Government (2015). *Exclusion from Schools and Pupil Referral Units: Guidance*. Cardiff: Welsh Government, p.8.

COVID-19 IMPACT – YOUTH DETENTION

The ongoing impact of Covid-19, and the requirement for self-isolation, means that there is the potential for children in Wales to be locked in their cells for long periods of time. From a children's rights perspective this is clearly unsatisfactory and as General Comment No. 24 (2019) Paragraph 95 b makes clear children should have opportunities to join with their peers and take part in sports, physical exercise, arts and leisure-time activities.

Relatedly, Article 37 of the UNCRC 1989 states that children in detention (or deprived of their liberty) should be treated with humanity and respect for the inherent dignity of the human person. Children with mental health and wellbeing conditions may be particularly negatively affected by spending large periods of time in self-isolation in their cells. It is therefore extremely important that they should be able to access physical and mental health support services whenever needed.

It should always be the case that children held in youth detention facilities in Wales are able to access hand sanitiser, tissues and other hygiene products and are given opportunities to shower and wash regularly.

Practically, the Alliance for Child Protection in Humanitarian Action and UNICEF have recently issued a Technical Note[176] outlining practical steps to be undertaken by State Parties. This guidance should be acted upon in relation to children in youth detention in Wales.

RECOMMENDATION 21

Unicef UK is concerned that children in youth detention in Wales are extremely vulnerable to the short and long-term impacts of Covid-19.

Unicef UK recommends that immediate action be taken in line with the steps identified in *The Alliance for Child Protection in Humanitarian Action and UNICEF Technical Note on Children Deprived of their Liberty*.

176 The Alliance for Child Protection in Humanitarian Action and UNICEF (2020). *Technical Note: Covid-19 and Children Deprived of their Liberty*. Retrieved from: https://alliancecpha.org/en/child-protection-online-library/technical-note-covid-19-and-children-deprived-their-liberty.

Chapter Two Summary

This chapter has examined youth justice practice in Wales and has identified a number of progressive features, but also areas of concern where the rights of children in contact with the law are currently being undermined.

AREAS OF PROGRESS

The analysis of youth justice in Wales has identified that post devolution there has been a specific ambition on the part of Welsh politicians and decision-makers to endorse a vigorous rights and entitlements agenda in respect of every child and young person. This emphasis on children's rights has seeped into youth justice practice within the country – despite youth justice not constituting a devolved matter – and has also underpinned key joint policy documents such as the *All Wales Youth Offending Strategy* (2004), *Children and Young People First* (2014) and the *Youth Justice Blueprint for Wales* (2019) – all of which promote the idea that children who come into contact with the law should always be viewed as children first. Promoting the centrality of children's rights has therefore become a clear and coherent foundation for youth justice policy and practice in Wales.

This progressive ambition has perhaps been most evident in the setting up of innovative, rights-based youth diversion schemes such as the bureau model, which has been recognised domestically and internationally for its child-centred approach. It is also encouraging that Welsh police forces have actively sought to reduce the criminalisation of children, as evidenced by sustained decreases in the numbers of children arrested; and that youth offending teams are adopting an enhanced case management (ECM) approach to engage with children who possess complex needs and have experienced trauma, although more needs to be done to examine the extent to which children are able to participate and their voices heard within its workings.

AREAS FOR DEVELOPMENT

There are, however, still certain areas where the rights of children in contact with the law are undermined in Wales – for example, in relation to the extremely low MACR of 10 years old (which requires UK Government reform); the potential for tasers to be used on children; the identification in the media of children involved in Welsh court proceedings; the detention of Welsh children in facilities outside of Wales (and those from England within Wales); and the worrying rise in permanent school exclusions, despite guidance to the contrary. Finally, as with Scotland, there is a broader issue of a lack of publicly available, detailed, disaggregated and consistent data concerning children's interaction with the youth justice system in Wales (as opposed to conjoined "England and Wales" data), which can make analysis and scrutiny of its workings challenging.

CHAPTER THREE

YOUTH JUSTICE IN ENGLAND

Youth justice in England has experienced a number of philosophical transitions over recent decades. A welfare and treatment-inspired focus on the "needs rather than deeds" of children was dominant up until the late 1970s. Through the 1980s this was superseded by the new-orthodoxy approach, centred around the three pillars of: increased diversion, minimised intervention and reductions in the use of custody. Then the 1990s saw the introduction of the Crime and Disorder Act 1998 with its declaration that: "the principal aim of the youth justice system is to prevent offending by children and young persons."

More recently, youth justice policy and practice has had to operate within the context of austerity, the political uncertainty created by Brexit and the effects of Covid-19. Given the current context, and the increasing vulnerability of many children who come into contact with the law, it is now more vital than ever that their rights are recognised, and their best interests championed.

The chapter adopts a rights-focus to examine the extent to which the UK Government is upholding the rights of children who come into contact with the law in England. It reviews a number of specific policy areas and structures that intersect with children as they both encounter and find themselves situated within the youth justice system in England. The analysis provides the basis for a series of recommendations for actions Unicef UK believes necessary to ensure the rights of children who are in contact with the law are properly recognised, upheld and protected.

UNCRC 1989 ARTICLE 40, 3 (A)

States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.

THE MINIMUM AGE OF CRIMINAL RESPONSIBILITY

The minimum age of criminal responsibility (MACR) in England is 10 years old.[177] This means that any child over 10 years of age in England, if they commit a criminal offence, can be arrested, appear at court and be sentenced to youth detention.[178]

There have been repeated concerns raised around the low MACR in England from a variety of different sources. From an international children's rights perspective, the UN Committee on the Rights of the Child has been at the forefront of holding the UK Government to account on the issue over a number of years (see UNCRC, 2002, 2008, 2016). These criticisms have also been reiterated domestically by organisations such as the Children's Rights Alliance for England,[179] the National Association for Youth Justice,[180] and the Standing Committee for Youth Justice,[181] while at a political level, the Liberal Democrat peer Lord Dholakia has been vocal on the issue and has introduced Bills in the House of Lords designed to raise MACR – to date, without achieving parliamentary completion.[182]

Despite these concerted efforts, the UK Government has consistently rejected raising MACR and is seemingly convinced of its suitability. For example, in its 2014 review of progress in implementing the Convention on the Rights of the Child, the UK Government stated that children above the age of 10 years of age can distinguish between "bad behaviour and serious wrongdoing" and so deemed the MACR to be appropriate.[183] In 2016, during the second reading of Lord Dholakia's MACR Bill, the minister of state at the time again restated the UK Government position that it would not be seeking to change the existing legislation.[184] Likewise, in 2016 in its reply to the regular report by the UN Committee on Rights of the Child on UK progress in implementing the Convention, the UK Government reiterated:

> *"There are no plans to change the minimum age of criminal responsibility in England and Wales. The Government believes those aged ten and over can differentiate between bad behaviour and serious wrongdoing and the public must have confidence the youth justice system will deal with offenders effectively."*[185]

As recently as 17 July 2020, at a House of Commons Justice Committee hearing, Minister of State for Prisons and Probation Lucy Frazer MP once again stated that the UK Government had no plans to change the existing MACR. The UK Government has therefore made it repeatedly clear – despite the growing body of research based on developmental, neuroscientific and criminological evidence arguing for raising the threshold (see Delmage, 2013; Bateman, 2015; Goldson, 2009, 2013; Brown and Charles, 2019) – that it believes that a MACR of 10 years is appropriate for children in England.

Significantly, the current MACR of 10 years in England must be understood in the context of the removal of *doli incapax* as enacted in the Crime and Disorder Act 1998. Up until 1998 *doli incapax* meant that children aged 10 to 14 years old were considered to be incapable of criminal intent – *doli incapax* therefore offered a limited safeguard for children. Practically, this meant that if prosecutors wished to claim a child fully understood their actions, they needed to establish before the court that a child comprehended or knew their actions were a serious wrong, rather than, say, a joke or prank which had simply gone amiss. The abolition by the New Labour government of *doli incapax* had the effect of decreasing the MACR threshold for children in England and exposing those as young as 10 to the criminal law. Ultimately, the current MACR of 10 years old places England at odds with many other European countries (see **Table 5**).

177 When an England MACR of 10 years old is referred to in this section, it also applicable to Wales.
178 This has been the case, at least ostensibly, since the 1960s.
179 Children's Rights Alliance for England (CRAE) (2015). *UK Implementation of the UN Convention on the Rights of the Child: Civil society alternative report 2015 to the UN Committee – England. London: Children's Rights Alliance for England.*
180 National Association for Youth Justice (2012) 6th December 2012…Our letter to Youth Justice Minister Jeremy Wright MP. Retrieved from: http://thenayj.org.uk/6th-december-2012-our-letter-to-youth-justice-minister-jeremy-wright-mp/.
181 Standing Committee for Youth Justice (SCYJ) (2017) *SCYJ briefing: Age of Criminal Responsibility Bill 2017. Retrieved from:* http://scyj.org.uk/publication/scyj-briefing-age-of-criminal-responsibility-bill-2017/.
182 See: https://services.parliament.uk/Bills/2017-19/ageofcriminalresponsibility.html.
183 UN Committee on the Rights of the Child (2015). *Consideration of reports submitted by States parties under Article 44 of the Convention, Fifth periodic reports of States Parties due in 2014. United Kingdom*, Paragraph 248. Geneva: UN.
184 See: HL Hansard, 29 January 2016, Column 1574.
185 UN Committee on the Rights of the Child (2016*). List of issues in relation to the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, Addendum, Replies of the United Kingdom of Great Britain and Northern Ireland to the list of issues*, Paragraph 90. Geneva: UN.

TABLE 5: Minimum Age of Criminal Responsibility (MACR) Across Europe[186]			
COUNTRY	**MACR**	**COUNTRY**	**MACR**
Austria	14	**Italy**	14
Belgium	12	**Latvia**	14
Bulgaria	14	**Lithuania**	16
Croatia	14	**Luxembourg**	16
Rep of Cyprus	14	**Malta**	14
Czechia	15	**Netherlands**	12
Denmark	15	**Northern Ireland**	10
England & Wales	10	**Poland**	15
Estonia	14	**Portugal**	16
Finland	15	**Romania**	14
France	13	**Scotland**	12
Germany	14	**Slovakia**	14
Greece	14	**Slovenia**	14
Hungary	14	**Spain**	14
Ireland	12	**Sweden**	15

The example of Scotland (see **Chapter One**), although still not going far enough, illustrates that raising MACR is achievable where the political will exists. This political will has not yet materialised within the UK Government resulting in a MACR in England that does not adhere to the threshold of "at least 14 years old" outlined in General Comment No. 24 (2019). If the UK Government is serious about conforming to international children's rights standards (and an increasing body of research evidence) then progressive reform of MACR in England is urgently required.

RECOMMENDATION 22

Unicef UK recommends the following actions be carried out in relation to the minimum age of criminal responsibility (MACR):

1. **The UK Government should amend its MACR to at least 14 years of age in line with General Comment No.24.**
2. **The UK Government should commit to ensuring children's views (UNCRC 1989 Article 12) in England are recognised in any future legislative processes aimed at raising MACR.**

186 Table as originally appears in Scottish Parliament (2018). *Age of Criminal Responsibility (Scotland) Bill Policy Memorandum (2018)*. Edinburgh: Scottish Parliament; see also, Brown, A., and Charles, A. (2019). The Minimum Age of Criminal Responsibility: The Need for a Holistic Approach. *Youth Justice* (doi: 10.1177/1473225419893782).

YOUTH OFFENDING TEAM (YOT) SOCIAL WORKER

VIEWS ON MACR

"My view is it isn't right [the MACR] ... children's brains are still developing ... but we are still saying they are fully responsible and should be paying back for offences they have committed."

"If a young person is criminalised, then you are in that system, you are labelled."

"The vast majority of children I have worked with have themselves experienced some form of trauma in their lives."

YOT Social Worker

UNICEF UK YOUTH ADVISORY BOARD

VIEWS ON MACR

"I think children who are doing these really serious crimes, they need help, going to prison isn't the right way – I think it's a cop-out to say if you are over 10 you have to go to prison, I think there could be more done to like help these children. It is like ruling out that they can be rehabilitated and have normal lifestyles."

"There should be more looking at the family situation, their parents, like how it led up to that happening. You have to look at the school environment and all of that."

YAB Member A

"I think that 10 and even 12 is really low – it should be higher. At that age you are not really that independent ... you are not really thinking 'this is going to affect my future employment'. If you are young you might just have a negative reaction to a bad environment that wasn't kind of your fault. For example, if you live in a high crime area or an area with a lot of drugs, that's not your fault you live there at that age."

"If someone at the age of 10 or 12 or below commits a crime, it's not about saying it doesn't matter, of course they are going to be held responsible, but you don't just give them a punishment, you try to help them."

"If it is the job of government, society and the child's parents to kind of take care of children. If that has not happened, instead of punishing the child for what isn't their fault, you need to help them in any way you can now."

YAB Member B

"I don't think they [children] fully realise the repercussions of their actions ... A lot of times people commit crimes because there is something going on in their lives, and children and young people might not think things through as fully and act on impulse."

YAB Member C

YOUTH JUSTICE LIAISON AND DIVERSION SCHEME, TRIAGE AND THE YOUTH RESTORATIVE DISPOSAL

Youth diversion schemes have become increasingly prominent in England since the turn of the decade. The renewed prominence[187] afforded to youth diversion within England[188] can be attributed to a number of factors, including: the introduction of a specific target in the Youth Crime Action Plan 2008 to reduce the number of first time entrants (FTEs) into the youth justice system,[189] and associated changes in policing practices; the influence of austerity subsequent to the 2008 financial crash (youth custody is an expensive option); and the impact of criminological research (for example, McAra and McVie, 2007) around the dangers of unnecessary system-contact. This shift towards "penal moderation"[190] has recently been underscored by the Secretary of State for Justice in the document *Standards for Children in the Youth Justice System* which states that in line with a child-first ethos, agencies engaged with children should make sure that: "All work minimises criminogenic stigma from contact with the system."[191]

This shift in emphasis towards seeking to reduce children's contact with the formal youth justice system (and unnecessary criminalisation) has led to the emergence of a diverse range of youth diversion schemes operating in England[192] (see HM Inspectorate of Probation and HM Inspectorate of Constabulary and Fire & Rescue, 2018, Centre for Justice Innovation, 2019). Most prominent among these youth diversion schemes have been the youth justice liaison and diversion scheme, triage, and the youth restorative disposal (for an overview of these schemes, see: Smith, 2014; Creaney and Smith, 2014; Haines and Case, 2015).

The youth justice liaison and diversion (YJLD) scheme originated from a study funded into diversion and mental health by the Youth Justice Board, Department for Health and the Centre for Mental Health. After some promising results emerging from the research, the YJLD scheme was piloted in six areas in England, commencing in 2008 with funding lasting until 2012. Its main aim was to help children with mental health and developmental difficulties such as SLCN when placed in a justice system lacking the capability and capacity to cater for their needs. The intent of the YJLD scheme was therefore to divert these children away from the formal youth justice system and into specific agencies or interventions with the capability and capacity required. An evaluation of the scheme undertaken in 2012 by Haines et al. found it to be "promising" but that, in some of the pilot sites analysed, the scheme's effectiveness was undermined by a lack of police co-operation.[193]

Triage was launched in 2008 and employs an approach usually associated with emergency medical settings to try and expedite the youth justice process. It places youth offending services in police custody suites at the juncture of criminal processing in order quickly to evaluate children's specific requirements. Once assessed, the child is then sent one of three ways: they are "diverted", they are "designated interventions" or they are "advanced" through the system. The workings of triage were evaluated in 2012 in a Home Office report. The report, although it did not present comprehensive results into "impact" because of a lack of reliability and uniformity in local monitoring data, did state that triage is prized for its diversionary approach.[194] It also found that triage operates best when police are fully aware of and support the scheme's intended objectives.

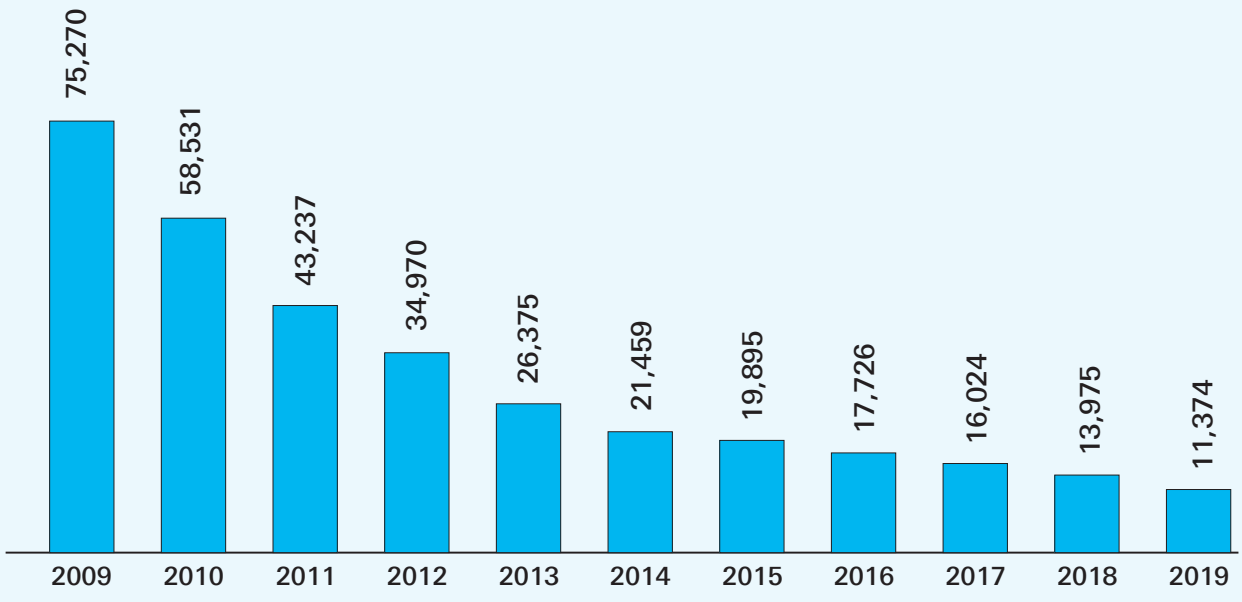
The youth restorative disposal (YRD) flowed out of the Youth Crime Action Plan 2008 and was initiated though a partnership of the Youth Justice Board, Ministry of Justice, Association of Chief Police Officers and the Department for Children, Schools and Families. Its principal objective was to offer a

187 Youth diversion was most notably a foundational pillar of the 1980s new-orthodoxy approach to engaging with children – a period that has been referred to as the "decade of diversion".
188 Youth diversion has also become a prominent feature of engaging with children in Wales, but this must also be understood within the context of Wales' "dragonised" approach to youth justice – see Chapter Two.
189 The Offences Brought to Justice (OBTJ) target had previously disproportionately impacted children and young people.
190 See Cunneen, C., Goldson, B. and Russell, S. (2018). 'Human rights and youth justice reform in England and Wales: A systemic analysis', *Criminology and Criminal Justice,* 18, 4, pp.405–430.
191 Ministry of Justice and Youth Justice Board (2019). *Standards for children in the youth justice system 2019*: London: Ministry of Justice, p.6.
192 Some of these diversionary schemes, such as triage, have also been employed in Wales.
193 Haines, A., Goldson, B., Haycox, A., Houten, R., Lane, S., McGuire, J., Nathan, T., Perkins, E., Richards. S. and Whittington, R. (2012). *Evaluation of the Youth Justice Liaison and Diversion (YJLD) Pilot Scheme – Final Report.* Liverpool: University of Liverpool.
194 Home Office (2012). *Assessing Young People in Police Custody: An Examination of the Operation of Triage Schemes*. London: Institute for Criminal Policy Research, Birbeck, University of London.

rapid and effective method for countering low-level anti-social behaviour without resorting to more formal steps, while also allowing applicable agencies to offer interventions at the earliest opportunity. A YRD was to be applied by the police – one time only – to juveniles found to have committed minor criminality and who had not in the past received a reprimand, final warning or caution. A strong restorative component, taking the form of a written apology letter or in certain cases extending to compensation and reparation arrangements, was central to the workings of the YRD. A 2011 evaluation by Rix et al. into its workings (in eight police force areas) found that contentment with the scheme's workings among police and victims was "high", while offenders were "satisfied". The evaluation did highlight, however, that it was fundamentally a police-guided or owned process, with youth offending teams providing limited input into its daily workings.[195] Significantly, in recent years, these national level diversionary schemes have been supplemented by a variety of local level schemes, including (but not restricted to) the Hampshire Youth Community Court Programme,[196] Cheshire DIVERT[197], Juvenis[198] and the Durham Pre Remand Disposal.[199]

The overall impact made by these diversion schemes, both nationally and locally, is hard to quantify in exact statistical terms. However, as **Figure 11** illustrates, there have been pronounced year-on-year falls in numbers of FTEs entering into the youth justice system in England over the past decade: over the 2009 to 2019 period these FTE reductions have totalled 85 per cent. Despite a lack of relevant data, it is logical to assume that the use of youth diversion schemes in England over the past decade will have played some role in achieving these steep reductions.

