

## **Response from Barnardo's Scotland to Children's Care and Justice Bill – consultation on policy proposals**

**Submitted 22 June 2022**

Barnardo's is the UK's leading national children's charity. Barnardo's Scotland works with thousands of children, young people and families every year, delivering a wide range of support across over 100 services. We use information and experience from our services across Scotland, and from the children and young people we work with, to seek positive change in policy and practice based on what matters to the people who use our services and what we see working in communities. We work collaboratively across all sectors and political parties to achieve the best outcomes for children and young people.

Barnardo's Scotland welcomes that the Scottish Government has brought forward proposals for a Children's Care and Justice Bill in this parliamentary term (2021-2026). We view this forthcoming piece of legislation as a key opportunity to influence the delivery of [The Promise](#) that was made to children, young people and families at the outcome of the [Independent Care Review](#) to reform the care system in Scotland so that it is one where all children can grow up loved, safe and able to fulfil their potential.

We have consulted with frontline service managers in Barnardo's Scotland via internal focus groups to gather views on the policy proposals for the Care and Justice Bill and we have answered only the specific questions where we have relevant expertise and where we believe we can add value to the Scottish Government's policy considerations.

We believe the proposed Children's Care and Justice Bill must be set clearly in the context of existing policy work that is already underway by the Scottish Government and that Barnardo's Scotland is already engaged in. We do not want to lose sight of the relevance of this consultation to other streams of work - including the delivery of the Whole Family Wellbeing Fund, the development of Bairns Hoose<sup>1</sup>, the ongoing re-design of the children's hearing system<sup>2</sup> in light of The Promise and incorporation of the United Nations Convention on the Rights of the Child (UNCRC) into Scots law<sup>3</sup>.

Barnardo's Scotland delivers a wide range of care and justice services across Scotland, and use information and experience from those services, and from the children and young people we work with, to seek positive change in policy and practice based on what matters to the people who use our services and what we see working in communities.

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<sup>1</sup> <https://www.gov.scot/publications/bairns-hoose-scottish-barnabus-vision-values-and-approach/>

<sup>2</sup> <https://thepromise.scot/news/2021/08/15/redesign-will-put-the-needs-of-children-and-families-at-heart-of-the-children%E2%80%99s-hearings-system/>

<sup>3</sup> <https://www.gov.scot/news/protecting-childrens-rights/>

Many of the young people we support across many different services are care experienced. Barnardo's Scotland also has fostering and adoption services, residential care services and support accommodation services for young people who are over 16 and leaving the formal care system but who need ongoing support.

Our services also include prison-based support such as those within HMP Polmont Young Offenders Institution and the HMP Edinburgh prison visitor's centre; community-based youth justice services including those based in Stirling and Clackmannanshire; women's justice services which include our Shine Women's mentoring and Ayrshire Court screening; and family support for children affected by parental imprisonment.

Barnardo's Scotland operates three residential services for young people – Northern Lights, Linksfield and Caern for children with disabilities – as well as 16+ residential services which provides transitional support for young people up to the age of 26. Barnardo's also provides the Gap Homes project.

### **Raising the Maximum Age of Referral to the Principal Reporter**

**1 Where a person has been harmed by a child whose case is likely to proceed to the children's hearings system, should further information be made available to the person who has been harmed (and their parents if they are a child) beyond what is currently available? Please select: If yes, what further information should be made available?: If yes: are there specific circumstances when further information should be provided and what would those circumstances be? Please give reasons for your answer:**

**2 Where a person has been harmed by a child who has been referred to a children's hearing, should the Scottish Children's Reporter Administration be empowered to share further information with a person who has been harmed (and their parents if they are a child) if the child is subject to measures that relate to that person? Please select: Please give reasons for your answer:**

**3 Where a person has been harmed by a child who has been referred to the Principal Reporter, should additional support be made available to the person who has been harmed? Please select: If yes, what additional supports do you feel are necessary?: If Yes, should this apply to all victims or only in certain circumstances? (Please specify):**

**4 Should a single point of contact to offer such support be introduced for a person who has been harmed? Please select: If yes, should this be available to all people who have been harmed or only in certain circumstances? (Please specify circumstances):**

Barnardo's Scotland has consulted with frontline service managers via internal focus groups to gather views on the policy proposals for the Care and Justice Bill. Barnardo's staff felt strongly that more support was required for those who have been harmed and that a single point of contact could have certain benefits but there is a lack of clarity in the proposals to date about how this would work in

practice. The views of the young person must also be taken into account in the allocation of the single point of contact and care must be taken in regards to children's right to privacy. If Yes, who should be responsible for providing the single point of contact? Please give reasons for your answers:

