

THE REPORT OF THE FEASIBILITY GROUP ON YOUTH CRIME PILOTS

FOREWORD

A Group was set up early in 2001, in response to a recommendation from the Advisory Group on Youth Crime, to examine the feasibility of setting up a bridging pilot to refer young offenders aged 16 and 17 year old in cases where it is right to do so. The Feasibility Group reported to Scottish Ministers in the summer of 2001. Following Ministers' approval of the report, the Scottish Executive's White Paper "Making Scotland Safer", published in December 2001, set out the intention to legislate to allow the bridging pilots to be established. In January, the Scottish Executive Education Department published its Youth Crime Action Programme for 2002, and included the bridging pilots as one of its 5 key action points. In the meantime, the Scottish Executive has invested £23.5 million in programmes to prevent youth crime and to set up multi-agency youth justice teams in local authorities. The Scottish Executive Justice Department is now publishing the report of the Feasibility Study to explain in more detail the proposals for the bridging pilots.

The intention is to proceed with the choice of sites which, subject to Parliamentary approval of the legislation, will host the pilots. This will be done using the range of information and statistics on local authority services which is available to the Executive. It is hoped that the information contained in this report will assist these local authorities to make the necessary preparations for the pilots by developing new and adapting existing programmes and support systems for the young offenders, aged 16 and 17, who fulfil clear criteria for referral to the Hearing system rather than the courts.

Introduction

1. In November 1999 the Scottish Cabinet held a strategy session on Youth Crime in Scotland. As a result the Cabinet commissioned a review of youth crime under an advisory group. This group reported back in June 2000 with a range of recommendations. One of the recommendations for early implementation was that there should be a detailed examination of the feasibility of a bridging pilot scheme which would refer as many 16 and 17 year olds as appropriate to the Hearings system.

2. The report of the advisory group stated that their consultations had highlighted particular problems in relation to persistent offenders in the 14-18 year old age group. It also noted that the sharp division between the Children's Hearing system, which operated up to 16, and the adult criminal justice system, which operated after 16, tended to aggravate rather than resolve the problem.

3. The relevant paragraphs of the report and the annex to the report which analysed this issue are attached as Annex A to this report.

4. The report concluded that improvements were needed in the way in which 16 and 17 year old offenders were dealt with. The report suggested improvements in services and procedures for 16 and 17 year olds within the existing system. It also recommended that more should be done to develop a coherent bridging system which crossed the divide between the Hearings and the adult criminal justice system. The advisory group recommended a detailed examination of the feasibility of a bridging pilot to refer as many 16 and 17 year olds as appropriate to the Hearings rather than the Courts.

5. The advisory group envisaged that the bridging pilot would have the following elements:

- Almost all under 16 year olds referrals on offence grounds would go to the reporter, as at present.
- For 16 and 17 year olds, the police would operate a fast track approach for the young person at the point of arrest which would accelerate their being reported to the Procurator Fiscal.
- The Procurator Fiscal, taking full account of public interest and public safety, would refer as many cases as appropriate to the reporter for action.

6. The expectation was that the young person would be dealt with in the community, with custody or containment available only in cases where it could be proved that the young person presented a risk to the public or to their own safety. The report also commented that young people could be assisted in making a successful transition into adulthood if the system set out to divert as many as possible of those involved in minor offences out of the system altogether and delayed as long as possible the entry of more persistent minor offenders into the adult system.

7. The advisory group concluded that, if the proposition was feasible, it would need to be tested by pilots on the basis of court areas with the following characteristics:

- In local authority areas where there was a commitment already to bridging arrangements.
- The availability of the appropriate range of programmes and interventions.

It would also be desirable to have a mixture of areas with high and low custody rates.

Constitution of the Group to examine a bridging pilot

8. In order to examine the possibility of a bridging pilot, a Feasibility Group was set up, chaired by the Scottish Executive. The membership of the Group is in Annex B.

9. The Feasibility Group held a series of meetings and collected statistics and research information. A visit was paid to the Youth Justice Board in London which is responsible for developing new youth justice arrangements in England and Wales. In particular, the Group was concerned to share experience on effective measures of intervention.

10. Having prepared a draft report, the Feasibility Group held a final meeting with a wider reference group consisting of the original advisory group which drew up the main report, as well as panel training organisers, Children's Panel Advisory Committee members and the Director of the Criminal Justice Development Centre. The report was then adjusted to take account of the comments made at that final stage.

Objectives of a Pilot Scheme

11. Against the background described above the Group defined the objectives of the pilot scheme as follows:

"To test on a pilot basis whether the offending behaviour of significant numbers of 16 and 17 year olds could be dealt with effectively within the Hearings system, taking account of the issues of organisation, service delivery and cost."

12. In this context, effectiveness was defined as a reduction in the frequency and seriousness of offending in both the short and long term.

Feasibility

13. The Group examined the feasibility of mounting such a pilot scheme under the following headings:

- Legal
- Crown Office and Procurator Fiscal Service
- Children's Hearings
- Effectiveness

The legal position

14. In terms of current legislation a 16 or 17 year old offender can only be referred to the Children's Hearing in limited circumstances. Thus, under the Children (Scotland) Act 1995 a Procurator Fiscal may refer a 16 or 17 year old to the Reporter if he or she is already on supervision. A court may also seek advice from a Children's Hearing on the disposal of a 16 or 17 year old, regardless of whether the young person is under supervision or not. However, 16 and 17 year olds not under supervision can only be referred to Children's Hearings for advice or disposal following criminal proceedings.

15. Thus, any pilot scheme designed to test whether 16 and 17 year olds generally could be dealt with by the Hearing system would need a change in primary legislation.

16. To achieve a situation in which a 16 or 17 year old could be referred to the Hearing for consideration and disposal in the same way as a child under 16, it would be necessary to amend the definition of 'child' in section 93(2) of the Children (Scotland) Act. This would extend the scope of Chapter 2, of Part II of the Children (Scotland) Act to children under 18. Since the purpose of the pilot scheme is to assess whether 16 and 17 year old offenders can be dealt with effectively within the Hearing system, the amendment of the definition of child

in the Children (Scotland) Act would need to be limited, for the purposes of initial referral under the pilot, to 16 and 17 year olds charged with an offence.

