



Youth Justice in Scotland: Fixed in the past or fit for the future?

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Introduction

During any meaningful conversation about youth justice in Scotland it is all but inevitable that *The Kilbrandon Report* will be mentioned given that it continues to act as a touchstone for practitioners, policymakers, researchers and politicians. As noted by Professor Stewart Asquith in the *Preface* to the reprinted version of the report, “*The Kilbrandon Report* was, and still remains, one of the most influential policy statements on how a society should deal with ‘children in trouble’” (Asquith, 1995: vi). The release of this briefing paper falls, by chance, almost exactly half a century on from the presentation to Parliament by the Secretary of State for Scotland of *The Kilbrandon Report* in April 1964. At such a significant juncture it seems apposite to take stock of the state of youth justice in Scotland.

- How successful is the youth justice system?
- Have we translated the aspirations of the Kilbrandon Committee into meaningful support for children and young people?
- What have been the recent developments in youth justice in Scotland?
- Is there a shared vision for the future of youth justice in Scotland, and what might this look like?

From the outset it is important to note that the very term “youth justice” poses a definitional challenge. For the purposes of this paper, we understand the youth justice system in Scotland to encompass the individuals, institutions and services with which young people up to the age of 18 come into contact as a result of their involvement in offending behaviour. However, we operate now in the world of Getting It Right For Every Child (GIRFEC) and the Whole System Approach (WSA), initiatives focused on the whole person and the whole system. Both terms would have seemed foreign to Lord Kilbrandon but one imagines that the principles and ethos which underpin them would have met with his approval. Nevertheless, one wonders what his assessment of the strengths, weaknesses, achievements and limitations of the youth justice system in Scotland might be 50 years on.

While looking back to the work of the Kilbrandon Committee on the one hand, 2014 is also a hugely important year to look to the future, with a referendum scheduled that will decide whether Scotland becomes an independent nation state or remains part of the United Kingdom of Great Britain and Northern Ireland. Values have moved to the forefront of the debate, just as consensus around specific values drove the work of the Kilbrandon Committee. People are beginning to ask deeply challenging questions of themselves and others: not least, what are Scotland’s values?

Part of the purpose of this paper is in one sense to capture the *zeitgeist*. In part we want to reflect on the way values (whether stemming from Kilbrandon or other influences) can and might shape the youth justice system. We suspect that without a broad, societal consensus about the way in which offending behaviour by children and young people should be dealt with, it will remain a challenge to deliver the kind of youth justice system envisioned by the Kilbrandon Committee and latterly promoted by the Scottish Government through initiatives such as WSA. The stark reality is that talk is cheap. It is easy to talk about a commitment to the Kilbrandon philosophy but harder to carry through the policy changes that might be required to bring such a philosophy to life. Any politician is beholden to the electorate. It is less controversial for politicians to talk about the indivisible nature of “needs” and “deeds” and the importance of a welfare-oriented approach when making a speech to a supportive audience but much harder to articulate the merit of such an approach when faced with

an angry constituent in a drop-in surgery who is irate about youth crime and disorder in his local community.

This paper is structured into three parts. Firstly, we examine some of the discernible trends in relation to youth offending patterns over the course of the last decade. Then we examine the interplay of politics, policy, research and practice in post-devolution Scotland as they relate to youth justice. We also explore some of the broader sociological and cultural trends that might account for some of the changes in relation to offending by young people. Lastly, we turn to the question of values and how these shape the current youth justice system. We conclude by outlining five practice and policy improvements which we believe would more effectively realise and update the Kilbrandon vision, building on youth justice developments and progress to date. We hope these suggestions stimulate further discussion and debate about the future of youth justice in Scotland.

Part I: Youth Justice Data – Painting a picture or chasing a mirage?

“Juking the stats. Making robberies into larcenies. Making rapes disappear. You juke the stats, and majors become colonels” (Roland Pryzbylewski, *The Wire*, Season 4, Episode 9).

The cynicism displayed in the quote above by Roland Pryzbylewski, (fictional) former police officer turned teacher, captures in a nutshell the problem with data. Whilst there is clearly a place for quantitative data to inform our understanding of sociological trends and to enable us to learn about the effectiveness of particular interventions and approaches, data is no panacea. In particular there are a range of well-documented issues with some of the crime statistics we draw on in this paper, so we urge readers to treat these with caution.

With this caveat in mind, we present below trend data that represents a potential journey through four key stages of the youth justice system; from initial charge, through referral to the Children’s Hearings System, prosecution in Court and finally reception to prison. We hope that such quantitative information supplemented by relevant qualitative data might begin to help us to develop a picture of Scotland’s youth justice landscape.

General Offending Levels

What we know is that the vast majority of young people in Scotland make a positive contribution to society, and more than 95% of young people were not charged with any offending behaviour at all during 2012/13 (Scottish Government, 2013e). However, on the flip side it does mean that around 23,726 children and young people, or 4.7% of all those aged eight to 17 in Scotland, were involved in offending behaviour (Scottish Government, 2013e). These young people were charged with around 43,117 crimes (Scottish Government, 2013e: 53).

Promisingly, these figures have been on a consistent and downward trajectory since 2008/09, when Police Forces started reporting on this. Of particular note is that, according to police statistics, while offending by young people under 18 in Scotland has fallen by almost half since 2008/09 (45%), adult offending has fallen by a much lesser extent (4%) (see Figure 2).

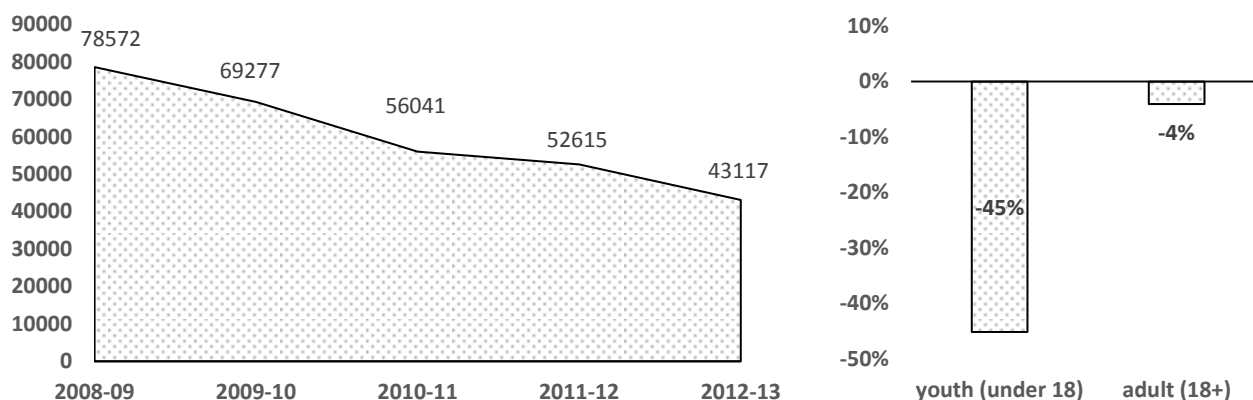


Figure 1: No. of detected offences by eight to 17 year olds. Figure 2: % change in detected offences, 2008-09 to 2012-13. Both figures adapted from "Scottish Policing Performance Framework 2012-13" [data tables], Scottish Government, 2013e.

Given the inherent challenges in measuring offending levels it is useful to consider a range of data sources to better understand trends and to triangulate data. The Scottish Crime and Justice Survey (SCJS) provides us with an alternative dataset by asking a representative sample of 12,000 adults living in Scotland about their experiences and perceptions of crime (Scottish Government, 2014b).

The SCJS identified a 22% reduction of crime in 2012/13 since 2008/9 (Scottish Government, 2014b), compared to police data suggesting that recorded crime fell by 27.8% in the same timeframe (Scottish Government, 2013e). A weakness of the SCJS is that it excludes young people aged under 16 for practical reasons, despite the survey's own acknowledgement that younger age groups are more likely to be victims of crime than adults. As youth crime appears to be falling at a faster rate than adult crime, and a reduction of young people involved in offending is likely to be associated with a fall in young *victims*, it is possible that some of the divergence between the two sets of statistics is simply related to differences in their sample populations.

