

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

10th June 2016



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Who Cares? Scotland [WC?S] supports young people who have care experience up to 26 years of age, by providing independent advocacy and opportunities for participation. WC?S aims to provide looked-after 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 as a result 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.

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

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¹ Artist Graham Ogilvie produced this image for CYCJ during Laura Beveridge from WC?S' input to the national secure care sector lead event April 2016.

Who we spoke to

For this consultation we spoke a total of **32 care experienced young people** from all over Scotland. There was a nearly equal division by gender as 44% of the young people were male and 56% were female. Their ages ranged between 12 and 24 years, although the majority were in their mid to late teens.

46% of the young people we spoke to were in a secure placement unit, these young people were aged between 12 and 17 years and 80% were male.

Most of the young people we spoke to had experienced multiple **interactions with the youth justice system**. Some had also had contact with the criminal justice system through family involvement and personal contact with the **police**.

The main methods employed in order to engage with young people included;

- Group workshops
- Semi- structured interviews

What we asked

We began the process by asking care experienced trainees at the WC?S to consider the consultation and break it down into relevant themes and smaller questions that they felt were more accessible to young people. The main topics selected for discussion included;

- Minimum ages
- Children's Hearing System
- Police relationships with young people in care
- Criminal records and disclosures

We recognised that due to the sensitive nature of these topics the conversations could potentially expose confidential information which was inappropriate to collect and discuss in group settings. All discussions were therefore led by an experienced advocacy and participation worker or development officer who utilised well tested creative methods in their facilitations, and steered conversations away from any areas that could be considered upsetting.

Photographs of a selection of completed materials can be seen in Appendix 1.

Young people were given information forms before they took part to explain the purpose of the groups. They were also asked to sign a consent form if they understood and agreed to the reasons for taking part and to acknowledge that any information recorded would remain anonymous.

Introduction

Children and young people must be aware of, and seen to abide by a plethora of age restrictions which are all set by adults based on their assumption of child development and the associated risks. Young people are permitted to act in certain ways when they reach benchmark ages for example:

- 12 – Consent to adoption
- 16 – Enlist in the UK armed forces
- 18 – Purchase alcohol

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. However, it cannot be assumed that all children mature and realise responsibility at the same rates. There are a number of factors that will clearly affect the individual child's development including, but not limited to, their environment, family, experiences, education and physiology.

While some young people resent the rules they must follow and see them as arbitrary, restrictive and unfair, many also understand that they need protecting. When we asked young people what the world would look like if everyone could do whatever they wanted at any age we received a mixed response. Generally interviewees at the younger end of the age scale thought it would be a good thing, perhaps revealing their undeveloped sense of rationality. While most of the older interviewees expressed their awareness of every child's intrinsic need for protection and guidance,

'I'd be dead by now if there was no authority' (14 year old female).

It is traditionally assumed that in the Scottish youth justice system the young person's welfare is prioritised, based on the philosophy of justice advocated by the Report of the Kilbrandon Committee.² This recognises the **special status of children** and that their *'involvement in crime is linked with 'social problems' which are symbolic of deeper social and psychological difficulties, rather than from free, rational and informed choice.'*³ We know that looked after children generally come from lower socio-economic backgrounds and the reasons they become looked after include loss, neglect, abuse and parental alcohol or substance misuse which are all extremely traumatic. Without the strong attachments that are so vital in early life many young people are unable to develop confidence in themselves and others. They may lack trust in the world and can also miss being taught the social values which are necessary to become an involved citizen. Statistics reveal that this group of people who make up only 0.5% of the general population make up 33% of Scotland's youth offender population and 31% Scottish adult prisons.⁴ This potentially shows us that the state which has a legal and moral responsibility to be a good parent (corporate parent)⁵ is missing opportunities to make positive changes in young people's lives. For this welfare approach to work and reduce the flow of Scotland's care experienced young people into the justice system it must be **child-centred, needs-focused and non-criminalising**, all of which are founded in **rights based** policy making.

This consultation response acknowledges that the MACR is presumed to be raised to 12 years of age and we have considered the effects and necessary supplementary changes for this to be a smooth and successful transition. However, as will be discussed later in this response WCPS would like to push for the MACR to be set at a higher age.

