



Agenda Item
3.6

Meeting	Policing Performance Committee
Date	15 June 2023
Location	MS Teams
Title of Paper	Places of Safety for Children in Conflict with the Law – Post-Event Report
Presented By	Scott Ross, Head of Change and Operational Scrutiny Chief Superintendent Gordon McCreddie, Divisional Commander Criminal Justice Services Division
Recommendation to Members	For Discussion
Appendix Attached	Yes Appendix A: Places of Safety for Children in Conflict with the Law – Post-Event Report

PURPOSE

This paper provides an overview of the 'Places of Safety for Children in Conflict with the Law' event which took place in November 2022. This event was jointly convened by the Authority and Police Scotland. Appendix A contains the Post-Event report which further details the outcomes from the event.

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Policing Performance Committee
Places of Safety for Children in Conflict with the Law – Post-Event Report
15 June 2023

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1 BACKGROUND

- 1.1. The Scottish Police Authority and Police Scotland have made public their view that police custody is not a suitable place of safety for children. As part of the regular Independent Custody Visiting Scheme reporting, the number of children taken into Police Scotland custody is regularly published, with 4,012 children held in custody from 1st April 2021 – 31st March 2022. This is a decrease from the 4,147 children and young people held in the 2020-21 reporting year.
- 1.2. In November 2022, the Authority and Police Scotland hosted the Places of Safety for Children in Conflict with the Law event to discuss the topic of children in police custody with key stakeholders.

2 FURTHER DETAIL ON THE REPORT TOPIC

- 2.1. The event brought a variety of stakeholders together to discuss how agencies can collaborate to keep people safe while minimising the number of children that experience police custody when they come into conflict with the law.
- 2.2. The event was attended by Chief Social Workers (or a nominated representative) from across Scotland, Scottish Government and public sector partners. In addition there were also attendees from representative organisations, including the Children and Young People's Centre for Justice (CYCJ), The Children and Young People's Commissioner Scotland and Who Cares? Scotland.
- 2.3. Key note speakers at the event included Fiona Dyer, the director of CYCJ, James Docherty of the Scottish Violence Reduction Unit, DCC Malcolm Graham and the Chair of the Authority.
- 2.4. The focus of the event was the facilitation of group discussions based upon two scenarios. Whilst these scenarios were created solely for the purpose of the event, they are a true depiction of circumstances Police Scotland and partners regularly face. During these discussions, participants considered the care and welfare of children with a view to improving the shared understanding of challenges for all partners and stakeholders. Most importantly, discussion focused on the likely impact of holding a child in police custody. This opened beneficial dialogue on identifying solutions and future opportunities to drive positive change in the short, medium and long term.

2.5. Following thorough analysis of the discussions at the event, several key themes emerged. Attendees identified these considerations as potentially supporting further reductions in the number of children that experience police custody while still supporting victims of crime. Full details of these themes are provided in the post-event report (appendix A), however for ease a brief summary is provided below:

- **Enhancing Partnerships** – Momentum from the event should support the development of a common understanding of roles, concerns and obligations for each organisation involved in safeguarding children and the criminal justice system. Attendees expressed a willingness to develop united and transparent approaches at a local level.
- **Definition of a child** – The Scottish legislative landscape includes several different definitions for children and young people. As such, opportunity exists to streamline the definition of a child within legislation.
- **A multi-agency care setting for children accused of crime** – It was considered that the similar fundamental underpinning principles of Bairn’s Hoose could be used to develop a separate (standalone) solution for children accused of crime that did not share space with victims of crime. For example, a multi-agency care setting could be developed that still allowed for investigative processes to be undertaken.
- **Driving improvements that meet local needs** - It was recognised that approaches to minimise the number of children and young people that experience police custody in major cities may not be easy to directly replicate in less urban, rural, remote or island communities. Discussions highlighted that there will not be a standardised approach, but rather any national initiatives should help support and drive the best possible care for children and young people who are in conflict with the law at a local level.
- **Protecting care experienced children from criminalisation** – Care experienced children are far more likely than other children to come into conflict with the law. When interacting with care experienced children, officers and other frontline professionals should ensure a caring and empathetic approach is taken which focuses on supporting the

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child and understanding their circumstances, rather than criminalising the child.

- **Provision of seven day courts** – Currently, if a child is arrested on a Friday night for a serious offence and no alternative place of safety is provided by the local authority, it is likely the child will remain in police custody until courts reopen on Monday morning. Lengthened stays in police custody will likely add to any trauma experienced by a child. To improve this situation, delegates proposed consideration be given to extending court opening hours to six, or ideally seven days per week.

3 WORK UNDERWAY AND FUTURE DEVELOPMENT

- 3.1. Many of the themes that emerged from the event are not for Police Scotland or the Authority to consider in isolation. Rather, the majority would require enhanced partnership work and collaboration.
- 3.2. SPA and CJSD Officers continue to explore, with partners, how the themes that emerged from the event could be put into practice. Several discussions taken place between SPA, Police Scotland and Scottish Government colleagues.
- 3.3. The Scottish Government provided the following statement: *'The Scottish Government agrees that police custody is not a suitable environment for children and is supportive of minimising its use as a place of safety for children in conflict with the law. Where this remains necessary, our shared aim should be for its use to be for as short a period as possible. We recognise the realisation of finding alternatives to police custody requires the involvement of a range of partners to ensure the development and delivery of local and national solutions.'*

The Scottish Government will continue to work proactively with all partners on this agenda. This includes progressing the Children Care and Justice (Scotland) Bill and exploring the supports partners will require for commencement and implementation, including consideration of places of safety for children who enter police custody and for those appearing at court.'