**5 Should existing measures available through the children's hearings system be amended or enhanced for the protection of people who have been harmed? Please select: Please give reasons for your answer : If Yes, please provide details of how they should be amended or enhanced :**

**6 Should Movement Restriction Condition (MRC) orders be made available to children who do not meet the current criteria for secure care? Please give reasons for your answer:**

No

We are not convinced it would be suitable to expand the criteria for movement restriction conditions for children who do not meet the current criteria for secure care as this moves away from the welfare-based principles of the children's hearing system. Barnardo's Scotland want to see the reforms of the children's hearing system, secure care and the wider criminal justice system focused on increasing resource within the system to provide compassionate and proportionate support to young people who require it. A proposal to expand the use of MRCs to young people who would not otherwise meet the threshold for secure care appears contradictory to the direction of travel of early intervention and a reduction in the number of young people who have their liberty restricted, as well as a move away from the welfare-based principles of the children's hearing system.

**Maximising the use of the children's hearings system and supports to children beyond the age of 18**

**7 Should any of these three options be considered further?**

**1. Enabling all children under the age of 18 to be remitted to the Principal Reporter for advice and disposal in their case even where they had initially been prosecuted and have pled, or been found, guilty**

**2. Promoting wider use of the existing ability for the children's hearings system to require support to be offered to a young person on a voluntary basis following the termination of any CSO by virtue of that individual turning 18.**

**3. Increasing the age to which children can remain subject to measures through the children's hearings system for a period beyond the child's 18th birthday.**

**Please give reasons for your answer, including any positive or negative implications of any of the proposals:**

Yes - Option 1, Option 2, Option 3

Barnardo's Scotland supports increasing the age of referral to the Principle Reporter up to 18 years of age for all cases. Many of the children, young people

and parents we work with have experienced trauma, loss and abuse, often multiple and severe which can have significant lasting impacts upon their lives. This proposal will increase the window of opportunity to respond differently to the needs of many vulnerable 16/17 year olds through a rights based trauma informed approach to policy and practice. On a daily basis our service staff support children and young people who are either involved in the children's hearing system, youth justice programmes or the adult justice system.

Many of these children and young people are aged fifteen to eighteen and the current system can be complex, inconsistent and frustrating not only for those children and young people but also for agencies and professionals seeking to provide the right support at the right time. Evidence from our services suggests;

- 16/17 year olds can be left in limbo in terms of accessing appropriate support as they fall through the gaps between children and adult services.
- There is a 'grey' area for children nearing their 16th birthday especially those who have not previously been subject to statutory orders. There is often uncertainty in terms of what approach to take including decisions based upon the belief that there is 'no point in seeking a compulsory supervision order (CSO) given their age.
- Citing various reasons, agencies recommend the termination of children's CSO's prior to them turning 16. Many of these children may agree without realising the implications especially in the loss of entitlement to continuing care.
- 16/17 year olds can face a 'postcode' lottery in terms of how their offending will be dealt with including what type of alternative community supports are available. Court processes can be complicated, time intensive and difficult to understand. Sometimes young people are subject to bail conditions or restrictions which become more difficult to comply with the longer it takes to get to court.

A Children's Hearing would be more likely to take place in a shorter time period and a Compulsory Supervision Order (CSO) can have conditions which involve supports, interventions and restrictions. Advocacy would also be available via the newly established National Advocacy Service for the Children's Hearing System. Extending the age of referral to the Principal Reporter will help to ensure that more children have access to support, guidance and protection. The extended window of opportunity will be of particular benefit to those children at high risk who have not previously reached the threshold for statutory interventions. The processes involved in the Children's Hearing System are more likely to identify and consider the individual and family circumstances, including impact of childhood trauma, of a 16/17-year-old and potentially have a greater list of potential options in terms of recommendations/disposals.

Barnardo's Scotland recognises the importance of ensuring sufficient resources across all sectors supporting vulnerable children and young people and do share concerns about unintended consequences and the resource implications for expanding the use of the children's hearing system. In line with Getting It Right For Every Child (GIRFEC) principles increasing the age of referral to the Reporter should be viewed within the spectrum of earlier intervention especially for those children and young people who have not been involved within the Children's Hearing System prior to their 16th birthday. Successful intervention at this stage,

using a child focused approach is likely to be more cost efficient for society as a whole.