17. A range of related amendments to the Children (Scotland) Act 1995 would be required. These are set out at Annex C. The Feasibility Group suggest that the pilot proceed on the basis that:

- All 16 and 17 year olds were treated under the same procedures once they were in the Children's Hearings system, by whatever route they entered it
- The only restriction on pilot 16 and 17 year olds would be that the initial grounds for referral could only be on section 52(2)(i) grounds (ie offence)
- For 16 and 17 year olds in the Hearings system, the supervision requirement would be extended so that it could last until they were 19, that is until their 19th birthday. A supervision requirement could, of course, be discharged earlier. This would ensure that the programmes available would have time to impact on the young person's behaviour in the case of a disposal made when they were almost 18.
- Secure or residential care would be available as a disposal although the kind of young person referred to the Hearings under the pilot would be very unlikely to be one for whom secure or residential care was considered appropriate. There is also considerable pressure on secure care which would make it difficult to accommodate any additional young people.
- The obligation on "relevant persons" to attend would continue, but business meetings could lift the obligation if appropriate. Relevant persons would have the right to attend Hearings. It would, however, be necessary for the panel at its business meeting to reach a judgement on whether or not the relevant person should be required to attend the Hearing. In some cases, particularly where the young person was still living at home, it would probably be beneficial for the parent(s) to attend. In other cases, where the young person was living independently, parental attendance might not be appropriate. In all cases the relevant person should retain the right to be notified of the referral and relevant persons would have the same rights as with children currently referred to the Hearings. It would be for business meetings to consider the practical application in individual cases and for the hearing to decide whether or not to speak to the child on his or her own at the Hearing itself.

- The Criminal Procedure (Scotland) Act 1995 would be amended to allow for a Hearing to take a decision up to 18 (instead of 17_) on the basis that supervision requirements could be extended until age 19. This was preferable to having the Hearing leave the onus on the local authority (under section 73(12)).

Further detailed consideration of these and related changes to subordinate regulations, such as the Children's Hearings (Scotland) Rules 1996, would be required, but, in principle, suitable amendments could be made to give effect to the pilot.

18. It is also recommended that a change be made to primary legislation in order to give the Reporter power to liberate detained young people from a place of safety pending further investigation. This is dealt with fully in Annex D.

19. **Name of the Hearing:** The advisory group has already recommended a renaming of the Children's Hearings since the name may be inappropriate for a body which deals with 16 and 17 year olds. Views have been sought on what the name should be. If the Hearings were to deal with significantly larger numbers of this age group, the case for changing the name of the Hearings to a title such as 'Youth Hearings' becomes even stronger. It is not suggested that the term 'Children's Hearing' should be changed in the primary legislation for the purpose of a pilot scheme. However, it is suggested that wherever possible the term 'Hearing' should be used instead of the term 'Children's Hearing'. If, on the basis of the pilot, it was decided to change the name of the Children's Hearing to Youth Hearing or simply 'Hearing' this could then be done by primary legislation at that time.

20. If approved, the necessary changes in primary legislation would be included in a Criminal Justice Bill to be introduced in 2002 to implement other changes.

Crown Office and Procurator Fiscal Service

21. The feasibility of the pilot will depend on a recognition by all concerned of the Lord Advocate's right and duty in terms of section 48 of the Scotland Act 1998 to take decisions regarding the prosecution of crime independently of any other person. For the purposes of any pilot, therefore, the decision whether or not to prosecute a young person will continue to rest with the Procurator Fiscal, subject to such general or specific instructions from the Lord Advocate as he considers appropriate in light of the new arrangements for 16 and 17 year olds. In taking any decision regarding a young offender, prosecutors will be obliged to act compatibly with the Convention rights of all concerned – both the accused and any victim – and with the public interest at large.

22. Organisationally, arrangements for the discussion and management of jointly reported cases are already in place between Crown Office and the Procurator Fiscal Service and the Scottish Children's Reporter Administration. These arrangements could also be applied to jointly reported cases concerning 16 and 17 year olds. Once the necessary legislative changes have been made to extend the jurisdiction of the Hearings to deal with all 16 and 17 year olds, and new programmes are in place which will address the offending behaviour and needs of this group, the Lord Advocate would issue such instructions to Procurators Fiscal as he considers appropriate to maximise the number of young people to be dealt with in the Hearing system. Suitable cases will thereafter be identified at a local level, and will be the subject of liaison between Procurators Fiscal and Reporters, using existing channels of communication. In certain cases, Procurators Fiscal may choose, or be instructed, to obtain Crown Counsel's instructions as to the course to take.

23. It is important when dealing with young offenders that there should be the minimum of delay. In dealing with young offenders, it would therefore be necessary to set up a fast track system to accelerate the reporting of 16 and 17 year olds to the Procurator Fiscal. Decisions need to be well informed as well as speedy, but Procurators Fiscal will take account of the circumstances of the reported offence(s), any history of offending, and the circumstances and background of the accused young person when considering a referral to the Hearings System. The principal source of that information will be the police report, but useful discussions are also likely to take place with the Reporter. The Group considered that time should not be spent compiling social background reports at the police report stage. It was agreed that the information described should be adequate to make a sound judgement on referral without delay.

24. Procurators Fiscal would still retain the discretion to divert 16 and 17 year old offenders. Protocols already exist on diversion and there is no intention that cases thought suitable for diversion at present should be referred to the hearings. These cases would continue to be diverted as before.

The Hearings

25. Dealing with 16 and 17 year olds will place new demands on the Hearings. This will require the right training, facilities, procedures and resources.

Training

26. **Panel Members** – the content of additional training for Children's Panel members involved in the pilots should focus on:

- the legal and procedural changes involved in the pilot

- the objectives and content of programmes for 16-17 year olds
- communication issues with older adolescents
- compatibility of the objectives of the pilot and special programmes with Kilbrandon principles

Advice to Children's Panel Advisory Committees' (CPAC) members will also be required to ensure that training programmes for panel members in the selected areas are put in place in advance of the pilot. If additional panel members are required to ensure that hearings may be held, the CPAC members will need to be involved to ensure that their balance of recruitment is appropriate.

27. The presumption should be that all Children's Panel members in the pilot areas will be involved in Hearings for 16-17 year olds. All members may already deal with cases involving young people of 16 or 17, and panel members do not sub-divide into specialist categories to deal with different types of cases. As long as all members can undertake the necessary training, there seems no reason to depart from the principle. Although panel members already deal with 16 and 17 year olds, the introduction of greater numbers of those past school leaving age would mean a significant shift in the client group and attitudes towards the Hearing which would need to be fully addressed in training.

28. **Reporters** – the training needs of reporters would largely replicate those for Children's Panel members (see above). In addition, however, there would be a specific training requirement on criminal evidence issues. At present, most reporters have relatively infrequent experience of taking offence grounds to proof, but the introduction of significant numbers of 16-17 year olds into the Hearings system is likely to increase substantially the call for offence grounds to be proved.

29. **Facilities for Hearings** – as far as possible, existing Children's Hearings premises should be used. However, issues of capacity will need to be assessed as part of the process of determining the pilot sites, as many Hearings Centres are already running at or near full capacity. Use of early evening sessions may be a possibility in some areas.

30. The pilot will also highlight the need for sensitive but effective arrangements for security and safety in Hearings Centres. On current resourcing, it is not possible for SCRA to provide minimum reception facilities in all Hearings Centres. This will either require to be taken into account as a criterion for selection of the pilot sites, or as a resource issue.

31. Finally, the availability of Court time and facilities in the pilot areas will also require to be reassessed to ensure that appropriate timescales and customer care standards can be met.