- 3.4. Following on from stakeholder event in November 2022, G Division, CYCJ, Glasgow, East Renfrewshire and East Dumbarton are

organising a practitioner event to look at Places of Safety. It is being held on the 27 September in Glasgow City Chambers.

- 3.5. CYCJ & Social Work Scotland are also planning a follow up event in November 2023
- 3.6. Both Police Scotland and the Authority will continue to work with partners to consider how themes that emerged from the event can be adopted. In the meantime, Police Scotland continue to have rigorous controls in place to ensure that only in exceptional circumstances will a child be brought into police custody. Should the situation arise that a child is brought into custody additional safeguards are in place to ensure the care and welfare of that child.

4 FINANCIAL IMPLICATIONS

- 4.1. There are no financial implications in this report.

5 PERSONNEL IMPLICATIONS

- 5.1. There are no personnel implications in this report.

6 LEGAL IMPLICATIONS

- 6.1. There are no legal implications in this report.

7 REPUTATIONAL IMPLICATIONS

- 7.1. There are no reputational implications in this report.

8 SOCIAL IMPLICATIONS

- 8.1. There are no social implications in this report.

9 COMMUNITY IMPACT

- 9.1. There are no community implications in this report.

10 EQUALITIES IMPLICATIONS

- 10.1. There are no equality implications in this report.

11 ENVIRONMENT IMPLICATIONS

11.1. There are no environmental implications in this report.

RECOMMENDATIONS

Members are invited to discuss the contents of this paper.



SCOTTISH POLICE
AUTHORITY
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POLICE
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Places of Safety for Children in Conflict with the Law - Post-Event Report

Roundtable
hosted by the
Scottish Police
Authority and
Police Scotland



Tuesday 15
November 2022
10am until
3.30pm



#PlacesofSafety

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"This event aims to not only highlight our views that police custody is not a suitable place of safety for children in Scotland, but to also engage with partners and discuss how we could take a collaborative approach in ensuring children receive the right support, from the right service, at the right time, to best care for their needs." – Sir Iain Livingstone QPM, Chief Constable, Police Scotland

"The Scottish Police Authority do not consider police custody to be a suitable setting for children who are in conflict with the law." – Martyn Evans, Scottish Police Authority Chair

Main Report Findings

The Scottish Police Authority (the Authority) and Police Scotland agree that police custody is not a suitable place of safety for children. In November 2022, the Authority and Police Scotland brought together key stakeholders to discuss how agencies can work together to keep people safe while minimising the number of children that experience police custody when they come into conflict with the law.

This report provides a summary of the challenges and the discussion that took place during the event. It also outlines a number of next steps.

Children in conflict with the law

Police Scotland's purpose is to improve the safety and wellbeing of people, places and communities in Scotland. Underpinned by human rights, this purpose focuses on keeping people safe in line with the values of integrity, fairness and respect. In order to achieve this purpose while maintaining these values, police officers, on occasion, must make difficult decisions that can include the need to deprive a child of their liberty.

Last year, 3730 children and young people were arrested and taken to a police station. Of these, 1473 were younger children (children under 16 or children aged 16-17 and subject to a compulsory supervision order) and whilst 1395 were subsequently released from police custody at the conclusion of enquiries, 78 were held in police cells to appear before the courts. Of the 2257 older children (children aged 16 or 17) brought into custody to enable further enquiries, 1767 were released at the conclusion of enquiries and 490 were held in police cells to appear before the courts.

While this number is reducing, the Authority and Police Scotland still wish to reduce this number further.

A child or young person is held in Police Custody for investigative purposes. After investigation has concluded and the child and young person is charged with a crime, they are only ever held in police custody as a last resort because there are no other suitable places of safety made available.

Police custody is not a place for punishment. It is instead a place to hold people that are suspected of committing a crime, either for questioning or for appearance in court. There is, however, a growing body of evidence that suggests that children and young people consider police custody to be a highly punitive action. Being held in a police custody cell is an intimidating experience. Police custody facilities are typically designed to detain adults suspected of criminal activity, and they offer little in the way of comfort or emotional reassurance. For a child, especially one who has suffered from adverse childhood experiences, regardless of any positive police interaction, being held in this physical environment is likely to be harmful and may have long term traumatic impact.

Children held in police custody are inherently vulnerable. This vulnerability is not only due to their age, but also likely due to the circumstances which brought them into contact with the police.

They may be under the influence of drugs/alcohol, or coming to terms with events that led them to be in conflict with the law, and the combination of circumstances may have a lasting impact on their lives. Consequently, children and young people are likely to find police custody a highly stressful and emotionally demanding environment.

Police Scotland seeks to minimise the need for children to enter custody, encouraging officers to progress minor matters without reverting to powers of arrest. However, when an arrest is necessary the law requires police to take all arrested people to a police Custody Centre with no alternative currently available. However, even when the investigative process has concluded, police often find no other person or service is willing to take care of the child for a variety of reasons. Most commonly there is no other place of safety available or because the child is displaying challenging behaviour or is under the influence of alcohol or drugs. As such, children are often kept in custody longer than required for the investigation of the matter they were arrested for, further compounding any impact.

Police Scotland is subsequently held to account for this in the media and by society, despite having almost no control over alternative places of safety available.

