

Young People aged between 15 and 17 in the Children's Hearings System

A Position Statement by ADSW

ADSW supports the implementation of the 'whole system approach' throughout Scotland and the principles upon which it is based. This approach requires the application of streamlined and consistent planning, assessment and decision making process for young people who offend to ensure they receive the right service at the right time, or no service if this is what has been assessed as being in their best interests (minimum intervention). The ethos of this approach centres around prevention- avoiding young people entering the criminal justice system unless absolutely necessary. Further information and a full range of guidance documents is available at: [Whole System Approach](#)

Research and case practice evidence clearly indicates that young people between the ages of 15 and 17 years often present to agencies with a complex array of issues. This is a time of significant change for a young person and the practical challenges that adulthood brings coincide with issues around identity, relationships, maturity and confidence. It is a challenging stage of development for many young people and it is essential that the support on offer is flexible and fluid enough to match the needs that the young person presents with.

This position statement records ADSW's commitment to supporting the development of practices and systems across Scotland that enable those who work to support and assist young people and their families to do so in partnership whilst being equipped with the best, most relevant information and professional advice to assist them in their decision making.

This document focuses largely on delivering best outcomes for young people who offend, but the underlying principles apply to all young people in the children's hearings system and wider.

1(i) Underlying Principles:

- **Action must include a consideration of a young person's wider emotional, developmental and family needs** : consideration should always be given to remitting a young person from court to the children's hearings system for advice and disposal where their wider welfare and family needs can be taken into account. If the advice of a children's hearing is an option for the court, this should always be considered by the report's author .as highlighted the in the criminal justice National Outcomes and Standards.
- **Alternatives to custody must be considered in each case** : the report writer and court social worker should also ensure that alternatives to custody are understood and explored within the relevant local authority. These options should always be detailed as a priority within all reports to enable panel members and courts to make decisions with confidence. Where a case is

remitted, there should be a clear plan provided as to what interventions can be undertaken.

- **Young people should continue to be supported on a supervision order between the ages of 16 and 18 years when this is in their best interests:** ADSW is committed to the current practice of ensuring that young people remain subject to supervision requirements beyond aged 16 (and up to age 18) when this is appropriate and justified.

1(ii) Furthermore, it is **not appropriate to base a recommendation of termination of a supervision requirement solely** on the following:-

- the young person has outstanding offences. This will likely lead to them being fast tracked into the criminal justice system and often into the prison system.
- on the basis of the age of the young person (unless approaching 18 years) in line with current legislation and the United Nations Convention on the Rights of the Child (UNCRC).
- as a result of failure to engage with services that are assessed as necessary. In line with the Kilbrandon principles, non engagement can actually be a reason to ensure compulsory measures are in place and every effort should be made to improve the young person's response, taking into account their individual needs and views.
- when the young person is in the adult court system or has been given a custodial sentence. If a young person subject to a supervision requirement is simultaneously prosecuted in court, remaining on a supervision requirement can provide them with the additional support they require, which is not dependent on their consent, whilst going through a complex adult system. We would wish to see the position where courts¹ confidently seek the advice of a hearing prior to disposing of the case, considering the option of remittal back to the children's hearings system for disposal. Remaining on a supervision requirement allows for the young person's wider care needs to be addressed, family work to continue and could also result in any further offences (especially if committed whilst in secure care/custody) being dealt with through the children's hearings system. Engagement with a young person on a statutory order during the period of transition back into community living can be crucial to achieving best long term outcomes.

¹ S.49 Criminal Procedure (Scotland) Act 1995
16 -17 ½ not on SR but charged summarily – court may seek advice.
16 and 17 on SR – Sheriff and JP court must seek advice
16 and 17 on SR – High court may seek advice

2. Other important factors for the success of the Whole System Approach:

2(i) The continued consideration of alternative services to secure care (e.g. Intensive Support and Monitoring packages.) The Children's Hearings (Scotland) Act 2011 (s.83) has introduced a new requirement to consider alternatives before a secure care authorisation is made. It is vital that panel members are provided with clear care plans and alternative packages of support to ensure that a secure care recommendation is not the only option available to them. Although the Act is not yet in force, it is based upon best practice.