FIGURE 11: Number of First Time Entrants (FTEs) in England: 2009-2019[200]



195 Rix, A., Skidmore, K., Self, R., Holt, T. and Raybould, S. (2011). *Youth Restorative Disposal Process Evaluation*. London: YJB.
196 See: Walsh, M. (2013). *Peer Courts UK: Restorative Justice for youths administered by youths*. London: Winston Churchill Memorial Trust Fellowship.
197 See: https://howardleague.org/community-awards/2017-community-awards-winners/.
198 See: https://www.juvenis.org.uk/portfolio/divert-youth/.
199 See: Smith, R. (2014). 'Re-inventing Diversion'. *Youth Justice*, 14, 2, pp.109–121.
200 Ministry of Justice and Youth Justice Board (2020). *Youth Justice Statistics: 2018 to 2019*. London: Ministry of Justice and Youth Justice Board. Table 2.8

It is clearly encouraging that the Ministry of Justice and Youth Justice Board, via local youth offending teams and the police,[201] have committed to preventing where possible children's engagement with the formal youth justice system – in accordance with General Comment No. 24 (2019), Paragraph 16 and Article 40.3 UNCRC 1989. As *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* also states:

> *"Alternatives to judicial proceedings such as mediation, diversion (of judicial mechanisms) and alternative dispute resolution should be encouraged whenever these may best serve the child's best interests."*[202]

However, as is the case with Wales, there remains a lack of robust and comparable data available to help analyse the impact being made by youth diversion practice across England. For example, there is clearly a gap in understanding concerning how diversion is affecting specific groups of children (for example, BAME, care-experienced, girls), or those residing in different locations (urban, rural, suburban). As a result, very little is known as to whether existing youth diversion schemes are meeting the specific needs and requirements of different groups of children, including the most vulnerable. The Centre for Justice Innovation and the 2016 Taylor Review have stated:

> *" ... there appears to be a gap in the capacity of YOTs to capture and analyse the data on diversion. As a result, we are still not in a position to confidently state the number or profile of children being diverted."*[203]

> *"The police and local authorities must pay particular attention to the needs and characteristics of BAME children in designing and operating diversion schemes, and should monitor the rates at which these groups are diverted from court and formal sanctions compared to other children."*[204]

RECOMMENDATION 23

Unicef UK, welcomes the growing emphasis that has been placed on youth diversion policy and practice in England. However, Unicef UK recommends that:

1. **The Ministry of Justice and Youth Justice Board invest in research to better understand the true impact of diversion[205] and how it relates to girls, BAME, school-excluded and care-experienced children in England.[206]**
2. **Solicitors representing children in police stations (e.g. the pre-court arena) should undertake specialist youth justice and children's rights focused training as part of their role.[207]**

UNCRC 1989 ARTICLE 40, 3. (B)

States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

201 Along with other local agency partners.
202 Council of Europe (2011). *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*. Strasbourg: Council of Europe p.25: See also, UN General Assembly (2019). *Report of the Independent Expert Leading the United Nations Global Study on Children Deprived of Liberty.* Paragraph B.1.113.
203 Centre for Justice Innovation (2019). *Mapping Youth Diversion in England and Wales*. London: Centre for Justice Innovation, p.4.
204 Taylor, C (2016). *Review of the Youth Justice System in England and Wales. London: Ministry of Justice*, p.19.
205 The relationship between 'diversion/out of court disposals' and children turning 18 should also be explored – see: JFKL and YJLC (2020). *Timely Justice: Turning 18.* London: JFKL
206 See General Comment No.24, Paragraph 113 on this point.
207 This also applies to Wales.

UNICEF UK YOUTH ADVISORY BOARD

VIEWS ON YOUTH DIVERSION

"It's definitely the right way to do it [youth diversion] ... especially if you can teach these children that all these [smaller] offences build up to a bigger thing."

YAB Member B

"I think [youth diversion] is a really good idea, because you are not just throwing them [children] in jail, you are actively helping them to not commit that crime again."

"If you have chosen to go into law enforcement, it's your job to care about people's wellbeing and their futures as well."

YAB Member B

"I think it's a much better alternative [youth diversion] than having to be sentenced and having a criminal record – it's like reformation, like changing your attitudes and your outlook."

YAB Member C

NATIONAL POLICE CHIEFS' COUNCIL

VIEWS ON YOUTH DIVERSION

"Diverting young people away from the opportunity to commit crime at the earliest point is exactly what we should be doing in policing."

"Those young people who are not diverted away from the system now are often presenting with more complex issues and therefore need a more complex intervention"

NPCC Senior Officer

YOUTH OFFENDING TEAM (YOT) SOCIAL WORKER

VIEWS ON YOUTH DIVERSION

"I think [youth diversion] is needed ... I think that is definitely where a lot more funding is needed, in terms of diversionary activities."

"It's about having the ability to match the intervention to what you need to be doing."

YOT Social Worker

POLICING – CHILD ARRESTS

As highlighted in the previous section, over the past decade a range of youth diversion schemes have emerged in England targeted at diverting children away from the formal youth justice system. Together with the workings of these youth diversionary schemes, policing activity – and particularly whether a child is arrested – can also determine whether a child is expedited into the formal youth justice system and an appearance at court (and possible criminal record or sentence), or alternatively, whether they are kept out of the system (see McAra and McVie, 2007; Petrosino et al., 2010).

In England, as in Wales, recent years have arguably seen a more tempered philosophy develop in respect of how police forces interact with children displaying offending behaviour – particularly when set against the aggressive interventionism that characterised aspects of New Labour's approach.[208] In accounting for this change, the removal of overarching incentivised target frameworks – for example, the Offences Brought To Justice target – and the corresponding introduction of a specific FTE reduction target in the Youth Crime Action Plan 2008 has clearly been important. Also of significance has been the growing role played by the police in many out-of-court youth diversion schemes in England, where a key objective has been to minimise criminogenic stigma and labelling practices. Crucially, this shift in emphasis has been reinforced and given legitimacy by central bodies such as the National Police Chiefs' Council who in their 2016 strategy emphasised:

> *"It is important that young people are not criminalised for behaviour which can be dealt with more appropriately by other means. We need to work in partnership with the Youth Offending Service and criminal justice agencies to ensure that the right support and intervention is in place to reduce offending."*[209]

208 This is a broadly philosophical observation and does not seek to diminish the extremely serious challenges that still exist around the policing of children, such as the continued overrepresentation of BAME and care-experienced children in the youth justice system.
209 National Police Chiefs' Council (2016). *National Strategy for the Policing of Children & Young People*. London: NPCC, p.11.

TABLE 6: Child Arrests by English Police Forces: 2010-2018									
POLICE FORCE	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**
Avon & Somerset	7,255	5,608	4,321	2,929	2,342	1,767	1,533	1,342	1,251
Bedfordshire	1,853	1,692	1,770	1,390	1,290	1,175	1,085	943	682
Cambridgeshire	3,440	2,099	1,473	1,067	1,060	979	1,013	821	715
Cheshire	1,870	1,904	1,508	1,269	1,266	1,292	1,187	1,025	1,007
City of London	273	192	136	122	77	80	51	140	*
Cleveland	4,367	3,368	2,407	1,862	1,527	1,358	1,206	936	760
Cumbria	1,274	1,864	1,263	1,125	1,073	1,034	900	554	405
Derbyshire	4,194	3,938	*	1,930	1,840	1,573	797‡	1,038	994
Devon & Cornwall	4,132	3,363	2,398	1,431	1,470	1,297	994	895	884
Dorset	2,310	1,053	1,252	815	770	916	447	459	495
Durham	3,658	2,841	1,767	1,445	1,493	1,193	1,157	1,009	830
Essex	7,739	5,870	4,237	3,931	3,718	2,635	2,588	1,923	1,942
Gloucestershire	1,516	1,412	1,268	920	861	725	663	649	580
GMP	*	10,903	7,807	6,144	5,969	4,587	3,714	3,197	2,799
Hampshire	8,267	6,533	5,091	6,058	3,192	2,295	1,711§	3,960	4,044
Hertfordshire	3,948	1,809	2,478	1,776	1,753	1,632	1,558	1,480	1,656
Humberside	5,751	2,067	2,732	2,008	1,460	1,300	1,409	1,385	1,202
Kent	7,505	6,409	4,412	4,602	3,752	2,967	2,900	2,683	2,070
Lancashire	9,779	5,476	4,158	3,201	2,887	3,074	2,775	1,893	1,826
Leicestershire	3,322	2,685	2,252	1,670	1,553	1,103	806	1,129	1,104
Lincolnshire	*	1,911	1,290	1,027	990	1,117	913	779	745
Merseyside	10,197	8,421	6,213	5,066	5,295	3,273	2,570	2,336	2,151
Metropolitan	46,079	39,901	30,155	26,442	23,402	22,328	20,387	17,672	13,791
Norfolk	2,510	2,201	1,316	1,384	1,561	1,602	1,261	1,083	1,374
North Yorkshire	4,525	3,644	1,152	1,556	1,445	1,317	1,291	1,034	1,077
Northamptonshire	2,594	2,177	1,660	1,289	1,270	1,115	885	880	918
Northumbria	11,407	9,280	6,983	5,990	5,280	3,829	2,838	2,440	2,136
Nottinghamshire	5,743	4,640	2,989	2,189	2,319	1,840	1,466	1,466	1,357
South Yorkshire	6,235	5,094	3,344	2,693	2,285	1,812	1,396	1,302^	*
Staffordshire	4,163	3,316	2,491	1,741	1,418	1,808	1,350	1,081	1,105
Suffolk	3,716	1,684	1,388	1,118	1,030	1,011	858	903	1,034
Surrey	1,955	1,974	1,483	1,524	1,624	1,338	889	730	751
Sussex	5,779	4,564	4,423	4,018	3,220	2,679	2,185	1,893	1,766
Thames Valley	8,012	6,539	2,531§	3,808	3,225	2,872	2,446	2,482	2,525
Warwickshire	1,419	1,050	673	623	563	619	597	447	411
West Mercia	5,491	3,442	2,664	1,758	1,418	1,354	1,247	805	655
West Midlands	14,387	10,487	7,484	7,123	5,803	5,438	5,244	4,674	4,049
West Yorkshire	12,947	10,600	7,492	6,148	5,417	5,045	4,663	3,953	3,697
Wiltshire	2,262	1,997	1,054	1,122	991	1,048	953	778	747
TOTAL	231,874	194,008	139,515	122,314	107,909	94,436	81,933	74,199	65,535

* Data unavailable
§ Limited data – some data was lost when a new system was introduced
‡ Police force provided data for number of children arrested not number of arrests. 2017 and 2018 data relates to number of arrests and is therefore not directly comparable with previous data
^ Does not include data from 6 December 2017 onwards when a new recording system was implemented

Since 2010, the Howard League for Penal Reform has worked closely with police forces in England and Wales to reduce the criminalisation of children. The Howard League's statistics reveal that every police force in England and Wales has managed to lower their number of child arrests over an eight-year period between 2010 to 2018 (see **Table 6**). The performance of the Metropolitan Police Service is particularly striking, with child arrests reduced by 70 per cent over the period. This general pattern of fewer children being arrested by English police forces over the last eight years is clearly encouraging. However, as **Table 6** also illustrates, a number of police forces have seen a rise in their most recent arrest figures for the year 2018: for example, Dorset, Essex, Hampshire, Hertfordshire, North Yorkshire, Northamptonshire, Staffordshire, Suffolk, Surrey and Thames Valley. As the Howard League for Penal Reform has identified:

> **"In some areas 2018 saw a plateauing of reductions of child arrests and in a worrying number of force areas there has been a small creep upwards. Political pledges to dramatically increase the numbers of new police officers on the street should not divert forces from continuing to target resources intelligently, or derail the tremendous success achieved in reducing child arrests over the last decade."**[210]

Ultimately, given the large reductions in numbers of child arrests achieved by all police forces in England over the eight-year period, sizeable year-on-year reductions may be less likely in the future, particularly for smaller police forces, and smaller reductions or a plateauing effect may be expected. However, it will be important to monitor carefully future child arrest data to observe whether the increases seen in 2018 are an anomaly, or rather constitute the start of a sustained upturn which would clearly be concerning from a children's rights perspective.

Despite the broadly encouraging trend of reductions in numbers of child arrests over a sustained period, the Howard League for Penal Reform has also made clear that further improvement in this area is still required, emphasising in particular the continued impact of arrests on certain groups of children, including those who are victims, are BAME or who are situated in care settings.

RECOMMENDATION 24

Unicef UK, welcomes the fact that Howard League for Penal Reform data suggests that every police force in England over the 2010-2018 period has achieved reductions in numbers of child arrests.

However, in light of 2018 upturns in child arrest figures amongst a number of English police forces, Unicef UK urges the Home Office and English police forces to continue to maintain efforts to reduce numbers of child arrests, with the ambition of keeping children out of the formal youth justice system.

NATIONAL POLICE CHIEFS' COUNCIL

VIEWS ON CHILD ARRESTS

"I think when we first had that strategy [NPCC Strategy] in 2016 the concept of child-centred policing – even the terminology and language – wasn't something that was being discussed within policing. So, I think having a child-centred policing strategy was really helpful and to articulate to officers the UNCRC rights of the child and outline those key principles ... So, to put a mark in the sand that this is important was a good step forward ... There was already a downward trend in the numbers of young people being arrested and entering into the criminal justice system, so [the NPCC Strategy] continued that progression."

"Interestingly in the last Howard League report there were quite a few areas [police forces] that are beginning to plateau ... so we may have reached a point where things are starting to change a bit – in a sense, we will always need to arrest some young people, but we need to make sure we are arresting those who really need it."

NPCC Senior Officer

210 Howard League for Penal Reform (2019). *Child arrests in England and Wales 2018: Research Briefing*. London: Howard League for Penal Reform, p.2.

UNCRC 1989 ARTICLE 3,1 /ARTICLE 37 (A)/ ARTICLE 40,1

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society

POLICING – TASERS, SPIT-HOODS, SEXTING, POLICE CUSTODY

Tasers are devices designed to incapacitate an individual posing a threat via a high-voltage electrical discharge and have been increasingly used by police forces in England.[211] They were first trialled in 2003 by authorised firearm officers in five police forces, before being trialled in 2007 by non-firearm officers (known as "specially trained officers") in 10 police forces. Following on from the trial, in 2008, taser use was extended to all specially trained officers in police forces. The use of tasers by police officers on children under 18 years of age has been subject to criticism on children's rights grounds. As far back as 2008, the UN Committee on the Rights of the Child recommended to the UK Government[212] that they:

> *" ... treat Taser guns and AEPs as weapons subject to the applicable rules and restrictions and put an end to the use of all harmful devices on children."*[213]

In 2014, notwithstanding the UN Committee's concerns, the UK Government confirmed that children would not be exempt from being subjected to taser if they posed a threat, stating:

> *"The UK Government has carefully considered the UN Committee's recommendation that it should end the use of Tasers and Attenuating Energy Projectiles (AEPs) on children. While we support the recommendation in principle, we believe it is impractical to implement it while Taser is in use for other age groups and officers' first priority must be to defend members of the public or themselves."*[214]

211 See McGuinness, T. (2016). *Taser Use in England and Wales. Briefing Paper, Number 7701*. London: House of Commons Library.
212 Encompassing England.
213 UN Committee on the Rights of the Child (2008*). Consideration of Reports Submitted by State Parties Under Article 44 of the Convention. Concluding Observations: United Kingdom and Great Britain*, Paragraph 31. CRC/C/GBR/CO/4. Geneva: UN.
214 HM Government (2014). *The Fifth Periodic Report to the UN Committee on the Rights of the Child*, Paragraph 33. London: HMSO.

