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**A Practice-based Approach to Youth Justice:
The Whole System Approach in Scotland**

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MA, MSc

Submitted in fulfilment of the requirements of the Degree of Doctor of Philosophy

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Abstract

This thesis investigates the development of a practice-based approach to youth justice – the Whole System Approach (WSA) in Scotland. Introduced nationally in 2011, the WSA aims to improve long-term outcomes for children and young people in the youth justice system by diverting them away from statutory measures. This PhD focuses on two key strands of the WSA which deal with low to mid-level level offending: Early and Effective Intervention and Diversion from Prosecution. After a punitive period in Scottish youth justice policy in the early 2000s, the WSA signalled a return to welfarist principles based on multi-agency working between statutory and non-statutory organisations.

A mixed method case study of the implementation of the approach in one local authority was conducted to provide an in-depth account of the development of Early and Effective Intervention and Diversion from Prosecution; considering these within the local context. Interviews with practitioners involved in these processes on the ground revealed intricacies of the daily implementation of the WSA in practice. Interviews with policy actors enabled perspectives on the national implementation of the WSA particularly around variations in national practice and long-term sustainability. Triangulating referral data on a sample of 65 cases of children and young people alongside interviews provides an illustrative case study of these processes and the use of restorative justice as a disposal in the case study area.

Locating this research within an existing body of literature on street-level bureaucracy and criminal justice decision-making, this thesis provides a new perspective on youth justice multi-agency implementation and decision-making. This research found that the translation of the WSA into practice was premised on holistic operational understandings. This thesis provides a unique case study on the implications of increased local autonomy in youth justice within the context of central-local governance reform as well as a narrative of how youth justice practice evolved in a changing political, structural and organisational context. The new multi-agency modes of working under the WSA have led to the sharing of expertise in decision-making, as well as an increase in disposals available to gatekeepers, but have ultimately retained autonomy for decision-making within key youth justice organisations. For 16 and 17-year-olds in transition from the youth to adult system, this thesis sheds light on perceptions of this group and how decision-making rests on their responsabilisation, leaving this group very much at the interface of, and overlapping, two

systems. Overall, this thesis has several policy and practice implications, which may serve to take deliberations about youth justice in Scotland forward.

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This is dedicated to my grandad who has inspired me and taught me to accept my best.

Author's declaration

“I declare that, except where explicit reference is made to the contribution of others, that this dissertation is the result of my own work and has not been submitted for any other degree at the University of Glasgow or any other institution.”

Printed Name: _____

Signature: _____

Glossary

ASBFPN	<p>Anti-Social Behaviour Fixed Penalty Notices</p> <p>On-the-spot fines issued by the police for low-level antisocial offences.</p>
CHS	<p>Children's Hearings System</p> <p>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 operational setting in which SCRA and partners work.</p>
CSO	<p>Compulsory Supervision Order</p> <p>Children's hearings can make compulsory measures of supervision for a child. These measures can encompass protection, treatment, guidance and control. There must be a need for compulsion for a referral to be made by the Children's Reporter to a children's hearing.</p>
COPFS	<p>Crown Office and Procurator Fiscal Service</p> <p>The independent public prosecution service in Scotland. It is responsible for the investigation and prosecution of crime in Scotland.</p>
EEI	<p>Early and Effective Intervention</p> <p>EEI aims to prevent future offending or antisocial behaviour by providing timely and proportionate interventions, and alerting other agencies to concerns about the child or young person's behaviour and well-being.</p> <p>See also PRS below.</p>

GIRFEC	<p>Getting it Right for Every Child</p> <p>A national approach to improving outcomes and supporting the wellbeing of children and young people through partnership between services, parents and children.</p>
PRS	<p>Pre-Referral Screening</p> <p>EEI initial screening and decision-making process for children and young people charged by the police. In the case study area, PRS was led by the police in conjunction with other agencies.</p>
PF	<p>Procurator Fiscal</p> <p>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.</p>
SCRA	<p>Scottish Children's Reporter Administration</p> <p>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.</p>

Chapter 1: Introduction and Outline of the Thesis

1.1. Introduction

This thesis explores the implementation of the Whole System Approach (WSA) to youth offending in Scotland introduced nationally in 2011. The WSA aims to improve long-term outcomes for children and young people in the youth justice system by diverting them away from statutory measures. The aim of the research overall is to contribute to policy and practice debates relating to the use of Early and Effective Intervention (EEI) and Diversion from Prosecution processes: two principal strands of the WSA which deal largely with low to mid-level offending.

The WSA emerged in the context of a punitive period in youth justice policy in Scotland, greatly opposed in practice. Representing a novel approach to youth justice in Scotland, this thesis explores how the WSA has been understood by practitioners and policy actors; how it has been implemented in the context of a period of considerable change in policy and practice; and, how multi-agency decision-making processes work in practice. Although the concept of multi-agency working is not new, the WSA involves a range of practitioners from different agencies in youth justice decision-making in comparison to pre-WSA where decision-making largely took place within the silos of individual key agencies.

This introductory chapter provides an overview and outline of this thesis. It begins by briefly exploring the background and context to this research project before going onto provide an overview of the WSA. From this, a rationale for the aims and research questions of this research is provided before moving onto describe the methodology adopted in this thesis. Next, the relevance of this research project is described specifically drawing out national implications for youth justice practice. Lastly, an outline of each chapter will be provided.

1.2. Background and Context

Formed in 1971, the Children's Hearings System (CHS) has been at the centre of the youth justice system in Scotland since and is the first formal system that children and young people involved in offending encounter. A welfarist based system, it is based on prevention

with the child's best interest as the paramount consideration. It exists of a lay tribunal, the children's hearing panel, which makes decision on whether compulsory measures of supervision are required for children and young people referred on a range of offence or care and protection grounds. Young people aged 16 and 17 can be retained in the CHS but have traditionally largely been dealt with through the adult criminal justice system. In the early 2000s, the number of offence referrals to the Children's Reporter, the gatekeeper to the CHS, increased and research raised issues around the appropriateness of the use of compulsion for some cases of children referred to the CHS on offence and non-offence grounds (Waterhouse and McGhee, 2002).

In the early to mid-2000s, youth justice policy was marked by a punitive turn. Under the Antisocial Behaviour etc. (Scotland) Act 2004, a range of harsh and punitive measures were introduced including anti-social behaviour orders for 12-15-year-olds and parenting orders, as well as the ability of police to disperse groups of young people. However, the use of these new measures was largely rejected by youth justice practitioners in Scotland. There was also a shift to focusing on persistent young offenders with the introduction of the fast-track CHS pilot and youth courts in 2003 – both of which were criticised for not taking a holistic approach to children and young people (Hill et al., 2005, McNeill, 2010).

At this time, there was growing criticism that children and young people were becoming increasingly criminalised in Scotland and in England and Wales (Barry and McNeill, 2009; Morgan, 2009; Jamieson, 2012). Barry and McNeill (2009, p. 12) argue that youth justice systems in several jurisdictions lost their 'social justice ethos' during the 1990s and 2000s. Literature on the impacts of system contact has evidenced the negative impacts this has on children and young people in terms of labelling and stigmatisation as well as their further involvement in the system. McAra and McVie's (2005, 2007, 2010) *Edinburgh Study on Youth Crime and Transitions*, a longitudinal study of pathways into and out of offending, found that certain categories of young people were propelled into a repeat cycle of referral into the CHS. They also found that the police disproportionately target a group of 'usual suspects' with the strongest predictor of being charged by the police in any given year being receiving police charges in the previous year. Based on their findings, McAra and McVie (2010) posited four key 'facts' about youth crime which any system of youth justice ought to fit. They advocated for youth justice policy to be 'holistic in orientation' whilst also maximising diversion from criminal justice. The Edinburgh Study was a key driver which underpinned the introduction of the WSA.

1.3. Overview of the Whole System Approach

In 2008, the Scottish Government (2008a) published *Preventing Offending by Young People – a Framework for Action*. The first policy document specifically on youth justice published by the Scottish National Party (SNP) - it signalled a changed in direction from the previous Labour/Liberal Democrat administration acknowledging that the past discourse around ‘needs and deeds’ had become too polarised and emphasising Early and Effective Intervention and prevention.

The WSA also had its roots in practice with the development of Early and Effective Action Groups in some local authorities in Scotland from 2008, also known as pre-referral screening processes (SCRA, 2009). These early intervention screening processes negated the need for young people to be referred to the Children's Reporter. With the greater awareness that many children and young people being referred to the Children's Reporter on offence grounds did not require compulsory measures of intervention, these multi-agency screening processes meant that these cases were discussed very shortly after concerns were highlighted and led to a reduction in referrals to the Reporter (SCRA, 2009).

These processes operated very much in line with the Getting it Right for Every Child (GIRFEC) agenda introduced by the previous Labour/Liberal Democrat government in 2006. In the *Early and Effective Intervention Framework of Core Elements*, the Scottish Government (2015a, p. 1) states: ‘For EEI to be effective it should be aligned to the principles of Getting it Right for Every Child’. A national approach to dealing with all children and young people, premised on inter-agency working and considering the needs and wellbeing of children and young people, GIRFEC has become a key policy under the SNP government and was instilled in the Children and Young People (Scotland) Act 2014. In practice, GIRFEC has required that all services that work with children and young people streamline their systems and practices to improve how they work together (Scottish Government, 2012a). It has also introduced the role of the named person for children and young people under 18 years, who for school age children sits within education and has responsibility for making an initial assessment on a child where concerns are brought and are entitled to receive appropriate information about the child and their family. From August 2017, the named person service will be implemented nationally which will have direct implications for youth justice practice.

Alongside these youth justice policy and practice developments, a restructuring of the way in which local authorities were governed was enacted by the Concordat Agreement in 2007, impacting on youth justice practice locally through the discontinuation of ring-fenced funding for youth justice meaning that local authorities no longer had to use government funding to have youth justice teams in place (Scottish Government and COSLA, 2007). The Agreement gave local authorities more autonomy and direction to set their own agendas and practice for youth justice.

The WSA strategy for children and young people who offend was introduced nationally in Scotland in 2011 following a year-long pilot of the approach in Aberdeen. The WSA is a locally determined approach in that it has developed in different ways across local authorities in Scotland (MacQueen and McVie, 2013). Multi-agency working lies at the heart of the WSA involving key youth justice agencies namely Police Scotland, social work, education, the Children's Reporter, the Crown Office and Procurator Fiscal Service and third sector organisations delivering services. The WSA has six key elements: EEI; maximising opportunities to divert young people from prosecution; providing court support to young people; increasing community alternatives to secure care and custody; changing behaviours among those in secure care and custody; and, improving re-integration back into the community.

The focus of my PhD is specifically on the EEI and Diversion from Prosecution strands of the WSA: processes that predominantly deal more with low to mid-level offending than offending which is more persistent and high risk. EEI aims to ensure that young people in or at risk of offending receive appropriate, proportionate and timely support to prevent their involvement in further offending. Diversion from Prosecution provides an opportunity to divert children/young people to social work or a diversion programme as an alternative to being dealt with in court.

The key aim of the WSA is to divert children and young people from statutory and formal measures including compulsory supervision by the CHS (the first formal system that young people involved in offending are likely to encounter in Scotland), prosecution and secure care and custody. The WSA signalled a change in direction in youth justice policy moving from the formal system of compulsory measures through Children's Reporter and the CHS to a more flexible multi-agency approach. The WSA has also specifically addressed the routine processing of 16 and 17-year-olds in court, which went against the principles of the United Nations Convention on the Rights of the Child (United Nations, 1989).

Whilst research conducted on the WSA has been minimal, evaluations of EEI and the WSA suggest that it has boosted partnership working; there is shared commitment by practitioners to the approach; that the flexibility of local practice has been found to be beneficial; and, it has contributed to a decrease in offence referrals to the Children's Reporter (SCRA, 2009; Fraser and MacQueen, 2011; Murray et al., 2015). An EEI scoping study across local authorities found varying experiences and interpretations of EEI (EEI Short Life Working Group, 2014). In 2015, the Scottish Government (2015a) published a framework of core elements for the use of EEI across Scotland seeking to bring more consistency in its use.

There is very little known about the implementation of EEI in Scotland. Some studies have conducted evaluations of the initial implementation of EEI (SCRA, 2009; Fraser and MacQueen, 2011) and some small-scale practice-focused studies have attempted to draw out prerequisites for effective practice (EEI Short Life Working Group, 2014; Papadodimitraki, 2016). There is also a lack of research on how Diversion from Prosecution processes have been implemented nationally in Scotland. As well as this, there is a lack of knowledge on how organisational and structural changes have impacted on the implementation of these processes. To address this gap, this PhD aimed to explore how these processes have been implemented specifically seeking the views of practitioners involved in these newly developing multi-agency decision-making processes. In conducting an in-depth case study of the implementation of the WSA in one local authority, this PhD sought to draw out implications for national youth justice policy and practice.

1.4. Overview of Research Aims and Methods

This research was co-funded by the Scottish Government and the Economic and Social Research Council. This overall aim of this thesis is to explore the implementation of the WSA in one local authority. Through examining the implementation of EEI and Diversion from Prosecution in one local authority area, this PhD thesis seeks to explore how these processes worked in practice within the context of structural and organisational change and explore perceptions on the long-term sustainability of the WSA. Specifically, this thesis focuses on the EEI and Diversion from Prosecution multi-agency decision-making processes within the case study area examining what factors influence decision-making. Within this case study area, third sector Sacro's Youth Restorative Justice Service has been

used as an illustrative case in order to explore how decisions are being made and the impacts of the WSA in relation to one specific service. The specific research questions which framed my research were:

- (1) What are practitioners' and policy actors' operational understandings of the WSA in practice?
- (2) How have the EEI and Diversion from Prosecution decision-making processes been implemented in front-line practice?
- (3) What factors have impacted on the sustainability and implementation of the WSA?
- (4) How do actors involved in the multi-agency EEI and Diversion from Prosecution processes make decisions and what factors influence these decisions?
- (5) How have the EEI and Diversion from Prosecution impacted on the use of restorative justice?

These research questions were driven by several key concerns. Firstly, I was particularly keen to explore practitioners' and policy actors' operational understandings of the WSA, given that it is very much an approach developed in practice. Practitioners, delivering these processes on the ground, are key actors in how the WSA has been formed and therefore it was important to find out the ethos and principles being built into practice by various practitioners from differing agencies involved. Second, as the EEI and Diversion from Prosecution processes represent entirely new modes of working within the case study area, I sought to explore how they were being implemented in practice and particularly the benefits and challenges to this. Lastly, much has been written in academic literature about criminal justice decision-making, but there is limited literature on multi-agency decision-making and how actors make decisions in collaboration with others.

A single exploratory case study of the implementation of the WSA in one local authority area was conducted in order to provide an in-depth, comprehensive, and focused study exploring different angles through the views of practitioners from a range of agencies, and understanding the processes specific to one local authority. There was no overarching aim to make generalisations about the implementation of the WSA in other local authorities, which have developed their respective practices in relation to the WSA. However, the case study area was specifically chosen as its respective EEI and Diversion from Prosecution

processes were quite embedded and therefore it was hoped that this would enable insights to be provided in future deliberations in the development of Scottish youth justice.

Semi-structured interviews were conducted with 15 practitioners from social work, the police, education, third sector organisations delivering youth justice services and legal practitioners from the case study area. The aim of these interviews was to gain practitioners' first-hand knowledge and perspectives on the implementation of EEI and Diversion from Prosecution; specifically issues around multi-agency working; consistency and flexibility in decision-making; barriers and gaps in delivery; and, the impacts of these processes. Seven semi-structured interviews were also conducted with policy actors including civil servants and policy representatives from national youth justice organisations. Interviews with policy actors enabled the perspectives of those involved in developing national guidance around the WSA as well as having a role in influencing and informing its development nationally to be brought together with the perspectives of practitioners.

The main period of fieldwork was conducted between September 2013 and April 2015. This included follow-up interviews with four practitioners in the case study area in order to explore changes in the EEI and Diversion from Prosecution processes which had taken place during the course of fieldwork. Three interviews were also conducted in late summer 2015 to speak to policy actors at national level about developments which had taken place since the end of the main fieldwork period; for example, the restructuring of case marking within the Crown Office and Procurator Fiscal Service in 2015. Interviewees' perspectives represent what they perceived to be happening at that particular point in time within practice and policy, which was very much in continuous flux. Their perspectives were also individual and personal accounts of what they perceived to be happening from within their respective agencies. Documentary analysis of local protocols and strategic documents as well as governmental policy documents, guidance documents and legislation was also conducted. Local protocols and strategic documents provided a useful tool to understand the aims and processes in the local authority particularly at the beginning stages of fieldwork. Scottish Government published guidance on the various strands of the WSA are supplemented alongside the interview data.

A small, illustrative case study of Sacro's Youth Restorative Justice Service in the case study area was also conducted. The purpose of this was to explore how the WSA has impacted on one service and how decisions in both the EEI and Diversion from

Prosecution multi-agency processes were being made in relation to this service. This involved interviews with practitioners from the service; descriptive analysis of data provided by Police Scotland on 65 cases of children and young people referred to the service between March 2010 and November 2013 and descriptive analysis of a small number of case files. This data was triangulated with the interviews in order to explore how decisions were made and shaped in relation to the use of this specific process and how the WSA has impacted on the use of this specific low-level disposal.

1.5. Relevance of Thesis

Having set the scene of the origins of this thesis and outlined the research aims and methods, this section will now go on to provide an explanation of the relevance of this project. This thesis explores the development of a new strategy to youth justice that has developed from practice and has been informed by research evidence and policy developments overtime. This thesis provides a unique case-study in which to explore policy implementation of the WSA in the context of central-local governance reform and the shifting political, structural and organisational context. The consequences of increased autonomy in local delivery of youth justice and the restructuring of key youth justice organisations are explored through the eyes of practitioners on the ground experiencing these changes as well as gaining a national perspective from policy actors. Centring on debates on local flexibility versus national consistency in policy implementation, this thesis unveils some key implications of increased local autonomy in youth justice. Significantly, local variation in the operation of EEI and Diversion from Prosecution processes and the availability of local services were viewed to result in a “post-code lottery” in youth justice.

This thesis highlights opportunities and challenges for the sustainability of the WSA in the future both locally and nationally. As an example, having a WSA coordinator role was viewed to be instrumental to effective communication between the various agencies involved in the WSA in the local authority area. This thesis also provides a timely narrative of the development of EEI and the role of the named person. There is little known about what the implications of the legislation of the named person under the Children and Young People (Scotland) Act 2014 in August 2017 will be for youth justice practice. Currently, there is variation in the role of the named person nationally but it is expected that they will have a greater involvement in EEI. The *Early and Effective Intervention Framework of*

Core Elements (Scottish Government, 2015a) identified minimum standards for EEI practice including that the role of the named person should be central to the process as information and planning is guided by the named person. This thesis provides a useful case study in relation to the role of the named person in EEI as during the course of the fieldwork, the pre-referral screening process was reviewed as the role of the named person became embedded.

Drawing on Lipsky's (2010) model of street-level bureaucracy as well as Asquith's (1983) perspective on criminal justice decision-making, this thesis explores the multi-agency implementation of the WSA from the perspectives of a range of professionals who sit within their respective institutional frameworks. Locating this research within an existing body of literature on street-level bureaucracy and criminal justice decision-making, this thesis provides a new perspective on youth justice multi-agency implementation and decision-making based upon a set of themes which emerged around multi-agency decision-making including discretion and professionalism. Lipsky's and Asquith's perspectives are developed in this PhD in an exploration of the impacts of differences and commonalities between agencies on EEI and Diversion from Prosecution decision-making. They are also developed through an exploration of how social, economic and political factors in the surround of youth justice influence decision-makers (Hawkins, 2002).

Whilst post-devolution, there has been a continued focus on how to deal with 16 and 17-year-olds in transition from the youth to adult criminal justice system (Scottish Executive, 2000; Scottish Executive, 2003), there is very little known about how decisions are made regarding this group. Whyte (2009, p. 202) argues that there are 'numerous structural difficulties' which face local authorities creating barriers to diversion and retaining this group within the CHS. Despite the WSA focus on retaining 16 and 17-year-olds within the youth justice system, 435 16-year-olds and 1,386 17-year-olds were prosecuted in sheriff summary and solemn courts in 2014/15.¹

It is important to explore how decisions are being made specifically in relation to 16 and 17-year-olds as they are dealt with by complex processes in the youth and adult systems. This thesis highlights some significant challenges to retaining 16 and 17-year-olds in the youth justice system. In particular, it identifies a lack of coherence and a lack of shared commitment to working with this group in transition. It provides a timely account of some of the challenges to retaining this group and puts forward recommendations on how

¹ Data received by FOI request from Scottish Government Criminal Proceedings database.

processes to support a change in practice towards making decisions on 16 and 17-year-olds.

This thesis has several policy and practice implications which may serve to take deliberations about youth justice in Scotland forward but also, more widely, will have relevance for other jurisdictions; for example, particularly in England where the focus has been on diverting first time offenders from the criminal justice system and on using more informal approaches in recent years. The findings of this thesis in relation to transforming practice and the increased autonomy of local government in youth justice delivery also provides useful insights given the recommendation made by the Charlie Taylor review of youth justice in England and Wales that local authorities be given greater freedom to innovate and develop their models of delivery (Taylor, 2016).

1.6. Outline of Thesis

This thesis is comprised of ten chapters. Chapter two provides an introduction to youth justice policy in Scotland specifically exploring the development of youth justice policy and practice post-devolution to the emergence of the WSA. As the focus of this thesis is primarily on EEI and Diversion from Prosecution, this chapter will specifically explore the development of these processes since the introduction of the WSA. Chapter two also explores how the WSA developed based on evidence of the negative impacts of system contact and this chapter will explain how evidence from McAra and McVie's (2007, 2010, 2012) *Edinburgh Study of Youth Transitions and Crime* has underpinned the development of the WSA. This chapter provides important contextual background to the WSA and in so doing is an important reference chapter for the later empirical chapters.

Chapter three describes and provides a rationale for the two conceptual frameworks drawn upon in this study: Michael Lipsky's (2010) framework on street-level bureaucracy and Stewart Asquith's (1983) conceptual framework on criminal justice decision-making. Specifically, this chapter addresses the applicability of using these multiple frameworks to the empirical findings of this thesis. This chapter engages with relevant literature on criminal justice decision-making particularly focusing this in relation to inter-agency decision-making and the exercise of discretion.

Chapter four describes the interpretivist approach and case-study methodology adopted for this research. Chapter four is also a context chapter for the following findings chapters as it

provides a narrative of the development of the WSA in the case study area as well as an overview of the EEI and Diversion from Prosecution processes.

There are five findings chapters. To begin, chapter five examines practitioners' and policy actors' operational understandings of the WSA in practice seeking to unravel the ethos and principles being built into the WSA. This chapter begins by exploring their perceptions of the key drivers which lay behind the WSA before moving on to explore the three dominant understandings of the approach which emerged from the analysis.

Chapter six explores the local implementation of the WSA in the case-study area specifically exploring the role played by front-line staff in the implementation of the WSA situated within the broader context of macro-level moves between centralism and localism and restructuring of key organisations and micro-level resource constraints and pressures. It also explores how the EEI process evolved over time with the embedding of GIRFEC in the case study area and the greater role of the named person in decision-making.

Chapter seven focuses specifically on the EEI and Diversion from Prosecution multi-agency decision-making processes in the case study area exploring the way in which actors involved in these processes make decisions, with a specific focus on how discretion is exercised by key actors in these processes.

Following on from this, chapter eight also explores decision-making but does this specifically in relation to 16 and 17-year-olds through exploring three key decision-making processes through which they can be retained in the youth justice system: Diversion from Prosecution; a referral to the CHS; and, by remittal from the court to the CHS. This chapter explores how decisions are shaped in each process and barriers in practice to utilising each.

To provide an illustrative case of decision-making and referral processes in relation to one service, chapter nine explores the use of Sacro's Youth Restorative Justice service in the case study area through triangulating practitioners' perspectives with police data on a sample of 65 children and young people referred to the service to explore the types of cases considered suitable for a restorative justice referral and the impacts the WSA had on this one service.

Lastly, chapter ten brings together the key themes to emerge from the empirical chapters focusing this discussion on the implications of this research for policy and practice. This chapter also draws upon some limitations of this research and points to some potential areas of focus for future research.

Chapter 2: Youth Justice Policy Timeline and Emergence of the WSA

2.1. Introduction

This chapter will provide an overview of the development of youth justice in Scotland over the last five decades, beginning with the publication of the Kilbrandon Report in 1964 and the introduction of the Children's Hearings System (CHS) in 1971 to the roll out of the Whole System Approach (WSA) to youth offending in 2011. Whilst detailed narratives of the development of criminal and youth justice policy in Scotland over recent decades exist (see, for example, Croall, 2005; McAra, 2006, 2007; Morrison, 2011; Lightowler et al., 2014), this chapter provides a timeline of youth justice in order to weave together a narrative of how the WSA emerged, its relationship to existing youth justice structures and systems and its general effects. In comparison to the existing literature, this thesis explores the development of a new strategy to youth justice that has developed from practice and has been informed by research evidence and policy developments overtime.

The WSA developed in the context of significant organisational, structural change as well as policy development, and was predicated on the introduction of new multi-agency approaches to decision-making regarding children and young people in need or at risk of offending. Importantly, the WSA emerged at a time of far reaching political change; the Scottish National Party (SNP) came into power in 2007 and shortly thereafter introduced far reaching changes to the forms of local authority governance in Scotland which focused on increasing local flexibility and autonomy. The new political administration also signalled a change in direction in youth justice policy evident in a collection of policy documents and guidance published in the subsequent years emphasising Early and Effective Intervention (EEI), diversion, the provision of alternatives to secure care and custody, and support for young people through court and reintegration back into their communities. These were to become the key principles of the WSA.

The significance of exploring political, policy and practice developments over time is to reveal how the WSA has been shaped and developed in a period of tension between policy and local practice and to highlight the mixed, and somewhat contradictory rationales underpinning the Scottish youth justice system over this period. Given the focus of this research study, this chapter will focus in particular on two strands of the WSA: the

development and implementation of EEI and Diversion from Prosecution and the effect of the introduction of these processes on decision-making by key actors. As such, this chapter provides important contextual background to the WSA and forms an important reference point for the later findings chapters.

The first half of this chapter provides a chronological overview of developments leading up to the introduction of the WSA, whilst the second half explores the effect of the WSA on the ways in which offending by young people is identified and responded to in Scotland. This chapter starts by describing the background to the WSA and then leads on to a description of the key elements of the WSA. This chapter also looks at the development of Getting it Right for Every Child separately so as to explore the key developments of this national approach to wellbeing for all children and young people under 18 in Scotland. This chapter then focuses specifically on the development of EEI and Diversion from Prosecution as well as the development of policy and practice in relation to 16 and 17-year-olds. The chapter also considers one of the key drivers behind the development of the WSA in the form of an emerging evidence base on the consequences of system contact on young people involved in offending in Scotland from the *Edinburgh Study of Youth Transitions and Crime*. Lastly, this chapter concludes by positing a rationale for my research.

2.2. A Recent History of Youth Justice in Scotland

2.2.1. Pre-Devolution: Kilbrandon, the Social Work (Scotland) Act 1968 and the Children (Scotland) Act 1995

In 1961, a working party, chaired by Lord Kilbrandon, a senior Scottish judge, was formed in order to consider the provisions of law with regards to the treatment of juvenile delinquents and juveniles in need of care and protection (Kilbrandon Committee, 1964). The committee, comprising four justices of the peace, four lawyers, a chief constable, a headmaster, a psychiatrist and a probation officer, was set up to ‘consider the provisions of the law of Scotland relating to the treatment of juvenile delinquents and juveniles in need of care or protection or beyond parental control and, in particular, the constitution, powers and procedure of the courts dealing with such juveniles’ (Kilbrandon Committee, 1964, p. 5). The committee met over twenty-nine days, visited courts and residential institutions in

Scotland, and heard from key witnesses. They found that the so-called ‘juvenile delinquents’ constituted a very small minority of juveniles in Scotland and that many of the cases brought before the courts involving juveniles were for trivial offences (Kilbrandon Committee, 1964).

The Kilbrandon Committee advocated working collaboratively with parents of juvenile delinquents. This was to be achieved through social education involving working with children and their families using a ‘case work approach’ through which the child and parent were to be helped by establishing a fuller awareness of their situation and problems and identifying a solution ‘that lies to their hands’ (The Kilbrandon Committee, 1964, p. 14). The report stated:

Delinquency is predominantly an activity of the young. On purely practical grounds it would therefore appear that emphasis ought to be given to preventive and remedial measures at the earliest possible stage if more serious delinquencies are not to develop (The Kilbrandon Committee, 1964, p. 30).

A preventative, early intervention approach was advocated. The Kilbrandon Committee proposed ‘a new alternative’ to dealing with juvenile delinquents and children and young people with care and protection issues – the Children’s Hearings System (CHS). The CHS took over from the courts to dealing with children in trouble or at risk. Kilbrandon identified that the needs of children who required care and protection were essentially the same as those involved in offending. The CHS was promoted as a ‘specialised public agency’ with no concern with the legalities of finding innocence or guilt but rather concerned with treatment measures.

The legislature for the CHS was provided by the Social Work (Scotland) Act 1968, which effectively removed children and young people from the courts. The Act set out eight conditions under which a child could be determined in need of compulsory measures of care; this included condition *G* ‘he has committed an offence’ (s32 Social Work (Scotland) Act 1968). The CHS became the core of the Scottish youth justice system for dealing with young offenders under the age of sixteen and was based on the principles of early intervention, prevention and diversion. The 1968 Act also allowed for young people aged 16 and 17 to be retained within the CHS, provided they were already subject to a supervision order.

In operational terms, referrals to the CHS are made by Children's Reporters, who are legal personnel employed by the Scottish Children's Reporter Administration (SCRA). SCRA is a national organisation but has divisions throughout Scotland. The Children's Reporter is the person who will decide if a child or young person needs to be referred to a children's hearing. The Children's Reporter receives referrals for children and young people from a range of sources; however, referrals related to offending are predominantly made by the police. The Children's Reporter considers the circumstances of each child referred to the hearings system and decides whether there is sufficient evidence to support the grounds² (reasons) of referral and, if so, whether compulsory measures of supervision are needed. Where the grounds of referral are upheld, the Reporter will call a children's hearing which consists of a panel of three members of the public. The role of the lay panel is to make a decision on whether the child is in need of a compulsory 'supervision requirement' and, if so, whether it is necessary to impose any conditions on the requirement, such as ensuring that the child resides in a particular place.

The CHS remained relatively unchanged until the Children (Scotland) Act 1995. The 1995 Act has been described as a turning point in youth justice history because it undermined the welfarist principles of the CHS, under which the interests of the child were paramount, and supplanted these with the principle of public protection (McAra and McVie, 2007). Despite this, the guidance for the Act stated that 'the welfare of the child is the paramount consideration when his or her needs are considered by courts and children's hearings' (The Scottish Office, 1997, p. vi). The 1995 Act represented a sign of forthcoming change within the youth justice system where the purely welfarist principles of the Kilbrandon Report were challenged. Through the emphasis on public protection, the 1995 Act foretold a move from a completely child-centred, welfarist approach to a more punitive and victim-focused approach post-devolution.

However, the Act also extended the participation rights of children and young people through the provision that a children's hearing should give the child the opportunity to express his views and have regard for views expressed (s 16, Children (Scotland) Act, 1995). The Act also states the requirement for different agencies and local authority departments to collaborate in delivering services; for example, social work, education, housing, voluntary organisations and primary health care (Children (Scotland) Act, 1995). This requirement would be a sign of greater multi-agency working between key

² The grounds or legal reasons for bringing a child or young person to a hearing are set down in section 67(2) of the Children's Hearings (Scotland) Act 2011.

organisations involved in delivering youth justice services evident post-devolution. This signalled a move to multi-agency working involving the contribution of a number of organisations rather than the involvement of key referral agencies the police and Children's Reporter only.

2.2.2. *Post-Devolution Youth Justice Policy: Initial Stages*

In 1998, the Scotland Act created the Scottish Parliament and a range of policy areas were devolved from Westminster to the Scottish Parliament. However, Westminster retained ability to pass laws and control over 11 areas of non-devolved matters. Crucially, the UK government remained in control of Scotland's finances through the provision of a block grant to the Scottish Government. However, devolution signalled a dramatic change in the policy making landscape of Scotland. Whilst youth justice policy was always within Scotland's control, devolution marked a significant time point in the development of youth justice through the creation of a Scottish Parliament with the power to legislate on a wide range of matters rather than legislation could through Westminster where there was often a lack of parliamentary time for Scottish bills (Mooney et al., 2015).

The post-devolution period was marked by a significant increase in policy documents across all areas of business and there were a series of important reports outlining a new attitude to youth justice policy. Post-devolution, the first key youth justice policy document was published in 2000 entitled *It's a Criminal Waste: Stop Youth Crime Now* (Scottish Executive, 2000). The background to this report was a Scottish Cabinet strategy session on youth crime in 1999, which led to the creation of an advisory group whose aim was to evaluate the disposals available to the CHS and to the courts where persistent young offenders were involved (Scottish Executive, 2000). In order to do this, the advisory group conducted a consultation on youth crime, which attracted three hundred responses and included focus groups with young people and Children's Reporters.

It's a Criminal Waste: Stop Youth Crime Now identified wider factors that lie behind youth offending; for example, family problems, drug and alcohol issues and the fact that many young offenders have been victims of crime themselves (Scottish Executive, 2000). There was undoubtedly a Kilbrandon welfare orientated belief lying behind the ideas presented in the 2000 white paper on youth crime through a focus on preventative and diversionary community-based measures. Also, Kilbrandon's argument that young offenders were as

much in need of care and protection as other vulnerable children was evident. The Scottish Executive (2000, p. 5), recognising the wider context of youth offending, put forward the need for ‘a unified approach at a practical level, combining care and protection with the public’s concerns over the need to address offending behaviour’. *It’s a Criminal Waste: Stop Youth Crime Now* also signalled a move towards a victim agenda, which coincided with the first explicit support of the use of restorative justice measures for young offenders. A turning point for restorative justice recognition in Scottish youth justice was in 2001 when Sacro (Safeguarding Communities Reducing Offending), the main deliverer of restorative justice services in Scotland, first received grant aid from the Scottish Government to create diversionary pre-hearing schemes and has since grown to become the main service used in youth justice interventions (McAra, 2004).

This policy document also advocated that 16 and 17-year-olds be dealt with in the youth rather than the adult criminal justice system through expanding diversion schemes for this age group; as illustrated in the statement: ‘the ‘whole person’ approach is however no less valid for the 16 or 17-year-old offender than it is for the 15-year-old’ (Scottish Executive, 2000, p. 4). It recommended a bridging pilot in order for 16 and 17-year-olds to be retained within the CHS (Scottish Executive, 2000). This marked the start of government concerns to ensure 16 and 17 year olds were retained within the youth justice system.

Despite the good intentions of this document, McNeill (2010) writes that its recommendations were not engrained into the Scottish youth justice system when, in 2001, a new Labour/Liberal Democrat coalition government was elected. From 2001, many policy areas were to see a greater merging with English policy agendas, despite devolution. Rather than pursuing its welfarist agenda, the new Scottish Parliament took forward many of the ideas regarding tackling youth crime of the New Labour government in England and Wales. McNeill (2010, p. 44) has suggested that this led to the creation of a more ‘punitive correctionalist agenda’ and a ‘toughening up’ of policy towards young people involved in offending. McAra (2006, p. 127) puts forward that the policy developments in post-devolutionary Scotland were ‘based on a broad set of competing and somewhat contradictory rationales’ which include punitive, managerialist, actuarial, welfarist and restorative principles. The next section will go onto explore how these conflicting principles arose in the early to mid-2000s.

2.2.3. A New Era of Youth Justice Policy in Scotland: A Move from ‘Welfarism’ to ‘Punitivism’

In 2002, the Scottish Executive published *Scotland’s Action Programme to Reduce Youth Crime* (Scottish Executive, 2002a) and the *National Standards for Scotland’s Youth Justice Services* (Scottish Executive, 2002b). These were to become influential and significant policy documents over the years to come because they set the tone for a new era of youth justice policy in Scotland based on a punitive rather than welfare-based model.

A recurring theme throughout *Scotland’s Action Programme to Reduce Youth Crime* was the importance of public protection and the role of the victim in the youth justice system. This is illustrated in the following quote by Cathy Jamieson (Minister for Education and Young People in 2002):

The Executive launched the Scottish Strategy for Victims of Crime in early 2001. This provides the foundation for increasing confidence among victims that we take offences by anyone, including young people, seriously and that action will be taken to help prevent re-offending (Scottish Executive, 2002a, p. 2).

The language use throughout this document indicated that the Scottish approach to young offenders was becoming more punitive. The above quote appears to move away from treating children and young people involved in offending as separate from adults over 16 as there is an argument that all offenders will be treated seriously. At this time, the bridging pilot proposed in 2000 to retain 16 and 17-year-olds in the CHS was abandoned and in its place youth courts were established for 16 and 17-year-olds based on the Youth Court Feasibility Project (Scottish Executive, 2003).

The 2002 Action Plan also focused specifically on the importance of ‘effective early intervention’ as crucial to preventing youth crime citing research revealing that children referred to the CHS for offences were likely to have first been referred to the Children’s Reporter from the ages of 5 to 11; most commonly on school non-attendance and protection grounds (Scottish Executive, 2002a). The recommendation of early intervention measures to reduce offending, which recognised that those who offend are often victims themselves, signalled a more holistic perspective in contrast to the hardening of language around children and young people at this time. It was introduced as being premised on effective partnership working between agencies, including the police, schools, health and

the voluntary sector, and this document also sparked the beginning of a move to multi-agency working.

The National Standards set out how youth justice should be managed at a local level and also presented an outline of standards to improve delivery (Scottish Executive, 2002b). The Standards proposed a national target to reduce the number of persistent young offenders³ by ten percent by 2006. The focus on persistent offenders and target setting at this time was evident in a spike in offence referrals to the Children's Reporter in the early 2000s peaking at 38,090 in 2005/06 and then decreasing by 7% in 2006/07, after a period of relatively steady referrals up to the 2000s (SCRA, 2007). The report set out six objectives for youth justice services which included improving the range and availability of programmes to stop youth offending and improving the strategic direction and coordination of youth justice services.

Arguably *Scotland's Action Programme to Reduce Youth Crime* provides the first evidence, in post-devolution youth justice policy, of the often referred to tension between the 'welfare model' and the 'punitive model' of youth justice (McAra, 2006). These tensions were to come to a head with the legislation of anti-social behaviour orders (ASBOs) for 12-15-year-olds under the Antisocial Behaviour etc. (Scotland) Act 2004. ASBOs are a form of court order in which a 12 to 15-year-old can be prohibited from engaging in specific activities, which if breached is a criminal offence (Scottish Executive, 2004). The theme of public protection heralded in the 2002 Action Programme was to be enshrined through the legislation of ASBOs in Scotland, which were defined as preventative measures 'intended to protect people in the community' (Scottish Executive, 2004, p. 1). The Act gave the police power to disperse groups of young people and introduced electronic tagging. It also created parenting orders - civil orders to deal with parents who refused to engage in voluntary support to prevent crime or antisocial behavior involving a relevant child or to protect a child, which if breached meant a criminal offence (Scottish Executive, 2004). In contrast to Kilbrandon's emphasis on social education and involving parents and children, the creation of parenting orders represented a punitive turn focused on blaming and responsabilising parents. McNeill (2010) has argued that the 2004 Act led to a change in focus from youth offending to anti-social behaviour. What this meant in terms of practice was a move to focusing not just on criminal behaviour by

³ A persistent young offender was defined as a young person with five or more offending episodes within a six-month period.

children and young people but also on ‘troublesome’ (non-criminal) behaviours of young people’ (Jamieson, 2012, p. 449).

The Scottish Executive guidance on ASBOs provided a contradictory picture in terms of how they fit into the youth justice system. On the one hand, they were identified as a way of intervening early in the lives of children and young people in order to ‘prevent the need for legal remedies’, while on the other, their overarching aim was to protect the public and the community (Scottish Executive, 2004, p. 8). Part of the way in which the document masks this contradiction is by a continued emphasis on persistent young offenders and the suggestion that ASBOs should only be used for this group of young people (Scottish Executive, 2004).

The guidance document neglects to refer to the external influences on the young offender, which were highlighted as crucial to understanding and tackling youth crime in *Stop Youth Crime Now: It’s a Criminal Waste*. Instead, a more punitive undercurrent is evident; for example, in this statement on Acceptable Behaviour Contracts (an early intervention written agreement between a child involved in anti-social behaviour and relevant agencies): ‘It should be clear in an Acceptable Behaviour Contract for a 12-15-year-old what the likely consequences of non-compliance may be’ (Scottish Executive, 2004, p. 9). Similarly, ‘A court-based order sends a strong message that persistent anti-social behaviour will not be tolerated’ (Scottish Executive, 2004, p. 12). In 2008, the United Nations Convention on the Rights of the Child recommendations, based on the UK government as a whole, were critical of ASBOs for going against the Convention’s stated rights of freedom of movement and freedom of association and peaceful assembly (Scottish Government, 2009a).