Introduction to the event

On Tuesday 15 November 2022, the Authority and Police Scotland brought together key stakeholders to discuss how agencies can work together to keep people safe while reducing the impact of children being held in police custody. The event was attended by Chief Social Workers (or a nominated representative) from across Scotland, Scottish Government and public sector partners as well as representative organisations, including the Children and Young People's Centre for Justice, The Children and Young People's Commissioner Scotland and Who Cares? Scotland. A small number of organisations that were invited to attend were unfortunately unable to do so due to competing commitments (including Scottish Youth Parliament, Amnesty International and Action for Children). The Authority and Police Scotland endeavoured to include a wide range of organisations to inform discussions to ensure consideration of the different perspectives and challenges faced across sectors.

The event was participatory by design, providing all delegates with a platform to voice their experiences and opinion. During discussion, participants considered the care and welfare of children with a view to improving our shared understanding of challenges for all partners and stakeholders. Most importantly, discussion focused on the likely impact of taking a child into custody and holding them. This opened beneficial dialogue on identifying solutions and future opportunities to drive positive change in the short, medium and long term.

During the event, delegates considered two fictional case studies, which were carefully constructed to represent challenges that Police Scotland and its partners face on a daily basis.

The first case study followed Oliver (aged 15) who had been arrested as a suspect following disclosures made by his 10 year old sister. The case study allowed delegates to discuss expectations regarding Oliver's care; who was best suited to care for Oliver during the Police investigation; how and where forensic investigative opportunities were undertaken and who was best placed to support Oliver if he was charged with an offence. The circumstances were further complicated when it came to light that Oliver too had been a victim of non-recent familial sexual abuse. The challenges and responsibilities that this placed on all involved was subsequently discussed.

The second case study followed the story of Emma (aged 16), defined as an 'older child' in terms of the Criminal Justice (Scotland) Act 2016, and focused on more commonly-experienced offending behaviours. However, the study also considered aspects of potential exploitation of Emma by adults. Again, groups were asked to discuss appropriate care for Emma; the appropriate place for investigations to be conducted; and how to safeguard Emma.

Both of these case studies generated robust discussion and debate among delegates. In most cases, people shared similar views about how the circumstances should ideally be handled by both the criminal justice sector and the health and social care sector. A brief summary of the discussion is provided below, with a full report of the discussion that emerged from each case study provided in Appendix A.

Whilst everybody fully recognised the importance of supporting the victims of the crimes committed by both Oliver and Emma, it was agreed that there was an equally important obligation and duty to manage their needs simultaneously. Ensuring all action taken and the processes that underpin this action are trauma-informed and child-oriented was thought to be essential to improve the outcome for any child who is in conflict with the law. In addition, ensuring there are appropriately trained professionals involved in the process is important to improving outcomes for children.

However, many discussed that current legislation offers limited options for tailoring criminal justice processes when children come into conflict with the law. Some delegates suggested that attending custody could be removed entirely for children, whilst still facilitating the investigation through attendance at another location more suitable for dealing with children who may well be innocent of allegations made. Processes and legislation, combined with risk aversion in some organisations, result in 'error terror', as individuals may be nervous to make decisions which are considered to be in the best interest of the child, but may introduce some additional risk for them, or their organisation. Some noted that individuals should be 'brave' and own their choices, with some suggesting that this could be facilitated through developing processes that would not hold individuals personally liable for decisions that could be evidenced as in the best interest of the child at the time. Furthermore, groups emphasised that any failings in situations such as Oliver's or Emma's should not be seen as a fault of frontline workers.

Key however was the fact that partnerships and processes need to work better to support children like Oliver and Emma. Proportionality and flexibility of approach was discussed widely, however clear processes should be established. Robust support in out of hours contexts was considered essential in providing a consistent approach, as discussions on both scenarios referenced as to how the approach would vary depending on the date and time it occurred. Local differences in approach were also mentioned.

It was recognised that partners need to work better and understand each other's culture and limitations in order to facilitate positive changes. Data needs to be better shared between bodies to allow timeous decisions to be made, utilising all of the information available. Ultimately, it was agreed all partners have responsibility for children in conflict with the law, and at times it may be appropriate to engage with third sector partners for their expertise.

However in cases such as Oliver and Emma, the challenge of finding suitable places of safety was discussed in detail by partners. No one present suggested in either of the cases, it was appropriate for the children to remain in police custody. However, many recognised the current system afforded no other realistic choice.

Many delegates suggested a model such as Bairn's Hoose to facilitate all the appropriate assessments and procedures needed in these cases. Whilst this was not a resounding resolution (with some stating that there would be challenges in providing such a model for both victims and those accused of crime), having a facility in which all partners are present to enable a thorough but efficient process in a child-friendly setting would be beneficial to all parties. Some real-life examples which utilise a more dynamic and child-centred approach already exist including the 'SCIM' (Scottish Child Interview Model) model being trialled in several local authorities, and Ireland's collaborative approach in the case of children in conflict with the law.

Alternative Place of Safety

Some children have committed acts that are against the law. These can vary from relatively minor offences with little impact to the most serious and grave offences including rape and murder. The Police Service is responsible for ensuring the efficacy of any investigation on behalf of the victim and communities, but also has a responsibility to consider the needs and rights of those who are accused of committing a crime. This responsibility is amplified when police officers are entrusted with dealing with some of our most vulnerable people, including children.

