



Law Society
of Scotland

Consultation Response

Youth Justice Standards

22 January 2020



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Criminal Law Committee welcomes the opportunity to consider and respond to the Scottish Government consultation: Youth Justice Standards (the consultation). The committee has the following comments to put forward for consideration.

General Comments

The proposed Youth Justice Standards that are the focus of the consultation outline the minimum expectations for all strategic and operational services delivering youth justice in the community, secure care and young offender's institutions. The interest of the members of the Criminal Law Committee lies in criminal justice which include being solicitor members of the Scottish criminal justice organisations involved in the delivery of youth justice.

It would have been clearer if the consultation had asked about the proposed Youth Justice Standards before questioning on whether they reflect priorities and allow for flexibility. Irrespective, we have responded to the consultation to comment on the terms of the proposed Youth Justice Standards.

We consider that the proposed Youth Justice Standards are good, and their introduction is to be welcomed. As well as recognising the importance, which is being assigned to them, which is positive, we would stress that the Scottish Government must come with support of their implementation by way of proper resourcing:

“a preventative approach [that] has the best chance of reducing crime, improving life chances and making good use of public resources. Timely, appropriate and effective interventions are necessary to address offending and harmful behaviour and ensure communities and children stay safe from crime.¹”

¹ Paragraph 1 of the consultation

Our comments relate in part to operational issues which are the responsibility of the relevant services. That highlights the need for consideration to be given at the same time as the Youth Justice Standards are introduced to the necessary budgets, while ensuring effective communication and collaboration among all the relevant professional organisations, and the provision of appropriate training to all involved as to the Youth Justice Standards to ensure effective compliance.

In ensuring that the proposed Youth Justice Standards are accessible and user-friendly as possible, we refer to the Inspectorate of Prosecution in Scotland Thematic Report on the Prosecution on Young People that was published in November 2018.² We are unsure how it is intended that the recommendations in that Report are to be taken account of or have been considered in relation to the drafting of the proposed Youth Justice Standards and their future observance/compliance. The Report's purpose is aligned with the Youth Justice Standards in describing:

“the approach to youth justice in Scotland [that] builds on the key principles and ethos of the highly influential Kilbrandon Report published in 1964.”

That Inspectorate Report was concerned with the legal provisions and systems to treat “children in trouble”, advocating for a welfare-based approach. There requires to be a focus as set out in the introduction to the consultation on early intervention and a welfare-centred approach to children and young people. A child-centred, welfare-focused approach involving multi-agencies with powers to make early interventions is required to ensure that the Youth Justice Standards are applied, and their importance stressed. There is an ongoing need to tackle the cause and impact of offending behaviour by addressing the wider needs of the young person and dealing with young people, where possible, but not within the formal criminal justice system.

Given the now recognised strong connection between young people who have experienced some form of Adverse Childhood Experiences (ACEs) being involved as both victim and offender, it is important as indicated under Standard 1 for that to be specifically recognised. That aspect also needs more generally to be a focus of specific agencies' training.

We understand that the key priorities have been identified as “Advancing the Whole System Approach, Improving Life Chances, and Developing Capacity and Improvement.” Exactly how these are to be achieved will depend on each organisation involved recognising and endorsing the Youth Justice Standards.

Finally, we would endorse that to make all this work that “...children's voices must be heard...” Full account must be taken of a child's ability to influence outcomes and that should be made clear.³

² <https://www.gov.scot/publications/thematic-report-prosecution-young-people/pages/12/>

³ Paragraph 5

Question 1: Do the proposed Youth Justice Standards reflect these national youth justice priorities?

We have the following comments to make:

- Throughout the proposed Youth Justice Standards, the commitment to collaborative working is noted which is an essential component of effective interventions. Collaboration should also apply to the regulation of these standards. It is not enough for the respective regulatory bodies to regulate their service's practice. They must work jointly, otherwise, the stated commitment to a holistic approach will not be achieved.⁴
- Who and how to provide and set out information for the victim is very important? To whom is the responsibility being assigned?⁵
- The need for effective data flows links up with the recent Scottish Government consultation on Official Statistics. In our response,⁶ we stressed the importance of the collation of data to inform. That involves better co-ordination, join up and recognising that justice organisation may collate information differently.⁷
- There is a need for training when dealing with risk and joint training is required.⁸
- Access to specialist supports and advice presupposes that such specialist supports exist and budgets are available to provide and purchase specialist services. This is particularly pertinent so those living in rural and island communities who may have to travel long distances to access specialist resources.⁹
- We welcome recognition that transitions between placements and from one service to another can be "stressful and challenging."¹⁰
- We endorse Standard 5.5 that children in "secure care or custody via court will be supported at the earliest opportunity to start planning for their transition back to the community" and that they have access to supports when transitioning as set out in Standard 5.7. Post transition supports are crucial as those going back into their own communities may experience prejudices and exclusion arising from their past reputations; while those entering new communities may experience isolation

⁴ Standards 1.3, 4.1, 4.4

⁵ Standard 1.5

⁶ <https://www.lawscot.org.uk/media/367990/2019-11-25-crim-a-consultation-on-how-official-statistics-present-information-on-recorded-crimes-and-related-topics.pdf>

⁷ Standard 1.7

⁸ Standards 2 and 6

⁹ Standard 6.3

¹⁰ Standard 7

and loneliness. A range of problems such as depression and other mental health issues may arise including inappropriate online activity. There is also vulnerability into being drawn to offending as a means of being accepted into a peer group.

