Preventing Youth Crime in Scotland: The Practices of Early Intervention and Diversion under 'Whole System Approach' Implementation

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Declaration

I declare that none of the work contained within this thesis has been submitted for any other degree at any other university. The contents of this thesis have been composed by Nicola Louise Benbow.

Abstract

There is a great deal of importance placed upon the conceptual strategies of diversion and early intervention in the field of contemporary youth justice. Despite the centrality of these concepts, comparatively little attention has been paid to critically exploring how they are interpreted and enacted by professionals at the front line. This thesis investigates the meaning of the highly contested rationales of diversion and early intervention in relation to the current policy context of enacting a 'Whole System Approach' (WSA) to prevent youth crime in Scotland. Utilising a qualitative case study design, the field work involved: analysis of questionnaires following a scoping study, documentary analysis of protocols and guidance documents, multiple observations of meetings and events across three case study areas, and forty-two interviews with a range of youth justice professionals.

This thesis makes a valuable contribution that is relevant for both professional and academic audiences. Firstly, the research brings considerable insight into the many intricacies and challenges involved for professionals working to prevent crime through early intervention and diversion. The research found that these strategies are conceptualised differently in practice, leading to ambiguity and variability in relation to local application. The thesis also considers the key implications arising from these differing conceptualisations, which raise some problematic issues of relevance to wider critical debates in youth justice. In particular, this thesis contributes to the academic literature through critically exploring the problems associated with responding to welfare concerns within a youth justice context, upholding children's rights within a pre-statutory context, and the implications of allowing ample discretion and local experimentation in youth justice policy implementation. Lastly, the research also found some evidence of neo-liberal influence in the implementation of the WSA, serving as a reminder that multiple and complex discourses are consistently at play within the contemporary youth justice sphere.

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Glossary

ASBFPN **Anti-Social Behaviour Fixed Penalty Notices**

On-the-spot fines issued by the police for low-level antisocial offences.

CHS **Children's Hearings System**

The care and justice system in Scotland for children and young people. A decision-making lay tribunal called the children's panel make decisions on the safety and wellbeing of children and young people. The CHS is the operational setting in which SCRA and partners work.

CSO **Compulsory Supervision Order**

A compulsory supervision order (CSO) is an order that the hearing can make which means that a named local authority is responsible for supporting the child or young person. The CSO will have conditions attached, such as what support the child is to receive, where the child or young person is going to live, for example with foster carers or in residential care, and/or who the child should have contact with.

COPFS **Crown Office and Procurator Fiscal Service**

The independent public prosecution service in Scotland. It is responsible for the investigation and prosecution of crime in Scotland.

CYCJ **Centre for Youth and Criminal Justice**

A workforce development centre which advises and supports workforce development by providing practice support, disseminating best practice and provide guidance. Funded by the Scottish Government.

EEI **Early and Effective Intervention**

EEI aims to prevent future offending or antisocial behaviour by providing timely and proportionate interventions, and alerts other agencies to concerns about the child or young person's behaviour and well-being. Also see PRS below.

GIRFEC **Getting it Right for Every Child**

A national approach to improving outcomes and supporting the wellbeing of children and young people through partnership between services, parents and children.

PRS **Pre-Referral Screening**

A pre-statutory screening and decision-making process for young people who have been charged by the police. PRS usually operates on either a multi-agency group basis or led by a single agency (usually the police) in consultation with other agencies. In some areas of Scotland, PRS is referred to as EEI.

PF **Procurator Fiscal**

Legally qualified prosecutors who receive reports about crimes from the police and other agencies and make decisions on what action to take in the public interest and where appropriate prosecute cases.

SCRA **Scottish Children's Reporter Administration**

A national body which facilitates the work of Children's Reporters whose roles include making effective decisions about a need to refer a child/young person to a children's hearing and supporting children's hearings' panel members and children, young people and their families.

VPD **Vulnerable Person Database**

A Police Scotland electronic IT system which was first introduced in 2013. The database is used to record details of concerns about children and adults, and it provides a way of sharing information across the country via 'concern forms' held on the system.

WSA **Whole System Approach**

A Scottish Government policy introduced in 2011. The WSA aims to divert young people who offend from statutory measures, prosecution and custody through the use of early intervention and robust community alternatives.

Chapter One: Introduction

Background

Initially introduced in 2011, the 'Whole System Approach' (WSA) is considered by many as a highly successful initiative in its pursuit to create a more effective, efficient and joined-up Scottish youth justice system. The implementation of the WSA has corresponded with a significant and interesting period in youth justice history, where there have been substantial falls in reported crimes committed by children and young people across the globe (Bateman 2008; Eisner 2003; Farrell et al. 2015). Scottish youth justice statistics also suggest that youth offending behaviour is in decline: In June 2009, there was a total of 1300 under 21's in custody. In June 2017, this number had reduced to 357 (Robinson et al. 2017). Similarly, the number of 16 and 17-year-olds convicted in Scottish criminal courts has declined sharply over the last decade, witnessing a 78% decrease during the period 2007/08 to 2016/17.[1] These downward trajectories are often attributed to the perceived success of the WSA's ambitions in Scotland, particularly citing the initiative's central philosophies of preventing entry into formal systems through diversionary measures and through delivering early intervention to provide holistic support for children and young people. This thesis is primarily concerned with critically exploring these two central strategies; that is, the research examines the conceptualisation and enactment of diversionary and early interventionist practice under WSA implementation.

Despite the crucial importance placed upon notions of diversion and early intervention in youth justice practice (Haydon 2014; Smith 2014), comparatively little attention has been paid to critically exploring how they are interpreted and enacted by professionals at the front line (Richards 2014). Although there have been some attempts elsewhere which have explored the 'implementation gap' between diversionary policy and practice (e.g. Smith 2014; Kelly and Armitage 2015; Swirak 2015), and the complexities involved in delivering 'early intervention' in a youth justice context (Haydon 2014), similar research which is specific to Scotland is somewhat lacking. Utilising a qualitative case

[1] Data obtained through a Freedom of Information Request to the Scottish Government, September 2018.

study design, this research brings considerable insight into the many intricacies and challenges involved for professionals working to prevent crime through early intervention and diversion. Furthermore, this thesis contributes to the academic literature through critically exploring and revealing the multiple, contested discourses that are present within the Scottish youth justice system under WSA implementation. This thesis is particularly timely in the current context of falling crime rates, and the paucity of research carried out in relation to the conceptualisation and enactment of diversion and early intervention ideals in practice.

Context of the Thesis

It is the basic premise of this thesis that youth justice policy and practice could be characterised as a 'hotchpotch of punitive and welfarist interventions rooted in a range of confused philosophies, ideologies and approaches' (Case 2015, p.99). Numerous scholars agree that the nature of youth justice involves a 'melting pot' (Fergusson 2007) of differing rationales, whereby conflicting and contradictory principles sit uncomfortably alongside one another in policy and practice (Muncie 2006). The very nature of youth justice strategies and rationales are problematic due to their highly ambiguous nature. The concepts of 'diversion' and 'early intervention' could be described as amorphous, ill-defined rationales which adopt different meanings depending on the context in which they are applied (Richards 2014; Case and Haines 2015). Akin to the views of these scholars, this thesis is rooted in the thinking that these are highly problematic concepts which necessitate further explanation and exploration, because their ambiguous nature can lead to high discrepancies in practice, as this research will demonstrate.

Related to the above, is also the belief that the youth justice system should not be understood or portrayed as a logical, coherent system or 'object' that can be straightforwardly manipulated or studied (Phoenix 2016). At the heart of the WSA is the stated objective to improve the efficiency of the 'whole system' through 'streamlined and consistent planning' and 'integrated processes' (Scottish Government 2011e, p.1). Such goals appear to convey a youth justice system which is linear, through placing considerable emphasis upon the importance of standardising proceduralised responses. Achieving such a vision would depend upon a shared commitment from all bodies

considered as part of the youth justice system[2], with congruent understandings of the current youth justice strategies and rationales. Due to the multiple, contested rationales in youth justice, and the number of organisations involved as part of the 'youth justice system' (and with all with their differing goals, professional orientations and accountabilities), it is the basic premise of this research that the youth justice system could be characterised as highly complex, non-linear, dynamic, and open to constant change (Fishwick 2015).

This thesis is also grounded in the knowledge that there are wider global influences and processes at play, believed to have swept across the field of youth justice practice across all advanced industrialised countries. In particular, key contemporary writers such as Garland (2001) Cavadino and Dignan (2006) Rose (1996) and Wacquant (2009) have written about the decline of penal welfarism and the homogenisation of both criminal and youth justice across Western societies through global transformations and neo-liberal governance. Such global influence has said to have manifested from the 1990's whereby the so-called 'punitive turn' shifted youth justice discourse away from an emphasis upon welfare and social need towards holding children responsible for offending behaviour, particularly witnessed in the USA and in England (Waterhouse and McGhee 2004). Commentators such as Goldson (2002), Muncie (2004) and Smith (2003) have put forward that this represented a shift towards the 'responsibilisation' of young offenders. It has also been suggested that a corporatist model of youth justice has also swept across western societies (Pratt 1989; Pitts 2003), propelling managerialist and actuarialist agendas into frontline youth justice practice (to greater and lesser extents). In amongst all of this, there are a variety of other global influences, with the most notable being the United Nations and their emphasis upon core principles of the rights of children, the 'best interests' of the child, and commitment to ideals of diversion and using custody as a last resort (Hamilton et al. 2016). In light of this, Muncie (2005) has argued that global processes are far from one-dimensional, whereby contemporary influences can involve both punitive and other more 'progressive' ideals. It is the premise of this

[2] The youth justice system in Scotland has vague boundaries which can involve professionals from multiple organisations, including: the police, local authority youth justice teams, social work, the Children's Hearing System, education, housing, The Crown Office and Prosecutorial Fiscal Service, criminal justice services, and different third sector agencies (which is dependent on the locality).

thesis that it is in this highly complex, ambiguous and uncertain context in which the WSA currently operates.

Early Intervention and Diversion under the WSA

The WSA advocates for early intervention and diversion to take place across three main 'sites' of youth justice practice: Pre-Referral Screening; Diversion from Prosecution, and lastly, the retention of young people in the Children's Hearing System whenever possible. Each of these processes are explored within this body of work to discover how the contested concepts of 'diversion' and 'early intervention' have been conceptualised and enacted across these three sites of practice.

Pre-Referral Screening (PRS), otherwise known as 'Early and Effective Intervention' (EEI) could be understood as the most radical strategy contained in the WSA because it represents a different way of initially responding to low-level offending behaviour committed by children and young people. Gillon (2018) reports that referrals to PRS have increased over 5000 per cent since its introduction in 2008, and various commentators have argued that it has brought about a considerable decrease in the number of offence referrals dealt within the Children's Hearing System (CHS). In place of a referral to the Children's Reporter, offence referrals are diverted into the PRS process. Typically, PRS comprises of a multi-agency group who aim to provide appropriate, holistic support as a response to minor offending behaviour (Scottish Government 2015b). The strategy is premised upon the principle of early intervention and intends to provide support to children and young people in a proportionate and timely fashion and acts to divert individuals away from formal systems. PRS is also reflective of the GIRFEC[3] policy agenda which is focussed upon the 'team around the child' (Scottish Government 2011a). Despite its widespread use and considerable emphasis placed upon its importance, the process has faced limited academic scrutiny (Papadodimiraki 2016), aside from two other recent doctoral projects carried out by Robertson (2017) and Gillon (2018).

Secondly, another central aspiration of the WSA is to combat the early criminalisation of 16 and 17-year-olds through expanding the practice of diversion and thus limiting the

[3] GIRFEC is national approach to improving outcomes and supporting the wellbeing of children and young people through partnership between services, parents and children. Introduced in 2006.

imposition of court attendances and custodial sanctions. Historically, there has been considerable concern and debate surrounding the criminalisation of 16 and 17-year-old age group and their precarious place of being 'at the interface' of the child and adult systems (Scottish Executive 2000). This specific group have occupied an interesting and very contested place in the Scottish youth justice field over a long period of time. Political reactions to this group have been ambivalent over the years, demonstrated through the numerous and wide range of strategies and proposals put forward in policy and practice. However, there has been long-standing criticism and deep concern that Scotland is the only country in Western Europe to routinely deal with 16 and 17-year-olds within the adult criminal justice system (Scottish Government 2011a). This practice has not changed in spite of an international body of research evidencing the damaging effects of prosecution and custody for young people, which demonstrates that processing individuals through formal systems of control can in itself lead to increased criminalisation (Bernburg and Krohn 2003; McAra and McVie 2010). Such a stance, which is underlined by notions of labelling theory and principles of minimum intervention, serves as the key rationale which underpins advocating diversionary practice under the WSA. Again, despite considerable increases in the use of diversionary practice amongst 16 and 17-year-olds since the introduction of the WSA, the practice has received very little external scrutiny.

Thirdly, the WSA advocates the increased utilisation of the CHS for 16 and 17-year-olds, through retaining young people on Compulsory Supervison Orders[4] whenever this is possible and appropriate to do so. This strategy is also premised upon the ideals of diverting 16 and 17-year-olds away from the court process, through dealing with cases through the welfarist orientated CHS instead. It was put forward at the time of WSA implementation that changing practice in relation to 16 and 17-year-olds who offend would be the most challenging element of the WSA policy to achieve, with numerous barriers to implementation due to entrenched cultures and ways of working (MacQueen and McVie 2011). Indeed, various authors have drawn attention to the perceived failure of the CHS to retain more 16 and 17-year-olds within the CHS (White 2009; Dyer 2016; Nolan et al. 2018). Despite these claims, there has been no recent research undertaken which explores the reasons behind this from a professional perspective.

[4] For an overview of the CHS and its use of CSO's, see chapter two.

Research Aims

The overarching aim of this thesis is to explore the strategies of early intervention and diversion which have emerged under the WSA in the pursuit to prevent offending behaviour amongst children and young people.[5] This research will explore how these strategies have manifested in practice, how they can be characterised, and will also reveal the challenges involved for professionals who are tasked with delivering these strategies. The research questions comprise of the following:

1. What are the WSA's key provisions and policy directions in relation to diversion and early intervention?

2. How are the principles of early intervention and diversion conceptualised and implemented through the PRS process, what challenges are involved, and how can we characterise this new way of dealing with children and young people who offend?

3. How can the Diversion from Prosecution process be characterised under WSA implementation? What are the challenges involved in the pursuit to divert more 16 and 17-year olds?

4. What are the complexities involved in relation to retaining more 16 and 17-year-olds on supervision orders? From the perspectives of participants, is the Children's Hearing System an effective means of dealing with 16 and 17-year-olds who offend?

In order to answer these research questions, it was decided that a qualitative study utilising a range of data collection techniques would be the best means to explore WSA actors' views and experiences in relation to WSA implementation. Overall, the field work involved thirty-five interviews with professionals across three case study areas, an additional seven interviews with 'policy actors' to provide a national perspective of WSA implementation; seven observations of PRS meetings; an early scoping study involving the analysis of sixteen questionnaire returns; and documentary analysis of key WSA

[5] In correspondence with the majority of Scottish Youth Justice literature and official guidance, in this thesis 'children' will be used to denote individuals under the age of 16. Where the term 'young people' is used, this denotes '16 and 17-year olds' for the sake of brevity.

protocols. I also attended various meetings and events relevant to the implementation of the WSA throughout the fieldwork period.

Structure of Thesis

In order to locate the WSA within its historical and political context, chapter two reviews the socio-political context of youth justice in Scotland. The chapter focuses on providing a summary of Scottish youth justice policy from 1998 (devolution), up to and including the introduction of the WSA. Particular attention is paid to charting developments and changes in response to dealing with 16 and 17-year-olds who offend.

The third chapter will explore notions of prevention, early intervention and diversion in the youth justice context. In so doing, it will reveal the multiple rationales that underpin these practices, and the diverse understandings which have been adopted over time and in different contexts.

Chapter four of the thesis will describe the methodological approach adopted for the study. A description of how the data was collated and analysed is provided, as well as reflecting and justifying why particular methods were chosen. Ethical concerns and key challenges involved in the research will also be discussed within this chapter.

Chapter Five is the first of three findings chapters. Attention will be paid to the various rationales and discourses which underpin the workings of PRS, using three case studies to exemplify how PRS is practiced under WSA implementation. After considering the purpose and objectives of PRS, the chapter also explores the foundations of the process, the different manifestations of 'early intervention' practice in PRS models, and also focuses on the impact of the PRS process specific to 16 and 17-year-olds. The last section of the chapter focusses on some of the rights-based challenges that were raised by various participants which are associated with the running of PRS.

The second findings chapter will aim to unravel the multifaceted practice of diverting young people, through an exploration of the underlying rationales involved at the ground level. The chapter begins by providing a national overview of diversion from prosecution for young people and will explore some reasons why there is so much variance in practice. Following this, discussion will centre upon three particular areas of diversion which emerged as particularly contentious issues involved in the practice. These areas include: the fundamental purpose of diversion, the nature of the diversionary intervention, and lastly, debates surrounding the necessity of admission criteria.

The final findings chapter will explore the practice implications of the WSA principle to retain 16 and 17-year-olds who offend within the CHS. The chapter will begin with a discussion on socio-economic issues commonly faced by this group, as this was a strong theme which emerged from speaking with professionals in relation to this area. Secondly, the challenges involved in relation to retaining a young person on supervision will be discussed. Following this, the chapter will explore some conceptualisations of young people in the CHS from the perspectives of interviewees taking part in the study. Lastly, views on the viability of adapting the CHS with an aim to retain more, or even all 16 and 17-year-olds will be presented.

Chapter eight discusses and develops the main critical themes which have arisen from the research. The chapter explores the evidence which demonstrates the multiple and conflicting rationales which underpin the three pre-statutory processes under investigation and considers the implications of this in light of the literature. This chapter is split into two parts. In the first half of the chapter, the manifestation of PRS and diversion from prosecution practice across the three case study areas will be explored. The second part of this chapter will focus solely on 16 and 17-year-olds who offend. This will include an exploration of the implications arising from keeping young people on supervision orders and will discuss professional perceptions and experienced challenges in this area. The final section of the chapter will explore some broader implications of the findings specifically in relation to 16 and 17-year-olds, with the intention of critically reflecting on how far the WSA has brought us in relation to this specific age group, in light of the main findings of this research.

Chapter nine concludes the thesis by considering what can be learned overall from the messages gleaned from the research. This chapter will go through each of the pre-statutory processes under investigation in this thesis to reiterate and discuss some final reflections and raise some important areas worthy of future consideration and debate. The second section will discuss some identified gaps in knowledge which have been raised during the course of the project, and in doing so will present some ideas for future research. Finally, the last section will discuss the overall contribution of the WSA in light of the key findings of this research.

Chapter Two: Youth Justice Policy and Practice

Introduction

The two main aims of this first chapter is to sketch out the central strategies and policies which have shaped Scottish Youth Justice over the last two decades, and secondly to present and discuss the basic objectives of the WSA. From the Kilbrandon report in 1964 to the implementation of the WSA in 2011, there have been a plethora of political strategies, polices and differing rationales which have been introduced in the field of youth justice. Commentaries on the history and development of youth justice in Scotland have already been provided by the likes of Burman et al. (2006), Croall (2005) and Lightowler et al. (2014), therefore an in-depth historical analysis will not be repeated here. The first half of this chapter will review the literature only in relation to the most significant developments in Scottish youth justice in order to place the WSA in its historical context. Due to the particular aims of this thesis, this review will also pay some attention to significant political shifts specifically in relation to the 16 and 17-year-old age group. Where relevant, this chapter will also draw upon literature from England and Wales to provide a deeper exploration of certain youth justice strategies and their various effects.

The second half of the chapter is concerned with describing the background to the WSA, key drivers behind its development, and will critically consider the approach in light of contemporary writings about the nature of youth justice policy. This chapter includes an explanation of three strands of the WSA which particularly pertain to the objectives of this thesis: the PRS process, diversion from prosecution, and 16 and 17-year-olds in the Children's Hearings System. Lastly, a description of the three case study areas and the three processes under investigation will be presented. This serves as a contextual piece to precede and set the context for the findings chapters.

Historical Overview of Scottish Youth Justice History

The Legacy of Kilbrandon

The Scottish youth justice 'approach' tends to be distinguished from its UK counterparts by its emphasis upon welfarist ideals, founded upon the notions which underpin the Children's Hearings System (McVie 2011; Muncie 2011). At the time of the Kilbrandon review in 1964, there was a feeling that Scotland was not responding appropriately to

children and young people in trouble or at risk (Burman et al. 2006). It was also recognised that the majority of children and young people were processed through formal judicial proceedings for minor offences, resulting in no action or admonition which was viewed as a time-consuming and inefficient means of dealing with youth offending (Kilbrandon Committee 1964). The Children's Hearings System (CHS) was formally incorporated into Scottish legislation under the Social Work (Scotland) Act 1968 in order to address the concerns raised by the Kilbrandon committee. This was a radical idea at the time, which has set Scotland on a different trajectory compared to other European neighbours (McVie 2011). At the heart of the CHS is the supposition that the needs of children who offend and the needs of children requiring care and protection are often the same, or very similar (Kilbrandon Committee 1964; Whyte 2003; Burman et al. 2006). Consequently, the CHS is a single agency which accepts referrals for all children in trouble or at risk, whether referred on offending, or care and protection grounds. In principle, the needs of the child are paramount (regardless of the grounds of referral) and decision-making is focused on early and minimal intervention (McVie 2011).

Essentially, the Hearings are welfare tribunals involving the young person and a panel of three lay people from the community. After discussion with the young person, their caregivers and a social worker (and other professionals, if relevant) a decision is reached by the panel. The panel have various powers available including supervision in the community, or a residential supervision requirement where a child could be sent to a specified secure unit, residential school or foster home. The role of the Children's Reporter is to receive referrals and decide whether a hearing should be held to consider compulsory measures of care and supervision. The Children's Reporter also attends the hearing to record the proceedings and support fair process. The system has undergone some change over the last few years with the introduction of the Children's Hearings (Scotland) Act 2011. The act brought structural changes impacting the way in which the panel members are recruited, trained and supported, as well as creating a new role of the 'National Convener' to act as a figurehead for panel members. Additionally, the 2011 Act revised the grounds of referral, and made other changes regarding legal representation, making it now possible to request the assistance of a solicitor during the hearing process. Regardless of these developments, the central tenets of the system remain unchanged, and the legacy of Kilbrandon has shaped a unique Scottish youth justice system.

Many commentators have described the CHS as a model of excellence, where it has attracted much international acclaim and interest (McVie 2011). However, the system is not without fault, and various concerns have been raised over the years. Various historical research findings have found resource problems, time delays and difficulty recruiting panel members (Audit Scotland 2002), possible misuse of compulsory measures of supervision by social workers to access resource[6] (McGhee and Waterhouse 2002), and questions over whether the rights of children are fully met (Hallet and Murray 1999). Commentators have also drawn attention to the impact of devolution on Scottish youth justice and the possible punitive drift that occurred in the late nineties with the introduction of the Scotland Act 1998 (Cavadino and Dignan 2006; Croall 2006). The CHS was certainly not immune to the effects of devolution[7], and there were many developments and challenges after 1998. Batchelor and Burman (2010) argued that such developments included a greater formalization of CHS procedures, a more punitive approach towards young people who offend, and an increased emphasis on criminogenic tendencies rather than welfare needs. Substantial, systematic and independent research is still lacking on the CHS (Waterhouse 2017), and it remains to be seen whether the issues raised in these research reports have been addressed adequately through the legislative and structural changes introduced through the 2011 Act.

A major and ongoing criticism of the CHS is the apparent sharp transitioning for young people who are transferred abruptly from the CHS to criminal courts. In the Kilbrandon Report, it is stated that those aged between 16 and 21 should be classified as a 'single intermediate group' who should be dealt with in the criminal courts in the same way as adults (Kilbrandon Committee 1964, p.40). At the time, it was understood that those over 16 had 'acquired a sufficient degree of maturity and understanding to enable them

[6] McGhee and Waterhouse (2002, p.281) found some evidence to suggest that compulsory orders of supervision were becoming 'the gateway to accessing resource', i.e. there is a concern that some children and young people unnecessarily obtain supervision orders just to ensure they acquire formal attention from social work, in circumstances where voluntary measures of support might have been sufficient.

[7] Scotland became a devolved country after the passing of the Scotland Act in 1998. Devolution meant that Scotland gained much greater independence and could take more political control over a number of social policy areas including health, education, social care and criminal justice. Whilst it is important to note that youth justice policy was always within Scotland's control, devolution marked a critical point in history through obtaining the power to legislate on a wide range of matters (Mooney et al. 2015).

to assume responsibility for their actions.' (Kilbrandon Committee 1964, p.41). Since then, young people aged 16 and above have predominantly been treated in the same way as adults and have been subject to the full rigour of the criminal courts (Whyte 2009). Scottish legislation paints a confusing picture of the status of young people as children or adults. Firstly, the age of majority in Scotland, the age at which a person is considered an adult, is technically 18 years of age (Guthrie 2011). However, under the Children Scotland Act (1995), a child is defined as somebody under the age of 16 unless they are subject to a supervision requirement (S93(2)(b)(i/ii)). The Children and Young People (Scotland) Act 2014 defines a child as a person under 18, which brings Scottish legislation in line with the UNCRC guidelines (see next section). However, this does not supersede the Children Scotland Act (1995), so a young person aged 16 or 17 in trouble with the law will still tend to be classified as an adult in practice, unless subject to a supervision order (Dyer 2016).

Provisions in Scottish legislation do enable young people up to the age of 18 to be retained within or remitted to the CHS, which serves to divert and protect them from adult criminal justice procedures. A young person aged 16 or 17 can be retained within the CHS, but they can only be referred if they have an existing supervision requirement in place. Furthermore, under the Criminal Procedure (Scotland) Act 1995, summary courts have the option to remit offenders to the CHS up to the age of 17 years, 6 months for advice or disposal. Despite these legal provisions, studies have shown that in practice these powers tend not to be exercised and the remittal of young people to the CHS is limited (Whyte 2004a; Henderson 2017). Although it is widely recognised that young people mature at different rates and Scottish legal provisions have attempted to create a graduated system for those aged between 15 and 18 years, in practice it is a different story (Whyte 2003). Even though it is not intended for a sharp transition to occur on a young person's 16th birthday, the reality is that the CHS can serve to "arbitrarily adulterise" young people almost overnight with an abrupt transition from the CHS into the adult criminal courts (Whyte 2003, p.75; Burman et al. 2006).

United Nations Convention on the Rights of the Child

These ongoing concerns relating to the Scottish strategy for 16 and 17-year-olds who offend sits uncomfortably alongside key principles found in international agreements. International guidelines, developed under the United Nations, established minimum standards in dealing with young people who offend. The United Nations Convention on

the Rights of the Child (UNCRC) guidelines lay out the expectations and provide a benchmark for assessing the way in which young people are treated when they commit a crime.[8] Article 3 of the UNCRC (1989) states that:

> "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

This UNCRC principle, amongst many others, was enshrined into Scottish legislation in the form of the Children (Scotland) Act 1995 and has also become a cornerstone of the Children's Hearing System. This is referred to as the 'paramountcy principle or the 'welfare principle' (Children's Hearings Scotland 2015), and its emphasis in Scotland brought about a historic commitment to a welfarist ethos. As identified however, the situation for 16 and 17-year-olds differs considerably and they are largely excluded from the protection of this welfare principle due to their routine processing outwith the CHS. UNCRC guidelines stipulate that no child (defined as under 18 years of age) should be prosecuted in adult courts (UNCRC 1989). Therefore, Scotland is directly contravening the principles of the UNCRC through the routine processing of young people in criminal courts (Dyer 2016). Even though Scotland was an early signatory to the UNCRC, the legislation is not directly enforceable (Whyte 2009).

New Labour Influence and the 'Punitive Turn' in Youth Justice

The report: 'It's a Criminal Waste: Stop Youth Crime Now' was initiated by the Advisory Group on Youth Crime who were commissioned by the Scottish Executive to carry out a major review of youth justice systems in Scotland (Scottish Executive 2000). They had several recommendations, including a review of the age of criminal responsibility from 8 to 12 years of age, and also the expansion of community-based interventions for 'persistent'[9] offenders. Radically, the Advisory Group also proposed that the CHS should be extended to include 16 and 17-year-olds. Generally, the core principles of the report

[8] There are three United Nations declarations which specifically relate to youth justice matters: The Minima Rules on the Administration of Juvenile Justice 1985; the Minima Rules for the Protection of Minors Deprived of Liberty 1990; and the Directing Principles for the Prevention of Juvenile Delinquency 1990. See Hallet and Hazel (1998) for a summary of these guidelines.

[9] A 'persistent' offender was defined as a young person with five offending episodes within a six-month period (Scottish Government 2007).

revolved around diversionary and preventative measures, and effective 'quality assured' interventions. Importantly, the report acknowledges the wider context of youth offending, by stating the fact that many young offenders have been victims of crime themselves and linking wider factors which lie behind youth offending such as deprivation (Scottish Executive 2000). Such acknowledgements reflected the Kilbrandon legacy which put welfarist ideals at the forefront of dealing with young people who offend.

The radical recommendation to extend the CHS to include 16 and 17-year-olds was never realised, and as an alternative a youth court was established (Piacentini and Walters 2006). Instead of building on the more progressive principles contained in the review, a variety of commentators suggest that at this time, Scotland set out on a path which was to lead to a greater convergence with New Labour governance in England and Wales, moving away from the traditional prioritization of welfare principles (Whyte 2003; McAra 2008; McAra and McVie 2010). In particular McNeill (2010, p.44) argued that the adoption of New Labour ideals led to the creation of a 'punitive correctionalist agenda' and a 'toughening up' of policy towards young people involved in offending in Scotland at this time. England and Wales had been developing an increasingly punitive approach especially after the implementation of the Crime and Disorder Act 1998, which was hallmarked as an 'authoritarian' approach to youth offending (Fergusson 2007; Walters and Woodward 2007). This Act formed part of New Labour's 'tough on crime' manifesto and introduced a whole raft of new measures. The approach, referred to by Goldson (2000) as the 'new youth justice' was underpinned by rationales of responsibilisation and risk-focused prevention techniques. Youth justice policy became largely preoccupied with preventing crime through the actuarial targeting of individuals based on the 'Risk Factor Prevention Paradigm' (RFFP; Farrington 2007). A vast number of initiatives were introduced which targeted the 'disorderly, anti-social behaviour as well as the criminal' (Muncie 2004, p. 250). Goldson (2000, p.91) argues that through this strategy of targeting those believed to be at risk of crime, 'pre-emptive early intervention replaced the diversionary tactics of the previous era.'[10] Although between 1998 and 2007 there was

[10] In England and Wales during the 1980's, there was a vast reduction in the number of young people sent to custody. A strategy of informal cautioning, diversion, and use of community alternatives was in place (Muncie 2004).

little change in annual reoffending rates[11] (Haines and Case 2018) there were significant increases in the use of custody over the same time period (Solomon and Garside 2008).

Reactive sanctions under the Crime and Disorder Act 1998 were introduced to 'nip crime in the bud' (Goldson 2000); most notably child curfews, dispersal orders, and anti-social behaviour orders (ASBOs). ASBOs are a type of court order whereby restrictions can be placed through prohibiting people from engaging in specific activities (Scottish Executive 2004). ASBOs have severe consequences if they are not adhered to, because failure to comply is an offence (Scottish Executive 2004). Interestingly, although ASBOs were originally introduced for adults (Cavadino et al. 2013), they have been used for children as young as 10 in England, and 12 in Scotland. The use of ASBOs has been strongly criticized by various commentators. Particularly, there was significant concern about the levels of ASBOs which were breached and the punitive consequences of this. For instance, in England, Brogan (2005, cited by Cavadino et al. 2013), found that 43 per cent of young people under 18 who breached an ASBO received a custodial sentence. Thus, there was a particular concern that ASBOs acted to propel young people into custody unnecessarily.

The introduction of ASBOs represented a particularly significant punitive turn in Scottish youth justice policy. Cleland and Tisdall (2005) explored the conflict between the implementation of ABSO legislation with the underlying principles and ethos of the CHS. They argued that the introduction of ASBOs and parenting orders change the way in which 'childhood' is constructed, whereby, instead of focusing on children's welfare or needs, attention is shifted to focus primarily on the child's actions and behaviour. Furthermore, Jamieson (2012, p. 449) argued that the introduction of ASBOs has resulted in a move from the youth justice system trying to gain control not only over criminal behaviour, but also 'troublesome' (non-criminal) behaviour of young people. The Anti-Social Behaviour etc. (Scotland) Act 2004 also gave the police new powers to issue 'Fixed Penalty Notices' (FPNs) for offences committed by persons aged 16 or over. The £40 fixed fine must be paid within 28 days, or the amount increases to £60 and then it becomes subject to fines enforcement procedures. FPNs are not treated as a conviction

[11] Defined as 'the proportion of the annual offending cohort who reoffend.'

or an admission of guilt. However, they are recorded on Police Scotland's criminal history system for two years and they can also be disclosed in court (Richards et al. 2011).

The full force of ASBO legislation was not implemented in Scotland in the same way as England and Wales. Of considerable importance, ASBO legislation appeared to be resisted in practice. Indeed, between 2004 and 2007 only six orders were granted in Scotland for 12-15-year-olds (Johnstone 2010). McAra (2008, p.494) writes that during the consultation stage, the legislation was strongly argued against, and practitioners were 'recalcitrant at the implementation phase.' Authors such as McAra (2004) and Nellis et al. (2010) have suggested that this period involved a tension between central and local governments; reflected by a punitive discourse promoted in policy, resisted due to the welfarist commitments of practitioners. Such developments are also a reminder that policy directions at a national level do not necessarily ensure that they will be enacted as initially intended (Fergusson 2007).

Aside from ASBO initiatives, there were other developments in Scotland which appeared to borrow from New Labour ideas. Youth Justice became a high political priority in Scotland especially after the millennium, demonstrated by the flurry of policies and initiatives introduced by central government. Scotland's Action Plan to Reduce Youth Crime, and the National Standards for Scotland's Youth Justice Services were both published in 2002. The latter (Scottish Executive 2002a) was published to help meet a target of reducing the number of young people identified as 'persistent offenders' by ten percent by 2006. McAra and McVie (2010) suggest this policy is a distinct example of convergence with England and Wales through increased levels of managerialism. For the first time in Scottish youth justice history, performance targets were set to achieve better quality and transparency in services. It is observable that the language contained in the action plan and national standards does not contain as much of the traditional discourse associated with Kilbrandon, demonstrating a move away from the welfarist approach. These policies had a strong emphasis on public protection and victim involvement in the youth justice system and introduced a preoccupation with early intervention based on criminogenic risks.

Another significant development during this time was that youth courts were piloted (from 2003) in order to address the concern over young people being prosecuted in adult courts. The policy approach at the time was very much centered upon 'persistent' offenders, which involved the classification of young people who had committed more

than five offences in a six-month period. Dyer (2016) drew attention to the problematic usage of this term because children and young people were labelled as 'persistent' irrespective of the type or severity of offences that they had committed. The youth court pilots were established in North and South Lanarkshire (Hamilton and Airdrie) which represent some of the most socially and economically deprived areas in Scotland. The youth courts possessed the same powers of sentencing as the adult courts and 'adjudicated with all the legal equivalence of an adult jurisdiction' (Piacentini and Walters 2006, p. 46). On the one hand, the youth courts were valued because they were able to process offenders through the system much more quickly compared to criminal courts, due to their 'fast track' approach (McIvor et al. 2006). The establishment of youth courts across Scotland would also mean addressing the "embarrassment as one of the few countries in Western Europe dealing with 16 and 17-year old's routinely in adult courts." (Whyte 2003, p.83).

On the other hand, there was significant concern that youth courts were causing up-tariffing and net-widening (McIvor et al. 2004; Piacentini and Walters 2006). Young people could be referred to the youth court via 'contextual criteria' which was where the individual 'posed a risk to the self or the public.' (Scottish Executive 2002b, p.11). Piacentini and Walters (2006, p. 50) argued that this criterion was so general that it acted as a 'catch-all category', and it led Popham et al. (2005) to raise concerns about the youth court potentially causing net-widening. Also, of considerable concern was that the youth court did not appear to take into account the status of young people, and operated similarly to the adult criminal justice court (Muncie 2008). Youth courts represented a period in Scottish history where young people in need of support, from some of the most socially deprived areas in Scotland, were propelled into a formal system of control involving punishment and increased regulation (McNeill 2009; Dyer 2016).

The Early Years and GIRFEC Agenda

Against this punitive backdrop, an early years' agenda was gaining strength. As a strong evidence base emerged about the importance and impact of early years' development on later life, the emphasis on early and effective intervention strengthened within policy. 'Getting it right for every child' (GIRFEC) is a core element of the early years' agenda. GIRFEC was introduced by the Liberal Democratic coalition in 2004, but the Scottish National Party has continued to support the approach since they came into power in 2007 (Hill 2008). It has remained an influential, national policy which relates to all

aspects of children's services in Scotland which has evolved over time. GIRFEC is a way of working, underpinned by a core set of principles and values, which can be applied in any setting in contact with children (Scottish Government 2008a) GIRFEC is founded on welfarist principles, focusing on the holistic needs of the child with an aim to improve outcomes for *all* children in Scotland (CYCJ 2018). It is ironic that this policy was gaining strength at exactly the same time as the more punitive initiatives such as ASBOs and parenting orders; this clearly demonstrates the contradictions inherent in the system. It is heavily emphasized in policy guidance that the wider context in which the WSA operates is firmly embedded in the GIRFEC agenda, where 'anyone providing support puts the child or young person – and their family – at the centre' (Scottish Government 2017a, para. 1).

The evolution of GIRFEC has continued and in 2014, the principles were legislated under the Children and Young People (Scotland) Act 2014 (CYPSA 2014). It is made up of four parts: Duties on Scottish ministers and public bodies to further effect the UNCRC; an extension of the investigatory powers of the Scottish Commissioner for Children and Young People; requirements for children's services at a local level, and lastly, a named person[12] for every child/young person under the age of 18 years. Part 4 of the CYPSA relating to the introduction of the 'named person' has been particularly controversial. This was supposed to be enforced in August 2016; however, a supreme court ruling deemed that some of the proposals 'around information sharing breached the right to privacy and family life' (BBC News 2016, para. 2). The CYPSA has been criticized by political parties and some organizations whose main concern is that it is invasive of the rights of families' privacy. Crucially, the Supreme Court ruled that further clarity was required in relation to how part 4 of the CYPSA conforms with Article 8 of the European Convention on Human Rights which protects children and families from unjustified interference by the state.[13]

[12] Under the GIRFEC approach, every child in Scotland will have a 'Named Person' from before birth to the age of 18. A Named Person will normally be the health visitor for a pre-school child and a promoted teacher - such as a headteacher, or guidance teacher or other promoted member of staff - for a school age child. A Named Person will be available to listen, advise and help a child or young person and their parent(s), provide direct support or help them access other services.

[13] The Christian Institute and others v The Lord Advocate (Scotland) [2016] UKSC 51

Concern was also expressed at the Supreme Court judgement regarding whether the Act conforms with the Data Protection Act 1998 (DPA). The DPA 1998 addresses when consent is necessary and when people should be told that information is being shared about them which has particular relevance and significance for the ethical practice of Pre-Referral Screening (PRS) groups. In a short briefing paper, McEwan (2018) considers what the developments mean for PRS practice, particularly in relation to sharing information appropriately and obtaining consent in the PRS context. McEwan (2018) argues that the CYPSA offers an opportunity for reflection to ensure that PRS practice adheres to data sharing legislation in place. The complex details surrounding issues of consent and information sharing will be revisited in more depth within the findings and discussion chapters of this thesis.

Restorative Justice

From the early 2000s onwards, the Scottish Government started to endorse the use of restorative measures in youth justice. MacKay (2003, p. 5) argued that Scotland had taken a 'cautious approach' to the development of restorative justice, whereby it did not reflect an entire ethos change to the youth justice system, and instead involved only tentative developments (Robertson 2017). With its roots relating back to John Braithwaite's influential work (1989), it was proposed that the use of shaming could be used as a positive tool in encouraging offenders to face the impact of their behaviour and to help them change and reintegrate back into society. Although notoriously difficult to define with its inherent tensions in its overall ideology (Daly 2002; Newbury 2008) restorative justice could be described as 'a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future." (Marshall 1999, p.55). Fundamentally, restorative practice should be about healing relations between offenders, victims and communities (Johnstone 2003). However, authors such as Gray (2005, p.941) have brought attention to how restorative practices 'sit well' with advanced liberal thinking whereby in the English practice context, it has been used to mainly responsibilise young people defined as 'socially excluded.' In Scotland, the first policy document to be introduced in relation to restorative justice was 'Restorative Justice Services across the Children's Hearing System' (Scottish Executive 2005a), which was the first national guidance to be published in this area. This was followed by 'Restorative Justice Services – for children and young people and those harmed by their behaviour' (Scottish Government 2008b). Young

people are portrayed in these policy documents as being capable of accepting responsibility and understanding the consequences of their crimes, in order to prevent future offences. However, the then Scottish Executive (2005a, p.4) also made it clear that reparation action plans should be 'reasonable, constructive, mutually respectful…and restorative, rather than punitive.' Restorative justice initiatives have never been officially incorporated into Scottish legislation, nor has it ever been perceived as being an integral element of the Scottish youth justice approach (Dignan 2007). SACRO (Safeguarding Communities Reducing Offending) is the main deliverer of restorative justice services, operating across 22 locations in Scotland (SACRO 2017). The use of restorative justice could be perceived as slightly ad-hoc where services are provided only when locally available; thus the full extent of its use is not widely known (Robertson 2017).

A Third Era of Youth Justice?

When the Scottish National Party came into power in 2007, this political change brought about what has been referred to as a 'third phase of youth justice policy' for Scotland (McAra and McVie 2010). The minority Scottish National Party (SNP) took youth justice in yet another direction through publishing 'Preventing Offending by Young People: A Framework for Action' (Scottish Government 2008c). A number of dissonant themes run throughout this policy document. McAra and McVie (2010, p.4) suggest that the framework is "underpinned by an uneasy mixture of welfarist, actuarialist and retributive impulsions." The strongest theme that is portrayed within this document is the notion of early and effective intervention, based on the premise that prevention is better than cure. This discourse is closely related to the 'Early Years Framework' (Scottish Government 2008d) and implementation of 'Getting it Right for Every Child' (Scottish Government 2008a). Key to this preventative agenda was the emphasis on all services working effectively together, including health, education, and youth services.

The SNP also made significant changes to the relationship between central and local government. In 2007, a Concordat Agreement changed the nature of governance structure in Scotland, shifting away from centralized decision-making to control at a local level. The Concordat Agreement led to the creation of 'Single Outcome Agreements' which reflects outcomes specific to each local authority (Scottish Government & COSLA 2007). This brought about increased autonomy and considerable flexibility in managing services in local government. In addition, ring-fenced funding was abolished in 2008

(Lightowler et al. 2014), meaning that local authorities no longer were required to have dedicated youth justice services in place. Nolan (2015), in her report of youth justice practice across 27 (out of 32) local authorities in Scotland, found that less than 30 per cent had a specialized youth justice team. Nine local authorities had in place a 'hybrid' model whereby youth justice services were provided by a combination of teams. These included services such as children and families, youth services and criminal justice social work (Nolan 2015, p. 5).

Introduction to the WSA

Background

The Scottish Government Whole System Approach for Children and Young People who offend was formally launched in September 2011. The WSA has six main areas of focus, which are summarised below. The WSA 'suite of guidance', published in 2011, covers policy and practice across the following areas:

1) '**Early and effective intervention'** is at the heart of the WSA, where it is emphasised that responses to offending behaviour should be early, timely and proportionate. Central to this principle is the establishment of PRS multi-agency groups which aim to provide appropriate, holistic support as a response to minor offending behaviour (Scottish Government 2015b). This process enables children and young people to access proportionate interventions at the earliest stage possible without recourse into formal systems (Papadodimitraki 2016). This area of the WSA is reflective of the GIRFEC agenda which is focussed upon the 'team around the child' (Scottish Government 2011a).

2) Specific to 16 and 17-year-olds, the WSA advocates **diversion from prosecution**, proposing that more opportunities to divert young people should be created through working effectively with the Crown Office and Procurator Fiscal Service (Scottish Government 2011b).

3) The Scottish Government WSA guidance recognises the damaging effects of secure care and custody for children and young people, and advocates **community alternatives** whenever this is possible. These alternatives, it is stated, require to be carried out with robust risk assessments, and involve effective partnership working. The guidance also includes a separate section on 'working effectively with girls', where it is recommended that individualised risk

assessment processes are required which carefully consider personal circumstances and level of need (Scottish Government 2011a).

4) The WSA also recommends that there should be more **support for children and young people attending court**. In particular, children and young people should be assisted so they can understand the judicial process. The guidance also recommends the introduction of a 'youth justice court social worker' to raise awareness of alternatives to custody (including remittal to the children's hearing system), for the benefit of sheriff and other court professionals (Scottish Government 2011c).

5) **'Managing High Risk'** is an area of the WSA which covers working with children and young people who present a more serious risk of harm through sexually harmful and/or violent behaviour. The guidance focuses on the application of the 'Framework for Risk Assessment Management and Evaluation' (FRAME) as applied to young people who offend (Scottish Government 2011d).

6) Lastly, the WSA aims to **improve re-integration back into the community** for children and young people who have been in secure care or custody. The guidance emphasises the importance of ensuring that a package of support is provided (detailed clearly in a 'Child's Plan') which describes how the young person will be assisted to re-integrate back into society (Scottish Government 2011e).

The basic philosophy behind the WSA is that children and young people should be kept away from formal systems because evidence has shown that contact with criminal justice agencies can increase the likelihood of criminalisation through labelling processes (McAra and McVie 2010; Murray et al. 2015). Traditionally, the 16 and 17-year-old age group have routinely been dealt with through the adult criminal justice system in Scotland; therefore, the WSA represents a shift away from more punitive measures especially for this age group. To put the WSA philosophy into practice, three policy areas were developed with an aim to reduce contact, or re-direct children and young people away from traditional formal systems. The first policy process developed under the WSA was 'pre-referral screening,' which radically changes the way in which minor crime is responded to when an offence is initially reported. The second policy strand is the emphasis on diversion from prosecution processes for young people, which aims to reduce the number of those attending court. The third policy process is the

recommendation to retain young people within the CHS where possible, to avoid the use of court measures. Each policy strand will be explored in further detail later in this section. Prior to this, attention will be paid to characterising and understanding the WSA in more detail. This discussion will entail a more critical appraisal of the basic principles of the WSA in light of key messages from the literature.

Multiple Rationales in the WSA

The Centre for Youth and Criminal Justice (CYCJ 2018, p.6) offers in their comprehensive 'youth justice guidance' booklet one of the most concise summaries to be found on the WSA:

> "The WSA involves putting in place streamlined and consistent planning, assessment and decision-making processes for young people who offend, ensuring they receive the right help at the right time. The ethos of WSA is that many young people involved in offending behaviour could and should be diverted from statutory measures, prosecution and custody through early intervention and robust community alternatives. WSA works across all systems and agencies, bringing the Scottish Government's key policy frameworks into a single, holistic approach to working with young people who offend."

Even in this brief introduction to the nature of the WSA, quite a number of strategies and philosophies of justice are put forward. From the quote above, it is possible to deduce that the WSA's central philosophy is a combination of the following principles: proportionality; diversion; early intervention; partnership working; 'robust' community alternatives; and effective systems management. However, there are two other strategies central to the WSA which are missing from the above CYCJ summary. The first omission (probably missing because it is so implicit), is the overarching aim of the WSA to prevent youth offending behaviour. On the WSA webpages provided by the Scottish Government (2017a), it is stipulated that one of the objectives of early intervention is to prevent future offending by responding in a timeous and proportionate fashion. The second omission relates to the principle of minimum intervention which is also intrinsic to WSA thinking. This principle is closely interlinked, yet distinct from the notion of diversion, where both derive from the idea that formal contact and certain types of intervention should be avoided wherever possible. Lastly, it is important to consider that the CYCJ summary of the WSA states that 'key policy frameworks' are also part of the

WSA and brings them collectively together under a 'single, holistic approach.' This suggests that the WSA should not be considered as a singular approach which should be prioritised above previous strategies. Rather, it is put forward that youth justice practice should also continue to be shaped by other historical policies, which all contain different rationales (as demonstrated earlier within this chapter), to be applied in parallel with the WSA.