In fact, very few ASBOs were given to children and young people in Scotland. Only six orders were granted in Scotland for 12-15-year-olds between 2004 and 2007 (Johnstone, 2010). Also, not a single parenting order was implemented in Scotland in contrast to England where 766 orders were made between October 2003 and September 2005 (Nellis et al., 2010). The main reason for this appears to have been an overwhelming reaction against such punitive measures by practitioners in Scotland. Research at the time demonstrated that the use of alternative measures over ASBOs, including acceptable behaviour contracts, parenting classes and diversionary options, were considered more appropriate by local authorities (DTZ and Herriot Watt University, 2007 cited in Johnstone, 2010). Nellis et al. (2010) pointed to considerable tensions between central

government and local government at this time because practitioners working with young people in Scotland were unsupportive of ASBOs. McAra (2004) has described this as a divide between the punitive political discourse in policy and the welfarist commitments of practitioners.

At the same time as the legislation of the Antisocial Behaviour etc. (Scotland) Act 2004, the fast-track children's hearing pilot and youth courts were introduced in 2003. Concerns about persistent evident in the National Standards (2002b) underpinned these developments. In the early 2000s, many Reporters and CHS panel members expressed reservations about the capability of the CHS to deal effectively with persistent young offenders and that they were often marking time until the young person entered the adult system (Audit Scotland, 2002). Created specifically to deal with persistent young offenders, the fast track children's hearing was designed to deal with young people who had committed five or more offences in a six-month period. The fast-track hearings were intended to deal swiftly and appropriately with these so-called persistent young offenders, thus reducing their reoffending rates (Hill et al., 2005).

This move to focusing on persistent young offenders as a separate group was symbolic of the general shift in direction within youth justice policy at the time. As Hill et al. (2007) note, the basis of the CHS was to treat all children and young people the same, with their welfare being of paramount consideration. The fast-track hearing pilot drew attention away from predominantly focusing on the child's welfare through focusing on the young person's behaviour. The evaluation of the fast-track hearing sites found positive outcomes in relation to timeliness. However, the results showed no improvement in reoffending rates when compared to comparison sites and they were discontinued in 2005 (Hill et al., 2005).

In 2003, the *Action Programme to Reduce Youth Crime* (Scottish Executive, 2002a) also led to the piloting of youth courts in Airdrie and Hamilton for 16 and 17-year-olds involved in persistent offending. Following the pilot, plans were announced to increase the number of youth courts by the Labour and Liberal Democrat administration but these never transpired (BBC, 2006). The objectives of these new courts were to promote social inclusion and personal responsibility whilst maximising young offenders' potential (Scottish Executive, 2003). Another specified aim included enhancing community safety by reducing the harm caused to individual victims of crime (Scottish Executive, 2003).

The youth courts provided a fast-track process in which the young person would attend a youth court within ten days of being charged (Piacentini and Walters, 2006). Similar to the

fast-track children's hearing pilot, also introduced in 2003, the premise behind the approach was that a quicker intervention would lead to more positive results in terms of reoffending. Piacentini and Walters (2006) proposed that the introduction of the youth court was a response to public concern and the media pressures with regards to youth crime. Indeed, research conducted by Piacentini and Walters (2006) found that sheriffs believed the origins of the youth court were political. The youth courts continued to be used until 2013 when it was announced that they would be discontinued.

McNeill (2010, p. 65) writes that the introduction of youth courts faced criticism as many perceived them to be 'a stark deviation from a 'child-centred' and needs orientated state apparatus for dealing with young offenders to one based on deeds and individual responsibility'. Indeed, Whyte (2003) was critical of the Youth Court Feasibility Project Report (Scottish Executive, 2003) for not making any references to welfare and social needs, unlike the aim of the proposed bridging pilot to retain 16 and 17-year-olds in the CHS in 2000, which was later abandoned. To be referred to the youth court, children and young people had to be aged 16 or 17 (15 for serious offences) and have a history of three criminal charges in the previous six months (Piacentini and Walters, 2006).

Several commentators have suggested reasons for this punitive turn in policy in the early to mid-2000s. McAra (2008) has suggested that the populist punitive rhetoric and the crime control agenda in the early years after devolution were symbolic of an attempt by the Scottish Parliament to build capacity and legitimacy. She writes: 'As is well documented in the criminological literature, weak governments often turn to crime control as a ready mechanism through which to overcome crises of legitimacy' (2008, p. 493). Prior to devolution, the Scottish Office administered rather than set agendas for policy; whereas, after devolution, the Scottish Executive had the capacity to determine policy agendas and, therefore, the array of policies in these early years may have been the result of a political motive to be seen to be doing something in an area where there was high public concern.

This period of 'punitivism' may have also arisen as a result of public and media pressure. As Whyte (2003, p. 74) noted at the time: 'Young people persistent in their offending have become a key focus for politicians keen to demonstrate to potential voters that they have the policy and practice solutions to the problem'. This suggests that the focus on persistent offenders in the early to mid-2000s may have been partly due to public concern and thus a need for the government to be seen to be doing something rather than due to the issue itself. Statements made by politicians and media representations of crime arguably sparked

a moral panic in the early 2000s with regards to young people and crime. The 2004 Scottish Social Attitudes Survey found that sixty-nine percent of the public thought that crime levels were higher than in years previously (Anderson et al., 2005). The media played a large role in increasing fear of crime through the representation and sensationalism of youth crime; for example, with frequent reports about ‘neds’ and youth gangs, Piacentini and Walters (2006) and Archard (2007) argue that the move towards a penal populism approach was partly fuelled by growing media-led campaigns.

Ironically, just as the punitive turn within youth justice was reaching its peak, a new more welfare-focused policy called Getting it Right for Every Child (GIRFEC) was starting to emerge. First mentioned in the Scottish Executive’s (2005a) *Getting it Right for Every Child Proposals for Action*, GIRFEC represented a more coordinated approach to improving outcomes for children and young people throughout Scotland. This policy suggested that Scotland’s children and young people should be successful learners, confident individuals, effective contributors and responsible citizens. To achieve this, children and young people needed to be safe, healthy, achieving, nurtured, active, respected, responsible and included⁴ (Stradling et al., 2009). In 2006, the final year of the Labour/Liberal Democrat coalition, an implementation plan for GIRFEC was published outlining a development strategy for information sharing and the development of national practice tools. A pilot pathfinder project was then set up in the Highlands in 2006 with a remit to adopt a multi-agency approach to address all aspects of children and young people’s needs (Stradling et al., 2009).

An evaluation of the development and early implementation of GIRFEC in the Highlands identified the change processes associated with GIRFEC specifically changes in practice and also changes in professional cultures (Stradling et al., 2009). The evaluation found evidence of good collaborative working between organisations and of an inter-professional cultural shift with organisations working together rather than to their specific remit. The development of GIRFEC is an important part of the narrative of the emergence of the WSA. Based on the individual needs of children and young people, it suggests that government officials were not wholly bought into the punitive agenda. It also suggests that, unlike the disposals introduced by the Antisocial Behaviour etc. (Scotland) Act 2004, research evidence on effective practice with children and young people was feeding through into policy.

⁴ These wellbeing indicators are referred to by the acronym SHANARRI.

2.2.4. *The Development of Restorative Youth Justice*

It was not until the early 2000s that restorative justice began to tentatively emerge in Scotland as an approach to dealing with young offenders. The use of restorative justice was slower in Scotland than in other parts of the world however with MacKay (2003, p. 5) stating that Scotland had taken a ‘cautious approach’ to the development of restorative justice. In 2007, Dignan, writing about the use of restorative justice for young offenders in the UK, argued that the RJ reform movement had had the least impact on the CJS in Scotland (Dignan, 2007). Restorative justice initiatives for children and young people have occurred informally in the Scottish youth justice system and without legislative support.

Restorative justice had never been part of the youth justice agenda in Scotland; however, it was around the time of the development of GIRFEC that the government started to consider alternatives to the CHS such as restorative justice processes. From the mid-2000s, Children’s Reporters could utilise restorative justice as a diversionary measure and young people have largely been referred to a restorative justice service by the Scottish Children’s Reporter (Viewpoint, 2009). The extent of the use of restorative justice in the Scottish youth justice system is not widely known; however, and one of the aims of this research was to explore how EEI and Diversion from Prosecution referral processes impacted on the use of restorative justice.

It was not until 2005 that the first specific paper on restorative justice was published in relation to young people (Scottish Executive, 2005b). This was followed, in 2008, by *Restorative Justice Services – for children and young people and those harmed by their behaviour* (Scottish Government, 2008b). The 2008 document stated that restorative justice aims to address the harm caused by the young person’s offence, for the young person to accept responsibility for their offence and to make some form of reparation or apology to the victim and community (Scottish Government, 2008b).

The introduction of restorative justice in policy represented a new approach to tackling youth crime through the involvement of the victim (Scottish Government, 2008b). The discourse around restorative justice emphasises responsibility and restoration through having the opportunity to witness and address the harm caused to a victim through an offence (Scottish Executive, 2005b).

The terminology surrounding restorative justice represented a shift to a new territory of dealing with young offenders; for example, the Scottish Government (2008b, p. 2) refers to the potential for victims of youth crime to obtain 'symbolic reparation' through the restorative justice process. In the case of restorative justice, young people are portrayed as being capable of accepting responsibility (as a key part of the process is the young person accepting responsibility), understanding the consequences of their actions and in doing so being able to desist from reoffending (Scottish Executive, 2005b). The consequence of a restorative justice measure, such as a restorative justice conference, is the creation of an action plan which is to be mutually decided upon. An action plan can include a range of measures/interventions and significantly the Scottish Executive emphasised that action plans should be restorative – not punitive - through addressing underlying factors such as anger management (Scottish Executive, 2005b).

In 2009, an evaluation of restorative justice services in Scotland for young people found that 64% of cases were referred by the Children's Reporter, 27% were referred by the police and six percent by social work (Viewpoint, 2009). This information shows that, before the WSA was introduced; restorative justice has been used as an early intervention and diversionary disposal in Scotland. Dignan (2007) writes that it cannot be assumed that the use of restorative justice approaches are intended as a means of diversion as they have also been adopted as an alternative to other low-level disposals; for example, police cautions. As the Viewpoint (2009) research shows that the majority of referrals have been made by the Reporter, this would suggest that restorative justice has largely been used as an early intervention alternative disposal. As a Diversion from Prosecution, RJ relies on the Procurator Fiscal exercising discretion and diverting cases to RJ (Dignan, 2007).

Restorative justice sits somewhat uneasily within the Scottish youth justice system as it seeks to address the needs of young offenders and also the needs of the victims. The Children (Scotland) Act 1995 states that the interests of the child should be of the paramount consideration, except where public protection usurps it. The Scottish Executive (2005, p. 1) put forward that restorative justice process can effectively ensure the welfare of the child is the 'paramount consideration'. However, at the same time, the Scottish Executive (2005) refers to the interests of the person who has been harmed by a child's offence and the necessity of the system meeting the best interests of both the person harmed and the young offender. Whilst the development of restorative justice in Scotland has been incremental, its support in policy at this time was altogether a sign of a move

away from the purely preventative and child-centered approach espoused by Kilbrandon through the focus on the victim alongside the young person.

2.3. Recent Developments in Scottish Youth Justice Policy: The Emergence of the Whole System Approach

With the election of the SNP minority government in 2007, another change in direction for youth justice policy was signaled. This was signified with the publication of *Preventing Offending by Young People – a Framework for Action*, developed in collaboration by key partners to establish how organisations should work together to prevent and reduce offending by children and young people (Scottish Government, 2008a).

In comparison to policy documents published under the previous administration, the Preventing Offending Framework demonstrated a change in language use around children and young people. Instead of focusing on the responsibility of the young person, public protection and tackling persistent offending, the Scottish Government (2008a) clearly acknowledged that offending and victimisation were associated and that the past discourse around ‘needs and deeds’ had become too polarised. The turn in language was very similar to the language used by the Kilbrandon Committee in 1964. The Preventing Offending Framework adopted a holistic approach to young offenders by recognising the intergenerational aspect of issues related to offending such as employment, education and health inequalities (Scottish Government, 2008a). The Scottish Government (2008a, p. 7) stated: ‘Collectively, we are committed to taking action to identify those children and young people and families at risk of not achieving positive outcomes, or having access to positive opportunities, and taking action to prevent these risks materialising’. EEI and preventative measures were seen as key to breaking the cycle of inter-generational poverty and tackling perceived risk factors that may underlie future offending.

Under the new SNP government, persistent offenders continued to be identified as an area of concern. However, the concern was framed very differently. In 2007, Minister for Community Safety Fergus Ewing proposed that the persistent offending target set in 2002 (to reduce the number of persistent offenders by ten percent by 2006 and by a further ten percent by 2008) was unhelpful (Scottish Government, 2007). He argued that the definition was too narrow and made no distinction between minor offences and more serious ones. This change in focus came about in the aftermath of a peak in offence referrals in 2005/06

to the Children's Reporter which increased by 10% between 2003/04 and 2005/06, during the 2003-2005 fast-track children's hearings pilot for persistent offenders (SCRA, 2007). A new system was introduced whereby, instead of counting five offence referrals in a six-month period, the volume, frequency and seriousness of offending was taken into account (Scottish Government, 2007). In addition, there was a shift away from the quantification of risk and statistical analysis of reoffending of actuarial justice towards a broader conceptualisation of outcomes. As noted by the Scottish Government (2008a, p. 5): 'The success of our efforts to tackle offending by young people cannot be measured by the number of persistent offenders or anti-social behaviour orders'. Instead, a range of softer outcomes were identified in terms of positive outcomes for children, such as that they become successful learners and have improved life chances (Scottish Government, 2008a).

Simultaneously, the SNP focused on rebalancing the relationship between central and local government. In 2007, a Concordat Agreement was reached which placed responsibility for the development and planning of local services with local authorities, reflecting a shift away from centralised decision-making to control at local level. The Concordat Agreement changed the face of the governance structure within Scotland and comprised: a commitment by Scottish Government not to reform local government structure in the current term of parliament; 'a significant growth in the capital resources being made available to local authorities'; a reduction in ring-fenced funding; the creation of Single Outcome Agreements; new options for performance management whereby there would be a reduction in monitoring and performance requirements; and, that efficiency savings should be retained by local government (Scottish Government and COSLA, 2007, p. 3). The Concordat Agreement led to increased autonomy and flexibility of local governments in Scotland through the creation of Single Outcome Agreements made at local government level on outcomes specific to the local authority, which were framed by the Scottish Government's fifteen national outcomes (Scottish Government and COSLA, 2007).

One consequence of the Concordat Agreement was the abolition of ring-fenced funding for youth justice in 2008, which meant that local authorities no longer had to use government funding to have youth justice teams in place (Lightowler et al., 2014). A recent review of youth justice delivery across 27 of 32 local authorities in Scotland revealed that less than 30% had a dedicated youth justice team (Nolan, 2015). Youth justice teams were introduced by the Labour government in the early 2000s and in 2002 existed in every local authority in Scotland (Scottish Executive, 2002c).

Since 2008, there is variation in how youth justice is delivered across local authorities with nine areas reporting a ‘hybrid’ model of service provision where services are provided by a combination of teams. In the remaining six areas, teams providing services included children and families, a young people’s service, youth services, criminal justice social work, court support and third sector agencies (Nolan, 2015). This variation in the local set up of youth justice is a consequence of the Concordat Agreement with local authorities holding increased autonomy in how they organise and provide youth justice services.

2.4. The Whole System Approach

The WSA was officially launched in 2011, after a one-year government funded pilot in Aberdeen City from 2010-11. The policy timeline of youth justice post-devolution shows how the origins of the WSA stemmed from the evolving multi-agency GIRFEC approach emphasising multi-agency working and a child-centred approach and from a punitive period in youth justice policy in the early to mid-2000s, which was greatly opposed in practice. This led to the introduction of new pre-referral screening processes piloted in local authorities in the late 2000s based on prevention and early intervention.

The WSA was piloted in Aberdeen between 2010 and 2011. An evaluation of the pilot project, the Aberdeen Youth Justice Development Programme, found fewer inappropriate referrals being sent to the Children’s Reporter, an improvement in agencies working together and an increase in diversion from prosecution of 16 and 17-year-olds (Capgemini Consulting, 2011).

Following the pilot project, the WSA was rolled out across local authorities on a voluntary basis in 2011. This new initiative was a major step in the timeline of Scottish youth justice after a punitive focus on young offenders. The punitive focus was largely political and the introduction of the WSA was risky in this sense as it was based diverting young people from statutory measures. The aim of the WSA, as stated by the Scottish Government, was to improve outcomes for 8 to 18-year-olds involved in offending, especially those 16 and 17-year-olds falling between the gaps between the CHS and the adult Criminal Justice System. Since 2011, the approach has focused on six key areas detailed in table 1. This thesis focuses on two of these key elements which predominantly deal with more low to mid-level offending: Early and Effective Intervention and Diversion from Prosecution. These two strands are discussed separately from the policy timeline later in this chapter in

order to explore their specific development. The development of policy and practice in relation to 16 and 17-year-olds is also explored separately.

Table 1. The key elements of the WSA.

<ol style="list-style-type: none"> 1. Early and Effective Intervention: a flexible approach to low to mid-level offending behaviour, premised on multi-agency working and information sharing, through the provision of timely, proportionate interventions focused on the needs of the child. 2. Opportunities to divert young people from prosecution: working with the Crown Office and Procurator Fiscal Service to identify young people reported for low-level offences and diverting them to diversion programmes. 3. Court Support: providing support to young people in the court system including improving the information for courts dealing with young people and ensuring they have a greater understanding of the needs of young people. 4. Community alternatives to secure care and custody: providing robust community alternatives to secure care and prison based on intensive support and supervision in the community. 5. Managing high risk, including changing behaviours of those in secure care and custody: identify effective ways of dealing with high risk young people in secure care and custody. 6. Improving re-integration back into the community: supporting reintegration through the provision of a package of support detailed in their child's plan. <p style="text-align: right;">(Scottish Government, 2016a)</p>
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Local authorities were given one year's initial seed funding by the Scottish Government to develop the WSA in 2011 – thereafter it was to be funded through their own budgets through embedding the principles of the WSA in practice. The Scottish Government published a suite of national documents aimed at providing broad guidance on the different aspects of the WSA but the practical implementation was to be decided at local authority level. The responsabilisation of young people in the early to mid-2000s is still apparent when examining the WSA guidance policy documents. While the WSA is set in language that is predominantly welfarist in orientation, there is still the language of actuarialism evident in the focus on risk. For example, in the *Framework for Risk Assessment*

Management and Evaluation (FRAME) Planning for Local Authorities and partners, it is stated:

The overall aim of intervention for children and young people who present a risk of harm is for them to be able to take responsibility for managing their own risk...For children and young people who have experienced considerable abuse and deprivation in their lives, it is highly unlikely that they will have the capacity or internal resources to be able to take full responsibility for their own behaviour at the beginning of an assessment or period of intervention. Children and young people in this situation will often have to learn skills relating to self-management through a process of work that will involve gaining insights and learning new social skills, all of which would have to be evidenced in a range of settings...The main responsibility for managing risk during the early stages of involvement with services has therefore to lie with adults. Nevertheless, wherever possible, a partnership approach where the child or young person, slowly takes more responsibility for their own management as more effective coping skills and social competences are developed is to be endorsed (Scottish Government, 2011a, p. 10).

Risk and responsabilisation discourses may be less visible within the language of the WSA, as the policy guidance emphasises addressing needs and providing a holistic approach, but they still exist below the surface. There is a focus on capacity building and self-management, which does not fit entirely with the WSA ethos of treating children ‘first and foremost as children’. This resonates with Armstrong’s (2004) criticism of the risk-factor prevention paradigm, that risk factors become seen as the properties of children and young people themselves rather than factors beyond their control. The policy statement noted above does precisely this – it positions the responsibility of risk factors as lying with the young people themselves. Whilst the structural barriers of deprivation are acknowledged, there is a discourse around riskiness within the WSA that proposes that young people should adopt ‘self-management’ and learn ‘new social skills’. Barry (2013, p. 356) has argued that the WSA emphasises the ‘whole system’ of the child/young people and the management of individual offenders rather than addressing the ‘whole system’ of policy responses ‘by addressing wider socio-economic constraints’.

At the same time as the WSA was being launched nationally, a reform of the Police in Scotland was announced. In 2013, under the Police and Fire Reform (Scotland) Act 2012, eight police forces in Scotland were amalgamated into a single police force named the

Police Service of Scotland (known as Police Scotland). The police restructuring process was not without controversy. The Scottish Government claimed it was driven by a need to improve efficiency and effectiveness; however, many opponents believed it was merely an exercise in cost cutting. One of the consequences of the Reform Act was that responsibility for policing was transferred from local government to central government. As a result, concerns have been expressed about a reduction in local policing accountability. For example, a survey by the Convention of Scottish Local Authorities in 2013 found that local authorities had ‘lost meaningful local control over the police’ (cited in Garside, 2015). Fyfe (2016) has argued that the Act could also be viewed as enabling flexibility and responsiveness to local conditions without prescribed structures or processes (Fyfe, 2016). However, local councils have raised concerns about their role in establishing local policing plans and a lack of influence over local policing (HMICS, 2013 cited in Fyfe, 2016).

2.5. Youth Justice Refresh

In January 2015, the Scottish Government held a Youth Justice Refresh Event: a collaborative event attended by a range of organisations which examined the impact of the WSA and priorities for improvement. In June 2015, the Scottish Government (2015b, p. 2) published *Preventing Offending – Getting it Right for Children and Young People* – an update on the Preventing Offending Framework published in 2008. The document introduced priority themes for youth justice going forward from 2015-2020 including advancing the WSA; improving life chances; and, developing capacity and improvement. The Scottish Government (2015b) continued its commitment to a holistic partnership approach focusing on ‘tackling deeds while taking account of wider needs’ and premised on the GIRFEC rhetoric of providing support which is appropriate, proportionate and timely. It also commended the progress of the WSA stating that prevention and positive alternatives for young people involved in offending ‘are part of a broader approach to tackling inequalities and promoting social justice’ (Scottish Government, 2015b, p. 1). As part of the priority themes, an Advancing the WSA implementation group was introduced in 2016. The multi-agency group has agreed a number of actions to advancing the WSA including the integration of EEI with the named person and increasing the use of Diversion from Prosecution.

2.6. The Development of GIRFEC

As GIRFEC developed overtime under the SNP, it is therefore considered separately from the overall timeline. An exploration of the development of the WSA needs to be seen hand in hand with the evolution of GIRFEC under the SNP. The GIRFEC approach, initiated by the previous Labour/Liberal Democrat administration, was made a key component of the SNP's focus on children and young people in 2008 with the publication of *A Guide to Getting it right for every child* (this document was updated in 2012) (Scottish Government, 2012a). GIRFEC is defined as: 'Putting the child and young person at the centre and developing a shared understanding within and across agencies' (Scottish Government, 2012a, p. 5). GIRFEC requires that all services that work with children and young people, including education, health, social work, police and the voluntary sector, streamline their systems and practices to improve how they work together (Scottish Government, 2012a). In practice, GIRFEC focuses on improving outcomes for children and young people through focusing on achieving the aforementioned eight wellbeing SHANARRI indicators.

Over time, the GIRFEC approach has evolved with the creation of practice tools such as the My World Triangle used to aid decision making in practice through identifying the strengths and pressures in a child or young person's life and their needs and risks from a range of sources (Scottish Government, 2012a). The multi-agency child's plan has also been created as an information sharing tool and is developed across agencies, involving the child and their family's input, to record all actions required to support the child's wellbeing including which agency will be responsible for an action. There is considerable variation in practice regarding the implementation of GIRFEC across education authorities (Education Scotland, 2012). Issues around information sharing between agencies in the legislation of the Children and Young People (Scotland) Act 2014 have been raised.

In 2014, the principles of GIRFEC were legislated in the Children and Young People (Scotland) Act 2014, which involves the following provisions: duties on Scottish Ministers and Public Bodies to 'further effect' the UNCRC (Part 1); an extension of the investigatory powers of the Scottish Commissioner for Children and Young People (Part 2); requirements for children's services planning at local level (Part 3); and a named person for every child/young person under 18 years (Part 4). The Act has extended statutory responsibilities for the welfare of children to include their wellbeing.

2.6.1. The Development of the Named Person

Part 4 of the Children and Young People (Scotland) Act 2014 has introduced the named person, which will typically be a health visitor for children aged less than five years and a senior teacher for school aged children (Scottish Government, 2015c). The named person has responsibility for making an initial assessment on a child where concerns are brought and are entitled to receive appropriate information about the child and their family. The use of the named person across Scotland is not widely known and a study found that most staff in early years centres and schools did not have a sound understanding of the roles and responsibilities of the named person (Education Scotland, 2012).

The development of the named person has been problematic and controversial. A consultation with children and young people on the Children and Young People Bill found that they were concerned about the implications of the named person with regards to confidentiality (Scottish Government, 2012b). There are ambiguities in the Children and Young People (Scotland) Act 2014 around information sharing, as whilst it is stated that children's views should be taken into account this is only as far as what is 'reasonably practicable'. There are potential tensions likely to arise in practice regarding appreciating the views of children/young people and sharing information which the named service provider sees as 'necessary or expedient' which may differ with the child's views. Consultees felt that they should have a part in drafting the child's plan.

The introduction of the named person for every child/young person under 18 years was to be enforced in August 2016 but was delayed for a year when the Supreme Court ruled the data sharing provisions were in breach of human rights (Brooks, 2016). The Education Secretary announced that a period of "intense engagement" on necessary amendments, including with young people, would take place and that the named person would be implemented nationally in August 2017. The Act has been challenged by other political parties in the Scottish Parliament and by religious groups with the main criticism to it that it is invasive of families' privacy.

When the named person is enforced in August 2017, their role will put them at the centre of youth justice decision-making. This has direct implications for the WSA: the Scottish Government (2015a) states that aspects of the WSA will have to be updated when the Act is implemented and the children's plan and named person come in. The Children and Young People (Scotland) Act 2014 will expect the EEI process to incorporate the named

person in information sharing, decision making and planning. The Scottish Government (2015a, p. 1) states that EEI should ‘complement the statutory responsibilities of the named person’.

2.6.2 A Consideration of Children’s Rights in Scottish Youth Justice

Recognition of the rights of children in youth justice systems has grown in recent years, particularly with the UN Committee on the Rights of the Child requiring periodic reports from state parties on their implementation of the UNCRC. Post-devolution, children’s rights debates have not been a central focus of youth justice policy. Whilst the WSA signalled a change in direction to a focus on children’s needs, it has not explicitly focused on the rights of children and young people who offend in youth justice processes. Whilst the CHS has been advocated for protecting the procedural and legal rights of children, the protectionist approach of the system has been argued to sit uneasily with ensuring children’s rights, with research finding that children lack awareness of their rights and that their direct participation in hearings has been generally limited (Hallett and Murray, 1999). The Children’s Hearings (Scotland) Act 2011 changed the ethos of the system to one that was more focused on the rights of the child. The Act specifically states that the views of children should be considered in hearings. It also extended the scope and availability of legal aid in the CHS and establishing the presence of solicitors to act for children and relevant persons, reflecting a move towards a more participatory approach.

In policy discourse, the GIRFEC agenda has represented a change in direction to focus on children’s rights. The previous section revealed how GIRFEC has underpinned youth justice practice in Scotland in recent years. This section will briefly seek to unravel the place of children’s rights within the GIRFEC agenda and youth justice. The Children and Young People (Scotland) Act 2014 reflected a move to a greater focus on children’s rights by introducing a duty on Scottish Government Ministers to further effect the UNCRC requirements in Scotland and imposing a duty on local authorities, health boards and police Scotland to report every three years on how they have improved the lives of children. However, issues around information sharing and confidentiality led to the delay in some aspects of the Children and Young People (Scotland) Act 2014 in 2016 which the Supreme Court ruled were incompatible with the rights to privacy and a family life under the European Convention on Human Rights. Regarding confidentiality and the sharing of

information, it is stated that the named service provider may provide to a service provider or relevant authority any information they hold which is 'necessary or expedient' to help them carry out their named person role (Children and Young People (Scotland) Act 2014 s 26(9)). The Act states that, in decisions on whether information about a child or young person should be shared between a service provider and another authority, the named person should have regard to the views of the child and whether it is to be to the likely benefit of the well-being of the child or young person (Children and Young People (Scotland) Act 2014, s 26(6)(7)). The implications of this are that organisations working with young people have a responsibility to provide information, where appropriate, to the child's named person. Information sharing will be facilitated by the use of a child's plan, a legal requirement when it comes into force in August 2017. There are ambiguities in the Children and Young People (Scotland) Act 2014 around information sharing, as whilst it is stated that children's views should be considered this is only as far as what is 'reasonably practicable'. The Act states that the views of the child and the family should be taken into consideration when deciding regarding whether the creation of a child's plan is appropriate and what information should be in it (Children and Young People (Scotland) Act 2014, s33(6)(7)). There are contentions likely to arise in practice regarding appreciating the views of children/young people and sharing information which the named service provider sees as 'necessary or expedient', which may differ from the child's views. In a consultation with children and young people on the Children and Young People Bill, concerns were raised about the implications of the named person with regards to their confidentiality (Scottish Government, 2012d). Those consulted felt that they should have a part in the drafting of the child's plan.

The retention and disclosure of information in relation to criminal convictions by children and young people is another area of contention regarding children's rights. Whilst the Children's Hearings (Scotland) Act 2011 legislated to prevent young people who have gone through the CHS being negatively impacted on when going into employment, by treating CHS disposals as alternatives to prosecution rather than criminal convictions, relevant provisions of the Act are yet to come into force (McCallum, 2016). Until then all offences dealt with by children's hearings potentially result in criminal records for children. In relation to retention of information by the police, police guidance states that the police may hold criminal conviction, children's hearing (offence grounds) and non-conviction information. In this guidance, offence grounds established/accepted at

children's hearings is treated in the same way as criminal court convictions (Police Scotland, 2016b cited in McCallum, 2016).

2.7. The Development of Early and Effective Intervention and Diversion

As the focus of this PhD is on the implementation of EEI and Diversion from Prosecution, this next section will primarily focus on the development of these two strands nationally. The development of policy and practice specifically in relation to 16 and 17-year-olds will also be explored as a key focus of the WSA has been to retain this group within the youth justice system.

2.7.1. *Early and Effective Intervention*

EEI multi-agency processes were initially rolled out in some local authorities in 2008 with the aim to reduce referrals to the Children's Reporter through pre-referral screening (PRS) (this process is either referred to as EEI or PRS across Scotland) (SCRA, 2009). The Scottish Government states (2015a) that the purpose of EEI is to provide proportionate and timely approaches for children and young people placing behaviour in a holistic context (Scottish Government, 2015a). Traditionally, the police have referred most cases of youth offending to the Children's Reporter. With the introduction of EEI multi-agency processes, the police can make a referral to a PRS group where a multi-agency decision is required. However, as stated in the Scottish Government (2009b) EEI multi-agency guidance, where compulsory measures of care are deemed necessary, referrals are made to the Children's Reporter.

There are two PRS models across Scotland: firstly, taking the form of a multi-agency decision-making group and; secondly, a lead agency, usually the police, consulting with other agencies (Murray et al., 2015). Where an offence is minor and a multi-agency response is not deemed necessary, the police can also deal with offences by means of a direct measure; for example, by use of a formal warning or an Antisocial Behavior Fixed Penalty Notice – an on the spot fine for low-level anti-social offences (hereafter Fixed Penalty Notices). EEI processes vary across local authorities; some discuss cases relating to offending only whilst others consider welfare cases too and some will consider cases

already open to the Children's Reporter whilst others do not (Murray et al., 2015). Data on the use of EEI for 8-17-year-olds was first published by the Scottish Government for 2014/15 dating back to 2008/09 when these measures were first introduced (Scottish Government, 2016b). The Scottish Government (2016b) notes that these are not a full measure of EEI police disposals as there are a number of measures that cannot be quantified. Bearing in mind that likely improved recording of EEI since it was first introduced, the Scottish Government (2016b) states that the number of young people referred for an EEI has increased steadily since 2008/09 rising to 650 by 2011/12 then quadrupling to 2,533 in 2014/15.

As part of the suite of WSA guidance published by the Scottish Government, guidance on the implementation of EEI multi-agency practice was provided by Scottish Government to assist local teams and to prompt discussions and developments in EEI implementation in its initial stages (Scottish Government, 2009b). In Murray et al.'s (2015) evaluation of the implementation of the WSA, practitioners in the three local authorities studied raised concerns about the interpretation and use of prosecutorial guidance which meant that some offences, including low level cannabis use and use of fake ID for buying alcohol or entering nightclubs, were not considered for EEI despite recognition that they would be suitable. The Lord Advocate's Guidelines on offences committed by children, which contains guidance to police officers in Scotland on the categories of offence which require to be jointly reported to the Procurator Fiscal and the Children's Reporter, state that categories of offences eligible for EEI are generally offences dealt with by police direct measures (COPFS, 2014). The guidelines describe the offences that are required by law to be prosecuted on indictment and the offences which may be prosecuted on indictment on the instructions of the Lord Advocate. They serve as guidance to Procurators Fiscal in their decision-making in relation to offences committed by children. This means that Procurators Fiscal have significant individual discretion in decision-making.

With the awareness of inconsistencies in EEI nationally, the *Early and Effective Intervention Framework of Core Elements* was introduced in 2015 to set out minimum standards in relation to various aspects of the EEI process (Scottish Government, 2015a). The Framework of Core Elements sets out guidelines for EEI; for example, on the suitability of offences for EEI; whether children subject to supervision by the CHS may be referred; and, on multi-agency decision-making at local level (Scottish Government, 2015a). In relation to suitability of offences for EEI, it is stated that **all** offences should be considered for EEI unless excluded by the following guidelines: Lord Advocate's

Guidelines for under 16s; COPFS guidelines for 16 and 17 year-olds; and, police guidance for immediate referrals to the Reporter (Scottish Government, 2015a). It is stated that ‘it is fully the responsibility of the police to determine the suitability of the offence to be referred to EEI based on the gravity’ (Scottish Government, 2015a, p. 3). What this meant was that in terms of decision-making, there was still a high level of professional discretion on eligible offences in relation to the practice of the respective agencies involved in EEI decision-making.

In the EEI Core Elements Framework, the Scottish Government (2015a) specifically stated that the use of Fixed Penalty Notices for 16 and 17-year-olds lessens the opportunity of them being referred to EEI and their needs being addressed. Fixed Penalty Notices were introduced under the Antisocial Behaviour etc. (Scotland) Act 2004 and allowed the police to offer fines of forty pounds for ten specific offences.⁵ The number of Fixed Penalty Notices issued to 16 and 17-year-olds decreased by 42% from 7,512 in 2008/09, when EEI processes were first introduced in some local authorities, to 4,372 in 2013/14.⁶ In response to a freedom of information request⁷ on Police Scotland’s Standard Operating Procedures on the use of FPNs, I was provided with relevant extracts from a Police Scotland guidance document outlining the use of police direct measures and EEI for 16 and 17-year-olds. The Police Scotland guidance states that the issuing of FPNs should be considered against the young person’s offending history and previous interventions tried. The guidance also recommends that FPNs are subject to referral to the local EEI/youth justice team. This suggests that in practice FPNs should only be in conjunction with an EEI referral.

Since multi-agency EEI processes were introduced locally in 2008, and then rolled out nationally from 2011, there has been a steady decrease in offence referrals to the Children’s Reporter (see figure 1). The number of children and young people referred to the Reporter on offence grounds decreased by an astounding 83% from 17,361 in 2005/06 to 2,891 in 2014/15.⁸ The numbers of children and young people referred on offence grounds, with the grounds established, and receiving a new Compulsory Supervision Order also declined sharply between 2004/05 and 2014/15 (see figure 2). The combination of GIRFEC, the Scottish Government’s (2008a) policy document *Preventing Offending by*

⁵ They can be offered on the spot and if the offender pays the fine then there will be no criminal conviction but where a fine is unpaid it will be passed to court and may lead to a conviction.

⁶ Data received by FOI request from Scottish Criminal Proceedings database.

⁷ Received in January 2016.

⁸ Data from SCRA online statistical dashboard.

Young People and the introduction of EEI in 2008 explain the decrease in offence referrals from the mid-2000s onwards.

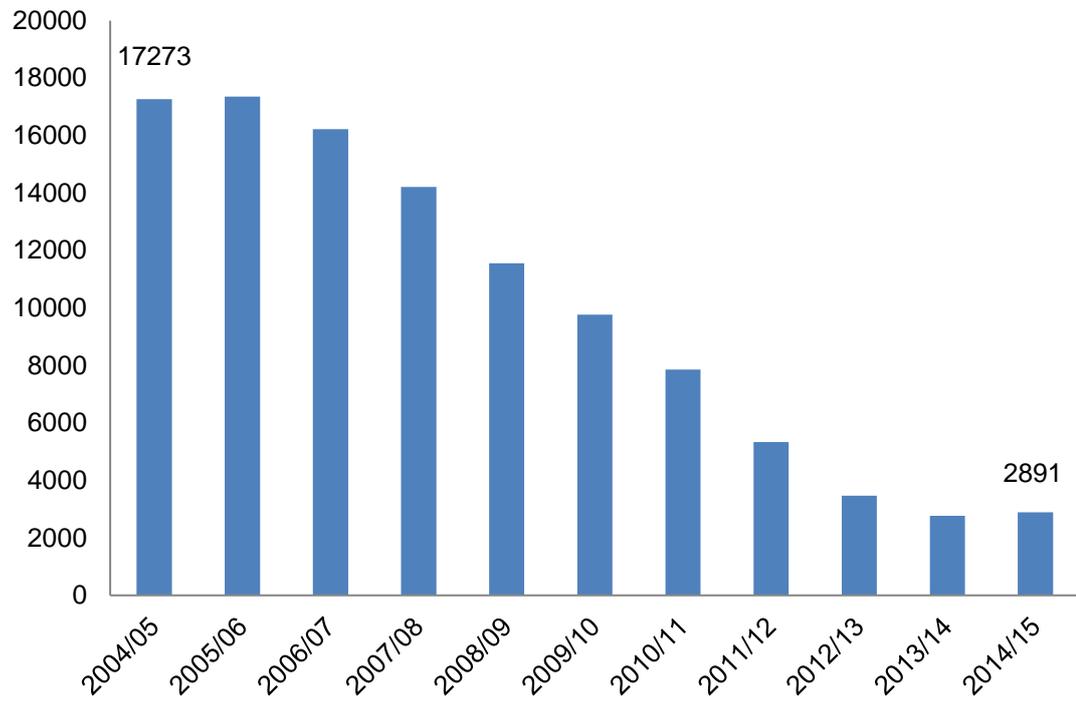


Figure 1. Number of children and young people referred to SCRA on offence grounds 2004/05 to 2014/15.

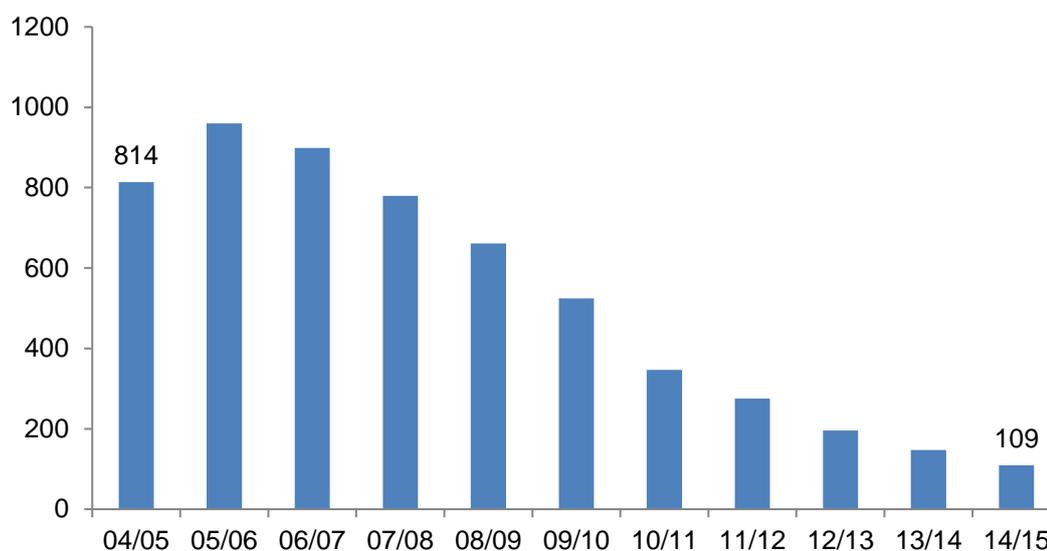


Figure 2. Children/young people with Compulsory Supervision Orders made at hearings where offence referrals considered and established 2004/05 to 2014/15.⁹

2.7.2. Diversion from Prosecution

Diversion from Prosecution is a key strand of the WSA. Diversion from Prosecution is the responsibility of the Procurator Fiscal (PF) who can divert a young offender to social work or other diversion programmes for example run by third sector organisations. Based on their study on the use of diversion to social work in three criminal justice authorities and a review of publicly available guidance, Bradford and MacQueen (2011) found that Diversion from Prosecution models vary across Scotland. Significantly, they found that there were wide discrepancies particularly in the take up of diversion schemes in the different local authorities. Bradford and MacQueen (2011) concluded that the disparity is not surprising given the lack of available guidance on Diversion from Prosecution to social work. As will be discussed in the proceeding chapter, this variation in diversion is also a result of autonomy within the COPFS and high levels of discretion (Bradford and MacQueen, 2011).

