

Response to Scottish Government consultation on raising the age of referral to the principal reporter

October 2020

Children 1st is Scotland's national children's charity. We have over 130 years of experience of working alongside families to prevent problems from escalating to the point of crisis, to protect children from harm and to help children and families to recover from the trauma associated with childhood adversity by providing relationship- based practical and emotional support.

We strongly support increasing the maximum age of referral to the Reporter to 18, in line with our increasing knowledge and understanding of trauma, the significant gaps in respecting the justice, care, protection and recovery rights of 16 and 17 year olds and the principles of the United Nations Convention on the Rights of the Child (UNCRC) and the Council of Europe guidelines on child-friendly justice.

We remind the Scottish Government that 16 and 17 year olds are **children** and their right to be safe, loved, cared for and protected must be unequivocally upheld.

1. Do you agree that the maximum age of referral to the Reporter should be increased to 18?

a) Yes – All cases

Please provide reason(s) for your answer (free text)

Children 1st believes increasing the age of referral to the Reporter so that it is inclusive of all children is entirely in line with the principles of the Kilbrandon Report, the UNCRC and the Council of Europe guidelines on child-friendly justice.

Our experience is that at present there are significant discrepancies between the way that older children experience justice, care, protection and recovery compared to younger children that is entirely out of sync with our broader ambitions for children in Scotland. For example, we know that many older children are not able to access the support that they are entitled to or feel that limits are placed on the support they can receive as they approach their sixteenth birthday.

There is a growing body of evidence about the impact of trauma and the support needs of children who have experienced adversity.¹ It is vitally important that all children who need it are able to access the type of relationship- based, trauma- informed support that upholds their rights and listens to their voices in order to break cycle of inter-generational trauma and prevent the system from compounding or ignoring this trauma.²

The evidence is clear that many children who are involved with the criminal justice system are also in need of support to help them to recover from their experiences and prevent negative patterns of re-offending and unhelpful coping mechanisms. This includes ensuring that children take responsibility for associated unhelpful or criminal actions and prevent them from reoccurring. We recognise that extending the age of referral to the Reporter will not remove

¹ See, for example https://www.scotphn.net/wp-content/uploads/2016/06/2016_05_26-ACE-Report-Final-AF.pdf

² See, for example: Sara, G., & Lappin, J., *Childhood trauma: psychiatry's greatest public health challenge?*, The Lancet Public Health Vol. 2; No. 7: e300-e301, July 2017; http://www.prisonreformtrust.org.uk/Portals/0/Documents/Domestic_abuse_report_final_lo.pdf; https://www.scotphn.net/wp-content/uploads/2016/06/2016_05_26-ACE-Report-Final-AF.pdf.

the ability of the Procurator Fiscal to retain serious cases for prosecution in the criminal justice system.

Children 1st's experience has shown that when children are listened to, when they feel heard, loved, supported and respected it is much more likely that they are able to recover from their experiences. At present we are failing children who are exhibiting distressed behaviour by failing to respond adequately to their needs and leaving them feeling unloved, overwhelmed and unsupported—left to cope with trauma on their own.

2. If the age of referral is increased to 18, are the existing grounds of referral to a Children's Hearing sufficient (see pages 11-12 for existing grounds)?

b) No

Please provide reason(s) for your answer (free text).

Children 1st refers to the response our colleagues at Who Cares? Scotland, the Children and Young People's Centre for Justice (CYCJ) who have more expertise in this area. However, we highlight to the Government that it may be important to consider whether the needs of children who have experienced sexual exploitation or trafficking are adequately covered by the existing grounds of referral.

3. What are your views on the potential implications, including resource, of increasing the age of referral to the Reporter for local authorities, Police and other service providers/organisations?

Increasing the age of referral to include 16 and 17 year olds must not be an empty gesture that is not accompanied by the required resource to implement it effectively. This includes measures to provide trauma- informed training about how to uphold and secure children's rights for all who need it. It also includes ensuring access to appropriate legal representation, advocacy support and wraparound holistic support for all children who need it.

And crucially, there must be urgent mapping of what support services are available for children and a determination of where investment must be made, in line with The Promise, to ensure that adequate trauma- informed, relationship- based support is available that provides emotional, practical and financial help for all children and their families who need it. This includes 16 and 17 year olds who are parents themselves.

Support must be accessible and strengths- based, designed right alongside children who can much more effectively tell us what they need to help improve their lives rather than finding inappropriate but well- intentioned support being forced upon them.

As we know, many children have developed coping mechanisms that help them to process trauma and deal with distress in the absence of appropriate support and help. This may include using drugs and alcohol and/ or being involved with gangs or criminal activity. Proper support packages that wrap around all children and families and help them to recover from their experiences, to take responsibility for behaviour that harms or affects others and to uphold their rights (particularly art. 3- best interests; art. 12- hearing their voices; art. 19 protection from abuse; and art. 39- access to recovery support of the UNCRC) is essential. However, this approach does not always exist in all parts of the country and this must be urgently addressed.

As with all children, the support that is available for older children must be holistic rather than compartmentalised. Clear consideration should be made of children's needs as a whole, which includes with respect to housing, education, health, finance, recovery support etc as well as

emotional or mental health and trauma recovery. In some cases, support will be needed for the whole family—including the possibility of Family Group Decision Making (FGDM)—to prevent further harm or crisis.

Children 1st is currently working alongside SCRA to pilot FGDM in the Hearings. For young people, the FGDM process could ensure that a support plan is produced right alongside them that could either aid the Hearing's decision or avoid the need for a Hearing in the first place. We encourage the Scottish Government to consider the findings of our pilot and how it might be helpful in considering this change.