The WSA could be characterised as an approach which involves a varied collection of different projects. The programs and activities taking place under the WSA banner are vast and span across many agencies and 3rd sector organisations. Although this may well demonstrate strong ambition and a determination to bring change across many areas of youth justice practice, a plethora of rationales, projects and principles means that it is very difficult to establish what fundamental philosophy underpins the WSA. This is typical of contemporary youth justice policies, whereby they tend not to have a dominant 'orthodoxy' or congruent ideologies. Instead, 'competing discourses are clearly evident' in youth justice policy and practice (Smith and Gray 2018, p.14). On one hand, Cherney and Sutton (2007, p.67) argue that there is a need for professionals to genuinely understand the 'overall enterprise in which they are engaged' because in the absence of such an understanding, 'it is inevitable that individuals and organisations at the grassroots will endow programs with purpose and meanings that derive from their own values, experience and expertise.' On the other hand, Smith and Gray (2018 p.14) believe that the eclectic nature of youth justice policy can "offer scope for engaged and committed practitioners (and their managers) to assert their own priorities and objectives in seeking to deliver effective services." Whatever the effects, the nature of contemporary youth justice appears to be increasingly localised and diverse, with much more discretion and flexibility afforded to professionals who are free to interpret and choose what rationales to prioritise in daily practice (Haines and Case 2018).

The Edinburgh Study

The evidence base on which the WSA was developed was informed by the 'Edinburgh Study of Youth Transitions and Crime.' Key findings of the research, particularly relating to principles of diversion, early intervention and community alternatives, have been cited consistently in policy guidance and have been used as the WSA's main evidence source. The study was a major longitudinal piece of research which involved a single cohort of around 4,300 young people who started secondary school in 1998 (ESYTC 2017). In a

summary of key findings, McAra and McVie (2010, p.126) explain that they found a group of young people who had contact with formal agencies time and time again, referring to them as the 'usual suspects.' Using quasi-experimental analysis, the study established that the young people who had experienced the most intervention were those who were most likely to commit serious offences one year later. McAra and McVie (2010, p.127) state that:

> "The deeper the 'usual suspects' penetrated the juvenile justice system, the more likely it was that their pattern of desistance from involvement in serious offending was inhibited."

Coupled with the premise that most young people grow out of crime (Rutherford 1986), McAra and McVie (2010, p.125) argue that system contact can actually serve to 'inhibit this natural process of desistance.' In relation to young people, the evidence is particularly striking. McAra and McVie (2010) found that over half (56 per cent) of children who had been referred to the Reporter on offence grounds (up to the age of 16) had a criminal conviction by the time they were 22 years of age. These key findings, which are derived from robust research, led the authors to recommend a youth justice strategy of diversion and minimum intervention (McAra and McVie 2010). The WSA, in adopting these principles recommended by the Edinburgh Study, certainly marks a break from the more punitive policy approaches that have been discussed within this chapter. On the surface, the WSA represents a radical change of direction because there has not been a policy in the history of Scottish youth justice (since devolution) that centres so explicitly on the informalized principles of diversion and minimal intervention. As authors such as McAra (2006) and Goldson (2010) have argued, due to the politicised nature of youth crime, it is usually deemed politically unacceptable to base a policy on a 'do less' strategy of diversion and minimum intervention. On the contrary, as we have seen during the more punitive years of youth justice history both in Scotland and England, the government introduced many initiatives and new strategies perhaps to demonstrate a determination that they were taking youth crime seriously. The Edinburgh Study was thus instrumental for the WSA as it provided clear reasoning, based on robust evidence, for the Scottish Government to confidently advocate an approach of diversion and minimum intervention.

Governance under the WSA

The wider landscape of the direction of public policy has had an important influence on the shaping of the WSA and how it came to be introduced. Authors such as Cairney et al. (2016) and Keating (2010) have demonstrated that the Scottish style of policymaking is based upon high levels of consultation and emphasis upon forming relationships and partnerships with local government. Indeed, this style reflects the beginnings of the WSA implementation. Especially since the WSA was introduced on a voluntary basis (Scottish Government 2017), representatives from the Scottish Government were involved in a process of promoting the WSA across the country. This involved meeting with local government professionals and helping others to envisage how the WSA might be implemented within their area. This approach of policymaking contrasts greatly with the style of governance during the time of more punitive policies such as the ASBO and parenting order initiatives. At that time, youth justice funding was ringfenced to ensure that particular strategies were being carried out, and the Government's approach to policy making was more orientated with a centralised, top-down style of governance (Lightowler et al. 2014). Conversely, during WSA implementation, it was apparent that the Scottish Government fostered a discretionary approach whereby areas were given considerable autonomy in implementing the WSA. It was believed that 'one size doesn't fit all' whereby there was a common view that localities have different and unique challenges which require different responses.[14] Thus, it was argued that such a discretionary approach would be beneficial because it gave localities the opportunity to implement the WSA principles as they saw fit. Furthermore, youth justice 'champion' groups were instrumental for developing the WSA policy, which also fostered a consultative approach. These multi-agency groups were comprised of various youth justice professionals across Scotland such as managers, practitioners, Scottish government representatives, and also professionals from the Centre for Youth and Criminal Justice (CYCJ). The four groups at the time of WSA implementation were entitled: early and effective intervention, managing high risk, re-integrations and transitions, and lastly, vulnerable girls and young women. These groups existed to 'champion' the WSA. They were involved in various events and projects, and also

[14] Evidence taken from grey literature and oral presentations (from WSA events) and also practitioner interviews with policy actors.

published some guidance in relation to their specific areas.[15] Cairney et al. (2016, p. 503) comments that the Scottish approach to policymaking involves the government taking on more of a supportive role, whilst devolving responsibility and encouraging local government 'to innovate and learn from each other'. This strategy is certainly observable through the functioning of the WSA champion groups, and also the autonomy and discretion afforded to local authority areas in implementing the WSA.

Another key element of the WSA relates to the broader contemporary movement of placing cross-sector partnerships at the centre of developing and delivering policy objectives (Glendinning et al. 2002). Multi-agency working is conceptualised as a core vehicle of success in the WSA, with 'all parts working effectively together.'[16] Hughes et al. (2007, p.218) writes that this can bring about a breaking down of 'traditional professional and bureaucratic boundaries' whereby professionals can better 'understand each other's values and aims and embrace a multiplicity of objectives.' However, there are also clear challenges involved in partnership working across public services (White and Featherstone 2005), and thus should not be viewed as a panacea or delivered without carefully monitoring potential unintended consequences. Souhami (2007;2010) for example, in her evaluation of Youth Offending Teams in England, found that partnership working led to a problematic impact upon the organisational identity of professionals. Crucially, Souhami (2010) argued that for professionals to still feel like an integral part of the multi-agency team, it was important for them to retain a sense of their own distinct professional identity. Especially relevant to the functioning of PRS, the centrality of multi-agency working is seen as imperative to the success or otherwise of the WSA (MacQueen and McVie 2013).

Systems Management Ideology

A systems management discourse is an important underpinning rationale of the WSA. Much of the reasoning which sits behind the WSA borrows heavily from systems management theory, particularly observable through its pragmatic goals to achieve increased efficiency in dispensing justice, and to gain financial savings in certain parts of

[15] For example, the 'Framework of Core Elements' for PRS was produced by the 'EEI working group' (see Scottish Government 2015).

[16] Evidence from a presentation by a 'WSA steering group member' at the WSA pilot event in Aberdeen (2012)

the system. The chosen name of the 'Whole System Approach' is in itself significant, because it conveys a strong systems management ethos with its intention to deliver 'streamlined processes' for young people who offend (CYCJ 2018, p.6). The language and vision involved in promoting the WSA conveys a picture of coherence and strong partnership, with all parts and systems working efficiently together to achieve a common aim. This vision is somewhat problematic because youth justice scholars are in agreement that the reality of youth justice practice is highly complex, fragmented and unpredictable (Fergusson 2007; Muncie 2006; McAlister and Carr 2014). Secondly, the 'whole youth justice system' is comprised of a diverse range of actors who implement policy within their own separate sub-systems involving a variety of different assumptive worlds, beliefs, frameworks and discourses. Is it achievable to intend for professionals from different agencies to be working towards exactly the same goals across the whole of the 'youth justice' sphere? Thirdly, ideals of a 'whole system' working towards common aims raises a question about where the boundaries of the 'youth justice system' lie, and what agencies are included within its remit. Commentators such as Hughes et al. (2007) have highlighted that wider public policies have an incredibly important bearing on youth justice matters. Organisational domains traditionally classified as 'social policy' such as education, housing, health, and children's services are heavily interlinked with the task of reducing and preventing youth crime (Muncie 2004). This is problematic in the current context as the WSA guidance does not make clear what agencies are part of the 'whole system approach' and where the system is perceived to begin and end.

It is apparent that a systems management ethos was central to the initial conceptualisation and early implementation stages of the WSA, particularly observable through the way in which the WSA pilot was delivered and evaluated. Firstly, during the WSA pilot in Aberdeen, there was a rigorous attempt to map out how the youth justice system and its constituent parts interacted. This is a perfect example of a systems analysis approach, whereby it was felt that, once armed with this knowledge, it would be possible to 'devise and facilitate system interventions in order to modify the process to achieve specific desired outcomes', (Cavadino et al. 2013, p.262). The consultancy company, Capgemini Ltd was involved in the implementation and evaluation of the WSA pilot where 'LEAN' methodology was used to map out "the current end to end process,

measuring the value added to each step and identifying any inefficiency."[17] At a conference held in Aberdeen to showcase the pilot's evaluation, the WSA was very much put forward as an approach which would dually improve outcomes for children and young people (because more would be diverted from formal systems) as well as achieving efficiency savings in the system. From the outset, the Scottish Government was explicit about the WSA objective to achieve financial savings within the system, mainly due to preventing children attending the children's hearing system and avoiding secure care placements. As previously noted, the financial rationale underpinning the WSA is a sign of the times; the introduction of the approach corresponded with heavy cutbacks across welfare and youth justice services in Scotland.[18]

The Scottish Government decision to employ Capgemini Consultant Ltd to evaluate the WSA pilot is especially significant because it points towards a congruence with contemporary managerialist trends. Loader and Sparks (2012) argue that as part of the altering climate of the governance of crime, governments are increasingly employing other knowledge producers, such as consultancy companies, to carry out evaluations. Although the CapGemini evaluation may have brought considerable benefits in relation to 'working smarter' and simplifying processes in the youth justice system, arguably with such an approach the goals of the youth justice system are somewhat displaced with an undue focus upon linear processes instead of endeavouring to explore what qualitative challenges and outcomes the WSA brings for professionals, and indeed children and young people in receipt of services. The report (CapGemini Consulting Ltd 2011) has a strong emphasis on the efficiency of the youth justice system with managerialist echoes in the pursuit of achieving 'integrated processes.' Furthermore, the evaluation failed to include the views of children and young people, and measured success mainly in quantitative terms. For example, some findings of the evaluation were that 'social work report writing has reduced by 11%; and there has been a 7% increase spent in meetings.'[19] Loader and Sparks (2012 p.14) consider that Governments are increasingly

[17] Evidence collated from grey literature distributed at the WSA Pilot Event in Aberdeen (2012).

[18] There are historical similarities here with the strategy of bifurcation pursued in England and Wales from the early 1980's. This was a time period involving a fragile economic situation, recession, and many cuts in public services, coupled with a youth justice strategy focussed on de-carceration, diversion and a rise in cautioning practice (McCarthy 2013).

[19] Evidence collated from grey literature distributed at the WSA Pilot Event in Aberdeen (2012).

choosing to employ alternative knowledge producers to carry out research evaluations because they tend to 'deliver on time,' but also because other knowledge producers 'have a *line,* a known and readily communicated position, which, moreover, happens to align with the political preferences and prevailing rationality of governments." Indeed, to focus on managerial aspects of the system brings a focus on ideologically-free technicalities and process. In consequence, this can turn attention away from engaging with the more politically-charged, controversial subjects such as core and pervading youth justice discourses and dualisms which characterise the complexities of working with young people who offend.

The WSA Policy Streams

There are three policy strands existing under the WSA which aim to put the strategies of diversion and early intervention into practice. These include: Pre-Referral Screening, diversion from prosecution, and lastly, retaining 16 and 17-year-olds in the CHS whenever possible. Each process will now be explored in turn.

Pre-Referral Screening

Pre-Referral Screening (PRS), otherwise known as 'Early and Effective Intervention' (EEI) is a nationally agreed, multi-agency process which aims to ensure timely and effective responses to young offending (Scottish Government 2009a). PRS has changed considerably over the years, and there are different models in place (Papadodimitraki 2016). Young people aged 16 and 17 were not eligible for PRS prior to September 2013, with only 8 to 15-year-olds being considered. It has been said that PRS generally involves three main stages involving core components, which are summarised below:[20]

Stage 1: A child or young person under 18 years who presents concerns on offending or anti-social behaviour grounds are brought to the attention of the PRS co-ordinator. Many local authorities have a dedicated employee for this role who is often based within the local police station, and has either a social work or police background. Various checks are made to ensure eligibility for the PRS scheme. An initial decision is taken by the PRS

[20] This summary is an adaptation of 'The EEI Process' as described in Fraser and MacQueen (2011, p.10). However, note that this research found key differences at every PRS stage in the process. The key variances in the procedural aspects of PRS practice are summarised in the methodology chapter.

co-ordinator whether to bring the case to a PRS multi-agency meeting for discussion. Otherwise, other common disposals include: no action, formal police warning, police restorative warning, referral to SCRA or the Procurator Fiscal.

Stage 2: For those cases that require a multi-agency PRS meeting, the PRS co-ordinator contacts the members of the group to gather relevant information. Typically, at a minimum the PRS members will comprise representatives from youth justice, police and education. Often, professionals from other agencies are involved, typically SACRO, child care and protection, housing, health, and ASBO services. Further police checks are also carried out at this stage. After relevant information is collated, the PRS meeting takes place and the case is discussed.

Stage 3: Various options for disposal are discussed by the multi-agency partners at the PRS meeting, which aim to take a holistic account of many factors. The most common disposals include: voluntary work with youth justice teams, SACRO (or other 3rd sector agency), referral to SCRA, or referral back to the police for a 'direct measure' (for example, a caution, warning or Anti-Social Behaviour Fixed Penalty Notice).

It is important to highlight that a 'Framework of Core Elements' was introduced in 2015, following concerns about the variance in PRS practice (see Scottish Government, 2015b). This document aimed to address some of the differences in PRS practice, and it intended 'to provide a shared language and where possible a commonality of processes.' (Scottish Government 2015b, p.1).

PRS had already been functioning in a few areas prior to the introduction of the WSA in 2011, and four evaluations were carried out: one was specific to Dumfries and Galloway (Fraser and MacQueen 2011), another exploration of PRS was included in the evaluation of the Aberdeen WSA pilot (CapGemini Consulting 2011), and the other two evaluations reported on a few different areas which had PRS schemes in place (Consulted Ltd 2010; Henderson et al. 2009). These evaluations were preliminary, small in scale, and mostly qualitative in nature; however, they revealed some important early findings with regards to PRS practice. The WSA evaluation carried out by Murray et al. (2015) provides the

most robust evidence on PRS practice to date, because the study utilised a mixed method[21] approach across three case study sites.

Evidence from these studies suggest that the running of PRS schemes has caused a decline in offence referrals to the Children's Reporter. For example, Henderson et al. (2009) report that Fraser and MacQueen (2011) highlight that one of the main aims of the PRS process is to reduce the burden on the Hearings system, as it enables a voluntary intervention to be delivered without the case being referred to the Reporter. There are a number of reported benefits attached to this. Firstly, it enables a more timely response. Consulted Ltd (2010, p.10) reported that for 90% of the PRS cases, the time lapse between the initial offence and engagement with the child or young person was less than 10 days on average. Research suggests that as a result of timely interventions, young people are much more likely to engage (Fraser and MacQueen 2011). Secondly, it has been argued that PRS leads to a more appropriate and proportionate response to minor offending behaviour (Fraser and MacQueen 2011). Prior to the implementation of PRS, referrals would be sent to the Reporter automatically without prior consideration over whether statutory supervision was really necessary. Furthermore, Capgemini Consulting (2010, p.15) found evidence that in one area PRS led to a reduction in inappropriate offence referrals to the Reporter. In essence, the PRS process 'dispenses with the gate-keeping function of the Children's Reporter' which is based on the principle of minimal intervention (Fraser and MacQueen 2011).

In the same vein, Murray et al. (2015) analysed the heavy decline in referrals to the Reporter, citing that over a 10-year period between 2003/4 and 2013/14, the overall fall in the rate of offence referrals was around 70-80% in their analysis of data from three case study areas. However, Murray et al. (2015, p.20) argue that 'the largest declines in referrals had already occurred before the WSA was formally implemented and are most likely to have been influenced by GIRFEC and '*Preventing Offending by Young People: A Framework for Action.'* This is an important reminder not to take statistics at face value and recognise that there are many other influences at play.

[21] The mixed method approach included: 33 qualitative interviews with WSA practitioners and stakeholders, observations of WSA meetings, and quantitative analysis of SCRA and relevant management data (Murray et al. 2015, p.6).

Diversion from Prosecution

The second policy strand of the WSA is the emphasis on and renewal of diversion from prosecution processes for young people. This study is concerned with the type of diversion which involves a decision made by the Procurator Fiscal. The following explanation of the process was taken from the most recent CYCJ practice guidance (CYCJ 2018, p.14):

> "Where the nature of an offence does not demand prosecution in court the Procurator Fiscal has the option to utilize diversion from prosecution schemes in order that a meaningful intervention can be delivered to address the identified concerns for that young person."

There is considerable discretion existing in the Scottish criminal justice system which provides Procurator Fiscals the powers to make decisions regarding who should be brought to trial. When exercising their discretion, Fiscals draw upon certain criteria found in the Prosecution Code (COPFS 2001). Under this guidance, the Fiscal must decide whether to prosecute through reviewing legal, evidential and public interest considerations. If the Fiscal decides not to prosecute, there are many alternatives available which include; no proceedings, no proceedings meantime, issuing a warning, issuing a Fiscal fine, diversion from prosecution, or referral to the Reporter where applicable (COPFS 2001). The principle *'de minimis non curat lex' (*'the law will not concern itself with trifles') is very much the legal foundation of the practice of diversion (Dingwall and Harding 1998). It may be decided that it is not in the public interest to prosecute as it may be considered disproportionate due to the trivial nature of the offence (COPFS 2001). However, it is stated in the guidance that no matter how minor the offence, consideration must always be given to the impact on the victim, if possible. It is a complex decision because there are many factors that require to be considered, such as the risk of further offending, the motive for the crime, and the age, background and personal circumstances of the accused (COPFS 2001).

The type and nature of diversion schemes vary greatly across Scotland. Many diversions take place through a casework approach via social work agencies, but it can also consist of a restorative justice programme, psychiatric diversion, or an alternative scheme run by a voluntary or third sector organisation (Scottish Government 2011b). Typically, a young person is involved in individual and /or group work sessions which address a range

of issues such as offending behaviour, alcohol and drug use, social skills, and employment/further education. A report on engagement and progress is submitted to the Procurator Fiscal at the end of the diversion programme (CYCJ 2018).

There are two 'types' of diversion used in Scottish criminal justice: 'waiver' or 'deferred.' Stedward and Millar (1989, p.7) identify the main difference between these two models as 'the point at which the Procurator Fiscal makes the final decision over whether or not to prosecute a case.' In other words, the use of 'deferred' prosecution is where the Procurator Fiscal still has the power to prosecute after a diversion programme has been completed. A report is compiled providing details of the young person and the diversion programme completed (or perhaps non-engagement with the service). This is then sent to the Procurator Fiscal, who reviews the report, and decides whether prosecution is still necessary. On the other hand, 'waiver' diversion is when the Procurator Fiscal does not proceed with prosecution, irrespective of whether the person successfully completes a diversion programme or not. The Scottish Government (2011b, p.7) recommends the use of deferred prosecution, stating that 'it provides incentives to engage with services, resulting in better outcomes for the young person.' The deferred model is in place across most areas in Scotland (CYCJ 2018).

Bradford and MacQueen (2011) investigated diversionary practice in three community justice authorities through analysing official Scottish Government data on diversion use, reviewing policy documents relating to diversion, and also carrying out interviews with Procurator Fiscals and social work staff. Even though this study was in relation to both adult and youth diversion, it reveals important issues about the nature of diversion practice currently in operation. They found from interviews with Procurator Fiscals that diversion to social work was a very informal process, where personal relationships between the Fiscal service and social work were of the utmost importance (Bradford and MacQueen 2011). Procurator Fiscals in the study revealed that the two main aspects which have the most bearing on their decision to divert are 1) the characteristics of the offender (such as the history of offending, and their behaviour – for example whether they care for others, and their vulnerability) and 2) the nature of the offence (such as the severity, gravity and impact of the offence). It was also mentioned that 'diversion is a means to keep ridiculous cases out of court' (Bradford and MacQueen 2011, p.27) which reflects the *de minimis non curat lex* principle. It is interesting that no reference was made to the Prosecution Code (COPFS 2001) as outlined above; indeed it was highlighted

in the study that decisions were made very much on a case by case basis with little reference to guidelines and policies.

Since the implementation of the WSA, there has been little research on the practice of diversion. However, one of the main findings that Murray et al. (2015) report on is the high variation of practice surrounding diversion from prosecution. Murray et al. (2015) proposed that this is due to high levels of autonomy and discretion which are available to the Procurator Fiscal, and also because of the different local services that are available from area to area.

Retaining Young People Aged 16 and 17 in the Children's Hearing System

The third policy strand of the WSA relating to this thesis is the principle of retaining young people within the CHS for as long as possible, instead of recourse to the adult courts. The thinking behind this relates to the avoidance of the adult criminal justice courts for this age group, where it is thought to be preferential for them to be dealt with within the welfarist CHS. As previously noted, young people cannot be referred to the Reporter unless they are already subject to a supervision order. Furthermore, under the Criminal Procedure (Scotland) Act 1995, summary courts have the option to remit offenders to the CHS up to the age of 17 years 6 months for advice or disposal. There are some offences that require to be 'jointly reported' to both the Procurator Fiscal and the Children's Reporter, as contained in the Lord Advocate guidelines. The presumption is that children (aged under 16) will be dealt with via the Reporter in this circumstance. However, for young people, there is the presumption that the Procurator Fiscal will deal with the case (COPFS 2014). Henderson (2017), who investigated the use of the Hearing's System for 16 and 17-year-olds found that the research findings opposed previous arguments in the literature which share the view that Hearings often decide to terminate CSOs too early (see for example Dyer 2016; White 2009). Out of a sample of 113 young people aged 15 and 16, it was found that 72% of young people's CSOs were continued past their 16th birthdays. For those individuals whose supervision orders were terminated, Henderson (2017, p.4) found from analysis of case file data that this was because the supervision requirement 'was no longer required because the young person (and their family) would receive support on a voluntary basis and/or that the young person had addressed their problems.'

Alternatively, Whyte (2009) has argued that there are many structural constraints which prevent more young people being retained in the CHS. For instance, for children and young people subject to a supervision order, services such as secure care or intensive support in the community falls directly on local authorities' revenue costs. On the other hand, services such as criminal justice social work, prosecution and custody are funded centrally and therefore they generate no additional costs to the local authority. Therefore, arguably there is an intrinsic incentive built into the current system for young people to be kept outwith the children's hearing system. Whyte (2009, p. 202) identifies this as one of the reasons why the 'most difficult young people' tend to be discharged from the children's hearing system and progress into the adult criminal justice system.

The Contexts of Provision

The rest of this chapter will be dedicated to setting the context for the findings chapters by presenting background information and the structures of youth justice arrangements with a particular focus on the three case study areas.[22] After outlining some key characteristics of the case study areas, this section will describe and explain the structures and processes involved in retaining 16 and 17-year olds in the CHS, diverting 16 and 17-year-olds from prosecution, and the PRS process. This section serves as a preamble for the findings chapters in order to introduce and explain each of the processes under investigation.

Background

Estimated populations of the three local authority areas are relatively similar in nature, and they all sit within the top half of the largest authorities in Scotland. According to the Scottish Index of Multiple Deprivation 2016[23], areas A and B have particularly high levels of deprivation when compared to the rest of the country. Indeed, these areas are amongst the top five local authority areas in Scotland with the largest proportion of their data zones in the 20% most deprived category. Area C has fewer data zones which are

[22] Although, a detailed overview which describes the characteristics of local authorities will not be included where necessary in order to further protect the anonymity of areas.

[23] The Scottish Index of Multiple Deprivation is an overall measure of relative deprivation and combines data from seven different domains of deprivation: Income, Employment, Health, Education, Access, Crime and Housing.

amongst the most deprived 20% in Scotland compared to other areas. Area C sits within the lower half of all local authorities when looking at the local share of data zones falling within the 20% most deprived in Scotland.

The case study areas began implementation of the WSA in 2011, and they all established steering groups to advance the policy. Documentary analysis of WSA project plans[24] show that the case study areas had slightly different areas of priority due to their arrangements already in place. For areas A and B, their project plans demonstrated strong congruence with the six WSA objectives[25], whereby both project plans addressed each of the six WSA objectives separately, outlining current arrangements and proposed relevant changes. The 'Early and Effective Intervention' policy stream was the area which required the most work for Area B, because they did not have any multi-agency screening processes in place prior to the WSA's implementation. Area A already had a PRS model established prior to the implementation of the WSA[26], however this was only in relation to children under 16 years. Area A's project plan stated that they would extend their PRS model to include 16 and 17-year-olds, and their report also emphasised tackling a limited number of young people diverted from prosecution. Area C had a different format in their project plan compared to areas A and B, because they did not address all of the WSA official objectives. In their report it was stated that WSA implementation would build upon the services already in place, representing an 'extension of key features of existing practice.' Like Area A, this local authority already had multi-agency screening processes in place. The practices of early intervention, diversion from prosecution, risk assessment and maintaining young people who offend in the community were the focuses of Area C's WSA project plan. Area C also went further than the WSA focus on 16 and 17-year-olds, stating that in some areas of work, their strategy would involve young people up to the age of 21. The particular local authority arrangements in relation to PRS, Diversion from Prosecution and CHS processes will now be explored in turn.

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[24] Local authorities were required to draw up 'project plans' for the Scottish Government in order to secure seed funding. I obtained project plans from WSA representatives who returned questionnaires for the scoping study.

[25] The Six WSA objectives are detailed within chapter 2.

[26] Some PRS models in Scotland had been in place as early as 2006 (evidence from PRS event presentation).

Retaining 16 and 17-year olds in the Children's Hearing System

The Lord Advocate's guidelines on offences committed by children states that where a child is 16 or 17-years-old and subject to a supervision order and the offence committed falls within the Framework on the use of police direct measures and PRS for 16 and 17-year-olds, then there is not a requirement for the case to be jointly reported to the PF and the Reporter (COPFS, 2014). This means that under their guidelines, for a 16 and 17-year-old to be referred only to the reporter, they must already be subject to supervision order.

According to the Lord Advocate's guidelines, in the instance of a 16 or 17-year-old being jointly reported to the PF and the Children's Reporter, there are two possible routes. Either the child will be referred to the Children's Reporter in relation to the offence or the PF will deal with the offence which could involve either prosecution, an alternative to prosecution, or diversion from prosecution.

In the instance when a young person is prosecuted, it is also possible for the court to remit the case to a children's hearing for advice, which is advocated in the WSA guidance (Scottish Government, 2011c). Where young people under the age of 18 are dealt with in court, there are special provisions under the Criminal Procedure (Scotland) Act 1995 (s49) that allow them to be remitted back to the hearings system for disposal under certain circumstances. If a child before the court is already subject to a supervision order, then the court is obliged to request the Reporter to arrange a hearing for purpose of obtaining their advice.

It is worth noting that this is the only process in this thesis which did not differ from area to Area aecause the procedures are clearly set out within the legislative frameworks and guidance in relation to the Hearings System.

Diversion from Prosecution

In Scotland, criminal prosecution is the responsibility of the Procurators Fiscal, who has discretionary powers in ensuring that allegations of crime are dealt with appropriately and are responded to in line with public interest. The Procurators Fiscal carry out in-depth examinations of allegations. The factors which are taken into account during this process are laid out in the 'Prosecution Code' (COPFS 2011). Diversion from Prosecution is one of seven options available to the Fiscal as an alternative to prosecution disposal.

As stated in the COPFS prosecution code, diversion from prosecution 'is the referral of an accused to the supervision of a social worker, psychiatrist, psychologist or mediator for the purposes of support, treatment or another action as an alternative to prosecution.' (COPFS 2011, p.10).

In 2015, the marking system structure was centralised. Instead of cases being marked locally, the majority of cases are marked in three central hubs based in Stirling, Paisley and Hamilton. The scoping study found that this was a radical change for local authority diversionary processes, because in most circumstances, this move meant that there would no longer be a local Fiscal contact. For example, one questionnaire respondent stated that the centralised model acted to 'take us away from a specific PF who was a champion for the 16 and 17-year-olds and diversion.' As a result, there was concern that young people were 'slipping through the net' mainly because of a lack of contact and loss of communication with local Fiscals. However, from the perspective of legal representatives taking part in the study, one of the main reasons for centralising the marking process was to encourage consistency in approach, combating the recognised variability in diversionary practice.

At the time of fieldwork, the central marking hubs were responsible for marking reported cases only (i.e. those on summons). There were some indications during interviews that going forward, there were plans to extend the scope so the centralised units would also be responsible for the marking of all undertakings and custody cases.

The Diversion Process for 16 and 17-Year-Olds

For most areas, the process starts with the identification of potential diversion cases by Fiscals tasked with 'marking' crime reports received from the police. Some police officers in the study indicated that if they felt the young person accused of the offence was a suitable candidate for diversion, they would document this on the crime report to assist in the Fiscal decision-making process. Some areas in Scotland also directly notify Procurators Fiscal of potentially suitable diversion cases, for example through sending a weekly email to COPFS (this could be sent from social work or the police). During fieldwork there was no evidence to suggest that the practice of flagging up potential diversion cases were in place in any of the three case studies under investigation.

Where diversion from prosecution is offered by the Fiscal, the referral is sent to a social work or criminal justice team. A suitability assessment is then carried out and where

appropriate a programme will be offered. In some areas the diversion referral is forwarded to a third sector organisation who carry out the suitability assessment. The diversion programme would then be provided by the third sector organisation. CYCJ (2017) reported that 31 out of 32 local authorities offer diversion from prosecution services for 16 and 17-year-olds.

The Procurators Fiscal has the power to decide whether prosecution is waived or deferred through diversion. However, current guidance and common practice is that diversion cases are deferred, meaning that the Procurators Fiscal still has the power to prosecute after a diversion programme has been attempted or completed. In cases of deferred diversion, the Fiscal secures a report from the diversion co-ordinator on their progress during the programme. If the report is satisfactory, the accused young person is informed that there will be no further proceedings.

Diversionary Practice in the Case Study Areas

At the time of fieldwork, the main differences in relation to diversion practice across the three case study areas are summarised in the table overleaf.

Table 4.3 Differences in Diversion from Prosecution practice

	Area A	Area B	Area C
Provider	Diversion was delivered by a youth offending team, based within social work children's services with a remit to work with 12 to 18-year-olds.	An established diversion from prosecution programme, run in partnership by a social worker and support workers seconded from a third sector agency.	The majority of diversion cases for young people were delivered by Criminal Justice Services.[27]
Nature of Intervention	An individualised programme of support was offered through the diversion service, matched to levels of maturity and need. Groupwork or other 3rd sector services were offered depending on the offence and identified needs.	The diversionary service included six standard sessions which usually took place in a group setting. Furthermore, there was an individually assessed component whereby services were offered depending on the offence committed and the young persons' identified support needs. For example, sessions could involve anger management, internet safety or problem-solving skills.	A 'tailored, individualised service' was offered to young people based on assessed needs and risks.
Average length	3 months	3 months	6-8 weeks

Pre-Referral Screening (PRS)

Pre-Referral Screening (PRS), otherwise known as 'Early and Effective Intervention' (EEI) is a nationally agreed, multi-agency process which aims to ensure timely and effective responses to young offending (Scottish Government 2009b). Most local authorities have developed a multi-agency process as an early intervention response to offence charges

[27] This was aside from a few cases which, on two occasions had been accepted by the young persons' team based within social work because 'the young people were not functioning at their age and stage of development. There were some hopeful indications shared by one participant that more diversion cases would be accepted by the young persons' team instead of criminal justice.

which might have otherwise resulted in a referral to the Children's Reporter (for under 16's) or the Procurator Fiscal (for 16 and 17-year-olds). Prior to PRS, the police referred most cases of youth offending for under 16's to the Children's Reporter, regardless of how minor the offence was. Similarly, the police referred most cases committed by 16 and 17-year-olds straight to the Procurator Fiscal. The most important principles of PRS reflected in guidance published by the Scottish Government (2015b), is that decisions made through PRS are based on all available and appropriate information, that the response is timely, proportionate, and that wellbeing needs are responded to. Crucially, whenever it is appropriate, PRS should be used to divert children and young people away from formal processes and as an alternative, receive support in other, less intrusive ways. As well as highlighting the above priorities, PRS guidance issued for Police Scotland also emphasises that PRS is not a 'soft option' in dealing with offending behaviour, nor does PRS 'provide a means for children and young people to avoid taking responsibility for their actions.' It is evident that there are a variety of PRS models across Scotland which operate differently. The main variables of PRS will now be outlined, which were revealed through a variety of methods (mainly from scoping study data and documentary analysis).

The Nature of PRS Referrals

Perhaps the most significant variance of PRS specific to the interests of this thesis relates to the nature of referrals which are considered. Whilst some PRS models focus solely on offending behaviour, other PRS models deal with children and young people who have an identified wellbeing concern.[28] PRS was initially envisaged as a way of swiftly dealing with children and young people who had committed an offence; however, it is apparent that there are some PRS models which have evolved into a process which accepts referrals both on offence and welfare grounds. The case studies included in this research differ in relation to the nature of referrals which are accepted. Area B has a PRS model which only accepts offence referrals. Area A initially only accepted offence referrals through PRS, however the model was extended in 2013 to also accept wellbeing concern referrals. Lastly, Area C's multi-agency group accepts referrals on both offence and welfare grounds, but only in relation to under 16's. For 16 and 17-year-olds who commit

[28] The subsequent findings chapter will include a discussion on the types of referrals received through PRS as a 'wellbeing' concern.

an offence eligible for PRS in Area C, they can be referred to an appropriate service for intervention instead of recourse to the PF. The decision in relation to 16 and 17-year-olds is made solely by the co-ordinator in Area C, without discussion at a multi-agency group.

The PRS Decision-Making Process

PRS generally involves three main stages involving core components, which are summarised below. Key differences in practice are also listed under each stage in order to highlight PRS practice variance.

Stage 1: A child or young person under 18 years who presents concerns on offending (and in some cases, welfare grounds) are brought to the attention of the PRS co-ordinator. Many local authorities have a dedicated employee for this role who are often based within the local police station.[29] Various checks are made to ensure eligibility for the PRS scheme. An initial decision is taken by the PRS co-ordinator whether to bring the case to a PRS multi-agency meeting for discussion. Otherwise, common other disposals include: formal police warning, police restorative warning, referral to SCRA or the Procurator Fiscal. In many local authorities, PRS co-ordinators can dispose of the case at this stage by referring the child or young person to a service for an appropriate intervention, instead of arranging to discuss the case at a multi-agency meeting. In at least one local authority area, the PRS multi-agency group does not exist and the responsibility of screening and diverting PRS cases is the responsibility of one individual.[30] In each of the case study areas under investigation, the PRS co-ordinator screens the cases prior to them being discussed at the multi-agency group, mainly to ensure relevance and eligibility, and also has the option to make single agency referrals without recourse to the multi-agency group.

Variances at Stage One

- Whether PRS only considers young people who are alleged to have committed an offence, or whether PRS also accepts referrals on 'wellbeing' grounds.

[29] All three case studies included in this research had a PRS co-ordinator based at the local police station

[30] Evidence collated from a policy actor interview; uncertain of how many areas adopts this PRS model.

- Whether young people subject to a supervision order can be dealt with through PRS
- Whether it is necessary for the young person to admit guilt prior to progressing through PRS
- In some areas the PRS co-ordinator can make single agency referrals without consulting the multi-agency group.

Stage 2: For the cases that are put forward for discussion at a multi-agency meeting, the PRS co-ordinator contacts the members of the group to gather relevant information. Further police checks are also carried out at this stage. After relevant information is collated, the PRS meeting takes place and the case is discussed. Typically, at a minimum the PRS members will comprise of representatives from youth justice, police and education. Often, professionals from other agencies are involved, typically SACRO, child care and protection, housing and health.

Variances at Stage Two

- Whether PRS members meet in person or by other communication methods such as email or phone
- Frequency of multi-agency meeting (scoping study research indicated this ranged from twice a week to once every few months)
- PRS group members (for example, to what extent is the third sector represented? Also, in some areas a children's reporter attends the meeting)

Stage 3: Various options for disposal are discussed by the multi-agency partners, which aim to take a holistic account of many factors. The most common disposals include: voluntary work with youth justice or social work teams, SACRO (or other 3rd sector agency),

Variances at Stage Three and Beyond

- What factors are taken into account during the decision-making process, for example in some areas a risk assessment (for example, ASSET) is used to inform the process
- The type of intervention available, depending on the services and resources in place

- Whether there is a limit on the number of times a child or young person can be processed through PRS
- The extent and quality of evaluation differs across areas. In some areas evaluation is non-existent, and in others there is evidence to suggest that some PRS coordinators, gather and interrogate some PRS statistics.

Summary

This chapter has explored the historical and political context in which the WSA emerged, through providing a short history of youth justice since devolution. The timeline within this chapter has encompassed an additional focus on the shifting priorities in dealing with 16 and 17-year-olds, demonstrating the ambivalent attitudes of successive governments over time. Even though Scotland is often cited as providing 'welfarist' response to youth crime (Dyer 2016), this chapter has shown that for 16 and 17-year-olds, the landscape is altered and this group are largely outwith the realms of a welfarist response.

The WSA marks a change of direction in youth justice with its focus upon diversion and early intervention. Indeed, a policy centred upon principles of minimum intervention and diversion could be viewed as a radical step especially in comparison to the more punitive policies that have preceded it. However, the WSA does not operate in a vacuum. The youth justice system in the 21st century is 'the gradual accretion of numerous initiatives that have emerged over the centuries' (Muncie 2004, p.249), creating a very complex landscape indeed. The next chapter will explore the interplay of youth justice discourse in more detail in order to consider the multiplicity of rationales commonly at play in contemporary youth justice policy and practice.

Chapter Three: Multiple Discourses in the Youth Justice System

Introduction

This chapter is concerned with exploring the varying strategies and multiple discourses present in the contemporary youth justice system. It is widely accepted that youth justice strategy involves multiple conflicting and contradictory discourses and rationales (Muncie 2006; Fergusson 2007; McAra and McVie 2010), and that policy implementation is heavily dependent upon professional, front-line interpretation (McAlister and Carr 2014). This thesis is grounded in the understanding that since the 1960's, developing forms of neo-liberalism have impacted upon youth justice policy and practice in differing ways (Muncie 2006). Thus, prior to an introductory section outlining the complexities of enacting policy strategies in youth justice, the first half of this chapter will focus on exploring some influences of neo-liberalism in youth justice policy and practice. The latter half of this chapter will critically unpack the multifaceted dimensions of the strategies of diversion and early intervention. These strategies, which underpin the central ethos of the WSA, will be theoretically examined, especially in light of a developing body of literature which calls for more conceptual clarity with regard to their use (Richards 2014; McAlister and Carr 2014).

Throughout, this chapter will borrow heavily from research across the UK (and particularly in relation to English developments under New Labour). This is due to a paucity of Scottish research specific to the multiple youth justice discourses which are relevant to this thesis. Whilst there are many differences between the Scottish and English systems, there are also similarities in relation to the strategies and discourses that are at play within the youth justice sphere.

Implementing Youth Justice Strategies

Traditionally, approaches to youth justice have been described as an oscillation between the two models of 'welfare and justice' in an attempt to reconcile them (Stahlkopf 2008). However, it has long been established that the justice-welfare dichotomy is too simplistic because youth justice systems combine elements of welfare, justice, and other more contemporary philosophies (Waterhouse and McGhee 2004). Commentators have characterised youth justice as a 'complex patchwork' of policy and practice, drawing upon many approaches and principles such as 'welfare, justice, retribution, rehabilitation, treatment, punishment, prevention and diversion (Muncie 2004, p.266).

All the concepts listed above could be understood as discourses, approaches or rationales which are commonly featured in youth justice policy and practice.

Even if a discourse can be clearly identified at a policy level, it is not inevitable that it will be straightforwardly applied in practice (Fergusson 2007). McAlister and Carr (2014, p.242) put forward: "even where a particular model of youth justice is prominent, the meaning and experience is dependent on how interventions are institutionalized and enacted." In other words, the implementation of policy is ultimately dependent upon how professionals at the ground level interpret and decide to enact the strategy. As previously highlighted in the introduction, youth justice is awash with contested terms which can be interpreted very differently in practice.

Neo-Liberalism in Youth Justice

This section will consider some ways in which the ideology of neo-liberalism has influenced the youth justice system across the UK. Prior to defining and critically exploring the contested notion of neo-liberalism, the concepts of responsibilisation, managerialism, and actuarialism will be put forward as three specific 'imperatives' of neo-liberalism (Arthur 2012) and will be explored in turn. This section will not be used to rehearse the vast amount of evidence already published in relation to the 'new youth justice' era (Goldson 2000), considered by many as a particularly punitive period in the history of youth justice which was underpinned by neo-liberal thinking.[31] However, New Labour examples will be used to grasp an understanding of the various discourses which are symptomatic of neo-liberal manifestations in youth justice. Such knowledge will aid understanding when considering if and how these discourses are also present within the Scottish youth justice sphere.

Neo-liberalism has been described as 'polysemous' term which is often poorly defined, despite its widespread use in many political and academic debates (Bell 2011, p.139). This thesis is grounded in the understanding that neo-liberalism cannot be understood as a complete political philosophy or ideology, because it does not offer a whole or

[31] There is a body of literature which demonstrates convergence with neo-liberalism within the youth justice system under New Labour governance (see for example Goldson 2000; Muncie 2008; Arthur 2012). In England especially, New Labour policies led to a particularly punitive era of youth justice, where child incarceration rose substantially. For example, Moore (1998) found that more than two thousand boys were remanded in prison custody in 1997, which was a 100 per cent increase compared to 1990.

comprehensive understanding about how political processes should be organised (Thorsen 2010). Neo-liberalism is not a universally applicable concept, and it involves multiple dimensions and understandings which are not solely economic in nature (Bell 2011).

Nevertheless, it is generally agreed that at the heart of neo-liberalistic thinking, is the idea that the only way to prosperity and growth involves the 'rolling-back' of the state, to promote free-market economies (Whitehead and Crawshaw 2012). However, as Bell (2011, p.140) argues, the enactment of neo-liberalism in practice would rarely involve the privatisation of all state functions. Bell (2011, p.140), borrowing from the ideas of Dardot and Laval (2009) goes on to argue that neoliberalism is more akin to 'a *system,* an entire *raison d'être* which reserves an active role for the state as promoter of market solutions and facilitator of competition between rational, free thinking individuals.'

Commentators writing in relation to youth and criminal justice have drawn attention to how neo-liberalism has affected criminal justice in different ways, for example highlighting that it has led to policies based on social inequality and penal expansionism (Arthur 2012), the construction of self-governing individuals ('technology of the self'- Rose 1999, p.74), created alienation amongst communities (White and Cuneen 2015), and led to the 'death of the social' whereby there has been a movement away from penal welfarism which traditionally characterized the UK justice system (Rose 1996; Garland 2001).

There are many other theories and arguments regarding the various facets and impacts of neo-liberalism, offered by the likes of influential authors such as Garland (2001) and Wacquant (2009), of which there is not enough scope to explore in detail here. However, of particular relevance to this thesis, it has been argued that a key influence of neo-liberalism is that it can lead to 'placing less emphasis on the social contexts of crime and measures of state protection and more on prescriptions of individual/family/community responsibility and accountability' (Muncie 2005, p.37). In this way, 'social problems consequently become defined in terms of the individual rather than state responsibility.' (Arthur 2012, p.135). Rose (1999) argues that this results in a type of individualisation process whereby neo-liberalism brings about the construction of self-governing individuals who must accept that the responsibility for changing their circumstances lies completely within their own hands. Such a stance has considerable implications for

youth justice policy and practice, which will be explored in more detail within the next section.

Much of the research which has been carried out in this area has considered to what extent different democracies have shown divergence or convergence with neo-liberalism and wider structural penological trends (see for example McAra 2004;2005; Muncie 2011; Hamilton et al. 2016). For example some authors have sought to demonstrate that increased punitiveness through a neo-liberal trajectory is not inevitable. Muncie (2005) for example emphasizes that there are many other global processes at play (for example, the UN Convention on the Rights of the Child). Convergence of global developments are not one-dimensional and whilst there may be punitive influences spreading through the growth of neo-liberalism, there are many other, (potentially progressive) initiatives being dispersed globally (Muncie 2005). It is evident that global processes are not enacted uniformly, and cultural and political contexts may act to mitigate against penal transformation (McAra 2005). For example, the Scandinavian countries have not yet succumbed to popular punitiveness as seen in the USA and England. Scotland has also been identified as being 'relatively resistant' (McAra 2005, p.278) to some punitive effects of neo-liberalism, particularly due to the existence of the children's hearing system. McAra (2005, p.297) also points out that Scotland is a smaller jurisdiction which may provide protection because they have 'particular features which can make them better able to ride out such turbulence without fundamental damage to their central principles and purposes.'

Responsibilisation

> "The offender is depicted as a rational, responsible decision maker, who responds to situational opportunities to engage in crime." (Gray 2005, p.938).

The discourse of responsibilisation is closely interlinked with the neo-liberalist school of thought, with its emphasis upon shifting certain responsibilities away from the state. In a penal context at a broader level, the notion of responsibilisation brings an expectation that communities and private sector organisations should be taking measures to reduce criminal opportunities (Muncie 2006). Crime control should not be a duty undertaken solely by the state; organisations and communities should also be taking active steps to reduce crime. At an individual level, Gray (2005, p.938) characterises the responsibilisation of young people who offend as 'challenging perceived deficits in their

moral reasoning.' This brings an emphasis on treatment, such as 'cognitive behavioural therapy' (CBT) programmes to address the perceived deficiencies in moral reasoning believed to have caused the offending behaviour (Barry 2009). With this way of thinking, young people are rational beings, and should be held individually accountable for their actions. A responsibilising discourse tends to downplay, or at worst, wholly disregards the body of literature that shows young people are products of their environment and affected by socio-economic factors which can influence offending behaviour (Muncie and Hughes 2002).

A responsibilising discourse underpinned many of New Labour youth justice policy reforms, especially through the medium of 'youth offending teams' (YOTs) which were introduced under the Crime and Disorder Act (1998) (Goldson and Jamieson 2002; Muncie 2006). Goldson (2000) highlights how YOTs were managed under 'crime and disorder' and 'community safety strategies' by multi-agency groups instead of being dealt with by social services under the local authority. This replacement, Goldson (2000) argues, brought about a distinct operational and ideological separation of 'young people who offend' from 'children in need' (i.e. children who are dealt with via mainstream child and family services). Goldson (2000, p.256) posits that this move was highly detrimental, contributing to processes of child criminalization, and re-establishing notions of 'the 'undeserving' from the 'deserving,' the 'threats' from the 'threatened,' the 'dangerous' from the 'endangered', and the 'damaging' from the 'damaged' and 'vulnerable.' There is an abundance of research which considers the consequences of the responsibilisation discourse under New Labour administration and provides important insights into the development of the 'new youth governance' (see for example Goldson and Jamieson 2002; Muncie 2006; Field 2007; Gray 2007;2009; Phoenix and Kelly 2013). However, a word of warning is put forward by Phoenix (2016, p.123) who is critical of the 'gloomy state' of this body of literature which largely derives from a governance angle. Phoenix (2016, p.126), also drawing from the work of Pitts (2008) emphasises the gaps which exist between policy and practice; arguing that 'the youth governance framework struggles to see how and in what ways some of the interventions done in the name of governance do, in fact govern young people in the ways suggested.' Indeed, studies such as Burnett (2005) and Field (2007) found that benevolent discourses of welfare are still maintained by professionals despite the responsibilising discourses propagated under New Labour reforms.