In 2016, in Paragraph 39, the UN Committee on the Rights of the Child once again warned the UK Government about the use of tasers in respect of children:

> *"The Committee is concerned about: (a) The use by the police of Tasers and, in the case of Northern Ireland, attenuating energy projectiles against children in the four devolved administrations."*[215]

In 2019, in its *Concluding Observations on the Sixth Periodic Report of the United Kingdom and Great Britain and Northern Ireland*, the UN Committee Against Torture stated in respect of tasers:

> *" ... the Committee is concerned about the reported increase in their use, including on children and young people, and their disproportionate use against members of minority groups."*[216]

Additionally, medical concerns around the impact of tasers on children have also been highlighted by the Scientific Advisory Committee on the Medical Implications of Less Lethal Weapons (SACMILL).[217] The increasing extent to which tasers are being used on children has recently been highlighted by the Children's Rights Alliance for England (CRAE) with freedom of information data for 2017/18 gathered from 29 police forces revealing that 51 per cent of children who had taser used on them in England were from a Black, Asian and Minority Ethnic (BAME) background.[218] Worryingly, CRAE has also identified in respect of Metropolitan Police Service (MPS) data that Black children are most at risk of being tasered:

> *"Looking at MPS data alone the figures are even more shocking and show that for 2017–2018, the number of Taser incidences involving children aged 0-17 was 526. Of those 54% involved black children (black or black British), 4% mixed, 9% Asian, 1% Chinese, 2% other, 2% don't know and 28% were white."*[219]

More recent data confirms this trend, revealing that from January to October 2019, BAME children made up 74 per cent of MPS taser use on children.[220]

RECOMMENDATION 25

Unicef UK is concerned that tasers are increasingly being used by English police forces on children (and in certain police forces disproportionately on BAME children). Unicef UK recommends that the following actions be undertaken:

1. **The UK Government should prohibit the use of tasers on children in England who are under 18 years of age.**
2. **The Home Office should review the impact on children's rights presented by increasing numbers of police officers in England being equipped with a taser.**
3. **The Home Office should assess the reasons for the disproportionate use of tasers on BAME children in England.**

A spit-hood is a bag constructed out of mesh which is placed over the head of a detained individual by a police officer to stop them from spiting or biting, with the aim of preventing injury or infection to the police officer. Spit-hoods are now used by the bulk of police forces in England and are increasingly being used on children who come into contact with the law.

Home Office and CRAE freedom of information (FOI) statistics demonstrate that over the period April 2018 to March 2019 spit-hoods were used on children on 312 occasions (including four children who were aged under 11 years old), compared to

215 UN Committee on the Rights of the Child (2016). *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*, Paragraph 39. CRC/C/GBR/CO/5Geneva: UN.
216 UN Committee Against Torture (2019) *Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland*, Paragraph 28. Geneva: UN.
217 HQSG/SACMILL/STATEMENTS/001/TASER_X2_CED, dated 30 August 2016
218 CRAE (2019). *State of Children's Rights in England 2018. Policing and Criminal Justice*. London: Children's Rights Alliance for England.
219 Ibid, p.6.
220 CRAE (2020). *Children's rights and policing: Tasers and children's rights*. London: Children's Rights Alliance for England, p.5.

47 occasions recorded in 2017 and 27 recorded in 2016.[221] In particular, CRAE FOI data has identified the disproportionate use of spit-hoods on certain groups of children in England, and strikingly within London:

> *"Across the whole period requested for 2017 and 2018, BAME children accounted for 34% of spit-hood use nationally and 72% of MPS use. This shows hugely disproportionate use of spit-hoods on BAME children given that they make up approximately 18% of the 10-17 year old population."*[222]

RECOMMENDATION 26

Unicef UK is concerned that spit-hoods are increasingly being used by English police forces on children and recommends that:

1. **The UK Government prohibit the use of spit-hoods on children in England who are under the age of 18 years old.**[223]

2. **The Home Office assess the reasons for the disproportionate use of spit-hoods on BAME children in England.**

Children's use of social media platforms has increased exponentially over recent years. UK level statistics from Ofcom show that, in respect of online users: 1 per cent of 3- to 4-year-olds; 4 per cent of 5- to 7-year-olds; 21 per cent of 8- to 11-year-olds and 71 per cent of 12- to15-year-olds possess a social media account.[224] Against this backdrop, there have been increasing concerns around the exposure of children to "sexting". Sexting is the sending of a sexual or naked image or video to another person, sometimes known to the sender, but who may also be a stranger. In line with children's increasing use of social media, numbers of incidents of sexting between children have also risen. National Police Chiefs' Council data for police forces across England and Wales[225] reveals that there were 2,700 sexting offences in 2014/15, rising to 4,681 in 2015/16 and increasing again in 2016/17 to 6,238 – constituting a 131 per cent growth over the period.[226]

Within England,[227] Section 1 of the Protection of Children Act 1978 (England and Wales), as amended in Section 45 of the Sexual Offences Act 2003 and Section 67 of the Serious Crime Act 2015, states that it is unlawful for a person to develop or disseminate sexual images of any person under 18 years old – even if that person is under 18 years of age themselves at the time. Police are required to record on police systems all sexting offences as a crime in line with Home Office counting rules (HOCR). As of 2016, the Home Office introduced Outcome 21 as an outcome code that could be used by the police to respond proportionately to instances where a sexting offence had been committed by a child – and where there was potential for them to be unnecessarily criminalised. Outcome 21 effectively states that no formal action should be undertaken in respect of the child:

> *"Further investigation, resulting from the crime report, which could provide evidence sufficient to support formal action being taken against the suspect is not in the public interest – police decision."*[228]

However, even where Outcome 21 has been administered by the police, a police record will be kept of the incident and the coding does not automatically guarantee that the child's police record will not be disclosed as part of a future Enhanced Disclosure and Barring Service (DBS) check; a chief officer in a police force might deem the information relevant to a particular form of employment, for example a role working with children. Bond and Phippen used FOI requests to research the use of Outcome 21 by police forces in England and Wales. From the statistical data they received, they concluded:

221 CRAE (2020). *Children's rights and policing: Spit-hoods and children's rights*. London: Children's Rights Alliance for England, p.4
222 Ibid, p.4.
223 Where applicable, this recommendation also applies to police forces in Wales.
224 Ofcom (2020). *Children and parents: Media use and attitudes report 2019*. Retrieved from: https://www.ofcom.org.uk/research-and-data/media-literacy-research/childrens.
225 There is a lack of available England-only police force data in respect of sexting offences.
226 See: https://news.npcc.police.uk/releases/police-responding-proportionately-to-rising-number-of-sexting-incidents.
227 And also, Wales.
228 College of Policing (2016). *Briefing Note: Police Action in Response to Youth Produced Sexual Imagery ('Sexting')*. Retrieved from: https://www.college.police.uk/News/College-news/Documents/Police_action_in_response_to_sexting_-_briefing_(003).pdf p.4.

"It is positive that outcome 21 recording is, in a lot of cases, being applied far more than arrest. However, we still see that arrest of minors does occur. Perhaps more concerning, however, is that the practices seem highly inconsistent across forces and young people may still be subject to a postcode lottery should they be discovered engaging in the exchange of images."[229]

RECOMMENDATION 27[230]

Unicef UK welcomes efforts by police forces in England to reduce the unnecessary criminalisation of children via the use of Outcome 21.

However, Unicef UK believes that there is (a) a need for the Home Office to more comprehensively examine the reasons behind apparent discrepancies between police forces in the administering of Outcome 21 and (b) a need for the Home Office to examine the extent to which Outcome 21 information is being disclosed by police forces in respect of Enhanced DBS Checks.

NATIONAL POLICE CHIEFS' COUNCIL

VIEWS ON SOCIAL MEDIA

"We undertook a national survey with young people to understand what they wanted from engagement from the police ... 80 per cent of that 5,000 [surveyed] said that you should be on social media because that's where we are and we can't believe you are not there."

"And that's been an interesting journey for policing generally to try and work out what our role in social media should look like. Is it about community engagement? Is it a place for people to report crime? Should we be policing it?"

"We have created an Instagram channel called 'yourpolice.uk' and we did a lot of work with young people before we started to get the tone right, and the information they wanted. We created three pillars that we base all our information and content around. So, we have a pillar all about the law – so we explain the law in a simple way. We have a pillar that are issues that are relevant for young people that they want to talk about, and we have a pillar about the police and demystifying the police and what we do. And we have a digital Youth Advisory Group of just under 100 young people that we meet with monthly that give us feedback."

"We've been going for about a year and we've got around 11,700 followers, but we get a lot of engagement from young people. We respond to every post and DM. They want to talk about lots of issues ... some of them come on angry, but they talk to us, and that's a great starting point!"

NPCC Senior Officer

229 Bond, E. and Phippen, A. (2019). *Police Response to Youth Offending Around the Generation and Distribution of Indecent Images of Children and its Implications.* Suffolk: University of Suffolk/Marie Collins Foundation, p.7.
230 This recommendation also applies to police forces in Wales.

Police custody is a key setting certain children in contact with the law in England will experience. However, it is a component of the youth justice system which remains largely concealed from examination, particularly when compared to the workings of the youth custody estate. Gibbs and Ratcliffe have written of police custody:

> *"Police custody is a hidden world to which few outsiders have access. Lawyers and volunteers go in and out, but little hard data is available about those who are imprisoned in police cells, who they are and why they are there."*[231]

It is widely accepted that police custody does not constitute an appropriate setting for children and that a sustained stay in a police cell can have a detrimental impact on children's wellbeing (Home Office, 2017). Article 37 (b) of the UNCRC 1989 states:

> *"No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time."*[232]

Domestic law recognises the harmful effect police custody can have on children and the Police and Criminal Evidence Act (PACE) 1984 states that when children have been charged, but denied bail, they should be removed from police custody and placed in suitable local authority accommodation. However, research suggests that this does not routinely happen, and children are consequently spending many hours and sometimes days in police custody settings. In 2011, the Howard League for Penal Reform determined, using FOI requests, that in 2008 and 2009 there were roughly 53,000 overnight detentions of under-16-year olds, according to data from 24 police force areas in England and Wales.[233] In 2015, HMIC also undertook a thematic inspection to better understand the "welfare of vulnerable people in custody" and found that in each of the six English and Welsh police forces inspected, children were being detained overnight in police custody.[234] Recognising the persistent deficiencies in this area, the Home Office in 2017 produced a concordat clearly specifying the obligations and duties of both the police and local authorities in relation to the detention of children in police custody.[235] Despite the long-standing concerns about how children in police custody are treated once they have been charged (Bateman, 2020), inspections of English police custody suites are still routinely finding children denied bail detained there, rather than being placed in local authority accommodation (see 2020 HMICFRS inspections into Leicestershire, Sussex, Bedfordshire, Northumbria police custody suites). To provide just one example, the inspection report into Leicestershire police custody suites found:

> *"In the year to 31 January 2020, 33 children had been charged and refused bail. Of these, three had been remanded for only a short time before being sent to court, so other accommodation had not been required. Of the remainder, 24 requests had been made to the local authority for alternative accommodation but none of the children had been moved, which was a poor outcome for them."*[236]

In each of the issues covered here – arrests, tasers and spit-hoods, sexting and police custody – interaction between children and police is a key overarching dynamic with important implications for children's rights. CRAE, in a survey conducted as part of its *See it, Say it, Change it* project, found that 55 per cent of the children who responded felt the police did not have a good relationship with children, while 8 per cent thought that police harassed children; numerous children felt that the police had an unconstructive stance towards them and were "rude, judgemental and heavy handed" in their approach.[237] The report also included interviews with children, sharing at greater length their views on their experiences of policing: they felt the police

231 Gibbs, P. and Ratcliffe, F. (2020). *24 hours in police custody – is police detention overused?* London: Transform Justice, p.2.
232 UN Committee on the Rights of the Child (1989). *The United Nations Convention on the Rights of the Child,* Article 37b. Geneva: UNCRC.
233 The Howard League for Penal Reform (2011). *Overnight Detention of Children in Police Cells*. London: The Howard League for Penal Reform. See also: Bateman, T. (2013). *Detaining Children at the Police Station: A Failure to Comply with Legislation*. London: NAYJ.
234 HMIC (2015). *The Welfare of Vulnerable People in Police Custody*. London: HMIC, p.94.
235 Home Office (2017). *Concordat on Children in Custody*: *Preventing the detention of children in police stations following charge*. London: Home Office.
236 HMICFRS (2020). *Report on an unannounced inspection visit to police custody suites in Leicestershire.* London: HMICFRS. pp.37–38.
237 CRAE (2018). *Children Speak Out on Policing and Youth Justice*. London: CRAE.

did not listen when they said they were experiencing pain when being arrested and that they would not be believed if they reported what had taken place; that they were fearful of police officers using taser on them; and that, at times, they experienced injury through excessive use of force by police officers. Significantly, the National Police Chiefs' Council in their 2016 National Strategy for Child Centred Policing identified improving the " ... relationship between young people and the police"[238] as a key priority. It is clearly welcome that there is increasing focus on this area, but it is the case that more needs to be done to ensure that the best interests of the child are respected in all interactions (both verbally and physical).

RECOMMENDATION 28[239]

Unicef UK is concerned that children in England who have not been granted bail are still not routinely being placed in appropriate local authority accommodation as stipulated in the Police and Criminal Evidence Act (PACE) 1984.

Unicef UK recommends that the UK Government urgently review the progress that has been made on this issue in the period since the publication of the 2017 Home Office Concordat.

NATIONAL POLICE CHIEFS' COUNCIL

VIEWS ON POLICE INTERACTION WITH CHILDREN

"Leaders Unlocked did a report Policing the Pandemic where young people talked about their experiences of policing ... There's a real mixed bag. There are some young people saying the police were really fair and reasonable and what they were saying made sense and then you've got some saying 'we feel like they were picking on us, they were really rude and unfair' ... and that, I think, is our challenge."

"We probably don't, or we don't, train officers in how to engage with groups of young people ... back in the day we used to have neighbourhood officers working in neighbourhoods who knew the young people in their area, spoke to them and built relationships, whereas, with austerity we've sort of lost a lot of that."

NPCC Senior Officer

YOUTH OFFENDING TEAM (YOT) SOCIAL WORKER

VIEWS ON POLICE INTERACTION WITH CHILDREN

"Youth Offending Services have police officers linked to them ... different personalities of officers have a massive difference on how kids respond ... and you can really see it. There is training that can be done ... there are officers that are 'it's all about responsibility' and then you have others that are 'it's all about working with the children and the families'."

YOT Social Worker

238 National Police Chiefs' Council (2016). *National Strategy for the Policing of Children & Young People*. London: NPCC, p.1.
239 This recommendation also applies to Wales.

COURTS AND JUDICIARY – PRIVACY

The Children and Young Person's Act 1933[240] automatically prohibits the identification of defendant children – for example, their name, address, school – appearing at Youth Courts in England.[241] It is therefore a criminal offence to violate Section 49 reporting restrictions. This automatic anonymity does not relate to children who come before adult courts in England. However, adult courts can – and often do – impose a restriction order under Section 45 of the Youth Justice and Criminal Evidence Act 1999, which specifically affords anonymity to children and young people involved in proceedings until the age of 18.

International children's rights standards (see for example, Article 40 UNCRC 1989, General Comment No. 24 (2019), the Beijing Rules) are unequivocal that all children under the age of 18 years old who appear at a court should have their identity and personal details kept private. This is because revealing children's identities in judicial proceedings can increase the likelihood of their facing physical and mental harm; negatively impact upon their wider family; and can also reduce the chance of their successfully reintegrating back into society at the end of their sentence (see **Chapter One** for more detail).

There have been cases where children appearing in English courts have had their identity revealed, often because it was considered by the Judge to 'be in the public interest' to do so; the case of the 16-year-old boy who was convicted of murdering his school teacher among the highest profile recent examples.[242] There have also been other cases, of which perhaps the best-known is that of the two 10-year-olds who were convicted of killing James Bulger.[243] In reflecting on the case of the 16-year-old boy above, Fitz-Gibbon and O'Brien underlined the primacy afforded by certain English courts to public interest, over and above their obligations to protecting a child's best interests, their welfare and future rehabilitation in line with domestic and international children's rights standards:

> *"While rehabilitation has long been considered the overriding principle in cases involving children, decisions of the English courts establish that, when the gravity of the offence is deemed 'exceptional', the need for punishment and deterrence may outweigh the need to provide for the rehabilitation of the child. This is particularly problematic when a disproportionate emphasis is placed on ambiguous justifications relating to 'public interest' at the expense of the court's domestic and international obligations to consider the welfare and best interests of the child."*[244]

From a children's rights perspective, the identification in the media in England of children who have committed criminal offences – whatever their gravity – is unacceptable and must be reviewed. In line with the recommendations of the 2016 Taylor Review, there needs to be consideration of extending automatic anonymity to all children appearing in adult courts and for the course of a child's lifetime, as opposed to it terminating once a child turns 18 years old.

RECOMMENDATION 29

Unicef UK recommends that the following action be undertaken in relation to children's anonymity:

The UK Government commit to ensuring the anonymity of all children under 18 years of age who come into contact with the law and appear at English courts - regardless of the offence they have committed. This anonymity should not cease at 18 years of age but instead should last a lifetime.

UNCRC 1989 ARTICLE 40, 2.B (VII)

"Every child alleged as or accused of having infringed the penal law has at least the following guarantees: (vii) To have his or her privacy fully respected at all stages of the proceedings."

240 Specifically, Section 49 of the Act.
241 And also, Wales.
242 Keeping to the standard being advocated, a decision has been made not to name the child involved in the case.
243 See Fitz-Gibbon, K. and O'Brien, W. (2017). 'The Naming of Child Homicide Offenders in England and Wales: The Need for a Change in Law and Practice'. *British Journal of Criminology*, 57, pp.1061–1079.
244 Ibid, p.1077.

UNICEF UK YOUTH ADVISORY BOARD

VIEWS ON CHILDREN'S PRIVACY

"When you name a child, that is obviously the name of the child, but it is also their family, and they may have siblings as well. Just being named, that is their lives as well, automatically everyone can find out that information."

"Their siblings who are just there, may have never committed a crime ... they could be like really young themselves ... they could be like five ... and that's their whole life as well."

YAB Member A

"I think it is about 'public interest', because you may have been able to prevent a re-offence of it, if you had known that this person had previously done something."

YAB Member B

"I was looking at the UNCRC and Article 16 ... the protection of privacy ... I feel like that would be a violation of a child's privacy. I don't think it's right for a child's name to be used all over the media ... and then for people to criticise them ... to go out and criticise their families ... or in the long-run just really damage their reputation."

"I also think the media tend to distort things quite a lot."

YAB Member C

UNCRC 1989 ARTICLE 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

COURTS AND JUDICIARY – PARTICIPATION, PROCESS AND PRACTICE

The Youth Court in England[245] is a specialist court developed for children aged 10 to 17 years old who have committed serious criminal offences and is intended to be more informal than an adult court setting. Trials in a Youth Court are not decided by a jury; rather, cases are presided over by either three magistrates or a district judge. There are a variety of sentencing options available, including, but not limited to: discharge (absolute or conditional); referral order (RO), youth rehabilitation order (YRO) and detention training order (DTO).

