

Children aged 12-15 years involved in serious offending referred to the Reporter

Exploring gender differences in serious offending,
and Reporter decision making



“The prosecutorial response in relation to children and adults needs to be different. The fundamental reason that someone under the age of 18 is treated as a child is because of the impact their age and maturity have on the assessment of their culpability, and the potential for them to change and be reintegrated into society, thus reducing the risk of reoffending. The Crown also has an obligation to act in a child rights-based manner which is compatible with the United Nations Convention on the Rights of the Child (UNCRC)”¹

Executive Summary

Background

The Age of Criminal Responsibility (Scotland) Act 2019 received Royal Assent on 11th June 2019 and was fully implemented on 17th December 2021. The Act, herein referred to as ACRA, raised the ACR to 12 years of age; bringing it in line with the existing age of criminal prosecution. These changes mean that no children under the age of 12 can be charged or prosecuted for committing an offence. Instead, any child under the age of 12 who is engaging in harmful behaviour can be referred to the Children's Reporter for consideration of whether their needs should be addressed through compulsory measures of supervision.

Prior to the implementation of ACRA, the ACR in Scotland was 8 years of age. This ACR was significantly lower than the United Nations' minimum recommended ACR of 14. It was also the lowest in Europe, with the ACR in other nations ranging from 10 (England) to 16 (Portugal). Since the implementation of ACRA, calls have been made for Scotland to raise the age of ACR to 14, with the Scottish Children's Commissioner calling for the Scottish Government to go further and raise the ACR to 15 or 16. Calls to raise ACR reflect recommendations made within Scotland's Independent Care Review, "The Promise", namely that all children in Scotland should be diverted from the criminal justice system.

Section 78 of ACRA places a statutory duty on Scottish Ministers to review the operation of the Act both generally and with a view to considering the future ACR. The review period was set at three years, commencing on the date that the Act was fully implemented and concluding on the 16th December 2024. ACRA further specifies that a report on the review should be prepared, published and laid before the Scottish Parliament no later than 12 months after the review period ends, i.e. by the 16th of December 2025.

The Age of Criminal Responsibility Advisory Group was established to assist Scottish Ministers to undertake the review. Evidence gathered by the Advisory Group broadly indicates that the ACR in Scotland could be raised to 16 with limited impact upon prosecutorial and court services. However, the review also highlighted a number of key considerations that Ministers would need to address in order to do so. These included identifying how best to manage *"the serious behaviour of children just above the age of criminal responsibility threshold or those nearing adulthood, and ensuring that victims of harm caused by children receive appropriate support"*. This report aims to contribute to this question by examining how serious offending by 12-15-year-olds is currently addressed by the Children's Reporter. In doing so, the report aims to answer seven questions, namely:

- What trends exist in the nature and frequency of serious offences referred to the Reporter for 12-15-year-olds?
- To what extent are the lives of children aged 12-15 who are referred to the Reporter for serious offending characterised by adversity and trauma?

- What are the patterns of serious offending among children aged 12-15 who are referred to the Reporter in terms of type, volume, gravity and recidivism, and do these differ by gender?
- What factors are associated with or influence serious offending by children aged 12-15?
- What factors do Children's Reporters take into consideration when making decisions about children aged 12-15 who have been referred for serious offending?
- What barriers exist to statutory agencies addressing the behaviours of children aged 12-15 who cause serious harm through offending?
- What, if any, impact does the handling of serious offences through the Children's Hearings System have upon public confidence in Scotland's approach to youth justice?

Methods

To address these questions, a mixed-methods design was used. This combined data from a trends analysis of routinely collected administrative data, quantitative content analysis of children's case files and semi-structured qualitative interviews with Children's Reporters who had experience of making decisions about children referred to the Reporter after being charged with a serious offence. The trends analysis sought to identify the nature of the serious offences referred to the Reporter, along with any identifiable age- and gender-differences in the type and volume of offences. To do this, data for all children aged 12-15 who were referred to the Reporter after being charged with committing a serious offence between 1st of April 2021 and 31st March 2024 were extracted from SCRA's Data Warehouse. The seriousness of offences was assessed using the language of s39 of ACRA, which states that a child "*by behaving in a violent or dangerous way, has caused or risked causing serious physical harm to another person*" or "*by behaving in a sexually violent or sexually coercive way, has caused or risked causing harm (whether physical or not) to another person*".

The quantitative content analysis explored the backgrounds of children referred to the Reporter after being charged with a serious offence, how children who cause serious physical or sexual harm are responded to by the children's hearings system and what, if any impact, the provisions of interventions and supports have upon desistance from further offending. To do this, a random sample of 59 children (boys n=30, girls=29) was drawn from the 254 children referred for serious offences between the 1st of October 2022 and the 30th June 2023. The sample accounted for all of the girls referred during this period and 1 in 7 of the boys. Data were extracted through close reading of: police reports (SPR2); reports obtained from social work, health and education; the records of investigations made by the Reporter; correspondence and notes related to the child; grounds of referral and hearings outcomes. The data gathered included: sociodemographic information; information on family functioning and risk; information on educational engagement and the health of the child; exposure to peers and adults involved in antisocial or offending behaviours; previous contacts with the care and justice sector; details of the alleged serious (index) offence and decisions made in

relation to this; information on victims; interventions provided to the child in relation to their offending; and further contacts with the care and justice sector within the following 12 months. Data storage, manipulation and statistical analyses were undertaken in Microsoft Excel.

Semi-structured online interviews were conducted with Children's Reporters (n=10) between October and December 2024. The Reporters who participated had experience of making decisions about children charged with sexual offences (i.e. rape, attempted rape, penetrative sexual assaults, sexual assault and sexual communications offences), serious assaults (i.e. assault to severe injury, assault to severe injury resulting in disfigurement or impairment and attempted murder), significant fire-raising with substantial economic and societal impacts, possessions and supply of class A drugs by children; and dangerous driving offences. Several had experience of managing cases involving suspected criminal exploitation of children. The interviews focussed upon: exploring Reporters' views on what constitutes serious offending by children; understanding how and when referrals of children involved in serious offending are made to the Reporter; and identifying how Reporters investigate and manage referrals when a child has been accused of a serious offence. The interviews were analysed using the thematic framework approach.

Results

What trends exist in the nature and frequency of serious offences referred to the Reporter for 12-15-year-olds?

- Between the 1st of April 2021 to the 31st of March 2024, 788 children aged 12-15 were referred to the Reporter for a serious offence. These figures account for 14% of all offence referrals received for this age group.
- The majority (70%) of the serious offences captured by our trends analysis related to an allegation of sexual harm being caused by a child aged 12-15. Within this category, referrals for rape, attempted rape and sexual assault by penetration were rare; accounting for 0.6% of all serious offences referred over a three-year period. The remainder of the offences that were referred related to allegations that the child had caused another serious physical harm (24%) or committed a driving offence (6%).
- The primary route through which children were referred to the Reporter after being charged with a serious offence was through the Procurator Fiscal (PF), with 74% of the serious offences having been considered as joint reports.
- Our trends analysis indicates that children aged 14–15-year-olds were more likely to be referred to the Reporter for a serious offence than 12-13-year-olds (73% vs. 27%). This reflects wider findings showing that children's involvement in offending increases with age.

To what extent are the lives of children who are referred to the Reporter for serious offending characterised by adversity and trauma?

- Our case file analysis indicates that the lives of children who are referred to the Reporter for serious offending tend to be characterised by poverty, maltreatment, exclusion from education and engagement in risk taking behaviours within the community.
- There were high levels of mental ill-health, neurodiversity and learning difficulties present among the children included in our case file sample.
- 1 in 10 (10%) of the children in our case sample were suspected by the police and/or social workers to be at risk of criminal exploitation. This figure was higher for girls than boys (14% vs. 6%).
- 1 in 7 (14%) of the girls within our case sample were considered to be at risk of sexual exploitation; half of whom were also considered to be at risk of criminal exploitation.
- Two thirds (69%) of the children in our case sample were known to either social work services or the Reporter prior being referred for involvement in serious offending.
- A third (31%) of the children were not previously known to services. This group of children tended to be referred for sexual offences.
- Girls who were accused of sexual communication offences tended to be unknown to services. In contrast, boys accused of these offences tended to be already known to services.

What are the patterns of serious offending among children aged 12-15 who are referred to the Reporter in terms of type, volume, gravity and recidivism, and do these differ by gender?

- Our trends analysis indicates that boys are more likely than girls to be referred to the Reporter for a serious offence, with around 9 in 10 serious offence referrals being for boys. This finding reflects wider evidence indicating that boys are more likely than girls to be involved in offending behaviour.
- Our trends analysis shows some gender differences in the offences that children who were referred to the Reporter were charged with. Girls were more likely than boys to be referred for serious physical assaults and sexual communication offences, while boys were more likely to be referred for physical sexual assaults, including allegations of rape.
- Our case file analysis indicates that serious physical assaults referred to the Reporter tended to be carried out by groups of children. There were a small number of offences in our sample where a violent assault carried out by a child,

or group of children, was filmed for the purpose of being shared via social media and group messaging platforms.

- Sexual offences referred to the Reporter were typically carried out alone, except in the case of several girls where the sexual offence was linked to a group acting inappropriately in public. Sexual communications offences, while generally carried out alone, often resulted in the sharing of indecent images and/or videos via social media and group chats. The recipients of the images and videos were often other children.
- The majority (70%) of children who were referred to the Reporter for a serious offence were charged with a single offence.
- Boys were more likely than girls to have been charged with multiple offences (33% vs. 16%). The mean number of offences alleged to have been committed by boys was 1.64 (range: 1-14), while for girls it was 1.23 (range: 1-5). Multiple charges accrued by boys tended to relate to sexual offences, whereas for girls there was a more equal split between sexual and violent offences.
- The majority (97%) of the serious offences we looked at had at least one victim. In 4 out of 5 cases this victim was another child who was described as being a classmate or peer. Reflecting the gendered pattern of the offences that were referred, child victims were more likely to be the victim of a serious physical assault or sexual communications offence when the referred child was a girl. They were more likely to be the victim of a serious sexual assault or rape when the referred child was a boy.
- Adult victims, although rare, were more likely to be unknown to the referred child, with 78% having no previous relationship or association with the child. Where adults were known to the referred child they tended to be described as family members or other trusted adults.
- Our findings show that children's hearings were arranged for 3% of girls and 5% of boys referred for a serious offence between the 1st of October 2022 and the 30th of June 2023. The most common reasons for not arranging a hearing were: that the offence could be addressed under the terms of an existing legal order (boys: 18%; girls: 27%); the child was referred to the local authority to receive support and intervention on a voluntary basis (boys: 42%, girls: 33%); that there was insufficient evidence that compulsory measures were required (boys: 28%, girls: 30% of girls); that there was insufficient evidence an offence had been committed (boys: 4%, girls: 7%). A similar pattern was observed within the case file sample.
- Two thirds (63%) of the children in our sample were not referred to the Reporter for a further offence within 12 months of being referred for a serious offence.
- Just over a third (37%) of the children in our case file sample went on to reoffend. The range of offences included: vandalism, fire-raising, possession of weapons, assault (including assault of a police officer), threatening and abusive

behaviour, theft, drug offences and road traffic offences. Generally, these offences were of lower gravity than the index offence.

- Overall, 1 in 10 (12%) of the children in our case file sample went on to commit a subsequent offence that would be considered to be serious using the definition of harm provided in s39 of ACRA. The converse of this is that 9 in 10 (88%) of the children who were referred for a serious offence were **not** referred to the Reporter for a further serious offence within the following 12 months.
- None of the children referred to the Reporter after being charged with a sexual offence were referred for a further sexual offence within the following 12 months.

What factors are associated with or influence serious offending by children?

- Involvement of 12–15-year-olds in serious offending is broadly patterned by deprivation. In our case sample, half of the children who had been referred to the Reporter after being charged with a serious offence lived within the 40% most deprived areas of Scotland.
- The relationship between deprivation and serious offending was most pronounced for violent offences, with 86% of boys and 61% of girls who were referred to the Reporter for causing physical harm to another person living in the 40% most deprived areas.
- There was no association observed between deprivation and referral to the Reporter for sexual offending among boys; suggesting that sexual offending among boys is a wider societal issue. A u-shaped relationship was observed between deprivation and referral to the Reporter for sexual offending among girls, indicating that girls living in the most affluent and most deprived areas of Scotland were being charged with sexual offending. Given the high proportion of sexual communications offences included in the girls sample it is likely that these findings will reflect easier access to mobile phones and the internet among more affluent children.
- Children's Reporters considered offending by children to be underscored by the impact that early childhood trauma and poor family functioning, particularly when it normalised violence and lack of appropriate sexual boundaries within relationships, could have upon children's development.
- The impacts of trauma were considered to be long-lasting, with adolescence identified as a particularly challenging period due to the adverse effect that trauma could have upon children's mental health, their ability to meaningfully engage in education and their ability to form prosocial relationships. All of these issues were considered to increase children's vulnerability to becoming involved in antisocial and offending behaviour.
- Reporters were particularly concerned about the impact that other individuals involved in antisocial and offending behaviour could have upon the behaviours

of children who had been referred on offence grounds. This included adults who sought to criminally exploit children. It also included the impact that being cared for with other children in out-of-home care could have upon the child's exposure to risky behaviours and situations.

- Reporters expressed concerns about how undiagnosed or unmanaged neurodiversity could increase the risk of children becoming involved in offending behaviour. These concerns were particularly raised in relation to sexual offences as it was considered that these conditions could impact upon understandings of sexual consent, including when it had been given and when it had been withdrawn.
- Reporters considered poor understandings of sexual consent and boundaries to be a factor in decisions by children to share sexual images and videos using digital devices. It was felt that the normalisation of these behaviours within wider society could make it difficult for children to understand that an offence was being committed when sexual images and videos were being shared.

What factors do Children's Reporters take into consideration when making decisions about children aged 12-15 who have been referred for serious offending?

- When serious offences are referred to the Reporter by the PF there has been careful consideration of the circumstances of the offence, whether there is scope to address the offending behaviour through alternatives to prosecution and what impact intervention through the children's hearings system will have on public safety. This consideration is based upon multi-agency assessments of the offending behaviour, the level of risk posed to the public and any underlying needs of the child.
- Jointly reported serious offences tend to be retained for prosecution by the PF when the offence is likely to cause significant public alarm and where there is a significant risk to public safety. These offences are those where significant physical or sexual harm has been caused and usually involve the use of weapons. The PF is also more likely to retain a jointly reported serious offence when multiple attempts at rehabilitating the child through the children's hearings system have been unsuccessful.
- Serious offences are referred to the Reporter when it is considered that the provision of targeted intervention, support and supervision could be used to address the underlying needs of the child who has offended and promote desistance from further offending. These needs commonly included: the impact of trauma and abuse upon the behaviour of the child; the presence of harmful sexual behaviour and poor understandings of sexual consent; the influence of others, including the child being at risk of criminal and/or sexual exploitation; and the impact of suspected or confirmed neurodiversity on offending behaviour.

- When a child is referred for a serious offence there is a need for the Reporter to: 1) demonstrate that there is sufficient evidence to prove that one of the grounds of referral to the children's hearing applies to the child; 2) the child requires to be subject to a compulsory supervision order to ensure that they receive support and intervention to address both the offending behaviour and their wider needs. When drafting offence grounds, Reporters identified that the test that they apply is whether it can be proven beyond reasonable doubt that an offence has occurred.
- Reporter decision-making around the necessity of compulsory measures requires careful consideration and weighing up of a range of factors, including: the gravity of the offence; the level of culpability and remorse children have shown for their behaviour; the understanding of consent in sexual offences; the level of support that is being provided to children by their family and statutory services; how the child and their family are engaging with the supports being provided; any underlying risk factors that would place the child or others at risk if compulsory measures are not used; and what, if any, influence other individuals have had upon the offending behaviour. For children already on compulsory measures, it was identified that the ability of the existing care plan to address the new offence referral, along with the child's level of engagement with the existing plan, were key factors in whether new grounds of referral should be drafted.
- The wealth of insight that social workers could provide into the child and family was considered to be particularly valuable for Reporter decision-making. The information provided through the use of tools such as START-AV and AIM-3 was also really valued. This is because these tools are specifically designed to provide practitioners with insights about the risk of re-offending by examining both the needs of the child who has caused harm and the level of risk that their behaviours pose to themselves and the wider community.
- Reporters identified that delays in the PF making the decision to pass a jointly reported case to the Reporter can affect whether the necessity test for a CSO will be met. This is because the circumstances that underpinned the behaviour of the child at the time of the offence may have changed by the time a decision has been made, or because the child has been engaging well with interventions to address their offending behaviour while the PF considers whether to prosecute the offence. Within our case file sample, the average length of time that had elapsed between the date of the serious (index) offence occurring and a post-referral decision being made by the Reporter was 243 days (range: 34 to 694; median=257) for boys and 161 (range: 57 to 395; median=133) for girls.
- Reporters indicated that the likelihood of using compulsory measures of supervision to address offending behaviour was lower in cases where the child and the family were accepting of the offence, the child had already started working with social workers on a voluntary basis and was engaging with this work, and there were minimal concerns about their safety and welfare. In contrast, where the child and family were steeped in denial about the offence and were not receptive to offers of voluntary supports from services, Reporters stated that the likelihood of them recommending a CSO increased. For sexual

offending, how these factors interacted with understandings of sexual consent were considered to be really important when considering whether to use compulsion to ensure that children received support to prevent re-offending.

- The presence of normative family values around violence, especially violence towards women, were considered to be particular risk factors that would always increase the risk of an order being required to address offending behaviour.
- When dealing with allegations of serious sexual offences, Reporters identified that understandings of sexual consent and the level of coercion present within the offence factored strongly into their decisions about whether compulsory measures were necessary. In these cases, the likelihood of the necessity test being met was further increased when acceptance of the offending behaviour was low, the child was regularly being exposed to narratives that promoted violence towards women and/or the child had a history of demonstrating sexually harmful behaviour.
- Reporters identified that children who were referred to a children's hearing after being accused of causing sexual harm were more likely to not accept the grounds of referral at the hearing. When this occurs, it is more likely to result in a proof application needing to be heard in court, which can lead to delays in the hearing considering the need for a CSO. This was considered to adversely affect victims' wellbeing as it introduced delays in decision-making and required decisions to be made about how the victims evidence would be heard in court.
- Reporters described seeing an increased reluctance in victims being willing to go to court and give evidence. The reasons given for this included concerns about the adversarial nature of court and the potential for re-traumatisation of child victims. Negative perceptions of the children's hearings system, including that the voices and needs of victims were secondary to the needs of the child who had harmed, were also considered to affect the willingness of victims to give evidence
- Suspicions about the criminal exploitation of children were identified as another factor that would always necessitate the need for compulsory measures. This was due to the level of harm that the child who was being criminally exploited was being placed in. It was also recognised that it can be very difficult for the child and their family to recognise or admit that they are being exploited, which in turn could act as a barrier to their receiving help and support.
- Reporters who had dealt with cases where criminal exploitation had been either suspected or confirmed described children engaging in: possession, supply and distribution of class A drugs; possession of weapons; threatening and abusive behaviour; assault; assault to severe injury; housebreaking; and prolific shoplifting. One Reporter had handled the case of a child who had been cuckooed.
- Reporters highlighted that it could be challenging to prove the influence of others; resulting in it not always being possible to draft grounds of referral under s67(e) of the Children's Hearings (Scotland) Act: "the child is being, or is likely

to be, exposed to persons whose conduct is (or has been) such that it is likely that the child will be abused or harmed, or the child's health, safety or development will be seriously adversely affected". Lack of credible and reliable information about the presence of exploitation was considered to increase the likelihood of grounds being drafted under s67(j) of the Children's Hearings (Scotland) Act 2011: "the child has committed an offence". Reporters felt this was not appropriate as it put the blame upon the child for actions that were not fully under their control.

- It was felt that the criminal exploitation of children was being recognised more frequently, with Police Scotland in particular highlighted as a robust source of information about suspicion and concerns. Reporters also spoke highly of the contextual safeguarding approaches being used within some local authority social work teams. However, despite these advances it was felt that more training and support was needed to help practitioners to recognise early indicators of harm.

What barriers exist to statutory agencies addressing the behaviours of children aged 12-15 engaged in serious offending?

- The holistic and solution-focussed approach of the children's hearings system was considered to open doors to interventions that were not always available when prosecution was sought through the criminal courts.
- Our case file sample highlights that children referred to the Reporter after being charged with a serious offence were offered a wide range of interventions to address both their offending behaviour and promote their welfare. These interventions included those designed: to reduce engagement in antisocial and offending behaviour; address harmful sexual behaviour; promote greater understandings of sexual consent; improve children's mental health; reduce substance misuse; reduce vulnerability to criminal and/or sexual exploitation; encourage engagement in education and/or employment; and promote more effective family functioning. There was also evidence of restorative justice and contextual safeguarding approaches being used with children.
- It was recognised that for some children, particularly those who have experienced trauma and adverse childhood experiences, disentangling themselves from behaviours that bring them into contact with the police can be a journey. This journey was often non-linear, with periods where children and their families engaged well with supports, and others where there was little sign of engagement.
- 1 in 5 (19%, n=<5) of the children in our sample who were referred again for an offence had not engaged with any supports or interventions offered by the local authority. In some cases, this lack of engagement was accompanied by more frequent episodes of violent behaviour within the community. It was these cases that were considered to cause the public alarm.

- Engaging with children experiencing multiple adversities and repeatedly coming to police attention takes time, consistency and building relationships. Youth justice social workers were considered to be best placed to undertake interventions with children who commit serious offences. This was due to the high level of skill, dedication and perseverance that they can exhibit when working with children and families who are not yet ready to accept help.
- Lack of resources was seen as a potential barrier to children receiving support and intervention. It was felt that years of under-funding caused by the combination of austerity and the economic impacts of the Covid-19 pandemic had resulted in the closure of specialist youth justice teams. Unfilled vacancies and high caseloads also created challenges for tackling non-engagement as social workers were, understandably, having to prioritise child protection concerns over addressing barriers to engagement.
- Resourcing issues were also considered to result in social work teams: not having sufficient capacity to investigate police concern reports until a request for information was made from the Reporter; delays in sharing information with the Reporter due to there not being sufficient numbers of social workers trained in how to conduct specialised risk assessments, resulting in these having to be outsourced to third sector agencies; and reviews of CSOs not being requested by social work teams when there was a decline in the circumstances or behaviour of children already subject to compulsory measures.
- Reporters also highlighted how under-provision within CAMHS continued to act as a barrier to the mental health needs of children who come into conflict with the law being addressed.
- Issues focussed on resourcing were raised, not to be critical of social workers, but to illustrate the pressures that can exist when the systems designed to provide support are over-stretched and under-resourced. It was also highlighted that not having sufficient resources to address the continued behaviours of a “*small minority*” of children who require significant levels of intervention to address the underlying causes of their offending can result in the perception that the children’s hearings system is not working. It was therefore considered essential that any rise in ACR should be appropriately resourced.
- Reporters would like to see more preventative interventions being delivered during middle childhood (i.e. when children are in primary school) for children who have experienced trauma in earlier childhood. This specific period was identified due to the number of children who Reporters saw engaged in offending behaviour who received intensive supports in early childhood who then bounced back into the system when they began offending during adolescence.

What, if any, impact does the handling of serious offences through the Children's Hearings System have upon public confidence in Scotland's approach to youth justice?

- Reporters felt that the high visibility of the behaviours of “a small minority” of children engaged in repeat antisocial and violent behaviour within communities could, when reinforced by reporting on social media and in mainstream media, amplify the perception that serious offending by children is common. It was felt that these views needed to be challenged through the provision of evidence on the true scale of youth offending.
- Societal beliefs around the use of punishment as a deterrent can result in the perception that the Children's Hearing is “a soft touch” that results in no consequences for children who cause significant harm. These views can be reinforced by media portrayals of the small proportion of very serious cases (i.e. rape) that are referred to the Reporter.
- Legislative provisions designed to promote privacy for the child who has caused harm can result in victims being left with the perception that nothing has been done to address the behaviour; particularly if the decision of the Reporter has been to refer the child to social work on a voluntary basis or to draft alternative grounds of referral to the children's hearing because they believe that the offences is part of a wider set of concerns for the child. For victims the belief that there will be no consequences for a child that has caused harm can be damaging.
- Reporters specifically highlighted the difficulty that victims could experience in cases where the Reporter chose to draft alternative grounds of referral for a child accused of an offence. This is because in these cases the victim would be told that no action was being taken in relation to the offence, when in reality a significant body of work would likely be undertaken to address the underlying causes of the offending behaviour through the children's hearings system.
- Reporters did not want to see privacy for children in the hearing system removed, namely due to the potential that exists for the referred child to be harassed or harmed. However, they felt that more could be done to help victims understand the types of support that children who commit serious offences are likely to receive and how successful these are.
- Lack of transparency around the children's hearings system was considered to result in both victims and the wider public doubting the effectiveness of diverting children from prosecution. Reporters described seeing this lack of confidence reflected in descriptions of the children's hearings system being “a soft touch” that allowed children to be “let off” with their offending behaviour. They also described seeing it within public calls for a more punitive approach to offending by children to be adopted.
- Media reporting of victims' experiences was considered to further reinforce negative perceptions of the children's hearings system by providing a very one-

sided and emotive view of the decisions taken in relation to children who cause serious harm.

- Reporters felt that in order to effectively raise the ACR there was a need to engage the public in an open and frank discussion about Scotland's welfare-based approach to justice. The purpose of this discussion should be to: 1) challenge public narratives around the volume of youth offending; 2) support them to understand the impact that trauma can have upon children's participation in offending behaviour, including their susceptibility to being influenced and exploited by others; 3) demonstrate that the children's hearings system can and does manage the offending behaviour of the majority of children who are diverted from prosecution.
- It was felt that there was a need to better support victims and families to understand the range of interventions and support that children who offend can be provided with and how effective these are at promoting rehabilitation.

Discussion

The underlying aim of this report was to explore how the children's hearings system currently addresses the needs and behaviour of children who are involved in serious offending when they are above the ACR threshold. As the ACR is currently 12, the findings of this report relate specifically to children aged 12-15 who have been referred to the Reporter after being accused of committing a serious offence. Within this report we have demonstrated that the holistic, welfare-based approach to youth justice that exists within Scotland continues to be appropriate for addressing the behaviours of the majority of the children who come into conflict with the law. This is due to the fact that the underlying causes of serious offending behaviour by children are largely amenable to change with time, support and intervention. These findings, along with those contained within the report of the ACR Review group which highlights the rarity of serious offending by children aged 12-15, would allow Scotland to continue delivering a welfare-based approach to children in conflict with the law.

However, it is also clear from our findings that in order to effectively raise the ACR there is a need to manage public confidence in the children's hearings system and ensure that victims are better supported. In particular, there is a need to help both victims and the general public understand more about: 1) the impacts that trauma can have upon offending behaviour in children; 2) the range of supports and interventions that are used with children to address their offending behaviour and how effective these are at preventing reoffending. These issues should ideally be addressed prior to the implementation of any further rises in ACR as unless a frank and open discussion with the general public around the merits of Scotland's whole system approach occurs the public will lack confidence and not be supportive of these changes.

Professor Susan McVie recently wrote that *"the evidence around using harsher punishments as a deterrent, frankly, does not stack up. We should be reassured that Scotland has the structures and mechanisms in place to deal with such incidents in a sensitive, holistic, and trauma-informed way. However, whether it has the capacity and resource to do so is another matter"*. The findings of this report reinforce this view by

highlighting how lack of capacity and resources within the system are acting as a barrier to children receiving appropriate support for their offending behaviour. Ensuring that children are provided with appropriate supports means that there needs to be timely referrals to the Reporter. Understanding whether there is scope to reduce delays in referral to the Reporter by the PF for jointly reported cases is one way of doing this. Providing children's reporters with the statutory powers to request early reviews of orders when children who are already placed on CSOs show a decline in their wellbeing and behaviour is another; particularly given the current capacity issues facing social work departments. But most importantly, it is important that any further rise in the ACR is appropriately financed and resourced. This means ensuring that all of the agencies who work with children coming to police attention receive additional funding to avoid difficult choices having to be made about how limited resources are allocated.

Addressing the underlying causes of offending behaviour also requires more investment in preventative services and interventions. Poverty, undiagnosed and untreated neurodiversity, and mental health difficulties stemming from exposure to domestic violence, maltreatment and other forms of trauma can all be addressed. And they should be if Scotland is committed to the vision of being a country where every child can succeed. Our findings also indicate that there needs to be further exploration and understanding of how children at risk of criminal exploitation are identified and supported within Scotland. There also needs to be greater steps taken to understand and address the impact of technology and the media on children's offending behaviour, particularly in relation to sexual offending. It is also clear from our findings that in order to prevent sexual offences being committed by children there needs to be more focus placed on ensuring that children are provided with education to understand consent and appropriate sexual boundaries

Recommendation 1: The ACR should be incrementally raised to age 16, beginning with a rise to age 14.

Recommendation 2: A national communications strategy should be developed to help explain youth justice processes to the general public. This should include a focus on explaining the benefits of diverting children from prosecutor, the purpose of referring children to the Reporter, and contextualising the need for a child-centred, non-punitive approach to justice within the wider contexts of the lived experience of children who offend. It should also tackle misperceptions around the volume of serious offending by children.

Recommendation 3: Provisions for better information and support for victims of children referred to the Reporter, as outlined in the Children's (Care and Justice) Scotland Act 2024, should be implemented prior to any further raises in the ACR.

Recommendation 4: There is a need for victims to receive independent advocacy and support to help them to better understand the benefits and risks of choosing to give or not give evidence when offence grounds are the subject of a proof application to the sheriff.

Recommendation 5: Children's Reporters should be able to request early reviews of compulsory supervision orders in cases where there is clear evidence that the behaviour of a child subject to an order is declining and/or there is evidence of limited engagement or progress with the care plan.

Recommendation 6: To ensure that offending by children is effectively addressed significant investment in both rehabilitative and preventative services are required.

Recommendation 7: More research is required to understand how prevalent the criminal exploitation of children is in Scotland. This research should explore how identification of criminal exploitation is occurring in practice, and how both the PF and the Reporter work within the law to identify children and seek appropriate support for them. It should also seek to understand whether there are gender-related differences in the nature of offences identified for children who are being exploited and the decisions taken in relation to addressing these.

Recommendation 8: Addressing sexual offending by children requires all children to receive information about sexual consent and appropriate sexual boundaries in both offline and online relationships.

Recommendation 9: Research is required to identify how messages about sexual consent and boundaries can be more effectively tailored to children who are neurodiverse.

Recommendation 10: More research is required to understand how the media that children are exposed to is contributing to sexual offending.

Recommendation 11: There is a need to improve the capturing of disability data for children referred to the Reporter in order to allow the youth justice trajectories of neurodiverse children who offend to be fully understood.

Recommendation 12: More research is required to understand the extent to which technology is being used by children as part of their offending behaviour, and what supports can be put in place to support them to more safely navigate a digital childhood.

Conclusion

In Scotland we have long understood that children in conflict with the law remain children, should be treated as children and where at all possible should have their needs addressed through specialist child settings rather than judicial ones. From the core principles of Kilbrandon, through our Whole System Approach to addressing the needs of children and the more recent UNCRC (Incorporation) (Scotland) Act 2024, there is acknowledgement that children coming to police attention often have the same childhood trauma, adversity and welfare needs, and deserve the same level of care and protection, as children referred to the Reporter on neglect and abuse grounds.

The number of children who commit serious offences within Scotland remains low; however, when a child is charged with a serious offence the level of public discourse around these incidents is understandably high and focussed upon what policies should be used to prevent these incidents from occurring. The evidence on youth offending to date identifies that holistic, individualised and therapeutic responses, that avoid further stigmatisation, are the most appropriate way of preventing re-offending. This is the premise of our current system and should remain that way.

The evidence presented in this study strengthens the argument that a further raising of the ACR is both necessary and justified. It also reinforces the view of the ACR Advisory Group, namely that it is possible for Scotland to raise the ACR to 16. However, in order to do that, serious consideration needs to be given to whether the services which are tasked with implementing the decisions of the children's hearings system are well enough resourced to provide intensive support to: 1) the small minority of children whose behaviours cause significant alarm to the public; 2) children who, having caused serious physical or sexual harm to another, are not ready to engage with supports and continue to offend. Greater consideration also needs to be given as to how the care and justice sector, including the children's hearings system, can better support the victims of children who commit serious offences. Without addressing these issues, it is likely that the general public would lose confidence not only in any revised ACR but also in the systems designed to support its implementation. Due to these facts, we believe it would be prudent to raise the ACR incrementally, beginning with a rise to age 14.

Table of contents

<i>Executive Summary</i>	1
Background.....	1
Methods	2
Results	3
<i>What trends exist in the nature and frequency of serious offences referred to the Reporter for 12-15-year-olds?</i>	3
<i>To what extent are the lives of children who are referred to the Reporter for serious offending characterised by adversity and trauma?</i>	4
<i>What are the patterns of serious offending among children aged 12-15 who are referred to the Reporter in terms of type, volume, gravity and recidivism, and do these differ by gender?</i>	4
<i>What factors are associated with or influence serious offending by children?</i>	6
<i>What factors do Children's Reporters take into consideration when making decisions about children aged 12-15 who have been referred for serious offending?</i>	7
<i>What barriers exist to statutory agencies addressing the behaviours of children aged 12-15 engaged in serious offending?</i>	10
<i>What, if any, impact does the handling of serious offences through the Children's Hearings System have upon public confidence in Scotland's approach to youth justice?</i> 12	
Discussion.....	13
Conclusion	15
<i>Table of contents</i>	17
<i>Table of Figures</i>	21
<i>Table of Tables</i>	22
<i>About the authors</i>	23
<i>Acknowledgements</i>	24
<i>Chapter 1: Introduction</i>	25
Background to the Age of Criminal Responsibility (ACR) in Scotland	25
Reviewing the ACR	25
Addressing the offending behaviour of children in Scotland.....	25
<i>Early and Effective Intervention (EEI)</i>	26
<i>Jointly reporting the offence to the Procurator Fiscal and the Children's Reporter</i> 26	
<i>Referral to the Children's Reporter</i>	28
What is currently known about the nature and volume of serious offending by Children in Scotland.....	30
The backgrounds of children who commit serious offences.....	31

Aims of this report	32
<i>Case Study: Riley, age 14</i>	34
<i>Chapter 2: Methods</i>	35
Data Sources	35
Trends Analysis	35
Case sampling	36
Qualitative interviews	37
Ethical approval	37
Confidentiality	37
Terminology	38
Data Security	38
Limitations of this study	38
<i>Case Study: Robbie, age 15</i>	39
<i>Chapter 3: Trends in the volume and nature of serious offences referred to the Children's Reporter</i>	40
Trends Analysis	40
Case Sample Findings	45
Description of sample	45
Nature of serious offences referred	45
How the index offences were reported	46
Age when the serious offending occurred	48
Age of children when the serious offending was referred to the Reporter	49
Relationship of the child to the victim	49
Number of children involved in the index offence	51
Location of the index offence	51
Summary	52
<i>Case Study: Ryan, age 15</i>	54
<i>Chapter 4: Backgrounds of children referred to the Children's Reporter for serious offences</i>	55
The socioeconomic circumstances of children referred for serious offending	55
Experience of poverty	56
Children's living circumstances at the time of the index offence	57
Children's health and wellbeing	57
Experiences of education and school	57
Child's experience of abuse, neglect, trauma and significant events	58
Additional health and social care needs of parents/carers	59
Histories of criminal and sexual exploitation by others	59

<i>Children's harmful behaviours</i>	59
Involvement of statutory services prior to being referred to the Children's Reporter for serious offending.....	60
Children with no previous service involvement	62
<i>Case Study: Rosie, age 12</i>	64
<i>Chapter 5: Management of serious offences within the Children's Hearings System and implications for public confidence</i>	65
Deciding whether to prosecute serious offences by children	65
<i>The Reporters role in gathering and sharing information to assist the PF in their decision around whether to prosecute jointly referred cases</i>	65
<i>Barriers to identifying and sharing information with the PF around jointly reported offences</i>	68
<i>Factors that affect whether a serious offence is retained by COPFS for prosecution or referred to the Reporter for consideration of compulsory measures through the children's hearings system</i>	70
Reporters' decision-making in relation to serious offences	71
<i>Decisions made by Reporters in relation to serious offences referrals</i>	71
<i>Information and tools used to support Reporter decision-making</i>	73
<i>Consideration of the evidence and establishing offence grounds</i>	75
<i>Demonstrating the necessity of compulsory measures</i>	78
<i>Understanding the influence of others in offending behaviour</i>	87
<i>Case Study: Reece, age 13</i>	95
<i>Chapter 6: Views on the ability of the Children's Hearings System to handle serious offending</i>	96
Does referral to the Children's Reporter for serious offending result in reductions in further offending behaviour?	96
Barriers to addressing the offending of children who are not ready to engage with interventions and support.....	98
Reporters' perceptions of how the Children's Hearings System is viewed by the general public.....	103
<i>Case Study: Ross, age 14</i>	110
<i>Chapter 7: Discussion and recommendations</i>	111
Summary of findings	111
<i>What trends exist in the nature and frequency of serious offences referred to the Reporter for 12-15-year-olds?</i>	111
<i>To what extent are the lives of children who are referred to the Reporter for serious offending characterised by adversity and trauma?</i>	112
<i>What are the patterns of serious offending among children aged 12-15 who are referred to the Reporter in terms of type, volume, gravity and recidivism, and do these differ by gender?</i>	113
<i>What factors are associated with or influence serious offending by children?</i>	114

<i>What factors do Children’s Reporters take into consideration when making decisions about children aged 12-15 who have been referred for serious offending?</i>	115
<i>What barriers exist to statutory agencies addressing the behaviours of children aged 12-15 engaged in serious offending?</i>	118
<i>What, if any, impact does the handling of serious offences through the Children’s Hearings System have upon public confidence in Scotland’s approach to youth justice?</i>	120
Discussion and recommendations	121
<i>Raising the ACR would reflect the continued need for a welfare-based approach to children in conflict with the law</i>	122
<i>Managing public confidence in the children’s hearings system</i>	123
<i>Providing better support for victims</i>	124
<i>Ensure that all of the key organisations that work with children coming to the attention of the police are fully funded and resourced</i>	127
<i>Addressing the criminal exploitation of children</i>	128
<i>Providing interventions to promote greater knowledge of consent and boundaries in sexual relationships</i>	130
<i>Understanding and addressing the impact of technology on adolescent offending behaviour</i>	131
<i>Appendix A: Serious offences mapped using the s39 test of the Age of Criminal Responsibility Act 2019</i>	134
<i>Appendix B: Case File Research Variables</i>	135
<i>Appendix C: Semi-structured interview topics</i>	139
<i>Appendix D: Details of common risk assessments</i>	140
<i>References</i>	141

Table of Figures

Figure 1: Percentage of offence charges that met the ACRA s39 test by report type	41
Figure 2: Percentage of serious offence referrals (as measured using the s39 test) by gender for 12–15-year-olds between 1st of April 2021 and 31st of March 2024..	41
Figure 3: Percentage of children referred for a first serious offence (as measured using the s39 test) broken down by age for 12-15-year-olds between 1st of April 2021 and 31st of March 2024.....	42
Figure 4: Gender differences (%) in the nature of serious offence charges (as measured using the s39 test) for 12–15-year-olds between 1st of April 2021 and 31st of March 2024	43
Figure 5: Gender differences (%) in the gravity of non-sexual crimes of violence charges that met the s39 test between the 1st of April 2021 and the 31st of March 2024	43
Figure 6: Gender differences in the gravity of sexual crimes charges that met the s39 test between the 1st of April 2021 and the 31st of March 2024.....	44
Figure 7: Percentage of children with repeat serious offence referrals (as measured by the s39 test) between 1st of April 2021 and 31st of March 2024	44
Figure 8: Percentage of boys and girls with a standard or joint referral, by type of serious index offence*	47
Figure 9: Percentage of girls and boys with one or more serious offence charge within the index referral	48
Figure 10: Child’s age when a a jointly reported offence was passed to the Reporter by gender and offence classification	49
Figure 11: Percentage of child and adult victims by offence classification	50
Figure 12: Percentage of victims who were known to the child who was referred for serious offending	50
Figure 13: Percentage of children who acted alone or in a group by offence classification.....	52
Figure 14: Percentage of deprivation (as measured by SIMD Quintiles) among children aged 12-15 referred to the Reporter for serious offences (as measured using the s39 test).....	55
Figure 15: Percentage of deprivation (as measured by SIMD Quintiles) among boys and girls aged 12-15 referred to the Reporter for serious sexual and violent offences (as measured using the s39 test)	56
Figure 16: Age of children at first referral to the Reporter by gender.....	62
Figure 17: Percentage of children not previously known to the Reporter or social work broken down by offence type	62

Table of Tables

Table 1: Comparison of serious index offence referrals (as measured by the s39 test) within the wider 9-month sample of serious offences and the case sample	45
Table 2: Distribution of violent and sexual index offence categories (as measured by the s39 test) across boys and girls within the wider 9-month sample of serious offences and the case sample.....	46
Table 3: Mean age of children at the time of the index offence by offence classification.....	48
Table 4: Distribution (%) of victims by their relationship with the child who was alleged to have committed a serious offence*	51
Table 5: Living arrangements at the time of the index offence	57
Table 6: Additional support needs of the child at the time of the index offence	57
Table 7: Percentage of children exposed to trauma	58
Table 8: Additional health and social care needs of parents at the time of the index offence	59
Table 9: Harmful behaviour being displayed to self or others at time of index offence	60
Table 10: Previous involvement of statutory services	61
Table 11: Reporter decisions made for serious offence referrals, for both 9-month period and case sample	72
Table 12: Gender split of Reporter decisions by offence type for the case sample ..	72

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Acknowledgements

Thank you to our Research Advisory Group for your guidance, support and feedback throughout this project.