In 2011, the Scottish Government (2011b) published a *Diversion from Prosecution Toolkit* specifically for 16 and 17-year-olds. The stated aim of the toolkit is: ‘to offer guidance to service providers and decision makers on what they need to do to provide a more effective, tailored and appropriate intervention - in the form of diversion from prosecution - for

⁹ Data from freedom of information request received from SCRA in May 2016.

young people who offend aged 16 and 17 years old' (Scottish Government, 2011b, p. 2). This was the first time that diversion for young people was prioritised in policy. It also 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). The toolkit was also a significant step in policy as although it provides guidance only, and is therefore not mandatory, it was premised on providing greater consistency in diversion across Scotland through providing guidance on priority target groups and criteria for diversion with 16 and 17-year-olds (Scottish Government, 2011b). In the toolkit, it is also stated that: 'Young people should not be diverted to social work programmes unless their offending behaviour is sufficiently serious to require such intervention' (Scottish Government, 2011b, p. 5). This was also significant as it addressed the potential of net-widening or up-tariffing through diversion.

Despite the publication of this national guidance, in Murray et al.'s (2015) evaluation of the WSA in three local authorities, variation in patterns of diversion were identified and whilst good working relationships with fiscals were identified, a lack consistency was a significant issue. One key issue identified as resulting in this variation was the autonomy of PF's. A key recommendation of the research was that practitioners identified that diversion may work more effectively if it was the default position and the onus was on the PF to justify prosecution rather than vice versa (Murray et al., 2015). The toolkit recommends the use of a deferred model of prosecution meaning that prosecution is deferred depending on a young person's engagement with a diversion programme. This is in comparison to a waiver model where prosecution would be waived even where a young person does not complete a diversion programme. The toolkit also states that young people should not necessarily be exempt if they have been diverted to a scheme previously or if they are in already completing a diversion programme or subject to a court disposal. Another significant issue identified by Murray et al. (2015) was that diversion opportunities were dependent of the availability of services locally.

In 2015, the COPFS marking system was centralised from taking place within three federations to a centralised initial case processing hub at Stirling, Paisley and Hamilton.¹⁰ The key function of the initial case processing hub is 'is to make first time autonomous decisions on crimes reported to us [the Crown Office and Procurator Fiscal Service] at

¹⁰ In January 2016, I sent a request to the COPFS requesting access to any guidance documents or process maps on the national initial case processing hub but was told that there was no documentation that would be of assistance.

summary level’ (COPFS, 2015, p. 6). The stated aim of the initial case processing hub is to improve the consistency in the initial stages of case marking.

The use of Diversion from Prosecution for 16 and 17-year-olds has increased steadily since the publication of the toolkit in 2011. There were 535 diversion cases relating to 16 and 17-year-olds in 2014/15 across Scotland, an increase from 142 cases in 2010/11 when the WSA was introduced and specific guidance on diverting 16 and 17-year-olds was published (see figure 3) (Scottish Government, 2011b; Scottish Government, 2016c).

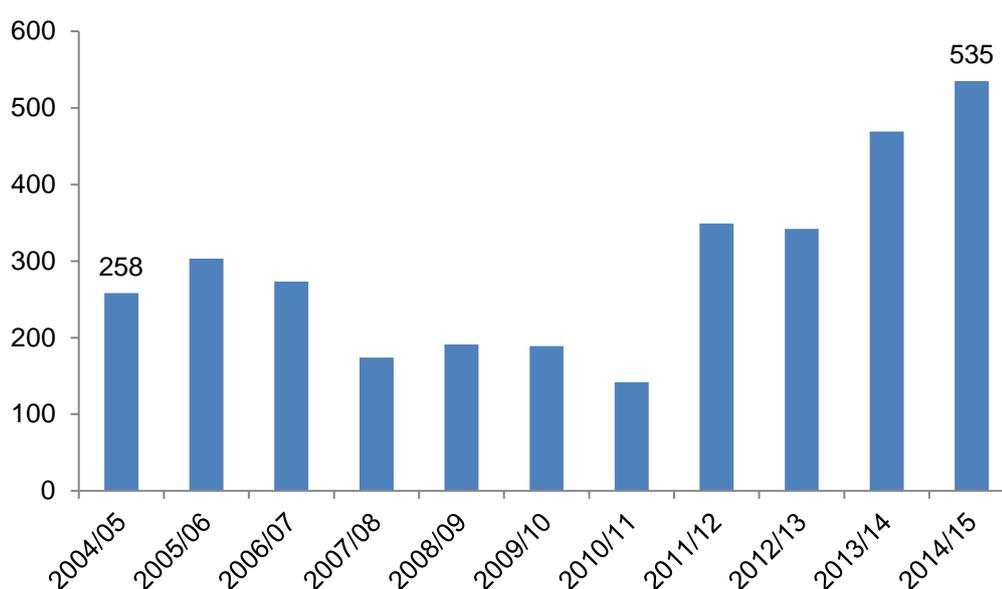


Figure 3. Diversion from Prosecution cases commenced (16 and 17-year-olds) 2004/05 to 2014/15.¹¹

2.8. 16 and 17-year-olds in the Youth Justice System

Sixteen and seventeen year-olds, whilst defined as children, have been treated as a specific group, separately from 8-15-year-olds, in youth justice policy and practice since the Kilbrandon reforms were introduced in 1971. A key aim of the WSA has been to retain 16 and 17-year-olds within the youth justice system through the use of EEI and Diversion from Prosecution. A specific focus of this PhD therefore is how the WSA affected this group specifically how decisions are made in relation to this group and what practitioners’

¹¹ Scottish Government Criminal Justice Social Work statistics.

and policy actors' perceptions towards this group are post-WSA. This section details the legislative, policy and practice approaches to this group.

In Scotland, 16 and 17-year-olds have largely been dealt with through adult criminal courts (Whyte, 2009). Whilst PFs can divert 16 and 17-year-olds from prosecution, they cannot refer them to a children's hearing where they consider compulsory measures may be required unless they are already subject to a supervision order. The CHS was originally intended to be used for young people aged 15 and under only as it was deemed that those aged 16-years and above had 'acquired a sufficient degree of maturity and understanding to enable them to assume responsibility for their actions' (Kilbrandon Report, 1964, p. 41). 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 EEI 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, a 16 and 17-year-old subject to supervision may be referred to the Reporter only.

Where a 16 or 17-year-old is jointly reported to the PF and the Children's Reporter, in terms of the Lord Advocate's Guidelines, there are two possible outcomes. 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 (i.e. a fiscal fine) or a Diversion from Prosecution (COPFS and SCRA, 2015).

Where a young person is prosecuted, the court may remit the case to a children's hearing for advice, which is advocated in guidance (Scottish Government, 2010). 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.

In practice, a small number of 16 and 17-year-olds are remitted by the courts back to the CHS. Whyte (2009, p. 202) writes that 'numerous structural difficulties' face local authorities creating barriers to retaining of 16 and 17-year-olds in the CHS. For example, he writes that where local authorities make efforts to retain 16 and 17-year-olds within the hearings system; the costs of secure accommodation and intensive support is the responsibility of the local authority. On the other hand, criminal justice social work

(probation) prosecution, and custody are funded centrally and therefore do not cost the local authority. Whyte (2009, p. 202) suggests that this encourages early discharge of the 'most difficult young people' from the hearings system.

The figures show that the percentage of 16 and 17-year-olds attending a summary court who were referred to the CHS from the Sheriff Court for advice or disposal are low (Dyer, 2016a). In 2013/14, for approximately 10% of the total number of young people appearing at court advice was sought and only 5% (on average) of these young people were ultimately remitted for disposal to the CHS (Dyer, 2016a).

A review of youth justice practice in 27 of Scotland's 32 local authorities found that less than a third of participants stated that remittal to the CHS was always mentioned in Criminal Justice Social Work Reports where the young person was under the age of 17 years and a half, despite Scottish Government guidance stating that in all Criminal Justice Social Work Reports the report writer must 'must always comment on the option of remittal back to the children's hearing' (Nolan, 2015; Scottish Government, 2010, p. 52). A key recommendation from Nolan's (2015) review of youth justice practice across local authorities was that the option of remittal should be mentioned on every criminal justice social work report for all cases pertaining to young people under the age of 17 years and 6 months and reasons for decision-making on such cases and sharing of best practice examples should be developed.

2.9. Drivers Behind the WSA

The first half of this chapter explored how the WSA emerged from a period of pendulum like swings between welfarist and punitive approaches and arose from practice developments locally after the rejection of punitive approaches by practitioners in the early to mid-2000s. The WSA also emerged at a time when there was increasing evidence about the negative impacts of system contact on young people. The development of the WSA has been informed by evidence from the *Edinburgh Study of Youth Transitions and Crime*: a longitudinal study of 4,300 young people who started at Edinburgh schools in 1998 aged 11/12 (McAra and McVie, 2005, 2007, 2010). This section will focus on the key points from the research that are of relevance to the WSA.

A key aim of the Edinburgh study was to explore factors leading to criminal offending and desistance from the teenage years onward. Another aim was to examine the impact of system contact with a number of agencies of formal control in Scotland including the police, social work, the CHS and courts (McAra and McVie, 2010). In particular, the study focuses on serious, persistent offenders and how distinctive factors relating to desistance are to this group.

Adopting mixed methods, the Edinburgh Study involved conducting yearly self-completion questionnaires with young people. Data was also gathered from a range of official records including from social work, school records, Children's Hearings, SCRA and conviction data from Scottish criminal records. Drawing on data from 10-years of fieldwork, McAra and McVie (2010, p. 180) posit four key facts about youth crime that any youth justice system 'ought to fit': (i) that persistent serious offending is associated with victimisation and social adversity; (ii) that early identification of children is not a water-tight process and may be induced unintentionally; (iii) critical moments in the early teenage years are key to pathways out of offending; and (iv) diversionary strategies facilitate the desistance process.

McAra and McVie (2007) explored the effects of three different stages of agency contact on future contact. Based on a sample of 105 children, who at age five were identified as having behavioural problems by social work and the CHS, they found that rather than early system contact 'nipping problems in the bud' – just under two fifths still had ongoing contact with the CHS at 13-years-old (McAra and McVie, 2010). Findings from their study showed that the police disproportionately target a group of 'usual suspects' – an outcome of the discretion of the police being the creation of a stigmatised population. They found that the discretion of police was high with two-fifths of children who reported that they had been charged by the police not subsequently referred to the Reporter despite protocols recommending that all children be referred to the Reporter (McAra and McVie, 2007). Using trajectory modelling to examine young people's pathways and key turning points, they also found that the age range of 13-15 was a significant point for an 'early onset chronic group' of young offenders as they experienced a significant deterioration in key aspects of their school and agency experience including increased rates of police contact unlike the 'early onset desister group' (McAra and McVie, 2010).

Based on the findings from their study, McAra and McVie (2012) posit a theory of offending pathways, based on the concept of negotiated order. With roots in labelling

theory developed by Becker (1963) and Lemert (1967) in the 1960s, McAra and McVie (2012) posit that young people are ascribed offender identities through experiences of regulatory practices, namely formal and informal orders. Young people's experiences of formal orders (for example those imposed by the police and schools) and informal orders (for example the rules governing peer interactions) lead to the ascription of a range of identities on young people and where young people do not adhere to a set of prescribed norms and experience a process of 'secondary labeling' they become to identify wholly to this ascribed offender identity. The effects of this include feelings of distrust towards the criminal justice system and disillusionment with authority (McAra and McVie, 2012).

Other studies have also evidenced the negative impacts of system contact on young people's transitions. Corr's (2014) qualitative study of young people's offending careers and experiences of criminal justice contact in Ireland with 37 young people aged between 14 and 23 in contact with criminal justice agencies highlights young people's perceptions on the repercussions of contact with the criminal justice system, ranging from contact with the Gardaí (police) and experiences of arrest to court appearances and periods of incarceration. Specifically, ongoing interaction with the police, particularly amongst males, was viewed as having negative repercussions on future offending in particular experiences of being 'labelled' by the police as offenders were felt to be unjust and to provoke reaction (Corr, 2014). Where there were 'deterrent effects' of criminal justice system contact; for example, through experiences of 'criminal justice system fatigue', Corr (2014, p. 261) argues that these were short-lived with most becoming 'resigned' to an offending lifestyle. The offender label had negative implications on the young people's transitions from crime in relation to finding employment and continuing education; for example, with many of the young people finding themselves 'increasingly marginalised' as a result of criminal justice system contact (Corr, 2014, p. 263).

2.10 Multiple Discourses in the Youth Justice System

This chapter has shown that post-devolution the Scottish youth justice system has rested on a myriad of what McAra and McVie (2010) call somewhat contradictory discourses namely welfarism, punitivism, restoration and actuarialism. The youth justice literature in England and Wales, Ireland and Scotland has sought to unravel these in particular the meanings behind these discourses and how they come to be in practice (Muncie and Hughes, 2002; Muncie, 2006; McAra, 2006; Fergusson, 2007; Briggs, 2013; McAlister and

Carr, 2014). Fergusson (2007) argues that two sets of considerations must be addressed. Firstly, ideas and values which inform policies in the form of discourses with identifiable political-philosophical origins must be considered. Secondly, he argues that there are three different modes of policy which he classifies as rhetorical (i.e. political speech), codificational (i.e. codified in policy documents) and implementational (where policy is played out in practice). Fergusson (2007, p. 184) posits ‘which discourse is at play depends upon which mode is being considered’. Considering these three different modes of policy is useful to understand of multiple discourses existing in and between different levels of the youth justice system. For example, Briggs’ (2013) research which examined practitioners’ conceptions of ‘risk’ and ‘need’ within the Youth Offending Service in England shows that in practice, whilst practitioners employed the technical language of risk inherent in the practice tool, their decision-making was primarily concerned with children’s welfare. Added to this, the ways in which young people experience policy and practice may vary considerably. Exploring young people’s accounts of their experiences in the youth justice system in Northern Ireland, McAlister and Carr’s (2014) found that the same intervention could be experienced differently by a young person.

The Scottish youth justice model is often described as welfarist having since the 1960s had its foundations in Kilbrandon’s philosophy of meeting the best interests of the child. However, post-devolution, McAra and McVie (2010) and Barry (2013) have been critical of the dichotomies between ‘welfarist’ and risk discourses in the Scottish youth justice context. The conceptualisation of the Scottish youth justice model as purely welfarist hides these deeper dichotomies, and this is partly the consequence of youth justice depictions often falling on a welfare/justice binary (McAllister and Carr, 2014). What this chapter reveals is that the concepts of welfarism and punitivism used frequently in youth justice should not be viewed simplistically as binary concepts and that a system can be rest on a mix of welfarist, punitive, restorative and actuarialist discourses. In the early to mid-2000s, the introduction of punitive youth courts (Piacentini and Walters, 2006), a move to criminalising children’s behaviour as anti-social as well as a focus on persistent young offenders driven by targets represented a move to a less welfarist system but one resting on a mixture of rationales. The CHS has often been presented as an example of putting the child’s needs first but this chapter reveals that, despite this, children and young people under the age of 16, and even more aged 16 and 17, continue to be prosecuted in adult courts. Dyer (2016b) has questioned why many children have been prosecuted in adult courts in Scotland on lower level summary proceedings rather than dealt with by the CHS.

The focus on responsabilisation and the deeds of young offenders evident in youth justice policy post-devolution shows how a simple understanding of welfarism as based on the child's needs is too straight forward. Lying behind the discourse of 'responsibilisation' in youth justice is a construction of children/young people who offend as autonomous and responsible beings. Muncie (2002) argued that the 'contemporary governance of young people' has become based on a complex set of government rationalities including neo-liberalism and neo-conservatism. These political ideologies have framed the young offender as rational beings. The depiction of the young offender as an autonomous and a rational, responsible being is contradictory to broader discourses on young carers or looked after children and young people, often portrayed as vulnerable and at risk, even though these young people are over-represented as young offenders. Children who offend are often also victims of offending themselves. Children involved in offending often also have long histories of being in care and as Barry (2013, p. 350) argues 'young people in care are doubly stigmatised' because of the greater likelihood of their involvement in the criminal justice system. It is important to recognise these multiple, and often contradictory, rationales which underpin the youth justice system in Scotland. This chapter has shown that an understanding of the Scottish youth justice system as purely welfare focused is not the full picture and it is important to understand the differing 'modes' of policy (Fergusson, 2007) in which youth justice is formed.

2.11. Conclusion

This chapter has woven together a narrative of the development of youth justice in Scotland from the Kilbrandon Report and the establishment of the CHS in the 1960s to radical post-devolution changes to youth justice under the Labour/Liberal Democrat coalition and then finally the emergence of the WSA under a SNP government. The policy timeline reveals that despite the fact that Scotland is often conflated with having a penal-welfarist approach to youth justice (Deuchar et al., 2015), there have been tensions in policy and practice - particularly in the early to mid-2000s.

It is clear that welfarist principles underpinning the WSA (such as early intervention and diversion from formal measures) are not entirely new; however, they took on a new resonance within youth justice policy-making following a very controversial period of punitive activity post-devolution. It emerged in the context of difficult relationships

between Scottish Government and local governments following the introduction of punitive anti-social behaviour orders and parenting orders under the Antisocial Behaviour etc. (Scotland) Act 2004. It also emerged after a period of concerted focus on persistent offenders which resulted in perverse and meaningless targets, the re-introduction to Scotland of youth courts, and attempts to tackle persistent offenders through special fast-track hearings, all of which were heavily criticised.

The WSA developed from the principles of GIRFEC based on inter-agency working to address the needs of the child. This coincided with the development of EEI pre-referral screening processes to dealing with low-level offending. It was a period of political stability, after a SNP minority government came into power that provided the necessary conditions for the WSA to flourish. The analysis of policy documents in this chapter reveals that the WSA formed part of a much wider move towards a more holistic focus on children and young people's wellbeing. However, there continues to be an emphasis on risk and responsabilisation.

Alongside these changes in policy, there have been structural, organisational changes with the Concordat Agreement increasing local authority autonomy meaning that local areas can set their own objectives and have flexibility in how they develop youth justice processes. The creation of a single police force has had implications in the field of youth justice practice too. As a specific aim of this research is to explore what factors have impacted on the sustainability and implementation of the WSA, it is necessary to explore the impacts of this period of flux on the implementation on the WSA at local authority level. These changes to local governance pre-dated the WSA but have had significant effects on youth justice leading to the development of more local-specific and flexible processes but with important implications regarding the consistency of youth justice practice nationally. The greater autonomy provided to local authorities through the discontinuation of ring-fenced funding as well as a reduced focus on government targets has changed the arena of policy making with local government now able to set their own strategies and targets and make their own decisions regarding how processes are organised. The impacts of this new localised policy making need to be explored and this research provides a case study on the implications of restructuring on youth justice.

Smith (2014a) argues that in order to develop a more systematic understanding of change in youth justice, we must seek to address what the ideological underpinnings for the prevailing climate of thought in youth justice are and how these beliefs are transported into

practice through service delivery. McAlister and Carr (2014, p. 241) write of prevailing discourses in youth justice across the UK jurisdictions, arguing: 'How these discourses are enacted in practice, how multiple and competing rationales circulate within them and most fundamentally how they are experienced by young people is less clear'. As this chapter has shown, the implementation of youth justice policy is dependent on practitioners on the ground; for example, despite the legislation of a range of new measures by the Antisocial Behaviour etc. (Scotland) Act 2004, these were rejected in practice. This chapter has also shown that the 'ideological underpinnings' of youth justice in Scotland have rested on a mix of punitive, actuarialism and welfarism discourses. The emergence of the WSA, alongside GIRFEC, signalled a return to a Kilbrandon welfare-based perspective but as it is a localised strategy, the operational understandings of the approach are unknown. The rationale behind this research is therefore three-fold. Firstly, the rationale is that the implementation and interpretation of these new developments in youth justice must be explored from the perspectives of practitioners and policy actors. Secondly, that the effects of organisational and structural change which have coincided with the development of the WSA must be considered in an exploration of its implementation. Thirdly, the evolution of the WSA is best seen within a history of 'competing and somewhat contradictory rationales' (McAra, 2007, p. 107) in Scottish youth justice post-devolution in order to understand it is being operationalised in practice.

Chapter 3: Conceptual Framework

3.1. Introduction

The purpose of this chapter is to locate this study within an existing body of literature on street-level bureaucracy and criminal justice decision-making highlighting themes which will be drawn on in empirical chapters five to nine. This thesis explores the implementation of the WSA in one local authority. Firstly, this thesis explores practitioners' and policy actors' operational understandings of the WSA in practice. Secondly, it explores how the multi-agency Early and Effective (EEI) and Diversion from Prosecution decision-making processes have been implemented in front-line practice and thirdly, the factors which have impacted on the sustainability and implementation of the WSA both locally and nationally. As EEI and Diversion from Prosecution are new multi-agency decision-making processes, actors' perceptions on how they make decisions and what factors influence these decisions are also explored. Lastly, this thesis specifically explores how these processes have impacted on the use of restorative justice.

Maxwell (2013) uses an analogy of theory as a coat closet in which concepts of existing theory represent the coat hooks on which to hang data. He writes that no theory will accommodate all data equally well. This chapter will describe the two key conceptual frameworks drawn upon in this study and their applicability to the empirical findings and identify the rationale for using multiple perspectives. The first of these is Michael Lipsky's (2010) work on street-level bureaucracy which provides an understanding of the implementation of policy and how practitioners exercise discretion. The second is Stewart Asquith's (1983) conceptual framework on criminal justice decision-making in which he proposed a number of concepts through which to consider the decision-making of actors within different institutional frameworks. There are a number of conceptual themes drawn upon in this chapter around multi-agency decision-making including discretion, professionalism and 'relative professional status' (Halliday et al., 2009). This chapter presents Lipsky's and Asquith's respective frameworks as well as drawing on literature on criminal justice decision-making to provide examples. It also provides a critical voice through addressing limitations in the applicability of these perspectives as frameworks to examine the empirical material in chapters five to nine.

3.2. Lipsky's Street-Level Bureaucracy

This section will describe and explore the relevance of Lipsky's (2010) work on street-level bureaucracy as a framework through which to examine the implementation of the WSA. There are four main conceptual parts to Lipsky's work utilised in this thesis. Firstly, the central argument made by Lipsky is that the street-level bureaucrats make policy on the ground through the exercise of discretion leading to the establishment of 'routines'. Second, he argues that the individual-level actions of street-level bureaucrats amount to the creation of 'agency behaviour' (Lipsky, 2010, p. 13). Lipsky also argues that, as a result of the unpredictable and complex interactions of policy delivery such as inadequate resources, street-level bureaucrats develop 'coping mechanisms' to deal with their work. Lastly, Lipsky argues that policy is 'coproduced' by individuals from differing agencies.

Policy implementation literature first emerged in the 1970s when it was recognised that policy implemented at street-level may not completely reflect what was intended by policy makers (Pressman and Wildavsky, 1973). As a result, studies emerged with a bottom-up focus and demonstrated the role of street-level bureaucrats in formulating their own versions of policy on the ground (Lipsky, 1980; Barrett and Fudge, 1981). Traditionally, the policy process was largely perceived to represent a cyclical and staged process (Hogwood and Gunn, 1984). In the last thirty years, policy-based literature has highlighted the move from a top-down process of governing toward a multi-level governance structure in which central and local government are two of a number of actors (Rhodes, 1997; Marsh et al., 2003). With this, there has been recognition of the complexity of policy making systems involving a number of people and organisations (Cairney, 2015).

Lipsky (1980) emerged as bottom-up proponent of policy making arguing that whilst legislation is made at the top, it is shaped by street-level bureaucrats who deliver it. Lipsky's seminal work *Street-Level Bureaucracy*, first published in 1980, and based on the U.S.A in the 1970s, is extremely influential in the field of policy analysis. He was influenced by the work of implementation studies, at the time, focusing on how policy was not always straightforwardly implemented in practice. Lipsky's (2010) key argument was that street-level bureaucrats who deliver policy at the front-line, for example, social workers and the police, have a role in making policy through exercising discretion and through autonomous routine decision-making. He argues that street-level bureaucrats make

policy in two ways or at two levels: firstly, through the exercising of individual discretion in the delivery of policy to the public; and secondly, through individual discretion resulting in ‘agency behaviour’ which he defines as the collective effect of the exercise of discretion in an organisation (Lipsky, 2010, p. 13). An agency or local council, for example, may have specific ways of doing things and be resistant towards any policy that attempts to change its routines and practice.

Lipsky (2010) writes that street-level bureaucrats develop routines as coping behaviours. Firstly, they develop routines of practice in order to cope with time and resources pressures. Secondly, street-level bureaucrats adapt the roles of their job in order to meet a gap between objectives and resources available. Thirdly, they adapt the needs of their clients in order to meet their objectives. The routines of practice developed by street-level bureaucrats should be viewed in relation to their interaction with clients and their respective institutional frameworks. Asquith (1983) explores the idea of professional ‘frames of relevance’, individual-level and organisationally driven perceptions of what is the seen-to-be-relevant information in decision-making by street-level bureaucrats, provided by the knowledge, diagnostic tools, accepted measures and objectives from which the individual derives his professional identity. Lipsky (2010) posits that street-level bureaucrats develop routines in response to occupational and personal biases. Therefore, both the influence of the institution within which the street-level bureaucrat is based as well as their own individual frames of relevance should be explored. In this research, discovering the views of practitioners’ responsible for implementing the WSA was crucial as ‘the meaning and experience is dependent on how interventions are institutionalised and enacted’ (McAlister and Carr, 2014, p. 242).

In Lipsky’s (2010) second edition of *Street-Level Bureaucracy*, a reworking of his perspective in the context of policy development and a changed political environment in the U.S. context since the 1980s was provided. In the intervening years, Lipsky (2010) identified an erosion of support for central government policy making and a shift from state to decentralised service provision. Lipsky (2010) also acknowledges several limitations with the earlier 1980 edition. He writes that the chief conclusion drawn by many readers of the first edition that discretion exercised by street-level workers leads to ‘agency policy’ is too limited. He writes that it should be recognised that this exercise of individual agency sits within a context of a broader policy structure. Street-level bureaucrats make judgements and decisions and respond to situations in practice not just

related to their own coping mechanisms and through exercising discretion but their choices are structured within the rules and laws and policy within which they work.

Lipsky (2010, p. 216) writes ‘a new kind of street-level workforce has emerged’. He argues that whilst this new kind of street-level bureaucrat does not directly work for government; they fit with the street-level bureaucracy profile, as contracting agencies have to be accountable through controls, performance measures and review processes. Also, he argues that in many street-level bureaucracies, the perspectives of workers reflect professional rather than administrative norms meaning that it is the profession rather than the agency in which the individual is based that is key. This new kind of street-level workforce is based on partnership working and contracting out with public policies being ‘coproduced by individuals’ (Lipsky, 2010, p. 214).

The concept of ‘coproduction’ is useful in recognising a move to inter-agency decision-making and partnership working in Scottish youth justice policy and practice. Rather than conceptualising street-level bureaucrats exercising discretion within their own professional fields, there is recognition that policy is coproduced in its formation at street-level. Chapter two discussed the effects of the Concordat Agreement between central and local governments in Scotland in 2007 giving the latter greater autonomy in policy making and delivery. For youth justice, this meant that local authorities were no longer constrained by ring-fenced funding and government targets and were able to develop their own practice. Chapter four unravels a narrative of the development of the WSA in the case study authority revealing that the EEI and Diversion from Prosecution processes were formed by inter-agency collaborative development.

3.2.1. Exercising Discretion

A key theme to emerge from Lipsky’s analysis and to be explored in this thesis is that of discretion. The ability of professionals to exercise discretion is important to explore in the context of criminal justice decision-making particularly in light of research which has evidenced variations and inconsistencies in practice; for example, in the use of stop and search by the police in Scotland (Murray, 2014). The ability to exercise discretion has its merits in enabling flexibility to case decision-making but inconsistency may arise when decision-making is based on the judgement and personal characteristics of key actors in the

criminal justice system. Whilst noting that discretion is difficult to define, Gelsthorpe and Padfield write:

At its simplest then, discretion refers to the freedom, power, authority, decision or leeway of an official, organisation or individual to decide, discern or determine to make a judgement, choice or decision, about alternative courses of action or inaction (Gelsthorpe and Padfield, 2003, p. 3).

Discretion therefore arises when individuals have alternative courses of action available to them and have the ‘power, freedom, authority or leeway’ to exercise discretion in making a judgement or decision. The organisational context is paramount here as individuals’ ability to exercise discretion is contained within their organisations’ rules and regulations (Lipsky, 2010). Also, in the context of decision-making in the criminal justice system, key actors, often referred to as gatekeepers, have considerable discretion and power in making decisions. For example, in Scotland, the police are key gatekeepers to the youth justice system and have an array of disposals open to them including: no action; a verbal or written warning; issuing an antisocial behaviour fixed penalty notice; a direct referral to an agency; referral to the Children’s Reporter; and, referral to the Procurator Fiscal. Whilst guidance exists as to offences which should be referred to the Procurator Fiscal, there is a high level of discretion as to the use of lower level disposals by the police. As noted in chapter two, variation and inconsistencies in the use of EEI disposals across Scotland have become apparent as EEI evolved across local authorities, with significant variations around eligibility and time-frames for example. The *Early and Effective Intervention Framework of Core Elements* (Scottish Government, 2015a) was launched in March 2015 to instil national consistency.

Arguments around the use of discretion in criminal justice decision-making often centre on flexibility, consistency and fairness (Gelsthorpe and Padfield, 2003; Ashworth, 2010; Ashworth and Redmayne, 2010). Ashworth (2010) has examined the role of decision-makers and the exercise of discretion in sentencing specifically exploring informal influences of sentencing practice. Whilst the disadvantages of discretion in criminal justice decision-making have been raised in relation to unfairness and disparity, Ashworth (2010) argues that without discretion ‘unfairness results from treating alike cases which are unlike’ in sentencing. However, an implication of discretion in criminal justice processes

is the existence of variations in practice nationally between local areas leading to ‘justice by geography’ (Ashworth and Redmayne, 2010, p. 175).

3.2.2. *Gatekeepers and Discretion*

Exploring the exercise of discretion by key gatekeepers in the criminal justice system, such as the police and Procurators Fiscal, is important due to their hegemony in decision-making which impacts on young people’s entries or not into the criminal justice system. As well as this, criminal justice decision-making represents a serial process in which decisions of key gatekeepers are determined by others. As Ashworth and Redymane (2010, p. 8) write: ‘The individual police officer or Crown Prosecutor is likely to be affected, for example not only by the working practices and expectations of colleagues, but also by decisions taken by others beforehand and decisions likely to be taken at subsequent stages’. Ashworth and Redymane (2010) have explored the making of what they call ‘dispositive decisions’ by gatekeepers, defined as decisions which determine whether or not a case enters the criminal justice system, specifically exploring why some cases are diverted and others are not. This has significant implications for youth justice as evidence shows that it is the effects of these initial encounters that lead to further involvement in the system (McAra and McVie, 2007, 2010). For example, McAra and McVie (2007), in their *Edinburgh Study of Youth Crime and Transitions*, found that the strongest predictor of being charged by the police in any given year was receiving police charges in the previous year.

As described in chapter two, a key aim of the WSA is to divert young people from prosecution. In Scotland, a decision to divert is a formal decision made by the Procurator Fiscal. Literature on prosecutorial decision-making in Scotland is limited with most of what is available pre-dating the online publication of Crown Policy in Scotland, which Crown officials are now bound by and which has led to the curtailment of discretion. Moody and Tombs’ (1982) study of prosecutorial decision-making in Scotland, whilst over thirty-years-old, still highlights some relevant key themes in the present day context. Their study, involving interviews with Procurators Fiscal, revealed that decision-making is very much based on individual judgement, although they write that prosecutors develop ‘common perceptions of appropriate goals and methods or achieving such goals’ (Moody and Tombs, 1982, p. 4). Moody and Tombs (1982) found that that there were a range of

differing influences on decision-making from punishment and a need to see justice for the victim to perceptions that prosecuting is about helping people by bringing them to the attention of relevant authorities at court. Regarding decisions not to prosecute, certain categories of offences and particular types of accused persons led to this decision. Whilst the fiscal's primary focus is on the criminal act, it was commented that some adopted 'a less restrictive approach' taking the personal characteristics of the accused into account (Moody and Tombs, 1982). However, Moody and Tombs (1982) concluded that when a fiscal makes a decision relating to the prosecution of crime, the wide discretion which (s)he has in law is limited and shaped by legal frameworks, and organisational factors.

At the time of their study, the options available to Procurators Fiscal did not include the ability to issue an alternative to prosecution or to divert from prosecution. In the 1990s and 2000s, the options available to Procurators Fiscal in Scotland expanded with alternatives to prosecution such as fiscal fines, warning letters and diversion to social work and other agencies (Fionda, 1995; Barry and McIvor, 1999). Fionda (1995) explored how the introduction of these alternatives increased the role of fiscals in the sentencing process as they were able to divert cases or offer alternatives. Based on interviews with Procurators Fiscal in Edinburgh and Glasgow, Fionda (1995) found that there was reluctance amongst prosecutors to utilise these new powers with all those interviewed relating this to 'tradition' of the Procurator Fiscal role. Procurators Fiscal were reluctant to take on the discretionary power of offering fines as they felt that sentencing should be a judicial function. Fionda (1995) also writes that the use of Diversion from Prosecution, little used in the 1990s, was influenced by local circumstances, attitudes and prejudices.

Despite the publications of prosecution policy and guidance, MacQueen and Bradford (2011), in their study on the use of Diversion from Prosecution to social work in Scotland, found a lack of publicly available information and guidance on its use. Based on interviews with Procurators Fiscal in three areas of Scotland, they found that although structured policy and processes exist, the relationship between fiscals and social work as well as the judgement of fiscals in particular were more important. Primarily, what seemed to affect fiscals' decision-making was the availability of suitable diversion schemes in the local area (MacQueen and Bradford, 2011). They found that fiscals' discretion was a key issue in the decision to divert and largely based on the offender's personal characteristics and the nature of the offence.

The significance of high levels of autonomy in the prosecution service was also highlighted in Murray et al.'s (2015) evaluation of the WSA in three local authorities. They found that diversion of 16 and 17-year-olds varied across authorities, both in terms of extent of use and trends over time. In one authority, issues of consistency in the marking of cases were raised as a result of a 'churn of staff' and a large marking team (Murray et al., 2015, p, 39). As stated in chapter two, with the increase in the disposals available to Procurators Fiscal in Scotland to provide alternatives and diversions from prosecution, their levels of discretion have been heightened. Whereas previously, Procurators Fiscal would be making a decision between whether to prosecute, take no action at all or in some cases provide an alternative to prosecution through a fiscal fine for example, they are now making decisions on whether to divert too.

For youth justice, this literature highlights key issues around consistency and power in decision-making particularly by key gatekeepers to the youth and adult justice systems. In particular, whilst Diversion from Prosecution is a key aim of the WSA, evidence shows that it has been used sparingly and inconsistently for 16 and 17-year-olds (Murray et al., 2015). Literature has also highlighted an issue that increases in diversion disposals may lead to a process of net-widening which Ashworth and Redmayne (2010, p. 174) describe 'as the process of using a new measure, not (or not only) to encompass the target group of offenders who would otherwise have been prosecuted, but also to drag into the net people who might otherwise have benefited from a lesser response'.

In England and Wales, the use of reprimands, final warnings and fixed penalty notices soared during the mid-2000s with many arguing that this led to a net-widening of children and young people entering the criminal justice system through cases where there would have previously been no action taken to court (Morgan, 2009; Newburn, 2011). The prescriptive use of reprimands and final warnings meant that should young people reoffend they would be brought before a court. Brown (2009) argues that young people's criminality was broadened by 'pre-criminalising increasingly 'low level' behaviours as 'anti-social'. Smith (2014a, p. 39) also argues that the Crime and Disorder Act 1998 represented 'an intensification of the processes of criminalisation'. A significant danger with these seemingly lower-level out-of-court disposals, such as cautions, is also that young people may be more likely to admit offences than in court.

In relation to discretion in youth justice system decision-making, research examining the English and Welsh context is interesting to consider as it has moved from prescriptive decision-making based on performance measuring to a greater emphasis on practitioner discretion and local autonomy in recent years. In England and Wales, the Crime and Disorder Act 1998 seriously constrained the ability of practitioners to exercise discretion in decision-making as it linked specific interventions to the circumstances and offending patterns of young people (Smith, 2014a). Pitts (2001) argues that the managerialism of the Crime and Disorder Act 1998 ‘deprofessionalised’ practitioners. In Keightley-Smith’s (2010) doctoral research on the implementation of final warnings in England and Wales, some police representatives viewed their use to have inhibited police’s discretionary capability negatively by preventing the diverting of young offenders and the excusing of minor crimes. On the other hand, there were those who viewed the curtailment of discretion as beneficial and as necessary ‘to do justice to young people’ as it enabled greater consistency in practice in comparison to the prior cautioning system (Keightley-Smith, 2010, p. 156). Under the Conservative/Liberal Democrat coalition, this prescriptive framework of final warning schemes was discontinued and the capacity for greater police discretion promoted through the removal of centrally imposed targets and a push for a ‘payment by results’ system by the coalition government in the *Breaking the Cycle* Green Paper (Ministry of Justice, 2010 cited in Robinson, 2014). In policy and practice, the creation of the AssetPlus assessment and intervention framework largely based on professional judgement is symbolic of this (Haines and Case, 2015). This literature raises some key debates about the benefits and challenges of both a prescriptive versus a more flexible, amenable to professional discretion approach to youth justice decision-making chiefly centred around issues of consistency and adaptability.

3.2.3. *Critique of Lipsky*

Lipsky’s (2010) framework has limitations in its applicability as a conceptual framework for this thesis, which will be discussed here drawing on criticisms made by academics in this field. A key limitation of the relevance of Lipsky’s work for this thesis is that he defined street-level bureaucrats as public service workers who interact directly with citizens in their jobs. Therefore, much of the focus of his work was on the impacts of street-level bureaucrats’ interaction with clients which was not the focus of this thesis –

indeed, some of the professionals interviewed did not work face-to-face with young people.

Maynard-Moody and Musheno (2000, 2003) are critical of the relevancy of Lipsky's street-level bureaucrat based on their own U.S. story-based research with street-level workers in which they found that front-line workers held little relevancy to Lipsky's key concepts of discretion, implementation, and legitimacy, and did not describe themselves as policy makers or decision makers. They instead advocate an understanding of the 'citizen agent' emphasising that front-line work is defined by relationships with citizens and other front-line workers. Their concept of 'citizen agents' has some relevancy to considering the WSA as it emphasises the informal nature of front-line work 'which is conducted with only loose guidance and constraint' (Maynard-Moody and Musheno, 2000, p. 982). However, their research adopted an in-depth narrative methodology of the day-to-day interactions of front-line workers to explore how their moral beliefs and identities influenced decision-making (Maynard-Moody and Musheno, 2003). A conceptualisation of the individual as one who interprets policy and exercises choices in tandem with others, in a multi-agency context, and in a fluctuating and complex landscape, is required for this thesis. Whilst Lipsky (2010) advocates an examination of the differences and commonalities between public organisations such as the police and social work, there is little mention of how this impacts on the day-to-day work of the street-level bureaucrat.

Halliday et al. (2009) write that the literature on street-level bureaucracy has little explored situations where professionals must work alongside others in the street-level bureaucratic process instead focusing on specific professional contexts. Inter-agency working has been shown to impact on street-level bureaucrats' sense of 'organisational identity' (Souhami, 2007). Halliday et al. (2009) adopted Bourdieu's (1990) concepts of the 'field' and 'capital' and built on Lipsky's (2010) work on street-level bureaucracy in their ethnographic study of social workers writing pre-sentence 'social enquiry reports' written for judges passing sentences, which specifically explored the inter-professional relations between these two agencies. Based on their own work on inter-agency decision-making, they argue that inter-professional relations influence the character of street-level behaviour. In inter-agency working, they write that there is an additional "coping mechanism" unexplored by Lipsky stemming from 'relative professional status'.

Their research revealed a tension between the 'welfarist ambitions' of social workers and the judicial decision-making in courts. They argue that social workers suffer from a 'basic

professional status anxiety' when working in the legal domain, often cautious of appearing too lenient in the writing of social enquiry reports (2009, p. 416). Halliday et al. (2008) found that the judge's role is given primacy and social workers' reports are only meant to assist in a sentencing decision rather than direct it. They found that social workers were not fully able to develop and utilise their expertise; their diaries revealing concerns that they would be seen as naïve by judges in the writing up of narratives for court reports. Relative professional status is a useful concept because it highlights that power relationships are not equal in multi-agency decision-making.

With a move to local and multi-level governance and an emphasis on joined-up working and partnership working, practitioners on the ground are now working in much more complex decision-fields (Hawkins, 2002). As well as this, Lipsky's agency perspective has been criticised for lacking a macro-level critique of structural influences on street-level bureaucrats although he does refer to pressures. Whilst Lipsky (2010) acknowledges that agencies may have conflicting goals; there is a lack of appreciation of the conflicting goals that occur between interdependent organisations and how this influences decision-making. Lipsky (2010) emphasises the similarity of all front-line workers and in so doing ignores the differences particularly in status between professionals. In spite of these criticisms, Lipsky's perspective retains applicability to considering the implementation of the WSA through his fundamental emphasis on the ways in which street-level bureaucrats make policy on the ground through the exercise of individual-level discretion and as a result of 'agency behaviour'. However, these limitations suggest a need for a more holistic perspective. It is for this reason that an understanding of differing professional identities is also required and the rationale for framing the empirical findings of this thesis in the context of Asquith's work alongside Lipsky's. A more nuanced perspective on individual and multi-agency decision-making is required in the case of the WSA.