As already outlined, recent years have seen an expansion of national and local level youth diversion schemes within England (e.g. the youth justice liaison and diversion scheme, triage, youth restorative disposal, Durham Pre-Remand Disposal, Cheshire DIVERT, Juvenis and Hampshire Youth Community Court Programme). These schemes have played an important role in reducing the number of children now appearing before Youth Courts in England; a development which is to be welcomed. Nonetheless, recent research has identified that there remain aspects of the functioning of these courts which are problematical from a children's right perspective. A key concern relates to whether children truly feel that they can effectively participate in the court's proceedings (Article 12 UNCRC 1989; see also Article 40). Both the Beijing Rules and General Comment No. 24 (2019) are clear about the importance of enabling children's participation:

> *14.2 The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely.*[246]

245 And also, in Wales.
246 Office of the High Commissioner on Human Rights (1985). *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* ("The Beijing Rules"), Part 3, 14.2. Geneva: OHCHR.

"Proceedings should be conducted in a language the child fully understands" and "Proceedings should be conducted in an atmosphere of understanding to allow children to fully participate."[247]

The 2014 Carlile Inquiry[248] into the operation and effectiveness of the Youth Court heard evidence which suggested that children frequently lacked understanding and engagement with the court's process. In 2016, the Taylor Review reported:

"Too often children are alienated by the frequent use of opaque legal argument and arcane terminology, and not all magistrates do enough to explain what is happening in language that children can understand."[249]

More recently, the Centre for Justice Innovation[250] has investigated the court's workings, including speaking to children about their experiences. Despite a number of examples of positive practice, some of those interviewed felt that their voice was not sufficiently heard during the proceedings. The report identifies a number of possible factors inhibiting children's engagement, including: insufficient knowledge or understanding of the Youth Court process, what would be involved and what the outcomes would be; an inability to relate to the presiding magistrates or judge because of demographic and cultural differences; an unaccommodating court layout that failed to put the children at ease. The report highlights that these factors can be exacerbated when the legal representatives and professionals appearing in the court lack the specialist training and skills appropriate to its workings and aims.

This is a point that has also been identified by Wigzell and Stanley, who suggest that there are particular reasons why additional training for those practising in the Youth Court is required:

"There is arguably a stronger case for competency requirements for practitioners in the youth court. This is because, as a closed court, there may be greater potential for poor practice: practitioners can neither learn from more experienced colleagues (with the exception of magistrates who sit as a bench of three) nor have their conduct observed and assessed by them."[251]

Wigzell and Stanley also point out that the Youth Court is often mistakenly viewed within the legal profession as an "ideal training ground" for novice advocates, rather than as a specialist court requiring specific expertise. Furthermore, reductions in numbers of the court's cases and sittings (largely resulting from the success of youth diversion) mean that magistrates are spending more time within adult judicial settings, culminating in an erosion of their specific Youth Court knowledge and expertise. Significantly, the importance of ensuring sufficient and appropriate training for legal professionals engaged with children is a key component of the Council of Europe's *Guidelines on Child-Friendly Justice* (see IV/A/4).

Assessing the available evidence, despite pockets of good practice, six years on from the Carlile Inquiry and four years on from the Taylor Review child appropriate provision in the Youth Court remains inconsistent and arbitrary. It is suggested that these inconsistencies risk limiting children's participation in judicial proceedings at a critical juncture in their lives. For children possessing SLCN these inconsistencies can be particularly deleterious (Jacobson and Talbot, 2009).

247 General Comment No. 24 (2019). Paragraph 46.; see also, Council of Europe 'Guidelines on Child Friendly Justice', Section IV.
248 Carlile, A. (2014). *Independent Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court*. Retrieved from: https://www.michaelsieff-foundation.org.uk/carlile-parliamentary-inquiry-youth-justice-system/.
249 Taylor, C. (2016). *Review of the Youth Justice System in England and Wales*. London: Ministry of Justice, p.27
250 Centre for Justice Innovation (2020). *Time to get it right: Enhancing problem-solving practice in the Youth Court*. London: Centre for Justice/ Institute for Crime and Justice Policy Research. Chapter 3. See also Cleghorn et al., 2011, for similar analysis of children's experiences of court.
251 Wigzell, A. and Stanley, C. (2015).'The Youth Court: Time for Reform?' In M. Wasik and S. Santatzoglou (Eds.) *The Management of Change in Criminal Justice*. Basingstoke: Palgrave MacMillan, p.248. See also the Carlile Inquiry, Chapter Five.

RECOMMENDATION 30[252]

Unicef UK welcomes the fact that reduced numbers of children are appearing at Youth Courts. However, we are concerned that existing research suggests that certain children feel they are not able to effectively participate in proceedings and legal professionals sometimes lack specific youth justice and children's rights expertise when working in this setting:

Unicef UK recommends that the following actions be undertaken in relation to the Youth Court:

1. **Legal professionals in the Youth Court undertake specialist youth justice focused training when working in this setting.**[253]

2. **Legal professionals in the Youth Court undertake children's rights training when working in this setting.**

UNCRC 1989 ARTICLE 37 (C)

States Parties shall ensure that (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.

YOUNG OFFENDER INSTITUTIONS, SECURE TRAINING CENTRES AND SECURE CHILDREN'S HOMES

Young offender institutions (YOI) are a key component of the youth secure estate in England for children who are sentenced to youth detention.[254] There are a number of YOI operating in England which cater specifically for children aged between 15 and 18 years old. Currently these are Wetherby, West Yorkshire – including the specialist Keppel Unit,[255] Werrington, Stoke-on-Trent, Cookham Wood, Kent, and Feltham A, Middlesex.

There have been repeated concerns raised about safety and conditions in YOI in England which have called into question their appropriateness as settings for children to reside in (see Article 37 of the UNCRC 1989). As recently as 2017, HM Chief Inspector of Prisons in his 2016/17 annual report stated in relation to youth detention facilities:

> *" ... there was not a single establishment that we inspected in England and Wales in which it was safe to hold children and young people."*[256]

In respect of YOI inspected in England,[257] the serious concerns highlighted in the 2016/17 report included: rising levels of violence at Keppel and Wetherby; increased use of force at Keppel and Cookham Wood; inadequate access to exercise in Keppel, Wetherby and Cookham Wood; inadequate learning, skills and work at Wetherby and Keppel; and children at Wetherby were being placed in cramped sterile cells. While the most recent annual report for 2018/19[258] identified an overall improvement in conditions in youth detention facilities across England and Wales, in respect of YOI in England it highlighted significant concerns around use of force at Werrington, Wetherby and Keppel; and the lack of time children spent out of their cells at Feltham A, Wetherby and Keppel (which all fell short of acceptable standards).

252 This recommendation also applies to Wales.
253 This should also apply to legal professionals (e.g. solicitors) representing children in police stations (e.g. in the pre-court arena).
254 Girls under the age of 18 years old are held in STCs and SCHs.
255 The Keppel Unit is a high-dependency specialist child unit which provides a special level of care.
256 HM Chief Inspector of Prisons (2017). *Annual Report 2016–2017*. London: HMCIP, p.9. Concerns were also raised by the Youth Custody Improvement Board (YCIB) around this same time.
257 Werrington and Feltham A were not part of the report.
258 HM Chief Inspector of Prisons (2017). *Annual Report 2018–2019*. London: HMCIP.

At a European level, in May 2019 the Council of Europe's Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) examined conditions at Feltham A and Cookham Wood YOI as part of a follow-up visit to England to assess levels of violence in detention. In its published findings the CPT was highly critical of conditions in both YOI visited. It found that assaults on staff members and on other children had risen by 10 per cent in Cookham Wood and more than doubled in Feltham A, while physical force and restrictions on movements were being employed routinely in each:

> *"The CPT delegation's assessment was that, in the establishments visited, episodes of violence were being tackled by a very frequent resort to the use of force and restrictions on the movements of the young persons which, in the case of the YOIs, came at the expense of an acceptable regime for juveniles."*[259]

More recently, in July 2019, HM Chief Inspector of Prisons invoked an "urgent notification" (UN) process in respect of Feltham A. In a written letter to the Secretary of State for Justice he outlined that there had been a significant deterioration in Feltham A's performance and there were a number of serious concerns about the treatment and the conditions of children residing in the institution. He concluded the letter by stating:

> *"I have decided to invoke the UN process because the treatment and conditions currently experienced by the children held in Feltham A are, I believe, totally unacceptable. There has been an accelerating decline in the past 18 months, the speed and scale of which has overwhelmed the processes and procedures intended to allow children to serve their sentences constructively, safely and in such a way as to re-join their communities less likely to reoffend."*[260]

More recently, to discover the impact of Covid-19 on the youth custodial estate,[261] prison inspectors undertook a series of short, scrutiny visits to youth detention facilities, including Wetherby and Cookham Wood YOI. The inspection report[262] highlighted positively the swift steps that had been taken by managers at the institutions to ensure the safety of children being held. However, the same report also identified that children were only allowed outside of their cell for 40 minutes a day in Cookham Wood and for around an hour in Wetherby. General Comment No. 24 (2019), Paragraph 95 b states that due regard should always be given to children's need for:

> *" ... sensory stimuli and for opportunities to associate with their peers and to participate in sports, physical exercise, arts and leisure-time activities ... "*[263]

Clearly Covid-19 has posed unique operational challenges for YOI. However, the issue of isolation in youth detention facilities has been a long-standing concern raised by children's rights bodies and organisations. The issue of isolation in youth detention was explored as far back as 2015 in a report undertaken by the Children's Commissioner for England. The report was critical of the amount of time children were spending in isolation and specifically in relation to YOI, established that when compared to Secure Training Centres and Secure Children's Homes:

> *"Within young offenders' institutions, there is more of a sense of isolation used as punishment, with less emphasis on ensuring its use for the minimum necessary period."*[264]

259 The Council of Europe's Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (2020). *Executive Summary*. Strasbourg: Council of Europe, p.4.
260 HM Chief Inspector of Prisons, Peter Clarke, *Urgent Notification: HMYOI Feltham A*, 22 July 2019.
261 Recommendation 36 specifically relates to the impact of Covid-19 on youth detention in England.
262 HM Chief Inspector of Prisons (2020). *Report on Short Scrutiny Visits to Young Offender Institutions holding Children*. London: HMCIP.
263 United Nations Committee on the Rights of the Child (2019). *General Comment No. 24 (2019) on children's rights in the child justice system* Paragraph 95b. CRC/C/GC/24. Geneva: UNCRC. See also UNCRC, Article 31.
264 Children's Commissioner for England (2015). *Unlocking Potential: A study of the isolation of children in custody in England*. London: Children's Commissioner for England, p.3.

More broadly, YOI – including those in England – were criticised for their use of segregation and solitary confinement practices by the UN Committee on the Rights of the Child who expressed concern that:

> *"(g) Segregation, including solitary confinement, is sometimes used for children in custody, including in young offenders' institutions."*[265]

The concerns expressed by the Committee in 2016 were underscored in further research undertaken by the Children's Commissioner for England into segregation practices in youth custody. The research found:

> *" ... there were 357 episodes recorded in YOIs over 7 months in 2014, but 437 episodes over 6 months in 2018. Therefore the number of segregation episodes per month has increased by 43%: from 51 in 2014 to 73 in 2018. This is despite the fact that the total YOI population has fallen since 2014."*[266]

Exploring both areas of concern, the UK Parliament's Joint Committee on Human Rights concluded in its 2019 report that children's rights were being undermined in YOI in relation to the practice of physical restraint and the use of solitary confinement.[267]

More broadly, there have been reservations expressed that youth custody is routinely used as a sanction, rather than being a measure of last resort (see Article 37 UNCRC 1989), as evidenced in recent reports produced by Transform Justice[268] and the Standing Committee for Youth Justice (SCYJ).[269] The pattern of the use of remand identified in these reports is all the more striking in respect of BAME children and calls into question both whether all options are fully explored before a child is sentenced to youth custody, and whether the remand process requires urgent reform:

> *"Two thirds of children remanded to custody do not go on to receive a custodial sentence. Around a third of children on remand are acquitted (32%) while a third receive a non-custodial sentence."*[270]

As the above analysis has identified, there is a growing body of evidence that children's rights have been undermined in YOI establishments in England over an extended period. YOI are manifestly extremely challenging settings for staff to work within. However, from a children's rights perspective, the frequent resort to the use of physical restraint and force; the practices of isolation, segregation and solitary confinement; and the high levels of violence within these settings are all hugely troubling. These serious shortcomings are compounded by youth custody not being used solely as a last resort, in contradiction of international children's rights standards.

Secure training centres (STCs) differ from YOI in that they are intended to house vulnerable boys and girls aged between 12 and 17 years old and so have a higher staff to child ratio. There are currently three STCs operating in England: Medway, Rochester; Oakhill, Milton Keynes; and Rainsbrook, Rugby.

Recent Ofsted inspections of STCs in England have identified serious concerns about conditions within these settings. Ofsted undertook an annual inspection of Medway STC between 21 and 25 October 2019 and found its overall performance to be "inadequate", concluding:

> *"The overall progress and experience of children is inadequate due to serious concerns relating to ineffective strategies to manage serious and significant incidents. The quality of practice has declined since the last inspection and not*

265 UN Committee on the Rights of the Child (2016). Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland., Paragraph 33. CRC/C/GBR/CO/5 Geneva: UN.
266 Children's Commissioner for England (2018). *A Report on the Use of Segregation in Youth Custody in England*. London: Children's Commissioner for England, p.6.
267 House of Commons and House of Lords, Joint Committee on Human Rights (2019). *Youth detention: solitary confinement and restraint.* London: UK Parliament.
268 Gibbs, P. and Ratcliffe, F. (2018). *Path of Little Resistance: Is Pre-trial Detention of Children Really a Last Resort?* London: Transform Justice.
269 Standing Committee for Youth Justice (2020). *Ensuring that Custody is a Last Resort for Children in England and Wales*. London: SCYJ.
270 Ibid., p.11.

only places children at risk of harm, but also gives them an inadequate experience of care and support."[271]

Ofsted carried out an unannounced, monitoring visit inspection of Medway STC[272] between 4 and 5 December 2019. The inspectors found that, although practice had improved in some areas since the regular annual inspection, little progress had been made in key areas affecting "children's experiences, well-being and safety"[273] Oakhill STC was most recently inspected by Ofsted between 8 and 12 April 2019 and its overall performance was rated as "requires improvement to be good." The inspectors found that high rates of violence impacted negatively on children's experiences and that single separation, use of force and restraints were experienced by many children in the establishment.[274] The most recent Ofsted annual inspection undertaken at Rainsbrook STC between 17 and 21 February 2020 rated its overall performance as "requires improvement to be good" and noted that children's education and learning were poor and that levels of violence still too high.[275]

271 Ofsted (2019). *Medway Secure Training Centre: Annual Inspection*. Retrieved from: https://reports.ofsted.gov.uk/provider/11/1027076.
272 Medway STC will close and be replaced by a 'secure school' run by the Oasis Charitable Trust.
273 Ofsted (2019). *Medway Secure Training Centre: Monitoring Visit*. Retrieved from: https://reports.ofsted.gov.uk/provider/11/1027076.
274 Ofsted (2019). *Oakhill Secure Training Centre: Annual Inspection*. Retrieved from: https://reports.ofsted.gov.uk/provider/11/1027077.
275 Ofsted (2020). *Rainsbrook Secure Training Centre: Annual Inspection*. Retrieved from: https://reports.ofsted.gov.uk/provider/11/1027078.

TABLE 7: Use of Force Incidents in English Secure Training Centres (STC) – Year Ending March 2019[276]	
SECURE TRAINING CENTRE (STC)	**USE OF FORCE INCIDENTS (PER 100 CHILDREN AND YOUNG PEOPLE)**
Medway STC	113.5
Rainsbrook STC	138.9
Oakhill STC	127.1

A further concerning development in relation to STCs is in the context of Covid-19. The Secure Training Centre (Coronavirus) (Amendment) Rules 2020 came into force in July 2020 and are to remain effective until March 2022. There are particular concerns that the legislation will mean children spending significant periods of time in their cells, which in turn, will have implications for their engagement in exercise, education and other vital day-to-day activities. The Children's Commissioner for England has stated that the amendment "legalises the unacceptable treatment of some of the most vulnerable children in our society".[277]

Secure Children's Homes (SCHs) are establishments which cater for especially vulnerable children – and often those who are among the youngest within the youth secure estate – within a secured and care-orientated context. There are currently eight local authority-run SCHs operating in England which cater for children who are referred for justice-related offences. They are the most expensive type of provision within the youth secure estate.[278] Little, in his research into the youth custodial estate, determined via an FOI request that the cost per head, per annum in 2018/19 in a YOI was £99k, in a STC was £211k and in a SCH was £251k. The cost implications of SCH places, he argues, have resulted in cheaper YOI and STC provision becoming the option preferred by policy-makers for children.[279] Similar concerns have also been voiced by criminal justice organisations such as the Howard League for Penal Reform who have identified significant reductions in SCH places in England over recent years, following on from a sustained process of decommissioning[280] – a process which, it is suggested, has in turn caused children to be placed far away from their home locations (see the section in **Chapter One** on secure care in Scotland for an analogous argument).

Given the deep-rooted challenges facing the youth secure estate in England over a sustained period, the UK Government, building on the recommendations of the 2016 Taylor Review, has decided to pursue the development of "secure schools". These are being set up as establishments with an underlying educational ethos, sitting within an educational legislative framework. A number of criminal justice organisations have expressed concerns that secure schools will simply constitute a further layer of youth detention, which may not differ markedly from the existing STC model. The UK Government has confirmed that the introduction of secure schools will be a piecemeal process and they will need to be evaluated before any decisions are made about decommissioning any YOIs or STCs. Initial concerns raised by criminal justice organisations have been compounded by the announcement that Medway STC will be re-designed as the first secure school in England. Criminal justice organisations and academics have been highly critical of this decision, highlighting the problematic history of Medway STC, along with its prison-like architectural design which cannot be easily adapted into a progressive setting.[281]

276 Table adapted from data appearing in: Ministry of Justice and Youth Justice Board (2020). *Youth Justice Statistics: 2018 to 2019*. London: Ministry of Justice and Youth Justice Board. Chapter 8. Table 8.23.
277 Children's Commissioner for England (2020). *Children's Commissioner for England Anne Longfield responds to amended statutory rules for secure training centres*. Retrieved from: https://www.childrenscommissioner.gov.uk/2020/07/08/childrens-commissioner-responds-to-amended-statutory-rules-secure-training-centres/.
278 Beard, J. (2020). *Youth Custody. Briefing Paper Number 8557*. London: House of Commons Library.
279 Little, R. (2020). 'Paying the price: consequences for children's education in prison in a market society'. *International Journal of Educational Development*, 77.
280 The Howard League for Penal Reform (2016). *Future Insecure: Secure Children's Homes in England and Wales*. London: The Howard League for Penal Reform.
281 See for example: https://www.basw.co.uk/media/news/2018/nov/concern-basw-criminal-justice-over-first-secure-school.

