

JUSTICE COMMITTEE

SECURE CARE PLACES FOR CHILDREN AND YOUNG PEOPLE IN SCOTLAND

SUBMISSION FROM CENTRE FOR YOUTH AND CRIMINAL JUSTICE

Work within CYCJ included hosting the secure care national project, being a member of the mental health review of young people in custody and undertaking a secure care census in 2018. We also chair a 6 monthly SPS partners meeting. Much of the information contained within this submission is from various sources from these pieces of work.

- **What is the current provision of secure accommodation in Scotland?**

Secure accommodation is among the most intensive and restrictive “alternative form” of care available to children in Scotland, whereby children up to age 18 are detained in a locked care setting, through the Children’s Hearings System or justice system, due to the level of concern about risks of, or actual significant harm, their behaviours pose to themselves and/or others. Though the number of children secured each year in Scotland is relatively small, the decision to restrict any child’s liberty is significant and has an immediate wider impact for the child, their family, friends and wider community. The Secure Accommodation (Scotland) Regulations 2013 and Public Service Reform (Scotland) Act 2010 define secure accommodation as accommodation provided for the purpose of restricting the liberty of children in a residential establishment, where care services are provided. Secure care aims to provide intensive support, care and education to keep these children safe and to meet the extremely high levels of need and vulnerability experienced by these children.

The 2017-18 Children’s Social Work Statistics highlight that there are 84 secure places available in five secure units in Scotland excluding emergency beds. There are an additional six beds available across these units for emergency and respite use - these would normally only be used if required and on a short-term basis.

The majority of children within the Scottish secure estate (80-90%) are placed there on welfare grounds.

Following a census undertaken by CYCJ of the secure care population in 2018, figures showed that 24% of the children from Scotland had been placed within secure with offending behaviour being noted as one of the primary reasons for admission. Thirty one percent were felt to pose a risk of harm to others. In the year prior to admission, 33% of the Scottish population had used a weapon (although not necessarily resulting in a charge) and 43% had been in possession of a weapon. Twenty six percent had been subject to interventions or supervision through the Criminal Justice System. In the year prior to admission, 46% of children from Scotland in secure care had accrued at least one charge of assault; 11% had five or more. Seven percent had been charged with multiple counts of rape and 9% had been charged with other contact sexual offences.

Therapeutic environments and interventions have been shown internationally to reduce reoffending. A study of juvenile institutions in Norway, Finland, Sweden and Germany demonstrated the benefits of the institutions being set up as “social therapeutic communities” where young people were assessed by their needs above their potential risks (Kidson, H, 2013). Building successful and supportive relationships with practitioners is also particularly important for children and can make the difference in relation to behaviour. It is the “relationship formed between the professional and young person” rather than the particular content of an intervention that ensures progress in the prevention of future offending (McNeill, F., 2006). This is what secure care can offer children.

Scottish local authorities are responsible for providing (either by delivering or purchasing) secure care services. This includes children who are placed in secure care following a Children’s Hearing where authorisation for placement in secure care has been made and implemented by the local authority Chief Social Work Officer. This is also the case for children who have been remanded or those who have been sentenced under section 44 of the [Criminal Procedure \(Scotland\) Act 1995](#) (where the child has been ordered to be detained in residential accommodation for a period not exceeding one year and it is for the local authority to determine the appropriate residential placement, which can include secure care). Scottish Ministers are responsible for children under the age of 16, or those aged 16 or 17 who are subject to compulsory supervision through the Children’s Hearing System, who have been convicted under solemn procedures and sentenced to detention (under section 205(2) of the [Criminal Procedure \(Scotland\) Act 1995](#)); and all children under 18 who have been convicted of murder under section 205(2) of the Criminal Procedure (Scotland) Act 1995.

- **What is the current level of cross-border placements in secure care units?**

Statistics gathered over summer 2018 found that English local authorities have been the third highest user of Scottish secure care between 2012 and 2018 (behind Glasgow City Council and City of Edinburgh Council), having purchased 12% of places used during that time frame (Gough, 2018). The CYCJ census of the secure care population in late 2018 identified that 37% of placements were from outwith Scotland. It should be noted that these were the findings on one particular day, and the levels of cross-border placements do fluctuate.