The severity of a crime will influence whether it's proportionate to arrest that child and present them at a Police Custody Centre. A significant number of incidents are dealt with in the community with no need to arrest children at all. Presentation at a Police Custody Centre is often necessary to prevent further offending, facilitate investigations and capture samples such as; fingerprints, photographs and DNA. Any arrested person must also be afforded their rights to having a reasonable named person and a Solicitor informed of their arrest, with further solicitor access options if a Police interview is required. A Police Custody Centre is currently, in respect of legislation and facility, the only legal option available to enable these procedures.

However, the biggest challenge faced by the Police is in securing the release of a child either back to their family/care provider, or obtaining a placement in a care setting, timeously. Custody supervisors are often faced with the need to keep children in custody, after the investigative process is complete, for prolonged periods because either a placement cannot be found for them or because their family/care placement cannot attend at the custody centre to collect the child.

For a variety of reasons, the police service is often faced with the need to keep children in police cells long after the investigative process is complete. Where it has been decided that a child must appear before the court because of the gravity of the offence or in order to protect others, children are often held in cells because the local authority cannot provide an alternative place of safety for them. Alternatively, where the police have concluded their investigative process and are able to release a child from being held in cells, they are often unable to do so as their corporate parent, biological parent or guardian are unable or unwilling to collect them until they are sober or less challenging. Not only is this likely to increase the trauma that the child is exposed to, it could also be argued that this goes against the provisions of the Criminal Justice (Scotland) Act 2016 and the Lord Advocate's guidelines which are based on the presumption of liberty.

Key considerations

The following section summarises the key considerations that emerged from the event on 15 November 2022. These considerations are intentionally action orientated, focusing on practical steps that could be taken to reduce the number of children who experience police custody in Scotland.

1. Enhancing partnerships

There were several discussions about enhancing partnership working between Social Work, Police Scotland and the third sector. It was apparent there are gaps in understanding in terms of what each of the agencies does and their statutory obligations. Momentum from the event should support the delivery of workshops for local practitioners to develop a common understanding of roles, concerns and obligations for each organisation involved in safeguarding children and the criminal justice system. Ultimately, there was a belief that organisations and individual partners want to see the best for children and young people in conflict with the law. This was paired with a willingness to develop transparent and united approaches at a local level.

2. Definition of a child

The Scottish legislative landscape includes several different definitions for children and young people. The recently introduced Age of Criminal Responsibility Act (ACRA) protects those aged under 12 from harmful criminalisation. The Criminal Justice (Scotland) Act includes different provisions for those under the age of 16 and those aged 16 and 17 years of age and subject to a compulsory supervision order. The Corporate Parenting duties given to organisations named within the Children and Young People (Scotland) Act 2014 protects the needs of care experienced young people until their 26th birthday.

Recognising children's rights and improving children's outcomes are major components of the Scottish Government's policy agenda. However, opportunity exists to streamline the definition of a child within Scottish legislation. This is particularly relevant to the Criminal Justice (Scotland) Act which includes specific provisions for those under 16 if not subject to a compulsory supervision order.

The Scottish Government remain committed to delivering the rights of children and young people, as enshrined in the UNCRC [United Nations Convention on the Rights of the Child]. The Scottish Government are currently making amendments to the UNCRC (Incorporation) (Scotland) Bill, before presenting to Scottish Parliament for reconsideration (following a previous challenge by the UK Supreme Court). The provisions in the UNCRC apply to all children and young people, aged 17 and under, a comprehensive set of rights. Incorporation of UNCRC into Scots Law, will likely present an opportune moment to streamline the definition of a child within criminal justice legislation, particularly the Criminal Justice (Scotland) Act.

It should be noted that the Children (Care and Justice) (Scotland) Bill is currently at Stage 1. The Bill makes changes to the law in relation to the care of children and the involvement of children in the criminal justice system. The first part changes the definition of "child" in the children's hearings system from someone under 16 to someone under 18. This part makes some other changes which include offering more guidance for children who turn 18. The second part makes changes to criminal procedure in relation to children, including the kind of accommodation and safeguarding that is used. This includes stopping children under 18 from going to a young offenders institution (YOI) or prison.

3. A multi-agency care setting for children accused of crime

When considering alternatives to holding children in police cells, discussions focused on the role of the Bairn's Hoose for victims of crime. Recognising most children and young people who are suspects/accused of crime are also vulnerable and often victims themselves.

Partners discussed potential alternatives to police custody to care for their needs. Naturally, comparisons were made to the Bairn's Hoose and this was identified as a potential multi-agency care setting for children that come into conflict with the law. There were however mixed views among delegates as to whether the Bairn's Hoose itself, or an alternative standalone solution would be preferable for children that have been accused of causing harm.

Some considered that the Bairn's Hoose would potentially be an inappropriate setting for both victims and certain individuals accused of crime (depending on the nature of the alleged crime) to be housed. Practical concerns regarding, including, forensic cross-contamination and conflicts with victims and those accused of the crime being co-located were identified. Furthermore, such settings would also allow for children's wider needs (such as mental and physical health) to be appropriately monitored and supported by appropriately trained staff.

Some delegates considered that the similar fundamental underpinning principles of Bairn's Hoose could be used to develop a separate (standalone) solution for children accused of crime that did not share space with victims of crime. For example, a multi-agency care setting could be developed that still allowed for an investigative process to be undertaken. This facility would have the appropriate staff in place to best care for the young person. It is recognised that this approach may require legislative change to allow for rights of the child and young person to be offered to them in this setting rather than at a police station.