RECOMMENDATION 31

Unicef UK is particularly concerned at conditions within English young offender institutions (YOI) and secure training centres (STC), and specifically, the frequent use of restraints and use of force; the employment of isolation, segregation and solitary confinement; and the routinely high levels of violence to be found within these establishments. Based on longstanding evidence of repeated failings within these establishments, Unicef UK does not believe that YOI and STC in England constitute appropriate settings for children.

Unicef UK recommends that the following actions be undertaken in relation to youth detention:

1. **The UK Government should prohibit the use of solitary confinement in youth detention settings.**

2. **The UK Government, HM Prison and Probation Service and the Youth Justice Board should outline what steps are currently being taken to address the disproportionate representation of BAME children in youth custody.**[282]

UNCRC 1989 ARTICLE 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

BLACK, ASIAN AND MINORITY ETHNIC (BAME) CHILDREN IN THE YOUTH JUSTICE SYSTEM

BAME children are overrepresented at nearly every stage of the youth justice system.[283] In 2017, the Lammy Review, which examined the "treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System" identified the youth justice system as its "biggest concern."[284] Acknowledging the significance of these concerns, the Youth Justice Board in its Business Plan 2020/21[285] has placed a key strategic emphasis on reducing the overrepresentation of certain groups of children – including those who are BAME – within the youth justice system. The Board's chief executive stated:

> *"Present levels of disproportionality affecting children across the Criminal Justice System are unacceptable. A child's ethnicity should play no part in their experience of the youth justice system and that is why disproportionality is one of six priorities for the Youth Justice Board."*[286]

The overrepresentation of BAME children in youth justice proceedings in England is evident across the youth justice system. Children's rights NGOs have consistently highlighted concerns about BAME children before they even enter the formal youth justice system – in particular, the impact of stop and search, the use of taser and spit-hoods and, within London, the "gangs matrix" database compiled by the Metropolitan Police Service.[287] The data on arrests is equally troubling, with Youth Justice Board and Ministry of Justice statistics for "recorded crime for (notifiable offences) of children by self-defined ethnicity and English police area" revealing that there were 34,293 arrests of children who were White and 16,437 arrests of children who were BAME during 2018/19. When the BAME figure is broken down into more detail, there were 8,311 arrests of children who were Black or Black British; 3,281 arrests of children who were Asian or Asian British; 3,862 arrests of children who were Mixed and 983 arrests of Chinese or Other children. By percentage proportion, this

282 See the next section for key statistics.
283 See: https://www.gov.uk/government/news/the-journey-of-the-child.
284 The Lammy Review (2017). *An independent review into the treatment of, and outcomes for, Black, Asian, and Minority Ethnic individuals in the Criminal Justice System, p.*4. Retrieved from: https://www.gov.uk/government/organisations/lammy-review.
285 Youth Justice Board (2020). *Youth Justice Board Business Plan 2020 to* 2021. London: YJB.
286 See: https://www.gov.uk/government/news/the-journey-of-the-child.
287 See: CRAE (2019). *State of Children's Rights in England 2018. Policing and Criminal Justice*. London: Children's Rights Alliance for England.

equates to 68 per cent of arrests being of White children; 16 per cent of arrests being of Black or Black British children; 6 per cent of arrests being of Asian or Asian British children; 8 per cent of arrests being of Mixed children and 2 per cent of arrests being of Chinese or Other children.

TABLE 8: Number and Proportion of Arrests for Recorded Crime (Notifiable Offences) of Children by Self-Defined Ethnicity in English Police Force Areas[288]

Year ending March 2019	White	Black (or Black British)	Asian (or Asian British)	Mixed	Chinese (or Other)	BAME	England Total
Number of Arrests	34,293	8,311	3,281	3,862	983	16,437	**57,129**[289]
Proportion %	68	16	6	8	2	32	-

When this England-only data is extrapolated to an England and Wales level (using the relative rate index), Black children were four times more likely to be arrested than White children; Mixed and Chinese or Other children were twice as likely to be arrested as White children; and Asian children had a similar arrest rate to White children.[290]

Worrying trends in respect of BAME children are similarly apparent elsewhere in the youth justice system. The latest England and Wales statistical data shines a spotlight on these areas.[291] For example, it reveals that the proportion of Black children given youth cautions increased from 7 per cent in 2009 to 11 per cent in 2019, while staying broadly stable for Asian and Other children. In contrast, the proportion of White children receiving a youth caution fell from 88 per cent in 2009 to 83 per cent in 2019.[292]

In respect of first time entrants (FTEs) to the youth justice system, the data reveals that the proportion of these children who are Black rose from 8 per cent in 2009 to 16 per cent in 2019, while the proportion of Asian children rose by 2 per cent over the same period; and broadly remained the same for Other children. In contrast, the proportion of White children who are FTEs fell from 85 per cent to 75 per cent over the same period.[293]

At sentencing, over the 2014 to 2019 period, the data reveals that the proportion of all occasions in which Black children were sentenced for indictable offences rose from 14 per cent to 20 per cent, while remaining broadly stable for Mixed, Chinese or Other and Asian children. The proportion of all occasions on which White children were sentenced for indictable offences over the four-year period fell from 73 per cent to 65 per cent. [294]

Finally, in respect of youth custody, the data reveals that over the period 2009 to 2019, the proportion of Black children in custody rose from 15 per cent in 2009 to 28 per cent in 2019. As of January 2019, BAME children made up the majority of the youth custody population, at 51 per cent.[295]

Significantly, BAME disproportionality in the youth justice system is a long-standing issue, with the UN Committee on the Rights of the Child highlighting it for the whole of the UK (including England) in their 2016 *Concluding Observations*:

288 Table adapted from data appearing in: Youth Justice Board and Ministry of Justice (2020). *Youth Justice Statistics 2018/2019*. London: Youth Justice Board and Ministry of Justice. Supplementary Tables. Chapter 1, Table 1.7.
289 There were also 6,399 arrests of 'Unknown' children.
290 Youth Justice Board and Ministry of Justice (2020). *Youth Justice Statistics 2018/2019*, Chapter 1, Table 1.8. London: Youth Justice Board and Ministry of Justice.
291 There is a lack of publicly available England-only ethnicity data in relation to these fields.
292 Youth Justice Board and Ministry of Justice (2020). *Youth Justice Statistics 2018/2019*, Chapter 1. Table 1.11. London: Youth Justice Board and Ministry of Justice.
293 Ibid., Chapter 2. Table 2.7
294 Ibid., Chapter 5. Table 5.6c
295 Ibid., Chapter 5. Table 7.11.

"The number of children in custody remains high, with disproportionate representation of ethnic minority children, children in care and children with psychosocial disabilities, and detention is not always applied as a measure of last resort."[296]

Yet in the four years since the publication of that report, BAME disproportionality within the youth justice system has intensified rather than lessened. Given the gravity of the situation, it is welcome that the Alliance of Sport, supported by the Youth Justice Board, have recently received £1 million in funding from the London Marathon Charitable Trust to launch Levelling the Playing Field[297]; a sports-based project to enhance health and life trajectories for 11,200 BAME children aged between 10 and 17 years old who are either at risk of entering/or already situated within the youth justice system in England.[298] This project offers an innovative blueprint and the data that the project captures should be regularly reviewed and used to inform future policy and practice.

Ultimately, in reflecting on the above analysis, there can be no doubt that BAME children's disproportionality within the youth justice system requires urgent action. It is tempting to think that further reviews into what, how and why are desirable and should form a cornerstone of any such action. The evidence is already clear, however, and further reviews into this issue are unnecessary. What is needed is a collective acceptance from all involved in youth justice that the current situation is undermining the rights of BAME children (Article 2 UNCRC 1989) and requires bold progressive actions to remedy it.

RECOMMENDATION 32

Unicef UK is extremely concerned at the continued overrepresentation of BAME children within the youth justice system in England.[299] Unicef UK recommends that the following actions be undertaken in relation to this area:

The UK Government should fully implement the recommendations made in The Lammy Review.

The UK Government and Youth Justice Board should develop and fund further initiatives such as Levelling the Playing Field which are aimed at preventing BAME children from entering into the formal youth justice system in the first instance/ and addressing their needs if within the formal youth justice system.

The UK Government and Youth Justice Board should commission further research into BAME children's interaction with the youth justice system to better understand the reasons underpinning how specific youth justice processes and practices are disproportionately impacting upon this group of children. BAME children's views, their experiences and their understandings should be a central feature of this research (UNCRC 1989 Article 12).

The UK Government and Youth Justice Board should create opportunities to actively listen (UNCRC 1989 Article 12) to BAME children and young people's views on this issue.

296 UN Committee on the Rights of the Child (2016). *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*, Paragraph 78. CRC/C/GBR/CO/5. Geneva: UN.
297 See: https://www.gov.uk/government/news/1m-grant-to-help-improve-outcomes-for-bamechildren.
298 The project will also be deployed in Wales.
299 And Wales.

CHILDREN EXCLUDED FROM SCHOOL

Analysis of statistical trends in relation to the rate of permanent exclusions in schools in England reveals that from 2004/05 to 2013/14 there was a prolonged reduction. However, as **Table 9** depicts, from 2013/14 to 2018/19 the rate of permanent exclusion rose from 0.06 to 0.10. Examination of the rate of fixed period exclusions in schools in England reveals that from 2006/07 to 2012/13 there was a period of sustained reductions, but that from 2013/14 to 2018/19 the rate increased from 3.50 to 5.36.

TABLE 9: 'Permanent' and 'Fixed Period' School Exclusions in England – 2013/14 to 2018/19[300]

	2013–14	2014–15	2015–16	2016–17	2017–18	2018–19
Number of Permanent Exclusions	4,949	5,795	6,684	7,719	7,905	7,894
Permanent Exclusion Rate	0.06	0.07	0.08	0.10	0.10	0.10
Number of Fixed Period Exclusions	269,475	302,795	339, 362	381,864	410,753	438,265
Fixed Period Exclusion Rate	3.50	3.88	4.29	4.76	5.08	5.36

However, the true nature of school exclusions in England may be even more acute because of "off-rolling" practices; a process whereby a child is removed from the school roll with the school's interests in mind, but where this is not formally recorded and, consequently, safeguarding procedures cannot be activated. Off-rolling is a practice which Ofsted has deemed to be unacceptable.[301] More detailed demographic analysis of school exclusion data in England reveals that there are also differences in exclusions between ethnic groups. Data for 2018/19 reveals that: Gypsy/Roma children had the highest rate of permanent exclusions in England (0.39), with Traveller of Irish Heritage children having the second highest rate (0.27). Black Caribbean children have the next highest (0.25), followed by White and Black Caribbean children (0.24). By way of comparison, White British children had a permanent exclusion rate of 0.10 in 2018/19. When looking at rates of fixed period exclusions, Gypsy/Roma children had the highest rate (21.26), followed by Traveller of Irish Heritage children (14.63), then White and Black Caribbean children (10.69) and then Black Caribbean children. By way of comparison, White children had a fixed period rate of 6.01.[302]

Significantly, in their 2016 *Concluding Observations*, the UN Committee on the Rights of the Child expressed concern at the impact school exclusions were having on certain groups of children:

> *" ... the Committee is concerned that: (b) Among children subject to permanent or temporary school exclusions, there is a disproportionate*

300 Table adapted from data appearing in: Department for Education (2020). *Permanent and Fixed Period Exclusions in England: Academic Year 2018/19*. London: Department for Education.
301 See: https://educationinspection.blog.gov.uk/2019/05/10/what-is-off-rolling-and-how-does-ofsted-look-at-it-on-inspection/.
302 Department for Education (2020). *Permanent and Fixed Period Exclusions in England: Academic Year 2018/19*. London: Department for Education.

number of boys, Roma, gypsy and traveller children, children of Caribbean descent ... "[303]

It is therefore concerning that the most recent data available (2018/19) illustrates that specific ethnic groups of children are still being disproportionately affected by school exclusions in England.

In addition to ethnicity and deprivation, in 2019 the Timpson Review of School Exclusion also identified a number of other factors that are strongly linked with school exclusion in England. Their analysis determined:

" ... 78% of permanent exclusions issued were to pupils who either had SEN, were classified as in need or were eligible for free school meals. 11% of permanent exclusions were to pupils who had all three characteristics."[304]

The 2018/19 data reveals that the rate of permanent exclusion for children entitled to free school meals is 0.27, whereas it is 0.06 for those children who are not entitled to this provision. The 2018/19 data also confirms that permanent exclusion rates are greater for children possessing special educational needs (SEN).[305]

In respect of youth crime, the link between school exclusion and involvement in offending behaviour is clearly complex and a straightforward causative relationship should not be inferred. The All-Party Parliamentary Group on Knife Crime (APPG) has, however, recently examined the relationship between school exclusion and knife crime and determined from the evidence they gathered that school exclusion risked exposing vulnerable children to grooming and exploitation by criminal gangs.[306] Just for Kids Law/CRAE have also recently launched a report which highlights the relationship between children being outside mainstream education and enhanced vulnerability to criminal exploitation.[307] Additionally, the Mayor of London has drawn attention to the issue of school exclusions and youth violence and, via the newly formed London Violence Reduction Unit, has committed £4.7 million to programmes tackling school exclusions.[308]

In examining why school exclusions have increased in England, it has been suggested that recent education policy has adopted a more punitive ethos, particularly when compared to corresponding guidance in Scotland and Wales (see Department for Education, 2016 and 2017). For example, in relation to the 2016 Department for Education document *Behaviour and Discipline in Schools: Advice for Headteachers and School Staff* McCluskey et al. found:

"... much of this current advice document is given over to descriptions of punishments, advice on powers to search without consent, power to use 'reasonable force' and use of isolation and seclusion."[309]

What is clear from the above analysis is that school exclusions in England are both increasing and disproportionately affecting certain social groups (often those who are most vulnerable). What is also evident is that the true picture of school exclusions in England is still not fully understood because of the impact of practices such as off-rolling. Ultimately, when measured against Article 2 and 28 of the UNCRC 1989 the current trajectory of school exclusions in England is undermining the right of children to education.

303 UN Committee on the Rights of the Child (2016). *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*, Paragraph 72. CRC/C/GBR/CO/5. Geneva: UN.
304 The Timpson Review (2019). *Timpson Review on School Exclusion*. London: The Timpson Review, p.10. See also: House of Commons Education Committee (2018). *Forgotten Children alternative provision and the scandal of ever-increasing exclusions. Fifth Report of Session 2017–19*. London: House of Commons.
305 Department for Education (2020). *Permanent and Fixed Period Exclusions in England: Academic Year 2018/19*. London: Department for Education
306 All-Party Parliamentary Group on Knife Crime. (2019). *Back to School? Breaking the Link Between School Exclusions and Knife Crime*. London. UK Parliament.
307 Just for Kids Law and CRAE (2020). *Excluded, exploited, forgotten: Childhood criminal exploitation and school exclusions*. London: Just for Kids Law and CRAE.
308 See: https://www.london.gov.uk/press-releases/mayoral/violence-reduction-unit-tackles-school-exclusions.
309 McCluskey, G., Cole, T., Daniels, H., Thompson, I, and Tawell, A. (2019). 'Exclusion from school in Scotland and across the UK: Contrasts and questions'. *British Educational Research Journal*, 45, 6, p.1149.

RECOMMENDATION 33

Unicef UK is concerned that since 2013/14 the rate of permanent exclusions in schools in England has risen to, and then remained at 0.10 (whilst fixed period rates continue to increase). Unicef UK is particularly concerned at the disproportionate impact that school exclusions are having on children who are from certain ethnic groups, have Special Education Needs (SEN), are eligible for free school meals and who attend schools in the most deprived areas of the country. Unicef UK recommends the following actions are undertaken in respect of school exclusions:

1. **The Department for Education should end the use of off-rolling practices.**

2. **The Department for Education should outline what measures are currently being taken to address the disproportionate impact that school exclusions are having on some of the most vulnerable children in society (e.g. children with SEN, who are eligible for free school meals and who attend schools in the most deprived areas of the country).**

3. **The Department for Education should outline what work is currently being done to explore the relationship between children being outside of mainstream education and enhanced vulnerability to criminal exploitation.**

NATIONAL POLICE CHIEFS' COUNCIL

VIEWS ON POLICE ENGAGEMENT WITH SCHOOLS

"It should be a role for an officer, and they should cover four or five secondary schools ... and the feeder primary schools. Ideally, they go into the classroom and support the curriculum, are trained to do that and effectively engage with young people. They get involved when it is appropriate for them to be involved in order to divert [young people] at the earliest opportunity, but they also see those young people out in the community as well. It's about getting that model right."

"We've launched guidance for schools on when to call the police ... because we realised we've never told them ... We assume they would be able to work it out for themselves and they will just know ... So we have written in partnership with the Department for Education guidance for schools."

NPCC Senior Officer

CHILDREN IN CARE SETTINGS

Available statistics reveal that there were 78,150 "looked-after" children in England as of March 2019.[310] Research suggests that children residing in residential care settings are particularly susceptible to being disproportionately criminalised within the youth justice system (Prison Reform Trust, 2016). Research from the Howard League for Penal Reform has highlighted that police interaction with children in such settings has traditionally been high. For example, 2018 data retrieved from police forces revealed that there were over 22,000 call-outs to children's homes. Specifically, the research found in relation to England:

> *"One home in Northumbria called the police 207 times; a home in Suffolk called 209 times; one in Humberside called the police 235 times; a home in South Yorkshire called 253 times; and a home in Derbyshire called the police 267 times."*[311]

In understanding why children in residential care settings are disproportionately criminalised, there are certain factors that increase the likelihood of police interaction with this cohort of children. One key factor relates to "missing children": a child is identified as missing from their residential care setting, so the police are notified and called out to search for them. But the interaction is not necessarily straightforward, if the police find the missing child in conflict with the law. This could be on a number of grounds: because the child is being groomed to undertake criminal activity (for example, county lines);[312] because they are involved in an incident of theft; or because they become involved in a confrontation with the police officers when they are found and identified. All these incidents increase the possibility of criminalisation, despite the fact that these incidents or behaviours are often rooted in care-experienced children's vulnerability and previous trauma.[313] The relationship between children going missing from residential care settings and criminalisation is illustrated clearly by the statistics obtained under FOI by the Howard League for Penal Reform:

> *"77 per cent of children who had been formally criminalised whilst living in a children's home between 1 April 2017 and 31 March 2018 had gone missing from placement at some point during the course of the year."*[314]

Criminalisation of care-experienced children can also occur when police are called out to deal with incidents and minor offending within residential care settings; something far less likely to occur in the context of a private family home, where calling the police is usually considered to be an action of last resort. The long-term (pipeline) impact early episodes of criminalisation have on looked-after children is evident when looking at their representation within the youth custodial estate. [315] A 2020 HM Inspectorate of Prisons report analysed the results of 717 questionnaires sent out to children situated in three STCs, five YOIs and a specialist unit;[316] the analysis found that 52 per cent of respondents identified themselves as having been in the care of a local authority. The overrepresentation of care-experienced children in custody was also highlighted in 2016 by the UN Committee on the Rights of the Child (UNCRC 2016, Paragraph 78 d) and it is clearly concerning that such disproportionality persists. The Laming Review published in the same year reported that care-experienced children from specific social groups (BAME, girls, SLCN, foreign nationals, victims of trafficking) may be doubly vulnerable to criminalisation.[317] Despite the issue's prominence within the Laming Review, precisely how these sub-groups of care-experienced children are affected by criminalisation remains insufficiently understood.