While it is encouraging that there is broad similarity between public experiences and police recording, the SCJS also reveals that just under two-fifths (39%) of crimes were reported to the police in 2012/13, which is the same reporting rate as in 2010/11. Therefore, the police did not come to know about 60% (489,000) of incidents identified in the SCJS (Scottish Government, 2014b).

Obviously, SCJS findings relate to the numbers of crimes in general, rather than specific data about youth crime. However, the SCJS also asks victims of crime whether they had any contact with the offender or offenders and whether they felt able to say anything about them. The victim was able to say something about the offender in relation to 47% of crimes and of these, 19% of offenders were perceived to be school age children. Yet while victims will be in a better position to describe offenders than the general public, it should also be noted that adults in general have been found to overestimate the involvement of young people in offending. For instance, an Ipsos MORI (2006) survey of 1,001 adults across the UK found that almost half (47%) of all crime was attributed to children and young people. In fact, according to the recorded crime statistics, young people in Scotland were responsible for 16% of all crimes and offences in 2012/2013 (Scottish Government, 2013e).

Children's Hearings System

The first formal system that young people involved in offending are likely to encounter is the Children's Hearings System. Children are referred to the Reporter under the provisions of the Children's Hearing's (Scotland) Act 2011 if it is believed that a compulsory supervision order may be necessary for the "protection, guidance, treatment or control" of the child. Anyone can refer a child

to the Reporter and referrals come from five main sources – the police, social work, education, health and parent(s)/ relevant person(s).

In the recent past Scotland has witnessed a continuous fall in referrals to the Reporter for both offending and care and protection, with referrals on offence grounds experiencing an especially dramatic decline. Between April 2012 and March 2013, 3,636 children aged between eight to 17 years old were referred to the Reporter on offence grounds, a fall of 78% from 2006-07 (Scottish Children's Reporter Administration, 2013). The total number of offences committed by these children and young people has also reduced significantly from 34,216 offences in 2003/4 to 8,824 offences in 2012/13. While this reduction may reflect broader falls in young people charged with offences, the influence of government policy and practice changes on these statistics is also a contributory factor, such as the introduction of Early and Effective Intervention processes that divert young people from formal systems.

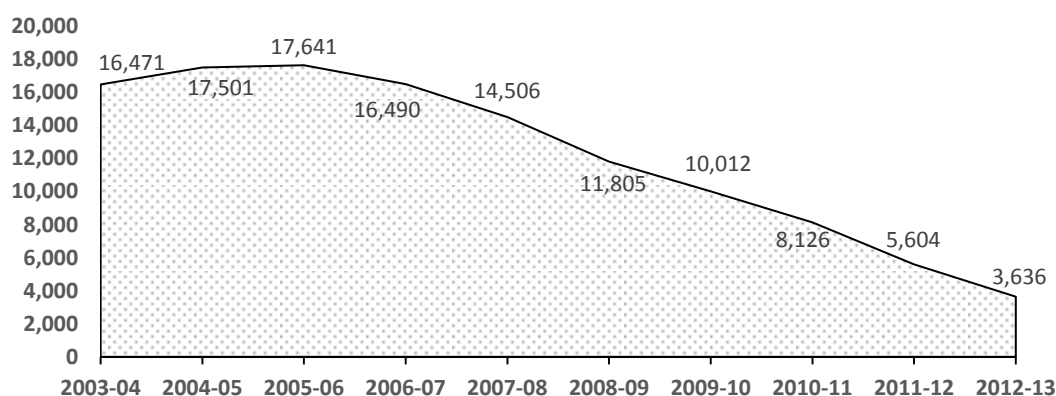


Figure 3: No. of young people referred to Scottish Children's Reporter Administration (SCRA) on offence grounds. Adapted from 'SCRA Online Statistical Dashboard', Scottish Children's Reporter Administration, 2013.

Serious Offending Levels

To some extent much of adolescent involvement in offending can be seen as the product of a stage of development, and the majority of young people tend to have short-lived involvement in low level offending (see McVie (2009) for a useful overview relating to young people and criminal careers). The police data (Scottish Government, 2013e) confirms this, with more than half of all offending by under 18s categorised as miscellaneous offences (for example: littering; drunkenness; common assault) rather than more serious crimes. Violent crimes, such as murder, attempted murder, serious assault and robbery made up around 1% of all crimes and offences by eight to 17 year olds, and crimes of indecency less than 2% (see Figure 4). In addition, while crimes and offences by eight to 17 year olds have reduced by 45% overall, serious violent offending has dropped by 57% over the same timeframe suggesting the severity of offending by children and young people is also decreasing.

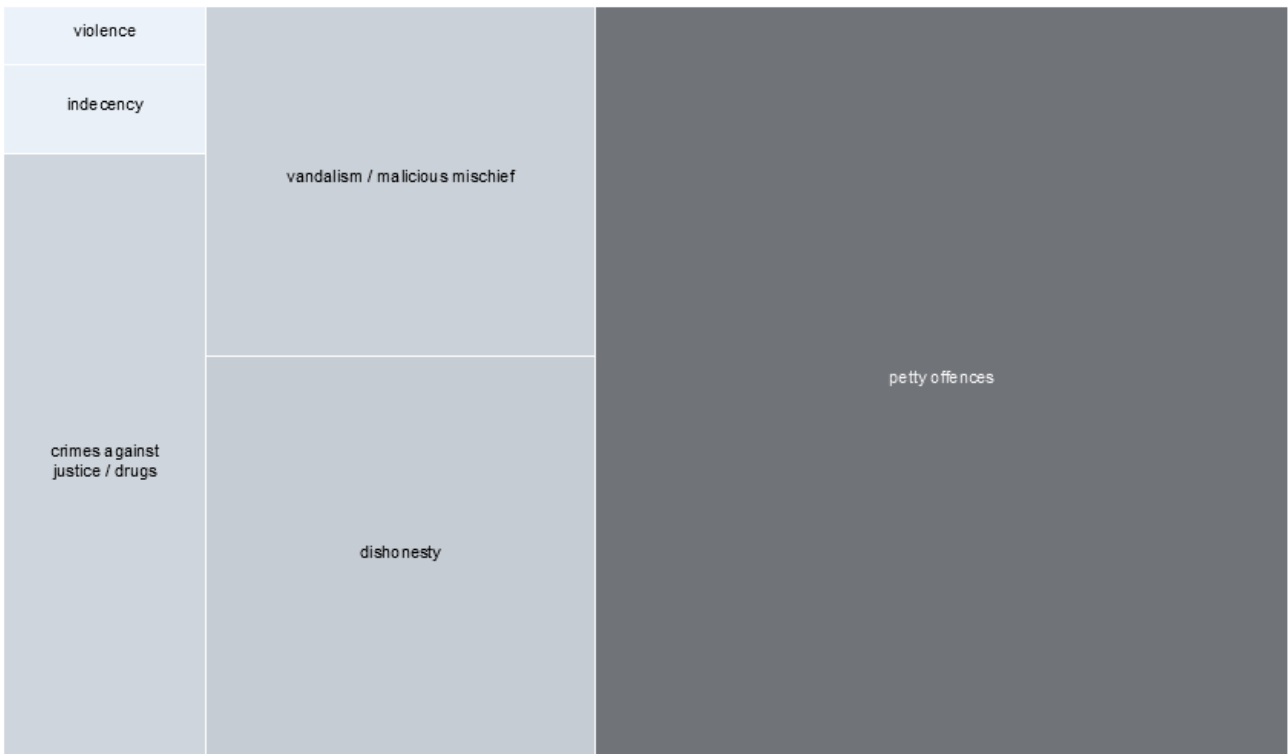


Figure 4: Breakdown of youth offending, 2012-13. Adapted from 'Scottish Policing Performance Framework 2012-13' [data tables], Scottish Government, 2013e.

