



Children and Young People's
Centre for Justice

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Preparing to Keep The Promise: A Comparative Study of Secure Care and Young Offender Institutions in Scotland

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March 2023

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1. Introduction

Consideration of the role that secure care and Young Offenders Institutions (YOI) play in the lives of children deprived of their liberty has featured in both the Independent Care Review (2020) and the Scottish Ministers Programme for Government (2022). Both have indicated that there should be no under 18s held within a YOI by 2024, mandating instead that these children should be placed in “small, secure, safe, trauma informed environments that uphold the totality of their rights” (The Promise, 2020:91). This is likely to be reflected in the forthcoming Children (Care and Justice) (Scotland) Bill which will create the legislative changes to achieve this ambition.

The Independent Care Review’s successor organisation, The Promise, has stated that it is time to “rethink the purpose, delivery and infrastructure of Secure Care, being absolutely clear that it is there to provide therapeutic, trauma informed support” (The Promise, 2020: 4). These developments are in keeping with the secure care strategic boards findings and recommendations (Secure Care Strategic Board, 2018).

To inform the debate and discussion surrounding this task, the authors gathered information and evidence on the needs and circumstances of children who experience secure care or YOIs; we reviewed publicly available data and analysed a tranche of new, as yet unpublished, data gathered in recent secure care censuses. This has culminated in a report that can, we hope, inform the development of future provision for children who experience a deprivation of liberty due to the nature of their behaviour, or the risks they are exposed to.

This report will consider whether, for all intents and purposes, the children placed within YOI are distinguishable from those entering secure care. The level of adversity experienced by both groups of children are considerably higher than within the general population, and broadly similar across both cohorts. Each face a range of complex and dynamic circumstances that are known to correlate with adverse outcomes over the short, medium and long term. Both cohorts of children have often demonstrated acts of significant harm, with secure care already providing care, support and supervision to children who have caused acts of grave and significant harm.

There is considerable evidence that secure care and YOIs offer a wide array of resources, services, interventions, and programmes designed to meet the needs of the children within their care. The range of opportunities afforded provide an opportunity for services to learn from each other. However, the role of secure care and YOI must also be considered in light of the Scottish Parliament’s unanimous support for the incorporation of the United Nations Convention on the Rights of the Child, Article 1. This defines a child as anyone under the age of 18. Any changes to secure care or YOI provision are therefore a matter of children’s rights, and secure and custodial settings must strive to achieve the best possible outcomes for those in their care. This is particularly relevant given the Scottish Government has repeatedly committed to making Scotland the best place in the world for children to grow up (Scottish Government, 2022).

Amongst other developments within academia, Scotland has benefited from longitudinal studies which have provided consistent and clear findings regarding the trajectory of those children who come into conflict with the law. The Edinburgh Study of Youth Transitions and Crime has repeatedly shown that involvement with formal judicial systems can adversely

affect the process of desistance, and that most children who come into conflict with the law will end such behaviours by early adulthood according to McAra and McVie (2007, 2022). Findings from this long-running study have heavily influenced Scotland's Whole System Approach; this calls on practitioners to utilise community alternatives to secure care and custody whenever possible, and to develop robust risk management strategies. These recent policy developments, the conclusions reached within The Promise and the earlier work done by stakeholders and partners combine to create a compelling portrait: the secure and child custodial estate must be seen through the prism of children's rights.

To assist colleagues across the children's rights and justice landscape to best consider how to achieve these aims, CYCJ sought to gather information and evidence about secure care, and the use of YOIs for under 18s. We hope that this report can inform future developments in these services, promote the respective visions of The Promise and Scotland's Youth Justice Strategy (2021) and contextualise the challenge set by The Promise.

As we prepare to the end of the practice of holding children within YOIs, this report is designed to help key stakeholders to be ready for the next steps in secure care provision, including the development of alternatives to secure care. The Promise clearly sets out that prison is no place for Scotland's children; to make that possible we require a clearer picture of their needs and the supports that are currently available. The report begins by setting out the purpose of secure care and shares previously unpublished data gathered as part of the secure care census in 2018 and 2019 (See Gibson, 2020, 2021, 2022). It outlines current provision within secure care and the demand for the service, whilst also exploring the approach taken to children and their families.

It then discusses YOI provision - its purpose, function, and governance arrangements - as well as demand and approaches to children. Using data from the 2019 Scottish Prison Service prisoner surveys, the report illustrates the range of life experiences of children placed within YOIs.

2. Secure Care

Secure care offers a controlled environment that provides safety and security for children referred through the Courts and Children's Hearings system (Care Inspectorate, 2014). It provides "the most containing and intense form of alternative care" (Gough, 2017: 3) for children who are deprived of their liberty.

Government published social work statistics illustrate that on July 31, 2021, the number of children within secure care was 76, 38 of whom were looked after children. Of these children 47 were placed from inside Scotland and 29 from outside Scotland. Of the 177 admissions over the year, 51% of these children were aged 16 or over. 41% of children were placed within secure care for up to three months and a further 55% remained within their placement for between 3-12 months (Scottish Government, 2022). The Secure Accommodation Network Scotland ([SAN](#)) indicate that on 31 January 2023, 65 children were living within independent secure care centres.

Children may be placed within secure care if they meet the following criteria:

- Subject to a Compulsory Supervision Order (CSO), Interim Compulsory Supervision Order (ICSO), medical examination order or warrant to secure attendance made

under the Children's Hearings System or by a Sheriff who is satisfied that conditions set out under S83(6), 87(4) or 88(3) of the Children's Hearings (Scotland) Act 2011 are met. Once a secure authorisation has been made the Chief Social Work Officer (CSWO) has responsibility for decision making regarding the implementation of the order with the consent of the secure care centre head.

- A child provided with accommodation under S25 of the Children (Scotland) Act 1995 or, if they are the subject of a permanence order under S80 of the Adoption and Children (Scotland) Act 2007, they may in specific circumstances under the Secure Accommodation (Scotland) Regulations 2013, be placed in secure accommodation.
- When a child is under 16 - or the subject of a CSO/ICSO and aged 16-17 years old - under S22 Criminal Justice (Scotland) Act 2016 where a place of safety is identified using police powers the child may be placed in secure accommodation, if they meet the requirements under regulation 11(3)(a) and (b).
- When a court remands a child under the age of 16 or a child aged 16-17 years old subject to a CSO/ICSO, under S51 Criminal Procedure (Scotland) Act 1995 the child can be committed to local authority care, with the court requiring the child to be placed in either secure care or an appropriate place of safety.
- Where a child pleads or is found guilty to an offence under S44 of the Criminal Procedure (Scotland) Act 1995, they may be ordered by the court to be detained in residential accommodation deemed appropriate by their local authority. Under regulation 12 of the Secure Accommodation (Scotland) Regulations 2013, if regulation 11 requirements are met, the child may be placed within secure care if deemed necessary by the CSWO and head of the secure care centre. Review requirements are specified within the regulations.
- Under the Criminal Procedure (Scotland) Act 1995, children may be detained under sections 205(2) or 208 and the location of the detention will be determined by Scottish Ministers. Under the Whole System Approach (WSA) when sentencing or remanding children, secure accommodation should be used as an alternative to YOIs (Nolan, 2021).

Secure care centres consist of between one and five locked children's houses; each has five or six individual ensuite bedrooms and its own communal living, dining and relaxation spaces which provide "very high levels of staff supervision of, and support to, children" (Gough, 2017: 4). While this data is dated, there is no current published information reflective of the configuration of secure care centres in Scotland, although individual websites can offer some insight and SAN Scotland provides figures. Johnson & Steckley (2023:61) however, note that as a form of residential care, over the past decade there has been increasing evidence of a collaborative approach with "multidisciplinary teams of psychologists, therapists, and family workers" working alongside residential workers within the life space, in recognition of increasing mental health needs.

Care staff working within this setting in Scotland are registered with the Scottish Social Services Council where qualifications are set to promote a high standard of care. This is of crucial significance as it has been reported that the majority of referrals to secure care are made "at an acute point of crisis" (Justice Committee, 2019b: 6). In addition, referrals through the court system may be reflective of children who have been remanded or sentenced for some of the most serious crimes (Justice Committee, 2019c). Parliamentary hearings have learned that there is no centralised mechanism for recording the number and nature of referrals to secure care, resulting in it being difficult to ascertain Scotland's level of

need for secure care. A centralised approach is adopted in other areas: “Scotland Excel’s experience of social care procurement is that a national approach to service provision of this type generally results in a more transparent understanding and appreciation of the different services” (Justice Committee, 2019c: 4).

National social work statistics show that in 2020/21, an average of 76 children experienced secure care at any given time. This represents a reduction of six on the previous year and reflects 177 admissions to secure care over a one year period (Scottish Government, 2022).

Secure care offers a 24-hour curriculum of care, delivering support across education and health, with interventions designed to meet the child’s needs. Pineau, Kendall-Taylor, L’Hote, and Busso (2018:8) state that:

“the primary purpose of the care system is to support children’s growth and development. All care-experienced children have endured some form of trauma or adversity, but the ways in which they interact with the care system vary considerably across individuals. Experts therefore argued that the care system should be child-centred and flexible. It should not only address the effects of past experiences, but also support individuals to live full and productive lives. According to experts, the system’s job is to support children to both ‘heal and flourish.’”

These authors go on to state that care experienced children and young people need supportive, nurturing and long-lasting loving relationships, with “trauma-informed care that provides for reflection, nurtures trust and recognises and contextualises trauma symptoms” (Pineau et al., 2018:9) as well as stable long-term living arrangements. Gough & Lightowler (2018:99) also highlight that secure care in Scotland provides “integrated, multi-professional, and innovative approaches...delivering what is described as the ‘24-hour curriculum’.”

The Scottish Government describes secure care as a form of residential care that restricts the liberty of under 18s. The service is provided to a small group of children who present a significant risk to themselves or others within the community. Such is the extent of their needs and risks that they are deemed unable to be managed outwith the controlled environment of a secure care setting; the provision is designed to provide an intensive level of safe and supportive boundaries. The Secure Care Pathway and Standards (2020) make explicit reference to the bespoke nature of the support that should be provided by secure care providers and their partners, outlining the various stages of a child’s journey through secure care. It aims to ensure that children can re-engage with, and contribute positively to, their communities (Scottish Government, n.d.) and is thus a setting which is consistent with Pineau et. al.’s (2018) view of what a care system ought to provide. Given the profile of the children resident there, secure care must be flexible in order to meet a wide array of needs.

Views reflecting the current political and policy imperatives were also evident almost two decades ago (Smith and Milligan, 2004; Scottish Government and COSLA, 2009). Smith and Milligan (2004) highlighted that Scotland had a significant history of locating services for children in conflict with the law within welfarist and educational frameworks reflective of Kilbrandon’s principles, despite conceptions of secure accommodation as a justice-oriented disposal. Kilbrandon “concluded that children who offend and those deemed to require care and protection are united in a commonality of unmet need” (Smith and Milligan, 2004: 178). The focus on intervention needed to be on meeting these children’s needs rather than the

behavioural manifestation that may have brought children to the attention of professionals and services (Smith & Milligan, 2004). Gough (2017) however highlighted that children who experience secure care do not constitute a homogeneous group; there are diverging views on whether children who have committed serious offences, or experienced serious offences committed against them, should be cared for together. One of the calls for action resulting from the National Secure Care Project related to different houses for “younger children so that the group living environment and activity programme is appropriate (Gough, 2017: 25). While dividing children on justice or welfare grounds is not a feature of the model of care within Scotland it is customary practice within Ireland (Whitelaw, 2022) and England (Hales, Warner, Smith & Bartlett, 2018).