Cheryl Clark, COPFS
Tirion Seymour, Victim Support Scotland
Nathan Farrell, Victim Support Scotland
John McDiarmid, Police Scotland
Grant Trainer, Police Scotland
Tamar Jamieson, Police Scotland
Sharon Glasgow, Social Work Scotland
Carole Murphy, CYCJ
Kenzy Thompson, Scottish Government
Melisa Parkinson, Scottish Government
Abbie Montgomery-Fox, CHS
Elizabeth Lloyd-Kelly, SCRA

Thank you also to the Scottish Governments' Age of Criminal Responsibility Sub-group for Data and Research for their advice, support and feedback.

Thank you to Alistair Hogg and Neil Mitchell, SCRA's Head of Practice and Policy and Practice Manager respectively, for their advice and guidance during the completion of this research. Thanks also to Alison Deighan (Practice Reporter) and Jennie Laurneson for proofing this report prior to publication.

Chapter 1: Introduction

Background to the Age of Criminal Responsibility (ACR) in Scotland

The Age of Criminal Responsibility (Scotland) Act 2019 received Royal Assent on 11th June 2019 and was fully implemented on 17th December 2021. The Act, herein referred to as ACRA, raised the ACR to 12 years of age; bringing it in line with the existing age of criminal prosecution.² These changes mean that no children under the age of 12 can be charged or prosecuted for committing an offence. Instead, any child under the age of 12 who is engaging in harmful behaviour can be referred to the Children's Reporter for consideration of whether their needs should be addressed through compulsory measures of supervision.

Prior to the implementation of ACRA, the ACR in Scotland was 8 years of age. This ACR was significantly lower than the minimum recommended ACR of 14.³ It was also the lowest in Europe, with the ACR in other nations ranging from 10 (England) to 16 (Portugal). Since the implementation of ACRA, calls have been made for Scotland to raise the age of ACR to 14, with the Children and Young People's Commissioner for Scotland calling for the Scottish Government to go further and raise the ACR to 15 or 16.⁴ These calls reflect recommendations made within Scotland's Independent Care Review, "The Promise", namely that all children in Scotland should be diverted from the criminal justice system.⁵

Reviewing the ACR

Section 78 of ACRA places a statutory duty on Scottish Ministers to review the operation of the Act both generally and with a view to considering the future ACR.⁶ The review period was set at three years, commencing on the date that the Act was fully implemented and concluding on the 16th December 2024. ACRA further specifies that a report on the review should be prepared, published and laid before the Scottish Parliament no later than 12 months after the review period ends, i.e. by the 16th of December 2025.

The Age of Criminal Responsibility Advisory Group was established to assist Scottish Ministers to undertake the review. In their final report, the group concluded that the ACR in Scotland could be raised to 16 with limited impact upon prosecutorial and court services. However, the review also highlighted a number of key considerations that Ministers would need to address in order to do so. These included identifying how best to manage *"the serious behaviour of children just above the age of criminal responsibility threshold or those nearing adulthood, and ensuring that victims of harm caused by children receive appropriate support"*.⁷ This report aims to provide insights in relation to this question by examining how serious offending by children aged 12-15, who are over the ACR, is currently addressed by the Children's Reporter.

Addressing the offending behaviour of children in Scotland

In Scotland, the approach taken to addressing the offending of children is grounded within the principles of the 1964 Kilbrandon Report. This report identified that children in conflict with the law often shared the same underlying welfare needs as those who were referred to the courts on neglect and abuse grounds, and as such were deserving of the same level of care and protection. The committee recommended that children

under the age of 16 who committed minor offences should no longer be subject to the adult court system, and that instead their behaviours should be addressed through the provision of compulsory social education. The most serious offences, including solemn offences such as rape and murder, would continue to be addressed by the criminal courts. These recommendations, which were enacted through the Social Work (Scotland) Act 1968, led to the inception of the Children's Hearings System on the 15th April 1971.^{8,9}

The ethos of Kilbrandon continues to underpin Scotland's approach to youth justice. This is due to there being consistent research evidence demonstrating that early and repeat contact with the criminal justice system, rather than promoting desistance, can increase the risk of subsequent offending.¹⁰ This approach, which focusses upon "*needs, not deeds*" also reflects the principles of Article 40 of the United Nations Convention on the Rights of the Child (UNCRC), which was passed into Scots Law through the UNCRC (Incorporation) (Scotland) Act 2024.^{11,12} This Article states that children in conflict with the law should be treated as children, and where it is possible to do so, they should be dealt with in specialist child settings rather than judicial settings.

Offending by children is currently addressed using a Whole System Approach (WSA). This approach aims to divert children who are in conflict with the law away from prosecution and custody through the use of early intervention and alternatives to custody. The use of WSA means that there three broad pathways available to the Police when children commit an offence. These are: 1) the use of Early and Effective Intervention; 2) jointly reporting the offence to the Procurator Fiscal (PF) and the Children's Reporter; 3) referring the child directly to the Children's Reporter. Decisions about which legal mechanism to use are made based upon the age and legal status of the child, as well as the seriousness of the alleged offence.¹³

Early and Effective Intervention (EEI)

Early and Effective Intervention (EEI) is used to support children and young people to understand and address offending behaviours. EEI is largely used for minor offences where there are no indications that compulsory measures of supervision through the children's hearings system are required. It can also be used for children under the age of 12 who, although not meeting the ACR, are demonstrating harmful behaviour that would have been considered an offence prior to the implementation of ACRA.¹³

Jointly reporting the offence to the Procurator Fiscal and the Children's Reporter

Section 42(1) of the Criminal Procedure (Scotland) Act 1995 states that "*no child under the age of 16 years shall be prosecuted for any offence except on the instructions of the Lord Advocate, or at his insistence*".¹⁴ The Lord Advocate's Guidelines state that any child over the ACR who commits an offence which must be prosecuted by indictment must be jointly reported to the PF and the Reporter by the Police.¹⁵ Examples of the offences that must be jointly reported include: murder; attempted murder; assault; serious assaults resulting in danger to life, severe injury or permanent disfigurement; assault and robbery involving the use of firearms; assault with intention to rob involving the use of firearms; rape; and fire-raising. Joint reports can also be

made for children aged 15 years or over in relation to driving offences where it is considered that a disqualification from driving, that would remain in place after the age of 16, would be in the public interest.

The Lord Advocates Guidelines also outline that older children who are engaging in sexual conduct with younger children, i.e. those under the age of 13, can be jointly reported. However, in these circumstances the Police are asked to consider the nature and circumstances of the alleged offence, including: the age of the parties involved; the level of force, violence or coercion involved; the impact of power imbalances; the impact of substances upon the behaviour of the accused and alleged victim; attempts at hiding or creating secrecy around the offence; the level of denial or minimisation of concerns; and if indications of grooming are present. In cases where there is ambiguity around the referral route to be taken discussions between the Police and COPFS will be undertaken to ascertain whether prosecution is indicated.

When an offence is jointly reported, prosecutors at COPFS will consider whether or not the case should be retained for prosecution or referred to the Reporter. In order to pursue a prosecution, the PF must be satisfied that there is sufficient evidence that an offence has been committed and that the child who has been jointly referred has committed that offence. They will also assess whether prosecution of the case is within the interests of the public.¹⁶ The factors that will be taken into account when making these decisions include: the nature and gravity of the offence; the physical, psychological and economic impact upon the victim and any witnesses; the age, background and person circumstances of the accused; the age, background and personal circumstances of the victim and other witnesses; the attitude of the victim; the motive for the offence; how long ago the offence occurred; any mitigating circumstances that might explain the behaviour of the accused; the effect of prosecution on the accused; the risk of further offending; whether civil proceedings may offer a more appropriate method for settling the case; what powers the court may exercise in the event of a conviction; and the level of public concern.

In addition, the PF must also consider whether or not prosecution is in the best interests of the child. To support this decision being made, the PF will request information from SCRA about the child that has been reported. They will also engage in discussions with the Children's Reporter about any potential benefits of the case being addressed within the Children's Hearings System. The range of information that can be requested about the child is outlined within an agreement between SCRA and COPFS^a, and includes: whether the child is currently subject to a compulsory supervision order (CSO); the date and purpose of any scheduled children's hearing; details of any referrals for the child which are currently being investigated; the contact details of the child's social worker or "lead professional"; information about any offence-focussed work already being undertaken with the child and how they are engaging with this; any relevant information about the background of the child or context of the offence that can inform decisions around the need for prosecution; the views of the child in relation to the offence; and the Reporter's view as to whether the needs and behaviour of the child could be more appropriately and effectively addressed within the Children's Hearing System than in the criminal justice system.

^a Decision-making in cases of children jointly reported to the Procurator Fiscal and Children's Reporter

The timescale for deciding which agency will take forward the case is set at 10 working days. If the PF needs to seek advice from Crown Counsel's about the offence this decision can take up to 45 days, or longer in exceptional circumstances. This is because COPFS may choose to conduct a pre-petition investigation to establish whether there is sufficient credible and reliable evidence to prove the crime, and to determine whether proceedings are in the public interest. These investigations are more likely to be undertaken for offences that are considered to be sensitive or sexual in nature and are designed to ensure that there is sufficient evidence of the offence, and that any concerns about the quality of evidence can be assessed.

If a decision has been made by COPFS to prosecute, and a child above the ACR has pled or been found guilty, there are certain circumstances where advice will be sought by the court from the Children's Hearing before disposing of the case. The decision to remit a case for advice is based on a range of factors including the age of the child, whether the child is already subject to a CSO, the type of court which has dealt with the offence, and the seriousness of the offence. For instance, where a child is subject to a CSO the Sheriff Court must seek advice from a children's hearing before they dispose of the case^{17, b, c}. In addition, children under the age of 17.5 years can have their cases remitted to the Children's Hearings for advice on how the court should dispose of the case. Following receipt of that advice the court can also choose to remit the young person's case to a Children's Hearing for disposal as an alternative to sentencing.¹⁸ If a decision is made not to prosecute, the child's case will be passed to the Children's Reporter by the PF so that a decision can be made about the need for compulsory measures of supervision.¹⁹ These cases, are then dealt with as per the procedures outlined below.

Referral to the Children's Reporter

Referrals to the Reporter can currently be made for all children under the age of 16, as well as 16–17-year-olds who are already subject to a compulsory supervision order (CSO) through the Children's Hearings System.^d When an offence referral (or any referral) is received by the Reporter they must decide whether or not: 1) there is evidence that a ground of referral applies to the child; 2) the child requires to be made subject to a CSO. To help inform this decision, the Reporter can carry out any investigations that they consider necessary. This can involve gathering information about: the circumstances of the offence; the level of risk that the child poses to others;

^b There are some exceptions to this based upon the nature of the offence that has been committed. For instance offences listed under Section 51A of the Firearms Act 1968 or section 29 of the Violent Crime Reduction Act 2006 are exempt from this ruling as per Section 49(3) of the Children (Scotland) Act 1995.

^c The Children (Care and Justice) Scotland Act 2024 changes the definition of a child to being an individual under the age of 18 in line with the UNCRC (Incorporation)(Scotland) Act 2024. Once implemented, these changes mean that Sheriffs will have to consider remitting the cases of all children aged 16-17 to the Children's Hearings System for advice, irrespective of whether they are subject to a CSO.

^d The Children's (Care and Justice)(Scotland) Act 2024 once implemented will raise the age of referral to the Children's Reporter to age 18, meaning that all 16-17 year olds will be eligible for referral. The Act also extended existing powers relating to the remittal of criminal cases from the Courts to the Children's Hearings System for advice to age 18, with advice to be sought for all summary cases and at the discretion of the Courts in solemn cases.

what underlying concerns there are about the child; and what, if any, supports are currently in place to address the offending behaviour.

To assess whether an offence ground applies to the child, the Reporter will adhere to the standard of proof and the rules of evidence that are used within in criminal proceedings. This means that in order to establish the offence ground, the Reporter must prove the offence beyond reasonable doubt. The amount of information the Reporter requires to support this will be guided by the severity or gravity of the offence, with offences of higher gravity requiring significantly more information to be gathered. In addition to the severity of the offence, there are a number of other factors that can increase the gravity of an offence. These include whether the offence was racially motivated, whether the offence was targeted at a vulnerable individual, and whether there were significant impacts on the victim. In cases where the victim of the offence is another child, the gravity of the offence is assessed by examining factors such as the age of the children involved, the presence of deliberate intent to harm, and the presence of coercive behaviours. Examples of offences that would be considered by the Reporter to be of high gravity include: assaults with a weapon; the theft of a motor vehicle; sexual offences involving sexually coercive behaviour; the supply of drugs; intentional fire-raising; robbery; driving with no insurance or licence; and possession of a knife or other offensive weapon. A full description of the factors that the Reporter must consider are outlined within practice direction²⁰.

If the Reporter believes that there is a need for compulsion and that there is sufficient evidence for compulsory measures, they will draft grounds of referral as per s67(2) of the Children's Hearings (Scotland) Act 2011 and arrange a Children's Hearing. Where all of the evidence gathered indicates that the child has performed a criminal act, this referral must be made under section 67(2)(j) "*the child has committed an offence*".^{21,19} The Reporter may also choose to draft non-offence grounds if it is felt that the use of these will reflect the principal concerns around the child's welfare and, if a hearing is arranged, lead to constructive and appropriate decision-making about the interventions and supports needed for the child's care, protection and welfare. If there is no need for compulsion and insufficient evidence that compulsory measures are required, a Children's Hearing will not be arranged. In this situation there are a number of options available to the Reporter. If there is no evidence that an offence has been committed and there are no other concerns in the child's life, no further action will be taken by the Reporter. In deciding not to arrange a children's hearing the reporter can refer the child to the local authority for it to provide support and intervention with the consent of the child and family.

If a Children's Hearing is arranged, recommendations about how to address the offending behaviour and any underlying concerns will be drafted by the lead social worker for the case. These recommendations will include a consideration of whether or not compulsory measures of supervision are required, along with the interventions that will be provided to address the offending behaviours. At the hearing, trained volunteers, known as panel members, will determine whether there is a need for the child to be subject to a CSO. This is a legal order that instructs social work services to provide support and supervision to the child. It also states whether the child will be looked after at home by their parents or whether they will be looked after away from home in kinship, residential, foster or secure care. To support the panel in making their decision, the views of children, their parents and any relevant professionals and

caregivers will be sought during the hearing. A Children's Reporter will also be present at the hearing to keep a record of the proceedings and to support a fair process.

What is currently known about the nature and volume of serious offending by Children in Scotland.

Data on youth offending is generally derived from routinely recorded administrative datasets compiled by the statutory bodies involved in addressing the behaviours and needs of young people who come into conflict with the law, i.e. Police Scotland, COPFS, the Scottish Prison Service and SCRA. As these datasets can vary in the type of data routinely collected the information generated on offending is not always comparable.²²

Published evidence on the nature of offences committed by children are not up to date, with the most recently published national Scottish figures coming from 2012/13. This publication indicates that among children aged 8-17, crimes of dishonesty, vandalism and fire-raising and drugs offences accounted for 43% of all offending behaviour.^e Miscellaneous crimes, which includes less severe forms of assault, including common assault constituted 53.9% of all offending behaviour. Rates of serious violent and sexual offences among children were much lower, accounting for 1.2-1.9% of offences.²³ Figures indicating a low prevalence of serious offending by young people are consistent across a number of data sources, with evidence from police statistics indicating that violent offences constitute 2-4% of all offences committed by individuals under the age of 21.²⁴

Looking specifically at offences referred to the Reporter it can be seen that during 2023/24, 26% (n=2701) of the 10,197 children were referred on offence grounds. The most common alleged offences were assault, threatening or abusive behaviour and vandalism. Placing these figures within a national context highlights that 1.1% of all children aged 12-15 in Scotland were referred to the Children's Reporter for offending in 2023/24.²⁵ This proportion has remained relatively stable over time. The ratio of boys to girls being referred on offence grounds is 3:1. This has also remained relatively stable over time and reflects findings from the wider international literature showing that boys are more likely to engage in offending behaviour.^{26,27,28,29} The most common age of referral on offence grounds is 14-15 years.³⁰

A review of the 43,874 alleged offences referred to the Reporter between 2020/21 and 2023/24 indicates that children were most commonly referred for assaults, threatening and abusive behaviour and vandalism. Sexual offences accounted for 4% of all alleged offences, while non-sexual crimes of violence accounted for 28.5% of alleged offences.³¹ It is important to note that these are individual charge counts and therefore do not reflect the proportion of children in society who are committing these offences.

If a child under the age of 16 is charged with a serious offence they will be jointly reported. To understand the number of serious offences by 12-15-year-olds we extracted data on all joint reports from CSAS. In 2023/24 there were 2610 joint reports

^e The term offending behaviour is used here due to the inclusion of children aged 8-11 who would now be considered under the ACR.

made to the PF and the Reporter for 1329 children ^f. Just over half (53%, n=1383) of these related to an alleged offence by a child aged 12-15. Compared with the figures for 2018/19, where 1225 joint reports were made for children aged 12-15, this represents a 13% increase in the number of serious offences being jointly reported. Looking in more detail at the joint reports made for 12–15-year-olds in 2023/24 it can be seen that the overwhelming majority (98.6%, n=1364) were submitted while the child was not in the custody of the police. The PF made the decision to retain 9.4% (n=130) of the cases for prosecution, with 86.2% (n=1192) cases passed to the Children's Reporter for a decision about the necessity of compulsory measures of supervision. A decision was still being made about the remaining 4.9% (n=68) of cases at the time these statistics were published. Joint reports were more likely to be retained by the PF when the child was in custody when the report was made (57.9% vs. 8.7%).

The backgrounds of children who commit serious offences

Children in conflict with the law are a vulnerable group who often have complex backgrounds and multiple needs. Evidence from the international literature consistently shows that offending by children is associated with the presence of conflict and dysfunction within the home, witnessing and experiencing violence in the home, and inconsistent, harsh and punitive parenting.^{32,33} Histories of childhood maltreatment and neglect are also commonly observed among children in conflict with the law.^{36,34} The experience of poverty exacerbates risk factors associated with offending and can increase the likelihood of children coming to police attention.³⁵

Retrospective studies have found that care experienced children are overrepresented in both youth and adult justice settings.³⁶ While it is argued that this may be due to children in care being more visible to the police, it is also noted that placement in out of home care can increase exposure to other children who are demonstrating offending behaviour.³⁷ Behavioural concerns such as ADHD, oppositional defiance disorder and conduct disorders, which are more prevalent among both maltreated children generally and those who are cared for by the state, can also increase the risk of offending behaviour.^{37,38} Other factors that can underscore youth offending include low academic achievement, lack of connectedness to school and lack of contact with prosocial adults.^{40,39,42}

Adversity during childhood can also have a profound impact upon offending. Studies which have measured the prevalence of Adverse Childhood Experiences (ACEs),⁴⁰ including exposure to abuse and neglect, criminality and drug and alcohol misuse within the home, indicate that 92.6%-97.2% of children who come to the attention of the police have at least 1 ACE.^{41,42} The impact of ACEs can be cumulative. For instance, there is some evidence to suggest that for each additional ACE a child has their risk of becoming a serious, violent or chronic offender increases by 35%.⁴³

These findings from the international literature are reflected within the backgrounds of children referred to the Reporter on offence grounds. For instance, a study exploring the characteristics of 400 children aged 12-15 referred to the Reporter on offence

^f Please note that all 16-17 year olds who are already subject to a CSO or have an open referral must be jointly reported when they are accused of any offending behaviour. This means that while joint reports can be used as a marker for seriousness for those aged 12-15, it cannot be used in the same way for those aged 16-17. -

grounds identified that their lives were characterised by adversity, trauma, neglect, exposure to harmful behaviours by others, victimisation, and exploitation, including criminal exploitation and sexual exploitation. This was often compounded by socioeconomic disadvantage and poverty. Additional areas of concern included poor educational attendance and attainment, high levels of mental health difficulties, histories of self-harming and use of substances.⁴⁴

Aims of this report

Previous research undertaken by SCRA for the ACR advisory group concluded that further understanding is required on how decision-making related to serious offences is undertaken by the Children's Reporter.⁴⁷ This study aims to address this gap by exploring in more detail the nature and volume of serious offences referred to the Reporter, and how these are addressed. The study also aims to build upon existing evidence by understanding whether or not gender differences exist in the nature of serious offences referred to the Children's Reporter and what, if any, impact this can have upon decisions taken to address serious offending. In exploring these issues, the report will address the following research questions:

- What trends exist in the nature and frequency of serious offences referred to the Reporter?
- To what extent are the lives of children aged 12-15 who are referred to the Reporter for serious offending characterised by adversity and trauma?
- What are the patterns of serious offending among children aged 12-15 who are referred to the Reporter in terms of type, volume, gravity and recidivism, and do these differ by gender?
- What factors are associated with or influence serious offending by children aged 12-15?
- What factors do Children's Reporters take into consideration when making decisions about children aged 12-15 who have been referred for serious offending?
- What barriers exist to statutory agencies addressing the behaviours of children aged 12-15 who cause serious harm through offending?
- What, if any, impact does the handling of serious offences through the Children's Hearings System have upon public confidence in Scotland's approach to youth justice?

The report is laid out as follows. Chapter two provides an overview of the methods used. Chapters 3-6 provided a detailed thematic analysis of the data gathered in order to triangulate findings across the three methods used. Chapter 7 begins by mapping findings from the study against each of the research questions to provide a summary of key findings. It then moves on to relate the findings to the wider literature and reflections upon what the findings mean in relation to revising the ACR. The chapter concludes with recommendations on specific areas of policy and practice that would

need to be revised in order for the ACR in Scotland to be raised to either 14 or 16. For those short on time, reading chapters 1, 2 and 7 along with the case studies provided on pages 34, 39, 54, 65, 96 and 111 will provide a detailed insight into how serious offending among 12-15-year-olds is managed, and what implications this has for the ACR review.

Case Study: Riley, age 14



Riley's mum struggled with addiction. Due to a lack of consistency in Riley's care the family was referred to the Reporter when Riley was a baby; however, no action was taken as the family agreed to work with social work on a voluntary basis.

At age three, SCRA received three more referrals for Riley and she was placed onto a compulsory supervision order through the Children's Hearings

System. Although this order was removed a year later, the family continued to receive support from social work at various points of crisis throughout her childhood.

At age 14 Riley began disengaging from school. Although she had a group of friends, they were considered to be a bad influence on her behaviour and Riley was consistently getting into trouble. Her home life was becoming increasingly unstable, and she had started sleeping at the homes of family members and her boyfriend. Riley was also self-harming; something that she was known to do when she found things difficult.

One evening, Riley and three friends attacked a girl from her school. The girl suffered serious injuries. The incident was recorded by several boys, who shared the video on social media. Riley was charged by the police with having committed an assault to severe injury and jointly reported to the PF and SCRA. The decision was made by the PF to refer Riley to SCRA for consideration of whether a children's hearing should be arranged.

Riley was remorseful about the attack and wanted to apologise to the girl she had harmed. Her family was shocked by the behaviour as it was felt to be very out of character. Since the assault, Riley has worked well with statutory agencies and has taken on board their advice and guidance. She accepts the seriousness of her actions and has undertaken work in respect of managing her emotions and reactions to situations. She is attending school on a part-time basis and social work have been providing her parents with support to establish boundaries and routines. Riley has been reacting well to this structure and is complying with the boundaries that are being set at home.

Given the family's willingness to engage with supports, the level of remorse shown and the responsibility taken by Riley for her actions, the Reporters' view was that this case could be managed on a voluntary basis without the requirement of a hearing. Riley has had no further referrals to SCRA in the 12 months following the assault.

Chapter 2: Methods

Data Sources

To address the research questions a mixed methods study combining trends analysis, case sampling and qualitative interviews with Children's Reporters was undertaken.

Trends Analysis

Data for the trends analysis were extracted from SCRA's Data Warehouse on all children aged 12-15 who were referred to the Reporter on serious offence grounds between 1st of April 2021 and 31st March 2024. In order to identify whether there were any differences in the nature of serious offences referred by age and gender, the generated dataset include the age and gender of the child, along with details of the alleged offence.

For the purpose of this analysis our definition of how serious an offence is was based upon whether or not the police would be authorised to conduct an investigative interview with the child if the ACR was raised to age 16. The circumstances under which this would occur are outlined in s39 of the ACRA, which states that a child, who *"by behaving in a violent or dangerous way, has caused or risked causing serious physical harm to another person"* or *"by behaving in a sexually violent or sexually coercive way, has caused or risked causing harm (whether physical or not) to another person"*, can only be interviewed with the consent of the child's parents, a court order or where the police are able to demonstrate that there is a necessity to interview the child to prevent the loss of a life. ⁴⁵ To identify all offences that met this definition, a mapping exercise was undertaken by SCRA's Data Manager, Police Scotland and Social Work Scotland. During this mapping exercise it was concluded that just looking at offence names without knowledge of the circumstances of the case made it difficult to ascertain whether a case would meet the test. To address this, four data categories were created, namely:

- Yes: it is clear from the offence name that the behaviour involved in the offence would meet the s39 test
- Yes, if: it is clear from the offence name that the behaviour involved in the offence would meet the test, but only if the offence: was a violent act risking serious physical harm; was accompanied by any measure of sexual coercion; was accompanied by force or violence risking serious physical harm; was part of a dangerous act risking serious physical harm; resulted in serious physical harm being risked or was sexually coercive in nature.
- No, maybe: it is clear from the offence name that the behaviour involved in the offence would not meet the test unless certain facts and circumstances were present. These circumstances and facts were broadly the same as outlined for 'yes, if'.
- No: it is clear from offence name that the behaviour involved in the offence would not meet the test.

All data captured within the 'yes' categories were extracted for inclusion in the analysis. The full list of offences that were captured using these rules is included in Appendix A. Data were extracted and manipulated using Power BI and Microsoft Excel.

Case sampling

Our case sample consists of 59 children (boys n=30, girls n=29^g) who were referred to the Reporter between the 1st October 2022 and 30th June 2023 for an offence that involved behaviour that would definitely have met the s39 test if the ACR was raised to age 16. The children were randomly selected from the wider sample of 254 children referred for serious offences during that period. To allow for gender comparisons, girls were oversampled. Overall, the case sample that was created represents the experiences of 1 in every 7 boys referred to the Reporter for a serious offence, and all of the girls.

Detailed case file analysis was undertaken to explore the background characteristics of the children, along with the circumstances relating to the first (index) offence charge received between the 1st of October 2022 and the 30th of June 2023. A twelve month follow up examined changes in the risk profiles of the young people over time, including engagement with services and future involvement in offending behaviour. The following information was gathered: sociodemographic information; information on family functioning and risk; information on educational engagement and the health of the child; exposure to antisocial peers and adults; previous contacts with the care and justice sector; details of the serious offence and decisions made in relation to this; information on victims; interventions provided to the child in relation to their offending; and further contacts with the care and justice sector within the following 12 months. A full list of the research variables explored is available in Appendix B.

Data were extracted from case files held in SCRA's Case Management System (CSAS). This involved close reading of: police reports (SPR2); reports obtained from social work, health and education; grounds of referral and the records of investigations made by the Reporter; correspondence and notes related to the child; and hearings outcomes. The quantity and type of information varied across children's case files. This affected data collection in three ways. First, information on the child's background was sometimes reduced in the event that there had been no previous involvement with the Children's Hearing System or Social Work Services. Second, if the outcome of the serious offence was that compulsory measures were not required and no further referrals were received by the Reporter over the next 12 months, we were unable to provide insight into the child's broader wellbeing, i.e. engagement with school. Third, if the child was not made subject to a CSO as a result of the serious offence that was referred to the Reporter and went on to be involved in lower-level offending behaviour that necessitated the police to make a referral to EEI we would not be able to see this information; meaning that it is possible that our data on re-offending is not complete.

The extracted data were collated in an Excel database that had been designed for the purposes of acting as a data collection tool. Data analysis was conducted in Excel.

^g Please note that two of the girls within the subsample were recorded within our case management system as presenting with a male gender identity.

Qualitative interviews

In order to gain an understanding of how serious offences are handled by the Reporter, semi-structured interviews were undertaken with Children's Reporters (n=10). These interviews focussed upon exploring Reporters' views on what constituted a serious offence committed by children; their interactions with the PF for jointly reported offences; and how serious offences are investigated and managed within the Children's Hearings System. A copy of the interview questions is provided in Appendix C. Interviews were undertaken between October and December 2024 using Microsoft Teams and lasted around 60 minutes on average. Interviews were conducted by the lead author.

Recruitment consisted of sharing an advert with a brief description of the research on SCRA's intranet. Locality Reporter Managers and Senior Practitioners within SCRA were also contacted and asked to highlight the study to Reporters with recent experience of managing serious offences. Reporters who showed an interest in the study were provided with an information sheet outlining what participation in the research would involve. This allowed potential participants the opportunity to ask questions about the research and their participation prior to giving consent.

All participants were asked to provide written, informed consent for participation in the study. Copies of the signed consent forms were retained by both parties for their records. Participants were informed that they could opt out at any point or refuse to answer specific questions. They were also reassured that they would not be identified within any outputs, and neither would any individual children they might use as examples throughout the interview.

Permission to audio-record the interviews was obtained. Transcription of interviews was undertaken using Microsoft Teams, with any errors or gaps in the recording being addressed through listening back to the audio files and editing the transcripts. All the interview transcripts were analysed using thematic framework analysis.⁴⁶

Ethical approval

Ethical approval was granted by SCRA's Research Ethics Committee on 1/10/2024.

Confidentiality

Children in both the trends analysis and case file sample were not identified by name or date of birth but instead were identified by unique identifiers throughout the data collection. The data for the trends analysis was provided by the Data Manager and did not require additional reading of children's case files. Numbers less than five have been suppressed in reporting where it is possible to do so by aggregating data or capturing them as <5 within tables.

Qualitative interview transcripts were anonymised to prevent identification of children who were referred for serious offences. As the number of serious offences committed by children are relatively low there were times when the cases being described by Reporters were highly recognisable due to either the media reporting of these offences at the time or specific details relating to the decision-making that could allow the cases to be easily cross-referenced against media reports. Due to this a decision has been made to only provide descriptions of offences in this report where it is absolutely necessary to illustrate decision-making. Where concerns about identification are

present, a broad description such as “*sexual assault involving a weapon*” has been used instead of giving specific details.

A Research Advisory Group (RAG) was appointed and provided oversight and advice on the research. The membership of the RAG is provided in the acknowledgements. All information shared with the RAG was aggregated and anonymised.

Terminology

Throughout this report we use the term child or children to identify any individual under the age of 18. This is in line with the definition of children contained with the UNCRC, which was incorporated into Scots Law in 2024

Data Security

SCRA is part of the Scottish Government’s IT network, which is a secure system. All data collected and analysed were held in a folder to which only the SCRA research team had access via encrypted devices. The researchers are all PVG scheme members in respect of regulated work with children and have all been trained in data protection law.

Limitations of this study

The approaches taken within this report have some limitations. For the trends analysis, using s39 of ACRA may result in the inclusion of some cases which, although they could be considered to be serious, might not have met the legal threshold to be jointly reported to the PF and the Children’s Reporter. However, as the purpose of this study was to explore how serious offences are addressed by the Children’s Reporter, we believe that the insights are still valid in addressing this question.

For the case sampling, it was not possible to generate an age- and gender-matched sample due to the low numbers of girls who were referred for a serious offence. Instead, in order to undertake a comparison, we randomly selected 1 in every 7 boys, and all of the girls referred between the 1st of October 2022 and the 30th of June 2023. This approach has resulted in some offences by boys potentially being over-sampled, namely sexual offences.

Finally, as previously highlighted, the gathering of data from children’s case files can be affected by the nature of data that is recorded. Two key issues relating to data quality were encountered. First, information on the child’s background was sometimes reduced in the event that there had been no previous involvement with the Children’s Hearing System or Social Work Services. Second, if the outcome of the serious offence was that compulsory measures were not required and no further referrals were received over the next 12 months, we were unable to provide insight into how the handling of a case by the Children’s Reporter affected the wellbeing of the child.

Case Study: Robbie, age 15

Robbie grew up with an unstable home life. His mum experienced domestic violence with multiple partners, which Robbie frequently witnessed. Robbie's biological father was imprisoned for domestic violence related assaults, including several against Robbie's baby brother.



Robbie's first interaction with SCRA came from a referral on care and protection grounds when he was a baby. Between birth and the age of 12, SCRA received 13 referrals on care and protection, or welfare grounds. Robbie's family were initially provided with support from social work services on a voluntary basis. However, at age 8 the decision was made to place him on a Compulsory Supervision Order (CSO) with a condition that Robbie remain living at home with his mum.

Robbie's mum struggled to provide a clean and safe environment for the children, and Robbie spent significant periods of his childhood living with different family members. All of his siblings experienced similar neglect and witnessed traumatic events within the home. All of the children were described as struggling at school and frequently displayed violent and distressed behaviour within the class or playground. All of the children were excluded from school at various points.

The first offence referral SCRA received for Robbie came when he was 13 years old. This was for threatening and abusive behaviour towards a shopkeeper. After this point Robbie was coming to police attention more and more for antisocial behaviour, threats of violence and being in possession of a weapon. At an annual review hearing it was decided that Robbie and his siblings should be looked after in foster care.

At age 15, Robbie and his brother got into a fight when visiting their mum at the weekend. During the fight they punched and kicked an adult male who was later found to have broken his nose and collarbone. Robbie was charged with assault to severe injury and jointly reported to the Procurator Fiscal and SCRA. As Robbie was already subject to a CSO the PF referred the case to the Children's Hearings System.