Care and Protection

Do you think that the support needs of, and risks posed by, children aged 8-11 years demonstrating harmful behaviour can be met through the extension of the National Child Protection Guidance?

Yes, we agree with the Advisory Group's recommendation that the National Child Protection Guidance should be adjusted to meet the needs of children under 12 demonstrating harmful behaviour. Most children that display harmful behaviour have experienced trauma and harm in their own lives and this behaviour is a reactive response to this. One young person commented,

² SHHD. 1964. *Children and Young Persons (Scotland)*. London: HMSO.

³ Muncie, J., 2004. *Youth and Crime*. London: Sage Publications.

⁴ Scottish Prison Service. 2016. *Prisoner's Survey 2015 – Young People in Custody*. SPS: Edinburgh.

⁵ Children and Young People Act 2014 (asp 8) [online] <<http://www.legislation.gov.uk/asp/2014/8/part/9/enacted>>

'I turned getting into trouble as a way of communicating, like asking for help' (female).

This young person reflected upon the difficulties that some children and young people have verbally communicating the problems they are facing. Therefore it is vital to address their harmful behaviour as they will most likely have **unmet wellbeing needs**. It is important that these wider wellbeing needs are then met in a way that allows the child to realise and accept that the support is in place to meet their needs and not punish them for their behaviour. Every effort should be made to ensure that the child is not criminalised or labelled.

For this relatively small number of children who display harmful behaviour the impact that successful intervention and support can have is high. It is therefore imperative that it **is based on evidence and the views of young people themselves**. WC?S supports the suggestions made by the advisory group in point 2.8 but would like to highlight the importance of **well-informed guidance** and training for practitioners. Children and young people who have themselves demonstrated harmful behaviour can provide powerful insights into what it feels like to be in their position,

'I'm not a bad person, but I get classed as a criminal. I've just got issues that make me do things like having no family. And drinking makes things come to the surface' (female)

The voices and understandings of young people should help build the extension of the National Child Protection Guidance.

[Do you think that a multi-agency scoping study of training and skills would be helpful?](#)

Yes. Children who display harmful behaviour need specialist support from professionals who understand not only the child's current needs but the **context** of their harmful behaviour. WC?S supports point 2.15 and agrees that all agencies need to have a working knowledge and continually develop their understanding of these areas but include the views of young people within this theory based training. It is important that professionals supporting children and young people with complex needs are supported in their professional development and education.

[Should the age of criminal responsibility be raised to 12, do you think that it will be possible to deal with the harmful behaviour of 8-11 year olds via existing care and protection \(welfare\) grounds through the Children's Hearing System?](#)

Yes. The Children's Hearing System is based on the assumption that the *'similarities in the underlying situation'* of young people who demonstrate harmful behaviour and those in need of care and protection *'far outweigh the differences'*.⁶ As a consequence Children's Hearings never focus exclusively on the child's harmful behaviour but address wider questions of the child's welfare in a **holistic and non-criminalising way**. If the MACR is raised to 12 any harmful behaviour of children under 12 can only be considered a welfare issue and one or more of the existing grounds other than criminal can be applied to bring a child to a Children's Hearing.

Point 3.11 states that being brought to a Children's Hearing on offence grounds is likely to lead a child to think that they will be punished for their actions. However, following conversations with young people about their experiences of the Children's Hearing System many were unaware that different grounds exist. Several young people seemed to think that going to a Hearing was always because of their behaviour and they were going to be punished, regardless of the grounds for the Hearing. Some young people commented that they knew going to a Hearing would mean they were going to be removed from their families and expressed

⁶ SHHD. 1964. *Children and Young Persons (Scotland)*. London: HMSO.

regret and blamed themselves for their actions which they believed led to the Hearing. WC?S believes that children and young people should be **helped to understand the Children's Hearing System** and should always be offered **independent advocacy** in advance of their hearing. Young people need to be **supported well enough to understand the process, the decisions and their own rights**.

A common concern from the young people we spoke to who were secured was that they did not feel the Hearing System clearly explained the decisions made about them. Many of these young people also expressed opinions that being in secure was a form of punishment, the equivalent of prison. They revealed their anxieties surrounding the uncertainty of their length of stay,

'With the Hearing system you don't know how long you'll get. It's 3 months, and then maybe another 3 months, but in court you'll get a time' (15 year old male).