The 2017-18 Children’s Social Work Statistics report an average of 81 residents in secure care accommodation between August 1, 2017 and July 31, 2018, an increase from an average of 76 in the previous year. There was an 18% decline in the average number of residents from within Scotland and an increase of 89% in the average number of residents from outside Scotland, most of whom were from England.

An average of 43% of Scottish secure care beds were used for cross-border children in 2018. The ethical issues and tensions in relation to children’s fundamental rights and state

and Corporate Parents' responsibilities to meet children's needs and ensure their safety and wellbeing and that of others in respect of cross-border placements, are detailed at length elsewhere (see for example responses to UNCAT submissions). For the context of this submission, it is important to note that in the Legislative Consent Memorandum to the Children and Social Work Bill, which led to the 2017 Act, the Scottish Government consented to these arrangements, with John Swinney (Deputy First Minister and Cabinet Secretary for Education and Skills) highlighting that "The withdrawal of English placements would lead to a loss of income to one or more of the Scottish units, with the possibility it would force at least one provider into an early and unplanned closure". This arguably highlights the sustainability challenges of secure care as discussed further below.

Although we lack published data, anecdotally it has been suggested that since this time, there has been a reduction in the number of "cross-border" placements. However, at the same time it would appear that the demand in secure care placements for Scottish children has increased.

- **What are your views on the structure, funding and sustainability of the secure care units in Scotland?**

Secure care is a form of care which is sometimes necessary and the right resource, rather than a last resort, for some children, at certain points in time. The Secure Care National Project (based at CYCJ between 2015 and 2018) highlighted that secure care has the potential to save and/or change the lives of children for the better. Through this work, a range of recommendations or calls for action were made and issues regarding the structure, funding and sustainability of secure care in Scotland were highlighted.

Fundamentally, the project highlighted a lack of consensus about the place, purpose, quality and effectiveness of secure care in Scotland (Gough, 2016). This was deemed to be exacerbated by the lack of agreed vision and national strategic and standards framework for secure care. Under the Secure Care Strategic Board, a comprehensive Vision, Purpose, Values and Actions framework with clear guiding principles for responses to children and young people living with extreme vulnerabilities and risks of harm to themselves and/or others was agreed, and National Pathways and Standards were drafted. Work is underway to support the implementation of this Vision, including via the work of the Independent Care Review, and the National Standards, but fundamental questions about the structure of secure care remain.

In terms of the structure of secure care, there remains a strong sense from the secure care sector, and from other key stakeholders, that secure care is treated as 'separate' and 'outside' from the broader continuum of children's care services and some 'other' form of care (Gough, 2016). Secure care is first and foremost a form of care and not punishment. However, there is a tendency to consider secure care in relation to youth justice rather than the care system. Moreover, there is debate on whether the current integrated model delivered by the secure care centres (caring for young people whether they are on sentence or remand or secured for their own protection only) is the best model possible.

Secure care is usually referenced - and often equated with - custody. Whilst this is inevitable due to the comparable restrictions on liberty, there are unintended consequences which impact on perceptions, expectations and young people's experiences of secure care. Further exploration of the interface between secure care, the Children's Hearing System and youth/criminal justice is necessary.

As entering custody or secure care can be very traumatising for children, it is a time when they need the most support and understanding of their needs and experiences, many of which may have contributed to their behaviour that led them entering these establishments in the first place.

Whether children in secure care are there for their own protection or due to being in conflict with the law, they are almost always children who have experienced multiple difficulties, neglect, trauma, adversity, loss, bereavement and abuse. Many have significant mental and emotional needs as a consequence of their family and care histories and experiences. As such our responses to all of these children must be psychologically and trauma informed.

In terms of funding and sustainability, each of the secure care centres operate independently of each other, so in reality there is no "secure care sector" (Gough, 2016). Contracts between each of the four independent charitable secure care centres and Scotland Excel, on behalf of the 32 local authorities, deal with the "secure care sector" as a market. While the current approach to contracting has brought some benefits and there are various examples of good cross "sector" working, the market approach to secure care inevitably engenders competition which restricts collaboration and brings a different set of considerations for secure care providers.

