



SCOTTISH
CHILDREN'S REPORTER
ADMINISTRATION

Cyber-enabled and cyber-dependent offences among 12-15 year olds referred to the Children's Reporter

www.scra.gov.uk 

Executive Summary

Background and aims

Cybercrimes account for around 6% of all crimes committed in Scotland, and are continuing to increase in number. It is estimated that cybercrimes account for around 1 in 10 non-sexual crimes of violence, 1 in 10 crimes of dishonesty, 1 in 5 crimes recorded under the Domestic (Abuse) Scotland Act, and 1 in 3 sexual crimes. At present there is limited evidence around how adolescents who are accused of committing a cybercrime are treated within the Scottish criminal justice system. In this rapid evidence review we address this gap by: 1) identifying trends in the number of cybercrimes referred to the Reporter; 2) the backgrounds of children alleged to have committed these offences; 3) how referrals to the Children's Hearings System for cybercrimes were disposed.

Methods

To identify trends in the number of cybercrimes referred to the Reporter, data on all offence referrals and associated charges received by the Reporter between 1st April 2018 and the 31st of March 2023 were mapped against the list of offences contained within Police Scotland's Cybercrime First Responder Guide. To explore the backgrounds of children and young people referred to the Reporter for cybercrimes, as well as gain insight into how their cases were addressed by the Children's Hearings System, we examined the cases of 12 children aged 12-15 who had been referred to the Reporter on offence grounds that contained an online or social media element. This data was drawn from a wider dataset created by McGarrol et al to understand the experiences of 12-15 year olds referred to the Reporter on offence grounds.

Results

In 2020/21 cybercrimes accounted for 2.6% of all offence referrals received by the Reporter. Although this figure constitutes a small proportion of offence referrals, our analysis indicates that the number of cybercrimes referrals had increased by 81% since 2018/19. The profile of cybercrimes reported to the Reporter were as follows:

- 60% of referred charges related to offences under s127(1) and s127(2) of the Communications Act 2003, i.e. the sending of, cause to send and persistent use of communications networks to send offensive, false or indecent messages of a sexual or non-sexual nature.
- 25% of referred charges related to offences committed under s51 and s52 of the Civic Government Scotland Act 1982, i.e. the taking, possession, display or distribution of indecent, obscene and pornographic images, including those of children.
- 13% of referred charges related to offences committed under s2(1) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, i.e. either disclosing or threatening to disclose intimate and sexual images of another individual.
- Less than 2% of referred charges related to offences committed under s33 and s34 of the Sexual Offences (Scotland) Act, i.e. communicating indecently with an older child or causing an older child to look at obscene, sexual images.

Notable changes in the types of charges referred over time included a decrease in the number of charges received in relation to the Communications Act 2003 and an increase in the charges under the Civic Government Scotland Act 1982. This change appeared to be related to more children being charged with the taking, distributing and possessing of indecent photographs of children. It should be noted that while the overall number of cybercrimes referred under the Communications Act 2003 fell, there was a notable increase in referrals related specifically to s127(1)(a) of the Act, i.e. the sending of non-sexual offensive messages.

Our analysis into the backgrounds of 12-15 year olds referred to the Reporter for online or social media offences identified that: 3 in 5 had been charged with the distribution of indecent images of a child(ren) and the sending of offensive sexual messages; 2 in 5 had been charged with sending non-sexual offensive messages; and 1 in 6 had been charged with a serious sexual offence where the use of social media apps was considered to have enabled the sexual offences being committed. The children committing these offences tended to be male, and living at home with their parents at the time of the offence. The mean age at referral was 13. The backgrounds of the children showed elevated levels of childhood maltreatment, school exclusion, mental health difficulties and parental offending. At the time of the cyber offence, 1 in 2 of the children were receiving support from social work services and 1 in 4 were already subject to a compulsory supervision order (CSO).

In terms of decision making, 3 in 4 of the cyber offences were referred directly to the Reporter. All of the jointly reported cases were either retained by the Reporter or referred back to the Reporter by the Procurator Fiscal. Overall 31% of the offences were considered to be of low gravity, 41% were of medium gravity and 17% were of high gravity. Investigations into the offences identified that 3 out of 5 offences involved: the use of online messaging to continue disputes between children; the breakup of friendships that had escalated to the sending of aggressive and threatening messages via social media; low mood and mental health issues affecting decisions around the sending of messages/images; and children believing their actions to be consensual.

Children's Hearings were arranged for 25% of children referred for cybercrimes; all of whom were placed onto compulsory supervision orders as a result of the offence. The remainder of the referrals were either referred back to the local authority for additional supports to be put in place, or not progressed on the basis that existing legal orders, diversionary measures or actions taken by the family were considered sufficient to address the offending behaviours. Twelve months after being referred for an online offence, 3 in 5 of the children had been re-referred to the Reporter on offence grounds.

Next steps

These data provide insight into both the nature of cybercrimes referred to the Reporter and how these are addressed in practice. Data on the children being referred to the Reporter for cybercrimes should continue to be compiled by SCRA to measure changing trends in referral. This should be supplemented with wider reporting on the number of children charged with cyber-crimes by Police Scotland. As the data presented here only include those children referred to the Reporter, further research is needed to understand the decision making around the referral of children who

commit cybercrimes, including what role early and effective intervention pathways and referral to the Procurator Fiscal play in addressing these offences.

Contents

Executive Summary	2
Introduction	5
Methods	6
Offence referral data 2018-2023	6
Detailed examination of the lives of children referred for online offences	9
Results	9
Cyber-crime offences referred to the Reporter between 2018 and 2023	9
Detailed examination of the lives of children referred for online offences	13
Discussion	16
Appendix 1: Number of cyber-crime related charges referred to the Reporter 2018-2023	19
Appendix 2: Cyber-crime related charges (%) jointly referred to Reporter and Procurator Fiscal 2018-2023	20

Introduction

National guidance produced by Police Scotland identifies two forms of cyber-crime, namely cyber-enabled and cyber-dependent crimes.¹ Cyber-enabled crimes are those crimes which are committed using the internet or by accessing an Information and Communication Technology (ICT) device. Examples of these crimes include: threatening and abusive behaviour on social media platforms or via messaging services and email; online fraud, theft and extortion; sexual exploitation and sextortion; the grooming of children and other offences against children as documented in the Sexual Offences (Scotland) Act 2009; and stalking.

Cyber-dependent crimes refer to crimes that are designed to compromise a computer, network or system “*where the devices are both the tool for committing the crime and the target of the crime*”. Examples of these crimes would include: the creation, distribution or deployment of computer viruses, malware and trojans; distributed denial of service attacks that interrupt and impair the normal use of websites; hacking and any other forms of unauthorised network penetration; and the corruption or controlling of systems via email or other means. The majority of cyber-dependent crimes are classed as offences under the Computer Misuse Act 1990.

The last statistics published on the number of cybercrimes being committed in Scotland covers the period 2020-2021. These statistics, which were compiled by Police Scotland defined a cybercrime as being any offence that involved the use of cyber technology, in any way, to commit or enable the offence.² This definition means that published figures for cybercrime in Scotland include both cyber-enabled and cyber-dependent offences. During 2020-2021 it is estimated that 14,130 cybercrimes committed; an increase of 95% on 2019-2020 when 7,240 cyber-crimes were recorded.³ Based upon there having been 246,511 crimes committed in 2020-2021, it can be seen that cybercrimes account for an estimated 6% of all crimes conducted in Scotland.

