

Who Cares? Scotland's Consultation on the Minimum Age of Criminal Responsibility

6th April 2018



Who Cares? Scotland [WC?S] is an independent advocacy and influencing organisation working with care experienced people. We provide direct advocacy to care experienced young people, as well as opportunities for national and local participation. WC?S aims to provide looked-after children and young people in Scotland with knowledge of their rights. We strive to empower them to positively participate in the formal structures they are often subject to solely because of their care experience. At WC?S we utilise the voice of the care experienced population of Scotland to inform everything we do as an organisation.

Introduction

We would like to welcome the introduction of the Age of Criminal Responsibility (Scotland) Bill (the Bill) into Scottish Parliament and recognise this as a historic moment in the progress of human rights in Scotland. We believe the introduction of the Bill is the first step on a journey of change which needs to take place, to ensure we uphold the rights of all children and care experienced people in Scotland.

There are many reasons why care experienced people face higher rates of criminal convictions in comparison to their non-care experienced peers. These are rooted in the lived experiences of being in care and include over-involvement with, and sometimes stigmatisation by, the Police; increased scrutiny in care placements; and participation in difficult formal processes. We have conducted numerous pieces of research with care experienced people on the issues surrounding contact with the police and the criminal justice system and recommend this report is read in conjunction with this pre-existing material.¹

This report reinforces existing evidence of the continued criminalisation of care experienced people and the adverse experiences they have with regards to the criminal justice system.

We are pleased to see that the Bill will raise the age of minimum responsibility to 12 years old, as this reflects some of the views expressed in our previous response. However, we would like to reinforce that care experienced people have consistently told us that 12 years old can be too low an age to have criminal responsibility.

¹ WCS, *Response to the Consultation on Stop and Search*, May 2015;
WCS, *Response to the Scottish Police Strategic Policies Review*, February 2016;
WCS, *Response to the Consultation on the Minimum Age of Criminal Responsibility*, June 2016;
WCS, *Response to the Consultation on Police Powers to Search Children and Young People for Alcohol*, July 2016;
WCS, *Response to Consultation on the Draft Strategic Police Priorities for Scotland*, August 2016;
WCS, *Response to Consultation on the Proposed Draft Police Act 1997 and Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2018*, November 2017.

As young people mature, they are considered to be developing into rational and responsible decision makers and are gradually allowed more freedom as this rationality and responsibility evolves. We would like to emphasise again that it cannot be assumed that all children mature and realise responsibility at the same rates. As mentioned previously, there are a number of factors affecting a child's development, for example: environment, family life, early experiences, education and physiology.

“Remember that they are weans! Some people might be slower at learning than others.”

“Don't let their past, stop their future.”

- Quotes from a participant in the consultation.

If Scottish Ministers are to uphold their corporate parenting duties and ensure Scotland is the best place in the world to grow up, the Bill, and its implementation, must be shaped by the views of the children, young people and adults it affects.

[Summary of the WCS Response to the Consultation on the Minimum Age of Criminal Responsibility - 10th June 2016](#)

We would like to draw attention to the key points made in the previous consultation we held in 2016 with 32 care experienced young people. Many of these issues and suggested solutions have been built on in this latest round of consultation, evidencing their continued relevance.

1. A Higher MACR

WCS believes that children and young people need to be asked what they think the MACR should be. Throughout the discussions in this consultation, most young people we spoke to felt that the MACR should be higher than 12.

2. Needs-focused Justice System

A needs-focused response is required to deal with harmful behaviour of young people. The state has a legal and moral responsibility to be a good parent (corporate parent) and to reflect this the justice system must be child-centred, needs-focused and non-criminalising, all of which are found in rights-based policy making.

We know that harmful behaviour towards the self or others is most often a reaction to harm that others have caused the individual. It is vital to address harmful behaviour from an unmet wellbeing needs perspective and every effort should be made to ensure the child is not criminalised or labelled.

3. Improved Training and Awareness Raising

Training needs to be provided for professionals working with children who display harmful behaviours. This should aim to contextualise the behaviours that some children may display. The training should include inputs from care experienced young people.

This is an opportunity to raise awareness of how few children really behave in seriously harmful ways and educate the public. It has been shown that adults generally overestimate young people's involvement in offending.

4. Building Trust in Police and Care Experienced People

This is also an opportunity to recognise the often-problematic relationship between the police and care experienced young people and take steps to reconcile this relationship. Young people tell us that the police are over-involved in their lives. Because of this there is a sense of mistrust between care experienced young people and the police.