32. **New Hearing Procedures** – fundamentally, the procedure at a Hearing for a 16 or 17 year old will be very similar to that at a Children's Hearing. The young person attending a Hearing should have the right to receive copies of the reports made available to the Hearing. This will be dealt with under the Principal Reporter's duties under Section 6 of the Human Rights Act.

33. The Court of Session in *S v Principal Reporter and Lord Advocate* confirmed that the Children's Hearing, when dealing with an offence grounds for referral, was not determining a criminal charge. The Court concluded that the Children's Hearings system is compatible under the ECHR, the only exception being the absence of provision for legal aid for representation. The Children's Hearings (Legal Representation) (Scotland) Amendment Rules 2002, which come into effect on 23 February 2002, will cure this defect. The scheme will apply to children and young people appearing before Hearings, including those in the pilot, who meet the criteria for publicly-funded legal representation.

34. **SCRA Resources** - the pilots will add a significant additional stream of work for the SCRA teams involved in them. The assumptions about the number of offences to be referred suggest approximately a 12% increase in referral rate for those teams involved. On top of this, however, given the age group involved and the likely retention by the Procurator Fiscal of warning or diversion cases, allowance must be made for:

- A higher rate of referral by Reporters to Hearings than for other age groups
- An unusually high rate of denial of grounds and referral to proof

The impact on total workload for SCRA is therefore estimated to be an increase of the order of 25%. The impact on demand for Children's Panel members is likely to be of a similar order. This is dealt with more fully in the section on Resources.

Timing

35. It is vital that all these requirements - training, programmes, resources procedure, recruitment - are all in place before the pilot starts. Unless time has been taken to get everything in place the pilot would have no chance of success.

Programmes and Resources

36. The key requirement as far as Panel members are concerned is an adequate supply of effective programmes designed for this age group. These are considered more fully below.

Effectiveness

37. A key recommendation of the advisory group was that there should be an expansion of the range of effective community based interventions for persistent young offenders. These would be for use by Reporters and Hearings and also for the use of young offenders generally up to the age of 18. It is crucial that an expanded range of effective disposals is available in the pilot areas from the very start. Without such disposals the pilots could not take place. Much could be done by enhancing programmes which are already available and in existence, some of which are being funded under the Youth Crime Review to address the needs of persistent young offenders. These programmes would have a wider applicability than simply 16 and 17 year olds and offer an opportunity to strengthen the capacity of the hearings to address offending behaviour generally. In designing programmes it is important not to underestimate the need to continue working with young offenders to prevent relapse after the end of the formal intensive programme.

38. The advisory group listed in their report the elements which needed to be included in the range of services. The group highlighted risk assessment and challenging offending behaviour as the starting point for any and every programme of intervention.

39. There is now a significant and emerging body of research which points to the types of interventions which are most likely to reduce the level of offending amongst young people who offend. In general, programmes based on cognitive and behavioural approaches, which help offenders to face up to the consequences of their behaviour, to understand their actions and to develop new ways of controlling their behaviour have been found to be most effective. Such programmes must, however, be directly relevant to the problems and needs presented by individual young people if they are to be effective. Skilful and imaginative staff, who can respond flexibly to the particular issues in each case, are needed to deliver effective and responsive programmes.

40. When these approaches are used with young people who offend, it is essential that they are located within a broader framework which deals with a wide range of issues central to the lives of young people, such as education, employment skills, constructive use of leisure and, importantly, family relationships. The requirements of looked after children and children with special needs should be given particular attention. Researchers have identified family factors as central to an understanding of why some young people offend and others do not. Work with the families of young people, to help them to make or sustain changes likely to

contribute to the young person stopping offending, is, therefore, a critical element in effective practice with such young people.

41. At present, programmes specifically designed to tackle offending behaviour are not widely available to the Children's Hearings, and the principles on which they are based may be unfamiliar to many workers supervising cases from the Hearings. On the other hand, however, work with the families of young people has long been seen as a strength of the Children's Hearings. Thus, the proposed approach builds on existing strengths of the current system, by maintaining a focus on families, education and employment, whilst at the same time strengthening the focus on offending. As an illustration of what is possible, a recent evaluation¹ of one such Scottish programme, working with persistent young offenders aged 12–15, concluded that the project demonstrated "an impressive degree of success" in reducing the frequency and severity of their offending. (See Annex E for more details of research evidence). This programme has subsequently been extended to work with young people up to 18. However, dealing with persistent young offenders is still an area which needs strengthening.

Flexible Disposals

42. In England and Wales many specific new disposals have been introduced to the Youth Courts. They include referral orders, reparation orders, parenting orders, action plan orders and, most recently, intensive supervision and surveillance programmes. The range of orders is intended to provide flexibility and the capacity to deal appropriately with all types of offending, from the relatively trivial to the most serious. Use of the different types of order has been variable. Action plan orders, for example, are widely used, but to date there has been little use of parenting orders.

43. In Scotland the criminal justice system and the Children's Hearings both already offer highly flexible disposals and forms of supervision. The supervision requirement and the probation order (through the use of additional conditions) can encompass elements of restitution, reparation and restoration. Although the potential flexibility of the Hearings' supervision requirement is rarely exploited at present, there is ample scope within existing disposals to tailor approaches to suit the needs and levels of risk presented by the young person, in accordance with the effective practice evidence.

44. An essential element in the disposals for 16 and 17 year olds would be greater clarity, at the point of disposal, about the precise nature of the work to be undertaken with and by the young person. This could be achieved through the presentation of a specific action plan,

¹ Lobleby, D., Smith, D., and Stern, C. (2001) Freagarrach: An Evaluation Of A Project For Persistent Juvenile Offenders, Edinburgh: Scottish Executive Central Research Unit

tailored to the needs and risk presented by the young person. Action plans such as these are regularly submitted through the children's hearings' system. In addition, the action plan would set out in writing clear expectations, against which both the offender and the supervising agency would be held to account, and would include restorative or reparative requirements as appropriate. Action plans like this are already provided to the adult courts when placing an offender on probation. The action plan would set out what would be done to tackle the young person's offending behaviour, identify related problems or skills deficits which required to be addressed, and outline how best to take account of victims' issues. This specific focus on victims' issues (including reparation or mediation where appropriate), and on restorative approaches in general, would be a standard core component of the new approach, and would mark a significant development on current practice. The overall aim should be to reduce offending and to re-integrate young people who offend into the civil life of their communities.