Delegates agreed that in general terms a multi-agency care setting would be more appropriate and less trauma inducing than a police custody centre and police cells, where they will most likely be alongside adults in police custody and all the trauma that environment can introduce. Although such solutions would likely require investment, there may also be opportunity to use neutral spaces (from across the public sector estate) in less urban areas. This would support consistency in service across the country.

4. Driving improvements that meet local needs

There was a clear statement made on the day that the Authority and Police Scotland do not believe that custody is an appropriate place for children and young people and that alternative and local solutions are required.

Discussions on the day highlighted that there will not be a standardised approach to resolving this problem, but rather any national initiatives should help support and drive the best possible care for children and young people who are in conflict with the law at a local level.

It was understood on the day that, for example, end to end resolutions to this issue that might help major cities may not be easy to directly replicate in urban, rural, remote or island communities. A resolution to this would be opportunities to develop local practice through Key Consideration 1, by bringing practitioners together at a local level. It is envisaged that local developments and resolutions to help care for children and young people who are accused of a crime could be helped and supported by national initiatives. This would require in-depth consultation with all different communities and areas prior to any legislative changes or investment for multi-agency alternatives to custody.

5. Protecting care experienced children from criminalisation

Police Scotland, the Scottish Police Authority and Scotland's local authorities are all named as Corporate Parents in the Children and Young People (Scotland) Act. A corporate parent is the name given to an organisation or person who has special responsibilities to care experienced children and young people

In simple terms, a corporate parent is intended to carry out many of the roles a loving parent should. While they may not be able to provide everything a parent can, they should still be able to provide the children and young people they're responsible for with the best possible support and care. Corporate parent responsibilities are intended to encourage people and organisations to do as much as they can towards improving the lives of care experienced children, so that they feel in control of their lives, and are able to overcome the barriers they face.

During discussions it was clear all attendees took their responsibilities as a corporate parent incredibly seriously, and were acutely aware of the challenges care experienced children face. It was also widely acknowledged care experienced children are far more likely than other children to come into conflict with the law. In addition, when interacting with care experienced children, officers and other frontline professionals should have a caring and empathetic approach focuses (d) on supporting the child and understanding their circumstances, rather than criminalising the child.

During table discussions it was clear delegates were aware of the challenges that exist with regard to managing behaviours in the care setting. It was acknowledged adverse childhood behaviours are almost exclusively managed by parents or guardians in traditional home settings. Contrary to this, for children in the care setting, adverse behaviours could often result in the police being contacted.

It was suggested that police involvement could be limited with care staff instead trying to manage behaviours or seeking the support of additional services (e.g. social work) and only calling the police if there are serious concerns. Furthermore, in the instance where a child needs to attend a custody setting, residential staff familiar with the child should discuss the child's needs to ensure they can be best supported in the custody setting.

There may be opportunity for local authorities to provide further training to care staff regarding the management and de-escalation of behaviours and how to deal with absconding.

6. Provision of seven day courts

During table discussions it was recognised that Scottish courts only operate from Monday to Friday can place further challenges on the police and how they minimise any exposure a child has to police custody. Currently, if a child is arrested on a Friday night for a serious offence and no alternative place of safety is provided by the local authority, it is likely the child will remain in police custody until courts reopen on Monday morning. It was recognised lengthening a stay in police custody would significantly add to any trauma experienced by a child.

Discussions then moved on to how this situation could be resolved with delegates proposing consideration be given to extending court opening hours to six, or ideally seven days per week.

Next steps

Police Scotland and the Scottish Police Authority have been clear they do not consider police custody to be a suitable place for a child. Through discussions held during the Children in Conflict with the Law event it was clear this was a vision shared by both partner and representative organisations.

Going forward Police Scotland and the Authority will take every precaution to ensure no child is unreasonably or unnecessarily held in police custody.

Police Scotland will also continue its efforts in promoting disposal alternatives to reduce the number of children taken to police custody overall.

It is recognised Police Scotland only plays a small part in the overall journey of children in conflict with the law. In order to help improve the welfare and treatment of children who are in conflict with the law, partners will need to own some of the next steps that have arisen from the event. The below seeks to articulate the Authority and Police Scotland's role in the initial implementation of these next steps.

There is an opportunity for partners to use momentum from the event to deliver workshops in order that local practitioners develop a common understanding of the roles, concerns and obligations on each organisation involved in safeguarding children and the criminal justice system. The Authority and Police Scotland will liaise with partners in the first instance to progress this action.

The Authority and Police Scotland will liaise with Scottish Government to identify the next opportunity to review the legislative landscape to simplify the definition of a child and young person across several Acts of parliament.

The Authority and Police Scotland will liaise with Scottish Government to discuss the potential for a future the creation of a multi-agency care setting for children in conflict with the law. In the longer term, Police Scotland and the Authority will work with Scottish Government to articulate a case for future legislative change that would ensure in the future no child would be brought into a police custody able.

There is an onus on local authorities to create, with partners, local solutions that will help ensure the amount of time children and young people spend in Police custody is significantly reduced.

The Authority and Police Scotland will liaise with partners to discuss how a joint approach can be taken to ensure a decrease in the criminalisation of children and young people who are care experienced.

The Authority and Police Scotland are already aware of discussions regarding a 6 or 7 day court service. The Authority and Police Scotland will liaise with Scottish Government and Crown Office and Procurator Fiscal Service to establish if there is an opportunity to ensure children are able to attend court 7 days a week.

