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children & young people

IMPROVING LEGAL SUPPORT FOR CHILDREN AND YOUNG PEOPLE IN CONFLICT WITH THE LAW: A SCOPING STUDY

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ACKNOWLEDGEMENTS

For several years myself and colleagues at Clan Childlaw have been aware of the need to improve legal support for children and young people in conflict with the law. I would like to thank the Promise Partnership for funding this scoping study designed to help us better understand what is needed and to support improvements. I am grateful to everyone at Clan Childlaw for supporting this work and committing to do what they can to progress the issues raised in the report.

I would like to also thank the wide range of individuals and organisations who met with me and generously gave their time and shared their thoughts. Thanks to the Children and Young People's Centre for Justice (CYCJ) and the Scottish Throughcare and Aftercare Forum (STAF) for supporting young people to engage with this work. Ruth Kerracher and Ashley Mayer from Youth Justice Voices deserve particular thanks for supporting an engagement process which young people described as meaningful participation. I am, of course, most grateful to the young people who shared their views and experiences in order that we might do better for children and young people in the future. My wholehearted thanks to the members of Inside Out, Youth Just Us and STARR.

SUMMARY

The scoping project was funded by the Promise Partnership's 'A Good Childhood' fund and it was conducted between April-September 2022. The aim of the scoping study was to better understand the legal needs of children and young people in conflict with the law, and to identify improvements, specifically considering what Clan Childlaw could do to better meet the needs identified. The study explored three main questions, for children and young people in conflict with the law:

- What does a good lawyer look like?
- What does good legal support look like?
- Are there unmet legal needs or issues?

The scoping study involved three main elements: engagement with, a) young people, b) professionals, and c) Clan Childlaw staff.

We found that:

- Young people want lawyers that turn up as “real people”, are compassionate, treat them with dignity and respect, are honest with them and tell them uncomfortable truths when its needed.
- For young people, a good lawyer explains things in terms they can understand, checks their understanding throughout but doesn't simplify facts or the gravity of the situation.
- Children and young people need lawyers to spend time with them and to be people who they can connect with.
- Young people identified that it was important for lawyers to meet them informally, ideally over chips, to get to know them first before engaging in focused and difficult discussions.
- There is a significant gap between what children and young people want, and need, from their lawyers, and what they usually experience. This gap is in large part due to structural issues, particularly issues with legal aid which doesn't fund the time that children and young people need with their lawyers.
- To be effective, legal advice and support must be available where children and young people are and not be dependent on their ability to identify that a lawyer might be able to help.

- There was a lack of awareness amongst young people about the fact that decisions can be challenged. Young people and professionals generally had little understanding about how lawyers can support such challenges or about their role in supporting the realisation of children and young people's rights.
- Young people had a, not unsubstantiated, fear of the implications of seeking to have their rights and entitlements upheld, of complaining or challenging.
- Young people saw the value in a legal service that not only included lawyers but people who fulfilled more of a relational and support function, supporting with practical and emotional matters.
- Young people valued independent advocates, youth workers, support workers and social workers, identifying their importance in connecting them to lawyers, educating them about their rights, offering legal information and explaining information that had been provided by lawyers.
- Suggestions about what would improve things included: the need for all children in the Children's Hearing System to be offered a lawyer and the provision of legal advice and support based in key settings, such as in Young Offenders Institutions and in secure care centres.
- Young people identified that a range of professionals (including teachers, social workers, and support workers) could do more to inform them of their rights, check with them whether their rights were being upheld and support access to lawyers when needed.
- A lack of access to legal advice, and the resultant gaps in understanding about the implications of decisions or events, has major and often long-term repercussions for many children and young people in conflict with the law.
- Access to education emerged as a key issue and schools were a significant space in which children and young people in conflict with the law experienced concerns about their rights and entitlements not being upheld. Legal issues they identified in schools included school exclusions, reductions in educational provision, being removed from classes for meetings/police interviews, police data being shared with their teachers without their knowledge or consent.
- There were critical moments when not receiving legal advice, support or representation had major consequences for children and young people's lives. These

critical moments might be different for each child or young person, depending on their specific needs and experiences, but commonly mentioned ones were:

- before and during police contact
- when a decision is being made about whether an offence will be referred to the procurator fiscal, meaning it could be dealt with by the courts rather than a Children's Hearing.
- before, during and after a Children's Hearing
- when considering accepting offence grounds at a Children's Hearing
- when considering termination of a Compulsory Supervision Order
- before, during and after court appearances
- when in secure care
- when in a Young Offenders Institution (YOI)
- when navigating issues about disclosure of criminal records

What is needed?

This scoping study has highlighted that children and young people in conflict with the law need legal services. There is a significant gap between what children and young people want, and need, from their lawyers, and what they usually experience. To address this gap, dedicated legal services, tailored to meet the specific needs of children and young people in conflict with the law are essential. In addition, improvements to legal services whose remit includes supporting children and young people in conflict with the law are required to ensure services are accessible and provide meaningful support to this group. Delivering better legal services for children and young people in conflict with the law means improving four key areas:

1. *Knowledge of rights and entitlements*: There is a need to ensure that children and young people in conflict with the law, and those who work with them, know about their rights and entitlements and have a good understanding about how legal support can help where rights and entitlements are not being upheld.

2. *Access and availability of legal support*: Children and young people face considerable issues accessing legal advice and representation, with additional barriers experienced by many of those in conflict with the law. Barriers included: knowing there was a legal issue,

understanding that a lawyer might be able to help, having the resources and opportunity to contact a lawyer, having the trust and confidence needed to seek legal support.

3. *Quality of legal support:* The legal support that children and young people experience needs to be of the highest quality possible. This means lawyers need to have a good understanding of the law, perform confidently in courts/children's hearings, be non-judgemental, empathetic, able to build a relationship, to genuinely care, and adapt communication based on what children and young people need. It was also important to children and young people that lawyers have knowledge and understanding about trauma, the care system, and of learning disabilities.

4. *Legal support for issues affecting children and young people in conflict with the law:* There is a need to pay particular attention to improving legal support on key issues which have a significant impact on children and young people in conflict with the law. Important issues include: disclosure of criminal records; challenging the appropriateness of school exclusions and reductions in educational provision; providing legal representation in relation to the decision about whether a child goes through the Children's Hearing System or the courts.

Ideas about specific actions which could contribute to improving these four areas are identified in section six of this report.

Next Steps

As there is no legal organisation in Scotland which currently has a specialism or focus on children and young people who are in conflict with the law, Clan Childlaw has committed to consider what more it can do to support them. Hence their commissioning and support for this scoping study. Clan Childlaw is well placed to play a leading role in improving legal support for children and young people in conflict with the law because of its organisational set up as Scotland's law centre for children and young people, and its wider work to keep [The Promise](#). Clan Childlaw also has relevant experience to progress several areas of improvement because they:

- provide legal representation for children and young people
- provide legal advice and support to other professionals (including a specific legal advice service for advocacy workers)
- deliver training and development for lawyers and other professionals
- is involved in policy development work and is a member of policy networks
- have experience of strategic litigation

- are experienced in working in partnership with other organisations to provide legal advice and support (for instance, Street Legal, a partnership with Shelter Scotland)

However, Clan Childlaw does not currently undertake criminal defence work and there are others who have considerable expertise in such work (e.g., [trauma aware lawyers](#)).

Therefore, there are ideas within this report which will require the skills and expertise of others, and/or that others might be in a better place to pursue. There is, therefore, a need for further dialogue with a range of people about how best to act on the findings in this report, and how to resource some of the changes required.

Clan Childlaw have agreed to support the immediate next steps from this report and to explore what they and others can do to improve things. Initial next steps include:

1. Producing a video about the findings designed specifically with and for young people and publishing a young person friendly version of the report.
2. Organising a roundtable event to discuss the scoping study findings, their implications, and next steps.
3. Establishing a small action group involving key stakeholders to take forward some of the ideas from the report.
4. Continuing dialogue about what can be done individually and collectively to support improvements.
5. Making changes within Clan Childlaw to ensure they are better able to respond to the needs and issues identified in this report.