New Programmes

45. Programmes of the type outlined above, which focus directly on the young person's offending behaviour but also deal with wider issues facing many young people, will need to be in place in the pilot sites. Whilst such programmes are not yet widespread throughout Scotland, there are already a number of examples of work of this nature which have been seen to be effective and could provide models for use elsewhere. The new programmes will need to be firmly founded on research evidence of effectiveness and in due course would have to be subject to accreditation in order to ensure the quality and consistency of programmes. Work to develop an accreditation system for adult criminal justice programmes is currently underway in Scotland, and should be in place in the near future. The remit of the proposed accreditation system could easily be extended to encompass programmes to be delivered as part of the Hearings system. Under the proposals, service providers will be required to submit their programmes for scrutiny by a panel of experts who will evaluate the extent to which the programmes meet key criteria for effectiveness derived from research. Only programmes which meet the pre-determined criteria will be accredited for more widespread use.

46. The required programmes will need to focus both on offending behaviour (including specific types of offending, such as car crime) and be underpinned by the principles of effective practice. They must also promote social inclusion by addressing issues related to offending, such as

- physical and mental health
- substance misuse
- education and training

- employability
- family and relationships
- accommodation
- use of leisure.

It will be necessary to ensure prompt access to the networks providing services in these areas.

47. A key element of the focus on these broader issues extends the scope of restorative approaches being used in many jurisdictions. These approaches seek to involve victims more directly in the process of tackling offending behaviour. A range of measures is available, but can include a focus on victims' issues as part of an intervention programme, requiring the offender to write a letter of apology or, where both parties are willing, bringing the young offender and the victim together to consider the impact of the offence on the victim. This is a key element in the work of the Youth Justice Board in England and Wales. Interventions which bring the offender and victim together have been generally well-received² by all involved, and can help bring home to young offenders the consequences of their actions. Further research into the effectiveness of restorative approaches in helping to reduce levels of further offending amongst young people would however be useful. Introduction of a victim perspective in this way must be undertaken with care and in ways which genuinely promote victim interests. It will be important to develop protocols and identify best practice in relation to restorative justice approaches.

Young women who offend

48. There is an emerging body of evidence and research which identifies that the nature of women's offending, and the circumstances which contribute to it, are different from those of men. Research into the backgrounds of women offenders suggests that many have experienced sexual abuse and personal violence, and have significant problems with substance misuse. Recent Scottish reviews and research have provided further evidence to support this finding.³

49. Another difference is that relationships seem to be a more significant factor influencing the behaviour of girls and young women who offend than is the case for young men. In a Scottish study⁴, for example, most girls and young women who offended reported having a partner who had offended, whilst offending was less common among the female partners of male offenders in the sample. This provides further support for the view that

² See Annex E

³ Loucks, N., (1998) HMP Cornton Vale: Research into Drugs and Alcohol, Bullying, Suicide and Self-Injury, and Backgrounds of Abuse, Edinburgh: Scottish Prison Service. See also Annex E

⁴ Jamieson, J., McIvor, G., Murray, C. (1999) Understanding Offending Amongst Young People, Edinburgh: The Stationery Office Ltd.

many girls and young women who offend seek acceptance through relationships with other young people, especially young men, whose own life experiences are similarly damaging and who may promote, rather than discourage, re-offending.

50. There is a growing recognition that, because of these differences, programmes developed primarily to deal with the issues presented by male offenders may not be particularly appropriate for women or girls. Rather than simply delivering the same programmes in single sex groups, there is a need for gender-specific services which take account of differences in the learning and relationship styles, and life circumstances, of young men and women.

51. For girls and young women who offend, such programmes need to address issues including the development of self-esteem, the establishment of rewarding and positive relationships, tackling substance misuse, sexuality and sexual health, decision-making skills, and recovery from trauma resulting from their frequent experience of physical, emotional and sexual abuse. In essence, such programmes must be directed towards assisting these young women to develop skills and competencies necessary to achieve healthy independence. It will be essential, therefore, that specific programmes for young women who offend, which take proper account of these issues, are available in the pilot areas.

Public confidence

52. A key issue to be addressed, both in presenting the pilot scheme and in operating it, is the issue of public confidence. To command public confidence, it is vital to link the pilots clearly to the advisory group's objectives. These objectives are:

- Improved community safety by reducing youth crime (ensuring that the small number of highly disruptive recidivist offenders (often drug related) and those where violence is a factor, are dealt with in a way that maintains public confidence and safety).
- Effective, consistent (in terms of quality and availability) and quality assured interventions for children and young people who offend
- Better outcomes for all children and young people, including the most deprived and vulnerable
- Greater emphasis on prevention, diversion and the concept of restorative justice
- A clear recognition of the needs of victims and of the need for young offenders to recognise the damage they may have done to the victim

- Making best use of resources by moving from expensive and often damaging institutional disposals to effective, quality assured, community based interventions. The pilot is designed to achieve these objectives primarily by providing programmes which can help to reduce the frequency and seriousness of offending.

53. The Lord Advocate, in issuing prosecution guidelines to divert as many 16 and 17 year old offenders as appropriate to the Hearings system for the purpose of this pilot, will instruct Procurators Fiscal to take full account of public interest and public safety in all such cases. The Advisory Group on Youth Crime “believe that young people can be assisted in making a successful transition into adulthood if the system sets out to:

- Divert as many as possible of those involved in **minor** offences out of the system altogether, and
- Delay as long as possible the entry of the more persistent **minor** offenders into the adult system” (page 9, para 31 of its Report)

Accordingly, where 16 and 17 year olds are reported to the Procurator Fiscal for serious offences that merit prosecution on indictment, or for road traffic offences that on the face of it merit disqualification, the presumption will continue to be in favour of prosecution in the adult criminal court. The Lord Advocate will exercise his discretion on a case by case basis and the adult courts will continue to deal with serious offenders.

54. The key to achieving the group’s objectives and, therefore, to winning public confidence, will be demonstrating the quality and effectiveness of the programmes that will address the behaviour of these persistent young offenders. The issue of disposals has already been discussed above. It will be important that these are presented as having a proven record of effectively dealing with offending, thus emphasising the need to find an effective response which will reduce offending, whilst protecting the public from further offending behaviour where there could be significant trauma to victims.

Victims

55. A clear communication strategy is needed, particularly in the pilot areas. The key messages of greater effectiveness desired from programmes specifically aimed at 16 and 17 year olds and the full account to be taken of public interest and public safety needs to be emphasised. In the pilot areas the community safety partnerships could be used as a means of transmitting these messages to the interests most closely involved. These same interests should be kept fully informed throughout the partnership.

56. Public confidence will benefit from a clear focus on victims. The development of the Scottish Strategy for Victims provides a natural framework for this. The Strategy recognises the need to put mechanisms in place to take the needs and concerns of victims into account in criminal justice processes and this is an issue which the pilots will also need to address⁵. If the pilots are successful then they would lead to a reduction in the numbers of victims who suffer as a result of youth crime.

Research

57. It will be necessary to design and commission research to inform the development of the pilot and to evaluate its effectiveness. Full evaluation of the pilot will be essential to find out whether and in what way it has achieved its aims and objectives.