The need to separate children on these grounds is not supported by recent research carried out in England. Hart and La Valle (2021) undertook a review of the practice of mixing children placed on justice grounds and those placed on welfare grounds following concerns around risks, particularly around sexual abuse. They found that there was a low incidence of harmful incidents, and this was not greater depending on the reason children were placed. They state that:

“(Secure Care Home) SCH staff described a wide range of strategies to identify and manage risks between children. Approaches included harm prevention, with plans to minimise the opportunities for children to put themselves or others at risk, but also work to tackle the underlying causes of risky behaviour” (Hart and La Valle, 2021:8).

They also stated that risk level was not determined by the pathway into the Secure Care Home; they found that perceptions that children’s association would elevate risk or that mixing children was unfair did not reflect the reality of practice. Mixing children was viewed as reflective of the wider community experience and provided opportunities for support and the development of life skills (Hart and La Valle, 2021). They “found considerable qualitative and statistical evidence showing that the justice and welfare categories do not provide an indication of the level and type of risk children pose to each other” (Hart and La Valle, 2021: 34-35). The risk of violence was evident in children placed on welfare grounds; at times the risk was greater from these children “with respondents citing their inability to self-regulate and control their emotions as the driver of their violent and aggressive behaviour” (Hart and La Valle, 2021: 35).

Five secure care centres operate in Scotland. Four of these are run by independent charitable organisations: the Good Shepherd Centre, Kibble Safe Centre, Rossie and St Mary’s Kenmure. The fifth is operated by Edinburgh City Council. There is a national contract in place for the four independent providers which promotes a standardised service specification where the contract is managed centrally; commercial elements are managed by Scotland Excel while the service and outcomes responsibility elements are held by the Scottish Government and COSLA (Moodie, 2015). The Scottish Parliament’s Justice Committee (2019b) reported that the business model currently used in secure care impacts on collaboration between providers and there needs to be improved choice and competition, although it was also noted that this should not include private provision (Justice Committee, 2019c). 78 places are routinely available across the four independent centres, although on 31 January centres were operating under capacity with 65 children and a few emergency beds can be made available at times of need (Scottish Government, 2022; SAN Scotland,

2023). Moodie (2015: 2) describes the secure care providers as “splintered and competing for business” impacting on the sharing of good practice, information, and collaboration. Significant challenges were identified that require further exploration in relation to care planning, mental health and continuity of care; we will return to this shortly. A review of mental health provision in Polmont similarly found that the “demand and supply of secure care is complex, and secure units’ operations are funded almost exclusively from their bed rate” (Scottish Government, 2022b: 3). It has also been argued that the current funding model is not sustainable in the longer term (Scottish Government, 2019; 2022b). It could be suggested that the stress on bed capacity on SAN Scotland, while of significance to referrers who are interested in availability, detracts from the focus required on the needs of children in national conversations. This view is also asserted in responses to the Justice Committee (2019c: 16) where it was stated that the “commissioning model is not congruent with the delivery of a service that meets the needs of vulnerable and/or high-risk young people”. More recently discussions have taken place wherein an agreement in principle has been reached for the Scottish Government to purchase ‘the last bed’ within the independent secure care centres. This is designed to ensure that there is capacity for Scottish children and to provide some financial support while a longer-term strategy can be considered.

Meanwhile, discussions are ongoing with Ministers, providers, Scotland Excel, COSLA and Social Work Scotland to consider a range of options for potential future action. This includes increasing capacity in Scottish centres by supporting them to deal with the implications of any reduction in cross border placements, supporting (*children*) under 18 who are currently in Polmont in secure care settings instead, and retaining some (*children*) in secure care beyond their 18th birthday to avoid short moves to Polmont (Scottish Government, 2022b: 42). Secure care services have supported cross border placements in order to remain financially viable. The Promise has called for an end to cross border placements by 2030 as part of the overall transformational change programme.

Lightowler (2020) states that 37% of children who come to the attention of the formal justice system for offending behaviour go to court. She highlights that a shift in focus is needed from seeing children as “troubled, challenged, vulnerable and challenging, which, whilst often well-meaning and containing a partial truth, can encourage negative unintended consequences which disproportionately affect and stigmatise the most disadvantaged children” (Lightowler, 2020:2). While many of these children may be referred back to the Children’s Hearings system it is hoped that one of the outcomes of the Children (Care and Justice) (Scotland) Bill and Children’s Hearing system review will be that all children will be supported in a trauma-informed and rights-respecting way.

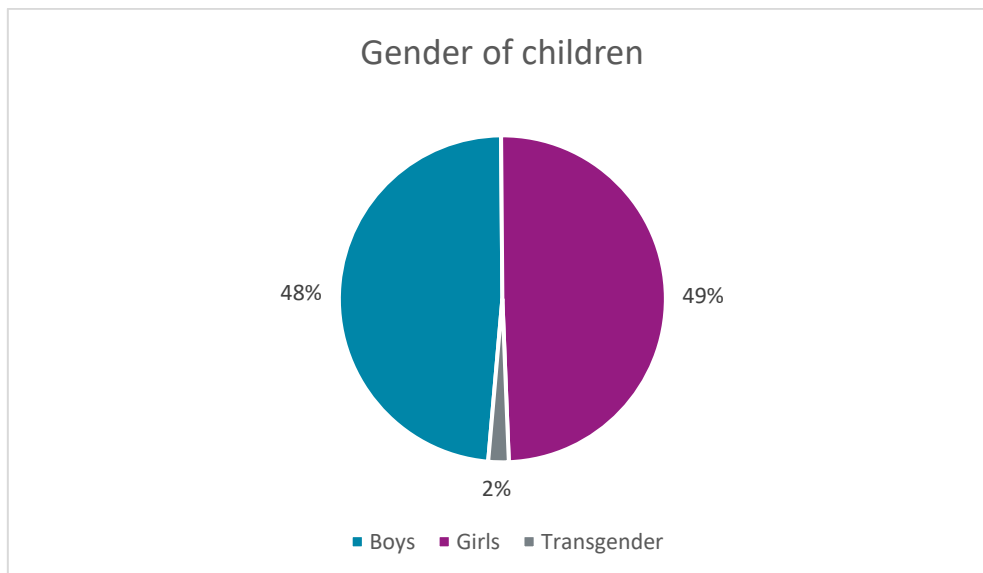
2.1 Secure Care Census

In 2018 and 2019 CYCJ examined the lives of every child accommodated within secure care in Scotland on two distinct dates, gathering statistical information regarding the needs, risks and life experiences of those children accommodated. This required staff from secure care to complete a census regarding each child which highlighted the range and scale of multiple issues. This resulted in a range of analyses being undertaken which highlighted the scale of adversity faced by this cohort of children (see Gibson, 2020, 2021, 2022).

This section of the report builds on those earlier publications, whilst going beyond that by introducing new data relating to the wider features of children's lives. It includes content relating to the aggregated data from the two iterations of the census, consisting of 165 children in total. These children were predominantly placed in secure care by a Scottish local authority, although in 37% of cases the child had been placed within secure care by an English or Welsh local authority, reflecting the continued use of Scottish secure care by bodies outwith Scotland.

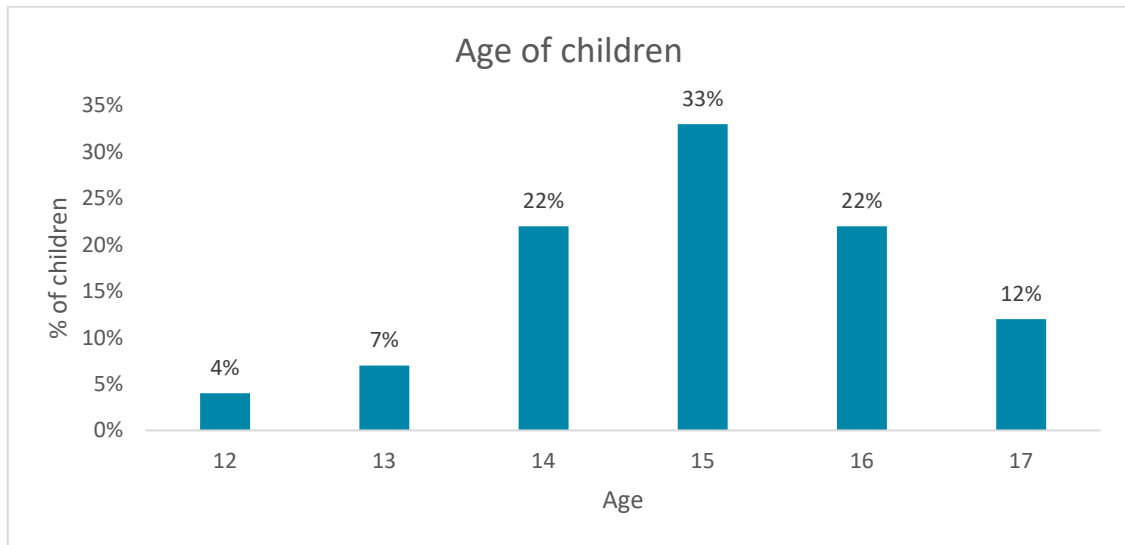
Demographics

Gender



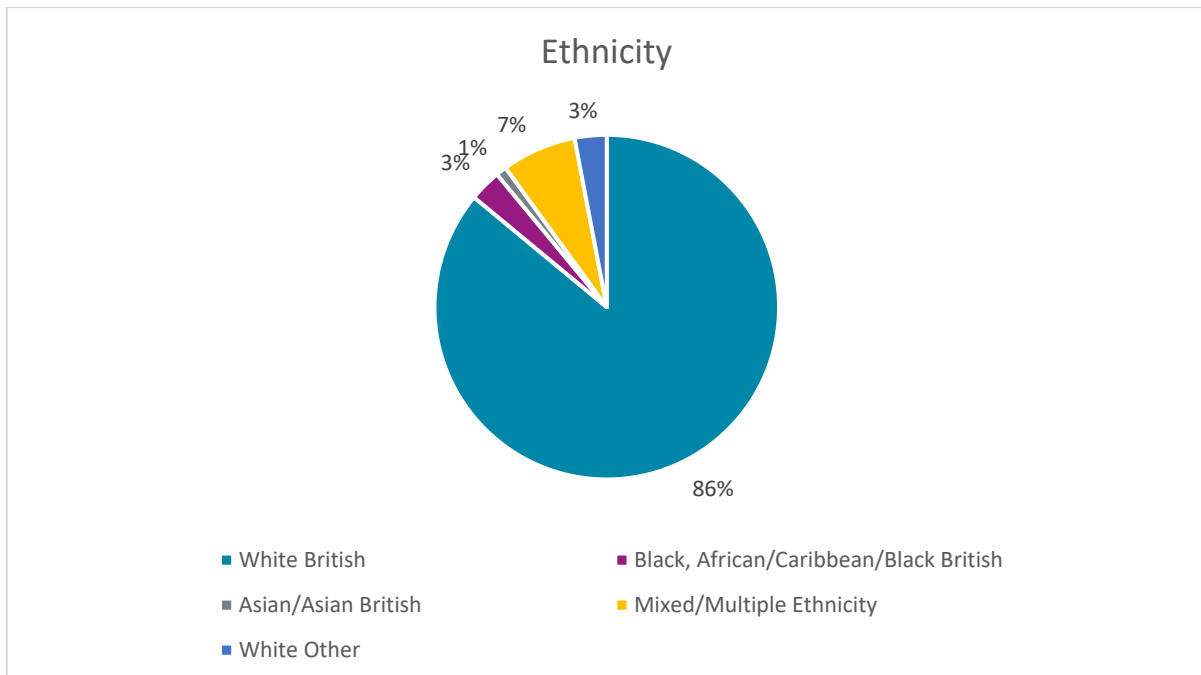
Over the course of the two studies the gender balance was found to be fairly evenly split, with 49% of children being girls, 48% boys and 2% of children identifying as transgender.