If you would like to discuss the scoping study findings or the next steps, please contact info@clanchildlaw.org.

1. INTRODUCTION

Funding from the Promise Partnership's 'A Good Childhood' fund enabled Clan Childlaw to commission a scoping study to better understand the legal needs of children and young people in conflict with the law. The purpose of the study was to improve our understanding and to identify what could be done to improve, specifically exploring what Clan Childlaw could contribute.

[The Promise](#) included a commitment to improve legal support for care experienced children and young people and made a range of promises where better legal support could make a contribution. For example, improved legal support may help prevent the criminalisation of children and challenge the over-representation of care experienced children in the youth justice system. The Promise also committed to ensuring children involved in offending stay within the Children's Hearing system, rather than the justice system, and identified that Young Offenders Institutions are not appropriate places for children. The [Plan 2021-2024](#) set out that by 2024:

- Care experienced children and young people will be able to easily access child centred legal advice and representation.
- The disproportionate criminalisation of care experienced children and young people will end.
- The formal and informal exclusion of care experienced children from education will end.
- 16- and 17-year-olds will no longer be placed in Young Offenders Institutes for sentence or on remand.
- There will be sufficient community-based alternatives so that detention is a last resort.
- Children who do need to have their liberty restricted will be cared for in small, secure, safe, trauma-informed environments that uphold their rights.

Forthcoming legislation to incorporate the United Nations Convention on the Rights of the Child (UNCRC) into domestic law in Scotland should result in additional protections for children in conflict with the law, especially for 16 and 17 year olds (UNCRC (Incorporation) (Scotland) Bill). It is, therefore, particularly critical to improve legal support at this time so these children can claim their rights.

As there is no legal organisation in Scotland which currently has a specialism or focus on children and young people in conflict with the law, Clan Childlaw committed to consider what more it can do to support them and to keep the Promise. Dr Claire Lightowler was commissioned by Clan Childlaw to lead the scoping study, which was conducted between April-September 2022. The study explored three main questions. For children and young people in conflict with the law:

- What does a good lawyer look like?
- What does good legal support look like?
- Are there unmet legal needs or issues?

The term “children and young people in conflict with the law” is used to refer to those who come into contact with the care or justice systems, either due to a perception or allegation that they are involved in offending, or because they have been found guilty of an offence. Some children and young people who come into contact with the care and/or justice systems for offence reasons will not have committed an offence. There is also significant evidence about the trauma and adversity which affect most children and young people in conflict with the law, meaning that nearly all of those who come in contact with systems/organisations for offence reasons will also have a range of other issues affecting their lives.

2. APPROACH AND METHODS

The scoping study involved three main elements, engagement with, a) young people, b) professionals, and c) Clan Childlaw staff. Emerging findings were shared as the project progressed through social media and newsletters, inviting comments and feedback throughout.

2.1 Children and Young People

In this report the term “children” is used to refer to those under 18 years old, and “young people” to those aged 18-25. Engagement with young people focused on what they most needed from legal support and what they wanted this to look like. At the beginning of the scoping work a conversation was held with [Youth Just Us](#), a participation group for young people with experience of care and justice. The group shared their initial thoughts about the project and were offered the opportunity to be more actively involved in shaping it. Ruth Kerracher, the Youth Justice Participation Lead based at the Scottish Throughcare and Aftercare Forum, and Ashley Mayer from Youth Just Us supported young people’s engagement. The young people who participated in engagement sessions were paid for their time with money or vouchers depending on the young people’s preferences and situation. It was particularly important to young people that they were paid for their time and contribution, with young people noting this helped to ensure that the engagement process did not feel exploitative. Young people also highlighted how essential payment was in the context of the cost-of-living crisis.

The intention of the engagement sessions was to gain an in-depth understanding about experiences and preferences. The issues being discussed were potentially distressing and could involve sharing personal experiences, so a decision was taken to engage with established and well supported groups, who had a known interest in these issues. Therefore, the focus was on engaging with young people who had experience of care and justice when they were children, rather than children who were currently facing these issues. There would be considerable value in continuing the conversations with the young people engaged with so far, some of whom have indicated a desire to be involved in what happens next, and to reach out to others, specifically seeking to engage with children.

Between July-September 2022, engagement sessions were held with [Inside Out](#) (a group of young people currently in HMP YOI Polmont), [Youth Just Us](#) (a group of care and justice

experienced young people), [STARR](#) (a group of secure care experienced children, young people and adults)¹. In total 13 young people contributed their views and experiences to the scoping study.

For *Youth Just Us* and *Inside Out* two engagement sessions were held with the young people a couple of weeks apart. The first session primarily focused on exploring the legal issues and needs, and the second session focused on designing what the ideal legal support or legal service looks like. The engagement sessions involved a range of activities such as explaining legal needs and rights to aliens, playing word association games for core concepts being explored (“service”, “legal expert”, “legal”, “child friendly”), agreeing or disagreeing with a range of statements about legal needs and rights, creating a job description for an “ideal lawyer”, and designing the dream legal service. The activities undertaken were tailored to the interests and focus of the young people. Sometimes the activities stimulated a broader conversation and the focus shifted to the discussion young people wanted to have. The issues were combined and addressed in one engagement session for the *STARR* group members. Engagement sessions were in-person and online depending on practicalities and young people’s preferences.

2.2 Professionals

Conversations with a range of professionals who support children and young people took place between April-September 2022 about the gaps in legal provision for children and young people, and to explore what would improve matters. The professionals engaged with included lawyers; social workers; police officers; prison staff; managers and practitioners from third sector organisations; independent advocacy organisations; and academics. Most of the conversations took place on a 1-2-1 basis, with separate conversations held with representatives from seventeen organisations. A workshop was also held with interested attendees at the [National Youth Justice Conference](#) in June 2022, with people attending from around nine different organisations (some organisational affiliations were unclear).

¹Youth Just Us and Inside Out are part of [Youth Justice Voices](#) a joint collaboration between the [Children and Young People’s Centre for Justice](#) (CYCJ) and [Scottish Throughcare Aftercare Forum](#) (Staf). Inside Out is supported by [Barnardo’s Youth Work](#) team within HMP YOI Polmont, and STARR is supported by CYCJ.

2.3 Clan Childlaw staff

The scoping project also engaged with the Clan Childlaw staff team to explore the opportunities and challenges for delivering the best legal support for children and young people in conflict with the law. This involved considering what the team were already doing, identifying what they could do to better meet the needs identified and explore what additional skills and/or capacity might be needed to realise this.

Clan Childlaw also has extensive organisational knowledge about the types of legal queries involving children and young people across Scotland and feedback from children and young people. This provided important additional data for the scoping study.

Three sessions were held with the entire Clan Childlaw team. The first session took place at the beginning of the project (March 2022) and it explored:

- existing **strengths** to do this work
- **opportunities** on which to build
- **any concerns** about supporting children in conflict with the law
- **alignment** between Clan Childlaw's current work and supporting children in conflict with the law.

A second session took place midway through the scoping (July 2022) where the emerging findings were shared, and staff were given opportunities to share reflections and ideas. A third session was held in September when the findings were discussed. A draft of the scoping study report was also shared with all staff, with an opportunity to provide feedback provided. Separate conversations were held with several members of staff about the content of what was emerging from the scoping study and how the work connected to other work in the organisation.

3. A GOOD LAWYER

3.1 Young People's Views

When young people had direct experience of lawyers this was usually as their representative in court or children's hearing. Unsurprisingly no young person mentioned approaching a lawyer to help them secure their rights and entitlements outwith court or children's hearing processes. It was suggested that lawyers should take more time to explain their role in a way that children or young people can understand, "they should tell you that they are there for you [and] they are there to do what you tell them to do". Young people also identified that lawyers should explain the different things that they can do to help, pointing out, for instance, that they can do things like write letters and complain when rights are not being upheld.