There must also be a re-evaluation of how harmful behaviours are handled within residential homes. There is a need to re-evaluate the involvement of the police to reduce their presence care settings.

Police treatment can also make them feel different or separate from their non-looked after counterparts. It is the duty of all corporate parents to ensure that they actively reduce this feeling of isolation from the rest of society.

5. Retention of Police Powers

Regarding certain police powers being retained for those under 12, it must also be acknowledged that any involvement with the police is immediately going to have a traumatic effect on the child no matter how many safeguards are in place.

6. Disclosure of Information

There should be a presumption against disclosing any harmful behaviour conducted by care experienced young people under the age of 18. Disclosing information about previous misconduct goes against the aim to support young people to reach their potential.

Methodology

Following on from our previous consultation response summarised above, in order to support Scottish Government's fresh round of consultation work looking specifically at the Bill we recently conducted workshops with care experienced young people. Building on previous discussions, the workshop used for engagement sessions focused on key issues related to the Bill. Four different engagement sessions were held across Scotland and the workshop was adapted by practitioners based on the size of the group and the needs of participants.

The workshop plan was designed in four parts, with key questions to guide conversations:

1. Exploring the 'Minimum Age of Responsibility'

- a. What does it mean?
- b. What age should it be?

2. Stop and Search

- a. What should stop and search look like?
- b. Does age make a difference?

3. Police and the Use of Force

- a. Is it okay for the police to use force?
- b. When is it appropriate?

4. Disclosures

- a. Should age make a difference for reporting something on a Disclosure check?

- b. Should the context of the crime make a difference? (e.g. assault during an individual being restrained).

Discussions on each topic were also split into different age categories, to compare opinions on whether different measures should be in place for certain age ranges. The age brackets were: under 12s, 12-16 year olds and over 16s. However, many young people decided not to focus on different ages as the definitive factor in the type of treatment a person should be subject to by the police and criminal justice system and discussed the topics more broadly.

We recognised the sensitive nature of the conversations and the potential for confidential information to be exposed. Therefore, discussions were led by experienced practitioners and it was made clear that all responses would be anonymised and that no personal information, such as criminal histories, needed to be shared or would be recorded.

The consent process was also made clear, and participants had the option to opt-out at any point of an engagement session and could ask for their input to be removed from the evidence collected if necessary. We also utilised the engagement sessions to raise awareness of the introduction of the new bill and what changes may be introduced as a result.

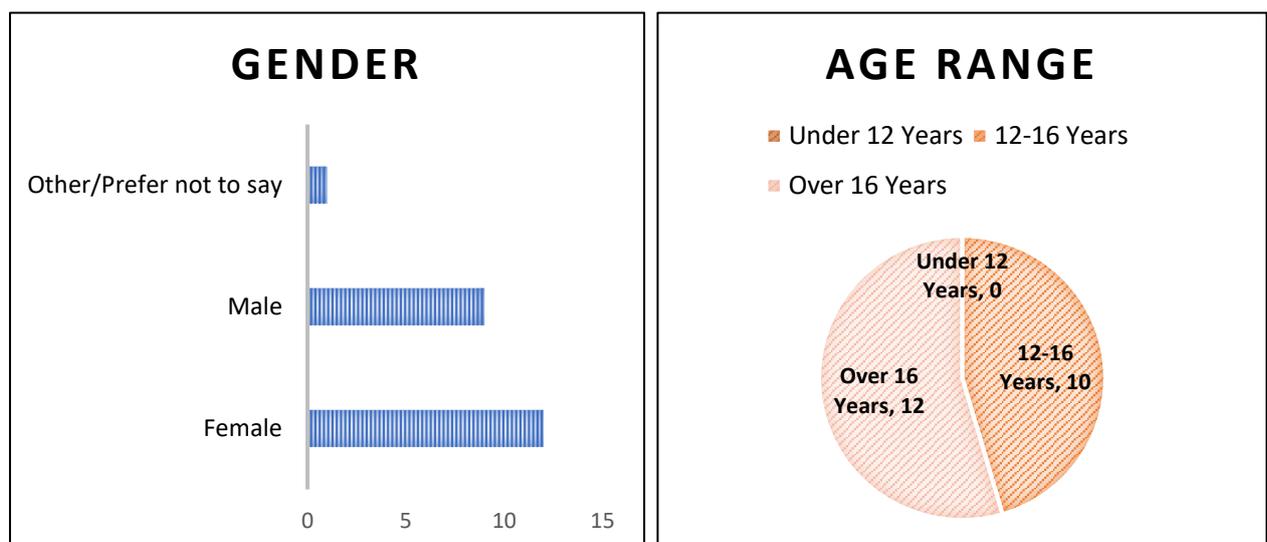
Demographics

22 young people participated in this consultation, across 4 different engagement sessions. Geographically these were held across Scotland and those involved had experience of a variety of care placement types. The session formats ranged from a 1:1 interview, to larger groups of up to 9 participants.