A few studies have shown that the discourse of responsibilisation is also present in Scottish youth justice (McVie 2011; Barry 2013). At a policy level, responsibilisation has featured in a number of initiatives. The introduction of ASBOs and youth courts are the more obvious examples as discussed within the previous chapter, but the discourse can also be found, perhaps more covertly, within the WSA policy and also in previous policies such as *Preventing Offending by Young People: A Framework for Action* (Scottish Government 2008c). McVie (2011) writes how the policy speak contained in the Scottish Government (2008) 'Preventing Offending' framework reflects a shift away from a welfarist discourse, towards more of an emphasis upon the risk management of young people and emphasising the individual responsibility of young people. In relation to the WSA, Barry (2013, p.356) argues that the policy reflects a responsibilising discourse in the following way:

> "The [WSA] array of guidelines […] have been entirely preoccupied with process and outputs and rarely mention outcomes for young people – namely, constructive alternatives to youth offending. There is talk of sanctions, measures, risks, needs and robustness, but little seeming interest in why young people offend."

Barry (2013) highlights that what the WSA policy fails to acknowledge is just as significant as what it contains. Through a failure to appropriately emphasise the socio-cultural context and explain what young people themselves feel about desistance and integration, Barry (2013 p.356) argues that the WSA 'epitomises a deficit model of youth offending and the responsibilisation of young offenders.'

In the same article, Barry's (2013) study (which explored the views and experiences of 103 young people[32] involved in the Scottish youth justice system) found that elements of responsibilisation were present in working with young people. Barry (2013, p.356) found that interventions delivered to young people 'operated in a vacuum', where they took place 'away from the reality of everyday life…thus exacerbating a culture of rational choice and responsibilisation.' Young people in the study reported that the programmes which they took part in whilst in care were unlikely to impact them in the future when they returned to the community. Once back in their communities, young people are

[32] The sample was drawn from young people who were or had been looked after and accommodated.

abruptly left to their own devices and expected to individually put into practice programmes which were delivered to them in a completely different context. The desistance literature points towards alternative factors which deter young people from crime. For example, research has shown that 'turning points' in people's lives – such as getting married or becoming employed - can deter offending (Sampson and Laub 1993) and, crucially, developing a positive relationship with skilled professionals has been identified as a factor linked with desistance (McNeill 2006). Clearly, there is a requirement for professionals to gain rapport, foster motivation and help create opportunities for a young person to start the desistance process. Practice which focuses on delivering coercive interventions which do not address structural issues, expecting individuals to manage risks by themselves once back in the community, reflects a responsibilising model (Barry 2013).

There is also some evidence to suggest that a responsibilising discourse may become more pronounced when a young person turns 16. For example, in their study which examined child welfare case plans in England, Liebenberg (2015) found strong evidence of a responsibilisation discourse expressed in different ways. The results of the study demonstrated that many of the professionals writing case plans tended to adopt a neo-liberal ideology in their management of risk. In particular, Leibenberg (2015, p.1018) found that the use of language contained in youth offender reports 'blamed youth for their risk' which acted to 'transform social collective risk into individual responsibility.' Furthermore, they found that the responsibilising discourse became more pronounced when young people started to approach the age of 16, reflecting the view that the older the person becomes, the more responsibility they should accept for themselves. This way of thinking tends to disregard structural contexts and tends to place more emphasis on young people as 'troublesome' instead of 'troubled' (Barry 2009, p.78). There is also evidence of a stronger responsibilising discourse for 16 and 17-year-olds in Scotland. Of particular relevance, Robertson (2017) found some evidence of a responsibilising discourse present in the diversion from prosecution process when working with young people. This was found to be more pronounced in cases where professionals were finding it hard to engage with individuals. Robertson (2017, p.186) states that 'diversion from prosecution was perceived to be an opportunity for 16 and 17-year-olds; an opportunity to not enter the adult criminal justice system, but an opportunity determined by their admission of responsibility for an offence and their engagement in

the diversion process and disposal'. In this way the professionals construed the practice as being wholly determined by the 'attitude of the youngster'; and if they chose not to engage with the process, then they had effectively lost their 'opportunity' to be diverted from prosecution.

Managerialism

"Efficiency, the ratio of output to input, has become the primary yardstick…Managers tend to count instead of judge, measure instead of think, and care about the cost instead of the cause." (Tsui and Cheung 2004, p. 439).

For Bell (2011, p.4), the most significant transformation which the UK Government has undergone due neo-liberal influence 'is the move from its role of public services to that of facilitator of market solutions." This transformation has greatly altered the culture of criminal justice over time, involving a widespread manifestation of management ideology into the field (Bell 2011). Muncie (2006, p.775) characterises managerialism as:

> "Stressing the need to develop a connected, coherent, efficient and above all cost-effective series of policies and practices. It is ostensibly governed by pragmatism rather than any fundamental penal philosophy."

Managerialism is not a theory of crime control in itself; rather it is an approach preoccupied with emphasising systematic matters to produce what is believed to be an efficient system. Garland (2001, p.188) writes that managerialism is a type of 'culture which has become embedded in institutional settings' where crime control 'has become saturated with technologies of audit, Fiscal control, measured performance and cost-benefit evaluation.' In essence, managerialist thinking is the transfer of market principles and management theories, where private sector ideas are applied to the public sector (Thomas and Davies 2005). In practice, the manifestation of managerial thinking can entail the setting of targets and performance indicators, the publication of league tables, and market testing of programs to ensure value for money (McLaughlin et al. 2001).

There is existing research evidence which explores the effects of managerialism in the youth justice system, especially in relation to New Labour reform (for example Brownlee 1998; Eadie and Canton 2002; Stahlkopf 2008). Commentators have argued that a culture of managerialism applied to youth justice practice can serve to limit the discretion of professionals (Eadie and Canton 2002), stifle creativity through a routinized approach

to practice (Baker 2005), and 'skew practice to fit performance indicators' (Garland 2001, p.189). In particular, Eadie and Canton (2002) demonstrate how an emphasis on performance targets in the youth justice field is not conducive to practice which should be preoccupied with gaining a holistic account of children's needs. However, a managerialist approach can also bring benefits, because it can improve budgetary and operational processes, especially for example, where there is wastage of resources (Tsui and Cheung 2004).

There is also evidence to suggest that a managerialist agenda has infiltrated into Scottish youth justice. Prior to devolution, managerialism was present within criminal justice but it was not undermining the dominance of the welfarist discourse (Croall 2006). However, after devolution there were a number of initiatives which reflected the managerialist ethos, such as the target setting in relation to persistent offenders (Croall 2006) and the 'Preventing Offending Framework' (Scottish Government 2008c) which has a specific focus on performance improvement. The introduction of on-the-spot monetary fines (FPNs) through the the Anti-Social Behaviour etc. (Scotland) Act 2004 is also heavily underpinned by managerialist thinking, with a principle aim being to provide swifter, more efficient responses to offending or anti-social behaviour to save court and police time (Cavanagh 2009).

Managerialist themes can also be found within the WSA, particularly due to the way in which the WSA pilot was carried out in Aberdeen. The Scottish Government decision to employ Capgemini Consultant Ltd to evaluate the WSA pilot is especially significant. Loader and Sparks (2012) argue that as part of the altering climate of the governance of crime, governments are increasingly employing other knowledge producers, such as consultancy companies, to carry out evaluations. Although the CapGemini evaluation may have brought considerable benefits in relation to 'working smarter' and simplifying processes in the youth justice system, arguably with such an approach the goals of the youth justice system are somewhat displaced with an undue focus upon linear processes instead of endeavouring to explore what qualitative challenges and outcomes the WSA brings for professionals, and indeed children and young people in receipt of services. The report (CapGemini Consulting Ltd 2011) has a strong emphasis on the efficiency of the youth justice system with managerialist echoes in the pursuit of achieving 'integrated processes.' Furthermore, the evaluation failed to include the views of children and young people, and measured success mainly in quantitative terms. For example, some findings

of the evaluation were that 'social work report writing has reduced by 11%; and there has been a 7% increase spent in meetings.'[33] Loader and Sparks (2012 p.14) consider that Governments are increasingly choosing to employ alternative knowledge producers to carry out research evaluations because they tend to 'deliver on time,' but also because other knowledge producers 'have a *line,* a known and readily communicated position, which, moreover, happens to align with the political preferences and prevailing rationality of governments." Indeed, to focus on managerial aspects of the system brings a focus on ideologically-free technicalities and process. In consequence, this can turn attention away from engaging with the more politically-charged, controversial subjects such as core and pervading youth justice discourses and dualisms which characterise the complexities of working with young people who offend.

An Actuarial Approach for the Prevention of Youth Crime

> "Distorted constructs of crime prevention have ushered in a multitude of early (and earlier) intervention strategies, targeted not only towards convicted 'offenders' but also children who are deemed to be 'latent offenders', 'near criminal', 'possibly criminal', 'sub-criminal', 'anti-social', 'disorderly', or 'potentially problematic' in some way or another." (Goldson 2009, p. 20).

Grasping the concept of actuarialism is crucial in the pursuit of a comprehensive understanding of dominant discourses present in contemporary youth justice. The notion of actuarialism (previously referred to as the 'new penology') was first introduced by Feeley and Simon (1992) whose original ideas have since been developed and refined. In short, actuarialism could be defined as a theoretical model 'in which the pursuit of efficiency and techniques that streamline case processing and offender supervision replace traditional goals' of the criminal justice system (Kempf-Leonard and Peterson (2000, p.67). Closely related to discourses of managerialism and risk, Feeley and Simon (1994, p.173) have influentially put forward that actuarialism is 'concerned with techniques for identifying, classifying, and managing, groups assorted by levels of dangerousness.' The managerialist aspect of actuarialism replaces the traditional goals of the youth justice system with the pursuit of efficiency (resulting in the management

[33] Evidence collated from grey literature distributed at the WSA Pilot Event in Aberdeen (2012).

and classification of groups); and the risk aspect of actuarialism brings an emphasis on statistically assessing individuals (to sort them by 'levels of dangerousness').

The 'risk factor prevention paradigm' (RFPP) is a crime prevention model which Case (2007, p.92) refers to as 'the jewel in the actuarialist crown.' The concept of 'RFPP' was originally coined by Haines and Case (2008), who describe it as a model involving the assessment of risk factors which are statistically correlated with the likelihood of offending behaviour. The risk assessment conclusions are then used to justify delivery of an intervention, which ultimately aims to prevent offending behaviour. The RFPP model is underpinned by the findings of the 'Cambridge Study of Delinquent Development' (Farrington 1996). This influential study identified many 'risk factors' associated with offending behaviour, mainly relating to individual characteristics, school life, family issues and community factors. Through his influential work, Farrington (1995, p.120) hoped to address what he saw as a perpetual cycle of disadvantage and offending behaviour, through a strategy of early prevention:

> "It is clear that problem children tend to grow up into problem adults and that problem adults tend to produce more problem children. Major efforts to tackle the roots of crime are urgently needed, especially those focusing on early development."

The work of Farrington (1995;1996) has been criticized by the likes of Armstrong (2004) and Case (2007), mainly due to the lack of attention paid to macro and structural impacts on the influence of offending behaviour. Across England and Wales, the RFPP model was one of the key techniques used by New Labour in their aim to overhaul the entire youth justice system. Under the 1998 Crime and Disorder Act, the principle aim of the youth justice system was heralded as the 'prevention of offending.' (Haydon 2014). The strategy of 'prevention' under New Labour was underpinned by actuarialism, and included a strong focus upon risk and intervening early in the lives of children and young people. There is a dedicated body of literature which has highlighted various damaging and harmful effects of the strategy (e.g. Goldson 2000;2008; Muncie 2004; Creaney 2012). The main critique relates to how the RFPP model was adopted under New Labour to blur the lines between offending and 'pre-offending' behaviour (Smith 2003), resulting in the early criminalization and stigmatization of young people (Goldson 2005a). It is also clear to observe the responsibilising element which pervades through the RFPP model, because such an approach brings targeted, individual interventions, as opposed to

provision through universal services. In this way, under New Labour, the remedy for youth offending behaviour (and sub-offending behaviour, or anti-social behaviour) became 'harnessed to notions of moral restoration and individual responsibility, as distinct from wider social-structural relations.' (Goldson 2005a, p.258). Case (2007, p.173) identifies additional harms of the RFPP model by arguing that risk-based, targeted interventions contravene young people's rights because the practice involves "adults 'doing things to' (rather than with) young people under the auspices of 'we know best...'"

Structured risk assessment tools (such as 'ASSET' for England and Wales, and predominantly ASSET/YLS-CMI in Scotland[34]) are the medium through which the RRFP model continues to be delivered across the country. In relation to England and Wales, ASSET is the uniform risk assessment tool which is used by YOT's to achieve consistency in the way youth crime is responded to (Baker 2005). Research which has been carried out exploring the effects of risk assessment tools in practice show mixed results. On the one hand, critics have argued that such tools place an undue emphasis upon managerial targets, and actuarial statistics which tends to nurture an ignorance of the offenders' wider needs and socio-structural experiences (Smith 2006). Others have put forward that risk assessment models stifle creativity, cultivating a culture where professionals become 'technicians, encouraged to do as they are told.' (Bhui 2001, p.638). On the other hand, authors such as Baker (2005) and Case (2007) have highlighted that risk assessment tools are not harmful in themselves; rather, it is how they are used by professionals which can bring either detrimental or positive results. If used appropriately, especially through the inclusion of qualitative, inductive material alongside the quantitative (Case 2007), risk assessments have the potential to not only reap the 'benefits of a structured approach' but also partner this with 'the insights of professional knowledge and experience.' (Baker 2005, p. 118/9).

There appears to be a lack of research in relation to the practice of risk management processes in Scotland. Importantly, there is not an evidence base to suggest that a strong culture of actuarialism exists in practice. The undertaking of risk assessment across

[34] However, Nolan (2015) identified more than eight risk assessment models utilised across Scotland in relation to youth justice practice. 96% of respondents reported they used a risk assessment tool for inclusion in reports to the Children's Reporter and in preparation for attending court.

Scotland varies considerably and there is little consistency in the protocols which exist (Nolan 2015). The policy 'Preventing Offending by Young People: A Framework for Action' (Scottish Government 2008c), brought about a shift in thinking in relation to the subject, because this was the first time in youth justice policy that 'risk management' was explicitly referred to. It is stated in the guidance that 'agencies should focus on the identification, assessment, planning and management of this group of children and young people.' (Scottish Government 2008c, p.11). This language reflects actuarialist thinking and encourages the targeting of young people to assess perceived risks.[35]

The WSA policy includes guidance in relation to risk, through the publication of FRAME in relation to children and young people who offend (see Scottish Government 2011d). The WSA crucially highlights that risk is dynamic, and any assessment of risk should involve a 'person-centered consideration of needs' (Scottish Government 2011d, p.6). The guidance also contains information in relation to delivering a multi-agency approach for the few who present a serious risk of harm. In contrast to some of the more punitive applications of risk assessment seen in England and Wales, the guidance avoids viewing risk in isolation, recognising that risk is not embedded in individuals but involves a complex interplay between individual and context (Murphy 2018).

Diversion and Early Intervention

The strategies of diversion and early intervention are at the very core of the WSA approach. This second half of the chapter will explore the literature surrounding these two strategies by placing the terms in their theoretical context, whilst simultaneously attempting to consider their broad meaning under the WSA policy. The last section of this chapter will explore the reported rise in multi-agency youth offending prevention initiatives across the UK (Kelly and Armitage 2015). Recognising that examples of such initiatives as found in the literature have some similarities particularly in relation to PRS, the final section will explore how notions of early intervention and diversion have played out in practice in relation to these comparable schemes.

[35] One of the drivers behind this change was the review of the arrangements after the death of Karen Dewar, who was murdered by a 17-year-old in 2005. This review led to recommendations pertaining to the risk management of young people who display sexually harmful behaviour, and who present a risk of serious harm within the community.

The Meaning of Diversion

The concept of 'diversion' is an elusive term, with different understandings attached dependent upon the context in which it is being applied. In accordance with the views of Dingwall and Harding (1998, p.2), this thesis adopts the view that the word 'diversion' is only a useful shorthand term, where its use will always necessitate further explanation. The traditional understanding of diversion is firmly rooted in the theoretical concept of labelling, predominantly associated with the theorists Becker (1963) and Lemert (1967). The basic premise of labelling theory is that deviance is created by labelling certain acts as 'deviant' and treating individuals who commit such acts as 'outsiders' (Becker 1963). In relation to a judicial setting, there is the belief that formal processes such as the court can label, construct and reinforce a person's identity as a criminal; in effect courts are 'degradation ceremonies' (Garfinkel 1956, p.23) which can serve to encourage or perpetuate criminal behaviour. In essence the basic premise of labelling theory argues that the processes involved in the identification of 'deviant behaviour' establishes criminal identities through the stigmatisation of individuals. Therefore, diversion programmes are rooted in the principle that this stigmatizing exposure to the formal legal system can and should be avoided where possible. It is believed that this avoidance will increase the probability of desistance for people who commit minor crime. In this way, the fundamental purpose of diversion could be viewed as a type of harm reduction due to the avoidance of system contact through diversion from the system (Potter and Kakar 2002).

Richards (2014, p.130) has drawn attention to the 'amorphous' nature of diversion and has written extensively about the many different versions of diversionary practice. Instead of the traditional view above (i.e. diversion from the system) an alternative understanding of the concept entails 'diversion from crime.' This way of thinking underpins the preoccupation in youth justice practice which aims to address the root causes of offending behaviour. A very clear message from the literature is that young people who offend are likely to have a range of exacerbating issues, which can often include regular drug or alcohol consumption, mental health problems, growing up in socially deprived backgrounds, problems at school, and inconsistent parental supervision (Audit Scotland 2002; Whyte 2004b; McAra and McVie 2010; Scottish Government 2011a). It is argued that through taking part in a diversion programme, young people are 'given the opportunity' to change and address underlying issues (Scottish Government

2011b). In this way, adopting an understanding of the concept as 'diversion from crime' entails an intervention of some sort, which is entirely different to the traditional understanding of diversion. Under this premise, diversion from the system involves an accompaniment of 'diversion to' another service (Smith 2014). Of crucial importance, the WSA approach adopts both understandings of the concept, where diversion is accepted as 'diversion from the system', and 'diversion from crime':

> "Intervention in this way keeps young people away from the formal criminal justice process and gives them the opportunity to make positive changes at a crucial time in their lives." (Scottish Government 2011d, p.2).

In the same sentence, the WSA policy guidance refers to diversion as a practice which involves intervention to provide young people with an opportunity to change, and a practice which involves avoidance of system contact. Richards (2014) argues that these two understandings should be separate and distinct, due to the very different schools of thought which sit behind the two main conceptualisations of diversion. Smith (2014, p.110) calls for a nuanced understanding of diversion where the influences of 'legitimizing discourses' are carefully considered. Under the WSA policy, the concept of diversion appears to have two main 'legitimizing discourses' where children and young people are conceptualised within youth justice. The first relates to a rehabilitative, welfarist discourse which advocates intervention to address problems in individual lives which are understood as factors leading to offending behaviour. The second relates to minimum intervention (which, is also an economically wise course of action) that advocates the avoidance of system contact where possible.

Aside from the purposes of diversion as avoiding system contact and addressing risk factors linked to offending behaviour, another important justification behind its use relates to economic pragmatism. Potter and Kakar (2002) report that diversion is a means for courts to process cases faster and focus their attention on more serious offenders (Potter and Kakar 2002). Tak (2008) states that this need to reduce pressure on the criminal courts is the main drive behind the use of diversion for most European countries. There are also claims that diversion is highly cost effective bringing vast monetary savings for youth justice. For example, Smith (2014, p.119), writing in relation to the increased use of diversion in England towards the end of the 2000's, reports that 'it does not seem entirely coincidental that the onset of economic difficulties coincided with the onset of the recorded decline in prosecutions in the late-2000's.' Similarly, the

development of the WSA coincided with the onset of the economic downturn, and policymakers were open about their intentions to save money and 'work smarter.'[36] Indeed, the WSA pilot evaluation claimed to 'make efficiency savings of around the region of £425k across criminal justice partners' solely due to the increased use of diversion from prosecution (Scottish Government 2011b, p.20). It was stated in their report that this saving was made through a reduction in staff time, across the Procurator Fiscal service, the police, and social work (CapGemini Consulting 2011).

In contrast to the findings above, some authors have found that diversionary practice is resource-intensive. For example, Duff et al. (1994) conducted a study which investigated the operation and use of psychiatric diversion schemes in Scotland. Reflecting on interviews, Duff et al. (1994, p.18) found that Procurator Fiscals found diversion time-consuming and not in their interests. Participants in the study commented 'they had no doubt it would be more 'efficient' – in terms of their office resources – simply to prosecute all those offenders who are presently diverted.' Furthermore, Barry and McIvor (1999) conducted an evaluation of the 100% funding for diversion schemes and found that diversion is not an inexpensive alternative to prosecution, but also highlight that costs per case could reduce over time when the programs are better established and running at full capacity. Clearly, measuring the efficiency of diversion is far from straight forward. It would appear more likely that diversion may cause the shifting of resources and could lead to savings elsewhere in the system. For example, even though diversion may cause considerable extra work at the front end for Fiscals and those delivering diversion programmes, money could be saved in the long term due to the avoidance of court or secure care costs, assuming that diversion led to desistance from crime (Stedward and Millar 1994).

There have been many claims regarding the perceived dangers of diversion, one of which is concern over due process. It has been proposed that some individuals might prefer to 'admit' offences (whether they are guilty or not) and be diverted, rather than experience the anxiety of a court proceeding and escape the risk of receiving a criminal record (Sanders 1988). Moreover, Austin and Krisberg (1981, p.171) argue that 'diversion programs represent an erosion of due process and increased formal intervention by the

[36] Recurring spoken theme at the WSA pilot event in Aberdeen, 2012.

state – instead of justice, there is diversion.' The erosion of due process is a valid point because the offender is not officially brought to justice if they are diverted. Dingwall and Harding (1998, p.94) compare the court process with the pre-trial process, through highlighting that court is all about 'fair dealings' with its openness and public nature. On the other hand, the pre-trial process has a much 'lower level of visibility' with informal processes characterised by discretionary decisions, with more chance of injustice (Dingwall and Harding 1998, p.94).

The strongest concern about the practice of diversion relates to its potential to cause 'net-widening.' This debate is related to the understanding of the concept as 'diversion from crime' where the practice also involves some sort of intervention. In short, net-widening can be understood as 'the expansion of formal or informal controls exercised by either social service systems, or the juvenile justice system over youths for whom such services were not designed (Berg 1986, p.33). The danger is then, as Sanders (1988, p.514) aptly states, 'as well as diverting offenders from prosecution, diversion schemes also divert them from no further action at all.' The net-widening debate is most associated with the likes of Austin and Krisberg (1981) and Cohen (1985). In his influential book 'Visions of Social Control,' Cohen (1985) investigated the implications of the new ideology of 'community control' which became most popular in the 1970's. Cohen (1985, p.45) argued that diversionary initiatives such as 'community corrections' are in effect an expansion of social control. Practices such as diversion have a welfare based, benevolent appearance which can be difficult to fault. However, Cohen (1985, p.45) argues that "something like 'diversion' becomes not movement out of the system but movement into a programme in another part of the system." In the same vein, Austin and Krisberg (1981) comment that diversion not only widens the net, but also creates 'new nets'; because they suggest that diverted youths can be individuals who would have been previously ignored by the police.

The phenomenon of net-widening, whereby young people are inadvertently drawn into diversion schemes who would previously have been dealt with informally, is mentioned in the WSA 'Diversion from Prosecution Toolkit' provided by the Scottish Government (2011b, p.5):

> "Diversion should be seen as the highest tariff alternative to a prosecution and this approach should avoid net-widening and possible misuse of resources. There must always be sufficient evidence to prosecute before a young person can be diverted."

Although brief in nature, for the first time the Scottish Government acknowledged the potential of diversion to cause net-widening or up-tariffing. In order to protect against this, it is clarified that diversion should always be viewed as the 'highest tariff alternative to prosecution', so that young people are indeed being genuinely diverted away from the court process (Scottish Government 2011b, p.5).

The rest of the chapter will focus upon critically examining the concept of early intervention. Although these terms are conceptually distinct, authors such as Richards (2014) have highlighted how the boundaries and meanings of these rationales can overlap and become blurred in practice. Attention will be paid to exploring the dangers of this conceptual blurring through considering the rise of 'pre-statutory schemes' and the centrality of early interventionist and diversionary discourses which permeate differently within and through these programmes depending on where priorities are placed.

Early Intervention

Not dissimilar to the nature of diversion as a concept, 'early intervention' is ambiguous with many different interpretations. Thus, in the same way as the concept of diversion, this thesis adopts the view that the term will always necessitate further explanation. Haydon (2014, p.226/7) suggests that there are three main ways in which early intervention is understood within the field of youth justice, which are listed below.

1) ***Preventive Early Intervention*** which stops problems from developing in the first place
2) ***Protective Early Intervention*** which protects children and families with identified 'risk factors' from experiencing problems in the future
3) ***Remedial/Therapeutic Early Intervention*** which addresses emergent problems before they become serious or persistent

The first characterisation of early intervention relates to the concept of prevention. The goal of prevention is an ultimate aim for many public services, most notably within health, education and social services. The second understanding provided by Haydon (2014) alludes to the discussions contained in the previous section, on actuarial justice and the New Labour preventative agenda which involved the targeting of 'at risk' children and young people. Interventions are promptly delivered to individuals who demonstrate first indications of a problem or are believed to be at 'high risk' of developing a problem.

Lastly, 'remedial/therapeutic early intervention relates to practice which involves the delivery of an intervention once an individual has already developed most symptoms of a problem.

The practice of 'early intervention' within the field of youth justice has historically been full of ambiguities, leading to many different applications of the concept (Case and Haines 2015). Thus, what exactly 'early intervention' means for practitioners and the children/young people in receipt of such interventions may look entirely different from one person to the next. The main challenge associated with the practice is the question of how it is possible know when exactly it is effective to deliver an 'early' intervention. Keeping in mind the evidence base that suggests contact with the youth justice system can be harmful, increasing the likelihood of further offending behaviour (McAra and McVie 2010), it is very difficult to establish when, and in what way, interventions should be delivered to ensure their efficacy. The political statement of 'providing the right help at the right time' is frequently used in reference to the practice of early intervention across Scottish children's services and within the WSA (Scottish Government 2011a; Scottish Government 2017b). However, the actual logistics and practicalities of achieving this objective in the field of youth justice is beset with difficulty. Indeed, how is it possible to know that the perfect opportunity for intervention has not already passed? For example, for some individuals, offending behaviour may have stemmed from attachment difficulties experienced between 0-2 years of age. In the same vein, Case and Haines (2015) comment that what constitutes 'early' is not clear; for example, should an individual be in receipt of such an intervention between 0-2, childhood, and/or in adolescence? Furthermore, of particular relevance to this study, is it possible for a 16 or 17-year-old to receive an 'early' intervention or has the opportunity been missed? It is important to highlight that such ambiguities have problematic consequences for research because without accurate definitions, 'it is impossible to reduce valid and reliable evidence-based conclusions regarding the efficacy of early intervention.' (Case and Haines 2015, p.107).

The conceptualisation of early intervention under the WSA is linked to the introduction of PRS across the country. PRS, the medium through which early intervention is delivered under the WSA, is a localised strategy which could be characterised within the academic literature as 'pre-court diversion' (Hughes et al. 1998, p.16), 'pre-charge diversion' (Samuels (2015), or a 'pre-statutory scheme' (Kelly and Armitage 2015). The next section

will critically consider the evidence relating to two examples of these schemes to explore the various discourses at play within them.

Pre-Statutory Multi-Agency Initiatives

Smith (2014, p.109) writes that although the use of 'out of court' disposals are by no means new, since around 2008 England and Wales have seen a 'significant change in the way in which the reported crimes of young people have been dealt with.' Corresponding with a fall in the numbers of young people processed through formal systems, there has been the introduction of a number of new 'diversionary' initiatives. Although these schemes[37] all have in common that young people are 'targeted at the pre-court stage of intervention,' they also often incorporate different core aims and objectives (Smith 2014, p113). The functioning of these pre-statutory schemes in contemporary youth justice and how they have manifested in practice has sparked a growing interest amongst a number of scholars (Haines et al. 2013; Bateman 2014; Richards 2014; Smith 2014; Kelly and Armitage 2015; Swirak 2016). From analysis of the literature, it is apparent that these schemes tend to involve and combine the strategies of prevention, diversion and early intervention. These three strategies are also evidently central to the WSA and PRS in particular, whereby there is an overall aim to prevent offending behaviour, and underlying this, there is a twofold aim both to divert children and young people away from formal systems (the criminal court or the children's hearing system); and to deliver early interventions to prevent an escalation of offending behaviour.

Other examples of pre-statutory schemes include the 'Garda Youth Diversion Projects' which are at the centre of the youth crime strategy in Ireland, a variety of pre-statutory schemes in England[38] (Kelly and Armitage 2015), and the establishment of the 'Swansea Bureau' in Wales (Haines et al. 2013). Authors have argued that the operation of these schemes can bring about a blurring of boundaries between the concepts of diversion, early intervention and prevention (Richards 2014; Kelly and Armitage 2015).

[37] Smith (2014) explores in particular, the 'YRD scheme'; Triage schemes; the 'Youth Justice Liaison and Diversion' scheme and the 'Swansea Bureau' in Wales.

[38] Three 'overlapping' models are identified in Kelly and Armitage (2014): Triage; Youth Justice Liaison and Diversion Schemes, and the Youth Restorative Disposal.

Diversion, (as explained in the previous section) in its truest form, is non-interventionist and implies 'diversion from the system.' Richards (2014) in her article which aims to 'disentangle' the concept of diversion, argues that 'diversion from the system' has become confused with 'diversion from crime.' The common understanding of 'diversion from crime' relates to an interventionist approach based on criminogenic risk factors, akin to the work of Farrington (1996). The problem with confusing these underlying understandings of 'diversion' has potentially harmful effects because 'diversion from offending may have far more intrusive consequences on young people's lives, and the lives of their families, than 'diversion' from the criminal justice system.' (Richards 2014). For example, in practice, a programme such as Cognitive Behavioural Therapy (CBT) may be used with an intention to divert an individual from crime; whereas an informal caution delivered by the police may be used with an intention to divert an individual from the criminal justice system. If the understandings are confused, there is a danger that interventionist programmes are delivered to children and young people, under the guise of a 'diversionary' service (which is, ironically, traditionally associated with limiting intervention as much as possible). Indeed, this may lead to circumstances where 'diverting' young people from offending may result in precisely the problems that 'diversion' from the criminal justice system seeks to avoid.' (Richards 2014, p.129). In relation to pre-statutory schemes where diversion and early intervention overlap, the different felt effects are determined by what discourses are underlining and legitimising the nature of the intervention. Two examples of pre-statutory schemes will now be explored to consider the very different consequences for young people who are being 'diverted' through these schemes, due to the different discourses which underpin them.

Kelly and Armitage (2015, p.117) argue that far from representing a 'sea change' in youth justice practice (with the renewed emphasis on diversion) pre-statutory schemes operating across England reflect the continuation of New Labour ideology under a new diversionary guise, which the authors refer to as 'interventionist diversion.' The study explored two models of pre-statutory schemes across two sites which had different ways of working. Even though these pre-statutory schemes were classed as diversionary, the researchers found that they 'shared some features of 'formal' system contact.' These included similarities in the type of intervention work carried out, and in one site, the recording of the offence and intervention on the police national database (Kelly and Armitage 2015, p.126). Additionally, the researchers found that the practitioners utilised

a risk-based discourse involving the criminogenic assessment of risks, similar to New Labour ideology. Practitioners used a 'shortened form of ASSET' in their assessment of young people when considering their likelihood of further offending behaviour. A welfarist discourse ran through practitioners' conception of 'early intervention' where it was viewed that the young people were being supported which was deemed entirely necessary, especially due to the erosion of broader preventative provision across the sector. This encouraged some practitioners in the study to believe that earlier, and heavier, intervention would be beneficial for the children and young people so they would be receiving some form of help.

The Swansea Bureau based in Wales is another example of a pre-statutory scheme which offers a different perspective. The Bureau is essentially a 'partnership model of diversion from the youth justice system' which aims to deliver a 'new' approach to diversion (Haines et al. 2013, p.5). The scheme is for young people admitting a first-time offence, and involves a decision-making process that engages the young person and their family to help decide on the course of action (Haines and Case 2015). Some key principles of the bureau's practice are 'to treat young people as children first, offenders second'; provide programmes to address underlying causes of offending behaviour; 'normalise' offending behaviour, and also promote prosocial behaviour, children's rights and family involvement (Haines and Case 2015). The Swansea Bureau, like other pre-statutory diversion schemes, involves an interventionist element through providing programmes which aim to tackle underlying causes of offending behaviour (Haines et al. 2013). However, there is a key difference in their stated approach to the type of intervention being delivered, where Haines et al. (2013, p.5) write that their aim is to 'eschew offence-focused programmes in favour of interventions which promote people's access to their entitlements.' Interventions are informal, delivered through community organisations, and may not be entirely offence focussed.[39] In this way, this model of intervention is 'located within a prosocial model that avoids blaming and responsibilising young people (Haines et al. 2013, p.8). The nature of the system contact delivered via the Swansea Bureau appears to be entirely different from the risk-focussed programmes delivered to

[39] For example, individuals may be coupled with a mentor, take part in a 'Duke of Edinburgh' programme or attend a fire or road traffic initiative (Haines et al. 2013).

young people reported by the likes of Kelly and Armitage (2015), even though they would both be classed as diversionary pre-statutory schemes.

Summary

This chapter has explored the varying strategies and multiple discourses present in the contemporary youth justice system which are especially relevant to the WSA and the aims of this thesis. Using examples from the literature, this chapter has critically explored theoretical concepts in contemporary youth justice practice including an investigation into the varying influences of neo-liberalism. Such knowledge is useful as it provides a framework through which to explore the manifestations of discourses under WSA diversionary and early interventionist practice. The concepts discussed within this chapter provide an important backdrop of the context in which professionals operate, highlighting the many complexities and contradictions which are fundamental to daily youth justice practice.

Chapter Four: Methodology

Introduction

This chapter outlines the research design and justifies the methodological approach that was adopted during the course of the project. Firstly, the research objectives will be laid out and the conceptual framework will be outlined. The methodological approach will then be discussed, in order to explain and justify the data gathering techniques used during the fieldwork period. Ethical considerations and some key challenges which arose during the course of the research will then be explored.

Research Aims and Objectives

This study was co-funded by the Scottish Government and the ESRC. The general area of study was set by the Scottish Government, which was initially comprised as a research project to investigate 'the impact of the Whole System Approach to dealing with young people involved in offending.' The original advert for the research was drafted into a proposal, which I developed in consultation with my supervisors. The proposal was submitted to the Scottish Government and funding was secured in March 2012.

Presently, in the current context of a widespread decline in youth offending figures, I would argue that the need for research into pre-statutory diversionary practice is more important than ever, due to the current political ambition to increase its use across Scotland, and indeed across the UK (Smith 2014). As highlighted in the preceding chapters, there are a number of notable knowledge gaps in relation to diversionary and early interventionist rationales in youth justice practice (Richards 2010; Kelly 2012). To address this, this thesis investigates the varied and contested understandings of 'diversion' and 'early intervention' under WSA implementation in three Scottish local authority areas. Through this critical exploration, the research revealed a range of challenges and problematic issues associated with delivering these rationales in practice which relate back to broader theoretical debates in contemporary youth justice.

Since the WSA's introduction in 2011, research on its implementation has been limited. One exception to this was the official evaluation carried out by Murray et al. (2015) which was commissioned by the Scottish Government. This involved 33 interviews and analysis of quantitative management data across three different sites. In terms of independent research, there have been two other doctoral students who have investigated the

implementation of the WSA which were ongoing during the course of this project. Robertson (2017) conducted an in-depth case study to explore the multi-agency decision-making processes which underpinned PRS and diversion from prosecution. Gillon (2018) explored how and why decisions are made in an Early and Effective Intervention (PRS) context, and also considered potential unintended consequences associated with the model.

The overarching aim of this thesis is to explore the strategies of early intervention and diversion which have emerged under the WSA in the pursuit to prevent offending behaviour amongst children and young people. In particular, this research set out to explore how these strategies have manifested in practice, how they could be characterised, and reveal the challenges involved for professionals who are tasked with delivering these strategies:

1. What are the WSA's key provisions and policy directions in relation to diversion and early intervention?
2. How are the principles of early intervention and diversion conceptualised and implemented through the PRS process, what challenges are involved, and how can we characterise this new way of dealing with children and young people who offend?
3. How can the Diversion from Prosecution process be characterised under WSA implementation? What are the challenges involved in the pursuit to divert more 16 and 17-year olds?
4. What are the complexities involved in relation to retaining more 16 and 17-year-olds on supervision orders? From the perspectives of participants, is the Children's Hearing System an effective means of dealing with 16 and 17-year-olds who offend?

In order to answer these research questions, it was decided that a qualitative study utilising a range of data collection techniques would be the best means to explore WSA actors' views and experiences in relation to WSA implementation. Overall, the field work involved: an early scoping study involving the analysis of sixteen questionnaire returns, seven observations of PRS meetings, documentary analysis of key WSA protocols from each case study area, thirty-five interviews with professionals across three case study areas, and an additional seven interviews with 'policy actors' to provide a national perspective of WSA implementation. I have also drawn upon observational notes I have written during attendance at various meetings and events relevant to the implementation of the WSA.

Conceptual Framework

With the recognition that it is impossible to conduct research from a completely objective standpoint, the purpose of this section is to provide an overview of the 'theoretical lens' which was used whilst conducting this study (Bottoms 2000, p.16). As well as adopting certain ontological and epistemological assumptions, I also drew from a particular understanding of policy-making, which framed my thinking especially during the analysis and write-up stages.

This thesis is grounded within an interpretivist paradigm, in which I seek to uncover participants own views and interpretations of WSA practice. With the adoption of this approach, it is the researchers task to explore the participants' world by elucidating the understanding of individuals. Subjectivity, instead of objectivity, is the business of interpretivist research, whereby researchers seek answers 'by forming and underpinning multiple understandings of the individual's worldview' (Thanh 2015, p. 25). The interpretivist paradigm is rooted in the notion that reality is socially constructed (Willis 2007), whereby individuals have their own 'frames of understanding' to view the world (Bottoms 2000, p.89). Where a positivist paradigm tends to pursue a universal, unifying theory or absolute rules, the interpretivist paradigm 'accepts multiple viewpoints of different individuals' which can accommodate for multiple truths (Thanh 2015, p.25). With the key recognition that the WSA was introduced flexibly across Scotland and considerable discretion was afforded to local areas in implementation, it was important that attention was paid to the unique contexts in which the WSA had been implemented. The delivery of youth justice is different from area to area; and as this thesis will explore, the providers of early intervention and diversion differ, and the rationales which underpin the practices are contingent upon local contexts. Because of this, the research needed to adopt a paradigm which could accommodate multiple perspectives, and so the interpretivist paradigm was an obvious choice.

The interpretivist framework also corresponded with my decision to pursue a qualitative, emergent research design, which was neither inductive or deductive. Firstly, an emergent research design was chosen for this study because there were a number of contingent, unexpected issues that led me to make certain decisions about how best to move forward with the research aims and methodology. Even though at some points the research process felt ambivalent due to the absence of an absolute and clear line of enquiry, the emergent design was important because I felt that remaining flexible should

be viewed as a strength in qualitative research (Denzin 2009, p.310). This decision to remain flexible became increasingly important, because the circumstances and nature of the field of enquiry led to alterations in the research aims and design. In the last section I will outline these particular challenges, through considering their consequences and how they were overcome during the course of the research.

As this research is preoccupied with the analysis of a new youth justice policy, I felt that it was important to establish how I conceived 'public policy', and particularly 'policy implementation.' In accordance with my chosen ontological and epistemological viewpoints, I decided to borrow from the sociocultural beliefs of various authors who suggest that policy is a socially constructed practice (Sutton and Levinson 2001). Although policies tend to be put forward by governments' as initiatives which 'reflect a linear progression of change based on a common understanding of social problems' (Maclure et al. 2003 p.136), I decided to adopt an alternative perspective of social policy initiatives. Instead of adopting a rationalist conceptualisation of policy, I understand policy 'as a complex social practice; involving an ongoing process of normative cultural production constituted by diverse actors across diverse social and institutional contexts.' (Sutton and Levinson 2001, p.1). Also part of my conceptualisation of social policy is the acknowledgement that social policy implementation is affected in this era of neo-liberalism. In the current governance context, policy is introduced through 'an assemblage of diverse components – persons, forms of knowledge, technical procedures and modes of judgement and sanction […] full of parts that come from elsewhere, strange couplings, chance relations, cogs and levers that don't work – and yet which 'work' in the sense that they produce effects that have meaning and consequence for us.' (Rose 1996, p. 38). Rose (1996) highlights here that the introduction of policy is inextricably linked and shaped by the unique world-views of individuals, and by the dynamics of the institution in which they work (Maclure et al. 2003).

Sutton and Levinson (2001) introduce the idea of 'social policy appropriation', in their rejection of the conventional labelling of policy formation and policy implementation as distinct phases in the policy process. They suggest that appropriation is a much more adequate term to use because it reflects the 'recursive dynamic' involved rather than implying that a policy simply 'gets implemented.' (Sutton and Levinson 2001, p. 2). In this thesis my assumption is that youth justice practice consists of dynamic interactions amongst different professionals across different organisational boundaries, whose

decision-making and subsequent actions arise from their own unique world-views and perspectives (Maclure et al. 2003). Thus, my research aims to shed light on the contextual dimensions of social policy; that is, it is an investigation into the meaning of policy in practice.

Methodological Approach

Case Study Design

It was decided early in the research process that a case study design would be a useful way to carry out a rich exploration of diversionary processes under WSA implementation. The case study method would ensure that an in-depth exploration could be carried out, situated within three unique local contexts. A multiple case study design was pursued because I was interested in exploring differing conceptualisations of diversion and early intervention; to do this I felt it would be necessary to investigate the manifestation of different models practiced in their own unique contexts. A disadvantage of including multiple sites is that it can act to 'dilute the overall analysis' where there is a danger that considerable detail and depth can be lost (Creswell 2007). This vital balance of maintaining a project to yield in-depth and rich data, and yet keep it manageable, was certainly a challenge involved in the research. To combat this challenge, I found that keeping my data and documents organised, and (later in the research process) using NVivo to store and analyse my data were important ways to effectively manage the large volumes of data.

The case study method most commonly utilises multiple sources of evidence to achieve a comprehensive understanding of the area of study (Yin 2003). A variety of qualitative methods were chosen to provide a rich account of the implementation of the WSA. Semi-structured interviews were the principle method of gathering data during the field work period, however these were supplemented by observations of PRS meetings in two of the case study areas, and analysis of various documents such as Scottish Government and local government guidance. Furthermore, whenever there was the opportunity, I attended various presentations and events relating to the WSA (at a local and national level), which assisted in developing my understanding of practice, especially through listening to key presentations and partaking in informal discussions with practitioners.

Initially, I had planned to include two case study areas as part of the research design. However, whilst I was mid-way through field work, I came to the realisation in

consultation with my supervisors that by adding a third area of investigation, it would bring even deeper insights into the workings of the WSA. Although it would have been better to have included this case study from the start, variability across different localities came to be an intrinsic theme of the thesis, and its addition led to a much deeper and insightful analysis which benefitted the research greatly. For me this also highlighted the benefits of adopting an emergent approach, where in this instance remaining flexible brought about a clear improvement in the study design even though I was already in the midst of field work.

This research involves an exploration of the manifestation of diversion and early intervention practices in three localities in Scotland only. It is important to reiterate that localities across Scotland have very different geographical, demographic and organisational contexts (Murray et al. 2015), and therefore the findings of this thesis are not generalisable to all local authorities across Scotland. Analysis would need to involve most or all of the local authority sites to claim generalisability, which was simply not feasible in relation to the confines of this study. In some places I have also included discussion of views only expressed by one or two participants, which hold particular significance in relation to the wider literature. Thus it is not my intention to solely present the most common views in relation to each area of discussion, rather I am also interested in pulling out and exploring interesting and significant issues arising which may or may not be generalisable. However, it is certainly believed and hoped that there are some key commonalities which hold much relevance and learning for other areas in Scotland, and indeed elsewhere in other youth justice jurisdictions.

Scoping Study and Case Study Selection

A scoping study was carried out during the months of July and August 2013. The purpose of this preliminary piece of research was to establish a general idea of the practices in place in relation to PRS processes and diversion from prosecution. It was also anticipated that the scoping study would develop my knowledge in relation to PRS and diversionary processes, and help to make an informed decision on where to base my research. I acquired the contact details of all 'WSA representatives' across the country, shared by my analytical supervisor at the Scottish Government. These individuals were contacted (emailed and telephoned) across the 32 local authority areas and sent a questionnaire for completion. Respondents were also asked to send any protocols or guidelines in

relation to PRS and diversion practices, and if they might be interested in taking part in the study.

After the scoping study exercise had been written up, a strategic selection of cases ensued which were based on three principles: pragmatics, purposiveness, and intrinsic interest (O'Leary 2004). A description of these principles and how they were applied in the context of this study is summarised in the table below.

Table 4.1 Principles underpinning the Selection of Case Study Areas

Principle	**Application of the Principle**
1. Pragmatics *The practicalities involved. This includes issues such as: objectives, funding, timely opportunities, accessibility, and contacts in the field.*	Supervisors at the Scottish Government excluded some areas, for example areas which have previously had extensive research carried out within their youth justice systems. Consideration of geographical location was important due to a limited travel budget. Extensive travel to different areas would not have been financially feasible. There are two other PhD students which were conducting studies on the WSA at the time of fieldwork; thus it was important to avoid researching in the same areas to avoid field saturation for participants. The scoping study included a yes/no question to ask participants if they would be interested in taking part in the research. If the participant selected 'no', the area was not considered.[40]

[40] Two participants indicated they did not wish to take part in the research.

2. Purposiveness *Selection might be influenced because they might enable researchers to explore particular areas and make particular arguments.*	At the time of carrying out the scoping study, some areas had not implemented the WSA or were at a very early stage of implementation. These areas were excluded from consideration because due to my research questions, I felt it was important to have a good degree of established practices. I also chose the case study areas on the basis that they had different diversion from prosecution provisions. This decision was based on the research question which set out to explore the differences between diversionary approaches in place.
3. Intrinsic Interest *Researchers might also select a particular case because it is interesting in its own right. For example, is it relevant, unique, misunderstood, or unheard?*	I chose to adopt a 'purposeful maximal sampling approach' which Creswell (2007 p.75) recommends, with an aim to show 'different perspectives on the problem.' Indeed, this was the rationale behind choosing the area for the final case study- Area C had a unique PRS model which I was keen to explore further.

Negotiating Access into the Field

Field work commenced in January 2014 in two sites (Areas A and B). In order to negotiate access, I made contact with the WSA manager in each site to ask if they would like to arrange a meeting to hear more about the research aims and objectives and discuss whether they may want to opt in and volunteer their Area as a case study site. Both of the WSA managers were interested and became the initial gatekeepers for the commencement of field work. Ethical permission had already been granted by the University of Stirling's School of Social Science Ethical board, and it was ascertained that no further ethical procedures were necessary in accordance with local requirements. The WSA manager in both sites provided contact details of the PRS co-ordinators for me to follow up and make contact.

Interviewing

One of the main benefits of an interview is that it has the potential to gain copious and in-depth data in relation to individual experiences (Robson 2002). The decision to carry out interviews was mainly due to this particular method fitting in well with the research objectives, which aimed to explore subjective views, experiences and understandings

surrounding the practice of early intervention and diversion. The reason why a semi-structured approach was used was so that it could allow for probing and questioning on more significant points (Bryman 2012). Questions were not exactly the same, and did not follow the same order or format in each interview. This was important because it allowed participants to elaborate on the areas that were relevant to them, and/or that they felt strongly about sharing. This approach led to a more fluid interview which was focussed on drawing out the most important concerns of the participant. In turn, I believe this led to a richer, more interesting and detailed dataset.

The recruitment of participants was purposive, where participants were asked to take part due to their position, knowledge and experience (Bryman 2012). The recruitment of PRS members to interview was straightforward in areas A and B, due to prior contact with the individuals in the group through observation of PRS meetings. At the end of each interview, each participant was asked whether they knew of any relevant persons who might be interested in taking part in the research. Although not every participant wanted to share colleagues' details, through this snow-ball technique I obtained the contact details of many other key individuals, across different sectors and agencies. This was helpful because it led to a wide range of interviews across the police, social work, education and third sector agencies. The table overleaf shows the professional orientation of participants who took part.[41]

[41] See Appendix C for the full list of interviewees who took part in the study and their associated pseudonyms and professional orientation, broken down by case study area.