Age



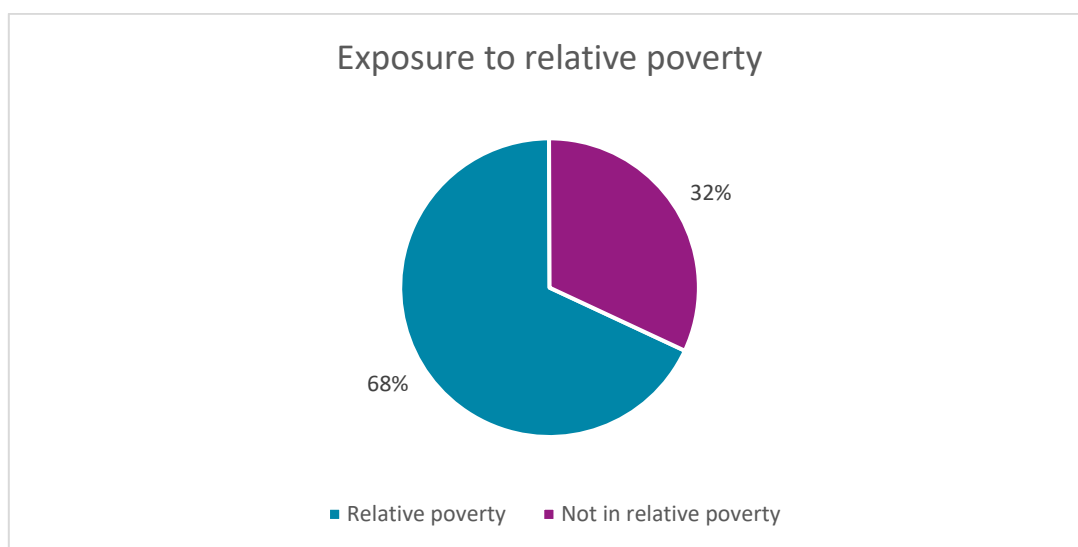
Over one third (34%) of children were aged 16 or 17, with a further third (33%) aged 15. In total 67% of children were aged 15 or above. A smaller number of children were aged 12, 13 or 14, constituting one third (33%).

Ethnicity



The vast majority (86%) of children within secure care identified as White British, with far smaller numbers of children of other ethnicities. Mixed/multiple ethnicities accounted for the next most common ethnicity at 7%, whilst Black, African/Caribbean/Black British was the ethnicity of 3% of children. Children who were White Other (3%) and Asian/Asian British (1%) were also resident within secure care on the days of the census. It is of note that the Black and minority ethnic group population exceeds the national average across the UK, providing further evidence of the impact of race and ethnicity upon the circumstances that children find themselves in.

Poverty



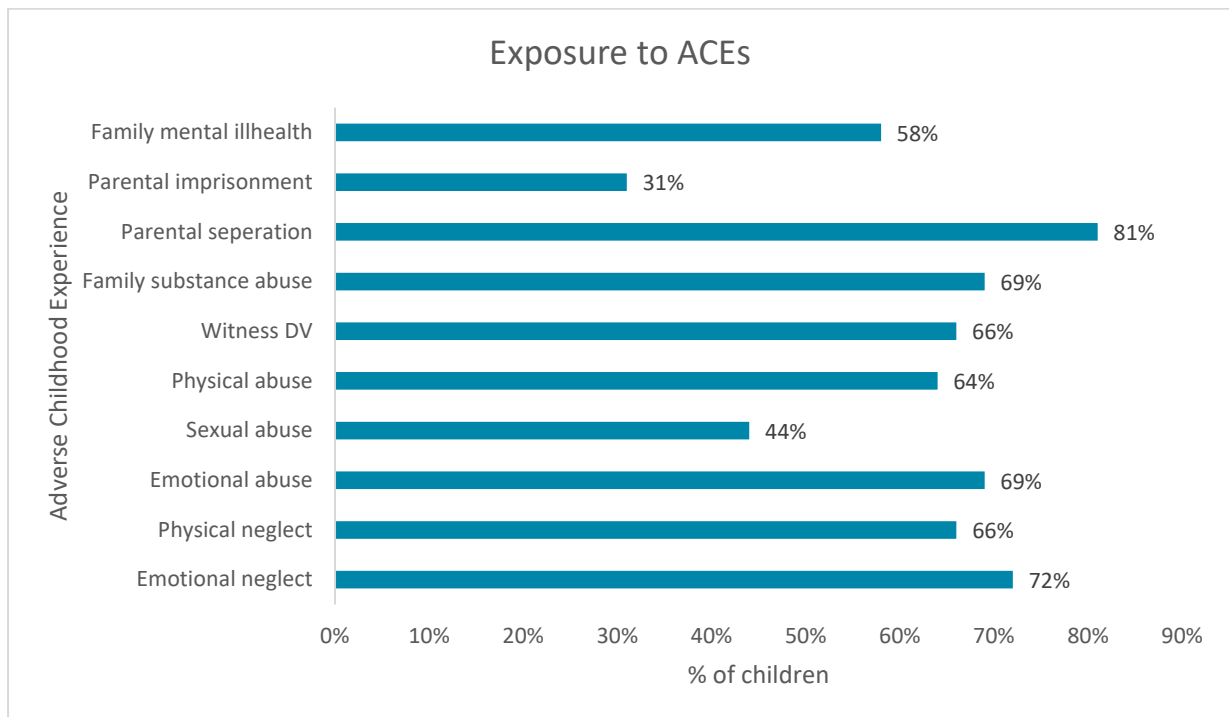
Over two thirds (68%) of children were from a family whose economic circumstances resulted in them experiencing relative poverty, and thus they were unable to enjoy the same standard of living as the majority of society. Subsequently, 32% did not live in relative poverty.

Whilst not entirely congruous with poverty, children within secure care – from both within and outwith Scotland – most commonly resided in the most disadvantaged communities. Gibson (2020, 2021) notes the tendency for children to come from a home located within areas which feature increased crime, unemployment and drug use, whilst being less likely to enjoy access to transport, health facilities and recreational opportunities.

Life Experiences

Adverse Childhood Experiences

As was shown in the three published reports, exposure to each of the ACEs was at heightened levels. This data relates to all children across the two censuses, and therefore constitutes new, and thus far unpublished, data.



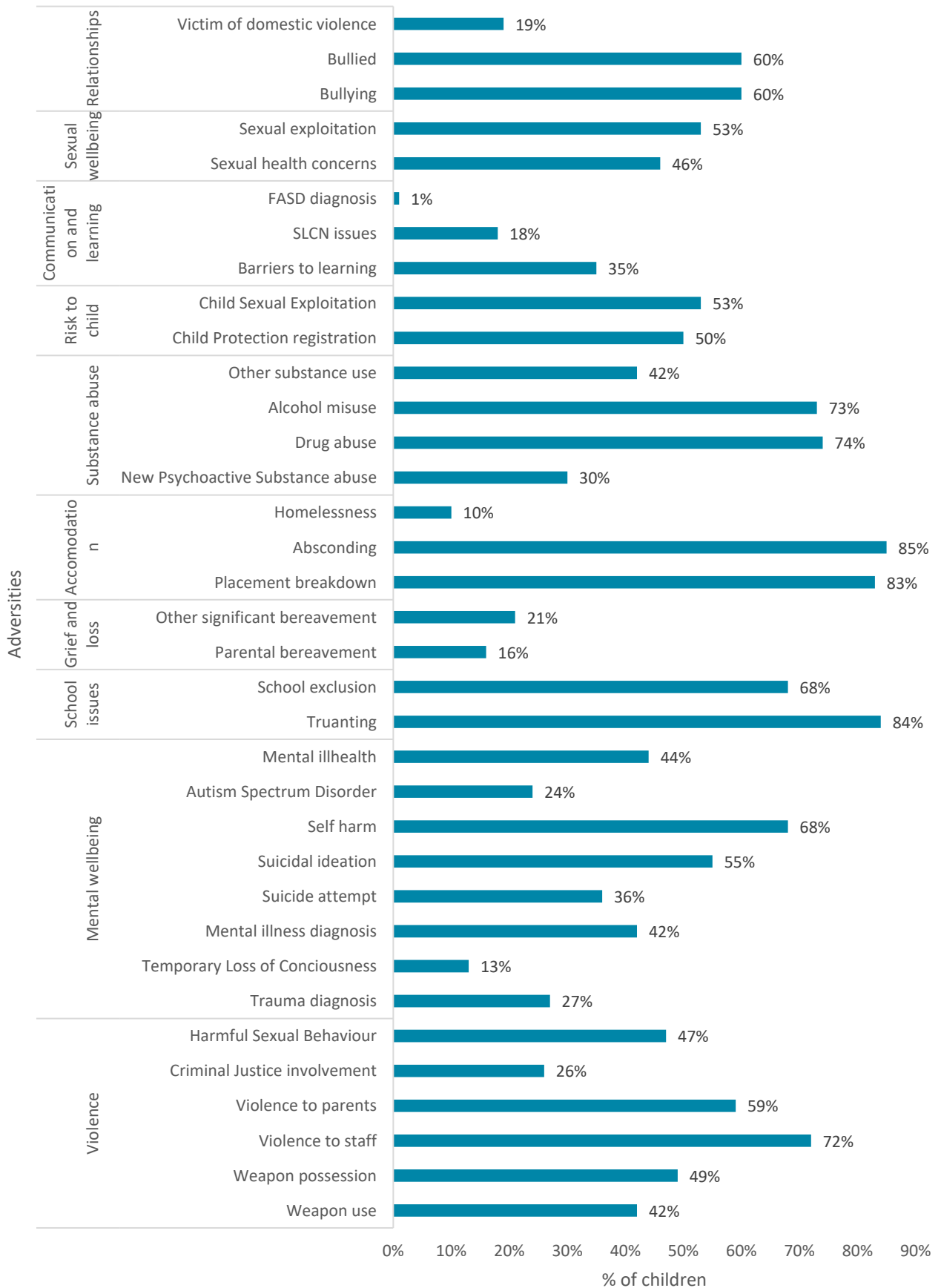
Parental separation had been experienced by 81% of children, with emotional neglect (72%) the second most common ACE. Emotional abuse and familial substance abuse were both found in 69% of cases, whilst both witnessing domestic violence and being subjected to physical neglect had been experienced by 66% of children. Almost two thirds of children (64%) had experienced physical abuse, with 58% experiencing the mental ill-health of a family member. Only two of the experiences has been encountered by less than half of the group, namely parental imprisonment (31%) and sexual abuse (44%).

Multiple Adversities

As Edwards, Gillies, and White (2019), Walsh (2020) and Karatekin et al (2022) have argued, the ACEs paradigm is too narrow to fully understand the lives of those we seek to support; the pathways into secure care – or indeed into the care system more broadly – feature a variety of challenges which each play a role in the lives of children in need. Reflecting this, children within secure care were found to have faced a wide range of adversities which have been clustered together under subcategories: relationships, sexual wellbeing, communication and learning, risks from others, substance abuse, accommodation, grief and loss, mental wellbeing and their displays of violence.



Multiple adversities faced by children in secure care



Not only does this graph demonstrate the prevalence of each of the adversities but it allows for 'clustering' of the issues to take place. Doing so leads to themes emerging such as the substantial levels of school disruption that this cohort have faced, with truanting (84%) and school exclusion (68%) common features of children's lives. Polysubstance use also features heavily, with 74% of children using drugs, 73% using alcohol, 42% using other substances and a further 30% of children known to have used New Psychoactive Substances.

The levels of violence displayed by the secure care population is also noteworthy. Violence to staff (such as residential staff, teachers, or social workers) had featured in the lives of 72% of children. However the nature of this violence may be at the lower end of seriousness, and caution should be exercised due to the risk of overcriminalizing children within residential childcare and other settings. Violence to parents (59%) was also common amongst this cohort. Almost half of children (47%) had displayed acts of Harmful Sexual Behaviour, as was the case for the possession of a weapon (49%). Weapon use was slightly lower at 42% of children. These behaviours may have contributed to 26% of children having some form of criminal justice involvement.