After discussions with social workers, the Reporter was satisfied that the care plan and the current CSO would best address his needs. For much of the year following the index offence, Robbie was living away from his local community and was able to reduce his offending and engage with social work. However, once he returned to live with his mum in the same place as before, his behaviour deteriorated.

Robbie has described himself as being "untouchable" and does not take being arrested seriously. He has struggled to manage his use of drugs and alcohol. He has also struggled to control his threatening and aggressive behaviour, and manage his ADHD through taking prescribed medication. He has been described as unable to form positive relationships and is refusing to engage with supports. Robbie has recently been placed into secure care for his own safety.

Chapter 3: Trends in the volume and nature of serious offences referred to the Children's Reporter

In this chapter we draw upon the data gathered within the trends analysis and case file analysis to contribute to our understanding of the following questions:

- What trends exist in the nature and frequency of serious offences referred to the Reporter?
- What are the patterns of serious offending among children aged 12-15 who are referred to the Reporter in terms of type, volume, gravity and recidivism, and do these differ by gender?

Trends Analysis

Overall, there were 29402 distinct offence charges referred to the Reporter for children aged 12-15 between the 1st of April 2021 and the 31st of March 2024. These charges related to offences alleged to have been committed by 5435 children. Of the charges, 4.3% (n=1256) met the s39 test for seriousness. This equates to 788 children (boys n=694, girls n=93) aged 12-15 who were alleged to have caused serious harm. These figures, when placed within the context of the number of children referred to the Reporter during that period, indicate that 1 in 7 (14%) of offence referrals for 12–15-year-olds are for serious offences. They also highlight that serious offending among 12–15-year-olds accounts for 2.5% (N=31762) of all referrals received by the Children's Reporter.

The majority (74%) of the offences that met the s39 test were received as joint (n=914) or custody (n=15) reports. Looking specifically at the charges captured by our definition of seriousness, 24% (n=296) were non-sexual crimes of violence ^h, while 70% (n=886) were sexual offences ⁱ. The remaining 6% were miscellaneous railways related offences and road traffic offences^j. Figure 1 highlights that there was broadly no difference in how non-sexual crimes of violence that met the s39 test were reported. Sexual offences that met the s39 test were slightly more likely to be submitted as joint or custody reports than standard referrals (72% vs. 66%). Road and railways related offences were slightly more likely to be reported as standard offences (9% vs. 5%).

There were 10 instances of an attempted murder charge being handled by the Children's Reporter. Of the 886 sexual offence charges that met the s39 test and were addressed by the Reporter, 182 related to rape, attempted rape and sexual assault by penetration. This means that attempted murder charges accounted for 0.03% of all

^h Charges included in this category include assaults to severe injury, assaults to severe injury and disfigurement (including permanent disfigurement), assault to injury/severe injury and impairment, and attempted murder.

ⁱ All of the charges in this category relate to the following sections of the Sexual Offences (Scotland) Act 2009: (s1) rape or attempted rape; (s2) sexual assault by penetration; (s3) sexual assault; (s6) coerced into looked at sexual image; (s7) indecently communicating; (s18) rape of a young child; (s19) sexual assault by penetration of a young child (s20) sexual assault of a young child; (s21) causing young child to participate in sexual activity; (s23) causing young child to view a sexual image; (s24) communicating indecently with young child;

^j Charges in these categories related to throwing objects onto the railway from overpasses and dangerous driving.

offence referrals received by the reporter between the 1st of April 2021 and the 31st of March 2024. Allegations of rape and penetrative sexual assault accounted for 0.6% of all offence referrals received during this period.

Figure 1: Percentage of offence charges that met the ACRA s39 test by report type

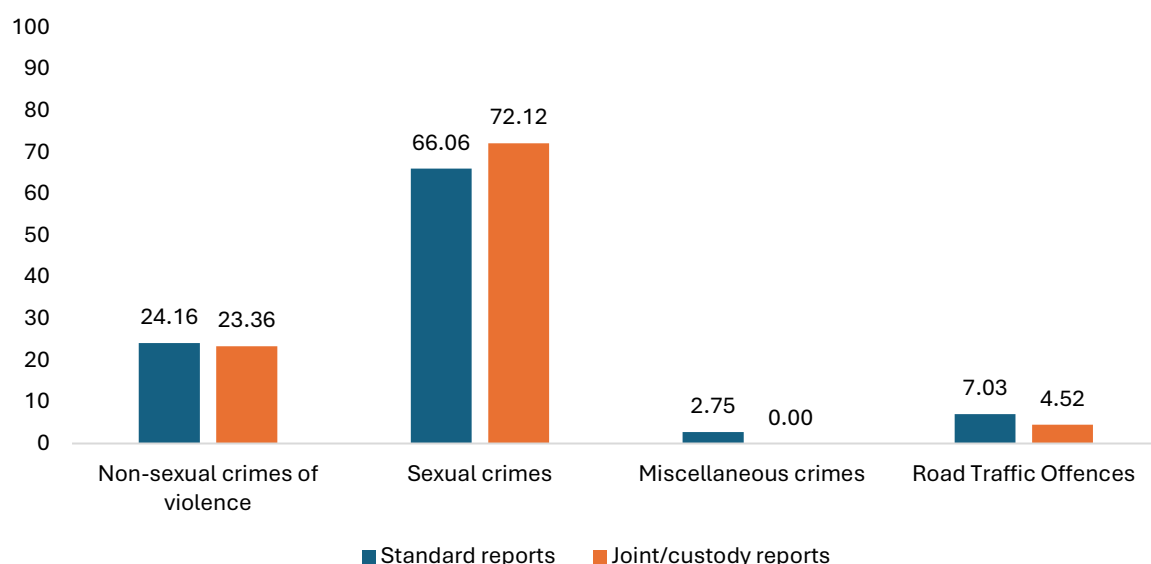


Figure 2: Percentage of serious offence referrals (as measured using the s39 test) by gender for 12–15-year-olds between 1st of April 2021 and 31st of March 2024

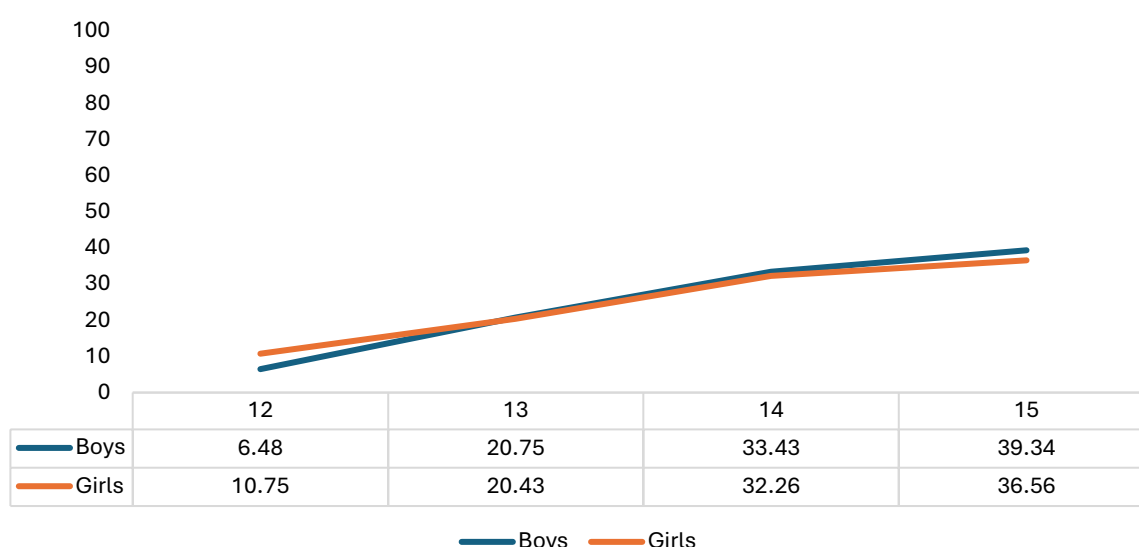


Figure 2 indicates that boys were more likely than girls to have been referred for an offence that met the s39 test between the 1st of April 2021 and the 31st of March 2024 (88% vs. 12%). This difference was consistently observed across all time points. It should be noted that this gender difference is starker than for all offence referrals

received to the Reporter. For instance, in 2023/24, boys were more likely than girls to be referred to the Reporter on offence grounds (74.4% vs. 25.6%). This figure has remained relatively stable over time, with similar ratios being reported in the five years prior to the implementation of ACRA.⁴⁷

Figure 3 indicates that the majority of children, irrespective of gender, were aged 14-15 years' old when they were first referred for an offence that met the s39 test (Boys: 72.77% vs. Girls: 68.82%). Although not shown, this pattern was consistently seen across 2021/22, 2022/23 and 2023/24. Looking specifically at whether gender differences exist in the nature of serious offences referred to the Reporter it can be seen that girls were more likely than boys to be referred for non-sexual crimes of violence (Figure 4: 42% vs. 22%).^k In contrast, boys were more likely than girls to be referred for sexual crimes^l (Figure 4: 72% vs. 53%) and road traffic offences (Figure 4: 6% vs 2%). Again, this pattern was consistently seen across 2021/22, 2022/23 and 2023/24.

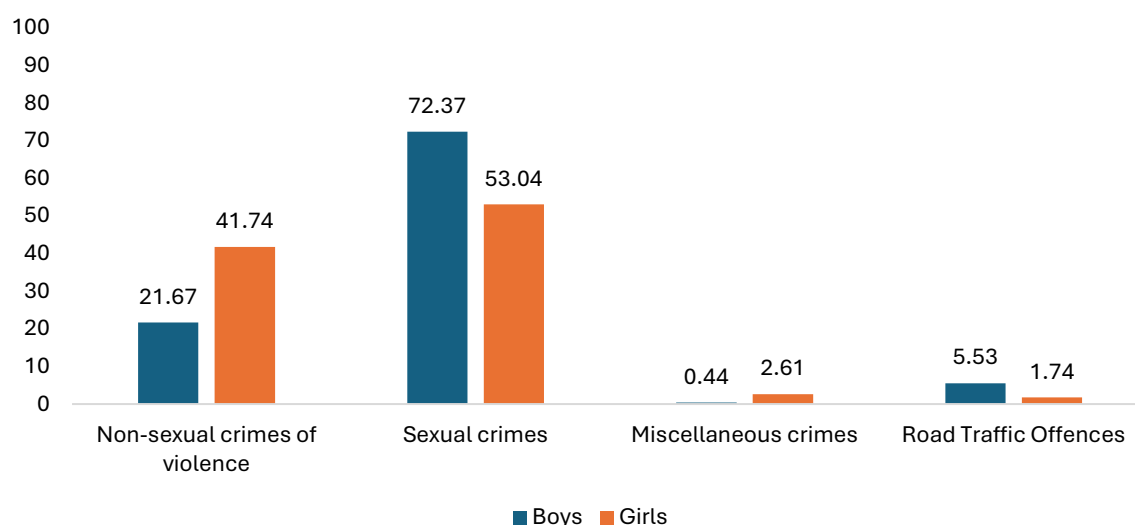
Figure 3: Percentage of children referred for a first serious offence (as measured using the s39 test) broken down by age for 12-15-year-olds between 1st of April 2021 and 31st of March 2024



^k Charges included in this category include assaults to severe injury, assaults to severe injury and disfigurement (including permanent disfigurement), assault to injury/severe injury and impairment, and attempted murder.

^l All of the charges in this category relate to the following sections of the Sexual Offences (Scotland) Act 2009: (s1) rape or attempted rape; (s2) sexual assault by penetration; (s3) sexual assault; (s6) coerced into looked at sexual image; (s7) indecently communicating; (s18) rape of a young child; (s19) sexual assault by penetration of a young child (s20) sexual assault of a young child; (s21) causing young child to participate in sexual activity; (s23) causing young child to view a sexual image; (s24) communicating indecently with young child;

Figure 4: Gender differences (%) in the nature of serious offence charges (as measured using the s39 test) for 12–15-year-olds between 1st of April 2021 and 31st of March 2024



Looking in more depth at the nature of the non-sexual crimes of violence that met the s39 test it can be seen that there were limited differences in the severity of the offences that were alleged to have been committed by boys and girls (Figure 5.). However, there were some gender differences seen in the nature of the sexual crimes that met the s39 test. A higher proportion of charges related to sexual assaults were received for boys than girls (Figure 6: 74% vs. 62%). In contrast charges relating to sexual communication offences were more likely to be received for girls than boys (Figure 6: 30% vs. 22%).

Figure 5: Gender differences (%) in the gravity of non-sexual crimes of violence charges that met the s39 test between the 1st of April 2021 and the 31st of March 2024

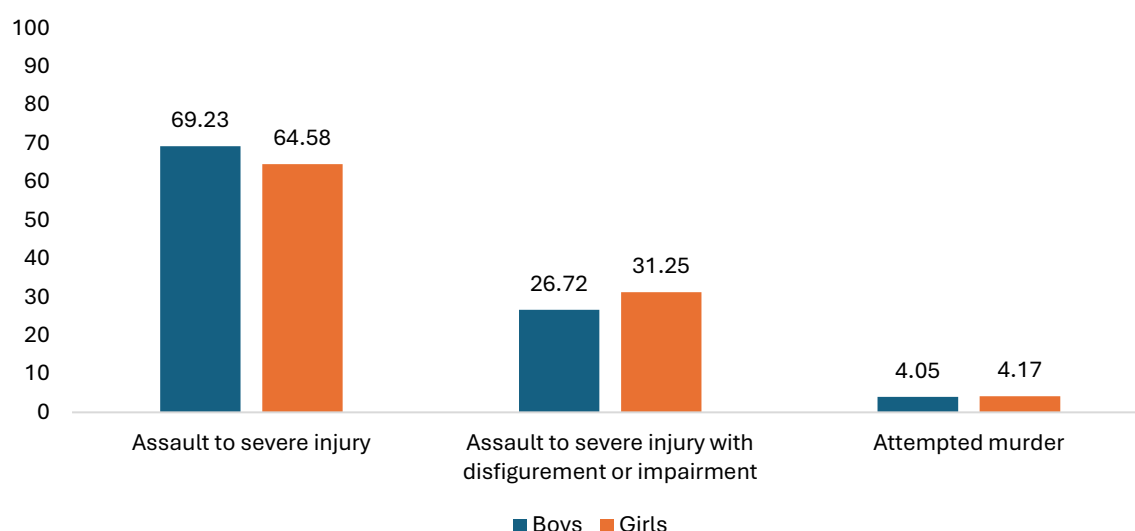


Figure 6: Gender differences in the gravity of sexual crimes charges that met the s39 test between the 1st of April 2021 and the 31st of March 2024

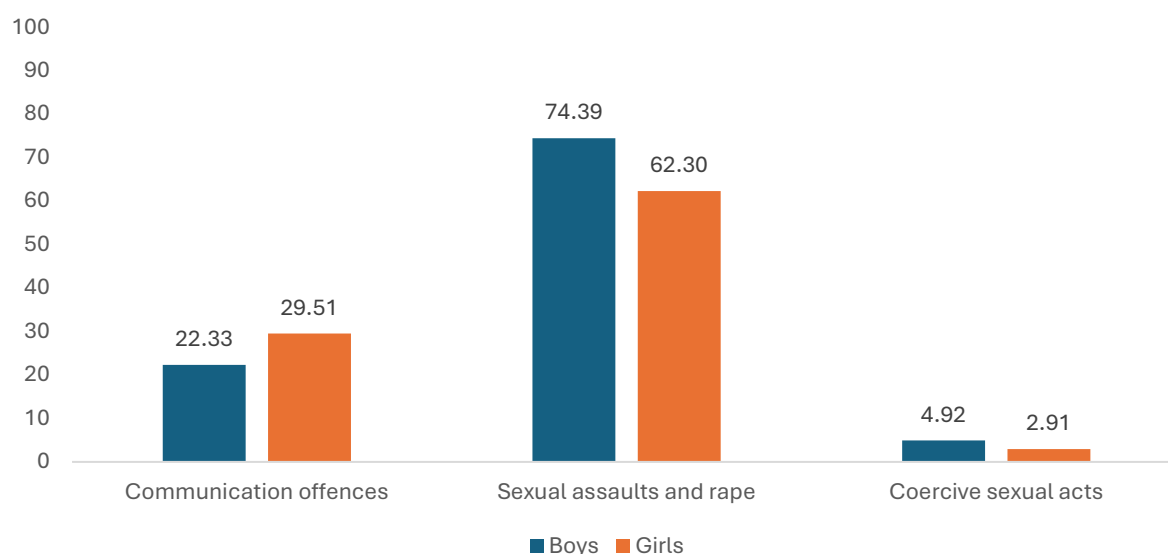
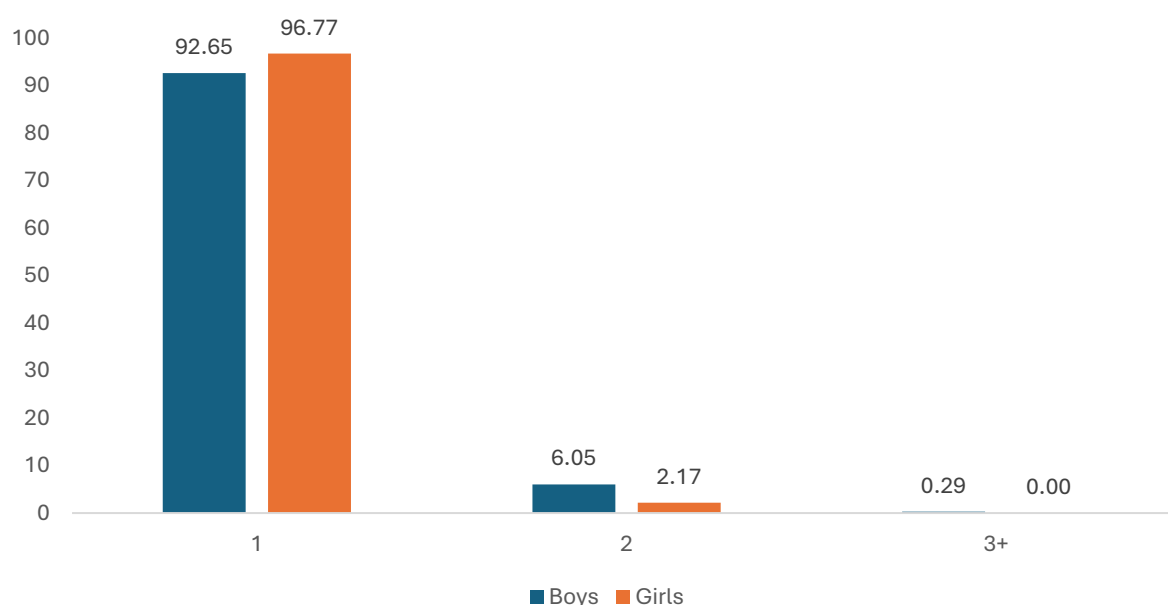


Figure 7 shows the percentage of children with repeat serious offence referrals between the 1st of April 2021 and 31st of March 2024. From this it can be seen that the vast majority (92-97%) of the children were referred for a single serious offence. Overall, the Reporter received 2+ serious offence referrals for 8% of the boys and 3% of the girls. It is important to note that these figures do not reflect a full three-year period for each child and could therefore underestimate the level of repeat offending.

Figure 7: Percentage of children with repeat serious offence referrals (as measured by the s39 test) between 1st of April 2021 and 31st of March 2024



Case Sample Findings

In this section of the report, we look in detail at the serious offences that were referred for the 59 children aged 12-15 years included in our case sample. Examining these cases in depth allows for more information to be included about the nature of the offences, including what, if any, relationship the children had to the victims of the alleged offence.

Description of sample

Overall, 254 children were referred for offences that included behaviour meeting the s39 test between 1st October 2022 and 30th June 2023. Of these, 59 children (30 boys and 29 girls^m) were randomly selected. The sample included children from 20 of the 32 local authorities in Scotland. Ethnicity was recorded for 85% (n=50) of the children. Of these, 95% were described as being 'White-Scottish'/White British'. The remaining 5% were recorded as 'White-Other', 'Black-African', 'Black-Caribbean' and 'Black-British'.

Nature of serious offences referred

The first serious offence recorded for the children between 1st October 2022 and 30th June 2023 was classed as the index offence for the purpose of analysis. The range of offences captured by our case sample included serious assaults, assault to severe injury, assault to disfigurement, rape [of a child], sexual assaults [of a child], indecent communications (i.e. the sharing of sexual images with a child) and road traffic (driving) offences. Table 1 provides aggregated information on the nature of the offences referred to the Reporter broken down for both the full 9-month sample as well as our case sampling to show that our case sample is broadly representative of all serious offence referrals over the period. From Table 1 it can be seen that girls in our case sample were more likely than boys to have an index offence that was related to violence (62% vs. 27%). In contrast, boys were more likely than girls to have an index offence that related to a sexual offence (73% vs. 38%). Boys were more likely than girls to have an index offence relating to dangerous driving (6% vs. 0%).

Table 1: Comparison of serious index offence referrals (as measured by the s39 test) within the wider 9-month sample of serious offences and the case sample

	Full 9 months of referrals		Case Sample	
	Girls (N=30)	Boys (N=224)	Girls (N=29)	Boys (N=30)
Violent offences	60%	33%	62%	27%
Sexual offences	40%	58%	38%	73%
Driving offences	0%	8%	0%	6%
Weapons/lasers	0%	1%	0%	0%

^m Two of the girls in the sample were identifying with a male gender identity.

There were some gender differences observed when the offence classifications were broken down further. Looking first at violent offences it can be seen from Table 2 that all of the boys had an index offence relating to a serious assault with no standard assault charges included in the sample.ⁿ Among the girls, there was a 3:1 ratio of serious assaults to assaults as index offences (72% vs. 28%). Boys were more likely than girls to be referred for an index offence relating to a sexual assault or rape,^o while girls were more likely than boys to be referred for sexual communications offences (45% vs. 23%).

Table 2: Distribution of violent and sexual index offence categories (as measured by the s39 test) across boys and girls within the wider 9-month sample of serious offences and the case sample

	Full 9 months of referrals		Case Sample	
	Girls	Boys	Girls	Boys
Distribution of violent offences				
Attempted murder	0%	3%	0%	0%
Serious assault	100%	82%	72%	100%
Assault	0%	15%	28%	0%
Distribution of sexual offences				
Rape/attempted rape	0%	22%	0%	27%
Sexual assaults	58%	46%	55%	50%
Sexual communication offences	42%	32%	45%	23%

How the index offences were reported

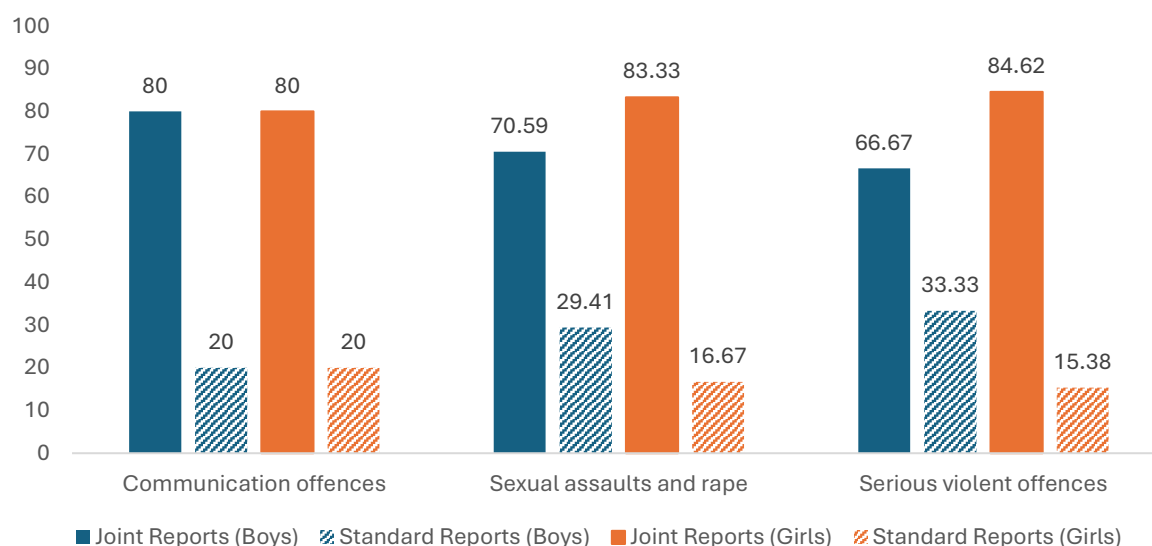
The majority (78%; boys 73% vs. girls 83%) of the index offences within the case sample were jointly reported, with the remainder being standard offence referrals. These proportions reflect those seen in the wider trends analysis. Girls were more likely than boys to be jointly reported when a physical sexual assault had taken place (Figure 8: 83% vs. 71%). They were also more likely to be jointly reported for serious violent offences (Figure 8: 85% vs. 67%). All of the assaults that were not severe enough to result in impairment or disfigurement committed by girls were jointly

ⁿ Assault and serious assault descriptors are based on the offence name. E.g. Assault to injury and assault to severe injury.

^o S1 of the Sexual Offences (Scotland) Act 2009 defines rape as being an offence that can only be committed through penile penetration without consent.

reported (data not shown). There were no boys in this category. All of the driving offences that were committed by boys were jointly reported (data not shown). None of the girls in our sample had been reported for driving offences. Of the children jointly reported, the majority (58%; boys 57% vs. girls 58%) had no previous offence referrals.

Figure 8: Percentage of boys and girls with a standard or joint referral, by type of serious index offence*



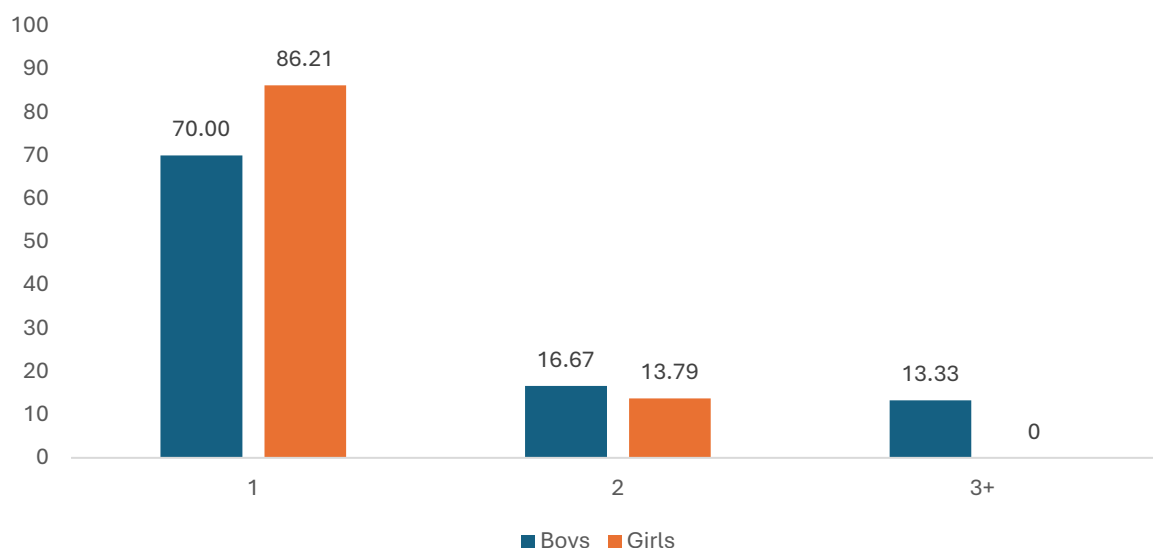
* The serious violent offences category includes assault to severe injury (with and without impairment, disfigurement and permanent disfigurement) and attempted murder charges

Among the 22% of children who were referred to the Reporter through the standard offence referral process there was a 3:2 ratio of sexual offences (62%) to violent offences (38%). Just over half of the children (54%; boys 50% vs. girls 60%) with a standard offence referral had not previously been referred to the Reporter on offence grounds. The remainder had all, with the exception of 1 child, been previously referred for offending. Among the boys who had been previously referred it was noted that half of these referrals related to a sexual offence that was different from the wider pattern of antisocial or physically violent offences that had previously been reported.

Number of charges associated with the index offence

The majority (70%) of the children were charged with a single serious index offence. Girls were more likely than boys to only be charged with a single offence (Figure 9: 86% vs 70%). The mean number of offences alleged to have been committed by boys was 1.53 (range: 1-6), while for girls it was 1.13 (range: 1-2). In some cases, the children were charged with multiple serious offences. These were most commonly of the same category of offence. Among the boys the multiple charge counts tended to relate to sexual offences. For girls there was a more equal split between sexual and violent offences.

Figure 9: Percentage of girls and boys with one or more serious offence charge within the index referral



Age when the serious offending occurred

The mean age of the children at the time of the index offence was 13.66 years (range: 11 to 15). There was no age difference by gender (boys mean: 13.53 vs. girls mean: 13.66 years). Similar findings were observed when the index offences were broken into categories (see Table 3). Where the offence was jointly reported, the children were slightly older at date of incident (Boys: 13.59 years vs. 13.38 years; Girls: 13.75 years vs. 13.20 years).

Table 3: Mean age of children at the time of the index offence by offence classification

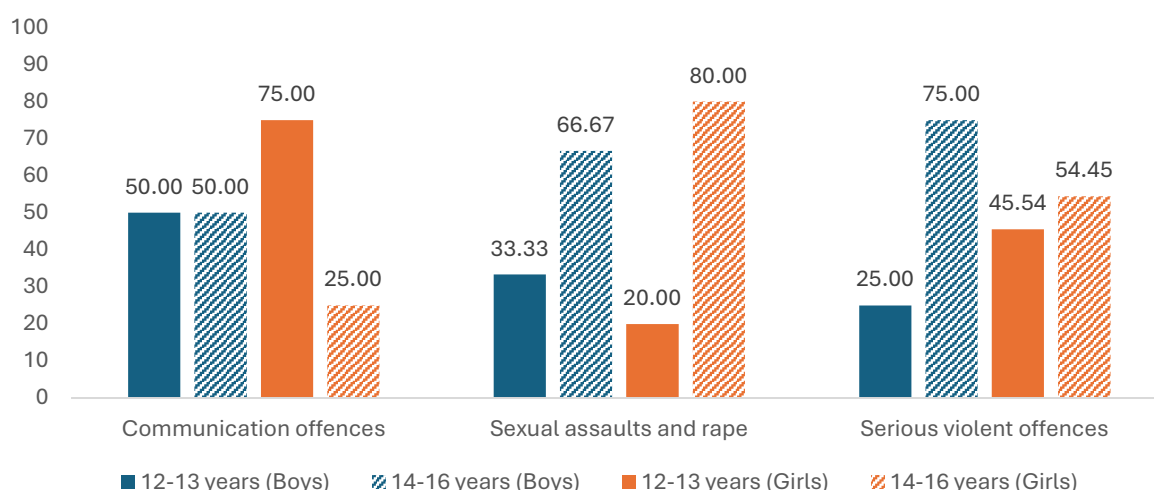
Offence type	Girls age at time of incident (mean)	Boys age at time of incident (mean)
Sexual communication offences	13.55	13.54
Sexual assaults and rapes	13.65	13.46
Violent offences	13.79	No offences recorded
Serious violent offences	13.65	13.57
Driving offences	No offences recorded	14.00

Age of children when the serious offending was referred to the Reporter

The mean age at referral to the Children's Reporter was 14.17 (range: 12 to 16)^p years, with little variation by gender (boys mean: 14.23 vs. girls mean: 14.10). The mean ages of the children referred for different offence categories were also extremely similar, both overall and split by gender. Children whose offences were jointly reported were slightly older on referral to the Reporter than those whose offences were received as standard referrals (Boys: referral after joint report mean age 14.32 vs. 14.00 standard referral; Girls: referral after joint report mean age 14.17 vs. 13.80).

Figure 10 looks specifically at the ages at which children who were jointly reported for serious offences were referred to the Reporter. Due to the small numbers, this data has been aggregated by ages 12-13 and ages 14-16. From this it can be seen that referrals for sexual communication offences were more likely to be received at age 12-13 than age 14-16 for girls (75% vs. 25%). There was no variation in age of referral for sexual communications offences among boys. Sexual offences and serious violent offences among boys were more likely to be referred at ages 14-16 than ages 12-13. There was limited variation in the age of referral for violent offences among girls (age 12-13: 46% vs. age 14-16 54%).

Figure 10: Child's age when a jointly reported offence was passed to the Reporter by gender and offence classification



Relationship of the child to the victim

The vast majority (97%) of the index offences had at least one recorded victim. The only exception to this was for driving offences where there were no victims recorded. The majority (82%) of the recorded victims were children. Child victims were more likely to be recorded for serious alleged offences by boys than girls (86% vs. 79%). Figure 11 indicates that for boys, all of the victims of sexual offending were other children. This pattern was more mixed for girls, with 50% of the victims being other children and 50% being adults within the community. Close reading of these cases showed that the majority of the sexual offences towards adults by girls were sexual harassment type behaviours, including unwanted sexual contact. However, it is important to note that these percentages refer to a small number of offences. For violent offences it was more common for the victims of both boys and girls to be

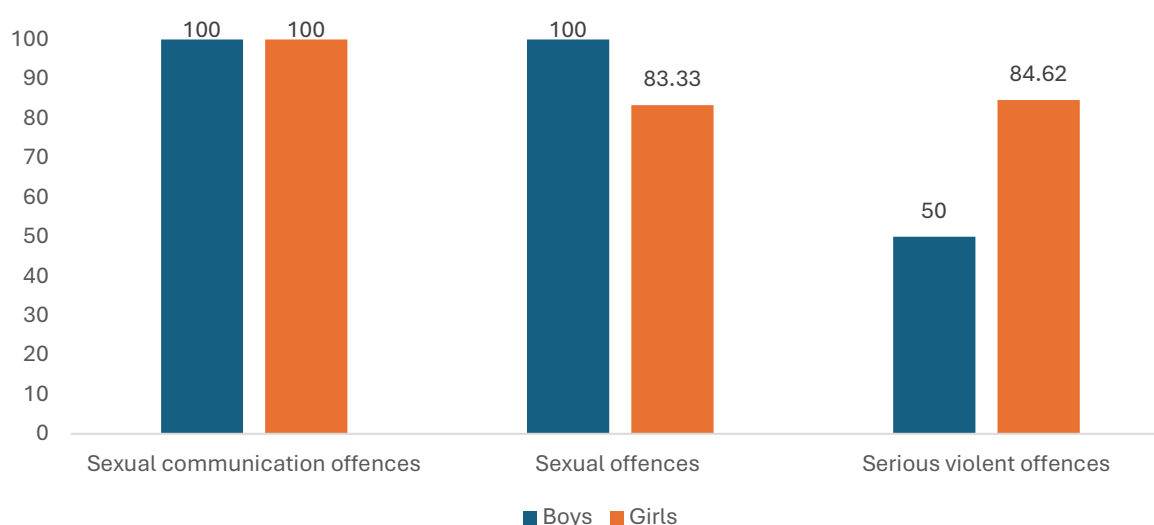
^p Children aged 16 at referral to the Reporter were jointly reported for a serious offence at age 15.

children (Figure 11). Figure 12 shows the percentage of victims that were known to the child. From this it can be seen that all of the victims of sexual communication offences were known to the child who had been jointly reported for the offence. The same pattern was seen for sexual assaults alleged to have been committed by boys. The majority (84%) of the victims of sexual assaults alleged committed by girls were known to the reported child; however, there was a small group of girls in our sample who were charged with the same offence of sexual harm on adult victims that were unknown to them. While the majority (85%) of the victims of serious violence were known to the girls, only half (50%) of the victims of serious violence were known to the boys.

Figure 11: Percentage of child and adult victims by offence classification



Figure 12: Percentage of victims who were known to the child who was referred for serious offending



In every case where there was a child victim, the victim was known to the child who had committed the offence. In contrast, three quarters (78%) of the adult victims were not previously known to the child. Table 4 shows the distribution of victims by their

relationship with the child. From this it can be seen that the majority (64%) were described as being peers of the child, i.e. children that the child knew from school or the community. A further 11% of the victims were described as having been in a relationship with the accused child.

