



Report of focus groups on youth offending and sentencing

Summary report

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A summarised evaluation of the public perceptions of youth offending and sentencing. This work was used to inform the Scottish Sentencing Council's decision making and drafting around the 'Sentencing young people' guideline.

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Introduction

This report summarises work undertaken exploring the public perceptions of youth offending and sentencing. This work was undertaken in two tranches, initially from June to August 2017 and then subsequently between January and March 2018. This work was used to inform the Scottish Sentencing Council's decision making and drafting around the 'Sentencing young people' guideline. This report is being published to provide additional context and understanding in support of the Council's public consultation on the 'Sentencing young people' guideline. It should be read in conjunction with the Council's other published research on this topic, available here:

<https://www.scottishsentencingcouncil.org.uk/publications/>.

In its 2015-18 Business Plan, the Scottish Sentencing Council announced its intention to prepare a guideline for the courts on the sentencing of young people. This is a complex area with opportunities to significantly improve public education and confidence, and to consider how such offending behaviour can be addressed. This report seeks to explore key public attitudes to the sentencing of young people, including core principles in sentencing and best practice approaches to encouraging desistance, along with examining a real world case study.

Methodology

This report summarises two distinct tranches of fieldwork. In the initial tranche, qualitative data on public perceptions were gathered through a series of focus groups. Seven focus groups with a total of 39 participants were conducted throughout Scotland. A brief demographic summary of participants can be found in table 1, below.

Table 1: Demographic breakdown of participants – tranche 1

Demographic Information Summary (39 participants)		
Gender	Female	21
	Male	18
Age	18 - 24	9
	25 - 64	20
	65 +	10
Employment Status	Employed	9
	Looking after family or home	1
	Retired	16
	Student	13
	Unemployed	0
Parent	No	18
	Yes	21

Transcripts of the focus groups were made and data were analysed to identify emergent themes. These themes were incorporated into a coding structure used to analyse the transcripts.

In the initial participant recruitment stages in excess of 1,200 organisations were approached, ranging from sports and recreational clubs to religious centres. While this resulted in a geographic spread of respondents with a range of employment statuses and ages, all initial focus group participants identified as white. To address concerns that the perceptions and experiences of the criminal justice system may differ for those from minority ethnic groups, additional fieldwork was undertaken with focus groups composed of respondents identifying as coming from black or minority ethnic backgrounds. This second tranche of focus groups included three sessions with a total of 28 participants across central Scotland. Brief demographics of this second tranche of respondents can be found in table 2, below.

Table 2: Demographic breakdown of participants – tranche 2

Demographic Information Summary (28 participants)¹		
Gender	Female	19
	Male	8
	Non-binary	1
Age	18 - 24	2
	25 - 64	24
	65 +	0
Employment Status	Employed	17
	Looking after family or home	0
	Retired	0
	Student	6
	Unemployed	4
Parent	No	6
	Yes	22

Transcripts of the focus groups were made and data were analysed using the coding structure developed during tranche 1.

All participants in tranche 2 identified as coming from black or minority ethnic backgrounds. While the focus groups comprised participants with a mix of backgrounds, it should be noted that there were no non-minority ethnic participants in these groups. Although unintentional, the segregation of white and black or minority ethnic participants may have influenced discussions to some unknowable extent.

Main Findings

- Participants viewed youth offending and sentencing from a perspective analogous to the whole systems approach, seeing criminal sentencing of youths as symptomatic of larger, structural failures.
- There was no agreed definition of a “young” person. Participants’ definitions of when youth should no longer be taken into account ranged from 16 to up to 25 (although the upper range was dependant on the maturity of the offender).
- Successful interventions were often seen to come before sentencing often taking the form of diversions from prosecution (e.g. in school or at home) rather than as a result of it.

¹ Not all participants answered every demographic question. As a result, cells may not sum to 28.

- Participants tended to see rehabilitation as a key goal in sentencing young people – more so than when sentencing adults, although punishment and deterrence were also important.
- When undertaking the sentencing case study, participants tended to agree on a sentence that was very similar to that given by the court.