3.3. Asquith's Conceptual Framework on Decision-Making

A range of studies, adopting a variety of methodologies, have been used to study decision-making in the criminal justice system (see, for example, Maynard-Moody and Musheno, 2003; Hawkins, 1992; 2002; Padfield and Gelsthorpe, 2003; Halliday et al., 2008). In England and Wales, literature has explored multi-agency decision-making in the youth justice system following the formation of multi-agency Youth Offending Teams in the

early 2000s (Souhami, 2007, 2010, Keightley-Smith and Francis, 2007, Phoenix, 2010). However, there has been a lack of literature specifically focusing on youth justice decision-making in the Scottish context; particularly, there has been little research since the introduction of EEI in 2008 (Papadodimitraki, 2016). Moreover, as explored in chapter two, youth justice has rested on a set of mixed, contradictory discourses post-devolution in Scotland. Whyte (2013) has written on how practitioners face a struggle under the opposing welfare and justice models which UK youth justice systems sit upon. After a period of sweeping change in youth justice policy in Scotland from the early to late 2000s, the WSA emerged in local practice with the building of multi-agency pre-referral screening models. These represented new modes of decision-making involving professionals from different agencies. It is therefore important to explore practitioners' operational understandings of the WSA as well as how decisions are made in practice.

An early study to explore decision-making in the youth justice system, specifically exploring how the ideologies of professionals affect the framing of decisions at street-level, was Stewart Asquith's (1983) *Children and Justice: Decision Making in Children's Hearings and Juvenile Courts*. In comparison to previous studies on criminal justice decision-making, Asquith's study did not take a rationalist perspective to analysing decision-making but adopted what Hawkins' (1986) described as a naturalistic approach. Hawkins' (1986) naturalist perspective, based on his research on legal decision-making, stemmed from his criticism of rationalist conceptions of decision-making such as that adopted by Gottfredson and Gottfredson (1988), who advocated a policy control (guidelines) perspective to analyse decision-making, utilising the concepts of goals, alternatives and information in order to establish guidelines to achieving rational decision making.

Hawkins (1986) criticised the rationalist work for coming from a positivist standpoint, holding a limited conceptualisation of decision making in relation to attaining specific laid out objectives and decision goals and for having a 'narrow and inaccurate conception of what constitutes "information" for any decision' (Hawkins, 1986, p, 1180). Unlike rationalist decision-making theory, which examines decision-making in relation to organisational and individual goals, naturalism seeks to understand how decisions are made and how an individual understands and derives meaning. There was a move to a wider understanding of decision-making through exploring the impact of professional ideologies and the discretionary behaviour of legal actors.

Asquith's (1983) conceptual framework to criminal justice decision-making is adopted in this thesis as a lens through which to understand how decisions are made by individuals operating within different institutional frameworks. Asquith was interested in the influence of professional ideologies on decision-making in the context of what he terms 'individualised justice' brought about by the welfare-based Children's Hearings System. He writes that the key impact of individualised justice was the existence of discretion exercised by professionals justified in terms of their professional knowledge and experience. The empirical focus of Asquith's (1983) work examined how decisions about children who commit offences are made by individuals operating within the formally different institutional frameworks – the Scottish Children's Hearings System and the English Juvenile Courts. One of the aims was to identify whether children's hearings' panel members and Juvenile Court magistrates subscribed to particular accounts of delinquent behaviour through examining to what extent they deployed welfare factors, defined as relating to children's needs and interests, in the decision-making process. He specifically explored whether magistrates would place greater importance than panel members on the question of personal responsibility, the seriousness of the offence and the need to protect society. His objective was to articulate the relationship between the ideologies of delinquency control maintained by key personnel and the structural arrangements which provide the context of decision-making. Asquith posits that there are three basic elements to a decision about children who commit offences: (i) information; (ii) objectives and goals; and (iii) knowledge and assumptions about delinquency.

The main assumption underlying his work is that how people conceive of delinquency in part determines what they do about it. Another important factor in Asquith's (1983) understanding of decision making is 'how the informal working ideologies of those responsible for implementing a treatment of welfare-orientated philosophy...will affect the way in which, or the extent to why, the policies stated in the relevant official pronouncements have actually been put into effect' (Asquith, 1983, p. 39). His empirical study specifically sought to analyse the translation of social policy into practice. As Muncie and Hughes (2002, p. 14) write: 'Whatever the rhetoric of government intention, the history of youth justice is also a history of active and passive resistance from the magistracy, from the police and from youth justice workers through which such reform is to be effected'. Drawing parallels to Lipsky's (2010) work, Asquith holds the viewpoint that it is by practitioners that policies actually are put into effect noting that individualised

justice entails discretion but centres his argument on the ideologies of professionals being important determinants.

Asquith's work is rooted in the sociology of deviance developed by theorists including Becker (1963) and Taylor et al. (1973) through which the invocation of the criminal law as a process of social control became a central focus of sociological studies of crime. Asquith (1983) was concerned with the ways professionals' philosophies of delinquency control influenced decision-making. Literature on decision-making in the criminal justice system has demonstrated the significance of power and prestige in decision-making and the impacts of system contact and labelling of young offenders on further offending. For example, McAra and McVie's (2007, 2010) *Edinburgh Study on Youth Crime and Transitions* revealed how the working cultures of the police and the Children's Reporter in Scotland lead to a repeat cycle of what they term the 'usual suspects' going through the youth justice system.

3.3.1 Professional Ideologies and Frames of Relevance in Decision-Making

There are several central concepts to Asquith's framework on decision-making. Of particular significance to this thesis is Asquith's conceptualisation of formal and informal ideologies. Asquith wrote that the philosophy ('formal ideology') underlying the Social Work (Scotland) Act 1968, based on a reconceptualisation of delinquency as symptomatic of need, may well have been mediated in practice by the operational philosophies ('informal ideologies') of those responsible for implementation of the legislation. He developed the concept of informal operational ideologies based on evidence on the administration of juvenile justice which had shown that the notion of police and prosecutors operating within strict parameters of legally prescribed procedures was a misrepresentation of policing and prosecution (cites Box, 1971).

Asquith (1983) believed that the 'ideology of practitioners' must be examined in relation to the construction of institutions in which they either work within or with, for example in the case of his own research the structures of the Juvenile Court and Children's Hearing System. In particular, Asquith (1983) noted that there was a failure to actually practically define what was meant by social need in the Social Work (Scotland) Act 1968 which meant that the notion of need obtained its meaning from the process of ascription by various personnel operating within the social control network.

The empirical material of chapter five explores practitioners' and policy actors' operational understandings of the WSA in order to piece together a sense of the ethos and principles being built into practice. Asquith's (1983) framework provides a useful perspective through which to examine how the WSA policy has been translated into practice within a politicised context. Significantly it explores how the WSA premise of providing a holistic approach was given meaning by practitioners and, after a period of punitivism and responsabilisation in the early to mid-2000s, to what extent the WSA signalled a return to welfare-orientated approaches.

Asquith (1983) argues that examining ideologies of practitioners must be linked theoretically to the construction of institutions. These ideologies are driven from professional knowledge and experience and embedded in institutional contexts which shape values and norms. Arguably these professional ideologies remain fairly unchanged when the individuals' professional world is unchanged but specific events and experiences or a change in role within a profession and institution may lead to the altering of these ideologies. Professional ideologies are held at an individual level, rather than completely at a group level, as they may differ between individuals. As Asquith (1983) writes, the criteria on which decisions are made are drawn from a stock of professional knowledge, which creates individual frames of relevance. Procurators Fiscal draw on strict Prosecution Code and Lord Advocate's guidelines in decision-making, giving primacy to public protection (see chapter two for a more detailed description of COPFS frameworks). The implication being that the child's needs are not central when considering whether a case should be prosecuted or not in this institutional field. Whereas the personal and practice-based professional knowledge of social workers stems from a 'continuing interactive process amongst practitioners' rather than an 'established base' meaning that in social work 'frames of relevance' are provided by a wider set of 'knowledge, diagnostic tools, accepted measures and objectives' (Payne, 2001, p. 133; Asquith, 1983, p. 46).

Asquith's (1983) conceptualisation of 'common' and 'competing frames of relevance' in decision-making is also useful to draw upon in this thesis as a tool through which to explore consensus and conflict in multi-agency decision-making. Asquith (1983, p. 46) argues individuals in decision-making hold extant 'frames of relevance', which are structured by previous experiences and gained knowledge and also structuring in the formation of routines and a 'set of generalisations or typifications'. Common frames of relevance occur when there are shared understandings of a problem between individuals. However, focusing on the decision-making within Scottish children's hearings' panels and

English Juvenile Courts, he writes that the involvement of different professions leads to 'competing frames' of relevance. 'Competing frames of relevance' may also occur within professions with Hawkins (2002) referring to decision-making within agencies as very much a 'layered phenomenon'. For example, Ashworth (2010, p. 43), interested in the informal influences on sentencing practices, noted the influence of 'the complex of attitudes and beliefs held by different sentencers'. Asquith (1983) concept of 'competing frames of relevance' between individuals in decision-making has negative connotations regarding power dynamics and successful communication.

For Asquith (1983), professionalism represents more than 'socialisation' into particular forms of knowledge and the acquisition of skills through training and experience, but also holds connotations of prestige and status highlighting the power dynamics that can exist between different fields. Asquith's concern is to identify the significance of frames of relevance for decision-making process. This draws parallels to Lipsky's (2010) conceptualisation of the street-level bureaucrat exerting individual-level discretion stemming from their own experiences and dispositions which can lead to the formation of 'agency behaviour' defined as the collective effect of the exercise of discretion within an organisation.

Literature has focused on the effects of working within a profession on working philosophies and practices (Moody and Tombs, 1982; Asquith, 1983; Halliday et al., 2008). The significance of professionalism in youth justice needs to be considered to fully understand practitioners' interpretations of policy. Much of this literature centres on relative authority and status between different professions. Professions can be defined through the holding of certain characteristics; for example, Fudge and Barrett (1981) state that these include a relationship with the client regulated by codes of professional ethics and the provision of education and training relating to a specific profession and certificated by a professional institute. However, the concept of professionalism should be treated with caution as it suggests homogeneity within a professional group. Whilst professional training and qualifications influence individual ideologies; there are also other influences. For example, Payne (2001) argues that the idea of a knowledge base as a crucial aspect of a professional activity is flawed and that areas of professional knowledge are interdependent and interlocking between professions.

As well as this, professional judgement must be seen in the context of a decision-making field in which there are often resource constraints and pressures. For example, the social

worker as a professional is often depicted to come from a welfarist frame in decision making. However, Halliday *et al.*'s (2008, p. 202) study of the writing of social work enquiry reports found that social workers are constrained in their writing of reports by limited time and have to 'rely on short-hand methods of making a professional judgement'. They write that social workers' role in decision-making is bounded in 'emotional aspects of administrative behaviour', where social workers engage with offenders as professionals but also as moral and emotional human beings (Halliday *et al.*, 2008, p. 204).

The difference in the agendas and ideologies between the professional organisations of the police and social work has long been acknowledged in the literature with Asquith (1983, p. 45) writing of the 'clearest example' of differences between professional groups existing between the police and social work 'in their definition of and approach to delinquency and crime control' (see also Sampson *et al.*, 1988). Eadie and Canton (2002) write of differing 'occupational cultures' between youth justice agencies, which have their own training, values and practice wisdom. Research on the Youth Justice Liaison and Diversion pilot scheme, introduced in 2008 in six pilot sites in England and Wales, found that the greatest barrier to the successful implementation of the YJLD was police support and cooperation at a strategic and operational level (Haines *et al.*, 2012). Interviews with YJLD staff reveals their perceptions that police often hold differing agendas with one worker stating that the 'Police's attitude is very punitive' (Haines *et al.*, 2012, p. 163).

Whilst Asquith's framework is useful for conceiving of how individuals collectively reach a decision, particularly in relation to children's hearings' panels, and how individuals who hold competing frames of relevance work together in the task of decision-making, he was looking at decision-making at a time when it involved working in silos before the introduction of multi-agency processes. Both Early and Effective Intervention and Diversion from Prosecution are premised on inter-agency working and the Scottish Government advocates the police and other agencies, such as social work, health, education 'sharing information in relation to their own contact with the young person and joint deciding on the best response to support the young person and their family' (Scottish Government, 2016a). This thesis explores the way in which actors involved in the multi-agency EEI and Diversion from Prosecution processes make decisions. This involves a consideration of how multi-agency working has impacted on professional identities and power dynamics between agencies.

Souhami's (2007, 2010) case study research exploring the impacts of the restructuring of the youth justice system through the creation of multi-agency Youth Offending Teams in England and Wales is interesting to consider here. A key concept explored by Souhami (2007, 2010) was professional identity in the multi-agency team specifically in relation to the fluctuating power dynamics of multi-agency working. Souhami writes that the restructuring of youth justice 'put at issue the nature of professional expertise itself' through requiring social workers to 'relinquish' ownership whilst being 'confronted by the implicit claim that they were unable to manage youth crime effectively alone' (Souhami, 2007, p. 23). Multi-agency working in requiring organisational change also inherently requires cultural change within organisations (Souhami, 2010). Souhami's research demonstrates the importance of acceptability amongst practitioners towards change and to each other. It was crucial also for professionals to retain a sense of their own distinct professional identity in order to feel an integral part of the multi-agency team.

3.3.2 Decision-making in the Context of the 'Surround'

A limitation of both Lipsky's and Asquith's perspectives is that whilst they acknowledge the influences of the wider decision-field on professionals, there is a lack of focus on the influences in the 'local surround' on decision-making (Hawkins, 2002). Hawkins (1992) advocates the consideration of the social, political and economic facets in the surround as well as the organisational context in order to critically analyse the sense-making activity and the framing behaviour of decision-makers and organisations. This concept was based on his empirical research into the legal decision-making of regulatory agencies in health and safety cases (Hawkins, 2003). Hawkins (2003, p. 201) provides the example of the political or media backdrop as 'changing elements in the surround', which can have a 'significant impact on the 'decision-makers' field', described by Hawkins (2003, p. 190) as the 'legally and organisationally defined setting in which decision-makers work'. The surround can be understood as taking a broader account of how macro-level factors influence the more micro-level delivery of youth justice.

Features in the surround can be nuanced and reflect many different areas. There are several examples of studies on criminal justice decision-making which have explored the influence of changing elements in the surround on decision-makers. This is illustrated in Kemp and Gelsthorpe's (2003) case-study research on diversion of young people from court and

custody, in which they examined the impacts and constraints of the Crime and Disorder Act 1998 on decision-making in Northamptonshire, an area which they write was well known for its policy not to prosecute young offenders through adopting a multi-agency approach to pre-court diversion. They note how changes in the social surround impact on the decision-maker's field highlighting the political swing towards support for diversion in the 1980s in England and Wales. Kemp and Gelsthorpe (2003, p. 33) also highlight the influence of public fears about youth crime as influential to a 1992 review of pre-court diversion leading to police 'taking back' responsibility for decision-making and the discontinuation of the multi-agency process in Northamptonshire. Economic influences in the surround are also key to consider when examining the context of policy and decision-making; for example, much of the literature on the escalation in the use of diversion in youth justice in England and Wales in recent years has noted the political popularity of this approach in relation to cost savings; for example, Smith (2014b) writes of economically driven pragmatism.

Phoenix (2010) draws on Hawkins' concepts of the surround, the decision field and frames in her research on whether discourses, strategies, and technologies of risk governance have affected Youth Court Magistrates in England and Wales. She argues that a focus on risk within youth justice reflects a broader 'audit culture' in the surround (2010, p. 351). Adopting Hawkins' (2002) analytical perspective, Phoenix (2010, p. 349) draws the conclusion that: 'The criteria by which magistrates make decisions are not determined by the policy context they inhabit' but rather by 'common sense and their experience of life and young people'. However, Phoenix (2010) also found that the youth court magistrates took an individualist case-by-case approach so that whilst informed by risk, magistrates held an 'interpretative frame' (Hawkins, 2002) which enabled them to also be directed by non-actuarial and non-risk knowledge. Phoenix (2010, p. 353) concludes that because of the multiple and contradictory discourses regarding young people there 'is no clear, coherent, single trajectory of policy that shapes social action'. This highlights that although practitioners are influenced by the context of the wider youth justice surround, the framing of their day to day decision-making is determined by individual interpretations.

3.4. Adopting multiple perspectives

This chapter has provided a conceptual framework of policy implementation and criminal justice decision-making. This framework informed the development of the research questions, how this research fits in with previous research and acts as a lens through which to analyse the empirical findings of this thesis. A framework has been built to allow an understanding of the multi-agency aspects of decision-making in youth justice practice. Each of these frameworks offer useful perspectives in which to consider the implementation of the WSA and decision-making on the ground. Similar in that they each focus on the practical implementation of policy by front-line practitioners, taken together, they provide an overarching framework which enables the different objectives of this research to be considered. Firstly, Asquith focuses on the informal working ideologies of the youth justice professional and how these affect the way in which policies are put into effect. His conceptualisation of ‘frames of relevance’ enables an understanding of the conflict and consensus in decision-making on the ground by professionals, specifically in relation to youth justice. More recent literature adds an additional layer through examining this in the context of multi-agency decision-making taking into account the ‘relative professional status’ between agencies involved in decision-making (Halliday et al., 2008, 2009).

Alongside this, Lipsky’s framework is focused on the process of policy making by street-level bureaucrats on issues around discretion and accountability in policy making and the influence of the wider policy structure. His work enables an understanding of how street-level bureaucrats make policy on the ground from a bottom-up implementation perspective, whereas Asquith was primarily concerned with how professional ideologies influence decision-making. What Hawkins’ perspective does is to focus this at a higher-level arguing that the decision-making frame, and professional context, cannot be seen out with wider social, political influences, which continuously shift the context in which practitioners on the ground are working. Whilst Asquith explored the politicised context of decision-making, he did not specifically seek to explore the influence of this on decision-making.

Adopting multiple perspectives in this thesis enables a concern about power through a consideration of the exercise of discretion, the role of key gatekeepers in decision-making and inter-professional dynamics. Taken together, these perspectives provide a complementary, integrative framework in which to explore the translation of the WSA into practice and multi-agency decision-making in the context of a shifting policy context.

3.5. Conclusion

This chapter develops a framework through which to examine the implementation of policy and decision-making on the ground by front-line workers adopting Lipsky's and Asquith's conceptual frameworks, and also drawing on Hawkins's work on the influence of the surround in legal decision-making. Using examples from the literature on criminal justice decision-making, this chapter highlights key themes around multi-agency working including power dynamics between agencies and issues of ownership. This chapter explores concepts making sense of implementation of policy and decision-making of actors within institutional frameworks. These multiple perspectives are useful to holistically provide a framework in which to explore how actors make decisions and how discretion is exercised both individually and in multi-agency contexts. Overall, the concepts discussed in this chapter help to highlight the significance of informal ideologies held by front-line workers in the delivery of practice on the ground. Empirical chapters five to nine reveal that whilst professionals still individually exercise discretion in the context of their respective professions and frameworks, the multi-agency basis of decision-making routes means that practice is informed by a combination. Given the WSA focus on diverting 16 and 17-year-olds from prosecution and the increase in the use of diversion from prosecution in Scotland in recent years, it is important to explore how decisions to divert are being made in practice. As well as this, as EEI and Diversion from Prosecution are locally determined processes, the ability to exercise discretion and the implications this has regarding consistency and flexibility in decision-making need to be explored.

Chapter 4: Methodology

4.1. Introduction

The purpose of this chapter is to describe, explain and justify the methodology used for the empirical research undertaken for this thesis. This chapter also provides a narrative of the development of the Whole System Approach (WSA) in the case study area specifically on the development of Early and Effective Intervention (EEI) and Diversion from Prosecution processes. This also involves a consideration of local and national restructuring which occurred during the fieldwork period. This serves as a contextual piece for the following findings chapters.

This chapter begins by stating the research aim and research questions which framed my research and in doing so explains how I came to these research questions. The research process is then described in detail followed by a description of the changes in the EEI and Diversion from Prosecution processes in the case study area during fieldwork. The single case study methodology which was adopted to explore the implementation of the WSA is described and a rationale for this approach provided. The case study encompassed mixed methods including: semi-structured interviews with practitioners and policy actors; documentary analysis of guidance and policy documents; and, descriptive analysis of data on a sample of children and young people referred to the restorative justice service in the local area. This chapter concludes by considering some challenges which arose in conducting this research.

4.2. Research Aim and Questions

This thesis explores the implementation of the WSA in one local authority. The WSA has several strands and the focus of this thesis was narrowed to look specifically at EEI and Diversion from Prosecution. Research on the implementation of EEI and Diversion from Prosecution processes since the WSA was rolled out in 2011 is almost non-existent (Papadodimitraki, 2016). Although situated within government guidance and legal frameworks, EEI and Diversion from Prosecution processes have developed locally and vary across Scotland. The local implementation of these processes is therefore very much unknown.

Employing a case study of the implementation of the WSA enabled an in-depth exploration of how the WSA was implemented within the context and processes of the local area. As a new strategy, very much developed in practice by various agencies involved in youth justice locally, it was vital to discover practitioners' and policy actors' operational understandings of the WSA in order to piece together a sense of the ethos and principles being built into practice. As explored in chapter two, the roll out of the WSA strategy has occurred at the same time as organisational restructuring of key agencies involved in the youth justice system in Scotland namely the police, the Crown Office and Procurator Fiscal Service (COPFS) and social work. The changing governance relationship between central and local government through the creation of the Concordat Agreement (Scottish Government and COSLA, 2007) has also underpinned the development of the WSA through giving local authorities increased flexibility in their delivery of youth justice. Therefore, a particular focus of this research was on how practitioners and professionals on the ground implement the WSA locally within the context of the varied 'balance between localism and centralism' under the Scottish National Party (Garside, 2015, p. 4).

The WSA was predicated on the introduction of new multi-agency approaches to decision-making regarding children and young people in need or at risk of offending; moving away from the involvement of only one or two key agencies in decision-making. Understanding how the multi-agency decision-making processes underpinning EEI and diversion worked in practice was also key particularly in relation to the 16 and 17-year-olds, who had pre-WSA largely been dealt with by the adult criminal justice system in Scotland. Finally, in initial discussions on the WSA with representatives of the Scottish Government and locally with gatekeepers, it became apparent that the use of restorative justice disposals within EEI and diversion was unknown. Therefore, this research project included an illustrative case study of the Sacro Youth Restorative Justice Service in the case study area in order to explore how decisions were being made and the impacts of the WSA in relation to one specific service. The specific research questions which framed my research were:

1. What are practitioners' and policy actors' operational understandings of the WSA in practice?
2. How have the EEI and Diversion from Prosecution decision-making processes been implemented in front-line practice?
3. What factors have impacted on the sustainability and implementation of the WSA?

4. How do actors involved in the multi-agency EEI and Diversion from Prosecution processes make decisions and what factors influence these decisions?
5. How have the EEI and Diversion from Prosecution processes impacted on the use of restorative justice?

4.3. Research Process

The first stage in the research process was to meet with the youth justice coordinators from the council in the case study area to discuss my research proposal, receive feedback and gauge their expectations. The specific case study area was chosen as both the EEI and Diversion from Prosecution processes were considerably developed and therefore there was potential to aid policy learning in other local authorities. The aim was not to make generalisations beyond the implementation of the WSA in the local authority but to draw out implications from the research; for example, in relation to the long-term sustainability of the approach in practice. The variations in WSA implementation across local authorities also meant that a single case study was most appropriate as the aim was not to make comparisons between local authorities but to gain an in-depth and focused study exploring the perspectives of practitioners from different agencies on the implementation of the WSA in relation to local context and processes.

In terms of access, approval was required from three organisations. Initially, access to the local council was required in order to have a point of contact to find out about the process and to identify key persons to speak to from other agencies. Secondly, as the research involved a small case study of Sacro's Youth Restorative Justice Service, permission to interview practitioners and young people, examine case files and to access police data relating to Sacro cases was required. This meant submitting a research access application to Sacro, which was approved in August 2013. Thirdly, access to data held in crime files by Police Scotland was approved through consultation with the police in the case study area mediated by my supervisor from the Scottish Government. Data was provided by Police Scotland in November 2013.

In September 2013, I was invited to a local youth justice strategy meeting, attended by representatives from various agencies, to introduce myself and provide information sheets on my research. The main period of fieldwork was conducted between September 2013

and April 2015 (see table 1 for an interview timeline). Interviews were also conducted with five young people who had gone through Sacro's Youth Restorative Justice Service. Due to limited number of interviews, it was decided not to include these in the empirical analyses. Follow-up interviews were conducted with four practitioners in the case study area at a later stage in fieldwork (between July 2014 and February 2015) in order to discuss a number of changes which had taken place since the initial interviews.

The first of these changes was the discontinuation of the multi-agency pre-referral screening (PRS) meetings for 8-15-year-olds in October 2013. I was informed that the PRS was undergoing a review but it was difficult to establish the reasons and the impacts of the review, which was described as ongoing throughout most of the fieldwork. This was an issue as I had originally intended to conduct observations of PRS meetings in the case study area and I was no longer able to include this method in my research.

The second of these changes occurred in early 2015 when the COPFS case marking was moved from taking place at federation level to a central initial case processing hub. In late summer 2015, three interviews were conducted with policy actors which had a specific focus on the consequences of this change in case marking. The third of these changes was the forthcoming restructuring of social work services in the case study area, which in the latter stages of fieldwork several practitioners referred to as having implications for local youth justice practice.

During the course of my fieldwork, there were also several personnel changes which had implications in terms of having a key point of contact to update me on changes in practice as well as having someone who I was able to clarify anything with. The two youth justice coordinators I originally met to discuss my research were no longer in post when I began my fieldwork in September 2013. In terms of the challenges to the WSA, staff turnover since the introduction of the WSA was a key issue identified by practitioners, which had implications regarding awareness and communication between individuals and agencies.

Table 2. Interview timeline.

Interviewee	Date	Second interview date
Third sector representative 3	September 2013	
Third sector representative 4	September 2013	
Third sector representative 5	September 2013	
Police representative 1	November 2013	January 2015
Legal representative 1	November 2013	August 2014
Legal practitioner 1	November 2013	
Legal practitioner 2	November 2013	February 2015
Social Worker 1	February 2014	July 2014
Third sector representative 6	February 2014	
Third sector representative 1	March 2014	
Policy actor 2	March 2014	
Police representative 2	March 2014	
Third sector representative 3	April 2014	
Legal representative 2	April 2014	
Social worker 2	August 2014	
Policy actor 3	August 2014	
Policy actor 1	September 2014	
Civil Servant 1	October 2014	
Education	February 2015	
Civil Servant 2	April 2015	
Policy actor 4	August 2015	
Legal representative 3	September 2015	
Policy actor 5	September 2015	

4.4. Development of the WSA in the Case Study Area

This section is intended to provide a narrative of the development of EEI and Diversion from Prosecution processes in the case study area. Changes in the local authority are outlined alongside national WSA policy developments in a chronology of policy and practice youth justice developments during fieldwork in Appendix A. The case study area has been anonymised in this thesis in order to protect the identity of practitioners, who

would have been more easily identifiable where the case study area had been provided. However, in order to give some context, some background information on the local authority area is provided here in relation to population, deprivation and crime trends. Of the 32 local authorities in Scotland, the estimated population of the local authority is relatively high, falling in the top third of the largest authorities in Scotland. Looking at the Scottish Index of Multiple Deprivation 2016¹², the official tool to identify areas of multiple deprivation in Scotland, the case study area has comparatively fewer data zones in each area which are among the most deprived 20% in Scotland in comparison to other local authorities. The local share of data zones falling within the 20% most deprived in Scotland falls within the lower half of all local authorities. However, when looking only at the crime domain¹³ of the Scottish Index of Multiple Deprivation, the local share of data zones falling within the 40% most deprived in Scotland is relatively high, with nearly half of the data zones in the area falling within this band. Overall, the national fall in police recorded crime is also mirrored in the case study area. The decline in the number of children and young people referred to the Children's Reporter on offence grounds in the last ten years in Scotland is reflected in the case study area too where the number decreased dramatically between 2009/2010 and 2014/15, falling by more than three quarters.¹⁴

Before the WSA, a youth justice unit was set up in the early 2000s as a coordinating body within the police in the local authority case study area. Its chief role was to provide an initial screening of all offences of young people (aged 8-17) and to refer appropriate cases for either a warning letter or a police restorative warning. Prior to the introduction of the PRS process in the local authority in 2010, most cases of youth offending were referred by the unit to the Children's Reporter. The WSA was introduced in the case study area in March 2010 and received funding from the Scottish Government to run for 12 months. A range of strategic and operational groups were put in place in the local authority area after the introduction of the WSA.¹⁵

¹² 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.

¹³ The crime domain considers recorded crimes of violence, sexual offences, domestic housebreaking, vandalism, drugs offences, and common assault per 10,000 people.

¹⁴ Data from online SCRA statistical dashboard.

¹⁵ The case study area had a steering group in its initial year (which was then dissolved). The steering group was responsible at an executive level for the direction and initial implementation of the WSA and was made up of high-level representatives from key youth justice agencies such as Children's Services and the Police. A Youth Justice Programme team sat underneath the steering group who were directly involved in the strategic direction of the WSA. In the initial stages of the WSA, a Youth Offending Review Group existed,

There were five outcome groups under the Integrated Children's Services Partnership¹⁶ in the case study area and the Responsible Theme Group had responsibility for matters relating to youth justice. The specific aim of the group was to lead and coordinate youth justice services. Quarterly meetings of the Responsible Theme Group were held and attended by various representatives from youth justice agencies including Police Scotland, Children's Services, third sector, Scottish Government, the Scottish Children's Reporter Administration and housing. The outcome group was created in order for representatives from different areas within youth justice to discuss together service provision including gaps in delivery, partnership working issues and to consult on training required and identified issues of concern within the different work streams. In the summer of 2014, the police took over the lead of the Responsible Theme Group from Children's Services.

During the final stages of fieldwork, I was informed that the local council social work services would be reorganised in the case study area under the Reclaiming Social Work model, which originates in Hackney in London. This involved the reorganisation of the traditional team system (i.e. the youth justice team, the disabilities team) to working with children and young people to smaller units where staff worked with a number of children and families. As the reorganisation was only starting to come into place at the final stages of fieldwork, it was not a key focus of the research interviews but some interviewees raised this as a development which would have implications for youth justice in the case study area.

Appendices B and C illustrate the separate processes relating to EEI and Diversion from Prosecution for 8-15 year-olds and 16 and 17-year-olds in the case study area during the time of fieldwork for this thesis. These diagrams were created based on interview data and were verified in consultation with contacts in the local authority.

4.4.1. The Development of EEI in the Case Study Area

which was held monthly to discuss cases of young people who continued to be involved in offending. This has since been dissolved.

¹⁶ The Integrated Children's Services Partnership was responsible for the strategic delivery of the local authority's Integrated Children's Services Plan (between 2011 and 2015) [a statutory report required under the Children (Scotland) Act 1995]. The roles of the group encompassed developing an implementation plan to incorporate GIFREC principles in the delivery of young people's services in the case study area and the development of frameworks, tools and practices to support the delivery of integrated children's services.

The first stage of the process remained the same as pre-WSA – all cases of youth offending were dealt with initially by the youth justice unit within the police which reviewed the cases. For low-level cases, the youth justice unit were able to use police direct measures (i.e. police verbal or written warning). The unit was able to make these direct referrals pre-WSA but in summer 2013, the use of these measures was extended to 16 and 17-year-olds. An interviewee noted that beforehand, cases relating to 16 and 17-year-olds would have had to have been referred to the Fiscal to discuss the cases but when EEI was extended, the unit could refer directly without Fiscal involvement (police representative 1). The direct disposals available to police were also expanded to enable the police to be able to refer direct to the Sacro Youth Justice Service.

In 2010, a multi-agency PRS process was introduced to discuss 8 to 15-year-olds with welfare and/or offending concerns. It was commented where there were wider concerns or a history of previous offending, a child/young person would be referred to a PRS meeting rather than given a police direct measure. PRS represented a new option available to the youth justice unit in their processing of cases whereby they could refer a young person to a PRS multi-agency meeting rather than to the Reporter to make a decision. An interviewee involved in the EEI process (police representative 1) noted that the purpose of PRS was about who would take the lead in dealing with a concern rather than what agencies a young person should be referred to.

A range of practitioners attended the PRS meeting. These usually included a representative from the police, social work, education (not the named person), mental health, Barnardo's and Sacro. At the PRS meeting, the various representatives present discussed the case and provided relevant information. A police representative provided information on any previous offences and the previous routes taken. Representatives from education and health provided any information relevant to the case (i.e. if the young person had difficulties at school). A social worker also brought forward any additional concerns; for example, relating to family issues, drugs/alcohol etc. Six referral options which could be made by the PRS group were highlighted by the interviewees: (i) referral to Sacro if there were no other concerns about a young person and if the offence involved the victim; (2) returning the case to the young person's named person (education) as part of GIRFEC; (3) a police warning letter or police restorative justice warning; (4) referral to the Children's Reporter; (5) referral to another agency e.g. Barnardo's; or, (6) a referral to social work if the young person was already known. A form recording the meeting and the decision made was then forwarded to education as named person.

The PRS process underwent a review during the period of fieldwork (from October 2013 to date unknown). In the latter stages of fieldwork, I was informed the review resulted in the discontinuation of the PRS multi-agency meeting and that a multi-agency screening process (see appendix B) was introduced in its place where the youth justice coordinator consulted with other agencies, principally the named person, by phone and email. The named person could then call a GIRFEC multi-agency meeting if required which the young person, their parents/guardian, the named person and social work were invited to attend as well as Sacro, where there was offending involved.

4.4.2. The Development of Diversion from Prosecution in the Case Study Area

Diversion multi-agency meetings were introduced in 2010 in the case study area. The youth justice unit within the police worked with the local Procurator Fiscal to identify suitable cases for diversion for 16 and 17-year-olds. They were attended by the same representatives as the PRS and also a Procurator Fiscal Depute. It was commented that decisions to divert were made on a case by case basis. Several disposals were available at the diversion meeting (these are detailed in appendix C). In 2015, the diversion meeting was discontinued when case marking was centralised through the creation of an initial case processing hub which took over responsibility for case marking. Previously, case marking took place within three separate COPFS federations in the north, east and west of Scotland. The initial case processing hub transferred initial case marking to a centralised hub based across Stirling, Paisley and Hamilton. It was commented by interviewees that this was intended to instil greater consistency in case marking.

4.5. Research Design

This section provides a rationale for the case study and mixed methods approach adopted in this study drawing on methodological literature as well as making reference to others who have used a similar approach.

4.5.1. Case Study

A single case study was considered the most applicable approach in order to address the aforementioned research questions as the specificity of the questions required an in-depth focus on practice in one area. Marinetto (1999, p. 63) writes that a case study is a useful way to achieve a 'fuller understanding of public policy' and the factors which influence it. In particular, the case study is useful in policy research as it enables the incorporation of various methods and sources of data available to the researcher. In particular, conducting a single case study was decided upon as the question of local context was key and this enabled an in-depth exploration of the case itself and also external factors relevant to the case being studied.

Donmoyer (2000) argues that understandings of what it means to generalise from research are limited and that the absence of an alternative language to understand generalisability other than the scientific understanding has led to an under-valuing of single case studies. Whilst adopting a single case study in policy and practice research presents challenges in terms of drawing conclusions for wider practice, it enables what Stake (1995) terms naturalistic generalisation. The process of naturalistic generalisation emphasises the personal knowing and experiences of the researcher and readers of research (Stake and Trumbull, 1982). Writing about their experiences of educational research, Stake and Trumbull (1982, p. 3) write that 'practice is guided far more by personal knowing, based on and gleaned from personal experience'. Naturalistic generalisations are made personally by the reader. Therefore, the concept fits with the epistemological stance of interpretivism in that it is about researchers and readers drawing their own understandings and interpretations. In research involving practice, potential readers 'often are more familiar with the cases than we researchers are' and therefore they can form their own generalisations from the description and vicarious experience provided by the researcher (Stake, 1995, p. 86).

The strength of this conceptualisation of generalising from research is that it may serve to bridge the gap that exists between policy makers and practitioners, on the one side, and researchers on the other. Hammersley (2013, p. 30) highlights limitations of research that does not closely enough focus on practical concerns generating conclusions that are 'inaccessible' to policy makers and practitioners.

Another side of the argument is that an aim of case study research need not include generalisable findings. Hammersley and Gomm (2000, p. 3) write: ‘It is sometimes argued that the aim of case study research should be to capture cases in their uniqueness, rather than to use them as a basis for wider generalisation or for theoretical inference of some kind’. Proponents of this view argue that understanding a case for its own sake is purpose enough and there does not need to be a requirement to generalise. Hammersley and Gomm (2000) suggest that the aim of the case study, rather than to generalise, has been to present the case ‘authentically’ meaning to give an illustration of the case being studied which is accurate and truthful. Whilst the achievement of data which is accurate and truthful is a goal of the research, it is recognised in adopting a constructionist perspective, my role as an ‘outside’ researcher means that the results of the research are based on my interpretations and understandings as well as the constructions of those who are being researched rather than a single authentic reality. Hammersley and Gomm (2000, p. 7) encapsulate these issues well when they write:

Their [constructionists and postmodernists] arguments undermine the notion of authenticity by denying the existence of any real situation that is independent of investigations of it; by questioning the legitimacy of researchers speaking on behalf of (or even acting as mediators for) others; and/or by challenging the idea that people have unitary perspectives which are available for case study description.

It should therefore be recognised that what is being described and examined in this case study research is the interpretations and constructions of those interviewed in the research at a single point in time during the ongoing implementation of the WSA rather than the authentic description of ‘unitary perspectives’ on overall perceptions of the WSA. Research on policy is not static as policy evolves, is adapted or reviewed. Indeed, proponents of the incrementalist model of policy making process depict the process as a piecemeal one in which policies are often formulated in reaction to specific issues that arise and can often take the form of small adjustments to existing policy (Hill, 2005).

4.5.2. Mixed Methods

Mixed methods were employed to access multiple sources of data and also to provide a rich understanding of the development of the WSA from a variety of approaches in order

to see it through multiple perspectives. Semi-structured interviews with practitioners and policy actors were the principal method adopted but these were also supplemented with documentary analysis of local government and government policy documents and descriptive analysis of crime file data provided by Police Scotland as well as documentary analysis of Sacro case files. As previously mentioned, it was also originally intended to conduct observations of PRS meetings but this was not possible as they were under review at this time.

Case studies can vary in terms of size, detail and purpose (Hammersley and Gomm, 2000). The strength of using mixed or multiple methods for the purpose of this research was the achievement of triangulation through combining methods and data. This project adopted an embedded case study (Cresswell and Clark, 2007) with the qualitative interviews with practitioners the principal source in the research and data analysis of police crime file data and Sacro case files providing additional data on the use of decision-making referral options.

Denzin (2009, p. 298) highlights problems with adopting a single methodological perspective when he writes: ‘Methods are like the kaleidoscope – depending on how they are approached, held, and acted toward, different observations will be revealed’. The use of research methods is contingent on how the researcher utilises them. Denzin also writes that individual researchers approach their research with their own experiences, idiosyncrasies and mood playing a role. In arguing this, he advocates the use of methodological and data triangulation in order to observe the units of analysis in multiple ways proposing that it will tackle the issues of adopting a single approach specifically ‘the personalistic biases that stem from single methodologies’ (Denzin, 2009, p. 390). Observations of PRS meetings were originally intended to complement interviewees’ perspectives on how decisions were made within this process. Not being able to observe these meetings meant that I was only able to draw on practitioners’ and policy actors’ stories and examples of PRS meetings.

4.5.3. Interviews

The principal method used was semi-structured interviews with 15 practitioners from a range of agencies within the local authority including social work, police, education, third sector organisations delivering youth justice services, SCRA and COPFS. As the research

questions specifically sought to explore practitioners' operational understandings of the WSA in practice, as well as how EEI and Diversion from Prosecution decision-making processes were implemented in front-line practice, the insights of practitioners working at the heart of these processes were required. Practitioners were asked questions on the implementation of EEI and Diversion from Prosecution; specifically issues around multi-agency working; consistency and flexibility in decision-making; barriers and gaps in delivery; and, the impacts of these processes. A semi-structured interview schedule was created to use with all interviewees. Over time, this schedule template was amended in order to focus on areas relevant to the specific practitioners and policy actors interviewed (see appendix D for the practitioner interview template). As I became more informed of processes in the case study area during fieldwork, as well as changes to practice and policy locally, questions were also amended and added. For example, initially the interview schedule had a large focus on the PRS process but after becoming aware that this process was being reviewed, questions were added to explore the causes and implications of this review.

Purposive sampling was used to speak to relevant practitioners involved in EEI and Diversion from Prosecution. The sample of interviewees did not include all relevant practitioners as there were several potential interviewees who did not respond to my inquiries or chose not to take part. Initially, participants were accessed through two key gatekeepers: the Sacro service in the case study area and a youth justice coordinator in the council. There was a degree of snowballing from thereon in; for example, representatives from agencies mentioned my research to other members in their team. Potential interviewees were contacted by email and provided with an information sheet which outlined the background of the study, the research questions as well as how their confidentiality and anonymity would be ensured.

The interviews conducted varied in degrees of structure with some interviewees more open than others. This was also dependent on their knowledge and direct experience of EEI and Diversion from Prosecution. Interviews lasted between forty-five minutes and one hour taking place within the work place of the interviewee. Most of the interviews took place during the main period of fieldwork from September 2013 to April 2015. The interviewees varied in the length of time in their post with four of the interviewees having started in their position after the implementation of the WSA. These interviewees commented that it was difficult for them to fully assess the impacts of the WSA as they had come in after its implementation and therefore could not make comparisons to what had happened before.