There is no placement commissioning mechanism in Scotland and individual local authorities approach the secure care centres directly in order to access secure care placements. Secure care currently operates on a spot purchase basis, which the Secure Care National Project found most local authorities were comfortable with as their requirements for secure care placements are few and far between (Gough, 2016). These arrangements however present challenges when demand for placements outstrips supply. Recently, there have been several issues highlighted by local authorities who are unable to find a secure care placement for young people who have been assessed as vulnerable and requiring care and protection from the state via being subject to compulsory measures of supervision through the Children's Hearing Systems. Where secure authorisations have been made by the Children's Hearings System and agreed that these should be implemented by the Chief Social Work Officer, secure care will have been deemed the "last resort" and necessary for these children. When no beds are available, a variety of risk management measures have instead been utilised in the community, which should already have been attempted prior to the decision being made to secure the child (we recognise the provision of community-based alternatives to secure care and custody is a separate matter, albeit one that is intrinsically linked to the issues raised in this submission). This leaves everyone involved, not least the child concerned, in a vulnerable and risky situation. In other occasions, when children could have been secured via the criminal justice system but

no beds are available, they have instead been remanded to HMP&YOI Polmont. Although HMP&YOI Polmont will offer these children the best possible care they can, they are not designed to be therapeutic environments, cannot offer the same level of trauma and attachment informed support, nor the high staff to child ratio, necessary to meet the needs of these children and may compound the impact of previous traumatic experiences or retraumatise them. Children who have been assessed as requiring secure care need to be provided with care in a developmentally and age-appropriate environment. We believe that for those small number of children who are assessed as requiring secure care, a placement should always be available, which is not currently the case.

The above approaches mean all costs associated with running the secure care centre (e.g. capital costs, workforce development, pensions etc) are met through the individual placement fee. This brings implications for assuring staff of longevity which contributes to challenges of recruitment, retention and continuity of the workforce and upkeep and development of the physical estate. The National Secure Care Project concluded that a change in thinking and approach to commissioning is required, with the current model of funding not sustainable, which we would echo based on the above.

- **What are your views on the development of services and training at HMP&YOI Polmont?**

CYCJ recognise the positive progress made in HMP&YOI Polmont in recent years and the progress made by SPS in respect of children (see for example the vision for young people in custody). HMP&YOI Polmont have developed a range of opportunities for learning, education, work and support services to children. There is evidence of good partnership working to provide opportunities to address identified needs, including with a wide range of third sector organisations, Fire and Rescue Service, Police Scotland, Job Centre, Department of Work and Pensions Skills Development Scotland, and Fife College. Support services include youth work, parenting, employability, life skills, counselling, and in respect of relationships, trauma, abuse, loss and bereavement. Via the Learning Centre a full curriculum is available, including a variety of educational and expressive courses, with programmes and approaches aligned with the curriculum for excellence and a range of qualifications available. This is supplemented with a range of vocational training options, including joinery, plumbing, painting, engineering, and hairdressing. We understand that the development of services is under ongoing review and development, taking account of the needs, interests and views of the children in their care.

However, as detailed in the HMIPS Inspection Report in 2017 and the recent mental health review, engagement and participation in these activities could be improved.

In particular, the [Prisons and Young Offenders Institutions \(Scotland\) Rules 2011](#) state: an untried prisoner is not required to work in prison but may, if the prisoner so chooses and with the agreement of the Governor, undertake work or an educational class. As such within HMP&YOI Polmont children on remand are invited to work and can access education. However, as only convicted prisoners are expected to work, many children on remand

refuse this offer, and instead could for up to 140 days be doing nothing, with the resulting lost opportunity and potential for isolation this brings.

The inspection report found that staff were committed to SPS' vision, and investment had been made in the two activities areas in the institution, creating "bright, fit-for-purpose areas for learning and development". Despite this, engagement with the activities on offer was low with only a third of children taking part in daily activities and a "sizeable proportion" of young men spending "extended periods of the day locked in their cells. There was a widespread view among staff throughout the institution that the children could not be trusted to be responsible and high levels of control needed to be exerted over them. It was argued that this focus on control was at the expense of opportunities to "socialise and demonstrate constructive behaviour" which could undermine preparation for a positive future. There was evidence of "pockets" of positive work with young men in areas such as speech and language therapy and mental health, but there was not a "comprehensive and coherent framework" in the implementation of this work. There are however, challenges with ensuring that all necessary supports and programmes are available as access can be limited due to length of sentence, capacity and availability (Hammond, 2019, p.33).