Understandings of youth offending and its causes

At the start of the focus groups, participants were asked to discuss what they understood by the term “youth offending”. Participants tended to define the offences involved in youth offending broadly, covering behaviour which could be seen as relatively minor, all the way up to murder.

“Do you remember removing the window wipers from cars? Never thought anything of it. Now that’s not a bad thing to do. That’s a child thing to do. You’re not offending. Well you are offending, but it’s something that people look at and don’t think twice about when you’re a child. When you’re a driver, and it’s pouring rain and you can’t drive your car to work because you don’t have a legal... That’s a massive implication to a family who can’t afford the £7.99 or don’t even know how to fit it. The repercussions of that. That’s minor. I would say that’s minor. That’s just kids being kids.” (Tranche 1 participant)

“My earliest memory of like youth offending was...I mean everyone will probably know this case, it was ... Jamie Bulger...” (Tranche 2 participant)

Participants’ understandings of the causes and factors driving youth offending tended to be broad, framing youth offending as a societal problem caused by either systemic or familiar failures.

A common thread throughout group discussions was around parenting, or the lack of, being a preamble to youth offending and was seen as having significant influence in why young people offend.

“My perceptions are slightly more that there must be a reason for children to be doing these things, rather than immediately saying they are criminals. More that they’ve been let down, they’re bored. That’s more my perception.” (Tranche 1 participant).

“A lot of the time, the kids are on the street because their parents aren’t there – they’re drug users.” (Tranche 1 participant).

Some participants went further with this idea, highlighting that the young people committing these crimes are in the penal system because they have not got the help that they require to prevent reoffending and perhaps do not have appropriate adult support and backing.

“There are so many kids that go unreported, but they are neglected. I am generalising here a lot, but I would say, would they not be the ones who are predisposed to actually commit crimes? They are in the environment; they have family trauma and stuff. They are the ones who actually go and do this kind of crime, however, they go unreported and completely neglected and when they do go into the penal system, it’s not taken into account at all.” (Tranche 1 participant).

Participants also discussed influence from peers. If peers and friendship groups are showing off their criminal activities, young people are seen to be extremely impressionable and impulsive at such ages, therefore are less likely to say no in a peer group situation for fear of being ostracised or being made to feel an outcast.

“It’s boundary issues from an early age that cause, I think, youths to stray, because of the acceptability from their peers and their elders. That then leads to a whole lot of different social issues that leak into the system.” (Tranche 1 participant).

Defining a “young person”

Participants were asked to discuss who they understood to be a “young person” for the purposes of sentencing within the criminal justice system. Participants often made assumptions around ages in a person’s life when they transition from one significant or notable stage to another, without taking into consideration other factors and whether or not this is a uniform occurrence.

“I think people under the age of 21.” (Tranche 2 participant.)

“Personally for that type of thing, offending, not generally for any other thing, I think it should be 18... You know, I feel that people are at an age, in the main, that they

know what they're doing. If they can make decisions on all sorts of other things, then... ” (Tranche 2 participant.)

However, participants also acknowledged that cut off ages are arbitrary and could be ill-defined. Despite this, they still framed chronological age as being the primary factor for consideration, but with a degree of flexibility and leeway built in to the judicial process.

“Ultimately, your ADHD point is quite a good point. Ultimately, by 16, you're going to have developed a conscience. At the end of the day, by 14, you're going to have an idea of moral rights and wrongs. Ultimately, your decisions are your own and they fall on you at the end of the day. Your ADHD things like that, mental health, yeah. I can understand a stipulation and some potential leeway in a sense” (Tranche 1 participant).

“I don't think you can cut off youth. Because everybody is different, you can't say this is the cut off of being a youth. I think that's to fall to social services to do backgrounds reports and things like that because some people are 16 and got the mental age of an 8 year old. Some people are 8 and have the mental age of a 16 year old. You can't just cut off...” (Tranche 1 participant).

As the above examples detail, there was no consistency in the age limit suggested by participants in the focus groups, although key “milestone” ages (16, 18 and 21) were mentioned most frequently. An upper age of 25 was suggested in some cases as well.

“I don't know, under 25 probably? Often group-related, and probably mostly minor? Just off the top of my head” (Tranche 1 participant).

Participants did highlight some concerns that if there aren't rigid definitions around age, how are those imposing sentencing supposed to be consistent in their delivery and upholding of the legal system?