As well as this, fieldwork was conducted during a period of considerable flux and change to the WSA nationally and locally. Organisational changes had implications regarding the day to day work of practitioners and this needs to be considered in relation to their perspectives on what was happening in practice.

Seven semi-structured interviews were also conducted with policy actors. These included two civil servants and representatives from national youth justice organisations. This enabled the perspectives of those involved in developing national guidance on the WSA as well as having a role in influencing its development nationally to be brought together with practitioners' perspectives locally. These interviews were largely conducted later in the fieldwork period (August 2014 – September 2015) with the specific aim to draw out national issues pertinent to the development of the WSA; in particular, around consistency of EEI processes nationally. The interview questions were largely the same as those asked of the practitioners although there was more of a focus on the implementation of the WSA nationally and on issues around flexibility and consistency across Scotland.

Case and Haines (2015) have expressed concern that practitioners' views are not being sought or heard regarding the recent reviews and changes in youth justice in England and Wales. They write that some of the potential damaging consequences of silencing the views of practitioners include the de-professionalising practice and promoting ineffective practice. Commenting on a lack of consideration of the views of children and young people from youth justice processes and practices, they write: 'It is possible that the neglect of practitioner voices in shaping youth justice processes is an issue even more overlooked by critics and advocates of system reform' (Case and Haines, 2015). This thesis was concerned primarily with exploring how practitioners translated the WSA in practice; particularly their understandings of the WSA and what principles were being built into practice. The rationale for this was that the changes in practice introduced by the WSA need to be examined through speaking to those who are involved directly in implementing these processes.

Whilst conducting in-depth interviews enabled practitioners to give their individual accounts of how multi-agency decisions were made, the lack of concurrent observations of the multi-agency decision-making meetings in practice meant that a first-hand and outsider perspective of how decisions were made in the dynamic setting of the meetings was not captured. This meant that narratives of the decision-making processes were purely based on individuals' accounts of what they say they do. Conducting observations of these multi-

agency meetings would have enabled a deeper insight into the actual realities of multi-agency decision-making and the interactions between practitioners, which may have added significantly to the interview data. The value of triangulating interviews and observations has been shown in criminology research exploring practice and in particular decision-making. For example, Keightley-Smith (2010), in her research exploring the use of final warnings in the English youth justice system, conducted observations of practice, alongside interviews, to capture police officers' behaviours and interactions and to show how individuals carried out their role. Souhami's (2010) research on the introduction of inter-agency Youth Offending Teams and changes in occupational culture allowed her to explore the realities of practice on the ground in a state of ambiguity during organisational change. Whilst the non-inclusion of observations in this research may have inhibited a more complete picture of the processes being explored, the interviews with a range of practitioners and policy actors enabled individual in-depth accounts which were then woven together in the analysis.

4.5.4. Documentary Analysis

Documentary analysis of governmental policy documents and legislation, as well as local protocols and strategic documents from the case study area, was conducted in the initial stages of the research. A discourse analytical perspective was adopted in the analysis of these documents, forming the basis of the youth justice policy timeline in chapter two. Discourse analysis involves a process of analysing text through considering the history of how a discourse has come to exist and considering the location of individual texts to a wider context (Phillips and Hardy, 2002). The qualitative data analysis software, NVivo, was used to analyse these documents. Words and phrases were coded to specific discourses including welfarism, punitivism and responsabilisation. This enabled the identification of multiple and contradictory discourses within and across policy documents.

Documentary analysis sits alongside the primary fieldwork in that it provided a basis for the understandings I developed of the WSA. As the WSA was a new policy, it was through reading these documents that I formed an understanding of the key aims of the approach, the principles upon which it was based and how the respective processes were to be delivered in practice. It was through this that I gained much of my knowledge about the youth justice system which informed the development of the research questions and

interview schedules. The guidance documents on EEI (Scottish Government, 2009b), Diversion from Prosecution (Scottish Government, 2011b), as well as the EEI Framework of Core Elements (Scottish Government, 2015a), informed my understanding of the EEI and diversion processes central to this research. Indeed, these guidance documents are often referred to in the empirical chapters in this thesis as they served as contextual markers in unravelling practitioners' perceptions of the processes in practice.

This research also involved documentary analysis of a small sample of children and young people's case files held by Sacro's Youth Restorative Justice Service. Case files held information on the restorative justice process; contact between the service and the young person; background information on the young person and the offence they were referred for; correspondence information between the referrer and the service and the young person's chronology (as part of Getting it Right For Every Child). These case files provided a valuable resource through which to gain inside knowledge of the minutiae of the referral processes.

4.5.5. Descriptive Analysis of Police Data

Data on cases of children and young people who had completed a Sacro Youth Justice Restorative Justice process (comprising face-to-face meetings, conferences and shuttle dialogue) was initially sought for two separate periods – pre-WSA and post-WSA. This was so that a control group (pre-WSA) could be used to examine young people's pathways before and after completion of a restorative justice intervention since the implementation of the WSA. Negotiating access to this data took place over a number of months and the process was stalled when it became apparent that data on pre-WSA cases, initially thought to be held by Sacro, was not available. Also, there were initial access issues with regards to gaining approval from the police to access the crime files in terms of the time commitments it would require. Consultation with my supervisor at the Scottish Government led to the approval to access this data.

In October 2013, Police Scotland agreed to provide data on children and young people who had completed a restorative justice intervention since the introduction of the WSA. This required Sacro providing them with the names of young people, their date of birth and intervention type in order to retrieve the specific cases. After having a discussion with a

representative from the police about the information held in young people's crime files, I provided a list of variables which I sought to access (see appendix E). In December 2013, I was provided with a dataset of a sample of 91 cases of young people who had completed a restorative justice process between March 2010 and November 2013. Once data cleaning had been undertaken, the sample was reduced to 65 cases as many of the other cases had missing information. Descriptive analysis of the data was conducted. Adopting a triangulation approach, interview data provided a narrative to the descriptive analysis of the data regarding the processes by which young people were referred and the types of cases that were referred to the service.

SPSS, a statistical package for analysis of quantitative data, was used to conduct descriptive analyses of the sample of cases of 65 children and young people referred to Sacro's restorative justice service, provided by Police Scotland. Frequency tables were run on all the variables in order to highlight any anomalies with the data. Thorough data cleaning was conducted during the process of data entry with missing data coded.

4.6. Ethical Considerations

There were several key ethical issues to be considered in conducting this research project. Firstly, there were issues to be considered as this research was part funded by the Scottish Government. When research is funded by a body with vested interest, issues arise with regards to the objectivity of the findings and the researcher's autonomy. The Scottish Government had a political, financial and policy interest in the outcomes of my PhD research. Denscombe (2010) argues that readers of sponsored research will ask questions such as: what is the likelihood of a sponsor approving research which highlights negative findings and whether researchers will be likely to interpret the findings in a way that is positive or sympathetic to the sponsor body? In the first year of my PhD, I had regular meetings at the Scottish Government to discuss the development of the WSA and to update my supervisor there on my research plans. The supervisors at the government were open to my suggestions and my research proposal and did not seek to contribute to that side of my research. Another potential issue identified was that practitioners in the local area may have perceived their participation to be obligatory as it was funded by the Scottish Government. It was made clear to practitioners and policy actors that their participation in the research was completely voluntary. During the second and third year of my PhD, I had

minimal contact with the WSA team at the Scottish Government after my original supervisor left the position in October 2013.

There were also potential ethical issues around the use of both the local authority, Police Scotland and Sacro as gatekeepers to this research project. The submission of a research access application form to Sacro was necessary to gain access to case file records and research participants. A meeting with the WSA coordinators and a Sacro local area manager to discuss the research in the initial stages enabled some of these issues to be discussed. Gatekeepers have a vested interest in the results of research because it may reflect positively or negative on their organisation. Denscombe (2010) writes of a sense of obligation in conducting research with gatekeepers which may impact upon objectivity. In reflecting on my fieldwork experiences, it is important to highlight this idea of moral obligation to the gatekeeper and instances where the pursuit of objectivity may have collided with this sense of obligation. Bearing in mind the potential expectations of agencies in the local area, at no point was I directed in what my areas of focus should be.

During the course of my fieldwork, I had regular contact with a gatekeeper at Sacro, either at the office or by email, who provided me with information and clarified uncertainties I had particularly around referral processes. It should be mentioned therefore that much of my general knowledge about the processes was informed by interviews but also through these informal chats. For example, I had several queries when conducting descriptive analysis of the Sacro case data, which I checked with the Sacro gatekeeper.

Ethical approval was gained by the University of Glasgow College of Social and Political Sciences Ethics Committee in September 2013. Careful considerations were made regarding informed consent, anonymity and confidentiality. As the research involved a single case study, the decision was made to anonymise the local authority area in an effort to protect the identity of the practitioners interviewed. I also offered to provide participants with transcripts of their interviews. Interviewees were provided with information sheets (see appendix F) prior to taking part in the interview and their informed consent was acquired before conducting the interview by using a consent form (see appendix G). Audio recordings of practitioner/policy actor interviews were made and stored on a password protected computer. The potential identification of the case study area and of the research participants was a risk identified in this research. Practitioners were informed that the case study area would not be referred to in the thesis nor would their names. Practitioners are

referred to in relation to their practitioner title with every effort made to protect their anonymity throughout this thesis.

4.7. Analytical Approach

I adopted an intrinsically interpretivist epistemological and a rationalist-constructivist ontological perspective in this research through seeking to examine the constructions and interpretations of the interviewees as well as acknowledging my own interpretations in the analysis process. The rationalist-constructivist stance emphasises actors' interpretations within their own experiential reality. What this means in practice is a recognition of individuals having their own 'frames of understanding' within which the social world is viewed (Bottoms, 2000, p. 89). Such an approach emphasises individuals 'constructed interpretations' (Stake, 1995, p. 101). As this research aimed to discover practitioners' and policy actors' understandings of the WSA in practice from their respective institutional backgrounds, an approach was adopted which enabled their personal interpretations to be gained.

Layder's (1998) adaptive theory was drawn upon as an analytical approach in this research. Layder's put forward this approach based on his view that an unnecessarily and unhelpful division in social research between 'researchers' and 'theorists' exists. In particular, he criticises the perception that either an inductive or deductive approach to theory construction must be adopted. The adaptive theory approach process involves utilising an existing theoretical scaffold to lend 'shape to the constantly emerging research data', which can embrace new concepts and new theories and be reconfigured leading to minor modifications of existing theory or the reformulation of concepts and theories through developing new theories or abandoning extant ones (Layder, 1998, p. 172). The flexibility of this approach and the emphasis on construction or elaboration of theory through research enables a less restrictive approach to theorising in empirical research.

In order to adopt a flexible approach based on synthesising extant theory with concepts generated from the research, interview data was analysed using thematic analysis. This involved a reiterative process of reading and re-reading interview transcripts and creating a list of themes comprising of new themes emerging directly from the data, and also drawing on pre-existing concepts from the literature. These themes were recorded coherently using

an Excel file to create a cataloguing system. The initial list of themes were reviewed and refined through a process of systematically reviewing the transcripts.

Chapter three put forward a conceptual framework through which to examine decision-making on the ground by street-level bureaucrats. Lipsky's (2010) theoretical perspective on policy implementation by street-level bureaucrats and Asquith's (1983) theory on criminal justice decision-making were utilised as a lens through which to explore how the WSA was implemented locally by practitioners who made decisions in the EEI and Diversion from Prosecution processes based on 'frames of relevance' stemming from their own institutional frameworks. Findings were examined in relation to decision-making literature which has shown how professionals make decisions based on their institutional frameworks and professional experience and that multi-agency decision-making has implications for professionals' feelings of ownership and identity (see, for example, Souhami, 2007, 2010). Drawing on Layder's adaptive approach, I was able to utilise an existing theoretical scaffold through which to view emerging data which can also embrace new concepts and new theories. Layder's (1998) adaptive theory approach was particularly useful for policy and practice related research as it emphasises ongoing data collection and the emergence of new findings.

Adopting such an analytical perspective fits with the aim of case study research which Yin (2014) writes is to generate analytic generalisations through shedding 'empirical light' on theory through the in-depth research involved through conducting a case study. Yin (2014) argues for a new form of generalisation from case study research which is analytical in nature and involves theory development through generating new concepts or reconfiguring extant concepts and theories similar to Layder's (1998) adaptive theory approach.

4.8. Fieldwork experiences and reflections

4.8.1. *Researching from the Outside*

Academics have discussed the merits and demerits of practitioner-led research and research conducted by outside researchers (Hammersley, 2013). This research involved interviewing professionals from a range of public and third sector organisations as well as policy actors responsible in some way for developing policy or influencing policy making around justice. All of the interviewees were highly experienced in the youth justice field

and their positions ranged from professional to management levels. A challenging aspect of this kind of research which seeks to uncover professionals' perceptions of their practice, as well as the practice of their partner agencies, is the asking of difficult, intrusive-like questions. Based on his experiences of elite interviewing, Harvey (2011) writes that it is important to be aware of the positionality of participants. After several of the interviews, I reflected on occasions where interviewees were keen to demonstrate their own organisation in a positive light and also, at times, there was a potential reluctance to highlighting any challenges in practices they might have conceived of.

The potential implications of this on the empirical findings cannot be known but the fact that this research was focused on practitioners' own practice should be borne in mind when drawing conclusions on its implications. What also has to be considered is the potential influence of the research being part funded by the Scottish Government on interviewees' openness and transparency regarding challenging and difficulties in practice. Interviewing elites also brings into play issues of power between the researcher and interviewee and as Rice (2010) puts forth the 'relational effects of power' can lead to elites being restrictive. For me, my position as a student researcher meant that the research gatekeepers (or 'experts') sought to help me in my position as a 'novice' through using their experience and knowledge to aid me in my understandings of practice (Roesch-Marsh et al., 2012).

In my fieldwork experience, there was a spectrum of openness from interviewees. At one end, I conducted interviews with participants who were open about their own perspectives and experiences; for example, by highlighting challenges in practice and within their own organisations. On the other, there were participants who were more guarded in their responses and appeared less likely to share their own views but rather relayed the views of their agency or organisation. Those who were more open and expressed their own views were more likely to highlight negative issues. These interviews led to a wealth of interesting data. On the other hand, there were interviewees who were wholly positive and did not comment on any challenges. In respect of this, it is important to consider to what extent their responses have been 'authentic'. A key issue that Gillham (2000) raises, which is relevant to my own experiences, is considering the representativeness of findings drawn from research. It is important to reflect on why those who took part in the research agreed to take part and whether those who did not would have something different to say. This is pertinent in relation to my research with practitioners and policy actors as it may be questioned whether those who chose not to take part in the research were more critical of practice or wary of providing their personal perceptions.

Having highlighted some of the potential limitations of doing research as an outsider, there can also be advantages. For example, Donmoyer (2000, p. 63) points to the benefits of the gaining of vicarious experiences through conducting a case study over that of direct experience stating ‘case studies allow us to look at the world through the researcher’s eyes and, in the process, to see things we otherwise might not have seen’. From this quote, there is the idea that though the eyes of an ‘independent’ researcher, new things may be learned. There is also the potential benefit that being an outsider might mean being more open to change and learning from research. Finlay (2003) writes that reflexivity has become a defining feature of qualitative research. She writes that it is recognised that in qualitative research, findings are a ‘joint product’ of the participants and the researcher and their relationship and are also dependent on social contexts meaning that qualitative research undertaken at another time or by another researcher may likely lead to different findings (Finlay, 2003, p. 5). Therefore, this thesis emphasises that it is the personal and subjective perspectives of interviewees on which findings are based.

My own positionality as a researcher also needs to be taken into consideration. Gillham (2000) argues that social researchers should be reflexive and that this should include recognising pre-existing conceptions and values that may have an influence on the research. Coming to this research without experience of practice, and wholly from an academic background in public policy, meant that my viewpoints on the system were influenced by my academic knowledge of policy making. The analytical framework I adopted was centred on understandings of how policy is made; the interactions between actors; the policy settings in which they work; and the broader policy backdrop. May (2011, p. 272) writes on how research is grounded by the researcher’s positionality:

...we deploy lenses through which we not only gaze upon social reality, but also seek to provide understandings and explanations of its causes, reasons, dynamics and consequences. Perspectives are thus fundamental as they provide the framing that underpins our work.

Lacking grounding in practice meant that the conceptions I developed were very much from the eyes of practitioners and policy actors I spoke to. In conducting research with gatekeepers, it was through their eyes that I developed my own views and understandings of processes and practice. Neither I nor the gatekeeper is impartial and this had implications for analysing the findings from the research. Adopting an interpretivist and

rationalist-constructivist perspective meant that acknowledging the subjectivities of the narratives of the interviewees was a part of telling the story of the WSA in practice.

4.8.2. Researching a Policy in Flux

Like other forms of interaction, sociological research reflects the emergent, novel, and unpredictable features of ongoing activity...No investigation should be viewed in a static fashion. Researchers must be ready to alter lines of action, change methods, reconceptualise problems, and even start over if necessary (Denzin, 2009, p. 310).

This quote had particular pertinence to my research as fieldwork was conducted during a period of considerable flux and change to the WSA. In researching a policy seemingly in constant review, it was difficult to get a sense of what was happening in practice as there was a lack of consensus amongst practitioners about what was happening at particular points in time. Kelly and Armitage (2015), writing on their own research experiences interviewing youth justice practitioners about diversion from prosecution, in England and Wales, state:

Varied local practices and the diversity of service structures within which YOTs [Youth Offending Teams] now sit (Fielder et al., 2008) heralds considerable challenges for researchers attempting to assess what forms of ‘system contact’ help and hinder, or indeed how forms of ‘prevention’, ‘early intervention’ and ‘diversion’ are developing within any given local authority area in England, let alone the jurisdiction as a whole (Kelly and Armitage, 2015, p. 118)

Variation in practice both locally and nationally makes it difficult to draw conclusions as to what is happening in practice and what the effects of different services are. In my research, changes in local practice and the diversity of services involved in either youth justice decision-making or delivering services led to challenges in terms of gaining a clear, consensual picture of what was happening in practice at any given point of time.

Coming from a constructionist perspective, the aim of the research was to understand how participants interpreted what was going on around them and so the purpose of the research gradually became more about understanding these different interpretations rather than trying to construct a single understanding of the process. As I progressed through my fieldwork, I began to realise that this lack of consensus was a finding in itself.

4.9. Conclusion

This chapter has described and provided a rationale for the specific methodology and individual methods adopted in this research. This exploratory case study neither claims to offer an authentic description of what was happening in practice nor aims to generalise findings to other local authority areas as it is recognised that fieldwork took place during a period of change to the WSA as well within the context of reorganisation of key agencies involved in EEI and Diversion from Prosecution. The aim was to provide an in-depth description of the processes extant in one area from the perceptions of those working in front-line services. The remaining chapters present the empirical findings from this research.

Chapter 5: Operational Understandings of the Whole System Approach

5.1. Introduction

This findings chapter explores practitioners' and policy actors' operational understandings of the Whole System Approach (WSA) in order to piece together a sense of the ethos and principles being built into practice. As part of this, this chapter specifically explores how the term 'holistic' is given meaning by practitioners and policy actors as this has become a key buzzword in policy documents and practice tools around the WSA and Getting it Right for Every Child (GIRFEC). As discussed in chapter two, youth justice has become more localised since the Scottish National Party (SNP) government came into power in 2007 through the creation of the Concordat Agreement. Understanding how the WSA strategy is translated into practice is crucial as local authorities have a considerable degree of flexibility and autonomy in the development of their respective practices.

This chapter draws upon interviews with practitioners from social work, the police, education, third sector organisations delivering youth justice services and legal practitioners from the case study area. It also draws upon interviews with a range of policy actors including civil servants and policy representatives from national youth justice organisations to gain understandings of the WSA from a national perspective. Interviews with these two groups of actors highlight perceptions on the rationales and principles underpinning the WSA from two different angles: from the eyes of those on the ground delivering practice and from those involved in developing guidance around the WSA and informing and influencing its development nationally. Several of the policy actors interviewed had backgrounds in related practice prior to their current positions working in policy-focused roles.

There were three dominant, overlapping understandings of the WSA, discernible from the findings: 1) the WSA denotes a 'holistic' approach to dealing with individual children and young people through being child-centred and through sharing expertise; 2) it is based on minimum intervention; and, 3) the WSA aims to smooth the transitioning process for 16 and 17-year-olds. Several practitioners commented that this represented a return to Kilbrandon's welfarist principles. GIRFEC was also viewed as central to the WSA particularly in the case study area where the named person became a key decision maker in the development of EEI. These understandings reflect practitioners' and policy actors'

perceptions of the fundamental principles on which the WSA rests. These represent individual perceptions of what is perceived to be happening at particular points in time within practice and policy, which is in continuous flux. The chapter begins by exploring interviewees' perceptions of the rationales which lay behind the creation of the WSA before going on to discuss the three dominant understandings.

5.2. Drivers Behind the Emergence of the Whole System Approach

To fully understand practitioners' and policy actors' operational understandings of the WSA, it is important to consider the context in which these have emerged. Chapter two examines policy documents to explore the development of youth justice policy post-devolution exploring how the WSA emerged. In 2008, the publication of the SNP's first policy document on youth justice, *Preventing Offending by Young People – a Framework for Action* (Scottish Government, 2008a), signalled a change in direction towards young offenders based on taking a more holistic approach. Chapter two reveals how, after a period of punitive-based policy in the early to mid-2000s, the roots of the WSA grew from changes in local practice to dealing with low-level offending cases through the creation of pre-referral screening processes. As well as these changes in policy and practice to youth justice, the Concordat Agreement between central and local governments changed the governance structure in Scotland through the creation of Single Outcome Agreements, the end of ring-fenced funding and a reduction in performance and monitoring requirements (Scottish Government and COSLA, 2007). An examination of policy documents and developments in practice only provides a partial picture of where the seeds of the WSA were sown and practitioners' and policy actors' accounts provide a perspective from those involved in the implementation of the WSA on the ground and those involved in developing the WSA nationally.

Interviewees were asked, firstly, how they thought the WSA had come about. The interviewees, in particular the policy actors, identified a myriad of inter-related, political drivers, which were perceived to lie behind the forming of the WSA. In terms of the context in which the WSA emerged, three drivers were highlighted: opposing political and practice-based agendas; the limitations of the Children's Hearings System (CHS) to dealing effectively with youth justice; and, the perceived rise in youth offending in the early to mid-2000s.

Seeking to unravel the political agendas underpinning policies is a complicated task, as agendas may often be multi-faceted rather than crudely explainable. Several reasons have been put forward to explain why a ‘fast changing and volatile’ (Morrison, 2011, p. 58) period of policy making in criminal justice occurred in the early stages post-devolution. For example, McAra (2008, p. 493) has argued that a focus on crime control was a move by the Scottish Parliament to build political capacity ‘as the early years of the new Parliament were accompanied by a degree of public disillusion with the devolved settlement’. In the early to mid-2000s, youth justice policy was largely viewed as having taken a punitive turn, with a marked convergence to policies south of the border, with some commenting that the respective Labour administrations at this time may have been at the root of this (Mooney et al., 2015). As illustrated in the policy timeline in chapter two, the Scottish youth justice system has rested upon contradictory and changing rationales post-devolution, conceptualised by Asquith and Docherty (1999) as a ‘pendulum-like swing’ between ‘welfarism’ and punitive approaches.

Practitioners and policy actors interpreted the WSA as a return to the Kilbrandon principles of welfarism and minimum intervention; for example, through being focused on individual specific needs and circumstances. A legal practitioner commented: ‘*We’ve gone back to the way it should have been; the way that Kilbrandon felt that it should be*’ (Legal practitioner 2 (a)). Some interviewees viewed the WSA to be directly implanted in the SNP’s agenda to reform governance relationships between central and local government through a conjoining of government and local practice agendas. For example, an interviewee commented: ‘*In actual practice in form, it came from a lot of good practice that was happening in selected authorities*’ (Policy actor 1). One interviewee provided a narrative of the background to the WSA:

I mean the Preventing Offending Framework was launched in 2008 after a period of quite oppositional relationship between government and local authorities...The Labour administration was very much focused on ASBOs, tagging young people, the fast-track children’s hearings pilot – where we let people do whatever they want until they become persistent offenders then poured lots of cash on them once they’d entrenched their behaviours and caused so much damage across communities. So, there was a real sense that the political agenda, at that time, through 2002 to 2008, was very different to the practice agenda...So, the Preventing Offending Framework came out in 2008/09 but that was a kinda a time of fairly seismic change within youth justice because we’d gone through the bit where everyone says the children’s hearings

system doesn't work. Offending at that time, I mean by 2004/05, the level of offending across Scotland, by young people, was absolutely horrendous. It was phenomenal...But what happened was the Preventing Offending Framework really helped us to focus in on under 16s, those within the Children's Hearings System, but as people developed their practice and multi-agency partnerships became, you know, were quite effective... (Civil Servant 1)

This 'oppositional relationship between government and local authorities' was marked by the rejection of the use of anti-social behaviour orders and parenting orders by local authorities, which were introduced by the Anti-Social Behaviour etc. (Scotland) Act 2004 (Johnstone, 2010). The above quote suggests that the WSA stemmed from practice alongside a recognition that the CHS was not working for youth offending cases. Interestingly, the interviewee also suggested that youth crime was rising and at a 'phenomenal' level despite decreases in youth crime from the late 1990s to late 2000s with the only major fluctuations coinciding with Labour/Liberal Democrat punitive phase of youth justice in the early 2000s (McAra and McVie, 2010). Another interviewee's perspective on the agenda behind the WSA is based similarly on stemming from the perceived failures of the previous Labour administration's punitive response to youth offending. This policy actor stated that many practitioners ignored the new powers introduced in the early to mid-2000s, which led to the evolution of practice predicating the WSA:

What did come out of it was a group of folk who were sort of committed and specialising in youth justice and who looked more at other effective ways of dealing with things and in particular effective ways of dealing with things that built on what lessons we know that the earlier you intervene the better that you intervene; by not working as a single entity but involving other agencies as appropriate; and, building on ideas of what works rather than what is sexy politically which is always the huge trap in dealing with offending particularly youth offending...And, fortunately, we're in a climate at the moment where politically, you know, the government is strong enough to be able to support these ways even if they're not the ones that sort of are attractive from a vote winning point of view and don't always make sense to everybody. (Policy actor 4)

This perception suggests that practitioners' rejection of the punitive youth justice policies introduced in the early to mid-2000s was a driver behind the development of the WSA.

Also, the election of a majority SNP government in 2011 is perceived as having provided an opportune moment for a new direction in youth justice policy; very much in tune with their focus on governance reform and on early years. The argument that the SNP government is ‘strong enough’ to support this new approach is interesting.

Garland (2001) examined how, in the course of the 1990s, criminal justice policy making in Britain became more intensely politicised and increasingly subject to public and media scrutiny. The punitive turn in the early to mid-2000s, in Scotland, may be depicted as representing what Whyte (1998, p. 199) called ‘a repoliticisation of youth’ at a time when the Scottish Labour party were attempting to ‘build legitimacy for the new parliament’: the political climate emphasising blame and responsibility epitomised in the focus on the anti-social behaviour of young people (Garland, 2001; Morrison, 2011, p. 123). This quote suggests that having a ‘strong enough’, majority government may have made possible the introduction of a policy which may not be ‘sexy politically’ nor favourable in the eyes of the public and media. As well as this, as illustrated in chapter three, the development of a more open and collaborative, discursive politics and policy making style under the SNP may have paved the way for more progressive policies (Mooney et al., 2015). This is reflected in the consultative process with a range of stakeholders including charities and local authority representatives, which has underpinned the development of GIRFEC and the Children and Young People (Scotland) Act 2014. Scotland also has a small close network of agencies and because of this specific context, consultation and the involvement of a range of actors is arguably easier (Mooney et al., 2015).

As explored in chapter two, the WSA arose from evidence from the *Edinburgh Study of Youth Transitions and Crime* (McAra and McVie, 2007, 2010). Several interviewees made reference to the findings of the *Edinburgh Study of Youth Transitions and Crime* as influential to the development of the WSA. It was commented that evidence from the study, specifically the importance of keeping young people out of ‘formal systems’, had been utilised to spur new policy and practice. The political environment was amenable at this time for a change in direction in youth justice and *Preventing Offending by Young People - a Framework for Action* (Scottish Government, 2008a) ascertained this change in direction in youth justice with McAra and McVie (2010) positing that this period represented the entering of a ‘third phase’ in youth justice post-devolution marked by a focus on early intervention and prevention.

5.3. Operational Understandings of the Principles Underpinning the WSA

In response to questions probing their understandings of the WSA, interviewees highlighted three dominant understandings: the first was that it provides a holistic approach focused on the individual specific needs of the child, through drawing on shared expertise from statutory and non-statutory organisations. In these perceptions, the WSA had enabled a more child-centred approach and has utilised professional knowledge and disposals available through different agencies. Secondly, minimum intervention was a key principle based on the perceived negative impacts of formal system contact for young people. Thirdly, some understood the WSA as easing the transitioning process for 16 and 17-year-olds, who had previously been mainly dealt with through the adult criminal justice system, and suggested that this age group represented a vulnerable group of young people with specific needs. These perceived principles of the WSA reflect research evidence on the principles on which youth justice systems should be based. Based on findings from the *Edinburgh Study of Youth Transitions and Crime*, McAra and McVie (2010) recommended that there was a need to provide a holistic approach to children in conflict with the law with interventions being proportionate to need and minimum intervention and diversionary strategies adopted to avoid stigmatisation and criminalisation.

5.3.1. Understandings of a Holistic Approach

In youth justice policy guidance, the word ‘holistic’ can often appear in a broad and opaque way and one objective was to explore how this concept was given meaning by practitioners. For example, the GIRFEC approach stipulates that the creation of a multi-agency child’s plan, which records all actions required to support the child’s wellbeing, should involve agencies thinking beyond their ‘immediate remit, drawing on the skills and knowledge of others as necessary and thinking in a broad, holistic way’ (Scottish Government, 2012a, p. 25; Scottish Government, 2015d). There are also various GIRFEC practice tools designed to provide a holistic focus. For example, the My World Triangle, used to aid decision-making in practice, is premised on helping practitioners to understand the child or young person’s whole world from a range of sources in order to identify the

strengths and pressures in a child's life and the child or young person's 'needs and risks' (Scottish Government, 2012a, p. 18; Scottish Government, 2015f). There are two different levels or 'modes' of policy here (Fergusson, 2007). These policy guidelines represent what Fergusson (2007) terms the 'codificational' mode of policy in which policy is codified through legislation, guidance and protocols. Whereas, the 'implementational' mode of policy represents the stage at which policy is played out in practice. Different meanings may be attached within these different modes of policy and examining how policies are translated in practice is important with a wealth of literature emphasising that it is at the implementation stage that policy is 'made'.

The majority of participants depicted the WSA as a holistic way of addressing offending behaviour. For example, it was commented:

...about considering the child holistically, in one sense, but also about being flexible about what your actions are. To my mind, the WSA is about not following a process. People are people and for all you know you can have ten different kids reported for ten vandalisms and each one will have a completely different background, family values, experiences and you can't treat them the same. (Police representative 1 (a))

For this police representative, considering the child holistically in practice involves considering the individual circumstances of the child including their background, family values and experiences. The flexibility provided by the WSA is viewed as central. '*Being flexible about what your actions are*', and not being restricted by processes, was highlighted by several of the interviewees as a key benefit of the approach; it has enabled the opening up of referral processes and disposal options through multi-agency EEI and Diversion from Prosecution processes. Their perceptions of the WSA as holistic can be seen to be premised on a depiction of the WSA as enabling, first, an individual child-focused approach and; second, an approach drawing on shared expertise and responsibility.

(i) An Individual Child-centred Approach

Interviewees perceived the WSA to be child-centred through placing emphasis on the child's individual circumstances. It was perceived by many practitioners to have rekindled Kilbrandon's welfarist principles. One commented that the WSA has involved considering the individual needs of the child '*rather than a one size fits all*' approach, which it was

posited to be prior to the WSA (Civil servant 1). Talking specifically about the development of EEI, it was commented:

...so it was about creating that process where there wasn't just an automatic thing that you did with a young person who stole a mars bar, it was about actually taking the offence, taking the information that you had, and taking what other information people had about that. It's called the Children and Young People's Act. It's called GIRFEC now. But it was just, it was taking that approach to say, you know, Kilbrandon, it's about holistic, it's about needs of the young person as well as what they've done. (Civil servant 1)

The above understanding of a 'holistic approach' is predicated on dealing with the offence with an understanding of the needs of the young person through sharing information between different agencies. The above quote signals a return to Kilbrandon report's recommendation that children's individual needs should be established with reference to the 'fullest possible information as to his circumstances, personal and environmental' (Kilbrandon Committee, 1964, para. 75).

GIRFEC was viewed as concurrent to the WSA and as having underpinned its development. Chapter six picks up this theme of GIRFEC processes having underpinned the development of the EEI process in the case study area. As described in chapter two, GIRFEC places education at the heart of the youth justice process through the introduction of the named person: a single point of contact for a child and their family and the central point of contact for other agencies where there are well-being concerns. The WSA can be viewed as incorporating the core elements of GIRFEC into youth justice.

As explored in chapter two, the development of the named person in policy has been very contentious. In August 2016, the introduction of the named person for every child/young person under 18 years in Scotland was delayed for a year when the Supreme Court ruled the data sharing provisions were in breach of human rights. The Scottish Government (2015a) states that aspects of the WSA will have to be updated when the named person is implemented nationally. In a small-scale study, professionals identified the involvement of education as a key prerequisite of EEI good practice particularly as they more likely to identify potential issues since they are more likely to monitor children and young people (Papadodimitraki, 2016). In the case study area, the named person was integral to the development of their EEI process and for this reason was a recurring issue across the interviews with practitioners.

It was interesting that whilst a holistic approach was very much constructed as one that focuses on children's needs and centred around addressing these through shared expertise from health, education, social work and third sector organisations – interviewees did not present a definition of holistic as addressing the structural socio-economic routes into offending. Arguably, the WSA could be viewed as providing holistic services but not explicitly, holistically addressing causes of offending. Barry (2013) has been critical of the government's definition of 'active citizenship' in Scotland coming from an understanding that 'holistic' means looking at the whole person from an 'agentic' rather than a 'structural' perspective. Her research has shown that the issues faced by young people involved in offending include structural constraints including poverty, labelling and a lack of access to community leisure services (Barry, 2013). The Edinburgh Study has also evidenced the significant and direct effect poverty has on young people's likelihood to engage in violence at age fifteen (McAra and McVie, 2015).

(ii) *Shared expertise and responsibility*

As well as being child-focused, understandings of a holistic approach were also based upon a perception that the WSA had enabled the sharing of expertise between organisations as well as shared responsibility for dealing with offending by young people. In the case study area, at the crux of EEI and Diversion from Prosecution processes, was the joint decision-making between agencies and also the increase in disposal options. On the other hand, prior to the introduction of the WSA, most offending cases relating to children under 16-years-old were referred by the police to the Reporter. Chapter four provides a description of the EEI and Diversion from Prosecution multi-agency processes in place in the case study area. An increased opportunity to refer to differing services was highlighted:

The options have changed and what is available for me to do for these young people has changed so there are more decidedly more options. It's far more flexible and it allows us to refer a lot of young people to other agencies rather than referring them to the Children's Reporter to allow voluntary interventions to take place rather than compulsory. (Police representative 1 (a))

From this, as well as other interviewees' perspectives, a key feature and benefit of an approach which is holistic is that it offers a greater array of interventions; interventions that are voluntary rather than compulsory for the young person. Prior to the WSA, education,

health and third sector agencies did not have such a direct role in decision-making processes and with their involvement post-WSA, it was perceived that a more rounded discussion with input from organisations providing different services and drawing on differing professional ‘frames of relevance’ had transpired (Asquith, 1983). Multi-agency decision-making processes have implications regarding the differing professions and frames of relevance interviewees draw on; these will be the focus of chapters seven and eight. The following quote illustrates an understanding of the WSA being predicated on a holistic approach through shared expertise, shared responsibility and the opening up of services to third sector service providers:

To get together and share that information, cause we all had different information, getting all that information together and kind of seeing it as, right, what can we all do that is a whole wraparound service? We’ve all got a role in this. How can we all get together and what are we going to do? We had, obviously the third sector came on board and they were offering, you know, a lot of services as well... (Social worker 2)

‘Whole wraparound service’ is an interesting metaphor to use in relation to the WSA as it highlights that, by agencies bringing different information together, a complete approach utilising a variety of services is enabled. Practitioners suggested that it has enabled unified agendas between agencies. However, the EEI and diversion multi-agency screening processes did not include every local agency; for example, there were a range of third sector organisations not involved directly in these processes. Some interviewees commented that they would often refer young people onto other agencies where an appropriate service was in place. One commented that it would be fairer to have all third sector agencies in attendance at multi-agency meetings where decisions on direct referrals are being made: ‘*If Barnardo’s is here, why are not the other 10/15 voluntary agencies around the table? You’re excluding other options*’ (Police representative 1 (a)). However, this was not a specific issue raised by the majority of the interviewees. A third sector representative commented on the benefits of Diversion from Prosecution disposals being opened up to voluntary sector providers:

...one of the unintended consequences, but I think was probably a benefit of it coming and sitting with a voluntary sector provider, rather than staying with statutory social work, is that we have the capacity to offer a bit more than just that bit about the crime that’s been committed as such, because what we do is we do the work with the young people around the crime but we also, you know, we’ve supported young people who

face homelessness, we've done quite a bit of work with young people around about benefits, around about accessing employment or training and that is the beauty of a voluntary sector provider. Whereas, if it was to be held by a statutory worker, in reality, a young person on diversion would probably not be seen as high as a priority as a young person who's involved in a lot of other things. (Third sector representative 1)

This perception of voluntary sector providers being able to address a wider range of issues affecting a young person was generally held amongst the third sector interviewees. This differentiation between the 'voluntary worker' and the 'statutory worker' presented here suggests that third sector providers are able to be more flexible whereas social work may be constrained by wider statutory pressures; this interviewee suggesting here that they may have to prioritise certain groups of young people. The literature on young people involved in offending highlights that they are likely to have multiple and complex needs, and there is a wide body of evidence on effective support and interventions for young people involved in offending. For example, Fraser et al.'s study (2010) found that the most successful interventions rest on involvement of key stakeholders including the family, school and community. The *Framework for Action around Preventing Offending by Young People* (Scottish Government, 2008a, p. 16) also notes the important role of the third sector: 'The third sector brings particular skills and experience to this agenda in terms of engaging with and championing children, young people, families and communities'.

Several interviewees commented on the benefits of the SNP's reform of the relationship between local government and Scottish government. In 2007, Single Outcome Agreements were introduced, and ring-fenced funding for youth justice services discontinued, meaning that local authorities were able to decide locally on their spending and organisation around youth justice. Interviewees commented on the fact that this had led to more agencies having input in the decision-making process as well as becoming involved in delivering youth justice interventions. As a result, there was a feeling that this had led to greater creativity through utilising different supports for young people.

5.3.2. Minimum Intervention

Several of the interviewees' understandings of the WSA emphasised minimum intervention. One of the most commonly stated benefits of the WSA was that it had led to less statutory system contact. On the impacts of the EEI process leading to fewer referrals to the Reporter, it was commented:

We've gone back to the way it should have been, the way that Kilbrandon felt that it should be, the way that, you know, the 1995 Act suggested that if there's evidence – that's great for a grounds for a referral but there needs to be a need for compulsion.
(Legal practitioner 2(a))

This quote highlights an interviewee's concern that, prior to the WSA, referrals to the Children's Reporter led to compulsory supervision orders being made when there might have not been a need for this level of intervention. In the year 2000/01, the most likely disposal for children referred to a hearing on any grounds, and not already subject to supervision, was a supervision requirement (Waterhouse and McGhee, 2002). In arguing that there has been a return to Kilbrandon principles, there is a suggestion that there has been a return to focusing on prevention and early intervention moving away from the interventionist period of the early to mid-2000s. As Waterhouse and McGhee (2002) write, the expectation of the Kilbrandon committee was that the majority of children would appear in front of a panel in a children's hearing with many gaining access to family support but not necessarily on a compulsory basis. This quote illustrates minimum intervention through diversion from formal systems using the example of the use of EEI for sex offences:

You can get a sexual offence that's children exploring, it's natural, it's age appropriate, it's been maybe not well managed by parents but somebody's made a complaint cause they're frightened, angry, upset, which is really, you know, a huge concern and better addressed by some education and guidance. Sexting is the key example of that. Children all sending pictures of each other. That's better addressed by advice and guidance and support from an agency than putting them through a formal system so that's why we remain flexible cause there's context behind every incident. (Police representative 1 (b))

This quote raises several issues around police discretionary decision-making, using alternative approaches to dealing with young people and informal support versus formal intervention. Issues around gatekeeper discretionary decision-making will be explored in detail in chapters seven and eight which specifically explore how discretion is exercised

within the localised processes of EEI and Diversion from Prosecution. However, what is significant about this quote in relation to unpicking operational understandings of the WSA is that the discretionary power of the police is fundamental to minimum intervention. Informal support, through advice and guidance, rather than formal intervention, is perceived to be more suitable for addressing the context of separate incidents.