Table 4.2 Coverage of Participants' Professional Orientations

Type	Area A	Area B	Area C
EEI Chair	✓	✓	✓
YJ Strategic Manager	✓	✓	✓
Statutory YJ Services	✓	✓	✓
SACRO	✓	✓	n/a[42]
Education	✓	✓	×
Community Education	×	✓	n/a
Police	✓	✓	✓
Children's Reporter	✓	✓	✓
Mentoring Services	✓	✓	×
Voluntary/3rd Sector	✓	✓	✓
ASB Team	✓	×	n/a
No. of interviews in each area	13	15	7

Initially I hoped that I would be able to interview at least three Fiscals linked with each local area. However, the recent re-structuring within COPFS appeared to bring challenges in recruiting Fiscals due to the absence of local Fiscal marking offices. After a few failed attempts to contact Fiscals relating to each area, I sent a request to COPFS head office to ask for access centrally. This request resulted in a joint interview being carried out with two Fiscals. Although joint interviews have notable disadvantages in that they can cause influence in the direction of conversation or one person can dominate over the other (Arksey 1996), I felt that due to my difficulty in securing interviews with Fiscals it was important to grasp the opportunity while I could. I also felt that the joint interview led to a much more complete and lengthy data set as each of the interviewees prompted each other which served to provide considerable depth and even more insight into certain areas of practice.

[42] n/a denotes that these professional orientations did not exist or were not filled at time of fieldwork.

A total of seven interviews were also carried out to gain a national perspective of the trajectory of youth justice since the WSA was implemented. Participants in this respect involved policy representatives and others placed in strategic roles situated in 3rd sector agencies. Again, the recruitment of these individuals was carried out in a purposive manner, where I emailed individuals directly to enquire whether they would like to take part in the study. I delivered a presentation during the early stages of my research in 2014 at a WSA conference, held by the Scottish Government. This was an important opportunity to showcase my research and it familiarised key individuals working in the sector with my research. This fostered some interest and led to the arrangement of some interviews with key professionals. I felt that the data collated from these interviews added an important dimension because it led to the inclusion of a macro perspective of the way in which early intervention and diversion is conceptualized at a national level.

Interviewing: Consent and Ethical Considerations

Ethical approval was gained by the University of Stirling's Ethics Committee in November 2013. All potential participants were given an information sheet and consent form to sign prior to the interview being carried out. The information sheet (Appendix A) and the consent form (Appendix B) were emailed to every potential participant when they were invited to take part in the research.[43] If the interview went ahead, copies of the information sheet and consent form were handed over to the participant prior to the commencement of the interview, giving the opportunity for the participant to ask any questions and sign the consent form.

All participants were satisfied with the terms contained within the consent form, however some questions were posed by two participants regarding anonymity issues pertaining to the research. It was made clear in the consent form that every effort would be made to protect the identity of participants, however full anonymity could not be guaranteed. This was because in a study such as this, research participants occasionally possess a combination of attributes that can make them readily identifiable. Some programmes or initiatives that the participants were involved in are unique across Scotland, and so there was the potential for the possibility of working out who the

[43] Careful thought was given to issues of informed consent, anonymity and confidentiality. These ethical considerations are outlined in Appendix A and B which contain the information sheet and the consent form used for all participants.

participant was. In the two circumstances where the participants were concerned about their anonymity, I gave assurance that their specific professional titles would not be revealed, and the names of local programmes withheld. This ensured that identities could be protected as much as possible without distorting the data considerably. The decision was taken early on in the research to not disclose the geographical areas under investigation, instead referring the areas as A, B and C, which also helped to protect the participants' identities. Extensive detail in relation to the profile and characteristics of each case study area was deliberately omitted to avoid obvious identification of the areas.

Case Study C: Access and recruitment

Field work commenced in the final case study site in January 2015. As with the two other areas, the WSA manager was contacted to discuss the research, access and ethical implications. Access to the final case study site required a full ethical application to the local authority for consideration which slightly delayed field work progress. Once this had been approved, I carried out the first interview with the WSA manager. Unfortunately, I was not able to conduct observations in Area C due to a lack of response after trying on a few different occasions to contact the PRS co-ordinator. It proved to be much more of a challenge to recruit participants within the third case study site due to not being able to make contacts through the observation of meetings. This resulted in a much smaller sample size in the third case study site. Although Area C was a smaller Area Containing comparatively less practicing youth justice professionals, it was still hoped that more interviews could have been carried out. There is a particular gap in relation to the number of PRS members who were interviewed, which is a notable weakness in the methodology. Thus, I began to envisage Area C as a 'mini' case study addition just to bring some extra insight and perspectives. However, the interviews which did take place were with key individuals within the local authority who shared very rich insights into the workings of early intervention and diversion within that area. Although the number of interviews were fewer, the content and honesty of professionals in Area C led to deep insights which were especially valuable and relevant for the research findings. The inclusion of Area C also provided important insight into some of the challenges involved in implementing the WSA in a smaller local authority area with comparatively less resource than the other two areas.

Observations

Participant observation was used as a data collection method during the initial stages of fieldwork in two of the case study sites (A and B). Observations were mainly used in an exploratory capacity in order to develop rapport with participants in the PRS groups, learn about the PRS procedure and the context in which decisions were made, and assist in the process of developing interview schedules. I had initially thought that the participant observation data would contribute towards the findings and act as a primary focus of analysis. However, due to various challenges met in conducting observations which will be covered within this section, the observational data which was collated brought some interesting insights for my findings, but did not form a major part of the analysis in the way which was initially intended. Nevertheless, the participant observation technique was successfully used in an exploratory capacity which brought many benefits in other ways for the research project. One of the main benefits of conducting observations at the start of the field work was that it facilitated easy progression into inviting all members to also participant in an interview. It was apparent that a good level of trust and rapport had been built up through attending PRS meetings, because nearly all PRS members who were often in attendance across areas A and B agreed to take part in an interview. This led to a good representation across professional groupings particularly in areas A and B (see table 2 in previous section).

The technique of participant observation is grounded in an interpretative school of thought, and is concerned with uncovering rules and norms which lie behind observable behaviours (Bryman 2012). The technique encourages the researcher to immerse themselves in the context under investigation, and study interactions taking place within everyday life (May 2001). Geertz (1973) acknowledged the important difference between what people say, and what people do; and therefore observations were initially envisaged as a way to access a more substantial and truer account of PRS practice. Gold (1969) identified four roles that can be adopted during observations by the researcher: complete participant, participant observer, observer participant, and complete observer. I decided to adopt a 'participant as observer' role, where my presence and intentions were known to the group. I found it helpful to conceptualise this role as 'becoming a fan' (Van Maanen 1978) with the main intention being to understand more about the phenomenon under investigation, but also slightly distancing myself to avoid becoming a part of the group being studied.

The observations were carried out at an early stage in the field work. This had key benefits which greatly helped guide the rest of the research. The main benefit was that it enabled me to build trust and rapport with PRS members. I entered into the field with very little knowledge of the PRS groups and their functioning. The observations provided the perfect means to learn about the process and how they worked on the ground, in practice.

Permission to attend the PRS meetings was sought in advance from the chair of the group. Initially an information sheet and consent form was sent to the chair, who then shared this information with members of the group to initially discuss and ask for their verbal consent (without me being present). Therefore, consent was granted through a written consent form from the PRS chair, and verbally by other members in the group. It was made clear that if any individual who was involved in the meeting objected to being observed, anything that person said or did during the particular observation would not be included in data collection or analysis. However, this circumstance did not arise as all members consented to the observation of PRS meetings. A 'self-introduction' was prepared and memorized prior to the first observation which was used to explain the aims and objectives of the research quickly, concisely and clearly. I viewed this as crucial in making a good first impression and making clear the aims of the observation. In this self-introduction it was important to be careful about the type of language used, because I wanted to avoid members feeling that the purpose of the observation was to inspect or evaluate their practice in terms of effectiveness.

May (2001, p.153) argues that participant observation is amongst the most "personally demanding and analytically difficult method of social research to undertake." Indeed, I found this methodological technique particularly challenging, especially in relation to taking field notes effectively during the observation. Firstly, I was declined permission to audio record the meetings, resulting in the necessity to record the observations in note form. The lack of an audio file brought challenges as there was a pressure to accurately take notes throughout the observation. As I was the only 'instrument of data collection' during the observation (Creswell 2007), there was an extra reliance on my memory and quick judgement to record what should be deemed 'important' at the time of observation. Especially during the first few observations I found it very challenging to establish and judge what was important to record and what should be left out. I found myself over-recording 'the facts,' recording what people said, and the decisions made.

The more observations I attended, I began to get better at recording the more subtle nuances, observational behaviours and gleaning more meaning from the discussion. I also learnt the crucial importance of spending a considerable amount of time immediately after the meeting to reflect and write out my thoughts and observations in more detail.

Another key challenge arose in relation to the sharing of information. Prior to the PRS meetings, I established that all members communicated via email about the cases to be discussed. Summaries of the cases were emailed so the respective professionals could prepare and research information from their files and systems on the case for discussion at the meeting. Therefore, I found that the basic facts relating to the case (for example, age, or offence committed) was not openly shared at the PRS meetings, because it was already obvious to everyone present due to previous communications. I did not have access to the case details and therefore exact characteristics of each case could not be collated. Due to my position as 'participant as observer' I did not feel it was appropriate to interrupt the group conversation to ask about key facts. In some circumstances, I did ask for more details after the meeting had ended. Nevertheless, the main aim of the observations in the present study was about witnessing the decision-making process to identify key underlying rationales in an exploratory way, as opposed to collating statistical information on each case and what disposal was chosen. In retrospect, it would have been beneficial to have negotiated further with the chair of the PRS group to request the possibility of receiving the data shared by all members in the group in advance of the meeting.

Documentary Analysis

Documentary analysis is an important tool for researchers conducting case study research (Yin 2003). It is also beneficial in a practical and ethical way as it is an unobtrusive methodological technique (Bryman 2012). Throughout the research in all three case study areas, documents and protocols were collated and thematically analysed in order to bring insight in relation to the research objectives. The below list summarizes the main sources of evidence which were subject to thematic analysis:

1) The WSA 'Suite of Guidance' published by the Scottish Government
2) Protocols received from participants who completed a questionnaire as part of the scoping study

3) WSA implementation strategies of various local authority areas, which were submitted to the Scottish Government
4) PRS protocols belonging to the police and local authority
5) Diversion protocols belonging to the police and COPFS
6) Various guidance notes and protocols relating to the Children's Hearing System
7) Internal evaluation documents belonging to the local authority and/or Police Scotland

Particularly at the beginning of the research, through documentary analysis I gained much of my knowledge about the WSA and indeed more generally about the Scottish youth justice system. This certainly helped to frame my understanding, define my area of research, and develop an interview schedule. During the field work period, analysis and write-up stages, I continually referred back to documents to compare perspectives and views gleaned from interviews against the guidance documents.

Analysis of Statistical Data

Before I began researching into the field of youth justice and at the time of developing my very first proposal submitted to the Scottish Government to apply for PhD funding, I thought that the best way to analyse the WSA would be to conduct a mixed method study, involving quantitative analysis of statistical data. I feel this was because, at the beginning of my research journey I was immersed in policy studies which sought to answer questions about 'effectiveness' through measuring offending rates and establishing whether policies had achieved the ultimate aim of preventing crime. However, once I had spent some time learning about the Scottish Youth Justice System and conducted the scoping study, I no longer felt that it would be feasible to ask such questions about effectiveness, through inclusion of quantitative data analysis. The availability of statistical data in relation to my research questions was scarce, and it would not have been comparable across the case study sites, as different areas collated different data, particularly in relation to PRS.

Alternatively, I decided to utilize some official statistics to descriptively analyse and bring further insight in some areas. However, particularly due to the ontological position of this piece of work, I did not accept statistics at face value. From a positivist standpoint, crime can be understood as an objective social phenomenon where statistics can be collected, analysed and used to explain causal relations in society (Jupp 1989, p.91). Such an approach, which conceptualises official statistics as measurable, objective

phenomena has been dominant in criminology, however it has been heavily criticized by the likes of Merton et al. (1956) and Kitsuse and Cicourel (1963) due to validity and reliability problems inherent in the analysis of official statistics. Congruent with the ontological position of this thesis, official statistics can also be viewed as being socially constructed as opposed to being objective indicators of reality. With this perspective, there is an acknowledgement that everyday interactions actually create the output of statistics, through the application of individual meanings and labels. Jupp (1989, p.92) identifies that this way of conceptualizing official statistics is situated with micro-sociology and is referred to an 'institutionalist approach.' Jupp (1989 p.92) explains that:

> "Statistics are seen as products of the criminal justice system in general, and specifically as indicators of the activities of those who work within it. In this sense, official statistics are not more or less accurate measures of crime upon which to base causal explanations, but representations of individuals and institutional policies and practices."

Through adopting this perspective it is acknowledged that such data is unlikely to reveal 'true' accounts of early intervention and diversionary practice in case study areas. This became particularly apparent whilst researching statistics which revealed clear and substantial inaccuracies in relation to official diversionary data (see chapter six). The intention that I adopted with this theoretical mind-set was not to reject quantitative data based on a 'suspicion of numbers' (Seale 1999, p.120); but instead be mindful that the local production of meaning in specific contexts results in the generation of official statistics. Even though the statistical data included in this research was limited, it still provided some important insights discussed in the findings chapters, and it was also a helpful aid during interviews to explore avenues of investigation and discuss certain patterns with participants.[44]

Data Analysis

The data analysis procedure was an ongoing activity which began during fieldwork. In this way, I decided to carry out some preliminary analysis as and when the observations

[44] Especially during interviews where I felt that participants were reluctant to share challenges, or reciting policy guidance, I felt that sharing statistics was a helpful way to spur conversation. In particular, I sometimes shared the diversion statistics pertaining to their area to ask about their view on local patterns.

and interviews had been carried out. Where time allowed, I listened to interview transcripts, part-transcribed them and some initial observations were written just after the interview took place. This iterative technique is recommended by Lofland and Lofland (1994) for qualitative analysis. This method was useful because as findings started to emerge, I was able to ask participants in other interviews about particularly pertinent issues in more depth, or in different ways, after identifying what appeared to be emerging from previous transcripts.

The process of data analysis was affected by taking a year out for maternity leave, (which began during July 2016). Before my leave commenced, I personally transcribed all the interviews, printed them out on paper, and analysed them using thematic analysis. This involves a technique whereby the researcher 'looks for themes which are present in the whole set or sub-set of interviews and creates a framework of these for making comparisons and contrasts between the different respondents' (Gomm 2008, p.244). I read and re-read the transcripts, taking notes throughout, and developed a list of themes on a working document. I also visited the literature at this stage to draw from pre-existing concepts, to reflect and consider their relevance to the transcripts. I felt particularly challenged at this stage in my research journey; mainly due to the abundance of data, confliction of ideas, and daunted by the process of managing to pull everything together. Upon my return from maternity leave, I felt that I needed to re-analyse the data to immerse myself back into the data (this process began in August 2017). At this point, I made the decision to use NVivo software to carry out qualitative data analysis.

Thankfully I had already undertaken NVivo software training at the start of my research degree, and although I had retained some knowledge of using it, I had to re-familiarise myself with the software by referring back to guides I had received at the training sessions. These proved invaluable, so I could reach a good enough understanding of how to get the best out of the software for the purposes of my research. Although there are disadvantages and challenges associated with using NVivo, I found that having an awareness of these pitfalls was important in overcoming them. The main concern about using this data is that it could lead researchers to focus upon 'volume and breadth as opposed to depth and meaning' (St John and Johnston 2000, p.393). However, to ensure this wasn't the case, I spent time looking over hardcopies of transcripts which I had previously analysed by hand. Overall I believe that the use of NVivo transformed my research project as I was able to cope with analysing a large amount of data through the

software's ability to find, organise and present excerpts at ease. It has also been said that it's use can lead to 'improved validity and auditability of qualitative research' (St John and Johnstone 2000, p.393). I certainly feel that the use of NVivo software contributed towards the validity of the research because it enabled me, as a novice researcher, to ensure that my analysis was presenting an accurate account of collective themes across many datasets.

Further Ethical Considerations

Due to this research being part funded by the Scottish Government, there are certain ethical issues to consider because when research is funded by a body with vested interest, there can be questions over the objectivity of the findings and the extent of the researcher's autonomy. The aims of the proposed research have altered since the initial proposal was developed in response to the Scottish Government call for applications, generally moving away from questions about 'impact' and 'effectiveness' towards an exploratory study investigating the way in which early intervention and diversion practice was conceptualised and enacted by professionals. In the first year of the PhD I had regular meetings at the Scottish Government with my supervisors to discuss the development of the WSA and to update them on my research plans. The supervisors at the Government were open to suggestions and they did not object to the change in research questions after the reasons behind the decision were explained. Another associated issue was a concern that interviewees and those taking part in observations might have felt their participation was obligatory, or the research was a type of evaluation to inspect their success or otherwise. It was made clear to participants in the research that their participation was entirely voluntary, and the research aims were shared so it was made clear that the study was not measuring effectiveness. During the latter years of the PhD, I had minimal contact with the WSA team at the Scottish Government after my original supervisor left the position in October 2013. For me, this demonstrated the nature of Scottish Government policy making in the field of youth justice, which can often entail a high turnover of staff and relatively short-term succession of different policy projects.

Fieldwork Challenges

To conclude, I will consider two main challenges that I encountered during the research process to share how these were experienced. The first challenge relates to the

difficulties of conducting research in a field which is dynamic, variable and constantly in a state of flux. Secondly, there are challenges that come with practicing research as an 'outside researcher' trying to access and uncover honest subjective truths relating to the interviewees practice. Each will be explored below in turn.

Carrying out Research in a Dynamic, Complex Field

The literature is replete with examples highlighting the complexity and 'messiness' of contemporary youth justice policy and practice (Goldson and Muncie 2009; Goldson and Hughes 2010; McAllister and Carr 2014; Hamilton et al. 2016). Aside from policy containing a multitude of differing and conflicting rationales (Muncie and Hughes 2002), and the recognition that these rationales often play out differently in practice (Fergusson 2007), there was also the realisation that practice formations not only change quickly over time but also vary considerably from area to area (Goldson and Hughes 2010). Such complexity inherent in the nature of youth justice is also reflected at an individual level. It was apparent that when it came to attempting to understand the processes under investigation, sometimes there were differing accounts of practice expressed by interviewees. I had hoped to chart in detail the exact processes under investigation in this study; however it became apparent that such 'truths' would not be easy to access due to conflicting accounts over details. Or, interviewees didn't know themselves what the exact process entailed. Thus I felt it was important to move away from asking questions about details and trying to figure out the intricate processes involved because I felt it would not be easily attainable. This also came with a recognition that my initial conceptualisation of conducting an evaluation to ask questions about the 'success' of the WSA or otherwise would not be appropriate in a study such as this. Therefore the aim of the study moved away from trying to directly compare outcomes across areas or evaluate effectiveness of differing WSA approaches. Alternatively, the intention became to understand the different conceptualisations and subjective experiences in relation to diversionary and early interventionist processes. In this way, I was embracing the diversity in practice and experience rather than viewing it as problematic and as a stumbling block in my research journey.

Relatedly, thinking back retrospectively, the sheer scale of the WSA policy led to difficulty in deciding what elements of the policy should be investigated as part of this study. It is interesting to reflect on my argument that the WSA could be best characterised as a collection of different projects with varying rationales; far from being a singular

'approach' (see chapter nine). The very nature of the WSA policy led to confusion on my part about what should be studied, how it could be studied, and why. I was also very conscious of trying to keep the project manageable and keeping to Silverman's (2000, p.41) advice to 'say a lot about a little.' However, I also wanted to investigate a few practices that were intrinsic to WSA thinking, so I would be able to make viable comments in relation to thinking about the WSA as an 'approach' instead of focussing on one element of it. I also felt that carrying out three case studies was important so I could explore the extent of variability in more depth; not as a direct comparison, but to examine the convergence or divergence of rationalities underpinning diversionary and early interventionist practice.

Subjectivity and Reflexivity

One of the key characteristics of qualitative research design relates to the centrality, importance, and inescapable influences of 'the self' during the research process. This comes with a key recognition that my history, experiences, knowledge, values, beliefs and interests impacted upon every element of the research journey (Glesne and Peshk 1992; Punch 1994). The bias which can adversely affect the reliability of the data in qualitative research (Ely et al. 2006) was protected against by ongoing reflection throughout the research journey. Whilst I had experience of practicing reflexivity due to my social work background, continual and meaningful reflection was a challenge throughout. Keeping a research diary and taking notes as soon as possible after interviews and observations became easier as the field work progressed. I found that it was also helpful to conceptualise reflexivity in terms of an ongoing developmental process. Attia and Edge (2017, p.38) write that reflexivity is a "process of continuous transformation and development, thereby embodying a becoming approach to being a researcher." Such a stance emphasises the importance and value of reflecting on progress and helps in the process of deciding what direction to go in next.

Furthermore, it was important that I acknowledged myself as the 'principle research instrument' in the research journey (Janesick 1994), which brought about a mixture of feelings. On one hand, I felt excited at the prospect of such a role because I could decide on the direction of the research and think creatively (Ely et al. 2006). However, I also felt daunted about this role because of anxiety over 'asking the right questions' during interviews, and then accurately conveying the views and experiences of participants. I was worried that I would inadvertently misinterpret what practitioners meant in their

interviews during the data analysis stages. This was one of the reasons why I decided to complete data analysis twice-over and utilise NVivo to ensure that I was managing a large volume of data in the best way that I could. Nevertheless, this concern decreased as I became more confident in my abilities, as well as coming to a key acceptance that other researchers, with their own subjective world-views, would perhaps interpret the data differently. Indeed Finlay (2003, p.5) writes that in qualitative research, findings are a 'joint product' of the participants and the researcher together. These findings are also contingent upon the participant/researcher relationship and on the social context meaning that qualitative research undertaken at another time or by another researcher may very well lead to different findings.

Chapter Five: Pre-Referral Screening

Introduction

This chapter presents findings of the research in relation to the PRS process drawing from data collected from interviews, observations and documentary analysis. Attention will be paid to the various rationales and discourses which underpin the workings of PRS, using three case studies to exemplify how PRS is practised under WSA implementation. After considering the purpose and objectives of PRS, this chapter explores the foundations of the process, the different manifestations of 'early intervention' practice in PRS models, and also focuses on the impact of the PRS process specific to 16 and 17-year-olds. The last section of the chapter will focus on some of the rights-based challenges that were raised by various participants which are associated with the running of PRS.

PRS Aims and Intended Outcomes

As explained in the preceding chapter, PRS is a nationally agreed, multi-agency process which is a way of dealing with low level youth offending (Scottish Government 2009a). According to the Core Elements Framework[45] (Scottish Government 2015b), there are eight main 'objectives' of the PRS process:

- To prevent/reduce offending by children and young people
- To respond as quickly as possible to offending behaviour by children and young people
- To undertake a multi-agency, proportionate and holistic assessment of need and to identify the most suitable response
- To provide clear information to children, young people, and families on the purpose of PRS
- Where appropriate to keep victims informed of the outcome of the PRS process
- For more young people to have their needs met through access to universal services
- To reduce unnecessary offence-based referrals to SCRA
- To ensure that the most appropriate referrals reach statutory agencies thereby freeing up agency resources to focus on higher need/risk cases

[45] The Core Elements Framework presents the findings of a short life working group (comprising of practitioners and policy actors) who were commissioned to establish minimum standards for PRS practice (Scottish Government 2015). At the time of fieldwork, this document was the only guidance which was available in relation to PRS practice at a strategic level.

At a strategic level, as conveyed in the Core Elements guidance, there are many objectives tied up in the PRS process. Although it could be argued that some of the points above are more value-based statements as opposed to concrete objectives, the stated intentions of PRS place emphasis upon bringing benefits for young people who offend through providing an early, holistic, welfarist response. There is also considerable emphasis placed on system management objectives of PRS which is envisaged to bring many benefits for the wider youth justice system. The Core Elements Framework also conceptualises PRS as a model which is an early response to offending behaviour committed by children and young people. Indeed, it is stated that the overarching aim of the PRS process is to 'reduce offending by young people under the age of 18.' (Scottish Government 2015, p.1). This is important to note, because as we will explore, the case studies under investigation adopted differing conceptualisations of the practice of early intervention under PRS.

Many of the objectives contained in the Core Elements Framework were mentioned by participants when asked about the purpose of PRS. The only two objectives that were not referred to by any participants taking part in the study were - 'to provide clear information to children, young people and families on the purpose of PRS', or – 'where appropriate to keep victims informed of the outcome of the PRS process.' Possibly, this was because these statements are perhaps more about values and principles associated with the practice as opposed to being overall objectives of the process. When the interviewees were posed with the question 'in your opinion, what is the purpose of PRS?' participants overwhelmingly answered that the process was used to provide early intervention and secondly, to divert children and young people away from formal youth justice systems. In a few instances, participants cited both of these aims in the same sentence:

> For me it's about getting in early and diverting young people away from the systems that historically have been there, for me it's about getting in early and offering a service. [PRS B co-ordinator].

> So early and effective intervention is very much about keeping kids out of the statutory system. [Policy Actor 4].

> It is based on early intervention, preventing people from moving into the criminal justice system, and looking what's behind people's offending behaviour. [PRS B Member 2].

Therefore, from the perspective of participants, PRS could be characterised as a pre-statutory process which has a twofold purpose to *divert from* formal youth justice systems (diversion) and secondly to *divert towards* other forms of intervention (early intervention). As the quotes above demonstrate, there appears to be considerable overlap between the two terms in the PRS context. In a few interviews there was not a distinction made between 'early intervention' and 'diversion', indicating a blurring of conceptual boundaries between the two terms.

Another unanimous perspective which was particularly evident in the interviews with children's reporters, was the purpose of PRS to reduce the number of inappropriate referrals sent to the CHS. This objective is reflective of a systems management rationale which is foundational to the PRS process and the WSA in general. Early intervention delivered through PRS meant that children's reporters witnessed a 'massive drop' in offence referrals, freeing up capacity within the system. A significant number of interviewees noted that the introduction of PRS led to a system whereby offence cases were dealt with much more quickly compared to when offences were dealt with via the Children's Hearing system. Dealing with cases in a timely fashion through PRS brought obvious benefits for children's reporters, enabling them to focus on the higher risk cases; but it also brought reported advantages for front line professionals, and the children/young people they were working with:

> PRS is sifting out those low-level offenders that don't need to come to us. [Children's Reporter 2].

> You're getting less referrals in, but more appropriate […] rather than stuff being sent to us to investigate and then toss it back out again. [Children's Reporter 1].

> The whole idea of PRS is that an incident has happened, and you're dealing with it really quickly. Because it's like saying to a young person, remember 3 weeks ago, or 6 weeks ago… Before, we used to say remember 6 months ago - a long time ago? We were having to go out and visit these families and bring all this up again [PRS A Member 5].

This objective of reducing unnecessary offence referrals to SCRA has become the most observable outcome of PRS, due to the significant reductions in offence referrals to the reporter. During the fieldwork period, the statistics displaying this significant downward

trend were regularly acknowledged to demonstrate the perceived effectiveness of PRS and even the WSA in general.[46] Indeed, the number of children and young people referred to the Reporter on offence grounds (Scotland-wide) has decreased by 62% from 7,857 in 2010/11 to 2,995 in 2016/17.[47] The case study areas also reflected this trend, demonstrated in the table below, which shows the percentage decreases in relation to the numbers of children referred on offence grounds, before and after WSA implementation.

Table 5.1 Children Referred to the Children's Reporter on Offence Grounds

Case Study	Percentage decrease in numbers of children referred to the reporter on offence grounds from 2010/11 to 2016/17 (During WSA)	Percentage decrease in numbers of children referred to the reporter on offence grounds from 2003/04 to 2010/11 (Pre-WSA)
A	52%	73%
B	71%	48%
C	79%	75%
Scotland	62%	51%

The inclusion of the right-hand column of the table above is important because it reveals that the decline in offence referrals pre-dates the implementation of the WSA, demonstrating that the downward trajectory had begun before the majority of local authorities established PRS. It is clear from the table that areas A and C in particular witnessed a dramatic decline prior to WSA implementation. Partly, this is because PRS groups had been established prior to WSA implementation, during the period from 2003/4 to 2010/11. However, due to the Scotland-wide downward trajectory, it can be deduced that PRS has not been the only reason for the decline in offence referrals to the Children's Reporter. This has also been recognised by Murray et al. (2015, p.20), who found in their statistical analysis that the largest declines in referrals had occurred before the WSA was implemented and were 'most likely' to have been influenced by other policies which preceded WSA. It might be assumed that with the introduction of PRS, there has been a straightforward and direct impact on the CHS causing the decline in

[46] From the experience of the researcher at various events and conferences.

[47] Data analysis source: SCRA statistical dashboard

offence referrals to the Children's Reporter. However, a closer look at the historical statistics show that this is not the case. The time prior to the WSA saw a substantial decrease, over an extended period from 2003-2010. Nevertheless, the downward trajectory in offence referrals to the Children's Reporter has continued from when the WSA was first introduced, which does suggest that PRS is at least partly responsible for sustaining the decline.

The Bedrocks of PRS Decision-Making

This section will draw upon findings concerning two particular aspects of PRS relating to decision-making that emerged as strong themes from all the interview data combined. Firstly, the significant emphasis placed on effective multi-agency working will be discussed. The second part of the section will focus on the emphasis placed on a proportionate response based on a holistic assessment of the child or young person's needs.

Multi-Agency Working

Many of the policy actors or legal representatives who were interviewed adopted 'policy-speak' associated with GIRFEC when speaking in relation to multi-agency working, leading to difficulty in being able to interpret deeper meanings felt by some participants:

> We're getting in, we're offering support, when it's needed at the right time, by the right people, for the right length of time, I think that's absolutely critical that we do that. [Civil Servant].

> If you have the right people at the right time, then you're able to sort something out […] the buy-in from local authorities needs to be consistent and again that's having the right people in the right meetings all of the time. [Legal Representative 1].

The participants at the ground level across all three case studies didn't necessarily use popular policy phrases, but they heavily emphasised the importance of effective multi-agency working for PRS decision-making. Interviewees put forward that they felt that the members included in the PRS groups were integral to their success, commenting that they had the 'right people around the table,' that the group was 'tight-knit' and they were 'efficient in decision-making.' Certainly, these group characteristics were apparent during PRS meetings. It was noticeable through observing interactions that the PRS professionals were highly committed individuals who worked well together in a group.

The setting was inclusive and friendly, where often professionals used the group to share and receive advice on other cases not necessarily on the agenda, demonstrating the strong alliances between professionals. The meetings were structured, which involved a discussion between members on each case before coming to a decision on the outcome. A notable number of participants also shared the importance, from their perspective, of keeping the PRS as a relatively small group of well-chosen participants whom everyone could rely upon:

> I think you need to be careful not to have too many people, round the table, you know. And you need people round that table that are gonna take the cases away and work that case. You know, we don't need people that say yeah we'll do that and then they don't. You need trust and I think the people round the table do. [PRS A Member 5].

When interviewees were posed with the question whether they would like other representatives included in the group, some participants from areas A and C[48] shared that they would like to have more involvement from health, especially for assistance in dealing with the non-offence referrals. This finding is reflective of the messages found in the literature about lack of involvement from health in the youth justice system, and most notably from Papdodimitraki (2016, p.4) who found that the participants in her study felt that the lack of involvement of the health service in PRS had 'acted as a barrier to good practice and effective intervention.'

It was notable especially from the observations of PRS meetings, and from getting to know PRS member participants, that there were a few individuals who could have been described as 'champions' of the PRS process, and indeed of the WSA policy in general. These individuals stood out because they were exceptionally passionate about the purpose of PRS. These professionals appeared to be at the centre of PRS functioning, lynchpins in the partnership group, inputting frequently at PRS meetings, and tending to be highly supportive of the research. It was also evident that some of these individuals were involved in events and meetings relating to the WSA, and a few were also members

[48] Three participants in Area A, and one participant in Area C.

of the 'champion groups'[49] established by the Scottish Government. Murray et al. (2015, p.58) also identified the existence of key individuals who could have been characterised as champions across all three case study areas in the WSA evaluation. They found that champions 'sustained the ethos of WSA amidst less enthused partners or those with different remits or working practices.' Indeed, this was also a finding of this research whereby some professionals reported having to 'persuade others' and 'fight their corner' in order to advocate the practice of PRS in the face of opposition especially for 16 and 17-year olds.

Another interesting finding was the view (from the perspective of a couple of policy makers) that multi-agency working in PRS was an important type of safeguard:

> It doesn't have to be six people in the room. It could be just having that extra one person to say, hmm do you think the thresholds are ok, or what would you do. But kinda sole working with child protection, justice, is hard… because you are judge and jury. [Policy Actor 3].

This area of discussion of PRS members 'playing judge and jury' is related to the complexities involved in the administration of justice and upholding children's rights in the PRS context. A variety of rights-based issues relating to potential injustices involved in the PRS process were raised by a few participants, and the policy actor quoted above argued that the existence of a strong partnership is important because it acts as a safeguard against such potential. It is important to note that in some areas, PRS does not exist as a multi-agency group; the decisions are sometimes the responsibility of one sole person.[50] The final section will discuss this area in depth, to relay the points that were raised by participants to consider the rights-based complexities that might be problematic in the PRS process.

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[49] At the time of fieldwork, there were four 'champion groups' in existence including: managing high risk; early and effective intervention; vulnerable girls and young women, and reintegration and transitions. These groups consisted of practitioners, policy actors and civil servants, with the aim to enact government policy and share good practice.

[50] This knowledge was gathered from the scoping study, from national interviews and shared in conversations at PRS events.

Providing a Proportionate, Holistic Response

The interventions available through PRS were diverse, involving a wide range in intensity. At one end of the spectrum, they could include referral to a community project which might involve youth work or focusing on practical activities such as gardening or cooking. Support could also be provided through universal services in the school, for example through regular meetings with a guidance teacher. Referral to a mentoring project was a common case outcome in all three case study areas, which was often accompanied by another source of support.[51] Another popular PRS case outcome across all three areas was 'restorative work.' Under this umbrella term this could involve a restorative warning, groupwork sessions or interventions involving the victim of the offence (usually delivered by a 3rd sector agency). One to one work 'tailored to individual need' was also very common, delivered by social work or youth justice team. Specific to Area A only, children and young people could also be referred to the Anti-Social Behaviour team for an intervention.[52] For 16 and 17-year-olds referred to PRS, there was often a strong focus on employability included as part of their support outcome. This could involve activity and training agreements, classes to help develop a C.V., or referral to an outside agency to assist in securing an apprenticeship or work.

There was evidence of a genuine concern to meet need and provide support across all three study sites, through exploring and utilising creative solutions to support children and young people. For example, at an observation of a PRS meeting, the education representative was able to share that the young person referred (for an offence) had suffered the bereavement of his brother at a much younger age. The group decided to explore whether they could access specialised bereavement counselling. It is important to note that this information may not have come to light, and support not offered, if the PRS partnership had not been in place. Another example was the identification of a young person as a young carer who came to the attention of the group. The members were able to refer to Carers Trust (alongside another support) in order to receive additional supports for that young person.

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[51] Observation data

[52] Interventions from the ASB team in this Area Could include the following: Advice (Verbal Warning); Written Caution (ASBO Warning); or File For an ASBO. Participant shared that 'so far, nothing higher than a caution has been issued for cases referred to us via PRS.'

Across all three of the study sites, participants emphasised the aim of delivering a proportionate response based on a holistic assessment of the child or young person's needs:

> It's about using as much universal services as possible, that we em – that we don't draw them into or up-tariff them using social services intervention or other interventions where perhaps the school can do something else. [Youth Justice Worker 1].

> It's like SCRA you're not just looking at the deeds, you're looking at the needs of that young person. That's the main aim. (PRS B co-ordinator).

> Early Intervention should just be, minimal and sort of, matched to need as well. It shouldn't be as intensive say, as somebody that has committed a more serious offence. However, running alongside that – you could have somebody who has committed a less serious offence, but their needs could be quite complex. [Criminal Justice Representative 2].

The above excerpts show that there is certainly an awareness amongst PRS members to avoid over-zealous interventions for children and young people who have committed a low tariff offence. The principle of proportionality was mentioned by some participants, most notably in Area B, demonstrating their awareness of the dangers of up-tariffing. Observations of PRS meetings demonstrated that members clearly focussed on the perceived needs of children and young people, alongside a discussion on the offending behaviour. Additionally, various professionals often relayed strengths of the children and young people at the PRS meetings demonstrating that a holistic approach was adopted. The final quote above shared by the criminal justice representative alludes to a perceived challenge inherent in responding to needs holistically in the PRS context. Sometimes, professionals discover that circumstances are more complex than initially anticipated once they start engaging with the child or young person. This line of thinking was also picked up by a participant in Area B who shared a concern that sometimes a PRS intervention can 'open a can of worms.' In a forum where diversion, minimum intervention, and proportionality are prioritised, indications from the data revealed that there are difficult decisions to be made by professionals in relation to what extent practitioners can keep providing support in the PRS context if there are wider, complex identified needs.

PRS for 16 and 17-Year-Olds

The WSA brought about an impetus to treat 16 and 17-year-olds in the same way as under 16s where possible, by creating opportunities to divert this group away from the criminal justice system. PRS is one of three strands where this objective is put into practice. This thesis has a particular interest in the various rationales surrounding practice relating to 16 and 17-year-olds under the WSA; thus, this section will consider the issues that case study participants experienced in providing early intervention in the PRS context specific to this age group.

In the same way as with under 16s, participants expected that PRS would serve to divert 16 and 17-year-olds away from formal systems and divert young people towards other forms of intervention to receive support. Participants, particularly PRS members, shared their frustration with the way in which the Scottish system defined and dealt with 16 and 17-year-olds, commenting that 'the whole outlook on them changes overnight' when a young person turns 16. Interviewees relayed that suddenly young people are expected to take full responsibility for their actions in a court setting which adopts a completely different approach to the Children's Hearing System. Instead of responding to offences in a welfarist context (which is what many young people will have been used to, having gone through the Hearings system[53]), the criminal justice system adopts a 'scaremongering' approach whereby 16 and 17-year-olds are suddenly hit with the full force of the law. Participants viewed PRS as a crucial means of preventing the far-reaching consequences of a criminal record for young people:

> That could have an impact on their job, their career, for, well a silly offence […] going back to what I've said - two friends having a fall out, its ended up in fisty cuffs, the two of them are charged, going to a new employer with that information obviously they are having to go to court - it could have a massive impact on that individual's life. So the more that we can prevent from going to the Fiscal if we think we need to try that. [PRS A Member 3].

Similar to the stance of the interviewee above, participants often clarified that they were speaking in relation to low tariff offences when it came to the purpose of PRS as an

[53] McAra and McVie (2015) found that over half (56 per cent) of children who had been referred to the reporter on offence grounds (up to the age of 16) had a criminal conviction by the time they were 22 years of age; showing that many young people going through the criminal justice system have experienced the CHS.

alternative to court for 16 and 17-year-olds; in these circumstances cases were often referred to as 'silly' or a 'stupid mistake.' At observations of PRS meetings, the types of offences committed by 16 and 17-year-olds could be considered as low tariff[54]; common examples included vandalism, breach of the peace, reckless conduct, and minor drug possession.

Despite the overwhelming positivity surrounding the inclusion of 16 and 17-year-olds in PRS, it became apparent that particularly in areas A and B, PRS referrals for 16 and 17-year-olds were 'lower than expected.' The PRS co-ordinator in Area A commented:

> We were expecting it to take off but it never, it never - I don't know what we were expecting but somebody did some research on it and it was like we were going to get these massive amounts of 16 and 17-year-olds but it hasn't been like that at all. [PRS A co-ordinator].

The research revealed two challenges in practice which prevented more 16 and 17-year-olds being referred to PRS. The first issue was in relation to the drugs offences criteria of PRS which do not allow for anything other than exceptionally minor drugs offences to process through the system. The second challenge was in relation to the issuing of fixed penalty notices.

Drugs Criteria in PRS

Most participants agreed that it was appropriate for 16 and 17-year-olds to progress through PRS in relation to minor drugs offences. Often it was commented that receiving support through PRS would be much more likely to prevent further offences compared to Fiscal fine (which was noted as the most common disposal if the case had been sent to the Procurator Fiscal).

> They are just growing up, experimenting. Why give them a criminal record and spoil their whole life, it took one moment of stupidity. For minor drugs offences, yeah, it's appropriate. [PRS B Member 4].

> Drugs offences well. Again I would say you know you've got 50 pence worth of cannabis and you're put into court for that – I mean the proportionality of what

[54] Denied access of document stating the full list of eligible offences that can progress through PRS.

> that's about! (laughs) em again I think PRS would be a much swifter, and a much more efficient and appropriate route. [Youth Justice Worker 1].

At the time of fieldwork there were stringent criteria in relation to the type of drugs offences that could process through PRS for 16 and 17-year-olds. This differed considerably for under 16's:

> If you're under 16 you could have a backpack of cannabis and still come through PRS. If you get caught with a couple of joints when you're 16 you can't come through PRS just now. You have to go to the Fiscal. [Policy Actor 1].

Indeed, at the time of fieldwork PRS police guidance specified that for 16 and-17-year olds, young people found in possession of up to £30 street value class B and C could be processed through PRS. Any quantity higher than £30 street value or class A, would have to be referred to the Procurator Fiscal.[55] The participant above shared that criteria were much more lenient for children under 16 years of age, showing that the police apply different criteria purely dependent on the age of the young person. This is indicative of a more punitive approach applied to 16 and 17-year-olds within Police Scotland at a policy level. Although none of the police representatives who took part in the study conveyed a more punitive stance in relation to 16 and 17-year-olds, one participant commented:

> I've heard a lot of cops moaning about it [speaking in relation to 16 and 17-year-olds processing through PRS] Know what I mean. I think some of them think its maybe going a bit too far. But, personally, I think - what is the problem with it […] Why have their life ruined by one moment of madness. Maybe they've been caught with a wee bag of grass or something like that. [PRS A Member 1].

In the same vein, the co-ordinator in Area A mentioned that they had witnessed a change in police attitudes with the introduction of the WSA. For example, the PRS co-ordinator in Area A shared that 'there was a lot of resistance against PRS from the police officers. I got phone calls and I had to fight my corner quite a lot.' This participant went on to explain that most police officers were on board now that the process was well established, apart from a few, 'because there will always be some that think differently.' This anecdotal evidence is indicative of there being some resistance from police officers, in Area A especially in relation to 16 and 17-year-olds being processed through PRS.

[55] In relation to possession only. If there is any evidence that the young person has any intent to deal drugs, they would not be able to progress through PRS.

However, in the main this appeared to be historic attitudes with the co-ordinator sharing that once police officers saw evidence that PRS was working, many more were supportive of the approach.

Fixed Penalty Notices

Another area which is indicative of a more punitive approach at a policy level within Police Scotland is the continued use of Fixed Penalty Notices (FPNs) for 16 and 17-year-olds. The vast majority of participants were decidedly against the issuing of fixed penalty notices, for two main reasons. The first reason was the perceived inadequacy of FPNs in addressing offending behaviour. Participants shared their view that for young people, offending behaviour is linked to unmet need and 'aspects of their lifestyle.' They shared that they 'didn't see the point' in FPNs because they did not address the reasons behind offending behaviour in the way that PRS did, which focuses on the needs of young people. Secondly, many participants shared that the issuing of FPNs could lead to the unnecessary criminalisation of young people; believing that FPNs are not only ineffective but also detrimental for young people's future. One participant shared a particularly illuminating example:

> I'll just give you one example of one young man who has been in care, subject to supervision, 16 years old and has over £450 worth of fixed penalty notices, from the British Transport Police[56], in relation to trains and so, what is a young person in a position like that meant to do? We know that he will not pay it. We know that he does not have the capability to pay it. We know that he has no relatives who will support him in paying it. And therefore we know what will probably happen is that he will end up in the criminal justice system, and then probably be subject to some statutory order based upon the fact that he has not paid his rail fares. [Youth Justice Worker 2].

The above interviewee went on to explain that he did not think this young man would comply with a statutory order in the community, because he might feel the disposal is 'over excessive for not paying a train ticket.' It would then be entirely possible that he could receive a custodial sentence due to non-compliance with the statutory order.

[56] At the time of writing, the British Transport Police (BTP) were a separate organisation from Police Scotland. The BTP's equivalent of a FPN is called a 'penalty notice for disorder' (PND) and can be issued to a young person aged 16 or over.

Indeed, it is possible to witness how a case such as this can escalate quickly,[57] and result in severe consequences. As stated on their website, the issuing of fines from the British Transport Police can result in a criminal record, and the record can appear in disclosures, visa applications, or could be 'cited in any future criminal or civil proceedings as evidence of bad character (British Transport Police 2013). This reflects a highly punitive discourse which contrasts greatly with the approach of PRS. The findings demonstrate that in relation to 16 and 17-year-olds, punitive discourses are in existence within the wider Scottish system, which are the antithesis of WSA ideals. Analysis of the interview data showed that all three co-ordinators were frustrated about their continued use, and being relatively powerless to prevent FPNs being issued:

> They shouldn't be issuing them. We've told them not to… but they still have the option. There is no point in giving them that kind of thing. [PRS A co-ordinator].

> They still have the option but we're trying to discourage that practice. We've still not found a way of determining how many fixed penalty notices are issued. Apparently no one in the police can tell us that, which I find hard to believe. We don't know how many fixed penalties are still going on […] [PRS B co-ordinator].

> They do get used (FPNs). Em, I'm not overly happy about it. And officers have been told not to use them. Sometimes things get forgotten in the moment and to them it's an easy option. If it has been done without my knowledge, it just automatically goes through. [PRS C co-ordinator].

Most of the police representatives taking part in the study supported the issuing of FPNs for 16 and 17-year olds, but only in certain circumstances. They commented that they are a 'very specific tool' which should be issued only if the young person is in employment, and for young people 'who haven't been in a lot of bother before.' Two interviewees indicated that there was a performance indicator culture in relation to the issuing of FPNs:

> That's the culture that we're now increasingly in. It's easier to just give the ticket, and not care – and not take an interest and not learn any more. Just do it. Issue the ticket. We're getting into this culture, that they want a certain number of returns at the end of the week, how many tickets will be issued, how many searches have we done… [Police Representative 3].

[57] Interest rates on fines accrue quickly. If the fine is not paid within 21 days, it is increased by 50% (British Transport Police 2013).

> What we've seen in some areas is the referrals to PRS are down, and when we've investigated it a bit further, one of the issues that came up was the police had key performance indicators, for fixed penalty notices, and they had to have a certain number of them. [Policy Actor 3].

These participants bring to light evidence that the issuing of FPNs is linked to a performance indicator culture, and their use may be preventing some 16 and 17-year-olds from processing through PRS. It is important to highlight that this evidence is anecdotal, and due to the existence of a 'postcode lottery' in relation to FPN practice across the country,[58] circumstances could be very different depending on the locality. Indeed, statistics show the wide variability in FPN practice, with figures showing that in 2012/2013, out of the 5,120 FPNs issued to 16 and 17-year-olds across Scotland, 84% of these were issued within the Strathclyde area. The other police forces ranged from 0.4% of the total number of FPNs issued (Dumfries and Galloway), to around 4% (Fife, and Lothian and Borders).[59]

The Interpretation of 'Early Intervention' within PRS

Despite the identified similarities across all case study areas in relation to the purpose of PRS, the research also revealed key differences in the conceptualisation and implementation of early intervention in the PRS context. Firstly, all interviewees from Area B were clear in their understanding that they were working with young people who had committed an offence, to 'prevent people from moving into the criminal justice system' and to 'look what's behind people's offending behaviour.' This revealed that participants from Area B viewed the PRS process as a forum to deliver an early intervention to address offending behaviour. Their intention was to deliver an appropriate, needs-led intervention; but only in the circumstance where a child or young person was alleged to have committed an offence. Thus, this model was in tune with the Core Elements Framework introduced at the beginning of the chapter, because the PRS group was established as an early response to offending behaviour.

[58] The phrase used to describe the issuing of FPNs by Police Scotland Representative delivering a presentation at a Scottish youth justice event.

[59] Data Obtained from the Scottish Government by request (not publicly available). Data is split by the eight police forces only (numbers of FPNs issued to 16/17 year olds broken down by local authority area was not available at time of request).