Sentenced children can also access supports and programmes to address their offending behaviour. Such programmes can include for example Substance Related Offending Behaviour Programme; Controlling Anger Regulating Emotions; Constructs (problem solving); Youth Justice Programme; and Female Offending Behaviour Programme. In addition, with the exception of the Youth Justice Programme, the other programmes mentioned were initially designed for adults. As part of the work of the expert group to prevent sexual re-offending and via the SPS Partners Meeting, it was highlighted that HMP&YOI Polmont did not offer any age appropriate specialist interventions for children under 18 who had committed sexual offences (the main programme used in custody is Moving Forward Making Changes, utilising the SA07 risk assessment tool to determine eligibility, neither of which are age appropriate). Moreover, accessing services can be challenging, again illustrated most starkly in respect of accessing psychological services and interventions to address harmful sexual behaviour. Any such intervention is determined on a case-by-case basis taking into account factors such as length of sentence; resource capacity of the psychology team; reasons underpinning behaviour; level of risk and proportionality. If such supports and services cannot be accessed, the implications for reintegration and transitions and future life chances are significant, particularly where children have received a custodial, as opposed to community-based sentence, specifically for such work to be undertaken. Given the developmental stage of the children in custody and what we know about the typical needs underlying their behaviour (YJIB, 2017; Murphy, 2018) interventions with a systemic approach are likely to be more effective than group work programmes focused solely on individual change (NICE, 2013; Fox and Jones, 2017; Johnstone & Gregory, 2015).

CY CJ has at various times supported HMP&YOI Polmont with the provision of training. With changes and movements in staffing, having rolling programmes of training, and training that is specific to the needs (including mental and emotional) of children is important. The needs

of the institution can also impact on the ability of staff to undertake training. We are aware that a training plan has been developed in relation to working with children in states of heightened stress, anxiety or depression.

In line with Government Policy (WSA - see description below) CYCJ believes that alternatives to custody and secure care, with the view of keeping children out of formal systems, should be utilised as far as possible. Where deprivation of liberty is necessary, this should be within a care rather than custodial setting where, as highlighted above, children's needs can be better met.

- **How does HMP&YOI Polmont interact with secure care units in Scotland in terms of the transfer of young people in custody?**

The Scottish Government has prioritised work that supports partners to take forward the development of a Whole System Approach (WSA). WSA involves putting in place streamlined and consistent planning, assessment and decision-making processes for children who offend, ensuring they receive the right help at the right time. The ethos of WSA is that many children involved in offending behaviour could and should be diverted from statutory measures, prosecution and custody through early intervention and robust community alternatives. WSA works across all systems and agencies, bringing the Scottish Government's key policy frameworks into a single, holistic approach to working with children who offend. It should be noted the WSA is policy, not legislation. National Standards for Youth Justice are currently in development but there is a lack of agreed data set and available data. We also recognise that longitudinal outcome data across youth justice, including in respect of secure care and custody, is scant.

As part of the WSA, it is essential that children have a smooth transition when moving between secure care and custody. The transition from secure care to custody can be unsettling. Therefore, as part of the WSA the Scottish Government (2011) included clear guidance on the process for children transferring from secure care to custody. The guidance states it is important to plan the move and schedule it for the most appropriate time for the child. The plan for the move should include:

- Ensuring the child knows where they are going and what will happen when they get there
- Information on changes to structures and routines, e.g. staffing, pocket money, family contact
- Ensuring a pre-transition review meeting takes place and that the identified hall manager or Personal Officer from SPS attends this to give and receive information including about the Young Offenders Institution (YOI).
- If appropriate, arranging for the child and family members to visit the YOI before moving

- Providing the YOI with full information and documentation about the child (Scottish Government, 2011)

HMP&YOI Polmont has standardised procedures that support the transitions from secure care to custody.

Transitions meetings should start six months prior to a child moving from secure care to custody, although this is not always possible if young people are moved on an emergency basis.

All relevant information should be sent to HMP&YOI Polmont at the earliest opportunity and all children will be re-assessed once they enter the establishment.