Grief and loss featured heavily within this cohort, with 16% of children having experienced the death of a parent; some 21% had experienced the bereavement of someone who was significant in their life.

The sexual wellbeing of children in secure care is of note, with over half of children (53%) having been subjected to sexual exploitation; just under half (46%) had experienced concerns around their sexual health.

Bullying behaviour towards others featured in the lives of 60% of children, whilst being the subject of bullying had also affected 60% of children. Also featuring within the relationships cluster, 19% of children had been subjected to domestic violence.

A number of issues were present which may impact upon a child's ability to communicate or learn. Over one third of children (35%) were believed to experience a barrier to learning, 1% had been diagnosed with Foetal Alcohol Syndrome Disorder and a further 18% had speech, language and communication needs.

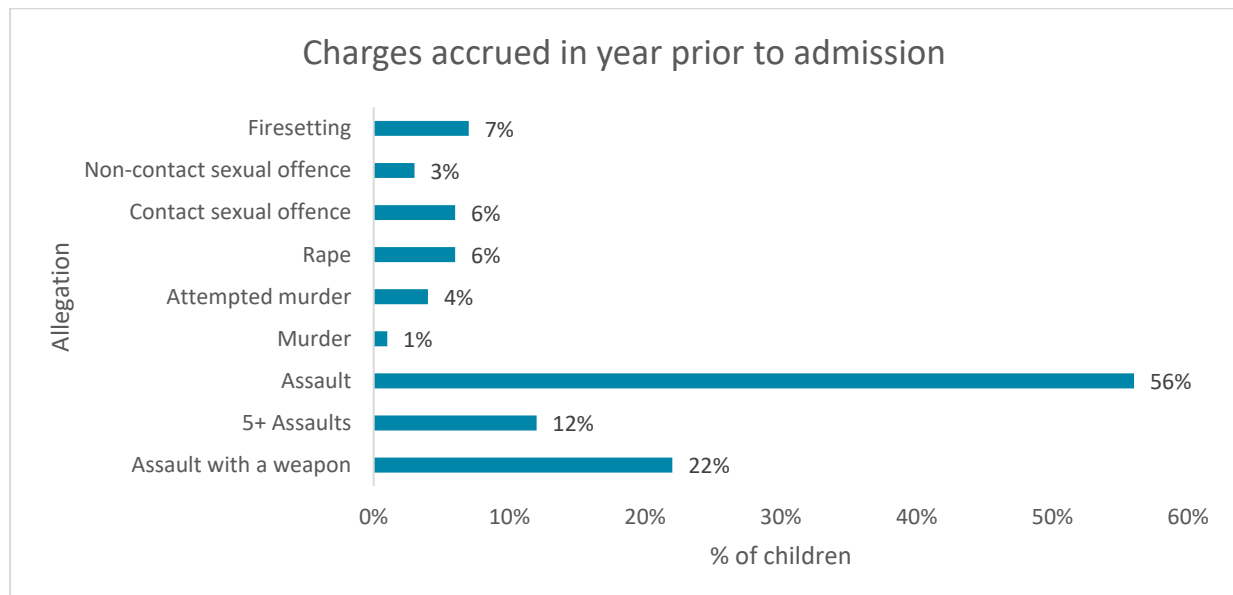
The mental wellbeing of this cohort is of concern, with 68% of children engaging in acts of self-harm and 36% attempting to end their life through suicide. Some 55% had encountered suicidal ideation, with 13% experiencing a temporary loss of consciousness due to head injury. Almost half of children (44%) had experienced general poor mental health, with 42% diagnosed with a mental illness; 27% presented with a trauma-related condition and 24% with autism spectrum disorder. How agencies respond to these difficulties can be impacted by partnership working; it has been highlighted that access to Child and Adolescent Mental Health Services outwith 'the big 3' can be a postcode lottery (Scottish Government, 2020), reflecting that further developments are required of mental health services.

Problems relating to accommodation were common within this cohort, including 10% of children having been homeless. Further to this, most children had experienced placement breakdown (83%) or had run away from their place of residence (85%).

The frequency of these adversities arising amongst the general population of children in Scotland is significantly lower than amongst the secure care cohort. Despite the multiple adversities outlined by these findings, it is of concern that child protection registration (or an equivalent measure) was used in only half of cases. There may be a variety of explanations for this. However, the scope of this paper means that consideration of child protection practice and decision making is best left for an alternative forum.

Alleged harm to others

Data gathered during the two censuses illustrates the extent to which acts of violence have been alleged against children within secure care. In addition to the figures quoted above, data regarding the nature of allegations made against this cohort in the year prior to admission demonstrates the severity and scale of the behaviours.



In the year prior to admission, 56% of children had accrued a charge of assault, with 12% having accrued at least five. Some 22% of children had accrued a charge of assault using a weapon. Smaller numbers had been charged with attempted murder (4%) and murder (1%). Allegations of sexual offending also featured within this cohort, with rape (6%) and contact sexual offences (6%) the most common. Non-contact sexual offences had been alleged against 3% of children. Allegations of fire setting had been made against 7% of children.

Whilst such significant contact with the justice system may be a symptom of the disproportionate criminalisation of children within residential childcare, these findings provide evidence which highlights that some children have engaged in acts of harm towards others. In light of this - and the earlier data which highlights the vulnerabilities and adversities faced by children who enter the secure arena - secure care should be viewed as a space that responds to high risk of varying natures. Rather than being a resource that is solely used for children who are *at risk*, data shows that many children resident within secure care have been *at risk* whilst simultaneously *posing a risk* of harm to others. This dualistic perspective cannot be emphasised enough, echoing the findings of the Kilbrandon Committee who argued that “in terms of the child's actual needs, the legal distinction between juvenile

offenders and children in need of care or protection was - looking to the underlying realities - very often of little practical significance” (Scottish Office, 1995) .

3. Young Offenders Institutions

Currently a child aged 16 or 17 cannot be dealt with by the Children’s Hearings System unless they are subject to a Compulsory Supervision Order or have been referred to the Reporter prior to their 16th birthday. Therefore, YOIs provide custodial settings in which children aged 16 to 18 years old are placed through the courts. Many of these children are likely to be unknown to services, posing challenges in relation to information sharing. There are currently three establishments that can offer provision for children:

- HMP and YOI Polmont which offers the main provision for boys, girls and young people;
- HMP and YOI Cornton Vale that can cater for girls and young women; and
- HMP Grampian which also has limited capacity for girls and young women.

In keeping with the UNCRC article 37 children should not be housed with adult prisoners (IRISS, 2021).

Children and young people can only be placed within a YOI through the Scottish courts. (IRISS, 2021). Under the Criminal Procedure (Scotland) Act 1995 children may be placed within a YOI under:

- Section 51 when they are placed on remand;
- Section 205 when sentenced for murder; and
- Section 208 when they are convicted on indictment.

3.1 Data from prison research

The Scottish Prison Service regularly publish data in the form of Prisoner Surveys. This report draws heavily on the 2019 iteration of the survey, authored by Broderick and Carnie, (2019a; 2019b; 2019c) and Carnie and Broderick (2020). While some of the information within the survey is not comparable with that gathered within the secure care censuses (and the method through which information was gathered differs) invaluable insights into the needs of those who experience prison are provided, enabling us to shape a profile of the children in question.

The Prisoner Survey

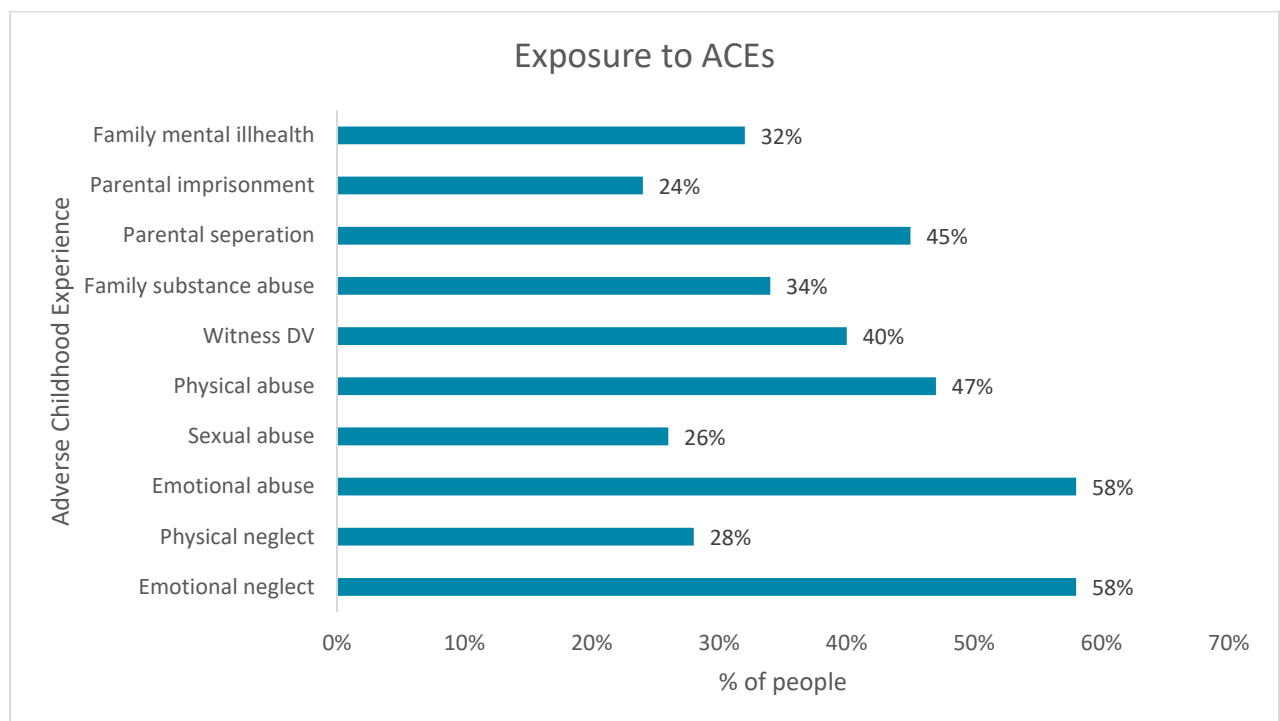
The Prisoner Survey data is drawn from a self-completed questionnaire undertaken by 30% of the entire prison population in 2019, equating to 1,636 individuals. Of this total, 93% (1,655) were men and 7% (128) were women. It is of note that this data is reflective of all age ranges and therefore data relating solely to children is not available on all occasions; in such instances reference has been made to the wider prison population and is highlighted as such within this report.

Stemming from the 2019 Prisoner Survey, three thematic commentaries were produced, namely: “People in custody who have been in care as ‘looked after children’” (consisting of 409 people, of whom 90% women and 10% men); ‘Women in custody’; and ‘Young people in

custody' (221 boys and young men aged 16-21 years old) (Broderick & Carnie, 2019a, 2019b, 2019c). The following information utilises these commentaries and illustrates the nature of those who enter the custodial estate.

Adverse Childhood Experiences

Drawing on the 2019 Scottish Prisoner Survey data, it is possible to examine the prevalence of ACEs amongst the prison population. It is important to note that this data relates to the prison population in its entirety, with no data currently available regarding children solely. The method of gathering this data also differs, with those held within prison asked to complete the survey themselves, compared to the model adopted during the secure care census, which relied on the assistance of secure care staff. Nevertheless, this allows for some degree of comparison to be made.

