



## includem submission: Scottish Government Consultation on Raising The Age of Referral to the Principal Reporter

October 2020

### 1. Do you agree that the maximum age of referral to the Reporter should be increased to 18?

#### a) Yes – All cases

**includem strongly supports the increase in referral age for all children to 18.** In the year that has seen the introduction of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill it is important that the measures within our legislation for children are aligned with the UNCRC. Article 1 of the UNCRC defines a child as anyone under the age of 18. For many years the practices with referring young people to the Children's Reporter have been anomalous with this definition, with significant lifelong consequences for young people aged 16 and 17 who enter the adult criminal justice or adult support and protection systems instead of the welfare-based Children's Hearing System.

The fundamental principles of the Children's Hearing System as outlined by the Kilbrandon Report are that the welfare of the child is paramount and, for the measures to be effective, the child had to be viewed in the context of the family. This is regardless of the cause for concern which brought the child before a Children's Hearing. There was a fundamental recognition that punishing young people for behaviour which has resulted from failures in their own care and upbringing was not the right response. These principles remain unaltered more than 50 years later and for that reason includem support the raising of the age of referral for all cases. They do not change when a young person turns 16.

Article 19 of the UNCRC places a duty on the state to have all appropriate legislative, administrative, social, and educational measures to protect the child from all forms of abuse, neglect or negligent treatment, maltreatment, or exploitation. It follows that children, every human being under the age of 18, in need of care and protection and those who come into conflict with the law have a right to the same protections. There should be no distinction made based on age or presenting behaviour. One of the parents we support said, *"My son is still a wee boy and it's not fair at 15/16yrs old to be treated as an adult. 18yrs old would be fair age. We are dragging our children up too fast."*

Scotland is proud of our unique welfare-based Children's Hearing System and so we should be.

**However, the current referral criteria which excludes some 16- and 17-year olds do not uphold the rights of all children and creates a disparity between children.** These children could be the same age and engaged in the same activity but dealt with differently by virtue



of whether they are already in the system or not. Inclusion of all under 18's gives the greatest ability to uphold children's rights and in particular Article 40 part 3 and 4 – that there are measures for dealing with children in conflict with the law without resorting to judicial proceedings and that the variety of dispositions ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

This is what one of our young people said about how a Compulsory Supervision Order (CSO) would have made a difference in her life. Despite Caitlin's behaviour and coming into conflict with the law, she was not given a CSO and was only referred to the children's panel, but no further action was taken. She believes that earlier support and guidance could have helped her, and other young people in similar situations.

*"I think if you commit a crime at that age, you're obviously not old enough to understand, your brain isn't old enough. Maybe we shouldn't be punished, maybe we should be taught and supported. Not everyone knows what's right and wrong at that age. I know people who were punished at that age who then turned out really bad, and maybe they wouldn't have if they hadn't been punished like that.*

*"I am now dealing with the offences through the adult system from when I was 16yrs old. A CSO would have steered me in the right direction... all I wanted to do when adults told me what to do is rebel against them. I didn't realise that they were trying to help me. At 14, 15 I didn't understand but its only now that I'm starting to understand my actions having consequences and I'm starting to sort myself out."*

includem foresee that there will be other legal considerations with raising the age of referral to 18 which we would also like to comment on.

**All young people made subject to a CSO after their 16<sup>th</sup> birthday should be eligible for continuing care services.**

It is not clear if the provisions for continuing and aftercare as currently outlined within the Children and Young People (Scotland) Act 2014 will automatically extend to those young people made subject to a CSO after their 16<sup>th</sup> birthday should the age of referral be raised. includem believes that access to the full range of support and corporate parenting responsibilities into young adulthood are just as important for these young people and, if necessary, amendments should be made to the 2014 Act to support entitlement to the continuing and aftercare provisions for all young people on a supervision order on or after their 16<sup>th</sup> birthday.