Participants from Area A revealed similar understandings of early intervention as Area B, conveying a particular emphasis on providing young people who offend with a 'second chance', and to prevent entry into formal systems:

> It is giving young people the opportunity and chance to change, and to learn from their mistakes and so that they don't escalate into further offending. Or, they don't make the transition from the youth justice system to the adult criminal justice system. [PRS A Member 4].

As described in the preceding chapter, PRS in Area A was initially envisaged as a process aimed to deal with offending behaviour. In 2013, PRS in Area A was extended so that the group were also able to accept referrals on wellbeing grounds; thus children and young people deemed 'at risk' of committing an offence, or presenting with a particular need, could be referred to PRS and receive support through the group. This introduction was linked to the national implementation of the 'Vulnerable Persons' Database' (VPD) and the introduction of 'concern forms' across Police Scotland. VPD, an electronic IT system, was implemented in 2013. The database is used to record details of concerns about children and adults, and it provides a way of sharing information via a 'concern form.' The way in which the concern forms are processed appears to vary. In Area A, all child concern forms are sent to a specialised unit within the police who decide how to respond. At the time of fieldwork, the PRS co-ordinator in Area A had begun to receive some child concern forms, referred by the specialised unit, to process through PRS. Prior to this arrangement, child concern forms were sent to an alternative multi-agency group, which is a forum dedicated to dealing with child protection issues. A police officer from Area A explained how the arrangement came about:

> This was introduced by social work management who, there was a perception… I think that there was a certain level of referral that wasn't really getting acted upon, at that level. There was a feeling that we were the right body to deal with this, so that the concern would be picked out, and diverted to our meeting […] It was considered along the lines of the work we are doing. Not as an offence but for an interaction by one of the agencies. [Police Representative 1].

The types of cases that were referred to PRS on this basis appeared to differ considerably. Examples were provided by participants, including 'fascination with self-harming or suicide,' 'solvent abuse' and 'drunkenness in public.' Others included 'where a young person had been to a house party and was drinking and taking drugs,' a 'young person going missing,' and an instance where a young girl 'didn't come home at her curfew time

– she came home a few hours later.' As the police representative indicates, it appeared to be the case that for children referred to PRS on non-offence grounds, it was a way of delivering early intervention to children with welfare concerns for whom there was no other route available. The addition of non-offence cases to the PRS process in Area A was at a very early stage at the time of fieldwork, and it is important to note that these types of cases were relatively few. The emphasis that the PRS group members conveyed was still very much placed on providing early intervention services for young people who had already committed an offence (clearly demonstrated through the quote by the police representative above).

Area C had a considerably different approach to the concept of early intervention under their multi-agency arrangements. As with Area A, the source of the difference had arisen from the development of the Vulnerable Persons Database. Where it was apparent that both Area A and B placed more emphasis on early intervention applied to offending behaviour, the multi-agency arrangements in Area C placed emphasis on all welfare concerns for children and young people, which may or may not have included offending behaviour. Significantly, Area C did not associate themselves with the traditional PRS model and had changed the name of the multi-agency group accordingly. Below, the co-ordinator of the group explains the nature of their multi-agency partnership and how it came about:

> We used to have PRS…We would take youth offending, that was the way it used to run. That was all very well but our numbers just got lower and lower and our council is small anyway… when it comes to youth offending, the offending aspect of why their doing, what they are doing, or, you know, there is such a bigger reason behind it. Em, in light of recent changes with internet, and sexual offences act, all that – we just kind of noticed, such a shift in what behaviours were and what actually we needed to be offering as a service. So our focus has changed, our group is slightly different because it actually looks at child concerns as well as youth offending. [PRS C co-ordinator].

The focus in Area C for under 16's appeared to be placed on addressing need and vulnerabilities, demonstrating a strong alliance with a welfarist approach. Consequentially, this strong welfarist emphasis brought different members for the multi-agency screening group, with notable additions being child protection and the social work duty team. The group also met more frequently compared to areas A and B (once a week in Area A, once a month in Area B, and twice weekly in Area C). At the time of fieldwork, the multi-agency screening group was only accepting referrals for children

under 16 years of age. The PRS co-ordinator in Area C would solely deal with all offence referrals for young people aged 16 and over. For the co-ordinator, the aim was to 'treat them the same' as if they were under 16 and the services that they could access. The difference was that 16 and 17-year-olds referrals could not be discussed at the multi-agency meeting, and thus the decision-making process was solely placed with the co-ordinator.

This section has raised the significance of concern forms for PRS groups, with the evidence indicating that the introduction of the VPD database brought about a change in the way early intervention was conceptualised within the PRS context. The next section will consider the implications arising from accepting non-offence referrals through PRS, and will also explore some key findings in relation to practitioner views in relation to the VPD system.

Non-Offence Referrals in PRS

Analysis of the data exposed that for Areas A and C, the introduction of the VPD across Police Scotland assisted to trigger the acceptance of non-offence referrals under PRS:

> They are flagged up by the child protection unit in the police. If they've got concerns or if they have gone missing, or they've been picked up under the influence etc, they'll get all these in. So when they read them and think oh there is a pattern here or there might be something needing done then, they'll say right, you can discuss them. [PRS A co-ordinator].

> For under 16s, every under 16 goes through a multi-agency screening group, so, where any police concern is generated, they will all head to a multi-agency screening group […] In the past we wouldn't have seen those. [Social Worker 3].

The inclusion of these referrals reflected an increased welfarist focus within PRS, which particularly came across when speaking with professionals from Area C. An important difference is that in Area A, the concern reports were screened prior to being sent to the PRS co-ordinator. Consequentially, there were not a great number of non-offence reports processing through PRS. On the other hand, in Area C every child concern form generated by the police was referred to all members of the multi-agency screening group. Participants, particularly from Area C, shared the rationale behind operating their chosen model:

> Well let's just expand. Why should a young person who clearly has some need or whatever, not be offered a service. And it's obviously – don't want to attach stigma or anything like that to, a 'youth justice service' you know, it's not about that it's about saying you know we're here, the supports are here. You're not being punished you're just educating or supporting. [PRS C co-ordinator].

> We are so upstream now that 16 and 17-year-olds that are going into the adult system are 'gey few'[60] now. So the further up we get here, is the less that comes through there. The multi-agency screening group allows us to identify kids at a younger age… [Social Worker 3].

The benefits identified by Area C participants in relation to their particular model comprised of three particular aspects. Firstly, children and young people who had been flagged up with an identified need were receiving support, which would not have been the case if their screening group had not existed. This is reflective of a pragmatist rationale, whereby the professional above demonstrates a view that it simply 'makes sense' to extend the provisions of the group so they can provide support where it's needed. Secondly, a few interviewees shared that they believed their particular approach was having an impact on the number of young people committing offences, because they were providing support at a much earlier stage. Lastly, the professionals in Area C demonstrated a commitment to an approach which focussed on children's multiple needs, whereby there was common acknowledgement that offending behaviour is usually indicative of wider problems, reflecting a child or young person's need for support. Reflective of the thinking behind the Children's Hearing System, this perspective had resulted in a model which did not separate 'needs' or 'deeds', instead focussing on supporting the young person, irrespective of whether they had committed a crime or not. As the participant above also demonstrates, there was some awareness of the potential dangers of providing support through what is essentially a youth justice service; and thus it was important to some professionals in Area C that the 'PRS' title was changed, and the offending emphasis removed. Indeed, participants in Area B drew attention to two separate case examples which demonstrated a key difficulty which is involved in providing support through what is intrinsically a 'youth justice' service:

[60] Scottish slang for 'considerably few.'

> He's worried about his son accepting this service now, because he's been caught up in it as well, and he's worried it has implications for him and his son – so he's a bit reluctant to accept the service that we offer. [PRS B co-ordinator].

> His mum didn't accept the offence, he said that he said was one of a number of young people, and it was the other ones - why did they pick on him, and not pick the other ones […] and I had to say well, I'm separate here - I'm just here to offer your son something which might benefit him, now it has just so happened that it's come through PRS, but it could equally have come through the school […] this is not a response to the offence, this is just a response to your son or daughter's situation. There's a feeling that they are isolated - this is no a punishment or anything that they have to go and see a mentor – it's not in relation to the offence. [PRS B Member 3].

For Area B, a model which was firmly camped in the view that PRS should be used as a response to offending behaviour, the quotes above show that there was a challenge for practitioners involved in engaging and supporting children and their families via a 'youth justice' service, because of the stigma that can sometimes be attached. The second quote shows that the practitioner had to work at 'separating' the notion that PRS was a 'youth justice' response, in order to engage with the family. It could be presumed that because Area C accepted referrals on both 'needs' and 'deeds' grounds, and distinguished itself apart from a 'youth justice' response, the practitioners would not have to meet with the challenges involved with the PRS model as experienced in Area B. Despite this key advantage associated with the model in Area C, evidence showed that there was a different type of challenge involved in the running of a PRS model which included referrals on wellbeing grounds, as explained by an interviewee below:

> I think my concern is sometimes (sighs) what's the word I'm trying to say. It kind of provides an unnecessary intervention at times. I think sometimes people can panic, oh! And everything you know and it can sometimes be like oh maybe we should do this, maybe we should do that […] I think as soon as you put something to a group that everyone has to discuss it's like, oh what will we do, what will we do. Sometimes you have to step back and go these are young people, and sometimes young people just make mistakes. [PRS C co-ordinator].

The co-ordinator above believes that their PRS model can sometimes be too hasty in deciding to provide an intervention. By commenting on the recognition that 'sometimes young people just make mistakes'; the interviewee appears to be demonstrating an alliance with the dominant perspective that many children and young people 'grow out of crime' through the natural process of maturation (Rutherford, 1986). Likewise, for

children and young people who haven't committed an offence but are deemed 'at risk' of doing so, many commentators have cited the dangers involved in providing an 'over-zealous intervention', at too early a stage (Goldson 2005b).

In the same vein, a significant number of Area A interviewees showed a degree of uncertainty about the appropriateness of non-offence referrals for PRS:

> We do get the 'at risk' cases that come through as well, which we kind of struggle with sometimes… not that we struggle, it's just finding where they fit with us, because again it's touching on the parenting issues […] It may be more parenting work needing done and I'm not necessarily sure that the group is the right place for that. [PRS A Member 3].

> We were a bit concerned at first, that it would overwhelm and dilute, what we were trying to do. Because effectively we are tackling offending, we're trying to reduce offending, and that's quite clear. [Police Representative 1].

The interviewees above convey some ambivalence about the suitability of non-offence cases processing through PRS and appear to struggle over the notion of whether PRS should be used as a process to 'meet need' in general or 'meet the needs of children and young people who offend.' PRS A Member (ASB), along with some other interviewees from Area A, shared a view that the non-offence cases were 'maybe not necessarily appropriate' mainly due to the referrals being 'too low level.' The participants indicated that the addition of non-offence referrals was a decision taken by management whereby not all professionals conveyed that they were in agreement with the development.[61] Although participants conveyed this ambivalence about appropriateness, the inclusion of non-offence referrals had been accepted by the PRS members, whereby most acknowledged the 'reasoning behind it' and partly agreed with its inclusion because from a pragmatic perspective, it meant that these cases were getting acted upon and young people were able to receive support:

> I think that cause we – the strength and the knowledge base that we have around the table, and the ability to refer on, we are not precious about one of us will work with this young person it's not about that its very much the needs of that young person and holistically what's available. [PRS A Member 2].

[61] Evidence collated through observation data

This participant's views are in line with a dominant welfarist discourse, demonstrating that there is a priority to meet young people's needs above all else. Furthermore, similar to the findings in Area C, the development is seen as a pragmatic one; a move which 'makes sense,' because the interviewee acknowledges that due to the professional strengths, the group is an ideal forum in which to decide what supports should be offered.

Participants in Area B demonstrated a very different relationship with the introduction of concern forms, and a couple of professionals appeared wary of the idea of accepting cases into PRS on welfare grounds. To reiterate, this PRS group were not accepting non-offence referrals at the time of fieldwork, and there did not appear to be any plans to do so; however, it was an interesting observation that the co-ordinator of the group commented, "I always knew that non-offence referrals would start coming the PRS way, but I didn't think it would just be me at that point!" The co-ordinator appeared to suggest here that they were not accepting non-offence cases partly because they didn't have the capacity. There appeared to be a problem regarding how the concern forms relating to offences were processed and shared in Area B, mainly because they were all sent to the PRS co-ordinator for her to action:

> The concern forms I receive are for offence referrals. Within that concern form there will often be a victim in there, […] I'm sitting with 40 concern forms now. And within those concern forms there could be 5 or 6 nomino's[62] within those concern forms – each nomino is, you have to look at each nomino and make sure that everybody is a-ok. [PRS B co-ordinator].

This participant indicated that she felt over-stretched in her role due to the influx of concern forms, admitting that she often had to work extra hours at home to catch up. Another professional commented that this was the one area that needed improvement with the approach in Area B, commenting that the forms 'take weeks to come through…it takes forever to get processed.' Other participants conveyed that concern forms represented a vast increase in bureaucracy and paperwork, and that the concern forms being forwarded to the co-ordinator were not appropriate, because, for example, the

[62] It is understood that 'nomino' is a colloquial police term meaning someone with a 'nominal record,' which is created as a result of an individual receiving a caution, reprimand or having been arrested.

young person lived outwith the area, or to do with the age of the young person. This resulted in a vast increase in bureaucracy:

> I mean there have been some months where we have had as many as 85 concern forms coming through so if you think about the numbers – in one month! So if you think about actually having to follow them through… [Youth Justice Worker 2].

One participant also shared concerns in general about the VPD system and the types of concerns that were being recorded on the database:

> These concern forms are highlighting young people who should never be highlighted to a 'youth justice' service. You know, an 8-year-old, who took a scooter out of a skip, for example. You're just thinking, is that really something that we should have to spend time looking through? […] I think there is a danger that we could draw young people into statutory – or into systems through the concern forms who don't need to be there, at all. [Youth Justice Worker 2].

This participant reflects on the dangers of bringing a young person into the remit of the youth justice system for an incident which is not an offence. His concern is related to the notion of net-widening and the idea that developments in youth justice systems can act to widely expand the net of social control (Cohen 1985). Furthermore, another interviewee put forward that there was a target-driven culture in relation to concern forms in the police:

> I think the police are saying you know it's great, that 2000 concern forms – I don't know if that was in the first month, or the first quarter – can't remember now. If that's their outcome – if the outcome is how many they can put out, then that is a massive concern. [Youth Justice Worker 2].

The majority of police professionals interviewed in the study conveyed a positive view of the VPD system, commenting that it was just a way of sharing information effectively, facilitating partnership working, and dealing with concerns in a timely manner. This section has presented the findings of the research in relation to the introduction of the VPD and the various implications associated with this in the context of the PRS process. Exploration of the impact of concern forms reveals some key discourses at play in the PRS context. Whilst Area B respondents reported that the concern forms had brought an extra layer of bureaucracy, for Areas A and C, this did not seem to be an issue. For them the concern forms brought about an added welfarist dimension for PRS, where data suggests that their introduction assisted to trigger the acceptance of non-offence referrals. The research also found that some interviewees held ambivalent views on the

appropriateness and suitability of non-offence cases for the multi-agency screening processes, especially for professionals working in Area A.

Upholding Children's Rights in PRS practice

There were several concerns about the running of PRS that were raised by a variety of participants in the study. These are the murkier, difficult areas of PRS which represent fundamental challenges involved in the process. They also reveal key insights into different discourses at play involved in the delivery of early intervention in the PRS context. This last section will be dedicated to voicing four of these concerns which emerged from the data, which all relate to upholding children's rights in the PRS context.

Sufficiency of Evidence?

> A concern I suppose that I've always had historically with PRS is, a concern that – for some of those offences that are being screened away, has there been sufficient evidence to actually warrant the intervention in the first place? Because they are only taking the police word for it. Em, whereas we know that quite often, not quite often, fairly often, there is insufficient evidence. And therefore, that can't merit an intervention. So, I think ethically there has always been a bit of an issue with that for me. [Children's Reporter 3].

Firstly, it is important to emphasise that this was the only participant in the study that raised this concern. Nevertheless, the interviewee raises some crucial points which relate to the difficulty involved in responding to offences with a lack of evidence. There is an inbuilt protection involved in the Children's Hearing System, which the Reporters often emphasised during interviews. There has to be a sufficiency of evidence for an offence case to be processed through the CHS, because 'it's a civil standard of proof so we use a balance of probability.' Two different Children's Reporters noted that sometimes Fiscals have not understood this, particularly in relation to cases of a sexual nature:

> Sometimes the Fiscal might not think there is enough evidence, but still refers to the Reporter. But because we are left with the same test, we would have to no further action it, because there was insufficient evidence. If the Fiscal is saying well I've no got enough evidence so could you deal with it, we would say no, (strong emphasis), you have to 'no pro' it. And close the case. [Children's Reporter 1].

> If the Fiscal for example, let's just say they thought the evidence was shaky, and didn't fancy - sorry that's being blunt, didn't fancy trying to prove it, they might say, we'll give it to the Reporter - you deal with it. It wouldn't be the first time we've seen shaky evidence coming back. [Children's Reporter 3].

With the recognition made by the above participants that there are cases with weaker evidence, and sometimes scarce evidence, it is important to consider what safeguards are in place within the PRS process to deal with such cases. As this type of 'passing the buck' practice has been experienced between the courts and the CHS, it is important to warn that the PRS forum should never be used as a means to deal with offences with weak evidence, just because it is perceived as a less formal system. Indeed, the Core Elements Framework clearly states that "there should be a sufficiency of evidence to charge and proceed, which will be ratified through robust police internal scrutiny." (Scottish Government 2015b, p.3). Of course, this is in relation to the conceptualisation of a PRS model which deals with offence cases only. The offence cases which are processed through PRS are not recorded as convictions; they are not recorded on the criminal history system (the same applies for 16 or 17-year-olds). However, crucially, the offences may be disclosable. This is at the discretion of Disclosure Scotland, depending on the nature and severity of the offence.[63] The potential for injustice could occur in PRS if the evidence test is not strictly adhered to. Arguably, the risk of this occurring is higher in the PRS context because there is not an independent, authorised person (i.e. the Children's Reporter or the Procurator Fiscal) who is responsible for gathering and establishing standards of proof. As the Core Elements Framework states, the responsibility lies with police internal scrutiny (Scottish Government 2015b). The child or young person receiving an intervention through PRS because of an offence is not a conviction; but, if the offence was sufficiently serious, they could pick up a disclosure on record which could affect future employment prospects.

Uncertainties over Admission Criteria

Related to the previous discussion over insufficient evidence, the problem is intensified when the child or young person refuses any culpability. Interview data revealed quite a mixed response from the participants over the issues of guilt and culpability. The Core Elements Framework (Scottish Government, 2015b, p.4) lays out the following guidance in relation to this area:

- Young person should understand that a referral is being made to PRS
- Consent to a PRS referral is not required but is preferable.

[63] Evidence collated from a follow-up phone call with a PRS co-ordinator.

- Initial denial of the offence should not prevent the offence being referred.
- Consenting to PRS referral is not an admission of culpability; however, the young person's attitude to being charged will form part of the assessment.
- Views of the child should be sought where a targeted intervention is proposed.

The stance of the framework is in tune with a particularly flexible perspective which recognises that the issue of culpability is not black and white; and the lack of admission or acceptance of responsibility in itself should not prevent the child or young person from receiving support. This stance is a particularly interesting aspect of the PRS system because it is atypical of other out-of-court disposal schemes. In other comparable schemes to PRS such as the Swansea Bureau (Haines et al. 2013), the Final Warning Scheme (Keightley-Smith 2009) and the TRIAGE system (Taylor 2016), the young person would not be eligible unless they admitted to the offence at the time of charge. Some participants shared their agreement with this line of thinking and shared why they believed it was beneficial:

> We get a lot of cases coming through where they've not admitted it to the police officer but then will say to SACRO ok yeah I admit it or, 'yeah a wee bit - I was there and I did do a wee bit.' Not admitted it to someone in uniform they maybe don't like, but if you get an agency out there who tries - 9 out of 10 we will get it eventually. [PRS A co-ordinator].

A few participants felt that although an initial acceptance of culpability should not prevent a referral to PRS, a continued denial should bring about alternative action:

> In terms of the whole legalities, and if we think we take justice seriously […] if they don't admit it, and if they continue not to admit to offences, then in my opinion, there are other issues there and I think we would really need to consider in terms of, welfare issues, in terms of the young person's view of the world, and I think there probably is a need for other approaches for that particular young person and family [Youth Justice Worker 2].

In order to 'take justice seriously' it was important to this interviewee that cases should be referred to the Children's Hearing if young people do not admit to the alleged offence. For 16 and 17-year-olds, the debate surrounding consent and culpability became more pronounced, as reflected on by the policy actor below:

> For the 16/17 kids and the consent idea, there is also this punitive aspect again, cause we can't quite get rid of it. And the idea is that 16/17s, if they were not remorseful, and they didn't consent to referral to PRS or support from PRS, then

> they should get sent to the Fiscal and hell bend them. It's really the theory that sits there. [Policy Actor 1].

The idea that 16 and 17-year-olds should show remorse to progress through PRS is indicative of a wider responsibilisation discourse present within the Scottish youth justice system, particularly in relation to those aged 16 and over. This issue of offenders showing remorse, and taking full responsibility for their actions, is suggestive of tensions in practice and the wider societal rhetoric and beliefs about how offending behaviour should be responded to.

Other participants appeared ambivalent about the issue of obtaining an admission of guilt, and conveyed the challenges involved:

> If the young person says they haven't done it, you know it's difficult. The evidence would say that they have but they refuse. And sometimes the evidence, it's, you know, you get stronger cases and you get weaker cases. In an adult system that would be challenged, and you would potentially end up in court, a criminal case. Which is right and proper […] it's like we are judge and jury. It's a really difficult one. Do we need some form of legal involvement? Perhaps. But maybe not direct legal representation, but some sort of guardianship approach to their rights, so they would be able to put over their point? [Police Representative 3].

The police representative above reflects on the possibility of involving some sort of legal representation, or guardianship approach, to protect the rights of children and young people in the PRS process. Standard PRS practice currently does not involve legal representation and also appears not to involve in-depth consultation with the child or young person regarding their views on what they believe the intervention should entail.[64] One participant gave the following justification for their view on why this is:

> We are looking at this particular level of a young person who commits a low-level offence, my hope is that we could keep them out the system - and that it is as least intrusive as possible. I think that there is an absolute need for young people to be involved in decision making, but I'm not sure that this is the right level. I think there is a level of intrusion, there is a level of anxiety that this would create, that you've got to go to this meeting because you've done that thing, and imagine how

[64] Apart from one local authority which the researcher is aware of, where the child or young person actually attends the PRS meeting so that their views can be obtained and taken into consideration.

> families would deal with that, and the barriers that that could create for the young person. for families, for moving forward. [Youth Justice Worker 2].

This perspective shows a strong alliance with a minimum intervention rationale, whereby the interviewee is wary of a response which could be construed as too intrusive. In this professional's opinion, this rationale outweighs the need to consult and involve the child or young person (and their family) through inviting them to attend the PRS meeting.

Lastly, although the following evidence is in relation to the CHS, one participant drew attention to the possibility of children and young people 'admitting to an offence' which they hadn't committed:

> I do remember a boy in my car one day taking him to the panel, and eh - just trying to advise him as far as possible, and - the options are here, and I said - so you'll be asked, do you deny the charge or do you accept the charge? Oh I'll just accept it. I says, did you do it? 'No.' And I had to say to him, if you didn't do it, you shouldn't really be admitting to it, because this is a thing that could remain on some sort of record for you […] sometimes I certainly found that it was almost like, aw - I'll just admit it anyway 'cause it doesn't matter. [PRS B Member 3].

Such a scenario sketched out by the above practitioner should lead to a cautious reminder that there is the potential for some children and young people to go along with the PRS process even if they have not committed an offence, demonstrating how processes of criminalisation occur in youth justice systems. In the face of weak evidence, practitioners working within PRS will have some very challenging decisions to make over whether to proceed. Just because PRS is a less formal process, and there is no risk of obtaining a criminal record, there are still potentially serious consequences because the offence is still held on police records and is potentially disclosable.

Data Protection

The third concern relating to PRS is a brief note regarding the uncertainty regarding how data is stored, particularly in relation to the non-offence referrals and the VPD system. In response to my question, 'How long is the information stored for on the VPD system?', one participant replied:

> It's kept indefinitely. That's my understanding. There is certainly no mention of deleting stuff. [Police Representative 2].

Indeed, this concern has recently been voiced by the Information Commissioners' Officer (ICO), as reported in the media (BBC News 2017). The concern was raised because, as

the above interviewee comments, there is no policy in place for removing or weeding data from the system. Since this media story was published, there may have been developments in this area because Policy Scotland issued a statement at the time commenting that 'we are now working on a stringent weeding policy that will see more people removed from the database at certain time intervals.' (BBC News 2017, para.12). Nevertheless, there is still the recognition that due to the introduction of the VPD system, more data about children and young people will be held (on welfare grounds) in what is essentially a national, police database (and, as an assumption, potentially disclosable in future court proceedings if relevant).

Contravention of Voluntary Nature of PRS

The last concern associated with PRS is that there was evidence to suggest that at least one area in Scotland does not conform with the guidance which stipulates PRS should be a voluntary intervention. The Core Elements Framework (Scottish Government 2015b, p. 8) states that "a child or young person should not be re-referred to EEI for the same alleged offence, even if they have refused to engage with services offered. If the relevant agency has new or on-going concerns over the wellbeing of the young person then these must be reported to the Named Person/Lead Professional/ SCRA if required." It came to my attention during the fieldwork that some areas did not adhere to this practice, as explained below by the following interviewee:

> PRS is voluntary. It doesn't matter if they don't engage. The case is closed […] some areas want another chance, they want another wee shot! You can't do that! If it went through SCRA and it went through court and it didn't work you couldn't take them back to court for another shot. And I think when you look at the process, just because it's early, and it's not a statutory system, doesn't mean you can forego children's rights. So when people are re-referring to review, that's absolute nonsense. [Policy Actor 1].

By offering a service which is voluntary, it may be perceived that PRS is a system whereby children 'get away with offending scot free,' or that it is a 'soft option.' Indeed, some of the participants reflected on this during interviews, sharing that they did not believe PRS represented as a soft option. Interviewees shared that they had to promote the service and show that it worked, to persuade those who felt 'young people were getting away with it' that it was a viable alternative way of dealing with low level offending behaviour. This research did not reveal reasons behind incentives to keep the PRS process as a voluntary service (by re-referring children for the same offence), because no evidence

was found of this type of practice across the three case study areas under investigation. Indeed, all three areas showed that PRS ran as a voluntary service:

> If the young person doesn't want to engage, then there's not really much we can do about it. [PRS C co-ordinator].

Summary

This chapter has presented findings in relation to the purpose, conceptualisation and challenges involved in front line PRS practice. In so doing, it has revealed multiple discourses at play which are variable depending on the case study area. Firstly, the data revealed that participants understood PRS as a process with two main simultaneous aims: for children and young people to be *diverted away* from formal systems and *diverted towards* other forms of intervention. There are clear benefits associated with the PRS process, both system benefits and clear advantages for children and young people who avoid contact with formal systems. Effective multi-agency working was viewed as crucial to PRS success, and it was found that the PRS groups were tight-knit professionals, highly committed individuals who worked well together in a group. PRS brings particular benefits for the 16 and 17-year old age group, whereby participants perceived PRS as an opportunity for young people to escape what they viewed as a disproportionate, punitive and ineffective system (in relation to low tariff offences). Despite this, PRS referrals for 16 and 17-year-olds were lower than expected. The research revealed two main reasons for this, which involved the existence of strict criteria surrounding drugs offences and secondly, the issuing of FPNs instead of referral to PRS. These findings are indicative of a responsibilising discourse which appears to govern practice to a certain extent, particularly in relation to this age group.

The interpretation of 'early intervention' in the PRS context differed depending on the area. For Area B, PRS involved a sole focus on addressing offending behaviour. For Area A, PRS entailed a predominant focus on offending behaviour but had an added functionality for the acceptance of welfare cases, based on a pragmatic rationale. For Area C, their emphasis had evolved away from offending behaviour towards a focus on the needs of children and young people, irrespective of whether they had offended or not. It was reported that this was an effective approach because they were able to provide support at a much earlier stage. However, it was thought by one participant that the downside of this model could lead to unnecessary interventions with some children and young people. The introduction of the VPD system assisted to trigger the acceptance

of non-offence referrals under PRS for Areas A and C which appeared to bring about an added welfarist dimension in PRS for these areas. Alternatively, for Area B, the VPD added a layer of bureaucracy for PRS, reflective of managerialist tendencies. Area A participants demonstrated some ambivalence about the suitability of non-offence cases for PRS and how it fitted in to a service which was perceived essentially as a 'youth justice' response.

The final section of the chapter explored some of the concerns about the running of PRS that were raised by a variety of participants in the study. Firstly, there was some concern shared about safeguards in place which ensured that only cases with enough evidence to proceed would be processed through PRS. Secondly, the findings revealed split opinion in relation to whether an admission of guilt was necessary for a child or young person to progress through PRS. Thirdly, it was highlighted that there could be data protection issues involved with the introduction of the VPD system. Lastly, the research found that some areas are not providing a voluntary PRS model which goes against current guidance, which stipulates that children or young people should never be re-referred to PRS for the original offence.

Chapter Six: Diversion from Prosecution

Introduction

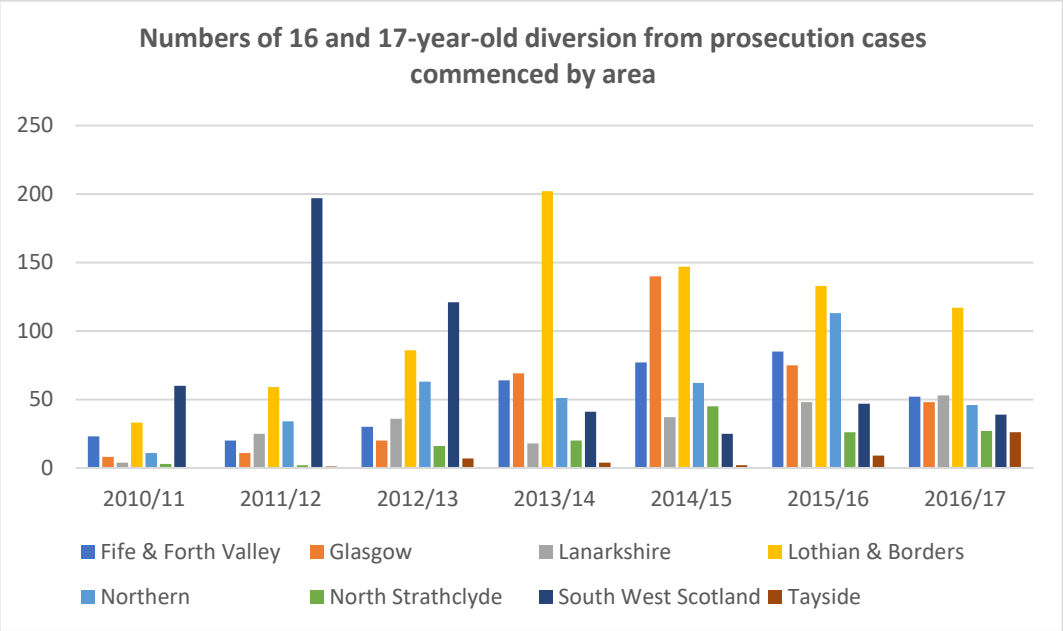
This chapter will explore the practice of diversion from prosecution for 16 and 17-year-olds[65]. One of the main objectives of the WSA policy is to increase the utilisation of diversion, via the Procurator Fiscal. This chapter will aim to unravel the multifaceted practice of diverting young people, through an exploration of the underlying rationales involved at the ground level. Through presenting findings gathered from interviews, the scoping study and grey literature, this chapter will demonstrate that the process of diverting young people from prosecution is a complex, ambiguous and highly variable practice. In order to set the context, the chapter will begin by providing a national overview of diversion from prosecution for young people and will explore some explanations why there is so much variance in practice. Following this, discussion will centre upon three particular areas which emerged as particularly contentious: the fundamental purpose of diversion; the nature of the diversionary intervention; and lastly, debates surrounding the necessity of admission criteria.

'Postcode' Diversions

The first section of this chapter brings together available evidence to present what is known about diversion from prosecution practice across the country. After presenting statistics displaying the extent of variation in diversionary practice, the rest of the section will explore practitioners' perspectives behind this variability. Adopting a broad, national perspective, official statistics show that the overall number of young people who have been diverted from prosecution has increased considerably since the WSA was introduced. In 2010/11, 142 diversion cases were commenced for 16 and 17-year-olds. In 2015/16, this number had increased to 536. However, in the most recent statistics available (2016/17), the number of young people diverted decreased to 408. When the statistics are analysed through breaking the data down by area, an even more complex picture is revealed.

[65] As stated in the introduction, where the term 'young people' is used, this denotes '16 and 17-year olds' for the sake of brevity.

Figure 6.1 Numbers of 16 and 17-year-old Diversion from Prosecution cases commenced by area



Source: Criminal Justice Social Work Statistics

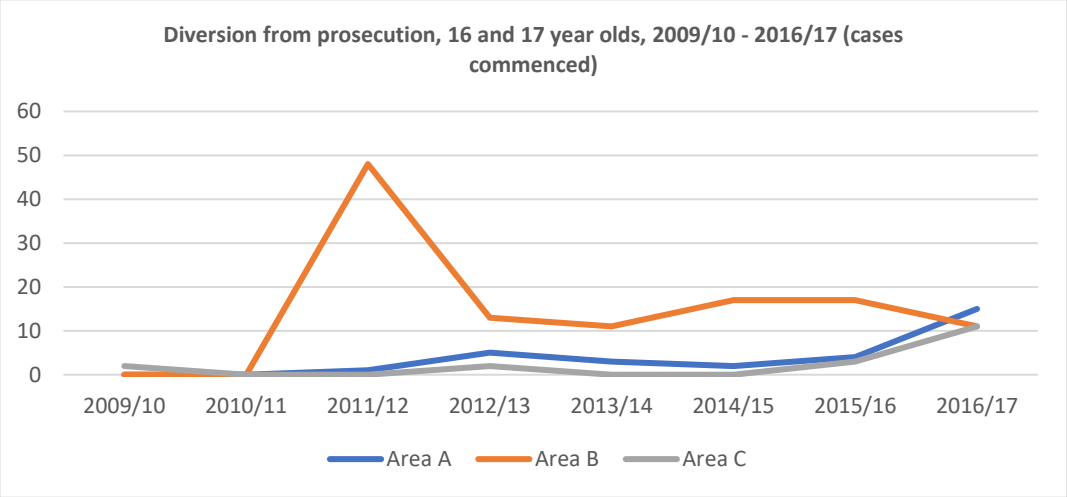
Figure 1 demonstrates the varied use of diversion from prosecution for 16 and 17-year olds across the country. In particular, the graph shows that the overall increase in diversions has not followed a steady upward trajectory in every area; indeed, many areas have experienced fluctuating trends since the WSA has been introduced. A further look at this data illuminates the variability inherent diversion practice:

- The city of Glasgow only diverted 8 young people in 2010/11. This number rose to a peak of 69 in 2013/14. Numbers decreased again to 48 in 2016/17.
- Lothian and Borders is perhaps the highest achiever in terms of diverting young people from prosecution in Scotland (whereby the majority of referrals are from Edinburgh City). There were 33 young people diverted in 2010/11, leading to a peak of 202 in 2013, before falling incrementally every year thereafter.
- North Strathclyde has diverted quite small numbers of 16/17 year olds, with a high of 45 in 2014/15 and then dipping down to 27 in 2016/17.
- The South West of Scotland is another high achiever in terms of diversionary practice, reaching a peak of 197 diverted in 2011/12. However, this was followed by a dramatic decline down to 25 diverted in 2014/15.

Looking specifically at the three case study areas under investigation, the following graph shows the number of diversion cases commenced for 16 and 17-year-olds between

2009/10 and 2016/17. During the period from 2006/07-2009/10 (just prior to the introduction of the WSA), there were no 16 or 17-year-olds diverted in any of the three areas.

Figure 6.2 Number of Diversion from prosecution cases commenced for 16 and 17-year olds, 2009/10 – 2016/17



We can see from figure 2 that in areas A and C, the use of diversions for young people is very minimal. Only from 2015/16 onwards (after the fieldwork took place), it is observable that there is an increase in diversionary numbers, but the time period is not lengthy enough to indicate a trend. In relation to Area B, there was a considerable spike in the numbers of young people diverted during 2011/12, a year after the Diversion from Prosecution Toolkit was published by the Scottish Government. With the introduction of the WSA in 2011 in Area B, this increase certainly indicates that the policy had a direct impact upon the numbers of young people diverted. The graph above suggests that the WSA did not have an initial effect on diversionary practice in relation to young people in areas A and C. As described in chapter four, at the time of fieldwork Area B had a dedicated diversion from prosecution programme unlike areas A and C, which might have been a contributing factor in more young people being diverted.

The fluctuating levels of diversions are very difficult to explain. With many different variables at play such as population levels and crime rates, no sure claims can be made with regard to whether the WSA has brought about an impact upon diversionary rates for 16 and 17-year-olds across Scotland. Indeed, Bradford and MacQueen (2011, p.3) also drew attention to the high variability in diversion practice in their analysis of diversion statistics. They found that they could distinguish no clear trends because of

the fluctuating statistics, stating that 'over time variation could not be accounted for by population size or crime rates.'

The published statistics on numbers diverted should be treated with caution however, as data provided by COPFS (received through a freedom of information request[66]) differed in the numbers of 16 and 17-year-olds recorded as having been diverted (see table overleaf). However, it is important to highlight that the data is not directly comparable because COPFS was unable to break down the data by area in the same way as the Scottish Government statistics (COPFS broke down the dataset only by federation: east, west and north). Furthermore, COPFS extracted the data from their live, operating database which is not designed to provide statistical information. Because of this, one might expect there to be a certain degree of variation between the datasets. However, the extent of the variation found could not be accounted for these reasons alone.

As well as this, when speaking with a criminal justice representative in Area C, the interviewee stated that the diversion statistics held by the Scottish Government were incorrect for 'at least two or three years.' Interestingly, Bradford and MacQueen (2011, p.17) also found discrepancies in diversionary data when comparing Scottish Government statistics with data held locally. They warned that these discrepancies, although the errors may be small at a local level, could add up and 'represent a significant bias in the data.'

[66] See following link to view FOI request: http://www.copfs.gov.uk/foi/responses-we-have-made-to-foi-requests/942-diversion-16-17-year-olds-r008982

Table 6.1 Variations between COPFS and Scottish Government data held on numbers of 16 and 17-year olds diverted from prosecution.

Data Source	Data collated (precise wording)	2009/ 2010	2010/ 2011	2011/ 2012	2012/ 2013	2013/ 2014
COPFS Data	Total Numbers of 16 and 17-year-old subjects reported to COPFS who have **successfully completed** a diversion programme.	207	308	408	495	577
COPFS Data	Total Numbers of 16 and 17-year-old subjects reported to COPFS which **have been considered suitable** for diversion from 2003 to 2014.	368	479	674	717	946
Scottish Government Data	Total number of Diversion from Prosecution Cases **commenced**, aged 16/17 (successful diversions broken down by age not available).	189	142	349	379	469

The first observation from the above table is that one would expect the number of those who have 'successfully completed' a diversion programme (provided by COPFS) to be less than the number of cases commenced (Scottish Government data); and for each year reported above, the contrary occurs. Secondly, it would be ordinarily expected that the COPFS data which displays the 'subjects reported to COPFS which have been considered suitable for diversion' to be relatively similar to number of cases commenced. The variance in these numbers are striking; indeed, they differ by a few hundred. The inaccuracies found in diversion data appear to be substantial, and the need for an audit into how diversion statistics are collated is clear, as recommended seven years ago by Bradford and MacQueen (2011).

Why is there so much variation?

Interviews with professionals revealed many reasons why there is so much variance in relation to numbers of young people diverted from prosecution. Firstly, one participant put forward that areas in Scotland have different crime profiles which has an important bearing on the type and frequency of diversions. In particular, an interviewee believed that areas in the west of Scotland experience higher levels of knife crime offences compared to the east, which tend not to be diverted from prosecution. Secondly, another reason is linked to differences in local availability of diversion disposals. Indeed, with increased resource, there is more capacity and more opportunity, and crucially there is potential for programmes to accept cases where the offence committed is more serious in nature or 'traditionally' may have not been considered suitable for diversion from prosecution.[67] Speaking in relation to a new diversion programme set up to respond to offences of a racial nature, a legal representative commented:

> We got them [the diversion programme representatives] along to talk to us to say what they actually did as part of their racial justice programme, and the senior guys [Fiscals] were there, to hear it, and actually I think they are buying into it – thinking right, that's pretty good. And it's much better than going to court - the reality is, you'll get a fine, or you'll get admonished for that kind of thing. [Legal Representative 1].

This quote brings to light that specialist diversionary programmes are operating in some areas. Indeed, the participant alludes to the development of a new and innovative diversion programme in one area which was designed to divert young people charged with hate crime offences. This excerpt also demonstrates the importance of 'championing' diversion, acquiring Fiscal trust and maintaining strong links with COPFS. Such a finding has also been mirrored in the wider literature (Fraser and MacQueen (2011) and Murray et al. 2015).

High levels of autonomy and discretion held by professionals is another main contributor to the variation in the use of diversion for young people. This research found that high

[67] These are the offences listed in the 'Diversion from Prosecution Toolkit' WSA guidance which are 'not generally regarded as suitable for diversion' but 'if there is a suitable diversion programme available, then consideration can be given to diversion programmes': offences of a sexual nature, domestic violence, and hate crime offences.

discretion not only lies within the Fiscal service, but also with professionals in local authorities who can accept or reject diversion cases:

> I've been in meetings a couple of times with PFs and we've talked about the kind of cases they might mark for diversion, and - I think we are miles apart. I think PFs were thinking along the lines of - like, domestic offences. For me, I'm quite concerned about that, because - you know, a lot of domestic offences can be quite complex, quite complicated, so I would be quite concerned that that is the type of offences that they - would be flagged for diversion. Researcher: So do you get domestic diversion cases? No, so, we haven't come to a consensus about that. We've pretty much said, we don't think that's an appropriate diversion case. [Criminal Justice representative 1].

The above excerpt reminds us that for diversions to take place, the local authority area also has to accept the case. It is easy to assume that it the Fiscal is the sole gate-keeper in the diversion process; however, the above participant suggests that they can refuse cases referred to them which are marked for diversion. By commenting that they 'are miles apart' the criminal justice representative indicates that there are considerable differences in opinion regarding what offences are considered suitable for diversion. It appears that under the WSA, some programmes have developed in a few areas to deal with specific offences which historically have not been considered suitable to divert (for example domestic, sexual or hate crimes). Their development is dependent on resource, but also their existence crucially depends on the attitudes and views surrounding thresholds and appropriateness of offences for diversion. Although such developments should be welcomed, this also leads to a system whereby young people who have committed a very similar offence could be responded to very differently depending on where they live. One could be diverted due to a dedicated programme being in place, and the other could be prosecuted leading to a criminal conviction purely because of a lack in programme availability in their area. Often participants picked up on this, sharing concerns about the extent of variability:

> I think there is still a lot of variation – it's hit or miss you could be 16 and end up serving a custodial or end up having a diversionary route, so I think there should be more consistency in how the law is applied. [3rd Sector representative 3].

The above interviewee rightly highlights that the variances in diversionary practice will have vastly significant consequences for some young people, which raises questions regarding the extent of differential justice which exists in Scotland.

The last collection of reasons which contribute towards variance in diversion practice relate to the differences in diversionary processes and channels of communication, which have an important bearing on a) the numbers of young people diverted, and b) how quickly diversionary decisions are made. There were a number of different aspects raised by participants in relation to this. This is a complex area because the marking process appears to differ from area to area and practitioners themselves were often uncertain about the procedures in place. However, the research identified three aspects of practice which helped to explain some reasons behind variability in the procedural dimensions of the marking process. These comprise of: the existence of 'champions' in the diversion process; the impact of 'flagging-up' cases for the Fiscal; and lastly, the consequences of direct liaison between the Fiscal and PRS co-ordinator. Each will be briefly explored in turn.

The existence of 'champions' in diversion processes

Previous research and WSA guidance has emphasised the importance of establishing and maintaining good links with Fiscals to maximise the numbers of young people diverted. An Area B participant (which was the area with the most diversions taking place out of the three case studies) shared how they actively reached out to Fiscals to develop trust and establish stronger diversionary processes:

> What we've done is - the Fiscals have regular briefing meetings anyway, and so do the police. We just invite ourselves along, and [name of colleague] and I have been going there - we've done a few briefings up there just to try and raise the profile. [Social Worker 2, Area B].

This particular participant demonstrated that they adopted an enthusiastic, advocating role for the WSA policy, with a particular impetus and focus on boosting the numbers of young people diverted from prosecution. From the research interviews undertaken, an individual who adopted such an advocatory role to this extent was largely missing from areas A and C. Although professionals in areas A and C were supportive of diverting young people, there were no identified individuals in these areas who displayed a particular, active willingness to go out of their way in boosting the numbers of young people diverted from prosecution. Undoubtedly this is related to the existence of a dedicated diversion scheme in Area B. In areas A and C, there was no dedicated diversionary programmes in existence with employed professionals with sole responsibility for their delivery. As explained in chapter four, for Area A, diversions took

place within the youth justice team, and for Area C, diversion programs usually took place within criminal justice. In Area B it was the diversion co-ordinator who acted as a champion for the process and whose sole responsibility was to manage the diversion programme. Murray et al. (2015 p.64) also drew attention to the imperativeness of a 'champion' to facilitate diversionary processes, rightly making the point that there is certainly "a precariousness in relying upon a single WSA champion within a single organisation."

The 'flagging-up' of cases for the Procurator Fiscal.

Interviews with professionals also revealed that they could affect how quickly cases could be diverted from prosecution, by notifying the Fiscal of potentially appropriate cases:

> Ultimately, it's a decision for crown but it helps crown if you flag up to them. If you're ringing them and saying 'listen just to let you know we're going to send you five reports this week for 16 and 17-year olds, and out of those five – four are potentially suitable for diversion.' [Civil Servant].
>
> Cases can be fast-tracked, so they're then picked out of, like [area] has 700 unmarked report cases – a month's worth of work. So, they're plucked out of that. If we say let's try diversion, it's getting marked, generally within a week of us getting a heads up on it." [Legal Representative 1].

The legal representative went on to explain that not all areas inform the COPFS about suitable diversion cases, explaining that 'such cases are thrown into the normal marking bundle and will be picked up in about a month's time.' During the same interview it was highlighted that COPFS are trying to encourage areas to inform Fiscals of potential appropriate cases so that they may fast-tracked through the system. The practice of flagging up cases for Fiscals did not appear to be in place in any of the three case studies. Indeed, it became apparent during fieldwork that many participants did not know where cases were being marked or how they could contact the Fiscal. In Area C, participants did not know where cases were marked, indicating that channels of communication were not strong and processes were not fully established:

> I'm just wondering if the PF has changed, or there has been a direction from somewhere about that. So, I mean we're geared up to do diversion, so its just - really surprised that there hasn't been a take up on it. Researcher: Where are they marked? It was in [area] I believe. But I think that might have changed and that maybe explains why we've had an increase in diversion recently. [Criminal Justice Representative 1, Area C].

In areas A and C, there was not any evidence collated to show that there were particularly strong channels of communication or processes in place to encourage an increase in the diversion of young people. Evidence gathered from policy actors and legal representatives shows that in some areas, cases are being fast-tracked due to being previously flagged-up to the Fiscals by local authority representatives. This will also lead to variability in relation to how quickly cases are being processed.

The Interface and Liaison between the Fiscal Service and PRS Forum

Lastly, it appears that in some areas there is direct liaison between a Fiscal and the PRS co-ordinator. For example, in Area A, the PRS co-ordinator shared that the Fiscal would be contacted in order to gather their opinion on what route a case should take (i.e. whether it should go through PRS, result in a police report to the Fiscal, or referral to the children's reporter). This communication was particularly helpful in relation to individuals who had been released on an undertaking.[68] The PRS co-ordinator in Area A was sent a weekly list of young people who had been released on an undertaking and could liaise with the Fiscal to re-route them through PRS instead of what would normally be an automatic case progression to the Fiscal. Conversely, in areas B and C, the PRS coordinators did not have close contact with Fiscal(s) and, in Area B the co-ordinator completely separated diversion from prosecution processes from the work of PRS:

> I don't know about the Procurator Fiscal, because I don't have any dealings with the PF and they don't have dealings with me. [Area B PRS co-ordinator].