310 Department for Education (2019). *Children looked after in England (including adoption), year ending 31 March 2019*. Retrieved from: https://www.gov.uk/government/statistics/children-looked-after-in-england-including-adoption-2018-to-2019.
311 Howard League for Penal Reform (2019). *Ending the Criminalisation of Children in Residential Care: Know Your Numbers: Using Data to Monitor and Address Criminalisation.* London Howard League for Penal Reform, p.6
312 See Howard League for Penal Reform (2020). *Ending the Criminalisation of Children in Residential Care. Victims not Criminals: Protecting Children Living in Residential Care from Criminal Exploitation*. London: Howard League for Penal Reform; see also: Children's Society (2019*). Counting Lives: Responding to Children who are Criminally Exploited*. London: Children's Society.
313 Howard League for Penal Reform (2019). *Ending the Criminalisation of Children in Residential Care: Know Your Numbers: Using Data to Monitor and Address Criminalisation.* London Howard League for Penal Reform.
314 Ibid., p.6.
315 HM Inspectorate of Prisons (2020). *Children in Custody. An Analysis of 12–18-year-olds' Perceptions of their Experiences in Secure Training Centres and Young Offender Institutions*. London: HMCIP.
316 All the institutions included in the report methodology were located in England, with the exception of Parc.
317 Prison Reform Trust (2016). *In Care, Out of Trouble: An independent review chaired by Lord Laming (The Laming Review). London. Prison Reform Trust.*

Acknowledging the seriousness of such concerns, the UK Government has developed additional guidance – *National Protocol on Reducing Unnecessary Criminalisation of Looked-after Children and Care Leavers*[318] – to provide a best-practice framework for key local agencies (for example, local authorities, youth offending services, police, Crown Prosecution Service) who work with care-experienced children. There is some evidence that this guidance, reinforced by the work of organisations such as the Howard League for Penal Reform, has made a difference in this area. More still needs to be achieved, however, especially within the context of county lines and the criminal exploitation of vulnerable children.

RECOMMENDATION 34

Unicef UK welcomes the fact that there is increasing recognition of the overrepresentation of care-experienced children within the youth justice system and that progress is being achieved in respect of addressing this issue.

To help increase knowledge of how care-experienced children interact with the youth justice system and work towards their reduced criminalisation, Unicef UK recommends that there needs to be:

1. **Improved and more consistent data-recording practices in respect of care-experienced children who come into contact with the police (e.g. in relation to police call-out data).**
2. **Greater examination of the impact of criminalisation on specific groups of care-experienced children (e.g. BAME, school-excluded, girls and SLCN children) - this should be underpinned by the views and experiences of these groups of children (UNCRC 1989 Article 12).**
3. **Greater examination of the relationship between criminal exploitation and the criminalisation of care-experienced children (e.g. children seen as victims, rather than as perpetrators of crime).**

UNCRC 1989 ARTICLE 40.1

States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

318 Department for Education, Home Office and Ministry of Justice (2018). *The National Protocol on Reducing Unnecessary Criminalisation of Looked-after Children and Care Leavers*. Retrieved from: https://www.gov.uk/government/publications/national-protocol-on-reducing-criminalisation-of-looked-after-children.

CHILD CRIMINAL RECORDS

The negative impact of labelling and stigma on children who come into conflict with the law has long been recognised within the criminological literature (see, for example, Tannenbaum, 1938; Becker, 1963). Consequently, efforts to filter children who have committed low-level offences away from the formal youth justice system have been viewed as increasingly important; so much so, that youth diversion schemes are now used widely within England[319] and have become a key feature of youth justice practice (see earlier in the chapter). From an international children's rights perspective, youth diversion is a key requirement of a child-friendly youth justice system, as is explicitly underlined within General Comment No. 24 (2019):

> *"Diversion should be the preferred manner of dealing with children in the majority of cases. States parties should continually extend the range of offences for which diversion is possible, including serious offences where appropriate. Opportunities for diversion should be available from as early as possible after contact with the system, and at various stages throughout the process. Diversion should be an integral part of the child justice system ... "*[320]

It is therefore encouraging that efforts are being made within England to divert children in conflict with the law away from the formal youth justice system (and associated labelling and stigmatisation). However, General Comment No. 24 (2019) also states:

> *"(f) The completion of the diversion should result in a definite and final closure of the case. Although confidential records of diversion can be kept for administrative, review, investigative and research purposes, they should not be viewed as criminal convictions or result in criminal records."*[321]

Over a number of years there has been growing criticism of the practice of disclosing 'diverted' children's criminal records when those children are subsequently undergoing routine criminal record checks (Sands, 2016). Such disclosures undermine the effectiveness of youth diversion schemes by damaging the children's futures at this later stage. In 2016 the House of Commons Justice Committee looked into the issue and concluded:

> *" ... the current system undermines the laudable principles of the youth justice system and may well fall well short of the UK's obligations under the UN Convention on the Rights of the Child."*[322]

Significantly, in a landmark ruling in 2019 a Supreme Court judgement[323] backed a previous ruling by the Court of Appeal and declared that youth reprimands and warnings (post LASPOA, 2012,[324] now called youth cautions) should not be disclosed as part of a criminal record check, as they are intended to be rehabilitative and diversionary outcomes. Positively, following on from the Supreme Court ruling, in July 2020 the UK Government announced new legislation that would amend The Police Act 1997 to remove the automatic disclosure of youth cautions, reprimands and warnings.[325] This is a welcome development and an important first-step, but currently the relationship between other commonly used youth diversion outcomes such as the community resolution (CR) and their appearance on future criminal record checks is less well understood. This is an area that requires further examination to ensure children are not being unnecessarily labelled and stigmatised in other parts of the pre-court (diversionary) system.

319 And also, Wales.
320 United Nations Committee on the Rights of the Child (2019). *General Comment No. 24 (2019) on children's rights in the child justice system,* Paragraph 16. CRC/C/GC/24. Geneva: UN.
321 Ibid., Paragraph 18 f.
322 House of Commons Justice Committee (2017). *Disclosure of Youth Criminal Records. First Report of Session 2017-19*. London: House of Commons.
323 R (on the application of P, G and W) (Respondents) v Secretary of State for the Home Department and another (Appellants) [2019] UKSC 3.
324 The Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPOA) – This piece of legislation introduced a new set of out-of-court disposals in England and Wales (e.g. youth restorative disposal, youth caution and youth conditional caution).
325 The legislation also intends to remove the multiple conviction rule.

RECOMMENDATION 35

Unicef UK welcomes newly proposed legislation aimed at removing the automatic disclosure of youth cautions, reprimands and warnings. However, Unicef UK recommends that the UK Government (and where applicable the Ministry of Justice) undertake the following actions moving forward:

1. **Ensure that the proposed legislation is enacted as intended, without delay.**

2. **Review the legislation once implemented, to ensure it is functioning as intended.**

3. **Examine the extent to which other commonly used out-of-court or diversionary outcomes (e.g. the community resolution) are appearing on criminal record checks, so as to ensure that children who have been diverted are not unnecessarily being stigmatised as they move forward with their lives.**

4. **Review whether other areas of the child criminal records system also urgently require reform.**

KNIFE CRIME

Statistics from the Youth Justice Board and Ministry of Justice reveal that during the year 2018/19 children and young people under 17 years old committed 4,451 knife and offensive weapons crimes which ended with a caution or a sentence, constituting a 1 per cent decrease on the previous year, when there were 4,506 offences committed.[326] Prior to this point, there were year on year increases between 2014 (2,671) and 2018 (4,506).

The Mayor of London has recognised knife crime as a key issue affecting young people in the capital, as identified in his *London Knife Crime Strategy*, launched in 2017.[327] In 2018, the Mayor of London Office for Policing and Crime produced a report entitled *Youth Voice Survey 2018* which collected young people's experiences of serious violence in the capital (including knife-crime) and found that 26 per cent of young people surveyed said that they were aware of someone who had carried a knife, while 3 per cent said they had carried a knife themselves.[328] The survey also found that certain groups of young people experienced greater exposure to individuals carrying knives – for example, young people who were victims of crime themselves and those residing in pupil referral units.[329] Building on this theme, research undertaken by Ofsted in 29 schools, colleges and pupil referral units in London identified three tiers of children at risk of carrying a knife: firstly, those who have been criminally exploited and are within gangs; secondly, those who have been a victim of a knife offence, are aware of somebody who carries a knife for their safety, or who are heavily influenced by knife culture in social media; and thirdly, those who carry knives in a school setting as a one-off incident.[330]

To look at and understand this complicated societal issue and how best to respond to it a structural and societal lens is required, rather than one that is narrowly individualistic which can easily lead to increasingly punitive measures being placed upon children. Solutions should be aimed at holistically supporting children in their communities, ensuring that they have access to appropriate services, and should always build upon children's strengths and future potential (see, for example, Case and Haines, 2019).

RECOMMENDATION 36

Unicef UK recommends the following actions be undertaken in relation to knife crime:

1. **The UK Government should commit to treating knife crime as a societal/ structural, rather than individualistic issue, when developing any new policy/ guidance in this area.**
2. **The UK Government should fund holistic prevention programmes aimed at addressing knife crime.**
3. **The UK Government should actively develop opportunities to listen to children and young people's views (UNCRC 1989 Article 12) on this issue.**

UNCRC 1989 ARTICLE 3, 1

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

326 These statistics relate to England and Wales. Youth Justice Board and Ministry of Justice (2020). *Youth Justice Statistics 2018/2019*, Supplementary Tables. Chapter 4 , Table 4.7. London: Youth Justice Board and Ministry of Justice.
327 Mayor of London (2017). *The London Knife Crime Strategy.* London: Greater London Authority.
328 Ramshaw, N., Charleton, B. and Dawson, P. (2018). *Youth Voice Survey 2018*. London: MOPAC.
329 The link between knife crime and school exclusions has been specifically highlighted by the APPG on Knife Crime in their 2019 report, *Back to School, Breaking the Link between School Exclusions and Knife Crime*.
330 Ofsted (2019). *Safeguarding children and young people in education from knife crime: Lessons from London*: London: Ofsted.

COVID-19 IMPACTS – YOUTH DETENTION

The ongoing impact of Covid-19, and the requirement for self-isolation, means that there is the potential for children in England to be locked in their cells for long periods of time. From a children's rights perspective this is clearly unsatisfactory and as General Comment No. 24 (2019) Paragraph 95 b makes clear children should have opportunities to join with their peers and take part in sports, physical exercise, arts and leisure-time activities.

Relatedly, Article 37 of the UNCRC 1989 states that children in detention (or deprived of their liberty) should be treated with humanity and respect for the inherent dignity of the human person. Children with existing mental health and wellbeing conditions may be particularly negatively affected by spending large periods of time in self-isolation. It is therefore extremely important that they should be able to access physical and mental health support services whenever needed.

It should always be the case that children held in youth detention facilities in England are able to access hand sanitiser, tissues and other hygiene products and are given opportunities to shower and wash regularly.

Practically, the Alliance for Child Protection in Humanitarian Action and UNICEF have recently issued a Technical Note[331] outlining practical steps to be undertaken by States Parties – this guidance should be acted upon in relation to children in youth detention in England.

RECOMMENDATION 37

Unicef UK is concerned that children in youth detention in England are extremely vulnerable to the short and long-term impacts of Covid-19.

Unicef UK recommends that immediate action be taken in line with the steps identified in *The Alliance for Child Protection in Humanitarian Action and UNICEF Technical Note on Children Deprived of their Liberty*.

UNICEF UK YOUTH ADVISORY BOARD

VIEWS ON CHILDREN'S VOICES AND PARTICIPATION

"If you are getting children and young people's input, it can show people what they need to improve on to help children. So many children will not really understand the system, so obviously getting their input into what they need to understand it better is always a good thing – lived experience is the best way to make the system better."

YAB Member A

"I think that children's views on youth justice should 100 per cent be looked at and should be of interest. Especially for those children who have been in the youth justice system – if they have any ideas on how to improve it, or even if they want to mention things that could have been done better, or things they thought were wrong ... it could help those younger people who later down the line may come into contact with the youth justice system."

YAB Member B

"I'm sure youth justice children aren't taken seriously ... this is what I would assume ... because a lot of adults would probably think 'why would we want this child's input considering they've committed a crime?' But I think it's still really important to hear what they have to say because there is obviously a reason why they committed the crime and they are still children, they are still people, and they still deserve to have their voices heard."

YAB Member C

331 The Alliance for Child Protection in Humanitarian Action and UNICEF (2020). *Technical Note: Covid-19 and Children Deprived of their Liberty*. Retrieved from: https://alliancecpha.org/en/child-protection-online-library/technical-note-covid-19-and-children-deprived-their-liberty.

Chapter Three Summary

This chapter has examined youth justice practice in England and has identified a number of progressive features but also areas of concern where the rights of children in contact with the law are currently being undermined.

AREAS OF PROGRESS

The analysis of youth justice in England has identified that there are certain areas where progressive rights-focused developments are taking place – for example, every police force in England over the 2010–2018 period achieving reductions in numbers of child arrests. Additionally, the renewed attention being afforded to the role of youth diversion is welcome, which is also helping to reduce the numbers of children appearing at the Youth Court. It is encouraging, too, that Outcome 21 has been created in order to reduce the criminalisation of children for sexting offences and there is growing awareness around the criminalisation of care-experienced children, leading to the development of the *National Protocol on Reducing Unnecessary Criminalisation of Looked-after Children and Care Leavers*. It is also positive in respect of child criminal records that new legislation has been announced that will amend the Police Act 1997 to remove the automatic disclosure of youth cautions, reprimands and warnings (although this needs to be implemented without delay).

AREAS FOR DEVELOPMENT

However, there remain many areas of youth justice practice where the rights of children who are in contact with the law in England are severely undermined. A prominent and long-standing example is that of England's extremely low minimum age of criminal responsibility (10 years old) which sits four years beneath current international children's rights standards. The continued use of tasers and spit-hoods on children by police officers is also extremely concerning, with their use disproportionately affecting BAME children in certain police forces. In addition, children situated in police custody who have not been granted bail are still not routinely placed in appropriate local authority accommodation as required by PACE 1984.

From a children's rights perspective it is highly problematic that children and young people under 18 years old who have committed criminal offences continue to be named in the media, and that concerns still exist as to whether children feel they can meaningfully participate in Youth Court proceedings. The rate of school exclusions in England also remains too high. The present conditions in youth detention are especially alarming, with high levels of violence routinely documented and children habitually subjected to use of restraint and force, along with practices of isolation, segregation and solitary confinement.

Finally, and hugely troublingly, certain groups of children – such as BAME children – are still disproportionately represented within the youth justice system. This requires immediate action to remedy.

CHAPTER FOUR

YOUTH JUSTICE IN NORTHERN IRELAND

Policing and justice powers became the devolved responsibility of the Northern Ireland Executive in 2010 as part of the Hillsborough Castle Agreement. Within the Agreement, a commitment was made to review the workings of the youth justice system in Northern Ireland. A Youth Justice Review was subsequently undertaken which reported its findings in 2011.

The current make-up of youth justice in Northern Ireland reflects those areas where the Review's recommendations were enacted upon, but also where there has been little or no progress. The reality of youth justice process and practice in Northern Ireland also heavily reflects the political climate in which it functions; notably, the legacy of the Troubles and at times also the lack of a functioning executive.

The chapter adopts a rights-focus to examine the extent to which Northern Ireland is upholding the rights of children who come into contact with the law. It reviews a number of specific policy areas and structures that intersect with children as they both encounter and find themselves situated within the Northern Irish youth justice system. The analysis provides the basis for a series of recommendations relating to actions that Unicef UK believes necessary to ensure the rights of children who are in contact with the law are properly recognised, upheld and protected.

UNCRC 1989 ARTICLE 40, 3 (A)

States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.

THE MINIMUM AGE OF CRIMINAL RESPONSIBILITY

The minimum age of criminal responsibility (MACR) in Northern Ireland is 10 years old. This means that any child over 10 years of age in Northern Ireland who commits a criminal offence can be arrested, appear at court and potentially be sentenced to youth detention.[332] Policing and justice powers were devolved in April 2010 from the UK Government to the Northern Ireland Executive as part of

332 For an overview of MACR in Northern Ireland, see McAlister, S., Carr, N., Dwyer, C., and Lloyd, K. (2017). *Raise the age? Children's attitudes towards the minimum age of criminal responsibility*. ARK. http://www.ark.ac.uk/publications/updates/update113.pdf; see also, Dwyer, C. and McAlister, S. (2017). *Raising the age of criminal responsibility: endless debate, limited progress*. https://www.ark.ac.uk/ARK/publications/features?keys=&page=1.

the Hillsborough Castle Agreement. Within the Agreement a commitment was made to review:

> *" ... how children and young people are processed at all stages of the criminal justice system, including detention, to ensure compliance with international obligations and best practice."*[333]

This commitment was realised in the Youth Justice Review commissioned by then Minister for Justice, David Ford, in November 2010. The Youth Justice Review was published in 2011 and stated in Recommendation 29:

> *"The minimum age of criminal responsibility in Northern Ireland should be raised to 12 with immediate effect, and that following a period of review of no more than three years, consideration should be given to raising the age to 14."*[334]

Despite the recommendation outlined in the Youth Justice Review being accepted in principle, to date, Northern Ireland's MACR remains 10 years. Over the past nine years, and from a variety of different quarters, concerns have been raised about this lack of progress.