It is clear that for some young people the means that are selected to protect them instead adultify, institutionalise and criminalise them. Young people articulated a need for **transparency** surrounding their care and for their opinions to always be carefully considered. Anxiety and uncertainty about the length of a placement is heightened due to the fact that many care experienced young people face a lot of upheaval and have experienced frequent moves. This can have numerous negative effects on their wellbeing and development, for example the disruption of positive and warm relationships that may be acting as a protective factor in the young person's life.

Police Involvement

'I will stay as far away as I can from the police for the rest of my life' (16 year old male).

Nearly all of the young people we spoke to had personal experiences of the police or experience through family involvement. Some experiences were positive and these often stemmed from a relationship with a particular officer. However many young people expressed feelings of being **over-policed** and conveyed feeling **targeted** by the police due to their care status, previous criminal convictions and due to regularly going missing from their unit.

Some young people described frequent, and often public, engagement with the police. This is clearly distressing, and has the potential to be harmful to the young person's wellbeing, sense of self and personal development. It can also be a constant reminder that they are not the same as their contemporaries and that adults often see them as stereotypes rather than individuals. It is also important to note that some care experienced young people feel uneasy around the police, due to their past experiences. This can impact upon their behaviour and may make them present as **hyper vigilant** in an officer's presence, or demonstrate behaviours that could be misinterpreted as suspicious.

Young people tell us that being in care can cause them to **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. The inappropriate criminalisation of looked after children and young people due to their needs not being met is a serious issue that needs to be immediately addressed. The over-representation of looked after young people in the youth justice system, a third of those in young offenders institutes⁷, means that **specific strategies should be considered** to meet the needs of this group to prevent their criminalisation and erase the well-trodden path into adult jails.

⁷ Scottish Prison Service. 2016. *Prisoner's Survey 2015 – Young People in Custody*. SPS: Edinburgh.

Should the age of criminal responsibility be raised to 12, do you agree with the assessment of the Advisory Group that some police powers should be retained in relation to children under 12?

WC?S are in partial agreement. We are aware that if certain police powers were retained they would be used infrequently and only in the most serious cases. There is however, a concern that the retention of certain police powers will effectively mean that children involved in causing serious harm, bearing in mind that these children are likely to be those who have been the most seriously harmed themselves, will not benefit from the full policy intention of promoting the importance of welfare and avoiding criminalisation. Any involvement with the police is immediately going to have a **traumatic effect** on the child no matter how many safeguards are in place.

The Advisory Group suggested that in exceptional circumstances the police should have the power to take children to a place of safety. It is not directly clarified within the report whether the place of safety is intended to be a police cell, for purposes of discussion we assumed that it was and asked young people what they thought about this. Most young people felt that securing children in police cells is unnecessary and indeed harmful. Comments included,

‘The cells are never safe’ (17 year old male).

‘I was in the cells when I was 9 there was all junkies shouting, I didn’t even know what they were saying. I was greeting’ (14 year old male).

‘No they shouldn’t be put in a cell, with all that noise like drunk people shouting’ (14 year old male).

‘Imagine if someone treats their kid like that’ (14 year old female).

The young people we spoke to clearly felt that police cells are not a safe place, especially for children and young people. The young people also felt that the police frequently treated young people who have acted in a harmful way like criminals and did not try to understand the circumstances behind the behaviour,

‘They say if you’re old enough to do all that I can speak to you like that’ (14 year old female).

‘They treat you like you’re 18, but you’re not’ (14 year old female).

‘When I got lifted the policeman grabbed me and slammed me into the ground’ (16 year old male).

‘They always put handcuffs on really tight to antagonise people. They ask if you have any marks on you, but you don’t get any medical help’ (17 year old male).

WC?S asks that there is further consideration given to this, which includes in depth conversations with children and young people in order to gain an understanding of the reality and long term effects of being detained by the police at a young age.

What safeguards should be put in place for children aged under 12 in relation to the use of these powers?