Table 4: Distribution (%) of victims by their relationship with the child who was alleged to have committed a serious offence*

Victim type	Offence classification and child's relationship to victim	Total
	All offences	
Child	Peers 13+	64%
	Peers <13	2%
	Previous or current partner	11%
	Family member	5%
	Older peer	2%
Adult	Trusted adult	4%
	No previous relationship	12%

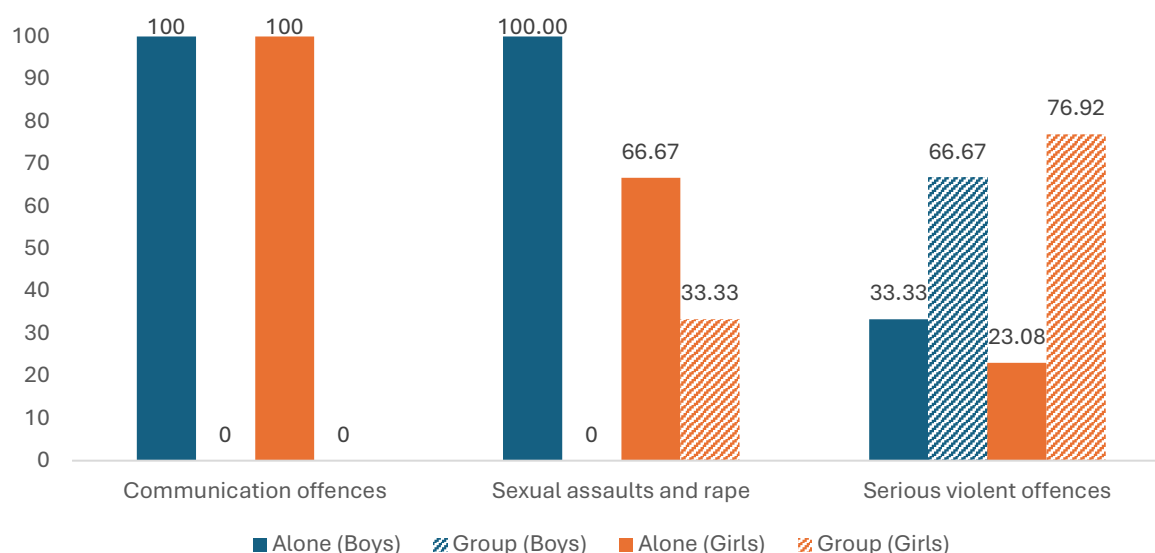
Number of children involved in the index offence

A third (31%) of the children referred for serious offending were not solely responsible for the index offence, with descriptions provided by the police indicating that a friend or a larger group of children were also involved in the incident. This was more likely to be reported for girls than boys (48% vs. 13%). Figure 13 indicates that serious violent offences were more likely to involve at least one other child. This pattern was seen for both boys and girls but was slightly more common for girls (77% vs. 67%). All of the sexual offences (both communication offences and physical sexual assaults/rape) that were alleged to have been committed by boys were committed alone. The same pattern was seen for communication offences by girls. A third (33%) of the girls charged with sexual offences did not act alone. As previously highlighted, this was a group of girls who were charged with the same incident of sexual harm. As a result, this finding should be viewed with caution.

Location of the index offence

Around half (49%) of the index offences took place within the community. Overall, a quarter (24%) took place within the child's home, with a further 8% occurring in somebody else's home. The remaining incidents took place on public transport (5%), within a residential, foster or secure care placement (5%) or during an organised activity (3%). For 7% of the offences the location was unclear.

Figure 13: Percentage of children who acted alone or in a group by offence classification



Summary

The trends analysis, which examined serious offence referrals received by the Reporter between the 1st of April 2021 and the 31st of March 2024, generated the following key messages:

- Serious offences were identified as being those behaviours that would definitely meet the criteria under s39 of ACRA if the ACR was raised to 16 and no change was made to the situations under which an investigative interview could be conducted by the police with a child under that age.
- Between the 1st of April 2021 to the 31st of March 2024, 788 children (boys n=694, girls n=93) aged 12-15 were referred to the Reporter for a serious offence. Overall, there were 1256 criminal charges reported to the Reporter for this group of children.
- Referrals to the Reporter for children aged 12-15 who have committed serious offences accounted for 1 in 7 (14%) of offence referrals received for this age group, and 2.5% of all referrals received by the Reporter.
- The two largest categories of serious offences were sexual and violent offences, accounting for 70% and 24% of all serious offence charges respectively. Charges related to rape, attempted rape or sexual assault by penetration accounted for 0.6% of all serious offence referrals received. Attempted murder charges accounted for 0.03% of all serious offence referrals.
- Boys were more likely to be referred for an alleged serious offence than girls (88% vs. 12%). Serious offence referrals were also more likely to be received

for 14-15-year-olds than 12-13-year-olds (Boys: 73% vs. 27%; Girls: 69% vs. 11%). These findings reflect wider knowledge indicating that boys are more likely to become involved in offending behaviour than girls, and that the likelihood of children engaging in offending behaviour increases with age.

- There were some key gender differences noted in the nature of serious offence charges referred to the Reporter. Boys were more likely than girls to be referred for sexual assaults and rape, while girls were more likely than boys to be referred for sexual communications offences. Girls were also more likely than boys to be referred for serious assaults.
- The primary route for serious offence referrals was through the Procurator Fiscal, with 74% of the serious offences having been considered as joint reports.
- Repeat serious offence referrals were rare, with 92% of the boys and 97% of the girls only referred once for a serious offence referral during the time period. However, it is important to note that these figures do not capture a full three years of follow up data for every child so these figures may be overestimated.

Our case sample analysis, which examined serious offence referrals for 59 children (30 boys and 29 girls) between 1st October 2022 and 30th June 2023 yielded broadly similar findings. What this data did do, however, was allow us to explore the circumstances of the serious offences in more detail. The following key messages can be drawn:

- The majority (97%) of the serious offences referred to the Reporter included at least one victim. The exception to this was dangerous driving offences.
- In 80% of the cases the victim was another child. All of these children were known to the child who was alleged to have caused serious harm.
- Adult victims were more likely to be unknown to the child, with 78% having no previous relationship or association with the child. Where adults were known to the child they tended to be described as trusted adults e.g. known to the child through formal activities.
- Due to the patterning of offences children were more likely to be the victim of a sexual offence when the referred child was a boy, and more likely to be the victim of a serious physical assault or a sexual communications offence when the referred child was a girl.
- Sexual communication offences had no involvement of other children. Physical sexual assaults and rapes tended to have no other children involved if the referred child was a girl. All of the sexual assaults and rapes involving boys had no other children involved. In contrast, serious assaults were more likely to involve other children, with this trend most pronounced for girls.

Case Study: Ryan, age 15

Ryan was arrested and charged under SOSA S24(1) “communicating indecently (with a) young child after sharing a sexual image with his friends on Snapchat. A standard offence referral was made to SCRA by the Police.



At the time of the offence Ryan was living with his grandparents under a Compulsory Supervision Order. This had been put in place as a result of several offences where he had caused criminal damage through vandalism, breaking windows and damaging cars. At the annual review hearing a decision had been made to continue his CSO due to concerns around his continued involvement in anti-social behaviour, his use of alcohol and cannabis, and the amount of time he was spending with “friends” who were older than him in the community. His social workers told the Panel Members that she was concerned that Ryan was at risk of being criminally exploited due to his level of risk and vulnerability.

Although there was evidence that Ryan had shared the images, the Reporter after concluding their investigations decided that the current terms of his CSO were sufficient to address his behaviour. This was due to Ryan having agreed to undertake additional work with his social worker around online safety and consent.

In the year following the image being shared, Ryan’s behaviour declined. He disengaged completely from school and continued to associate with a negative peer group. His use of drugs and alcohol increased, and he was regularly coming to police attention for theft and drug offences. At age 16 he was described by the professionals working with him as a distressed child who has self-harmed and experienced suicidal thoughts.

Ryan is now 17. His most recent offence referral was for a historic shoplifting offence. There are signs that things have improved for Ryan. His most recent social work report identified that during the past year he has acknowledged that he has a problem with alcohol, and he has sought help and support for that. He has also been working with CAMHS to address his poor mental health. He is engaging with his social worker. He is attending a community-based education class for children who have been disengaged from education and has stated he plans to attend college. He remains on a CSO for his own support.

Chapter 4: Backgrounds of children referred to the Children's Reporter for serious offences

In this chapter we draw upon the data gathered within the trends analysis and case file analysis to contribute to our understanding of the following questions:

- To what extent are the lives of children who are referred to the Reporter for serious offending characterised by adversity and trauma?
- What are the patterns of serious offending among children aged 12-15 who are referred to the Reporter in terms of type, volume, gravity and recidivism, and do these differ by gender?
- What, if any, impact does the handling of serious offences through the Children's Hearings System have upon public confidence in Scotland's approach to youth justice?

The data included in this section are subject to the limitations that were described earlier in the report.

The socioeconomic circumstances of children referred for serious offending

The SIMD is a relative measure of deprivation across 6,976 small areas (called data zones) (Scottish Government, 2020a). If an area is identified as 'deprived' it can indicate that a large proportion of the people living in that area have a low income, but it can also mean that there are fewer resources or opportunities available within the area. The SIMD looks at the extent to which an area is deprived across seven domains: income, employment, education, health, access to services, crime and housing.

Figure 14: Percentage of deprivation (as measured by SIMD Quintiles) among children aged 12-15 referred to the Reporter for serious offences (as measured using the s39 test)

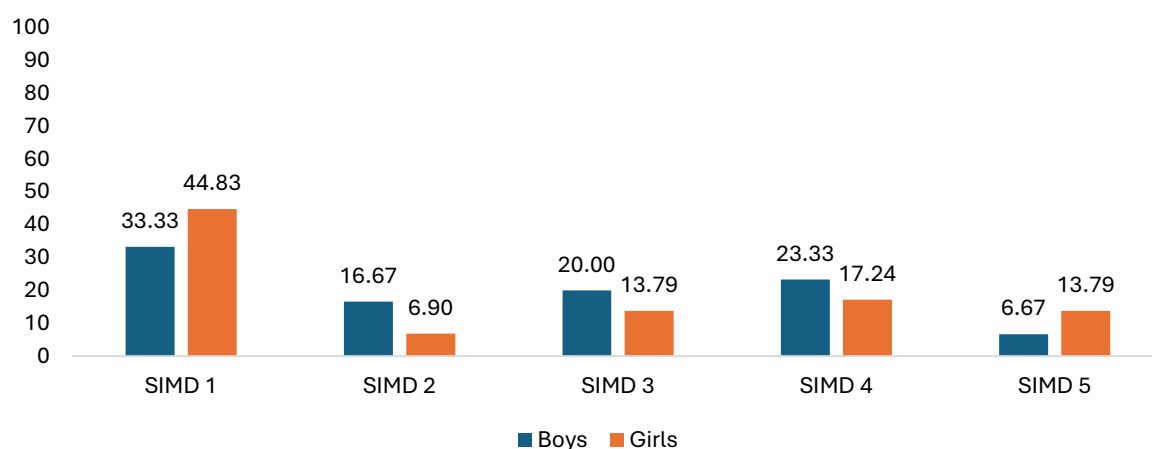
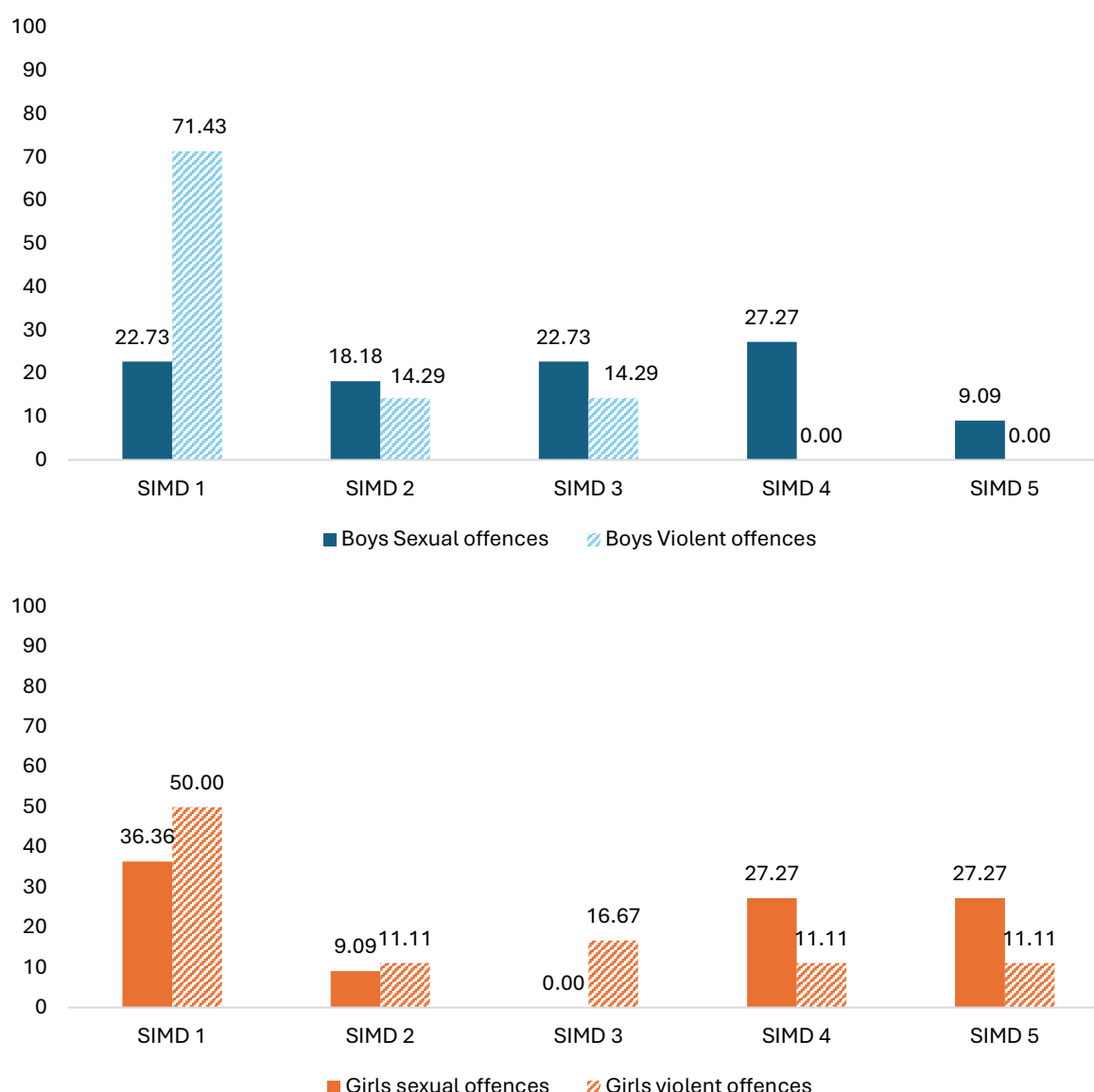


Figure 14 indicates that 33% of the boys and 45% of the girls who were referred for serious offences lived within the 20% most deprived areas within Scotland. When

looking at the 40% most deprived areas, these figures rose to 50-51%. Figure 15 shows that a social gradient was evident for violent offences committed by boys, with 71% of boys who were referred for a serious violent offence living in the 20% most deprived areas. A broadly similar pattern was observed for girls. No social gradient was observed for sexual offences among boys, with evidence of offences occurring across all quintiles. Among girls, a more u-shaped relationship was observed for sexual offence referrals with 45% of girls living in the 40% most deprived areas and 54% of girls living in the 40% most affluent areas.

Figure 15: Percentage of deprivation (as measured by SIMD Quintiles) among boys and girls aged 12-15 referred to the Reporter for serious sexual and violent offences (as measured using the s39 test)



Experience of poverty

While the SIMD data above describes the area-level deprivation, the level of deprivation experienced by families can be indicated by other factors. For a quarter (25%) of the children, social workers had highlighted concerns around the suitability

of the home environment. These concerns were more prevalent for girls than boys (34% vs. 17%) and focussed on indicators of poverty such as the home lacking white goods, being unfurnished or being overcrowded. For 14% of the children a period of homelessness in the family had been noted. In 15% of cases, it was recorded that nobody in the household was working, and in 19% there was a record that the family was fully dependent upon benefits. It should be noted that this type of information is not always recorded in case files, and as such the figures published here are likely to underestimate the level of deprivation experienced.

Children's living circumstances at the time of the index offence

The majority (76%) of the children who had been charged with a serious offence were living with at least one parent when they were referred to the Reporter. The rest of the children were living in out-of-home care, with girls more likely than boys to have been living outwith the home (Table 5: 28% vs. 20%).

Table 5: Living arrangements at the time of the index offence

		Violent offence	Sexual offence	Driving offence	All
With parent(s)	Girls	48%	24%	0%	72%
	Boys	17%	57%	7%	80%
Out of home care	Girls	10%	20%	0%	28%
	Boys	3%	17%	0%	20%

Table 6: Additional support needs of the child at the time of the index offence

	All	Girls	Boys
Learning disability, autism and neurodiversity*	54%	48%	60%
Mental health difficulties, self-harm and suicidal ideation	63%	59%	67%
Low self-esteem	37%	38%	37%

* Combined variable that includes both diagnosed and suspected conditions. We are unable to comment on the degree of impairment that individuals experienced due to the wide range of terms that were used to describe different conditions. For instance, our category of learning disability includes descriptions such as 'those who learn differently', 'learning disabilities' and 'intellectual disabilities'.

Children's health and wellbeing

There were no physical disabilities recorded within this sample of children; however a wide range of additional support needs were recorded. These included neurodiversities such as autism and ADHD, learning disabilities and mental health concerns such as low self-esteem, depression, anxiety, self-harm and suicide ideation. A larger percentage of boys than girls (Table 6: boys 60% vs. girls 48%) were diagnosed with or suspected to have a neurodiversity or intellectual disability. Boys were also slightly more likely to be recorded as having a mental health difficulty (Table 6: 67% vs. 59%).

Experiences of education and school

Information on educational concerns was not consistently present within the case files; resulting in us being unable to assess attendance for 8% of the children, attainment

for 12%; and exclusion for 31%. Where information was recorded, educational concerns were common, with 53% of the boys and 59% of the girls recorded as having poor attendance at school. Around half of the children had low attainment (boys: 47% vs. girls: 52%). A third (33%) of the boys and a quarter (24%) of the girls had been excluded from school at least once. The majority (65%; boys 50% vs. girls 86%) of those who had been excluded from school had been reported to the Reporter on offence grounds prior to being charged with a serious offence.

Overall, 39% of the children were described as having bullied other children in school. This was more common among boys than girls (50% vs. 31%). A third of the children (32%; boys: 33% vs. girls: 31%) were described as having been bullied by other children. Overall, 14% of the children were described as having been both bullied and bullying other children. This did not differ by gender (boys: 13% vs. girls 14%).

Child's experience of abuse, neglect, trauma and significant events

Table 7 indicates that around half (46%) of the children came from families where domestic violence was present within the home. Levels of child maltreatment ranged from 19% (victim of parental violence) to 32% (physical or emotional neglect/abuse). Girls were more likely than boys to be recorded as the victim of parental violence or maltreatment.

A third (32%) of the children were specifically described by a social worker as having witnessed something within the home that put them at risk or scared them. This tended to relate to the child witnessing an episode of domestic violence within the home or experiencing periods of emotional or mental instability from a parent or carer. In addition, 17% of the children were recorded as having been the victim of violence or aggression from someone other than their parents. This was more common for boys than girls (20% vs. 14%). A similar proportion of children had been the victim of physical harm or a crime within the community.

One in three (31%) of the children were recorded as having experienced the death of a significant person such as a parent, grandparent or sibling. Overall, 14% of the children in our sample had experienced the death of a parent.

Table 7: Percentage of children exposed to trauma

Traumatic events recorded	All	Girls	Boys
Domestic violence	46%	48%	43%
Victim of parental violence	19%	21%	17%
Parental physical neglect or abuse	32%	38%	27%
Parental emotional neglect or abuse	32%	38%	27%
Traumatic incident	32%	34%	30%
Victim of non-parental violence	17%	14%	20%
Victim of physical harm in the community	15%	17%	14%
Victim of a crime within the community	5%	7%	3%
Bereavement*	31%	34%	27%

* In 8 cases the significant bereavement was a parent

Table 8: Additional health and social care needs of parents at the time of the index offence

Additional needs of parents	All	Girls	Boys
Poor mental health	42%	35%	50%
Experienced interpersonal violence from a partner	42%	43%	41%
History of imprisonment	17%	17%	17%
History of drug misuse	24%	23%	24%
History of alcohol misuse	31%	24%	40%
History of maternal drug use in pregnancy	8%	7%	10%
Learning difficulties	7%	10%	3%

Additional health and social care needs of parents/carers

When parents and carers of children have their own health or social care needs this can have an impact on the functioning of the family and on the children in the home. Table 8 indicates that 42% of the children had a parent who had poor mental health. This was more common for boys than girls (50% vs. 35%). Two fifths (42%) of the children had a parent who had experienced interpersonal violence from a partner. Just under a fifth (17%) had at least one parent who had been imprisoned in the past. There was no difference by gender for either of these variables. A quarter (24%) of the children had a parent who had misused drugs, while a third (31%) had a parent who had misused alcohol. While there was no gender difference observed for parental drug misuse, boys were more likely than girls to live with a parent who misused alcohol (40% vs. 24%).

Histories of criminal and sexual exploitation by others

The numbers of children in the sample where criminal exploitation or sexual exploitation was identified and included within social work reports were relatively small. Overall, 6% of boys and 14% of girls were identified as being at risk of being or were being criminally exploited. It was also identified that 14% of the girls were being or at risk of sexual exploitation; half of which also had concerns noted about criminal exploitation. Examples of exploitation, its impacts, and how Reporters view children referred for a serious offence who are being exploited are explored in chapter 5.

Children's harmful behaviours

This section examines the ways in which the children in our case sample were exhibiting harmful behaviours towards themselves or others. Table 9 highlights that two fifths (39%) of the children were recorded as staying out late at night, while a fifth (22%) were recorded as having run away or gone missing. This was more common

for girls than boys. Drug and alcohol use were relatively common within the sample with a third (31%) of the children using drugs and half (47%) using alcohol. There was no gender difference in rates of drug use, however alcohol usage was more common among girls than boys (55% vs. 40%).

Two fifths (44%) of the children were considered to have negative peers, with this being slightly more common for girls than boys (48% vs. 40%). Two fifths of the children in our sample were considered to have behaviours that could place others at risk. These included having a history of violence or aggression (42%) or a history of harmful sexual behaviour (40%). Both of these were much more prevalent among boys than girls, with 57-67% of the boys having a history of these compared to 14-28% of the girls.

Involvement of statutory services prior to being referred to the Children's Reporter for serious offending

Table 10 indicates that two thirds (64%) of the children referred for serious offences had previous social work involvement. Of these, three in five (61%; 39% of the whole sample) of the children were recorded as having had historic social work involvement. A quarter (24%) of the children had previously been subject to a child protection order or placed onto the child protection register.

Table 9: Harmful behaviour being displayed to self or others at time of index offence

Identified from records	All	Girls	Boys
Staying out late at night	39%	37%	41%
Episodes of running away or going missing	22%	31%	13%
Drug use	31%	28%	33%
Alcohol use	47%	55%	40%
Negative peer group	44%	48%	40%
History of violence and aggression towards others	42%	28%	57%
History of harmful sexual behaviour ¹	40%	14%	67%

¹ The definition of harmful sexual behaviour used included preoccupation with sexual behaviours and language, as well as the use of violence and control in relationships.

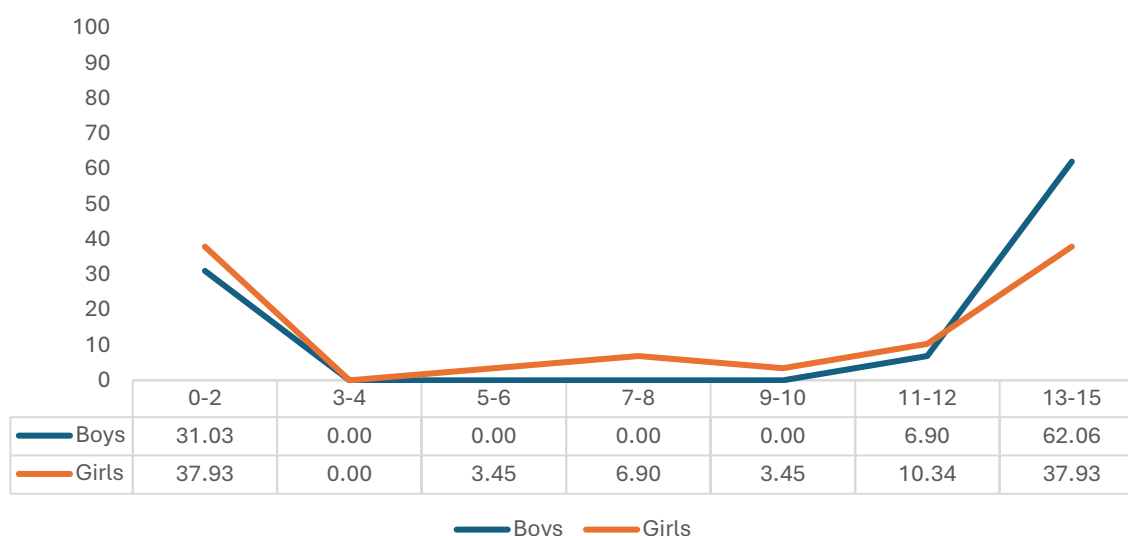
Table 10: Previous involvement of statutory services

	All	Girls	Boys
Prior Social Work involvement	64%	72%	57%
Prior Social Work involvement limited to pre-birth or within the first year of life.	19%	13%	24%
Previous on child protection registry or a child protection order	24%	31%	17%
Previous referral to the Reporter	69%	60%	79%
Previously referred on offence grounds	42%	43%	41%
Previously referred on non-offence grounds	56%	40%	72%
Previous referred for both offence and non-offence grounds	29%	23%	34%
Ever placed on CSO	36%	43%	28%
On CSO when index offence took place	24%	23%	24%

Looking specifically at contacts with the Reporter we identified that 69% (boys 79% vs. girls 60%) of the children had been previously referred. Two fifths (42%: boys 43% vs. girls 41%) of the children had previously been referred on offence grounds, while three fifths (56%: boys 40% vs. girls 72%) had been referred on non-offence grounds. There were some notable gender differences in the volume of previous referrals to the Reporter. Boys had a higher mean number of offence referrals than girls (boys: 12.92 [range: 1-39] vs. girls: 4.25 [range: 1-24]). They also had a higher mean number of non-offence referrals (boys: 3.62 [range: 1-34] vs. girls 2.82 [range: 1-12]). Overall, 36% of the children (Table 10: boys: 43% vs. girls: 28%) had a history of being placed on a CSO. One in four (24%) of the children were on a CSO at the time that the index offence occurred.

Figure 16 shows that there was a U-shaped pattern to the age at first referral to the Reporter; indicating that children who were referred for serious offending tended to fall into two categories. These were children who were first referred on care and protection grounds during infancy (age 0-2: boys 31%, girls 38%) or for offending behaviours during adolescence (age 11-15: boys 69%, girls 48%).

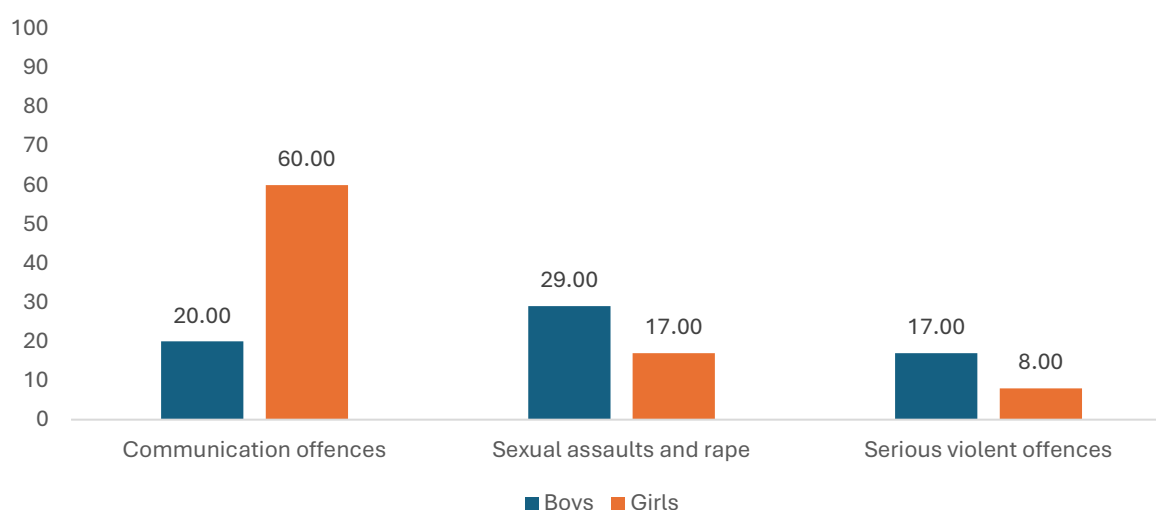
Figure 16: Age of children at first referral to the Reporter by gender



Children with no previous service involvement

Overall, 31% of children were unknown to either the Reporter or social work services at the time the index offence was committed. There were some gender differences in whether or not a child was previously known based upon the nature of the offence. Girls accused of a sexual communication offence were less likely than boys to have been previously known to services (60% vs. 20%). In contrast, boys were more likely than girls not to have been previously known to services when the offence that was committed was a sexual assault or rape (29% vs. 17%) or a serious violent offence (17% vs. 8%).

Figure 17: Percentage of children not previously known to the Reporter or social work broken down by offence type



Summary

In this chapter we explored the background characteristics of children who had been referred to the Reporter for serious offences. Serious offences were defined as being those behaviours that would definitely meet the criteria under s39 of ACRA if the ACR

was raised to 16 and no change was made to the situations under which an investigative interview could be conducted with a child under that age. The key messages are:

- Serious offending is generally patterned by deprivation, with 50-51% of the children referred for these offences living within the 40% most deprived areas of Scotland.
- The association of serious offending with deprivation was most pronounced for serious violent offences (assault to severe injury, assault to severe injury with impairment or disfigurement and attempted murder), with 86% of boys and 61% of girls referred to the Reporter living within the 40% most deprived areas of Scotland.
- In our case sample there was a limited social gradient apparent for serious sexual offences referred to the Reporters for boys, with 64% of these offences alleged to have been committed by children living within the 60% most deprived areas of Scotland and 36% by children in the 40% most affluent areas.
- Among girls a u-shaped association between deprivation and serious sexual offending, with 55% of the offences alleged to have been committed by children living in the 40% most affluent areas and 45% alleged to have been committed for children living in the 40% least affluent areas.
- Evidence from the case sample indicates that the lives of some children referred to the Reporter for serious offending were characterised by multiple adversities. These included having parents with high levels of additional support needs; previous histories of social work involvement with the family; child protection concerns relating to maltreatment and/or exposure to violence within the home and community; bereavement, including the loss of a parent; lack of engagement and participation with education; high levels of child mental health concerns, learning difficulties and neurodiversity; engagement of the child in risky and harmful behaviours towards themselves and others; and exposure to antisocial peers and exploitative adults.
- However, a third (36%) of the sample had no previous social work involvement and 31% had no previous referrals to the Reporter. There was some indication that previous involvement with services was patterned by both gender and offence type, with girls who committed sexual communications offences more likely to have been previously unknown to either the Reporter or social work services.

Case Study: Rosie, age 12

Rosie was sent a video on WhatsApp by one of her friends. The video was a secret recording of another girl in her class who was undressed and participating in intimate activity. Rosie shared the video with another friend. The video was discovered on Rosie's phone by Rosie's mum who took her and the phone to the Police.



Rosie was charged with 3 offences under s6 of the Sexual Offences (Scotland) Act (coercing another person into looking at a sexual image), s52(1)(b) of the Civic Government (Scotland) Act 1982 (distribution of an indecent photo of a child) and s2(1) of the Children and Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (disclosing or threatening to disclose an intimate photo or film). These offences were jointly reported to the PF and the Children's Reporter. Upon reviewing the case the PF decided not to go ahead with prosecution and instead referred the offences to the Children's Reporter.

The investigation conducted by the Reporter identified that Rosie's family had never been supported by social work, and that there had been no previous referrals to the Children's Reporter for Rosie. Rosie had a good attendance record at school and was doing well in all of her subjects. None of her teachers had expressed concern around her behaviour.

Rosie immediately admitted that she had shared the images. She was remorseful and concerned about the impact that being charged with an offence would have on her future career. Her parents were also upset and horrified. They grounded her and removed her phone access. Because the images had been shared by a number of pupils, the school took additional steps to tackle the behaviours by providing lessons in online safety. After completing their investigation, the Reporter was satisfied that the actions taken by Rosie's parents and schools were appropriate and were sufficient to address the offending. The Reporter chose not to arrange a children's hearing and instead fully discharged the referral. There were no further referrals for Rosie to the Reporter in the 12 months following the incident.

Chapter 5: Management of serious offences within the Children's Hearings System and implications for public confidence

In this chapter we draw upon the interviews conducted with Children's Reporters, as well as findings from the case sample analysis, to contribute to our understanding of the following question:

- What factors are associated with or influence serious offending by children?
- What factors influence decision-making around serious offending by children aged 12-15?
- What barriers exist to statutory agencies addressing the behaviours of children aged 12-15 engaged in serious offending?

The findings in this chapter reflect Reporters' experience of handling a range of jointly reported offences, including: serious sexual assaults such as attempted rape and rape without the use of weapons; sexual communications offences; violent physical assaults, including assault to injury and assault to severe injury; significant fire-raising with substantial economic and societal impacts; possessions and supply of class A drugs by children; and dangerous driving offences, particularly those where there was evidence of endangerment to the general public. The findings also reflect Reporters' experience of dealing with some standard referrals which would have likely been prosecuted in the high court if they were committed by adults. These cases often focussed upon the repeated theft of items with significant economic value.

Deciding whether to prosecute serious offences by children

In this section we explore Reporters' experiences of engaging with the Procurator Fiscal (PF) while a decision is being made as to whether a serious offence allegation should be prosecuted or referred to the Reporter for a decision to be made about the need for compulsory measures through the Children's Hearings System. In doing so we discuss views on the types of cases that are retained for prosecution by the PF, those which are referred on to the Children's Hearings System and what factors influence these decisions.

The Reporters role in gathering and sharing information to assist the PF in their decision around whether to prosecute jointly referred cases

When a child is jointly reported, the PF is required to make a decision about whether they will prosecute the offence or refer it to the Children's Reporter for a decision to be made about the need for compulsory measures of supervision. To support the PF in making this decision, the Reporter will provide information about the child and any mitigating factors that could mean the offence would be best dealt with through the Children's Hearings System.

"There's a form that we have to use, a template that we have to complete, that was jointly agreed between SCRA and the PF office. There's a template that

we complete for summary matters, but for solemn matters there is a more detailed template, and within that we've got to provide information specifically about what the children's hearings system can do with any disposals that are available to it."

The Reporters discussed the range of information that they would usually share with the PF. This included: whether the child was already known to statutory services; the needs of the child who had been jointly reported; what interventions were being provided, or had been provided in the past, to address their needs and behaviour; how responsive the child had been to any interventions or supports offered; what measures could be used to address their behaviours going forward; and views on the measures that could be used within the children's hearings system to address the offending behaviour and any other associated needs.

"I would give all the background information in terms of these are the adversities which the child has faced and give as much detail. The main thing, I would always look to try and give them [the PF] is what work has been done with this child or what work is being done at the moment and has that resulted in a reduction in offending behaviours".

"Crown Counsel want to know from the Reporter what is the likelihood of an order. What is the likelihood of certain decisions being made. What time scales are we talking about? How is this child better off being dealt with through the children's healing system?"

When gathering information about a child who had been jointly reported, the Reporters highlighted the need to identify the professional(s) who would be best placed to provide meaningful insights into why the serious offence should be referred to the Reporter or retained by the PF. This person was often considered to be the one who knew the child the best or was already providing them with intervention and support. For children who were unknown to services, the teachers within the child's school were often considered to be best placed to provide insights into the child's recent behaviour and welfare.

"Why would I go speak to a social worker who knows nothing about the kid when I've got a guidance teacher that's known them since they were 11-12 and is best placed to know that child better than anybody else. It's about going to the people that work with them".

"School are often a very valuable resource because if the child is going to school they see school every single day. And if a child is not within the social work radar, they will still be on a school radar".

When the child was already known to the Reporter or other statutory services, the Reporters tended to draw upon the wealth of information that already existed within case records when compiling information for the PF. This was often supplemented through information gathered through informal discussions with social workers, teachers and other relevant professionals. These discussions focussed on what the recent behaviour of the child had been like, how they were engaging with education

and any supports that were being provided, and any concerns that existed about their safety and welfare.

"I would tend to give information from CSAS,⁹ which details if the child has got involvement [from the Children's Hearings System] at the moment and what that involvement is. I would be phoning to get an update from a Youth Justice Services Social Worker in terms of the work which has been done and give all of that".

The insight that social workers, particularly those who had worked with the child and their family for a long time, could provide was really valued by Reporters. There were two key reasons for this. First, it was recognised that as the lead professional for the child the social worker was able to provide a "critical analysis" of the child's circumstances and behaviour. They were also able to provide insights into how the child was engaging with their current care plan, as well as any additional interventions that could be provided to address the offending behaviour.

"When social work know these children and have known these children since they were 'yay high', you've got a lot of critical analysis behind you. You have more information".

"Our youth justice team and our social work team are fantastic because they will be able to give you that information. If you don't already know some of it, they'll give you it and it will be very focused".

Finally, it was felt that being able to have open and honest discussions with social workers about how the child's offending behaviour could be addressed allowed the social worker to identify whether there would be any potential barrier to implementing any decisions that would be made through the children's hearings system. All of this information was considered to be necessary for informing the decision of the PF.

"What is the care plan? What additional services can be brought to bar in relation to this child? That requires input from social work because ultimately it is them who are going to be providing the service, regardless of whether or not this child is dealt with on a voluntary basis or comes to hearing".

"Quite often we'll get a joint report in, and the alleged offence was four months ago, so we can see we actually haven't had any other referrals for this child in four months, so it does seem there's been a reduction. It can be really helpful to speak to the social worker working with them so they can say 'well, in the last four months this is the work we've done, and this is the positive change we're seeing'. That information can really influence the Fiscal's decision in terms of whether or not they are going to bring the case. What they're looking for is for social work to be doing work that is going to stop this child coming to their attention again".

⁹ SCRA's internal case management system which captures information about all children who have been referred to the Reporter.

Barriers to identifying and sharing information with the PF around jointly reported offences

Although social workers were usually a rich source of information about children's circumstances, some of the Reporters indicated that there could sometimes be a reluctance among social workers to share information. It was perceived that this was due to the Reporter having limited powers to request information when a child had not yet been referred to the Reporter. It was also felt that resourcing issues could contribute to this, particularly if the social work department being contacted was under-resourced.