“If there's so much flexibility in the definition, then clearly whoever's arranging the hearing or sentencing is making their own judgement on the definition too. There's going to be a huge number of inconsistencies” (Tranche 1 participant).

Purposes of sentencing for young people and effective sentencing

Participants were asked to discuss the purposes of sentencing for young people. This conversation often covered what makes a sentence effective when dealing with a young person, suggesting that participants' opinions around the purpose of sentencing may be based upon what they think will work to prevent future re-offending.

“There needs to be some sort of punishment and consequences but at the end of the day, it’s about trying to stop the person repeating, is that the word...?” (Tranche 1 participant.)

Perhaps following from this emphasis on the prevention of reoffending, participants tended to emphasise rehabilitation as the most important purpose of sentencing for young people.

“Yeah – rehabilitation, stop it going and progressing down the system” (Tranche 1 participant)

“I would certainly want to say in answer to your question, that the purpose of the process should be diversionary rather than...Rehabilitation, diversion is definitely the way forward.” (Tranche 1 participant)

“Rehabilitation of the young person so they can reflect on what they’ve done, hopefully in a safe environment and consider changing their actions in the future.” (Tranche 2 participant.)

However, participants also highlighted the importance of punishment as a form of deterrence in regards to the sentencing of young people. This was often, although not always, framed as working in concert with rehabilitation.

“I think there has to be an element of punishment as well as rehabilitation for more serious crimes. Even for lesser crimes, they need to be reprimanded to understand.” (Tranche 1 participant.)

“[I]n the first place it’s a deterrent, and secondly it is about rehabilitation. There’s a difference between going for the rehabilitation right away. I think there’s a deterrent, you know like...you’ve done something wrong, you’re going to do time. Simple as that.” (Tranche 2 participant.)

“Deterrence. That’s what it should be. You find a lot of the time, they don’t deter them. They look for ways to make it not their fault, to make it a breakdown in the family or something else that’s happened” (Tranche 1 participant.)

Sentencing exercise

Participants were given an anonymised criminal case (see appendix A) involving a young person to discuss and were asked to propose a suitable sentence. Participants were then told the actual sentence received by the young person and asked to compare the two sentences. Lastly, the participants were given the final sentence after appeal and again asked to compare their sentence with the actual punishment.

Based on the information given, participants generally considered the offence to not be worthy of a custodial sentence.

“He would have to go to something to do with alcohol... Certainly, it’s not jail worthy.” (Tranche 1 participant)

“[Interviewer]: Ok what I’m hearing from you all is that a sort of medium level sentence, probably a community supervision of some sort with an alcohol course..” (Tranche 2 focus group)

When considering the first sentence given to the offender at trial (a period of custody), respondents generally expressed disagreement with the level of punishment involved.

“I don’t think making an example of someone is a good way of law making to be honest with you.” (Tranche 1 participant).

“I cannot believe that is a custodial sentence, I really can’t. Ok, maybe [the offender is] a bit of a prat but where is the rehabilitation there?” (Tranche 1 participant).

The offender is further given sympathy by other respondents for the way he has been treated due to his circumstances.

“He is being judged by his circumstances and where he lives and things that other people are committing.” (Tranche 1 participant).

As well as having a personal disposal handed down to the individual offender in the instance, one respondent considers the wider community issue of why such offences are happening in that particular area. They suggest that if systems and processes are in place already, they are clearly not as effective as they could be and require revisiting by the relevant and appropriate organisations. This reflects the perception of participants that pre-prosecution diversion and activities are generally more effective than criminal sentencing.

“If it’s a common theme, then they’re not dealing with it properly. If it’s commonly occurring, whatever systems are in place isn’t working. Needs to be revisited. That’s like in our community.” (Tranche 1 participant).

When discussing the sentence on appeal (a community order involving alcohol treatment), participants felt more at ease and in agreement with the final sentence.

“I think that the second one was better. I would have said straight away something because he’d had chances before. I never took into account the area. I never took into account anything like that.” (Tranche 1 participant).