Case Studies Summary

Case Study 1 - Oliver

The first case study considered the fictitious scenario involving Oliver, a 15 year old. Oliver was accused of sexual offences committed against his younger sisters. As the scenario progresses, it emerged Oliver may have additional needs and his family's support network may present a challenge in balancing his needs with that of his sisters'.

The subsequent discussion that took place can be grouped under the following themes:

- Oliver's rights and needs
- Legislation and policy
- Processes
- Balancing with the rights of victims
- Places of safety
- Partnerships, resources and sharing information
- Decision making, risk tolerance and culture

Oliver's rights and needs

As the scenario progressed and more information was shared with participants, it was clear there needed to be focus on both the victim and Oliver's needs. There was agreement that the crime Oliver had been alleged to commit was of a serious nature. However as Oliver is a child (under any definition) there was a requirement to consider and safeguard his welfare and rights. It was recognised such a sensitive and considered approach is particularly difficult to maintain in the initial stages of the investigative procedure. This was particularly the case as there was a necessity for the police to act quickly in order to protect any forensic evidence and under current legislation would require to be undertaken at a police station.

Delegates discussed Oliver may have Adverse Childhood Experiences (ACEs) and will require additional support due to his autism. All of these factors require appropriate consideration and should support a suitable trauma-informed approach to interaction with Oliver. In support of this, delegates considered Oliver should be fully supported to make sure he fully aware of the process involved as he progresses through the criminal justice system. It was also considered that he should be involved in the decision making process where possible and that he should have a social worker or an appropriate adult to support him throughout the process.

Furthermore, it was seen as important that Oliver was engaged in regular dialogue and was not left alone for any length of time. Minimising the potential for trauma was seen as essential.

Delegates generally considered that given the current provisions within the law and severity of the alleged crime that it was proportionate for Oliver to be taken into police custody, but that in an ideal scenario he would be held in an alternative place of safety before appearing in court. However, if it was ultimately decided that Oliver needed to remain in custody, this should be for as limited a time as possible. It was recognised that an extended period in police custody would likely result in trauma and greater exposure to adults in a custody setting. Delegates did however recognise the significant challenges that Police Scotland face in minimising time in custody due to Scotland's courts only sitting five days per week. It was suggested that the current system of five day judiciary services can compound both trauma and demand for police custody.

Legislation and Policy

The constraints and limitations policy and legislation have on organisational flexibility when caring for a child that has come into conflict with the law was discussed. Some groups noted that opportunity exists to standardise the definition of a child.

In terms of legislation specifically relating to alleged offences being committed by children and young people, the legislation could provide more flexibility in approach, enabling investigations to be progressed in the community or somewhere that is not a police station. This would ensure a child centred approach that could potentially avoid attendance at a custody centre. Furthermore, some delegates were unclear of what the present legislation allows for in circumstances such as Oliver's, other than legal rights and access to a solicitor.

Specifically relating to Scottish Government policies, some noted that there was a government obligation to protect the human rights and the wellbeing of children and young people of Scotland. As such, the lack of public sector funding to resource children's services adequately may result in public bodies failing to meet this obligation. Some went further to suggest that Scottish Government policy should look to remove custody entirely from a child's journey through the criminal justice system.

Processes

There was recognition amongst delegates that there are required processes in cases such as Oliver's, such as attending custody for forensics capture and interview. However, if allegations were non-recent, this would remove the urgency as there would be no forensic window to capture evidence. Some groups suggested adjusting procedural requirements in terms of proportionality of the case. Furthermore, the likelihood of criminal justice procedures, for example going to court, was also a potential factor in adjusting the processes. It was suggested by some partner organisations that the police have a particularly procedural ways of approaching investigations of sexual crimes, and that this is not necessarily in line with the broader wellbeing of children.

It was widely acknowledged that the response to Oliver's case would vary depending on the time of day or week. For example, the required Multi-Agency Initial Referral Discussion may be challenging to facilitate over the weekend. As such, out of hours processes should be mapped to enable as smooth a process as possible for Oliver, with an expectation that there should be out of hours support.

Whilst protecting Oliver's rights as both a child and a potential victim of abuse himself, protecting his reported victims was seen as a priority and there was recognition for the need to balance both their and Oliver's rights.

Places of Safety

It was the consensus amongst all groups that whilst Oliver would be physically safe in police custody, this is not a positive environment for any child to remain. However due to the complexity of the circumstances, agreeing upon an alternative was challenging. Some were of the view that Police Scotland should not have more involvement with Oliver once the required procedures were complete, and that ensuring Oliver's welfare was not within their responsibility.

It was widely agreed that, due to the risk he presented to his sister, the victim of a sexual crime, it would not be appropriate for Oliver to return to the family home. Due to the nature of allegations, it would be unlikely that Oliver could go to a residential unit or foster care. Ideally, Oliver would be placed in solo accommodation, although delegates acknowledged that in reality it would be unlikely that such accommodation would be available. It was noted that significant regional differences exist in the availability and type of accommodation that is available that can serve as a suitable alternative to police custody.

The issue of secure units was also discussed amongst different groups. Social work representatives suggested that at times, Police Scotland officers would sometimes make requests for 'secure accommodation' rather than a suitable 'place of safety'. It was however noted that the decision as to which type of accommodation a child is placed in is taken by the local authority. Social work colleagues also noted that placing a child in a secure unit has strict criteria, so in reality it may be difficult to obtain a place for Oliver in a secure unit. As such, the lack of secure unit places was agreed to lead to the unnecessary detention of children like Oliver in custody. Having considered all the likely possibilities currently available, partners concluded that the most likely outcome was that Police Scotland would be required to hold Oliver in custody for court as no alternative place of safety would likely be identified.