**CSOs should be in place for a full 12 months for young people placed on an order after their 17<sup>th</sup> birthday to allow for a realistic time scale to achieve change.**

As the current law stands within the Children's Hearing (Scotland) Act 2011 a CSO automatically falls when a young person turns 18. includem is concerned that young people approaching their 18<sup>th</sup> birthday will not be placed on a CSO as there would not be sufficient time to enact the agreed care plan. This would mean that the intention of extending the age



of referral to 18 would not be achieved. includem calls for the 2011 Act to be amended to allow for a CSO imposed after a young person's 17<sup>th</sup> birthday to run for a full 12 months to allow the young person the full protection of the Children's Hearing System within a realistic time scale to achieve change. This also considers the recent research conducted by The University of Edinburgh on behalf of the Scottish Sentencing Council into the brain development of young people which shows that full maturity is not reached until around the age of 25. Young people should be offered the greatest protections we can offer while they remain at risk of continued offending due to their stage of development.

**2. If the age of referral is increased to 18, are the existing grounds of referral to a Children's Hearing sufficient (see pages 11-12 for existing grounds)? a) Yes b) No Please provide reason(s) for your answer (free text).**

**We ask for specific grounds for young people who are at risk of, are being or have been sexually or criminally exploited.**

includem do not consider that the current grounds of referral provide sufficient protection for those who have been sexually or criminally exploited. Our experience of supporting young people in these situations tells us that they frequently do not see themselves as harmed or adversely affected. We do not consider therefore that they would accept a referral under (e) grounds which could delay the process of providing them with the legal protections of the Children's Hearing System.

includem would ideally like a separate ground which reflects the experiences of these young people. We would suggest something like: 'the child has been, is being, or is likely to be, groomed, trafficked, exploited, coerced or subjected to physical, emotional or other pressure to engage in sexual or criminal activity'. With this wording the fact to be accepted or established is around the behaviour and actions of those doing the exploiting, not whether harm can be evidenced. We think young people are more likely to accept this.

**3. What are your views on the potential implications, including resource, of increasing the age of referral to the Reporter for local authorities, Police and other service providers/organisations?**

**Local Authority Children and Families Team need to be appropriately resourced to provide the right support when it is needed.**

We know from our own experience that Local Authorities' Children and Families Teams are already stretched, and more and more are responding only to those most at risk and need. includem's vision is a world where every young person is respected, valued, and has the opportunity to actively participate in all aspects of life and society. This includes a vision that young people and families get the support they need, when they need it to live safely in their communities without statutory intervention.

includem recognises that raising the age of referral to the Children's Reporter will result in more young people being placed on CSO's and therefore allocation of Children and Families



already stretched resources. Likewise, it is expected that fewer 16- and 17-year olds will be involved in the adult criminal justice system, including diversion from prosecution. includem would expect that there will be a realignment by Local Authorities of funds and resources from adult services to children and families. **We do not consider, however, that this is enough.** The Scottish Government recently committed £4 million to The Promise for family support. Again, we do not consider this is enough. To truly realise the vision of Kilbrandon and in particular the no order principle, more resources need to be given to statutory and third sector agencies to provide holistic family support to prevent children and young people's need and risk increasing to the point that they need to be referred to the Children's Reporter.

After years of austerity, Local Authority services are stretched thin and as a result many families often only receive a service from Social Work when a crisis occurs. Many Local Authority Social Work departments report long waiting lists and an inability to do preventative work. Within these constraints there is a significant risk that an unintended consequence of raising the age of referral will be young people being placed on a CSO in order to receive a service. Local Authority Children and Families teams need to be adequately resourced to provide a service that limits the need for children and young people to require a Compulsory Supervision Order.

includem is also concerned that due to Local Authority financial constraints, Social Workers will not recommend young people for a Compulsory Supervision Order over the age of 16 due to the financial and corporate parenting responsibilities of continuing care. Sufficient financial allocation needs to be given to Local Authorities to allow for adequate provision of aftercare services to ensure that young people who need statutory support receive it without any consideration to the financial implications.