There is also additional practice guidance in respect of those children convicted under section 205(2) or 208 of the Criminal Procedure (Scotland) Act 1995 for whom Scottish Ministers have statutory responsibility.

Where children are moving from secure care to custody, there should be a wealth of information known about them that can be shared to inform the approach of HMP&YOI Polmont. As highlighted in the mental health review however, information sharing can be challenging in practice.

While the intention would be for all transitions to take place on a planned basis, since 2015, there have been a small number of children in secure care who have displayed extreme violence and troubling behaviours towards others including serious threats of, and actual, physical harm resulting in injury. As a result, these children have transitioned from secure care to custody earlier than planned (usually their 18th birthday).

- **How has the NHS/Scottish Prison Service developed youth mental health and wellbeing strategy in secure care units or in prison custody?**

Mental and emotional health and wellbeing was a significant area of attention in the Secure Care National Project. All of the children who engaged with the secure care national adviser talked about their histories in relation to mental and emotional health, all had experienced early traumas or losses, all were now, as young adults, on medication for mental health issues, and a third had experience of inpatient mental health services, but they had differing views and experiences of the mental health and support they received in secure care. Concerns were shared by secure care and social work practitioners and managers about the current health service in relation to secure care and the unresolved tensions in relation to definitions and who is responsible for identifying and addressing mental health difficulties. Children said they felt more could be done to help and support those who have experienced trauma and adversity (Gough, 2016, p.6). Most of the children felt that the underlying reasons for the poor emotional and mental health experienced has only began to be properly addressed once they reach the point of secure. Secure care can provide a

therapeutic environment, with children identifying that staff training and recruitment is crucial to the culture and quality of environment and care provided. Structural arrangements, regulations and expectations can however make this difficult to provide in practice and can risk re-traumatising children in their care.

CY CJ's secure care census found significant levels of mental ill-health within the secure care estate. Amongst the Scottish population 35% of children had attempted suicide in the year prior to admission, with 53% experiencing suicidal ideation. 22% had received a trauma diagnosis over that timeframe and 45% had experienced sexual exploitation; an issue that may require specialist counselling and support. Furthermore, staff within secure care noted that in 24% of cases there was a suspected, undiagnosed mental health concern which they believed - based on symptoms and presentation - may include depression, PTSD, violent fantasies and personality disorders. Despite this, only 36% of children within secure care had received support from CAMHS and 4% from FCAMHS in the year prior to admission.

In secure care, there have been innovative initiatives over recent years including the introduction of accredited trauma recovery training programmes and therapies. There has also been considerable investment in developing specialist intervention services and the promotion of whole system approaches, in recognition that responding to trauma and promoting positive mental and emotional wellbeing has to be a whole environment and service approach. The Mental Welfare Commission (2015) although identifying gaps in transition support in the interface with CAMHS services, reported that secure care centres were meeting the needs of children with diagnosed mental health problems well.

During the project, concerns were repeatedly expressed across professions regarding the interface between health services and secure care. This is a complex interface, with difficulties and delays in accessing services, records and contested responsibilities when a child on a CAMHS waiting list becomes secured. Although secure care centres have often developed effective partnerships with their "host" health board areas, there can be tensions between 'placing' and 'host' authorities and there is a lack of national overview of health needs, service responses or how continuity of care is achieved following secure care. The lack of national health care pathway has arguably compounded this lack of agreement regarding the role, responsibilities and expectations for the provision of mental health support and treatment for children in secure care, which the National Secure Care Standards will seek to address.

"Young people in detention have heightened risks and needs compared to young people outside of prison: A common finding in the literature is that young people in custody have higher rates of suicide in custody and also higher rates of factors associated with self-harm and suicide including depression, anxiety disorders, psychotic symptoms, ADHD and more. There also is some evidence that young people who experience custody are more vulnerable than young people in the general population with histories of abuse, time spent in care, histories of violence and mental health issues prior to detention" (Armstrong & McGhee, 2019).