The value of maintaining direct contact with the Fiscal is largely unknown in terms of the impact on numbers diverted from prosecution. It might be assumed that it would be helpful to discuss cases whereby circumstances are not clear-cut, or for the purposes of flagging up potentially appropriate cases for diversion before the report reaches the Fiscal office. For Area A, the PRS co-ordinator suggested that the main benefit of the liaison was that she believed a few more cases came to be diverted through the PRS system instead of being referred to the Fiscal. Indeed, some participants indicated that

[68] "Undertakings are issued by the police, and involve the liberation of an accused on an undertaking to appear in court on a specified date, normally within 28 days of their release. Scottish Government (2012) http://www.gov.scot/Publications/2012/03/4845/2).

the introduction of PRS has impacted upon the number of young people being referred to the Fiscal, and thus being diverted from prosecution:

> Pre-referral screening especially has got rid of a lot of cases, because they've gone to PRS. [Legal Representative 2].

This may have led to some areas observing a decrease in the number of individuals diverted from prosecution; due to the introduction of PRS for 16 and 17-year-olds. Young people committing non-serious, first time offences are often now diverted earlier in the system, without recourse to the PF which in theory, has undoubtable managerial, system benefits for the administration of the Crown Office.

The Three Complexities of Diversionary Practice

Three separate themes emerged during analysis of the interview data that represented as ambiguous areas associated with the diversion of young people from prosecution. These areas of practice involve competing ideals whereby professionals demonstrated alliance with an array of sometimes contrasting standpoints, which is reflective of the multiplicity of different rationales present in youth justice practice (see chapter two). Findings relating complexities in diversion practice will be presented in turn. The first section will explore perceptions of the fundamental purpose of diversion, which was viewed to be dualistic and inherently conflicting. The second area of complexity is in relation to the nature of the diversionary intervention which is provided as an alternative to prosecution, exploring from the viewpoint of participants what this 'system contact' should look like. Thirdly, the last section will explore professional standpoints on whether admission criteria should be in place prior to the commencement of a diversion programme.

What is the Fundamental Purpose of Diversion?

On the surface, there was similarity in the way in which diversion from prosecution was conceptualised by professionals. Participants tended to demonstrate a view that diversion had a dual purpose: to divert young people from the process (avoidance of the damaging effects of the formal criminal justice system), and to also divert young people from outcomes (i.e. to divert young people away from reoffending):

> It's really to divert 16 and 17-year-olds away from court, and away from the adult system - and well it's based on research that says putting kids in jail, putting kids through the court system, doesn't actually help them stop offending. But some educational programme might do that, so that's what we aim to provide - a programme for them. [Social Worker 2].

A majority of participants reflected on the damaging effects of the court system for young people, citing it as a process which begins a 'downward spiral' whereby 'they are thrown into the lions' and are 'set up to fail.' Many participants demonstrated that they viewed diversion from prosecution as a way for young people who have committed low tariff offences to escape the damaging and stigmatising effects of the court process, and all the deleterious consequences associated with obtaining a criminal conviction. Thus, there was a strong congruence in participant understandings relating to the meaning of diversion as 'diversion from a process.' These understandings fit with traditional conceptualisations of diversion which is to avoid the stigma and detrimental effects associated with court processes.

However, the same participants often demonstrated that they also conceptualised diversion as a means to address 'underlying issues' in young people's circumstances, in an attempt to 'prevent further offending behaviour.' Participants taking part did not tend to emphasise one or the other; rather, they displayed an equally dualistic conceptualisation of the purpose of diversion. The same duality in understanding was also demonstrated through wording in local protocols relating to diversion from prosecution processes. However, it was interesting that from the protocols that were made available to the researcher[69], an increased emphasis tended to be placed upon the intervention itself, indicating more of an alliance with the objective of diversion as 'diversion from outcomes' at a strategic level:

> Diversion involves a young person undertaking a programme of work to address the causes of their offending behaviour. This intervention should prevent young people becoming involved in the criminal justice process. [Diversion from Prosecution Local Guidance].
>
> The basis for the development of diversion schemes rests on the recognition that some offenders experience personal factors which contribute to their offending

[69] These local protocols on diversion from prosecution processes were collated during the scoping study exercise and are not guidance notes from the case study areas under investigation.

> behaviour. Identifying these root causes and providing appropriate help could enable them to move on to more positive and responsible way of life and prevent re-occurrence of offending. [Diversion from Prosecution Local Guidance].

From the above statements it is apparent that 'diversion from outcomes' is prioritised, whereby the programme of diversion is focussed upon addressing factors and 'root causes' which are seen to contribute towards offending behaviour. The WSA guidance also places considerable emphasis on the purpose of diversion to provide young people with 'the opportunity to make positive changes at a crucial time in their lives' (p.2), making clear that Fiscals 'can only refer cases for diversion if they can be satisfied that the issue causing offending or the nature of the offending behaviour can be addressed' (Scottish Government 2011b, p.14). Such a stance is more in line with the 'risk factor prevention paradigm' (RFPP) and interventionist techniques associated with the likes of Farrington (1996). The CYCJ guidance published in 2015 went further by citing that diversion 'constitutes a form of early intervention which aims to address unmet needs and reduce the prospect of further offending behaviour' (CYCJ 2015, p.5). In this statement there is a clear conflation between notions of diversion and early intervention. Richards (2014) argues that the two concepts should be kept distinct from one another, because the principles which underline them are contrary. Put simply, notions of early intervention aim to target young people at an individual level with an aim to correct problematic behaviour, i.e. promoting more intervention. A traditional view of diversion is about avoiding contact with systems, i.e. promoting less intervention. The nexus between these two conflicting understandings plays out in practice, particularly in relation to the nature of diversionary interventions provided, which will now be explored.

The Nature of 'System Contact' through Diversion

Findings revealed that perceptions of what system contact should consist of differs between different agencies involved in the diversion process. From the perspectives of the legal representatives, the following viewpoints were shared:

> There remains a journey for various different people about what is appropriate, what Fiscals are comfortable being dealt with via diversion, what local authorities are able to provide and able to respond to such - that that young person's life gets turned around […] diversion is seen as an easy option and people think that they've got away with it and that type of thing. I think a challenge perhaps for the Scottish Government is being able to say to people this is what goes on so it's not an easy

> option. It's not just a cup of tea with a social worker and a chat. [Legal Representative 1].
>
> I think another hurdle is just people's understanding of what diversion means, and therefore what they actually have to produce, to, in order to waive that right of prosecution, sort of thing. And we need to agree to a buy in, like I've said before, there are a lot of cosy chats – but you absolutely need to justify to a victim why court proceedings were not raised. [Legal Representative 2].

The above quotes are important because they demonstrate that Fiscals must be satisfied that diversion programmes are intensive enough, that they go beyond 'cosy chats,' and do not represent as 'easy options.' From the statement, 'there remains a journey,' there is an indication that there is disparity in the field with regard to expectations surrounding what diversion programs should entail (and what offences are considered appropriate for diversion, as previously discussed). Indeed, participants shared different visions of what 'system contact' through a diversion program should look like. The legal representative above alludes to the view that a diversionary intervention should aim to bring about a complete change in a young person's life, i.e. '*that that young person's life gets turned around.'* Although professionals working with diverted young people share optimism that an individual's life could be drastically changed through a diversionary intervention they often had less ambitious hopes. Indeed, some professionals tended to place alternative emphasis on bringing about positive lifestyle changes in young people's lives and helping them to understand and deconstruct what happened when they committed the offence. For example, a participant shared her experience of a boy who had successfully completed a diversion programme, but then six months later had gone on to commit another offence:

> And when I was speaking to him yesterday, he was saying yes I've got this charge coming up and all the rest of it... but I'm still at my granny's, she's sticking by me and I'm still doing my work placement and you know, so all the other things that he bought into while he was with us, he's still doing them. But he's had this further charge. So yep, there's the risk that they go onto further offending but you can't go and say well that's rubbish it doesn't work […] and we're thinking do you know if he gets prosecuted then that's going to set him back so far because we've made that progress. [Social Worker 1].

The above quote shows that the participant does not equate the success of a diversion programme solely in terms of desistance from crime. Alternatively, the participant viewed that the diversion programme was a success because it brought about 'progress'

in a young man's life; thus diversion was not solely conceptualised as a way to prevent crime, it was also understood as a way to bring positive lifestyle and circumstantial changes which may or may not prevent another offence being committed.

When thinking about the nature of diversionary interventions, the crux of the issue appears to lie in the difficult pursuit of appropriate system contact which is neither too intrusive (to avoid net-widening or over-zealous intervention) or not intrusive enough (for the victim's sake, diversion cannot be seen as an 'easy option', or a 'cop-out' for young offenders). On the one hand, practitioners in the study drew attention to the necessity of diversion programmes to be educational and informal, so the intervention is not too intrusive and avoids risk of net-widening. Yet, for the diversion to take place there is a requirement for the programme to be intensive enough to satisfy the Fiscal requirement to address areas seen as the 'root causes' of offending behaviour in individual lives.

This research revealed that diversionary interventions have a strong 'educational' focus, where there was no evidence of intensive treatment programmes. The nature of the intervention often included 'information' sessions (sometimes which took place in a group setting) which would cover topics such as offending behaviour, victims, drugs and alcohol, and employability. Generally, intensive forms of intervention were not considered suitable for diversion. Indeed, a policy actor clarified that 'nobody should run treatment programmes like cognitive behavioural therapy for diversion.' It was significant and interesting that professionals highlighted the importance of developing a relationship, listening, and treating the young person with respect through diversion interventions, as demonstrated through the excerpts below:

> Researcher: What would you identify as fundamental principles for a successful diversion from prosecution programme? Participant: To see the young person as an individual, and their right to decide that they want to be diverted or not. Building up a relationship of trust, treat them with dignity, and allow them to have a right to allow them to have a right to say their piece, you know. [Policy Actor 4].

> The feedback we get is that somebody listened to them, and heard their story, rather than just assuming 'that's something bad you need to be punished.' And don't listen to the context of it. So, I think just allowing them to deconstruct what happened in their own head and feel like somebody is listening to that… It makes them feel like they can maybe do something about it […] It's their space, it's their time and sometimes nobody has actually listened to them before. [Social Worker 2].

The importance that these participants placed on listening to young people might, inadvertently construe a picture of diversion mainly involving a 'cosy chats', which was the phrase used by the legal representative on the previous page. Conversely, professionals did not view diversion as an 'easy option', believing that 'sometimes it's actually tougher for them to come along' because 'it's embarrassing, and they are ashamed of what they have done.' The professionals are demonstrating an alliance with a welfarist approach here, and especially emphasising the importance of developing genuine relationships with young people to help and support them. Such an approach is congruent with messages in the desistance literature which emphasises the importance of professionals providing a 'listening ear, motivation and encouragement' in their journey towards a life free of crime (Barry 2009, p.12; McNeill 2006). The research revealed that there may be some disagreement in wholeheartedly following such an approach in a diversion programme context. The Procurator Fiscal Service represents public interest, who, probably more often than not would not accept a programme which emphasises support, listening and encouraging the young person in place of receiving a 'punishment'. From a Fiscal perspective, intervention needs to be shown to be rigorous, and not 'light touch.' Indeed, there may be an appetite to incorporate more punitive components into diversion programmes. For example, one of the participants shared the following view:

> One of the things that frustrates me at the moment is there's no compulsion I suppose, or necessarily a consistent appetite to address vandalism, with repayment so I quite often have to say to police could repayment of the damage be a part of your diversion programme, and some people are willing to do that, and other agencies aren't. [Legal Representative 2].

This evidence demonstrates that some professionals may want to incorporate more punishing elements in their diversionary programs compared to others. Clearly there is high discretion and under the delivery of tailored, individualised schemes, it is very difficult to know what is actually provided through diversionary interventions. From the research carried out however, diversionary interventions in the case study areas clearly involved a strong focus on educational aims, which were not overly-risk focussed, nor did they emphasise the treatment or punishment of young people. Instead, participants demonstrated a genuine concern to support and listen to young people, encouraging them to adopt more positive lifestyles.

Diversion programmes were not viewed by participants as interventions designed to 'punish' young people; professionals across the three areas viewed the intervention as an educational and rehabilitative service whereby it was stated 'it's more about being accountable rather than being punished.' Nevertheless, without examining the actual nature of system contact[70] across Scotland, or most importantly speaking to young people to assess how the interventions were experienced, no sure claims can be made with regard to the intensity and impact of system contact through diversion programs. However, this research has identified that there may be a disparity over what 'system contact' should look like in diversion programmes; whether professionals should encourage and support, treat and rehabilitate; or even penalise. Such a way of practice is reflective of the age-old problem in youth justice whereby professionals are tasked with reconciling societies 'need to punish wrong-doing' with 'supporting young people to grow out of crime,' whilst knowing that the latter is probably the wisest course of action to facilitate desistance (Eadie and Canton 2002, p.14).

Confused Stances over 'Admission Criteria'

This research revealed that there are differing professional perspectives on whether an admission of guilt by a young person is necessary to obtain in order for a diversion to take place. Crucially, it appears that this is another area of variability in diversionary practice which is dependent upon local views and processes. It is apparent that under some local protocols, an admission of guilt is always preferable, but is not always entirely necessary for a diversion intervention to commence. However, in other areas, an admission of guilt must be obtained as a prerequisite to the commencement of a diversion programme. For example, Robertson (2017) found that for restorative diversion to take place, the young person must admit to the offence for the diversion to take place, as accepting responsibility is viewed as a key principle which is foundational to restorative justice. This final section will explore this contentious issue which is representative of differing discourses which underline the way in which young people who commit low level offences are responded to.

[70] Examining returned reports on diversion cases submitted to the Fiscal would be an interesting line of enquiry to explore the nature of interventions delivered through diversionary interventions.

Many participants referred to the common occurrence whereby young people will initially deny any responsibility in relation to the accused offence, but will then progress to a partial or full admission at a later date, often with another professional:

> That whole thing about if they deny it to the police and if we go round and speak to them they go, 'aye well I wasnae gonna tell the police!' You know so they will admit it. [Social Worker 2].

> You know, admission to offence is a tricky one because obviously first of all when police go out maybe charge a young person, and they go 'I didnae do it, I didnae do it, it wasn't me'. However, sometimes you find when, you know, workers go out to, who are very skilled in engaging with sort of disenfranchised young people well actually – 'it was me' or 'I did this, I didn't do that'. [Civil Servant].

This represents a flexible approach which recognises the special status young people, understanding that their initial ability to process events and understand the severity of potential consequences is not the same as adults. Once young people are given the opportunity to reflect on events and speak with a different professional about what happened, participants shared that many young people will start to accept responsibility, even if it is partial. This stance was also mirrored by the legal representatives who took part in the study, who shared that an initial denial of the offence should not automatically result in withdrawal of a diversion disposal:

> Our response to the initial decision isn't necessarily about what they say about it to the police at that initial moment because they might be in quite a different place to the next day or the next week or whenever the social worker is able to speak to them or whatever the intervention actually is. It's something that would affect our consideration of sufficiency of evidence and so on and it might affect our decision but that in itself wouldn't change the nature of the offence into something that we wouldn't think would be appropriate for diversion. [Legal Representative 1].

This above view expressed by the two legal representatives who took part in the study is vitally important, because the research revealed that there is an incorrect perception held by some participants that Fiscals require an admission of guilt for a diversion programme to take place:

> Because, for the Fiscal to agree diversion you have to admit the offence. If you don't admit the offence you don't get diversion. [Policy Actor 1].

> You can divert as long as the person has admitted guilt and there is a structured programme available. [Children's Reporter 3].

As reflected upon within the previous section, the flagging up of potential diversionary cases to Fiscals has an important impact. If practitioners hold a belief that an admission of guilt is necessary in order for a young person to be diverted, they may withhold their recommendation for diversion. In the same way, a police professional who has the ability to recommend diversion on the standard police report[71], may also abstain from a recommendation on the same basis if the young person is denying the offence.

For participants in the study, it was often shared that they felt an initial denial of the offence should not bring about an automatic barring from diversionary processes. However, practice protocol appears to differ with regard to the appropriateness of diversionary processes for young people who are persisting in their denial of the offence. Some areas in Scotland do not accept young people on their diversion programmes if they do not admit responsibility, as was the case for Area C under investigation in this study:

> If the young person says em, 'didnae do it, wasnae there', then - we would explain to them that, you are unsuitable for diversion, and we would need to refer that back to the PF. So, if the young person says yes, I am willing, able, wanting to - then we would provide probably 6-8 weeks [Criminal Justice Representative 1, Area C].

Indeed, this was reflected in Area C's operational guidance on the diversion from prosecution process:

> The Accused MUST accept responsibility for the alleged offence and MUST also consent to being diverted to Diversion from Prosecution. If the Accused attests their innocence, the matter should be referred back to the Procurator Fiscal for consideration to prosecute.'[72]

Thus, in Area C, if the young person continues to deny the offence, the case is sent back to the Fiscal. Although it is not entirely clear, the excerpts above suggest that Area C only rejects individuals who are entirely attesting their innocence and who are wholly disputing any responsibility in the accused offence. There is no mention in Area C's guidance regarding what should happen when young people only partly accept responsibility for the offence. Stipulating the exact terms of admission criteria is

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[71] This is known as an 'SPR2', which is submitted to the Procurator Fiscal. See link for a template of the SPR2: http://www.gov.scot/Resource/Doc/254431/0097124.pdf

[72] Grey Literature obtained through the scoping study research.

important because for diversion to go ahead, it may not be clear whether young people are expected to wholly admit to the offence, or just partially. A legal representative shared their view on the matter, describing why a young person denying all responsibility should not be barred from diversionary schemes:

> Further down the line, if they don't admit it to social work then that doesn't automatically mean the diversions failed. So again its back to looking at well, actually they didn't admit and said that you know 'Johnny was equally as awful as them and he punched them back', but actually they did accept that that wasn't an appropriate way to act in that circumstance. We done x, y and z with him and this is the outcome […] And that's part of the beneficial process of what diversion to be honest because that allows them to go through that learning development. [Legal Representative 2].

The participant above shares a particularly flexible view regarding the admission of guilt, and views the diversion programme itself as a means to work through the issues which are preventing the young person from accepting responsibility. During interviews, participants often drew attention to the complex area of guilt, especially when the individual had been involved in a group offence. A police representative shared some examples which demonstrate the complexities involved in acquiring an admittance of guilt, which was particularly illuminating:

> I think - just because we see things quite often in black and white, they're not black and white at all. For example, a 16-year-old charged with assault, and a male on the street. But the male that grabbed a hold of him, thinking he'd committed a vandalism - when he hadn't, but his reaction - frightened - I could tell, by speaking to him, he'd been frightened, and he'd lashed out. So, he's charged with an assault, potentially criminalised, I mean - to be honest with you, in my day, that'd been sorted out there and then. That would never have gone on paper - it would have been warnings all round and - this is a misunderstanding, let's get over it. It's happened, that's it. But not now. So, then you're into this process, and he struggles with the concept - well why should he admit guilt, he accepts that he lashed out at the boy - but his reason for it is, so - whose right there in that circumstance? And, so I struggle with that requirement of acceptance of guilt. Because perception of guilt is a very different thing. Particularly when you're dealing with young people." [Police Representative 3].

Through highlighting that cases are not 'black and white', this participant acknowledges that in some cases, it is far from straightforward to ascertain exactly where responsibility lies. There are certain offences committed whereby 'perceptions of guilt' can be particularly debated and contested, and, like the example provided above, young people

may struggle in their ability to accept responsibility due to the circumstance. In the same vein, a few participants drew attention to case examples where young people had committed an offence as part of a group:

> You know, your granny said if you fly with the crows you get shot with the crows. For some young people that's the reality, it maybe wasn't them. But mere association, you know. We have Scots law where if you are there, and your 3 pals do in in wee old woman and your standing there and don't stop them, you're getting done! That's not fair! But it's a sense of public responsibility - you can't stand and watch a crime happen, and then not be held accountable for what that's about. But for some young people that was their level of engagement and that will feel very unfair. [Policy Actor 1].

Like the participant above, a number of professionals agreed that there should not be an absolute necessity for a full admittance of guilt in the diversion from prosecution process because of the complications that are so often involved. However, participants also emphasised from a justice and human rights perspective, that young people should always be given the opportunity to progress through court instead. Importantly, interviewees emphasised that young people should never feel coerced to take part in a diversion programme when they completely refuse to accept any responsibility for an accused offence.

The WSA diversion from prosecution guidance (Scottish Government 2011b) does not make any reference to the necessity of an admission of guilt or otherwise in relation to the diversion process, nor does the CYCJ's 'Guide to Youth Justice in Scotland' which is currently the most comprehensive guidance available for practitioners (CYCJ 2018). These are both extremely surprising omissions given its importance and relevance, and consequentially this failure to stipulate criteria surrounding admission criteria will certainly have contributed towards the lack of clarity in practice, and arguably, may have even blocked some eligible cases from being diverted due to some areas only diverting in cases only where they have received a full admission.

Summary

Diverting young people from prosecution in Scotland could be characterised as a complex, ambiguous and highly variable practice, underpinned by a multitude of differing rationales. This chapter has investigated the extent and nature of the variances in diversion practice and has also explored three particular areas of diversion which emerged as particularly contentious issues for practitioners.

The varied use of diversionary practice is widely known and has been noted elsewhere (Fraser and MacQueen 2011; Murray et al. 2015; Robertson 2017). The exact reasons behind the extent of this variance has received less attention, aside from a few key characteristics of diversion including high autonomy in the system and the dependency upon a professional acting to 'champion' the practice and maintain links with the Procurator Fiscal (Murray et al. 2015). This research found that there is disparity over who is considered suitable for diversion, that poor communication between the COPFS locally and partners contribute towards the diversity in diversion practice, and differing views and rules over admission criteria also contributes to differential justice in the diversion context. It is also vital to draw attention to the questionable validity of the available statistics on the numbers of young people diverted. Without the assurance of reliable data, the quantitative claims which this research makes about the use of diversion practice (along with the findings of Fraser and MacQueen 2011 and Murray et al. 2015) is put into question.

Participants in the study tended to demonstrate a view that diversion had a dual purpose: to divert young people from the process (avoidance of the damaging effects of the formal criminal justice system), and to also divert young people from outcomes (i.e. to divert young people away from crime). However, literature (such as Richards 2014) warns against conflating these two very different kinds of practice which are sustained by differing ideologies. Indeed, the confusion over the fundamental philosophy which underpins diversion plays out in practice, whereby there appears to be confusion and disagreement over what 'system contact' should look like in the diversion context. Professionals are expected to support, listen, penalise and treat young people all at the same time, which only adds further confusion in a field whereby youth justice practitioners are tasked with reconciling society's deeply grained ambivalence towards young people who offend (Eadie and Canton 2002).

Chapter Seven: Young People in the Children's Hearing System

Introduction

This final findings chapter is concerned with exploring another strand of the WSA: retaining 16 and 17-year-olds who offend within the CHS. As outlined within chapter two, a young person aged 16 or 17, already subject to a compulsory supervision order (CSO), may continue to be dealt with by the CHS. The WSA advocates for greater use of the CHS

through retaining young people on CSOs 'for as long as appropriate' with the aim to divert children away from appearing in adult courts (Scottish Government 2011c). Moreover, retaining more young people on CSOs would increase the number of young people that can be responded to within a welfarist framework, which complies with the UNCRC which defines children as under the age of 18. Sixteen and 17-year-olds may also be remitted to the hearings by the courts. Under the Criminal Procedure (Scotland) Act 1995, sheriffs have the option to remit young people up to the age of 17 years and 6 months for advice and disposal at a hearing following conviction by a court. However, the number of remittals to the CHS is low, despite being advocated by the WSA (Robertson 2017). In the main, this chapter focuses on the first means of retaining more young people in the CHS: that is, exploring the practice and underlying rationales relating to keeping 16 and 17-year-olds on supervision orders. The remittance of young people from court to the hearing system is a distinct and different area of practice which would require a different sample selection of interviews with those involved (for example, sheriffs) to ascertain exactly how the process works and views surrounding its use.

The chapter will begin with a contextual section which will explore the wider challenges faced by young people who offend who are in contact with the CHS. Subsequently, the challenges involved in relation to retaining a young person on supervision will be presented. Following this, the chapter will explore some conceptualisations of young people in the CHS from the perspectives of interviewees taking part in the study. Lastly, views on the viability of adapting the CHS with an aim to retain more, or even all 16 and 17-year-olds will be presented.

Young People Who Offend in the CHS: The Wider Context

Young people aged 16 and 17 referred to the CHS on offence grounds represent a distinct group. Many will have experienced childhoods characterised by trauma, disadvantage and victimisation, and many will also have had prior involvement with the Hearings System (Whyte 2003). Indeed, in a unique study carried out by Henderson (2017), a profile of this particular group was gathered. It was found that nearly half of young

people in the research sample[73] were first referred to the Children's Reporter as young children. Almost half had been 'exposed to violence in the family home' and over a third had 'experienced significant bereavement.' Additionally, almost a quarter were recorded as having a disability, and a third of this group had been separated from their main caregiver, 'most often because they'd been abandoned or rejected' (Henderson 2017, p.5). Thus, many young people in this category will have been looked after by the authority or placed in alternative care settings.

It was apparent from the data collated during this research that young people in the CHS commonly face very difficult wider circumstances, with practitioners highlighting three main areas of concern: housing and accommodation needs, mental health problems, and a need to secure further training or employment opportunities. The identification of these areas is of course by no means new, with many commentators drawing attention to the same issues (e.g. Henderson 2017; Hutton 2013; Whyte 2003). Nevertheless, it is important to reiterate these three areas of common concern because they emerged as strong themes in the data, and they reveal the challenges involved for professionals who are tasked with attempting to address these welfare needs within the context of the CHS. Interviewees expressed frustration both at the lack of services available, and sometimes the perceived ineffectiveness of services in relation to these problems, which, put together, conveyed a sense of hopelessness for professionals trying to help this group of young people. Firstly, the lack of appropriate housing for this vulnerable group was often raised:

> We need more suitable accommodation for young people which, is not secure but is probably - more geared towards young people. So in [Area C] we've got [names of two services] and they're just - we've had young people go in there and they fail really quickly. They are homeless accommodation. So maybe specific supported accommodation for young people - males and females which are more geared to the needs, more based on the residential. We've got another service but it's probably based more on child care residential. I think would probably be quite a good spend of money." [Criminal Justice Representative 1].

[73] Henderson's (2017, p.4) research investigated "all the cases of young people with advice requested from criminal courts and children's hearings held in 2015/16 and any remittals following this advice; and those cases remitted from courts 2015/16 where there was no previous advice request." The sample includes 111 cases in total.

The participant above drew attention to the gap in services whereby there is a lack of accommodation options that genuinely provides effective support which is tailored to the needs of young people. In the same vein, another participant shared that simply providing flats for young people with no support was also considered ineffective:

> By giving them their own flat, and no support in a dodgy area, it just sets them up to fail. And so they end up with a record as long as your arm because they play their music too loudly, and have all their pals round, or they are weak and therefore are targeted by 18 year olds that think, oh that's a great place to go. But then they breach their ASBO and then, a good proportion of people who are in Polmont are there because they repeatedly breached court orders. [Legal Representative 2].

From the perspective of the above participant, the dire consequences of this gap in appropriate housing options has contributed towards young people being 'set up to fail', ending up in custody for solely breaching ASBO orders.

Secondly, there appears to be difficulty in accessing support for young people with mental health needs. This area of concern was raised by the majority of participants across all three case study areas. The below participant shared her frustration:

> The reality is lots of folk have been through care, lots are homeless, lots are unemployed, lots are, mental health is a big one - also substance misuse, pregnancies, STI's, the whole shebang. So you can't just turf them out at 16! Drives me mental. We had one girl who, very poor mental health at the moment, was in a couple of pretty dire crisis situations in the last 4 to 6 weeks, eventually managed to get an appointment up at [name of children's mental health service]. She arrived and was turned away because she is 16, and she's a fairly young 16-year-old I would say, but because she'd left school, she no longer qualifies for the child and adolescent service. She's now classified as an adult. So was told to go back to her GP and make a referral into the adult system which will take weeks, if not months. And it's just infuriating. [PRS A member 5].

The participant above argued that for young people aged 16 and 17, their age can act as a barrier and place them at considerable disadvantage where they are 'stuck in-between services.' Vulnerable adolescents cannot access children's services for mental health services, instead they often have to endure long waiting lists to access adult services. In the same vein, one professional argued that it was 'ridiculous' to expect young people living 'intensely chaotic lives' to feel able to arrange a GP appointment and talk about mental health issues. To help bridge this gap, some professionals commented that they

felt part of their role was to assist in making and attending appointments with the young person.

Thirdly, the importance of assisting young people to access employment and training opportunities was highlighted by participants, and it was often put forward as a crucial element in helping the young person desist from offending. Two professionals noted their surprise at the absence of any mention of this area within the WSA policy given its importance. Many interviewees drew attention to the lack of meaningful training and employment opportunities available for young people:

> Sometimes they'll get a work placement and go through that for 3 months or 6 months, and then, that's it. They've got all that experience and all that motivation and then it's done. And there is nothing else for them. It doesn't lead to a full-time job and they are back to square one. It's frustrating for them." [Social Worker 2].

Unfortunately, like the above professional, it was identified that training opportunities can often be short-term which doesn't provide any real opportunity. Indeed, commentators have pointed out how it is the actual quality and meaningfulness of employment opportunities that is important in encouraging desistance, rather than the experience by itself (Barry 2009; Rutter 1996). On the other hand, some interviewees shared a few positive examples of some programmes which had provided meaningful apprenticeship opportunities leading to full-time employment. For Area C in particular, there was a strong focus on the employability of young people. One of the participants described their unique approach at length:

> So what we were talking to the young person about was, where do you want to be once this bit is finished? See once you've finished this bit of your life, where is it you want to be? So, we should just be looking at - we should be aspirational for all of our kids - and it's not good enough, just to say, they are not offending - it should be that, we should be able to improve their lives. So that's where we are with employability […] And I suppose for us, we are secure in the knowledge that their kids are going to be supported, to be active in education, to be active in employment. So, if people are genuinely talking about breaking the cycle, it needs to be at that level. [Social Worker 3].

The above perspective represented an interesting ethos in Area C which was underlined by the theme of 'aspirational' thinking for young people who offend; an approach which, in effect, switched the usual end goal of 'desistance' with 'employability.' The participant above was largely critical of the WSA due to a perception that it had failed to acknowledge and address wider socio-economic issues, particularly further

education/employment. From the participants' perspective, the focus of youth justice policy should be on 'improving young people's lives', 'being aspirational' whereby youngsters are 'active in education or employment.' Even though there were successful placements in Area C which had led to some full-time work, the participant shared that it was not an easy route because of lack of funding:

> We were never funded. Well, way back, in 2011[74] - I'm not convinced that we got a great deal, and then when we went and asked to be funded - we went and asked for a pot of money to fund the employability stuff, but - not a factor. If you were looking at secure, or whatever else [alluding to other WSA principles] you would have got money for that so we were just like, phh." [Social Worker 3].

This point relates to the difficulties involved at planning a youth justice strategy at a strategic level and even though local authorities have considerable autonomy, the acquisition of funding is inextricably linked with the national policies which are in place. It also shows, that from this interviewee's perspective, the WSA focus has tended to be on specifically youth justice related services and not on addressing the wider circumstances of young people's lives, which participants clearly felt needed to be tackled alongside offending behaviour.

This section has set the context for the chapter by exploring the wider challenges that professionals face when trying to holistically address the needs of young people. Reflective of wider messages in the literature, this research found that there are clear socio-economic barriers faced by 16 and 17-year-olds, specifically in relation to housing, employment and mental health. Interviewees reported a dearth of meaningful services to assist in addressing these challenges, which undoubtedly affects the extent to which professionals are able to help young people at this critical juncture in their lives.

Retaining 16 and 17-year-olds on CSOs: Challenges and Barriers

At an organisational level, all three case study areas displayed a commitment to meeting the WSA objective to retain more young people in the CHS. Documentary analysis revealed that all three local authority areas had included in their 'WSA project plans'[75] to meet the following objectives in relation to the children's hearing system: to encourage

[74] This will have been temporary 'seed funding' provided by the Scottish Government.

[75] WSA 'project plans' were drawn up by youth justice teams in each local authority area, and submitted to the Scottish Government to evidence how they were going to implement the WSA.

the number of under 18's to be supported through the CHS post 16; and secondly, to encourage the number of under 18's to be remitted to the hearings from the courts. However, this did not translate into practice because there appeared to be a lack of information in relation to how these objectives would be implemented, particularly from the perspectives of children's reporters:

> Certainly not in SCRA it's not well advertised at all. It was never put out to us really. Which is kind of interesting when you think, that we obviously will have kids referred to us that are over 16 and who are on supervision, and we will also have discussions with the Fiscal in terms of what is an appropriate disposal. [Children's Reporter 1].

> The WSA isn't something which is broadly discussed very often. [Children's Reporter 4].

In principle, many of the participants acknowledged that retaining 16 and 17-year-olds in the CHS should be encouraged where it was considered necessary and appropriate. Some professionals drew attention to international legislation, particularly the UNCRC guidelines which states that every young person under 18 should be treated as a child. Some professionals also commented on the welfarist emphasis which characterises the work of the CHS and, alike to findings presented in previous chapters, cited the damaging effects of the criminal courts and where possible, the avoidance of this was to be welcomed:

> We are all about welfare, and for the welfare of 16 and 17-year-olds I don't think that is doing them any good [speaking in relation to the adult courts]. I think it's more of a scaremongering type angle [...] you are still a child when you're that age! It is I mean goodness. You'll remember being 16 yourself - I couldn't imagine standing in front of a court! I think the hearings system is a much better way of them being dealt with, to be honest." [PRS A Member 4].

There has been some debate within the literature over whether in some Hearings a decision is made to terminate CSOs too early specifically in relation to 16 and 17-year-olds who offend. Dyer (2016) previously argued that further use of the CHS would be possible for 16 and 17-year-olds because, using a snapshot of data[76] from 2014, Dyer (2016, p.5) concluded that 'the majority of jointly reported young people aged 16 and 17 years are being prosecuted in adult courts.' However, Henderson (2017, p.22) disputed

[76] The data was extracted from a six-month period only.

this claim because her analysis of CHS data showed that there was 'little evidence' to show that Hearings decide to terminate CSOs too early, whereby in actual fact 'in most cases Hearings do continue young people's CSOs past their 16th birthdays.' It is not possible to resolve or provide added insight into this debate within this space because there is currently no available published data which shows the proportion of jointly reported 16 and 17-year-olds which progress into adult courts instead of being retained in the CHS. However, what the research did find was an element of tentative qualitative evidence pointing towards a greater use of supervision for 16 and 17-year olds who offend. A few interviewees mentioned that traditionally, when an individual reached the age of 16 the young person would most likely be taken off their order and the case would be handed over to adult criminal justice. One children's reporter commented 'it used to be, supervision terminated, and the police would be camping at their door waiting for the next offence.'

Participants highlighted that the practice of retaining young people on supervision can often bring many challenges in practice:

> It's not an easy route really to assist and retain a young person in the children's hearing system. It can bring barriers sometimes. [Youth Justice Worker 1].

> It's tough work, working with challenging young people who don't want to engage and have a lot of complexities around. It's not easy work. [Civil Servant].

These excerpts highlight that there are multiple challenges involved in retaining young people on orders because, as previously highlighted, individuals in this group will often have particularly complex needs. It is apparent that such challenging circumstances require especially dedicated individuals who go above and beyond their normal responsibilities:

> I think it's because [Area B's Youth Justice Team] get involved, and I think they are the ones that really push to keep the kids on and out of the adult system, even more than the children and family team […] They are coming to advice hearings and really fighting to have cases remitted back, so the hearing can deal with things rather than the sheriff, even when it looks clear as day to everyone else that there should be a sheriff... And they really are fighting beyond. [Children's Reporter 3].

Reflected through the quote above, in Area B it was evident that the youth justice team were viewed as facilitators for the practice because of their commitment and determination to retain more 16 and 17-year-olds in the hearings system. As with PRS

and Diversion from Prosecution, dedicated practitioners working as 'champions' are crucial for success.

Aside from the circumstance where it is felt that support is no longer required, participants shared a few other reasons why supervision orders might be terminated specifically in relation to 16 and 17-year-olds who offend. These included: lack of engagement with the young person, and secondly, due to organisational and resourcing conflicts. The findings in relation to each will be presented in turn.

Non-Compliance

Across all three areas under investigation, participants explained that supervision orders were terminated due to lack of engagement by young people with their CSO:

> It's whether they are willing to engage with the supports that are in place. If there is non-engagement, it would need to go somewhere else. [PRS B Member 4].

> Social work will regularly ask for hearing to terminate orders on the basis of non-compliance. [Children's Reporter 1].

Only one participant in the study acknowledged that terminating supervision orders based on non-compliance was 'antithesis to WSA thinking.' Indeed, in the Association of Directors of Social Work statement which supports WSA implementation across the CHS, it clearly states that termination of orders based on non-compliance is not appropriate where 'non-engagement can actually be a reason to ensure compulsory measures are in place and every effort should be made to improve the young person's response' (ADSW 2012, p.2). The majority of participants stressed that CSOs would be terminated on a non-compliance basis only if the young person was continuing to offend, where professionals had 'tried everything,' and 'exhausted every opportunity.' The following participants explained in more detail the types of cases which might be terminated due to lack of compliance:

> It is sort of a bugbear for reporters because if they are not engaging, then the theory is, they should be on supervision because they are not engaging voluntarily, but - social workers will come and say, they're not engaging, we've tried everything, its serving no purpose... Those are the kind of sad ones. It's just giving up really isn't it. [Children's Reporter 3].

> This is a bit contentious but for me, there have been times where we have taken young people to children's hearings and taken them off supervision, when I think we have done everything we can to support a young person to desist from

> offending, and to try and meet some unmet welfare needs, and they've continued to offend to a high level. I feel in terms of credibility, it's important that we retain that right to be able to advocate that perhaps this young person has now exhausted all that we have got to offer, and perhaps the criminal justice system, as much as I realise it's not an answer, some young people are experiential learners and who go through a very negative experience, and that might be the beginning of a turn in attitude. [Youth Justice Worker 2].

Thus, in some circumstances professionals may feel as if they have no choice but to terminate an order because they feel powerless in their ability to help these young people by keeping them within the CHS. It was evident from some interviews that some professionals felt they had 'tried everything' they possibly could to meet welfare needs and help the young person desist from offending.

Organisational and Resourcing Conflicts

Secondly anecdotal evidence gathered from a few participants in areas A and C indicated that there may be resourcing incentives existing within the CHS which act to encourage the termination of supervision orders. The most pertinent resourcing barrier appeared to be in relation to accessing housing, described by the following participants:

> So going to housing, if you are on a statutory supervision order - because a lot of the housing is adult registered you know, and workers are not PVG checked and if they take you in on section 70[77] then you are still a child in the eyes of the law, some agencies are really jumpy about their levels of responsibility if they are taking on young people who are 16,16 and a half, 17. [Youth Justice worker 1, Area A].

> If they are on supervision and they become homeless, then basically they can't get into a place because all the supports are for the adult housing team. They view them as a child still being on a supervision order. [PRS C Member 1].

Thus, for areas A and C only, the research found that in some instances supervision orders would be terminated just so that young people would be able to access accommodation. On the contrary, in Area B the acquisition of a supervision order was seen as a facilitator in gaining appropriate housing for 16 and 17-year-olds. A participant from Area B commented that sometimes a supervision requirement could be used as a 'bargaining

[77] Under section 70 of the Children's Hearings (Scotland) Act 2011, the grounds of referral usually considered by the reporter and to be accepted by the child/relevant person (under section 65(2) does not have to be accepted or established before a hearing in the case where a child has pled guilty or been convicted of an offence in the criminal court.

lever, to be able to say, there are certain vulnerabilities this young person has, therefore this particular model of housing would be best suited to them.' Even though there did not appear to be any problems in Area B in securing accommodation for young people on supervision, a housing manager who took part in the study highlighted that a supervision order can bring challenges for young people living in supported accommodation:

> We may sometimes have young people who are still on orders and they can find that a real challenge because they come into this which is an adult environment - you know we are always very clear with young people that this isn't a children's unit and you know, you are an adult here. There are consequences to some of your actions and for young people who are still on supervision orders that can be a very strange thing to get their heads round because here they are treated as young people as adults, but they have got certain limitations put on them because they are still on an order. [3rd sector representative 3].

This participant went on to provide some examples of the limitations placed on young people when they are subject to a supervision order. For instance, the housing establishment was obliged to report young people who are on supervision as 'missing persons' if they did not return to the unit before their curfew. This particular regulation brought tensions in practice for the housing unit in Area B involving the local policing department. This separate, yet interrelated area only begins to scratch the surface in relation to the difficulties experienced by young people themselves as a result of being retained on supervision orders.

The research also brought to light that in some instances, accessing benefits could be a problem if a 16 or 17-year-old is subject to a supervision order. One youth justice manager explained why:

> They say well you're not getting benefit because you are looked after by the social work department; the social work department should pay your housing, not us, because you're still a child. [Youth Justice worker 1].

From these observations it is apparent that although a supervision order may provide some benefits for a young person in terms of avoiding court and continuing to be responded to within a welfarist framework, it may also bring disadvantages for the young person in terms of accessing housing and financial support. Social workers, whose role it is to consider the holistic needs of young people, may find it in the young persons' best interests to terminate a supervision order so they can access such supports:

> I've seen us go back and explain through the hearing that we will still retain the case on a voluntary basis, there will be no difference in the type of support they are going to get, but to access this they need to be taken off their order yes. We've done that occasionally in terms of balance of – what's best for them at that point in time. It is difficult. [Youth Justice worker 1].

In the above example, by retaining the case on a voluntary basis, the young person could access the available supports and still receive support from the youth justice team. However, if that young person was to then reoffend, the opportunity of being dealt with via the children's hearing system could potentially be lost, with the case most likely to be dealt with within the criminal courts. This is because of the current statutory guidance stating that for those aged 16 and 17 the presumption is that the Procurator Fiscal will deal with all cases, even if the young person is subject to a CSO and regardless of the gravity of the offence (Dyer 2016). Resourcing barriers such as this demonstrate the extent of the inherent dilemmas faced by professionals who are tasked with retaining 16 and 17-year-olds on supervision.

Lack of Confidence in the CHS in dealing with young people who offend

The research also revealed some attitudinal barriers which may also explain why more young people are not retained on CSOs for longer. Indeed, a number of participants demonstrated a lack of confidence in the hearing system in its ability to deal appropriately with young people who offend. This was expressed in three main ways by participants. The first two points are interconnected because there was a commonality in that a few participants believed that there was a 'lack of consequence' inherent in the system for 16 and 17-year-olds. However, the difference was that two professionals appeared to frame the 'lack of consequence' in a punitive light which reflected a view that the CHS response often didn't 'hold young people responsible' for their actions. Alternatively, others considered the 'lack of consequence' in the CHS as being detrimental for the young person themselves, where it was sometimes felt that no concrete or meaningful plans were put in place at a result of being on CSOs. Lastly, a few participants also demonstrated a lack of confidence specifically in relation to the ability of panel members. Each will be explored in turn.

Lack of Consequences: holding young people responsible

For a couple of participants, it was indicated that they felt the CHS 'didn't work' for 16 and 17-year olds because of a perceived inability for the system to hold young people to account:

> And to be honest, so often the kids who are on supervision that have been kept out of the court system, you're thinking, really, what is it doing for them? You know, slap on the wrists, if that. Generally no further action cause they are already on supervision, it's not gonna add anything to their care plan. [Social Worker 3].

Such a stance reflected that these individuals felt that the CHS is not equipped to assist young people to 'take responsibility' for their offences. This further implies that the court system is the only way this age group can be held properly to account for their crimes.

Other participants shared that the perceived lack of consequence in the CHS was unhelpful for young people themselves:

> We have had experiences of young people on a supervision order who um, are very blasé about offending they'll say 'och it doesnae matter i'll just go tae another panel.' They sometimes see that there is no teeth to it. You know? and you sometimes hear that there are not any consequences to their offending behaviour. [3rd Sector Representative 3].

In the same vein, another participant stated that the CHS is just 'probation for little people,' hinting that the CHS is more about monitoring behaviour, as opposed to more consequential action. It is not clear whether this is more of a reflection about the lack of disposals available through the CHS, or perhaps the participant is thinking that panel members do not take enough 'consequential action.' The same participants also argued that a history of supervision could be unhelpful, or even damaging for young people if they progressed into the adult system:

> I don't think it's a good message to send to kids. A good example that I keep using was, a kid that came through the hearing system and through child care, and, he appeared in an adult court, and the sheriff was asking his solicitor, would your client accept a tag under 77 - no, would he accept this - no, would he accept that - no, remanded for 21 days. That young man's absolute shock and horror, that that was the only choices that he got. I think there is a bit there about the system conditioning the young people to the bit about, if I don't like this, I will be offered something else. And - so I do think there is a bit about the children's system, being a bit more realistic about what it does and saying, these are the choices, it's that or that. But its - if you don't like it then ok we'll go and get you this. It doesn't do them any help. [Social Worker 3].

> There is a viewpoint that if a 16 or 17-year-old is offending and not having a consequence for that action, eventually they will come off the order by their 18th birthday. If they then continue to offend they actually may enter the adult system at a higher tariff than they would have, had they been taking responsibilities for their actions at an earlier age. [Children's Reporter 4].

Therefore, for some participants in the study, the CHS was not only ineffective in its response to offending behaviour for young people, it was also damaging because of the way it 'conditioned' young people to become 'blasé' about offending behaviour. Furthermore, as the children's reporter argued, being retained on an order could potentially result in up-tariffing within the adult criminal justice system if the young person demonstrated a previous unwillingness to comply with a supervision order. The conflicting views apparent in the interviews are representative of the two contrasting systems and the gulf which sits between the children's hearing system and adult criminal justice system. There is no in-between or settling in process for 16 and 17-year-olds. From the perspective of some participants, for young people especially who have been living with a supervision order for many years, the transition from a system rooted in welfarism, straight into a responsibilising system was a damaging and ineffective way of dealing with young people who offend.

Lack of Confidence in Panel Members

There were a few participants in the study who demonstrated a lack of confidence in panel members in dealing with young people who offend, and were sometimes very critical:

> Quite a lot of them are older. The older generation - and just talking to teenagers is maybe not their forte even regardless of knowledge of offending, even just communicating with kids that age is maybe not their forte. [Children's Reporter 2].

> I think they are probably quite good when it comes to under 12s, and care issues, and family - and this that and the other, but when it comes to 12 plus, you either get really woosy, mamsy pansy - oh my god that's such a shame on you panel members - usually to the ones you don't need that! and then you get the other ones where it's like,' right I'm gonna lock you up!' which again is to the ones that don't need that! You know, but – it's like they don't understand adolescence. A lot of them will go, join the club – these young people can't access clubs because they get banned, if they're not interested. Or you get the ones that say oh you're gonna end up in security and get locked up! And they're thinking oh god here we go again. [PRS A Member 5].

The same participants highlighted a need for more training for panel members to aid understanding and explain the reasons why policies such as the WSA advocates for more young people to remain on orders, where it is important to share that 'it is not just seen to protect that young person from going to jail.' Another participant shared their perceived benefits of organising training sessions whereby young people themselves can talk to panel members about past experiences of being on supervision. This was viewed as a particularly meaningful way of providing training to panel members to assist effective decision-making in relation to dealing with young people who offend in the CHS.

The Conceptualisation of Young People in the CHS

There were a few participants in the study that categorised young people into two classic 'types': those who are vulnerable and are still in need of protection, and those who are 'old enough' to take responsibility for their behaviour:

> There are a lot of 16 and 17-year-olds that are really vulnerable and quite immature, but there are quite a lot of 16 and 17-year-olds that know exactly what they are doing. I think a lot of 16 and 17-year-olds are old enough and responsible enough, but I can see the other side of the coin as well where there are those who are very vulnerable. [Police Representative 5].

The chosen language mirrors the categorisation taking place: there are only two sides to a coin whereby the young person is classified as one or the other, never both. The quote reflects the longstanding categorisation of young people who offend as either 'victims' (vulnerable, and in need of protection) or 'villains' (responsible, and in need of control). There appears to exist an implicit meaning that the CHS is not a forum where young people have to take responsibility for their actions. Such an indication was expressed by some participants who suggested that the young people classified as vulnerable are most suited to the CHS, whilst those viewed as responsible should progress to the adult courts.