“Our entitlement to request reports from social work, and their obligation to provide reports to us, stems from us having received a referral for that child. At the point of a joint report, it is not a referral. They were quite reluctant to give any information to inform the joint report because at that stage I didn't actually have a referral”.

“All I really wanted was some background information on the family that could inform a joint decision, but agencies were quite reluctant to engage resources. Social work are massively under-funded and under-resourced. Their staff are fully committed in the cases that they have allocated to them, but a lot of them are firefighting. It's a resource issue. I'm sure they would love to be able to, every time you ask them for information, to go out and provide that to you but they don't have the resources necessarily to fulfil that function all the time”.

Lack of resources was also considered to affect how quickly social workers were able to provide information to inform the PF's decision. For instance, one Reporter stated that they felt the social work team in their area did not always have the capacity to process Police Concern reports. The impact of this was that investigations into these concerns were only started by social work when the Reporter requested information to support the PF, resulting in pressure being placed on an already stretched team to gather this information quickly. The wider impact of social work funding and resources for the handling of serious offences by the Children's Hearings System is something that we shall return to discuss in chapter 6.

“Social work get the police concern reports for these matters, but quite a lot of them just leave them pending. They don't do anything with them and are basically waiting on a request from the Reporter or someone else. That can really hamper discussions for the Fiscal because it's quite important, given the serious nature of the cases, that you've got as much information as possible to go to the Fiscal”.

Some of the Reporters we spoke with stated that there could be tensions around the type of information that could be given to the PF to support their decision-making. For instance, it was felt that sometimes the PF would look for “*guarantees*” from the Reporter about the measures that would be used if the serious offence(s) was referred to the children's hearings system.

“If it’s a much more serious offence then they will look for what we think the likely outcome is going to be, which obviously we can’t tell them. They’ll ask, ‘do we think there’s a likely outcome of secure?’ and we can’t say this child is going to be placed into secure. We can’t do that”.

While it was acknowledged that this question was being asked because the PF wanted to ensure that serious offences were being dealt with appropriately, many of the Reporters highlighted that the legislation underpinning the children’s hearings system means that this question cannot and shouldn’t be given. Two reasons were given for this. First, it was identified that a Reporter is not legally permitted to investigate whether there are grounds of referral to a Children’s Hearing until after they have received a referral. When delays occur, there is a chance that the circumstances which might have necessitated the child being placed onto a CSO could have changed between the Reporter providing advice to the Fiscal and the point at which the post-referral decision on whether to arrange a children’s hearing occurs.

“When it’s jointly reported it’s not a referral until such time as we retain it, and we only retain it after we’ve had a discussion with the fiscal, and that discussion can take a very long time because for serious offences they would refer it to Crown Council for advice about whether or not they are going to retain it”

“Referrals are delayed with serious offending as there are so many things that the police are required to do, and in the case of it being jointly reported, we don’t always hear back from the Crown quickly. I have delay lists. We have cases that have been sat for hundreds of days, It can be a slow process, and by the time the Crown says that we can deal with it, it can be a year down the line and the child hasn’t behaved in that way at all in the intervening period and you’re thinking does this child need to be on supervision now? They probably did this time last year, but do they need to be in supervision now? Probably not”.

To put these delays into context, within our case file sample the average length of time that elapsed between the date of an offence and the post-referral decision was 243 days (range: 34 to 694) for boys and 161 (range: 57 to 395) for girls.

Second, it was highlighted that the clearly defined roles of the Reporter and Panel Members mean that even if the necessity test is met and a hearing is arranged, the decision to place a child onto a CSO rests with the Children’s Hearing, and not the Reporter. Together, these issues mean that the Reporter is only able to provide the PF with the range of potential options that would be available to the children’s hearing if the child was to be referred to one. This was something that was considered to cause some tensions as instead of being able to offer “guarantees” to the PF the Reporter was only able to speculate on potential outcomes.

They [the Fiscal] want to know what measures will be made, and you have to say ‘Wait a minute. We’re 10 steps behind there. I’ve not decided that I’m bringing it to a hearing and I don’t decide the measures, that’s the panel members, so I can’t tell you whether this measure will be made. That can cause a wee bit of tension, especially it’s a difficult case and you’re arguing the presumption should apply that the children’s hearing system is the best place for this, and then you investigate it and don’t bring it to a hearing”.

Factors that affect whether a serious offence is retained by COPFS for prosecution or referred to the Reporter for consideration of compulsory measures through the children's hearings system

It was recognised by Reporters that the PF had to make a decision about whether or not prosecuting an alleged serious offence by a child would be “*in the public interest*”. This process was considered to involve carefully balancing a number of different factors, including ensuring that the public are duly protected, that the rights of victims are upheld, and that the needs of the child who offend are identified and addressed through alternatives to prosecution where this is possible. In addition to these factors, it was considered that the PF will take into consideration how the decision to prosecute or not prosecute would be viewed through the public lens.

The Fiscal will be thinking what would the community think of that? What would the public think of that? How does that look? Is it in the interest of vulnerable people walking in society to have someone around doing these things? What do we need to do to prevent it? Whilst all of those considerations play into our own thinking, it's in a different way, with a different filter.

Considerations of public safety were reflected in the nature of the cases the Reporters described as being retained by the PF for prosecution. These were described as being “*the most serious offences*”, i.e. those “*that make you really react*”. Often these cases included serious physical or sexual violence that involved the use of weapons (i.e. rape committed at knife point) or where there was evidence that the offence had been planned. The Reporters generally agreed with the decision of the PF to retain these cases, indicating that the children's hearings system was not best placed to deal with the most serious offences.

"I'll be really honest. I did not think it was in the child's best interest to be dealt with through the children's hearings system, and that offence [rape at knifepoint] did end up being dealt with by the fiscal".

"This young person needed intensive therapeutic support that I don't think the hearing system would be able to offer, and I suppose at that stage you're balancing the public protection of young girls as opposed to this person's need. The holistic approach that the hearing system offers maybe wouldn't be able to address those very, very extreme behaviours".

The Reporters also identified that the PF tended to retain serious offences among children when there had been significant levels of past intervention through the children's hearings system and no evidence of behaviour change. This was due mainly to it being considered that the risk to the public from not prosecuting was too large.

"There was one recently. It was a rape involving a knife and the Fiscal said, 'we're going to retain this because this is a pattern that's happening here'. The child had been in a residential unit and social work where of the view 'what more can we do?'

"I just think when nothing is making any difference, these children are either going to really hurt themselves or really hurt someone. In fact, some of them

have, and that is where it gets to the point where the Fiscal is like ‘No. We’re keeping it and we’re going to deal with it’.

“99.9% of the time our position would be that it should be dealt with within the children’s hearings system, but there’s obviously going to be examples where it’s difficult to make that argument. For instance, there was a case of attempted murder. He’d already had a hundred previous offences, so it was difficult to make the argument that the hearing system is capable addressing that behaviour because on the face of it, it had singularly failed to do that”.

Although the PF was considered to retain the most serious offences, there was a sense among some of the Reporters that there had been some changes in the nature of serious offences being passed to the Reporter by the PF. In particular, it was felt that there had been an increase in the number of jointly reported sexual offences being received by the Reporter. Through discussions with the Reporters it was often clear why these cases, along with other serious offences, had been referred to the Reporter. These reasons included: the impact of past trauma histories; the influence of other individuals, including exploitative adults, on behaviour; the presence of neurodiversity and other additional support needs; and the child already engaging with or being willing to engage with interventions around their offending behaviour. These issues will be discussed in more detail in chapter 5 in relation to how decisions about the need for compulsory measures of supervision are made by the Reporter.

“Serious sexual offending seems to be the cases which are coming into us more. Those are the ones I’ve really dealt with in terms of supporting reporters with decision-making”.

Reporters’ decision-making in relation to serious offences

In this section of the report we look specifically at the decisions that Reporters make when they receive a serious offence referral. We begin by presenting information about the outcomes of serious offence referrals received between the 1st of October 2022 and the 30th of June, before going on to explore in detail Reporters’ views of the decision-making process and the decisions they reach.

Decisions made by Reporters in relation to serious offences referrals

Table 11 indicates that for the majority (60%) of serious offence referrals the decision was made to allow local authority social work departments to address the behaviour under existing legal measures (Boys: 18%, Girls: 27%) or by engaging with the child or family on a voluntary basis (Boys: 42%, Girls: 33%). In the remainder of the cases, it was considered that compulsory measures were not required (Boys: 28%, Girls: 30%) or that there was not sufficient evidence to prove the offence (Boys: 5%, Girls: 7%). Children’s Hearings were arranged for 3-5% of all of the serious offences received by the Reporter over 9 months. The same pattern was broadly observed within the case sample for the girls. However, among boys it was identified that no hearings were arranged, with the use of voluntary supports through the local authority and the provisions of existing orders being used more frequently.

Table 11: Reporter decisions made for serious offence referrals, for both 9-month period and case sample

	9 months of referrals		Case sample	
	Girls (N=30)	Boys (N=224)	Girls (N=29)	Boys (N=30)
Arrange hearing on 'j' grounds	3%	5%	3%	0%
Insufficient evidence	7%	5%	7%	3%
Insufficient evidence - refer to LA	0%	<1%	0%	0%
Current measures sufficient	27%	18%	28%	27%
CSO not necessary - refer to LA for voluntary engagement	33%	42%	31%	50%
CSO not necessary	30%	28%	31%	20%
No jurisdiction	0%	1%	0%	0%

Table 12: Gender split of Reporter decisions by offence type for the case sample

	Sexual assault and rapes		Sexual communication offences		Violent offences	
	Girls	Boys	Girls	Boys	Girls	Boys
Arrange hearing on 'j' grounds	0%	0%	0%	0%	6%	0%
Current measures sufficient	0%	18%	0%	40%	33%	33%
CSO not necessary - refer to LA for voluntary engagement	50%	59%	40%	60%	22%	17%
CSO not necessary	17%	18%	40%	0%	33%	50%
Insufficient evidence	33%	6%	20%	0%	6%	0%

Looking at the case sample in more depth it can be seen that boys were more likely than girls to be referred to the local authority social work department for support through either existing measures or voluntary engagement for alleged sexual communication offences (Table 12: 100% vs. 40%) and alleged sexual assaults and rapes (Table 12: 77% vs. 50%). In contrast, girls were more likely than boys to be

referred to the local authority for supports for violent offences (Table 12: 60% vs. 22%). It should be noted that in all cases where a child was already subject to a CSO at the time of an alleged reference the decision was made by the Reporter that the existing measures and care plan were appropriate for addressing the new alleged behaviour (data not shown).

Information and tools used to support Reporter decision-making

When a referral is received for a child, irrespective of whether it is for care and protection grounds or a serious offence, the Reporters use a structured tool called the Decision-Making Framework to evaluate and assess the information they have available to them.⁴⁸ The framework, which considers both the needs of children and the level of harm their offending behaviour has caused, was valued by the Reporters for providing a consistency to decision-making. How the framework is used in practice is described later in this chapter.

“The decision-making framework stops you from just using your instincts, which is what it should do”.

The Reporters discussed how their understanding of the decision-making framework was supplemented by Practice Direction, Research Evidence and Training on specific topics such as harmful sexual behaviour, child development, criminal exploitation and the impacts of trauma. These were all described as being helpful for assessing the referrals they had received.

“This year we’ve been delivering harmful sexual behaviour training to Reporters. That is a three-day course, specifically looking at harmful sexual behaviour, which is often present in very serious offences. That’s been so helpful. It’s really informative and it’s information I’ve used to help me. I know what to ask the local authority to give me and to help me with my understanding [of alleged sexual offences] and my decision-making”.

“There is training that the police have kind of laid on here [CCE training] which I’ve attended and that’s been really helpful. We’ve got a really good practice note on CCE as well; telling us the about things to look out for”.

“We have practice direction on the choice of ground. We look at the evidence. Then we’ll look at the extent of concern and the seriousness of the incident, and we’ll look to see what gaps there are in our knowledge and our information to be able to make a final decision about a referral”

When asked to describe what information they used to inform their decisions, the Reporters highlighted the need to gather and evaluate evidence from a wide range of sources. These included the standard prosecution report that details the offence, police concern reports about the child and reports submitted by single agencies or multi-agency forums in response to both the current and any previous requests for information from the Reporter. Depending upon the circumstances of the offence and the child’s previous involvement with services, this can mean reviewing information gathered from the Police, Social Work, Education, Child and Adolescent Mental Health

Services (CAMHS) and other third sector and charitable organisations involved in providing support to the referred child and their family.

“If it’s a serious incident you will always request a full assessment report from social work. You get an education report, and if there are any other agencies involved, for example if you know you’ve got a young child who is going through CAMHS or some other services, you might get information from them”.

These reports were usually supplemented with phone calls to different agencies to request additional information or seek clarification around points raised. The Reporters also indicated the importance of gathering the views of the child who was alleged to have caused harm.

“School might have had an input into the report, but if it is a school-based issue you want to go and speak to them directly because essentially they are going to be your witness”.

“You’ll request a multi-agency report from social work. We’re also writing to children about their views, and once you’ve got all of that in, we can basically make whatever investigations we really need to make, provided that they’re necessary and proportionate. We’ll get information from the police. We’ll get witness statements. Anything that we require to help us make that decision”.

It was felt that Reporters needed to have a wide range of information available to them to be able to fully assess whether compulsory measures would be required to address serious offending behaviour. The range of information that Reporters were looking for included the child’s background and needs, their involvement and engagement with services, and information about any risk and protective factors in the child’s life.

“You basically get as much information as you can in terms of what their needs are, what their vulnerabilities are, what their risks are, what their engagement is with the services that are in place, what is the plan in place, what assessment have social work undertaken in terms of the particular offence, can we be satisfied that it can be adequately addressed, can those needs be met, and ultimately, is there good and meaningful engagement and a clear willingness to engage with the supports that have been identified”.

“You don’t just get the multi-agency report, you get a copy of the child’s care plan as well, which has been worked out, and you get their social worker chronology as well”.

In addition to reports covering these issues, the Reporters indicated that they particularly valued the information that could be provided through the use of risk assessment tools such as AIM3, START-AV or FRAME (see Appendix D for more information). This was due to these tools often providing the most up-to-date information about the child’s attitude to their offending behaviour, the level of risk posed to both the child and the community and what interventions could be used to address their behaviour.

"It's hoping to get a proper risk assessment from the local authority. I will generally ask for Start-AV. That gets used here commonly. Where it is a serious offence, I would be asking for that to be done to really look at 'what are the particular risk factors here and what can be put in place to address that?'"

Although these assessments were valued there was some evidence that Reporters were frequently having to request that they be completed by social workers. When asked why this was, it was highlighted that some local authority social work departments did not have staff trained in how to conduct these risk assessments. This resulted in them having to be outsourced to third sector organisations, potentially introducing delays in decision-making. It was also identified that social work resources were so stretched that social workers often lacked the time to share this information with the Reporter.

"Very often we have to go back and prod for more information, particularly in relation to sexual offending. There's a particular type of risk assessment that should be carried out with children who are relatively involved in sexual offending, and quite often we have been told by social work departments that they don't have someone trained to carry out those particular types of assessments, so we're not getting enough in about it or we will get in the standard response that the child and family aren't prepared to discuss the offence. Or social work can't discuss it with them and there hasn't really been an effort to go beyond that, so quite often it's lacking in information, and that can be at the investigation stage, or it can be post-established grounds stage as well". (Reporter)

"Sometimes it's about resources and that the work isn't actually happening to be able to then give us these assessments. Sometimes the work is happening, but the resources aren't there to actually put it onto paper and get it to you in an appropriate time scale. We don't have the same difficulties with education and health, and that's not about the competence of certain workers and their motivation. I think they are so under pressure and so understaffed".

Consideration of the evidence and establishing offence grounds

In the interviews with the Reporters, it was highlighted that the first consideration for decision-making is whether or not the offence can be proven beyond reasonable doubt.

This was considered to be essential as it allowed Reporters to demonstrate that they had the evidence necessary to: 1) support the need for a children's hearing to be arranged; 2) establish the offence ground within court if the allegation was denied by the child at the hearing.

"In court, we are leading the evidence to establish the ground. It relates to your two prongs of decision-making. Does the child need to be on a CSO? Is there evidence to support a ground? So, in court, regardless of what the ground is, whether it's an offence ground or whether it's lack of parental care, our role is to lead the evidence and have the ground established".

Establishing that any offence has occurred requires the Reporter to examine all of the evidence that has been gathered by the Police within their investigations. It can also involve them requesting reports from other agencies and speaking with the victims and witnesses of the offence. It was also highlighted that unlike referrals for care and protection grounds, the Reporter must ensure that when

"You're having to see whether you've got the evidence to bring it. It's all very well to say the child needs to be in supervision, but if you can't actually prove the reason why they need to be in supervision...? So, we would also be obtaining all of that [evidence] from the police at the same time".

"You're looking at sufficiency of evidence, in terms of whether or not grounds would prove. You're looking at the victims at that point, basically in terms of the evidence, especially if it's a serious offence, they are going to be the main source [of evidence]. If it was a sexual offence, [...] Is there corroborative evidence? Once you've got that I would be asking for a social work report, asking the social worker for that in terms of looking at whether or not it's needed to bring a child to a hearing, but at the same time assessing the quality of the victims' evidence by getting a copy of the JII (Joint Investigative Interview)".

Although it was stated that the same process would be followed for any offence referral, several of the Reporters highlighted that there was a "higher burden" associated with proving that a sexual offence had occurred. This higher burden was considered to stem from the fact that children accused of sexual offences were more likely to deny these offences within a children's hearing, resulting in the need for the grounds to be established within court.¹ This higher burden was also felt in relation to cases where there were suspicions that children were being criminally exploited, an issue that we will look at in more detail later in this chapter.

"If you bring a child in on the basis that they've committed an offence and the offence is rape, and that's not accepted, that is so serious that there's no other place for that other than proof [in Court] to establish those grounds".

"Suppose you have a situation where a teenage boy has been charged rape. He would get access to a criminal defence agent and may even experience that solicitors advice of 'you make no comment, you make no admissions'. The sexual offence will almost certainly be denied at the hearings, so then it will go to proof, which can take many months".

Having to prove in court that an offence occurred was considered by Reporters to expose both the child who had been referred on offence grounds and their alleged victim(s), who were often children themselves, to the more adversarial nature of criminal proceedings. This was exemplified by Reporters describing the difference in the two approaches:

¹ In a children's hearing the grounds of referral, as outlined within s67 of the Children's Hearings (Scotland) Act 2011 must be accepted in order for the hearing to proceed. If they are denied the Reporter must make an application for the grounds to be established by the Sheriff within Court.

“The hearing is about how they’re doing, what is going on in their life, what can they do to support them and help them. The Sheriff is not interested in that. The Sheriff is finding out whether you did this on this day at this place. They’re there to establish whether or not there’s evidence to prove that this ground has been established. That’s all they’re interested in”.

The adversarial nature of court, including the potential need for witnesses to be cross-examined, was identified as a source of re-traumatisation for victims, particularly those who were children. Several of the Reporters indicated that the parents of child victims were often reluctant to let their children act as witnesses in court, which in turn could affect their ability to prove the offence in court.

“As a Reporter I have come across massive reluctance on the parts of the victims and their parents. Generally the victims are children themselves. They’re vulnerable witnesses, and even though we have protections in place for vulnerable witnesses, the parents will often take the view that they’re not going to put their child [through that]”.

“You can see the mindset if you have a young child who has been sexually abused... the parents of that child are very often are thinking ‘why should I put my child through this when it’s actually for the benefit of the perpetrator? What possible reason can you give me that I should subject my child to that? It’s difficult because we are saying we want you to retraumatize your daughter so that he can have support. As professionals we can see the logic in that, but in my experience that’s a very difficult sell to people”.

This reluctance was sometimes amplified by perceptions around the appropriateness of certain offences, particularly sexual and serious violent offences, being handled through the children’s hearings system (see chapter 6 for more detail). In particular, there was a sense that the non-punitive nature of the children’s hearings system resulted in the perception that proving the offence occurred was more beneficial to the child who had caused harm than the child who had been harmed.

“As far as they’re concerned if there’s no punishment, if the person who did this to them is not going to be punished, then they’re not necessarily going to want to come to court and give evidence. And in that environment? Who can blame them? It’s a very adversarial, not pleasant environment for anyone to be in, particularly a young person. And when they know that the consequences of the grounds being established is we come back to a children’s hearing? That causes massive problems”.

The impact that proving an offence in court could have upon victims was something that Reporters routinely factored into their decision-making around how to run a proof within court. This was considered to be particularly relevant when the victim was a child as Reporters considered themselves to *“have an obligation to protect a child witness”* as giving evidence, even by commission (video recorded in advance of court), was considered to be *“fairly traumatic”*. In cases where victims were willing to give evidence in court, the Reporters indicated the importance of ensuring that they were adequately prepared and supported to give evidence within court. They also

highlighted the range of special measures that could be provided to support vulnerable witnesses giving evidence.

“Your victims are usually young people themselves, so they’re almost always going to be vulnerable witnesses. You are going to be needing to do vulnerable witness applications. You’re going to be needing to speak to them at an early stage if you’re aware that you’re going to have to use them, You try to avoid using them as a witness if you can, but if the allegation is a sexual assault, these things tend not to happen in public and you’re going to need to call that girl [to give evidence]. She’s going to be a vulnerable witness, so you’re going to have to get all of that right so that your witness is as comfortable as they can be. They’re not going to be comfortable, they’re going to court essentially to give evidence that they’ve been sexually assaulted and they’re 13, so you’ve got to think about all of that”.

In cases where there was a significant reluctance on the part of victim(s) to give evidence in court, the Reporters described the need to weigh up the potential harm of citing a reluctant witness with the potential harms of the offending behaviour not being addressed. In these situations, the Reporters indicated that they would consider what role, if any, the potential for voluntary engagements with services by the child who had been referred could play in addressing their offending behaviour, this is an issue we will discuss in more detail later in this chapter when considering the necessity of supervision orders.

“You can be left with nothing if the victim does not want to give evidence. That is a factor that comes into play, because ultimately you could be doing more harm. If you get a situation, say for example, where social work say we can work with the child on a voluntary basis, and they are prepared to work with us.... you have to weigh that up against everything. If the only way I can get an alternative to that is to bring that child to a hearing, to bring grounds which will be denied and will go to court, which the victim will then potentially have to come and speak to, which they don’t want to do, you have to consider that. You have to weigh that up and think what is the best outcome from this”.

Demonstrating the necessity of compulsory measures

In addition to establishing whether there was sufficient evidence to prove the offence, the Reporters described needing to establish whether *“the [legal] test for the CSO is actually met”*. This process, which reflects the ‘no order principle’^s involved carefully considering whether or not the use of compulsory state intervention to address the offending behaviour was in the best interests of the child.

“At the heart of everything we do are the questions: ‘what is in this child’s best interest?’, ‘what does this child need?’ ‘Does this child need state intervention through their childhood for their care, protection, treatment, guidance and control?’ That is the language of the statute. It’s a test of what is necessary and what is proportionate”.

^s Section 28 of the Children’s Hearings (Scotland) Act outlines the ‘no order principle’, which states that compulsory measures should only be put in place if that is better for the child than taking no action, was being met.

The notions of necessity and proportionately were particularly discussed in relation to considering whether the proposed interventions and care plan being suggested by social work to address the offending behaviour could be feasibly achieved through voluntary engagement rather than compulsion. This process was often described as being a balancing act, in which all of the potential risks and benefits had to be carefully weighed up. This included the potential risk of harm to any child witnesses who were reluctant to give evidence in court.

“When a Reporter makes a decision whether to bring a child to a hearing or not, the first consideration is that there [is] sufficient evidence. Then you put that to the side, and there's the whole element of the no order principle. Would that order achieve anything that couldn't be achieved, whether it was in place or not. Let's say a child is already engaging and they're taking part in an intervention. What's the need for compulsion? Because the best you could hope for [with the order] is that he or she would comply with the intervention that is already happening on a voluntary basis”.

“It's a balancing act really. What are the strengths? What are the weaknesses? What necessary intervention does it point to? What do you think is in this child's best interests? Why is it proportionate. And why can't it be achieved without state intervention? That will bring you to make a decision about whether or not you need a children's hearing”.

The Reporters described in detail how different aspects of the decision-making framework interacted to inform their decision-making. Most commonly discussed was the seriousness of the offence and how the behaviour around it influenced the decision to arrange a children's hearing. This included taking a very holistic view of how the gravity of the offence and the behaviour of the offence interacted with other contextual factors to affect the welfare of the referred child. Assessments of gravity were undertaken using information about the contextual factors around the offence, including racial motivations, repeat victimisation, the age of the victims and the presence of coercion in sexual offences. It also included examining information about both the vulnerability of the victim(s) and the impact that the offence had had upon the victim(s).

“You're talking about offences and what does the severity of the offence include? Well, it includes the impact on the victim and the consequences for the victim of that offence. It includes racial motivations and the vulnerability of the victim”.

“Any form of rape or sexual assault I would consider to be serious, but the ones around sexual coercion or sexual images the judgements tend to be more of the circumstances of them. We get a lot of referrals now involving causing a young person to look at a sexual image. Some of them could be a child sending an image to another child, and it's whether those were invited or is there an element of coercion involved in that. Do they involve an element of abuse in terms of [how] they've been used? The revenge porn type situation as well. So those offences I think we would look at the circumstances surrounding them in

terms of assessing the gravity. I think we would automatically consider them to be a serious sexual offence or a serious offence”.

While the gravity of the offence was considered to be one key factor in determining the need for a hearing, the Reporters described a wide range of additional factors that they took into consideration within their decision-making. These factors, which we shall discuss in turn, were often interlinked and included: the level of culpability and remorse children showed for their actions; their understanding of consent in sexual offences; the level of support that was being provided to them by their family and services, and how they were engaging with this; any underlying risk factors within the home or community that placed them or others at risk; and what, if any, influence other individuals had upon the offending behaviour of the children. The gender of a child was not considered to factor into the decision-making process.

Several of the Reporters discussed how the attitude of the child towards the offence, when combined with evidence that the child was voluntarily engaging with interventions delivered by the local authority or third sector to address their offending behaviour, could result in a decision being made not to arrange a children’s hearing.

“The key thing would be the child's approach and their understanding of the offence. Whether there's an acceptance of that offence having been committed, and whether social work or youth justice services have been able to carry out proper, targeted work with them”.

"At the start of this year [we] had a young boy who was referred for a rape charge. That was an example of a case where you start off thinking this is so serious, and this is going to need to be coming into a hearing, but actually with the support of the IVY project ^t and the interventions they gave the local authority, there was a really positive bit of relationship work done with him, which has reduced his risk going forward. The young person really engaged with it. Without that I think I would have said bring him in to a hearing”.

The level of empathy that children demonstrated towards those they had harmed was also considered to be important. This was due to an awareness among Reporters that children who lacked empathy towards others can be at greater risk of re-offending and would therefore be more likely to require compulsory state intervention. Reporters highlighted the importance of the risk assessments they received from social work in helping them to assess children’s understandings of what impact they had had upon those they had harmed.

“I can go back to that risk assessment on the young person [who has been] referred. How much do they understand the impact on the victim? What is their level of empathy? My primary concern is the young person who has been referred, but it is really important that I understand how much awareness they have about the impact on the victim because if they don't have an awareness then the risk is higher as they're not seeing the impact of what they've done.

^t The IVY project is a specialist psychological and social work service which conducts risk assessment, formulation and management of children (aged 12 -18 years) with complex social, emotional and behavioural difficulties. These children are assessed as posing a risk to others, usually as a result of violent or harmful sexual behaviour (HSB).

And that's often going to be a big bit of work that social work will need to be doing with that young person around victim awareness and empathy development".

Although the attitude of the child towards the offence was considered to be an important factor in deciding whether compulsion was required, it was highlighted that the attitude of the child's family towards the offence is also factored into Reporter decision-making. For instance, in situations where the child admits the offence and is willing to voluntarily engage with supports, but their parents or caregivers deny the child's involvement in the offence and are not supportive of the interventions being proposed, it was considered more likely that a hearing would be arranged to increase the likelihood of the proposed interventions being received by the child. In contrast, it was indicated that having parents who respond to serious offence allegations by putting boundaries in place and supporting intervention attempts could influence the Reporter towards not requesting a hearing.

"If you have a child that is prepared to do that work, and the parents are saying 'yes, we also see the need to do that work', then that would definitely be leaning more heavily towards not bring them to a hearing. Whereas if you have a child who's saying 'I might be able to do this work', but the parents are saying 'absolutely nothing has happened. We don't accept this'. Then that would lean you more towards bringing them to a hearing".

The Reporters felt it was important that offences committed by children were viewed through "*the context of a developmental lens*". This was not done to minimise the seriousness of the offences that children were accused of committing, but rather to establish whether there were opportunities for social workers and third sector organisations to provide interventions to minimise the risk of re-offending. When reflecting on these issues, Reporters tended to highlight the importance of assessing children's understandings of the offence, including whether they were aware that they had committed an offence and whether their actions had been intended to cause harm or distress. In the case of sexual offences, it was also considered important to know whether the child had an understanding of consent. It was also identified that the age of the child, in particular how close their age was to the ACR, could also factor into Reporter decision-making.

For instance, several of the Reporters discussed the way in which these factors influenced their decision-making when dealing with cases where children had been accused of sharing sexual images via mobile phones or social media. In these cases, it was felt that there was a need to explore whether the child believed that there was consent for the images to be shared or whether they were being shared maliciously. The Reporters were also interested in understanding whether the child felt remorse over their actions and understood the impact that the image sharing had had upon the other individuals involved. All of these factors, when considered together, were considered to affect the decision to arrange a children's hearing.

"For cases that involve sexual coercion or sexual images the judgements tend to be more about the circumstances around them. We get a lot of referrals now involving causing a young person to look at a sexual image. Some of them could be a child sending an image to another child, and it's whether those were

invited or is there an element of coercion involved in that. Do they involve an element of abuse in terms of how they've been used? Is it a revenge porn type situation?"

Understandings of consent were considered to be particularly important in allegations of sexual assault and rape. There were several examples given of children who, due to language and communication difficulties or neurodiversity, did not appear to understand that consent in sexual relationships was a continual process and could be withdrawn at any point.

"I specifically [in cross-examination] explored with him his understanding of consent... If a girl says no is that her consenting? No. If the girl lay there and froze and said nothing, would that be her saying yes to sex? Yeah, it would be. So, we have a boy who has actually told us he doesn't understand consent.

In these cases, the Reporters identified that if social workers had assessed that the child's understandings of sexual consent could be improved through the provision of interventions, and both the child and family were engaging with this support, then the necessity for compulsory measures would be reduced.

"A central issue was his understanding of consent. It was whether or not his additional support needs [autism spectrum disorder] had impacted his ability to understand consent. His understanding of consent or lack of consent was really the key factor in terms of whether or not we were deciding to bring him to a hearing".

"In relation to serious sexual offending it would not be so much an acceptance of 'I raped this girl' but 'I have some issues around my understanding of consent, but I'm prepared to work'. And, that they've actually started the work and that it's made a difference in terms of their understanding".

The developmental lens that Reporters applied to their decision-making also extended to looking at the wider circumstances within which the child who had been accused of an offence was living. This was done to ascertain whether or not there were any specific risk factors that could place the child or others at risk of harm. When investigating allegations of serious sexual offences, Reporters were particularly interested in understanding whether or not the child who had been referred had been demonstrating a wider pattern of harmful sexual behaviour prior to the alleged offence. This was due to the recognition that children who sexually offend can themselves be victims of sexual abuse and require additional supports to address both the trauma they've experienced and the behaviours they are displaying.

"They can come from a background where there are serious attachment issues, where there are serious levels of dysfunction, and where there have been significant levels of breaches of sexual boundaries in terms of risky people being around this individual. So, you then have a young person who is both very vulnerable and at a high degree of risk themselves who is accused of [sexually assaulting] someone who is older than them, which, if it was non-consensual is a statutory rape".

The issue of assessing children's backgrounds led to Reporter reflecting that serious offences by children "*don't just come out of nowhere*", and that often the children referred by the PF have lives that are characterised by a lack of stability, trauma and chaos. Often, the children were considered to be "*depressingly well known*" to services due to concerns about parental mental health concerns, parental drug or alcohol use, domestic violence in the home, and lack of parental care.

"I can't think of one child involved in serious offending that I haven't known as a young child for significant care issues"

"I can't think of any cases I've dealt with where the child has otherwise been completely unknown to social work or the police, or any issues haven't been flagged".

"Looking into this boy's history, there were five entries for domestic violence, so he's certainly been exposed to domestic violence. That's a boy who had raped his then girlfriend"

It was highlighted that not all children who are referred for serious offending will be actively working with services such as social work at the time of the offence. However, when the Reporter conducts their investigation, they will usually receive evidence of historic engagement with services. For instance, the child may have been known to services on care and protection grounds as a very young child or had an older sibling who was known to services. They might also have been removed from their birth parents and placed into local authority care at a younger age.

"At times you can look at these teenagers and think this is the inevitable consequence of your childhood".

There was also a recognition among Reporters that children referred for serious offences tended to be largely disengaged from education, had difficulty forming prosocial relationships, and were more likely to have mental health difficulties or have additional support needs. It was broadly felt that Reporters were seeing more children referred to them on offence grounds who had either been diagnosed with, or were suspected to have, either foetal alcohol spectrum disorder, autism, autistic spectrum disorder and attention deficit hyperactivity disorder.

"I would say most of the children who are referred for serious offences either have adverse childhood experiences, or they have some kind of diagnosed or undiagnosed neurodiversity, and obviously that's coming up more and more now. Autism, ADHD, ASD, Foetal Alcohol Syndrome, whatever it is, there is a lot of neurodiversity with these children".

"I found out through my investigation and speaking to his mum that he had a diagnosis of ADHD but was not attending supports or taking medication. And so straight away, you're into potentially impulsive behaviours potentially and getting a dopamine hit out of certain things".

These factors, which echo the findings within chapter 4, were all considered to contribute to children offending, particularly if they also lacked exposure to prosocial

and trusted adults, had experienced multiple placement moves within the care system, or had been placed into residential care where they were exposed to other children with complex trauma histories and behavioural concerns.

“There was no structure and no routine. They [the child referred by PF for serious sexual offences] were not attending school so were not getting an education. There were difficulties with peers, partly because of his diagnosis [of ADHD]. And what underlay all of that was mum had been in quite a domestically abusive relationship with the biological dad, who had actually been accused of going to court for assaulting the children. Biological dad was now out of the scene. You have a level of potential trauma there from that. And then the Stepdad was really struggling with drug addiction and about to go through rehab, and the relationship between Mum and Stepdad was therefore strained”.

“For that child it was absolutely textbook. The parents were drug users. One died when he was little. He went into foster care when he was like 2 and stayed in foster care until he was 14. And then his foster placement broke apart. He ends up in a children's unit and went off the rails: various offences, threatening abusive behaviour with the staff and actually went into secure”.

This was due to it being perceived that the impacts of childhood trauma upon children's development were long-lasting, and key risk factors for children coming into conflict with the law during adolescence. Several of the Reporters stated that, in their experience, children who were removed from their birth parents and placed into foster or kinship care during their early years continued to carry that trauma with them throughout their childhoods, and that it could start to resurface and impact their behaviour during their teenage years.

“It seems to come back when they hit their teenage years, and they start displaying quite significant behaviours. For the past 12 years they've had a great upbringing, but in the background to that, they still have that initial early trauma which comes back to visit them”.

“That boy [referred by the PF for a serious violent offence] was pretty unknown. We had done grounds when he was about two and it was classic neglect, where the neighbours saw them hanging out of the upstairs window. Dad was a gambling addict and there wasn't enough money in the house. They were removed into the foster system. Nothing for 10-12 years and he's suddenly [offending] out [of] the blue. Classic example of adverse childhood experiences and how that impacts on future behaviour and the neurological development of the young person in that intervening period”.

All of the Reporters felt that addressing these concerns, alongside addressing the offending behaviour, had the potential to reduce the potential for reoffending. This belief reflected the philosophical underpinnings of the Children's Hearings System, i.e. that addressing offending by children requires considerations of “needs not deeds”. The underlying needs of children referred for serious offences was factored into both decisions about the necessity of compulsory measures, but also the grounds of referral that would be brought. Looking at the first of these issues, there were several

examples provided by Reporters which showed how lack of protective factors within the home could increase the likelihood of arranging a children's hearing.

"If it's a violent offence, and there is a family history of violent offending or domestic abuse, and maybe a normalisation of attitudes towards women or violence in general, I would be more inclined to bring them to a hearing because that's a negative factor. It's not just that the family isn't a protective factor, it's that there is a normalisation of violence within the family home or towards other people. That would definitely lean me more towards bringing them to a hearing".

The Reporters also discussed how the background circumstances of children's lives could affect decisions around grounds of referral they would bring when deciding to arrange a hearing. When reflecting on these issues the Reporters frequently referenced the decision of *Constanda v M* 1997 SLT 1396. This piece of case law stipulates that where the whole supporting facts of a case indicate that a child has committed an offence then the Reporter is required to refer the child to a hearing under s67(j) of the Children's Hearings (Scotland) Act 2011.^u This provision was considered to exist to prevent Reporters from bringing "*offences grounds in [to the children's hearing] through the back door*". to avoid the criminalisation of children.

"If they're only referred for offending, and that is it, they need to come to a hearing on offence grounds, and you have the responsibility of providing those beyond reasonable doubt because that's the standard".