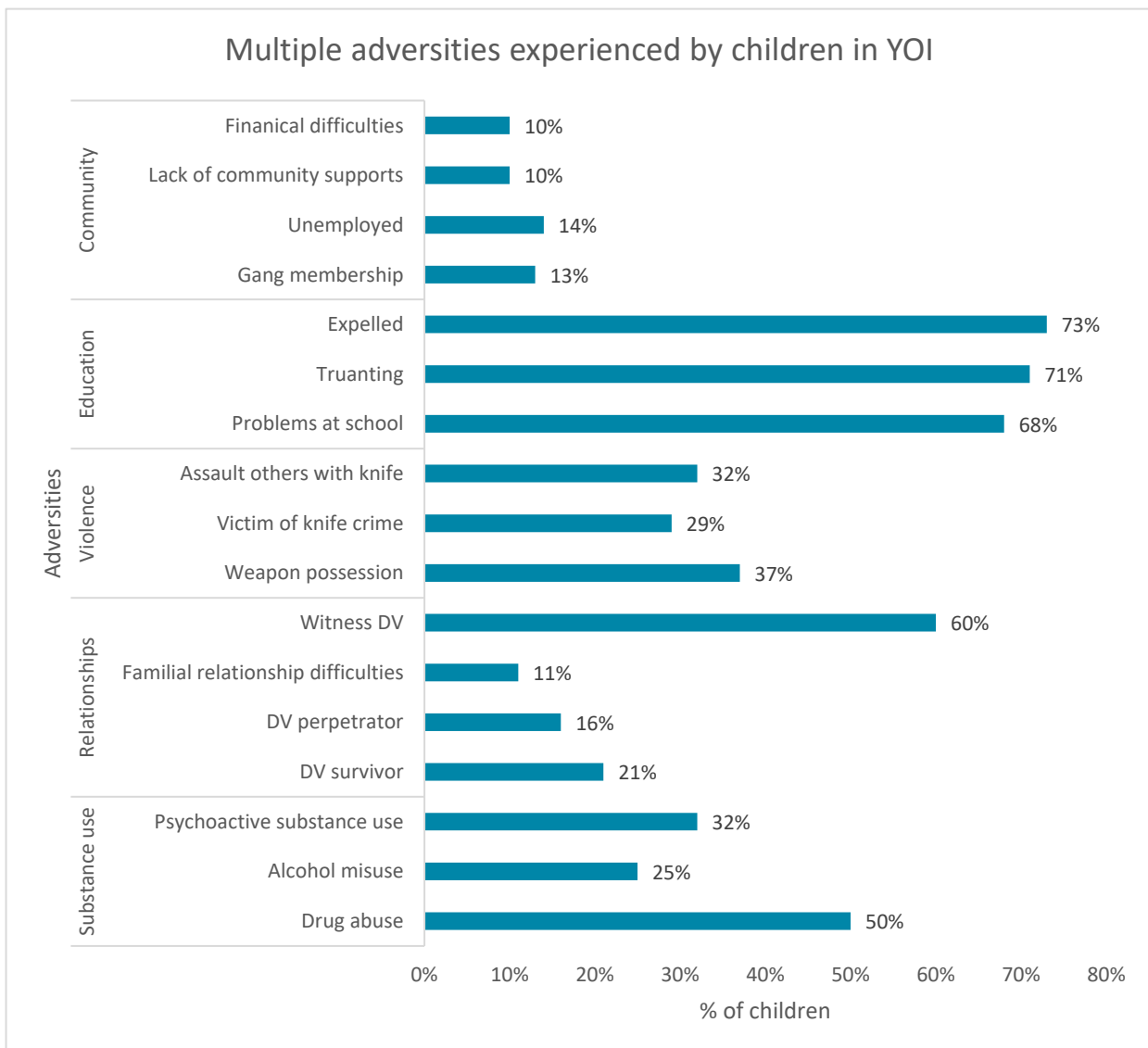


Amongst those detained within the prison estate, emotional abuse (58%) and emotional neglect (58%) were the most commonly experienced issues, followed by physical abuse (47%) and parental separation (45%). Some 40% of respondents had witnessed domestic violence, whilst 34% had experienced further family disruption in the form of familial substance abuse. Familial mental ill-health had been an issue in the childhood of 32% of respondents. Physical neglect (28%) and sexual abuse (26%) had been encountered by over one quarter of people within the study, with parental imprisonment (24%) almost as common.

Multiple adversities

In keeping with the experiences of their peers within secure care centres, children within YOIs experience a wide range of adversities that impact upon their lives. Drawing on numerous studies (Broderick & Carnie, 2019a, 2019b, 2019c; Carnie & Broderick, 2020; Lightowler, Robinson, & Leishman, 2017) it is possible to chart a number of these issues, as

outlined below. This graph includes data pertaining to children and young people – aged 16 to 21 – and therefore presents experience that is somewhat different to those children accommodated within secure care. Moreover, some data within the report refers to ‘children and young people,’ whilst in other areas it specifically refers to ‘care experienced children’, thereby rendering comparisons more challenging. The following graphs and discussion primarily focus on the ‘children and young people’ group and the information contained offers some insight into the life experiences, risks, needs and vulnerabilities of this group of children and young people. Whilst it is recognised that some children who enter secure care can be deemed care experienced by virtue of their place of residence, they are not always afforded this status and the supports that can come with it, for instance through care and aftercare support. Whilst variations in terminology and language should be borne in mind, the collated data does allow for some degree of comparison to be made between the two cohorts.



Issues that can be clustered together under 'relationships' were prominent within the lives of children in YOIs. Relationship problems with family members was an issue in 11% of cases, with over one in five (21%) having survived domestic violence. Some 16% of children had also been the perpetrator of domestic violence, highlighting the multifaceted nature of adversity in this area.

Substance use was a feature in many children's lives with half (50%) having engaged in drug abuse. Almost one third (32%) had used psychoactive substances and one quarter (25%) had misused alcohol. With the exception of psychoactive substance use, these figures are lower than the rates for children within secure care, although it is impossible to quantify the depth of the problem.

This cohort also experienced violence in its widest sense; both causing harm and being harmed. Whilst almost three in ten (29%) children had been the victim of a knife crime, almost one-third (32%) had assaulted someone using a knife. Moreover, 37% of children had carried a weapon prior to entering custody. This, however, is not to say that the child was placed in custody as a consequence of these actions. Weapon carrying and usage was also higher amongst children within secure care. However, as previously stated, the data relating to the prisoner survey relates to a mere 30% of potential respondents, whereas the secure care census captured information for 100% of children. More contemporary information would allow for greater insight into the current needs of these children.

Vulnerabilities were also found within the community, with 13% of children affiliated to a gang. Some 10% of children had faced financial difficulties, with the same proportion of children also experiencing a lack of community supports. Some 14% of children were unemployed.

Issues relating to education were the most commonly experienced amongst children and young people in YOIs. Almost three quarters (73%) had been expelled, making it the single most commonly experienced adversity amongst this cohort. Also, within this cluster of adversities, 71% of respondents had truanted from school and 68% reported having experienced problems at school. This is consistent with the experiences of children placed within secure care at 68% and 84% respectively, highlighting the significant need for educational and skills development support.

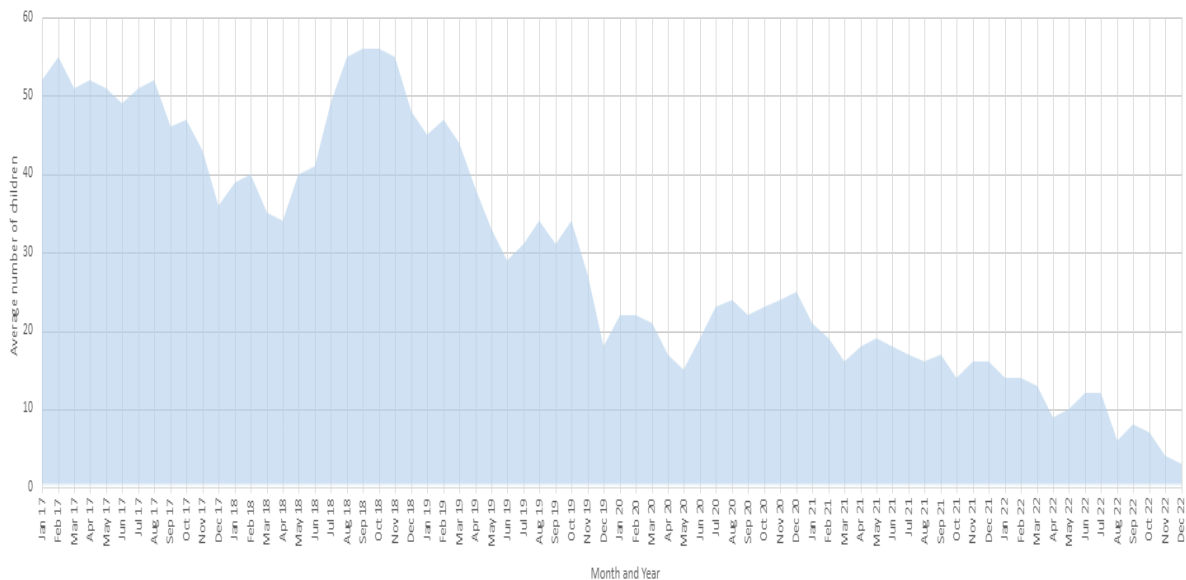
Care history of people in custody

Drawing on the work of Broderick and Carnie (2019a) it is possible to form an understanding of the care history of those who enter the custodial estate. Across the entire prison population – therefore including YOIs and adult establishments – 25% of respondents to the 2019 prisoner survey reported that they had a history of being in care. Of this quarter, 33% had resided within secure care (Broderick & Carnie, 2019a); this equates to some 8% of the entire prison population. Amongst the quarter of the prison population who had experience of care, some 64% had experienced residential care (16% of the entire population), and 16% had lived with a family member or someone else known to them (4% of the entire population). Further to this, 30% of the care experienced population across the prison estate had experienced foster care (reflecting 7% of the entire prison population) (Broderick & Carnie, 2019a).

Offending behaviour and custody

The Covid pandemic may have impacted on trends since 2020. Prior to June 2020 the number of children and young people on remand was around 35% but this figure has continued to increase since then. Scottish Government figures for 2021 note that, of the children held on remand, 199 were found not guilty, 286 received a sentence other than custody, 392 received community alternatives and 185 a fine. Such heightened rates of remand do not seem to be in keeping with these outcomes. Statistical data gathered by CYCJ reflects that both the number of children and proportion of children within YOIs on remand began to fall in 2022: in January children on remand accounted for 93% of all children held there but by August this number had dropped to 67% (CYCJ, 2022). A freedom of information request in 2020 illustrated that in the years 2018-19, a total of 14 children aged 16, and 122 children aged 17, received a sentence of up to one year. Some 17 children aged 16 or 17 years old received a sentence of between one and two years, whilst 8 received a sentence of more than two years (Scottish Government, 2020c).