> I think some cases, young people need to remain in the children's hearing system because actually its more to do with maybe learning disabilities, mental health, actually how mature are they. But there are a lot of other young people where they have been persistent offenders all of their days, who know how to play the system and know the system very very well…so at that stage do they then need to move up because they are kind of heading that way anyway? I don't know. I am of two minds. [PRS C co-ordinator].

This professional brings insight into how a young person might come to be classed as either vulnerable or responsible. Young people with disabilities or mental health

problems were classed by participants as being especially vulnerable and therefore should be retained in the hearing system. On the other hand, numerous other participants drew attention to 16 and 17-year-olds who were categorised as responsible because of characteristics such as 'persistent' offending, or more commonly, those who 'know the system very very well.' For young people placed in the 'responsible' category, participants tended to share a perspective that they had outgrown the CHS and should progress into the adult court system. In light of reported findings in the literature (e.g. McAra and McVie 2010), it is not inconceivable to envisage that the allocation of a 'vulnerable' or 'responsible' label could lead to crucial consequences for the young person, and could potentially determine their route through either the criminal courts or CHS.

Analysis of the data revealed an intriguing finding: a significant number of participants portrayed what they classed as 'responsible' young people in the CHS through describing them as 'playing the system':

> A year or two back, every single one that had committed an offence wanted to join the army. Part of the suspicion was that they were all saying that they were wanting to join the army because they know fine that with a criminal record they are not getting in. [Children's Reporter 1].

> Keeping them on supervision for 16 - 18s so they've got that support is a great idea but again, you know, remembering that sometimes young people use it to their advantage. [PRS A Member 5].

> They are getting, it sounds terrible, but they are getting away with a lot. And they know it, and they are out taunting the police, saying I'm on supervision, you can't touch me, hahaha. You know?" [Children's Reporter 3].

Such a characterisation of young people was evident across all three case study sites and was not associated with any professional group in particular. These participants, through commenting that young people were 'wise to the system' and 'knew exactly what they were doing' emphasises the perceived maturity of young people, portraying them as especially deviant and even scheming in their attempts to outwit the system. Others drew attention to the pride that young people sometimes gained from attaining a supervision order:

> There are kids there waving their supervision as if it's a flag. [Children's Reporter 2].

Surprisingly, only one participant spoke about why young people might try to 'play the system' or find pride in their supervision orders:

> For some of the young people, particularly those who have a reputation for being quite a gangster or somebody who is quite able to look after themselves - they see themselves involved in kinda outwitting the criminal justice system. Sort of badges of honour and a bit of kudos accrued from that. But a lot of our young people have very little other positive things in their lives that give them that credibility or that recognition. But that idea you know - that its quite cool that you're getting charges. But again that's when they are in groups and you speak to young people on their own, often they are actually very anxious about it but they put on this bravado in front of other people. [3rd sector representative 3].

As opposed to a portrayal of young people as deviant and deliberately playing the system, the participant above recognises that young people often have 'very little positive things in their life that give them credibility or recognition.' In this way, it is understood that the identities of young people can be intrinsically connected to a supervision order, and even though they demonstrate certain bravado in front of some, often this can be used as a front whereby they will hide from much anxiety about the circumstances that they are in.

What should be done about 16 and 17-year-olds who offend?

During the interviews, participants were asked about their views on the viability of adapting the CHS with an aim to retain more 16 and 17-year-olds. This question was revealing because it was indicative of some of the mixed rationales which underline working with this particular group of young people. Only one participant in the study explicitly demonstrated alliance with a purely welfarist framework for working with 16 and-17-year olds who offend:

> I think we are a country where we are saying we should treat all under 18's as children, but we put them into an adult system. Is the children's hearing system able to deal with them, and if not why don't we give it more power so it can? You know - we've got a really good system there. [Policy Actor 2].

The above professional was the only interviewee in the study to wholeheartedly agree for the CHS to be adapted so that the majority of 16 and 17-year-olds (aside from those committing major crimes such as murder) could be withdrawn from the criminal justice system and contained within the welfarist framework of the CHS. It was acknowledged

that for this to happen, serious adaptions would have to take place. For others taking part in the study, the proposal was not seen to be appropriate:

> My gut reaction is no, the care and protection side is probably our main focus, and probably should remain our main focus. There is a system that is there that is geared up to deal with criminality, so I would suggest not. Also, legally, well - they are not children. And therefore, they can't fit into a children's hearing system […] unless the powers changed - give panel members more powers, along, I don't know, deferred sentences - that sort of stuff. God help us! (laughing) Yeah. And I don't think that is appropriate to give that power to volunteers. [Children's Reporter 2].

There are a few important observations from the quote above. Firstly, the participant puts forward that the hearing system has a 'main focus' on care and protection. Indeed, since 2010 it has been found that the CHS is primarily used to address child welfare cases (McGhee et al. 2012). Further, the participant appears to separate the two underlying rationales of the systems whereby it is implied that for the majority of 16 and 17-year-olds, the CHS should deal with the 'needs' cases, and the criminal justice system should deal with 'deeds' cases despite the fact that many young people who go on to offend often have histories of care and protection needs (Whyte 2003). Lastly, the participant excludes 16 and 17-year -olds from the CHS based on the claim that they are legally not defined as children. This is an interesting statement because 16 and 17-year-olds are legally classed as children if they remain on a supervision order. The confusion in practice about classifying this group as children or adults is reflective of the conflicting statutes which are in place in various pieces of Scottish legislation.

Other participants were ambivalent about the question of retaining most young people within the CHS. Some suggested that 'something else' should be introduced, for example a youth court set within a welfarist framework. Another participant suggested that something else needs to be introduced so that 'anybody under 18 needs to have their status recognised, one way or another.' This appeared to indicate an underlying view that neither the CHS nor the criminal justice system is viewed as an entirely appropriate way of dealing with young people who offend. Another participant suggested that the CHS system could be adapted so it could include more 16 and 17-year-olds, but only on a case by case base so it could cater for a specific type of young person:

> Maybe a case by case basis if there is maybe some level of vulnerability there, or perhaps looking beyond an offence and looking to their background, maybe a lack

> of care kind of case, or something that has come up through that, it might be beneficial. [Children's Reporter 4].

Such a suggestion is reflective of the previous discussion on the categorisation of young people as vulnerable or responsible. This participant puts forward that young people classed as vulnerable should be kept within the CHS, but those classed as responsible should progress into the adult criminal justice system. This final section has demonstrated that practitioners working with 16 and 17-year-olds across the youth justice systems hold contrasting views on how this group should be responded to.

Summary

This chapter has explored some of the views and implications surrounding the retention of 16 and 17-year-olds in the CHS to divert them away from the courts. In so doing, it has revealed some key barriers and challenges which face practitioners in their attempts to prevent vulnerable young people progressing into the judicial system. Practitioners particularly drew attention to the multiple, complex need and adverse social circumstances that young people in this group often face, citing housing needs, mental health problems, and training/employment needs as the three most common problems. Interviewees conveyed a sense of hopelessness because of the dearth of meaningful services available, which affected the extent to which professionals could help young people navigate through this critical juncture in their lives. Furthermore, young people appear to be 'stuck' in-between adult and child services whereby the majority of participants in this study expressed a view that neither of the judicial systems in place are considered as a wholly suitable way of responding to 16 and 17-year-olds who offend.

The chapter also explored the specific challenges and views about retaining young people on CSOs and began to tap into the reasonings behind why young people 'graduate' into criminal justice despite having 'multiple and chronic difficulties whereby needs are left unmet, and offending unresolved, only to 'reappear shortly afterwards in the criminal system with many at high risk of early custody.' (Whyte 2004, p.405). The research found that CSOs were terminated based on non-compliance, and sometimes, so that young people could access housing placements or receive financial benefits. The research also found that some professionals displayed a lack of confidence in the CHS to deal effectively with this group of young people, which might also lead to some professionals recommending the termination of supervision orders. In particular, some interviewees felt that there was a 'lack of consequence' in the CHS. It was felt that for some young

people, keeping them on a CSO could be detrimental for them in the future because of a belief that the court might actually deal with them more harshly due to lengthy experiences within the system.

When speaking with professionals about their views on the appropriateness of the CHS for young people who offend, some interviewees classed young people as *either* 'vulnerable' or 'responsible', representing classic binaries inherent in youth justice practice. It was indicated that those classed as 'vulnerable' should be kept within the CHS, whereas those who were 'responsible' had outgrown the system and thus should progress into the criminal justice system.

Lastly, professionals were asked about their views on the viability of adapting the CHS with an aim to retain more 16 and 17-year-olds. The question brought about mixed results, which is yet again reflective of the mixed discourses at play within youth justice, and the different rationales which underline working with this particularly vulnerable group of young people.

Chapter Eight: Discussion

Introduction

This chapter discusses and develops the main themes which have arisen from the research. It will explore the evidence which demonstrates the multiple and conflicting rationales which underpin the three pre-statutory processes under investigation and critically discusses key implications in light of the literature. In part one of this chapter, the manifestation of PRS and diversion from prosecution practice across the three case study areas will be explored. The second part of this chapter will focus solely on 16 and 17-year-olds who offend. This will include an exploration of the implications surrounding keeping young people on supervision orders and will discuss professional perceptions and experienced challenges in this area. The final section of the chapter will explore some broader implications of the findings specifically in relation to 16 and 17-year-olds, with the intention of critically reflecting on the contribution of the WSA in relation to this specific age group.

Part One: Early Intervention and Diversion to Prevent Youth Crime

Pre-Referral Screening

This section will consider some central challenges and critical issues arising from the practice of PRS. As well as examining key messages relating to participant views of PRS, this section will draw from the literature to discuss some broader implications associated with the running of PRS, including: the difficulties arising from differing conceptualisations of 'early intervention'; the problems of providing welfare in a youth justice context; the potential for net-widening through the PRS process, and questions regarding upholding the rights of children in the pre-statutory PRS context.

Strengths of PRS

The research found several advantages and strengths associated with the PRS process. Of central significance, the PRS system is clearly better placed than the courts or the CHS to circumvent potential, negative, unintended consequences that can be caused by exposing children and young people to formal systems and interventions. The intentions of PRS are that children and young people's offences are dealt with proportionately and informally, thus avoiding formal interventions through the CHS or adult courts. This way of thinking is in line with McAra and McVie's (2010, p.200) recommendation that youth

justice interventions should aim to be 'proportionate to need and also operate on the principle of maximum diversion.'

The second main strength associated with PRS is that it is clearly a more efficient means of dealing with low-tariff offences committed by children and young people. Interviewees commonly shared their view that prior to the establishment of PRS, low-tariff offences were often dealt with disproportionately and inefficiently. Qualitative evidence suggests that young people who commit an offence are now dealt with in a timeous fashion and are no longer sitting with the Children's Reporter; PRS has enabled the freeing up of social workers' time because they do not have to write unnecessary reports; and the majority of offence referrals to SCRA are now appropriate and proportionate, which brings considerable system benefits for the children's hearings in general. These findings are also in line with the Murray et al. (2015) WSA evaluation, and Fraser and MacQueen's (2011) evaluation who studied the PRS system in Dumfries and Galloway. Such observations demonstrate the centrality of systems management ideology which is intrinsic to WSA thinking and has brought managerial benefits at a pragmatic level. However, it is important to recognise that the system of PRS also involves the displacement of resources and responsibility away from the CHS and into the hands of PRS professionals. Maclure (2003, p.137) writes that "community-based diversion is a way to decentralize and augment community responsibility for youth justice administration, and in so doing, contain its systemic costs." This can clearly be seen with PRS where there has been considerable shifting of statutory 'youth justice work' towards third sector organisations, which is indicative of neo-liberalism trends relating to the dismantling of the welfare state[78] (Youdell and McGimpsey 2015). Although there are a variety of disposals available through PRS, under a whole systems approach, young people are diverted away from statutory systems and often transferred into the hands of third sector agencies in the community.

The research also found that PRS brought notable benefits particularly in relation to 16 and 17-year-olds. A central aspiration of the WSA was to address Scotland's historic

[78] In line with this, financial state support for PRS has been minimal - local authorities received 'seed funding' to initially set up PRS which lasted only one or two years. After this, it was viewed as the responsibility of the local authority to fund PRS groups out of their own budgets. Robertson (2017) found considerable concern expressed by practitioners taking part in her study regarding the sustainability of the WSA due to lack of funding from the Scottish Government.

tradition of the regular processing of 16 and 17-year-olds through criminal courts (Scottish Government 2011b). One of the ways in which it was hoped this aspiration could be achieved in practice was through diverting some young people through PRS instead. Participants in the study shared their strong support for the role of PRS in acting to divert 16 and 17-year-olds away from criminal courts. Of crucial significance, through PRS more young people are avoiding formal processing in adult courts and indeed avoiding any negative labelling processes or stigma attached to obtaining a conviction. Thus, PRS could be viewed as some movement towards less punitive practice for 16 and 17-year-olds who offend, with more of an emphasis placed on their status as adolescents and enhanced concentration on welfare needs.

Lastly, the research found that PRS involved a body of highly committed and professional individuals, dedicated to promoting the best interests of children and young people in trouble. The observations of meetings showed PRS members to be passionate, caring and creatively endeavouring to meet children's needs in any way they could. The observations of PRS meetings revealed a tight-knit group whose members were supporting one another, maintaining strong links, where the groups observed represented a 'meeting of minds' and demonstrated a collective decision-making process to consider the best course of action. Furthermore, across all three case studies, the education sector was heavily involved in the PRS process. This is an undoubtable strength especially given that McAra and McVie (2010 p.201) found that 'school exclusion is a key moment which impacts adversely on subsequent conviction trajectories.' There is clearly a crucial role for education to play in the PRS process so that more young people can be retained in education wherever possible.

The Multiple Meanings of PRS

Previous commentators have highlighted the conceptual confusion surrounding 'diversion' and 'early intervention' demonstrating that the meaning of these concepts and the various rationales which underpin them differ markedly depending on the context in which they are applied (Haydon 2014; Richards 2014; Smith 2014; Kelly & Armitage 2015). In parallel with these claims, the research found that there existed conceptual blurring of boundaries between notions of prevention, early intervention and diversion, contributing towards a diverse and varied PRS landscape. In particular the research found that the fundamental purpose of PRS is variable dependent upon the priority placed on notions of 'diversion,' 'welfare' and 'early intervention.' Similarly, in

a research project which analysed the objectives of early intervention projects in Northern Ireland, Haydon (2014) found that there were 'clear differences in priority' across five projects which all aimed to deliver early intervention for the prevention of youth offending. These variable prioritisations led to differing manifestations of practice, leading Haydon (2014, p.226) to question the fundamental aims of the projects:

> "At the heart of debate about such programmes is their intended objective: addressing the needs of any child or young person as they are identified? Prevention of offending based on assessment of criminogenic risk factors? Or diversion from the formal criminal justice system for those already involved in 'anti-social' or 'criminal' behaviours?"

Similarly, PRS is usually construed at a policy level as a process which aims to deliver 'an early intervention response to offence charges' (CYCJ 2018 p.6), where 'offences are dealt with through processes which ensure young people receive proportionate and timely support to tackle and improve their behaviour." (Scottish Government 2015b, p.7). This research has revealed that PRS can indeed be classed as such but, in some areas, PRS models aim to achieve much more than these specified goals. Indeed, the research established that there are key differences in the conceptualisation of early intervention in the PRS context. At one end of the spectrum, it is apparent that some models have adopted a diversionist conceptualisation of early intervention understood purely as a response to youth offending behaviour. Such an approach emphasises minimum intervention and are wary of the effects that professional contact can have on children and young people. On the other hand, other areas have prioritised a welfarist conceptualisation of early intervention in the context of PRS. These areas have also started accepting non-offence referrals whereby their approach involves a much wider remit, where they work with a whole range of vulnerable children and young people, and thus do not consider themselves as providing purely 'youth justice' response. This approach is rooted in welfarist thinking framed by preventative, pragmatic thinking that the earlier the intervention, the better. As discussed in chapter three, the foundations and fundamental ideologies that these two schools of thought are built upon do not sit comfortably with each other. It could then be argued that PRS cannot be understood as a national process or one singular approach. The way in which PRS is practised across the country is not only variable in terms of process and procedure; of even more importance is that the very essence and intentions of PRS as practised are incongruent.

Put at its very simplest, some areas aim to intervene more into the lives of children and young people where a support need is identified (welfarist early intervention), and others are trying to intervene to a lesser extent, only when absolutely necessary in response to an offence (diversionist early intervention).

'Welfarist Early Intervention'

The findings revealed that one consequence of running a PRS model which accepts cases on non-offence grounds leads to a scheme which lessens connotations as being primarily a 'youth justice service.' The PRS group in Area C in particular was multi-disciplinary and the boundary lines between social policy, child protection and youth justice provision became heavily blurred. The advantage of this is that PRS groups with an exclusive focus on dealing with offending behaviour are perhaps stigmatised as such, which could lead to an unwillingness from children and their families to receive support from what is intrinsically a 'youth justice' service. There are however certain challenges involved in running fully integrated multi-disciplinary teams, which research into the Youth Offending Teams (YOTs) in England and Wales has shown (Souhami 2007). It can be a difficult path to heavily blur social policy and youth justice boundaries because as Souhami (2010, p.135) writes, it can be hard to know where youth justice 'begins and ends', and it also 'risks widening and deepening the reach of youth justice services into young people's lives.'

Another argument in favour of welfarist early intervention is that if it didn't exist, it could lead to missed opportunities to engage with and support young people. Whyte (2004b, p.4) appropriately writes that 'doing nothing may simply be a missed opportunity to provide help at an early stage.' There will indeed be young people who will 'grow out of crime' (Rutherford 1986); but there will be others who will not and require some intervention and support. The ability to provide an early intervention 'at the right time,' at the right intensity, and through what service is highly complex, beset with difficulty and represents a major challenge for youth justice policy and practice.

Implications arising from Welfarist Prevention in the PRS context

Previous research has found that welfare-based quasi-criminal initiatives, however well-intended, can lead to net-widening and disproportionate interventions (Cohen 1985; Muncie 2004). Given the damaging implications of these claims, any scheme which involves early interventionist, preventative practice should be implemented with clear

warnings in mind. At the crux of reported concerns, is that such a strategy can lead to unnecessary criminalisation in young people's lives and 'widen the net' through expanding the number of young people who come into contact with youth justice services (Cohen 1985).

This research raises a legitimate concern that PRS could well be 'widening the net' through expanding the number of young people who come into contact with social services (Cohen 1985). It is important to reiterate that the PRS process has truly 'diverted' i.e. prevented many young people from being dealt with through formal systems, especially for those who have committed offences of a more serious nature. However, a question remains about young people who have committed very low tariff offences, or are presenting with welfare concerns, who, in the absence of PRS, would simply have received a verbal warning, or even no action at all. From this perspective PRS could be explained as a type of 'interventionist diversion' (Kelly and Armitage 2014). Indeed, some practitioners pointed out that for many young people referred to the reporter on offending grounds pre PRS, the case was simply 'no further actioned.' Although out of date, this is in line with historical findings from the literature as Waterhouse and McGhee (2002) found three-fifths of all referrals ended in a 'no action' outcome in 1999/2000.[79] Thus, the introduction of PRS has meant that for some young people, it may have prevented them from being truly diverted; i.e. receiving no action at all.

As Morgan (2009, p.46) writes, initiatives such as PRS *might* indeed 'nip unacceptable behaviour in the bud' but there is also a risk that it could 'despoilingly drag an expanding cohort of young people into the criminal justice system.' It could be said that PRS is different because its stated objective is to provide informal responses to offending behaviour, using universal services wherever possible (Scottish Government 2015b). Conversely, net-widening concerns are rooted in the idea that 'no further action' is replaced by criminalising interventions (Morgan 2009). Therefore, a crucial question remains over the nature of 'systems contact' in the PRS context as experienced by children and young people, and if there is a risk that the interventions provided are in any way criminogenic. It is apparent that the actual interventions that children and young people receive through PRS are highly variable; which is to be expected because

[79] Both on offending and non-offending grounds. Data not available purely in relation to referrals to the Reporter on offending grounds only.

the process is designed to be tailored to need and proportionate to the offence committed. Indeed, the research found that the provision of interventions differs greatly in terms of formality: at one end of the scale, a child might be referred to a mentoring project for a few weeks; at the other end of the scale, a child might receive a restorative intervention through SACRO or the local youth justice team. If a young person is receiving an intervention through SACRO for example, to what extent does 'system contact' differ if they have been referred through PRS or the CHS? At the end of the day, is the intervention the same if they have been processed 'informally' through PRS, or 'formally' through the CHS? Kelly and Armitage (2015, p.126) found that one diversion scheme in England shared some features of statutory system contact, and also 'similarities in the actual intervention work carried out.' Undoubtedly, this is an area which would benefit from further research, but such a study would be met with considerable challenge, mainly due to the variability in PRS interventions provided across the country.

Commentators have argued that notions of prevention and early intervention across England and Wales have been dominated by risk-focussed, actuarialist, negative 'offender-first' discourses which have acted to responsibilise children and young people in trouble (Creaney 2013; Case and Haines 2015, p.226). Although there was no evidence of a dominant actuarial discourse in the PRS context, the research did find that some participants expressed concern about the risk of delivering 'unnecessary interventions' because of their willingness to help and 'take action' to address needs. This is highly problematic because it is easy to envisage that PRS, coupled with the expansion of the VPD system, has the potential to morph into a forum which targets children earlier and earlier, in effect widening the net through benevolently trying to address welfare concerns. Additionally, if unnecessary interventions are being provided under PRS then there is certainly a concern that scarce resources are being wasted; used for children too early when they might not actually need them (see Whyte 2004b). Another point of crucial significance is that PRS is always portrayed in publicly available documents and guidance protocols as a process which provides a response only when an offence has been committed (see for example CYCJ 2018; Scottish Government 2015b). This research has revealed that this is simply not the reality of practice, as in at least two areas in

Scotland, PRS includes intervening into the lives of young people purely on welfare grounds.[80]

The 'Vulnerable Persons Database'

The implementation of the VPD is also of considerable relevance here, due to the research evidence showing that the introduction of the database helped trigger the change in practice which brought about the inclusion of non-offence cases in PRS. There were a number of participants who demonstrated apprehension in relation to the recording of 'concerns' about children and young people on the VPD database, because, as one interviewee put it, 'some of these concerns should never be highlighted to a 'youth justice' service…there is a danger that we could draw young people into systems through the concern forms who don't need to be there, at all.' Such discussion is reflective of Cohen's (1979 p.339) argument whereby the VPD could be explained as an increased intrusion of the state where 'more and more of our actions and thoughts are under surveillance and subject to record.' Past research has shown that there can be a danger that boundaries between 'anti-social behaviour' and criminal behaviour can become blurred (Goldson 2000). Sight should not be lost that this is a police database whereby, the research found, in one area police were recording 'incidents' of behaviour where children were doing little more than playing.[81] Additionally, 'concerns' stored indefinitely on the VPD system (which children and young people and their parents are likely not to be aware of[82]) may be citeable in the future, for example in court or at a Children's Hearing.

With the VPD developments, the net of surveillance is extended further, where details about children and young people brought to the attention of the police on welfare grounds are stored on what is a national police database accessible throughout the country. Labelling theorists such as Becker (1963) and Lemert (1967) would argue that the accruing of records on police systems will only serve to label, construct and reinforce offender identities. The stigmatisation of young people can be enacted through subtle

[80] It is not currently known how many PRS models in Scotland accept non-offence referrals.

[81] A key example of this was provided by one participant of police recording a reported incident where a child removed an old bike from a skip.

[82] See BBC News (2017).

processes as well as through formal systems (Barry et al. 2009). From a labelling perspective the record of a young person in a police system can attach stigma and potentially affect future police responses. For young people on police records purely on welfare grounds this point is particularly important because as Barry et al. (2009, p.2) explain:

> "Stigma is connected 'not only to what has been done by young people but also dubious judgements about what they may do. This is a kind of prospective stigmatisation of perceived riskiness, a sort of pseudo-scientific identification of bad character, rather than a 'mere' question of bad conduct."

From a labelling perspective, there is a danger that the VPD system will serve to enact stigmatising processes for children and young people, creating an ever-expanding database of individuals who are most likely to belong to the most marginalised, disadvantaged communities in Scotland.

The VPD system also represents a 'system of audit' (Phoenix 2016, p.126) which is indicative of neoliberal managerialist trends. There is clear pragmatist thinking behind the introduction of the VPD, demonstrated through interviews with some police representatives who shared that it 'made sense' to create a database where all 'concerns' could be stored for the benefit of information sharing across all police forces across the country. Such pragmatic principles are at the heart of managerialist ideology, which helpfully entails sidestepping the need to demonstrate allegiance with any other penal philosophy (Muncie 2006). In a managerialist sense, on the surface, the running of the VPD system for Police Scotland is pragmatic, administrative and efficient. However, as this research revealed, for Area B, the VPD system added an extra layer of bureaucracy especially for the PRS co-ordinator, as many 'concern forms' were forwarded on from the police. It appears that there is an element of responsibility shifting occurring here. Despite sincere and benevolent intentions of the police who are working towards a renewed focus on addressing vulnerability and inequality across Police Scotland[83], it is possible that the VPD system inadvertently leads to a 'passing the buck' scenario for the police to ensure that welfare needs of children and young people are addressed.

[83] The role of Police Scotland is increasingly focused towards addressing vulnerability, represented through the current strategy: 'Policing 2026: Serving a Changing Scotland' (Police Scotland 2017).

Furthermore, there have also been concerns about data protection issues raised in relation to the VPD, which have been raised by the Information Commissioner:

> "Without informing or seeking people's consent Police Scotland have created a database of over 400,000 individuals that they have labelled as vulnerable, nearly 1 in 10 people. Once on there, there is no way of getting off […] The Information Commissioner has notified them that the Vulnerable Persons Database is in breach of the Data Protection Act by not having any retention or deletion policy." [Open Rights Group, 2017, para. 2/3].

For children and young people who are being processed through PRS on non-offence, welfare grounds, there are crucial questions to be asked about how this data is held, how it is used, how it affects future decision-making, who it is shared with, and for how long it is stored. The introduction of the VPD system not only raises data protection issues but also, from a labelling perspective, there is the danger that this system will serve to label and attach stigma onto a growing population of children and young people.

PRS as Targeted Prevention

It is important to acknowledge that PRS could be characterised as a 'secondary' prevention strategy, distinct from the provision of universally applied primary prevention (which by definition does not target individuals (Richards 2014)). Early preventative strategies such as PRS which are located in the youth justice sphere in themselves can indeed be positive developments, but when thinking about the wider societal context they should not be welcome if they deflect attention from, or even replace, initiatives which advance improvements in broader social and educational provision. There is a risk that through utilising a strategy of secondary or tertiary (i.e. targeted) prevention, universal service provision to prevent youth crime could be neglected or even abandoned in favour of targeted provision (Richards 2014). At a strategic level, it is imperative that responsibilities for addressing behavioural and situational difficulties amongst children and young people are not unduly placed within the hands of youth justice professionals who are tasked with delivering targeted 'early intervention' (Whyte 2004b) to prevent youth crime.

The recognition that PRS employs a targeting strategy of preventing crime is also somewhat reminiscent of a responsibilising RFPP model.[84] Although there was no evidence of the dominance of utilising risk assessments within the PRS process, the very nature of PRS entails the targeting of children and young people at an individual level. Haines and Case (2008, p.13) write that, through adopting the RFPP perspective, 'social factors are viewed as simply exacerbating developmental anomalies originating in the family, so the risk factor method fails to capture the broader (structural, social, political) context in which offending takes place.' It could be argued that the very machinery of PRS is reflective of a responsibilising neo-liberal agenda which involves the pursuit to prevent youth crime through targeting individuals, as opposed to introducing strategies founded upon universalising principles. An interesting question posed by one of the participants in the study is helpful to bring further insight in this area. At the end of a PRS meeting he commented: 'what on earth would happen to these young people if this group didn't exist?' From that professional's perspective, the existence of PRS was vastly important because vulnerable young people with complex needs would not receive any help from PRS professionals, and thus would greatly increase the likelihood of further offending behaviour and entry into formal systems of control. Many other PRS professionals who took part in the study were aligned with this perspective. Their conceptualisation of PRS focussed on helping and supporting children and young people in any way they could, which would hopefully deter them from committing any future offences. However, taking a broader perspective, despite these benevolent and caring intentions, practitioners are working within a neo-liberal system which is essentially trying to apply 'sticking plasters' at an individual level, which avoids addressing the very root of offending behaviour which lies in deeply entrenched societal inequalities. Indeed, if PRS did not exist, could there be a broader landscape of preventative provision instead or even alongside PRS, not delivered by the police or youth justice services, which assists children and young people on a more holistic, non-targeting basis? Such questions are worthy of exploring, to consider whether Scotland is adequately targeting resources in the right ways to genuinely prevent youth crime. Lightowler (2017) brings some insight into this area in a paper which briefly explores the proportion of preventative spend in

[84] The RFPP model is outlined in chapter three.

the current justice budget. Lightowler (2017, p.6) argues that the current strategy[85] has failed to adequately prioritise genuine preventative strategies, that the 'plan for prevention' isn't made clear, and that 'there's limited focus on primary prevention, with the main focus on preventing reoffending rather than offending in the first place.'

Children's Rights in the PRS Process

Article 40(3)(b) of the UN Convention on the Rights of the Child stipulates that for children being dealt with through non-statutory processes, their 'human rights and legal safeguards should be fully respected.' Whilst there is not a concern that young people could acquire a criminal record in the PRS context[86] it is important to state at the outset that there could potentially be serious implications for young people processed through PRS.[87] Combining evidence from this research and messages from the literature, this last section on PRS will consider a few ways in which there is potential for children and young people's rights to be eroded within the PRS process.

Smith (2014) writes that 'out-of-court disposals' similar to the PRS process have been commonly and historically criticised on a familiar number of grounds. These include a concern over victims' rights, and whether they feel as if 'justice has been done'; the lack of independent scrutiny and monitoring; and an increased potential for injustices to occur. PRS, like other out-of-court schemes, take place at the shallower, less visible end of the justice system, where it involves the 'production of conviction records' which are not subject to legal proof' (Garland 1996, p456; Cohen 1985). In the same way, critics of such schemes would perhaps argue that the lack of guidance, the lack of monitoring, and the lack of emphasis upon children's rights, increase the potential for injustice in the PRS process, in what could be characterised as a hidden part of the youth justice system. In the historical literature, commentators have argued that there are potential problems with out-of-court schemes which involve no independent adjudication or checks of a due process system, because there will be scepticism over the legal basis on which it is

[85] See the Scottish Government (2015a) for the current youth justice strategy.

[86] PRS support "does not result in a criminal conviction though could be considered relevant information as part of an enhanced disclosure to protect vulnerable groups." (Scottish Government 2015, p. 7).

[87] For example, at the discretion of Disclosure Scotland, young people could acquire a disclosure on record which could affect future employment prospects.

founded. As a few participants demonstrated in this study, the intrinsic nature of PRS may contribute to dubious conclusions about the legalities of justice and due process for young people being dealt with in this way, which is very different compared to the open and transparent processes found within the judicial court and CHS.

The fact that there is no requirement for a child or young person to consent to PRS, or that denial of the offence should not inhibit the referral to be processed through PRS, has important consequences worthy of careful consideration. First, this is atypical of other out-of-court disposal schemes which are in place throughout the UK. In other non-statutory diversionary schemes such as the Swansea Bureau (Haines et al. 2013), the Final Warning Scheme (Keightley-Smith 2009), and the TRIAGE system (Taylor 2016), the young person would not be eligible unless they admitted to the offence at the time of charge. In many ways this arrangement is highly advantageous for PRS because it safeguards against many young people entering statutory systems unnecessarily all because of an initial denial. For many children and young people, as reported by professionals in this research, they will often accept responsibility (or even partial responsibility) at a later time. Cushing (2014 p.145) argues that England and Wales' youth diversion programme tends to prioritize 'admission criteria over welfare considerations' by demanding a full, mandatory admission which results in many young people being denied the opportunity to be diverted. In stark contrast, PRS clearly prioritizes welfare over admission criteria in order to divert as many children and young people as possible, which brings a different set of implications and challenges.

Ashworth (2002, p.587), writing in relation to obtaining consent in restorative justice processes, states that the requirement of consent to take part in a programme 'may proceed from a small amount of free will and a large slice of (perceived) coercion.' The motivation behind this coercion is likely to be benevolent, because, otherwise, the professionals involved would be forced to progress the case into the formalities of the criminal justice system, which is a much harsher, riskier alternative to the likes of a restorative justice programme. Kemp et al. (2002) report of similar practices whereby there was evidence of legal advisers facilitating diversionary admissions to ensure that young people avoided formal court processes. In relation to PRS, in a case where there is substantial evidence coupled with denial of the offence, professionals are still able to progress the case through PRS without any need for practices of 'benevolent coercion'. In effect this could be viewed as a safeguard to promote the welfare of children within

the PRS system, because the child or young person will be protected from the deleterious consequences of entering the formal system for what is (usually) a trivial offence.

On the other side of the coin, attention should be paid to the possibility of a child or young person receiving an intervention through PRS, even if they have not actually committed the offence they have been accused of. Some might argue that it does not matter, because it is a welfarist, informal response which is focussing on responding to the needs of the child. This is especially the case if it relates to an offence of a particularly trivial nature where it is identified that the child or young person would benefit from some support - mentoring, for example. However, for a young person who has been alleged to have committed a mid to serious offence, which is potentially disclosable, there are clear children's rights issues to be considered. This is especially important with the recognition that sometimes children and young people make false admissions in the absence of evidence (Hine 2007, cited in Cushing 2014 p.149; Steer 1970). Further, even though the Core Elements Framework stipulates that there must be a sufficiency of evidence for an offence case to be processed through PRS (Scottish Government 2015b p.3), one of the participants in the study raised some concern surrounding this. To what extent is evidence 'sufficient enough' through PRS? It is important to consider what safeguards are in place within the PRS process to deal with such cases, to ensure that the PRS forum should never be used as a means to deal with offences with weak evidence, just because it is perceived as a less formal system.

Other questions which emerged from the research relate to what extent PRS models are fair, neutral, voluntary and whether the child's view is represented enough at PRS meetings. Firstly, although the three case studies under investigation in this research had PRS multi-agency groups, in some areas, the responsibility of the PRS process might lie with one or two person(s).[88] As one of the participants commented, having a multi-agency group in place is important because it acts as a safeguard for children's rights. In effect, the PRS members act as judge and jury; and to have this responsibility lie with one person (usually in the police) is arguably improper on the basis of safeguarding children's rights. Secondly, it came to light that some areas could be contravening the voluntary nature of PRS, where professionals were re-referring children into the PRS process if the

[88] As reported by two interviewees who were policy actors in the research.

intervention was not considered successful.[89] This is a clear contravention of a children's rights issue in a forum which is supposed to be entirely voluntary and supportive. Thirdly, it is important to consider the question, to what extent is the PRS process child-centred? The PRS multi-agency meetings across the three case studies did not include children and young people in the decision-making process, and it is unknown to what extent practitioners obtained the child or young person's view prior to the meeting. It was interesting to hear at one WSA event that one area in Scotland invites the child or young person along to the multi-agency meeting; demonstrating again the different models of PRS practice in place. For larger local authorities in particular it is presumable that, due to PRS not receiving long-term funding, this sort of level of participation with children and young people would simply not be feasible. One participant in the study disagreed with the idea of involving children and young people in decisions made about them in the PRS context, explaining his view that attending a PRS meeting might be too 'intrusive' for a young person, which might have an adverse effect on the child or the young person's ability to 'move forward.' This sort of thinking is reflective of labelling theory, where there is a concern that contact with professionals can lead to stigma and unwanted effects. This view also reiterates the finding contained in chapter five that despite practising early intervention in the PRS context, Area B's interviewees retained an allegiance and commitment to traditional understandings of diversion, particularly upholding the principle of 'minimum intervention.'

Overall, there are clear, discernible advantages associated with the introduction of PRS. However, attention must be paid to the potential erosion of children and young people's rights in the process, to establish whether there is enough confidence in the approach to completely uphold children and young people's rights, and whether there are enough safeguards in place to promote their best interests. Blagg and Smith (1989) recommend that out-of-court processes should prove their worth by being judged by their results. The outcomes of PRS require to be discussed widely and publicly, and above all, the advantages that PRS brings for young people's lives require to be evidenced in order for the process to be fully endorsed. However, there is some difficulty in establishing a common understanding of what constitutes a successful PRS model, because of the variability in practice as well as key difficulties involved in the evaluation of the process.

[89] Evidence collated from one policy actor in the research

In the absence of this common understanding, evaluation and statements about overall effectiveness of PRS is very challenging.

Diversion from Prosecution

Introduction

There is no doubt that the emphasis placed on diversion from prosecution under the WSA marks a significant change in Scottish Youth Justice history because it was the first time that diversion for young people was prioritised as a principle in youth justice policy. Furthermore, the 'Diversion from Prosecution Toolkit' officially recognised the status of all 16 and 17-year-olds as children under the United Nations Convention on the Rights of the Child (Scottish Government, 2011b), which was another notable change from the policies that preceded the WSA. The use of Diversion from Prosecution is a central element of the WSA in its attempt to reduce the numbers of 'children' aged 16 and 17 through criminal courts. Even though the WSA aimed to bring about more consistency in diversionary practice (Scottish Government 2011b), this research has found that there remains a high degree of variability in practice. This section will explore the reasons behind this variability, and it will also consider three main themes which are central to characterising diversionary practice as highlighted by practitioners in the study. These include: the fundamental purpose of diversion, the nature of system contact, and lastly, questions over eligibility criteria in the diversion process.

Diversion: Justice by Geography?

Haines (1999) identified that a consequence of modernity in youth justice brings a tendency towards 'justice by geography'. The evidence from this research reveals that diversionary practice under WSA implementation is especially symptomatic of such trends where 'justice by geography' is certainly a feature of the practice. The research found a high degree of variability in the range and type of services available, differing views over who is thought to be eligible, and key differences in the marking processes across the country. The table overleaf summarises the reasons revealed by the research which all help contribute towards the high variability in diversion practice.

Table 8.1 Summary of Reasons causing Variability in Diversionary Practice

Practicalities	Subjectivity and High Discretion	Differential Marking Processes
Different crime profiles in different areas lead to more (or less) individuals diverted.	There are multiple gate-keepers in the diversion process. Although the PF is the principle gate-keeper, the police and diversion providers can also hold considerable influence diversionary decisions.	The existence of WSA 'champions' in the case study areas is crucial because it appears to facilitate stronger diversionary processes and links with the PF.
Dependent upon whether there is a dedicated diversionary programme available.	There exists difference in opinion surrounding the purpose of diversion, and who is thought to be eligible.	Some areas have stronger links with the PF than others, i.e. some have developed processes whereby they are 'flagging up' cases to the PF which fast-tracks them through the process.
Dependent upon programme capacity.	There exists difference in practice and opinion over whether 'admission' to the offence is necessary or not.	Sometimes there is liaison between the PRS co-ordinator and the PF; in other areas they have no contact. The value of this relationship is unknown; however, it may contribute towards the fast-tracking of cases as detailed above.

Analysis of the available statistical data also conveyed a picture of variability and complexity. Although the overall number of diversions have increased considerably since the introduction of the WSA across Scotland, a closer look at the data revealed that not all areas have not followed a steady upward trajectory. Many areas have experienced fluctuating and unpredictable trends, encompassing high spikes followed by comparatively few diverted. To an extent this may be expected with all the structural and practice changes continuing to take place surrounding diversionary practice, as well as changes in how young people are offending and to what extent. Nevertheless, clearly there is high variability in diversionary practice across Scotland. As an important side note, during field work some questions arose over the reliability of the statistics when comparing data provided by the Scottish Government and Crown Office. The reliability of diversionary data is critical for evaluating trends over time. Currently the extent of the discrepancies is unknown and so, akin to the recommendations of Bradford and MacQueen (2011), there is certainly a need for an audit to be undertaken to evaluate the accuracy of recording diversion practice across Scotland.

The root of the variability found in diversionary practice might also relate back to wider, global influences of neo-liberalism present in contemporary policy and practice. Indeed Muncie (2007 p.39) writes that neo-liberalism not only has had a global impact, but it has also 'encouraged 'local solutions' to local problems' through notions of 'governing at a distance.' The WSA exemplifies such a stance, whereby during early implementation stages there was a mantra often repeated to make clear that 'one-size-doesn't-fit-all'[90] and local authorities appeared to be given considerable autonomy in how they wanted to apply WSA principles. Such an approach makes practice sense and has clear benefits. Indeed, Haines and Case (2018, p. 133) state that such discretion and autonomy is an opportunity because local areas could 'put right what is wrong with centralised Government policy.' The same authors draw attention to the fact that every local area is unique and will be facing different challenges; and thus, a flexible approach could be viewed as a positive. Such concerns about the extent of discretion and the nature of local-national relationships are of course not new in youth justice both in Scotland and internationally. There are however key questions to be asked about to what extent this variability in diversionary practice is acceptable. For example, is it fair that (in relation to the same offence committed) one young person living in one area will be diverted, and another young person living in a different area will attend a criminal court and acquire a criminal record? Haines and Case (2018) in drawing attention to the diversity in youth justice practice across England and Wales argue that there should be some degree of coherence and suggest that the level of divergence experienced across localities is currently unacceptable. Highlighted in this body of research in relation to Scotland, it appears that there are similar levels of variability and there are certainly issues that could be 'ironed out' (such as those highlighted within the table on previous page) to enable more uniformity and less 'postcode justice' in diversionary practice. It was highlighted by Fraser and MacQueen (2011, p.23) seven years ago that there was no overarching, national policy driving forward the practice of diversion from prosecution, and that the limited guidance available seemed 'patchy rather than comprehensive.' This is still the case today, and therefore 'it is not surprising that the use of diversion to social work appears so inconsistent across Scotland.' (Fraser and MacQueen 2011, p.23).

[90] Observed by the researcher at early meetings and events (in 2012/13).

The Fundamental Purpose of Diversion from Prosecution?

Interviewees in the study felt that diversion from prosecution was an incredibly important element of the WSA, viewing the practice as a key means to prevent 16 and 17-year-olds from being dealt with in the criminal justice system. Although research in this area is scarce, other studies have also found that professionals in Scotland are strongly in favour of the general strategy to divert young people away from prosecution where possible (Murray et al. 2015; Robertson 2017). However, the majority of participants also shared that the criminal courts were necessary for some 16 and 17-year-olds, where the system should be an option for young people who commit 'major' crimes. What crimes are defined as 'major' was not clear however and is perhaps worthy of more research attention.

Although there were some similarities in the way practitioners understood the purpose of diversion from prosecution on the surface, after a closer look at the data, there emerged an interesting conflict between the dualistic conceptualisation of diversion as 'diversion from the process' and 'diversion from outcomes.' The two understandings of diversion are indeed interrelated, because one would hope that through the process of being diverted from the system, the young person would also be diverted from outcomes (i.e. from further offending). However, the literature argues that these two understandings of diversion should be kept distinct because they are underpinned by very different ideologies (Richards 2014). Indeed, the research revealed that practitioners who placed more emphasis upon 'diversion from the process' tended to cite the damaging effects of the court system, and simply shared a hope that the diversionary intervention would help facilitate the desistance process. On the other hand, those who placed more emphasis upon 'diversion from outcomes' (which was expressed particularly through local document protocols) felt that the programme of diversion should focus upon addressing the 'root causes' of crime so that the young person would cease to offend.

Is the young person diverted so that they can escape the stigmatising effects of system contact, or so that they can receive an intervention to address criminogenic factors? Practitioners would likely answer that both of these aims are the objective of diversion from prosecution. However, arguably there is an inherent conflict in the pursuit of this dual objective because, depending where the emphasis lies, the diversionary intervention may look entirely different.

In relation to the nature and use of diversion programmes for young people in England, the likes of Bateman (2014) and Smith (2014) have drawn attention to a resurgence of diversionary practice within youth justice. In the same way, Smith and Gray (2018, p.7) found that the theme of 'diversion' featured strongly in their analysis of thirty-four official 'youth justice plans' across England. Interestingly they found evidence that some conceptualisations of the diversionary schemes prioritised "robust 'out of court' welfare interventions" in place of 'minimal contact with the youth justice system" (Smith and Gray 2018, p.7). In the same way, Kelly and Armitage (2015), in their research which explored two models of diversionary schemes in England, found evidence of a continued New Labour ideology through diversion programmes. In particular, it was found that practitioners were utilising a risk-based discourse and interventionist ways of working with young people. They also found that diversion schemes 'shared some features of 'formal' system contact.' (Kelly and Armitage 2015, p.126). Such evidence points towards models in England mainly conceptualising diversion as a means to address 'root causes' through 'interventionist diversions' (Kelly and Armitage 2015). Due to indications from this research that diversionary interventions tended to be 'educational' in nature, it would appear that Scotland does not have the same interventionist tendencies that exist in English diversion programmes for young people. The next section will discuss this Area ay considering the evidence collated during field work in relation to the nature of diversionary system contact.

The Nature of Diversionary System Contact

The research identified that we cannot know, with absolute certainty, the exact nature of the interventions delivered through diversion programmes in Scotland without investigating every single service available. The research mirrored findings from elsewhere (Bradford and MacQueen 2011; Murray et al. 2015) that diversion from prosecution schemes are highly individualised which involve different content, can be provided on a one to one basis or through groupwork (or a combination of both), and can vary considerably in length. Diversion programmes are also delivered through different bodies which can also include the third sector.

One commonality that this research found was that several participants described diversionary interventions as 'educational' in nature which avoided 'intensive,' or 'cognitive behavioural treatment' and classed as 'lower tariff' interventions. Although this area requires further research (because there is sometimes a key difference between

'what social actors claim about what they do and what is actually done' in youth justice (Phoenix 2016, p.127)), this provides some evidence to suggest that current practice is in line with notions of traditional conceptualisations of diversion (minimum intervention).

This 'educational' focus appears to be at odds with the emphasis contained within the WSA diversion guidance to provide services that 'address the needs and behaviour of the young person on an individualised basis' so that PFs 'can be satisfied that the issue causing offending or the nature of the offending behaviour can be addressed.' (Scottish Government 2011b, p.14). An 'educational' focus also appeared to be at odds with the views of some other professionals in the study, who stressed that diversion programmes need to go beyond 'cosy chats' whose purpose was to ensure that 'the young person's life gets turned around.'[91] This indicates that there is a conflict between the purpose of diversion as purely educational, still camped within the discourse of 'minimum intervention'; or on the other hand, the purpose of diversion to address criminogenic factors to address 'root causes', more reminiscent of interventionist rationales as witnessed in England (Kelly and Armitage 2015). Undoubtedly, ambiguity over the fundamental purpose of diversion leads to a confused and difficult pursuit of establishing what 'appropriate system contact' should look like, which is neither too intrusive (to avoid net-widening or over-zealous intervention) or not intrusive enough (for the victim's sake, diversion cannot be seen as an 'easy option', or a 'cop-out' for young offenders). Research is required in this area in order to start easing the divide between whether the very nature of diversionary interventions should be attempting to 'address the root causes of crime' (and what this actually means in practice) or whether the emphasis should remain upon an 'educational' ethos, rooted within notions of minimum intervention. Research undertaken from this angle is greatly required to instil faith in the practice and assist professionals in their very challenging task of promoting desistance in the best way they can, in the diversion context.

Criteria relating to Admission

The research highlighted that there is a current confusion in practice over whether an admission should be necessary for a young person to be eligible for diversion from prosecution. Some professionals (and reflected in Area C's local guidance) believed it

[91] Procurator Fiscal view

was current protocol that the denial of the offence would automatically bar the young person from entering into a diversion programme. Conversely, others shared that they felt an initial denial of the offence should not bring about an automatic exclusion from diversionary processes. The situation became more complex however in the instance where a young person persisted in denial of the offence, after talking to other professionals in social work, for example. In such instances the strength of the available evidence would be central in the Fiscals decision in what to do with the case. In relation to this area participants also commonly highlighted how 'notions of guilt' can be a grey area especially where offences had been committed in a group context, or in instances where it wasn't clear cut where 'responsibility' lay. It was suggested that for young people in particular, coming to terms with their 'responsibility' can be a long process and can actually form a part of the diversion programme itself. This is a highly complex, grey area which, although infrequent in practice, has clear challenges involved for professionals.