Additionally, where a young person is welcoming of support and compulsory measures are not needed there may be a different dynamic around an older child's engagement and involvement in working alongside services than there is with younger children. For example, their parents may not be involved. This is also the case where compulsion is involved in terms of appropriate accountability and enforcement mechanisms for older children. Although the Hearings System does currently in some cases work alongside older children, given that this change is likely to mean that an increased number of 16 and 17 year olds are included we encourage some further thought is required to take into account how 16 and 17 year olds may want to engage with the Hearings System to ensure they feel happy about their involvement and that it is beneficial to them. There must be a trauma- informed approach to compulsion and young people's engagement (or perceived lack of engagement) with the System.

Finally, it will be important to fully consider the interaction between adult and child services, given that there are sometimes different age 'limits' for referral etc. It is vital that older children do not continue to fall through the gaps due to arbitrary age limits of services or being held on waiting lists for oversubscribed or inappropriate services. This includes seeking clinical diagnosis or treatment for children or labelling them as in need of psychiatric support when in fact it may be more helpful to provide emotional support to children who are exhibiting natural signs of distress having coped with complex and difficult adversities in their short lives.

We strongly recommend that consideration of required investment and training needs to support this change includes the voices and experiences of 16 and 17 year olds and those with lived experience of the Children's Hearing and the criminal justice system. Children 1st can provide advice based on our experience and understanding of what children and families have shared with us—but this is no replacement for listening first-hand to children and families ensure the Hearings are able to fulfil its responsibilities.

4. What are your views on the potential implications, including resource, of increasing the age of referral to the Reporter for SCRA (the public body which operates the Reporter service)?

16 and 17 year old victims of crime will be included in the scope of the Barnahus pilot (House for Healing) in the West of Scotland that Children 1st and partners are pioneering. It will be important to discuss with colleagues in the Scottish Government and SCRA how the pilot—and the subsequent upscale of Barnahus across Scotland—will link to Children's Hearings. It is likely that some children who have been referred to the Hearings will also be referred to the Barnahus.

5. What are your views on the potential implications, including resource, of increasing the age of referral to the Reporter for Children's Hearings Scotland (the body which operates the national children's panel)?

Children 1st agrees with the calls to action identified in The Promise that work must be undertaken to consider and address the underlying operating structures of the Hearings. This includes a review of the role of volunteers in the decision- making structure. It will be important

for this to be considered in the context of these proposed changes, given the complexity of needs of some children who will be involved in the Hearings System.

We note that The Promise also states clearly that everyone involved in the Hearings System “must be properly trained in the impact of trauma, childhood development, neuro-diversity and children’s rights”. We think it is important that this training is rolled out as part of the proposed changes to increasing the age of referral. It is essential that Panel members are equipped with the knowledge and understanding they need to make rights- based, trauma- sensitive decisions about the children in the Hearings with compassion and clarity about the services available to help ensure they are safe, secure, loved and their rights are upheld.

We also note that The Promise is clear that in the longer- term the intention is that the Hearings should plan to “shrink and specialise”. It is important to consider how the rights of older children can be protected so that help and wraparound support is provided for them as early as possible.

6. If the age of referral to the Reporter was increased, are amendments required to ensure sufficient access to information and support for victims harmed by children?

a) Yes

Please provide further details for your answer, including any extensions or amendments you would wish to see (free text).

It is important that existing processes and procedures are carefully evaluated to ensure that they balance the rights of both victims and children involved in criminal justice.

7. If there are any further comments you would like to make, which have not been addressed in the questions above, please use the space below to provide more detail.

As these changes are considered we would welcome discussions about how increasing the age of referral may impact on Safeguarders, and the administration of the national Safeguarders Panel (which Children 1st currently manages).

As there is already provision for 16 and 17 year olds to be referred to the Children’s Hearing system on occasion, we believe that Safeguarders are currently well equipped to work alongside older children. However, we would welcome discussion about the following areas:

1. It is difficult to determine to what extent there might be an increase in referrals to the Safeguarders Panel. However, it will be important to work together with colleagues at SCRA, Children’s Hearing Scotland and the Scottish Government to consider whether there may be a need for additional Safeguarder recruitment and how to manage and mitigate potential pressure on the existing administrative structure (in terms of training, supervision, support, etc) to ensure that there is adequate support for this welcome change.
2. The possibility of enhanced training for Safeguarders relating to working alongside older children, given that it is possible (though not guaranteed) that the number of older children that Safeguarders work alongside may increase. For example, given the needs of older children, it may be helpful to Safeguarders (and indeed all those identified in the Hearings System as identified above) to have greater knowledge of criminal justice, housing/ risk of homelessness, services and support available when a young person is a parent, addiction and recovery support and learning disabilities.
3. Additionally, some Safeguarders may not be familiar with the complexities of working with older children—some of whom may feel overwhelmed with the ‘system’ or that the

Hearings is not an appropriate place for them or that the 'system' has let them down before. Children 1st are mindful about the trauma- informed support we can put in place to help Safeguarders, and indeed other people working alongside older children who may feel hurt or vulnerable, to help them to ensure children feel safe and secure. This includes children who may present as distressed, withdrawn and/or exhibit behaviour that may initially appear intimidating or challenging.

4. It is also important to consider what information may be needed to share with Panel members so that they are clear about the role of a Safeguarder for all children. Although older children may appear more autonomous or able to articulate their own views or perhaps have other workers involved in their lives (for example a Housing Support Officer) we must ensure that there is still a consideration of whether it would be helpful to appoint a Safeguarder to uphold children's rights.