While murder represents the most extreme level of violence and is therefore not necessarily reflective of *overall* levels of violence in a society, the high reporting rate of murder means that homicide rates can be seen as a more reliable indicator of a country's safety level than other forms of violence (OECD *n.d.*). The murder rate in Scotland has substantially reduced since 2003/04 when there were 109 murder victims, compared to 62 in 2012/13. When considering 'perpetrators', it appears that murder is nowadays very much an adult phenomenon. While the number of persons accused of murder has nearly halved since 2003/04, the number of under 21s accused of murder has fallen by almost 90% at the same time (see Figure 5). A total of 83 people were accused of the 62 murders that occurred in 2012/13, none of whom were aged under 16, and only four of whom were aged under 21. Whereas more than one-in-five of the persons accused of murder in 2003/04 were young people aged under 21, this was less than one-in-20 in 2012/13.

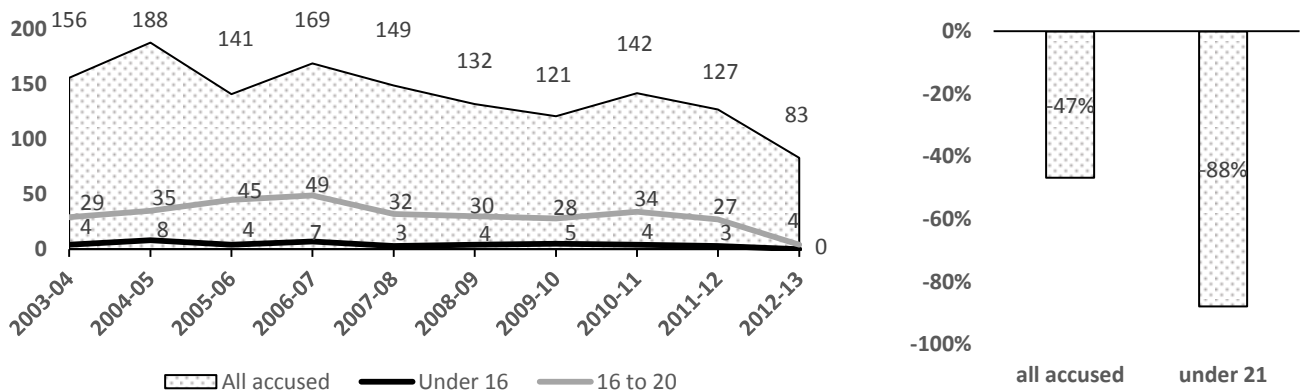


Figure 5: Persons accused of murder, by age group. Figure 6: % change in no. of persons accused of murder. 2003-04 to 2012-13. Both figures adapted from 'Scottish Policing Performance Framework 2012-13' [data tables], Scottish Government, 2013e.

Criminal Proceedings

The majority of young people who are aged under 16 and are involved in offending will either be diverted from formal systems or have their needs and behaviours dealt with in the Children's Hearings System. Young people aged 16 and 17 are more likely to be dealt with by the Court, unless they remain subject to a compulsory supervision order through the Children's Hearings System or if there are other exceptional circumstances. Since 2006-07 there have been falls in those convicted of an offence in court across all age groups, although the change is more marked in the youth population (under 18) compared to the adult population (18 and over), as shown in Figures 7 and 8 (Scottish Government, 2013a). In addition, it is notable that, in the same time period, the number of under 16s with a charge proven in court has fallen by almost three-quarters (74%), which meant that there were only 34 young people aged under 16 who were prosecuted and convicted by a court in 2012/13 (ibid).

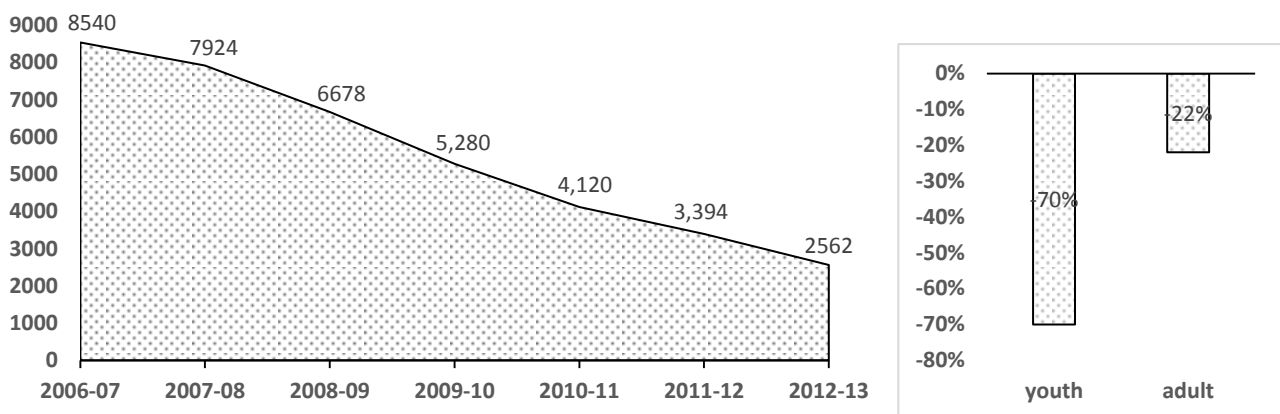


Figure 7: No. of under 18s prosecuted in court. Figure 8: % change in no. of people with a charge proven in court: 2006-07 to 2012-13. All figures adapted from 'Criminal Proceedings, 2012-13' [data tables], Scottish Government, 2013a.

Use of Secure Care and Custody

Current government policy advises that when a young person does appear at court, all options as an alternative to secure care and custody should be explored and that custody should be a last resort. Where custody is deemed inevitable, secure care should be used whenever possible as an alternative to prison (Scottish Government, 2011c). Therefore it is not surprising that admissions to prison by direct sentence have fallen dramatically since 2002/03, reducing by 41% in 2010-11 at the same time as adult (over 18) receptions to prison have increased by 9% (Scottish Government, 2012b).

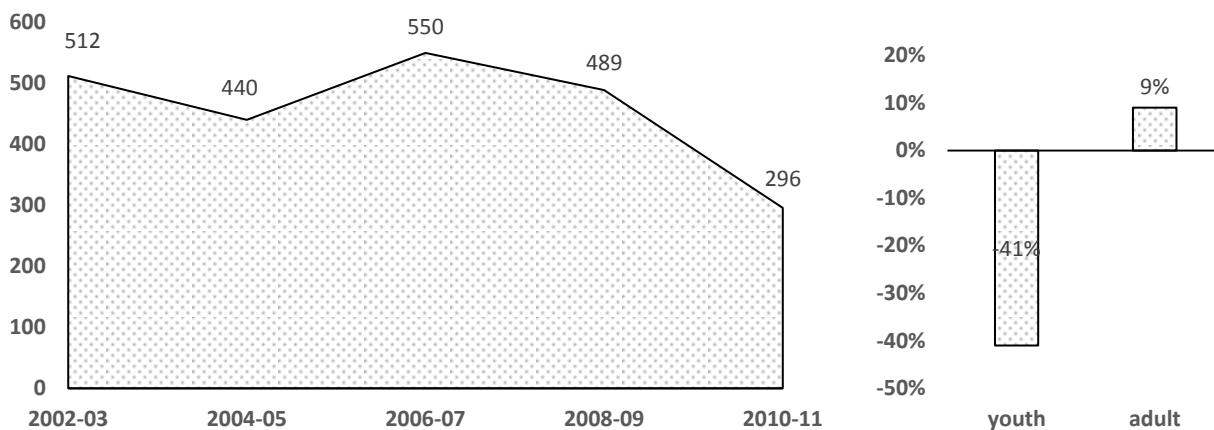


Figure 9: Under 18 prison receptions 2002-03 to 2010-11 (direct sentence).
 Figure 10: % change in prison receptions 2002-03 to 2010-11. All figures adapted from "Prison statistics and population projections Scotland, 2011-12", Scottish Government, 2012b.