Looking specifically at the nature of the offences committed, evidence from Police Scotland indicates that cybercrimes account for 1 in 10 (12%) non-sexual crimes of violence, 1 in 10 (10%) crimes of dishonesty, 1 in 5 (22%) crimes recorded under the Domestic (Abuse) Scotland Act, and 1 in 3 (33%) sexual crimes.³ In terms of sexual offences, it has been specifically estimated that 2 in 3 (66%) of crimes that are recorded as ‘other sexual crimes’ by Police Scotland are considered to be cybercrimes.⁴ These crimes include the use of the internet for: communicating indecently, the taking; possession and distribution of indecent photos; sexual

¹ Police Scotland (2022). Cybercrime First Responder Guide. Available at: <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.scotland.police.uk%2Fspa-media%2F4x0hquif%2Fpolice-scotland-national-guidance-cybercrime.docx>

² Scottish Government (2021). Police recorded cyber-crime in Scotland: Recorded Crime in Scotland (2020-2021). Available online at: <https://www.gov.scot/publications/recorded-crime-scotland-2020-2021/pages/4/>

³ National Statistics (2022). Recorded Crime in Scotland, 2020-2021. Available at: <https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2021/09/recorded-crime-scotland-2020-2021/documents/recorded-crime-scotland-2020-21/recorded-crime-scotland-2020-21/govscot%3Adocument/recorded-crime-scotland-2020-21.pdf>

⁴ Scottish Government (2021). Errata - Scottish Crime and Justice Survey 2019/20: main findings. Available at: <https://www.gov.scot/publications/scottish-crime-justice-survey-2019-20-main-findings/pages/13/>

exposure; public indecency; and causing others to view sexual images or activity.³ It is estimated that over half of the growth in 'other sexual crimes' in recent years can be attributed to the use of the internet to commit crime.^{3,5}

There is some evidence to suggest that adolescents may be particularly vulnerable to 'other sexual crimes' that involve the use of cyber technology. For instance, three quarters of the victims of sexual crimes relating to 'communicating indecently' and 'cause to view sexual activity or images' are under 16, while over half of the perpetrators of these offences are under the age of 20.³ During 2020-21 there were an estimated 2080 'other sexual crimes' committed in Scotland that were both cyber-crimes and had a victim under the age of 16.⁵

Given both the number of cybercrimes that are committed by children and young people, and the increasing number of these offences that are occurring, there is a growing need to understand how these cases are addressed by Police Scotland, the Children's Reporter and the Procurator Fiscal. At present there is no published information about decision making in this area, nor is there information about the number of children and young people who are referred to the Reporter and/or the Procurator Fiscal for cybercrimes. In this short report, we partly address this gap by:

1. Using routinely collected administrative data on offence referrals received by SCRA between the 1st of April 2018 and the 31st of March 2023 to provide an estimate of the number of charges received by the Reporter each year for cybercrimes.
2. Conducting a detailed analysis of the background characteristics and youth justice trajectories of 12 children alleged to have committed online or social media related offences between the 1st of April and 20th September 2018.

Methods

Offence referral data 2018-2023

Offence referrals to the Reporter were mapped against the offences contained within Police Scotland's Cybercrime First Responder Guide.¹ All offence referrals between the 1st April 2018 and the 31st of March 2023 were extracted from SCRA's Case Management System (CSAS) using Power BI. A full list of the offences included in the data extraction is included in Table 1. A copy of the raw data is provided in Appendix 1, with cell counts less than 5 suppressed to protect anonymity. Within the main body of the report we present findings based on the number of charges referred to the Reporter. This may result in a slight over-estimation of the number of cyber-crimes committed as some children will have accrued multiple charges for an offence.

⁵ [Scottish Government \(2017\). Recorded crime in Scotland: 'Other sexual crimes', 2013-2014 and 2016-2017. Available at: https://www.gov.scot/publications/recorded-crime-scotland-sexual-crimes-2013-14-2016-17/](https://www.gov.scot/publications/recorded-crime-scotland-sexual-crimes-2013-14-2016-17/)

Table 1: Police Scotland Cyber-crime offence classifications used in the analysis

Act	Charge	Description
Computer Misuse Act 1990	S1 - Unauthorised Access to Computer Material.	It is an offence to cause a computer to perform any function with intent to gain unauthorised access to any program or data held in any computer.
Computer Misuse Act 1990	S2 - Unauthorised Access with Internet to Commit Other Offence.	This offence is committed where an offence is committed as per S1, but the offence is committed with the intention of committing or facilitating a further offence, whether alone or with another.
Computer Misuse Act 1990	S3 - Unauthorised acts with intent to impair a computer.	An offence is committed if any person does an unauthorised act with the intention of impairing the operation of any computer.
Computer Misuse Act 1990	S3A - Making, Supplying or Obtaining Article for use in S1 or S3 offences.	The Police and Justice Bill 2006 created a new S3A offence of making, supplying (including offers to supply) or obtaining articles for use in S1 or S3 computer misuse offences.
Civic Government (Scotland) Act 1982	S51 - Obscene Material	An offence for any person to display obscene material in a public place; or sells, distributes, makes, keeps, has obscene material for eventual sale or distribution.
Civic Government (Scotland) Act 1982	S51A - Extreme Pornography	An offence for any person in possession of an extreme pornographic image.
Civic Government (Scotland) Act 1982	S51B - Extreme pornography: excluded Images.	An offence is not committed under S51 if the image is an excluded image.
Civic Government (Scotland) Act 1982	S52 - Indecent Child Photographs.	An offence for any person who takes, permits to be taken or makes; distributes or shows; has in possession; publishes or causes to be published - any indecent photograph or pseudo-photograph of a child.
Civic Government (Scotland) Act 1982	S52A - Possession of Photographs	An offence for a person to have any indecent photograph or pseudo-photograph of a child in his possession.
Sexual Offences (Scotland) Act 2009	S31 - Causing an older child to participate in a sexual activity.*	An offence for person who has attained age of 16 years to intentionally cause child who has attained age of 13 years but not attained age of 16 years, to participate in a sexual activity.
Sexual Offences (Scotland) Act 2009	S32 - Causing an older child to be present during a sexual activity*	An offence for person who has attained age of 16 years who intentionally engages in sexual activity in the presence of a child who has attained age of 13 years but not attained age of 16 years, or causes said child to be present whilst a third person engages in such activity.