If some police powers are retained the implementation of safeguards will be necessary. Should under 12s be interviewed by the police, it will no longer be in a criminal context but that of Child Protection. The guidance mentions the possibility of the use of solicitors with child centred training which is a viable option, however in many circumstances it may be preferable for a child to have **independent advocacy** from an organisation such as WC?S. Independent advocacy is described by the Independent Advocacy Alliance as,

‘A way to help people have a stronger voice and to have as much control as possible over their own lives. Independent Advocacy organisations are separate from organisations that provide other types of services. An independent advocate will not make decisions on behalf of the person/group they are

*supporting. The independent advocate helps the **person/group to get the information they need to make real choices about their circumstances and supports the person/group to put their choices across to others. An independent advocate may speak on behalf of people who are unable to do so for themselves.***⁸

It is imperative to **prioritise the voice of the child** and ensure that they **understand** the situation and their **rights** fully. Care experienced children and young people may already work with an independent advocate and in such cases this relationship should be utilised.

WC?S supports the suggestion that in the case of the retention of certain police powers they may only be used in the most serious of cases and when permission is granted from authority out with the police.

Criminal Records

It is a well-known fact that the majority of young people 'offend', to a greater or lesser extent. The Edinburgh Study of Transitions and Crime found that **95% of all young people commit a crime**.⁹ It is clear that the bulk of this 'offending' is minor, and can even be seen to be part of growing up - experimentation, rebellion, questioning authority, seeking excitement and negotiating both a social and a self-identity.¹⁰ Indeed most of these young people are never caught and simply stop offending of their own accord, most frequently when they have legitimate opportunities within mainstream society. These individuals grow up and do not give their past criminal activity much thought, and why should they? No one knows about it.

While the majority of young people are never charged for their 'offending' behaviour, in 2012/13 just under 5% of children aged between 8 and 17 in Scotland came into contact with the police.¹¹ For these individuals the long term effects of their pre-adolescent and adolescent offending have the potential to ripple through their lives and affect their future prospects. This is particularly apparent in respect of young people who are care experienced. Far too often a young person's journey towards the criminal justice system starts and/or escalates in residential care. The Howard League report recently revealed that in England and Wales **looked after teenagers are nearly 20 times more likely to be criminalised** than their non-looked after counterparts.¹²

Do you think there should be a strong presumption against the release of information about a child's harmful behaviour when an incident occurred before the age of 12?

Yes. There should be a strong presumption against the release of information about a child's conduct that occurs before the minimum age of criminal responsibility. If this behaviour is to be seen as a welfare concern then it is in the child's best interests for the information to remain confidential.

We know that **children and young people change**. Decisions made and actions taken in previous years can become questionable and as if they were decided by someone else. Children tend not to consider, or even be aware of the consequences as one young person commented,

⁸ Scottish Independent Advocacy Alliance. *What is Independent Advocacy?* [online] Available at: <http://www.siaa.org.uk/us/independent-advocacy/>

⁹ McAra, L., McVie, S., 2010. Youth crime and justice: Key messages from the Edinburgh Study of Youth Transitions and Crime. *Criminology and Criminal Justice*. [online] <<http://crj.sagepub.com/content/10/2/179>>

¹⁰ WC?S, 2009, *Nothing Has Convinced Me to Stop* [online] <<https://www.whocarescotland.org/media/2016/03/f5f669a4c2e9d6932359a35813f79a28.pdf>>

¹¹ Lightowler, C., Orr, D., Vaswani, N., 2014. *Youth Justice in Scotland: Fixed in the past or fit for the future*. [online] <<http://www.cycj.org.uk/wp-content/uploads/2014/09/Youth-Justice-in-Scotland.pdf>>

¹² The Howard League, 2016 *Criminal Care*. HLPR: London.

‘When you are younger you think it’s just fun and games. You don’t actually think it through. Then there is one year of your life when you open your eyes and see that you have to take responsibility’ (17 year old male).

Care experienced young people are **more likely to come into contact with the police** than their non looked after counterparts and this is often not simply due to their behaviour, but due to the decisions made by those caring for them. We know anecdotally of young people having charges such as assault for actions that would be dealt with by parents in the family home, not the police. One young person commented,

‘The police do get phoned when you are in a unit. Like if you were at home they wouldn’t phone the police’ (19 year old male).

WC?S would like to see the way in which harmful behaviours are handled within residential homes in particular, re-evaluated and for the involvement of the police to be radically reduced. If care experienced young people are to be allowed **equal opportunities** it is necessary that information about their harmful behaviour during childhood is not disclosed.