The SPS vision for children in custody and developments in practice has put a greater emphasis on wellbeing in HMP&YOI Polmont. The establishment has a range of healthcare provisions available, including in respect of mental health and wellbeing. This can include basic and specialist services provided from services both internally and externally. A specialist Trauma, Bereavement and Loss (TBL) service has existed in Polmont since 2015. While evaluation (Vaswani et al., 2016) revealed a positive impact on young men who attended the service, there were a number of barriers that the service has faced in relation to sustainability and accessibility. In terms of resource, demand outstrips capacity, as the evaluation found that young men waited on average for 46 days (almost seven weeks) between referral to the service and the initial meeting for assessment. In delivering a service against a backdrop of remands and short sentences the TBL service has sometimes had to prioritise not just according to presenting need but also prison and justice system logistics. While steps have been taken to address this, for example by adapting and delivering a pared down version of the service for young people on remand (often focused on short-term immediate coping strategies for symptoms), and building links with community organisations, this is not always possible. Funding models also mean it can be difficult to guarantee the long term stability and relationships that therapeutic interventions require.

At different times, CYCJ has raised issues regarding the access to health care for children in custody. This has included when services are available only on a self-referral basis. When children have low self-esteem and self-worth, combined with a lack of knowledge of available services and previous experiences of accessing services, self-referral can be difficult and often impossible, particularly without the support of others to advocate on their behalf. We have also highlighted challenges in accessing both basic and more specialist services, including specialist mental health support. We have shared these issues with healthcare staff and have sought to support community partners for example via development of an Information Sheet on this matter.

We are concerned that published [SPS data](#) indicates that from 2014-2018, 134 people died in SPS custody, with many of the causes of death of these individuals unclear (still detailed as awaiting determination) and it would appear seven of these individuals were aged 21 or under. We note that during this time frame some children under the age of 18 took their own life, and query whether the use of secure care might have been more appropriate in those instances. We are concerned by the apparent increase in the number of deaths by suicide and the disproportionate number of deaths of people on remand within the prison estate. In addition, there is a lack of publicly available information on instances of attempted suicide and self-harm and any learning taken from reviews of these. We are not aware of any recent deaths by suicide by children in secure care. Within HMP&YOI Polmont work is underway to make improvements to current systems and process for children who have mental health issues as part of the mental health review and some pre-dating this. One standardised assessment will be used and mental health nurses employed to ensure that the children have access to services when they need them.

In both secure care and custody, there are issues with information flow, including the lack of/or provision of incomplete health information.

As part of CYCJ we run the Interventions for Vulnerable Youth (IVY) Project, a highly specialist psychological and social work national service for children in Scotland aged 12-18 who present a high risk of harm to others. The project has been running for five years, funded by the Scottish Government. It provides a tiered approach to risk assessment, formulation, support and risk management for children who, in addition to high risk behaviour, often have complex individual experiences of trauma, neglect, instability, neurodevelopment needs, mental health needs, placement breakdown, school exclusion, lack of social support, poverty and marginalisation. IVY works with young people within secure care and HMP&YOI Polmont who are referred to the service. To date, over 200 young people from 31 local authorities have been referred. All young people age 12-18 in secure care and custody who present a risk to others can be referred to IVY to have a specialist psychological/social work assessment and intervention as required.

- **How are Scotland's international human rights obligations under the UN Convention on the Rights of the Child being met in relation secure care units and HMP&YOI Polmont?**

The UNCRC consists of 54 articles setting out the rights of all human beings under 18 years old (defined in Article 1). General rights include the right to non-discrimination (Article 2); the primacy of the child's best interests (Article 3); the right to life and maximum development (Article 6); and the right of children and young people to have their views given due weight in all matters affecting them (Article 12). The UNCRC also provides a range of 'civil rights' including: the child's right to freedom of expression and association; the right to receive information; and the right to protection from all forms of violence, abuse, neglect and mistreatment. The Convention further provides for every child's right to an adequate standard of living and the right to the best possible health care and educational services (Goldson & Muncie, 2012,).