Whilst the challenges in providing an appropriate place of safety for Oliver were recognised, an example of good practice was also shared by delegates. The 'SCIM' model currently being trialled in East Renfrewshire is an early version of the 'Bairn's Hoose' model. It acts as a dedicated facility for child interviews and medical examinations and is in operation during weekdays. The 'SCIM' model works on a child-centred model with a slower investigation process to reduce trauma. Such a model of practice was recognised as being a more appropriate setting and process for complex cases such as Oliver's.

Partnerships, resources and sharing information

It was widely agreed that improved partnership working would be in the best interest for Oliver. There was recognition that all partners should take equal responsibility for children in custody and that social work representatives should be involved at the earliest possible stage. This would ensure appropriately trained professionals are available to support Oliver from the beginning.

However delegates were cognisant of resource constraints across organisations, and potentially how improved partnership working may have resource implications on all partners. As such, resource limitations may ultimately impact what happens in reality. Despite these potential limitations, it was regarded that more streamlined partnership working results in swifter action being taken for children and ultimately the best outcomes.

Some were in agreement that a child arriving in custody should be automatically subject to an immediate multi-agency review. This approach could potentially be supported by all partners being available in one place, enabling these early discussions.

This could support swifter identification of a suitable alternative place of safety, therefore minimising any exposure Oliver has to police custody. Delegates also suggested that third sector partners could be included in discussions to support Oliver. All partners being available in one location could also result in emergency children's hearings and diversion from prosecution. One group highlighted that such an approach may require a partner to coordinate and control the process.

Frequently cited amongst groups was the Bairn's Hoose model, with some suggesting similar provision for suspect interviews and medicals. This would be separate from any victims. Specific facilities for children were also suggested. It was also suggested that partnership working could be improved through investment in joined up databases and systems, allowing partners to share critical information about Oliver which can assist in making the most appropriate decisions.

Decision making, risk tolerance and culture

The decision making process in the case of Oliver is challenging as some groups explained that decision makers from partner organisations do not work at the weekend. Furthermore, some argued that discussions between partners should be taking place before any decisions are being made. Early engagement with partners around disposal decision making processes was seen as important, however there was recognition that this may not always be possible in cases of spontaneous arrest due to potential risk of loss of forensic evidence.

A theme which emerged in discussions was that of 'error terror' and the fear of making decisions in the case of what is best for children and young people in the instance that things go wrong. The lack of organisational confidence in making such decisions was noted, however some were of the opinion that individuals should be brave and take ownership of the decisions made. Social work were noted to be more risk tolerant, whereas it was suggested Police Scotland were more likely to be risk averse. It was opined that was because Policing was perceived to be one of the most heavily scrutinised public services and that any adverse outcome from release, regardless if it was in the interests of the child, would be referred to the Police Investigation and Review Commissioner (PIRC) and potentially others. Police may be slightly more willing to release those involved in more serious cases from custody where there were other alternatives which sat in between the binary choices of releasing someone or holding them in custody i.e. another alternative place of safety. Some tables went on to consider that a future legislative requirement to release children from police custody would remedy this concern.

Additionally, it was considered that such risk aversion could be partially alleviated by developing procedures that provide sufficient flexibility to allow informed risk management. This could ensure that as long as the individual is compliant with the procedure, and can evidence their reasoning, that they will not be held liable for any negative events that may unfold.

A change of culture and an understanding of partners' culture was found by many to aid the decision making process both within and amongst organisations and to ensure the best outcome for children and young people.

Case Study 2 - Emma

The second case discussed by delegates was that of Emma. Emma, a 16 year old girl had been arrested in a city centre for a disorder offence. Emma is care experienced and under a Compulsory Supervision Order (CSO). As such, in terms of the Criminal Justice (Scotland) Act 2016, Emma has the rights of a Younger Child (under 16). As the scenario progresses, it emerges that Emma has been aggressive to officers and has previously been in police custody where she has been found to possess items to self-harm. The situation is complex as it becomes apparent that Emma may be at risk of Child Sexual Exploitation.

Emma's rights and needs

The groups believed a caring, supportive, empathetic approach was the best way to engage with Emma. It was important to delegates that Emma providing suitable support and care for Emma took priority over gathering evidence. This was concurred by other groups who highlighted that Emma may be coerced into criminality due to her vulnerability.

In terms of support mechanisms for Emma, it was highlighted that residential unit staff would have a key role to play in the partnership approach taken to care for Emma and to fully understand the events which may be impacting on Emma's life and which may have led her to come into conflict with the law. It was also suggested that Emma was spoken with once in a better frame of mind in order to establish whether there are any further instances of victimisation. It was suggested that someone other than police would be best positioned to have this discussion with Emma.

Legislation and Policy

One group highlighted that any failures in the case of Emma (or similar examples) should not be seen as a failure of frontline staff, but rather budgets, governmental policy and a confusing legislative landscape. Furthermore, there was an agreement in one group that there is a need to balance policy and frameworks in a way that respects children's wishes and interests.