58. It is unlikely that the pilot could be implemented before summer 2003. This provides the opportunity in the first instance to review available information about resources for youth justice for 16/17 year olds in Scotland which will facilitate identification of suitable pilot sites. A preliminary review of available statistics and research on 16 and 17 year old offenders and of court statistics has been undertaken to provide a current profile of this group of offenders and of process in dealing with them. Audit Scotland are also undertaking a wider audit of youth justice covering the age range 8 to 21 and have completed an initial baseline study.⁶ The Scottish Executive has drawn on the material collected to date by Audit Scotland in its review in order to limit the burden on local authorities and other agencies in providing information on this high profile issue. In addition, local authorities have been co-ordinating audits of services including programmes for young offenders and resources available to deal with them in response to the Youth Crime Advisory Group's Action Plan. This information will inform the selection of pilot areas in spring 2002 and provide initial baseline data.

59. Building on the material reviewed to inform selection of the pilot sites, a baseline study will be commissioned in 2002 to expand the collection of key information about these sites and possibly a number of comparison sites. This baseline will inform evaluation of the pilot. It will be important for the objectives of the baseline study to reflect the key aims and objectives of the pilot and its operation in different sites in order to ensure that appropriate information is collected to facilitate evaluation. Information will be collected on the development of the pilot schemes before they come into operation in the summer of 2003. The baseline study will ensure that short term (for example, the number of 16/17 year olds referred to the reporter rather than the courts or the level of custody for 16/17 year olds in

⁵ This issue has been highlighted as a key action point in the Youth Justice Action Plan for 2002.

⁶ Audit Scotland: Youth Justice in Scotland: a baseline report, June 2001

pilot sites) and longer term (e.g. re-offending rates for young people dealt with by the pilot schemes) outcome measures for the pilot are in place.

60. The evaluation of the pilot should be commissioned concurrently with implementation to ensure that relevant issues arising are identified and described to assist the development of future policy and practice. The evaluation will include assessment of:

- the number of 16/17 year olds dealt with within the Hearings system;
- the impact on re-offending for this group;
- the costs and cost effectiveness of operating the pilot (in comparison with alternative arrangements);
- the organisational implications of implementing the pilot;
- the effects on decision making for 16/17 year old offenders;
- the characteristics of effective practice with this group;
- public perceptions of this approach to dealing with young offenders.

In addition, it will be essential that monitoring and evaluation is built in to individual programmes for 16 and 17 year old offenders which are introduced in the pilot areas as the success of the pilot will depend critically on the effectiveness of the programmes available to young offenders. This monitoring and evaluation information will feed into the overall evaluation of the pilot.

61. Some important outcome measures from the pilot will not necessarily be available in the short term to inform the further development of policy and practice with this group (for example, the impact on re-offending). The baseline and the evaluation studies will require careful specification of outcomes and a realistic timetable to ensure that the evaluation provides reliable and valid information for future developments.

Resources

62. In its report the Advisory Group estimated that funding of about £0.5m per year in total might be required for any bridging pilots. It considered that a two-year pilot should be sufficient to test the validity of the approach and estimated that the funding would allow for at least two pilots, depending on their size. No detailed calculations were made.

63. The Feasibility Group agrees that two years should be sufficient for the pilot schemes and that there should be two or three pilots. It also considered that any pilot should apply within the whole of a local authority area. The Group would also recommend that the pilots should be in different types of areas: one predominately urban and the other(s) semi-urban or rural.

64. The main costs of any pilot would fall on the Scottish Children's Reporter Administration and on the local authority. As far as the SCRA is concerned, extra staff would be needed to deal with the additional work of 16 and 17 year olds referred to the Reporter under the pilot and additional Children's Panel members would need to be recruited and trained. In relation to local authorities, more detailed Social Inquiry Reports might be needed and social workers would need to attend hearings for 16 and 17 year olds. Most importantly, local authorities would need to develop and provide a greater range of community disposals to meet the needs of 16 and 17 year olds. The nature of these additional services has already been described. It is impossible to make a precise estimate of what these would cost for the pilots until the authorities have been chosen. The main factors which will determine the extra costs will be:

- (a) The size of the authority.
- (b) The level of existing services (the better developed the services are already, the less additional services will be required).
- (c) The stage reached in the development of services under the present Youth Justice initiative (substantial investment is being put into additional services under the Youth Justice programme).
- (d) The level of offset from adult services (the extent to which new services specifically aimed at 16 and 17 year olds might replace less suitable adult services).

65. In addition, there could be some additional costs on the police from running the fast-track procedure. As far as the Crown Office is concerned, 16 and 17 year olds are already dealt with by Procurators Fiscal. On the one hand, there would be a reduction in the number of prosecutions in the Sheriff Court as a result of more cases being dealt with in the Hearings system, but this would be balanced by the greater amount of time spent by Procurators Fiscal discussing cases with the Reporter, and others.

66. The Feasibility Group took the view that up to £0.5m per year should be allowed per pilot but the detailed figures could only be drawn up once the pilot areas had been chosen and the services already there or planned had been reviewed. The power already exists in primary legislation to finance this through the 100% funding mechanism for Community Justice Services, although secondary legislation is required to commence the provision.

Conclusion

67. It would be feasible to mount pilot schemes to test the effectiveness of referring as many 16 and 17 year old offenders as appropriate to the hearing system.

68. For the pilots to take place it would be necessary to make changes in primary legislation as described (paragraphs 14 – 18 and Annexes C and D).

69. To minimise delay in dealing with young offenders it would be necessary to set up a fast track system to accelerate the reporting of 16 and 17 year olds to the Procurator Fiscal. (Paragraph 23).

70. For the pilots to be a proper test of effectiveness each pilot area would have to have available to it the right range of programmes and disposals aimed at the 16 and 17 year old age group, based on research and in due course accredited. These programmes should have their major focus on addressing offending behaviour through clear written action plans and should also focus strongly on restorative justice. (Paragraphs 37 – 51 and Annex E)

71. The Hearings - both panel members and reporters - would require training to prepare them for the extension of their role. They would also require additional resources to deal with the additional numbers of cases. (Paragraphs 25-34)

72. The Lord Advocate will require to issue Prosecution Guidelines to Procurators Fiscal to refer as many 16 and 17 year old offenders as appropriate, within the scope of the pilot, to the Hearings (paragraphs 21-24 and 53).

73. Public safety and public confidence are primary considerations, and so a clear communication strategy would be needed to explain to the public, particularly in the pilot areas, the rationale and basis of the pilots: a more effective approach to 16 and 17 year old offenders with full regard to public safety and public interest. (Paragraphs 52-56)

74. Resource requirements cannot be accurately determined until the pilot areas have been chosen. Subject to this, however, each pilot scheme may cost up to £0.5m per year per area. It is recommended that there should be two or three pilots: one in an urban area, the other(s) in a semi-urban or rural area. (Paragraphs 62-66)

75. The pilot schemes should be fully evaluated (paragraphs 57-61).

(Extract from “It’s a Criminal Waste”, the Report of the Advisory Group on Youth Crime)

How do we bridge the gap?