- There seems to us a need to update some of the relevant materials. We note that Standard 2.5 refers to the Lord Advocate's Guidelines to the Chief Constable on the Reporting to Procurators Fiscal of offences¹¹ alleged to have been committed by children. That version refers to March 2014 and we query if this is the most up to date version given the commencement of the Age of Criminal Responsibility (Scotland) Act 2019.

However, we are not sure there will be substantive effect on the content of the document given the age of prosecution was already 12 and therefore offences would not be jointly reported to the PF. The Act will influence referrals to the Children's Reporter and the basis of referral.

- Under Standard 3.1, while this recognises that all cases being reported to COPFS from the police should contain all relevant information, does this happen in practice? The aspiration is there. Is it achieved? We consider that the reference to "timeously" is too vague. Under Standard 3.5, there is no link to national guidance on diversion. Should there be?
- Under Standard 4.4, where lies the role of the solicitor and the signposting to their services? If solicitors are to provide support, their services need to be adequately remunerated through access to solicitors and adequate legal aid funding.
- We have been considering the role of the vulnerable accused where we published a Report in April 2019 which made a number of recommendations.¹² The recommendation which is most pertinent relates to the definition of vulnerability which includes children and the need for effective identification and supports being required from the earliest stage of their involvement in the criminal justice system. That fully accords with the purpose of the proposed Youth Justice Standards.
- The consultation document outlines as background the United Nations Convention on the Rights of the Child. The Scottish Government policy recognises all under 18s as children, but they are subject to varying procedures and are afforded different supports depending on their age/ legal status and the severity of the offence involved. However, we are aware of issues relating to access to legal advice.

Following the implementation of the Criminal Justice (Scotland) Act 2016, a person under 16 years cannot consent to being interviewed by the police without a solicitor present (s.33(2)(a)). This also applies where the person is 16 or 17 years of age and subject to a compulsory supervision order, or

¹¹

https://www.copfs.gov.uk/images/Documents/Prosecution_Policy_Guidance/Lord_Advocates_Guidelines/Lord%20Advocates%20Guidelines%20offences%20committed%20by%20children.pdf

¹² <https://www.lawscot.org.uk/media/362501/vulnerable-accused-persons-report-final.pdf>

an interim compulsory supervision order, made under the Children's Hearings (Scotland) Act 2011 (s.33(2)(b)). Otherwise, those 16-17 can waive the right with the agreement of a relevant person.

Allowing children 16- 17 to waive right to legal advice was debated during passage of the 2016 Act, with many arguing that those aged 16-17 should be not be able to waive legal advice (and that requiring agreement from the relevant person provided insufficient protection), and others agreeing that this struck the right balance.

Now that the legislation has been in force for some time, does the evidence demonstrate that the right balance has been struck? Are the numbers of those aged between 16-17 waiving their right something that is being recorded and whether the current scheme is being kept under review given that there was debate about whether this afforded sufficient protection to those aged 16 and 17 at the time.

In their 'Legal Assistance in the Police Station' Report¹³ (2018) Justice Scotland¹⁴ found that 70% of suspects continued to waive right to legal advice. For those exercising their right, the majority (75%) receive only telephone advice.

The 2016 Act makes mandatory the provision of legal assistance to children and vulnerable adults at the police station, which we commend. However, the statute does not address the difficulties which may arise where the child or vulnerable adult refuses to have legal assistance at interview or where it has not been possible to find a solicitor able and willing to attend.

While it is to be hoped that such instances will be rare, these provisions of the 2016 Act pose important issues for the solicitor profession to consider and resolve. But those issues apart, solicitors will have to attend cases where the suspect is a child or vulnerable adult and should therefore be aware of the communication difficulties which arise with these groups and of how to address those difficulties.

Question 2: Do the proposed Youth Justice Standards allow for flexibility to meet local needs?

We have concerns over children who are excluded. At Page 3 of the consultation, it states that "exclusion should only be used as a last resort."

The proposed Youth Justice Standards should take account of children who

- are not attending school

¹³ <https://justice.org.uk/wp-content/uploads/2018/06/JUSTICE-Scotland-Legal-Assistance-in-the-Police-Station.pdf>

¹⁴ <https://justice.org.uk/justice-scotland/our-work/legal-advice-waiver-police-detention/>

- spend long periods of the school day sitting outside a senior management office because they have been removed from classes
- are on part-time timetables.

These children who remain on the school roll which makes it appear that they are included in mainstream school life, but they have in effect been excluded. Such children may have social, emotional and behavioural needs or may remain at home or wander the community. This renders them vulnerable to mental health problems and otherwise to offending and other challenging behaviours. All have a knock-on effect for family life.

Overall, being excluded limits their opportunity to live fulfilling lives and contribute positively to their families, local communities and the economy

Question 3: What aspects stood out as being the most helpful?

We refer to our answer to Question 1. It is not about being helpful as much as setting out agreed standards for all involved.

Question 4: What aspects stood out as being the least helpful?

We refer to our answer to Question 1 that indicate issues with the Youth Justice Standards which can be unhelpful.

Question 5: With reference to the core principles and data sets, will the proposed Youth Justice Standards allow for reliable local and national evaluation of services?

We have highlighted above the need for budgets and clearly agreed standards from all the criminal justice organisations who are involved.

The consultation then goes on to consult on the quality framework on the Care Inspectorate which was not signalled in the consultation as that seems quite separate from the high-level consultation on the proposed Youth Justice Standards. We do not intend to respond to that part of the consultation.



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