Processes

Most tables reported that they agreed Emma should not remain in custody longer than necessary and questioned why processes need to occur in custody, though delegates did note the complexity of conducting mental health assessments in the instance of intoxication. Similar to Oliver, discretion and proportionality when considering Emma's case was urged, with groups finding criminalising Emma's actions inappropriate and disproportionate. In addition, completing a robust IRD would ensure plans were in place and would ensure partners were aware of Emma's triggers, as well as any relevant information (for example, the presence of female officers when possible). Furthermore, others suggested attempting to include officers who had been involved with Emma in the past as a familiar face.

Balancing with the rights of others

In the case of Emma, it was seen as important to balance her rights with the other children at the residential unit. Regardless, in this circumstance, criminalisation of Emma's actions was not viewed as a vehicle to uphold the rights of others.

Places of Safety

The overwhelming consensus was that it was not appropriate for Emma to be held in custody, with some suggesting this has been part of the reason for the escalation of Emma's behaviour.

The priority for some was to get Emma home as soon as possible, with the majority of tables stating that it would not be appropriate for Emma to remain in custody until 9am the following morning, as there were no residential staff available to collect her. However again it was acknowledged that securing an alternative place for Emma would be challenging. Again Bairn's Hoose was often referenced as a possible alternative.

Partnerships, resources and sharing information

In the case of Emma, a proactive multi-agency approach was thought to be beneficial in supporting her especially due to her vulnerability and previous concerns being raised. Early intervention and sharing of information for her safeguarding would increase understanding amongst partners to ensure a proportionate response. Furthermore, this would enable concerns about Emma (for example some tables noted that Emma could potentially be involved in county lines) to be fully explored.

It was highlighted that resource constraints may mean that social workers may not be able to collect Emma from the police station and that residential unit staff may not be able to leave their accommodation. The discussions noted that there should be engagement between police and partners to promptly identify an individual that can collect Emma and take her to an alternative place of safety. There was also consideration given to engaging with third sector partners such as Barnardo's.

Decision making, risk tolerance and culture

Again in the case of Emma, differing risk appetites emerged. Particularly relating to strip searches, some tables discussed taking a more risk tolerant approach to managing concerns of self-harm. It was suggested that constant observations could serve as a suitable alternative (recognising that the requirement to undertake constant observations on a child would remove two police officers from operational duties for the entire period the person was in custody). Groups suggested that brave, child centred decisions should be made, and that 'error terror' means that officers and other partners rigidly stick to processes, rather than focusing on what is best for children.

Training

Due to the complexity of Emma's case, the issue of training was also raised. This was in relation to both ensuring staff and front-line officers are trained to work with children in these situations and are familiar with the relevant frameworks and processes to support these children, but also training amongst partner organisations so that custody processes are widely understood and to ensure that all organisations work to minimise the exposure of any child to police custody.

Strip searches

Emma's situation also brought up the topic of strip searching, which was an emotive discussion point. Many delegates understood that at times strip searches of children is required to prevent them from self-harming where there is a belief they may be concealing an item which may cause themselves or others harm. They understood that this was not an evidential search, that there were stringent authority levels required i.e. a senior officer independent of the investigation and that a responsible person should be present. However, in the instance of Emma many did not believe this was a proportionate action to take, with all parties recognising the potential trauma that a child would experience if strip searched. Some suggested alternative methods of ascertaining whether Emma had items, for example by using scanners. It was recognised that Police Scotland took their responsibilities in this respect very seriously and that they kept such instances under constant review to seek to improve practices and minimise intrusion.

Event Agenda

- 9.30am Registration Opens – Tea and Coffee Available
- 10am Opening Remarks from the Event Moderator
Michelle Miller, Scottish Police Authority Board Member and former Chief Social Work Officer
- 10.05am Welcome and Introduction
Martyn Evans, Scottish Police Authority Chair
Malcolm Graham, Deputy Chief Constable (DCC) Police Scotland
- 10.25am Keynote – Setting Out the Legal and Policy Landscape
Fiona Dyer, Director, Children and Young People’s Centre For Justice
- 10.45am Children in Custody – a Policing and Local Government Perspective
Gordon McCreadie, Divisional Commander, Criminal Justice Services Division
Local Government Representative
- 11am Keynote – Perceptions and Lived Experience of Custody
James Docherty, Scottish Violence Reduction Unit
- 11.20am Break
- 11.30am Case Study Table Top Exercise Outline
Michelle Miller, Scottish Police Authority Board Member and former Chief Social Work Officer
- 11.40am Case Study 1 Table Top Discussion
The Moderator will reveal additional aspects of the case study throughout, and pose questions for consideration at each table.
- 12.40pm Case Study 1 Plenary Session
The Moderator will lead a plenary discussion drawing contributions from the floor, and from your panel of speakers.
- 1.10pm Lunch

- 1.50pm Case Study 2 Table Top Discussion
The Moderator will reveal additional aspects of the case study throughout, and pose questions for consideration at each table.
- 2.50pm Case Study 2 Plenary Session
The Moderator will lead a plenary discussion drawing contributions from the floor, and from your panel of speakers.
- 3.20pm Closing Remarks and Next Steps
Scott Ross, Head of Change and Operational Scrutiny, Scottish Police Authority
Gordon McCreadie, Divisional Commander, Criminal Justice Services Division
- 3.30pm Event Ends

"This event aims to not only highlight our views that police custody is not a suitable place of safety for children in Scotland, but to also engage with partners and discuss how we could take a collaborative approach in ensuring children receive the right support, from the right service, at the right time, to best care for their needs." – Sir Iain Livingstone, Chief Constable, Police Scotland