Should individuals who may have obtained a criminal record based on behaviour when they were aged 8 to 11 prior to any change in the age of criminal responsibility no longer have to disclose convictions from that time?

Yes. In order for the legislative changes to benefit as many individuals as possible and create a fairer system, individuals who accrued a conviction or a proven offence ground under the age of 12 in the current system should no longer have that conviction disclosed.

In order for this policy change to fully benefit this group, firstly, they must be made fully aware of it and given information to aid their understanding of how the changes can positively affect their lives. Employers and college and university admissions services should also be informed of the changes and encouraged to re-asses any recent applications that may have been rejected due to a criminal record based on behaviour below the new MACR. It is important that we **aim for a change in public attitudes** towards harmful behaviour by children and young people and that the current culture of blaming and shaming is eradicated and replaced with educated understanding and community support for all young people.

Where it is felt necessary to release information about an incident occurring before the age of 12, do you agree with the Advisory Group’s recommendation that this process should be subject to independent ratification?

While WC?S suggests that that information about incidents occurring before the MACR is never released, if there is a situation where this is deemed necessary for the protection and continued support of the individual and general public then we agree that this process should be subject to independent ratification.

Should an incident of serious harmful behaviour that took place under the age of 12 continue to be disclosed when that person reaches the age of 18?

No. As the changes intend to promote the welfare needs of children and young people and end criminalisation, under no circumstances should an incident that took place before the MACR continue to be disclosed when the individual reaches the age of 18.

If the serious incident occurred under the age of 12 that leaves 6 years for the individual to re-offend, if this happens there is the likelihood of the recent incident showing on a disclosure. If the individual does not re-offend it is against their best interests to include an old incident on their disclosure as they have gone at least 6 years without demonstrating any other harmful behaviour and should be given the opportunity to continue in a positive destination.

However, if it is decided that incidents of serious harmful behaviour that took place under the age of 12 continue to be disclosed when that person reached 18 then WC?S believes that the gravity of the decision should never be minimised. Each case should be reviewed independently and regularly and the individual should be allowed to appeal the decision made.

Do you have comments on wider issues in respect of disclosure for all under 18s?

It must be remembered that children and young people are constantly growing, learning and changing. The system needs to reflect this with fluidity and the ability to **reflect the evolving nature of the individual**. In order to manage risk and safeguard the young person and the public there may be cases involving serious incidences following which the young person needs to be recognised as in need of ongoing **support**.

When we asked young people from what age they think conviction information should appear on disclosures, the majority suggested that it should be around 16. A group of young people we spoke to who were all over the age of 18 reflected on their teenage years and commented that they had made mistakes and perhaps committed crimes without thinking about consequences. Some admitted that they may have acted in way that some people would deem criminal, although at the time they did not look at it in that way. It was suggested that **this behaviour is sometimes the only way a young person can demonstrate how they feel**. However using harmful behaviour as a form of expression is not always recognised,

‘People noticed my behaviour, but not my trauma’ (female).

The group suggested that individuals who demonstrated harmful behaviour should always be offered the relevant support but all efforts need to be made to **avoid criminalising** the young person. They also agreed that such incidences are relatively commonplace among young people and it is not in the interest of the young person or of the public to include offences from teenage years on disclosures,

‘Things from your teenage years shouldn’t appear on your disclosure, especially if they are minor things’ (20 year old female).

It should be recognised that **looked after children and young people are more likely than their non-looked after counterparts to have regular police involvement in their lives**. We know that a ‘looked after’ status often contributes not only to the police being called in for, often, anti-social rather than offending behaviour reasons, but also to young people being charged by the police and referred to the Children’s Reporter.¹³

‘The staff in my home called the police in for nothing and when I’m out with my pals the police stop me just because they know me’ (20 year old female).

This over policing of the looked after population should be taken into account when considering whether to disclose information about convictions and additional non-conviction information. **Young people should be given the power to challenge** the inclusion of any information. The process to do so should be well publicised and accessible.

In addition to this, consideration should be given to the effects of the traumatic backgrounds that many young people in care experienced before they became looked after. The long term effects of trauma cannot be diminished and it is a well-accepted fact that trauma can affect all areas of a child or young person’s development, from learning and communication, to their ability to form appropriate, trusting and meaningful relationships. This means that many care experienced young people are functioning at a level

¹³ WC?S, 2009, *Nothing Has Convinced Me to Stop* [online]
<<https://www.whocaresscotland.org/media/2016/03/f5f669a4c2e9d6932359a35813f79a28.pdf>>

that would be considered to be below that of their contemporaries. The arbitrariness of age becomes extremely apparent when used in a system that has the power to greatly affect future chances.