Admissions criteria within diversion programmes for young people have been discussed elsewhere by Cushing (2014). Writing in relation to England and Wales, Cushing (2014) discusses the implications of the mandatory admission criteria, whereby diversion from formal criminal proceedings for a young person who offends is usually available only if an admission is made. Cushing (2014, p.141) argues that "it is regrettable that young people who fail to make an admission are deemed ineligible…and are excluded from the benefits…of such a course of action." Also, of crucial importance, Cushing (2014, p.144) draws attention to the very stringent criteria whereby an admission is classed as 'a clear and reliable admission to all elements of the offence, at an early stage in the proceedings.' Such admission criteria is very different from an 'acceptance of responsibility' which other jurisdictions have in place (for example in Canada and Ireland). Given the complexities involved in some cases in acquiring a clear admission of guilt as highlighted by the participants in this study, working along the lines of an 'acceptance of responsibility' appears as a viable alternative in comparison to a clear-cut, non-negotiable admission of guilt.

Ultimately, the decision to divert or not lies with the Procurators Fiscal, who deliberate over issues of admission and weigh them up against other factors, most notably sufficiency of evidence and levels of engagement. Indeed, Robertson (2017, p.188) found that:

> "In seeking to clarify the procedure for when a young person does not accept responsibility, I contacted a police representative in February 2015. The police representative stated that cases will only be discussed where the Procurator Fiscal is content with the level of evidence. It was stated that if the young person continues to deny the offence to the agency they are referred on to, and fails to engage, then the case would be prosecuted through the court system giving the young person the opportunity to advise on their version of events."

It is important that where necessary, especially in the face of weak evidence, young people are given the choice to attest their innocence at court instead of progressing into a diversion programme. However, it is also important to keep in mind that there is the potential for young people to admit to offences in order to escape the distressing process of criminal courts (Hine 2007). Similarly, a professional in this study shared a story of a young person 'admitting' to an offence they had not committed at a Children's Hearings Panel. In that situation the interviewee shared that the young person felt that he would 'just admit it anyway cause it doesn't matter.' This raises clear concerns around potential injustices in the system which may serve to coerce admissions (see Hine 2007).

As a final note, it is an intriguing and surprising omission that the Scottish Government's (2011b) 'Diversion from Prosecution Toolkit' fails to mention these vastly important areas of admission, evidence and engagement. Although the decision to divert officially lies with the Fiscal, this research alongside others (Duff 1997; Fraser and MacQueen 2011; Murray et al. 2015) has highlighted that front-line professionals also have considerable influence on diversionary decisions. For example, police have the option to recommend to Fiscals on police report forms that they may be eligible for diversion. Furthermore, other professionals in some areas 'flag up' potential cases to be fast-tracked through the marking process because they are deemed eligible cases for diversion. If the same professionals hold an incorrect perception that denial of the offence automatically deems the young person ineligible for diversion, they may withhold certain recommendations to the Fiscal. This highlights that it is important for professionals to know clear eligibility criteria because they unavoidably influence the diversion decision-making process.

Despite the importance placed on diverting young people from prosecution under the WSA, there still appears to be a lack of clear guidance. Although the WSA's 'Diversion from Prosecution Toolkit' (Scottish Government 2011b) does provide some insight, there

are numerous notable gaps in knowledge to aid practice and stem some variability in practice. There is also a dearth of research evidence which examines the actual nature of system contact through diversion programmes in Scotland, which includes the perspectives and experiences of young people themselves. Until such issues are addressed, the high variability which characterises current diversion practice for young people in Scotland will continue under this current era of WSA policy and practice.

Part Two: 16 and 17-year-olds who offend

16 and 17-Year-olds in the CHS

The Socio-Economic Context

The vast majority of participants speaking in relation to young people in the CHS referred to the wider socio-economic context, highlighting that 16 and 17-year olds often had common additional needs. Although not specific to 16 and 17-year-olds, this finding is in tune with messages from the general literature, which has consistently pointed towards young people in the CHS (on both offending and non-offending grounds) having a background of disadvantage and adversity (Waterhouse and McGhee 2002; Whyte 2004a). Interviewees expressed frustration both at the lack of services available, and sometimes the perceived ineffectiveness of services in relation to these problems, which, put together, conveyed a sense of hopelessness for professionals trying to help this group of young people. One theme that particularly came across during interviews was the importance of assisting young people to access employment and training opportunities, whereby many professionals felt that this was a crucial element in helping the young person desist from offending. Two professionals noted their surprise at the absence of any mention of this area within the WSA policy given its importance. Similarly, Barry (2013, p.356) is critical of the WSA because she argues that the policy does not pay enough attention to the 'whole' policy context to reduce youth crime because it fails to adequately acknowledge and address wider socio-economic issues:

> "There is talk of sanctions, measures, risks, needs and robustness, but little seeming interest in why young people offend, what would help them not to offend and what they feel works best for them in terms of desistance and integration."

Research has demonstrated the vital importance of providing authentic employment and training opportunities to help facilitate the desistance process (Barry 2013; Sampson and Laub, 1993). The failure of the WSA to emphasise such issues is surprising, where it could

be said that such a key omission is reflective of a neo-liberal agenda to detract attention away from structural constraints, instead placing responsibility at an individual level.

Retaining 16 and 17-year Olds' on CSOs

It was an interesting finding that Children's Reporters taking part in the study commented that the WSA was not well advertised within SCRA and panel members commonly had not heard of the approach. Such findings indicate that this aspect of the WSA has perhaps been left behind with only what appears as half-hearted attempts to enact policy into practice, serving as yet another reminder that there can often be a gap between what is claimed or intended, and what is actually put into place by social actors (Phoenix 2015).

Although there is a current debate over whether or not decisions to terminate CSOs tend to be 'too early' in relation to 16 and 17-year-olds who offend (see Henderson 2017, p.22), there is no doubt that historically (Whyte 2004b), and arguably currently (Dyer 2016; Nolan et al. 2018), use of the provisions in legislation to retain 16 and 17-year-olds in the CHS have not been fully utilised. McGhee (2015, p.31) argues that 'the hearings system primarily has become a child welfare system' which has been partly fuelled by most 16 and 17-year-olds being dealt with in the adult system instead of the CHS. This research found that professionals in the study were almost entirely in agreement with the WSA principle of keeping 16 and 17-year olds on supervision orders whenever 'necessary and appropriate'; but when the circumstances of actually retaining young people in the system were discussed, it emerged that there are multiple challenges involved, and for some professionals, they shared a lack of confidence in the CHS in dealing effectively with this specific group. The set-up of the Scottish youth justice system has created 'tremendous professional, theoretical, moral and legal pressures' (Rigby 2005 p.182) for practitioners working with 16 and 17-year-olds who offend, who do not 'belong' comfortably in either the CHS or adult courts. The research shows that the termination of orders is a highly complex matter, involving very difficult decisions for the professionals involved.

Some professionals in the research showed alliance with a previously documented perspective that young people do not have to 'take responsibility' for behaviour through being dealt with via the CHS (Rigby 2005). There is an implicit meaning here that a young person is only able to take responsibility for their actions if they progress through the

adult judicial system. Other interviewees believed that the response of the CHS was 'lacking in consequence' and could be 'unhelpful' for young people themselves. In particular, two participants expressed a fear that enduring supervision orders could lead to 'up-tariffing' in court for young people. Such concern is not unfounded due to the findings of previous research. Waterhouse et al. (2000) found that some practitioners were wary of retaining young people on orders because they felt it might lead to more severe consequences in the criminal justice system.

Additionally, the research found that supervision orders were being terminated due to lack of compliance, despite clear guidance stating that non-engagement should not be the basis for termination of a CSO (ADSW 2012, p.2). However, it appeared that professionals felt that they often had their hands tied in this respect, whereby in some cases they had 'tried everything' and felt they had no option but to terminate the order, especially in circumstances where it was felt that the CSO 'served no purpose.' In light of the previous discussion which uncovered the complex welfare needs of young people coupled with a lack of appropriate services to address them, there appears to be a sense of hopelessness felt by some professionals in relation to working with young people presenting with particularly complex needs in the CHS. There is also a key question over the ability of professionals being able to adequately address welfare needs in a meaningful way. The research revealed that some professionals recommend that CSOs should be terminated due to non-engagement, because they feel as if they have 'exhausted every opportunity' with the young person. However, it appears that there are multiple gaps in services whereby professionals only have limited opportunities to provide meaningful support especially in relation to housing, mental health issues and further training or employment. Waterhouse (2017, para.7) writes that the success or otherwise of the CHS is 'inextricably linked with the success of other welfare systems in dealing with the material and social circumstances of children referred.'

Indeed, in a period of economic austerity where service cuts abound, the ability to genuinely meet the needs of young people who are caught up in the CHS is contingent upon wider services that are available in the local area. The broader neo-liberal context is again of considerable significance here. Various commentators have drawn attention to the political changes which have taken place since the economic crisis involving substantial cuts in state support for young people through neo-liberal welfare reforms and lack of provision for affordable housing (Grimshaw and Rubery 2012; Kemp 2015;

McKee et al. 2017). The outcome of these reforms has led to a general distribution of wealth away from young people (Grimshaw and Rubery 2012). Research has found that for young adults this period has led to a lack of employment opportunities, a higher poverty rate amongst this group, inequality in pay and a considerable rise in homelessness (Scottish Government 2017c). Also of considerable relevance is the perpetual problem of the lack of affordable and appropriate housing for young people in Scotland (Hoolachan et al. 2017). Overall, professionals are tasked with an extremely difficult job of balancing a variety of rationales and trying to meet entrenched, unmet needs in the face of austerity and service cuts, with a constant pressure to prevent entry into the criminal justice system.

Responsible or Vulnerable Classifications

The research found that there were a significant number of participants who appeared to categorise 16 and 17-year olds who offend in the CHS into two classic 'types': either vulnerable and in need of continued protection through the CHS, or viewed as 'responsible', and thus ready to 'graduate' into the adult court system. Analysis of the data also found that professionals often added an extra dimension under the 'responsible' category whereby young people were seen as 'playing the system' and being deviant and even scheming in their ways to outwit the system. These findings are unremarkable in that they mirror the same historical dualisms that are intrinsic to the field of youth justice, of welfare versus justice, troubled versus troublesome, and vulnerable versus responsible.

McGhee and Waterhouse (2007) draw upon socio-legal classification theory in their article which explores the labelling processes of children as 'troubled' or 'troublesome.' The authors suggested that classifications can have long-term consequences because they 'define the particular state intervention, welfare or youth justice to which the child is allocated' (McGhee and Waterhouse 2007, p.108). Research has shown that children in contact with the CHS (both offenders and non-offenders) should actually be understood as a 'single class' (McGhee and Waterhouse 2007, p.114) because longitudinal data has shown that there is widespread social adversity across both groups (Waterhouse 2000). Thus, to categorise individuals as either troubled/vulnerable or troubling/responsible oversimplifies and obscures the reality and complexity of these young people's lives. The reality is that young people move between categories. Ascribed

classifications can only represent a 'snapshot' in time and are 'susceptible to change' (Becker 1963; McGhee and Waterhouse 2007, p.114).

The additional finding in the present study that some practitioners conceptualised 'responsible' young people as 'outwitting the system' seems to be reflective of stressing the perceived maturity of this group, thus legitimizing the need for them to be treated as adults through the judicial courts. Such a stance portrayed young people as rational actors who needed to be held responsible, who were more sophisticated in their thinking in comparison to their 'vulnerable' 16 and 17–year-old counterparts. It was not completely clear from the analysis what participants meant by young people 'playing the system' but they appeared to suggest that it involved a certain lack of respect for the law within the CHS, which involved bravado and associated pride with obtaining a CSO. Certainly a few participants in the study gave indications that these young people were not suited to remain in the CHS; however, more research is required to substantively establish whether such notions and conceptualisations of young people act to propel their entry into adult criminal justice (McGhee and Waterhouse 2007). It was interesting that only one participant reflected on why young people might act with bravado and 'play the system', stating that very often the same young people have 'very little other positive things in their lives that give them that credibility or that recognition.' In line with the views of McGhee and Waterhouse (2007), it is important that just because young people may not be showing respect, professionals do not immediately ascribe a 'responsible' label because underneath all the bravado and outward shows of rationality, it is likely that there are also very high levels of vulnerability which should merit a child-focussed, strengths-based response.

16 and 17-Year-Olds' Who Offend: Challenges and Debates for the Future

This last section will explore some broader implications of the findings specifically in relation to 16 and 17-year-olds. Firstly, contentious issues over eligibility criteria across all three processes will be considered, which in itself raises some questions about the extent of discretionary decisions afforded to professionals across the country. Secondly, the issuing of fixed penalty notices will be discussed, which emerged as a strong theme particularly in relation to the PRS context. The last section of the chapter will discuss findings in relation to whether there is an appetite to adapt the system so that the majority of 16 and 17-year-olds who offend could be kept within the realms of the CHS.

These discussions are particularly revealing of the current and mixed rationales which are dominant in framing Scottish responses to young people's offending behaviour.

A Particularly Contested Group

The research found that differences in professional opinion became much more pronounced when it came to decision-making and relating to 16 and 17-year olds. Across all three processes under investigation, views and decisions in relation to eligibility criteria were ambiguous and contested. Firstly, for PRS, the main area of difficulty appeared to be disputes over whether 16 and 17-year-olds who have committed drugs offences or hate crime offences should be able to progress through PRS. Secondly, in relation to young people who might be eligible to undertake a diversion from prosecution programmes, hate crime, domestic crimes and crimes of a sexual nature were the offences which brought about a particular difference in opinion. Importantly, perhaps contrary to popular opinion, it is not always Procurator Fiscals who are the chief gate keepers and prevent some cases from being diverted. Indeed, the research found that professionals in Area C did not accept some diversion cases due to their disagreement over eligibility. Furthermore, there was a difference in opinion in relation to whether an admission of guilt, or even a partial admission of responsibility should be required or not prior to diverting a child or young person. It was apparent that there are different practices and different guidelines depending on the area in relation to this issue, which will contribute towards the high variability in practice. Lastly, in relation to the CHS, the main area of dispute appeared to be whether 16 and 17-year olds who had committed a sexual offence should be able to be retained within the system or should progress into criminal justice. These areas are worthy of considerable individual exploration, which there is not enough scope to do here. Perhaps the main implication to take away from these findings is the acknowledgement that these differing views which exist across the 'whole system', coupled with high discretion, lead to highly variable ways of 'doing justice' for 16 and 17-year-olds who offend. Discretion in the youth justice system is important, 'so that it can facilitate balancing the needs of rehabilitation, the requirement of accountability, and the particularities of each offender.' (Maclure et al. 2003, p.143). The downside of this is: 'the differentiated manner in which young people are dealt with reflects an element of arbitrariness that might be unfair to some young people." (Maclure et al. 2003, p.143). It is somewhat ironic that a 'whole system approach' with an intention to provide 'better integrated services' appears to have sustained the extent

of variability within the system, especially in relation to the treatment of 16 and 17-year-olds.

Criminalisation through Fixed Penalty Notices

The research revealed that wider strategies remain in place across the system which directly work against the more progressive principles contained in the WSA. In particular, findings showed that practitioners were highly concerned about the deleterious consequences of issuing of FPNs to 16 and 17-year-olds, especially because it is believed that some young people are criminalised as a result. FPNs continue to be used in practice (Murray et al. 2015), despite the Core Elements Framework stating that they should not be used at time of charge (Scottish Government 2015b). Many PRS members argued that the issuing of fixed penalty notices is in direct conflict with central WSA and PRS principles and view the issuing of FPNs as a barrier to truly realizing PRS aims for 16 and 17-year-olds.

Commentators based in England have drawn attention to the criminalising and net-widening effects of on-the-spot fines[92] for children and young people (e.g. Roberts and Garside 2005; Morgan 2008; Morgan 2009; Bell 2011; Grace 2014). For example Roberts and Garside (2005, p.5) argue that fines 'create a new class of the semi-criminal, who face being put on the fast-track to arrest, prosecution and punishment.' The present study reflects such sentiments, as participants commonly shared that many young people issued with a FPN do not have the ability to pay it, which only acts to propel them into the formal criminal justice system. The proportion of young people who have been drawn into the criminal justice system by means of FPNs has not been investigated; indeed, overall the reporting of FPN data appears to be lacking somewhat, with practitioners in the study commenting that they are not able to access statistics, leading one participant to suggest that the usage of FPNs is a 'dirty secret' within the police.

This research also brought to light the criminalising effects of fines which are given to young people by the British Transport Police (BTP) (see chapter five). Bell (2011, p.5) writes that through the spread of neo-liberalism, 'state surveillance has been dispersed throughout an ever-expanding network.' As we can see with the example of the BTP,

[92] These commentators are writing in relation to the 'Penalty Notice for Disorder' (PND) which is comparable to FPN use in Scotland. See Grace (2014) for an overview.

there is a risk that through outsourcing responsibilities, ineffective and increasingly punitive ways of working are put into place. Such agencies are given the liberty of defining problem behaviour in accordance with their own interests (Bell 2011).

Evidence also indicated that the issuing of FPNs is linked with a performance indicator culture where it was reported that police have to meet a 'certain amount of returns at the end of the week.' This is reflective of the managerialist, bureaucratic culture that has pervaded the police force across the UK since the introduction of 'new public management' ideology, alongside many other areas within the public sector (Hood 1995; Taylor and Kelly 2006). Previous commentators have heralded warnings about the adverse and 'perverse incentives' that performance indicators can bring (Tilley (2002 p.24; Bird et al. 2005). For example, previous commentators have found evidence of instances where police have targeted young people who were perceived as 'easy wins' (Newburn 2011, p.100) or as Farrington-Douglas and Durante 2009, p.14) put it, akin to 'low-hanging fruit' for officers striving to satisfy performance targets. The anecdotal evidence found in the present study points to the presence of performance targets driving practice generally in relation to FPNs, however to what extent it is leading to an overuse of ticketing young people is not known.

The managerial intentions of FPNs are entirely transparent, leading several authors to acknowledge that the spread of on-the-spot fines is associated with the penetration of market logic into the criminal justice sphere (Roberts and Garside 2005; Bell 2011). Grace (2014) writes that the importance which is now placed on managerialist principles has outweighed the numerous concerns[93] raised in relation to the issuing of fines, which demonstrates the priority placed on managerialist ideals above all else. In other words, Bell (2011, p.59) writes that the wider context of the spread of managerialism has led to the 'bypassing of due process' in the name of modernisation and the promotion of more efficient processes. Indeed, the same could be said of PRS in general, which has multiple managerial imperatives which are clearly evident, but as demonstrated previously, shows less of concern for upholding children's rights and ensuring due process.

[93] The main concerns about the issuing of on-the-spot fines include: net widening (Cavanagh 2007); human rights concerns or lack of due process (Grace 2014); criminalisation (Bell 2011); and unjustly subjecting individuals to punishment (Roberts and Garside 2005).

The CHS and 16 and 17-year-olds

The findings showed that there was a divergence of opinion in relation to the place of 16 and 17-year-olds in the CHS. On the face of it, many professionals were on board with the overall idea to keep 16 and 17-year olds on supervision orders whenever 'necessary and appropriate' (Scottish Government 2011c) but when the challenges of actually retaining them in the system were discussed, it emerged that there are multiple obstacles which mitigate against more young people being kept on CSOs.

In an ambitious CYCJ report written by Dyer (2016), a number of recommendations are put forward which, if adopted, would radically address the current unease surrounding working with 16 and 17-year-olds. Dyer (2016, p.13/14), amongst a total of eight proposals, shares a vision that no 16 or 17-year-old should be processed through an adult court. Instead, all young people under 18 should be referred to the Reporter (if the offence is not suitable to be dealt with through PRS), so that, in effect, the presumption is shifted from the PF to the Reporter. Only the 'most serious' cases should be referred to the PF whereby the CHS should be adapted so that panel members have more conditions at their disposal for 16 and 17-year-olds. Lastly, Dyer (2016) recommends that 'youth hearings' should be implemented so that 16 and 17-year-olds who commit serious offences can be heard in a system which maintains a 'child-centred ethos.' These are radical solutions which would indeed overhaul the system for 16 and 17-year-olds. This research explored professional beliefs on whether there is an appetite to adapt the system so that the majority of 16 and 17-year-olds who offend could be kept within the realms of the CHS. The views of interviewees conveyed that we are currently a long way away from what the likes of Dyer (2016) hopes for. Participant views on the idea of extending the CHS to deal primarily with 16 and 17-year-olds who offend corresponded with the views expressed by McGhee and Waterhouse (2012) who wrote that they felt the incorporation of young people into the CHS is unlikely. The authors point toward the wider cultural and historical aspects of Scottish society where at 16 years of age, individuals can get married, leave school, and even be given the right to vote in some circumstances (for example 16 and 17-year-olds were given the right to vote in the 2014 Independence Referendum).

The controversy and high degree of unease surrounding 16 and 17-year-olds and their position of being in-between systems rages on under WSA policy and practice. Even though the WSA has, in a sense, addressed the issue through advocating that more young

people should be dealt with through PRS, diversion from prosecution, or the CHS, the fact is that these are secondary remedies to an enduring, primary problem. Still, young people who commit offences can remain exposed to the full rigours of the adult criminal court once they reach 16 years, and so Scotland remains amongst the minority of European countries that choose to reject UNCRC (1989) legislation which clearly states to treat every individual under the age of 18 as a child. Although there have been vast decreases, particularly over the last decade, it is important to not lose sight of the fact that thousands of young people, defined as children under international legislation, are treated as adults and face the full rigours of the criminal courts every year.[94]

Chapter Summary

This chapter has discussed and developed the main critical themes which have arisen from the research. It has explored the evidence which demonstrates the multiple and conflicting rationales which underpin the three pre-statutory processes under investigation and considers the meaning of the findings in light of key messages from the literature. The concluding chapter of this thesis will draw out the points of most significance contained within this chapter, to further explore the central implications of this research.

[94] During 2016/17, there was a total of 1706 16 and 17-year-olds convicted as adults in a criminal court (Information received via Freedom of Information Request to Justice Analytical Services in the Scottish Government, September 2018).

Chapter Nine: Conclusion

Introduction

This research has investigated the conceptualisation and enactment of early intervention and diversion strategies in Scottish youth justice, under the implementation of the WSA. This thesis has explored how these strategies have manifested in youth justice practice, across three central 'sites' of pre-statutory practice including: PRS, Diversion from Prosecution, and lastly, retaining 16 and 17-year-olds in the CHS. As well as outlining the key themes to emerge from the original research questions, this conclusion chapter will consider the overall significance and original contributions which this research brings for both policy, practice and to the academic literature. Finally, this chapter will also consider the limitations of the study, and put forward some recommendations for practice and future research.

By drawing upon a wide base of existing literature which highlights and demonstrates the complex and contradictory nature of youth justice policy and practice, this thesis has explored the multiple discourses which feature in the interpretation and enactment of the WSA. At its heart, this research has demonstrated that the nature of Scottish youth justice under the WSA has resulted in practice which is ambiguous, highly localised, and full of conflicting and multiple rationales which play out very differently in practice. These rationales are enacted in practice through differing notions of 'diversion,' 'early intervention' and 'prevention' in the WSA context, and thus these concepts can mean an entirely different approach from one area to the next. Especially with the recognition that there is a dearth of available evidence in this area, this research provides a comprehensive, important and unique insight into the distinctiveness of contemporary Scottish youth justice practice and reveals the current reality of early interventionist and diversionist practice under the WSA agenda.

Overall Reflections on the WSA

The WSA has brought about a renewed emphasis upon many progressive ideals in youth justice policy and practice, and it represents a welcome and different initiative in comparison to the more punitive policies that have preceded it. The PRS process is also much better placed compared to the courts or children's hearing system to genuinely provide early, informal, supportive help for children and young people in a timely manner (McAra and McVie 2007). Under the WSA there has also been a renewed impetus on

diversion from prosecution for 16 and 17-year olds, whereby the numbers diverted have increased substantially, contributing towards the numbers of young people avoiding a criminal conviction and the criminal court system. Thirdly, the WSA has in part addressed the unease surrounding Scotland's treatment of 16 and 17-year olds who offend, through encouraging professionals to retain young people within the CHS whenever necessary and appropriate to do so. It is also important to highlight that there are other policy strands included in the WSA which have not been the focus of this thesis, as they require separate research projects to take stock of changes in these different areas of the youth justice system. These include; support for 16 and 17-year-olds in court, promoting alternatives to secure care custody, improving transitions back into the community after custodial and secure care sentences and lastly, improving risk assessment procedures.

When the overall 'approach' of the WSA is considered in its entirety, it leads to some observations about the eclectic nature of the WSA which is problematic. Under the WSA, various discourses and strategies have been bundled together and presented as one singular, cohesive approach. Although it shows ambition to achieve change across many areas of the system, the lack of a coherent core philosophy can lead to the 'emergence of unchecked divergences in policy and practice at the local level.' (Haines and Case 2018, p5.). As this thesis has shown, the opposing discourses of 'minimum intervention' and 'early intervention' which are simultaneously promoted through the WSA, reflects a particular internal dissonance because these strategies derive from very different schools of thought, and advocate very different styles of 'doing justice.' This can be most clearly seen the context of PRS, whereby in the absence of a singular coherent philosophy, localities have free reign in deciding which rationales to prioritise leading to very different manifestations of early interventionist practice with children and young people. Although limited to three case studies, this research has indicated that the eclectic nature of the WSA, coupled with a governmental 'devolution of responsibility' (Smith 2018, p.14) and affordance of discretion in the WSA implementation has contributed towards an increasingly fragmented landscape of preventative youth justice policy and practice. Consistent with the views of a variety of commentators, modern youth justice in Scotland can be characterised as involving a hybrid amalgamation of rationales (Muncie 2006) which play out very differently in policy and practice.

The theme of locality has been a recurring topic throughout this thesis. Mirroring findings elsewhere (Robertson 2017), the present research found that practice norms

were developed 'from the ground up' and actors were intrinsic in the process of interpreting and enacting WSA principles. The research also serves as a reminder of the importance of committed professionals, at an individual level, who are absolutely instrumental in driving forward progressive ideals in daily youth justice practice. Whilst it is important to recognise that there has been a convergence, in that the WSA has brought about a renewed focus on diverting children and young people away from formal systems, there are also areas of considerable difference as highlighted within the body of this work. There is a great challenge in affording enough discretion and autonomy into the hands of local areas, without greatly compromising the overall fairness of the justice system.

Although it was not a main intention of this thesis to investigate areas of the WSA which showed convergence or otherwise with the contemporary trends of neo-liberal governance cited by the likes of Garland (1996; 2001) Rose (1996) or Gray (2009), there is an important observation when thinking about the WSA 'as a whole' strategy which is indeed symptomatic of contemporary neo-liberal trends. Although the wider socio-economic context is cited as a key contributor towards young people's offending behaviour in the WSA guidance (Scottish Government 2011a), it appears that more emphasis is placed upon dealing with offending behaviour through situational and individual circumstances. As highlighted by some professionals in the study, and indeed one commentator (Barry 2013), the WSA fails to place adequate priority on the socio-economic context of young people's offending behaviour. Revealed by this research, this failure becomes even more pronounced in relation to 16 and 17-year-olds. The socio-economic issues which are the real drivers behind young offending behaviour for 16 and 17-year-olds raised by professionals in this study are largely left untouched by the WSA policy. Especially of note are a lack of effective services to improve housing, mental health, and meaningful employment or training opportunities. Creating more layers within the system to create more opportunities for diversion is a welcome strategy to prevent young people from coming to the attention of formal systems, but a more radical solution to genuinely prevent youth crime needs to take place within a wider, socio-economic and cultural context. Without sufficient attention placed on such issues, the focus remains firmly placed on the individual's active contribution whereby young people are construed primarily as 'active entrepreneurs of the self' (Kelly 2006).

Pre-Referral Screening

Despite some very clear benefits of the PRS process, and benevolent intentions of the involved professionals, the research also raised some critically important issues in relation to the fundamental nature of PRS which are inherently problematic. Benefits associated with PRS included: offences being dealt with in a timely fashion, referrals diverted away from the CHS, and for some 16 and 17-year-olds, they avoid the risk of entering into the formal criminal justice system via referral to the Procurator Fiscal. However, it is imperative not to construe and over-state the ability of PRS as an all-encompassing effective strategy which prevents youth crime and anti-social behaviour. PRS is an under-scrutinised practice which is located in a hidden part of the justice system, where areas are given considerable autonomy to implement differing interpretations of early interventionist practice. Particularly in the current context of falling crime rates, an uncritical assumption that PRS is 'a good thing' especially under the guise of a diversionary narrative has the potential to produce practice which results in net-widening, up-tariffing, and the contravention of children's rights.

This research addresses the differing conceptualisations of early interventionist practice in the PRS context, through providing an expose of the reality of practice in three local authority areas. Of central significance, this research has found that in some areas PRS has widened its remit to the extent that it threatens to locate young people who are categorised as 'vulnerable' or 'at risk' of offending behaviour under the auspices of youth justice policy and practice. Of crucial importance in relation to this finding is establishing whether the nature of system contact through PRS has the potential to criminalise children and young people, and critically investigate how interventions are actually experienced by children and young people themselves (which adequately investigates PRS outcomes in all their diversity and varied degrees of formality). More research is required to ascertain to what extent PRS simply represents a movement of the place and meaning of punishment in youth justice, and to untangle the extent to which labelling concerns apply in the PRS context. Such questions are highly challenging, particularly due to the varied practices and differing interpretations of 'early intervention' in the PRS context.

Secondly, this research has brought to light problematic issues relating to upholding children's rights which also requires further analytical attention. PRS, like other pre-statutory schemes, could be characterised as a hidden part of the youth justice system

whereby decision-making takes place within a less transparent context. In such circumstances the potential for injustice is higher, necessitating the need for professionals to remain committed to a children's rights ethos and demonstrating adherence to important areas. There are numerous questions which emerged from the research relating to what extent PRS models are fair, neutral, voluntary and whether the child's view is represented enough at PRS meetings. One particularly notable theme which was raised relates to children and young people who are processed through PRS on welfare (non-offence) grounds. There are crucial questions to be asked about how this data is held, how it is used, who it is shared with, and for how long it is stored. There is also further recognition here that the VPD system developments are reflective of Cohen's (1979 p.339) argument whereby it could be perceived as an increased intrusion of the state where 'more and more of our actions and thoughts are under surveillance and subject to record.' Reflective of practitioner views, it is imperative that 'concerns' recorded on the VPD system are appropriate given that it is intrinsically a police database which could potentially have criminalising repercussions, especially given that the data in the VPD system is held indefinitely.

Diversion from Prosecution

The practice of diversion is multi-faceted, under-researched, and yet, it is a central strategy used in Scottish youth justice and indeed across contemporary society (Richards 2014). There is no doubt that the WSA has brought a renewed emphasis upon diversion from prosecution for young people who offend, which is a welcome development. However, the research revealed that diversionary practice for young people in Scotland is beset with variability in practice. Analysis of available statistical data also showed a complex picture of the use of diversion, whereby local authorities have experienced fluctuating and unpredictable changes in the number of diversions each year. Diversion is also contingent upon a number of factors which may or may not be present including; availability and existence of (sometimes specialist) schemes, and the approval of professionals in the local authority area. There are also other influences which facilitate or even act to speed up diversionary decision-making; including the marking process in place (whether or not the area recommends cases to the Fiscal enabling the 'fast-tracking of cases'), and the existence of 'champions' in the diversion process which act to instil Fiscal confidence in diversion programmes and develop relationships.

The research also raised intriguing findings in relation to the contested nature of the fundamental purpose of diversion from prosecution. Although there were some similarities in the way practitioners understood the purpose of diversion from prosecution on the surface, there emerged an interesting conflict between the dualistic conceptualisation of diversion as 'diversion from the process' and 'diversion from outcomes.' Interviewees who placed more emphasis upon 'diversion from the process' tended to stress the damaging effects of the court system, and simply shared a hope that the diversionary intervention would help facilitate the desistance process. On the other hand, those who placed more emphasis upon 'diversion from outcomes' placed more weight on the view that the programme of diversion should focus upon addressing the 'root causes' of crime so that the young person would cease to offend. Although there was no evidence to show that diversion in Scotland has adopted a model of 'interventionist diversions' akin to England and Wales (Kelly and Armitage 2015), more research is required to ascertain what current 'system contact' looks like in diversion practice, again through gathering the experiences of young people receiving these diversionary interventions.

16 and 17-year olds in the CHS

The third pre-statutory process under investigation explored the key insights, challenges and perceptions involved in retaining 16 and 17-year-olds who offend within the CHS. The WSA has brought about a renewed zeal for greater use of the CHS through retaining young people on CSOs 'for as long as appropriate' with the aim to divert children away from appearing in adult courts (Scottish Government 2011c, p.3). This research found that professionals in the study were almost entirely in agreement with the WSA principle of keeping 16 and 17-year olds on supervision orders whenever 'necessary and appropriate'; but when the circumstances of actually retaining young people in the system were discussed, it emerged that there are multiple challenges involved, and for some professionals, they shared a lack of confidence in the CHS in relation to dealing effectively with this group.

The research found that supervision orders were being terminated due to lack of compliance, despite clear guidance stating that non-engagement shouldn't be the basis for termination of a CSO (ADSW 2012, p.2). In light of the discussion which uncovered the complex welfare needs of young people coupled with a lack of appropriate services to address them, there appears to be a sense of hopelessness felt by some professionals

in relation to working with young people presenting with particularly complex needs in the CHS. A key question also emerged over the ability of professionals being able to adequately address welfare needs in a meaningful way. The research revealed that some professionals recommended that CSOs should be terminated due to non-engagement, because they feel as if they have 'exhausted every opportunity' with the young person. However, it appears that there are multiple gaps in services whereby professionals may have their hands tied in their ability to provide meaningful support especially in relation to housing, mental health issues and further training or employment. Such discussion relates back to the broader neo-liberal agenda of the scaling back of universal welfare provision. Although practitioners can indeed make a genuine difference to some individuals which is testament to their dedication and commitment, they are undoubtedly severely limited in their ability to substantially affect adverse socio-structural contexts affecting the majority of the young people they work with.

Limitations

One area which merits more attention not covered within this body of work is consideration of the upcoming named person scheme and how this will affect practice. Gillon (2018) writes that the uncertainty of the upcoming legislation has brought about an additional strain for partnership working, with confusion and concern surrounding how the changes will affect the PRS process in particular. It is clear however that change is on the horizon with the implementation of this legislation, which comes with a new opportunity to re-evaluate approaches under the WSA, most notably PRS. As this thesis has argued, it is important that a distinction is made over whether PRS is a forum delivering support to children and young people which is rooted in notions of minimum intervention, or whether PRS should have a broader remit which aims to target those believed to be 'at risk' of offending or those who are considered 'vulnerable' on welfarist grounds. The delivery of youth justice in Scotland continues to change rapidly, in the context of continuing financial adversity and scaling back of specialist youth justice teams across Scotland (Lightowler et al. 2014). Especially as there has been some concern raised by the likes of Nolan (2015) that the removal of dedicated youth justice teams is reducing specialist knowledge and practice, such issues will be of increasing importance for future research which needs to capture the intricacies of local differences and the impacts of such reforms under the continuing influence of the WSA.

A methodological weakness of this research was not consulting children and young people as part of the research. How these interventions are experienced by children and young people are of central importance in order to delve into investigating the actual nature of system contact. Only then will it be possible to answer questions about the formality and effectiveness of interventions delivered through these pre-statutory processes. To date, there is still not any existing research which captures children and young people's experiences of the WSA in a meaningful and comprehensive way. Filling this knowledge gap is essential because there is a requirement for youth justice research to go beyond exploring 'subject effects' and instead access the 'subjective experiences' of children and young people (Phoenix and Kelly 2013 p.419).

Lastly, this thesis has also not considered the gendered aspects of early interventionist and diversionary practice. At a strategic level, the WSA has considered the treatment of girls and young women as contained in guidance notes, notably comparatively more than preceding policies. For instance, the WSA reiterates evidence that has found girls have reported a particularly bad experience of secure care, compared to young men (Scottish Government 2011a). Secondly, it is explained that gender needs to be taken into account under UN Principles (Scottish Government 2011b). It is also expected that programmes and services must take account of the different needs of girls and young women (Scottish Government 2011d). Future research is required to obtain a better understanding to explore the needs of girls and young women involved in (or indeed at the cusp of) the youth justice system and how they are conceptualised and reacted to in pre-statutory practice. Furthermore, specific research should also focus on diversionary decision-making relating to young women who offend. This is especially important in light of the tentative finding reported in Murray et al. (2015) that decision-making in diversion from prosecution processes may be weighted towards young women and girls.

Contribution to Policy and Practice

This thesis brings deep insights into the realities of youth justice practice; and exposes many different areas of practice which will be of interest to a variety of professionals working in the youth justice field. However, I believe that the following four issues will be of particular concern which are certainly worthy of considerable future attention and debate:

1) Contravention of children's rights in the PRS process

The research found evidence that in some areas the PRS process may not always be upholding children's rights. Particular concerns were raised in this thesis in relation to: re-referring children for the same offence through PRS, not taking account of the children's views in the decision-making process, data protection concerns within the police VPD system, the potential for injustice in PRS systems without a multi-disciplinary group, and the implications associated with not requiring the child's consent or admission to the offence to progress through PRS. This finding has increased significance because it is now the second piece of substantial evidence which argues that PRS may be contravening children's rights (see Gillon (2018)). The work of Haines et al (2013) and their arguments in relation to the Swansea Bureau may be of interest for policy makers and practice managers to consider in relation to this area. The Swansea Bureau[95] has similarities with PRS, in as much as it is a pre-statutory diversion scheme which involves an intervention to tackle underlying causes of offending behaviour. However, the model of practice is firmly rooted within a prosocial, children's rights agenda which deliberately sets out to avoid the responsibilisation or stigmatisation of children and young people (Haines et al 2013). The Swansea Bureau is also purposively camped within a children's rights model, and seeks to deliver truly informal interventions preoccupied with promoting young people's access to entitlements. As argued in this thesis, many of these objectives are either understated or entirely missing from the current underlying PRS principles.

2) ASBFPN's for 16 and 17-year olds

The research found that the issuing of ASBFPN's is hugely variable across the country, highly controversial, and linked with a performance management culture.[96] The extent of its use largely unknown due to unavailable or withheld statistical information, leading to deep frustration expressed by professionals taking part in the study. Future research is required to assess the extent of ASBFPN practice, its effectiveness, and to explore whether – as many professionals in this study argued – it leads to the unnecessary criminalisation of young people.

[95] See page 67 for a full description of the Swansea Bureau and its main principles.
[96] See page 112-114 for ASBFPN findings

3) Diversion from Prosecution Statistics

The research also brought to light that the quality and accuracy of the national statistics held on diversion statistics should be brought into question.[97] The need for an audit into diversion statistics is clear, which interestingly was also a recommendation made by Bradford and MacQueen (2011) seven years ago (which was the last study which solely focused on the use of diversion for young people in Scotland). Research utilising quantitative analysis to investigate and compare the use of diversion across the country is considerably important to monitor its continued use, and to also explore claims made by Murray et al (2015) that decision-making in diversionary processes may be weighted towards young women and girls. Such research would only be worthwhile once it is ascertained whether the available data has reached a certain level of accuracy and trustworthiness.

4) The Place and Meaning of Prevention in Scottish Youth Justice

Lastly, the research raises the question of what 'prevention' should ideally look like in youth justice practice. In the current WSA context, the notion of prevention is still rooted in the idea of targeting young people, however informal, through PRS or other diversionary interventions. Furthermore, the PRS practice in some areas of targeting children and young people believed to be 'at risk' of offending, or categorised as 'vulnerable' brings many concerns to the fore, however benevolent the intentions of professionals involved. Considering and evaluating PRS with a broader mind-set in terms of wider preventative provision is crucial for policy-makers and professionals in the future. There is a danger that PRS becomes the primary preventative strategy in Scotland for dealing with young people who offend, through an uncritical and blinkered assumption that the strategy is effective, mainly because it appears as an improvement on the practice that has gone before it. Preventative strategies which are rooted in other principles such as universalism, or promoting the socio-economic conditions of children and young people, must not be lost in favour of advancing schemes such as PRS. Sight must not be lost of the fact that PRS is still intrinsically a service which targets individuals which brings them straight into the auspices of the youth justice system; which in itself increases the potential for criminalisation and stigmatisation to occur.

[97] See page 135 which presents the evidence in relation to this finding.

Contribution to the Literature

This research also brings a significant contribution to the literature in two main ways. Firstly, whilst there is a growing base of knowledge which has highlighted the existence of diverse interpretations and applications and early intervention and diversion (for example Richards 2014; Smith 2014) there has been much less attention paid to actually revealing how and in what ways these concepts play out in practice. Even if a discourse can be clearly identified at a policy level, it is not inevitable that it will be straightforwardly applied in practice (Fergusson 2007), which has been clearly evident in the implementation of the early interventionist and diversionary principles contained in the WSA. Thus, this research is particularly distinctive because it reveals of the realities of policy as enacted, on the ground. Through this investigation this research has also considered the extent to which neo-liberal influences feature in WSA policy and practice. In particular, this thesis has explored emerging evidence demonstrating the infiltration of responsibilisation and managerialism in different areas of youth justice practice under WSA implementation. A responsibilising discourse was particularly apparent through professional narratives of conceptualising 16 and 17-year olds as either 'responsible' or vulnerable' within the context of the CHS[98], and managerial imperatives certainly feature through the development of the VPD system in Scotland, which is reflective of a system of audit centred upon surveying a population labelled as vulnerable and potentially deviant.[99]

Another key contribution to the literature is the evidence which demonstrates the current geographical variability existing in contemporary Scottish youth justice practice. Interestingly, the evidence pointing towards increased localism in the Scottish context is congruent with the current literature in England whereby various authors have recently drawn attention to the growing emphasis placed upon localised responsibility for managing youth crime (Smith 2018), and the current climate of 'divergence, normlessness and local variations' (Haines and Case 2018, p.131). It has been argued that such a trend is symptomatic of neo-liberal influences. Indeed Muncie (2007 p.39) writes that neo-liberalism not only has had a global impact, but it has also 'encouraged 'local solutions' to local problems' through notions of 'governing at a distance.' Such a

[98] See page 198
[99] See page 179

finding raises key questions about what level of variability, discretion and autonomy is acceptable without greatly comprising the equality of the youth justice system. Haines and Case (2018) in drawing attention to the diversity in youth justice practice across England and Wales argue that there should be some degree of coherence and suggest that the level of divergence experienced across localities is currently unacceptable. Highlighted in this body of research in relation to Scotland, it appears that there are also high levels of variability and there are certainly issues that could be 'ironed out' through the issuing of more guidance to enable more uniformity and less 'postcode justice' in practice.

Concluding Comments

This research has revealed the distinctiveness of the Scottish approach in dealing with children and young people who offend in the current climate of early interventionist and diversionary strategies. This thesis exposes the reality of practice in terms of the multiple discourses at play and is revealing of key differences in local practice and geographical application of the WSA. Such findings raise crucial implications which hold considerable importance for the future delivery of effective youth justice policy and practice.

Especially with being on the brink of change with the anticipated 'named persons' legislation, there is an opportunity to debate and address many of the issues raised in this thesis. The current context of falling crime rates should not lead to an uncritical presumption that the WSA is an entirely successful approach. This thesis has contributed towards existing academic and professional knowledge in the field of diversionary youth justice, that tells a new story of how early intervention and diversion principles have manifested in practice under WSA implementation.

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Appendices

Appendix A: Information Sheet

A 'Whole System Approach' for Young People who Offend: Information Sheet

I am a PhD student based at the University of Stirling, co-funded by the Scottish Government and Economic Social Research Council (ESRC). I would like the opportunity to introduce you to my study and invite you to participate in this research.

Purpose

The overarching purpose of the study is to explore how the Whole System Approach strategy is changing practice in terms of early and effective intervention and diversion from prosecution, with a particular interest in 16 and 17 year olds. I am undertaking a mixed method, 3-site case study, utilising a range of data collection techniques including: interviewing, observation, and documentary analysis.

Participation

I would like to invite you to take part in one interview which will last approximately 45 minutes. This can take place in the location of your choice for your convenience.
Your participation is completely voluntary, and you may withdraw from the study at any time without explanation. You may also skip any question during the interview, but continue to participate in the rest of the study. With your permission, I will tape record the discussion so I don't have to take so many notes.

Confidentiality and Anonymity

The data gathered will be treated as highly confidential. However, in the event of disclosure of abuse, or if it emerges that someone appears to be at significant risk of harm, the researcher has a duty to report this to the appropriate person(s).
All hardcopy information will be kept in a locked file, and information held on a computer will be password protected. Your name will not appear on any of the files; a code will be assigned to each individual and the key linking the code to your name will be kept in a locked file cabinet.

Every effort will be made to protect your identity, however the researcher cannot guarantee full anonymity. Pseudonyms will be used in the final thesis and reports, and under no circumstances will actual names be revealed or included in transcriptions. It is recognized that in such a study as this, research participants occasionally possess a combination of attributes that can make them readily identifiable; therefore it needs to be highlighted to participants that it can be difficult to disguise identities without distorting the data considerably. Where possible, I will present data in such a way to disguise identities. Some of the things you say may be quoted in research reports but your name will not appear, and your specific professional title will be altered, where possible, to protect your identity. Furthermore, in an effort to protect anonymity, the three case study sites will not be named in the final thesis.

Dissemination

The data collected will be used to produce a PhD thesis at the University of Stirling and will also be shared with the WSA team at the Scottish Government. The findings may also be published in academic journals, research reports or findings shared during presentations at events.

Thank You!

If you have any questions about the research at any stage, please do not hesitate to contact me directly:

Email: nicola.yule@stir.ac.uk

If you would like to speak to someone else about the study you can contact:

University Supervisors:
Dr Margaret Malloch: m.s.malloch@stir.ac.uk
Dr Niall Hamilton-Smith: niall.hamilton-smith@stir.ac.uk

Scottish Government Analytical Supervisor:
Chris Wright Chris.Wright@scotland.gsi.gov.uk

Appendix B: Interview Consent Form

Researcher: Nicola Yule, University of Stirling (nicola.yule@stir.ac.uk)

	Please Tick Box
I confirm that I have read and understand the information sheet for the above study and have had the opportunity to ask questions.	
I understand that my participation is voluntary and that I am free to withdraw at any time, without giving reason.	
I understand that every effort will be made to protect my identity; my name will not be used, and my specific professional title will be altered wherever possible. However, I understand that due to unique characteristics such as affiliation to a group, or professional title, I could be potentially identifiable.	
I agree to the use of anonymised quotes in publications	
I agree to the interview being audio recorded	

Name of Participant:

Signature:

Name of Researcher:

Signature:

Appendix C: List of Participants

AREA A: 13 Participants

Pseudonym	Sector
Police representative 1	Police
Police representative 2	Police
Police representative 3	Police
PRS A co-ordinator	Police
PRS A member 1	Police
PRS A member 2	Education
PRS A member 3	Anti-Social Behaviour team
PRS A member 4	3rd sector
PRS A member 5	Youth Justice
Children's Reporter 1	SCRA
Youth Justice worker 1	Youth Justice
3rd sector representative 1	3rd sector
3rd sector representative 2	3rd sector

AREA B: 15 Participants

Pseudonym	Sector
Police representative 4	Police
Police representative 5	Police
PRS B co-ordinator	Social Work
PRS B member 1	Education
PRS B member 2	3rd Sector
PRS B member 3	Youth Justice
PRS B member 4	Social Work
PRS B member 5	Community Learning
Children's Reporter 2	SCRA
Children's Reporter 3	SCRA
Social Worker 1	Social Work

3rd sector representative 3	3rd sector
Social Worker 2	Social Work
3rd sector representative 4	3rd sector
Youth Justice worker 2	Youth Justice

AREA C: 7 participants

Pseudonym	**Sector**
PRS C co-ordinator	Police
PRS C Member 1	Youth Justice
Social Worker 3	Social Work
Children's Reporter 4	SCRA
Children's Reporter 5	SCRA
Criminal Justice representative 1	Criminal Justice
Criminal Justice representative 2	Criminal Justice

STRATEGIC LEVEL ('POLICY ACTOR') INTERVIEWS: 7 participants

Pseudonym	**Sector**
Policy Actor 1	3rd Sector
Policy Actor 2	3rd Sector
Policy Actor 3	3rd Sector
Policy Actor 4	3rd Sector
Civil Servant	Scottish Government
Legal representative 1	COPFS
Legal representative 2	COPFS