At the same time, secure admissions (as a result of an order by the Children’s Hearings System or by the court) have fluctuated, not always in line with the number of secure beds available. While admissions in 2011-12 were only down 8% on 2002-03, they were almost one-third lower than the peak of 346 in 2007-08 and were at the lowest level since recording began. It may be that this pattern reflects an increased use of secure care for young people who would have previously been remanded or sentenced to prison (Glasgow City Council, 2010; Scottish Government, 2011c) rather than reflecting a genuine change in the levels of vulnerability and risk of harm in the population.

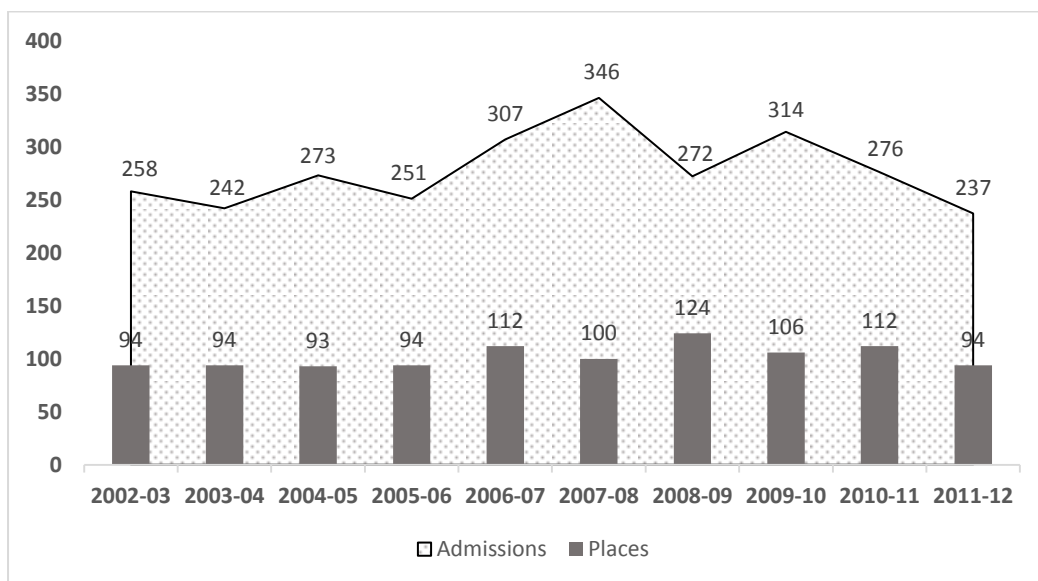


Figure 11: Secure admissions (all reasons) 2002-03 to 2011-12. Adapted from 'Children’s Social Work Statistics, 2011-12', Scottish Government, 2013b.

Notwithstanding the aforementioned caveats, a range of data is suggesting that youth crime is falling in Scotland. This trend is not specific to Scotland, and has been witnessed both close to home in England and Wales (Youth Justice Board, 2014) and as far afield as Australia (Australian Bureau of Statistics, 2014). However, indications are that the youth crime pattern in Scotland is marked and frequently divergent to the equivalent trends in adult crime, suggesting that different forces are influencing the level of, or response to, *youth* crime as opposed to crime in general. While it will always be impossible to attribute causality in population-wide statistics, in the next

section of this paper we reflect on the shifts in the landscape and the contextual circumstances that may have contributed to this steady reduction in youth crime.

Part II: Youth justice policy and practice: reflecting on developments post-devolution

In order to try to understand more about the state of youth crime and youth justice in Scotland, it may be useful to map out the way it has been shaped by the political context. From 1999 through to 2007, a Labour/Liberal Democrat coalition held power at Holyrood. This coincided with the period following 1997 when New Labour earned a landslide victory in the UK elections, remaining a dominant force at Westminster until 2010. Although the mantra “Tough on crime, tough on the causes of crime” had been a central plank of New Labour’s youth and criminal justice policy ever since Tony Blair uttered the phrase as Shadow Home Secretary in the early nineties, on coming to power it might be argued that government energy and attention focussed insufficiently on causes and overly on toughness. It was in this era that Antisocial Behaviour Orders (ASBOs), Parenting Orders and electronic monitoring (EM) came to the fore as persistent young offenders were alleged to be wreaking havoc in terrorised communities. The political narrative developed at Westminster filtered across the border to Scotland relatively swiftly along with several of the policies, not least the introduction of ASBOs for young people aged 12 and above in 2004. In this period the Kilbrandon philosophy was subjected to a rigorous test. Welfare and justice came to be presented almost as dichotomous variables and the belief that “needs” and “deeds” formed two sides of the same coin was challenged. When considering “children in trouble”, whether on account of offending behaviour, truancy, exposure to neglect and/or abuse, the Kilbrandon Committee observed, “The basic similarity of underlying situation far outweighs the differences...the normal up-bringing processes having, for whatever reason, fallen short” (Asquith, 1995: 9). In the changed political climate, could this philosophy upon which the foundations of the Children’s Hearings System were built and in which the vast majority of social workers and caring professionals in Scotland were “schooled” survive?

While the tone of the political debate during this period was rarely edifying, youth justice was unquestionably a political priority. *It’s a Criminal Waste: Stop Youth Crime Now* (Scottish Executive, 2000) was closely followed by *The Ten-Point Action Plan on Youth Crime* (Scottish Executive, 2002b) Consequently *National Standards for Scotland’s Youth Justice Services* (2002) were issued with the intention that they would contribute to the Scottish Executive’s commitment to reduce the number of persistent offenders¹ by 10% by 2006. Moreover, each local authority was required to have an Inter-Agency Youth Justice Strategy Group and an operational Youth Justice Services Team. In order to realise these aspirations, funding for youth justice services was ring-fenced. The approach adopted was very much centralised and “top-down” with the Scottish Executive retaining a firm grip on the various levers that were perceived as being central to propelling change.

With a change to the political landscape in Scotland in 2007, the approach adopted in relation to youth justice shifted markedly, first under a minority, and from 2011 onwards under a majority Scottish National Party (SNP) administration. Understanding the way in which the Scottish Government approach to promoting change has shifted requires an understanding of the broad policy framework that provides the foundations upon which all of its work is built. In this context, in some respects, the centralising trend identified in the immediate post-devolution years has been replaced by decentralisation. Local authorities and increasingly Community Planning Partnerships

¹ A persistent offender was defined as a young person with five offending episodes within a six month period.

(CPPs) are now entrusted with greater responsibilities to make the right choices for the individuals and the communities within their organisational boundaries. This modified approach was initially outlined in the *Scottish Budget Spending Review 2007* (Scottish Government, 2007b) which introduced the Scottish Government's Purpose and the five Strategic Objectives² along with *The Government Economic Strategy* (Scottish Government, 2007d) which set out the seven Purpose Targets³ and five Strategic Priorities⁴. Subsequently, *The Concordat* (Scottish Government, 2007a: 1) was drawn up between central and local government which set out "the terms of a new relationship...based on mutual respect and partnership". It required local authorities to prepare Single Outcome Agreements (SOAs) based on National Outcomes underpinned by National Indicators⁵ as part of the broader National Performance Framework (Scottish Government, 2011a). Youth justice is linked to a range of national outcomes, not least: Our young people are successful learners, confident individuals, effective contributors and responsible citizens (National Outcome 4); We have tackled the significant inequalities in Scottish society (National Outcome 7); We have improved the life chances for children, young people and families at risk (National Outcome 8); We live our lives safe from crime, disorder and danger (National Outcome 9); We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others (National Outcome 11).