There was a mix of young people who had direct experience with the criminal justice system and those who did not. Many have had contact with the police at some point. However, all those who participated, contributed their own opinions on the issues raised in the workshop, regardless of their own experiences.

Gender and age range of participants are provided at figure 1 below.

Figure 1:



What does the 'Minimum Age of Criminal Responsibility' (MACR) mean?

The first part of the workshops examined the meaning of the 'minimum age of criminal responsibility'. We provided an academic description of MACR and asked them think about how criminal responsibility could be decided.

'...they are considered too young to fully understand the nature and consequences of their actions, and any involvement with crime is likely to be due to wider difficulties in their lives rather than a free and rational choice.'

During the sessions, young people debated the need to use police powers of arrest for certain age groups and whether criminal charges should be applied as a form of punishment in all cases.

Knowing what is right and wrong:

There was a focus on understanding how a person both knows what they are doing at the time of a crime and if they know the full implications of their actions. Young people we engaged with expressed doubt that all those committing crimes at a certain age, fully understand what might happen to them or to others as a result.

"They know crime is wrong but might not understand the consequence."

However, they also were clear that criminal 'responsibility' did need to exist and one young person defined it as:

"You know your rights and you know what you're doing."

Young people made a link between both having a moral choice between right and wrong but also a full understanding a person has of the harm they are doing and the implications of the actions for themselves and others.

How old is old enough?

During discussions, there were different views on how old someone would have to be to be held responsible for their crime and when you could 'choose' to commit a crime.

As previously reported, the young people we engaged with were clear that 8 years old is too young to be held criminally responsible:

- *"Not fair for an 8-year-old to go to a police station."*
- *"An 8 year old might know right from wrong...but not what is illegal."*

However, there was also debate over the difference between a 12 year old committing a crime and a 16 year old:

- *"At 12, I knew what was right or wrong."*
- *"No, I think at 12 you're maybe still not old enough, you're just discovering right from wrong. At 12 you're just getting your freedom to be yourself. You've never been out yourself, to know you're breaking the law."*
- *"At 12 you don't know it's going to stick with you for the rest of your life."*

In line with existing evidence, care experienced young people do not fully agree that at aged 12 a person is old enough to be arrested and charged with a crime.

Alternative methods to criminal charges:

The young people we spoke to also discussed the use of other methods which could be used instead of charging a young person with a crime. They expressed doubt over whether experiencing arrest and gaining criminal charges helped young people to stop re-offending:

“I think they should be doing more, even at 16 you shouldn’t go to jail, should be moved at 18. Other steps should be taken. Things like community service and the tag, tag is the best way and you’re still getting to be at home with your family. The tag does work. Young people should be given the chance of a tag before going straight to jail, they’ve then been given another chance.”

“They should take into consideration how jailing you and charging you makes you lose your income and before you know it you’re homeless. Young people don’t have to be criminalised and have a record, can make sure they get some punishment but not a criminal record – maybe something like a behavioural course.”

Context of a Crime:

Many young people expressed the need for those working in the criminal justice system to look at the context of a crime. This related especially to the section of the academic definition of MACR that we provided, which describes a person as unable to be held responsible because the crime was committed ‘due to wider difficulties in their lives rather than a free and rational choice.’ However, at this stage of the discussion the young people we spoke to didn’t have a clear sense of a set age at when this process should stop:

- *“There’s reasons behind a crime, we need to understand that...being arrested, that could make things worse.”*
- *“Take the whole situation into consideration when a child commits a crime i.e. family, home conditions.”*

Stop and Search

Discussions around the police’s investigatory powers to stop and search individuals, started by exploring what a stop and search means:

- *“It’s checking for stuff you shouldn’t have, in public.”*
- *“It depends on who you are associating with.”*
- *“If you’re driving in a car, police can stop and search you.”*
- *“It’s when police stop you if they have suspicions you have drugs or offence weapons.”*
- *“You can ask for a receipt in case complaint of being badly treated – with an incident number.”*

The young people we spoke to understood what a stop and search procedure looked like, from personal experiences, from stories they have been told by peers and from popular perceptions of police practice. However, the reasons why you might be stopped and searched, or the rights a young person has in the situation started to surface as areas they were unsure about.