Act	Charge	Description
Sexual Offences (Scotland) Act 2009	S33 - Causing an older child to look at a sexual image.	An offence for person who has attained age of 16 years to intentionally cause child who has attained age of 13 years but not attained age of 16 years, to look at sexual images.
Sexual Offences (Scotland) Act 2009	S34 - Communicating indecently with an older child etc.	An offence for a person who has attained age of 16 years to intentionally sends by whatever means, a sexual written communication to, or directs by whatever means a sexual verbal communication to, a child who has attained age of 13 years but not attained age of 16 years.
Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005	S1 - Meeting a child following certain preliminary contact.	A person commits an offence if, person 'A' having communicated with person 'B' (who is under 16 years or is a constable) on at least one earlier occasion intentionally meets B, travels with the intention of meeting B, or arranges for B to meet A; and intends to engage in unlawful sexual activity involving B or in presence of B during or after meeting in any part of the world. Person A must reasonably believe that B is not 16 or over, and the meeting or communication on an earlier occasion must have a relevant Scottish connection, and Person A must be a British citizen or resident in the UK.
Communications Act 2003	Section 125 - Dishonestly obtained electronic communication services of another person's Wireless Internet).	It is an offence to dishonestly obtain the use of an electronic communication service with intent to avoid payment of the charge applicable to that service. (This would cover the unauthorised use
Communications Act 2003	Section 126 - Possession or supply of apparatus etc. for contravening S125.	It is an offence to possess, supply or offer to supply anything in order to dishonestly obtain such a service or in connection with obtaining such a service. Note: Broadcasting Services (Cable TV Services etc.) have been specifically excluded from the offences under sections 125 and 126 because they are covered by other offences under Section 297(1) Copyright, Designs & Patents Act 1998.
Communications Act 2003	Section 127 - Improper use of a public electronic communications networks.	It is an offence if anyone sends a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or causes any such matter to be sent. If for the purpose of causing annoyance, inconvenience or needless anxiety to another sends a message that he knows to be false; or causes such a message to be sent or persistently makes use of a public electronic communications network.

* Although s31 and s32 of the Sexual Offences (Scotland) Act 2009 are included in this list we do not present data on offence referrals for these charges. Any child who was charged under these offence codes for

Detailed examination of the lives of children referred for online offences

Case files for 400 children aged 12-15 who had been referred to the Reporter on offence grounds between the 1st of April to 20th September 2018 were extracted from SCRA's Case Management System (CMS) as part of a wider study examining the offending behaviour of 12-15 year olds. The dataset generated by this study provides rich and detailed information about the familial backgrounds, maltreatment histories, care trajectories and offending behaviours of the children included in the sample. It also documents the range of statutory and non-statutory supports provided to children referred on offence grounds, along with the decisions taken around how offences were handled by the Reporter and Procurator Fiscal. More detail on this study, including detailed methodology can be accessed in McGarrol et al. ⁶

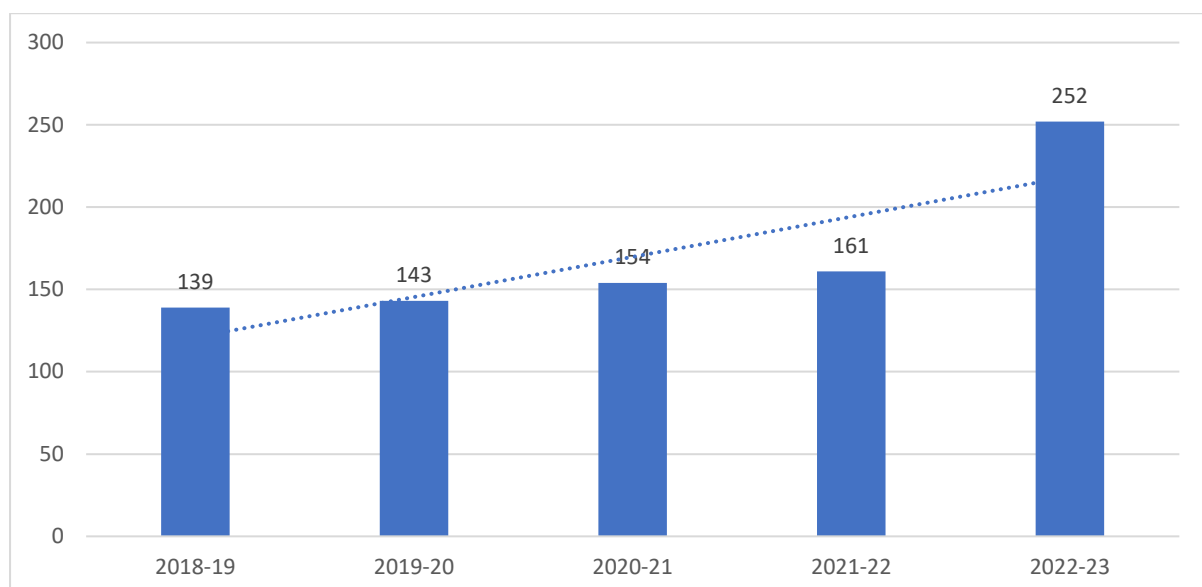
To provide insight into the backgrounds of children referred to the Reporter for online or social media related offences we identified all cases in this dataset where the locus of the offence was described as being 'online' or 'social media'. This resulted in a dataset of 12 children being created. In this report we present descriptive statistics, along with narrative descriptions, of the children's backgrounds, the nature of their offences, and the decision making around how these offences were addressed. All manipulation of data was undertaken in Microsoft Excel.

Results

Cybercrime offences referred to the Reporter between 2018 and 2023

Between the 1st of April 2018 and the 31st of March 2023 SCRA received 688 referrals from Police Scotland that listed one or more charges relating to a cyber-crime. The total number of charges referred was 849.

Figure 1: Number of police referrals received by the Reporter for cyber-crimes between 2018 and 2023.



⁶ [McGarrol et al \(2022\). Children aged 12 to 15 years involved in offending and referred to the Children's Reporter and Procurator Fiscal in Scotland. Available at: https://www.scra.gov.uk/wp-content/uploads/2022/06/Children-aged-12-to-15-years-offending.pdf](https://www.scra.gov.uk/wp-content/uploads/2022/06/Children-aged-12-to-15-years-offending.pdf)

To put this figure into context, in 2021/22 the total number of alleged offences committed by children referred to the Reporter was 9832.⁷ This means that cybercrimes accounted for 1.6% of all offences referred to the Reporter that year. Figure 1 shows that there was an 81% increase in the number of cybercrime based charges referred to the Reporter between 2018/19 and 2022-23.

Figure 2 highlights that 60% (n=509) of all cybercrime charges referred to the Reporter were charged under s127(1) and s127(2) of the Communications Act 2003. These charges included the sending of, cause to send and persistent use of communications networks to send offensive, false or indecent messages of a sexual or non-sexual nature. Offences committed under s51 and s52 of the Civic Government Scotland Act 1982 accounted for 25% (n=210) of cybercrime offences referred to the Reporter. These offences include the taking, possession, display or distribution of indecent, obscene and pornographic images, including those of children. Offences committed under s2(1) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 accounted for 13% (n=109) of cybercrime related referrals. These offences include either disclosing or threatening to disclose intimate and sexual images of another individual. Less than 2% (n=16) of the offences referrals related to cybercrimes that were charged under s33 and s34 of the Sexual Offences (Scotland) Act.