29. The consultation exercise highlighted the particular problems, which exist in relation to persistent offenders in the 14 to 18 year group. Recognising that this group has special problems around issues of maturity, the present fracturing of the system for young people at the age of 16 tends to aggravate rather than resolve the problem. [Annex D](#) provides an analysis of some of the issues rising at the transition point between the Hearings and the court system.

30. Whilst significant improvements in criminal justice social work interventions have been achieved in the 1990s with the introduction of National Standards, 100% funding for criminal justice social work services and the development of services based on research evidence of "what works", it is recognised that the adult court system was not designed to deal with the particular needs of these often very immature young people. Statistics also show that young people aged 16 and 17 have a high risk of custody once they enter the adult system. We believe that many young offenders can be assisted to grow out of patterns of offending, provided that a full range of credible and demanding alternatives to custody, tailored to their needs and deeds, is made consistently available within a community setting.

31. We believe that young people can be assisted in making a successful transition into adulthood if the system sets out to:

- Divert as many as possible of those involved in **minor** offences out of the system altogether, and
- Delay as long as possible the entry of the more persistent minor offenders into the adult system.

This approach suggests that 16 and 17 year old offenders should be dealt with in the Hearings system, once it is strengthened and given access to a wider repertoire of services.

Improving the present system

32. Under the present arrangements, those 16 and 17 year olds who continue to come before the courts will continue to have a range of offences and a range of needs to be addressed. In dealing with them, the adult criminal justice system should seek to combine the principles of welfare and justice in a way that will increase the potential for positive change. In particular, the system should:

- Adopt a multi-disciplinary approach, which deals not just with the offence but the life circumstances of the young person, including employment, education and training, housing, leisure facilities

- Be delivered by mixed teams of child care and criminal justice professionals to provide the skills necessary to support this holistic approach
- Create a link between the Children's Plans and Criminal Justice Plans prepared by local authorities to root joint working in the strategic planning process
- Expand the present pilot diversion schemes across Scotland to provide all procurators fiscal with an alternative to prosecution, with special provision for young people
- Extend the present restricted bail information and supervision schemes to all 16/17 year olds to avoid the unnecessary use of remand in custody for young people
- Review the use of fines as a penalty for young offenders to reduce the level of custody for fine default
- Provide access for the courts to the same integrated package of interventions, including mediation and reparation, as is recommended earlier in this section
- Adopt an evidence-based approach, operating to the same standards on integrity, quality assurance and performance evaluation for the interventions, whether made as a result of action in the Hearings or courts.

A bridging system for the future

33. The above package of measures seeks improvements within the existing structural framework. But we should do more to develop a coherent bridging system that crosses between the Hearings and the adult criminal justice systems. The Group recommends a detailed examination of the feasibility of a bridging pilot under which as many 16/17 year olds as possible would be referred to the Hearings rather than the courts.

34. We envisage that the bridging pilot would have the following elements:

- **For almost all under 16 year olds, referrals on offence grounds would go to the Reporter, as at present**
- **For 16/17 year olds, the police would operate a fast track approach for the young person at the point of arrest which would accelerate their referral to the procurator fiscal**
- **The procurator fiscal, taking full account of public interest and public safety, would refer as many cases as appropriate to the Reporter for action.**

35. The expectation would be that the young person would be dealt with in the community, with custody or containment available only in cases where it can be proved that the young person presents a risk to the public or to their own safety.

36. The new approach would call for new skills and attitudinal change on the part of all concerned. It would have major practical implications for the Hearings in terms of numbers

of panel members, workload for Reporters, accommodation etc. It would also require the full support and co-operation of procurators fiscal and police. There are also vires and ECHR issues which need to be considered. All of this needs further detailed examination.

37. If the proposition proves feasible, it would need to be tested by targeted pilots on the basis of:

- Court areas where there are high custody rates for 16/17 year olds
- Local authority areas where there is a commitment already to "bridging" arrangements
- Availability of the appropriate range of programmes and interventions.

If it worked, additional costs to the Hearings could be more than outweighed by the savings to the adult system.

(Annex D from Report of Advisory Group on Youth Crime)

TRANSITION BETWEEN THE HEARINGS AND THE COURTS

Introduction

1. Young offenders aged 14 -18 have been identified as a particular group for concern, straddling as they do the transition point between the Hearings system and the criminal justice system. After targeting interventions on the small number of persistent offenders who commit a disproportionately large amount of crime, this group should be given priority. In suggesting that the Children's Hearings and criminal justice systems are not realising their full potential in dealing with these young offenders, 3 pressure points are identified:

- disposals
- transition between the two systems
- co-ordination within and between the systems.

Problem

2. Young offenders in this age group present special problems whether they are dealt with in the Hearings system or in the adult criminal justice system. It is at this stage that attitudes towards the accountability of young offenders for their deeds begin to change, when patterns of offending are becoming established, when the number of offences are accumulating, and when difficult young people may be excluded from school. The result is that these young offenders are at serious risk of moving rapidly through the Hearings/court system towards custody.

Aim

3. The broad aim should be to assist these young people to make a successful transition into adulthood by:

- diverting as many as possible of those involved in more minor offending out of the system altogether, and
- delaying as long as possible the entry of the more persistent/serious offenders into the adult system.

Some Principles

4. At the COSLA/NCH Think Tank, the group which discussed the 14-18 age group identified some principles on which to base a more effective approach to the offending behaviour of this group. These were:

- recognition that the age group has special problems related to maturity and that many of these problems are transitional

- a multi-agency approach is required to deal not just with the offences but employment, education, training, housing etc. Since persistent offenders in the 14 to 18 age range have a range of needs, a range of responses should be offered
- the individual should receive a tailored response which meets their particular needs. Services should be designed to meet the needs of the person, not to serve the needs of the agency providing the services
- the system should aim to empower the young person
- the "what works" agenda should be adopted in order to address the offending behaviour/criminogenic needs of the age group
- young people should be represented and there should be a clear emphasis on due process, and
- standards should be set and effectiveness monitored and independently evaluated.

Transitional issues

5. With these principles in mind, we can move on to consider some of the specific issues which arise at the transitional point between the Hearings and the criminal justice systems.

6. The focus of the Hearings system is based on a much wider view of the issues around marginalisation. It aims to balance that with interventions which seek to effect change in either the life circumstances surrounding the criminal behaviour, or the young person's capacity to manage these circumstances within the law.

7. The criminal justice system is not primarily designed to promote or reinforce notions of inclusion. Because the primary concern is to establish whether the evidence presented is sufficient to prove that the individual committed the crime, the process of criminal justice is geared towards that purpose. In doing so, it sets out to signal the State's attitude to offending behaviour, to make redress and to respond to the needs of the victims of crime as well as to reduce patterns of re-offending.

8. In terms of inclusion, this suggests that the greater use of community based disposals, including mediation and reparation, if seen to be effective, would help to promote the concept of community justice.