While Reporters were extremely mindful of this provision, it was highlighted that practice direction issued by SCRA states that when making a referral to the children's hearing, the Reporter should "*specify the ground(s) that relevantly reflect the principal concerns regarding the child's welfare and which, were a children's hearing to be arranged, would support constructive and appropriate consideration and decision-making by the children's hearing*". There were several examples given where the Reporters considered that it would be more appropriate for Panel Members to reflect upon the offending behaviour as part of a wider constellation of concerns. These included the child having a wider pattern of behaviour and concerns that indicated that they were in need of care and protection, as well as concerns around the influence of others. In these cases, the grounds of referral drafted by the Reporter tended to include s67(m)^v or s67(e)^w of the Children's Hearings (Scotland) Act 2011.

"Lots of children who come to me for offence referrals, when you get the social work reports we're talking about adverse childhood experiences, neurodiversity etc. It is very clear from the report that whilst they are engaging in offending behaviour the concerns are actually wider for this young person. They're going missing. They're misusing alcohol. They're associating with a negative peer group. They're not attending school. So in terms of the Reporters decision-making process and determining if a hearing is needed, and if so on what

^u The child has committed an offence.

^v The child's conduct has had, or is likely to have, a serious adverse effect on the health, safety or development of the child or another person.

^w The child is being, or is likely to be, exposed to persons whose conduct is (or has been) such that it is likely that the child will be abused or harmed, or the child's health, safety or development will be seriously adversely affected.

grounds, there are wider concerns for that child which are more reflective of the actual picture, and offending is an aspect of that, so then I will bring them to a hearing on M [conduct] grounds as opposed to offence grounds because as long as I'm satisfied that the behaviours are clearly narrated and the concerns are there, it results in a more meaningful intervention for that young person and a more meaningful care plan".

"The whole ethos of the system is that you need to think 'it's needs not deeds'. Yes, this child is offending, but the broader picture is such that the proper ground and concern is not met by the offending ground. It's actually made by the welfare ground, so that would be a subsection aim and that necessitates a discussion with a locality Reporter manager or a senior practitioner to make sure that they're in agreement with that. It's not just something that you just go and do".

Choice of grounds was also discussed in relation to children referred for serious offending who were already subject to CSOs. Although the process of decision-making was considered to be broadly the same for children who were already on a supervision order and those who are not, Reporters described also taking into consideration whether the nature of the new referral differed significantly from what had happened before. They also described taking into consideration factors such as: the sequencing of events, i.e. was this referral for an offence that pre-dated the incident resulting in them being placed on a CSO; how long the child had been on compulsory measures; whether the care plan that was in place appeared to be working or not; and how long it was until the next scheduled hearing.

"For children who are already on an order or who we've already decided that they need to come in and we're waiting for a hearing, the task is slightly different. We have to look at the nature of the new referral. Is it similar or dissimilar to what's already before the hearing. We have to make a decision about the nature of the incident, the attitude of the child and carers. We look at the progress of the current care plan you've got and the time since the last hearing. So, you're kind of looking at all of these things and you're basically seeing is it more or less likely that you'll need either a new statement of grounds or a change to the order or for the order to be reviewed". (Reporter)

To answer these questions the Reporters felt it was really important for them to have spoken with the social worker assigned to the child in order to ascertain whether or not the care plan was sufficient to address the offence or whether additional grounds needed to be drafted to address the behaviours.

"Ultimately, we look at the care plan, what they're saying about the care plan, what has actually been done, and what engagement has happened to date. All of those things".

"You want them to be thinking are the current measures actually working? Is this child in the right place? Does this child need to be moved into a residential unit? If it's a serious offence, does this child meet the criteria for secure? Do we need to do something to help this child?"

When a child is placed onto a CSO there is a legal requirement to review the necessity of these orders within 1 year of the order being made. This is referred to as an annual review. Social workers are also permitted to request an early review of the CSO if there are any significant changes within the child's behaviours or circumstances. Some of the Reporters that we spoke with expressed frustration that early reviews were not always being requested when there was a clear pattern of escalating or deteriorating behaviour, and evidence that the young person was not engaging with their care plan. This frustration was largely borne out of a recognition that earlier intervention, including alterations to the existing conditions of the CSO, could have reduced the risk of the serious offence occurring.

"I had two boys with offence referrals concerning [including alleged assault to injury with a knife]. that were really concerning. I brought them in on M [conduct] grounds because they were 12. Then earlier this year I had a referral for one of them for a serious assault on another child that resulted in him sustaining a hairline fracture to his eye socket. There had been several incidents since the CSO was reviewed last year that social work had not told me about until I asked for this investigation, which was frustrating, and there didn't seem to be any sort of progress in the care plan. The child was dismissive of this incident and just making light of it. And there were significant concerns that the family just would not engage in with social work even though they were on a CSO. What really needs to happen in this situation is a review of this CSO because clearly things are not getting better. Clearly things were getting worse, not better... and I was concerned that social work hadn't called a review and that this had just been left to drift with things not getting any better and arguably getting worse".

Several of the Reporters indicated that cases like these, where attempts at intervention had been deficient could negatively affect public perception of the youth justice approach within Scotland. This is something that we will return to discuss in more detail in Chapter 6.

Understanding the influence of others in offending behaviour

In the previous section we indicated that there are times when the Reporter will choose to bring a child accused of committing an offence into the Children's Hearings System on alternative grounds. One area that this was specifically raised in relation to was in the criminal exploitation of children.

Criminal childhood exploitation occurs when children are manipulated or coerced into carrying out offences. Although the Reporters we spoke with understood that exploitation of children happens everywhere, the city of Glasgow was specifically highlighted as an area where exploitation of children was regularly occurring. There were also some concerns raised around how children who were not born in Scotland could be potentially more vulnerable to exploitation.

"There's been exploitation of children in Glasgow - exploiting children to sell drugs. It depends on the value whether that drifts into serious offending, or whether it's just low-level offending that is having a massive impact on that individual exploited child".

"We see a lot in Glasgow of children who are exploited. There are a huge amount of exploited children who are sent out to do shoplifting and you could argue that is a serious offence when the value of the goods is extremely high. You have children who are shoplifting incredibly expensive items of jewellery that, quite frankly, if they were an adult they could easily find themselves in the high court".

Several of the Reporters we interviewed indicated that they had been involved in making decisions about children referred to the Reporter who were being exploited by adults within the community. Generally, these were children who were coming to police attention multiple times rather than for a single serious offence. The range of offences that the children had been referred for included: the possession, supply and distribution of class A drugs; possession of weapons; threatening and abusive behaviour; assault; assault to severe injury; housebreaking; and prolific shoplifting. The Reporters considered any offending behaviour associated with the criminal exploitation of children to be serious. This was due to the level of psychological and physical danger that being exploited could place children in.

"Once he's involved in drug dealing, they're involved with elders who are dangerous, we know the whole nature of drug dealing is dangerous. We know that the exposure to danger that young person is putting themselves under, including being robbed, stabbed".

"That young person I spoke about who broke into the house with the old lady. In that whole evening he had tried to break it into quite a few houses, and reading the police statements it was like an absolute desperation that you could feel. He was very involved in the drug scene, and you just think 'you owe someone money'".

Identifying when criminal exploitation was occurring was considered to be challenging and relied upon professionals across a range of agencies being able to identify patterns within both the nature of children's offending behaviour and their wider behaviour and appearance within the community. Specific issues that were highlighted included the pattern of offending, who children were associated with, periods of going missing from the home and having unexplained sums of money and material goods. One Reporter also highlighted the case of a teenager who had been referred for offences who was being cuckooed, i.e. organised criminals had moved into the temporary accommodation she had been provided with by social work services in order to use her home as a base for drugs offences.

"I have 47 pending joint reports for a child that I'm discussing with the Fiscal. Their offence behaviour is raising alarm bells for me. Some of them are violent, and they [are] acting violently, but they are also going to supermarkets and stealing 70-80 bottles of alcohol. That is part of something bigger as she's doing that on a weekly, if not daily basis. We're looking at all of those offences coming in. Theft of a £1000 worth of alcohol. That's more than an offence referral. That's a red flag".

"These children are coming home with new phones and coming home with money that no one knows where they're getting it from. They're getting drugs, potentially distributing drugs at the age of 12. Where are they getting that from? They're associating with older kids. The signs are all there".

"The belief was that he was being used as a drug runner. He was involved with the wrong people, and everyone was gravely worried for this young lad. He had all of these new things. A designer watch. Gucci trainers. Fancy jackets that cost a lot of money, you know those Canada goose jackets that are known to cost over a thousand pounds. And this young lad is not working. Where is that coming from? I noticed all these kind of things, and at the hearings I noticed he was getting very very thin. He was getting very drawn in and I was thinking 'Is he using drugs? Is he stressed?'. His mum and dad were worried sick".

Arranging a children's hearing was considered to be the most appropriate decision that Reporters could make when faced with evidence of exploitation. This was due to compulsory measures of supervision not only offering opportunities for protection and support, but also increasing the likelihood of children engaging with supports if there was a wider pattern of fear and suspicion of engaging with services among the family. It was also recognised that compulsory interventions may be needed due to children viewing their exploiters as individuals who care for them or because they are not willing to voluntarily engage out of fear that they will be perceived to be "a grass". ^x

"We might be more likely with an exploited child to want to have them subject to a supervision order so that they get support because the reality is a child who's exploited... generally the parents are not interested in social work engaging with them. They don't want that. They just don't want that. And part of that might be fear. So, in general, you need an order to be able to somehow engage with these young people".

"I did come across a case recently where a very young and very vulnerable girl in a residential setting met a very predatory older girl who was violent and encouraging her to offend. And this wee lassie, just thought the sun [shone out of her backside]. And it was dreadful. I did do grounds because she was offending, but the biggest concern was this the influence of this other person and that can be very difficult to put into a set of grounds as it's very different to evidence, and if you can't evidence it you can't do grounds for it".

"The grounds that I had the other day mentioned the exploitation of this young person, and that was one where 'No. No. I'm not being exploited', and the parents felt 'no, he's not been exploited'. OK then... so where do we go with this?".

Although Reporters usually concluded there was a need for a CSO, they indicated that in some cases it could be very difficult to evidence a referral to the hearing under s67(e) of the Children's Hearings (Scotland) Act. ^y It was considered that the main

^x Colloquial expression for somebody who acts as a police informer within the criminal community.

^y The child is being, or is likely to be, exposed to persons whose conduct is (or has been) such that it is likely that the child will be abused or harmed, or the child's health, safety or development will be seriously adversely affected.

reasons for this were that the exploitation of children is often not articulated clearly, either because the professionals involved in the cases are unable to do so clearly or because the children and their families are unable to admit that exploitation is occurring.

"I have a few cases where [exploitation] is a feature, but sort of a hidden feature. It's not overly discussed. There seem to be a few mentions of it in reports, but it's never really properly addressed. The signs are all there, it's just nothing seems to be being done about it, and I suspect that they don't know how".

When suspicions about exploitation were not clearly articulated, the Reporters described finding it difficult to sufficiently evidence the involvement of others in the offence. Not being able to sufficiently evidence the involvement of others often resulted in children being referred to hearings under s67(j) or s67(m), which was something that Reporters felt uncomfortable doing as they felt that doing so conveyed the message that the child was to blame for their actions.

"What we're seeing a lot of now is the criminal exploitation of children, so again, what ground are you bringing that in as? Can you prove the ground? So, I got a wee boy that I dealt with who came in as an offence referral, several offence referrals, for possession and supply of cocaine. The broader picture of that was he was actually going into the City Centre and being exploited essentially. He has been used as a clean vehicle for these drugs. So, although on the face of it he was dealing [drugs], actually he has been supplied by those drugs by someone higher up the chain, which is terrifying".

"What ground do you bring? Are you bringing an M ground as it's the behaviour of the child? There are grounds around exposures to people who harm... we might try that, but evidentially it's not so straightforward".

"One of the things that I find really hard to balance is when it is appropriate to bring J grounds, because that's criminalising these children and that feels like a big step. We shouldn't be criminalising children whose behaviours are due to exploitation".

Although frustrations were expressed about the hidden nature of exploitation, it was highlighted that the recognition of childhood criminal exploitation by services had improved in recent years. For instance, Reporters with experience of dealing with criminal exploitation cases spoke highly of the work being undertaken in some local authorities around contextual safeguarding. They also highlighted the importance of the national referral mechanism, and the formation of working groups designed to promote the sharing of intelligence between agencies. The work of Police Scotland in identifying and sharing information around exploitation concerns with the PF and the Reporter was considered to be particularly valuable. It was felt that there was a need to continue building upon these improvements by ensuring that practitioners had both the confidence and training to articulate concerns about exploitation.

"I sit on the vulnerable youth protection group, so that's with social work and the police. In terms of sharing information, the police are really alert to it, and in

fact a lot of times it's them that are telling us that CCE [childhood criminal exploitation] is what is going on because they are picking this child up all the time".

"Social workers are all aware of the national referral mechanism. In our area they have contextual safeguarding panels, and one of the things that they do look at is exploitation and what is happening. Agencies are much more alert to it now".

Summary

In this chapter we drew largely upon interviews conducted with Children's Reporters to examine how allegations of serious offence referrals are handled by statutory agencies, including SCRA. The key findings identified in this section are:

- When serious offences are referred to the Reporter by the PF there has been careful consideration of the circumstances of the offence, whether there is scope to address the offending behaviour through alternatives to prosecution and what impact intervention through the children's hearings system will have on public safety. This consideration is based upon multi-agency assessments of the offending behaviour, the level of risk posed to the public and any underlying needs of the child.
- Jointly reported serious offences tend to be retained for prosecution by the PF when the offence is likely to cause significant public alarm and where there is a significant risk to public safety. These offences are those where significant physical or sexual harm has been caused and usually involve the use of weapons. The PF is also more likely to retain a jointly reported serious offence when multiple attempts at rehabilitating the child through the children's hearings system have been unsuccessful.
- Serious offences are referred to the Reporter when it is considered that the provision of targeted intervention, support and supervision could be used to address the underlying needs of the child who has offended and promote desistance from further offending. These needs commonly included: the impact of trauma and abuse upon the behaviour of the child; the presence of harmful sexual behaviour and poor understandings of sexual consent; the influence of others, including the child being at risk of criminal and/or sexual exploitation; and the impact of suspected or confirmed neurodiversity on offending behaviour.
- When a child is referred for a serious offence there is a need for the Reporter to: 1) demonstrate that there is sufficient evidence to prove that one of the grounds of referral to the children's hearing applies to the child; 2) the child requires to be subject to a compulsory supervision order to ensure that they receive support and intervention to address both the offending behaviour and their wider needs. When drafting offence grounds, Reporters identified that the test that they apply is whether it can be proven beyond reasonable doubt that an offence has occurred.

- Reporter decision-making around the necessity of compulsory measures requires careful consideration and weighing up of a range of factors, including: the gravity of the offence; the level of culpability and remorse children have shown for their behaviour; the understanding of consent in sexual offences; the level of support that is being provided to children by their family and statutory services; how the child and their family are engaging with the supports being provided; any underlying risk factors that would place the child or others at risk if compulsory measures are not used; and what, if any, influence other individuals have had upon the offending behaviour. For children already on compulsory measures, it was identified that the ability of the existing care plan to address the new offence referral, along with the child's level of engagement with the existing plan, were key factors in whether new grounds of referral should be drafted.
- The wealth of insight that social workers could provide into the child and family was considered to be particularly valuable for Reporter decision-making. The information provided through the use of tools such as START-AV and AIM-3 was also really valued. This is because these tools are specifically designed to provide practitioners with insights about the risk of re-offending by examining both the needs of the child who has caused harm and the level of risk that their behaviours pose to themselves and the wider community.
- Reporters identified that delays in the PF making the decision to pass a jointly reported case to the Reporter can affect whether the necessity test for a CSO will be met. This is because the circumstances that underpinned the behaviour of the child at the time of the offence may have changed by the time a decision has been made, or because the child has been engaging well with interventions to address their offending behaviour while the PF considers whether to prosecute the offence. Within our case file sample, the average length of time that had elapsed between the date of the serious (index) offence occurring and a post-referral decision being made by the Reporter was 243 days (range: 34 to 694; median=257) for boys and 161 (range: 57 to 395; median=133) for girls.
- Reporters indicated that the likelihood of using compulsory measures of supervision to address offending behaviour was lower in cases where the child and the family were accepting of the offence, the child had already started working with social workers on a voluntary basis and was engaging with this work, and there were minimal concerns about their safety and welfare. In contrast, where the child and family were steeped in denial about the offence and were not receptive to offers of voluntary supports from services, Reporters stated that the likelihood of them recommending a CSO increased. For sexual offending, how these factors interacted with understandings of sexual consent were considered to be really important when considering whether to use compulsion to ensure that children received support to prevent re-offending.
- The presence of normative family values around violence, especially violence towards women, were considered to be particular risk factors that would always increase the risk of an order being required to address offending behaviour.

- When dealing with allegations of serious sexual offences, Reporters identified that understandings of sexual consent and the level of coercion present within the offence factored strongly into their decisions about whether compulsory measures were necessary. In these cases, the likelihood of the necessity test being met was further increased when acceptance of the offending behaviour was low, the child was regularly being exposed to narratives that promoted violence towards women and/or the child had a history of demonstrating sexually harmful behaviour.
- Reporters identified that children who were referred to a children's hearing after being accused of causing sexual harm were more likely to not accept the grounds of referral at the hearing. When this occurs, it is more likely to result in a proof application needing to be heard in court, which can lead to delays in the hearing considering the need for a CSO. This was considered to adversely affect victims' wellbeing as it introduced delays in decision-making and required decisions to be made about how the victims evidence would be heard in court.
- Reporters described seeing an increased reluctance in victims being willing to go to court and give evidence. The reasons given for this included concerns about the adversarial nature of court and the potential for re-traumatisation of child victims. Negative perceptions of the children's hearings system, including that the voices and needs of victims were secondary to the needs of the child who had harmed, were also considered to affect the willingness of victims to give evidence
- Suspicions about the criminal exploitation of children were identified as another factor that would always necessitate the need for compulsory measures. This was due to the level of harm that the child who was being criminally exploited was being placed in. It was also recognised that it can be very difficult for the child and their family to recognise or admit that they are being exploited, which in turn could act as a barrier to their receiving help and support.
- Reporters who had dealt with cases where criminal exploitation had been either suspected or confirmed described children engaging in: possession, supply and distribution of class A drugs; possession of weapons; threatening and abusive behaviour; assault; assault to severe injury; housebreaking; and prolific shoplifting. One Reporter had handled the case of a child who had been cuckooed.
- Reporters highlighted that it could be challenging to prove the influence of others; resulting in it not always being possible to draft grounds of referral under s67(e) of the Children's Hearings (Scotland) Act: "the child is being, or is likely to be, exposed to persons whose conduct is (or has been) such that it is likely that the child will be abused or harmed, or the child's health, safety or development will be seriously adversely affected". Lack of credible and reliable information about the presence of exploitation was considered to increase the likelihood of grounds being drafted under s67(j) of the Children's Hearings (Scotland) Act 2011: "the child has committed an offence". Reporters felt this was not appropriate as it put the blame upon the child for actions that were not fully under their control.

- It was felt that the criminal exploitation of children was being recognised more frequently, with Police Scotland in particular highlighted as a robust source of information about suspicion and concerns. Reporters also spoke highly of the contextual safeguarding approaches being used within some local authority social work teams. However, despite these advances it was felt that more training and support was needed to help practitioners to recognise early indicators of harm.
- Resourcing issues were identified as a potential barrier to the children's hearings system being able to successfully address the offending behaviour of children. This issue was raised specifically in relation to the economic impact of austerity and the Covid-19 pandemic upon local authority social work departments. In particular, it was felt that reductions in staffing numbers combined with the level of need within society was affecting the ability of social workers to undertake timely investigation of police concern reports and to undertake specialist risk assessments in relation to offending. It was also highlighted that some local authority social work departments no longer had staff trained in how to conduct specialist risk assessment tools, resulting in requests for these needing to be outsourced to third sector organisations.
- Reporters were also concerned that lack of resources was resulting in social workers not requesting early reviews for children already subject to CSOs when there was a worsening of their behaviour or where they were not engaging with their care plan. This concern was based upon the experience of frequently seeing offending behaviour escalate from lower-level antisocial behaviour to violence within the community.

Case Study: Reece, age 13.



Reece was born to a vulnerable young mum and a dad who was often involved in crime. By the time Reece was a toddler his dad was serving a long prison sentence. There had been child protection concerns from the start of his life and at a post-birth conference it was decided that his mum needed the additional support of family members. Unfortunately, there were other safety concerns among these family members, and Reece

and his mum were eventually provided a flat of their own. As a toddler, and again as a 9-year-old, Reece was placed on a home supervision order due to parental neglect, drug and alcohol use within the home, and because he was the victim of various assaults by family members.

It is around this time that Reece's mum began to struggle to parent Reece. There was aggression and violence in the home. Reece was also violent in school where he caused injury and fear among other pupils. There was a CAMHS assessment and Reece was found to have no serious mental health concerns or a neurodiversity diagnosis. The family and Reece were provided with different types of support including after-school activities and a therapeutic service to support mum's parenting. Barnardo's provided weekly support to Reece and his mum.

Unfortunately, because of the Covid-19 lockdown many of these supports were not available, and by the time Reece was 12 years old he was coming to police attention in the community with a group of peers. There were multiple incidents of violence in the community, at school and in the home and at various times Reece was moved to stay with other family members. Reece began using drugs which was causing additional concern regarding how he was paying for these. When Reece was 13, he was caught participating in a drug deal and was carrying a 'burner phone'. At the same time unknown people were attending at his home requesting money for debts. It was clear at this stage that Reece was being criminally exploited and Reece himself confirmed there were occasions where he was forced to stay with the drug dealer.

The index offence for Reece at age 13 was a delayed referral from prior to being placed on Compulsory Supervision. It related to inappropriate touching of a girl he was familiar with; and was the only sexual offence in his background. Because he had only recently been placed on a CSO the Reporter made the choice to continue this order and care plan with no additional changes.

Now 15 years old Reece remains on his CSO because the panel feels he would not engage voluntarily. He no longer attends school but has indicated he would be open to learning construction skills. He has stated that he is no longer involved with the group who were selling drugs in the community, but it is unclear how true this statement is. In recent months, however, there have been fewer incidents involving the police and more periods of calm within the home.

Chapter 6: Views on the ability of the Children's Hearings System to handle serious offending

In this chapter we draw upon both the qualitative interviews undertaken with Reporters and our case file sample to contribute to our understanding of the following questions:

- What are the patterns of serious offending among children aged 12-15 who are referred to the Reporter in terms of type, volume, gravity and recidivism, and do these differ by gender?
- What barriers exist to statutory agencies addressing the behaviours of children aged 12-15 who cause serious harm through offending?
- What, if any, impact does the handling of serious offences through the Children's Hearings System have upon public confidence in Scotland's approach to youth justice?

In doing so we explore how serious offending by children is addressed through the children's hearings system, and provide insights into rates of recidivism by children after referral to the Reporter. We also explore Reporters' perceptions of how the Children's Hearings System is viewed by both the general public and those who have been harmed by children referred to the Reporter. Through discussing these issues, we identify potential barriers to raising the ACR and how these might be addressed.

Does referral to the Children's Reporter for serious offending result in reductions in further offending behaviour?

Many of the Reporters we interviewed spoke highly of the offence focussed work undertaken by social workers with children and families. In particular, they highlighted the high-level of skill that social workers exhibited in developing empathetic, non-judgemental and trusting relationships with children and families. They also spoke highly about the ability of these professionals to encourage engagement in offence-focussed work at really early stages within the decision-making process. For instance, one Reporter described how skilled social workers are able to encourage children accused of rape to engage in discrete pieces of work around consensual sexual relationships when there is not acceptance that an offence has been committed.

"In this area, the youth services team, which is part of social work and aimed at children involved in the youth justice process, seem to be very good at dealing with children involved in violent offending and persistent offending. We've got such a good team of very experienced people who've been working in youth justice for a very, very long time and they just have a way with these young people. They can build good relationships with the children".

"Suppose you have a situation where a teenage boy has been charged with rape and has experienced that solicitors advice of 'you make no comment, you make no admissions'. That doesn't mean that they can't discuss the issues around it with social work. If you have a skilled social worker speaking to them

they can say 'we don't need to talk about what you've been charged with, or that particular allegation, but here's some work you could do around when a girl is consenting and when they are not consenting. Here's some work around relationships. If you agree that would be helpful then we can do that work without you having to say I've committed rape'.

All of the Reporters we spoke with held the view that the Children's Hearings System was well placed to address offending by children. This was considered to be a reflection of the systems' design, which places an emphasis upon addressing the underlying causes of offending behaviour. This focus on "needs, not deeds" was considered to open doors to interventions and supports that were not always available when offences were prosecuted through the criminal courts.

"We always have to remember our system is an opportunity. Even if we bring somebody in on a J [offence] ground, it doesn't mean that we are trying to say that it's not about criminalising them. It's about bringing them into the children's hearing system in order to give them the care and protection that they need".

"When I was a criminal defence agent I wanted to get as many of the offences I was dealing with back to the children's panel because you've got a better chance of help and support, and resources to support you to prevent reoffending. You don't want them to keep reoffending because they're going to end up in jail, and it will be sooner rather than later".

The "holistic" and "solution focussed" approach taken by the Children's Hearings System was considered to be very different to the punitive approach of the Courts. This was due mainly to the ability of children and families to actively participate in discussions around how to address both the offending behaviour and any other concerns present within the child's life. Many of the Reporters, particularly those who had previously practised as defence solicitors, felt that this was a strength of the children's hearings system as it prevented the role of parents in supporting the rehabilitation of children from being lost. It was also considered necessary to address the deep mistrust that some children and families, particularly those with long histories of statutory intervention, could hold towards interventions being imposed upon them.

"The Children's Hearings System is quite solution focussed. We've got the circumstances. What is the solution to make this better? The Courts aren't about that. It is about punishment. A deterrent. It's a different focus".

"I think one of the bigger differences in the children's hearing system, whether it's those young people who just have voluntary support or who actually come to hearing, is that the involvement of children and families is totally different to court. I was a solicitor before I was a reporter and I represented people in court, and they'd be there but they weren't involved in the process and then afterwards they'd be like 'so what do I do?', 'what happened?'. Whereas at a children's hearing the panel members are talking directly to them, asking them questions, looking to them for solutions as well. It's very different. A hearing is quite solution focused, involving the child and parents in that in a way that court just doesn't.

Within our case file sample, we saw evidence of this holistic approach within the range of interventions offered to children accused of serious offending. These included interventions designed to: reduce engagement in antisocial and offending behaviour; address harmful sexual behaviour; promote greater understandings of sexual consent; improve children's mental health; reduce substance misuse; reduce vulnerability to criminal and/or sexual exploitation; encourage engagement in education and/or employment; and promote more effective family functioning. There was also evidence of restorative justice approaches being used with some children.

The provision of these interventions was considered to be capable of addressing the offending behaviour of the majority of children referred to the Reporter, including those referred for more serious offending. Our case file analysis supported this view, indicating that just under two thirds (63%) of the children who had been referred for a serious offence were not the subject of a further joint report or standard offence referral within the following 12 months. It is important to note, however, that for children where no action was taken by the Reporter, i.e. because there was no evidence that compulsory measures of supervision or voluntary engagement with social work were required, we are unable to identify whether they were subsequently referred to the Police and referred to EEI programmes rather than the Reporter.

"I've never heard from them again, and by that I mean the harmful behaviour is being addressed because I've never had a repeat offender. They've never come back to my attention for similar offences".

Looking at the 37% of children who were referred to the Reporter for a further offence within 12 months of the index offence, our analysis indicates that the majority of the children were boys (64% vs. 36% girls). The mean number of offence referrals received was 9 (boys, range: 1-36) and 3 (girls, range: 1-7). Boys were more likely to be jointly reported for an offence than girls (79% vs. 50%). The range of offences included: vandalism, fire-raising, possession of weapons, assault (including assault of a police officer), threatening and abusive behaviour, theft, drug offences and road traffic offences. Overall, 12% (n=7) of the sample went on to be referred to the Reporter for another offence that would be considered to be serious using the definition of behaviours contained within s39 of ACRA. None of the children who had been referred for sexual offending were subject to further joint reports or referrals for sexual offences; although 1 child was referred for sexual offence that pre-dated the sexual offence that was included within our sample. Looking beyond offence referrals, we identified that 43% (n=9) of the children who had been subject to additional offence referrals had also been referred on conduct and care and protection grounds during this period.

Barriers to addressing the offending of children who are not ready to engage with interventions and support

Although the children's hearings system was considered to be generally effective at addressing serious offending, it was recognised that there are "a *small minority of children*", mainly boys, who can be very resistant to interventions around their offending behaviour. Reporters described this group of children as having a pattern of behaviours that tended to begin with low-level antisocial behaviour before escalating into acts of violence within the community. Often, the children were already subject to

compulsory measures of supervision at the point they became involved in more serious offending. The children who fell into this category were often described as having very poor attitudes towards their offending behaviour. For instance, some of the children had been previously described by professionals as presenting with the attitude that they were “*untouchable*” or “*above the law*”.

“You tend to see the escalation there in terms of they maybe come into us on what would like M [conduct] grounds with antisocial behaviour, drinking and maybe possession of weapons, and then it escalates into assault. I would say that’s where we tend to see serious violent offending”.

“I’m aware, because the police tell us, that there are children who almost view a CSO as a badge of honour. They view a CSO as a ‘get out of jail card’. They’re like ‘you can’t touch me’. They say it to the police every time they are arrested”.

The Reporters we spoke to all felt that the greatest chance of rehabilitation comes when children who are in conflict with the law are able to admit that there is a problem that needs to be addressed and engage with the supports that are being offered. This was something that it was felt could be very difficult for children and families; either because they were steeped in denial that an offence has taken place, or because they are not psychologically ready to confront underlying issues such as the trauma, mental ill-health, the quality of parenting and relationships within the home, and the influence of others.

“I think what’s best for the child is that they’re not involved in offending. People can hear us talk like that and think ‘you’re just wanting to be really soft on them’, and it’s not actually because it is really challenging for a young person to do that introspection in a meaningful intervention. They have to reflect on what’s happened, why it’s happened and how they change that”.

“It’s a little bit like being sectioned I think. You agree to be an inpatient in a psychiatric wing or a section. You’re not really admitting yourself, but if at the end of the day they’re engaging with all that stuff, that is hard”.

It was also identified that the wider contexts of children’s lives can act as barrier to supports being engaged with. For instance, several of the Reporters highlighted that deeply entrenched offending often stems from the influence of others; either due to the behaviour being normalised within their peer group or family, or because the children are being criminally exploited (see chapter 5 for more details). Trying to address offending behaviour in these situations was considered to be very difficult as it required children to be able to recognise the harm that was being caused by individuals that they either loved or perceived to care about them. In the case of exploitation, it was also recognised that children could be afraid of the consequences of acknowledging that they were being harmed. Trying to provide help and support to this group was identified as being time consuming, resource intensive and extremely frustrating. It also resulted in feelings of disillusionment, as sometimes the only option available to social workers was to request that the child be placed into secure care so that they could be protected.

"It is hugely frustrating when you're dealing with referral number 45 or 50. You just think that nothing, not all the care plans in the world, all the intensive supports in the world, all the interventions of the children's hearings system has tried to put in place, and it has not made the blindest bit of difference."

"The minority take up so much of your time and that is difficult. They do take up an inordinate amount of your time because of the nature of the hearings and referrals, and it gets very frustrating."

"You want to just try and get them help, but sometimes they don't want help. Sometimes the only thing you can do is take them off the streets ..., and place them in secure units where education is available and services are available to address these behaviours".

Within our case file sample there was some evidence that engagement with support is not always a linear process, with some of children showing progress in some areas of their lives but not others. One year after being referred for a serious offence, three fifths (57%) of the children were described in social work reports as having mixed levels of engagement with the supports they were offered. For example, some children might show signs of addressing their substance use or mental health but be continuing to come to police attention as they found it difficult not to hang out in the community with friends who encourage them to participate in antisocial behaviour. A complete lack of engagement with supports was reported for one in five (19%, n<5) of the children who had been subsequently referred for a further offence. For each of these children, both girls and boys, there were additional vulnerabilities present within the home that were acting as barriers to support. These included parental involvement in the justice system, parents being wary of social work intervention and support, and the children themselves having additional support needs, including substance misuse and mental health needs, that acted as a barrier to their being able to engage with supports.

That engagement is not always linear means that the way this term is used has the potential to hold different meanings to different people. There were several Reporters who expressed concerns that the ways in which social workers used the word "*engaging*" could be very different from their own expectations of what engagement would ideally look like. For instance, one Reporter recalled a recent case where a boy who had been referred on a rape charge had received no interventions around his limited understandings of consent because the act of letting the social worker into the home had been considered to be an example of engaging with support. This was something that they were alarmed about as it felt like the potential for further offending was being left to chance.

"They took him letting the social worker into the house as evidence of engaging with social work, but there wasn't any targeted work done with this boy. This was a boy who told us that he doesn't understand consent... it was established in court that he had perpetrated a rape... and nobody sat down with that wee boy and said to him 'this is what consent actually looks like, and this is what non-consent looks like'. It's quite a bad example of how the system can work. He's gone through the process but hasn't been made subject to an order on the

recommendation of the social worker so there is nothing further that can be done. It might never happen again, but that is a big big thing to leave to chance”.

The potential for children to receive no intervention through the children’s hearings system was a source of anxiety and frustration for Reporters. It also resulted in them questioning their decision-making and wondering whether both the nature of interventions and the level of engagement that would occur would be proportionate to the level of harm caused. It also highlighted the challenges that they felt in letting go of cases and placing trust in other professionals to implement the decisions made by Reporters and Panel Members.

“It doesn’t always sit well with me when I say work with these children voluntarily, do some offence focus work and then I don’t know what that looks like. And on the occasions where I have been told what it looks like, sometimes I question whether it is enough. And that’s not meant to be a dig at social work. But it it’s a reality of the situation. They’re understaffed and under resourced and they don’t have the power to implement measures. It can be really hard.”

“It doesn’t do justice to the children because I have no way of really knowing how much they are engaging. I can have a social worker say, oh, yeah, they’ve started offence focussed work, and they’ve come to two sessions and they’ve been really enthusiastic about it. And I don’t know if they are actually really engaging in this or not, or if they’re going through the motions and you’d like to give them the benefit of the doubt, but sometimes this job makes you sceptical”.

The level of trust that Reporters were able to place in other professionals to implement decisions made within the children’s hearings system was largely related to the level of resourcing that was available to social workers within their local authority to address offending by children. Many of the Reporters that we spoke with expressed concerns that high caseloads, combined with the inability of some social work departments to fill vacancies, were resulting in social workers, understandably, having to prioritize child protection cases over spending time working with children and families to address non-engagement when it happened. These constraints were also considered to act as a barrier to early reviews being requested when children who were already on compulsory measures of supervision were not engaging with supports.

“In terms of the cases that I’ve dealt with I’m not confident there are the resources in place [to address non-compliance/non-engagement]”.

“There was lots of changes of worker through social work, and it got to a point where what ideally would have been taking place with him over that period of time hadn’t yet happened. And then this this more crucial incident took place in this more crisis scenario”.

“We all live in the real world, and if you are a very busy social worker and you’re firefighting you are looking at which child is most at risk. It’s very difficult. Very, very difficult. Much more money is needed for this whole system”.

It was highlighted that the combined impact of years of financial austerity and the economic impact of the Covid-19 pandemic had resulted in local authorities having to

make very difficult choices about what services they could continue funding. Some of the Reporters expressed frustration that these choices had resulted in the defunding of specialist youth justice teams. Concerns were also expressed about how lack of finances meant that social workers were not always able to purchase specialist interventions that could address gaps in service provision. Similar concerns were expressed around the level of funding available for child and adolescent mental health services (CAMHS), with Reporters indicating that “*long waiting lists for assessment and treatment*” were acting as a barrier to addressing the underlying mental health needs of children in conflict with the law. All of these issues were considered to be further exacerbated by regional disparities in the levels of service provision available. For instance, one Reporter working in the North of Scotland highlighted how the inability of CAMHS to fill posts in their area had resulted in a clinical psychologist from Glasgow visiting the area once a month to see patients.

“They [children in conflict with the law] used to be dealt with by specific teams. They used to be dealt with by youth offending teams that were specialists, but it’s money. The 2008 crash happened and they just got rid of them. They did away with the youth justice teams. They’ve done away with everything. SACRO. Restorative Justice Workers. They are all things of the past”.

“It’s about resources. We need more money and specialist services etc. Or are you just playing lip service to the problem? You can put a child on an order, but if the services are not available, the local authority are not willing to invest in it. That’s the reality”.

“There is a gap as well in the third sector, which has probably come from COVID. Certainly what we saw before COVID, compared to what we see now... the funding is not there for a lot of these organisations. It’s limited. There isn’t the same level of resources and availability of services and support, even for things like befriending agencies”.

Lack of resources was considered to be the main barrier to effectively implementing future legislative changes, including any future increases in the Age of Criminal Responsibility and the referral of more 16–17-year-olds as part of the Children’s (Care and Justice) (Scotland) Act. To that end, all of the Reporters were very vocal in their calls for more funding to support children who came into conflict with the law during adolescence. Some, went further, stating that there needed to be more investment in early intervention for children, particularly those in middle childhood, to address the long-term impact of trauma.

“The argument is absolutely there for us to do it, but I think you know you cannot do those things and not expand everything else accordingly. You know, if the intention is there, I think the alternative of just leaving children of those ages to be dealt with by the criminal courts is not the answer. I think improving of the whole system is the answer and probably, you know, whatever it takes to do that, I would assume it might be more investment and more money for resources”

“We’re really good at the immediate child protection response. I’m not sure that we’re good enough at doing that therapeutic intervention that’s needed for the

child who is maybe not presenting with obvious issues, but there is going to be an impact of exposure to adverse childhood experiences. We need to resource early intervention. I'm a huge advocate of early intervention".