It was important to young people that their lawyers "know their stuff" and young people valued their lawyers for their legal knowledge, expertise, and intelligence. Young people identified the importance of lawyers knowing about the law and several specifically mentioned the need for their lawyers to understand children's rights and entitlements. It was particularly important for children and young people that their lawyers excelled at what they did and that they were confident in court and children's hearings. It was also important to young people that lawyers did not judge them that their lawyers understood that "people have gone through things", were trauma informed, had knowledge about the care system, understood the reasons why children went into care or secure care, understood processes like the Children's Hearing System and courts, and had knowledge of learning disabilities.

It was of utmost importance to young people that lawyers turned up as "a person" rather than a professional role. Young people explained that when their lawyers wore a suit this indicated that their interactions with them was "just their work" and that their lawyers were focused on their role rather than turning up as a person. One young person powerfully described how clothes indicate who you are, which can be intimidating or incredibly reassuring, particularly to children. Young people suggested that as a minimum their lawyers consider wearing snazzy socks, eye-catching earrings, or wear clothes that show what music they like. To children and young people, such clothing helps them to see that their lawyer is a real person, not just a professional persona, and it gives them something they can connect with. Young people wanted lawyers who they could relate to in some way, and some young people were particularly wary of lawyers who they experienced as being "posh".

Some young people wanted lawyers who genuinely cared for them. One young person described that they wanted someone who would be willing to give up their Saturday for them if this was needed. Other young people were happy with a more transactional relationship

with their lawyer but appreciated the fact that lawyers “were on their side” and “didn’t care if I did it (committed an offence) or not”. Regardless of the closeness of the connection with their lawyer, young people wanted to be treated with dignity and respect. Some young people painfully described how their experience of lawyers and the entire legal system had been one of considerable humiliation, highlighting how important it is for their lawyers to not only treat children and young people with dignity and respect, but to challenge degrading treatment by others. Examples of treating someone with dignity and respect to young people included checking what name they preferred and remembering that someone’s legal name was not necessarily the one they identified as their name. Checking and not assuming pronouns was also important to young people, as was respecting communication preferences. One young person shared that they had felt unable to speak in their children’s hearings so wrote things down for their advocate to read out, but wanting to express their views in this way had not been respected.

Young people explained that they found talking to a lawyer intimidating and experienced them as unapproachable. Young people recommended that lawyers take children and young people out for food, perhaps “chips and cheese” and/or smoothies, as an informal opportunity to get to know a child or young person before more formal conversations took place. Young people identified how important it was that lawyers took food along whenever they met with children and young people, and that they took time to make sure basic needs were attended to. However, the young people were clear that interaction with a lawyer was a “serious business” and it was important “not to be treated like a wean”, but to be empowered to make decisions which would affect their life. There was a subtlety in young people’s discussions about what a child-friendly lawyer looked like. Young people did not want lawyers to become a key worker or social worker, “you don’t necessarily want to be all pally with a lawyer”, but they did want lawyers who could build relationships, demonstrate empathy, compassion, to genuinely care and be interested in them, make eye contact, and to adapt how they communicated based on how children and young people needed information.

Trust and honest communication were identified as being incredibly important for young people who sometimes sensed that they had not always been told the truth. A common problem for young people was that lawyers sometimes fill them “full of false hope”. All the young people we engaged with identified that they preferred lawyers to be honest, even when this involved delivering bad news. Most of the young people who had experience of being in a Young Offender’s Institution (YOI) or prison had been told by their lawyers that they would not “get the jail” before they found themselves there. Young people, particularly

those currently in a YOI, powerfully described how difficult it was to experience a different outcome to the one their lawyer told them about; leaving them feeling unprepared, distressed, deceived, and let down.

Young people talked about the power imbalance in Children's Hearings and courts where everyone else has a title and is "suited and "booted" whilst you are there as the youngest, most inexperienced person in the room in your "trackies". One young person described how, at a children's hearing, everyone goes round the room saying, "I am Andy, I am a social worker" or "I am Brenda, I am a panel member", then it gets to their turn which leaves them feeling, "I am Louise, I am nobody". Young people saw lawyers as different from many of the other professionals they interacted with, because lawyers tended to focus on technicalities and processes, and "see the child-friendly bit as someone else's job".

Young people thought that lawyers for children and young people were very important, but also felt that it could become "cluttered" in Children's Hearings when a child had a lawyer, their parent has a lawyer, each relevant person has a lawyer. Young people identified that professionals and panel members were also sometimes intimidated by having lawyers in the room. Young people identified that this intimidation could sometimes be helpful to them because it was based on the fact that lawyers were able to help them redress power imbalances and hold other professionals to account. Some young people also suggested there was a need to build confidence and understanding amongst professionals and panel members to help them meaningfully engage with lawyers.

Young people's perception of lawyers was, almost universally, that they were motivated by money. Some young people talked about experiences of dishonest or uncaring lawyers who they felt had exploited them in order to make money. Additionally, and perhaps more fundamentally, there is clearly a challenge and disconnect between the genuine care that children and young people want, and the need for their lawyers to receive funding for their time. Building trust and an honest relationship with children and young people takes time, and young people were very much aware of how funding concerns prevented this and dictated the level of support they received. Young people's awareness that funding was leading to inadequate legal support undermined their trust and enhanced their perception of money being the main motivation for lawyers.

It was also imperative to young people that their lawyers were clear about, and consistent in, their role. Some young people talked about experiences where lawyers had represented what they thought would be in their best interest rather than what children or young people had instructed them to say or do. Young people wondered whether this was a particular issue where safeguarders were also lawyers, with one young person talking about an

unsatisfactory experience where their lawyer had “switched roles” midway through a hearing sharing what they considered to be in the, then, child’s best interests. Young people suggested improved codes of conduct and training to ensure there is clarity about the roles and the distinction.

When young people described good lawyers, they talked about lawyers who properly listened to them and who explained things, for instance, taking time after court to explain what just happened. Young people talked about the importance of lawyers adapting their communication depending on what was needed, of simplifying language but not simplifying what was happening or what the implications of different options would be. Several young people talked about not having conversations with their lawyers before the day of court or a children’s hearing and the difficulties this posed in terms of their understanding, ability to emotionally prepare and to ensure that what was important to them was properly represented. Good lawyers pro-actively identified when children and young people might struggle to understand something and would reach out to explain. Young people talked about receiving 14-page letters to explain they were going to court and that the language used in official communications was the same as an adult receive which was a particular problem given that courts “talk like they’re in England in the 1300s”. Young people described how they need someone who can be a personal contact for them, someone they feel able to approach when they don’t understand and who will get in touch when letters have been sent or something has happened. Children and young people also talked about the importance of someone explaining the whole process to them, and of checking their understanding throughout. During the engagement sessions young people asked questions such as what an intermediate diet is, wondering what a court hearing next week was actually about.

Different children and young people talked about how they wanted information in different ways, but all agreed that having someone to talk to was important. They wanted their lawyers to be able to describe policies and laws in ways that young people could understand, with the [secure care pathway and standards](#) given as an example of how to do this. Young people wanted vocabulary they could understand, an avoidance of jargon, the use of scenarios and examples to help explain things, and that these things were conveyed without sounding like “an authoritarian teacher”. Young people emphasised the importance of remembering that not all children and young people can read. They identified the need for emotional support and for practical help as well, for instance, they wanted help filling in forms, having someone who would pick them up and take them to court or appointments but more fundamentally they wanted someone who would be there for them when they needed it. Some young people identified that someone who was more like a legally trained

support/key/youth worker could fulfil some of the more practical, emotional, and relational needs, whilst others thought that lawyers should provide this type of support.

In several of the sessions with young people there was discussion about the contribution and value of independent advocates, and youth, support, or key workers in improving legal support. These professionals were considered important in advising when lawyers could help and connecting children and young people to lawyers. However, whilst these professionals were identified as important, they were not seen as replacing the need for lawyers. One young person explained why, for instance, it was important to have both a lawyer and an independent advocate; “if you say to your advocate you want to fly in a chocolate aeroplane near the sun, they say this for you... [your lawyer] will advise you of the implications of flying near the sun”.

3.2 Professional’s views

Unsurprisingly, professionals had varied experiences and perceptions of lawyers who supported the children and young people they worked with. Some professionals shared examples of where lawyers appeared not to “really try” to defend a child in criminal proceedings while others explained that “lawyers are some of our strongest assets and are hugely valued”. It was the quality of legal representation that was considered to be the significant factor, with one person wondering whether bad legal representation is sometimes worse than having no representation at all.