There is also likely to be an increased demand upon the National Advocacy Service for the Children's Hearing System for those 16/17-year-olds who would wish to take up the support of an independent advocate. Any options for further expanding access to the children's hearing system must be properly resourced and we have to be particularly thoughtful around the use of language. The needs of older teenagers will have to be properly accounted for, and some Barnardo's practitioners expressed the view that perhaps a different system is required for older teenagers. We also seek clarity over how the proposed Children's Care and Justice Bill connects with the ongoing redesign of the Children's Hearing System and Scottish Government's rights-based approach to youth justice and its commitment to the Bairns Hoose approach.

**8 Please give details of any other ways in which the use of the children's hearings system could be maximised, including how the interface between the children's hearings system and court could change. Please outline:**

Experience from Barnardo's services is that 16- and 17-year-olds would be better served within the children's hearing system. Currently, young people often end up in the criminal justice system when what they particularly need help with is support with their mental health and wellbeing as well as wraparound supports to help them. A number of Barnardo's services have seen an increase in the number of young people aged 16/17 being targeted, groomed and forced into participation in criminal activity which can often result in them being criminalised. Perpetrators are targeting the vulnerability of specific groups of young people, including those who have not come to the attention of any agencies including social services, police or the Children's Hearing System prior to their 16th birthday. A specific ground in relation to this is more likely to recognise they are being exploited and should be supported and protected and not criminalised. Panel members would benefit from further training on awareness and understand of Human Rights including complex issues relating to conflicting rights. Panel members may also benefit from further training to increase their confidence in engaging more routinely with 16/17-year-olds including awareness of the impact of trauma, exploitation especially in relation to those referred on offence grounds. Panel members would also need further information and advice on the potential disposal options available within their particular locality. This would include knowledge on training and employability programmes, for example Barnardo's Work Fit for Work programme that is funded through Cashback for Communities and open to 16/17-year-olds. There are employability programmes within each local authority area in Scotland. Children and the Criminal Justice System

**9 Should any of the four options be considered further? Please select: Please give reasons for your answer, including any positive or negative implications of any of the options. We are particularly interested in implications for people who have been harmed:**

**Children in custody**

**10 Where a child requires to be deprived of their liberty, should this be secure care rather than a young offenders' institution in all cases? Please select: Please give reasons for your answer:**

**11 Should there be an explicit statutory prohibition on placing any child in a young offenders' institution, even in the gravest cases where a child faces a significant post-18 custodial sentence and/or where elements of a child's behaviour pose the greatest risk of serious harm? Please select: If no, in what exceptional circumstances should use of a YOI be considered? Please give reasons for your answer:**

**12 Should existing duties on local authorities to assess and support children and care leavers who are remanded or sentenced be strengthened? Please select: If yes, please provide details of how could this be achieved. Please give reasons for your answer:**

### **Secure Care**

**14 Do you agree that the regulatory landscape relating to secure care needs to be simplified and clarified? Please give reasons for your answers, including how this could be achieved:**

Yes.

The Promise states clearly that "there must be absolute clarity that the underlying principle of Secure Care is the provision of therapeutic, trauma informed support". The use of secure care is intrinsically linked to other proposals in this consultation regarding the potential legislative prohibition of children under 18 being placed in a young offender's institution. We know that children and young people can be placed in secure care for a range of reasons not restricted to offending behaviours. The purpose of secure care must be to provide a safe, rehabilitative space to aid recovery and provide safe care, considered on a case-by-case basis.

**15 Do you feel that the current definition of "secure accommodation" meets Scotland's current and future needs? Please select: Please give reasons for your answers, including how this could be changed:**

**16 Do you agree that all children under the age of 18 should be able to be placed in secure care where this has been deemed necessary, proportionate and in their best interest? Please give reasons for your answer, including any positive or negative implications:** Yes, anyone under 18 should be able to be placed in secure care if this has been deemed the most appropriate location for them and in their best interest. Following on from question 10 in this consultation, there needs to be a joined up approach across care and justice regarding the treatment of under 18s who are deprived of their liberty.

**17 Should the costs of secure care placements for children placed on remand should be met by Scottish Ministers, rather than local authorities? Please give reasons for your answer :** Yes, we agree that the cost of secure care should be met nationally by Scottish Government and not individual local authorities. Decisions about children and young people should always be based on

the best outcome for the individual, not on what is most convenient or cost effective for the relevant authorities.

**18 Is a new national approach for considering the placement of children in secure care needed? Please give reasons for your answer, including what this approach should look like :** Yes, for the same reasons expressed in response to question 17. However, this must not be to the detriment of ensuring local relationships and support is available.