Figure 2: Cybercrimes referred to the Reporter between 2018 and 2023

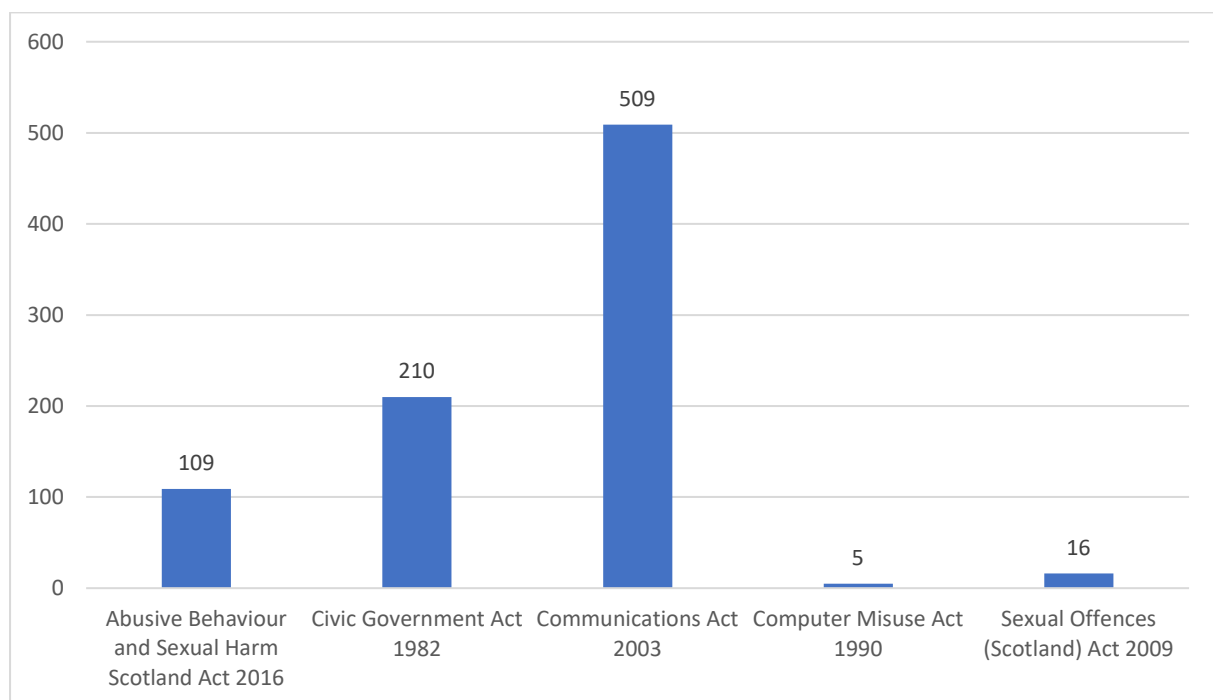


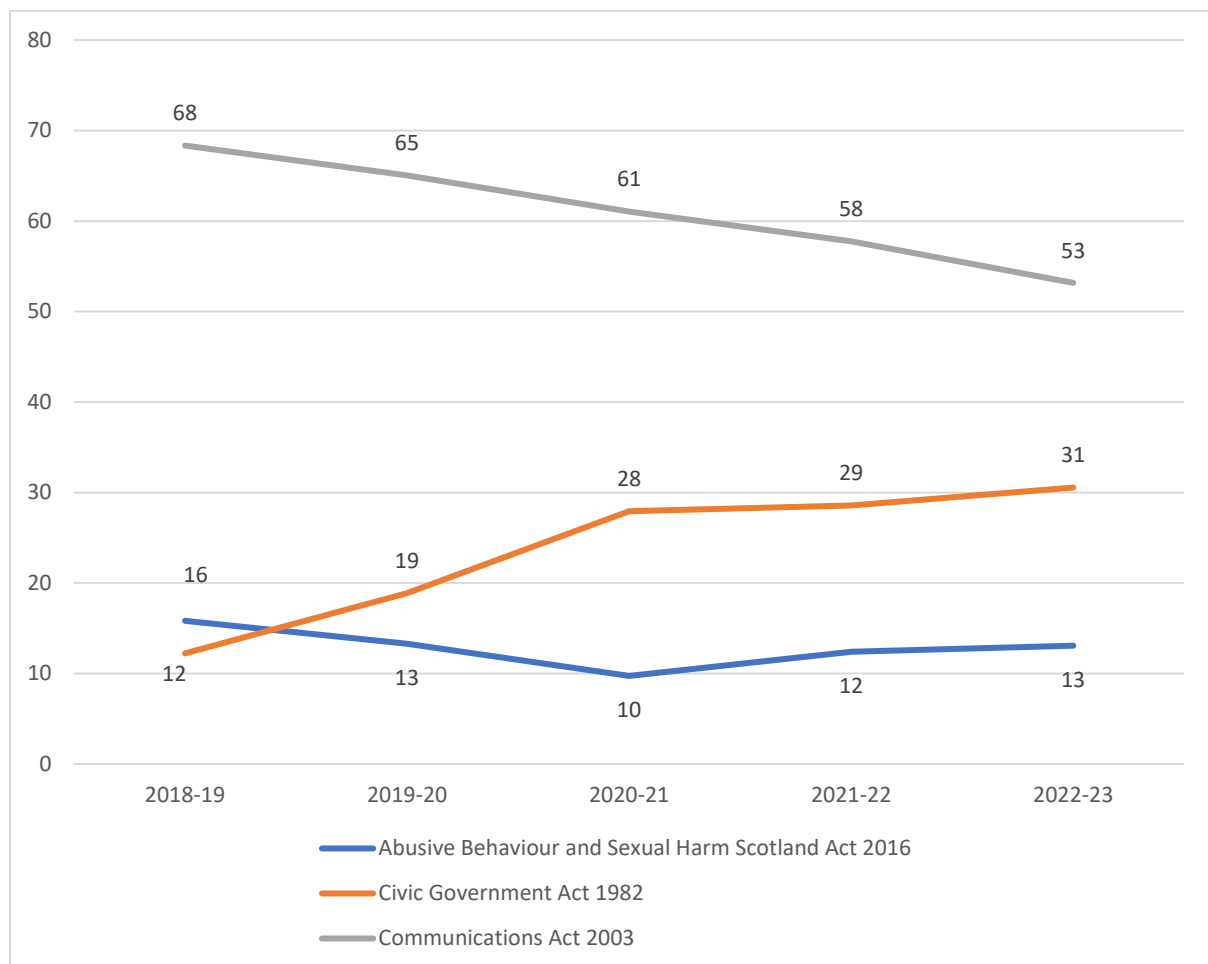
Figure 3 indicates that there were some changes over time in the types of charges accrued for cybercrimes among children referred to the Reporter. Between 2018 and 2023 referrals related to charges under the Communications Act 2003, which covers

⁷ SCRA (2023). Children referred to the Reporter: Statistical Analysis 2021/22. Available at: <https://www.scra.gov.uk/wp-content/uploads/2022/09/SCRA-full-statistical-analysis-2021-22.pdf> (scra.gov.uk)

the sending, threat to send or persistent use of telecommunications networks to distribute indecent, false or offensive sexual and non-sexual messages, reduced from 68% to 53%. At the same charges for cybercrimes under the Civic Government Scotland Act 1982, which covers the taking, distribution and possession of indecent, obscene and pornographic images, including those of children, increased from 12% to 31%. The rate of charges under the Abusive Behaviour and Sexual Harm Scotland Act 2016 has remained relatively flat over time, with 10-13% of charges between 2019 and 2023 relating to the disclosure, or threat to disclose, intimate and sexual images of another individual.

While there has been an overall fall in the proportion of cyber-crimes received by SCRA that are charged under the Communications Act 2003, it should be noted that there was a 62% increase in the number of charges received under s127(1)(a) of the Act between 2018/19 and 2022/23. This section of the Act specifically relates to the sending of non-sexual offensive messages.