- *“If you look suspicious, they have the right to stop and search.”*
- *“I don’t know my rights about stop and search.”*

Through asking some focused questions, we were able to explore these areas in more detail.

What should stop and search look like?

Throughout discussions, there was a widely held understanding that stop and search was a practice intended to keep people safe and prevent crime, but the young people were also clear that it is not currently practiced in the best way by police. There were several key areas of improvement suggested.

Location:

Young people told us that stop and search procedures often happened in *“town centres and really public places”*.

One young person explained how the public location of stop and search caused unnecessary embarrassment for individuals:

“It’s embarrassing in the street, especially if it’s an area where you’ve lived all your life.”

They suggested stop and search should:

- *“Be private and respectful, can’t be on the street in public.”*
- *“Show their police badge, say where they work, then give you options on where you could be searched – there or in an office.”*
- *“Do the stop and search in the police car/van.”*
- *“Give people the choice of where you will be searched (police car/station/street).”*
- *“Take you to the station to do it – then need to help you find your way back. Make sure they get home to where they stay, take them back there.”*
- *“Could take you back to your house.”*

Rights Enforcing:

As well as being in a more private location, with the choices of an individual being considered, young people wanted police to make sure they told people their rights in a stop and search situation:

- *“Ensure our rights are understood.”*
- *“If I am asked by the police if I understand my rights, I will just say yes, as I don’t really understand. More should be done to ensure young people understand and know their rights.”*
- *“Police need to take caution in how they speak to young people, can’t assume young person knows rights...”*
- *Don’t talk down – condescending manner.*

One young person suggested the creation of materials to help inform an individual when stopped and searched:

“Maybe they could hand you a ‘your rights’ card with what is being said on it, to ensure the police are telling you your rights and you have something to take away with you.”

Appropriate Grounds for Stop and Search:

Young people told us that not only should police make sure stop and search happens at appropriate times in appropriate places but also that they must have *“reasonable belief you’re doing something, not target you in the street because they know you.”*

This theme of discussion led to many young people sharing how they felt police stereotyped people, stigmatised those in care placements and often did not provide enough information for why they were stopping someone.

“My ex-partner was stopped in the street and searched because the police knew him. The search was done on the side of the road beside me. I was heavily pregnant, and it was very embarrassing. They didn’t search me, as there was no female police officer present.”

Stereotyping:

Many young people felt that if someone was ‘well known’ to the police or had a criminal charge already, then they would be targeted with stop and search procedures, potentially without any new evidence of criminal activity.

- *“I immediately get searched because they know me...”*
- *“If they know you, they will stop you.”*
- *“If you are part of a group who are known to the Police, they might stop you.”*
- *“Previously knowing someone has a conviction should not mean you are immediately stopped and searched, there should be reasonable cause.”*
- *“Don’t stop unless the person has committed a crime and there is evidence.”*
- *“Don’t stop anyone unless they’re actively committing a crime, like if they’re vandalising or at risk of hurting someone.”*

This extended to young people being stopped because they were associated with someone else who was known to police and therefore perceived in the same way.

- *“Police shouldn’t associate people with others when deciding who to stop and search, just because dad is well known to the police.”*

One young person, who was ‘known’ to the police, shared their own story of being stopped and searched:

“There was a time when I walked out my close, the local polis knew me and walking my dog – they came over and they grabbed me up against the wall. My ma went off her nut, just because you’ve been branded they shouldn’t just keep searching for you.”

Stigmatising Care Experience:

Stereotyping was also discussed as specific to care experienced young people. There is a continuing perception that if a young person is in care, they will automatically be targeted with stop and search procedures and this is perceived as the only reason the person is stopped.

- *“People are searched because of where they stay – as soon as you say ‘unit’ – with no reason.”*
- *“Police are dicks, police look at whole picture and immediately judge.”*
- *“They know you’re in care – this means you’re always pulled over.”*
- *“Police are automatically stopping and searching because young people are in care, with no reason.”*
- *“Police should not be influenced to stereotype and stigmatise care experienced young people because of the public and others stereotyping them, like neighbours to a unit*

phoning the police on a care experienced young person smoking outside the unit. Police are then treating care experienced young people as bad kids and troubled.”