Role of key players

9. The point of transition between the Hearings system and the criminal justice system is also one where the role of key players in the process change. Specifically these include the family, education, youth work services, and the young people themselves.

- the integration of the role particularly of the family and the community within the framework of the Hearings is an important part of the system, and the evidence which promotes its value in the Hearings system remains valid as the young person reaches

- the involvement of the young person in the adult criminal justice system emphasises responsibility/accountability for their deeds and gives them a more active role in the process.

This suggests that the system should be able to empower these maturing young people and yet avoid the effective removal of other key players from the process which serves to isolate them.

Addressing offending behaviour

10. Any system should be judged on the effectiveness of its interventions but an additional feature of the transition is the support which is provided for young people to help them address this behaviour:

- he or she passes from a system where the approach is to bring all the influencing factors and persons together with the young person and those charged with making decisions. The focus of the work of child care teams is primarily the provision of support and protection for the child. There is nevertheless, a perceived lack of confidence in the Hearings system's ability to deal with the 16-18 age group
- the move to the criminal justice system removes both this notion of collective or community responsibility and the support it offers to the young person in their efforts to change. But the criminal justice system has a wider range of disposals available to it and has adopted the "what's works" agenda. It has criminal justice staff whose job it is to assess risk and to address offending behaviour for example through cognitive behavioural and other intervention programmes.

This suggests that the system should serve to enhance the quality of the decisions to be taken, reinforce the responsibility and stake of each participant in the outcome at the same time, and have available to it a wider range of disposals specifically designed for this age group so increasing the potential for positive change.

Change in where responsibility lies

11. The transition marks a change in the approach to the child's rights as a citizen.

- the Hearings system approaches the question of responsibility for the actions and behaviour, and importantly of the changes required on the basis of shared responsibility
- the criminal justice system takes the approach of individual responsibility but in holding the young person accountable for their actions and for meeting the requirements of the court's decision, it also demonstrates a concern about proportionality and the due process of the law. There is a greater focus on representation and on advocacy which is there to protect the rights of the individual.

This suggests that the system should promote the responsibility of the community for the young people it produces, support community safety policies and recognise the rights of the young person to the due process of the law.

Questions of maturation and the 'temporary delinquent'

12. The abrupt transition from the Hearings to the criminal justice system fails to address the issues of maturation or to respond to what has been called the 'temporary delinquent' in an appropriate way. At whatever stage a young person moves from the more supportive ethos of the Hearings system, he/she will find it difficult to comprehend the change in the response which will follow any failure to meet the requirements which have been made by the court.

- the ethos of the Hearings system is supportive and the way it deals with lapses does not prepare the young person for the move to the adult system
- in the adult system, failures may well fast track the young person into continued offending and increasingly punitive disposals.

This suggests that there needs to be a bridge between the differing approaches taken by the two systems and a more flexible approach which sets out to ease the transitional process whether it occurs at age 16 or 18 or even later.

Conclusion

13. An understanding of these transitional issues may help to point the way forward. Both the Hearings and criminal justice systems have their strengths and their weaknesses when it comes to dealing with the 14-18 age group. It might be argued that the transition from one to the other, serves to emphasise the weaknesses at a critical time in the lives of these young people. We need to build in more of the strengths. The proposals in the report seek to do so.

Feasibility Group Members

Chair	Niall Campbell	Head of Civil and Criminal Law Group, Justice Department
Members	Elizabeth Carmichael	Head of Criminal Justice Services Division, Justice Department
	Alison di Rollo	Crown Office
	Alan D Miller	Principal Reporter, Scottish Children's Reporter Administration
	Val Cox	SWSI
	Sarah Campbell	Central Research Unit, Justice Department
	ACC Taylor	Statistics Unit, Justice Department
	Boyd McAdam	Young People and Looked After Children Division, Education Department
	Jennifer Keenlyside	Criminal Justice Services Division, Justice Department

MAIN CHANGES TO THE CHILDREN (SCOTLAND) ACT 1995

Section 45(8)(a) gives a relevant person the right to attend all stages of a Hearing. This need not be amended in respect of the obligation to attend, but may require some extension of the definition to cover cases where “children” over 18 appear before a Hearing. The definition of relevant person is linked to parental responsibilities for a child under Part I of the Children (Scotland) Act 1995. “Child” for this purpose is defined by section 15 of the Children (Scotland) Act 1995 as a person under the age of 18.

Section 73(3): amend to the provision that a supervision requirement “shall cease to have effect in respect of a child not later than on his attaining the age of eighteen years” to the age of 19.

Section 93(2)(b): amend to include an additional category of any other child, within a pilot area, over the age of 16 who has not yet attained the age of eighteen years who has been referred to the Principal Reporter on grounds for referral under section 52(2)(i) after attaining sixteen years of age.

Section 93(2)(ii) will also have to be amended to permit a Hearing to be convened, in a pilot area, in respect of any child who has not attained the age of nineteen, instead of eighteen.

CRIMINAL PROCEDURE (SCOTLAND) ACT 1995

Section 49(6)(c) of the Criminal Procedure (Scotland) Act 1995. Amend to raise the discretion of the court to refer a child between 16 and 18 (instead of 17 and a half as at present).

Giving Reporter Power to Liberate

Section 63: Further changes are also recommended to primary legislation. First, giving the Reporter power to liberate 16 and 17 year olds.

(Changes to secondary legislation would be required)

Where a child who has been charged with an offence is detained under the Criminal Procedure (Scotland) Act 1995 and subsequently referred to the Reporter, s.63 of the Children (Scotland) Act 1995 currently offers the Reporter only two options:

- to refer within three days to a Children's Hearing;
- or
- to determine within that time that compulsory measures are not required – in common parlance, to take no action on the referral.

Prior to April 1997 the Reporter had a third option – to liberate the child from the place of safety pending further investigation. Since April 1997, although the incidence of the use of custody powers has dropped significantly, the proportion of cases that are 'no actioned' under section 63 has remained about 30%. Previously, a similar proportion resulted in liberation pending further enquiries, with very few cases immediately 'no actioned'.

There are likely to be situations in which 16 and 17 year olds detained by the Police are then referred to the Reporter in terms of the proposed pilots. For a number of reasons, some of which are collateral to the proposed pilots, it is now appropriate to consider restoring the power to liberate:

- ECHR Article 5 considerations impel the Reporter to make as early as possible a decision on the cases of detained children and young people, but this limits severely the scope to undertake a full investigation and thus to make an informed decision
- statistical and anecdotal evidence both indicate that early 'no action' decisions are frequently being taken where immediate referral to a Hearing cannot be justified, but where further enquiries would nevertheless be appropriate if the option existed
- in a climate of heightened public and political awareness this appears regrettable

- given that all cases in the pilots will involve a choice between criminal or Children's Hearings proceedings, it is important to re-align the first-stage options open to the Reporter in custody cases with those open to the Procurator Fiscal.

