

# scottish justice matters

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## POVERTY, INEQUALITY AND JUSTICE



# JUST CARE?

## Criminal records and Children's Hearings by Maggie Mellon

**IN SCOTLAND**, we are invited to take pride in our unique Hearing system and its vaunted superiority to the English juvenile court. It is true that we do not subject children to appearing in the dock of a courtroom, nor do we sentence children under 16s to periods of imprisonment in 'training centres'. We tell ourselves we are enlightened in understanding the connection between needs and deeds.

But paradoxically, does this mean that the hearing system in practice penalises children for the very combination of needs and deeds that should lead to understanding?

The majority of children who appear before hearings are poor and suffering from additional adversities. Our low age of criminal responsibility allied to the notion that high need plus naughty deeds requires statutory responses in practice punishes children for needs as much as deeds.

Two children who both commit the same offence, say breach of the peace while drunk, may experience radically different responses with lifelong consequences. One, with two parents living in a 'good' area, doing well educationally, will be marked by the reporter as 'NFA' (no further action) and get on with life. The other, in a low income single parent household, who has experienced domestic violence is more likely to be brought before a hearing. The consequences of compulsory intervention may be a life long offending identity. The findings of the Edinburgh Study of Youth Transitions and Crime (ESYTC) (McAra et al, 2010) are that involvement in the hearings is in itself a predictor of future offending, and in the case of children who are taken into residential care, of prison.

The majority of children processed through the hearings in Scotland are no more likely than their English peers prosecuted in juvenile courts to prosper in later life. This mirrors the impact of the youth justice system in England and Wales in confirming an 'offending' identity and prolonging offending 'careers'. In evidence to a parliamentary inquiry, Barry Goldson of Liverpool University argued that attention to any 'crime' should be within the context of non-criminalising responses to a child's needs (Goldson, 2013).

Some of the lessons of the ESYTC have been learned in Scotland, and much more strenuous efforts have been made to keep children out of the hearings system altogether, and to divert where possible from the adult criminal courts. This seems to have led to a halving of the number in Polmont YOI, which will undoubtedly mean fewer offenders, and fewer prisons in future years.



Illustration: David from HMP Dumfries

However, many young people in Scotland suffer exclusion and permanent harm as a consequence of the misfortune of having needs as well as deeds. For many years parents and children have been assured when accepting offence grounds, that the Rehabilitation of Offenders Act 1974 (ROA) applies and will in due course wipe any record. It did, until the introduction of the Protection of Vulnerable Groups Scotland Act 2007. Now those children referred on offence grounds, where these are proved or accepted will have a criminal record currently retained and open to enhanced disclosure for 20 years or until they are 40 years old whichever is the longer. This is presumably because we believe that past behaviour is a predictor of future behaviour. Yet mostly the child only has a record because he or she was unlucky enough to be in need. It is indeed the stuff of nightmares - that a misdemeanour as a child can act as a millstone round the neck of children whose real crime was to have had needs as well as deeds.

**Maggie Mellon is a social worker, vice chair of British Association of Social Workers, a member of the Scottish Consortium for Crime and Criminal Justice, and editorial board of *SJM*.**

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# **CRIME, JUSTICE AND SOCIETY IN SCOTLAND**

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