Professionals emphasised that lawyers should try to understand the reasons for behaviours and have a good understanding of what children and young people have gone through and their wider needs, so that they can best represent them. Professionals described the importance of lawyers who understand behaviour from a child’s perspective, for instance, what makes a curfew more difficult to comply with for children and young people, or how time feels different for a child.

Professionals talked about how important lawyers were in articulating children and young people’s experiences, needs, and interests. They recognised the direct reach that lawyers had to procurators fiscal and sheriffs, that other professionals did not have. Therefore, many professionals talked about the importance of working with lawyers to ensure they had the best information possible to explain the child or young person’s needs, views, and experiences. Professionals also recognised the important role of lawyers in explaining the work of other organisations and agencies. Third sector representatives in particular

considered lawyers to be important in explaining what they do and that, for instance, the intensive support they offered was not a “soft option”.

Obviously one of the things that professionals relied on lawyers for was legal expertise and knowledge. However, there was a recognition that other professionals also needed some level of legal knowledge to be able to identify when to contact lawyers, or to advise/support children and young people to do so. This was a particular issue for support and independent advocacy workers, some of whom identified training and development needs in this regard. Some professionals suggested that resources explaining the law for non-legal audiences would be useful to help them know enough to identify when a lawyer was needed. One person suggested an input that could be developed and recorded to be played during staff inductions (which they commissioned for their organisation as a consequence of this discussion).

Sometimes professionals needed practical support from lawyers or law firms. They mentioned how beneficial it was to have relationships in order to glean information about court dates and explanations of what court processes would involve. Such information from lawyers helps other professionals prepare children and young people and to support them through legal processes.

Professionals talked about the work they did to support children and young people to access lawyers, taking children and young people direct to lawyers for instance. There was an acceptance amongst professionals that lawyers might not always be able to come to the child/young person, however, one professional reflected on how interesting it is that this is accepted for lawyers in a way that it wouldn't be for social workers or health professionals.

Many of the professionals engaged with during the scoping study talked about a lack of understanding about the role of lawyers, sometimes referencing their own or their staff's understanding as well as identifying knowledge gaps amongst others. There was a general impression amongst professionals that most of those working with children and young people did not have a good understanding of exactly what lawyers did, how they worked and why they acted as they did. Those specifically referenced as lacking understanding included panel members, social workers, independent advocacy workers, support workers. In particular, professionals reflected on the lack of understanding that lawyers had a role in defending children's rights.

4. GOOD LEGAL SUPPORT

4.1 Good legal support in the community

Views of Young People

The ideal legal service according to young people would be “full of people willing to go above and beyond” and this would be the case no matter what a child or young person had done or what their circumstances were. A good legal service would be there for the child/young person, would be non-judgemental and would not simply be focused on “ticking a box”. When young people talked about the ideal form of legal support in the community, they wanted it to support them with any legal issue or legal needs that they faced. They thought legal support should be tailored to them and there should be no restrictions or limitation on what issues it could support them with. Young people identified that a focus on rights was particularly important, and that good legal support needed to involve supporting their understanding with what their rights were and what they mean.

The best legal service would be flexible. Young people envisioned that it would not only provide 1-2-1 legal advice and support but that it would also be engaged in group work and facilitating peer support or mentoring. Young people talked about the importance and value of being involved in groups with their peers as a mechanism of learning about rights and of accessing support in relation to their rights. They also identified the need for a legal service to be active at providing diagnosis and support in relation to mental health issue, learning difficulties, and speech, language, and communication needs. For young people, the best legal service would not only be aware and responsive to young people’s needs but would also have within it services and supports focused on wider needs and/or seamlessly facilitate a connection with such supports.

Young people identified that good legal support for children and young people meant a need to engage with other people and professionals who supported them. Social workers, youth workers, support workers, and independent advocates were particularly important. Young people imagined that most children and young people who sought legal advice would do so through people who support them. There was therefore a need to ensure that a wide range of professionals supporting children and young people understood how to help them access legal support. Young people wanted legal support to be available online, via the phone, with support available out of office hours, perhaps via a phonenumber. They also identified that the dream legal service should have a presence and provide supports via youth clubs and schools.

The types of professionals working in the dream legal service would not only be lawyers but also legal advisors who were highly skilled communicators focused on supporting understanding about the law and legal processes. Young people saw a value in independent advocates and support workers being part of a dream legal service to help children and young people articulate their views and help them with practical and emotional issues. They thought the ideal legal service would also employ youth workers and peer mentors who would support groups of young people to understand rights and ensure these were upheld. They thought it was particularly important that someone with lived experience of the justice system had a role in holding the legal service to account, for instance, being on the board of the organisation. It was also suggested that the best legal service for children and young people would employ, or work with, social workers, police officers and teachers who would have a role delivering training and providing support to their respective professions.

Young people identified a need for improved legal support in schools and wondered whether a teacher working in the dream legal service could develop inputs and lessons for schools about rights and how to seek legal advice. For instance, they discussed developing games about children's rights which could be shared and incorporated into PE lessons. It was also suggested that all schools nominate a specially trained teacher to lead on children's rights who could be approached for information about rights and facilitate access to legal advice where needed. Young people identified the need for children and their parents to be made aware of the availability of legal support when a children's planning meeting is being organised. They suggested that when letters about a children's planning meeting are sent to parents this should be accompanied with a flyer about rights which explains how to access both an independent advocate and a lawyer.

Young people reflecting back on their experiences as children identified that there were key moments when they had not received good legal support in order to help them make informed decisions. For instance, young people wished they had known about their right to remain silent in police interviews, of the implications of accepting offence grounds at a children's hearing for their criminal record, and of the full implications of terminating a compulsory supervision order in relation to their removal from the Children's Hearing System. Young people suggested that there should be a requirement that every child involved in the Children's Hearing System is offered a lawyer, in a similar way to the requirement to offer support from independent advocates, Children's Hearing (Scotland) Act 2011, s122. Young people also identified the need for children in residential childcare to receive specialist support with their rights and help to access legal advice. Young people

identified the particular importance of lawyers helping to challenge the criminalisation of behaviours in residential childcare, they talked, for instance of lawyers helping to ensure something like a water fight did not end up being interpreted as an assault.

Young people also identified an important role for social workers in ensuring their rights were upheld. They suggested that social workers should sit down with children and young people to explain their rights, specifically asking them on a regular basis whether any of their rights were not being respected and supporting their access to legal support as needed. Young people thought that a social worker should be employed as part of a legal service with a specific role to develop training and resources for other social workers.

Views of professionals

Professionals articulated that good legal support for children and young people in conflict with the law should focus on the individual and not the process. Similar to the young people, professionals considered that good legal support had to be fluid and responsive to the specific child or young person and their needs. A good legal service would be holistic and focus on helping the child or young person achieve what is important to them, providing support with the range of legal issues they might face - housing, benefits, care entitlements, advice on disclosing criminal records, preparing them for court, and so on. At the same time, it was acknowledged that good legal support needed to be provided by subject specialists, so there was a balance to be struck between providing holistic and specialist support. An important feature of good legal support for children and young people was that it should support and empower the child and young person with their legal needs, explaining things properly to ensure the child/young person has all the information they need to instruct their lawyer. It is also of great importance that a lawyer takes the time needed to build trust with children and young people.

Providing good legal support for children and young people means taking time to build a relationship, to support their understanding and to talk properly about what is important to them. It is important that such a legal service is aspirational for children and young people, it is knowledgeable and is not driven by metrics or targets which get in the way of taking time, building relationships, and achieving what children and young people want. It is also important for children and young people's lawyers to take the time to talk with the team around the child or young person, to be well connected to other professionals, and to break down professional boundaries where this helps achieve what matters to the child or young person. In particular, one lawyer, highlighted the need for meaningful engagement with procurators fiscal at the earliest possible stage, indicating that this is particularly important in cases involving children and young people.