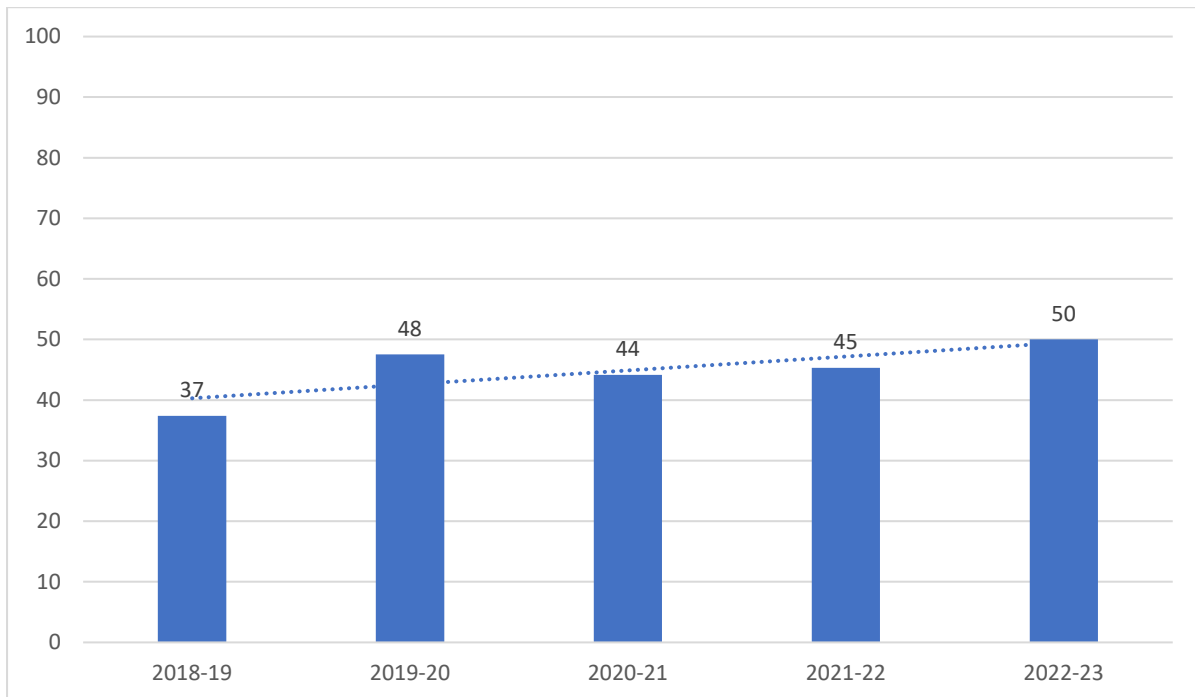
Figure 3: Cybercrime charges by Legal act expressed as a percentage of all cyber-crime charges received by SCRA each year



The increase in charges under the Civic Government Scotland Act 1982 appears to have been driven by a greater number of charges being received by the Reporter for the taking, distributing and possessing of indecent photographs of children (see

Appendix 1 for raw data). This change is also reflected when the cybercrime charges received by SCRA are categorised by whether or not a sexual element to the offence was present. For instance, Figure 4 demonstrates that the percentage of referred crimes involving a sexual element increased from 37% in 2018/19 to 50% in 2022/23.

Figure 4: Percentage of cybercrime charges referred to the Reporter between 2018-2023 with a sexual element*



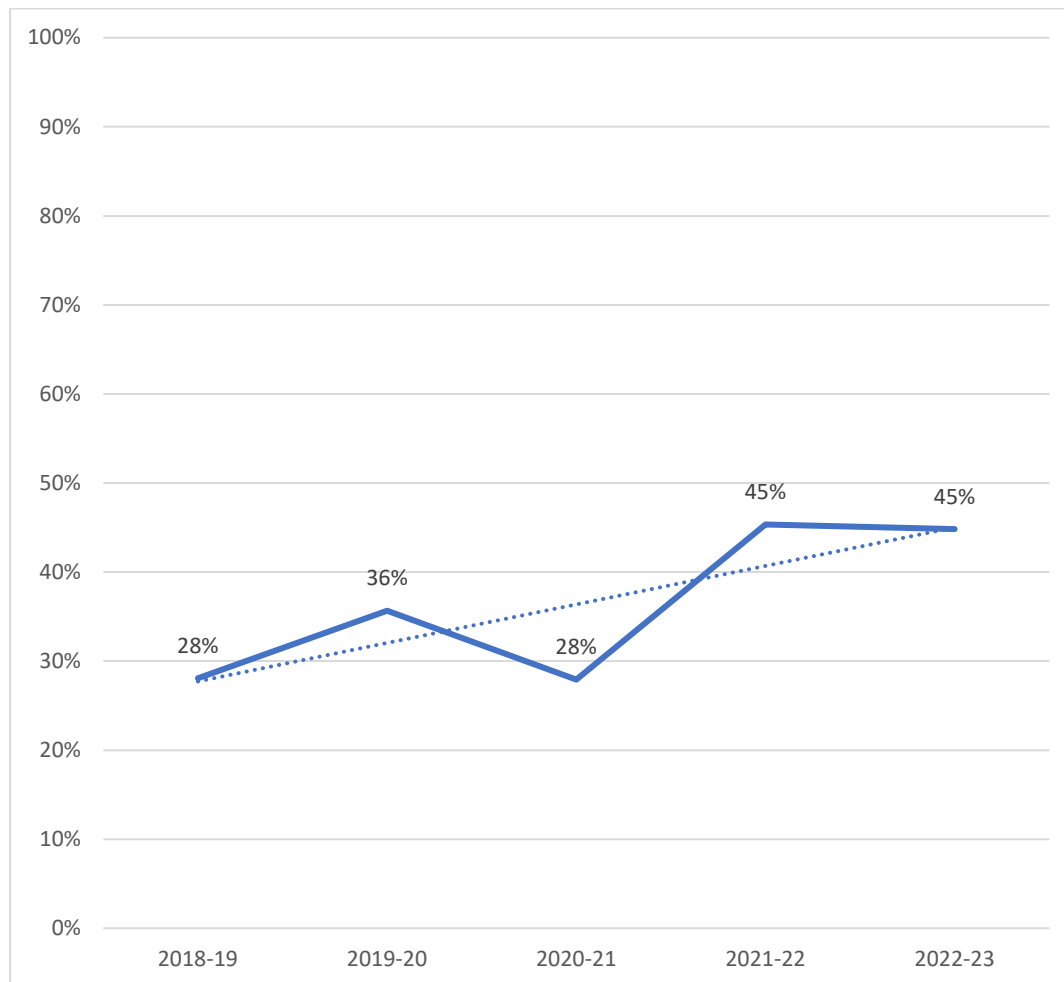
*Sexual element defined as any charge under: the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 s2(1); the Civic Government Act 1982 s51(1), s51(2), s51A(1), s52(1)(A), s52(1)(a), s52(1)(b), s52(1)(c), s52A(1), s52a(1); Communications Act 2003 s127(1)(a – sexual), s127(1)(b – sexual); Sexual Offences (Scotland) Act 2009 s33, s34, s34(1).