Domestically, Criminal Justice Inspection Northern Ireland (CJINI) in 2013 and 2015[335] assessed progress made in relation to the Youth Justice Review and found that an absence of political consensus on the issue of MACR was impeding any possibility of its reform. Against this backdrop, in 2015 the charity Include Youth launched a campaign – Raise the Age NI – to lobby for the MACR to be raised, while in November 2019 the UK's Children Commissioners produced a UNCRC mid-term review in which the Northern Ireland Commissioner for Children and Young People identified raising MACR as a key priority.[336]

At an international level, the UN Committee on the Rights of the Child has also consistently expressed concern at Northern Ireland's low MACR (see UNCRC, 2002, 2008, 2016) and called for it to be increased. Significantly, there have also been efforts made to gain children's views on the issue in Northern Ireland with a 2016 Kids' Life and Times Survey; a majority of the 5,094 children who responded were in favour of raising MACR.[337] Yet, without political consensus on the issue, Northern Ireland's MACR will remain unchanged and out of step with General Comment No. 24 (2019), which calls for a MACR of at least 14 years of age.

RECOMMENDATION 38

Unicef UK recommends the following actions be undertaken in respect of the minimum age of criminal responsibility (MACR):

The Northern Ireland Executive should amend its MACR to at least 14 years of age in line with General Comment No.24.

The Northern Ireland Executive should commit to ensuring children's views (UNCRC 1989 Article 12) in Northern Ireland are recognised in any future legislative processes aimed at raising MACR.

333 Hillsborough Castle Agreement (2010). *Agreement Reached at Hillsborough Castle. 5 February 2010,* p.7. Retrieved from: https://www.gov.uk/government/publications/hillsborough-castle-agreement.
334 Department of Justice (2011). *A Review of the Youth Justice System*. Belfast: Department of Justice.
335 CJINI (2013). *Monitoring of Progress on Implementation of the Youth Justice Review Recommendations*. Retrieved from: http://www.cjini.org/getattachment/c1e0f527-fef3-439d-a4aa-a6f414a7ff0d/Monitoring-of-Progress-on-Implementation-of-the-Yo.aspx. See also: CJINI (2015). *Monitoring of Progress on Implementation of the Youth Justice Review Recommendations.* Retrieved from: http://www.cjini.org/getattachment/355260de-ceb0-43f8-ad83-e91fee363dd1/picture.aspx.
336 UK Children's Commissioners' (2019). *UK Children's Commissioners' UNCRC mid-term review.* Retrieved from: https://www.niccy.org/media/3410/childrenscommissioners-uncrc-mid-term-review-5-nov-19.pdf.
337 See: https://www.ark.ac.uk/klt/2016/.

UNCRC 1989 ARTICLE 40, 3 (B)

States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

INFORMED WARNINGS AND RESTORATIVE CAUTIONS

International children's rights standards consistently highlight the importance of including diversionary mechanisms within child-friendly youth justice systems. General Comment No. 24 (2019) states:

> *"Diversion should be the preferred manner of dealing with children in the majority of cases. States parties should continually extend the range of offences for which diversion is possible ..."*[338]

In Northern Ireland, since 2012, Youth Engagement Clinics (YE Clinics) have played an important role in facilitating diversionary outcomes for children in contact with the law. YE Clinics were created by the Department of Justice with the aim of limiting cases appearing at the Youth Court unnecessarily and also as a means of expediting the workings of the system and reducing delays in cases. Practically, where the Public Prosecution Service (PPS) decides an out-of-court disposal is appropriate, the YE Clinic provides a setting or forum which allows children to make more informed decisions about the diversionary options available to them (with the help of legal advice) and to benefit from professional and practitioner expertise and support ('interventions') if required. The diversionary options flowing out of the clinic have routinely included "informed warning, restorative caution and diversionary youth conferencing" (see the next section for more detail on diversionary youth conferencing). An informed warning is an out-of-court disposal used by the Northern Ireland police service as a means of dealing with low-level offending by children. It does not involve a restorative meeting with the victim(s) and is delivered by a police-trained facilitator. Informed warnings, although not convictions, remain on a child's criminal record for a year. A restorative caution is used for offences higher up the tariff and involves the child (accompanied by their parent/carer), once they have agreed, engaging in a meeting with the victim(s) in order to talk through the offence and its effects. The meeting will usually be overseen by a police officer or a community representative and at the end of the meeting

338 UN Committee on the Rights of the Child (2019). *General Comment No. 24 on children's rights in the child justice system.* CRC/C/GC/24. Geneva: UNCRC.

specific actions (for example, an apology, some form of reparation, or interventions) will be drawn up and agreed to by the child. A restorative caution, although not a conviction, remains on a child's criminal record for two and a half years after being administered.

Latest available statistics in relation to YE Clinics and use of out-of-court disposals illustrate that over the period April 2018 to March 2019, 40.4 per cent of cases were deemed appropriate to be dealt with via the youth engagement process. Specifically:

> *"The most common outcome from youth engagement clinics was a youth conference plan, with 49.5% (564) of young people following this route. Informed warnings were the outcome for 18.9% (215) of young people attending youth engagement clinics, with restorative cautions being the outcome for 17.7% (202) of young people."*[339]

It is clearly positive from a children's rights perspective that out-of-court diversionary mechanisms are being utilised to deal with low-level offending by children in Northern Ireland. However, there have been certain concerns raised around the function of the YE Clinics, notably in relation to the uptake of legal advice by children. According to the latest statistics:

> *"Legal representation was present, or legal advice received prior to youth engagement clinics in 26.5% (245) of cases in 2018/19. In 73.5% legal representation was offered, but declined by the family or young person concerned."*[340]

Article 40, 2, b iii UNCRC 1989 and General Comment. No.24 (2019) Paragraph 16 highlight the importance of ensuring children's legal safeguards are fully respected and protected in judicial and diversionary contexts. It is clear that many children engaging with YE Clinics are not engaging legal representation, but the precise reasons for why this is the case and whether certain groups of children (for example, BAME, care-experienced, school excluded, girls) are being adversely affected is arguably not yet fully understood.

There have also been long-standing concerns about the stigmatising effect on children of diversionary disposals showing up on a criminal record; with informed warnings remaining on a child's criminal record for a year and a restorative caution for over two years. General Comment No. 24 (2019), Paragraph 18 (f), states:

> *"(f) The completion of the diversion should result in a definite and final closure of the case. Although confidential records of diversion can be kept for administrative, review, investigative and research purposes, they should not be viewed as criminal convictions or result in criminal records."*[341]

It is recognised that, as of March 2020, changes have been made to the disclosure of criminal records for non-court disposals for under-18s. However, these changes, which will require the Independent Reviewer to assess whether to disclose a criminal record, will need to be regularly reviewed to ensure they are working as intended and that children are not being unnecessarily stigmatised subsequent to their being diverted.

339 Graham, I. and Liddicoat, J. (2019). *Youth Engagement Statistics for Northern Ireland*, 2018/19. Retrieved from: https://core.ac.uk/download/pdf/237701121.pdf.
340 See: https://www.justice-ni.gov.uk/news/youth-engagement-statistics-northern-ireland-201819-published-today.
341 UN Committee on the Rights of the Child (2019). *General Comment No. 24 (2019) on children's rights in the child justice system,* Paragraph 18f. CRC/C/GC/24. Geneva: UN.

RECOMMENDATION 39

Unicef UK welcomes the growing emphasis placed on youth diversion in Northern Ireland via Youth Engagement (YE) Clinics. Unicef UK similarly welcomes the changes that have been made to the disclosure of criminal records for non-court disposals for children under 18 years old. However, Unicef UK believes that:

1. **These changes should be reviewed in due course to ensure that they are working as intended and children are not being unnecessarily stigmatised.**
2. **The Department of Justice and Youth Justice Agency should undertake analysis of why the majority of children engaged with YE Clinics do not take up legal representation.**

UNCRC 1989 ARTICLE 37 (B) – ALSO ARTICLE 40, 3 (B)

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

YOUTH CONFERENCING

Restorative justice has long been a feature of criminology (Braithwaite, 1989) and has practically been deployed in criminal and youth justice settings internationally as a way of bringing together those who have committed offences and their victim in order to mend the harm caused by offending behaviour and allow both parties to move forward positively with their lives. In Northern Ireland, the emergence of restorative justice practice in relation to children in conflict with the law can be traced to the 2000 Criminal Justice Review undertaken into the workings of the criminal justice system in Northern Ireland. The review recommended that:

> *" ... restorative justice should be integrated into the juvenile justice system and its philosophy in Northern Ireland, using a conference model (which we term a "youth conference") based in statute, available for all ... subject to the full range of human rights safeguards."*[342]

Following on from the recommendation of the Criminal Justice Review, youth conferencing was subsequently placed in statute in the Justice (Northern Ireland) Act 2002. The youth conferencing model as delivered by the Youth Justice Agency[343] has two strands of referral: a diversionary referral, where a child is referred to a Youth Conference via the Public Prosecution Service (PPS); or a court referral, where an order is made by the court for a child to attend a Youth Conference. Children aged between 10 and 17 years old can participate in these conferences, but they must agree to do so (see Doherty, 2014, for an overview of the emergence of restorative justice in Northern Ireland).

Individuals in attendance at a Youth Conference normally include: the child, an appropriate adult (for example, parent, family member, social worker); the conference co-ordinator; PSNI Officer; and the victim (or victim representatives). During the session, the offence and its effects are discussed by those in attendance (including by the child who has committed the offence, and the victim), before an Action Plan (which forms a legal agreement) is

342 Criminal Justice Review (2000). *Review of the Criminal Justice System in Northern Ireland' the report of the Criminal Justice System Review, 30 March 2000.* Retrieved from: https://cain.ulster.ac.uk/issues/law/cjr/report30300.htm p.205.

343 It is important to note that non-statutory restorative justice schemes are also delivered in Northern Ireland by community organisations. See: Payne et al. (2010). *Restorative Practices in Northern Ireland: A Mapping Exercise*. Belfast: Queen's University Belfast.

drawn up. The plan lays out the activities that child agrees to undertake, and can include: an apology to the victim; some form of reparation; commitment to interventions or activities aimed at addressing wrongdoing; engagement with treatment services (for example, mental health and addiction); or limitations on movements in certain locations. The Action Plan comes into effect shortly after the session ends and the PPS or courts are informed of what it contains, and what the child has agreed to undertake. Both the PPS and courts then have the final decision on whether to agree to the plan. If accepted, children referred on diversionary grounds do not receive a criminal record, while those referred on court grounds receive a Youth Conference Order, which constitutes a criminal record.[344]

Youth conferencing is therefore an important mechanism in achieving pre- and post-court diversion within Northern Ireland and, by extension, in helping ensure that youth detention is only used as a last resort. General Comment No. 24 (2019), Paragraph 16, states:

> *"Opportunities for diversion should be available from as early as possible after contact with the system, and at various stages throughout the process."*[345]

A number of evaluations have been undertaken into the workings of youth conferencing in Northern Ireland over the last two decades. An early evaluation undertaken in 2005 (Campbell et. al., 2005) reported favourably on the impact being made by youth conferencing and found that there were high levels of satisfaction for both children who had offended and victim(s); however, more concerningly it did also highlight that care-experienced children were disproportionately overrepresented in its workings. Criminal Justice Inspection Northern Ireland (CJINI) in 2008[346] also undertook an inspection of youth conferencing and was "convinced" of the merit of a restorative justice approach to youth offending. The inspectors did express concern, however, relating to the increasing number of referrals to youth conferencing which were putting the system under pressure, and the lack of robust data available on its impact on re-offending (recidivism) rates.

A further CJINI inspection was undertaken in 2015, and again found the process to be working effectively and producing positive results. However, concerns – echoing the analysis of Campbell et al., 2005, a decade earlier – were raised about the high proportion of care-experienced children being referred to a Youth Conference (40 per cent). In respect to these concerns, the most recent CJINI follow-up review of youth conferencing highlighted that integrating restorative justice into care-home settings had been recommended in the Department of Health's *Review of Regional Facilities for Children and Young People* and steps were being taken to implement the recommendation.

RECOMMENDATION 40

Unicef UK, acknowledges the growing emphasis that has been placed on restorative solutions to children's offending via Youth Conferencing.

However, Unicef UK is concerned at the high proportion of care-experienced children appearing at Youth Conferences (and subsequently at the Juvenile Justice Centre (JJC)).

Unicef UK recommends that the Youth Justice Agency undertakes research and analysis to better understand the reasons why high numbers of care-experienced children are engaged with Youth Conferences and take action to mitigate this.

344 For more detail on the youth conference process, see Gibbs, P. and Jacobson, J. (2009). *Out of Trouble, Making Amends: restorative youth justice in Northern Ireland*. London: Prison Reform Trust.
345 UN Committee on the Rights of the Child (2019). *General Comment No. 24 (2019) on children's rights in the child justice system,* Paragraph 16. CRC/C/GC/24. Geneva: UN.
346 CJINI (2008). *Youth Conference Service: Inspection of the Youth Conference Service in Northern Ireland*. Retrieved from: http://www.cjini.org/getattachment/f3cad34a-3f8f-49ef-8e02-131d85fa0ff4/Youth-Conference-Service-(Februrary-2008).aspx.

UNCRC 1989 ARTICLE 3.1 /ARTICLE 37 (A)/ ARTICLE 40.1

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

.....

States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

.....

States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

POLICING – ATTENUATING ENERGY PROJECTILES, TASERS, POLICE CUSTODY

The use of plastic bullets or baton rounds in Northern Ireland can be dated as far back as 1970. They were deployed in riot and crowd control situations, often in the context of the Troubles. They were replaced in 2005 by attenuating energy projectiles (AEP), purported to be a safer option which would limit the chances of individuals being injured. There have been widespread concerns expressed by organisations – for example, the Northern Ireland Commissioner for Children and Young People (NICCY)[347] – about the use of such weapons on children and young people under 18 years old, with evidence suggesting that a number of children have been seriously injured and killed following on from their usage. In addition to AEP, specially trained police officers have also been equipped since 2008 with tasers, whose use in respect of children has also similarly caused concern. The Defence Scientific Advisory Council Sub-Committee on the Medical Implications of Less-Lethal Weapons (DOMILL) undertook a review into tasers in Northern Ireland and highlighted a series of heightened risks to children posed by their use.[348] From an international children's rights perspective, as far back as 2008, the UN Committee on the Rights of the Child recommended to the UK Government[349] that they:

> *" ... treat Taser guns and AEPs as weapons subject to the applicable rules and restrictions and put an end to the use of all harmful devices on children."*[350]

347 NICCY (2004). *Children's Rights in Northern Ireland*. Retrieved from: https://dera.ioe.ac.uk/9165/1/22323%20Final.pdf.
348 DOMILL (2012). *Statement on the Medical Implications of Use of the Taser X26 and M26 Less-Lethal Systems on Children and Vulnerable Adults*. Retrieved from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/443842/DOMILL14_20120127_TASER06.2.pdf.
349 Encompassing Northern Ireland.
350 UN Committee on the Rights of the Child (2008*). Consideration of Reports Submitted by State Parties Under Article 44 of the Convention. Concluding Observations: United Kingdom and Great Britain*, Paragraph 31. CRC/C/GBR/CO/4. Geneva: UN.

In 2014, the UK Government confirmed that, despite the UN Committee's concerns, children would not be exempt from being subjected to taser if they posed a threat:

> *"The UK Government has carefully considered the UN Committee's recommendation that it should end the use of Tasers and Attenuating Energy Projectiles (AEPs) on children. While we support the recommendation in principle, we believe it is impractical to implement it while Taser is in use for other age groups and officers' first priority must be to defend members of the public or themselves."*[351]

In 2016, in Paragraph 39 of its report, the UN Committee on the Rights of the Child once again warned the UK Government about the use of tasers in respect of children:

> *"The Committee is concerned about: (a) The use by the police of Tasers and, in the case of Northern Ireland, attenuating energy projectiles against children in the four devolved administrations."*[352]

Despite these repeated calls, to date the use of AEPs and tasers on children is still authorised in Northern Ireland.

RECOMMENDATION 41

Unicef UK recommends that the Northern Ireland Executive prohibit the use of AEP and tasers on children under 18 years old.

Police custody is a key setting that certain children interact with in Northern Ireland when they become engaged in the youth justice system. Yet the impact police custody possesses for children (some of whom will be extremely vulnerable) remains little understood. A 2016 CJINI review of the use of police custody in Northern Ireland highlights certain concerns about the detention of children. For example, there is a lack of centrally held, publicly available data on the use of force, restraint and strip-searches within police custody suites. As the report makes clear:

> *"Use of force was recorded in individual custody records on the Niche RMS. There was central monitoring of use of force in relation to use of attenuating energy projectiles, batons, CS spray, firearms, Taser, police dogs and water cannon across the Service as a whole. There was no specific monitoring of use of these types of force, or lower level force (for example, use of leg restraints or handcuffs) in custody suites."*[353]

Without this level of data being available, disaggregated by age, gender and ethnicity, it is extremely difficult to assess the extent to which children's rights are being upheld in police custody in Northern Ireland. An additional and long-standing concern identified in the report (see also Department of Justice, 2011) relates to how children are dealt with if charged but then denied bail, prior to appearing at court. Specifically, the report points to instances of the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) being used to admit children to Woodlands Juvenile Justice Centre (JJC) before their appearing at court, primarily due to a lack of suitable local alternative accommodation. Yet Article 37 (b) of the UNCRC 1989 states clearly:

> *"No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time."*

From a children's rights standpoint, it is problematic that Northern Ireland's only JJC has routinely been used, via PACE (Northern Ireland), to hold children awaiting a first appearance at court. This practice calls into question whether youth detention is

351 HM Government (2014). *The Fifth Periodic Report to the UN Committee on the Rights of the Child*, Paragraph 33. London: HMSO.
352 UN Committee on the Rights of the Child (2016). *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*, Paragraph 39. CRC/C/GBR/CO/5. Geneva: UN.
353 CJINI (2016). *Police Custody: The detention of persons in police custody in Northern Ireland*, p.24 Retrieved from: https://niopa.qub.ac.uk/bitstream/NIOPA/2952/1/338df4a1-68d6-4bb8-9403-9888bed9ebd9.pdf.

genuinely being used only as a measure of last resort for children in Northern Ireland. In its 2018 report, *Statement on Children's Rights in Northern Ireland*, the NICCY identified this as a clear area for concern.[354] CJINI's inspection of Woodlands JJC in 2018 found:

> *" ... half of the children admitted to the JJC on PACE were released within 48 hours. Many only remained in the JJC for a matter of hours, which suggested custody was not used as a last resort, but because there was no alternative accommodation available at the time of their court appearance."*[355]

The inspection report notes that Woodlands' staff were increasingly querying police officers when they used PACE (Northern Ireland) to admit children to the JJC, the report states that the problem will not be fully solved unless PACE (Northern Ireland) is amended.