- *“Marked cars outside units are stigmatising, should use unmarked cars and plain clothed officers.”*

Lack of explanation:

The feeling of being stereotyped links with why young people we spoke to expressed that they didn't understand why stop and search happened to them and to others. If there are appropriate grounds for a search, then this is not always communicated effectively by police, leading to a feeling of being targeted without just cause.

- *“Police should not discriminate and target groups of vulnerable people who can't effectively communicate – there must be solid evidence for stopping someone of them actually committing a crime. Evidence like witnesses...”*
- *“Feels like random selection with no explanation.”*
- *“Police don't always say why they are searching you.”*
- *“Stop and search can feel like discrimination – do I look suspicious? What have I done wrong?”*

One young person summarised how they would like a stop search to happen instead:

“The young person should be able to ask for a reason – if the reason isn't good enough, like “you're in care” then you can refuse or have reason explained. The reason for stop and search must be evidence based.”

Trust in Police Practice:

Continuing from previous consultations on stop and search procedures that care experienced young people have participated in, there is further evidence of a severe lack of trust in the practices of police.

- *“Police look annoyed when they don't find anything on you.”*
- *“Police will look for another reason to ‘get you’ if nothing is found on you, like ‘breach of the peace’.”*
- *“Police took green off me and didn't charge me or book me...they probably smoke it themselves.”*
- *“Same police get bored and like to stop you.”*

Not all experiences of stop and search were negative. However, one young person stated, *“if you get a decent police officer, it's fine”*, which suggests a lack of continuity of practice.

It seems clear that there is still much more to be done to build trusting relationships between care experienced young people and the police force.

Does age make a difference in Stop and Search?

Some young people spoke strongly in favour of different types of stop and search procedures for certain age groups:

Under 12s

When police are stopping and searching this age group, young people emphasised the need to use age appropriate language. It was felt they were too young to be searched without a parent or guardian present. They also told us that police must be especially supportive of young people under 12, as they may not understand what 'rights' are.

- *"Be very considerate, talk to them, don't be blunt with questioning."*
- *"Use child friendly wording, not jargon."*
- *"Get down to their level – tall police officers can be intimidating."*

12 – 16 Year Olds

If a young person is 16 or under, many young people told us they would like a parent, guardian or carer to be contacted when they are stopped and searched. It was emphasised that the decision to contact them should be based on the choices of the young person being searched. They also saw stop and search procedures as a method of keeping under 16s safe and an opportunity to take them home to their parents or carers.

- *"ID under 16s, take them home to their parents to tell them what has happened and gain permission to search."*
- *"I don't think they should be allowed to search someone under 16 without their parents or carers. It would stop accidents happening, otherwise the young person won't get listened to and gives police too much power..."*
- *"Be there, be respectful."*

One young person described the way police should practice stop and search with this age group:

"Once searched, if the police don't have anything then they should apologise for taking your time, give you their contact details, remaining polite and apologetic. If you want to talk about being searched, you could then contact them."

Over 16s

Some young people acknowledged that being searched when over the age of 16 didn't necessarily require the presence of a parent or guardian, however many still felt that police should *"be respectful"* and understand that turning 16 doesn't mean you change into an adult overnight. They described similar issues around the intimidation of being dragged into a stop and search situation because of friends being searched and that previous crimes committed still shouldn't be a reason to search someone in this age group.

A participant also raised the issue with using age as the only determinant in deciding the type of action to be taken in a stop and search:

"What if you've got learning difficulties? You might be 16 years old but have the mind of an 8 year old?"

"What happens if you have mental health issues and they don't know? You might react in a different way to your peers and be criminalised for this even though it is not your fault."

Police and the Use of Force

We asked young people what they understood 'use of force' to mean. This is a selection of their answers:

- “When they hit you”
- “When they arrest you”
- “Pepper spray”
- “Restraint”
- “Smack you/truncheon”
- “Bend fingers back”

Some young people who participated had personal experience of the police using these types of force, for example whilst being restrained or experiencing force during arrest.

Is it okay for Police to use force and when is it appropriate?

There were mixed views from young people we spoke to about whether it is okay in certain circumstances for police to use force. A strong theme which came out of discussions was that it very much “depends on circumstance” and “depends on behaviour.” Some young people did feel strongly that force should not be used at all, although most acknowledged that if a person was harming themselves or others, then police should be able to step in to provide protection.