Professionals also talked about communication and the need to be responsive and particularly being aware of speech, language, and communication needs. Some lawyers shared some of their tips for communicating and engaging with children and young people, such as: always carrying fidgets to help them focus and carrying an iPad with the Disney channel on it to share when children will be waiting for long periods. Lawyers also talked about using various communication tools, such as Facebook and WhatsApp, as well as phone and emails, with one person talking about the importance of doing this and the complexities of navigating ethics and boundaries when doing so. Several people highlighted the need for specialist speech, language, and communication support to be utilised, and to ensure processes were in place to identify where there may be needs requiring additional support. One person highlighted the use of intermediaries in England and Wales as a model from which to learn.

Professionals thought that a legal service for children and young people in conflict with the law should also be available when they need it, and not limited to 9am-5pm. It was noticeable that when young people discussed this, they thought the provision of an out of office phonenumber was the only option that would be affordable. Professionals were conscious of the barriers to the provision of a good legal service, with issues around the availability and inadequacy of legal aid frequently given as one, and often the main, reason for poor legal support for children and young people. This was a particular issue because legal aid funding does not cover the time and additional meetings that children and young people need with a lawyer in order to build a relationship, talk through options, explain things, empower their decision making, and prepare them for court/children's hearings/meetings.

Good legal support for children and young people needs to be based on a common set of child/youth friendly values and meet quality standards for legal representation for those in conflict with the law (e.g. [CLEAR-Rights Quality Standards](#)). A good legal service needs to be trauma informed and be based on a good understanding of child development and children's rights. Some professionals suggested that there should be a specific code of practice for lawyers who work with children and young people to ensure they had the skills required.

Professionals and parents talked about how difficult it could be for children and young people to trust lawyers, or indeed anyone, when they were experiencing crisis. This could mean that children and young people would not instruct a lawyer to represent them or that it might take considerable time and skill to develop a trusting relationship first. One parent specifically talked about the difficulties when their child lacked trust in those around them and consequently decided not to instruct a lawyer to protect their rights. A good legal service

would therefore take the time to build trusting relationships and repeat offers of support when appropriate to do so, recognising that circumstances can change, and children/young people may change their mind about accessing support. There may also be a need to specifically consider improvements to legal support for parents.

4.2 Good legal support in secure care

Young people who had experience of secure care talked about the importance of good quality legal support being available when in secure care. Several young people with experience of both secure care and a YOI thought that comparing the two settings there was greater legal advice and support available within secure care. They thought the difference in the availability and/or quality of legal support was in part explained by the different behaviours of lawyers and the role of independent advocates in secure care, and their importance connecting children with lawyers. Young people thought that good legal support for children in secure care required a specific service based within secure care. They identified that such a service should focus on improving awareness of rights, help children raise legal issues, provide support with legal processes, and challenge where rights were not being upheld. It was important to young people that this type of legal support should be available to all children in secure care and that it was able to support children with legal issues and justice processes whether children were accused of offending or were victims or witnesses. Young people were particularly clear that this type of legal service needs to be completely independent, for them this meant that it should not be directly funded by the secure care centres themselves. They felt that a funding relationship of this nature would threaten its independence.

Some young people identified that having legal support available within secure care might help “respectfully challenge” and hold to account staff who disproportionately escalate behaviours either because they “are on a power trip” or are unskilled at de-escalation. Young people wanted legal support in secure care that was multifaceted, working to increase awareness and realisation of rights for children, and also working with the staff in secure care to improve their knowledge and understanding of the law and children’s rights. Young people thought that the provision of legal support within secure care could potentially help to challenge inaccurate narratives in the sector about what the law is. Young people talked about how misunderstandings can emerge over time and can shape practice. For instance, one young person shared how a false belief, that it was illegal for a young person to pack their own bags when leaving secure care, had been repeated and shaped what happened

for years. A legal service within secure care could address these types of inaccuracies or check the legal position where there was a lack of certainty.

Young people identified that the provision of a legal service of this nature would require the establishment of good relationships with all concerned, requiring time as well as skill. They suggested a legal presence in each of the five secure care centres in Scotland, though didn't feel this would need to be full-time. It was suggested that perhaps two lawyers could provide support across the five centres, given that at present there are 75 children in secure care. Because children won't necessarily even see the need to discuss issues with a legal service, it was identified that the support provided needed to be more pro-active than a simple "drop-in" type model. Young people identified that lawyers would need to actively go around having individual conversations with children and staff and provide rights and legal awareness raising training/information sessions. Young people felt there did need to be a regular presence though, at least on a weekly basis. When considering good legal support within secure care, young people focused specifically on the need for lawyers, identifying that what was needed in this context was their specific skill set. Interestingly, in contrast, young people considering other settings paid greater attention to the need for youth/support workers or independent advocates too.

4.3 Good legal support in a Young Offender's Institution

The young men from *Inside Out* were specifically asked about what good legal support looks like when inside a YOI and as they prepared for release. They described additional barriers to ensuring their rights were respected when they were in a YOI and overall their sense was that "You have no rights in custody". They also struggled to identify what they could do if they didn't feel that rights were being respected whilst they were in this setting. They described how there was a general lack of understanding about the rights they did have and there were concerns about complaining when their rights had not been upheld. In terms of what would help secure their rights they identified a need for support and/or services within the YOI. The young men we engaged with were actively involved in seeking to improve the realisation of their rights, so are likely to be more informed than most, but they were unaware that they had the right to challenge decisions made about them, for instance, in relation to throughcare entitlements or housing support. They were also cautious about the implications if they sought to secure their rights, and about the need to be realistic about what is achievable by any individual lawyer or legal service, "one person is not going to change anything".

A major issue for the young men in the YOI was difficulties accessing legal representation. Some of the young men had “been sitting in here (the YOI) for months” with no contact from their lawyer, others talked about how they had been to court and not even talked to a lawyer. One reflected on a court date coming up in a week’s time, uncertain of the process and yet to have a conversation with a lawyer. As well as discussing the details of their case the young men identified a need to talk about what being in court would be like and to talk through the process. Sometimes they acknowledged there might not really be much of substance to say, but they felt it was important to have communication with their lawyer. They young men reflected on how those in a YOI often hide emotions and vulnerabilities, and so it was particularly important that lawyers had an understanding of what might be going on for them. There were practical difficulties accessing lawyers, with the times they could make a phone call not necessarily complying with the times at which criminal lawyers would be available, i.e., not at court. There were also complexities given that conversations with lawyers needed to be exempt from monitoring, and their named lawyer needed to be on the young person’s list of 20 approved numbers to enable them to make a call. The young men did not always want or feel the need to use one of their approved numbers for a lawyer, or to use their allocated phone time to make such a call. They, therefore, identified that someone who could be based in the prison to liaise with their lawyers and to explain legal processes to them would be of considerable help.

They young men identified a need for people with legal expertise to be around the YOI and accessible, “if you were actually about you could do something”. They explained that what was needed would be a completely independent legal advice and support service and that the staff who worked for it would need to have a mix of skills, incorporating the expertise of youth workers, social workers, independent advocates, and lawyers. They didn’t care about the gender of those who would support them with their legal needs, but they wanted dedicated people who cared and who went through their case properly.

The young men thought the independent service should focus on supporting them to realise their rights in and beyond custody, but there was concern about pushing too hard for their rights and what this might mean for them. There was also a sense that within the prison there was little chance of some things changing, and so a need to avoid complaining and to just accept things. The young men felt that as a group there was a particular tendency to forget about their rights, with priority given to the children and women based in the YOI, because of greater attention by the Scottish Government on these populations.

Some professionals also thought it would be useful if a legal support service could offer training and support to staff in the YOI (youth workers, social workers, and prison officers). It

was suggested that professional development opportunities which help staff better understand young people's legal rights and entitlements would be useful, as would support for staff to write legally informed letters or raise legal issues when young people's rights were not being respected.