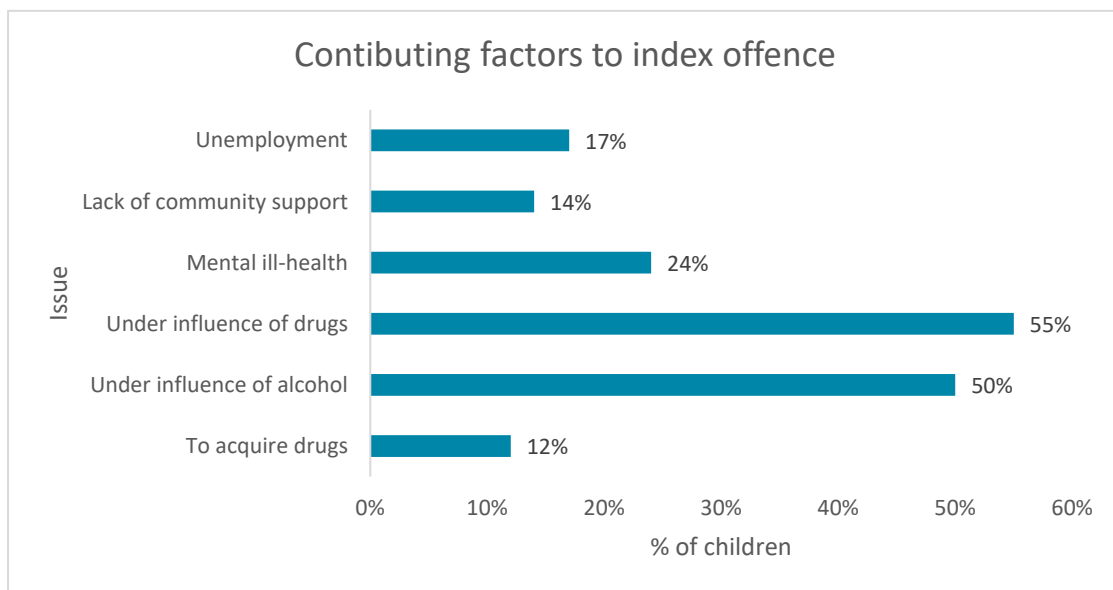
The chart below indicates how rates of custody have changed over the past six years (Children and Young People's Centre for Justice, 2022).



Data regarding the nature of the conviction enables some degree of analysis (Scottish Government, 2021b). Whilst this does not illustrate wider behaviours that the children may have been involved in that did not result in them being placed within custody, it does illustrate the nature of index offences which led to that outcome being reached by court. Thematically, behaviours of a violent nature were the most common, responsible for 63% of imprisonments. Within this figure are included attempted murder (25%), murder (7%), rape (2%), fire setting (2%), robbery (5%) assault (11%) and possession of an offensive weapon (11%). The single most common offence type was crime against public justice (21%), the overarching term that relates to breach of bail, perjury and other such matters. A further 12% of children were placed in custody as a result of their involvement in housebreaking and theft.

Precursors to offending behaviours

Again, drawing on the work of Broderick and Carnie (2019a, 2019b, 2019c) and Carnie and Broderick (2020) it is possible to develop an understanding of the circumstances which immediately preceded the offence that resulted in a custodial sentence being imposed. These are therefore more specific to offending behaviours than the wider concerns that have been charted elsewhere. Those wider concerns may, of course, play a role in the precursors noted below.



Substance use featured regularly within the range of factors contributing to the index offence, with 55% of children being under the influence of drugs at the time of the offence, and half (50%) under the influence of alcohol. A further 12% of children had been imprisoned due to an offence which was committed to acquire drugs.

Unemployment was a contributing factor in 17% of index offences, and a lack of community support was a factor in 14% of offences. Almost one quarter (24%) of children were placed in custody following an offence which was influenced by their own mental ill-health.

More contemporary insights are available in the form of qualitative reports (Scottish Government, 2022b, 2022c; McIntosh et. al., 2022). Whilst these speak to the wider prison population, it is recognised that health and care needs are significant and are not consistently met across the country (Scottish Government, 2022b). There is also consensus that the approach to health and social care is reactive instead of proactive and responses are mainly targeted at acute conditions. It has been acknowledged that a large population could benefit from more holistic and person-centred support that acknowledges underlying trauma and the underlying causes of an issue. Wider support that focuses on upstream determinants of health is needed (for example, education, social relationships and help with housing) (Scottish Government, 2022b: 7).

Vaswani and Paul (2019: 2) highlight that the elevated prevalence of “levels of loss, trauma, victimisation, abuse and mental health issues among people who are detained in custody

are well documented". It is recognised however that information is not gathered centrally to monitor the health needs of individuals within prisons across Scotland, making it difficult to strategically respond and plan appropriately. While it was noted that the initial screening process on being admitted to prison was useful and generated referrals to primary health providers, those with lived experience found the admission extremely stressful and it was highlighted that this could impact on the disclosure of health-related information such as substance use or Autism Spectrum Disorder (HMIPS, 2019). Access to resources which could meet these health needs may be restricted by the availability of transport services.

4. Meeting children's needs and upholding their rights

The Scottish Government's ambition for Scotland to be the best place for children to grow up calls for service provision which best identifies and responds to children's needs; this is particularly important for those children whose liberty has been deprived. Irrespective of the reasoning behind children being placed within secure care, CYCJ has noted that "they are almost always children who have experienced multiple difficulties, neglect, trauma, adversity, loss, bereavement and abuse" (Justice Committee, 2019c: 4). It was also noted that while YOIs "will offer these children the best possible care they can, they are not designed to be therapeutic environments, cannot offer the same level of trauma and attachment informed support, not the high staff to child ratio, necessary to meet the needs of these children and may compound the impact of previous traumatic experiences or retraumatise them" ([Justice Committee](#), 2019c: 5). Scotland's Independent Care Review has added to this debate, calling for all children to be removed from the custodial estate and for a significant change in the delivery of secure care. The need to reimagine the support and services that is provided to those children who face, make or take the highest levels of risk, or who cause harm to others, is therefore imperative. It also has to be recognised that these risks cannot be reduced by secure care services alone.

Since 2013, the Interventions for Vulnerable Youth (IVY) Project has recognised that children who present with violent behaviour can often have 'complex mental health and psychological difficulties' ([Johnson](#), 2019). The IVY Project was set up in recognition that children and young people may not be able to access services until their level of risk to others has escalated to the point where they are considered for secure care or prison. It provides a service that is multi-disciplinary and takes a tiered approach to risk assessment, formulation, and management for children aged 12 – 18 years.

For those children who do meet the criteria to access a service, state provision is available through Child and Adolescent Mental Health Services (CAMHS) or Forensic Child and Adolescent Mental Health Services (FCAMHS). CAMHS provision reflects a tiered approach with service access dependent on need and level of difficulty; tier one is universal services, tier two combines specialist input and community based services and tier three reflects specialist multi-disciplinary outpatient support ([Marini](#), 2022). As part of the wider mental health [strategy](#) set out by the Scottish Government, work is ongoing to develop cohesive national outpatient IPCU's for children and young people. In addition, requirements set out in the mental health strategy for 2021 – 2027 resulted in the development of Scotland's first National Secure Adolescent Inpatient Service, [Foxgrove](#), with plans in place for this to open in 2023.

The Getting It Right for Every Child (GIRFEC) framework ensures a holistic approach to meeting the needs of children; it ensures that practitioners supporting children and their families can work across both adult and children's services in a way that embraces the UNCRC and takes cognisance of the wider ecology of a child's life. The GIRFEC national practice model and approach aims to improve outcomes by keeping children's wellbeing at the heart of intervention; the SHANARRI wellbeing indicators of Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible are included as evidence indicators. Children who enter secure care through the Children's Hearings System should have been party to a holistic assessment within the community, adopting the GIRFEC principles and model. Those who enter YOI through court may not have been provided with this level of service, with the content and depth of assessment contained within a report to the children's hearing far exceeding that provided within a court report. It is unclear whether or not a holistic assessment which provides clear guidance as to what support is required is possible under current YOI policy; this may depend on any changes made by the Children's Care and Justice Bill.

A further difference can be found in the way in which children are admitted into the two settings. Children placed within secure care are subject to a post admission meeting, at which the responsible local authority shares relevant information, assessments and outlines existing care plans. This meeting provides an opportunity for those delivering care within the secure environment to best equip themselves to meet the child's needs, and to incorporate existing supports and interventions into the care plan thereafter.

Whilst best practice within YOIs would call for a similar meeting to take place upon the imposition of a custodial sentence or period of remand, in reality this often fails to take place due to a variety of reasons. One such reason could be the child not being known to the local authority social work department, on account of not being subject to a Compulsory Supervision Order. Additionally, the level of holistic and appropriate assessment of need on admission differs within a YOI; this resulted in SPS "undertaking work to determine if specific risk assessment practices adopted by secure care providers would be appropriate within Polmont and could be adapted for a custodial setting" (Scottish Government, 2022b:13). Nolan (2016) highlighted that the local authority has responsibility for sharing information on the day that a child is remanded or sentenced to custody. Despite guidance being available via the Scottish Government and CYCJ relating to what information needs to be shared with SPS – for instance, a Child's Plan – as of 2022 this continues to be raised as an issue as agencies do not always share this information timeously, if at all (SPS, 2022). These practices should be enhanced with [the extension of the WSA by April 2023](#) (Whitelaw, 2023).

This practice is already well embedded within secure care, so in this sense secure care appears better placed to respond to the needs of those children who are sentenced to custody or held on remand. As the data within this report has outlined, their lives are replete with a range of adversities that often result in adverse outcomes in both the short and long term. Moreover, the circumstances surrounding the index offence are often of such a nature that support is required to reduce risk and meet needs. Any delay in addressing these is therefore to be avoided.

The shared language and approach inculcated within GIRFEC is not evident within YOIs. When we refer to children who are placed within YOIs as young people, we can make assumptions about their capacity and capabilities despite research, evidence and guidance

reflecting that their cognitive and emotional abilities continue to develop up to the age of 30 (O'Rourke, Whalley, Janes, MacSweeney, Skrenes, Crowson, MacLean and Schwannauer, 2020). This can lead practitioners to adultize both expectations and intervention strategies.

Provision within both secure care and YOI impacts upon the ability of children to enjoy the full spectrum of their human rights. Lightowler (2020) summarises the range of ways that deprivation of liberty does this, calling into question whether the use of a custodial setting is comparable with the 'best interests of the child' principle which underpins Scotland's approach to children. Given the complex and challenging experiences faced by those children who find themselves in a locked setting on account of their offending behaviour, it appears unjust to adopt a more punitive approach for those children who are most in need of care and protection. Additionally, access to education has been viewed as compromised when children are detained. Issues raised with the Justice Committee (2019c: 15) included children being removed from education to attend formal meetings, as well as concerns surrounding "the availability of education in the secure units (*houses*) and the ability to retain the educational provision that children accessed before they came into secure care". However, the most recent data available from the Scottish Government (2022b) on educational outcomes for looked after children reflects that outcomes have continued to improve for more than a decade, particularly at levels 5 and 6. While this data does not relate solely to secure care, 'other residential' refers to residential schools, crisis care and secure care accommodation. Within this 'other' category, ≥83% achieved at SCQF level 3, ≥78% at level 4, ≥36% at level 5 and the latter achievement was greater than the achievements of children within other residential care settings. In addition, 78% had achieved a positive destination three months after leaving their education provision, falling to 60% nine months after leaving school.

Debate over the co-location of children who have caused harm alongside those who have been harmed has often featured within discourse surrounding secure care. Hart and La Valle (2021) address this point, stating that secure care homes in England have varying capacity and consequently require that provision be organised with children living in smaller groups. These authors argue that this is beneficial, although the optimum size of provision is not specified. In Scotland, a recent PhD study explored young people's experiences of residential care, including secure care. Participants expressed their concerns about group size and its impact on staff's ability to meet their needs. Young people also voiced concerns over staff time being 'taken up' by children who presented as being in crisis, with this seen as being detrimental to other children in the wider group (Whitelaw, 2022b). Small, specialist provision allows for separate groupings and differing operating models such as gender specific houses or supporting children described as having complex needs. Staff within such settings commented about it being best not to accommodate "too many children with the same behavioural needs living together" (Hart and La Valle, 2021:41) as this can result in 'contagion' and the spread of risky behaviours amongst those living within the secure children's house. It was also highlighted that identity and hierarchy need to be managed effectively, whilst stereotypes around dysregulation and 'alpha' boys were expressed by staff members within Hart and La Valle's study. However, the similarities between children accommodated through 'justice' or 'welfare' routes are significant and ultimately, the prevalent view amongst secure care staff was that "we lock (*children*) up under different legislation, but they're the same kids" (Hart and La Valle, 2021:49). The data highlighted within this report supports the view that the needs of children are the same irrespective of their route into a placement that deprives a child of their liberty. .