The Minimum Age of Criminal Responsibility

Do you agree with the Advisory Group's recommendation that the age of criminal responsibility in Scotland should be raised from 8 to 12 years of age?

WC?S believes that the MACR needs to be raised from 8, however we are concerned that the new proposed age is not higher than 12 as advised by the UNCRC.¹⁴

The Scottish Government's vision is to make Scotland the best place in the world to grow up. For this ambition to be made a reality, every aspect of a child's life must be considered. While the MACR cannot be recognised as a meter of progressivity, equally its significance cannot be denied. Scotland currently has a MACR of 8, which is considered 'not to be internationally acceptable' by the UN Committee on the Rights of the Child.¹⁵ If Scotland is to adhere to the UNCRC it is therefore imperative to increase the MACR, but to merely recognise lowest internationally acceptable age does not demonstrate Scotland being either progressive, or the best place in world to grow up. The committee suggests a higher MACR 'for instance 14 or 16 years of age'.¹⁶ Scotland should not punish any child and any intervention needed should be educative and protective, and as far away as possible from being punitive and responsiblising. It is possible to look around the world for many examples of this, for example Scandinavian countries (Iceland, Norway, Sweden, Finland and Denmark) 'use forward looking social and educational measures, together with mediation, [which] take precedence over prosecution and punishment'.¹⁷ This reveals the understanding that investing in education, health and social services is more likely to achieve positive outcomes than developing penal institutions.

Practitioners know that **harmful behaviour is more often than not a reaction to being harmed** and that **public safety does not rely on incarceration**, this knowledge needs to be shared. Ideology needs to change. For change to be realised it must be supported by every Scottish citizen. WC?S believes that for this change in public perception to be realised there needs to be a public education drive, like we have seen in recent years for health, recycling and CSE. At WC?S we challenge stereotypes by using positive messaging and asking people to listen to care experienced young people.¹⁸

While arrangements are already being made to consult with groups of children and young people, please tell us about the groups of children and young people you believe should be consulted as part of this consultation process and how they should be consulted.

We strongly feel that **looked after children and young people and care leavers** should be heavily involved in this consultation process. While young people in care are just like all other young people, they also need to cope with the **trauma** of being separated from their parents, being judged for living in a children's home and being viewed as 'different' because their families can't look after them. It is unsurprising that after these experiences, their **outcomes in life can be much poorer** than their non- care peers. While opportunities may

¹⁴ UN Committee on the Rights of the Child (CRC), *General comment No. 10 (2007): Children's Rights in Juvenile Justice*, 25 April 2007. [online] <<http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>>

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ B. Goldson and J. Muncie., 2006. Rethinking Youth Justice: Comparative Analysis, International Human Rights and Research Evidence. *Youth Justice*, 6(2). [online] <<http://yjj.sagepub.com/content/6/2/91>>

¹⁸ Please see our website for more information. <<https://www.whocarescotland.org/who-we-are/media-centre/press-releases/a-national-campaign-that-aims-to-end-discrimination>>

be there, young people often struggle to sustain them as they are dealing with the emotional impact of being brought up in care often without a strong and positive support network. Examples of these include;

- **Nearly half of looked after 5-17 year olds are diagnosed as having a mental health disorder.**¹⁹ We know that lots of young people may also be suffering with undiagnosed mental health problems and facing excessive punitive responses, such as restraint, used by workers in a misguided effort to control difficult behaviours.
- The educational outcomes for care experienced young people are unacceptably poor in comparison to their non-care peers. Trauma, mental ill health, stigma, frequent placement moves and chaotic living arrangements are all examples of how a looked after young person's experience of education can be a negative one. With such poor experiences it is unsurprising that **74% of looked after young people leave school before the age of 16** compared with 27% of all school leavers.²⁰
- Scottish Government statistics reveal that there is nearly a **50/50 chance of becoming homeless** for care experienced young people.²¹
- In Scotland, **a third of young offenders** identified as having been in care at some point in their life.²² Nearly a third of adult prisoners, 31% also self-reported being in care as a child.²³

In order to consult with group of young people meaningfully it is often beneficial to utilise **existing relationships** young people have with professionals. It is vital that any materials produced for the consultation process are **easy to read and understand** and have been **developed along with young people**. Consultation groups should always be held at a time and place that suits the young people.