From April 2008 onwards, ring-fencing of funding for tackling offending by young people was abolished in order to free up "local authorities and their partners to determine how best to target resources" (Scottish Government, 2008: 5). Interestingly, the persistent offender reduction target was one of the early victims of this more strategic approach, with the then Minister for Community Safety observing, "The vast majority of our young people are not offenders and they are certainly not persistent offenders – they are well behaved" (Scottish Government, 2007c). He indicated that he deemed the target too narrow, failing to take into account issues of "volume, frequency and seriousness of youth offending" and he felt that it arguably said "more about the habits of the adults referring young people to the hearings system than the behaviour of young people themselves" (ibid, 2007d). Such comments appeared to reflect a shifting of the tides in youth justice in Scotland.

Equally important to the development of youth justice policy in Scotland and public policy more generally, has been the findings of the *Commission on the Future Delivery of Public Services* ("the Christie Commission") (Public Service Commission, 2011). The Commission noted that the public service landscape is "unduly cluttered and fragmented" and emphasised the need *inter alia* for public service bodies to focus on "improving outcomes", to embrace "a presumption in favour of preventative action and tackling inequalities" and to "target the underlying causes of inter-generational deprivation and low aspiration" (Public Service Commission, 2011: IX & X). The theme of tackling inequality has gained particular policy traction in Scotland. Emphasis has been placed on the need to develop an "asset based approach". The former Chief Medical Officer Sir Harry Burns highlighted that such an approach relates to the processes by which individuals and communities create health and wellbeing, a key aspect of which is the idea that having control of one's life and circumstances is health enhancing (Scottish Government, 2011b: 24). This policy encourages a focus on enhancing the strengths and abilities of individuals and communities, rather than focusing on their deficits and challenges, and on investing to prevent future problems rather than responding to current ones. The creation of a £10 million Reducing Reoffending Change Fund by the Scottish Government can be seen in this light. This has involved funding mentoring initiatives, employability

² Wealthier & Fairer; Smarter; Healthier; Safer & Stronger; and, Greener.

³ Economic Growth; Productivity; Participation; Population; Solidarity; Cohesion; and, Sustainability.

⁴ Learning, Skills & Well-being; Supportive Business Environment; Infrastructure development and Place; Effective Government; and, Equity.

⁵ Initially 45 National Indicators were set but following some modifications there are now 50.

programmes and intensive support for young people involved in offending (for an evaluation of the first year of the Reducing Reoffending Change Fund, see Scottish Government, 2013d).

In parallel to this macro-level reorganisation of national performance planning, several other initiatives have helped to put some “flesh on the bones” of the broader strategic vision. These developments have been particularly informed by a piece of research: *The Edinburgh Study of Youth Transitions and Crime*, which began in 1998. The Edinburgh Study is a “longitudinal programme of research on pathways into and out of offending for a cohort of around 4,300 young people” (McAra and McVie, 2010: 180). The Edinburgh Study has produced a plethora of findings of importance for policy and practice. Arguably the most significant of these findings are that:

1. Persistent serious offending is associated with victimisation and social adversity;
2. Early identification of at-risk children is not a water-tight process and may be iatrogenic;
3. Critical moments in the early teenage years are key to pathways out of offending; and,
4. Diversionary strategies facilitate the desistance process (McAra and McVie, 2010: 180)

Over the same period as *The Edinburgh Study* a number of practice developments have emerged which appear to have been informed by these findings, or have emerged in a relatively complementary fashion alongside them. Below we explore these Scotland-wide developments in further detail.

Practice Developments

Taken together there are three particularly noticeable practice initiatives of relevance to youth justice: Getting It Right for Every Child (GIRFEC), the Early Years Collaborative (EYC), and the Whole System Approach (WSA). Combined, these three developments suggest an increasing emphasis on prevention, diversion and desistance.

1. Getting It Right For Every Child (GIRFEC)

The origins of GIRFEC can be traced back to the start of the century and specifically the publication of *For Scotland's Children* (Scottish Executive, 2001) and “*It's everyone's job to make sure I'm alright*” (Scottish Executive, 2002a). At a political and policy level there was growing recognition of the need for more effective joint working between all partner agencies to improve outcomes for children, young people and their families. GIRFEC then is “a consistent way for people to work with children and young people. It's the bedrock for all children's services and...the approach helps practitioners focus on what makes a positive difference for children and young people” (Scottish Government, 2012a: 6). GIRFEC is based on ten core components and a set of values and principles “which bring meaning and relevance at a practice level to single-agency, multi-agency and inter-agency working across the whole of children's services” (ibid: 7). The core components place an overriding emphasis on improving outcomes; effective information sharing and joint working; placing children, young people and their families at the centre of any assessment and/or intervention; robust co-ordination of service provision; and, an overarching focus on the wellbeing indicators⁶.

The GIRFEC approach has also evolved with time, leading to the creation of the National Practice Model which is “a dynamic and evolving process of assessment, analysis, action, and review, and a way to identify outcomes and solutions for individual children or young

⁶ Often referred to as the SHANARRI indicators, the eight well-being indicators emphasize the all children and young people should be: Safe; Healthy; Active; Nurtured; Achieving; Responsible, Respected; and, Included.

people” (ibid: 14). The National Practice Model encourages practitioners to utilise the ‘Wellbeing Wheel’⁷, the ‘My World’ Triangle and the Resilience Matrix to shape their work with children, young people and their families.

2. Early Years Collaborative (EYC)

The purpose of the Early Years Collaborative (EYC) is to accelerate the conversion of the high level principles set out in GIRFEC and the Early Years Framework (Scottish Government, 2008a; 2008b) into practical action. At the heart of the Early Years Framework is “a desire to see investment in early years focused on building success and reducing the costs of failure” specifically through cultural change and shifting “from intervening only when a crisis happens, to prevention and early intervention” (Scottish Government, 2008a: 1). Usefully the Early Years Framework elaborates what is meant by early intervention, distilling the concept into four core principles which merit inclusion in full:

- We want all to have the same outcomes and the same opportunities;
- We identify those at risk of not achieving those outcomes and take steps to prevent that risk materialising;
- Where the risk has materialised, we take effective action;
- We work to help parents, families and communities to develop their own solutions, using accessible, high quality public services as required (2008a: 3).

Underpinning the EYC is a clear articulation of the role that social inequality plays in shaping outcomes and one of the “ten elements of transformational change” is “breaking cycles of poverty, inequality and poor outcomes in and through early years” (2008a: 4). With an ambitious aspiration that Scotland should become the “best place to grow up”, the targets set for the EYC are demanding. Nevertheless, the expectation would be that for those children and young people born in Scotland in 2014, the risks of being drawn into youth criminality ought to be significantly fewer than those faced by a child or young person born in previous decades.

3. Whole System Approach (WSA)

The Whole System Approach (WSA) is about identifying at the earliest opportunity when young people are in trouble and ensuring that the systems and process in place across the Children’s Hearings System and the adult Criminal Justice System are tailored appropriately to meet need and address risks and concerns. WSA has six core elements:

- Early and Effective Intervention;
- Maximising opportunities to divert young people from prosecution;
- Providing court support to young people;
- Increasing community alternatives to secure care and custody;
- Changing behaviours among those in secure care and custody; and,
- Improving re-integration back into the community.

⁷ Individual local authorities have also demonstrated a willingness to innovate when seeking to make GIRFEC relevant in practice such as Angus Council’s creation of the ‘Wellbeing Web’ and related resources. For more information see www.angus.gov.uk/girfec/measuringoutcomes.html.

To date, the primary focus of WSA has been upon improving outcomes for young people up to the age of 18, particularly 16 and 17 year olds. In those local authorities where WSA implementation is at an advanced stage, it appears that the changes imposed are beginning to have a significant positive effect particularly in relation to the numbers of young people being diverted from prosecution in Court, which have increased starkly (Scottish Government, 2014a).