RECOMMENDATION 42

Unicef UK recommends the following actions are undertaken in relation to police custody in Northern Ireland:

1. **PSNI should make statistical data (disaggregated by age, gender and ethnicity) publicly and consistently available which relate to the number of children subjected to use of force, restraint and strip-searches when in police custody.**

2. **The Northern Ireland Executive should review existing legislation to ensure that children post-charge are no longer being admitted to the Juvenile Justice Centre (JJC) due to a lack of suitable alternative accommodation.**

354 NICCY (2018). *Statement on Children's Rights in Northern Ireland*: Belfast: NICCY.
355 CJINI (2018). *An Announced Inspection of Woodlands Juvenile Justice Centre.* Retrieved from: http://www.cjini.org/TheInspections/Inspection-Reports/2018/April-June/JJCP.13.

WOODLANDS JUVENILE JUSTICE CENTRE

Woodlands Juvenile Justice Centre (JJC) located in Bangor, County Down, is Northern Ireland's only youth detention facility for children aged between 10 and 17 years old. Children can be admitted to Woodlands JJC via the criminal courts or by PSNI through the use of PACE (Northern Ireland). Over recent years there has been a general trend of fewer children being situated within Woodlands JJC. In 2014/15 the highest population level recorded was 42 children, whereas in 2018/19 this number had fallen to 30 children.[356] In explaining this trend it is likely that the impact of Youth Engagement Clinics, along with diversionary and court-ordered youth conferencing, will have played some role in limiting the use of JJC.

The most recent CJINI inspection of Woodlands JJC took place in 2018 and its report characterised the establishment as "the jewel in the crown for the DoJ and is the envy of neighbouring jurisdictions."[357] The inspectors noted that management was effective and staff morale had improved; a discernible caring ethos was apparent; and standards of health care were generally good. Despite the overall positive tone of the report there were a number of areas of concern, including the high numbers of care-experienced children entering into the facility: 20 per cent at the time of the inspection were subject to a care order. Worryingly, as **Table 10** illustrates, this rose to 28.1 per cent over the course of 2018/19. The inspectors also drew attention to the proportion of Catholic children who were resident in the JJC at the time of the inspection (75.8 per cent Catholic, compared to 16.5 per cent Protestant).

TABLE 10: Juvenile Justice Centre (JJC) Demographic Data - 2018/19[358]

Gender	
Male	90.6%
Female	9.4%
Age	
17 over	38.8%
16	30%
15	20.6%
14	6.3%
10–13	4.4%
Religion	
Catholic	62.5%
Protestant	18.8%
Other religious beliefs	2.5%
No religious beliefs	4.4%
Unknown	11.9%
Looked-After status	
Subject to Care Order	28.1%
Voluntary Accommodated	10.6%
Not in Care	59.4%
Unknown	1.9%

UNCRC 1989 ARTICLE 37 (C)

States Parties shall ensure that (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.

Although this admission trend has fallen from this highpoint in subsequent years, as **Table 10** reveals, Catholic children still make up 62.5 per cent of those residing in the JJC. In addition to these concerns, the inspection report also reiterated that PACE (Northern Ireland) was being used by PSNI to admit children to the JJC in a manner that was calling into question the use of the JJC only as a measure of last resort.

356 Data retrieved from: Brown, T. (2019). *Northern Ireland Youth Justice Agency Annual Workload Statistics 2018/19. YJA Statistical Bulletin 2019* – https://www.justice-ni.gov.uk/sites/default/files/publications/justice/YJA%20Workload%20Statistics%20bulletin%202018-19.pdf.

357 CJINI (2018). *An Announced Inspection of Woodlands Juvenile Justice* Centre. Retrieved from: http://www.cjini.org/TheInspections/Inspection-Reports/2018/April-June/JJC.

358 Data retrieved from: Brown, T (2019). *Northern Ireland Youth Justice Agency Annual Workload Statistics 2018/19. YJA Statistical Bulletin 2019:* https://www.justice-ni.gov.uk/sites/default/files/publications/justice/YJA%20Workload%20Statistics%20bulletin%202018-19.pdf.

RECOMMENDATION 43

Unicef UK is concerned at the consistently high number of children in Woodlands JJC who are subject to a Care Order. Unicef UK recommends that the Youth Justice Agency undertake research into what the possible reasons are behind this trend and what action needs to be taken to reverse the current levels.

Additionally, Unicef UK recommends that the Northern Ireland Executive prohibit the use of solitary confinement in youth detention settings.

COVID-19 IMPACT – YOUTH DETENTION

The ongoing impact of Covid-19, and the requirement for self-isolation, means that there is the potential for children in Northern Ireland to be locked in their cells for long periods of time. From a children's rights perspective this is clearly unsatisfactory and as General Comment No. 24 (2019) Paragraph 95 b makes clear, children should have opportunities to join with their peers and take part in sports, physical exercise, arts and leisure-time activities.

Relatedly, Article 37 of the UNCRC 1989 states that children in detention or deprived of their liberty should be treated with humanity and respect for the inherent dignity of the human person. Children with existing mental health and wellbeing conditions may be particularly negatively affected by spending large periods of time in self-isolation in their cells. It is therefore extremely important that they should be able to access physical and mental health support services whenever needed.

It should always be the case that children held in youth detention facilities in Northern Ireland are able to access hand sanitiser, tissues and other hygiene products and are given opportunities to shower and wash regularly.

Practically, the Alliance for Child Protection in Humanitarian Action and UNICEF have recently issued a Technical Note[359] outlining practical steps to be undertaken by States Parties – this guidance should be acted upon in relation to children in youth detention in Northern Ireland.

RECOMMENDATION 44

Unicef UK is concerned that children in youth detention in Northern Ireland are extremely vulnerable to the short and long-term impacts of Covid-19.

Unicef UK recommends that immediate action be taken in line with the steps identified in *The Alliance for Child Protection in Humanitarian Action and UNICEF Technical Note on Children Deprived of their Liberty*.

359 The Alliance for Child Protection in Humanitarian Action and UNICEF (2020). *Technical Note: Covid-19 and Children Deprived of their Liberty*. Retrieved from: https://alliancecpha.org/en/child-protection-online-library/technical-note-covid-19-and-children-deprived-their-liberty.

Chapter Four Summary

This chapter has examined youth justice practice in Northern Ireland and has identified a number of progressive features, but also areas of concern where the rights of children in contact with the law are currently undermined.

AREAS OF PROGRESS

The analysis undertaken in this chapter has identified certain progressive developments in youth justice policy and practice in Northern Ireland. Efforts to divert children via the use of Youth Engagement Clinics (via informed warnings and restorative cautions) and youth conferencing (via diversionary and court-ordered streams) are clearly encouraging. Similarly, the most recent CJINI inspection of Woodlands JJC was largely positive in its tone, which is clearly significant for those children residing there. It is also encouraging that the Department of Justice in March 2020 revealed that they would be amending the AccessNI scheme in respect of non-court disposals pertaining to children under 18 years old, which should lessen the possibility of children being unduly stigmatised.

AREAS FOR DEVELOPMENT

However, there are also areas of youth justice policy and practice in Northern Ireland where children's rights continue to be undermined. For example, the extremely low minimum age of criminal responsibility, which despite recommendations calling for it to be raised in the Youth Justice Review, remains at 10 years of age. The ability for PSNI to use AEPs and tasers on children under 18 years old also clearly runs in opposition to international children's rights standards, while the use of PACE (Northern Ireland) to admit children routinely to Woodlands JJC also calls into question the use of the facility only as a measure of last resort. Despite the positive tone of the CJINI inspection report for Woodland JJC, it is concerning to see the disproportionate numbers of care-experienced children residing in the facility. This is not a recent trend and therefore may indicate challenges to be met elsewhere in the youth justice system.

CROWN DEPENDENCIES

YOUTH JUSTICE IN JERSEY

Jersey is one of the Crown Dependencies and as such is not part of the United Kingdom. Jersey is self-governing with its own distinct elected legislative assemblies, fiscal, bureaucratic and justice structures. Responsibility for youth justice therefore sits with the Government of Jersey, rather than with the UK Government, and affords Jersey autonomy in making decisions about how children in contact with the law should be engaged with and treated.

From a children's rights perspective a significant policy area where this legislative autonomy has clear progressive potential for youth justice policy and practice is in relation to the minimum age of criminal responsibility (MACR). Currently, the MACR in Jersey is 10 years and therefore is out of step with the most recent General Comment No. 24 (2019), which says:

> *"States parties are encouraged to take note of recent scientific findings, and to increase their minimum age accordingly, to at least 14 years of age."*[360]

Domestically, a number of recent independent reviews (see Evans et al., 2010;[361] States of Jersey, 2017; Evans, 2019) have highlighted this incongruity and called for Jersey's MACR to be raised in order to conform with international children's rights standards. For example, the most recent Youth Justice Review undertaken by Evans in 2019 recommended that MACR be reviewed as set out by the Government in 2021, with scope also being included to consider "the feasibility of introducing a non-criminal justice alternative model of dealing with offending behaviour" at the same time[362] – for example, merging with the approach outlined in the 2017 Independent Jersey Care Inquiry. This is an important consideration, as any raising of MACR logically requires that children who offend under that age threshold are engaged outside the formal criminal justice system. Significantly, in responding to the 2019 Youth Justice Review, the Children's Commissioner for Jersey requested: "Priority be given to raising the minimum age of criminal responsibility."[363] There is, then, a growing consensus developing, supported by a number of independent reviews, that for the island to become truly children-first and rights-respecting, MACR legislation requires immediate attention.

360 UN Committee on the Rights of the Child (2019). *General Comment No. 24 (2019) on children's rights in the child justice system*, Paragraph 22. CRC/C/GC/24. Geneva: UN.
361 The 2010 Youth Justice Review recommended that the MACR be raised to 12 years old in line with the recommendation of *General Comment No.10*, which was current at the time.
362 Evans, J. (2019). *Jersey Youth Justice Review*, Paragraph 2.5. St Helier: States of Jersey.
363 Children's Commissioner for Jersey (2019). *Children's Commissioner's Review of Youth Justice for the Government of Jersey – 'Jersey Youth Justice Review'*, p.17. Retrieved from: https://www.childcomjersey.org.je/media/1275/youthjusticereview.pdf.

The importance of Jersey having a MACR that observes international children's rights standards should also be understood in the context of its request in 2014 for the UK to extend ratification of the UNCRC to its territory. This places a responsibility on Jersey to promote the rights outlined within the UNCRC in respect of the jurisdiction's children, and also brings it under the monitoring and reporting procedures of the UN Committee.

RECOMMENDATION 45

Unicef UK is concerned that Jersey's minimum age of criminal responsibility (MACR) of 10 years old does not currently meet the threshold of at least 14 years of age as outlined in General Comment No.24. Unicef UK recommends the following actions are undertaken in relation to MACR:

The Government of Jersey should, at the earliest opportunity, progressively amend its MACR to at least 14 years of age in line with General Comment No.24.

The Government of Jersey should commit to ensuring that children's views in Jersey (UNCRC 1989 Article 12) are recognised in any future legislative processes aimed at raising MACR.

CONCLUSION

This report constitutes a starting point in Unicef UK's examination of youth justice in the United Kingdom. Its analysis has demonstrated that youth justice processes and practices across the United Kingdom are characterised by areas of commonality and divergence and are strongly shaped by the current devolved arrangements[364] (see Muncie, 2011). This has clear implications for the manner in which the rights of children who come into contact with the law are recognised or not within each country. This report has identified and evidenced the fact that within each of the four countries, from a children's rights perspective, there are both progressive and regressive aspects to current practice which have profound implications for children's lives, their rights and best interests.

SCOTLAND

RECAPPING THE KEY FINDINGS

The analysis of youth justice in Scotland identified that, post Kilbrandon, and devolution, a distinctive philosophical approach to engaging with children in contact with the law has emerged. Elements of this approach are positive and place a priority on children's welfare and needs – as illustrated by the workings of the Children's Hearings System – rather than focusing on the offence committed and children's wrongdoing. A commitment to this approach is practically reflected in the development of the Whole Systems Approach (WSA) and Getting it Right For Every Child (GIRFEC) which place a growing and progressive emphasis on prevention and diversion demonstrated by efforts to reduce the numbers of children excluded from school as well as the setting up of Early and Effective Intervention. The establishment of the Independent Care Review has also been clearly progressive, and its recommendations for reducing the criminalisation of care-experienced children in Scotland are welcome, as are the new secure care standards for Scotland published in October 2020.

Alongside, and sometimes within, these progressive elements there are, however, other areas of youth justice practice that undermine the rights of children who come into contact with the law in Scotland. For example, the existing MACR is lower than that recommended in General Comment No. 24 (2019).

The lack of direct child participation in the workings of Early and Effective Intervention also potentially serves to undermine children's rights to participation, while, the definition of the child in Scotland remains problematic: 16 and 17 year olds frequently appear in adults courts, rather than at a Children's Hearing which is more suitable for their needs (although it is positive that the Scottish Government is actively consulting on this issue).

The analysis has also highlighted that the use of tasers on children has not yet been prohibited in Scotland, despite the repeated recommendations of the UN Committee on the Rights of the Child and children's right to privacy, particularly when they have committed serious crimes, is not always respected in Scottish courts. Concerns remain about the welfare of children in young offender institutions in Scotland, in particular children on remand, along with challenges around provision and capacity in secure care, exacerbated by the selling of places to local authorities outside Scotland. Significantly, this also has a knock-on effect on the rights of the children who the purchasing authorities then place away from their home locations, and also, those in Scotland who are accommodated in young offender institutions settings because of a lack of available secure care.

Finally, as repeatedly evidenced, a lack of publicly available detailed, disaggregated and consistent data concerning children's interaction with the youth justice system in Scotland impedes thorough analysis and scrutiny.

Looking forward, the introduction of the UNCRC (Incorporation) (Scotland) Bill is the most significant child-rights development to take place in Scotland and may provide the opportunity to resolve the problematic elements of Scottish youth justice practice identified in this report.

364 It is suggested that even in Wales, where youth justice is not devolved, the wider impact of devolution has had an impact on youth justice policy and practice.

WALES

RECAPPING THE KEY FINDINGS

The analysis of youth justice in Wales has identified that post devolution there has been a specific ambition on the part of Welsh politicians and decision-makers to endorse a vigorous rights and entitlements agenda in respect of every child and young person. This emphasis has seeped into youth justice practice within the country – despite youth justice not constituting a devolved matter – and has also underpinned key joint policy documents such as the *All Wales Youth Offending Strategy* (2004), *Children and Young People First* (2014) and the *Youth Justice Blueprint for Wales* (2019), all of which promote the idea that children who come into contact with the law should always be viewed as children first. Promoting the centrality of children's rights has therefore become a clear and coherent foundation for youth justice policy and practice in Wales.

This progressive ambition has perhaps been most evident in the setting up of innovative, rights-based youth diversion schemes such as the bureau model, which has been recognised nationally and internationally for its child-centred approach. It is also encouraging that Welsh police forces have actively sought to reduce the criminalisation of children, as evidenced by sustained decreases in the numbers of children arrested; and that youth offending teams are adopting an enhanced case management (ECM) approach to engage with children who possess complex needs and have experienced trauma.

There are, however, still certain areas where the rights of children in contact with the law are undermined in Wales – for example, the extremely low MACR, the potential for tasers to be used on children, the identification of children involved in court proceedings, the frequent detention of children in facilities outside Wales and the worrying rise in the use of permanent school exclusions.

ENGLAND

RECAPPING THE KEY FINDINGS

The analysis of youth justice in England has identified that currently the rights of children in contact with the law in England are not being recognised consistently. There are certain areas where progressive rights-focused developments are taking place – for example, every police force in England over the 2010–2018 period achieving reductions in numbers of child arrests. Additionally, the renewed attention being afforded to the role of youth diversion is welcome and is also reducing the numbers of children appearing at the Youth Court. It is encouraging that Outcome 21 has been created in order to reduce the criminalisation of children for sexting offences. It also positive in respect of child criminal records that new legislation has been announced that will amend the Police Act 1997 to remove the automatic disclosure of youth cautions, reprimands and warnings.

Notwithstanding these positive developments, there remain many areas of youth justice practice where the rights of children who come into contact with the law in England are severely undermined. A prominent and long-standing example is that of England's extremely low MACR (10 years of age) which is incompatible with current international children's rights standards. The continued use of tasers and spit-hoods on children by police officers is also extremely concerning, with their use disproportionately affecting BAME children in certain police forces. In addition, children situated in police custody who have not been granted bail are still not routinely being placed in appropriate local authority accommodation as required by PACE 1984. It is also highly problematic from a children's rights perspective that children and young people under 18 years old who have committed criminal offences continue to be named in the media, and that concerns still exist as to whether children feel they can meaningfully participate in Youth Court proceedings. The rate of school exclusions in England also remains too high. The present conditions in youth detention are especially alarming, with high levels of violence routinely documented and children habitually subjected to use of restraint and force techniques, along with practices of isolation, segregation and solitary confinement. Finally, and hugely troublingly, certain groups of children – such as BAME children – are still disproportionately represented within the youth justice system, which is unacceptable.

NORTHERN IRELAND

RECAPPING THE KEY FINDINGS

The analysis undertaken of youth justice in Northern Ireland has identified that current practice contains both progressive and regressive elements. For example, there have been progressive efforts to divert children via the use of Youth Engagement Clinics (via informed warnings and restorative cautions) and youth conferencing (via diversionary and court-ordered streams), which is clearly encouraging. Similarly, the most recent CJINI inspection report for Woodlands JJC was largely positive in its tone, which is clearly significant for those children residing there. It is also encouraging that the Department of Justice in March 2020 revealed that they would be amending the AccessNI criminal records scheme in respect of non-court disposals pertaining to children under 18 years old, something which should lessen the possibility of children being unduly stigmatised.

However, there are also areas of youth justice policy and practice in Northern Ireland where children's rights continue to be undermined. For example, the extremely low minimum age of criminal responsibility, which despite recommendations calling for it to be raised in the Youth Justice Review, remains at 10 years of age. The ability for PSNI to use AEPs and tasers on children under 18 years old also clearly runs in opposition to international children's rights standards, while the use of PACE (Northern Ireland) to admit routinely children to Woodlands JJC also calls into question the use of the facility only as a measure of last resort. Despite the positive tone of its CJINI inspection report it is concerning, too, to see the high numbers of care-experienced children residing in the facility. This is not a recent trend and therefore may indicate challenges to be met elsewhere in the youth justice system.

A CALL TO ACTION – RIGHTS AS A REALITY FOR CHILDREN IN CONTACT WITH THE LAW

The analysis presented in this report evidences that, although there are progressive and innovative elements of youth justice process and practice across the locations examined, there are also many elements where children's rights are insufficiently recognised. Against this backdrop, the report's central ambition has been to recommend clear actions that Unicef UK believes will make the rights of children who are in contact with the law a reality.

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