“I think that’s much better. Like if he is naughty again he will end up in a young offenders institute anyway, so this is something in the middle where he’s being supervised for one year, which is a long time for a young person, all the way until he’s 18 years old... until he’s 18 years of age sorry, and you know, he’s doing something to give back to the community as well, so he’s learning something from that too. So he’s being punished, I’d say, in the right way.” (Tranche 2 participant.)

Overall, despite some suggestions in earlier discussions that sentences may be too lenient for young offenders, participants tended to propose sentences very similar to the final sentence given by the appeal court and express surprise and concern at the harsher sentence given at trial.

Discussion and Conclusions

Throughout the focus groups and despite facilitators highlighting the remit of the Council extending only to sentencing in court, participants consistently viewed youth offending in the

light of the whole social care system. Recommendations for intervention and prevention frequently sat outwith the courts. As such, any guidelines issued by the Council may not address all the perceived problems or solutions.

Participants tended to view rehabilitation as a core purpose of sentencing young people. This tended to be because young people had a larger number of years of life remaining in which to contribute to society and because they deserved a second chance due to their immaturity. Participants contrasted this with the sentencing of adult offenders, where rehabilitation was still a factor, but not as important as it was for youth offenders.

Participants did not have a uniform sense how to define “young” people, nor when an offender’s youth should stop being taken into account. Some participants took a very clear cut approach based on age – usually 18 – which was informed by other legal milestones such as voting. Others noted problems with this approach, citing varied legal cut offs, such as marriage, driving and drinking in pubs. Others still took a more developmental approach, with some mentioning studies suggesting brain maturity is not complete until 25 in some cases.

When participants were presented with an anonymised sentencing case study, they tended to broadly agree on a sentence, suggesting a degree of accepted levels of punishment. The sentence agreed on was very similar to that given by the court of appeal in the case study. Participants were shocked by the perceived undue harshness of the first instance sentencing. This suggests that, at least in the case presented, public attitudes to sentencing are broadly in line with accepted judicial thinking.

ANNEX A

Sentencing exercise

RH (the accused) – 17 years of age

Charge(s):

- (1) Assault to injury – Pled Guilty
- (2) Assault to injury – Pled Guilty

The accused was involved in a heated discussion with the complainer in Charge (1), SF, before the complainer threw a punch in the direction of the accused. After this the accused began punching the complainer before they both fell to the ground. The accused then walked over to the complainer in Charge (2), MB, who was standing watching the incident. Without warning the accused punched MB in the face.

Mitigating Circumstances:

The accused has no prior convictions, though had previous dealings with the Children's Hearing System and an outstanding Breach of the Peace charge. He is employed in the family business as a Steel Fixer. The accused had been drinking heavily and his recollection of events is hazy. He regularly consumed alcohol since early teens, habitually with other young people in groups.

Sentence at First Instance:

Charges (1) and (2): 14 months and 2 weeks' detention in a Young Offenders' Institution, reduced from 18 months' detention due to the guilty plea.

Reasoning:

- No previous convictions against him despite dealings with the Children's Panel and an outstanding charge for Breach of the Peace.
- Only a custodial sentence was appropriate given the attitude of the offender and his grandparents would not consent to a Restriction of Liberty Order.
[Area] is being plagued by gratuitous, random and casual violence committed by young men fuelled by alcohol and/or drugs. The offences are all too prevalent when groups of youths gather to drink copious amounts of alcohol and then pick on anyone who happens to irritate them, however innocently. The outcome could have been far worse.

Sentence on Appeal:

Charges (1) and (2): Community Payback Order involving supervision for a period of one year, and attendance at alcohol counselling, to be carried out by the Tayside Project, for a period of one year.

Reasoning:

- The Court has sympathy with Sheriffs faced with such social problems in their areas.
- There are other factors that may be taken into account in sentencing and, notwithstanding the seriousness of the offending behaviour, we reached the conclusion that the appellant requires supervision for a significant period of time to ensure that he desists in future from such behaviour and does not continue to contribute to the offend.
- The appellant had already served a period of detention, which the Court trusts has taught him some kind of lesson in itself.
- The main concern of the court is to ensure he gets the benefit of supervision in future.
- The appellant, at the time of the offending, had a problem with the use of alcohol and the Court was anxious that this problem be addressed.

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