Clearly politicians, policy makers, researchers and practitioners have begun to coalesce around similar and (arguably) relatively progressive approaches. Nonetheless, it must be recognised that the effectiveness of early intervention and prevention approaches today will only be evaluated meaningfully years into the future. It is when the children and young people of 2014 become the adolescents and adults of 2034 that the success or failure of these policies will be known.

Socio-cultural factors

It is important not to “over claim” as regards the significance of contemporary politics, policy, research and practice in re-shaping youth justice in Scotland over the last decade. Historically, many wider societal, cultural and environmental factors have been hypothesised to have some association with changing trends in both youth and adult crime, from the impact of the postwar baby boom and subsequent ageing of this population cohort (Fox, 2000) to levels of lead pollution (Nevin, 2000); legalised abortion (Levitt, 2004) or the rise and fall of crack cocaine (Bowling, 1999). One factor strongly believed to be an important influence in the prevailing crime trends is the impact of wider socioeconomic trends, in particular high unemployment levels and the lack of meaningful economic participation (Machin and Meghir, 2004) although the association is, at times, ambiguous (Scottish Government, 2010b). Certainly the economic downturn experienced in the UK and in many other Western nations since 2008 was widely expected to result in an increase in crime levels, mirroring the trends witnessed during the recession of the 1980s (Doward and Forsdike, 2008).

That this anticipated spike in crime did not materialise (indeed, the fact that crime has *fallen* steadily in the UK's deepest recession since World War II amid high levels of youth unemployment) is at odds with perceived wisdom and has been baffling scholars and journalists (Travis, 2013). Speculation as to the reasons behind this trend is wide ranging and includes *technological* as well as *societal* influences. The emergence of a smartphone in the pocket of many of our teenagers has also been attributed by some with a fall in youth crime, as the inevitable boredom faced by the teenagers of yesteryear has been replaced with ‘at your fingertips’ entertainment in the form of social media, games and online entertainment such as music and films (Griffiths and Sutton, 2013). The extent of the turnaround is such that video games are now being seen by some as contributing to a *fall* in violent crime rather than seen as creating a new generation of violent youth (Cunningham et al., 2011).

Advances in technology have also led to the ‘security hypothesis’, which proposes that “...changes in the quantity and quality of security have played a major part in driving crime falls in most industrial societies” (Farrell et al., 2011: 151). For example, Farrell et al. (2011) argue that the drop of around 60% in vehicle theft in England and Wales since the early nineties corresponds with the increasingly standard use of immobilisers, central locking and alarms. Security measures can therefore be seen to make opportunistic or temporary car theft (such as joyriding) much less likely to occur, and Farrell et al. (2011) indicate that the statistics (with two-thirds of the drop in car theft attributed to a reduction in these types of crimes) support this hypothesis. Other advances in security that potentially fall under the broad scope of this hypothesis include the proliferation of CCTV cameras in reducing theft and other crimes (Welsh and Farrington, 2004) or home security measures such as alarms and deadlocks reducing burglaries (Flatley et al., 2009). Another often mooted hypothesis is that the reduced cost of consumer goods and cheaper technology such as DVD players or televisions has contributed to the falling crime trends. This view is often used to explain the steep

fall in household burglaries (Telegraph, 2010), although it has also been argued that cheap goods and the internet have simply changed the landscape of offending in a way that has not yet been reflected in the latest crime reporting and trends (Treadwell, 2012).

The reality is that true influence behind the youth crime trends that have been witnessed in Scotland is likely to be a complex mix of policy, practice, societal and individual factors. However, that youth crime has fallen at a faster rate than that of adult crime, despite young people being most adversely affected by the economic downturn (Scottish Government, 2010a), suggests that something additional is at play here in youth justice in Scotland. While cause and effect will be impossible to determine when looking at population-wide trends, this divergence lends weight to an assumption that the policy and practice environment has contributed, at least in part, to substantial reductions in youth crime levels in Scotland. While Scotland may be doing something right in our approach to youth justice, and we should rightly be proud of our progress, we should also be cautious about becoming complacent, as undoubtedly there remains an element of tension between our Kilbrandonian ideals and the reality of how some young people experience the justice system.

Part III: Youth Justice: a work in progress

Implicit in the discussion above is the sense of a shared vision about youth justice in Scotland across policy, research and practice. Shared values are important in this debate about youth justice because further improvements to the youth justice system are unlikely to occur without them. These shared values still appear to stem in large part from Kilbrandon. Broadly speaking, commitment to Kilbrandon's vision seems to encompass a recognition that an understanding of developmental and maturational processes is fundamental to the interpretation of the behaviour of children and young people. They are not adults. It recognises that s.12 of the Social Work (Scotland) Act 1968 and s.22 of the Children (Scotland) Act 1995 continue to have relevance. The duty to promote "social welfare" by making available "advice, guidance and assistance" and to "promote the welfare of children in need" are at the core of the social work task, irrespective of whether or not an individual is in conflict with the law. Meanwhile it is only through "looking to the whole background" (Asquith, 1995: 8) of a child or young person that one can come to an appreciation of the individual, environmental and social factors influencing their thoughts, behaviours and actions. Beyond Kilbrandon, the referendum debate in 2014 is encouraging reflection about what are Scotland's values. Some in the debate draw heavily on "Nordic values"⁸ and in some ways the Scottish version of these, the Common Weal (shared wealth and common wellbeing). It is too early to say what the longer term impacts of such discussions will be, particularly for youth justice, or how these concepts might translate into concrete policy or practice developments. However, such discussions have inevitably triggered a pause for reflection in our own work at the Centre for Youth & Criminal Justice (CYCJ) and influenced the content of conversations with practitioners, policy-makers and young people as we have considered more seriously the question, where now for youth justice in Scotland?

The intention of the final section of this paper is not to articulate a new vision for youth justice in Scotland so much as to build on the solid foundations laid by Kilbrandon, which themselves flowed from an appreciation for and understanding of youth and young people. Moreover, we endeavour to

⁸ The subject of "Nordic values" merits a separate paper in its own right and it is recognised that the concept of a shared value base within an individual nation or across several nations is contested. For those wishing to explore this theme in greater depth the work of Pratt (2008a, 2008b) in relation to "Scandinavian exceptionalism" is instructive as is the website www.nordichorizon.org.

focus attention on ambitions for the youth justice system that seem realistic and achievable. Seismic shifts in thinking and practice are not necessary to improve further the youth justice system in Scotland on account of the sustained efforts that have been made to embed Kilbrandonian principles during the last half century and the energy invested in crafting a distinct and progressive identity for youth justice practice and practitioners. Outlined below therefore are what we, from our collective practice and research knowledge and experience, deem to be five realistic ambitions for change. These five ambitions are a starting point for discussion and may be disputed, rejected, refined or endorsed. They have been informed in no small part by the report from the Commissioner for Human Rights of the Council of Europe – *Children and Juvenile Justice: Proposals for Improvement (2009)* – which has helped to crystallise our thinking in relation to complex challenges. Furthermore, they have been influenced by innovations already identifiable in practice where individuals, organisations and agencies have taken the initiative, impatient to make systems and processes better and fairer for children and young people in conflict with the law. Ultimately an “earthquake” is not needed to reshape youth justice in Scotland from the bottom up as the system is built on firm foundations. These ambitions, if realised, might more usefully be construed as youth justice “home improvements”:

Ambition 1: The age of criminal responsibility in Scotland is raised to at least 12.

While recognising that the age of criminal responsibility is “a sensitive and controversial issue on which people’s views are often quite polarised” (Graham et al., 2011: 56) the youth justice sector in Scotland appears to us to be anxious to see Scotland comply with international norms. The UN Committee on the Rights of the Child’s General Comment No. 10 (2007:1) ended any dubiety on this matter when it stated, “it can be concluded that a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable”. Certainly Scotland has some distance to travel as the modal age of criminal responsibility across a comparison of 90 countries is 14 years old, a figure that is substantially higher than in Scotland (Neal, 2008). Only 16 countries had an age of criminal responsibility that was lower than in our country, this despite the existence of the highly lauded Children’s Hearings System and recent moves to divert young people aged under 18 from prosecution through WSA. In Denmark and Norway, where the age of criminal responsibility is 14 and 15 respectively, the crime rate is substantially lower than in Scotland, with lower youth crime rates, murder rates and imprisonment rates (see for example: Eurostat, 2010; Statistics Denmark, 2013; Statistics Norway, *n.d.*).