This objective could be achieved by amending s.63 of the Children (Scotland) Act 1995 as follows:

- subs(1)
 - delete ", unless he considers that compulsory measures of supervision are not required in relation to the child,"
 - insert at an appropriate point "subject to subsection (3) below"
- subs(3)
 - amend so that the Principal Reporter directs the child to be released if he considers either that
 - (i) the child does not require compulsory measures of supervision;
or
 - (ii) further investigation in terms of s.56 is necessary and in the meantime it is not necessary in the interests of the child that he be detained further.

EVIDENCE FROM RESEARCH

Effective programmes

There is now an extensive, and increasing body of research evidence which provides pointers towards approaches which have been shown to reduce levels of offending amongst adult offenders and young people who offend. Initially much of this research came from North America, but more recently there have been numerous studies in the UK which have produced similar results. During the last few years researchers have examined a number of programmes in Scotland and identified components which can be shown to have been more, or less, effective in reducing recidivism.⁷

The most recent such evaluation of a Scottish programme produced particularly positive results⁸. The Freagarrach Project in central Scotland works with persistent young offenders aged 12 – 18, all of whom have had at least 5 "episodes" of offending in the previous year. The project works with the young people individually and in groups, and has a core focus on offending behaviour. Programmes are, however, tailored to the individual needs of each young person, and staff also undertake work on related problems such as educational deficits and substance misuse.

The researchers found that the overall offending rate of young people attending the project decreased by between 20% and 50% in the year after they first started to attend the project. These figures represented 90 and 226 offences respectively. The researchers concluded that the project demonstrated "an impressive degree of success" in reducing the frequency and severity of offending amongst the group of serious and persistent offenders with whom it worked. The research evidence provides clear guidance on the essential elements of effective interventions with young offenders. A key component, which has been consistently identified throughout the research, is an enthusiastic and well-trained staff group which is capable of delivering appropriate programmes in a way which conveys concern and respect for young people whilst also making it clear that offending is unacceptable.

⁷ See, for example, Jamieson, J., (1997) *An Evaluation of the NCH Intensive Probation Unit*, Stirling: Social Work Research Centre, University of Stirling; Loblely, D., and Smith, D., (1999) *Working with Persistent Juvenile Offenders: An Evaluation of the Apex CueTen Project*, Edinburgh: The Stationery Office; McIvor, G., et al (2000) *Evaluation of the Airborne Initiative (Scotland)*, Edinburgh: The Stationery Office.

⁸ Loblely, D., Smith, D., and Stern, C. (2001) *Freagarrach: An Evaluation Of A Project For Persistent Juvenile Offenders*, Edinburgh: Scottish Executive Central Research Unit

Restorative Justice and Victim-Offender Mediation

"Restorative justice" seeks to balance the concerns of the victim and the community with the need to reintegrate the offender into society. Victim-offender mediation (VOM), which provides a range of options to include the victims in the justice process if they so wish, is central to this approach, and has become an increasingly common element in the way different jurisdictions deal with young people who offend. At one end of the range of options, VOM may simply involve the offender writing a letter of apology to his or her victim. At the other end of the range, it can involve a structured meeting (or "conference") between the victim, the offender and other interested parties, in which the impact of the offence on the impact is examined more closely by all concerned. Within the UK, this approach has been pioneered in a number of areas in England, most notably by Thames Valley police, and it is now a key element of the work of the Youth Justice Board throughout England and Wales.

Although there is increasing research, especially from Australia, into the impact of VOM on the attitudes those involved, there is relatively little data on its effectiveness in reducing re-offending. One Australian study suggests that victims who attend VOM conferences have less fear of further victimisation and are less likely to expect that the offender will re-offend than victims whose case was dealt with in court. In the same study, the young offenders who attended conferences were more likely than those dealt with in court to feel increased respect for the criminal justice system and for the police, and were more likely to think the police were fair.⁹

A group of American researchers have, however, undertaken an analysis of 4 separate American studies into the effects on re-offending of participation in VOM.¹⁰ Their analysis showed that young offenders involved in VOM re-offended at a rate 32% lower than non-participants, although it was not possible to identify a causal relationship. The researchers concluded that the study provided support for the view that participation in victim-offender mediation by young people who offend is associated with lower re-offence rates, at least over a one year period. Whilst these results offer some encouragement, the researchers commented that more research was needed to identify which factors in VOM were likely to influence positive outcomes. They also noted that VOM should be undertaken "carefully and with caution", using policies and practices which are sensitive to the wishes of victims, and coerce neither the victim nor the offender,

⁹ Study in Canberra, cited by Superintendent Mel Lofty, Head of Restorative Justice, Thames Valley Police, at a conference in Edinburgh, Effectively Achieving Youth Justice in Scotland and England, 9 June 2000.

¹⁰ Nugent, W.R., Umbreit, M.S., Wiinamki, L., and Paddock, J., (2001) Participation in Victim-Offender Mediation and Reoffense: Successful Replications? in *Research on Social Work Practice*, Volume 11 No.1, January 2001, Sage Publications.

Young Women who offend

Research into the personal circumstances and background of adult imprisoned women offenders in many jurisdictions has produced similar findings. These women are less likely than their male counterparts to commit violent offences, and tend to commit less serious offences of dishonesty. Their backgrounds are marked by experience of abuse, drug misuse, poor educational attainment, poverty, psychological distress and self-harm. To date there has been less research into the characteristics of girls and younger women who offend and who are dealt with in the community, but there is some evidence to suggest that the circumstances of the most persistent young women offenders are very similar. American researchers have commented that "When the profile of girl offenders is compared to the profile of adult women offenders, both in prison and in community corrections, it becomes clear that they are essentially the same females moving along the system".¹¹ The same writers note that "...two associations must be considered: the connection between childhood victimisation and offending and the connection between substance misuse and offending".¹²

Recent work in Scotland provides further support for this view. The review of women offenders conducted by SWSI and HM Chief Inspector of Prisons, "A Safer Way", noted that girls who were referred to the Children's Hearings on offence grounds were more likely than boys to have previously come to the attention of the Hearings for other reasons¹³. The most common early referral grounds for girls related to victimisation through sexual abuse, being "beyond parental control" or being in "moral danger". In addition, when the Social Work Services Inspectorate (SWSI) examined the circumstances of 25 young women aged under 18 years who were remanded in custody or imprisoned during a 4 months period they found a very similar profile. The lives of these young women were characterised by chronic substance misuse, and, in many cases, physical and sexual abuse, as well as a range of educational, employment and accommodation problems.

¹¹ Bloom, B., and Covington, S., (1998) Gender-Specific Programming for Female Offenders: What is it and Why is it Important? (Paper presented at the 50th Annual Meeting of the American Society of Criminology, November 11 –14, 1998, Washington D.C.

¹² *ibid*

¹³ The Scottish Office (1998) Women Offenders: A Safer Way, Edinburgh: The Stationery office