If there was a legal support service created within a YOI the young men discussed how important it was that the young people felt safe accessing it. In order to achieve this, they wanted the staff from such a service to come round the halls and to be seen out and about talking with everyone. They felt this would help protect everyone to be able to access the service. They wondered if the service could also be based in the Youth Work section of the YOI, a space where the young men we talked to felt more comfortable having more confidential conversations. They identified that it would take time for trust to be built up, and that word of mouth from the other boys would be the critical factor to its success. They also identified that criminal justice social workers had an important role to play in referring people to the service. One suggestion was to set up a group to "get people through the door", to discuss and raise legal and rights issues, perhaps linking with existing groups such as *Inside Out* or other Youth Work led groups (the long-term prisoners' group, for instance). They also thought links to *Who Cares? Scotland* advocacy workers would be an important connection to support them as they transitioned to the community.

Within the YOI they wanted a legal support service to be available 24/7 but considered that this might be unachievable. The times when they thought it was most important to have a legal advisor around would be after 4pm in the evenings. They also wondered if there could be someone they could call over the weekends, which was considered to be particularly important if they had court on a Monday and needed help to prepare beforehand. They thought such a service might also be able to be available to them via the kiosk devices in their cells as well as via the email a prisoner service. Ensuring there was awareness of the existence of the legal service was very important, with the young people suggesting producing flyers and talking to everyone during their induction to help with this. The young men also identified a need to be able to access the service once they were released from custody, and wanting to be able to do this online, via the phone, in all ways possible.

5. UNMET LEGAL NEEDS

Young people and professionals were asked about the legal issues faced by children and young people in conflict with the law, particularly where there were unmet legal needs. A range of broad issues and specific legal needs and issues emerged.

5.1 Broad issues

Rights and Entitlements not upheld

A major issue for children and young people who have experience of the justice system is that their rights and entitlements, particularly to **continuing care, after-care, housing, benefits, and education**, are not met. This is not exclusive to children and young people with justice experience, but there are justice related implications which stem from these gaps. For instance, a care experienced young person who is not receiving their entitlements may not have what they need to enable their release from custody on bail rather than to be placed on remand, particularly in relation to supported accommodation. We also heard about care experienced young people in a YOI who were not receiving benefits from their local authority to enable them to purchase clothes, toiletries, and food whilst in custody. There are still attitudes about children and young people in the justice system not having entitlements and rights, which were significant barriers to their realisation. Young people talked about how professionals did not always have a good understanding of their responsibilities as a **corporate parent**, this was raised as a particular issue for prison officers whose training and broader professional culture did not always encourage such consideration. Young people described how lawyers “play about with rights” and there is a focus on upholding some rights but not all.

Awareness of Rights

There continues to be a need for children and young people to be made aware of their rights and entitlements, and the implications of these, specifically where they come into contact with the justice system. This was an issue across the different care and justice settings, such as, police contact, children's hearings, courts, secure care and YOI. There were specific concerns expressed about those in a YOI not understanding their rights in custody and of the prison rules. There was also a need identified for professionals to be supported to fully understand children and young people's rights and entitlements in order to better support children and young people and raise issues and challenge decisions on their behalf. Some

professionals also identified that they would benefit from improved understanding about the role of lawyers, and their place in realising children and young people's rights.

Age boundaries and definitions of “child” and “young person”

There is confusion about legal definitions of “children” and “young people”, and the implications of these definitions. Professionals were conscious of the complexities, particularly when supporting 16- and 17-year-olds, but sometimes identified the need for legal advice and support about this. There was also an awareness that current policies and practices in relation to 16- and 17-year-olds may not fully acknowledge their rights, particularly in relation to their contact with the criminal justice system.

Participation and engagement

In different ways, everyone engaged with during the scoping study recognised that children and young people in conflict with the law were not always fully able to participate in decisions which affect them. A major theme across the scoping study was about different mechanisms and approaches that lawyers could develop to communicate and engage with children and young people. Several people noted the need for specific and specialist learning development opportunities about engaging with children and young people. There was an understanding that nearly all children and young people with justice experience had things being done to them and were used to being told that their views and voice do not matter. Overall, they did not feel seen or heard in justice settings, describing how panel members took a dislike to them, they hadn't understood what was happening at court, and that their views weren't taken into account when in a YOI. Experiences of secure and residential care differed from this general picture, and some children and young people talked about how they had been seen and supported here, including how they were supported with justice processes/issues.

Dignity in the justice system

Young people talked about not being treated with humanity, dignity, and respect throughout their contact with different elements of the justice system; by police, in courts, in the Children's Hearing System, in secure care, and in a YOI. They described how a lot of good practice “gets forgotten about and is not seen as important”. However, being treated with humanity, dignity and respect was of upmost importance to young people. Ensuring this happens was identified as primarily being an issue of culture and attitudinal change.

Challenging decisions and complaining safely

Most children and young people did not know that they could challenge decision making where they did not feel their rights and entitlements were being upheld, or have a good

understanding about how to do so. There were also a range of barriers to their ability to challenge and to complain, which were often linked to the power dynamics experienced by children and young people in the justice system. There was a nervousness amongst children and young people with justice experience about complaining or doing anything which might increase attention on them. Professionals observed that children and young people were sometimes right to be concerned about complaining and challenging, and discussed the potential implications for those who do. Children and young people with justice experience often struggled to access legal or advocacy support to help them challenge decisions. These issues were exacerbated for children and young people in a YOI, when having confidential conversations, talking to someone 1-2-1, and actually reaching a lawyer was incredibly difficult. Children and young people across all justice settings identified a need for someone to support them emotionally and practically to challenge decisions and help them make complaints where necessary. They sometimes needed an independent legal specialist to help keep them safe during such challenges, but they also needed people with time and skills to help them fill in forms, explain processes to them and to drive them to appointments/meetings.

5.2 Specific legal issues

Young people and professionals were also asked to identify specific legal issues which affect children and young people in conflict with the law where providing additional legal support would be likely to make a significant difference. Additional legal issues were also identified through Clan Childlaw's case work.

Right to education

One of the most important legal issues for young people in the community was around their right to education. Young people described how children who were in conflict with the law frequently had their education blocked or curtailed, sometimes in subtle or unthinking ways which went unchallenged. Young people described being taken out of class to attend meetings or to talk to the police, disrupting their education and marking them out to their peers. Their view was that they should never be taken out of education for such purposes. Legally challenging formal exclusions was identified as being beneficial. Professionals talked about situations where schools put in place part-time educational provision for children, perhaps at a time of crisis or difficulty, but which were then kept in place months or years later without challenge. As one professional explained "Essentially children are out of education but not legally out of education", appearing on the school roll but not being

provided with meaningful or adequate educational provision. A young person also explained how they had been suspended by school and then was subsequently diagnosed with ADHD whilst in secure care, explaining that “if they’d dealt with it at school I wouldn’t have needed secure care”. An additional issue raised by young people was about police reports being sent to their teachers without their knowledge or consent, meaning they walked into school unprepared for a change in attitude amongst their teachers, and sometimes contributing to disruptions to their education.

Police contact and interaction

The need for children and young people to have good legal support and advice before and during their contact with the police was identified by young people and several professionals. Some professionals talked about how there should be an automatic and immediate referral to a criminal defence lawyer when the police were engaging with children or young people. Other professionals thought funding probably made this unrealistic and wondered whether properly trained independent advocates could provide additional support. Young people identified critical moments in their interaction with the police where they did not have legal representation, their rights were not explained to them and there were significant consequences as a result. The right to remain silent when accused of a minor offence was identified as being particularly important to know and understand, especially for care experienced children and young people who are likely to have greater levels of police contact. There were also concerns expressed about the appropriateness of police practices, specifically the use of strip-searching on children and young people who were distressed and/or suicidal. Some professionals raised questions about police use of place of safety and whether legal challenge would be beneficial where children and young people are held in police custody for long periods.

Criminally exploited children and young people

A small number of professionals raised the issue of criminally exploited children and young people, and how they are seen through a criminal/offending rather than a child protection lens. The professionals who raised this issue identified it as a major priority, because the consequences of professionals missing what was actually happening for children and young people was so significant. There was discussion about how legal challenge might usefully be employed in order to ensure children and young people are removed from “justice” processes and for charges to be dropped when they related to offences committed as a consequence of exploitation.