Raising the age of criminal responsibility seems a sensible course of action on several levels. The difference between the age of criminal responsibility (8)⁹ and the age of criminal prosecution (12)¹⁰ can serve as a source of confusion. The former relates to “the age below which the child is deemed to lack the capacity to commit a crime” (Scottish Law Commission, 2002: 1), while the latter concerns “the point at which the age of a suspect or offender has no relevance for his treatment or disposal as part of the criminal justice system, most typically the age at which an accused becomes subject to the full or adult system of prosecution and punishment” (*ibid*: 1). Ultimately the provisions of s.67(2)(m) of the Children’s Hearings (Scotland) Act 2011 appear to offer a solution to the question of how behaviour of concern, currently captured under “offence grounds”, could be captured if the age of criminal responsibility were to be raised. Such behaviour would not simply be ignored but might instead be interpreted as “conduct” likely to

⁹ See s.41 of the Criminal Procedure (Scotland) Act 1995.

¹⁰ See s.41A of the Criminal Procedure (Scotland) Act 1995 (as amended by s.52 of the Criminal Justice and Licensing (Scotland) Act 2010).

have a “serious adverse effect on the health, safety or development of any child or young person”.

As Goldson (2013: 113) has noted, “the politicization of juvenile crime has had a direct bearing on the way in which child ‘offenders’ have been socially constructed and this, in turn, is particularly salient for any discussion concerning the minimum age of criminal responsibility”. The tragic death of James Bulger in 1993 arguably hardened public attitudes towards young people in conflict with the law across the UK fuelled in no small part by the persecution of Jon Thompson and Robert Venables in the media. More than 20 years have passed since that horrifying incident. Scotland now has an opportunity to take a step in a more progressive direction. The grounds for raising the minimum age of criminal responsibility are numerous and include human rights compliance, inter-jurisdictional consistency, the minimisation of social harm and the decriminalisation of social need (Goldson, 2013). While many would argue persuasively for an older age of criminal responsibility than 12, we recognise that incremental change is better than no change at all.

Ambition 2: Scottish employers recruit young people with conviction¹¹.

Criminal convictions incurred by young people under the age of 18 should not continue to affect their life chances into adulthood when seeking to secure employment and training opportunities. This view would appear to be shared by the UK Supreme Court in light of its landmark ruling concerning declaration of criminal convictions and the protections provided by Article 8 of the European Convention on Human Rights¹². The situation in Scotland is that the rehabilitation period for almost all sentences is halved if the individual was aged under 18 at the time of conviction. This means that a young person who receives a community order is deemed ‘rehabilitated’ after a period of two-and-a-half years; with the period until a conviction becomes ‘spent’ set at three-and-a-half years for a custodial sentence of less than six months and five years for a custodial sentence of between six months and two-and-a-half years (Scottish Government, 2013c). Crucially, when a young person and relevant person at a Children’s Hearing accept “offence grounds”, these are treated as convictions in terms of the Rehabilitation of Offenders Act 1974. This means that many of Scotland’s most vulnerable young people are carrying ‘convictions’ with them well into adulthood, and potentially further, adding to their exclusion from pro-social or meaningful opportunities. Rehabilitation periods across Scandinavia appear to be similar to Scotland but any comparison should bear in mind the much higher threshold for criminal liability and low imprisonment rates in these countries. For example, in Denmark, discontinued charges and fines will be spent within one year (under 18s) and all custodial sentences will be spent within five years of release (KPMG, 2009a). Similarly in Norway, irrespective of age, alternatives to prosecution do not tend to appear in a criminal records check, fines are spent within two years, short custodial sentences (less than six months) within five years and all other custodial sentences within ten years (KPMG, 2009b). Of note is that across most of Scandinavia all custodial sentences tend to be spent within ten years at most, whereas a young person sentenced to more than 30 months’ detention in Scotland will never be legally ‘rehabilitated’.

It should be highlighted that efforts to reform the existing system are in motion but have now spanned several years and are yet to take effect. The Children’s Hearings (Scotland) Act 2011 made provision in s.187 and s.188 for the introduction of the Alternative to Prosecution (ATP)

¹¹ *Recruit with Conviction* is the national campaign for safe, effective and sustainable employment for people with criminal records.

¹² *R (on the application of T and other) (Respondents) v Secretary of State for the Home Department and another (Appellants)*.

and modifications to Criminal Record Certificates and disclosure procedures. Their intended effect is that, “a child is to be treated as having been given an ATP where following a referral on offence the ground has been accepted or established, and a compulsory supervision order has been made, varied, or continued or the referral has been discharged” (Scottish Government, 2013f: 3). Provision is also made for the ATP to become spent and no longer subject to disclosure requirements (with the exception of certain offences) thereby addressing the current unsatisfactory situation where “the acceptance or establishment of the grounds of an offence referral to a children’s hearing is treated as a conviction” (ibid: 3). The intention remains that this provision should also be retrospective ensuring that ATPs would replace reference to specific offences on the records of the majority of children and young people who previously accepted offence grounds at a Children’s Hearing. However, these provisions have not yet come into force. The delay to their implementation stems in part from debates about how to address effectively offences committed by children and young people which, owing to their nature and severity, make subsequent disclosure desirable. It is intended that this issue will be resolved through the listing of relevant serious offences in an order to be approved by the Scottish Parliament in due course and this order exists in draft format¹³. Unfortunately the necessary legislative changes require action at Westminster¹⁴ as well as Holyrood and this has slowed the process. Ultimately implementation will also have implications for Police Scotland in relation to the recording, weeding and retention of information (Police Scotland, 2013).

The desistance literature (McNeill, 2009: 24) emphasises the critical importance of increasing “the personal resources that inhere within individuals” (human capital) involved in offending behaviour and “the resources that inhere within social networks and relationships” (social capital) to support their transition to offence-free lives. At present, young people with criminal conviction may be equipped with the personal skills and resources to work but systemic factors and individuals’ preconceptions preclude the development of these talents. Removing barriers which limit Scottish employers’ willingness to recruit with conviction is imperative. While safeguards will always be necessary to ensure that members of the public are not placed at undue risk, the current measures in relation to disclosure (in the absence of implementation of the intended reforms) seem far too blunt an instrument, stifling opportunities for many on account of concerns about the behaviour of “a critical few”.

Ambition 3: The Whole System Approach (WSA) is expanded.

In the three letter acronym WSA the important word to focus on is “approach” in that WSA describes a manner of working and changes to systems and processes that can be achieved without the need for legislation or major additional investment. While the focus of WSA to date has been placed on 16 and 17 year olds and the six core elements outlined above, it is difficult to find fault in the approach as the basis for work with young adults and older prisoners. Increasingly there appears to be a recognition that the boundaries between child, youth and adult services can be artificial with the emergence of several Adolescent Services in various local authorities perhaps an indication of this shifting picture. Moreover, the overlap between the Care and Justice Division in the Scottish Government (which is located in the Children and Families Directorate which in turn sits under Health and Social Care) and the Justice Directorate (which sits within Learning and Justice) is increasingly apparent. The potential for working across boundaries is clear, not least with the reform of Community Justice pending. Essentially

¹³ The Police Act 1997 (Criminal Record Certificates – Children’s Hearings) (Scotland) Order 2012.