“Force is okay in certain circumstances... like if someone has a blade and is going to harm themselves or when it’s for your safety or their safety.”

One participant emphasised that whether it is okay depends on what type of force the police use and that they should not use whatever force they want, especially not as a form of punishment:

“You can’t break the law on your shift as a polis – you can’t jail someone and then beat them up on the way as punishment and then punish them through court. This does happen... there’s been loads of time when I’ve been hurt and there’s a clear imbalance of physical power. I have brothers and cousins that have come back from polis station beaten up.”

Some young people shared that they felt police didn’t care about those they used force against. These responses reinforce that there is currently a lack of trust in the police force, as communicated in the stop and search section of the workshops.

- *“They try to inflict pain all the time.”*
- *“Police only care about their own safety.”*
- *“Police think they are the boss, have a sense of power.”*
- *“I have a fear of police, they make you feel vulnerable. You cannot challenge a charge because they have all the power.”*
- *“They think ‘We are the police we can do what we want.’”*
- *“Polis don’t see you as a human being at the end of the day. The minute you go to the station, you’re just scum in their eyes.”*

There were also numerous personal stories which young people wanted to share about instances where they have experienced the use of force:

- *“They put the cuffs on far too tight.”*
- *“They banged my head off the floor.”*
- *“Police pile up on you, bend your arms back. They go for your weakest point.”*

Several similar stories were shared in different workshops about the danger of being put in the back of a police van, whilst in hand-cuffs:

“Restraint isn’t safe and being put in the back of a van without seatbelts and then driving them like that. In the back of the van you get thrown about the place... you’re on wee metal seats.”

“In the van when I had cuffs on – police drove erratically on purpose, I flew around...”

Improving Police Practice:

During discussions, participants understood that force may have to be used in certain circumstances, however they suggested ways police could change their practice, especially with younger people.

- *“Police should always wear a body camera so that unnecessary force is captured and can be challenged.”*
- *“Police can be quite aggressive. They should be calm and ask you what’s going on. Be approachable rather than threatening. Uniform is too visible and intimidating.”*
- *“Male and female officers dealing with different circumstances – young people should have a choice of who deals with them.”*
- *Proper training for police is important of how and when force should be used.*
- *“Physical force can be escalating and can trigger things. Should only be last resort.”*

A strong theme in discussions around improvements was about the need to communicate properly with young people, especially when force is used by police. It was also seen as important for police to try and understand what the young person may be thinking or feeling before they decide to use force:

- *“If someone is acting out, they need help, they are communicating something.”*
- *“Police need to speak to you, give you a choice and explanation of what’s happening.”*
- *“The young person needs to understand why police are acting in a certain way.”*
- *If a young person is scared or anxious, force shouldn’t be used.*

Care Experience and the Use of Force:

There were young people in every engagement session, that expressed concerns over how police use force in situations with care experienced children and young people. They felt that young people in care placements were negatively impacted by police use of force because of being highly vulnerable and having potentially traumatic backgrounds.

- *“Force by police is used in a residential setting to ‘calm’ things down. They apply same force to all young people regardless of needs and circumstances.”*
- *“They don’t take into account people’s backgrounds, issues, trauma, vulnerabilities.”*
- *“The presence of police can trigger things for care experienced young people, that there’s a threat and something is wrong.”*
- *“Care experienced young people often feel targeted.”*

- *“Impact of previous experiences and trauma, particularly for care experienced young people - physical restraint (how it feels).”*
- *“Young people in residential units are being ‘controlled’ by police coming out when staff can’t cope – this shouldn’t happen!”*

One young person suggested that care experienced young people’s stories could be used to educate the police. This is something which the WCS corporate parenting team are currently working on with Police Scotland.²

Does age make a difference?

There were mixed opinions on the use of force at different ages, with some young people expressing stronger opinions than others that age should affect whether force is used by police. For instance, some young people felt strongly that younger teenagers and children should not be touched by police, whilst others felt unsure about whether they should in certain circumstances.

- *“Being restrained is terrifying, but there are some circumstances in which it is necessary. Younger age should require less force. Always should be a last resort.”*
- *“With arm locks and headlocks. Is it necessary to use that force on a child?”*
- *“Anyone under 14 should not have force used against them except in extreme circumstances.”*

One young person shared that at aged 14, they had their shoulder dislocated by police and were put in a cell overnight. There was a theme in discussions that young people in a lower age bracket, up to 16 years old, should not be subject to such extreme uses of force by police.