Children aged 12 and over who commit the most serious offences can also be dealt with in the adult criminal justice system. Such serious cases are jointly reported by the Police to the Procurator Fiscal and the Reporter.⁸ Existing evidence shows that there has been a decrease in the number of jointly reported offences being retained by the Procurator Fiscal for prosecution. This has resulted in more cases being referred on to the Reporter by the Procurator Fiscal; reflecting the policy aim to divert children from the criminal justice system to the Children’s Hearings System.⁶ Our analysis indicates that overall, 38% of charges and 33% of referrals received by the Reporter for cybercrimes between 1st April 2018 and 31st March 2023 were jointly referred to the Procurator Fiscal. Figure 5 indicates that there was an increased trend towards joint reporting over this period, with the percentage of joint reports rising from 28% (2018/19) to 45% (2022/23). Appendix 2 provides information about the percentage of each of the charge codes jointly reported. There is a suggestion within this data that

⁸ The Lord Advocate has issued guidelines to the Chief Constable regarding the reporting to Procurators Fiscal of offences alleged to have been committed by children. It is the responsibility of the police, following the Lord Advocate’s Guidelines, to decide to whom an offence shall be reported. A case is “jointly reported”, where it is reported by the police to the Procurator Fiscal and the Children’s Reporter in terms of the Lord Advocate’s Guidelines.

the increased use of joint referral was largely driven by charges relating to the taking, distributing and possessing of indecent images of children under s52 1982 Civic Government Scotland.

Figure 5: Percentage of charges jointly referred to the Reporter and the Procurator Fiscal, 2018-2023



Detailed examination of the lives of children referred for online offences

To explore the characteristics of children aged 12-15 who are referred to the Reporter after being charged with a cybercrime we identified all children within the dataset generated by McGarrol et al who had been referred for a crime where the locus of the crime was described as being 'online' or 'social media' related. Overall, 12 children were identified as having committed an offence online or via social media. This accounted for 3% of the original sample examined by McGarrol et al (2022).

Characteristics of children referred for online offences

Two thirds (67%, n=8) of the children who were referred for online offences were male, and four fifths (83%, n=10) were living at home with their parents at the time of the offence. The mean age of children at the time the online offence occurred was 13.18 years (range: 12-15, mode=13). Three fifths of the children (58%, n=7) had reported concerns in relation to school absence or exclusion.

Mental health, socioemotional functioning and exposure to adverse life events

Two thirds of the children (67%, n=8) were identified as having mental health difficulties or a history of self-harm. Several of the children (n=3) were identified as having learning disabilities or being neurodiverse. One in two (50%, n=6) had a history of using drugs and/or alcohol; however, none of the children were reported to be under the influence of drugs or alcohol when the online offence was committed.

Three fifths (58%, n=7) had been the victim of either emotional neglect, physical neglect, physical violence, physical abuse or sexual abuse perpetrated by their parents or another adult. A quarter (25%, n=3) of the children were described as having sexually inappropriate behaviours, with one child considered to be demonstrating sexually harmful behaviour. One of the children was recorded as being the victim of childhood criminal exploitation and childhood sexual exploitation.

Two thirds (67%, n=8) of the children referred for committing online offences had a wider pattern of behaviour that was cause for concern. These behaviours included involvement in antisocial behaviour, demonstrating challenging, threatening and physically abusive behaviour at school, reports of dating violence, poor attitudes towards women, a history of threatening and abusive behaviour towards women and ethnic minorities, a history of committing assault and allegations of sexualised behaviour. One in two (50%, n=6) of the children were described as bullying other children, with two thirds (67%, n=8) recorded as being physically violent or aggressive towards others. One in three (33%, n=4) of the children were considered to be both the victim and instigator of bullying behaviour.

Family history of social work and criminal justice involvement

A quarter (25%, n=3) of the children had one or more parents who had previously offended, with the range of crimes listed including: cruelty and neglect towards a child(ren), misuse of drugs, neglect, assault (domestic violence) and breach of the peace. There was no additional information available about whether the children's parents had additional health and social concerns, including whether they had previously been in care. Two thirds (67%, n=8) of the children had siblings. None of these siblings were involved in the online offences that were reported. Three quarters of the siblings (75%, n=6) had no involvement from services. None of the children's siblings had been accommodated or permanently removed from their parents' care. Two (n=25%) of the children with siblings, had sibling(s) who had been previously referred to the Reporter on offence grounds.

Children's history of social work and criminal justice involvement

At the time of the online offence two fifths (42%) of the children were receiving support from social work at services. Four of these were also receiving support in relation to their mental health and socioemotional functioning. Half of the children (50%, n=6) had been referred to the Reporter prior to committing the online offence; the majority of whom (83%) were first referred on care and protection grounds. The remainder of the children were referred to the Reporter for the first time after they had committed the online offence. Two (17%) of the children who had committed online offences had previously been placed on the child protection register. A third (33%, n=4) of the children were subject to CSOs at the time of the online offence occurring; three of whom (25% of the total sample) were accommodated away from home. Five children (42%) had offence referrals prior to being referred for online offences. The nature of

these offences included road and traffic offences, racial harassment, breach of the peace, possession of an offensive weapon, firearms offences and sexual offences.

Details of online offence(s)

Three fifths (58%, n=7) of the children were described as being referred for online offences relating to the Sexual Offences (Scotland) Act 2009, including the distribution of indecent images of a child(ren) or the sending of offensive sexual messages. The remainder (42%, n=5) were referred for sending non-sexual offensive messages. Two of the children were referred for serious sexual offences where the use of online social media apps was considered to play a role in the sexual offences being committed.

Two thirds (67%, n=8) of the online offences had an aggravator recorded. The main aggravators recorded were offences against children (50%, n=4) and sexual offences (50%, n=4). A quarter (25%, n=3) of the children who had been referred for online offences were considered to have committed a serious violent or sexual offence alongside the online offence. None of the online offences included other children as perpetrators. In one of the cases an adult was also charged by the Police.

A quarter (25%, n=4) of the children who were referred for online offences were also referred for additional offences at the same time. The average number of offences that children were referred for as 1.83 (range: 1-6, mode=1). The additional offences included threatening and abusive behaviour, assault and the possession of a weapon(s).

Decision making around online offences

Three quarters (75%, n=9) of the children were referred solely to the Reporter. The remainder (25%, n=3) were jointly reported to the Reporter and Procurator Fiscal. Of the cases jointly reported, 2 were retained by the Reporter. The other was initially retained by the Procurator Fiscal and then referred back to the Reporter. As a result all of the cases were dealt with by the Children's Hearings System. Using the Reporter decision making framework⁹ it was identified that a third (33%, n=4) of the offences were of low gravity, two fifths (41%, n=5) were of medium gravity, and one in six (17%, n=2) were of high gravity.

Children's hearings were arranged for a quarter (25%, n=3) of the children referred for online offences. A quarter (25%, n=3) were referred back to the local authority for other support measures to be pursued. The decision was made not to arrange a Hearing for 50% (n=6) of the cases. In the majority of cases the reasons given for not scheduling a Hearing were that existing legal orders, diversionary measures or actions taken by the family were considered sufficient to address the offending behaviours. All of the children who were referred to Hearings (n=3) were placed onto CSOs. This meant that half (50%, n=6) of the children who were referred for online offences were subject to a CSO either at the time of, or as a direct consequence of, committing the online offence.

There were a range of extenuating factors identified for the behaviours of 58% (n=7) of the children referred for online offence behaviours. These included: the use of online

⁹ [SCRA \(2023\). Framework for Decision Making by Reporters. Available at: https://www.scra.gov.uk/wp-content/uploads/2016/03/Framework-for-Decision-Making-by-Reporters.pdf](https://www.scra.gov.uk/wp-content/uploads/2016/03/Framework-for-Decision-Making-by-Reporters.pdf)

messaging to continue disputes between children; the breakup of friendships that had escalated to the sending of aggressive and threatening messages via social media; low mood and mental health issues affecting decisions around the sending of messages and images; and some children engaging in what they perceived to be consensual activity.