A key advantage of multi-agency decision making processes under the WSA and GIRFEC is the sharing of information between agencies which interviewees posited meant that young people did not have to have contact with differing organisations and repeat the same stories to various practitioners:

Decisions are made quicker for young people and everybody's communicating so they don't have to repeat the same things over and over again. If you're a 15-year-old, and you're having to tell the same story to six or seven different people – it could be quite daunting. So it takes the burden off them as well. (Third sector representative 6)

Here it is argued that multi-agency processes have led to young people not '*having to repeat the same things over and over again*'. This is as a result of increased communication and information sharing between different agencies meaning that there is less contact time for young people with individual agencies. The above quotes reveal a change in mind-set regarding the appropriateness of system contact through the CHS for young people. McAra and McVie (2010, p. 197) argued that the findings from their *Edinburgh Study of Youth Transitions and Crime* suggest that Kilbrandon's philosophy of minimum intervention has been undermined by the working cultures of the police and the Reporter to the Children's Hearings System leading to a group of young people, 'the usual suspects', going into a 'repeat cycle of contact' with the system. These operational understandings of the WSA in practice suggest that the working cultures of the police and Reporter, the gatekeepers to the youth justice system, have become reoriented to Kilbrandon's principles of welfarism and minimum intervention through the child's needs being identified as paramount. As described in chapter two, there has been a dramatic fall in offence referrals by the police to the Reporter particularly since the introduction of EEI in 2008. Also, fewer children and young people have been made subject to supervision at a hearing on new offence grounds.

That working cultures of specific actors and organisations appear to have changed is only a part of the picture. As explored in chapter six, the changing role of organisations involved in youth justice must also be considered with GIRFEC having brought education to the

forefront of decision-making regarding youth justice. The introduction of the named person and a focus on wellbeing now underpins the youth justice system.

5.3.3. A Smoother Transition for 16 and 17-year-olds

Hand in hand with an understanding of the WSA in relation to providing a holistic approach, interviewees perceived the WSA to foster smoother transitions between the youth and adult criminal justice systems for 16 and 17-year-olds, which resonates with literature evidencing gaps for those in transition from youth to adult criminal justice systems and wider state systems more generally (see Barry, 2006; Britton, 2012; Robinson, 2014; Nugent, 2015).

The place of 16 and 17-year-olds within the Scottish youth justice system has long been contentious but particularly so post-devolution with the introduction of a youth courts pilot in the early 2000s, criticised for being overly punitive and not making reference to welfare and social needs (Whyte, 2003; McNeill, 2010). The introduction of the WSA signalled a move away from the punitive direction of the early to mid-2000s. The WSA has addressed the routine processing of 16 and 17-year-olds in court and by adult services; the use of EEI was extended to 16 and 17-year-olds in the summer of 2013 and Diversion from Prosecution of 16 and 17-year-olds is a key strand.

Despite this concerted focus on this transitions group, complex and overlapping processes, at different levels, between the youth and adult criminal justice systems remain in place for 16 and 17 year-olds. At the lower-end, 16 and 17-year-olds may go through EEI for offence categories under COPFS guidelines, which are generally offences which can be dealt with by police direct measures. If already subject to a compulsory supervision order and an offence committed is outwith Lord Advocate's guidelines (COPFS, 2014), a 16 or 17 year-old may be jointly referred by the police to the Procurator Fiscal and the Children's Reporter who will decide on the most appropriate disposal and support for the young person. Those not subject to a compulsory supervision order, and not eligible for EEI, are referred to the Procurator Fiscal where Diversion from Prosecution may be an option. Sheriff summary courts may also refer 16 and 17-year-old cases for advice within the CHS. These processes have been utilised variably across local authorities (Murray et al., 2015; Dolan, 2015).

Prior to the WSA, young people were described as being ‘discharged’ from the CHS and ‘parachuted’ into the adult criminal justice system (Civil servant 1). A key aim of the WSA stated by the majority of interviewees was to smooth this transition from the youth to adult criminal justice system. These quotes encapsulate this:

But I suppose most importantly it's about making sure that focus looks at transitions and that 16 and 17-year-olds, and it tries to sorta address this issue about where we've failed badly before in relation to the transitions from child to adult, 16 to 17, and that's where its greatest success has been...addressing that issue between youth justice and adult criminal justice. (Policy actor 1)

But most importantly, and I suppose more towards the kind of adult side of it as well, for those who are leaving childhood and entering adulthood it's a smoother transition. For those who wish to continue their behaviours in terms of offending – it's not kind of one day you're a child and the next day you're in jail or that's not the way it should be. No, there is that kind of better transition. (Legal practitioner 2 (a))

Interviews suggested that there has been a change in perception of 16 and 17-year-olds to viewing them as children. There was a consensus amongst practitioners and policy actors that the use of EEI and diversion processes have eased the transition period for this group. However, the extent to which ‘that issue between youth justice and adult criminal justice’ has been fully addressed will be explored in chapter eight: an empirical chapter exploring practitioners and policy actors towards 16 and 17-year-olds. Despite a general consensus that the WSA had led to a smoother transition for 16 and 17-year-olds, there was awareness that this may have simply displaced the difficulties of transitioning to 18-21-year-olds. This issue was reflected on by this interviewee:

There are some 18-year-olds who are operating at a very low level because of their development, because they've been primarily part of the looked after children community so there are still big issues there. So it doesn't matter what level you put – you set a bar – there's always the transitions. (Civil servant 1)

Practitioners in the case study area and policy actors nationally were asked whether they thought that the WSA should be extended to the 18-21-years group. Whilst many agreed to this in principle, practitioners felt that this would be unachievable in practice referring to resource constraints and difficulties in terms of numbers with a practitioner stating that it would be ‘unmanageable’ (Legal representative 2).

5.4. Conclusion

This chapter has explored practitioners' and policy actors' operational understandings of the WSA and in so doing so has sought to unravel perceived principles and ethos underpinning the WSA. It has encapsulated the WSA as representing an ethos with a set of key principles underpinning practitioners' perceptions. Exploring the perceived political drivers behind the emergence of the WSA reveals how it emerged after a changeable period of mixed, punitive youth justice policy post-devolution; from a disconnected relationship between local authorities and the Scottish Government; and, after an increase in offending referrals to the Children's Reporter through the early to mid-2000s. The development of the WSA was perceived to have brought together the agendas of Scottish Government and local authorities through the WSA having developed out of local practice. This suggests that there has been an emerging consensus across policy and practice appearing to endorse the idea of minimum intervention and a shared emphasis on diverting young people from the formal justice system.

The WSA is perceived to have rekindled Kilbrandon's welfarist principles as well as kindling new principles based on shared working and drawing on shared expertise. The emphasis that practitioners' and policy actors' operational understandings placed on minimum intervention is key given the findings of the Edinburgh Study which found labelling processes which occur through involvement in the youth justice system are associated with further involvement in offending and further contact in the system. Based on the findings from their study, they developed a theory of offending pathways based on the concept of 'negotiated order' (McAra and McVie, 2012). They state that young people come to identify themselves in relation to ascribed offender identities through their experience of regulatory practices, akin to Lemert's (1967) conceptualisation of 'secondary deviance'. These interviewees' commitment to the ethos of minimum intervention over the use of more formal processes suggests that the WSA adopts a less interventionist ethos than prior to the WSA. However, chapter two demonstrates that conflicting rationales are still present within policy discourse; discourses around risk and responsabilisation are still evident in policy despite the general change in direction predicated with the introduction of the WSA. In practice the retaining of 16 and 17-year-olds in the youth justice system has been met by barriers and problematic discourses and chapter eight shows that this group are very much responsabilised and often treated as adults rather than as children. Having explored how the principles that have been built into the WSA, the following empirical

chapter will go onto explore practitioner and policy actor perspectives on the implementation of the WSA.

Chapter 6: Implementing the Whole System Approach in practice

6.1. Introduction

This chapter explores the implementation of the WSA in practice, specifically focusing on the processes of Early and Effective Intervention (EEI) and Diversion from Prosecution. It considers the role played by front-line staff in the operational implementation of the WSA in one case study area. It also examines the views of policy actors regarding more systemic issues around implementation across Scotland. The implementation of the WSA is considered in the broader political, economic and organisational context. Macro-level structural changes including the restructuring of Police Scotland, the centralisation of case marking within the Crown Office and Procurator Fiscal Service (COPFS) and social work restructuring from youth justice to more generic teams, as well as the changing governance relationship between central and local government, were identified by interviewees as having directly impacted on the implementation of the WSA. As well as this, more micro-level pressures including resource constraints, funding cuts and staff turnover were highlighted by practitioners as impacting on the long-term sustainability of the WSA policy.

A particular focus of this research is how practitioners and professionals on the ground implement the WSA locally. This chapter draws on Lipsky's (2010) street-level bureaucrat model as a framework through which to explore the implementation of the WSA. Lipsky argues that the 'entire policy environment in which street-level bureaucrats function' needs to be examined to fully understand how policy is "made" by those at street-level. In particular, his conceptualisation of how individuals coproduce policy and his understanding of how street-level bureaucrats "make" policy in ambiguous contexts determined by their work conditions they are surrounded by will be drawn upon.

This chapter begins by exploring interviewees' perceptions on the initial implementation of the WSA highlighting that several factors were key to the successful set up of the WSA. Secondly, this chapter will consider how EEI and Diversion from Prosecution processes have been implemented in front-line practice specifically focusing this in the context of the varied 'balance between localism and centralism' under the Scottish National Party (SNP) (Garside, 2015, p. 4). This section is split into two parts: firstly, focusing on the Scottish policy making context specifically the restructuring of key youth justice institutions and

the implications this has had for local youth justice practice and secondly, focusing on how EEI policy and practice has been coproduced and developed in the case study authority. Throughout, there is a focus on the significance of national consistency, and relatedly on flexibility of practice at local level, in the implementation of the WSA. Lastly, this chapter will explore interviewees' perspectives on issues affecting the sustainability of the WSA.

6.2. Initial Implementation

The WSA was introduced as a pilot in Aberdeen in 2010-11; officially launched by the Cabinet Secretary for Justice in September 2011. EEI processes had been piloted in three case study areas and were rolled out nationally in 2008. Chapter two examined the development of post-devolution youth justice policy to discover where the basis of the WSA emerged through examining policy documents and legislation post-devolution. The *Preventing Offending by Young People – a Framework for Action* policy document signalled a change in youth justice policy emphasising prevention, early and effective intervention, managing high risk, victims and community confidence and planning and performance improvement (Scottish Government, 2008a). A suite of national guidance on the various strands of the WSA was published in 2011. Civil servants and policy actors were asked how the WSA was rolled out nationally. Interviewees spoke of the initial stages of forming the key strands of the WSA, how there was a process of instilling it out across local authorities through 'buy in' and the challenges involved in this:

What we were asking was for people to look at the core components of the Whole System Approach – look at what services they have – look at what gaps there were – and then come with, come to us to look for money to help bring things up to a level they could be satisfied with but also, knowing the facts, and government and local authorities are traditionally not very good at this, knowing that the money would stop, show how they could sustain a service going forward. (Civil servant 1)

We had a project board and that's where we had representatives, high-level representatives, from SCRA, from ACPOS [the Association of Chief Police Officers in Scotland] at the time, from the Crown Office, from the Court Service, from ADSW [the Association of Directors of Social Work], so we got a high level buy-in to Whole

Systems and these people in there was, you know, were chairing our work streams to write the guidance... (Policy actor 2)

These quotes suggest that initial implementation was focused on enhancing quality of service. Several interviewees commented on the importance of instilling ‘buy-in’ at both high-level and at local authority level through the involvement of work streams in developing the WSA guidance documents and through local level events to raise the awareness of the WSA. These quotes suggest that there was senior level support and a concerted desire to make it work. The civil servant identifies that local authorities had to conduct a ‘gap analyses’ of local services in cooperation with the Scottish Government to secure funding. The funding that came from the government, known as ‘seed feeding’, was to help develop the WSA at local level for the initial year with the hope that it could then be sustained in practice from local budgets. The issue of ‘sustaining’ practice, and relatedly concerns about funding, will be addressed later on in this chapter.

6.3. Implementing the WSA in Frontline Practice: Localism versus Centralism

Chapter two weaved together a narrative of the development of a specific new Scottish policy style post-devolution. The Scottish policy making style is characterised by a consultative and ‘deliberative’ policy process (Hajer and Wagenaar, 2003). The literature on politics and policy making in Scotland has focused on the stream of changes introduced under the SNP from 2007; most notably the impacts of the Concordat Agreement which changed the relationship between central and local government (Keating, 2010; Morrison, 2011; Cairney and McGarvey, 2013; Mooney et al., 2015). As discussed in chapter three, the Concordat Agreement changed the relationship between central and local government in Scotland through the creation of local Single Outcome Agreements framed within the Scottish Government’s national outcomes¹⁷; through a reduction in ring-fenced funding; and, a reduction of monitoring of performance of local authorities. In 2008, the ring-fenced grants for tackling offending by young people were discontinued by the Scottish Government and transferred into local government settlements (Scottish Government and COSLA, 2007). The WSA policy can be used as an illustrative example through which to examine the shifting relationship between central and local government in policy making.

¹⁷ For an overview of the Scottish Government’s 15 national outcomes, see Scottish Government (2012c).

The move to increased local autonomy is only half of the picture; particularly in the context of criminal justice where a move to greater centralism has been evident; for example, with the bringing together of the eight legacy police forces into one single police service of Scotland in 2013.

As Garside (2015, p. 4) posits the ‘balance between localism and centralism’ has varied under the SNP. Whilst local authorities have long held autonomy, the governance reforms under the SNP have furthered local autonomy particularly through a reduction of Scottish Government ring fenced funding. As previously stated, the WSA, whilst a national strategy, has developed individually within local authorities. Interviewees highlighted both benefits and challenges of the approach being operationalised at local authority level. This is conveyed in the following quote: ‘*That’s one of the joys of Whole System Approach; you could argue it’s one of the holes in it as well – is that it’s an approach. It’s about practice approach*’ (Civil servant 1). From a national as opposed to a local perspective, policy actors and civil servants recognised local variation as a key challenge; identifying the potential for what is often referred to as a ‘post-code lottery’ in terms of variation in processes and practice and services available across local authorities. A perspective on the importance of consistency in the implementation of WSA across Scotland was put forward:

I think the general position in a lot of things about consistency is that consistency across the country seems to be desirable in terms of broadly how things work and what the outcomes are and essentially looking at it from the young people’s perspective kind of what they can expect...That’s not saying there shouldn’t be an argument for centralisation of everything that there is because that has its own downsides so we are very keen on an approach where there are some clear parameters of nationally set expectations about how things should look roughly and where there are local practices that are clearly working and have the right, the right results... (Policy actor 3)

This quote reveals the tension between having local, flexible approaches and achieving parity in terms of outcomes nationally. This idea of having a ‘*broad consistency*’ across local authorities was expressed by several of the interviewees and the publication of the *Early and Effective Intervention Framework of Core Elements* (Scottish Government, 2015a) can be viewed as setting out to achieve what this interviewee refers to as ‘*clear parameters of nationally set expectations*’ through setting out minimum standards for the delivery of EEI. This idea of achieving a broad consistency was also expressed by another

interviewee who argued that ‘*there should be consistency in expectations regarding youth justice approaches*’ (Policy actor 1). An interviewee commented on the benefits of Framework of Core Elements in relation to consistency around EEI:

I think the Core Elements is a really good, is a really good document. It’s an aspirational piece cause obviously Police Scotland still have to commit around Fixed Penalty Notices and things like that there. But I think, you know, a lot of local authorities will look at that and think, you know, we’re well on the journey here and we’re well to and this is quite a supportive document...So, I think you’ve got a lot of things running alongside each other at the moment and I’m hoping combined with the review [Police Concern Hub¹⁸ Review], combined with the Children and Young People Act that we will start to see more consistency but at the same time through that consistency I think we also need to be sure, as I said earlier on, we’re not, you know, breaking down good work relationships or things which are working well... (Civil servant 2)

This quote reveals that the implementation of the Core Elements Framework is dependent on negotiation between key agencies as it is stated that Police Scotland ‘*still have to commit*’ regarding the use of Fixed Penalty Notices¹⁹. It is resonant of Lipsky’s (2010) perspective that conflict may arise as the result of ‘relative autonomies’. Lipsky argued that relative autonomies exist between different levels of organisations in the implementation of policy. In this example, the relative autonomies between organisations in the delivery of the Core Elements Framework are portrayed highlighting the differing organisational interests of those involved in EEI. During the fieldwork period of this thesis, Police Scotland reviewed their Standard Operating Procedures for youth justice and therefore was not able to agree to proposed changes at the time of the Core Elements Framework (Scottish Government, 2015a). The interviewee’s suggestion that the Core Elements Framework was ‘aspirational’ suggested that there was still some way to go in terms of achieving the criteria set out in the guidance across Scotland, particularly with the use of Fixed Penalty Notices. As detailed in chapter two, the number of Fixed Penalty Notices issued to 16 and 17-year-olds has decreased by 42% between 2008/09 and 2013/14. However, there were still 4,372 Fixed Penalty Notices issued to 16 and 17-year-olds in

¹⁸ Concern hubs within Police Scotland exist across Scotland and represent a single point of contact for sharing and receiving information with partners about vulnerable people.

¹⁹ Fixed penalty notices were introduced under the Antisocial Behaviour etc. (Scotland) Act 2004 and allowed the police to offer fines of forty pounds for up to ten offences.

2013/14.²⁰ This was despite the Core Elements Framework noting that use of Fixed Penalty Notices prevent the use of EEI for 16 and 17-year-olds (Scottish Government, 2015a).

In the above quote, the interviewee expresses a hope that the Police Concern Hub Review and the Children and Young People (Scotland) Act 2014 will provide a potential catalyst to enabling more consistency through instilling the role of the named person across Scotland. The final part of the quote is interesting as the interviewee reflected that, whilst consistency is important, local good practice and successful relationships at local level should not be lost sight of. This illustrates a tension that ran through the majority of interviews between the primacy placed on centralism and consistency versus localism and flexibility. Lipsky (2010) argues that street-level bureaucrats “make” policy in front-line practice but that they do so in the context of broad policy structures. This section has revealed that despite a move to greater local autonomy in youth justice, front-line practitioners are still restrained by rules and regulations of individual agencies and also by the norms and practices of different occupational groups.

6.3.1. Loss of Youth Justice Focus

Whilst youth justice services have always varied across local authorities in Scotland, the Concordat Agreement has further increased local autonomy and flexibility in relation to local youth justice delivery. A recent review of youth justice delivery across 27 of 32 local authorities in Scotland revealed that less than 30% of the authorities had a dedicated youth justice team (Nolan, 2015). There was a level of consensus amongst the interviewees that the effects of introducing greater local autonomy, through the abolishment of ring-fenced funding, the removing of targets and the opening up of locally determined Single Outcome Agreements, has led to greater flexibility. The flexibility to create a local approach based on local services and not to have a strict ‘*one size fits all*’ model meant that local authorities could adopt localised ways of working through ‘*knowing their own services a lot better than us* [actors outwith the local area]’ (Policy actor 2). On the other hand, there was some concern expressed about whether these changes may have led to a less specific focus on youth justice. A reduced focus on youth justice nationally, and at local authority

²⁰ Data received by FOI request from Scottish Criminal Proceedings database

level, is elucidated to here with reference to the abolishment of ring-fenced funding and the introduction of Single Outcome Agreements:

It's just that, unfortunately, within social work there's movement. Because funding's not ring-fenced anymore for youth justice – a lot of local authorities don't have youth justice teams anymore so there's a risk that specialisms been lost across the country...
(Policy actor 2)

As we moved into Single Outcome Agreement with the centralised money coming in – the money that was coming ring-fenced went into local authorities and it was quite clear they were saying this was previously used in relation to youth justice but a lot of local authorities stopped their dedicated youth justice services and rolled them into children's/families' services and said part of what they deliver generally about children and children's would include youth justice. There's a lot of loss of focus in some authorities...But part of the reality, I would argue is, you know, like child protection is prominent. And I don't have a problem with it being a priority. It comes first. (Policy actor 1)

These quotes reveal a tension between the two contingent areas of child protection and youth justice. Other interviewees also expressed a concern that there had been a loss of focus specifically on youth justice, in spite of the WSA strategy, which was evident in the case study area where during the final stages of fieldwork I was informed that social work would be restructured from youth justice teams to more generic children and families' teams. The restructuring, under the banner 'Reclaiming Social Work', involved a move from traditional team models with individual social workers to units with a smaller number of staff. One interviewee explained this change in process as encompassing 'getting in early but looking at the family systematically' involving 'working in units or pods' with 'admin workers, your social workers, your therapists, your family support and it will be working with families in a systemic way' (Social worker 1). Some interviewees commented on the effects they thought might transpire, bearing in mind that the restructuring was very much in its initial stages:

I mean if it works, great, I suppose, I'm not trying to cast aspersions on it but, you know, if we're looking at trying to get remits back from court – we're looking at a very strong court report from a social worker and if we don't have that experience anymore – I'm not suggesting for a minute that the local authority won't be able to provide the training but... (Legal practitioner 2 (b))

A perceived lack of youth justice specialism and how this would impact on reports for court remittals back to the Children's Hearings System was also raised by another interviewee who was concerned how staff would be trained in youth justice work 'to make sure that the social workers have that, the skill to deal with young offenders'. The interviewee stated:

...we always felt that that specialist teams, that's why they were made, because it was giving certain people a service from specialist workers who had a lot of knowledge in that area but that's going to be lost because the social workers in the unit are now going to deal with everything and I do always think that child protection is going to take priority... (Social worker 2)

Here, both interviewees expressed concern that, with the move from specialist teams to more generic teams, there may be a lack of experience and skill related to a specific area. Both interviewees referred to social work court reports, required in cases of remittal from court to a children's hearing, as an example of a practice in which specialist knowledge is required and a concern was expressed that child protection concerns will take precedence. However, from another perspective, it was viewed that, rather than leading to a less specific focus on youth justice, the restructuring of social work to units and using a 'systemic family therapy' model would have positive impacts and 'enhance the Whole System Approach' through 'getting in early' and looking at the 'family systematically' (Social worker 1).

6.3.2. Organisation Restructuring

(i) From Police Forces to a Single Police Scotland

Chapters two and four describe the structural changes which have occurred nationally during the implementation of the WSA. The Police and Fire Reform (Scotland) Act 2012 amalgamated eight police forces into one single police service in Scotland. The Reform Act transferred overall responsibility for policing from local to central government. Several interviewees held a positive perception that there would be increased consistency in youth justice with the centralisation of the police; for example, one interviewee commented that 'there's a big opportunity with Police Scotland now in existence' to 'deliver sort of a more national policy supporting whole systems' (Policy actor 4). It was felt that the reform of the

police would lead to greater consistency rather than the variation in practice by police force before the Act. One interviewee commented that with the reform, Police Scotland has been trying to ‘*look at practice*’ around EEI and trying to bring some consistency nationally (Civil servant 2). However, the interviewee reflected that:

...you’re trying to bring some consistency to that without, at the same time, breaking or dismantling what works really well in local communities and I think it’s getting that balance right and making sure that the service our young people get isn’t based on postcode lottery so if you get service X in authority Y, you should be able to get service X in authority Z as well basically. So, it’s quite important that we look at that and we sort of look for consistency. (Civil servant 2)

These quotes reveal the tension between achieving a level of national consistency as well as flexibility and local autonomy. This suggestion that the reform of Scottish policing may improve EEI consistency is in contradiction to Fyfe’s (2016, p. 177) assertion that, regarding the distribution of power to influence policing: ‘the asymmetries that existed under the pre-reform governance arrangements have been heightened rather than diminished by police reform’ based on evidence on the disparity in use of stop and search across Scotland (cites SPA, 2014). Murray (2015) examined rates of stop and search in the first two years of Police Scotland and found that geographical distribution of searches was broadly consistent to the patterning of searches prior to the reform suggesting that local variation in policing ensues despite reform.

Interviewees were asked whether they could identify any issues in sustaining the WSA but not specifically whether the reform of the Scottish police force had impacted on the WSA or on EEI with Police Scotland acting as gatekeepers to this process. The reform of the police, whilst at the initial stages during the main fieldwork period (September 2013 – April 2015), was not largely identified as having an impact on sustainability. However, one interviewee viewed this organisational shift as having led to some fragmentation in sustaining the WSA:

And I also think that in the midst of all of this we’ve gone from one national police force and we’re working within the context of real major structural organisational shifts and change and things and I think and I’m not that sure that same commitment to and emphasis on young people and their needs and their deeds to get all jargony is there... (Third sector representative 2)

This perspective suggests that national police reform may have impacted on the local commitment and emphasis on young people and the WSA. However, this was not a view provided across the majority of the interviews and it was felt locally that the police were committed to sustaining the WSA.

(ii) Crown Office and Procurator Fiscal Service - from Federations to Centralised Marking

The COPFS in Scotland is organised into three geographic federations, each led by a Procurator Fiscal: the north, east and west. In 2015, the COPFS marking system was centralised from taking place within each of the three federations to a centralised initial processing hub at Stirling, Paisley and Hamilton with dedicated deputies. The rationale behind this was so that it would improve marking consistency across Scotland: *‘So, we hope from that, one of the things, is we get consistency in approach and the same understanding as opposed to local variations which used to happen’* (Legal representative 3). The three federations continue to exist and it was commented that different local arrangements are in place and that trying to make those work *‘in terms of standardising’* under the initial processing hub is still continuing (Legal representative 3).

During the main period of fieldwork, case marking took place at federation level. At this time, key issues were raised around consistency in case marking nationally, differing crime profiles between the west and the east and the availability of diversion programmes at local level. An interviewee commented on inconsistencies nationally in the use of Diversion from Prosecution for 16 and 17-year-olds arguing that *‘there’s no clear guidance from the Procurator Fiscal Service about how they deal with 16/17 year olds’* (Policy actor 1). This interviewee commented:

That doesn’t happen and there’s inconsistency even within local authority areas about that...So there’s no guidance. There’s no consistency. And that’s within the PF areas and it varies across different local authorities and from the PF service sometimes it figures go up and down cause somebody that’s pro-diversion or more aware of it and they’re being pro in marking – if they’re not and somebody else is marking they might not even think about it. (Policy actor 1)

Another interviewee also raised specific concerns around consistency when case marking was still at federation level: *'If you're looking for some around diversion from prosecution, you'll have found traditionally people have felt it's worked better in the east of Scotland than the west of Scotland ...'* (Civil servant 2). This interviewee then went on to extrapolate that this may be due to the differing crime profiles between the west and the east and also down to 'personalities' with a feeling that some people may be more committed to diversion. A policy actor (1) also shared this perception stating *'figures go up and down cause somebody that's pro-diversion or more aware of it and they're being pro in marking'*. There is also the issue of having the programme or service available in the local area: *'Also, you don't want to divert unless you've got the programme there. You have to make sure you've the appropriate programme and Crown have to have faith in the programme that's there as well'* (Civil servant 2).

In 2015, case marking was centralised to take place at a single initial case processing hub. This move to a centralised system meant that the initial case processing team was responsible for dealing with electronic reports; deciding on whether or not they are a crime; and, deciding on the diversion disposal options. Given that there is still variation in the services available across the country, the following interviewee was asked how decisions are made on options nationally when disposals vary locally:

We are trying to standardise that. So one of the things we've done is we've got a mailbox whereby we're asking local authorities to tell us about the cases in advance that they know have been reported for 16/17 year olds...So if we go, if we say let's try diversion, it's getting marked, generally within a week of us getting a heads up on it but that doesn't happen everywhere. So we are beginning to get them for Fife and in the west the police just tell us here's a 16/17 year-old report. They don't tell us if it's on supervision or there's no recommendation about diversion. And we're trying to encourage everybody to do that so that we can fast-track them... Just to try and, so that we can get the proper referrals done early doors. That then gets passed to our admin colleagues and our admin colleagues then liaise with the local authority through email and say - here's a case for diversion will you go and consider it and we will send out the letters we need to send out at whatever time, there's an agreement between local authorities to do it. Local authorities go away, do their assessment, and come back and say to us yes or no they're suitable for diversion, 16/17 year-old diversion, but we leave this to local authorities to decide what programme they're putting them on so I suppose in a way, when I'm marking, I'm not taking into

consideration the fact the Borders might not have a programme and that Wick might not have something. (Legal representative 3)

Despite the aim of the centralised marking to instil consistency, this quote suggests that variation was still apparent.²¹ Firstly, it was remarked that cases were not always marked for diversion within a week and different areas provided different pieces of information relating to a case. Secondly, as final assessments were conducted at local authority level, there was still local autonomy over decision-making. Lastly, local authorities make the decision on what programme is used and services available vary across authorities. The description of the process which takes place between the initial case processing hub and the local authority was ambiguous as previously the interviewee stated that the initial processing centre makes a decision on options but here stated '*local authorities go away, do their assessment, and come back and say to us yes or no they're suitable for diversion*' and '*we leave it to local authorities to decide what programme they're putting them on*'. This suggests that there was on-going communication between the initial case processing hub and the local authorities and at local level there was still autonomy over decision-making on whether cases should be diverted or not. This quote suggests that the introduction of a centralised case marking system changed the dynamics of intra-organisational relations within the COPFS with the overall autonomy on case marking decisions no longer resting at local level within federations, instead being held at a centralised level.

6.4. Coproduction and Cooperation in Policy Implementation

In Lipsky's (2010) re-working of his seminal book *Street-Level Bureaucracy*, thirty years on from the original, he sought to re-conceptualise how policy is made at street-level through a process of coproduction in the context of decentralised service provision and partnership working in the United States. He argues that 'a new kind of street-level workforce has emerged' (Lipsky, 2010, p. 216). This 'new kind of street-level bureaucrat' no longer works directly for government but fits within the street-level bureaucracy, argues

²¹ In December 2016, this interviewee commented that this quote was no longer accurate as times had moved on and provided this update: 'A mailbox has been set up for local authorities to use. We've recognised that the local authorities WSA teams receive and consider cases before we do. We have asked them to send us a "heads up" email with a recommendation as to whether they think 16/17 year-old diversion is appropriate or not. We are then fast tracking of the marking of the case. It means that appropriate referrals are being made early doors'.

Lipsky (2010), as agencies have to be accountable through performance measures, controls and review processes. The WSA represents a localised approach; central to which is the inter-agency working between key youth justice agencies namely social work, the police, education, third sector providers and SCRA. The WSA can be conceptualised as a continually evolving approach and one that is led from the bottom-up. This section will explore interviewees' perceptions on the evolving nature of the EEI process in the case study area.

6.4.1. Developing Early and Effective Intervention and Embedding the Getting it Right for Every Child Approach

The implementation of the EEI process can be seen as being coproduced by various actors at both a local and national level. The coproduction of the model of EEI in the case study area was evident in the ongoing review of the EEI process predicated on the embedding of the Getting it Right for Every Child Approach (GIRFEC). Several interviewees commented on the primacy placed on embedding GIRFEC in the local authority and how this meant that EEI had developed in an unique and specific way in the case study area; for example, it was remarked: '*We were the only area to basically work on GIRFEC*' (Police representative 1 (a)). The Children and Young People (Scotland) Act 2014, expected to be fully enforced in August 2016, will expect the EEI process to incorporate the named person in information sharing, decision making and planning.

(i) The Pre-Referral Screening Process

As described in chapter four, in 2010, a pre-referral screening (PRS) process was introduced in the case study area. The process involved weekly multi-agency meeting involving representatives from the police, education, social work and third sector organisations. The purpose of the meetings was to make a joint decision on who should be the lead agency regarding welfare and offending cases of 8-15-year-olds. The PRS multi-agency meeting was discontinued from September 2013 and replaced by a multi-agency screening process consisting of a youth justice coordinator, based within the police, consulting with other agencies and liaising chiefly with the individual named person for children and young people.

One interviewee reflected on how the purpose of the PRS meetings was to make a decision on who should be the lead agency to deal with the young person rather than to make a decision on the disposal, because without the named person being present a decision on the appropriate disposal could not be made:

...strictly speaking when it was implemented it was about – do we need to make this multi-agency or does it remain single-agency? Can the named person deal with the concerns that are here? If so, it goes to school and let them do it. And then, if things change, they go through their staged process, GIRFEC staged process, as per GIRFEC instruction and guidance set up by [the local council]. (Police representative 1(a))

It was also commented:

We're not making decisions at pre-referral screening as to what agencies we're referring them to. The purpose of pre-referral in [case-study area] is about who is going to take the lead in dealing with the concern. (Police representative 1(a))

PRS was viewed to be about making a decision on which the lead agency should be as the police, who it is stated cannot act as lead agency, should not be able to make the decision on a referral. The police could only make decisions about direct measures (a verbal or written warning) or a referral to Sacro's restorative justice service where '*we don't have any concerns about requiring a sort of GIRFEC type level intervention*' (Police representative 1(a)).

(ii) The Multi-Agency Screening Process and Bringing Education to the Fore-front of Decision-Making

The PRS multi-agency process underwent a review during the period of fieldwork. This was generally perceived to be a consequence of fewer cases needing to be discussed at a multi-agency meeting as time had gone on. Additionally, with the embedding of GIRFEC in the case study area, the named person was to take a more central role in leading the EEI process. The result of the review was that the PRS multi-agency meeting was discontinued and in its place a multi-agency screening process was introduced where it was decided that the youth justice coordinator should liaise with other agencies, principally education, by phone and email. The chief reason behind the review of the PRS process was that the

GIRFEC approach had been embedded and that PRS had merely served as an ‘*interim step*’ in the implementation of GIRFEC (Police representative 1(a)). It was commented that it was not feasible to have the named person for every child or young person in attendance at the PRS meeting as it would have been too complicated. Instead, with the multi-agency screener process, the named person could initiate a GIRFEC multi-agency meeting and ‘invite’ other agencies (Police representative 1(a)). Consequentially, instead of the police being central in decision-making processes, education began to take on a larger role.

The Children and Young People (Scotland) Act 2014 will require local authorities to incorporate the role of the named person in their respective EEI models. Under GIRFEC, all young people under 18 will have a named person when the Children and Young People (Scotland) Act 2014 Act fully comes into force in August 2017. Where there are concerns about children and young people, and there are two or more agencies involved in dealing with these concerns, a lead professional²², responsible for coordinating the child’s single plan, will also be put into place. The named person and lead professional roles were presented as a tiered process by this interviewee: ‘*...and you carry on as your named person and then if you have to escalate to lead professional another agency can become the lead and GIRFEC and the single plan can all come together*’ (Police representative 1(a)).

The following quote illustrates the evolving nature of EEI which is underpinned by the developing of GIRFEC:

Researcher: So is there a possibility for the review that the process [the PRS process] might go or change?

Participant 1(a): To go back to what I was saying about it being a step towards GIRFEC, eventually, the way we saw it, because I was part of the project team who implemented the Whole System Approach, was that you should be able to take PRS and get rid of it and when we get an offence, it goes – there’s a process to put it direct to education and then it should land on the guidance teacher’s desk for little Craig Smith, who can read it and go – ‘oh right, I’ve got that in just now, I had something in from health the other day to say he’d missed a couple of appointments’. Then they start, we need to do something and GIRFEC should work without unnecessary meetings but it was necessary at the time to start building the process.

²² For a description of the role and responsibilities of the lead professional, see Scottish Government (2015e).

An idea is presented of ‘*building the [GIRFEC] process*’ with the PRS process acting as a ‘*step towards GIRFEC*’. Whilst Lipsky (2010) advocates an examination of the differences and commonalities between public organisations such as the police and social work, there is little mention of how this impacts on the day to day street-level bureaucrat. For example, using the inter-agency model of GIRFEC to illustrate, practitioners from across a range of organisations, such as education, health, social work and the police, are responsible for sharing information on a young person through the creation of a children’s plan. This impacts in tangible ways on the day to day jobs of individual street-level bureaucrats as they no longer make decisions within their own organisation’s rules, procedures and protocols but alongside others.

An example of this multi-agency decision-making between agencies is the ‘building’ of the EEI process based on a partnership between the police and education. The police remained central to EEI as gatekeepers to the process but the named person within education had to be informed of every case. After the discontinuation of the multi-agency PRS, education had a growing role in EEI:

...I just automatically, everything that I deal with gets sent to education and it’s kind of up to education, strictly speaking, to then start the GIRFEC ball rolling if they feel they need to do so. However, I don’t just entirely leave it to them. If I’ve given a young person two or three warnings, sending it, a copy of the documentation to education and they still come back and think I’m going to speak to education and we’ll agree together what happens next because education aren’t used to dealing with youth justice. They might be used to dealing with kind welfare of children, you know, if they think things aren’t going that well they’ll alert social work but youth justice isn’t something they’ve dealt with before. (Police representative 1(b))

With the embedding of GIRFEC and the move from the PRS process to a multi-agency screening process, there has been a change in the roles of the principal agencies involved with education seen to be taking on a more central role. The above quote demonstrates that it is education who are responsible for making the decision regarding whether a GIRFEC process needs to be initiated in relation to youth justice. The importance of the relationship between the police and education was identified as paramount. In the above quote, the interviewee highlighted that it was their responsibility to guide education around youth justice issues, of which it is pointed out that education ‘*aren’t used to dealing with*’.

A policy actor expressed their views on the how the Children and Young People (Scotland) Act 2014 would have implications regarding EEI:

I still think, you know, there's work in progress to be done. I think, you know, the whole youth justice side of things, I think particularly for named persons and education, this might be a bit of a brave new world to them, just getting used to the fact you're getting a lot more referrals through, a lot more information through. They're going to maybe be playing a more significant role around deciding which pathway goes in relation to a young person who's committed an offence...And I think particularly education and health will need, you know, a lot of support and training and guidance around their roles cause some of this will be quite new to them and their involvement around youth offending perhaps than they did in the past. But I think it's good, I think, I think generally the idea of having that one point of contact, that anchor, I think is actually really important so they're holding all information, they've got the overview, rather than all this disparate information being held em I think it's actually really quite important em and I think, you know, it's a very very sound principle and we just need to continue to work how it's going to be implemented in practice to give those people, the workers out there the confidence. (Civil servant 2)

This quote shows how the Children and Young People (Scotland) Act 2014 will shift current EEI practice nationally meaning a change in the role and dynamics of actors involved in decision-making with education taking on a more 'significant' and 'new' role. At national level, there was some level of ambivalence regarding how aspects of the Children and Young People (Scotland) Act 2014, mainly the named person, would impact on existing EEI processes. The civil servant mentioned that more work was required to formulate revised practice guidance. In the above quote, the conception of the named person as an 'anchor' is an interesting analogy depicting their key role as a central 'point of contact' for children and their families as well as bringing together information from differing agencies involved with a young person.

6.5. Sustainability of the WSA

As the WSA represents a new approach, and has been implemented within the context of wide-scale cuts in public services, this thesis sought to examine issues around sustaining

the WSA in the longer-term. Interviewees were asked how sustainable they perceived the WSA to be and whether they foresaw any challenges to sustainability. Sustainability, as a concept, is addressed both in terms of challenges affecting the longer-term implementation of the WSA and secondly, through addressing and discussing the longer-term benefits of the WSA, particularly in comparison to processes pre-WSA, to explore how the WSA may be depicted as a more sustainable policy in terms of efficiency of processes and outcomes for young people. Challenges perceived likely to impact in the more long-term implementation of the WSA were at local level (for example a lack of coordination) and at national level (for example funding cuts).

6.5.1 Funding and Resource Constraints

Local authorities were given either one or two year's seed funding to implement the WSA; after which they were to continue to implement the WSA from within their own budgets. Questions over sustainability were most frequently raised in relation to funding and resource constraints; for example:

I think the challenges to it would probably be the man power and lack of that really cause obviously there's pressure on budgets, for example, and certainly for the police, and for us, and for the courts and for probably social work departments as well and councils that you know, the public purse is under pressure and that would potentially be you know, that could have an effect on it and obviously people's time as well. So yes, I could see that being a, having negative impact on its ability to continue long-term but I hope it's not the case. (Legal representative 1(a))

Challenges regarding sustainability and funding were expressed by an interviewee who argued: *'I don't even know how sustainable the WSA is in all areas...some, I think, came with really ambitious project plans where maybe they got quite a lot more money and that's not necessarily been sustainable in their area'* (Policy actor 2). This was an issue also expressed by another interviewee who reflected that *'there had become a kind of culture where local authorities get money from Scottish government, put staff in post, and lo and behold, two years later they can't sustain that'* (Civil servant 1). With the WSA, the importance of being able *'to sustain an approach that can go forward without additional funding'* was a key focus of Scottish Government in guiding the national development of the policy (Civil servant 1).

Continuing awareness and support for the WSA was also presented as an on-going challenge particularly in the light of exigencies levelled on street-level bureaucrats in their day to day job in the context of structural organisational change and also with high staff turnover since the introduction of the WSA in the case study area. Whilst many interviewees referred to the WSA as embedded practice, for example, legal practitioner 2 (b) referred to the WSA as a ‘*comfy pair of slippers*’, it was felt that staff turnover had led to some discontinuity:

I think it went really well when we had the [initial implementation] and it worked really well, and that kind of went on for two years and we had people at the head of it who knew it, you know, I think we had a real commitment from government and things. I think, you know, it's that bit where we sometimes knew there's such a lot of oomph and emphasis to it, you know. We've lost some key people. There's been some real changes. (Third sector representative 1)

Lipsky (2010) argues that the work environment of street-level bureaucrats is structured by ‘common conditions’ which influence the way they see problems and frame solutions. These typical working conditions experienced by street-level bureaucrats include inadequate resources, a higher level of demand for services than supply, vague and ambiguous goal objectives for agencies, difficult to measure performance goals and that clients in street-level bureaucracies are typically not voluntary (Lipsky, 2010). This chapter has revealed the impacts of ambiguities in practice on practitioners; for example, around the review of the PRS process and the reorganisation of the COPFS case marking. It has also revealed that practitioners were working at a time of funding challenges – the impacts of which were directly experienced in the reorganisation of youth justice services. However, Lipsky’s (2010) street-level bureaucrat model was based on policy making at time when agencies worked in silos in their delivery of policy and therefore lacks an understanding of the impacts of multi-agency working in the implementation of a policy. When asked about the sustainability of the WSA, many practitioners raised issues around multi-agency working including coordination and information sharing.