Within a YOI, unless children are being segregated, they are likely to live within the same hall as their contemporaries regardless of offence type, presenting needs, or prior life experiences. The SPS vision for children and young people looks at how the system can use the time that they spend in custody to prepare positively for their future (SPS, 2021). As a national organisation data may be gathered about the background and context to children placed in YOIs and the vision mentions cognisance being taken of both the UNCRC and The Promise. However, it has been highlighted in relation to mental health needs that SPS do not routinely collect national data (McIntosh, Rees, Kelly, Howitt, and Thomson, 2022).

HM Inspectorate of Prisons for Scotland (HMIPS) service delivery quarterly report for October – December 2021 illustrates monitoring resulting from 16 visits to HMP&YOI Polmont. The findings summary focuses on: relationships; the physical environment; reception; separation; induction; and the time individuals spend outside their cell and engaged in purposeful activity. While different criteria are used in Care Inspectorate reports which may provide a snapshot taken over several days from an inspection period within a secure care centre, some comparisons are possible, and these are outlined below.

Relationships between staff and those placed within Polmont were described within the HMIPS report as “in the main respectful” (2021:1), while the physical environment was seen as in need of “attention to make it more welcoming” (2021:1). Concerns were highlighted around the arbitrary nature of search procedures that were not based on individual risk assessment. This practice has since ceased (Scottish Government, 2022). It was also noted “that some prisoners are kept in isolation in the SRU for too long” (2021:1). Induction for new admissions to the prison were not always received, resulting in individuals being unaware of their entitlements, access to exercise or activities. Purposeful activities and the time spent outwith cells remained a cause for concern. In addition, the action plan update for the expert review of the provision of mental health indicated that in May 2022 staff absence was impacting on this further, with the access to areas being closed and limiting availability of activities (SPS, 2022).

In CYCJ's response to the Justice Committee (2019e) we observed that there is good evidence that partnership working provides opportunities for children's needs to be met within YOIs where statutory, third sector and supporting services come together. The learning centre provides the opportunity for children to experience a full curriculum incorporating educational, academic, and vocational courses that promote a range of qualifications and experiences. Children also have access to a wide range of supports and programmes designed to support behavioural change, although not all of them have been designed for use with children. Within secure care wellbeing teams may provide this service to children, and again there are partnerships evident across these settings. The Mental Welfare Commission (2015) has stated that while there are gaps in the transitional provision of mental health supports for children within secure care, secure care centres are meeting children's needs effectively and managing their diagnosed mental health difficulties well (Justice Committee, 2019e).

Barnardo's provide services to children with mental health concerns in YOIs whether they have a medical diagnosis or not, and they stressed the importance of a wider perspective than the medical model around mental health. Their input to the Justice Committee indicates the added value of the third sector within YOIs, with feedback from children and young people reflective of its positive impact (Barnardo's, 2019). Barnardo's provided training on trauma, bereavement, and loss to more than 200 SPS employees, showing a commitment

from SPS to promote a trauma-informed approach. However, an independent review by CYCJ found that staff resistance was evident, with some individuals not recognising the significance of this for children, or within their respective role. A summary report evidencing progress since the expert review indicates that since 2021, new recruits have received trauma-informed care input as part of their foundation training and a specialist 5-day module has been provided to those working within residential areas with children, young people, and women (Scottish Government, 2022b). In 2022, four staff attended a two-day workshop that focussed on trauma-informed care and mental health (Scottish Government, 2022b).

Broderick and Carnie (2019) highlighted that 16% of children and young people in custody experienced bullying and 10% feared for their safety in the month prior to the study; 75% were fearful of peers. This may have been impacted by staffing ratios which were described as having an impact on access to health, activities, and programmes for around a third of children and young people (Broderick and Carnie, 2019). In addition, 64% of the 30% of young people completing the survey vaped in prison although 22% wanted help to give this up.

The Children (Care and Justice) (Scotland) Bill consultation states that YOIs are not primarily designed to be therapeutic environments. They cannot offer the same level of trauma and attachment informed support as secure care, nor the high staff to child ratio sometimes necessary to meet the needs of the child (Scottish Government, 2022: 38). In addition, McIntosh et. al. (2022: 7) highlight that

“isolation has detrimental and enduring effects on a person’s ability to cope in prison, particularly for young people. The prison environment and custodial factors perpetuate this; overcrowding, bullying and discrimination can have further negative effects. Some people in prison use illicit drugs to try to cope with negative feelings, though drugs can both exacerbate existing difficulties, precipitate serious mental and physical illness, and even cause death.”

Hart and La Valle (2021) conducted a study in England where they looked at secure care services for children. They found that “some SCHs reported that most incidents and restraints involve welfare children” (Hart and La Valle, 2021: 35). Children placed on welfare grounds were more likely to be involved in self harm incidents (83%), restraints (93%), separations (65%), aggression (46%) and damage (22%) (Hart and La Valle, 2021).

It must be noted that different models of restraint are used across secure care and YOIs. A summary report that followed a roundtable discussion with the chair and co-chair of the ‘Expert Review of Mental Health support for young people entering and in custody at HMP&YOI Polmont,’ highlights that a considerable level of work to address the review’s recommendations was evident (Scottish Government, 2022b). Within the report it was highlighted that “development and implementation of new non-pain inducing techniques for young people and women in Polmont” (Scottish Government, 2022b: 4) in relation to restraint was evident. For this to be operationalised however all staff would need to be trained in the new techniques, so pain inducing techniques remain in operation within YOIs. The report indicated that the programme is being rolled out and the “control and restraint policy is being revised” (2022b: 6). Non-pain induced restraint is the practice used within secure care centres in Scotland when a child presents a risk to themselves or others.

There is no doubt that the COVID-19 pandemic has had an impact on the delivery of services to children, although it has been argued that there has been a disproportionate impact on children in YOIs. SPS responded to the challenge of maintaining contact between prisoners and their families by providing everyone with a mobile phone (Scottish Government, 2022). While current figures are not available, data from the prisoners' survey in 2019 showed that for children and young people in custody 50% had telephone contact, 38% had visits and 36% received letters (Broderick and Carnie, 2019c). These figures were lower than for the wider prison population where it was 75%, 53% and 67% respectively (Broderick and Carnie, 2019a). It is reasonable to surmise that the provision of mobile phones would result in an increase in family contact. This contrasts with one Care Inspectorate report that included the family time children experienced within secure care. Children "could have daily contact with those important to them" (Care Inspectorate, 2022, unannounced inspection 1: 4).

While these figures relate to 30% of the entire SPS estate, 77% of prisoners had access to work in prison (Broderick and Carnie, 2019a). This was seen as providing a routine and regular hours for 76% of individuals and the experience of responsibility taking for 78% (Broderick and Carnie, 2019a). In 2022's update to the expert review, the Scottish Government (2022b: 12) highlighted the need for a legislative review as Polmont indicated that "Prison Rules allow (*those who are on*) remand to participate in work but the current Prisoners Wage Earning policy may need reviewed to further support engagement going forward". This would suggest that most of the children placed in prison are not eligible to work while there.

5. Regulatory Processes

While evidence of feedback from inspections and reviews has been cited elsewhere within the report it is important to highlight that the regulatory process for secure care and YOIs differ and to reflect on further feedback. The Public Services Reform (Inspection and Monitoring of Prisons) (Scotland) Order 2015 sets out the provision for the inspection of prisons, including YOIs. The provision establishes the mechanisms supporting a system that involves regular visits from independent international and national bodies to establishments where individuals are deprived of their liberty. The aim of this is to ensure that the Optional Protocol to the Convention against Torture (OPCAT) is complied with. The Chief Inspector of Prisons' role is also to inspect the conditions within prisons, ensuring that prisoners are treated appropriately, that conditions are monitored and that they exercise their functions. The Prisons and Young Offenders Institutes (Scotland) Rules 2011 identifies a young offender as a child or young person between the age of 16 -21 years old, although this report is primarily concerned with children within YOIs aged under 18.

The Care Inspectorate is an independent scrutiny and improvement body which is also a member of the National Preventive Mechanism designed to ensure that OPCAT is complied with; within secure accommodation they ensure that social care and social work services provide care appropriately for children deprived of their liberty. The Care Inspectorate state within their corporate plan that "care must be compassionate, rights-based, respect choices and help to realise individual rights, hopes and ambitions (Care Inspectorate, 2022: 7). Their work is aligned with the National Performance Framework which is focused on delivering National Outcomes reflected in tackling poverty, reaching potential, inclusive communities, a well-educated and skilled community, healthy and active and respectful, protective

proponent of human rights (Care Inspectorate, 2022). In their contribution to the Justice Committee, they described themselves as having a regulatory, inspection and improvement role in a wide array of services, including secure care, with the Health and Social Care Standards underpinning their scrutiny activity (Justice Committee, 2019a). In addition to the Care Inspectorate, secure care Centres are inspected by Education Scotland against the criteria set out within the [Curriculum for Excellence](#).

The quality framework for secure care accommodation reflects a focus on the assessment of the experience of wellbeing (Care Inspectorate, 2020). Using the Health and Social Care Standards (2018) and Secure Care Pathway and Standards (2020) evaluations are made helping the Care Inspectorate to answer key questions about the contribution care provides to the quality of life for children within secure care. The framework is structured around the following key questions:

- 'How well do we support children and young people's wellbeing'
- 'How good is our leadership'
- 'How good is our setting' *and*
- 'How well is care and support planned'
- 'What is our overall capacity for improvement' (Care Inspectorate, 2020: 3).

An additional question was introduced in May 2020 in response to the COVID-19 pandemic which looked at the evaluation of "infection prevention and control and staffing" (Care Inspectorate, 2020: 4). Quality indicators (Qis) are identified as part of the framework and there is a 'scrutiny and improvement' toolkit that helpfully signposts services to key practice developments and guidance. A self-evaluation process is at the heart of the inspection; this enables services to assess how they are doing and provides the opportunity to showcase evidence and explore future developments. There is a six-point scale on which secure care centres will be graded and a written narrative will be provided post-inspection, highlighting strengths and developmental areas. Services have an opportunity to challenge the Care Inspectorate findings and amendments may be made if evidence is provided, supporting the challenge. The framework clearly sets out within the quality indicators what a very good service could look like in practice.

The Qis utilised by SPS focus on how good their care for children and young people in custody is. 24 indicators are split across the following subsections:

- The 'young person's experience'
- 'The environment' and
- 'Partnerships and Improvement' (SPS, 2020).

This process also incorporates a self-evaluation element where Qis are prioritised and evidence gathered to reflect how they are being met. These are described as being aligned to "the UNCRC, Secure Care Standards where possible and Youth Justice Standards" (SPS, 2020: 2). Children within SPS are not party to the same standards of care as those placed within secure care where the Secure Care Pathway and Standards are fully embedded. When looking at the child's experiences SPS explore the admission process, induction, and introduction into the YOI, everyday experiences, planning, needs and family as well as transitions out of the YOI. Evidence indicators provide useful guidance on how each of the Qis can be met. These and additional areas fall within the framework used by the Care Inspectorate from a children's wellbeing and rights perspective, incorporating the Standards.

Within the body of this report evidence is cited on how both YOIs and secure care centres evidence the quality indicators through the experiences of children. While positive and developmental feedback is received across both settings, the strength of relationships is reflected in feedback shared by the Care Inspectorate. Children were described as benefitting from calming milieus that promoted structure and routine, while relationships were observed as nurturing, with physical affection shown, alongside laughing and fun. This level of detail is not given in YOI inspection reports.