¹⁴ The necessary amendment to The Rehabilitation of Offenders Act 1974 is contained in the Criminal Justice and Courts Bill being taken forward by the Ministry of Justice, Royal Assent for which is anticipated early in 2015. This will then enable legislative changes at Holyrood to advance.

the extension of the WSA to older young people up to 21 or beyond is being actively advocated in some quarters as reflected in the discussion paper *Youth Justice in Scotland: Meeting the Challenge* (McClafferty, 2014). The early indicators of positive outcomes from WSA implementation for 16 and 17 year olds certainly suggest that local authorities might look to widen application of the approach's core principles. If nothing else, the Scottish Prison Population of 7,859 detainees in a country of approximately 5.3 million individuals does not seem sustainable (SPS, 2014a). With around 154 per 100,000 of the Scottish population detained, the need for a new approach seems self-evident, particularly when comparisons with European neighbours such as Finland (59 per 100,000), Holland (87 per 100,000) and Germany (83 per 100,000) are taken into account (Scottish Government, 2012b).

Ambition 4: The arrangements for “joint reporting” of young people aged 16 and 17 are revised

At present the *Joint Agreement in Relation to the Cases of Children Jointly Reported to the Procurator Fiscal and the Children's Reporter* (COPFS/SCRA, 2014) states that, “In relation to children **under the age of 16 years**, there is a presumption that the child will be referred to the Children's Reporter in relation to the jointly reported offence”. In contrast, it notes that, “In relation to children **over the age of 16 years**, there is a presumption that the PF (*Procurator Fiscal*) will deal with the jointly reported offence”. Both of these statements are subject to a range of caveats and the overarching principle influencing decision-making by the COPFS remains, “whether it is in the public interest to prosecute the child”. If the presumption was shifted, as has been discussed in the recent past, to enable children **under the age of 18** to be referred to the Children's Reporter, this would constitute a progressive step. This would ensure that that majority of children who commit offences continue to be dealt with in a non-adversarial system with a strong welfare orientation. If such a course of action were to be pursued, legislative changes would be unavoidable. In particular, it would be necessary to consider the raising of the age at which a child may remain subject to compulsory measures of supervision beyond the age of 18. This would ensure that the timeframe for working with a child involved in offending behaviour under the auspices of a Compulsory Supervision Order (CSO) would not be unduly constrained by somewhat arbitrary age cut-offs. Such a shift would seem to be complementary to the current policy and legislative direction not least the Children and Young People (Scotland) Act 2014, which extends the rights of certain previously looked after children and young people to the age of 26.

It is conceivable that some may harbour reservations about any ambition that seeks to curb or reduce the powers of the Lord Advocate and the COPFS. Indeed, one might legitimately question why social workers and Children's Hearings have been reluctant to take advantage of the opportunities which already exist that enable them to continue to work with children and young people beyond the age of 16. This may be an area in which a gradual shift, eased by the accumulation of evidence of positive outcomes for young people diverted from the Courts and dealt with in a robust, transparent and accountable fashion through the Children's Hearings System, could be realised. Evidently there is a role for practitioners to make greater and more consistent use of powers already available to them, such as recommending remittal of a young person's case from the Court to a Children's Hearing for advice and/or disposal, on a more regular basis in line with existing guidance (Scottish Government, 2010c). Equally there is a role for Children's Panel Members to utilise with confidence the full latitude of their powers when faced with children and young people involved in offending behaviour. Building a case for change will only come through good practice.

Ambition 5: When deprived of their liberty as a “last resort”, young people are held in age-appropriate facilities.

One of the current barriers to increased use of age-appropriate facilities for children and young people deprived of their liberty is financial. The financial costs of placing a child or young person in secure accommodation as opposed to HMYOI Polmont or HMPYOI Cornton Vale¹⁵ are significant. Based on 2011/12 figures the average cost per young person per annum for a place in HMYOI Polmont was £32,371 as opposed to the average annual cost of a secure bed of £268,320 per annum. Until a more equitable arrangement can be found between the Scottish Government, local authorities, the Scottish Prison Service (SPS) and secure accommodation providers to ensure that placements for young people under 18 are influenced primarily by need and vulnerability as opposed to cost, it seems unlikely that this situation will change. The perverse financial incentives are highlighted acutely when consideration is given to custodial remands. For example, a young man of 16 who appears in Court charged with a serious violent offence who is subject to compulsory measures of supervision and who has bail contested by the Procurator Fiscal would almost certainly be detained in HMYOI Polmont pending trial at a cost of £622.52 per week with costs being met from the SPS budget. However, a local authority committed to both the spirit and the letter of various pieces of Scottish legislation, international human rights conventions and obligations¹⁶ might seek to have the young man placed in secure accommodation at a cost of £5,160 per week. With such starkly contrasting figures, recourse to resource-led as opposed to needs-led decision-making seems almost inevitable.

In *Scotland's Choice* (The Scottish Prisons Commission, 2008: 3), Henry McLeish and his colleagues recommended reduced use of remand custody and a broader range of alternatives, in addition to highlighting the need for young people aged 16 and 17 to be detained separately both from adults and from young people under the age of 16, possibly in “secure youth facilities”. If the drive to minimise the number of children and young people under the age of 18 detained in adult facilities is genuine, it may be that ways of maximising the potential of the secure estate could be explored more fully. The Commissioner for Human Rights of the Council of Europe envisages detention facilities for juveniles which are “decentralised and small-scale...set up and integrated into the social, economic and cultural environment of the community” (2009: 35) while emphasising that it is imperative to “ensure separation from convicted juveniles” (2009: 30) for children and young people on remand. Two important principles underpin both the recommendations of McLeish and the Commissioner for Human Rights: the first is that of “innocent until proven guilty”, the second is that children differ from adults in their physical and psychological development, and have distinct emotional and educational needs. Indeed, in 2002 the Honourable Mr. Justice Munby¹⁷ held that children and young people under the age of 18 detained in custody may be deemed “children in need” and that local authorities bear duties towards them as they would such children in the community. It is evident that there is now a strong commitment to improving outcomes for all young people detained in custody as reflected in the Strategic Objectives in *Unlocking Potential: Report of the Scottish Prison Service Organisational Review* (SPS, 2014b). The emphasis on creating a “learning environment” in

¹⁵ Young people will soon be detained in HMPYOI Grampian as well.

¹⁶ Article 37(c) of the UNCRC and Rule 29 of the ‘Havana Rules’.

¹⁷ *Before: The Honorable Mr. Justice Munby Between: The Queen (on the application of The Howard League for Penal Reform) and The Secretary of State for the Home Department and Department of Health, Friday 29th November 2002* – While the judgement related to the application of The Children Act 1989 in England and Wales, the relevance of this ruling given the legislation’s similarities to The Children (Scotland) Act 1995 is striking.

HMYOI Polmont and adopting an approach that is “person-centred” and “asset-based” (SPS, 2014b: 49) is refreshing and with time, should yield positive results. Nevertheless, custody remains a far from ideal environment for any young person. With time and the necessary commitment to change, perhaps Scotland will be in a position to match its Scandinavian neighbours. In Sweden in 2009, only one young person was sentenced to custody (Swedish National Council for Crime Prevention, *n.d.*). In a similar vein, Finland in 2007 had merely three young people in custody (Muncie, 2008).

Part IV: Conclusions

This paper represents an attempt to stop and take stock of youth justice in Scotland, at this key moment in time, 50 years on from Kilbrandon and in the midst of a referendum debate exploring a vast array of potential futures. We have combined analysis of statistical evidence and policy documents with our own reflections and thoughts about developments to date and potential areas of improvement for the future. The paper draws on research evidence, practice wisdom and policy discourse in an attempt to provide a robust picture of youth justice in Scotland. We have received feedback on an earlier draft of this paper from a range of research, practice and policy colleagues, acknowledged below, and we are very grateful to them for helping to make improvements. Our intention is to use this paper as a discussion piece, engaging with others and documenting the insights of others about the ideas presented here. We see the publication of this paper as a starting point for conversation rather than a reason to tick an item off the to-do list! If you would like to discuss this with us or share your comments on this then please do get in touch.

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