Acceptance of responsibility and remorse

Two fifths (42%, n=5) of the children either admitted to, or showed remorse about, their online offence behaviour. Half of the children (50%, n=6) either showed no remorse or were identified as having lied about the offence behaviour. No information was available to assess remorse for the other child referred for online offences. Information about parent's attitudes towards the offending revealed that a quarter (25%, n=3) were supportive of service intervention for their child, and willing to engage with agencies to prevent reoffending. A third (33%, n=4) either refused to believe an offence had been committed or were found to have lied to provide an alibi for the child. The parents of 1 child were unsure whether their child had committed the offence or not. No information was available on the rest of the cases.

Victims

All of the victims of online offences were known to the child. The majority (83%, n=10) were classmates or friends of the child. The median age of victims was 14 (range: 12-43). There was no information available on whether victims had additional characteristics (i.e. physical disabilities additional support needs or mental health difficulties) that might increase their vulnerability.

Further offending

Twelve months after being referred for online offences, five (42%) of the children had been referred to the Reporter on non-offence grounds. All of these referrals were on conduct grounds. Three fifths (58%, n=7) of the children had received further offence referrals. Overall, 42 additional offences had been committed, with the median number of offences being 3 (range: 1-21). Of the 42 offence referrals, 37 (88%) were referred solely to the Reporter. Of the five jointly referred offences, three were retained by the Report and two were retained by the Procurator Fiscal. Unfortunately no data was recorded about the nature of these offences, therefore it is not possible to identify whether the children engaged in further online offences in the future.

12 months after being referred for the online offence, no additional children had been placed onto CSOs. Two thirds (67%, n=8) of the children were living with their parents; one of whom was in a shared care placement. Two (16%) of the children were accommodated. No information was available on the living arrangements of the other two children. None of the children had been looked after in secure care, nor had they received any custodial sentences.

Discussion

Information about children's involvement in cybercrime in Scotland is currently limited. Our data indicates that over the course of the last five years there has been a shift towards more children being referred to the Reporter for cybercrimes; particularly in relation to the taking, viewing and distributing of indecent, offensive and pornographic material, including the images of children. This finding fits with existing research

conducted by the Scottish Government which highlights that the offences of “communicating indecently” and “cause to view sexual activity or images” are more likely to have both victims and perpetrators that are under the age of 20.¹⁰

Increased reporting of cybercrimes to the Reporter, particularly those with a sexual element, are likely to reflect the impact of easy access to mobile phones and other smart devices among children. An audit conducted by HM Inspectorate of Constabulary in Scotland (HMICS) concluded that social media sites, in particular Facebook and Snapchat, can act as vehicles for children being victimised or conducting online offences. Offences arising from interactions on these platforms tended to include: rape, sexual assault, causing a young child to participate in a sexual activity, communicating indecently, causing a young child to look at a sexual image, coercing a person into being present during a sexual activity, possession of child and extreme pornography, and grooming.¹¹

The increased referral of children to the Reporter for cybercrimes that involved a sexual element points to a need for the continued inclusion of information to adolescents as part of the sexual health, relationships and parenting curriculum around: 1) online relationships and safety; 2) issues of consent and the legalities around sharing sexualised imagery and messaging via phones and the internet. However, how to ensure that those young people who are excluded from school-based sexual health, relationships and parenting education receive this information is something that will need to be considered; particularly given that persistent non-attendance in education is both a commonly identified predictor of youth offending behaviour and one of the legal grounds upon which children can be referred to the Reporter.^{6,12-}

Although our analysis highlights that there has been an increase in the number of cybercrime related charges referred to the Reporter, it should be noted that the data presented in this report does not provide a complete reflection of the levels of cybercrime being committed by children in Scotland. While it is important for the Reporter to regularly collate information on the number of cybercrimes charges that are referred each year, there is a need to supplement this information with wider reporting on the number of children charged with cybercrimes by Police Scotland. This should include information about the referral pathways that were used to address the offending behaviour. Additional research should also be undertaken to understand whether the increased rate of referral to the Reporter for cybercrimes reflects the wider trend towards increased levels of these crimes being committed, or a change in the processes Police Scotland use when deciding to prosecute a child who has allegedly committed a cybercrime.

¹⁰ [APS Group Scotland \(2018\). Cyber-crime in Scotland: A Review of the Evidence. Available at: https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2018/03/cyber-crime-scotland-review-evidence/documents/00532978-pdf/00532978-pdf/govscot%3Adocument/00532978.pdf](https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2018/03/cyber-crime-scotland-review-evidence/documents/00532978-pdf/00532978-pdf/govscot%3Adocument/00532978.pdf)

¹¹ [HMICS \(2016\). Crime Audit 2016. Available at: https://www.hmics.scot/sites/default/files/publications/HMICS%20Crime%20Audit%202016.pdf](https://www.hmics.scot/sites/default/files/publications/HMICS%20Crime%20Audit%202016.pdf)

¹² McAra, L & McVie, S 2016, 'Understanding youth violence: The mediating effects of gender, poverty and vulnerability', *Journal of Criminal Justice*, vol. 45, pp. 71-77. Available at: https://www.pure.ed.ac.uk/ws/portalfiles/portal/21958215/McAra_and_McVie_Article_Pre_print_version.pdf

Our findings also indicate that there has been a trend towards more cybercrimes being jointly reported to the Reporter and the Procurator Fiscal over the last five years. Existing evidence highlights that there has been decrease in the number of jointly reported offences retained by the Procurator Fiscal for prosecution in recent years. This has resulted in more offence cases being referred on to the Reporter by the Procurator Fiscal, and reflects the aim to divert more children from the criminal justice system to the Children's Hearings System.⁶ Further research is required to understand the decision making processes relating to cases where a child has been charged with a cybercrime. This should include exploring the nature of cases that are retained and prosecuted by the Procurator Fiscal. It should also explore: 1) the decision-making processes enacted by Reporters around the management of offence referrals in relation to cybercrimes, and whether these differ from offences that are not considered to be cybercrimes; 2) how Hearings were the offence-grounds relate to cybercrimes are viewed by Panel Members, and what impact the cybercrime element of the offence has upon the decisions made within Hearings? Gaining better understanding of how these offences are addressed is particularly important given recent concerns being generated about the increased use of deepfake AI technology to create realistic pornographic images using the real faces of children and adolescents, as well as the rise in AI-generated child pornography.¹³⁻¹⁴

Finally, our results provide some limited insight into the characteristics of 12-15 year olds who are referred to the Reporter for cybercrimes. Our data highlights that exposure to adverse childhood events, educational concerns, mental health difficulties and previous involvement with services was a common factor in the backgrounds of at least 50% of the children who were referred to the Reporter for cyber-crimes. These findings are largely congruent with the findings of McGarrol et al⁶ around the characteristics of 12-15 year olds who are referred to the Reporter on offence grounds. However, the opportunistic nature of the sample, along with its small size, makes it difficult to determine whether these findings are generalisable to the wider population of 12-15 year olds who are charged with cybercrimes; particularly given that this data does not tell us anything about those children who: 1) may have been referred solely to the Procurator Fiscal for more solemn offences that were cyber-enabled: 2) were not referred to the Reporter by Police Scotland as they chose to address the offending behaviour through the use of Early and Effective Intervention.¹⁵ There is therefore a need for further research to try and understand the background characteristics of the wider population of children who are charged with cybercrimes.