**19 Is provision needed to enable secure transport to be utilised when necessary and justifiable for the safety of the child or others? Please select: Please give reasons for your answer:**

**20 Are there any other factors that you think need to be taken into account in making this provision for secure transport? Please select: Please give reasons for your answer, including details of any factors you feel should be included:**

**21 Do you agree children should be able to remain in secure care beyond their 18th birthday, where necessary and in their best interests? Please select: Please give reasons for your answer:**

#### **Residential Care and Cross-Border Placements**

**22 Do you agree with the introduction of pathways and standards for residential care for children and young people in Scotland? Please give reasons for your answer, including details of what measures and provisions are needed and how you think this should operate in practice :** Young people have already told us what needs to change through the Independent Care Review and The Promise. At Barnardo's Scotland, we want the proposed Children's Care and Justice Bill to be used to help strengthen ongoing culture change in residential care across Scotland. Barnardo's Scotland staff felt that the development of new standards and pathways for residential care for children and young people could potentially be beneficial, but only if these are used as a mechanism to help bring the principles of The Promise (and future United Nations Convention on the Rights of the Child – UNCRC requirements) into practice quickly and not serve as an opportunity to increase bureaucracy, delays or unnecessary barriers.

**23 Do you agree that local strategic needs assessment should be required prior to approval of any new residential childcare provision? Please give reasons for your answer, including details of what measures and provisions are needed and how you think this should operate in practice :** Yes, Barnardo's Scotland agrees that a local strategic needs assessment prior to approval of new residential care provision is crucial to the future of residential care for children and young people in Scotland. The Promise is clear that there should be no commercial enterprise or profiting from the care of children in Scotland. The decision to approve new residential care provision in Scotland must be driven by local need – demand for residential care should drive provision, not the opposite.

**24 Do you agree that there should be an increased role for the Care Inspectorate? Please select: Please give reasons for your answer,**

**including potential measures and provisions may be explored and how you think this should operate in practice :**

**25 Do you agree that all children and young people living in cross-border residential and secure care placements should be offered an advocate locally? If yes, please provide details of how you think this should operate in practice :**

We believe that the rights of children and young people in all cross border residential and secure care placements should be promoted, protected and fulfilled through accessing locally based advocacy support. In addition to advocacy support rights representation should be available for complex cases and those where competing rights are evident. Representation should be made available via access to a Children's Rights Worker. The provision of advocacy support should be delivered via an opt-out model where all children and young people have access to information about the advocacy provision available and are supported to make an informed choice on whether to uptake the support available. This would include the advocacy offer being made by the local advocacy service. The local advocacy provision should work in tandem with any existing advocacy provision provided by the placing authority to enhance opportunities for face/face advocacy support when requested by the child/young person. Existing face/face advocacy support funded by placing authorities is often limited or non-existent due to the geographical distance between the advocacy provider and the child's/young person's placement.

The capacity of existing local advocacy services should be increased to enable them to

- Promote the availability of advocacy to children and young people within cross-border placements including visits to discuss the advocacy offer.
- Provide advocacy support at the point of need and throughout the period of the placement should the child or young person wish for the support to continue.

Additional training and support should be made available to advocacy services/workers to develop and enhance their experience/knowledge of issues relating to cross-border placements including any relevant legislation relating to the placements.

**26 Whilst there are standards and procedures to follow to ensure restraint of children in care settings is carried out appropriately, and there has been lots of positive work carried out across the residential and secure care sector in recent years, do you think guidance and the law should be made clearer around this matter? If Yes, please provide details of how this could be achieved :**

Yes – Barnardo's Scotland carried out consultation with frontline staff who felt strongly that updated national guidance is required and overdue. Potential new pathways and standards also proposed in this consultation, in the same spirit as the recent secure care pathway, could provide an opportunity for an updated national effort and conversation on how to reduce restraint of children in care settings. Age of Criminal Responsibility

**27 Do you agree with the timescales of the 3-year statutory review period? If no, what period do you think is appropriate? : If a shorter review period, how should the Scottish Government to address the lack of review findings or data to inform such a change?:**

We note that the view of the Children and Young People's Commissioner for Scotland that the age of criminal responsibility should be immediately raised to 14 in line with the international standard. We would therefore support a review of the 2019 Act before the end of the three-year review period.

**For further information about this response, please contact Senior Policy and Public Affairs Lead, Kirsty-Louise Hunt at [kirstylouise.hunt@barnardos.org.uk](mailto:kirstylouise.hunt@barnardos.org.uk)**