Victims of offending

Whilst this scoping study was primarily focused on children in conflict with the law, young people discussed how they had been victims as well. The simplistic distinction between children and young people as “victims” or “offenders” did not help understanding of the range of legal needs they experienced and needed support with. Those who discussed the legal needs of victims identified that it was important that their rights were upheld, and that a legal service needs to be provided for children and young people regardless of their status in justice proceedings.

Decision to refer a child to the Children’s Hearing System or Procurator Fiscal

A common issue raised by professionals was the decision about whether a child goes through the children’s hearing system or the courts. This critical decision-making by the procurator fiscal and the police about whether a case needed to be jointly reported or not was seen as a key moment potentially with significant consequences for children. However, it is not a transparent decision-making process, and children are not participants in the decision. For a range of reasons children’s legal representatives do not always engage with the procurator fiscal at an early stage in this process, meaning that a potentially important perspective is missed. Some professionals wondered whether this decision would be open to judicial review, whether there could be greater transparency about it, and whether there would be mechanisms to better ensure children’s views and input from children’s legal representatives are included as part of decision-making. Some professionals also observed that there was a lack of knowledge amongst lawyers about the ability and routes to refer back to the children’s hearing system.

Lawyers in the Children’s Hearing System

Professionals highlighted the need for specific training and support for lawyers working in the children’s hearing system, highlighting [research](#) which identified specific training needs and which suggested useful development opportunities, such as peer observation along with coaching or mentoring. One person also wondered whether more could be done to ensure greater training about working in the children’s hearing system was provided as part of the Diploma in Professional Legal Practice.

Offence grounds and disclosure

The main issue emerging during one of the engagement sessions with young people was how children do not understand how accepting offence grounds, and even “Other Relevant Information” at a children’s hearing means it can appear on future PVG (Protecting Vulnerable Groups) checks. Young people thought that “this happens a lot”, but that people don’t really talk about it because “no-one understands it”. Young people explained how

accepting offence grounds in relation to offences when they were under the age of 16 had significant impacts on their options and opportunities. Some young people talked about how they accepted offences to make the issue go away, and they did not understand the full implications of doing this at the time, “you’re there for 30 seconds, you accept it and you’re back in secure”. In addition, young people described how the lack of understanding about what was on their criminal records meant they later experienced being accused of lying when something then showed up on their record. Accepting offence grounds was identified as a key moment when legal advice is required.

An additional issue was discussed about how some offences appeared on their record once they turned 18, but at this point it was extremely difficult to access their children’s hearing files to understand what it related to or why it was there. There was a lack of understanding by children, young people, families, and professionals about the implications of a criminal record, and a desire for better advice about this. There was also a need for legal support to help young people understand what is on their records and to help them attempt to have unnecessary or inappropriate information removed.

An issue which was raised by professionals and through Clan Childlaw’s wider legal work has been about challenging the need for offence grounds at a children’s hearing where there are also care and protection grounds. The benefits of avoiding offence grounds include avoiding criminal record implications. In addition, this might minimise the attitudinal and labelling implications of “offending”. Young people referred to the children’s hearing system on offence grounds described feeling judged by panel members and feeling they “took a dislike to me”. One professional wondered whether there is a need for specialist offence focused children’s hearings, where panel members receive additional training and support about the reasons for offending and the links between needs and deeds.

Compulsory Supervision Orders

Several young people and professionals raised concerns about children not understanding the full legal implications of terminating a Compulsory Supervision Order. This was a particular issue when children reached the age of 16. Young people talked about being understandably keen to come off their Compulsory Supervision Orders and reduce “interference” in their lives, without understanding or being advised of what this would mean in terms of additional supports and no longer being referred to the children’s hearing system if offences were committed. Professionals suggested that the termination of compulsory supervision orders was a critical moment when children should receive independent legal advice about the benefits and the implications.

Accused children and young people in court

Young people with experience of court explained their lack of understanding about the process. Some children and young people had received minimal support prior to court hearings, and the young men in YOI described significant difficulties reaching their lawyers to discuss court proceedings beforehand. This meant it was not uncommon for children and young people to arrive at court with no prior discussion with a lawyer, this included those charged with serious offences. Young people described their reluctance to share their views and be completely open about the full context of an offence with someone they had not built a relationship with. This meant that legal representatives were often not fully informed about their views, were unaware of the entirety of the context of the offence, and did not have an opportunity to check that children and young people fully understood what was happening. Children and young people did not understand what happened at court and were often not provided with opportunities to prepare beforehand or debrief afterwards. One professional described how “young people get a life sentence, are put in a room and all they get is a cheese sandwich”. Even when lawyers communicate clearly, young people are so stressed at such times that they are not able to take information in and require further conversations and support afterwards. A handful of professionals specifically wondered about the roll-out of youth courts and how these might provide a specific opportunity to shape expectations of what good legal representation should look like in the youth courts. Issues were also raised about children being placed with adults in court cells, and the need for a child-friendly environment and for better safeguarding and protections. Additionally young people talked about significant time delays in being transported from court cells to the YOI, suggesting that there is a particular need for children and young people’s transport to be prioritised.

Deprivation of liberty

The need for legal representation when a child or young person is deprived of their liberty in any setting was identified as being of particular importance, including where there is consideration of placing children in a children’s home. Particular concerns were expressed about deprivation of liberty orders and cross border placements, and the need to ensure that children’s rights are fully considered and fully met when children’s liberty is being deprived, paying particular attention to children who are placed far from home in unregulated care settings. Some professionals questioned if it was true that there was no provision available in England leading to children being placed in Scotland, and whether this can be challenged and/or established with more certainty. In such circumstances there can be considerable difficulties for a child or young person accessing a lawyer or identifying a need to do so.

Children and young people may also not be in a place to trust anyone at such a difficult time meaning there may be reluctance to instruct a lawyer.

Children and young people on remand

Professionals commonly discussed the high proportion of children and young people on remand, and the need for improved legal support for children and young people at risk of remand. When professionals considered issues which had the potential to lead to system change, raising legal challenges about remand was frequently mentioned. There was a perception that children and young people's lawyers could do more to challenge periods of remand which were longer than the 140-day limit for remand set out in the *Criminal Procedure (Scotland) Act 1995* s.65. Some criminal defence lawyers also reflected on the challenges in knowing about various supervised bail programmes or alternatives to remand for children and young people when they only occasionally represented children/young people. These findings echo the work of the Howard League which has highlighted that all children at risk of remand should have specialist legal representation and that cases where children are remanded to custody should be prioritised and expedited in order to reduce uncertainty and harm (Howard League, 2022: [Remand Briefing 2- Voices and Lessons](#)). In addition, there was discussion about how breaches of bail, and other system breaches, could lead to children and young people being placed on remand, without a good understanding of the difficulties for them of complying with bail. Some professionals wondered whether, in such cases, the deprivation of liberty is not necessary and appropriate, and thus open to legal challenge.

Use of restraint and searches in secure care

Young people and some professionals expressed concerns about inappropriate restraint, the over-use of restraint by some specific members of staff and the difficulties holding such staff to account or raising concerns about it. Similarly, despite the requirement that searches of children in secure care must be justifiable, necessary, and proportionate ([Secure care pathway and standards](#), Standard 19), several young people and professionals felt that this was still not always the case. Legal support was identified as being important as a mechanism to challenge unjustifiable, unnecessary, and disproportionate restraints and searches

Rights and Entitlements for children and young people in a YOI

A range of issues were raised where legal advice and support may be beneficial:

- Housing support for children and young people leaving the YOI
- Parental rights and access to children

- Care entitlements and corporate parenting responsibilities
- Helping the young people identify who their personal officer is to help them discuss rights issues
- Support to ensure sibling and family contact
- Access to, and support to understand, the “[prison rules](#)”
- Intelligence gathering and recording: ensuring young people’s access to what is on their files and support with appealing inaccurate intelligence
- Improving facilities and activities
- Adequate provision of clothing and toiletries, particularly for care experienced children and young people
- Food quality, portions, and timing
- Adequate access to exercise and fresh air