2(ii) Panel members must have confidence in the management of those young people who present a significant risk to themselves or others and are within the children's hearings system. Social workers attending hearings must be able to make and present articulate, balanced judgements based on an analysis of facts as to whether, following local risk management procedures, the young person can remain safely in the community.

2(iii) Work must take place with the young person to identify their needs and risks which are then reflected in their single plans in order to achieve more positive outcomes.

2(iv) The Children (Scotland) Act 1995 regulations and guidance identifies good practice that continues to be applicable when dealing with young people who are being managed within the children's hearings system and also in the adult courts. It identifies that, where appropriate, children's and criminal justice services should be co-ordinated and agreements reached about who is the best person to complete court reports and supervise orders. This may involve joint working between children's and adult's services and the young person to allow for a continuity of support and resources. Co operation and co-ordination is essential when planning support to young people as they navigate their way through complex organisational systems. Joint arrangements, where necessary, can continue until a young person reaches 18 years of age.

2(v) Supporting Young People Leaving Care Guidance: The general principle is that young people should continue to be looked after until 18 years of age if it is in their best interests. Local authorities have a duty to carry out an assessment of the needs of **all** young people over school age leaving their care, including those looked after at home. This assessment should determine what advice, assistance and support the authority should provide. The success of Throughcare and Aftercare depends on a shared sense of corporate parenthood across an authority.

2(vi) Children and Families and Throughcare and Aftercare services, including youth justice services, should work together to support the young person leaving care. Children who have been looked after away from home may also be entitled to financial assistance from their local authority up to age 25.

2(vii) section 70 (Supervision requirement) and its relationship to Section 17 (Throughcare) : a perceived barrier to retaining young people on a supervision requirement at age 16 and 17 is the need for the young person to move on, for example, leaving the residence of family, or corporate parent. This often requires

independent living arrangements and finances. A supervision requirement is often cited as preventing the young person acquiring their own accommodation and financial benefits. This should not be the case. It may be that the young person cannot access some supported accommodation but there are other options available such as Local Authority housing (with appropriate support) or accommodation supported by third sector organisations. The Scottish Government is working with Local Authorities to support the development of such alternatives.

2(viii) Where a young person is subject to a section 70 supervision requirement and preparing to leave care, the Local Authority may wish to consider whether, in addition to statutory support and protection required by the supervision requirement, additional support is necessary under section 17(2) through care either for accommodation or financial purposes.

3. Recommendations for improved processes for young people in the children's hearings system:

3(i) Local multi agency panels have been found to be effective in some local areas in improving the consistency and quality of decision making in relation to termination of supervision requirements. These Panels may be made up from existing groups from youth justice/GIRFEC/Children and Families/Child Protection forums etc. They consider the reasons, needs and risk assessment (ensuring a common language) in relation to the recommendation for termination of a supervision requirement.

3(ii) Speedy reporting of offence information between police and social work may prevent any escalation/ repeat of offending. Information on an offence committed whilst a supervision order was in place may be obtained from the Children's Reporter/ Police.

3(iii) Best use of skills and resources can be achieved through avoidance of duplication of effort. When a case has been remitted from the court to a hearing for advice or disposal, it is not necessary to complete a new Social Background Report. Criminal Justice Social Work reports that are prepared in line with the young people in court guidance² (they include the young person's single plan, in line with the requirements of GIRFEC); can be used as basis for the hearing as long as the report is amended to address the welfare issues and need for compulsion as opposed to criminal justice related issues (such as the need for punishment).

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² <http://www.scotland.gov.uk/Publications/2011/09/27155150/0>