The 'Articles' of the Convention that have most direct bearing on juvenile justice include:

- In all actions concerning children... the best interests of the child shall be a primary consideration (Article 3).
- State Parties should recognise the rights of the child to freedom of association and to freedom of peaceful assembly (Article 15).
- No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence (Article 16).
- That services and supports should be made available to fulfil children's rights to health and healthcare (Article 24); education (Article 28 and 29); leisure (Article 31)
- No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment (Article 37a).
- 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 (Article 37b)

- 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. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so (Article 37c).
- Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action (Article 37d).
- State Parties 'shall take all appropriate measures to promote physical and psychological recovery and social integration of a child victim' (Article 39)
- State 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 (Article 40(1)).
- State 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; (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 (Article 40(3))

(Goldson & Muncie, 2012; United Nations, 1989)

In addition, the *Standard Minimum Rules for the Administration of Juvenile Justice* (The Beijing Rules) (United Nations, 1985) reinforce the above and include specific articles on detention pending trial (Article 13); least possible use of institutionalisation (Article 19); and part 5 relates to institutional treatment. Under part 5, children deprived of their liberty should be provided with care, protection, and all necessary assistance - social, educational, vocational, psychological, medical and physical - with a view to assisting the child to socially constructive and productive roles in society in the future. The importance of support for young people returning to the community is also highlighted under Article 28 and 29, with the commentary stating:

"The importance of care following a period of institutionalization should not be underestimated... This rule also emphasizes the need for a diverse range of facilities and services designed to meet the different needs of young offenders re-entering the community and to provide guidance and structural support as an important step towards successful reintegration into society" (pp.16-17).

Similarly, the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (The Havana Rules) (UN, 1990) further reiterate and extend the above, including stressing the need for the rehabilitation, planning for the period of detention, the range of supports that should be made available, matters while the child is detained (such as regarding the

use of restraint and complaints processes) and reintegration planning and support. It specifies all children should benefit from arrangements and supports to aid their return to society, family life, education or employment and to promote successful transition, with support in respect of accommodation, employment, clothing and financial support likely to be required, and services should begin prior to release. The importance of community and family involvement is also stressed. Each of these factors are further echoed in the Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly Justice. In spite of all of the above, UNCRC Committee in their General Comment No. 10 and Concluding Observations continue to highlight a range of areas in which the UK could do more to take forward the principles and provisions of the UNCRC (UN Committee on the Rights of the Child Committee, 2007; 2016). Recommendations include the need for better monitoring and data collection on the number of children in detention; adoption of approaches to reduce the number of children in detention; ensuring restraint is only used to prevent harm to the child or others, is not used for disciplinary purposes and pain inducing restraint is banned; establish the statutory principle that detention should be used as a measure of last resort and for the shortest possible period of time and ensure that detention is not used discriminatorily against certain groups of children (including children in care); and remove all children from solitary confinement (UNCRC Committee, 2007; 2016). This underlines the crucial importance of all practitioners understanding children's rights and supporting the adoption of a rights-based approach to reintegration and transitions and throughcare.

The Scottish Government's Youth Justice Strategy, 'Preventing offending; Getting it Right for Children and Young People' is integral to Scotland's vision as the best place to grow up - Getting it Right for Every Child in Scotland. "The Scottish approach to youth justice builds on the hugely influential Kilbrandon Report (1964) by responding to deeds in the context of needs. We see, understand and deal with offending behaviour in an integrated way to help the child, their family and the community to flourish" (Scottish Government, 2015). The Government's own strategy highlights the need to treat all children (under 18) as children, looking at their needs and not focusing on their behaviour.

It is well evidenced that the most serious breaches of children's rights appear to occur when children are at their most vulnerable, particularly around children in detention (Kilkelly, 2008). In England and Wales from March 2016 to March 2017, there were 119 recorded incidents of pain compliance being used on children in custodial institutions, which the review team argue 'is particularly intimidating to children who have been sexually abused (and)...In itself, this use of pain compliance should be seen as a form of child abuse and must cease' (Independent Inquiry Child Sexual Abuse, 2019, p. vi). In Scotland, data is not routinely published on this issue but in 2006/7 it was reported in the inspection report about HMP&YOI Polmont that 87 instances of 'control and restraint' were recorded. The Ministry of Justice has launched a review of pain-inducing techniques in YOIs, which is expected to report in summer 2019. Scotland may want to consider this also given the breaches of international human rights. Within secure care pain induced restraints are not used.

For children and young people in custodial settings in Scotland there have been concerns raised relating to the inappropriate and over-use of strip searching. Data about the number of times strip searching is used within the custodial estate is not routinely published, so we do not know how common the practice is. However, in England and Wales a FOI inquiry by the charity Article 39 revealed that 43,960 strip searches were conducted in a 21 month period, up to December 2012, but only in 275 searches were illicit items found.