However, most of the discussions did not differentiate between age groups but instead focused on how de-escalation methods need to be utilised more widely by police. Communicating with young people to make them think and calm them down were suggested as alternatives to force which should be tried first. Again, this was emphasised as needing to be age appropriate.

“Once force is used you are past the point of listening. Most people respond to being talked to. They need to listen and understand. Restraint just triggers panic, anxiety, anger.”

Once again young people emphasised that police practice should depend on the individual person and their background.

Disclosures

We already know from research that the disclosure process which exposes criminal convictions, specifically affects, and adds to the poor outcomes of care experienced children and young people.³ Some of the young people we engaged with had direct experience of applying for a PVG and other Disclosure checks, however many were also unaware of the system and that they may have to go through this process when applying for jobs.

² Please see WCS’s Corporate Parenting Hub: <http://www.corporateparenting.org.uk/learning-hub/case-studies/dionne-policing/>

³House of Commons Justice Committee (October 2017), *Disclosure of youth criminal records, First Report of Session 2017–19HC 416.*

In this part of the workshop, we asked young people to think about how this process could affect those with criminal convictions gained in their childhood and teenage years.

Should the context of a crime make a difference?

In every engagement session, young people felt strongly that the context of a crime should be considered when going through the disclosure process.

"You need to look at the situation, context and relationships."

Type of Crime:

Many of the discussions focused around the type of crime as key to whether a criminal conviction should appear on disclosure check and there was emphasis placed on the adverse effects of *"minor charges turning into ghost charges"*.

Petty crimes such as breach of the peace, shoplifting and other more minor incidents were mentioned numerous times as unnecessary to share with employers.

"Everyone should get a second chance, if it is a minor offence."

However, some young people strongly agreed that certain crimes such as murder or other more violent crimes should be shown in disclosure checks. Later in discussions, we asked them to think about whether age at time of committing a more serious crime affects whether it should be shown.

Convicted Whilst in Care:

The context of a crime was viewed as paramount if it took place in a care setting or whilst a young person was in care. One young person shared their story of receiving a conviction whilst in residential care, which shows up on their PVG. They are now worried how this will affect them in future:

"I was charged for "smashing a plate...that's fucking ridiculous."

They explained they had been angry and upset at the time of the incident and hadn't meant to damage any property. Staff at their residential placement called the police to gain control of the situation, which the young person saw as unnecessary and feels angry about.

"I had no support, and now something as stupid as that comes up on a PVG. The way I looked at things changed, I just needed the right support."

This links to how staff working in care placements can call police to deal with incidents, whereas in a non-care environment, minor incidents would more often be dealt with without police involvement. The young person explained things might have been different *"if staff were caring"* and that in their placement staff would *"go straight to a charge"* to punish the young person.

"Staff working on night shift are quick to call police and this resulted in young people receiving charges. There is less staff on a night shift, so they feel more vulnerable. Night-time is a really vulnerable time for a young person when charged, they can't contact legal representation or get hold of advocates."

Similarly, other young people commented that threats were used against young people in care by certain staff to *"get you charged"*. Then when police became involved, they would only listen to the staff or adult perspective of the events.

It is clear from this evidence and our previous consultation with the young people we work with that care experience should be considered when displaying charges on disclosures.

“There should be information about what happened at the time of the crime like context and care background.”

More Understanding Needed:

Police Scotland, Disclosure Scotland and employers hiring those with criminal convictions, need to gain more understanding of someone’s background and story before making judgements about their criminal behaviour.

One participant wanted to highlight how alcohol consumption affected why they committed crimes at a young age:

“When I was 16 I thought I knew what I was doing and looking back I thought I didn’t know anything. Alcohol has so much to do with it, you genuinely don’t know what you’re doing, I’ve seen myself and waking up in the polis station and not even knowing why you’re there. I’ve got a load of charges which I genuinely don’t know how I got.”

Experience of trauma, mental health and family background were also highlighted as key factors which could affect whether a crime should be displayed on a PVG. For example, one individual explained they had been turned away from jobs due to a conviction received when they were ‘jumped’ by a family member. They felt it was unfair this context wouldn’t be considered when their criminal conviction was displayed in a disclosure check.

- *It does depend on circumstances, the way they deal with emotions might be by kicking off.*
- *If they’re young they need help, something might be wrong with them.*
- *They might not have the means to communicate that isn’t volatile.*
- *Look into why they did it.*

Should age make a difference for reporting something on a Disclosure check?