6. ACTIONS TO IMPROVE LEGAL SUPPORT

This scoping study has highlighted that children and young people in conflict with the law need legal services. There is a significant gap between what children and young people want, and need, from their lawyers, and what they usually experience. To address this gap, dedicated legal services, tailored to meet the specific needs of children and young people in conflict with the law are essential. In addition, improvements to legal services whose remit includes supporting children and young people in conflict with the law are required to ensure services are accessible and provide meaningful support to this group. Delivering better legal services for children and young people in conflict with the law means improving four key areas:

1. *Knowledge of rights and entitlements*: There is a need to ensure that children and young people in conflict with the law, and those who work with them, know about their rights and entitlements and have a good understanding about how legal support can help where rights and entitlements are not being upheld.
 2. *Access and availability of legal support*: Children and young people face considerable issues accessing legal advice and representation, with additional barriers experienced by many of those in conflict with the law. Barriers included: knowing there was a legal issue, understanding that a lawyer might be able to help, having the resources and opportunity to contact a lawyer, having the trust and confidence needed to seek legal support.
 3. *Quality of legal support*: The legal support that children and young people experience needs to be of the highest quality possible. This means lawyers need to have a good understanding of the law, perform confidently in courts/children's hearings, be non-judgemental, empathetic, able to build a relationship, to genuinely care, and adapt communication based on what children and young people need. It was also important to children and young people that lawyers have knowledge and understanding about trauma, the care system, and of learning disabilities.
 4. *Legal support for issues affecting children and young people in conflict with the law*: There is a need to pay particular attention to improving legal support on key issues which have a significant impact on children and young people in conflict with the law. Important issues include disclosure of criminal records; challenging the appropriateness of school exclusions and reductions in educational provision; providing legal representation in relation to the decision about whether a child goes through the Children's Hearing System or the courts.
- In order to make progress on these four areas of improvement, specific actions have been identified.

1. Knowledge of rights and entitlements

1.1 Develop resources and deliver inputs to raise awareness of the legal rights and entitlements of children and young people in conflict with the law, and explain how lawyers can potentially help ensure they are upheld.

1.2 Improve access to knowledge about rights and entitlements by ensuring that knowledge is available in key settings and spaces (e.g., schools, residential childcare, children's hearings). Providing better information, training and supports designed for teachers, social workers, youth workers, support workers, and independent advocates.

1.3 Strengthen relationships, connections, and understanding between lawyers and others working across the children and young people's sector to improve confidence and professional understanding about legal support and when and how lawyers can help with the realisation of rights.

2. Access and availability of legal support

2.1 Challenge the structural and financial barriers to legal support for children and young people in conflict with the law, with the limited resources available via legal aid a key reason why lawyers are not able to provide support, spend the time needed to build relationships, or deliver the best possible legal representation.

2.2 Strengthen legal support for children and young people in schools, residential childcare, secure care, and Polmont YOI by ensuring existing legal services are visible and accessible via these settings and developing specific services or initiatives in different settings to support improvements.

2.3 Ensure all children in the children's hearing system have the opportunity to access legal support before their panel. Young people suggested that an amendment should be sought to section 122 of the Children's Hearing (Scotland) Act 2011 to ensure not only should they have a right to an independent advocate but also to a lawyer.

2.4 Ensure independent advocacy is available in care and justice settings which is well connected to legal advice and support. Independent advocacy is valued by children and young people and can have an important role in supporting access to legal support. However, there is a need for better understanding and improved models of working between advocates and lawyers, which recognise when children and young people need a lawyer rather than an independent advocate. There are also settings where young people do not

have access to advocacy. The provision of independent advocacy in HMP YOI Polmont was a recommendation by the Prison Inspectorate in 2018 and this could help to address some of the issues in accessing legal support identified in this report.

3. Quality of legal support

3.1 Provide training and development opportunities to improve the knowledge, understanding and skills of legal professionals supporting children and young people in conflict with the law. This could involve events, online training resources, mentorship, coaching, peer support learning opportunities, and buddy schemes. Several lawyers mentioned the potential benefits of training and development focused specifically on communicating and engaging with children and young people, and there appears to be considerable scope from supporting peer learning on such topics.

3.3 Produce resources for lawyers to help improve practice. Lawyers indicated that they would welcome toolkits, guidance and resources focused on improving their practice. Examples of helpful materials that would be welcomed included Scottish versions of some of the materials produced by Just for Kids Law, particularly Trauma informed lawyering in the youth justice system (#05 legal guide). Some lawyers suggested that a website/webpage where they could access relevant information and resources would be helpful.

3.4 Support ongoing dialogue with children and young people about good legal support, what this looks like and where improvements are needed. Raising awareness and understanding of children and young people's experiences and suggestions amongst the legal profession.

3.5 Create a good practice model for legal representation in the Youth Courts being developed across Scotland, which can inform practice involving children and young people across all courts. New developments around Youth Courts were seen to represent an important opportunity to develop and share good practice.

4. Legal support for issues affecting children and young people in conflict with the law

4.1 Ensure legal representation is available for the range of legal issues and unmet needs identified in the scoping study, supporting law centres and legal charities such as Clan Childlaw, Just Rights Scotland, Legal Service Agency, PDSO, Civil Legal Assistance Office to meet needs where legal aid limitations mean there would otherwise be gaps. There

may be a need for the development of initiatives, partnerships and funding bids focused on specific issues and needs.

4.2 Raise awareness of the range of legal issues and unmet legal needs of children in conflict with the law amongst policy makers, policy networks, strategic and leadership organisations.

4.3 Ensure there are skilled and experienced lawyers positioned to pursue strategic litigation on behalf of children and young people in conflict with the law, with Clan Childlaw and the [trauma aware lawyers](#) potentially well placed to fulfil a leadership role here.

7. CONCLUSION AND NEXT STEPS

This scoping study has highlighted that children and young people in conflict with the law need legal services. There is a significant gap between what children and young people want, and need, from their lawyers, and what they usually experience. To address this gap, dedicated legal services, tailored to meet the specific needs of children and young people in conflict with the law are essential. In addition, improvements to legal services whose remit includes supporting children and young people in conflict with the law are required to ensure services are accessible and provide meaningful support to this group.

Before considering the next steps, it is first worth noting that there have already been some impacts as a consequence of this scoping study, and developments which have happened as the work has been ongoing.

- Following conversations during the scoping study, one third sector organisation identified a need for their staff to receive better information about how lawyers can help children and young people realise their rights. Therefore, they have arranged for a lawyer to record an input which can be used for staff training and will be included as part of future inductions for new staff.
- There has been an increase in requests for legal advice or support to Clan Childlaw about children in conflict with the law, their rights, and entitlements. With queries raised about issues such as after-care for young people in YOI/prison, disclosure of criminal records, and offence grounds at Children's Hearings.
- The engagement sessions with children and young people have involved sharing information about their right to challenge decision making, increasing awareness, and improving understanding for the small number of young people involved in the scoping study.
- The Inside Out group involved in this work have secured a commitment by the Governor and Head of Offending Outcomes at HMP YOI Polmont to regularly meet with the group to discuss their rights and entitlements and to progress their ideas to address several of the issues outlined in this report, including for rights and entitlements to form part of the induction process for those entering the YOI.

Making progress on the issues identified in this report require the skills and expertise of a range of people and organisations. There is, therefore, a need for further dialogue about

what is needed and who is best placed to act. Through the scoping study process some people and organisations have emerged who are keen and well placed to contribute to different aspects of this agenda, and others may emerge through further dialogue. Clan Childlaw have agreed to support the immediate next steps from this report and to explore what they and others can do to improve things. Initial next steps include:

1. Producing a video about the findings designed specifically with and for young people, and publishing a young person friendly version of the report.
2. Organising a roundtable event to discuss the scoping study findings, their implications, and next steps.
3. Establishing a small action group involving key stakeholders to take forward some of the ideas from the report.
4. Continuing dialogue about what can be done individually and collectively to support improvements.
5. Making changes within Clan Childlaw to ensure they are better able to respond to the needs and issues identified in this report.

If you would like to discuss the scoping study findings or the next steps, please contact us at info@clanchildlaw.org.