¹³ [The Herald \(2022\). Pornographic deepfakes to be made illegal in new measure. Available at: https://www.heraldscotland.com/news/national/uk-today/23151375.deepfakes-made-illegal-new-measure-tackling/](https://www.heraldscotland.com/news/national/uk-today/23151375.deepfakes-made-illegal-new-measure-tackling/)

¹⁴ [UK Government \(2023\). UK and US pledge to combat AI-generated images of child abuse. Available at: https://www.gov.uk/government/news/uk-and-us-pledge-to-combat-ai-generated-images-of-child-abuse](https://www.gov.uk/government/news/uk-and-us-pledge-to-combat-ai-generated-images-of-child-abuse)

¹⁵ [Scottish Government \(2021\). Early and effective intervention: core elements \(framework\). Available at: https://www.gov.scot/publications/early-effective-intervention-framework-core-elements/](https://www.gov.scot/publications/early-effective-intervention-framework-core-elements/)

Appendix 1: Number of cyber-crime related charges referred to the Reporter 2018-2023

Charge code	Referral Year					Total charges
	2018-19	2019-20	2020-21	2021-22	2022-23	
Abusive Beh & Sex Harm (S) 2016 S2(1) Disclose Threaten	0	0	11	20	30	61
Abusive Behaviour and Sexual Harm (Scotland) Act 2016 Section 2(1)	22	19	<5	0	<5	48
Civic Gov 1982 S51(1) Display obscene material	<5	0	<5	0	0	<5
Civic Gov 1982 S51(2) Distribute obscene material	0	0	0	<5	<5	<5
Civic Gov 1982 S51A(1) Possession of Extreme Porn Image	0	<5	<5	<5	5	12
Civic Gov 1982 S52(1)(A) Indecent Photo of Child Etc	0	0	0	<5	<5	2
Civic Gov 1982 S52(1)(a) Take indecent photo child/children	<5	7	10	10	15	45
Civic Gov 1982 S52(1)(b) Dist indecent photo child/children	8	11	17	13	24	73
Civic Gov 1982 S52(1)(c) Posses indecent photo child/children	0	0	0	<5	<5	<5
Civic Gov 1982 S52A(1) Possess Indec Photo Child O/With Uk	0	0	0	<5	0	<5
Civic Gov 1982 S52a(1) Possess indecent photo child/children	5	8	13	14	27	67
Communications Act 2003 S127(1)(a)send Offensive non sexual	67	62	72	83	108	392
Communications Act 2003 S127(1)(a)send Offensive Sexual	<5	7	8	<5	9	32
Communications Act 2003 S127(1)(b)sent Off/indec Non Sexual	10	8	9	<5	8	39
Communications Act 2003 S127(1)(b)sent Off/indec sexual	<5	11	<5	<5	<5	20
Communications Act 2003 S127(2)(a)send False Message	7	<5	<5	0	<5	16
Communications Act 2003 S127(2)(b)cause To Sent False Mess	<5	0	0	0	0	<5
Communications Act 2003 S127(2)(c)persistently Use Network	<5	<5	0	0	<5	9
Computer Misuse 1990 S1 Unauthorised access	0	0	<5	0	0	<5
Computer Misuse 1990 S1(1)&2(1)(B) Unauth Access Fur Offence	0	0	0	<5	<5	<5
Computer Misuse 1990 S3 Unauth Act Impair Operation Of Comp	0	0	0	0	<5	<5
SOSA 2009 S33&34 Older Child Sexual Image Indecent Comm	0	<5	0	0	0	<5
SOSA S33 Attempt Cause Older Child View Sexual Image	0	0	0	<5	0	<5
SOSA S33 Cause Older Child View Sexual Image	5	<5	<5	0	5	13
SOSA S34(1) Communicate Indecently Older Child		<5		0	0	<5
Total number of charges	139	143	154	161	252	849

Appendix 2: Cyber-crime related charges (%) jointly referred to Reporter and Procurator Fiscal 2018-2023

Charge code	Referral Year					Total
	2018-19	2019-20	2020-21	2021-22	2022-23	
Abusive Beh & Sex Harm (S) 2016 S2(1) Disclose Threaten	n/a	n/a	64%	55%	60%	59%
Abusive Behaviour and Sexual Harm (Scotland) Act 2016 Section 2(1)	36%	37%	25%	n/a	0%	33%
Civic Gov 1982 S51(1) Display obscene material	0%	n/a	n/a	n/a	n/a	0%
Civic Gov 1982 S51(2) Distribute obscene material	n/a	n/a	n/a	100%	100%	100%
Civic Gov 1982 S51A(1) Possession of Extreme Porn Image	n/a	100%	50%	75%	100%	83%
Civic Gov 1982 S52(1)(A) Indecent Photo of Child Etc	n/a	n/a	n/a	0%	100%	50%
Civic Gov 1982 S52(1)(a) Take indecent photo child/children	33%	86%	80%	70%	73%	73%
Civic Gov 1982 S52(1)(b) Dist indecent photo child/children	50%	27%	53%	62%	71%	56%
Civic Gov 1982 S52(1)(c) Posses indecent photo child/children	n/a	n/a	n/a	0%	0%	0%
Civic Gov 1982 S52A(1) Possess Indec Photo Child O/With Uk	n/a	n/a	n/a	50%	n/a	50%
Civic Gov 1982 S52a(1) Possess indecent photo child/children	40%	88%	54%	79%	93%	78%
Communications Act 2003 S127(1)(a)send Offensive non sexual	25%	26%	10%	28%	24%	23%
Communications Act 2003 S127(1)(a)send Offensive Sexual	25%	29%	13%	100%	11%	28%
Communications Act 2003 S127(1)(b)sent Off/indec Non Sexual	0%	25%	22%	50%	38%	23%
Communications Act 2003 S127(1)(b)sent Off/indec sexual	25%	18%	0%	0%	50%	20%
Communications Act 2003 S127(2)(a)send False Message	14%	50%	0%	n/a	33%	19%
Communications Act 2003 S127(2)(b)cause To Sent False Mess	0%	n/a	n/a	n/a	n/a	0%
Communications Act 2003 S127(2)(c)persistently Use Network	0%	33%	n/a	n/a	0%	11%
Computer Misuse 1990 S1 Unauthorised access	n/a	n/a	0%	n/a	n/a	0%
Computer Misuse 1990 S1(1)&2(1)(B) Unauth Access Fur Offence	n/a	n/a	n/a	100%	0%	50%
Computer Misuse 1990 S3 Unauth Act Impair Operation Of Comp	n/a	n/a	n/a	n/a	0%	0%
SOSA 2009 S33&34 Older Child Sexual Image Indecent Comm	n/a	0%	n/a	n/a	n/a	0%
SOSA S33 Attempt Cause Older Child View Sexual Image	n/a	n/a	n/a	100%	n/a	100%
SOSA S33 Cause Older Child View Sexual Image	80%	100%	0%	n/a	40%	62%
SOSA S34(1) Communicate Indecently Older Child	n/a	100%	n/a	n/a	n/a	100%
Total	28%	36%	28%	45%	45%	38%

Dr Catherine Nixon and Donald Lamb
Scottish Children's Reporter Administration
November 2023