Young people mostly felt that the age a person is at the time of committing a crime does make an impact on whether an employer should have to know about it. However, as discussed above, some young people felt that certain types of crime should always be disclosed if of an ‘extreme’ nature.

Under 12s

Many young people felt that crimes committed under 12 should not be shown on a disclosure check. Although the new ACR bill will help bring this into effect, any criminal activity recorded under 12 was mostly seen as unfair to share with employers:

- *“At that age, you’re just learning about life.”*
- *“Over time, someone can change. You’re still growing...”*
- *“At age 8 I was a completely different person.”*

Young people also raised the issue of privacy with sharing information with employers about events which occurred at such a young age, as this could expose family backgrounds or more personal information.

There were also comments about whether the crime at this age had intent to harm or *“if it was playing”*, this relates again to the context of a crime and especially for cases of petty or minor crimes which can have repercussions in later life when seeking employment. Many

young people spoke about incidents that had happened in a harmless way, that were mistakes or had been the result of playing, learning and growing as a child.

12-16 Year Olds

Many young people also expressed concern about charges in this age bracket appearing on a Disclosure check. Again, they emphasised the type of crime should be used as a way to determine whether this information was shared with an employer.

“I understand places need to know about criminal past but only certain things that should be brought up but jail for shoplifting at 14, employers don’t need to know that.”

Some young people thought 16 was a more reasonable age to receive charges in the first place and so did see crimes committed from 16 years of age and beyond as more reasonable to tell employers about.

This topic also reinforced young people’s views that using age to judge whether a crime should be shown on a disclosure check in isolation, was not always fair.

- *“It’s down to how mentally stable you are...”*
- *Look at the emotions are involved in the incident.*
- *“Needs to be judged on mental maturity”*
- *Having a disability should change the judgement – they might not have understood what they were doing and could be related to medication.*

There were also comments about children and younger people being “led into criminal acts” whether through peer pressure with friends or potentially by parents.

Over 16s

Most young people agreed that crimes committed over 16 should be displayed on a Disclosure check. However, they did also reflect on how turning 16 did not lead to a person suddenly becoming responsible with one young person stating: *“your 16th birthday doesn’t make you miraculously mature.”*

Again, young people felt that context around mental health, disability and also whether the person had experienced trauma, should all be taken into account when judging a criminal conviction.

Summary of Recommendations

MACR Age:

In line with existing evidence, care experienced young people do not fully agree that at aged 12 a person is old enough to be arrested and charged with a crime. We ask that the age of MACR continue to be scrutinised and reviewed considering the continuing evidence of these views. While age 12 does not feel appropriate, neither does a ‘age-led’ assessment which ignores individual need.

Alternative Methods to Arrest:

Convicting children and young people with criminal acts was not seen as the best method to stop re-offending. They stressed the need for emotional support and trauma-informed practice by professionals dealing with a young person’s harmful actions.

Acknowledging the Context of Criminal Behaviours:

Throughout the consultation, young people strongly expressed the need for police and others working in the criminal justice system to look at the background and context around a criminal conviction.

Improving Stop and Search:

- Young people would like to be able to choose the location they are searched, especially to avoid public searches which are often embarrassing and uncomfortable.
- They would like police to more proactively enforce rights in this practice by ensuring those who are searched under 18 are informed when searched.
- Young people think under 12s should always have a trusted adult present if searched and that an option to have one present should be available for 12-16-year olds.
- Police must also improve stop and search practices to explain the grounds they are using to search a child or young person to stop stereotyping and build trust in police.

Improving the Practice of Police's Use of Force:

- Using force should be a last resort for police after exhausting alternative methods, to create practices of de-escalation in potentially volatile situations.
- If force must be used on a child or young person, Police must inform them of their rights and ensure they understand why they are using or have used force on them.
- The care experienced background of an individual must be considered when deciding to use force, as this can be triggering of traumatic experiences. It must not be used by staff in care placements as a method to deal with harmful behaviours of children.

Reducing the Barriers of Disclosures

- The disclosure process must allow for the context and background of a criminal conviction to be considered.
- Minor and petty crimes should not be displayed on a disclosure, especially if received under the age of 16.
- Care experience must be acknowledged in the disclosure process and a process put in place to help identify if a criminal conviction was received whilst in care.
- Criminal behaviour under 18 must be judged in the full context of mental health, disability and whether the individual has experienced trauma.

If you wish to discuss this consultation, please get in touch.

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