Reporters' perceptions of how the Children's Hearings System is viewed by the general public

It was felt that there was a general lack of understanding within society about the purpose and function of the children's hearings system. This was conveyed through discussions about how members of the public were often completely unaware of what a Children's Reporter was, and why adopting a trauma-based approach to offending among children offered the greatest chance for rehabilitation.

"They really don't know what we do. They think we're journalists".

"I don't think the public out there understand that to provide support to a young person whose behaviour is going off the rails has got a far better chance of them not doing it to someone else, which is surely, as a society, our number one goal, not just for the future victims, but for the person, for the offender".

There was a perception that views about how to address offending by children among the general public were influenced by wider narratives on the role of prosecution and punishment as a deterrent for offending. For instance, many of the Reporters recalled reading or hearing discussions about the children's hearings system being a "soft touch" that "let's them [children] away with it". It was felt that these views were often reinforced by narratives on social media, which regularly used the language of corporal punishment to highlight views on how social media should be addressed.

"There's no punishment. They think that they've got off. You see it on social media, 'they've had a slap on the wrist'. And, the type of people, the keyboard warriors who call for naming and shaming, they're not thinking that they're talking about maybe a 12-year-old, 13-year-old kid.

"You just need to read the comments on Facebook and any local Facebook group. It's terrifying. 'Hangings are too good for them'".

These views were considered to be reinforced by how frequently members of the public were exposed to children engaging in antisocial and offending behaviour within the community. For instance, it was highlighted that although Reporters and other professionals could often see the trauma and adversity that underscored the behaviour of children who offend, what the public tends to see was the financial and physical consequences of children who are loud, aggressive and causing chaos.

"It's the boys that will go down a street and they're maybe kicking off wing mirrors or smashing windows.

"They're loud. They're not timid little children. They are loud, violent and aggressive kids".

It was also felt that the “*huge media voice for victims*” also contributed to negative perceptions of the children’s hearings system within society. This coverage often reflected the most serious cases that were referred to the Reporter and focussed upon the levels of distress and sense of injustice that children and their families felt around the decision not to prosecute the child who had caused harm. They were also considered to reinforce the view that the children’s hearings system provided “*no consequences*” for children who offend.

“The difficulty is that people want consequences. If your son has been beaten up or seriously assaulted, parents want to see consequences for that, and invariably the hearing system’s not about that. It’s not about how they want to see them locked up”.

Many of the Reporters felt that in order to raise the ACR there needed to be a significant piece of work undertaken to promote public confidence in the children’s hearings system. Helping members of the public to understand more about the impact of trauma on behaviour was considered to be one way of doing this. It was also felt that the role that the Reporter plays in protecting the public by making decisions that are intended to support children to desist from offending needed to be explained.

“It’s about developing people’s understanding of trauma”.

“Nobody wants a 14-year-old to be basically, open a door and go into that room where he’s going to be a sex offender for the rest of his life. We want to stop that for him, but we also want to stop it for the future victims”.

“You can’t allow a child to be going around doing things that are totally against the public interest and are going to harm people. It’s not in their interests, and we have a duty to protect them from those behaviours”.

Challenging public perceptions around the volume of serious offending referred to the Children’s Hearings System was also considered to be important, as was providing examples of the type of rehabilitation work that was done with children who committed serious offences.

“Let’s produce some hard data on how much less likely they are to be involved in behaviour like this. I think the general public and victims would be more receptive to it [the children’s hearings system] then. I think you have to see the results”.

Supporting victims of offences

The Reporters we spoke with were extremely empathetic towards victims and could understand why some might feel angry and hurt when a decision was made to refer a serious offence to the children’s hearings system. It was felt that a lot of the anger and hurt that victims felt stemmed from a perceived imbalance of rights that exists when the focus of the children’s hearings system is upon the child who has caused harm.

“They can feel that they’re set aside and all the focus is on that children’s hearing to hear what the child who has hurt their child needs, and what his wants are and how can we support him and safeguard him and nurture him”.

There was a recognition that victims could perceive a referral to the children’s hearings system to be an injustice; particularly if the offence that was being referred was a serious physical or sexual assault. This injustice was considered to perpetuate feelings of anger and result in victims feeling that they had been “*let down*” and “*betrayed*” by the justice system. That referrals for serious offending frequently resulted in the decision being made that the offending behaviour of the child could be managed on a voluntary basis or as part of an existing care plan attached to a CSO was considered to contribute to a perception among victims that there had been “*no consequences*” and that the child had been “*let off*”.

“They’re often furious that the Crown have given it to us to deal with”

“The lack of punitive measures is a con from the point of view of victims”.

“Some of it [the anger and upset] I don’t think is unwarranted. The victims are going to see it as us letting them off, and that’s just them being dealt with through the children’s hearing system, let alone if the children’s hearing system is saying voluntary measures are sufficient. That is going to feel like a slap in the face because it really looks like those children are getting off”.

As already highlighted, the process of giving evidence in court can be traumatic for victims of offences. Some of the Reporters we spoke to felt that the intensive work they did while trying to prepare victims for attending court and giving evidence, along with the time that they spent listening to the impact that the offences had had upon the victim, could inadvertently amplify feelings of betrayal when the focus was then placed upon the child who had harmed within the next stages of decision-making.

“You’re meeting with the victims and you’re discussing with them the measures that are going to help them in court. In some ways they will look to you as a person who is going to help them because we’re saying to them this is what we think would make it easier for you to give evidence in court... I think some families might take the view that you’re on the side of the victim”

It was also felt that the anger and hurt that victims felt was also compounded by the fact that the children’s hearings system is intentionally designed to provide privacy to the child who has caused harm. This need for privacy is built into the system as it is recognised that in order to be able to promote meaningful behaviour change it is important to create a non-stigmatising, safe environment where both the offending behaviour and the underlying concerns can be openly discussed and addressed.

“The difference with the hearing and court is just the privacy of it, and I’m really aware of it here. What is said in that room is totally confidential, and even if the grounds have to go to the Sheriff for proof, it never appears on court lists and no one is allowed to be in the room while the case is being heard”.

It is also recognised that disclosure of information about the child who has harmed can result in their being placed at risk within the community. For instance, several of the Reporters described cases where the level of public anger over the offence had resulted in the child who had offended having to be put in a place of safety.

“It was immediately apparent that it was very serious, not just because of what had been done, but because of the impact on him. He had to be secured because it wasn’t safe for him. You can imagine what social media did. He never went home, because he couldn’t. So even at the stage of it being an unproven allegation, it can be serious from that point of view”.

While promoting privacy for the child who has caused harm can be beneficial in promoting rehabilitation, it can also be perceived as a lack of transparency by victims and their families. It was highlighted that when a criminal prosecution is undertaken the victims of the family are provided with access to the court, they are able to make victim impact statements, and they are provided with access to the decisions made by the court through both being able to be there when judgements are made and through publicly available records. In contrast, within the children’s hearings system the proving of offences occurs within court sessions that are closed to the public, with victims only being present for the purpose of giving evidence and being cross-examined. Similarly, when a children’s hearing is convened the victim(s) are not invited to participate as the focus of the hearing is upon the needs of the child who has harmed.

“If I decide to proceed and take J [offence] grounds and there’s proof, it’s not a criminal trial. They’re [the victim(s)] not going to be able to sit there. They might have to come and speak, but then they will be asked to leave.

“The impact on victims doesn’t enter into the decision of whether or not the child requires to be on an order because we are not a punitive system”.

How the outcomes of offence referrals are explained to victims was considered to potentially contribute to the perception that there are no consequences for children who cause significant harm. When a child is referred on offence grounds, the information that victims are entitled to receive about the outcome of a referral to the Reporter is limited under law. As per other restrictions within the children’s hearings system, this is done to protect the privacy of the child who has harmed and prevent them or their family from being harassed within the community. At present, victims can opt in to receive information about the outcome of the offence referral. If they do this, a Victim Information Coordinator will write to the victim and/or their parents to notify them of the outcomes of the offence referral. The information contained in these letters is restricted to whether or not a children’s hearing has been arranged in relation to the offence, or whether the child has been referred for voluntary supports.

“With the victim information scheme, what we can tell is really limited. Victims are allowed to know the outcome for the particular grounds related to them”.

“It is the way the legislation is written. It was very specific about what we would allow them to see in terms of the detail, I think it’s right that victims don’t know,

because the young person does need to be given a chance to come to live in the community still and become part of that community in a really healthy way”.

Several of the Reporters highlighted that the provisions within the victim information scheme only apply to offence referrals. This means that if there is evidence that the offence is part of a wider constellation of concerns for the child then they will be told that no hearing has been arranged in relation to the offence and will not be told about any hearings or voluntary interventions arranged to address the offending as part of a wider constellation of concerns. This lack of information was considered to contribute to the perception that there were no consequences for children who offend because it meant that the victims simply could not see the significant body of intervention that was often going on with the child in private. Several of the Reporters wondered if there was a way of addressing these concerns by providing victims with anonymised examples of possible interventions through the children’s hearings system.

“We will sometimes have brought that behaviour within an M [conduct] ground. The M grounds are wider concerns about behaviour because it’s a whole pattern of behaviours that we’re concerned about for this young person. So we have actually done something about it and it’s come to a hearing and it’s been really well talked about and dealt with, but the outcome the victim gets is ‘we did nothing with that offence’, and that’s just not even true. They have no reason to be aware of my decision-making process and why I’ve come to that conclusion. But who’s explaining that to these victims? Why would they be expected to know that?”

“I think we could actually get smarter, so that victims understand they might not know what the intervention was, but they understand that something was done about it. I would imagine that as a victim that’s the main thing I would want to know, but what we’re telling them is actually contradictory to what we’ve done. That isn’t the actual picture of what happened. It’s no wonder then people feel like nothing gets done”.

Restorative justice was identified as one particular means of addressing the lack of clarity that victims had over the interventions provided through the children’s hearings system. Restorative Justice involves trained facilitators bringing together victims and offenders, and supporting them to talk about what happened, how it had affected the victim and how and what can be done to help repair the harm. This was something that two of the Reporters had seen work very positively in other locations, including England, and wanted to see more widely used within Scotland.

“Sometimes I feel that there should be more of an understanding of the impacts that these children’s actions have on other people. And I think sometimes it’s very easy in a system that is focused on them [children and young people] to focus on them, and it should be that way, but not to the detriment of someone else”.

“One of the things we are looking at developing here and I don’t know how much it is done in other local authority areas, is more direct restorative work. It tends to be thought of as ‘you maybe paint over graffiti’ or ‘you do that type of thing and you get a warning from the police that’s classed as a restorative

warning, but this is what I think of as true restorative justice where it is that reparation between the person who has carried out the harm and the person harmed. There's a local worker that has been trained in doing that. I think that has potential. I'm really hoping that that will help".

Summary

In this chapter we drew upon data gathered from our case file sample and the interviews conducted with Children's Reporters. This was done to look at issues such as the level of recidivism among children who seriously offend and the nature of the support(s) they receive. We also explore how perceptions of youth crime can result in public confidence in the current system being eroded. The key findings in this section are:

- The holistic and solution-focussed approach of the children's hearings system was considered to open doors to interventions that were not always available when prosecution was sought through the criminal courts.
- Within our case file sample there was evidence of a wide range of interventions being provided to children who had committed serious offences. These included interventions designed to: reduce engagement in antisocial and offending behaviour; address harmful sexual behaviour; promote greater understandings of sexual consent; improve children's mental health; reduce substance misuse; reduce vulnerability to criminal and/or sexual exploitation; encourage engagement in education and/or employment; and promote more effective family functioning. There was also evidence of restorative justice approaches being used with some children.
- Nearly two-thirds (63%) of the children in our case sample were not referred to the Reporter again in the following 12 months.
- Just over a third (37%) of the children in our case file sample went on to reoffend. The range of offences included: vandalism, fire-raising, possession of weapons, assault (including assault of a police officer), threatening and abusive behaviour, theft, drug offences and road traffic offences. Generally, these offences were of lower gravity than the index offence.
- 1 in 10 (12%) of the children in our case file sample committed a subsequent offence that would be considered to be serious using the definition of harm provided in s39 of ACRA. The converse of this is that 9 in 10 (88%) of the children who were referred for a serious offence were not referred to the Reporter for a further serious offence within 12 months.
- None of the children who had been referred for committing a serious sexual offence were referred for a sexual offence in the following 12 months.
- It was recognised that for some children, particularly those who have experienced trauma and adverse childhood experiences, disentangling themselves from behaviours that bring them into contact with the police can be a journey. This journey was often non-linear, with periods where children and

their families engaged well, and others where there was little sign of engagement.

- 1 in 5 (19%) of the children in our sample and who were referred subsequently for offending behaviour were resistant to intervention and had not engaged with support(s) at all. In some cases, this lack of engagement was accompanied by more frequent episodes of violence. It is this cohort of children that creates the most concern among the general public, particularly because they and their actions are so visible in the community.
- Engaging with children experiencing multiple adversities and repeatedly coming to police attention takes time, consistency and building relationships. Lack of resources was seen as a potential barrier to being undertaken. In particular, it was felt that years of under-funding caused by the combination of austerity and the economic impacts of the Covid-19 pandemic had resulted in the closure of specialist youth justice teams. Unfilled vacancies and high caseloads also created challenges for tackling non-engagement as social workers were, understandably, having to prioritise child protection concerns over addressing barriers to engagement.
- Reporters felt that the high visibility of the behaviours of “a small minority” of children engaged in repeated antisocial and violent behaviour can, when reinforced by reporting on social media and in mainstream media, could amplify the perception that serious offending by children is common. It was felt that these views needed to be challenged through the provision of evidence on the true scale of youth offending.
- Societal beliefs around the use of punishment as a deterrent can result in the perception that the Children’s Hearing is “a soft touch” that results in no consequences for children who cause significant harm. These views can be reinforced by media portrayals of the small proportion of very serious cases (i.e. rape) that are referred to the Reporter.
- For victims the belief that there has been no consequences is damaging. Legislative provisions designed to promote privacy for the child who has been harmed can result in victims being left with the perception that nothing has been done to address the behaviour; particularly if the decision of the Reporter has been to refer the child to social work on a voluntary basis or to draft alternative grounds because they believe that the offences is part of a wider set of concerns for the child.
- Reporters did not want to see privacy for children in the hearing system removed, namely due to the potential that exists for the child to be harassed or harmed. However, they felt that more could be done to help victims understand the types of support that children who commit serious offences are likely to receive and how successful these are.

Case Study: Ross, age 14

Ross was accused of raping a 14-year-old girl after spending the night in the park with his friends. The alleged rape happened out of the view of any witnesses. After being charged, another 14-year-old peer came forward and accused him of rape. This incident had happened several months earlier but had not been previously reported to the Police.



Ross was arrested by the police and charged with two counts of rape under section 1 of the Sexual Offences (Scotland) Act 2009. Following advice from his lawyer, he made no comment during his police interview. His case was jointly reported to the PF and SCRA. The PF decided to prosecute the offences. In court, Ross consistently denied the allegations of rape and stated that the girls consented to have sex with him.

At the end of the court case, Ross was found guilty of two counts of rape. Due to his age, the Sheriff decided to remit the case to the children's hearings system for advice on how to dispose of the case. The advice given was that the case should be disposed of through the children's hearings system. At the hearing arranged to deal with the remittal, the panel members decided that Ross be placed onto a CSO. A movement restriction condition was attached to his CSO. This condition placed Ross on a "night time" curfew meaning that he had to remain within his home between 7 pm and 7 am.

An AIM-3 assessment undertaken by criminal justice social workers in preparation for the children's hearing recommended that Ross work with SACRO to improve his understandings of relationships and sexual consent. Ross agreed to undertake this work and has engaged well with the supports offered. He also agreed to take part in counselling. His family were supportive of this approach.

Twelve months after being placed on the CSO, Ross remains supported by his family and friends. He regularly attends school and continues with his extra-curricular activities. The movement restriction conditions associated with his order have been lifted, and there have been no further referrals to SCRA. Due to his age, it can be assumed that if he had reoffended to the same severity again over the next 12 months then any referral would have been jointly reported, and it would have been recorded within SCRA systems. However, had he been older and not placed on a CSO then any further offence would have been dealt with by the Procurator Fiscal.

Chapter 7: Discussion and recommendations

The report of the ACR Advisory Group recommended that the ACR be increased to 16 years of age. In making this recommendation they highlighted a number of key considerations that Ministers would need to address in order to do so. These included identifying how best to manage *“the serious behaviour of children just above the age of criminal responsibility threshold or those nearing adulthood, and ensuring that victims of harm caused by children receive appropriate support”*. In this report we have attempted to contribute to these questions by exploring how serious offending by children aged 12-15, who are above the current ACR, is addressed by the Children’s Reporter. The following research questions were posed:

- What trends exist in the nature and frequency of serious offences referred to the Reporter?
- To what extent are the lives of children aged 12-15 who are referred to the Reporter for serious offending characterised by adversity and trauma?
- What are the patterns of serious offending among children aged 12-15 who are referred to the Reporter in terms of type, volume, gravity and recidivism, and do these differ by gender?
- What factors are associated with or influence serious offending by children aged 12-15?
- What factors do Children’s Reporters take into consideration when making decisions about children aged 12-15 who have been referred for serious offending?
- What barriers exist to statutory agencies addressing the behaviours of children aged 12-15 who cause serious harm through offending?
- What, if any, impact does the handling of serious offences through the Children’s Hearings System have upon public confidence in Scotland’s approach to youth justice?

We begin this chapter by mapping the findings presented within chapters 3-6 against the initial research questions to provide a summary of key findings. We then draw upon both our findings and the wider literature to make recommendations around raising the ACR and what would need to be undertaken in order to do this effectively.

Summary of findings

What trends exist in the nature and frequency of serious offences referred to the Reporter for 12-15-year-olds?

- Between the 1st of April 2021 to the 31st of March 2024, 788 children aged 12-15 were referred to the Reporter for a serious offence. These figures account for 14% of all offence referrals received for this age group.

- The majority (70%) of the serious offences captured by our trends analysis related to an allegation of sexual harm being caused by a child aged 12-15. Within this category, referrals for rape, attempted rape and sexual assault by penetration were rare; accounting for 0.6% of all serious offences referred over a three-year period. The remainder of the offences that were referred related to allegations that the child had caused another serious physical harm (24%) or committed a driving offence (6%).
- The primary route through which children were referred to the Reporter after being charged with a serious offence was through the Procurator Fiscal (PF), with 74% of the serious offences having been considered as joint reports.
- Our trends analysis indicates that children aged 14–15-year-olds were more likely to be referred to the Reporter for a serious offence than 12-13-year-olds (73% vs. 27%). This reflects wider findings showing that children's involvement in offending increases with age.

To what extent are the lives of children who are referred to the Reporter for serious offending characterised by adversity and trauma?

- Our case file analysis indicates that the lives of children who are referred to the Reporter for serious offending tend to be characterised by poverty, maltreatment, exclusion from education and engagement in risk taking behaviours within the community.
- There were high levels of mental ill-health, neurodiversity and learning difficulties present among the children included in our case file sample.
- 1 in 10 (10%) of the children in our case sample were suspected by the police and/or social workers to be at risk of criminal exploitation. This figure was higher for girls than boys (14% vs. 6%).
- 1 in 7 (14%) of the girls within our case sample were considered to be at risk of sexual exploitation; half of whom were also considered to be at risk of criminal exploitation.
- Two thirds (69%) of the children in our case sample were known to either social work services or the Reporter prior being referred for involvement in serious offending.
- A third (31%) of the children were not previously known to services. This group of children tended to be referred for sexual offences.
- Girls who were accused of sexual communication offences tended to be unknown to services. In contrast, boys accused of these offences tended to be already known to services.

What are the patterns of serious offending among children aged 12-15 who are referred to the Reporter in terms of type, volume, gravity and recidivism, and do these differ by gender?

- Our trends analysis indicates that boys are more likely than girls to be referred to the Reporter for a serious offence, with around 9 in 10 serious offence referrals being for boys. This finding reflects wider evidence indicating that boys are more likely than girls to be involved in offending behaviour.
- Our trends analysis shows some gender differences in the offences that children who were referred to the Reporter were charged with. Girls were more likely than boys to be referred for serious physical assaults and sexual communication offences, while boys were more likely to be referred for physical sexual assaults, including allegations of rape.
- Our case file analysis indicates that serious physical assaults referred to the Reporter tended to be carried out by groups of children. There were a small number of offences in our sample where a violent assault carried out by a child, or group of children, was filmed for the purpose of being shared via social media and group messaging platforms.
- Sexual offences referred to the Reporter were typically carried out alone, except in the case of several girls where the sexual offence was linked to a group acting inappropriately in public. Sexual communications offences, while generally carried out alone, often resulted in the sharing of indecent images and/or videos via social media and group chats. The recipients of the images and videos were often other children.
- The majority (70%) of children who were referred to the Reporter for a serious offence were charged with a single offence.
- Boys were more likely than girls to have been charged with multiple offences (33% vs. 16%). The mean number of offences alleged to have been committed by boys was 1.64 (range: 1-14), while for girls it was 1.23 (range: 1-5). Multiple charges accrued by boys tended to relate to sexual offences, whereas for girls there was a more equal split between sexual and violent offences.
- The majority (97%) of the serious offences we looked at had at least one victim. In 4 out of 5 cases this victim was another child who was described as being a classmate or peer. Reflecting the gendered pattern of the offences that were referred, child victims were more likely to be the victim of a serious physical assault or sexual communications offence when the referred child was a girl. They were more likely to be the victim of a serious sexual assault or rape when the referred child was a boy.
- Adult victims, although rare, were more likely to be unknown to the referred child, with 78% having no previous relationship or association with the child. Where adults were known to the referred child they tended to be described as family members or other trusted adults.

- Our findings show that children's hearings were arranged for were 3% of girls and 5% of boys referred for a serious offence between the 1st of October 2022 and the 30th of June 2023. The most common reasons for not arranging a hearing were: that the offence could be addressed under the terms of an existing legal order (boys: 18%; girls: 27%); the child was referred to the local authority to receive support and intervention on a voluntary basis (boys: 42%, girls: 33%); that there was insufficient evidence that compulsory measures were required (boys: 28%, girls: 30% of girls); that there was insufficient evidence an offence had been committed (boys: 4%, girls: 7%). A similar pattern was observed within the case file sample.
- Two thirds (63%) of the children in our sample were not referred to the Reporter for a further offence within 12 months of being referred for a serious offence.
- Just over a third (37%) of the children in our case file sample went on to reoffend. The range of offences included: vandalism, fire-raising, possession of weapons, assault (including assault of a police officer), threatening and abusive behaviour, theft, drug offences and road traffic offences. Generally, these offences were of lower gravity than the index offence.
- Overall, 1 in 10 (12%) of the children in our case file sample went on to commit a subsequent offence that would be considered to be serious using the definition of harm provided in s39 of ACRA. The converse of this is that 9 in 10 (88%) of the children who were referred for a serious offence were **not** referred to the Reporter for a further serious offence within the following 12 months.
- None of the children referred to the Reporter after being charged with a sexual offence were referred for a further sexual offence within the following 12 months.

What factors are associated with or influence serious offending by children?

- Involvement of 12–15-year-olds in serious offending is broadly patterned by deprivation. In our case sample, half of the children who had been referred to the Reporter after being charged with a serious offence lived within the 40% most deprived areas of Scotland.
- The relationship between deprivation and serious offending was most pronounced for violent offences, with 86% of boys and 61% of girls who were referred to the Reporter for causing physical harm to another person living in the 40% most deprived areas.
- There was no association observed between deprivation and referral to the Reporter for sexual offending among boys; suggesting that sexual offending among boys is a wider societal issue. A u-shaped relationship was observed between deprivation and referral to the Reporter for sexual offending among girls, indicating that girls living in the most affluent and most deprived areas of Scotland were being charged with sexual offending. Given the high proportion

of sexual communications offences included in the girls sample it is likely that these findings will reflect easier access to mobile phones and the internet among more affluent children.

- Children's Reporters considered offending by children to be underscored by the impact that early childhood trauma and poor family functioning, particularly when it normalised violence and lack of appropriate sexual boundaries within relationships, could have upon children's development.
- The impacts of trauma were considered to be long-lasting, with adolescence identified as a particularly challenging period due to the adverse effect that trauma could have upon children's mental health, their ability to meaningfully engage in education and their ability to form prosocial relationships. All of these issues were considered to increase children's vulnerability to becoming involved in antisocial and offending behaviour.
- Reporters were particularly concerned about the impact that other individuals involved in antisocial and offending behaviour could have upon the behaviours of children who had been referred on offence grounds. This included adults who sought to criminally exploit children. It also included the impact that being cared for with other children in out-of-home care could have upon the child's exposure to risky behaviours and situations.
- Reporters expressed concerns about how undiagnosed or unmanaged neurodiversity could increase the risk of children becoming involved in offending behaviour. These concerns were particularly raised in relation to sexual offences as it was considered that these conditions could impact upon understandings of sexual consent, including when it had been given and when it had been withdrawn.
- Reporters considered poor understandings of sexual consent and boundaries to be a factor in decisions by children to share sexual images and videos using digital devices. It was felt that the normalisation of these behaviours within wider society could make it difficult for children to understand that an offence was being committed when sexual images and videos were being shared.

What factors do Children's Reporters take into consideration when making decisions about children aged 12-15 who have been referred for serious offending?

- When serious offences are referred to the Reporter by the PF there has been careful consideration of the circumstances of the offence, whether there is scope to address the offending behaviour through alternatives to prosecution and what impact intervention through the children's hearings system will have on public safety. This consideration is based upon multi-agency assessments of the offending behaviour, the level of risk posed to the public and any underlying needs of the child.

- Jointly reported serious offences tend to be retained for prosecution by the PF when the offence is likely to cause significant public alarm and where there is a significant risk to public safety. These offences are those where significant physical or sexual harm has been caused and usually involve the use of weapons. The PF is also more likely to retain a jointly reported serious offence when multiple attempts at rehabilitating the child through the children's hearings system have been unsuccessful.
- Serious offences are referred to the Reporter when it is considered that the provision of targeted intervention, support and supervision could be used to address the underlying needs of the child who has offended and promote desistance from further offending. These needs commonly included: the impact of trauma and abuse upon the behaviour of the child; the presence of harmful sexual behaviour and poor understandings of sexual consent; the influence of others, including the child being at risk of criminal and/or sexual exploitation; and the impact of suspected or confirmed neurodiversity on offending behaviour.
- When a child is referred for a serious offence there is a need for the Reporter to: 1) demonstrate that there is sufficient evidence to prove that one of the grounds of referral to the children's hearing applies to the child; 2) the child requires to be subject to a compulsory supervision order to ensure that they receive support and intervention to address both the offending behaviour and their wider needs. When drafting offence grounds, Reporters identified that the test that they apply is whether it can be proven beyond reasonable doubt that an offence has occurred.
- Reporter decision-making around the necessity of compulsory measures requires careful consideration and weighing up of a range of factors, including: the gravity of the offence; the level of culpability and remorse children have shown for their behaviour; the understanding of consent in sexual offences; the level of support that is being provided to children by their family and statutory services; how the child and their family are engaging with the supports being provided; any underlying risk factors that would place the child or others at risk if compulsory measures are not used; and what, if any, influence other individuals have had upon the offending behaviour. For children already on compulsory measures, it was identified that the ability of the existing care plan to address the new offence referral, along with the child's level of engagement with the existing plan, were key factors in whether new grounds of referral should be drafted.
- The wealth of insight that social workers could provide into the child and family was considered to be particularly valuable for Reporter decision-making. The information provided through the use of tools such as START-AV and AIM-3 was also really valued. This is because these tools are specifically designed to provide practitioners with insights about the risk of re-offending by examining both the needs of the child who has caused harm and the level of risk that their behaviours pose to themselves and the wider community.

- Reporters identified that delays in the PF making the decision to pass a jointly reported case to the Reporter can affect whether the necessity test for a CSO will be met. This is because the circumstances that underpinned the behaviour of the child at the time of the offence may have changed by the time a decision has been made, or because the child has been engaging well with interventions to address their offending behaviour while the PF considers whether to prosecute the offence. Within our case file sample, the average length of time that had elapsed between the date of the serious (index) offence occurring and a post-referral decision being made by the Reporter was 243 days (range: 34 to 694; median=257) for boys and 161 (range: 57 to 395; median=133) for girls.
- Reporters indicated that the likelihood of using compulsory measures of supervision to address offending behaviour was lower in cases where the child and the family were accepting of the offence, the child had already started working with social workers on a voluntary basis and was engaging with this work, and there were minimal concerns about their safety and welfare. In contrast, where the child and family were steeped in denial about the offence and were not receptive to offers of voluntary supports from services, Reporters stated that the likelihood of them recommending a CSO increased. For sexual offending, how these factors interacted with understandings of sexual consent were considered to be really important when considering whether to use compulsion to ensure that children received support to prevent re-offending.
- The presence of normative family values around violence, especially violence towards women, were considered to be particular risk factors that would always increase the risk of an order being required to address offending behaviour.
- When dealing with allegations of serious sexual offences, Reporters identified that understandings of sexual consent and the level of coercion present within the offence factored strongly into their decisions about whether compulsory measures were necessary. In these cases, the likelihood of the necessity test being met was further increased when acceptance of the offending behaviour was low, the child was regularly being exposed to narratives that promoted violence towards women and/or the child had a history of demonstrating sexually harmful behaviour.
- Reporters identified that children who were referred to a children's hearing after being accused of causing sexual harm were more likely to not accept the grounds of referral at the hearing. When this occurs, it is more likely to result in a proof application needing to be heard in court, which can lead to delays in the hearing considering the need for a CSO. This was considered to adversely affect victims' wellbeing as it introduced delays in decision-making and required
 - decisions to be made about how the victims evidence would be heard in court.
- Reporters described seeing an increased reluctance in victims being willing to go to court and give evidence. The reasons given for this included concerns about the adversarial nature of court and the potential for re-traumatisation of child victims. Negative perceptions of the children's hearings system, including that the voices and needs of victims were secondary to the needs of the child

who had harmed, were also considered to affect the willingness of victims to give evidence

- Suspicions about the criminal exploitation of children were identified as another factor that would always necessitate the need for compulsory measures. This was due to the level of harm that the child who was being criminally exploited was being placed in. It was also recognised that it can be very difficult for the child and their family to recognise or admit that they are being exploited, which in turn could act as a barrier to their receiving help and support.
- Reporters who had dealt with cases where criminal exploitation had been either suspected or confirmed described children engaging in: possession, supply and distribution of class A drugs; possession of weapons; threatening and abusive behaviour; assault; assault to severe injury; housebreaking; and prolific shoplifting. One Reporter had handled the case of a child who had been cuckooed.
- Reporters highlighted that it could be challenging to prove the influence of others; resulting in it not always being possible to draft grounds of referral under s67(e) of the Children's Hearings (Scotland) Act: "the child is being, or is likely to be, exposed to persons whose conduct is (or has been) such that it is likely that the child will be abused or harmed, or the child's health, safety or development will be seriously adversely affected". Lack of credible and reliable information about the presence of exploitation was considered to increase the likelihood of grounds being drafted under s67(j) of the Children's Hearings (Scotland) Act 2011: "the child has committed an offence". Reporters felt this was not appropriate as it put the blame upon the child for actions that were not fully under their control.
- It was felt that the criminal exploitation of children was being recognised more frequently, with Police Scotland in particular highlighted as a robust source of information about suspicion and concerns. Reporters also spoke highly of the contextual safeguarding approaches being used within some local authority social work teams. However, despite these advances it was felt that more training and support was needed to help practitioners to recognise early indicators of harm.

What barriers exist to statutory agencies addressing the behaviours of children aged 12-15 engaged in serious offending?

- The holistic and solution-focussed approach of the children's hearings system was considered to open doors to interventions that were not always available when prosecution was sought through the criminal courts.
- Our case file sample highlights that children referred to the Reporter after being charged with a serious offence were offered a wide range of interventions to address both their offending behaviour and promote their welfare. These interventions included those designed: to reduce engagement in antisocial and offending behaviour; address harmful sexual behaviour; promote greater

understandings of sexual consent; improve children's mental health; reduce substance misuse; reduce vulnerability to criminal and/or sexual exploitation; encourage engagement in education and/or employment; and promote more effective family functioning. There was also evidence of restorative justice and contextual safeguarding approaches being used with children.

- It was recognised that for some children, particularly those who have experienced trauma and adverse childhood experiences, disentangling themselves from behaviours that bring them into contact with the police can be a journey. This journey was often non-linear, with periods where children and their families engaged well with supports, and others where there was little sign of engagement.
- 1 in 5 (19%, n=<5) of the children in our sample who were referred again for an offence had not engaged with any supports or interventions offered by the local authority. In some cases, this lack of engagement was accompanied by more frequent episodes of violent behaviour within the community. It was these cases that were considered to cause the public alarm.
- Engaging with children experiencing multiple adversities and repeatedly coming to police attention takes time, consistency and building relationships. Youth justice social workers were considered to be best placed to undertake interventions with children who commit serious offences. This was due to the high level of skill, dedication and perseverance that they can exhibit when working with children and families who are not yet ready to accept help.
- Lack of resources was seen as a potential barrier to children receiving support and intervention. It was felt that years of under-funding caused by the combination of austerity and the economic impacts of the Covid-19 pandemic had resulted in the closure of specialist youth justice teams. Unfilled vacancies and high caseloads also created challenges for tackling non-engagement as social workers were, understandably, having to prioritise child protection concerns over addressing barriers to engagement.
- Resourcing issues were also considered to result in social work teams: not having sufficient capacity to investigate police concern reports until a request for information was made from the Reporter; delays in sharing information with the Reporter due to there not being sufficient numbers of social workers trained in how to conduct specialised risk assessments, resulting in these having to be outsourced to third sector agencies; and reviews of CSOs not being requested by social work teams when there was a decline in the circumstances or behaviour of children already subject to compulsory measures.
- Reporters also highlighted how under-provision within CAMHS continued to act as a barrier to the mental health needs of children who come into conflict with the law being addressed.
- Issues focussed on resourcing were raised, not to be critical of social workers, but to illustrate the pressures that can exist when the systems designed to provide support are over-stretched and under-resourced. It was also

highlighted that not having sufficient resources to address the continued behaviours of a “*small minority*” of children who require significant levels of intervention to address the underlying causes of their offending can result in the perception that the children’s hearings system is not working. It was therefore considered essential that any rise in ACR should be appropriately resourced.

- Reporters would like to see more preventative interventions being delivered during middle childhood (i.e. when children are in primary school) for children who have experienced trauma in earlier childhood. This specific period was identified due to the number of children who Reporters saw engaged in offending behaviour who received intensive supports in early childhood who then bounced back into the system when they began offending during adolescence.

What, if any, impact does the handling of serious offences through the Children’s Hearings System have upon public confidence in Scotland’s approach to youth justice?

- Reporters felt that the high visibility of the behaviours of “a small minority” of children engaged in repeat antisocial and violent behaviour within communities could, when reinforced by reporting on social media and in mainstream media, amplify the perception that serious offending by children is common. It was felt that these views needed to be challenged through the provision of evidence on the true scale of youth offending.
- Societal beliefs around the use of punishment as a deterrent can result in the perception that the Children’s Hearing is “a soft touch” that results in no consequences for children who cause significant harm. These views can be reinforced by media portrayals of the small proportion of very serious cases (i.e. rape) that are referred to the Reporter.
- Legislative provisions designed to promote privacy for the child who has caused harm can result in victims being left with the perception that nothing has been done to address the behaviour; particularly if the decision of the Reporter has been to refer the child to social work on a voluntary basis or to draft alternative grounds of referral to the children’s hearing because they believe that the offences is part of a wider set of concerns for the child. For victims the belief that there will be no consequences for a child that has caused harm can be damaging.
- Reporters specifically highlighted the difficulty that victims could experience in cases where the Reporter chose to draft alternative grounds of referral for a child accused of an offence. This is because in these cases the victim would be told that no action was being cases taken in relation to the offence, when in reality a significant body of work would likely be undertaken to address the underlying causes of the offending behaviour through the children’s hearings system.

- Reporters did not want to see privacy for children in the hearing system removed, namely due to the potential that exists for the referred child to be harassed or harmed. However, they felt that more could be done to help victims understand the types of support that children who commit serious offences are likely to receive and how successful these are.
- Lack of transparency around the children's hearings system was considered to result in both victims and the wider public doubting the effectiveness of diverting children from prosecution. Reporters described seeing this lack of confidence reflected in descriptions of the children's hearings system being "*a soft touch*" that allowed children to be "*let off*" with their offending behaviour. They also described seeing it within public calls for a more punitive approach to offending by children to be adopted.
- Media reporting of victims' experiences was considered to further reinforce negative perceptions of the children's hearings system by providing a very one-sided and emotive view of the decisions taken in relation to children who cause serious harm.
- Reporters felt that in order to effectively raise the ACR there was a need to engage the public in an open and frank discussion about Scotland's welfare-based approach to justice. The purpose of this discussion should be to: 1) challenge public narratives around the volume of youth offending; 2) support them to understand the impact that trauma can have upon children's participation in offending behaviour, including their susceptibility to being influenced and exploited by others; 3) demonstrate that the children's hearings system can and does manage the offending behaviour of the majority of children who are diverted from prosecution.
- It was felt that there was a need to better support victims and families to understand the range of interventions and support that children who offend can be provided with and how effective these are at promoting rehabilitation.