Opportunities for children's views to be shared are elevated within secure care due to the number of mechanisms in place where their views are sought. As part of the inspection process there is a [self-evaluation](#) mechanism in addition to views being sought from children, their families and key stakeholders. Children are also consulted in an ongoing way in relation to care planning, day to day experiences and the wider context of their care. The Care Inspectorate have also noted that children within this setting experience good access to advocates who are able to represent their views.

6. Placement breakdowns

The configuration of secure care provision in Scotland allows for a degree of flexibility should a child require to move from one setting to another. This may occur following a significant incident that leads to a breakdown in the caring relationships. For a very small number of children who are placed in secure care due to a period of detention, the behaviours and risks associated with the child lead to a decision being made to move the child into a YOI to serve the remainder of their sentence. Should the identical issue have arisen within a YOI, and a similar breakdown in the child-staff relationship occurs, there is often no recourse to alternative placements.

Were future legislative provision to prohibit the use of YOI for any child then all children receiving a sentence of detention would be placed within secure care. If that were the case and a breakdown in relationships subsequently occur, the absence of the option to utilise YOI would not necessarily lead to a crisis. The remaining four secure care settings could, following dialogue and consideration, offer accommodation and seek to address any challenges faced by the child. Of course, the most desirable solution would be to seek a repair of the relationship however the option of moving from one secure care home to another could be utilised if necessary. While this option is rarely utilised and secure care settings have largely managed to contain this type of situation themselves, alternative contingency planning arrangements are necessary so that learning can be shared, and the child afforded stability within a child-appropriate setting.

Since the publication of The Promise, discussion has taken place amongst relevant parties regarding the hypothetical scenario where a child sentenced to a period of detention acts in an acutely violent manner towards staff or other children within the secure arena, resulting in the management of the placement initiating proceedings to end their period of care. Some have queried what would happen if a move into a YOI was not possible, and the remaining secure care providers were unwilling or unable to provide a placement to the child. Four of the five secure care settings are run by independent charities and are therefore under no legal obligation to offer a placement to a child who has been deprived of their liberty. Whilst each organisation endeavours to provide a placement to every child who requires one, this

may not always be possible. Incorporation of secure care provision into the National Care Service – should the decision be taken that children’s services are included in any future National Care Service – may be one way of addressing this issue, thus bringing this strand of residential care under the jurisdiction of Scottish Ministers. Wider discussion regarding the adaptations and adjustment that could be made to the secure care provision is perhaps needed in order to fully address this question.

There is an opportunity for transitioning from a secure environment to one which is less restrictive. Moodie (2015) states that once a child becomes stable and no longer needs the safety and security of secure care, many of the secure care settings have close support services within their site or nearby that can promote a more independent way of living. COSLA’s response to the Justice Committee highlights that there can be a short window in relation to transitions and that getting this right is imperative (Scottish Government, 2019c). However, Scotland Excel have highlighted that this would be difficult if we look at secure care without looking at the wider care context. The Secure Care Pathway and Standards (2020) highlight the need to plan effectively for when children move on; this continues to be raised within practitioner forums as an area for development as we work to ensure that there is choice and availability to support children who are ready to move on. This is being considered through CYCJ’s Reimagining Secure Care work.

7. High profile cases

In the event of all children being placed in secure care rather than YOIs when sentenced to a period of detention, political and media attention may invariably focus on the critical few instances of children who cause the gravest of harm to others. This is particularly likely if those harmed are also children or if there are any particularly novel elements to the offence. In such a development, there may be a demand for the accused (if remanded) or guilty (if sentenced) child to be placed within a YOI or a prison-like setting in order to achieve ‘just deserts,’ or due to perceived or assumed risk of harm posed by that individual. There may also be concern over the risk of retribution from others who wish to cause harm to someone deemed to have engaged in behaviour that meets the disapproval of their contemporaries within the secure or YOI setting.

However, as this report has illustrated there are already a significant number of children within secure care who have been accused or convicted of acute levels of physical and sexual violence. The risk of harm to others is satisfactorily managed within that setting, where a greater staff to child ratio also allows for a greater level of supervision, whilst affording children a greater opportunity to meet their developmental milestones.

In relation to potential retribution, potential changes to reporting instructions within court proceedings could negate this risk somewhat, should lifelong anonymity be granted for all children accused of a crime. This would avoid the risk of media coverage of high-profile court cases contributing to a demand for vengeance from some quarters. Nevertheless, even without this development it is possible for services within the secure care environments to address this issue. Separating children from those who wish to cause them harm is not unusual practice within the secure arena and could be adopted more regularly should the need arise, and the service have capacity. Indeed, this approach has been utilised by secure care staff in the recent past when supporting children who were subject to media attention, and whose behaviour had elicited the disapproval of their peers. The enhanced staff to child

ratio allows for this approach to be deployed, whilst avoiding the use of seclusion and isolation to ensure the safety of others.

Many of the few critical cases referred to feature underlying mental health concerns which have contributed to the offence that precipitated admission into the custodial estate, or which impact upon the child's wellbeing. The increased level of support available within secure care better responds to this need. Mental health services within the custodial estate have been found to experience a number of gaps in provision (HMIPS, 2021); this view was shared by the expert review of the provision of mental health services for young people entering and in custody at HMP YOI Polmont (HMPS, 2019). Importantly, children within secure care receive swifter access to psychological support, psychiatry and other interventions that can manage, reduce, and minimise risk.

8. Family and social work visits

A significant difference can be found in the nature, frequency and quality of visits that can be undertaken by family members or social work and allied professionals across secure care and YOI settings. These have a differing impact upon the child and family and can also influence the insight and depth of assessment undertaken.

Whilst there are opportunities for family members to visit the child within a YOI, this commonly occurs within large, communal areas and at predetermined, structured timeslots. Physical contact is allowed, although monitored and kept to a minimum. Whilst visits from social work staff and other professionals can take place within YOIs, these often have to compete with other priorities for the child, and the custodial regime. These visits take place within 'agents' provision which, whilst offering privacy, do not provide any insight into the child's interactions with custodial staff or other children. The public nature of the visit, within a glass interview suite into which other inmates can see, is also a barrier to undertaking emotional or personal work that could be beneficial to the child.

Such issues are somewhat less acute within secure care, where social workers and others often see children interact with their peers during recreation, group living or with family. These observations assist the development of more holistic assessments, replete with insights into familial and peer dynamics that can aid the development of transition plans. Whilst there are similar regulations and rules surrounding visits within secure care, this is a less austere environment and takes place within a more family orientated and relaxed space; here intimate, personal conversations can take place in relative privacy and with the support of staff members where necessary. Scotland's Care Inspectorate often highlight the opportunity for family dynamics focussed interventions to take place, thus supporting the repair of familial conflict which may have precipitated the child's admission into that setting. Given that a great deal of children return to the family home or community soon after leaving secure care, it is imperative that the quality of these relationships is enhanced in order to assist the longer-term outcomes and success of the child's transition out of secure care (Wroe, Peace, & Firmin, 2023).

9. Next Steps

Production of this scoping report has proven difficult due to the limited availability of data pertaining to children who are currently placed within secure care or YOI settings. Despite this limitation, the information provided gives insight into the needs of those children who may come into conflict with the law or pose a risk to themselves or others, resulting in the need for a safe and secure environment to manage that risk. Future enquiries in this area, and greater collaboration between key stakeholders in sharing data, would enhance Scotland's ability to make positive and effective decisions regarding the wellbeing of these children.

Drawing on what limited data is available within published reports, and by introducing new data from ongoing projects, this report has highlighted the multiple adversities faced by those children who enter secure care and YOI. Their experiences are manifestly complex, with welfare concerns present in the vast majority of cases. Concerns over the risk posed by the children in question are also evident within the data; not only in the case of those children who have committed the most serious offences, but in the wider range of concerns that may not necessarily have resulted in justice involvement. Like welfare concerns, these risks are to be found both within the secure care and YOI population. This report thus provides evidence that the needs of these groups of children are remarkably similar. Further research in this area would be welcomed, so that we have a clearer picture of current needs amongst the small number of children who enter the secure or custodial environments. However, what is currently known reflects that the offending behaviour that precipitated the children being placed within the locked environment is similar with children who have committed the most serious of offences being detained both within the secure and YOI environment. This report therefore concludes that not only are the needs of these two cohorts similar, but their deeds are likewise analogous. This report echoes the views of Hart and La Valle (2021) who argue that children placed on 'welfare' and 'justice' legislation are in fact the very same children. Considering this, it is reasonable to query why separate locked provision is utilised. It is also reasonable to argue that that secure care centres are already providing care and protection for children who have caused the most significant levels of harm.

It has been noted that over a one-year period, 177 children experienced secure care in Scotland with a further 74 experiencing a period of time in a YOI in the financial year 2020- 21. This indicates a level of turnover that is likely to impact on the stability of placements for children within secure care and how this is managed needs to be carefully considered. The scale, size, remit and person-centred approach to the care and protection of children within secure care settings supports the assertion that they are better equipped to meet children's needs, although further work is necessary to ensure that there is a rethink of the delivery of secure care services (The Promise, 2020). In December 2022, the Scottish Government commissioned CYCJ to undertake an 18-month project that will take forward this delivery by reimagining secure care.

Further exploration around how secure care centres meet the needs of the children within their care and manage any challenging behaviour is necessary if we are to identify appropriate strategies for supporting those children who have in the past been moved on to YOIs.

It is clear that there is no proven formula that sets out the ideal size of secure care provision, but this report indicates that smaller houses are more in keeping with trauma-informed responsive care. Consideration of developmentally appropriate settings may also reduce the risk of children feeling that they have outgrown a placement, or that they are ready to move on to an adult setting, although it also has to be recognised that a smaller group may result in contagion.

The suggestion of a national referral mechanism would enable a more effective strategic plan to be put in place for secure care, helping with the facilitation of future planning. However, it is important that secure care is not viewed in isolation as it is evident that transitions for children with experience of secure care is an area that requires further development; lack of an appropriate and timely moving on service can often result in poor outcomes. In striving to improve this, reform within the wider care system is needed, reflecting the conclusions and ambition of The Promise.

The report has highlighted the different models of inspection and monitoring processes within secure care settings and YOIs and there appears to be a more interactive process in the former. The embedding of the Secure Care Pathway and Standards within practices across the secure care centres should help to ensure that children who live there experience a rights-respecting approach to their care. This is aligned with the commitment of both The Promise and Scotland's adoption of UNCRC legislation. Continuing the work of the Champions group ensuring a national approach to improving the experiences of children is evident and continues to be of crucial importance.

Further differences have been highlighted within the process of assessment undertaken when admitting a child into the secure care environment. This report has argued that secure care's adoption of the GIRFEC model lends itself to a comprehensive understanding of the child's personal needs, risks, and strengths, along with their position within the social and environmental milieu. By comparison, the level of assessment undertaken at the sentencing stage is far more limited and lacking in depth. Given the range and complexities of risks, needs and vulnerabilities faced by this group of children highlighted within this report, an approach which best equips staff within the secure care and YOI setting is needed.

While it has been shown that there are strengths in partnership working across settings, this report has also highlighted that the contractual nature of secure care provision promotes competition and can stifle joined up and collaborative working. A focus on bed rates and capacity within SAN Scotland rather than specialist individualised meeting of children's needs means that it is unclear what different secure care centres offer to children. A change in language and recording mechanisms could support transformational change in how services are perceived. There should be opportunities for secure care centres and YOIs to learn from each other as they provide a plethora of opportunities for children within their care.

The [Children \(Care and Justice\) Bill](#) which is currently making its way through Scottish Parliament has the potential to reconfigure the manner in which secure care is used in Scotland, going some way towards achieving the conclusions of The Promise. This report points to considerations to be borne in mind amongst the debate and potential new legislation, suggesting areas that require to be addressed in order that Scotland's response to children who face, take or make the highest levels of risk is equitable and effective.

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