6.5.2. Coordination and Shared Commitment

The majority of practitioners commented on the importance of having a coordinator position to take a lead on the WSA across the differing agencies involved in its implementation. It was felt that this position should encompass the needs of differing agencies, which might require a certain level of independence from the agencies. During the period of fieldwork, a youth justice coordinator position was not filled whilst the practitioner was on leave. There was a concern that the loss of having this coordinator impacted on communication between partners and also on the agencies, with their differing professional ideologies, being brought together:

Without having somebody like a [youth justice lead], who looks after youth justice, it will disappear further and we will go back to yes we do early intervention and yes we do diversion from prosecution but that's as far as we go. (Police representative 1(a))

Another view was that the various agencies should take 'possession' of their own involvement in the WSA. Relatedly, sustaining commitment and buy-in across the differing agencies, in the context of organisational change, was identified as key. Talking specifically in relation to their respective agencies, it was stated:

What I think it does so is that it means that someone's got to take possession of it, if you like, and kind of run with it and it's always possible to have that person, you know, available in every place. (Legal representative 1 (a))

So I'm still committed to doing what I'm doing but I think that's the crux of it – it's individual commitment as opposed to a process that's bedded in. (Legal practitioner 2(b))

This interviewee drew attention to the importance of shared commitment and the realisation of the individual agency benefits to achieving sustainability:

...so, you know, some local authorities take the view; for example, at those multi-agency groups, and say will listen we're moving towards sustainability, however, this benefits us all, so we'd like to ask you and you and you can you actually contribute to actually sustaining this so it isn't necessarily just a local authority responsibility. You know, fire service can contribute; organisation X; or organisation Y, you can see the importance...But ultimately we stress the importance of sustainability, recognising the importance of it and embedding within practice and as you go round a lot of local authorities they are doing it really well without any support, financial support from Scottish Government. (Civil servant 2)

Individual agencies taking ‘possession’ of their role and responsibilities in implementing the WSA whilst also recognising the mutual benefits of joint contribution and responsibility was perceived as vital to the continuing commitment to the WSA across the interviews. This idea of ‘possession’ in inter-agency working has been a focus in the literature on multi-agency partnership working and decision-making; for example, Souhami (2007, p. 23) writes that the restructuring of youth justice to multi-agency youth offending teams, in England and Wales, ‘put at issue the nature of professional expertise itself’ through requiring social workers to ‘relinquish’ ownership.

6.5.3. *Timeliness and Expediency*

In comparison to the pre-WSA process of making most referrals to the Reporter, the PRS process (later the multi-agency screening process) and the inter-agency diversion process were viewed as more sustainable and effective in terms of being more timely processes for young people. For example, an interviewee commented on the time-lags of the referral process from the police to the Reporter pre-WSA and the implications that this had for young people:

The police were frustrated with that as social workers were because they'd have the same young person, night after night, or every month, or whatever and they'd submitted a referral to the Reporter but because of back logs. Police always managed to meet their timescale, they would always get their reports in within 14 days but then the Reporter would take 6, 7, 8, 9 months to process the case to get it to social work, who had huge big allocation issues, so it might not be allocated for 3 months or 4 months... (Civil servant 1)

The majority of interviewees commented on increased efficiency in terms of timeliness of referrals for young people and the processes in place for agencies, which is explored in chapter nine in relation to the impacts of the new referral processes on Sacro's Restorative Justice Service. Several interviewees mentioned that while the processes had changed their workload had not. This is demonstrated in the following quote contrasting pre and post-WSA referral processes:

I didn't feel that we were, I was fulfilling a role. It was almost kind of like there were unnecessary referrals so for me and I'm not saying the referrals themselves were

unnecessary - there was obviously the route for it... I think a lot of them you would be looking for reports from social work which would have probably clogged up their system and not allowed them to kind of do their job and very few, I would say, were coming towards the Hearing. There was a higher proportion of no action than action.
(Legal practitioner 2(a))

When asked about whether referrals for young people were timelier, in comparison to pre-WSA, it was commented: *'Far better, absolute, and very very quickly on in WSA, social work were saying we can actually get out and work with children rather than sitting typing up reports for the Reporter'* (Police representative 1(a)). In 2014/15, it took on average 34.1 working days from the receipt of referral to a decision by the Reporter being made for offence cases and a further 19.8 days on average between the final reporter decision and the initial hearing (SCRA, 2015).

One of the key benefits of the diversion multi-agency process was timeliness:

Another benefit is it obviously saves court time. It saves police time in that they're not requested to attend at court or write statements for a case, which can be diverted at an earlier opportunity. So it's a process where, I believe, there are no losers in the process; there's only winners. Especially the young person who can be given the opportunity to avoid having a conviction and get an intervention at an early stage.
(Police representative 2)

Having a timelier and earlier process was viewed to be beneficial for young people in the long-term as depicted here:

...particularly for a young person, it's important to deal with things quickly rather than allow it to, kind of fester, or allow them to go on and potentially; for example, if there's peer group problems by the time it's got to court and been dealt with frankly they could have committed a whole lot of other crimes. (Legal representative 1(a))

Sharing expertise and information between agencies was also perceived as integral to developing processes which would improve outcomes for young people. However, it was commented that IT systems could be improved by having a system to process reports to education or other agencies referred on to by the police. The Police Scotland Vulnerable Persons' Database (VPD) was created to standardise IT recording after Police Scotland became a single police service and is used to record details of concerns about children and adults. The VPD provides a mechanism for Police Scotland to share information about a

young person through submitting a concern form. Interviews with police representatives and other relevant practitioners suggested that the VPD reports were becoming instrumental to information sharing with the VPD depicted as central to the multi-agency screening process in relation to offending and welfare concerns:

They [VPDs] were really useful. I can say definitely from a named person's perspective; that they're really useful that they come in because [pause] you might not know otherwise. I mean literally you wouldn't have this information otherwise.
(Education representative)

What happens now is that the police, when they're looking at their VPDs, they will send the VPDs to the central point of contact in education if they're education aged... if police are looking at their VPDs and they're, they might think that this triggers, so it's not necessarily to do with offending, but it might be offending, but it might not be offending. (Education representative)

This interviewee highlighted the value of VPDs for enabling practitioners to gain the full picture of the young person's life and suggests that that information sharing in this way enables a family focused approach which is essential for a child focused approach. A recurring theme was that of information sharing seen here to have direct impacts for education as named person. Delving into this further, challenges around the development of the WSA alongside the implementation of the Children and Young People (Scotland) Act 2014 will now be considered.

6.5.4. Moving Forward: The Children and Young People (Scotland) Act 2014

The Children and Young People (Scotland) Act 2014 has extended statutory responsibilities for the welfare of children to include their wellbeing. There are a number of key principles underpinning the Act including planned integrated support for children and young people. It is generally perceived to represent the legislation of GIRFEC and be based on strengthening children and young people's rights in Scotland. Parts three and four of the Act set out requirements for children's services' planning at local level and the role and responsibilities of the named person for every child/young person less than 18 years. The named person has responsibility for making an initial assessment on a child where concerns are brought as well as being a single point of contact for children and families.

Going back to the above section on the role of the named person in EEI, there were some concerns expressed, in connection with the idea of sustainability, around how the named person service would be implemented across Scotland. Specifically there were concerns as to how the named person would take on a leading youth justice role alongside their current responsibilities within education with an interviewee commenting that the Children and Young People (Scotland) Act 2014 ‘will change the players who are in the room’ (Policy actor 5). One interviewee remarked that it will be ‘hugely time consuming’ for the named person to be involved in youth justice cases:

So, I think it’s going to be quite interesting to see how it’s interpreted and what the guidance says and what happens cause at one point they’re saying all the EEI meetings are going to have to stop across the country cause you’re sharing too much information with inappropriate people, you’ve not got the named person there, and they’ll have to go. So what? Everything gets referred to the Reporter again? Do we really want to go back there? (Civil servant 1)

Here, a picture of the continuing change in EEI practice emerged with concerns that the implications in practice around this, specifically around the sharing of information, could signal a return to referrals to the Reporter. Issues around sharing information, specifically what information is being shared and how, in the inter-agency context of EEI and GIRFEC, were addressed in several of the interviews. The threshold of what was considered ‘appropriate sharing of information’ (Education representative) was viewed somewhat ambivalently and to be based on practitioner judgement.

When asked whether there had been any challenges regarding inter-agency working and the sharing of confidential information, it was commented:

I, again, we’ve been doing this for almost ten years now. We’re quite embedded in that. We don’t have any issues about, you know, you have to be careful if there’s been a serious sexualised behaviour type of incident in sending to – education don’t need to know the very high specifics of the event. Something like that will go to social work; something of a higher tariff and greater concern. Social work need to know the specifics so exactly what happened; whose done what to whom or whatever. Education don’t perhaps need the greater detail. They need to know a level of it because they’re dealing with the child both possibly the accused and the victim on a day in day out so they will get a redacted version. But generally sharing information,

no, no issues, no concerns. We are conscious of redacting where it's appropriate to do so. (Police representative 1(b))

By repeating 'we've been doing this almost ten years now', the interviewee emphasised their perception that GIRFEC inter-agency practice had been embedded in the case study area. The sharing of information between agencies was viewed here as being dependent on the specific case and the practitioner's judgement. The police act as a gatekeeper to offending cases and as stated above it is their responsibility to share VPDs with other agencies. It is interesting that an argument was made that education perhaps do not need to know 'the greater detail' when the named person is at core of the GIRFEC inter-agency process. It was not extrapolated on as to specifically what detail would be relevant for education to know.

The recurring nexus between localism and centralism in terms of local flexibility and national consistency with regards to the implementation of the Children and Young People (Scotland) Act 2014 was reflected on here:

In some jurisdictions it may be straightforward; others might find it extraordinarily difficult to provide the consistent response we seek to different types of offending in different places, depending on the level of concern and local priorities, the number of referrals that they are getting, the demographic of their jurisdiction. And that's - and that's a big challenge for the coming months and years. (Policy actor 5)

6.6. Conclusion

The WSA provides a unique case-study in which to explore policy implementation in the context of central-local governance reform. Whilst the WSA is determined at local authority level, this sits within a Scottish policy context based on both centralism and localism. Considering both in relation to consistency and flexibility suggests that neither approach brings straightforward benefits. Political, structural and organisational shifts, in the context of funding cuts, have transformed the infrastructure of youth justice practice in Scotland. Framing this in the context of Lipsky's (2010) street-level bureaucrat model, this chapter reveals that despite a move to the development of youth justice practice locally, front-line practitioners are still bound by broad policy structures. The restructuring and reorganisation of the police, the COPFS case marking system and social work locally

directed the practice of local decision-makers. The following chapters on decision-making will explore the implications of these organisational changes on decision-making in more detail.

Lipsky's model has relevance to the implementation of the WSA as its central focus is on how street-level bureaucrats adopt flexible decision-making approaches based on exercising discretion and the implications of this in practice regarding consistency. The tension between enabling local flexibility and variability in practice against achieving a level of national consistency is evident throughout this chapter. Concerns that there was too much variation in practice underpinned the *Early and Effective Intervention Framework of Core Elements* and the introduction of a centralised case marking system for diversion. Whilst Lipsky (2010) advocates an examination of the differences and commonalities between public organisations such as the police and social work, his analysis does not include a consideration of how this impacts on the day to day work of practitioners. This chapter has revealed how the multi-agency set up in the local authority is integral to understanding how the WSA was implemented in the local authority.

EEI and diversion multi-agency processes have changed youth justice practice in Scotland and GIRFEC has brought education to the fore of youth justice practice. GIRFEC has underpinned the development of EEI and with this a greater focus on broader welfare and well-being concerns surfaces. At the same time, abolishment of ring-fenced funding for dealing with youth offending has led to the restructuring of social work from youth justice teams to more generic teams, in the case study area and nationally. This has had implications including a less specific focus on youth justice with a loss of specialist knowledge and potential impact that child protection cases will take primacy. In light of these findings centring issues around consistency, disparity and flexibility, the next chapter will explore the way in which actors involved in the EEI and Diversion from Prosecution processes make decisions and how these decisions are shaped with specific reference to issues in the broader context explored here.

Chapter 7: Multi-Agency Working, Decision-Making and Discretion

7.1. Introduction

This chapter explores the way in which actors involved in the multi-agency Early and Effective Intervention (EEI) and Diversion from Prosecution processes make decisions and what factors influence these decisions, with a specific focus upon how discretion is exercised within these localised processes, which sit within legal, organisational frameworks and government guidance. EEI and diversion represent discretionary-based decision-making processes where key gatekeepers, alongside partners, make decisions on a range of disposals and referral options. Previously, most cases of low to mid-level offending were dealt with by a police direct measure and the majority were referred to the Children's Reporter. The opening up of disposal options to key gatekeepers increased their ability to exercise discretion; at the same time doing this within multi-agency processes.

The chapter draws on Asquith's (1983) perspective on criminal justice decision-making. Asquith's (1983) work explored the role of informal, operational ideologies in the decision-making processes of the Children's Hearings System in Scotland and in Juvenile Courts in England. His key argument was that individuals hold professional 'frames of relevance' in decision-making operating in terms of their own background knowledge, diagnostic concepts and objectives (Asquith, 1983). Asquith's empirical work focused largely on single agency decision-making and is therefore limited in considering the ways in which actors involved in multi-agency youth justice decision-making processes make decisions. This chapter unpicks where common and competing 'frames of relevance' were held between the different agencies involved in EEI and Diversion from Prosecution.

This chapter also considers the power dynamics between professions in multi-agency decision-making. Hawkins' (2002) concept of the surround; that is the broad setting in which decisions are made considers the influence of social, economic and political factors on decision-making. Exploring the influence of institutional frameworks and the surround enables an understanding of decision-making which looks at the wider contexts and circumstances in which decisions are made. Lipsky's work on how professionals exercise discretion will also be utilised in this chapter.

This chapter reveals how multi-agency relationships were perceived to have improved with the WSA bringing together organisational agendas and a greater understanding of what

services were available and how to access them. The relative role of power between organisations involved in multi-agency decision-making is also highly influential: those with the most power have the greater capability to exercise discretion. This chapter argues that the part played by individual actors and the primacy of discretion in these decision-making processes is key. For example, in the Diversion from Prosecution multi-agency process, the Procurator Fiscal retained autonomy.

This chapter begins by exploring practitioners' perspectives on multi-agency working to draw out perceived benefits as well as challenges to multi-agency working in the case study area. This leads on to exploring multi-agency decision making, specifically the fluctuating power dynamics between agencies, and how discretion is exercised by key actors in decision-making processes. Interviews were conducted over an 18-month period during which a review of the EEI process occurred in the case study area, as well as a change in case marking within the Crown Office and Procurator Fiscal Service (COPFS), and a restructuring of Police Scotland nationally. As such, it is important to bear in mind that interviewees' perspectives were based on in flux decision-making processes.

7.2. Multi-Agency Working

As discussed in chapter five, practitioners' and policy actors' understandings of a holistic approach were based on a perception that the WSA had enabled the sharing of expertise between organisations as well as shared responsibility for dealing with offending by young people. This section will provide a broad scene setting of multi-agency working in the case study area before exploring practitioners' perceptions on how successful multi-agency working had been since the introduction of the WSA, and barriers in practice to achieving a multi-agency approach.

7.2.1. An Overview of EEI and Diversion from Prosecution in the Case Study Area

Pre-WSA, there was an element of partnership working within the case study area through communication between the police and Children's Reporters; the police and the COPFS; and, the COPFS and Children's Reporters for joint referrals. However, the creation of multi-agency processes, involving a range of practitioners, represented a major change in practice from largely single or two agency involvement to a range of practitioners, including non-criminal justice system representatives, being involved in decision-making.

There were two separate multi-agency decision-making processes in the case study area: (i) a pre-referral screening (PRS) multi-agency meeting for 8-15-year-olds and (ii) a diversion multi-agency meeting for 16 and 17-year-olds (see chapter four for a detailed description of the processes in place in the case study area and appendices B and C for diagrams of the multi-agency screening process and diversion process). A range of practitioners sat on the PRS groups including a representative from the police, social work, education (not the named person), mental health, Barnardo's and Sacro. The diversion meeting was attended by the same representatives as the PRS for 8-15-year-olds as well as a Procurator Fiscal Depute. The police, as gatekeepers to EEI, were also able to make a decision on whether a range of direct measures were appropriate including a verbal or written warning or a direct referral to an agency such as Sacro. The Procurator Fiscal could make a decision to divert or at a higher level provide an alternative to prosecution including a fine.

A review of the PRS process for 8-15-year-olds, undertaken by the police and social work, was ongoing throughout most of the fieldwork period. I was informed that the PRS multi-agency meeting stopped taking place in autumn 2013 (when fieldwork for this PhD began). A narrative of the development of the EEI process in the case study area, explored from the perspectives of practitioners in chapter six, revealed that the evolving nature of EEI led to the formation of a multi-agency screening process for youth offending cases. This multi-agency screening process consisted of a youth justice coordinator, based within the police, consulting with other agencies and liaising chiefly with the individual named person for children and young people. As explored in chapter six, the embedding of Getting it Right for every Child (GIRFEC) in the case study area was central to the development of EEI meaning that the role of the named person became more central to the EEI decision-making process. It was stated that where concerns suggested a need for a multi-agency meeting, the named person would take the lead on this. As well as this, it was commented

that all cases already open to social work would have to be referred by the police onto social work.

The diversion multi-agency meetings were discontinued in 2015 with the centralisation of case marking in the form of an initial case processing hub within the COPFS, which meant that diversion cases were no longer marked locally. The initial case processing hub had a team of markers who specialised in marking specific groups of offences. The case markers liaised with local Procurators Fiscal regarding the use of local Diversion from Prosecution disposals. As the development occurred late on in the fieldwork period, it was not clear what implications this would have for local decision-making on diversion disposals, which is discussed later in this chapter.

Whilst EEI and Diversion from Prosecution have developed locally, these processes sit within legal, organisational frameworks and government guidance. These include, but are not limited to, the Lord Advocate's guidelines for under 16s; COPFS guidelines for 16 and 17-year-olds; and, police guidance for immediate referrals to the Reporter. The *Early and Effective Intervention Framework of Core Elements* (Scottish Government, 2015a) sets out minimum standards in relation to various aspects of the EEI process and was introduced to instil consistency in practice nationally. Many of the practitioners referred to the importance of adhering to guidance in decision-making around EEI and diversion processes; for example, adhering to Lord Advocate's guidelines on offences committed by children²³. However, the WSA Scottish Government guidance available online was not specifically referred to by practitioners when discussing influences on decision-making.

7.2.2. Perceptions of Multi-Agency Working

Practitioners in the case study area were asked their views on how well they felt these multi-agency decision-making processes were working and specifically whether there had been any challenges to successful multi-agency working. The PRS multi-agency meeting for 8-15-year-olds was discontinued from September 2013, during the initial stages of fieldwork interviews, with many practitioners uncertain as to what the PRS process review involved and what would happen to this process at this time. This process was very much

²³ The Lord Advocate's Guidelines states the offences that are required by law to be prosecuted on indictment and the offences which may be prosecuted on indictment on the instructions of the Lord Advocate (see COPFS (2014)).

in a state of flux during the fieldwork with practitioners' perspectives dependent on their individual knowledge of the review and many of those interviewed were not directly involved in the PRS process. As a key aim of this research was to explore how practitioners worked together within this multi-agency context, practitioners were asked for their retrospective views on the discontinued PRS process for 8-15-year-olds.

Multi-agency working was viewed largely positively by practitioners. For example, it was posited that one of the greatest achievements of the WSA was partnership working:

Being able for all the agencies to sit together and not be precious about their own area of work and to be able to not to try and just hold on to work because it justifies their job but to be able to do what's right for the young person. (Police representative 1 (b))

This quote highlights that a key tenet of the WSA was requiring agencies not to be possessive regarding their individual areas of work and to work together to provide the most appropriate approach for the young person. When asked about the perceived benefits of the WSA, in comparison to pre-WSA, the majority of practitioners referred to the change from single to multi-agency decision-making processes either in the form of multi-agency face to face meetings or through discussions and communication between partners by phone and email. This was perceived positively by practitioners in terms of the shared commitment and good relationships it had fostered between agencies. For example, a practitioner commented on the development of partnership working in the case study area over previous years:

For me, or maybe it's because I've been finding my feet in the last couple of years, it's more cohesive and we're all kind of coming together. I mean I could go just now and pick up the phone to Sacro for a young person or Barnardo's and we'd have that discussion and I know that we would get support – do you know that way? (Social worker 1)

The importance of trust between agencies and shared commitment were key themes:

This approach is to have confidence in your partner agencies and I think with [a unit within the police in the local authority area specifically dealing with offending by 8-17 year-olds] – they're a good gatekeeper for that. They are effectively doing what I did prior to all of this. And I think it's appropriate that they've got more work to do so that I've got the ones to deal with. (Legal practitioner 2 (b))

There was an overall feeling amongst most of the practitioners that multi-agency relationships were good and also had improved with the development of WSA practice. This was illustrated in the following quote:

I mean before that people weren't really getting together and there was not that formal process so it gave people from all sides that opportunity to get together cause we still had the same goal but we were coming from it from different obviously agendas and we would have had different roles kind of more streamlined trying to get the cases through and how we worked differently with people rather than us all doing our different separate bits. (Social worker 2)

The idea presented in this interview of multi-agency working leading to a more streamlined dealing of cases was a view shared by several practitioners. This interviewee suggests that pre-WSA, individuals came from 'different agendas' and that with the creation of multi-agency processes there has been a move to a more unifying agenda between agencies, despite their differing professional identities. However, whilst there is a strong commitment conveyed towards working together and sharing the same goals, a few interviewees raised issues about opposing agendas of key agencies involved in the processes. For example, it was commented:

The relationships are starting to fracture I would say... We have police, high-level police officers, who are very quick to criticise services and manage young people. I have a fear that now that there's no longer this immediate desire to implement whole systems – it should be there – some people have lost sight of it. (Police representative 1 (b))

This interviewee then went on to defend the police agendas to a degree, emphasising the pressures they face, as illustrated in the following quote:

I do sometimes think that some services may undervalue the impact on police resources; the time taken; how much it is to continue dealing with some of these children when they're been kept in the area, there's no boundaries, there's no restrictions placed on them but also we, I say we collectively, but there are officers who are not appreciative of the work that is going on that they don't see and they don't understand. (Police representative 1 (b))

This police representative's assertion that officers had started to be critical of services (appears to be referring to social work services) suggests that blame and responsibility may

be shifted between agencies with tensions arising as the result of fluctuating power dynamics. Much of the focus of the literature on inter-agency decision making in the criminal justice system, particularly in the English and Welsh context, is on the nature of differing professional identities within multi-agency practice (see, for example, Sampson et al., 1988; Gilling, 1994; Frost et al., 2005; Souhami, 2010). This interviewee highlighted the different agendas of the police and social work. The difference in the agendas and arguably ideologies between the professional organisations of the police and social work has long been acknowledged in the literature with Asquith (1983, p. 45) writing of the ‘clearest example’ of differences between professional groups existing between the police and social work ‘in their definition of and approach to delinquency and crime control’. More recently, Souhami (2007) touches on this in her work on the restructuring of youth justice in England and Wales through the creation of inter-agency Youth Offending Teams, which explored how this had impacted on social workers having to ‘relinquish ownership’ through the transferring of responsibility for youth justice from social work to inter-agency teams.

In the above quote, pressure on police resources to ‘*continue dealing with some of these children*’, who continue to offend, was identified. This interviewee also referred to a focus on performance, targets and statistics within high-level police. There was a sense that these factors ‘framed’ the key concerns of police at high-level (Asquith, 1983). The agendas of the two organisations were viewed as somewhat disparate with a perception that there can be misunderstandings between the two with social work focusing on dealing with the ‘underlying issues’ whilst the police are looking for ‘quick’ outcomes (Police representative 1 (b)). This is illustrative of Asquith’s conceptualisation of ‘competing frames of relevance’ in decision-making where the welfare of children was a central concern for those delivering services, for example social work and third sector organisations, whereas, for the police, managerial concerns were prevalent. The reality of policy delivery at street-level often, by its nature, involves looking for quick results; particularly for those higher up in an organisation whose priorities will be directed by strategy, performance monitoring and the provision of targets. Asquith’s (1983) conceptualisation of ‘common’ and ‘competing’ frames of relevance is useful to draw on here as the existence of differing professions in multi-agency working requires differing professions (i.e. the police, social work) to bring together their respective, and often competing, knowledge, diagnostic tools, and objectives.

Across the interviews, a sense of frustration was evident as was a feeling of a loss in focus on the WSA as time had passed. Interviewees' views represent perspectives on what they perceived to be happening at particular points in time in the development of the WSA. For example, after expressing concerns about incompatibilities between social work and police, the police representative (1b) commented: *'Our partnership working is there and it is still very strong and robust, don't get me wrong, but there are – it's getting picked away at'*. The use of the words 'strong' and 'robust' was at odds with concerns expressed about partnership working being 'picked away at'. There was also a sense that perceptions of partnership working were changeable and dependent on the current climate of working; for example, with an email follow-up from this interview suggesting that there had been increased communication and better working between partners.

As well, several interviewees frequently highlighted that it was their own personal views that they were providing. For example, this was quite often the case when practitioners were asked about their views on how GIRFEC was working in practice. In stating that it was their personal views being offered, there was an implication that this might somehow diverge from what their professional standpoint would be or perhaps that they wanted to note that these were unofficial views rather than the views of the organisation or local authority.

Across the interviews, there was a feeling that whilst multi-agency relationships were good, multi-agency working, on the other hand, could be challenging in practice; for example, as a result of the differing agendas and priorities of respective agencies. Also, as highlighted in chapter six, funding constraints in practice and restructuring of key organisations (the police, COPFS and social work) had impacted on implementation.

Shared commitment between agencies to working together and to the ethos of the WSA and GIRFEC were seen as crucial. The following quote conveys concerns regarding commitment between agencies and the idea of agency ownership in relation to GIRFEC:

I think that, I would say, the biggest challenge to GIRFEC is multi-agency working, is actually that the team around the child and how that happens and information sharing and it's about everybody taking responsibility to support but that also means giving up a bit of ownership from what they're used to doing and how people's day jobs are changing...You can't support the whole child unless you're involved in the whole life of the child but I think that that is, and there's a lot of work load implications for

everybody, but also work load implications on paperwork and procedures and a lot of people I speak to, they want the same thing...(Education representative)

This interviewee argued that the biggest challenge to implementing GIRFEC was multi-agency working. This quote conveys how the day to day work of individual practitioners had changed as a consequence of GIRFEC partnership working, information sharing and the introduction of the role of the named person. Power relations between organisations had changed as a result and this had confronted the status quo of organisations and practitioner roles within the youth justice system. However, this was felt to rest upon shared commitment as the education representative stated '*a lot of people I speak to, they want the same thing*'.

7.3. Multi-Agency Decision-Making and Discretion

7.3.1. *The Relative Role of Power in Decision-Making*

The role of power in decision-making was primary across the interviews. The police, as gatekeepers to EEI, were responsible for making decisions on whether children and young people should be given a direct measure, be referred to EEI or referred to the Reporter. The autonomy of the Procurator Fiscal in decision-making was also identified. The link between power and discretion is key to consider as these agencies, having the greater status, had increased capacity to exercise and retain discretion in decision-making. This section will explore the fluctuating power dynamics between partners and the relative role of power in multi-agency decision-making. Chapter eight focuses specifically on decision-making on cases of 16 and 17-year-olds through joint referrals to the COPFS and the Reporter, Diversion from Prosecution and remittal from court to children's hearing. The dominant role of the Procurator Fiscal in decision-making is explored as well as the 'relative professional status' between agencies involved in these inter-agency processes (Halliday et al., 2009).

Gelsthorpe and Padfield (2003) write that in the early gatekeeping stages of criminal justice decision-making, discretion may sometimes be referred to as diversion. Whilst

decision-making on the use of alternatives²⁴ or diversions²⁵ to prosecution is premised on Lord Advocate's guidelines, there is a high degree of 'freedom, power, authority, decision or leeway' to 'decide, discern or determine' around the alternative options available (Gelsthorpe and Padfield, 2003, p. 3). At the diversion multi-agency meeting, there were a number of disposal options available, which practitioners informed me of in interviews (see appendix C for a diagram of the Diversion from Prosecution process and disposals). A participant clarified some of these:

Most common is probably a referral on to social work and thereafter they can be referred on to either Barnardo's and we often have a direct referral to Sacro depending on the crime type or the victim or the person harmed I should say. We can take no further proceedings if that fiscal feels that the offence is so minor that it wouldn't be in the interest of the public or the young person to take any further proceedings...Our fiscal will advise if there's insufficient evidence therefore we can't take any further action because they're not satisfied there's sufficient evidence there. Prosecute if the offence is of a nature where it's felt that it's more appropriate to prosecute ...We can do a fiscal fine and that's usually for your minor possession of class C drugs...That's our most common ones. A fiscal warning letter as well again for really minor incidents. (Police representative 2)

'If the Fiscal feels' and 'our fiscal will advise' illustrates that the Procurator Fiscal retained the ultimate autonomy in the multi-agency decision-making context to 'decide, discern or determine' on the alternative options available (Gelsthorpe and Padfield, 2003, p. 3). Although literature on prosecutorial decision making is limited, studies have revealed that decision-making is very much based on the judgement of the Procurator Fiscal (Moody and Tombs, 1982). Arguably, the expansion of the diversion disposals available to Procurators Fiscal has upped their discretionary power as they are in a position to make decisions on a range of alternatives as well as diversions from prosecution. The primacy of fiscal autonomy was also made clear by an interviewee, asked whether debate ever arose over cases in the early stages of the Diversion from Prosecution multi-agency process:

Yeah, it did come up occasionally. As I say, the big stick that I always carried in my back pocket was that if push comes to shove, I have to say, I was not prepared to

²⁴ Alternatives to prosecution are generally perceived to be appropriate for less serious offences and include a PF warning, PF fine or a PF fixed penalty.

²⁵ Diversion is a direct measure as an alternative to prosecution and a formal decision by the Procurator Fiscal.

abrogate our responsibility so, you know, in the end of the day, if I wasn't persuaded then I was not prepared to give up the action that I thought appropriate. (Legal representative 2)

This quote is illustrative of Lipsky's (2010) concept of 'agency behaviour', which is particularly useful to draw on when considering multi-agency working, as it emphasises how agencies have their own objectives, routines and practices, which rest upon working philosophies of differing professional groups (Gelsthorpe and Padfield, 2003). In this case, the COPFS make decisions primarily based on the public interest and drawing on a set of legal frameworks. This interviewee emphasised that their position was paramount in the discussion in stating '*if I wasn't persuaded then I was not prepared to give up the action that I thought appropriate*'. When probed about why debate might arise between representatives at a diversion meeting, it was commented that there was rarely any sort of dispute about what action to take between partners but rather the discussion was around what form the action should be; for example, whether something '*relatively simple and informal*' would be sufficient such as a PF warning letter or whether the case should go to social work (Legal representative 2). Whilst these quotes suggest that the fiscal retained autonomy and that their behaviour did not change, arguably the diversion multi-agency meetings did reflect a degree of sharing autonomy in decision-making as examples were provided of joint decisions being made between the local Procurator Fiscal and partners leading to a change in mind set. For example, it was commented:

There was a big, big mind change from our point of view in terms of getting us away from thinking automatically taking it down a prosecution route – not necessary to court – but, you know my drift, in terms of us taking the action, well no, maybe us not taking the action and handing over to other people to deal with. (Legal representative 2)

Literature on prosecutorial decision-making has found that generally fiscals appear reluctant to involve social work or other agencies except indirectly through the court (Moody and Tombs, 1982). As well, literature on diversion schemes in England and Wales has shown that a key barrier to diverting young people has been differing agendas between agencies involved in multi-agency decision-making (see, for example, Davis et al., 1998; Haines et al., 2012). The above quote suggests that with the expansion of diversionary disposals available to the COPFS, as well as alternatives to prosecution, and the sharing of responsibility for these cases, the multi-agency diversion meeting led to an increased

willingness to cases being diverted to other agencies. This shows that an implication of the WSA in the case study area was that it altered the key roles of gatekeeping agencies leading to a more diffuse sharing of power between agencies. It meant that their operational ‘frames of relevance’ were altered from taking an automatic legalistic stance ‘*through taking it down a prosecution route*’ (legal representative 2) to a less interventionist approach based on ‘*us not taking the action*’.

7.3.2. The Exercise of Discretion in Decision-Making

Lipsky (2010) sought to emphasise that the exercise of individual agency sits within a context of a broader policy structure; that is, street-level bureaucrats’ decisions and actions are structured within the rules, policies and laws within which they work. Seeking to define discretion in the context of criminal justice decision-making, Gelsthorpe and Padfield (2003, p. 3) write: ‘At its simplest then, discretion refers to the freedom, power, authority, decision or leeway of an official, organisation or individual to decide, discern or determine to make a judgement, choice or decision, about alternative course of action or inaction’. Research has shown that in practice, discretion is constrained by rules and also bounded by the social, economic and political context (see for example Gelsthorpe and Padfield, 2003).

How discretion is exercised in these processes is important to explore as these decisions are made in a gatekeeper role and determine young people’s entries or exits out of the system. This section will go on to explore these issues around flexibility and discretionary decision-making with a specific focus on eligibility of offences in EEI and Diversion from Prosecution decision-making.

(i) Early and Effective Intervention

In national guidance on EEI, the Scottish Government (2015a) explicitly states that all offences should be considered for EEI unless ineligible under Lord Advocate’s Guidelines, COPFS Guidelines and police guidance for immediate referrals to the Reporter.

Practitioners involved in the EEI process, largely representatives from the police, viewed the flexibility of decision-making around EEI as central. On decision-making around eligible offences regarding EEI, it was commented:

We're very flexible. I think a lot of [local authority] areas can be very restrictive or have been restrictive in what they will take to a multi-agency meeting. Obviously, your indictable offences have to be reported. Other than that we'll look at anything. The chances are your high tariff increased risks will be reported but we don't restrict in terms of categories to that extent...we remain flexible because there's context behind every incident. (Police representative 1 (b))

The positives of a flexible decision-making process are depicted here as the interviewee reflected that it enabled consideration of background. Given that one of the aims of the approach was to be flexible, it was suggested that such discretion is inevitable and needed. As conveyed in chapter five, the WSA was perceived to be holistic in focusing on the individual specific needs of the child, through drawing on shared expertise from statutory and non-statutory organisations. Practitioners from all agencies involved in EEI emphasised that decisions on the suitability of EEI were based primarily on addressing the needs of young people. As explored in chapter six, the police, as the gatekeeper to EEI, use the Vulnerable Persons' Database to identify whether there are any previous or ongoing concerns regarding children and young people, and they then look to external partners including education, social work and the Reporter to find out whether the child/young person is already known (Police representative 2). On the question of repeat referrals for EEI, it was commented that *'each case is looked upon on merit'* (Police representative 2).

The overarching reason for the existence of discretion within professions, as argued by Lipsky (2010), is both the inevitable unpredictability of situations which arise in practice and the fact that discretion is a characteristic of many professions as rules, guidelines and instructions may not cover every circumstance that arises. This is particularly pertinent in relation to the localised formation of processes and practice in relation to EEI and diversion. During the period of fieldwork, processes around EEI and diversion were still relatively new and also undergoing review in the context of local organisational changes. The localised implementation of EEI and diversion was viewed as enabling flexibility and adaptability and with this comes an element of professional discretion.

As reported in interviews, for low-level offences, use of discretion by the police was high, in deciding whether a police direct measure, a referral to a PRS meeting or a referral to the Reporter was most appropriate, although reference was made to Police Scotland Guidance in the form of Standard Operating Procedures, as well as Lord Advocate's Guidelines on Offences Alleged to have been Committed by Children (COPFS, 2014) on the

appropriateness of a case for EEI. Higher level offences, ineligible for EEI under Lord Advocate's Guidelines, had to be reported to the Procurator Fiscal. Examples included assault and sexual offences although decision-making around whether or not to prosecute sexual offences was contentious as explored in the next section on diversion decision-making.

EEI processes and practice differ across the country and were seen to be very much dependent on the local context:

I think it's always a triage system. Somebody can look at and right away decide well actually that's a warning letter or actually I can actually refer that right away, 'I can clearly see there's no other issues' and do all the research and they can make a decision that actually 'I think I know there's an alcohol and drug programme for 6 weeks there – I think that's entirely suitable – however this is a much more complex case and therefore I think it's probably more suitable it goes to a more multi-agency type group'. So, you're right, there's different ways almost of triaging certain things and that happens in different areas. A lot of this is down to local practice, or volume, or resource or somebody's got a dedicated EEI coordinator and in some areas police effectively perform that role whereas in other areas you have actually somebody who's employed as a WSA coordinator and everything else. (Civil Servant 2)

This metaphor of EEI representing a 'triage' system is an interesting one, which conveys EEI as a tiered approach to offending with direct measures deemed appropriate for more minor offences, and a multi-agency group deemed more appropriate where there are other issues and the case is deemed to be more complex. As differing EEI approaches exist across the country and are dependent on local practice and the availability of local resources, discretion and flexibility in decision-making at local level were viewed as crucial.

(ii) Diversion from Prosecution

In Scotland, Procurators Fiscal make decisions on whether or not to prosecute, on what charge(s), by which form of procedure and in which court. They sit within a legal framework and are guided in their decision-making by the Prosecution Code²⁶ and Lord

²⁶ For Crown Office and Procurator Fiscal Service Prosecution Code, see COPFS (2001).

Advocate's guidelines. There are Lord Advocate's guidelines in relation to offences committed by children which should be jointly reported to the Reporter and the Fiscal.²⁷ An interviewee reflected on the purpose of the COPFS being somewhat in tension with other agencies:

Our constituency is much more broad and much more diffuse than the other agencies involved because we have to respond to the needs of the young person as part of the broader consideration of the public interest... We're not writing out saying you put this person on this programme, do this with them, then get back to us. We're saying this is what needs to be responded to - please confirm once that's been successful and we can then determine on that basis if we are able to say that the criminality of that offence and the broader welfare needs have been met therefore respecting the concerns of the community and the victims and witnesses. (Policy actor 5)

This quote highlights that the decision whether to prosecute or to deal with a young person using alternative or diversionary measures is based on broader considerations which respect 'the concerns of the community and the victims and witnesses'. It is commented that this is more difficult than for other agencies involved as the COPFS have to focus on justice in terms of the victim and the community as well as the 'broader welfare need' of the child/young person. In this quote, the importance of ascribing to legal considerations is evident. The 'frames of relevance' of Procurators Fiscal are therefore largely concerned with the needs of the victims and community and the responsibility of the offender. Legal representatives all noted that the chief concern of the COPFS was whether there are sufficient grounds to prosecute.

In contrast, a perspective of an education representative on the purpose of diversion, who sat on the diversion meetings, was framed wholly in relation to the welfare of the child/young person:

It's to try and get, and get the whole, it's to try and get as much of a whole picture as you possibly can because there's there's, there's more to it than an offence. So, there's the background as to why people are, people have done what they've done, what kind of supports have or haven't been in place, what circumstances are arising

²⁷ For Lord Advocate's Guidelines to the Chief Constable on the Reporting to Procurators Fiscal of offences alleged to have been committed by children, see COPFS (2014).

for that person for this to have happened, how serious the offence is and what can be done to support them. (Education representative)

This key point made by this interviewee was that the purpose of the diversion process was to explore holistically why a child/young person has committed an offence by recognising the factors which have led to an offence and realising what can be done to support the young person. In contrast to the previous quote, this perspective is based wholly on the welfare of the young person.

Regarding diversion of 16 and 17-year-olds, whilst the guidelines in place were perceived to be clear for low-level offences, decision-making around offences not as this level was viewed to be more complicated and based on individual discretion and judgement. An interviewee highlighted the primacy of legal frameworks specifically prosecution code on deciding which offences could be considered for diversion:

I mean there was an understanding from the get go which everybody agreed with that certain cases would come to us as custodies or undertakings where the nature of the charge - a serious assault (which is going on petition), knife crime, domestic/racial abuse etc. - they wouldn't be considered by the meeting because there were certain parameters that we have in terms of our prosecution code which are such that these are cases – it was pointless taking them to a meeting.... (Legal representative 2)

This quote suggests that discretion on which offences could be considered at a multi-agency diversion meeting was minimal in relation to high-level offences which required to be prosecuted. On the other hand, there were examples of cases where decision-making was less clear cut; for example, regarding sex offences and assault. The influence of the wider political and societal context on decision-making regarding eligible offences discussed at diversion meetings was also highlighted:

What I would say is that we've had issues with offences of a sexual nature which are not necessarily the most serious where the referral agencies have wanted them to be referred and could do work with those people; for example, there's been a relationship, a boy, say of 17, and a girl of say 15, where it's been consensual, but it subsequently has come to light; for example, by the school or the parents or whatever, and obviously that's an offence and it may be that some people might view that not as serious as some other sexual offences. However, we're to take a current view on that in light of the current society and the policies – we have to view them with a degree of

seriousness and I think the view is that diversion is not appropriate for those types of cases at all. (Legal representative 1(a))

This quote is resonant of Hawkins' (2003) assertion that wider-drivers such as political concerns play out in the surround of criminal justice decision-making. As previously stated, the surround is the broad setting in which criminal justice decision-making takes place which may relate to social, economic, political and organisational factors (Hawkins, 2002). Hawkins (2002) argues that the surround and decision-field, the setting in which decisions take place, shape individual decision-makers and that in order to understand criminal justice decision-making better – a connection between these and the individual-level frame should be made.