Discussion and recommendations

In this report we have specifically sought to provide understanding of how the Children's Hearings System currently addresses serious offending by children who are above the ACR. In doing so we have considered both the nature and circumstances of their offending, how that interacts with decision-making by the PF and the Children's Reporter, and what impact these decisions are likely to have on both the rehabilitation of children and public confidence in the ability of the children's hearings system to address serious offending. The evidence that has been presented strengthens the argument that a further rise in the ACR is both necessary and justified. In this final section of the report we draw upon our findings and the wider published literature to make recommendations about increasing the ACR, as well as the policy and practice levers that will need to be utilised to ensure that any increases can be implemented without eroding public confidence in Scotland's approach to youth justice. We also draw upon our findings to identify additional research that should be undertaken to better understand the underlying causes of offending by children.

Raising the ACR would reflect the continued need for a welfare-based approach to children in conflict with the law

For Scotland to continue developing a progressive, rights-based approach to youth justice, it is important that we continue to embrace the underlying principles of Kilbrandon, namely that children who offend require care and protection. The evidence presented in this report reinforces this belief, by emphasising that children's offending behaviour, and how it should be addressed, needs to be addressed within the context of their lived experiences. Existing research indicates that children who are involved in offending, particularly children who may be committing more serious and/or violent offences, are often vulnerable, have complex needs, suffer social adversity, and are multiply disadvantaged due to these complex vulnerabilities.^{49,50,45} Our data reinforces this, by highlighting that the majority of 12-15-year-olds referred to the Reporter for serious offending had lives that were characterised by the impact of trauma, maltreatment, poverty and social exclusion. Exposure to adults and peers engaging in violent, antisocial and criminal activities were also common. Long and complicated histories with statutory services at various points in their childhood were common. These findings reflect the findings of a number of meta-analyses indicating that adversity in childhood, including exposure to violence and maltreatment in the home and community, are predictive of offending both in adolescence and across the life-course.^{51, 52}

We know from the wider research evidence that early and repeated contact with justice agencies can be damaging to children in the longer-term and increase the likelihood of further offending.⁵³ In contrast there is significant evidence that diversion from prosecution, including the use of holistic interventions to address the underlying causes of criminal behaviour, can promote desistance from further offending.^{54, 54, 55} Within Scotland, the presumption that diversion from prosecution can be a vehicle for reducing offending behaviour is supported by reductions in self-reported offending and violent behaviour, as well as conviction rates.^{56, 57} Although our case file sample is limited in size, our findings also support this view by demonstrating that intervention through the children's hearings system resulted in 2 out of 3 children not being re-referred on offence grounds 12 months of being referred to the Reporter, and 9 in 10 children not being re-referred for a further serious offence within this period.

The research evidence tells us that the majority of children 'age out' of offending behaviour as they become older. There are several known reasons for this, including increased maturity, a reduced propensity towards taking risks, and a reduced susceptibility to peer influence.⁵⁸ Brain development can also play a significant role in offending by children. This is due to the fact that the prefrontal cortex, the area of the brain that regulates decision-making and manages impulsivity, continues developing until individuals are in their mid-twenties.⁵⁹ Although risky behaviour among children can be viewed as a normal facet of childhood development, there are some children who, due to additional vulnerabilities, are more likely to engage in offending behaviours rather than risk behaviours. As a society it is our responsibility to ensure that this propensity towards risk is managed. Our findings, along with the work of McGarrol et al⁶⁰, highlights that the holistic, multi-agency partnership approach that underpins the children's hearings system is capable of doing this for the majority of children who require this level of intervention.

Recognising the underlying neurological characteristics of childhood and ensuring that offending by children is addressed in a developmentally appropriate manner, can provide more positive outcomes for children than following a more punitive approach. The successful implementation of a rise in the ACR from 8 to 12 years of age in December 2021 is an example of this, with more children being diverted into early and effective intervention programmes designed to address offending behaviour and promote desistance from further offending.⁶¹ Although this finding is to be heralded, the evidence from this study indicates that Scotland could go further and raise the ACR to 16. Doing this would place Scotland on a par with the most progressive global governments. It would also mark a significant step towards the recommendation made within “The Promise” that all children under the age of 18 should be diverted from the criminal justice system. However, it is important to note that our findings indicate that to be able to effectively implement an increased ACR there is a need to consider how to: 1) manage public confidence in the children’s hearings system; 2) better respond to the needs of victims; and 3) ensure that there are sufficient resources to provide the intensive interventions required to addressing ongoing and serious offending by children. An incremental rise in ACR, beginning with an increase to age 14, would provide time to address these concerns.

Recommendation 1: The ACR should be incrementally raised to age 16.

Managing public confidence in the children’s hearings system

In this study we identified that the general public are considered to have limited understandings of the long-lasting impact that childhood trauma and adverse childhood experiences can have upon children’s development. These findings reflect evidence gathered by the ACR Advisory Group showing that the general public can lack understanding of the developmental and cognitive maturity factors that can influence offending behaviour by children. Our findings also demonstrate that the welfare-based approach used to address offending by children is perceived to be at odds with wider public narratives around the appropriateness of using corporate and capital punishment. These findings are not limited to the Scottish context, with a number of studies from around the world indicating that the general public have complex views on youth justice, with some members of the public favouring an approach to youth justice that is solely punitive or combines punishment with interventions to promote rehabilitation.^{62, 63, 64, 65}

The existing evidence indicates that low awareness of justice systems and the decisions that they make can result in members of the public holding more punitive attitudes towards offending.^{66,67} Where offences are committed by children the evidence shows that poor understandings of alternatives to prosecution and the carefully managed circumstances under which these are used can contribute to the belief that children face minimal consequences from the justice system.^{68, 69,70, 71} These views can be further influenced by media coverage of offending by children as this can generate strong emotional responses and feelings of moral panic.^{72, 73, 74, 75, 76} In this study, public perception of the effectiveness of the children’s hearings system was considered to be influenced by coverage of how offending by children,

particularly serious sexual and violent offences, affected the victims of those crimes; the majority of whom were children. Stringent privacy laws designed to protect children who cause harm were also considered to create a one-sided narrative around offending by children as these meant the general public were not being exposed to information about the backgrounds of children who offend and how these can influence offending.

Recommendation 2: A national communications strategy should be developed to help explain youth justice processes to the general public. This should include a focus on explaining the benefits of diversion from prosecution and contextualising the need for a child-centred, non-punitive approach to justice within the wider contexts of the lived experience of children who offend. It should also tackle misperceptions around the volume of serious offending by children.

In order for any future rises in the ACR to be successful there is a need to engage the general public in a meaningful conversation about the volume of youth offending, the impact of trauma on offending behaviour, the purpose of the criminal justice approach taken within Scotland and children's rights. This includes demystifying the role that the Children's Hearings System plays in addressing offending behaviour. To do this effectively a national communications strategy on youth justice is required. This should focus upon helping the general public to understand more about a child's journey after they are accused of an offence, and what interventions and support that they will receive to prevent further offending. It is also important that this strategy provides the public with access to examples of the positive instances of change that, as we have seen in this report, are commonly witnessed within the youth justice system. The use of vignettes which provide contextual information about the age of the child, their life circumstances and the cost-effectiveness of alternatives to detention may be helpful in structuring this discussion. This is because there is evidence to show that presenting members of the public with this information can result in their holding less punitive attitudes towards children and being more supportive of the use of rehabilitative approaches.^{77, 78, 79, 80, 81}

Providing better support for victims

The up-holding of children's rights is an integral part of Scotland's youth justice approach. Article 40 of the UNCRC⁸² states that children who offend should, where it is possible to do so, have their offending behaviour dealt with in specialist child settings rather than judicial settings. They should also be treated in a manner that promotes their dignity, and takes into consideration their age and the potential for reintegration into society. General comment 24 on the UNCRC elaborates on what dignity for children who come into conflict with the law should look like, stating that it is "*the right of the child to have his or her privacy fully respected during all stages of the proceedings*".⁸³ The traumatic upbringings of the children that are described in this study, along with the existence of retributive attitudes within society, emphasise why there is a need to ensure that children who are referred to the children's hearings system should be afforded privacy.

Balancing the rights of children who offend with the rights of victims is not easy, and in practice it may appear that upholding the rights of the accused child infringes upon the rights of victims. In this study, this was commonly seen in the impact that the accused child's right to privacy had upon the ability of victims to understand: 1) why certain offences, particularly sexual offences, had been referred to the Reporter by the PF; 2) what interventions and supports would actually be provided to the child to prevent them from reoffending. It was also identified that addressing offending by children in a rights-respecting way could result in victims believing that their right to justice was being infringed due to the lack of perceived consequences for the child who had caused them harm. These tensions are not new, nor are they confined solely to the children's hearings system, with evidence gathered over the course of the last 15 years showing that victims of crimes, including those committed by children, believe that they are not provided with enough information or support to: 1) support their recovery and healing from trauma; 2) ensure their safety.^{84, 85, 86, 87.}

Steps that are currently being taken within Scotland to better support victims to understand the decisions taken in relation to offending by children may address some of these concerns. For instance, recent changes to prosecution guidelines⁸⁸ have the potential to increase confidence in decisions to refer sexual offences by children to the Children's Reporter. This is because these decisions will now be made only by the most senior members of counsel. The views of victims about the impact of the offence upon their lives and the risk that they consider the child to pose will also be sought prior to a decision about referral to the reporter being made. In addition to this, the Children's (Care and Justice) (Scotland) Act 2024⁸⁹ will, once implemented, permit the Reporter to provide victims with more details about the decisions they have made about offence referral and what conditions have been attached to any compulsory supervision orders made. This will include: whether any measures have been made that prohibit the child from approaching or communicating with victims; whether a secure care authorisation has been included within an order; information on whether a child has been released from secure care or transferred to an adult prison; and information on whether there has been compliance with the order, and if not, what actions are being taken in relation to non-compliance. These changes, which have primarily been introduced to increase victims right to safety information, could also help to increase understanding of the steps taken within the children's hearings system to address offending. In order to ensure that the needs of victims are met, we believe that these measures need to be implemented in full prior to any changes being made to the ACR.

Recommendation 3: Provisions for better information for victims of children referred to the Reporter as outlined in the Children's (Care and Justice) Scotland Act 2024, should be implemented prior to any further raises in the ACR.

Recommendation 4: There is a need for victims to receive independent advocacy and support to help them to better understand the benefits and risks of choosing to give or not give evidence when offence grounds need to be established in court.

Another key finding of this report is that victims who perceive there to be no consequences for children who are referred to the Reporter can be reluctant to put themselves through the trauma of giving evidence in cases where offence grounds, particularly those relating to sexual offending, need to be established in court. While this reluctance was understood by Reporters, it was highlighted that when victims choose not to give evidence it can increase the risk that the accused child would not receive any support or intervention to prevent them from reoffending. These findings suggest that more needs to be done to ensure that victims are appropriately supported to understand what the benefits and risks will be of choosing to give or not give evidence in court. Providing victims with a single point of contact, as recommended within the Children's (Care and Justice) (Scotland) Act 2024, would provide victims with an independent source of advocacy that could provide information and support throughout their contact with the care and justice system. Forthcoming research from SCRA, which specifically explores views on the information and support needed for victims of children referred to the children's hearings system from the perspective of both victims and children who have caused harm, should be used to provide additional insights into what this service should look like.

Clearer and earlier intervention is needed when there are concerns around the wellbeing and behaviour of a child who has already been placed on a CSO for serious offending.

Having a whole system approach to offending by children requires that all parts of that system are able to have timely conversations when concerns exist about a child's welfare or behaviour. For children who have been placed onto a CSO, the use of review hearings is a key way of ensuring that these conversations can happen. The Children's Hearings (Scotland) Act 2011⁹⁰ states that review hearings must be held annually in order to assess whether an order should be terminated or continued. Although previous research indicates that children who are on CSOs due to offending are more likely to have an early review of their order arranged,⁹¹ in this study we heard that Reporters were concerned that early reviews were not being scheduled due to social workers not having sufficient capacity to participate in these hearings. Recent evidence shows that the ongoing recruitment crisis within social work, when combined with increased levels of poverty within society, has resulted in the case loads of social workers increasing significantly.⁹² To address these capacity issues, the Reporters we spoke with believed that they should be provided with legal powers to request an early review of an order in situations where it is clear from communications with the police and other agencies that the child's behaviour is declining and/or there is clear evidence that they are not engaging with the supports and interventions outlined within their care plan. We note the inclusion of these provisions within the recently published Children (Care, Care Experience and Services Planning) (Scotland) Bill⁹³ and hope that these remain in place during the passage of the bill into statute.

Recommendation 5: Children's Reporters should be able to request early reviews of compulsory supervision orders in cases where there is clear evidence that the behaviour of a child subject to an order is declining and/or there is evidence of limited engagement or progress with the care plan.

Ensure that all of the key organisations that work with children coming to the attention of the police are fully funded and resourced

Professor Susan McVie recently wrote that *"the evidence around using harsher punishments as a deterrent, frankly, does not stack up. We should be reassured that Scotland has the structures and mechanisms in place to deal with such incidents in a sensitive, holistic, and trauma-informed way. However, whether it has the capacity and resource to do so is another matter"*.⁹⁴ These concerns are highly relevant to considerations of whether further rises in the ACR can be implemented and sustained as without sufficient resources in place to address offending by children, particularly the small proportion of children who are causing significant harm and are disengaged from supports, there is not only a risk of these behaviours further escalating, but that public confidence in the whole system approach will be further eroded. Concerns about resourcing are reflected within this study, with Reporters indicating that social work departments are being increasingly stretched, resulting in frontline social workers having to, understandably, prioritise child protection cases over providing the intensive support that can be needed to address serious offending. Across the UK, years of economic austerity have resulted in social work services becoming increasingly under-funded and under-resourced.⁹⁵ These shortfalls have been further exacerbated by the deleterious effects of the Covid-19 pandemic and the impact that the current cost of living crisis is having upon children and families.^{96, 97, 98, 99} The combined impact of these issues has been that the caseloads of social workers have significantly increased, resulting in legal orders being poorly implemented and social workers not being able to spend time with the children and families they are supervising.^{100, 101, 102, 103}

Reporters also expressed concerns about the ability of the NHS to provide children who offend with equal and timely access to mental health provision and assessments for neurodivergence. Across the UK there have been longstanding concerns about the insufficiency of mental health provision for children and young people.^{104, 105} These concerns are often more pronounced for children in care as access to timely mental health treatment can be adversely affected by changes in placement. This is because placement moves can result in referrals for children being delayed or lost in the move between placements, or because CAMHS restrict intervention and support to those children who are considered to be 'stable' in their care placements.^{106, 107, 108, 109} While it is noteworthy that waiting lists targets for CAMHS assessment have recently been met for the first time in 20 years in Scotland, there continues to be regional disparities in how these services are accessed and more funding is required to ensure that all children are able to equitably access mental health supports.^{110, 111} It is also important to note that there continues to be significant waiting times for children to be assessed for neurodiversity in Scotland as unless children with suspected ADHD or autism also present with significant mental health difficulties, they are not eligible for assessment

through CAMHS pathways. Recent evidence indicates that less than half of children in Scotland are being assessed within the 36-week limit recommended by the National Autism Implementation Team.^{112, 113} Given the significant proportions of children with suspected and confirmed neurodiversity's seen within our data we would echo recent calls by Scottish MSPs for a cross-party summit on waiting times for neurodevelopmental support and believe that more investment in this area is required.

114

Recommendation 6: To ensure that offending by children is effectively addressed significant investment in both rehabilitative and preventative services are required.

Reporters also highlighted the lack of preventative interventions available during middle childhood to address the impacts of poverty, trauma and adversity upon children's life chances. When thinking about prevention it is important to highlight the combined impact that austerity and the Covid-19 pandemic have had upon the wider provision of services to children in the UK. Youth services were among the hardest hit by government cuts from 2010-15, with an estimated one billion pound cut to annual expenditure during the last decade.¹¹⁵ In Scotland, the continued need for economic austerity has resulted in a 50% reduction in the number of council employed youth workers over the last 8 years.¹¹⁶ The closure of youth services, while creating immediate economic savings, is likely to be more costly to society in the longer term. For instance, it was recently estimated that for every £1 in immediate savings a £3 cost to society had been incurred. These increased costs can be largely attributed to the closure of youth clubs increasing the risk of children engaging in antisocial and criminal activities.^{117, 118} We know from the literature that youth work can make a significant impact upon young people's lives by promoting access to prosocial adults, providing children with safe spaces to gather and limiting children's exposure to adults who might seek to exploit them into criminal activity. Detached youth work, which involves engaging with young people where they choose to meet, can be particularly effective in building relationships with the 'hardest-to-reach' children. It can also help children to make safer choices and reduce the risk of children becoming involved in risky, dangerous or violent situations, which in turn can increase public confidence and safety.¹¹⁹ Due to these findings, we believe that there needs to be national level investment in restoring community-based youth work services.

Addressing the criminal exploitation of children

The criminal exploitation of children is a complex form of child abuse that occurs when an individual or group takes an advantage of an imbalance of power to coerce, manipulate or deceive a child into participating in criminal activity. Victims are often provided with material goods or money, but can also be subject to violence or threat of violence or threats of violence. Often, the victim believes that their participation in the criminal activities is fully consensual.^{120, 121} There are a number of ways in which children can be exploited into offending. These can include: being recruited to act as runners for 'county lines' distribution of drugs; either being 'cuckooed' or coerced into

cuckooing vulnerable individuals for the purpose of properties being used to store and distribute drugs; forced cannabis cultivation; forced begging and busking; forced shoplifting; and forced pickpocketing or 'bag dipping' where bank cards are stolen after PINs have been observed and recorded at cash machines.^{122, 123, 124} Within this study, Reporters described drafting grounds of referral for children who were: involved in the distribution of drugs for organised crime gangs; being cuckooed; and appeared to be shoplifting to order. Concerningly, 10% of the children included within our small case sample were identified as potential victims of criminal exploitation by social workers or the police. Contrary to national statistics, which show that boys are more likely to be victims of criminal exploitation, in our case sample we identified that girls were more likely to be identified as potential victims of criminal exploitation.¹²⁵

Recommendation 7: More research is required to understand how prevalent the criminal exploitation of children is in Scotland. This research should also explore how identification of criminal exploitation is occurring in practice, and what impact this has upon decisions to divert children from prosecution. It should also seek whether there are gender differences in both the nature of offences identified for children who are being exploited, and the decisions taken in relation to addressing these.

The criminal exploitation of children is always serious and should be addressed as a child protection concern.¹²⁶ This view is reflected within the Lord Advocate Instruction¹²⁷ which state that where there is credible and reliable information that a child who has offended is being criminally exploited then the child should not be prosecuted for the offence.¹²⁸ The findings of this study reinforce the importance of this by highlighting the complex needs of children who are being or are at risk of being exploited; however they also suggest that more needs to be done to prevent children who are being exploited from being criminalised. Raising the ACR would be one way of doing this. While it is clear from our findings that the potential for criminal exploitation is being considered as a potential explanation for children's offending behaviour by the Police, Reporters and Social Workers, concerns were expressed that levels of knowledge about criminal exploitation and how tools such as contextual safeguarding could be used to address this, varied by region. We also heard that practitioners wanted to feel more supported to recognise and address exploitation. These findings reflect wider research identifying that practitioners in Scotland are less aware of issues relating to county lines activity than their English counterparts.¹²⁹ To better understand how well Scotland is currently placed to address the criminal exploitation of children is increased, further research is needed to understand how exploitation is currently recognised and addressed and what resources are needed to support improved awareness of this issue. This should include identifying whether there are any gender biases present in the identification of criminal exploitation. It should also consider what, if any, impact educational tools such as the Criminal Exploitation of Children Framework for Practice (developed by CYCJ and Action for Children) and 'You are not alone' (developed by the charity I Am Me and Police Scotland with support from children deprived of their liberty) can have upon knowledge and awareness of the criminal exploitation of children among children, family and practitioners.^{130, 131}

Providing interventions to promote greater knowledge of consent and boundaries in sexual relationships

Although multiple adversities were common among children referred for serious offending, our findings indicate the presence of a second, smaller group of children, who were referred for a really concerning sexual offence that seemed to have ‘come out of the blue’. The children in this group tended to have no previous history of service involvement and limited evidence of adversity or trauma. Close reading of the context of the alleged sexual offences suggest that they often stemmed from poor understandings of appropriate boundaries and a lack of understanding around sexual consent within both offline and online relationships. Our findings suggest that there is a need to prioritise the inclusion of information on how to negotiate both online and offline relationships safely and respectfully within Scotland’s sexual health and relationships curriculum. In order to ensure that these messages reach all children within society there is a need to think creatively about how these messages can be targeted at children who are persistently absent from education. This could include the provision of targeted messaging about sexual consent in paid for advertising on online video streaming platforms and popular social media sites, as well as providing parents and caregivers with the knowledge to have discussions about sexual consent and boundaries with children. Our data also indicates that there is a need to consider the impact that neurodiversity can have upon children’s understanding of sexual consent. We know from the wider literature that neurodiverse children are less likely to be exposed to discussions about sexual consent, and when they are, are more likely to express dissatisfaction that the messaging utilises slogans and metaphors that have been designed for neurotypical minds.^{132, 133, 134, 135} In order to promote better understandings of sexual consent, and thereby reduce the risk of sexual offences occurring, there is a need to prioritise research on how to better support understandings of sexual consent among neurodiverse children

The importance of providing children with messages about sexual consent and boundaries is evident within the wider literature. We know that children who do not receive sexual health education are more likely to seek information from unreliable sources and risk inaccurate and sometimes dangerous misinformation.^{136, 137} This can include narratives around what is permissible sexual behaviour through access to pornography sites; something that is concerning given recent studies indicating that these sites can feature borderline illegal content where sexual acts involving coercion and significant violence are being depicted as normative sexual behaviour.^{138, 139} While this study does not provide insight into how children who have been charged with sexual offences are learning about sexual consent and boundaries, we know that exposure to harmful sexual content can place children at greater risk of being both the victim and perpetrator of a sexual offence.^{140, 141} Given the number of sexual offences captured within this study, and wider evidence from Nixon and Lamb¹⁴² showing that there has been a steady increase in the number of sexual communication offences being referred to the Reporter, it would be helpful to better understand how the media that children are being exposed to is contributing to sexual offending by adolescents in Scotland. This should include assessing the impact of the UK Online Safety Act 2023¹⁴³ upon children’s access to harmful material as we already know that VPN technology is being used to circumvent age verification checks on adult sites while traffic to pornography sites that are complying with the act have fallen significantly.^{144,}

¹⁴⁵ More broadly, it would be helpful to identify the extent to which sexual offences referred to the Reporter are patterned by neurodiversity and how this affects children's journey through the care and justice sector. Doing this would require improvements to how disability data is recorded within SCRA's case management system as at present the most rigorous data on disability requires close reading of case files which is time and labour intensive.

Recommendation 8: Addressing sexual offending by children requires all children to receive information about sexual consent and appropriate sexual boundaries in both offline and online relationships.

Recommendation 9: Research is required to identify how messages about sexual consent and boundaries can be more effectively tailored to children who are neurodiverse.

Recommendation 10: More research is required to understand how the media that children are exposed to is contributing to sexual offending.

Recommendation 11: Improvements to SCRA's capturing of disability data need to be undertaken to allow the youth justice trajectories of neurodiverse children who offend to be fully understood.

Understanding and addressing the impact of technology on adolescent offending behaviour

Within the small case sample included in this study we found examples of children sharing intimate and sexual images of other children via social media and messaging platforms. There were also a few examples of children recording and sharing footage of violent attacks. Although existing evidence indicates that offences involving the use of technology account for less than 3% of the offence referrals made to the Reporter, we also know that there has been a significant increase in the number of online offences committed both generally and by children.^{146, 147, 148} That online offending by children is increasing is not surprising. We know from the wider literature that children are spending less time outside and more time online; resulting in youth culture being increasingly shaped by interactions that occur in online spaces.^{149, 150} There is currently limited information around motivations for online offending among children. However, what evidence there is suggests that online offending can occur due to: children's lack of awareness and knowledge of the law; disputes between children escalating significantly within online spaces; and for the purpose of deliberately

causing harm and humiliating others.^{151, 152, 153, 154} More concerningly, there is some evidence that the uploading of violent attacks to social media can be used to enhance the reputation of those who have caused harm, or to boast about or promote their involvement in illegal activities; particularly among those who are involved in gang activity or organised crime.^{155, 156, 157}

Recommendation 12: More research is required to understand the extent to which technology is being used by children as part of their offending behaviour, and what supports can be put in place to support them to more safely navigate a digital childhood.

Although the literature provides some insights into how technology can facilitate offending, it would be helpful to understand what children's underlying motivations are for using technology in this way. Consideration also needs to be given as to what approach Scotland wants to take to addressing online harms. At present, calls have been made within the UK to completely restrict access to mobile phones for children under the age of 16.¹⁵⁸ Discussions have also taken place around whether the UK and European Parliaments should follow Australia in legislating against children under the age of 16 being able to use social media.^{159, 160, 161} Although both of these suggestions have the potential to reduce online offending by children, there is some evidence to suggest that interventions focussed upon restricting children's access to online spaces are less effective than those which empower children to make better and safer online choices.^{162, 163, 164} (Wisniewski et al, 2015). The recent implementation of the Online Safety Act demonstrates this point effectively as there is evidence to suggest that the use of age verification checks to prevent children from accessing adult content has resulted in increased use of VPN platforms to circumvent these checks. To ensure that any interventions which are developed are meaningful, it is essential that children are involved in discussions around what education and solutions are needed to help them safely navigate a digital childhood is therefore essential.

Strengths and limitations

This report provides insights into the lives of children aged 12-15 who are referred to the Reporter for serious offending. It also examines in detail the decisions that are made in relation to their offending, including why diversion away from the criminal court system towards the children's hearings system is both necessary and appropriate. In doing so, it provides rich and detailed insights into the lived experiences of children who are referred to the Children's Reporter after being charged with a serious offence. These findings, along with the concerns that they raise, triangulate clearly with previously published research on the impact that serious offences can have upon both children who come into conflict and the victims of these offences.

The greatest strength of this report comes from the inclusion of the voices of Reporters working with serious offence referrals as they were able to provide clear, conscientious and thoughtful narratives of how decisions are made to address the needs of children

who cause serious harm, what information and resources are needed to allow them to feel confident in their decision-making, and what the impacts are when these are not provided.

Although this report has many strengths, there are three notable limitations to the data presented. First, as there is no clear or common definition of what constitutes a serious offence committed by a child, a proxy identifier was used. This definition, which relates to s39 of ACRA means that offences have been categorised as serious based solely upon the description of the charge. While it is without doubt that all of the offences described had either caused or had the potential to cause significant harm and distress, the weakness of this approach is that it lacks the nuance needed to assess the extent of harm caused. This is most obviously emphasised by the inclusion of a wide range of sexual communication offences within the sample. Second, while our findings are able to explore the proportion of children who are re-referred for offending behaviour within 12 months of being charged with a serious offence, our findings on recidivism are limited by the fact that we are unable to identify whether any of the children who were not made subject to compulsory measures went on to commit an offence that resulted in their being referred to EEI by the police. We are also unable to identify whether any of the children who were not subject to compulsory measures and turned 16 during our follow up period went on to commit an offence that resulted in being reported solely to the PF. Finally, it is important to acknowledge that the numbers of children included within our case sample are small (n=59) and therefore any differences observed, including those relating to gender, may lack statistical power.

Conclusion

The evidence presented in this study strengthens the argument that a further raising of the ACR is both necessary and justified. It also reinforces the view of the ACR Advisory Group, namely that it is possible for Scotland to raise the ACR to 16. However, in order to do that, serious consideration needs to be given to whether the services which are tasked with implementing the decisions of the children's hearings system are well enough resourced to provide intensive support to: 1) the small minority of children whose behaviours cause significant alarm to the public; 2) children engaged in serious offending who are not engaging with supports and who continue to offend. Greater consideration also needs to be given as to how the care and justice sector, including the children's hearings system, can better support the victims of children who commit serious offences. Without addressing these issues, it is likely that the general public would lose confidence not only in any revised ACR but also in the systems designed to support its implementation. Due to these facts we believe it would be prudent to raise the ACR incrementally, beginning with a rise to age 14.

Appendix A: Serious offences mapped using the s39 test of the Age of Criminal Responsibility Act 2019

Violent offences
Assault Disfigurement; Assault Injury & Disfigurement; Assault Severe Injury; Assault Severe Injury & Disfigurement; Assault to Injury & Impairment; Assault to Severe Injury and Impairment; Assault To Severe Injury, Impairment & Disfigurement; Assault To Severe Injury, Permanent Disfigurement; Attempt Murder.
Driving and transport offences
British Transport Commission 1949 S56 Throw Object; RTA 1988 S2 Dangerous driving; RTA 1988 S2 Dangerous Driving Unregistered Vehicle;
Sexual offences
SOSA 2009 S1 Attempted Rape; SOSA 2009 S1 Rape; SOSA 2009 S18 & S20 Rape And Sexual Assault Of A Young Child; SOSA 2009 S18 Rape Young Child; SOSA 2009 S19 & 20 Sexual Penetration/Sexual Assault Young Child; SOSA 2009 S19 Assault By Penetration Young Child; SOSA 2009 S2 Sexual Assault By Penetration; SOSA 2009 S24 Communicate Indecently With Young Child; SOSA 2009 S24(1) Sexual Communication With Child Under 13; SOSA 2009 S3 Sexual Assault; SOSA 2009 S4 Sexual Coercion; SOSA 2009 S5 Coerce Into Being Present Sexual Activity; SOSA 2009 S6 Coerce Into Looking Sexual Image; SOSA 2009 S6 Intent Attempt Into Look At Sexual Image; SOSA 2009 S7(1) Communicate Indecently; SOSA 2009 S7(1) Communicating Indecently; SOSA S20 Sexual Assault Young Child; SOSA S21 Cause Young Child To Participate Sexual Activity; SOSA S22 Cause Young Child To Be Present Sexual Activity; SOSA S23 Cause Young Child To View Sexual Image; SOSA S24(1) Communicate Indecently Young Child; SOSA S24(2)Cause Young Child See Hear Indecent Communication

Appendix B: Case File Research Variables

Demographics (child)
Gender Age at referral (index offence) Ethnicity Disability Learning difficulty SIMD (home address postcode)
Background (family)
Parents have history of being care-experienced Parental drug use Parental alcohol use Domestic violence present within the home Parents have a history of violence and aggression within the home or community Parental offending behaviour (type and frequency and associates) Parental imprisonment Parental health concerns: physical health Parental health concerns: mental health Parental health concerns: learning difficulties Childhood home: concerns about housing conditions and cleanliness
Health, health behaviours and risk taking (child)
Physical health concerns Mental health concerns, including self-harm and suicidal ideation Drug use (inc. legal highs) Alcohol use Solvent use
Educational concerns (child)
Attainment Attendance School exclusion
Socioemotional concerns (child)
Bullying: perpetrator Bullying: victim Peer group: negative/ positive Sexually harmful behaviour: perpetrator Sexually harmful behaviour: victim Child's history of violent/ aggressive behaviour

Trauma histories (child)

Victim of parental violence/aggression
Victim of violence/aggression - others
Significant bereavement
Significant traumatic event witnessed
Evidence of criminal exploitation
Evidence of sexual exploitation (CSE toolkit)
Child victim of any other type of crime

Previous service involvement (child)

Ever placed on child protection register
Ever placed onto a child protection order
Nature of first service involvement (type, description, date and age of child)
Nature of first referral to the Reporter (type, date, age of child and decision)
Number of previous referrals to the Reporter
First children's hearing (date, decision, CSO made, conditions of order)
First established grounds of referral to children's hearing (date, type)
Ever accommodated by the local authority (placement types, dates, legal basis)
Ever had a secure care authorisation (number and dates)

Previous service involvement (siblings)

Number known to services
Number accommodated
Number with offence referrals to the Reporter
Number with non-offence referrals to the Reporter
Number in secure accommodation
Number with histories of violence and aggression in the home or community
Number involved in offending behaviour
Number imprisoned
Number with stated misuse of drugs and alcohol
Number involved with offences with the referred child
Number involved with antisocial behaviour

Offending histories (child)

Child involved in antisocial behaviour
Nature of first offence referral to the Reporter (type, date, age of child and decision)
Number of previous offence referrals to the Reporter
First established offence grounds at children's hearing (date, charges, offence type)

Details of first or only offence between 1st October 2022 and 30th June 2023 (child)

Date of offence
Type of offence
Description of offence
Is the offence of a serious violent or sexual nature (use CJL(S)A definitions)
Gravity of offence (Reporter decision-making framework)
Child's age at offence
Date referred to the Reporter
Date of Reporter decision
Reporter decision
Offence grounds – accepted/established?
CSO made as result of offence?
If yes – CSO date and type
Is child on CSO at time of offence?
CSO varied as result of offence
If yes –date and variation
Is there a victim(s)
Age of victim(s)
Were other children involved in the offending incident (as perpetrators)?
Were any adults involved in the offending incident (as perpetrators)?
Location of offence
Was child under influence of alcohol at time of offence?
Was child under influence of drugs at time of offence?
Child's view on offence – description
Parents view on offence – description
Is child accommodated at time of offence?
What agencies are involved with child at time of offence?
Offence grounds – accepted/established?
CSO made as result of offence
If yes – CSO date and type
Is child already on CSO at time of offence?
CSO varied as result of offence
If yes – variation

12 months after 1st or only offence

Are there further offence referrals: Numbers, types and gravity
Reporter decisions on above
Any jointly reported offences
PF decisions on the above
Any accepted/established offence grounds
Any convictions
Any remittals from court
Are there non-offence referrals: Number and types
Reporter decisions on above
Accepted/established non-offence grounds: Numbers and types
CSO made –type

CSO varied –type(s)
CSO terminated
Is CSO linked to offence or non-offence referrals or both?
Secure authorisation
Custodial sentence
Other sentence
CPOs
CPR registrations
Child accommodated? – type/description
If previously accommodated has child been returned home
Where is child living?
Any changes in child's offending behaviour – description
Any changes in child's drug use
Any changes in child's alcohol use
Any changes in child's mental health
Any changes in child's physical health
Is child engaging with education
Is child engaging with training/further education
Is child in employment
Has child engaged with interventions
Has child's family engaged with interventions/supported child?
What agencies are involved with child?
Peer group – positive/negative

Appendix C: Semi-structured interview topics

Introduction

Provide background to study and purpose of the research to Reporters.

Reporters' experiences and views on serious offences

- Explore experiences of dealing with children who have been referred to the Reporter for serious offences.
- What are serious offences? What types of serious offence are referred to the Reporter?
- What are the characteristics and backgrounds of children who commit serious offences?
- Are there differences in the characteristics and backgrounds of children who commit one-off serious offences and those who commit serious offences after a wider history of more persistent offending?
- Are there any gender differences in the serious offences referred to the Reporter?

Decision-making

What factors influence decisions made about how serious offences are addressed by the PF and the Reporter?

What processes or factors inform Reporter decision-making?

Does gender feature in how decisions are made?

Who and what other organisations does the Reporter liaise with when making their decisions? Do these influence what decision they make?

What happens when a case is dealt with by the Reporter, compared to one dealt with by the procurator fiscal? How does this process/decision-making occur? What are the differences for the child/child's family, carers, as well as victims?

How will Reporters deal with increases in the age of referral and as a consequence, more children with serious/persistent offending?

What tools do Reporters have to make decisions in serious cases? Are these satisfactory? Are there other interventions which Reporters would like?

Appendix D: Details of common risk assessments

Assessment Tool	Description and Purpose
AIM3	AIM3 is a 25-item risk assessment tool that is used to: identify possible areas for intervention with the child; assess the level of risk associated with the harmful sexual behaviours being displayed; identify what level of supervision may be required. It covers five specific domains, including sexual behaviours, non-sexual behaviours, development factors, environmental and family influences, and self-regulation. Further information about the tool can be found in Leonard, M. and Hackett, S. (2019). <i>The AIM3 Model of Assessment: Assessment of Adolescents and Harmful Sexual Behaviour. Workbook</i> . AIM Project.
START-AV	START-AV is a 25-item structured risk assessment tool designed to assess and manage short-term risk of multiple adverse outcomes among children in mental health and criminal justice systems. It assesses risk of harm to others (i.e. violent and non-violent offences), rule violations (i.e. substance abuse and repeated school absence) and harm to the adolescent (i.e. suicidal ideation and self-harm, victimisations and neglect of health). All of the items included within the tool have been identified as dynamic criminogenic factors, insofar as in there is evidence that interventions can be used to modify the level of risk. Further information about the tool can be found in Nicholls T.L., Viljoen J.L., Cruise K.R., Desmarais S.L., Webster C.D. (2010). <i>Short-Term Assessment of Risk and Treatability: Adolescent Version (START:AV) (abbreviated manual)</i> , Coquitlam, Canada: BC Mental Health and Addiction Services.
FRAME	FRAME is an over-arching risk assessment, management and evaluation framework used within Scotland to ensure consistency in how risks are assessed in practice. The framework indicates that recommendations around risk and risk management should reflect the risk posed by the person who has offended, the complexity of the case and what interventions that could be applied to address harm. FRAME offers a rights-based approach to risk assessment that incorporates issues such as proportionality, gender, age, stage of maturity, and development, and supports multi-agency practice through a shared understanding of roles and responsibilities, process and language of risk. Further information about the approach can be found in RMA (2011). <i>Framework for Risk Assessment, Management and Evaluation: Frame</i> . Available at: https://www.rma.scot/wp-content/uploads/2022/07/Framework-for-Risk-Assessment-Management-and-Evaluation.pdf

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SCOTTISH
CHILDREN'S REPORTER
ADMINISTRATION

Published
November 2025