There are similar concerns regarding the use of single separation/segregation. In secure care, solitary confinement is never used and segregation is the option of last resort and is not used as a punishment, with strict limits on how long this can be used for.

These examples highlight that where children are detained of their liberty in Scotland (and beyond) there are significant breaches of the European Convention on Human Rights (ECHR): Article 3, the prohibition of inhuman or degrading treatment and UNCRC article 37a (degrading treatment), but also more fundamentally there are questions about compliance with rights to liberty and security (article 5 - ECHR), respect for private and family life (article 8 - ECHR) and the right to life itself (ECHR- article 2).

There have been concerns identified in relation to both secure care and detention in a YOI in respect of access to other services, specifically around access to health care, as detailed above. This represents a major breach of UNCRC article 24, 'no child is deprived of his or her right of access to such health care services'.

Whilst detention is meant to be a measure of 'last resort' it is clear that children are being detained before alternatives have been considered or tried. In Scotland we do not have an agreed definition of what constitutes "alternatives to secure care or custody". We also have a marked variation in what services are available across the 32 local authorities to meet the needs of children presenting with extreme needs, vulnerabilities and risks. Where a child is being considered for secure care via the Children's Hearings System, every hearing considering making a secure authorisation should discuss the option of a movement restriction condition (MRC). However, it would appear practice varies and we consistently have very low number of MRCs made (26 MRCs were imposed between Jan-July in 2018), with the 2018 secure care census finding that they were rarely utilised in the period prior to admission into secure care.

Around 40% of children who come into contact with the formal justice system in Scotland are prosecuted in an adult court with little, if any, changes made to court proceedings. In 2017/18, 2220 children aged 12-18 were prosecuted in adult courts (Scottish Government, 2019) compared to 3060 referrals made to the Children's Hearing System due to children's offending behaviours (Scottish Children's Reporter Administration, 2019). There are serious questions about how it is possible for children in this adult court room setting to have a fair trial, given their ability to comprehend proceedings, let alone to feel able to participate. This issue is further compromised by the fact that the majority of children who come into contact with the justice system have a known speech, language and communication issue, estimated at between 50-70% (CYCJ, 2018), and by the levels of trauma experienced by

children who come into conflict with the law, meaning that a court appearance has the potential to be additionally distressing and re-traumatising.

The United Nations Conventions on the Rights of the Child defines a child as a person under the age of 18. In Scotland, if we wish to follow the UN approach, then this means treating all under 18s as children, even in situations where children are in conflict with the law. This is important as evidence tells us that children who are a risk to themselves or to others often have backgrounds marked by substantial trauma and adversity. In Scotland we have a secure estate for children aged under 18 which can provide containment and offer therapeutic trauma-informed support to address many of the underlying issues these children may face. However, what we have highlighted is the inconsistency in Scotland where some children aged under 18 are remanded or sentenced to secure care, and others go straight to a YOI. Indeed, at any one time, we continue to have numerous more children on remand or sentenced in YOIs rather than secure care. This is in spite of the Scottish Government's policy framework for children involved in offending, the Whole System Approach, advocating that secure care should be utilised rather than YOIs ([Scottish Government, 2011a](#); [Gough, 2016](#)). Despite this, Scotland still has one of the highest imprisonment rates in Europe.

- **What are your views on the work of the expert review of mental health and wellbeing for younger people in custody?**

CYCJ was part of the mental health and wellbeing review, contributing to the roundtable discussion and as part of a working group to review the process and information sharing on admission to and liberation from HMP&YOI Polmont. CYCJ welcomes the attention of the review to this critical manner and acknowledge the inherent difficulties in undertaking a comprehensive review in such short timescales and which is asked to focus on a specific part of the system. The importance of information sharing; the need to keep children out of the justice system, in particular reducing the number of children on remand; importance of family contact; the key role of relationships and staff; and the need to ensure all working in the youth justice system understand the specific needs of children are particular findings/recommendations which echo those made elsewhere by CYCJ. There have been several recommendations made to support the mental health and wellbeing of children entering and leaving custody, which we agree with. We are particularly supportive of the recommendations on minimising social isolation; information sharing; and governance.