¹⁹ Office of National Statistics. 2004. *The mental health of young people looked after by local authorities in Scotland*. HMS; London.

²⁰ Scottish Government. 2015. Education Outcomes for Scotland's Looked After Children, 2013/14. <http://www.gov.scot/Publications/2015/06/6439>. Edinburgh.

²¹ Scottish Government. 2016. *Scottish Homelessness Statistics*. Scottish Government: Edinburgh

²² Scottish Prison Service. 2016. *Prisoner's Survey 2015 – Young People in Custody*. SPS: Edinburgh.

²³ Ibid.

Recommendations

- **WC?S believes that children and young people need to be asked what they think the MACR should be. They should be given a range of options, not just 12 years of age.**
 - Throughout our discussions with young people it was clear that the majority of young people felt that the **MACR should be higher than 12.**
- **A needs focused response is required to deal with harmful behaviour of young people.**
 - We know that harmful behaviour towards the self or others is most often a reaction to harm that others have caused the individual.
 - Ensure the focus is always on the **welfare** of children and young people and that the required support is **individualised** and provided in a **holistic** and **non-criminalising** way.
 - Skills development and **training** needs to be provided for professionals working with children who display harmful behaviours, and indeed all professionals working with looked after children and young people. 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.** A survey of 1,001 adults across the UK revealed they believed that almost half of all crimes were committed by children and young people. However, when compared to contemporary crime statistics their overestimation is shown to be huge, as in Scotland children and young people were responsible for just 16% of all recorded offences.²⁴
- **This is 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. This is often due to petty matters that could instead be dealt with by their care staff.
 - As a result of this there is a sense of **mistrust** between care experienced young people and the police.
- **There is 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 looked after young people to reach their potential.
 - If we consider the already poor outcomes of care experienced young people every effort should be made to ensure that they can excel. Including information about harmful behaviour by children and young people who have sometimes been harmed in the most traumatic ways prevents them from turning things around and attending college or university or applying for a job they want to do.

²⁴ Ipsos MORI, Attitudes towards teenagers and crime (2006), [online] Available at: < <https://www.ipsos-mori.com/researchpublications/researcharchive/287/Attitudes-Towards-Teenagers-And-Crime.aspx>>.

Appendix 1

Court Vs Hearings (3)

What are the differences between the two?

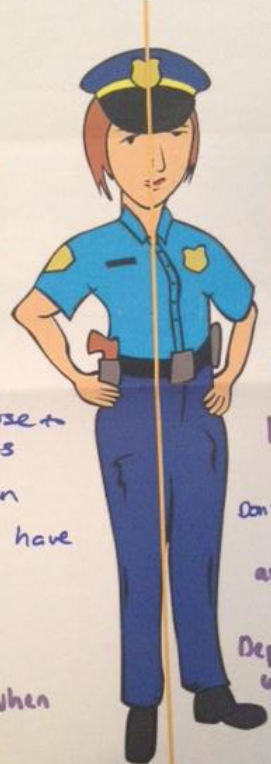
Court	Children's Hearing
Can get sentenced nearer	3 months at a time
You know the date you're getting out. You know your leaving date. More focussed.	More unknowns. stress + anxiety every 3 months.
A judge is trained, & takes everything into consideration	More stressful. Members of public, not professionals. Only listen to social work.

How do hearings make you feel?

Police and Young People

Good

bad



Took me away for a roll + sausage
 Visited the house + see how I was getting on even though I didn't have to.
 Nice guy.
 take you back when you go missing

think they can do what they want.
 lie
 Don't 'get' us
 assault
 Depends on how you look

MINIMUM AGE QUIZ! (5)

In Scotland, how old do you have to be to...

> Vote in an election?	16
> Get married?	16
> Write a will?	12
> Join the army?	16
> Join Facebook?	13
> Drive?	17
> Have a bank account?	0
> Work part-time?	13 - 14
> Give blood?	17
> Be held responsible for crimes?	8