## Secure Care

includem has direct experience of supporting young people who have been subject to a CSO, have been remanded by the court and there is no secure bed available so they have been remanded to a Young Offender's Institution, sometimes with tragic outcomes. Many times, there are no secure beds available in Scotland's secure estate due to English young people being placed in Scottish Secure Beds. We have also supported young people not on a CSO who have been placed in a Youth Offenders Institution as their lack of a CSO creates a barrier to being placed in a secure bed.

Were this change to come into force, it is logical to assume that children otherwise detained in a YOI would be cared for in a secure unit, and that – in turn – would have implications for the already stretched capacity within the secure estate, local authorities and children from outwith Scotland. Scotland's secure estate needs to be funded differently to ensure that there is always a secure bed for a Scottish child when it is needed.

Whilst secure care is a more appropriate child-focused setting than Young Offender Institutions for children who require to be deprived of their liberty for their own safety and/or the safety of others, it is recognised that it best for children if they can be supported



safely in their community. More needs to be done to utilise Alternatives to Remand and resources appropriately diverted to support this service provision.

**The Adult Support and Protection legislation and procedures should be amended to remove 16- and 17-year olds.**

Children aged 16 and 17 are currently covered by the Adult Support and Protection (Scotland) Act 2007 and associated procedures. We do not consider it appropriate for children to be considered within this act. If the premise is accepted that every human is a child until the age of 18 then all children should be covered by the National Child Protection Guidelines, they should be offered legal protection from the Children’s Hearing System and there should be no necessity for them to be covered by Adult Support and Protection (ASP). includem requests that should the age of referral be raised that amendments are made to the relevant legislation and procedures to remove 16- and 17-year olds from ASP.

**4. What are your views on the potential implications, including resource, of increasing the age of referral to the Reporter for SCRA (the public body which operates the Reporter service)?**

Should the age of referral be raised it is logical to assume that there will be an increase in the number of referrals to the Reporter for SCRA. This could result in delays in dealing with referrals due to the increased workload. It is imperative that SCRA are allocated enough resource to ensure that they can respond to each referral in a timescale that it helpful to the young person and their family.

**5. What are your views on the potential implications, including resource, of increasing the age of referral to the Reporter for Children’s Hearings Scotland (the body which operates the national children’s panel)?**

includem recognise that the needs of 16- and 17-year olds requiring support from the Children’s Hearing System are different from those of younger children. We consider that with the raising of the age of referral that members of Children’s Panels will require additional training on their needs and development, such as the recent studies on brain development and its impact on risk taking and decision making. This will be particularly important should older young people be referred on offence grounds and the panel are asked to consider the best ways of supporting them within a welfare-based rather than justice-based system. It is possible that an increase in this type of referral will increase the use of advocacy and legal representation, so it is important that all participants understand why a welfare response remains paramount.

includem considers that there is also likely to be an increase in referrals for children aged 16 and 17 who have been criminally or sexually exploited. The exploitation of children is a complex issue particularly for those who are over the age of legal consent for sexual activity or who appear to be profiting from their behaviour. We recommend that panel members receive appropriate training on child exploitation in order that these young people receive the best possible support and protection afforded by the Children’s Hearing System.



**6. If the age of referral to the Reporter was increased, are amendments required to ensure sufficient access to information and support for victims harmed by children? a) Yes b) No Please provide further details for your answer, including any extensions or amendments you would wish to see (free text).**

We recognise that it is important for communities and victims of crime or harm to see that action is being taken by the police and the justice system in addressing these offences. However, we also know that interventions that prevent involvement in the criminal justice system reduces the likelihood of further offending. These two things are not mutually exclusive and with the right information victims can be reassured that the behaviour has been addressed.

Fundamentally we consider that 16- and 17-year olds are children and should be afforded all the protections available to them under the UNCRC, they should therefore be offered the same measures available to those children under 16 who cause harm – there should be no difference based on age. We consider therefore that the current level of information provided to victims about the decision making of the Reporter of whether to refer a child to a Hearing and the sort of outcomes of the Hearing is sufficient. Although we recognise that this information would not necessarily bring comfort or closure to the victim. includem believe that use of restorative approaches would bring this closure and increase the victim's confidence in the system.