Hawkins (2002) writes of signals received from the surround and decision-field, which may influence the framing of decision-makers. The media and political focus on sex offences are examples of such signals. The interviewee begins by stating that some sexual offences are not necessarily of the most serious nature, with referral agencies deeming them suitable for diversion, before stating conclusively that diversion is not appropriate for *'those types of cases at all'* alluding to the media and political focus on sexual crimes at present in the UK. The interviewee's perspective is portrayed as being that of the organisation through the repetition of *'we're to take a current view'* and *'we have to view them with a degree of seriousness'*. Sexual offence cases appear to be framed as serious cases not suitable for diversion due to *'current society and policies'*.

Guidelines on reporting to Procurators Fiscal offences alleged to have been committed by children, state, under the Sexual Offences (Scotland) Act 2009 that: *'Children engaging in sexual contact with one another is an offence but not one that requires by law to be prosecuted on indictment but it may depending on facts and circumstance'* (COPFS, 2014). The Scottish Government's (2011b, p. 5) guidance on Diversion from Prosecution for 16 and 17-year-olds states: *'If there is a suitable diversion programme available, then consideration can be given to diversion programmes for offences listed below where the presumption is generally for prosecution'*. These offences include offences of a sexual nature, domestic violence and hate crime. The guidance notes that decisions on these cases should be taken in line with COPFS prosecution policy and in consultation with the District Procurator Fiscal. This suggests that there is a level of discretion which local Procurators Fiscal can utilise, dependent on the availability of a local programme, in relation to this type of offence.

In a later interview, the latter interviewee commented on a change in perspective towards the consideration of offences of a sexual nature for diversion:

We've had to fight a little bit for things like sexual crimes to be discussed there which is something that we have now I think decided that we would, certainly lower level ones, would potentially go there for diversion because there is a very – well I've never taken part but I'm aware, and I've made aware by Barnardo's that they do a very good course which concentrates on sexual behaviours and I think we've decided that that's probably the most appropriate way to discuss or to deal with accused persons of things like sexting or whatever...(Legal representative 1 (b))

In response to the idea presented of having 'to fight' for certain crimes to be discussed, I asked who it is that decides which offences are eligible to be taken to a diversion from prosecution meeting:

It's been the local area Procurator Fiscal in [case study area] who discussed it with - basically because I think there was a initially a bit of a, what's the word, an aversion to doing it that way – felt like, oh gosh, if it's sexual it needs to go to court but I think there was then discussions that took place to sort of say well look these are the crimes that potentially could most be or people's behaviours could most be changed by being part of a diversion process. (Legal representative 1 (b))

These quotes convey that over time, the appropriateness of considering sexual offences for diversion was reconsidered. It suggests that the 'frames of relevance' of those involved in diversion decision-making became more concerned with addressing the circumstances of young people's offending through taking into account the minutiae of sex offence cases including levels of serious and appropriateness of diversion (Asquith, 1983).

The personal disposition of key decision makers influences is also a key factor. For example, a civil servant argued that disparities between the east and west of Scotland in the use of Diversion from Prosecution for 16 and 17-year-olds, was the result of personalities of specific deputies whether '*people are prepared to drive it forward*' (Civil servant 2). This was also underpinned by the availability of local services suitable to address that offending behaviour. The Scottish Government (2011b, p. 11) *Diversion from Prosecution Toolkit* states: 'The Procurator Fiscal can only divert cases where they know that the appropriate services are in place'. This statement demonstrates the important need for local services to be in place which are well resourced and well publicised.

Hawkins (2002, p. 54) writes that within complex, multi-level organisations, framing behaviour occurs at different organisational levels and thus describes it as a ‘layered phenomenon’. In Moody and Tombs (1982) research on prosecutorial decision-making in Scotland, they described the Procurator Fiscal Office as a ‘hierarchically structured organisation’. These quotes convey a sense of differing perspectives between different organisational levels with the interviewee commenting that they had ‘*to fight a little bit*’ for sexual crimes to be considered with a higher level of authority. Hawkins (2002, p. 56) states that: ‘The higher the level of decision-making in an organisation, the more conscious of wider audiences and the outside world decision-makers become’. This is illustrated in the above quote which suggests that the higher level decision-maker, ‘*the local area Procurator Fiscal*’, had an initial aversion to considering some sexual offences cases through the diversion process.

Hawkins’ (2002) argument suggests that the perception of wider audiences is a key influence on decision-makers higher up within an organisation. Lipsky (2010) argues that policy is made by street-level bureaucrats at two levels or in two ways. The first is through individual exercise of discretion but it is the effect of this on ‘agency behaviour’ – the second level of discretion – which is significant here when considering the COPFS implementation of Diversion from Prosecution. Here the ‘collective effect’ of the higher-level decision-makers in COPFS shows how the agency has specific ways of doing things and a resistance to taking a more flexible approach to sex offences (Lipsky, 2010).

Alongside the type of offence, an interviewee highlighted that the intent of the young person was also a key consideration in assessing the appropriateness of diversion. To illustrate, an example was provided of two different scenarios of an assault case in relation to the intent of the young person:

...a kid that has made a mistake as opposed as to maliciously gone round to do. Supposing it is a broken bone which becomes a serious assault rather than just an ordinary assault - a broken bone - if somebody goes out to intentionally assault somebody and hurt them - that’s one thing - but somebody who, suppose the victim has been calling them names or saying something and he’s going ‘oh shut up’ and they’ve stumbled and by default landed funny and broken their arm. There’s not that sort of same intent. And that’s the sort of example of, well before the fiscal would say ‘well, strictly speaking’, and I’m not saying serious assault is a category we would necessarily automatically prosecute. I’m just giving it as an example of a few different

levels. The fiscal would read the case and say ‘yep I can see that we would do that and you know we can divert that and let’s go for it let’s do it’. But it now seems that the fiscal who attends doesn’t have the authority to make that decision and the head man has said no if it comes under that category – you’re not discussing it – end of.
(Police representative 1(a))

This illustrative example of decision-making in relation to two scenarios of an assault offence conveys the primacy of individual judgement and discretion underpinned by authority in decision-making. Different ‘levels’ of assault and degrees of ‘intent’ by a young person represent factors weighed in the decision on whether or not to divert a case. Again, the ‘layered phenomenon’ of decision-making in organisations is evident here illustrated in the latter part of the quote where those higher up are viewed to have the majority of control over which offences can be diverted. The interviewee refers to a ‘reluctance’ to allow certain types of crimes to be diverted.

This section has demonstrated that the Lord Advocate’s guidelines leave room for individual discretion and judgement regarding the use of EEI and diversion. This is summed up by an interviewee:

Lord Advocate’s guidance is guidance. Now, my interpretation of Lord Advocate’s guidance was for somebody that shouldn’t come to EEI, that should go to the PF, would be somebody whose offences are on solemn procedure²⁸...but some of the lower level things is, well I’m not defending their behaviour but they get caught up in behaviour and they’re involved in drink and stuff like that and they come away with things they shouldn’t be saying and it is racist or it could be sectarian, whatever, now that needs to be dealt with and addressed – nobodies suggesting it shouldn’t be. But does it have to be done through a prosecution? (Policy actor 1)

The subjectivity of interpretation of guidance is illustrated here with this interviewee highlighting that there are differing views on the use of diversion for lower level offences. As described in chapter six, case marking within the COPFS was centralised in 2015 from taking place within each of the three federations to a centralised initial processing hub across Stirling, Paisley and Hamilton with dedicated deputies. Those involved in this commented that centralisation of case marking was premised on achieving greater

²⁸ There are two types of criminal justice procedure in Scotland: summary procedure and solemn procedure. Solemn procedure is used for cases of more serious offences and involves trial on indictment before a sheriff or judge.

consistency. This change came about at the end of the main period of research fieldwork but relevant persons were interviewed subsequent to the centralisation of case marking in order to explore the initial impacts of this. Under the new system of marking, when questioned whether there are any offences not deemed appropriate for diversion, it was commented:

There are obviously matters, like the petition level cases- e.g. house breaking, rape, the major sexual offences, serious assaults, that kind of thing, where diversion is not suitable. It's a close call quite often for summary matters- some of the offending is still severe and I would take into account things like the level of violence that's used. If we're dealing with somebody kicked to the head I'd be quite reluctant to send that for diversion. But ultimately every case is considered on its individual facts and circumstances so I think it's probably a never say never. (Legal representative 3)

This quote suggests that within the centralised case marking process, individual discretion and judgement was still instrumental. The argument that it is ‘*a close call quite often for summary stuff*’ highlighted that case marking rests upon individual judgement but that decisions on certain offences still occurred within a ‘layered phenomenon’ (Hawkins, 2002) illustrated in the example of ‘*a fairly intense discussion*’ taking place between levels. These discussions have also illustrated the autonomy of the COPFS on the eligibility of offences for diversion.

7.4. Conclusion

Asquith (1983) writes that a key implication of welfare-based ‘individualised justice’, which takes into account the social, personal or environmental characteristics of children, needs to take into account the ‘operational or informal ideologies’ of professionals in translating policy into practice. Therefore in order to understand how practitioners involved in EEI and diversion make decisions, the processes of how individuals ‘frames of relevance’ inform decision making must be considered.

In the case study area, the introduction of the EEI PRS and the Diversion from Prosecution processes represented new multi-agency modes of working. At the same time, practitioners were working in the context of legislative and organisational change, which should be borne in mind when considering their perspectives, as these represent what they perceived

to be happening at particular points in time. This chapter has highlighted that, whilst there was an evident commitment towards multi-agency working, EEI and Diversion from Prosecution were underpinned by what Asquith termed ‘competing frames of relevance’ between professionals and agencies. An example of this was provided by an interviewee who perceived that there were ‘*officers who are not appreciative of the work that is going on [by other services]*’ at the same time arguing that ‘*some services may undervalue the impact on police resources; the time taken; how much it is to continue dealing with some of these children*’. However, there was a consensus amongst the interviewees that the primary goal of decision-making across agencies was to address the individual needs and circumstances of the child/young person.

In considering how policy is translated in practice, the ‘frames of relevance’ of professionals involved in EEI and diversion processes, whilst concerned with the individual circumstances of the child, were situated within their respective institutional frameworks and agendas. Legal representatives ascribed more to a legal, justice orientation in decision-making; an individualistic approach was evident through a focus on responsibility and intentionality. The example of a change in attitude to dealing with sex offences over time suggested a change in mind-set to dealing with these types of cases. It also suggests that over time, there was increased acceptance to relinquish autonomy over decision-making and work with other agencies on deciding the most appropriate disposal. As well as this, the process of deciding what information is relevant in decision-making differs between agencies but also between individuals. The individual disposition of the decision-maker was also key. Those out with the legal institutional frameworks involved in the processes (including an education representative, social work and third sector representatives) were more likely to ascribe welfare factors as significant. These representatives referred less to the responsibility or intentionality of the young person in determining what decision should be made.

Using illustrative examples of decision-making in relation to eligibility of offences, this chapter has shown how EEI and Diversion from Prosecution multi-agency decision-making processes are based on the exercise of discretion by specific gatekeepers and dependent on the personalities of individuals in key roles. However, in contrast to pre-WSA, these decisions by key gatekeepers were being made with other partners and this was perceived to have led to an increased awareness and openness to working with partners. This chapter has revealed that the autonomy of the Procurator Fiscal in decision-

making has not only been retained but arguably their ability to exercise discretion has increased through an increase in diversion disposals available.

The WSA was understood to be child-focused and premised on GIRFEC. It could therefore be argued that disparity and discretion is key to ‘getting it right for every child’ and the flexibility of the EEI process, commented on by several practitioners, paramount. However, the exercise of discretion in the Diversion from Prosecution process, which was depicted to be driven by key individuals, and differ in its utilisation between the west and east of Scotland, has arguably resulted in disparity which serves to lead to a differing approach taken towards young people who offend across Scotland. The next empirical chapter will examine decision-making specifically in relation to 16 and 17-year-olds, building on several of the issues raised in this chapter around the intent of the young person and the discretion of the Fiscal in decision-making.

Chapter 8: 16 and 17-year-olds at the Interface Between Youth and Adult Justice Systems

8.1. Introduction

This chapter explores decision-making specifically in relation to 16 and 17-year-olds and in so doing explores practitioners' and policy actors' perceptions towards this group post-WSA. This will involve examining how decisions are shaped in three key processes which retain 16 and 17-year-olds within the youth justice system: through remittal from courts for advice at a children's hearing; joint referrals to the Procurator Fiscal and the Reporter; and through Diversion from Prosecution.

Chapters two and four illustrate the complex processes in place for 16 and 17-year-olds in the youth justice system and should be regarded as contextual pieces for this chapter. There has been a change in practice towards 16 and 17-year-olds since the introduction of the WSA. Sixteen and seventeen year-olds represent a group in transition - historically, in the Scottish youth justice system this has been the age at which young people move from the Children's Hearings System (CHS) to the adult criminal justice system. The policy timeline (chapter two) weaves together a complex and changeable narrative regarding how 16 and 17-year-olds have been dealt with in the youth and adult criminal justice systems post-devolution. From an auspicious early announcement for a bridging pilot to retain 16 and 17-year-olds in the CHS (Scottish Executive, 2000) to the creation of youth courts in 2003 and a focus on persistent offender targets (Scottish Executive, 2002b; Scottish Executive, 2003); 16 and 17-year-olds have held a tenuous position at the interface of the youth and adult criminal justice systems. There is a wealth of literature evidencing gaps for those in transition from youth to adult criminal justice systems and wider state systems more generally (see, for example, on the Scottish Context: Barry, 2006; McAra and McVie, 2010; Nugent, 2015).

With the introduction of national guidance on diverting 16 and 17-year-olds from prosecution in 2011, the extension of Early and Effective Intervention (EEI) to 16 and 17-year-olds in 2013, and the specific aim to retain this group within the CHS, there has been a marked change in policy towards dealing with this transitions group. A key impetus for the WSA was to address the routine processing of 16 and 17-year-olds in court, which

went against UNCRC principles. The WSA ethos adopts a much more holistic and welfare orientated approach towards this group. In chapter five, practitioners' and policy actors' operational understandings of the WSA emphasised that it has eased the transitioning process for 16 and 17-year-olds.

A particular focus of this research is on how 16 and 17-year-olds are perceived and how decisions about them are being shaped. In the multi-agency decision making processes explored, decisions about children who commit offences are made by individuals operating within formally different institutional frameworks and Asquith's (1983) conceptualisation of 'frames of relevance' will be drawn upon to consider the impact of these. Halliday et al.'s (2008, 2009) conceptualisation of 'relative professional status' will also be drawn upon in an examination of the relative autonomy held by agencies involved in the separate decision-making processes discussed in this chapter.

One of the key benefits of the WSA, stated by all interviewees, is that it retains young people aged 16 and 17 within the youth justice system; although, some interviewees observed that this could merely displace the challenges of transitioning to adult systems to 18 and 19-year-olds. This chapter highlights the tension between welfare and responsabilisation for 16-17-year-olds. This chapter begins by exploring how this group was constructed as a separate entity from under 16s. This leads on to exploring how actors made decisions in relation to this age group examining three decision-making processes. Sixteen and seventeen year-olds can be retained in the youth justice system through four key processes at various stages: (1) use of EEI measures by the police; (2) through Diversion from Prosecution by the Procurator Fiscal; (3) through referral to the CHS where already subject to supervision or jointly referred by the Procurator Fiscal and the Reporter to the CHS; and, (4) being remitted by the courts to the CHS. The following sections will explore the extent to which processes two, three and four are happening in practice, how decisions are shaped in each process and perceived barriers in practice regarding each referral route. The use of EEI for 16 and 17-year-olds was not a key issue highlighted by practitioners in the case study area and is therefore not explored in this chapter. This chapter will also briefly consider some of the gaps in services for 16 and 17-year-olds identified by interviewees.

8.2. The Constructed Identities of 16-17 Year-olds: Neither Child nor Adult

Some practitioners' constructions of 16 and 17-year-olds within the WSA were at times conflicting. Whilst most recognised that this group should be treated first and foremost as children; they were differentiated from those under 16-years as being expected to take more responsibility for their offending behaviour, as demonstrated in the following quote:

...under 16s, we've kind of sorted that, we've got a much better direction of travel. 16/17 year olds, well some of them are expendable, you know, and it's about challenging that practice, and it was practice, and it still remains a little bit, that you know if you've worked with the young person two to three years within the Children's Hearings System and they've carried on offending automatically they need to face the consequences of their actions when they get into the adult system – really? (Civil servant 1)

This quote portrays a sense of inertia and despondency in dealing with 16 and 17-year-olds. The perception that constructing 16 and 17 year-olds as 'expendable' still remains practice 'a little bit' suggests that attitudes to dealing with this group of young people have not fully changed under the WSA. This interviewee questioned the construction of 16 and 17-year-olds as responsible and different (needing to '*face the consequence of their actions*') from under-16s. Several practitioners referred to 16 and 17-year-olds as a particularly vulnerable group - a sympathetic position towards them was conveyed by many of the practitioners and policy actors. For example, this social worker pointed to the sharp contrast between the youth and adult justice systems:

I feel for 16 and 17-year-olds. They're very much in that transition. If they've been through the Children and Families' System – that's kind of nurturing. To go into a criminal justice system that can be quite punitive. It's giving that little bit, like starting to give them more responsibility as well. (Social worker 1)

Sixteen and seventeen year-olds, being '*very much in that transition*', exist in a liminal space between youth and adult systems. As demonstrated in chapter five, a key understanding of the WSA by practitioners was that it eases the transition from youth to adult systems. However, this quote again rests on the premise that this group of young people take some responsibility as well. This perception that the WSA is also about '*giving*

them more responsibility as well suggests that the focus is not wholly on addressing needs but also about accepting responsibility.

8.3. Barriers to Retaining 16 and 17 Year-olds in the Children's Hearings System

Children aged 16 and 17 can be kept on supervision until they reach 18 or, if they are not on supervision, can be referred back to the CHS for advice by the courts. As described in chapter two, remitting cases relating to 16 and 17-year-olds from court for a disposal at a children's hearing is advocated in policy guidance (Scottish Government, 2010).

However, figures provided in chapter two show that the numbers of 16 and 17-year-olds actually being retained in the CHS by a remittal from court is low. The Association of Directors of Social Work in Scotland (2012) has issued a specific position statement on this issue which states: 'Young people should continue to be supported on a supervision order between the ages of 16 and 18 years when this is in their best interest'.

Whilst there was an evident commitment to the use of EEI measures and Diversion from Prosecution amongst practitioners – it was highlighted that not as many 16 and 17-year-olds had been retained within the CHS as had been hoped in the development stages of the WSA in the case study area. One interviewee's understanding of the WSA emphasised the importance of retaining 16 and 17 year-olds within the CHS:

The WSA for me, as I see it, is working with the kids – sticking with them – stickability. Just because they've reached 16 – it's not taking them off supervision – it's keeping them on supervision – it's taking them with you. (Social worker 1)

This quote suggests a change in positioning towards 16 and 17-year-olds, under the WSA, with the concept of 'stickability' suggesting that this transitioning group are viewed as having specific needs. This change appears to have occurred across institutions rather than at an individual level, with the majority of interviewees highlighting that the WSA is about easing transitions for 16 and 17-year-olds. However, despite this, there were several barriers identified to retaining 16 and 17-year-olds in the CHS in practice: a sense of inertia to doing so, a lack of knowledge as well as a lack of joint decision-making between social work and the courts and lastly as a result of resource issues.

When asked for examples of cases which have been remitted by the courts for advice at a children's hearing, it was commented:

Eight to fifteen year-olds, they would be more obvious, because they would be more likely to be remitted back because they're younger and there's more hope that something could be done. But for sixteen and seventeen year-olds it's probably few and far between. (Legal practitioner 1)

There is a real sense here of 16 and 17-year-olds being differentiated from under 16s with an indirect suggestion that there is '*less hope for them*' because they are older. This idea of hopelessness is interesting when contrasted with the hopeful perceptions of many of the interviewees' towards 16 and 17-year-olds; hopeful that they may be able to desist from offending. For 16 and 17-year-olds specifically, there was a feeling that they may represent cases of young people who have been involved in offending for years with those working in the system 'get[ting] exhausted' (Policy actor 4). There is an almost fatalistic depiction of 16 and 17-year-olds who continue to be involved in offending, with the conjuring of an inevitable future of further offending.

Several interviewees commented that they had hoped to see an increase in the number of 16 and 17-year-olds remitted at the beginning of the WSA but that this had not occurred. The main reason was perceived to be a lack of sheriff awareness and involvement in the WSA. A legal representative (2) identified a lack of sheriff involvement in the initial stages of developing the WSA in the case study area. Another interviewee commented on the role of the sheriff in the process:

They [a Children's Hearing] could also give advice as to what they think would be in the best interests of the child so it's purely advice. It's something that the sheriff doesn't have to follow but that was a strand that they were hoping they could build upon. (Legal practitioner 2 (b))

Another interviewee similarly voiced concern about a lack of remittals of 16 and 17-year-olds from the court to the CHS for disposal when asked whether they felt there was a certain type of case which progresses into the adult system:

There's a small amount of persistent offenders that obviously we have. But, there's also that kind of medium risk ones that really they should be put back to the hearings but I don't think enough social workers remit them back to the hearing enough and I don't think they're asking for that in the reports because the Sheriff can still choose to

do that. If we push it, and because I've said, because they're so keen to get them off of supervision when they're 16 that then gives them no option but they have to go to the adult courts. (Social worker 2)

These practitioners highlighted a lack of impetus to utilise remittal of 16 and 17-year-old cases from court for a disposal at a children's hearing; interestingly one placed responsibility for this on sheriffs and the other on social workers asking for remittal in social work reports. Specifically, it was highlighted that 'medium risk' young offenders may be slipping through the gaps and progressing into the adult system. The lack of remittals was not put down to a lack of resources in terms of funding, rather there was a concern that the restructuring of social work from youth justice teams to generic teams, as described in chapter six, may have led to a loss of youth justice specialism, potentially impacting on the writing of proficient social work reports for court. The legal practitioner (1) stated the advice was '*something that the sheriff doesn't have to follow*' illustrating that sheriffs have the ultimate autonomy in decision-making on the remittal of cases. Another interviewee talked about having to 'persuade' sheriffs by being able to evidence that there were resources in place and that the right outcome for the young person was attainable (Legal practitioner 1). This lack of sheriff remittals is a Scotland wide issue with a recent review of youth justice practice, in 27 of Scotland's 32 local authorities, finding that less than a third of participants stated that remittal to the CHS was always commented on in Criminal Justice Social Work Reports (Nolan, 2015).

These findings are resonant of Halliday et al.'s (2009) concept of 'relative professional status' which they used to reflect on the differing subjective experiences of social work and the judiciary in the sentencing process. The concept of 'relative professional status' conveys how professional status anxiety can occur when institutions with differing capital and in different fields are involved in a process. Halliday et al. (2009) drew on Bourdieu and Wacquant's (1992) concepts of field and capital in order to show the unequal power relations that occur when working between different professional fields, which is influenced by the 'capital' professional groups hold. These concepts are useful to draw on here to conceptualise differing capital, in terms of power held by sheriffs and social workers in the remittal process. The quotes above suggest that sheriffs hold the ultimate autonomy in decision-making. A loss of youth justice expertise may have served to lessen the capital held by social workers in writing reports for court. This is also resonant of Asquith's (1983) concept of professionalism, which he argued was based not only on

socialisation into particular forms of knowledge and the acquisition of particular skills, but also rested on prestige and status.

Lastly, a policy actor (4) stated that ‘*resource issues of playing money games*’ may be behind the lack of court remittals. Local authorities are responsible for funding a child in secure care, whereas the Scottish Government funds prison places. This argument suggests young people may be taken off supervision and end up in the court system as this does not place the same strain on local authority budgets. Whyte (2009) argued that this resource pressure has led to the discharging of the most vulnerable cases of 16 and 17-year-olds from the CHS. However, the number of young people in prison has dropped significantly in recent years, with admissions to prison by direct sentence for under 18s decreasing substantially between 2004/05 and 2013/14 by 17 % for 16-year-olds and 38% for 17-year-olds (Scottish Government, 2015g). This suggests the small numbers of 16 and 17-year-olds being remitted cannot be adequately explained by a resource issue at local authority level limiting the use of secure care and leading to funding prison places as more financially feasible as the numbers of 16 and 17-year-olds in prison has been decreasing.

There was some evidence of 16 and 17-year-olds being simultaneously retained in the CHS whilst being dealt with adult criminal justice measures. One interviewee depicted the confusing placement of 16 and 17-year-olds within both the youth and adult justice system in cases where they have been given a Community Payback Order (CPO) whilst being subject to a Compulsory Supervision Order (CSO) under the CHS:

We also have those that are straddling both; that are on Children’s Hearings System and on a Community Payback Order. Sometimes, that tends to be our more older kids maybe your 16/17 year-olds, and that becomes difficult when they’re on supervision so sometimes, in those cases, you would look to revoke the supervision requirement because we have the supervision requirement within the CPO so it’s kind of serving that same purpose. (Social worker 1)

This quote is not illustrative of an ‘integrated’ and ‘joined up approach involving children’s, youth and criminal justice services’ as advocated in the policy guidance on the WSA (Scottish Government, 2015b, p.5). The quote suggests that some 16 and 17-year-olds have ended up being subject to two supervision requirements under both a CPO as well as a CSO under the CHS. This practitioner also commented that there had been some instances where 16 and 17-year-olds had been given a CPO without a supervision requirement where ‘*they’ve only got unpaid work*’, making the orders ‘non-competent’.

This depiction of 16 and 17-year-olds' cases 'straddling both' the CHS and the adult system through the use of CPOs, raises concerns around how this age group is being dealt with. The number of CPOs commenced for 16 and 17-year-olds increased by 14% between 2011/12 and 2013/14 but decreased between 2013/14 and 2014/15 to 607 (Scottish Government, 2016c). The issue of incompetent court orders involving unpaid work in the community for 16 and 17-year-olds was also mentioned by two other interviewees, with one commenting specifically on the impacts of staff turnover and a lack of specialism:

You then had young people with again huge amounts of orders, huge amount of hours, we even had a young person with 470 hours unpaid work. Now, the maximum you can have is 300. So you had incompetent orders cause they had like 4 or 5 orders. (Social worker 2)

This example portrays a lack of clarity in dealing with this group as it is suggested that some young people have been given numerous court orders, with the number of unpaid work hours vastly exceeding the threshold. Funding issues were identified as a reason for this disconnect, with local authorities funded by criminal justice to do work with 16 and 17-year-olds rather than by children and families:

...so that money goes from justice into criminal justice across the country; some of whom have very good relationships with child and care – some of whom don't – many of whom it's a kind of battering system...So, the main barrier to it raising again [extending the WSA to 18-21 year-olds] and one of the main obstacles I think for real further progress in terms of under 18s has been funding and the government's mechanism for that. The funding arrangements for criminal justice social work were set up in 1991 because, at that time, services for offenders were coming out the same pot as learning disability, older people, child protection and it's not particularly politically expedient to be spending a lot of money on offenders...Whereas we've tried to change the focus for under 18s to, unless you address what they need, you'll never get them to change their behaviour. So the funding arrangements that we've got in place, now, in 2014, were set up in 1991 so that's, what, 23/24/23 years so there's a real need of review for how services are funded. (Civil servant 1)

This quote suggests that whilst there has been an effort to change the focus for under 18s, it has been inhibited by the funding process in place, with 16 and 17-year-olds coming under criminal justice rather than children's services. This interviewee perceived this to be a main barrier in further progress being made with this age group. The interviewee described

differing relationships between criminal justice and child and care teams in local authorities, commenting that some have good relationships whilst others do not. Interestingly, a ‘battering system’ is depicted as taking place in some areas, with connotations of a competitive, divisive relationship between adult criminal justice and children’s services.

8.4. Joint Referrals of 16 and 17 Year-olds to the Procurator Fiscal and Reporter

Sixteen and seventeen year-olds subject to a supervision order may be jointly reported to the Procurator Fiscal and the Reporter by the police. However, the Lord Advocate’s guidelines state that where an offence committed falls within the Framework on the use of police direct measures and EEI for 16 and 17-year-olds, then there is not a requirement for the case to be jointly reported. As described in chapter two, the Crown Office and Procurator Fiscal Service (COPFS) case marking process was centralised in 2015 from taking place across three federations to one national initial case processing hub. Before the centralisation of case marking, weekly meetings were held between the PF and the Reporter to discuss jointly reported cases. Cases discussed were high-level and serious offences such as serious assault or serious road traffic offences. It was commented: *‘If it’s a serious offence, and the child is, you know there’s very little the Reporter can do, then the Fiscal will inevitably keep it’* (Legal practitioner 1). This quote illustrates that the Procurator Fiscal had the overriding authority regarding decision-making of jointly reported cases. The joint decision-making forum was however viewed as beneficial in enabling joint, face-to-face discussion of cases between the Procurator Fiscal and the Reporter.

Uncertainty was expressed about how jointly reported cases would work with the centralisation of COPFS case marking:

We do have links with the Crown Office. We meet them regularly and we’re currently reviewing the jointly reported guidelines to see how they work and, you’re spot on, that is a critical area just in terms of ensuring that the necessary information can be passed between our two agencies and that, you know, their marking unit is not too remote. (Policy actor 4)

It was viewed that the COPFS should have the dominant role in decision-making regarding jointly referred cases (by policy actor 5 and legal representatives 2 and 3). The creation of the initial case processing hub was described as having led to a new process and it was not made entirely clear whether this would still involve a direct meeting or what form the liaison between the Procurator Fiscal and the Reporter locally would take. When asked how this would affect the local meetings between the Procurator Fiscal and the Reporter, it was commented:

Again we've taken over the liaison for that, at the moment, for all reports and we will gradually widen liaison for custody and undertakings. Many WSA teams or Reporters receive and consider cases before COPFS do so we've asked them to send us an email to this dedicated address, the case will be pulled out - and again - principal depute will look at it quickly. (Legal representative 3)

Given the new case marking changes within the COPFS, it was difficult to unpick the implications that these may have. This quote suggests that in the meanwhile at least, the local meetings of Procurators Fiscal and Reporters no longer take place and instead the national initial case processing hub will take the lead, with email communication with local Reporters. If this is the case, then there are implications regarding the effect of no longer having the close links which the Procurator Fiscal and Reporter were perceived to have in the case-study area.

8.5. Diverting 16 and 17-year-olds from Prosecution

Diversion from Prosecution for 16 and 17-year-olds is a key strand of the WSA. Decision-making on diversion was discussed in chapter seven in relation to the exercise of discretion and the relative role of power between individuals in the case study area. In this chapter, some of these issues will be explored with a specific focus on the onus placed on engagement and responsabilisation of 16 and 17-year-olds.

Chapter four describes the Diversion from Prosecution process in the case study area. A diversion multi-agency meeting was created in the initial year of the WSA; taking place on a weekly basis and attended by a Procurator Fiscal depute, an education representative, a social worker, a police representative and representatives from Sacro and Barnardo's. Diversion is a lower level intervention than alternatives from prosecution, which may

include a fiscal fine or warning. Representatives from the COPFS stated that where a diversion fails then an alternative to prosecution may be used instead of taking a case to court. The consequence of the centralisation of case marking within COPFS in 2015 has been that the diversion multi-agency meeting in the case study area no longer takes place. The centralisation of case marking took place at the very end period of fieldwork for this thesis but some initial perceptions on this will be considered.

Diversion from Prosecution was viewed positively by practitioners as an important step to keep 16 and 17-year-olds out of court. Chapter five revealed that a key understanding of the WSA was that it eased the transition between the youth and adult criminal justice systems. An education representative stated:

And quite often when they're getting older, it's like this could be their last chance to really kind of help support them...It's like well, they're getting older, there's this chance here – they might be able to respond. (Education representative)

As explored in chapter seven, legal representatives' decision-making 'frames of relevance' towards the appropriateness of diversion for 16 and 17-year-olds have broadened to take a more welfarist, holistic perspective within this multi-agency decision making forum. 'Common frames of relevance' (Asquith, 1983) appeared to have been formed between practitioners in this forum, with all interviewees saying that there was largely consensus between representatives on decisions made. However, a recurring issue evident again in this chapter is the onus placed on the young person themselves, as highlighted in the depiction of this being a 'last chance' for 16 and 17-year-olds, and their need to respond being essential.

When asked whether there had been a change in attitudes towards 16 and 17-year-olds in the criminal justice system, a sole view was made by this representative:

You can't save them all, and so - sometimes, some offenders need court action, and they need the book thrown at them - and I think in some ways one of the perception of the changes made in the last 5 years is that the PF is too soft. We need to accept that there are some cases that just have to go to court. (Legal representative 3)

This was an individual perception and not reflective of practitioners' perceptions generally; however, it does convey the significance of frames of relevance and the institutional field in which decisions are shaped and made.

8.5.1 'Responsibilisation' and 'Engagement' in the Diversion from Prosecution Process

Those involved in the Diversion from Prosecution process were asked what factors would be weighed in the decision whether to divert a 16 or 17-year-old. Key themes which emerged around decision-making included the 'responsibilisation' of 16 and 17-year-olds and the engagement of young people. 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.

As stated by the legal representatives interviewed, cases are assessed on a case by case basis. The discretion of the Procurator Fiscal is therefore of primacy. In the Diversion from Prosecution decision-making process, the young person's admission of guilt was portrayed as something of a grey area with differing, and sometimes uncertain, perceptions held between the different agencies concerned. The consequences for a young person in not accepting responsibility, in cases put forward for discussion at a diversion meeting, was discussed by this interviewee:

If we think there's a sufficiency then obviously it can potentially go to diversion. So letters would be sent out to the accused person to let them know what's happened, that they're going to be diverted to social work or Barnardo's or Sacro. If they get in touch with, or when they're got in touch with, they say 'well sorry no I didn't do this' then there's nothing those agencies can do. And I do get letters back from them saying no – not often to be honest – it's a relatively few number but a few will come back and deny the crime and if that's the case then the only thing we can do then really is to look at the case again and think, right, do we want to be prosecuting this person for this crime and that will be tested in court. (Legal representative 1 (b))

Several other interviewees also stated that it is not possible to work with a young person who denies an offence. Whilst highlighting that denial of an offence is uncommon, under the deferred model of prosecution such denial and non-engagement may result in prosecution. Where an offence is denied, it was stated that the case is returned to the COPFS to decide how to proceed, with the concept of 'proportionality' the basis of the

decision (Legal representative 1 (b)). When asked whether no disposal would be used in cases where offences were not deemed of a high enough level, it was commented:

...so really the only thing you can do there is either to, for whatever reason, no action the case, if you felt that no that you felt further action would be disproportionate but if we're bothering to divert them we should really be bothering to put them to court so they might, for example, go to the court which is a lower court than the Sherriff court, justice of the peace court and there obviously the case would be tested and it would be found either guilty or not. (Legal representative 1 (b))

The interviewee's view that *'if we're bothering to divert them we should really be bothering to put them to court'* implies that those specific cases where a denial of offence takes place, may end up being prosecuted. This raises concerns about the influence of the young person themselves on decisions made by key decision-makers and the onus this places on the young person. In England and Wales, the issue of admission of responsibility of offence as a pre-condition for diversion has also been problematic, with Cushing (2014), for example, critiquing this pre-condition as 'onerous' and sometimes 'unhelpful' particularly where offences are lower-level. Hine (2007) has explored issues around guilt and the admission of offences in the English and Welsh context and found that young people would tend to admit offences in order to escape the stressful situation. The potential for net-widening and criminal records are issues here.

In contrast, the following quote suggests that young people, who deny guilt for an offence, can be diverted from prosecution. However, this is not portrayed in a positive light, with the implication that the Diversion from Prosecution process could possibly lead to net-widening:

The only thing I've seen before is when there's been a couple of cases on diversion when we've thought if they weren't put for diversion; I think if it had went to court it would have been thrown out – do you know what I mean? So maybe they're doing cases that there isn't much evidence. If they take chances it might just be thrown out at court anyway so I suppose you just have to watch that because we've seen young people that we've worked with on diversion totally denying anything and saying it wasn't even them and when you look at the evidence – there isn't much evidence. So I suppose that there's that difficulty is that they need to make sure that it's the right cases you're putting to diversion. (Social worker 2)

This quote suggests that the process has the potential to lead to an up-tariffing of cases, with the perception that some cases *'would have been thrown out'* if they had gone to court. However, this view was not prevalent amongst most interviewees; although it is possible they may not have considered this. The Scottish Government (2011b, p. 5) position on this is made clear in the following statement: *'Diversion should be seen as the highest tariff alternative to a prosecution and this approach should avoid net-widening and possible misuse of resources'*. In light of the above quote, in order to avoid the potential for net-widening that arises through use of diversion, there arguably needs to be a clear protocol in place for dealing with cases where young people either do not admit to the offence or do not engage in the diversion process.

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. Putting this in the context of government guidance, the Scottish Government (2011b) guidance recommends use of a deferred prosecution model, rather than a waived model, as a way of inducing young people to engage in services. It is interesting that the guidance does not make specific reference to cases where a young person does not admit guilt to an offence. Alike to the Procurator Fiscal view above, the guidance states: *'Procurators Fiscal 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).

Connected to admission of guilt is the issue of young people's engagement in services and how this may impact on decision-making, particularly whether previous non-engagement may influence decisions relating to new offending cases. A sense of responsabilisation is also evident with regards to engagement with the services that young people could be diverted to. When asked whether young people would be aware that they would be referred back to the COPFS if they didn't engage with a service they were referred to through diversion, it was commented: *'Yep that was made plain to them at the outset and they knew what the consequences of it would be, you know, they could do it the easy way or the hard way effectively'* (Legal representative 2).

In asking what would happen for a young person who did not engage, it was commented:

If it was the youngster didn't engage or pay lip service to it then the chances were that he would then be or she would then be taken to court in the normal fashion. Not always because sometimes, to be honest, the offence was pretty de minimus and it probably didn't justify it but in virtually in all the cases, if it was a failed diversion, because of the attitude of the youngster then, well, it would just go to court. (Legal representative 2)

A key theme underpinning these quotes is the 'responsibilisation' of young people through the portrayal of engagement, and the consequences of not engaging, being determined wholly by the 'attitude of the youngster'. Arguably, this is contradictory to the ethos and principles underpinning both the WSA and GIRFEC which include 'making sure that you make the right decision for them' (Third sector representative 6) and 'being in the best interests of the child' (Legal practitioner 2(b)).

Engagement is a key issue, with research demonstrating the barriers that young people face in engaging with youth offending practitioners and services. For example, in Phoenix and Kelly's (2013, p. 429) research, exploring young offenders' subjective experiences of responsibilisation, it emerged that young people felt that they had engaged with Youth Offending Team (YOT) workers 'but with little real effect'. Several young people felt that what they said was not what YOT workers wanted to hear or that YOT workers did not understand (Phoenix and Kelly, 2013). Seymour (2013, p. 101), based on her research in Ireland interviewing practitioners, managers and young people supervised on community disposals, advocates a collaborative approach be taken between practitioners and young people 'requiring practitioners to connect with young people through a series of dialogues and active cajoling in bringing together an agreed plan for change'. In light of this, the barriers young people face when engaging with services should be considered when deciding on whether a failed diversion should '*just go to court*'.

Diversion from Prosecution was presented as an opportunity for young people not to be prosecuted and potentially convicted. This view is portrayed here:

...and so it's a way of almost allowing that person, if you like, not a way out of being dealt with but it offers them an opportunity to not to get a criminal record on the first occasion and to basically amend their ways. (Legal representative 1(a))

Across the interviews, a key theme was the persistence of third sector services in engaging with young people whose lives may be chaotic and therefore may struggle to continue to engage with services. For example, it was stated that Barnardo's and Sacro would '*do their utmost to try and keep on*' by tracking young people down who may be at alternative addresses for example (Education representative). There was a feeling held, in particular by third sector service providers, that where young people do not engage there should be a persistence to try and engage with them. Although it was stated that where a young person was not '*particularly cooperative*' in the past and '*difficult/problematic to work with*' the decision would revert to the Procurator Fiscal (Education representative).

Issues around non-engagement and denial of responsibility need to be considered in the light of young people's experiences of the 'inclusion-exclusionary' processes of 'secondary labelling', whereby young people are ascribed offender identities through experiences of regulatory practices (McAra and McVie, 2012). McAra and McVie's (2012, p. 348) theory of offending pathways, based on the concept of 'negotiated order', shows that experiences of formal orders²⁹ and informal orders³⁰ lead to the ascription of a range of, sometimes competing, identities on young people. Where young people do not adhere to a set of prescribed norms, they are 'expelled' through a process of 'secondary labelling' with their identity wholly based on 'ascribed identity' (McAra and McVie, 2012, p. 348). Drawing on McAra and McVie's (2012) theory, complex offender identities can be seen to stem from a range of influences including anti-authority issues and class. As a result of 'regulatory practices of formal orders', young people are ascribed identities and labelled by those in authority. The long-term effects include distrust and lack of belief in the justice system with young people becoming 'disenfranchised and disillusioned with authority' (McAra and McVie, 2012, p. 360). In light of this, the issues raised in this chapter around the continued responsabilisation of young people aged 16 and 17-year-olds are very problematic. The WSA aims to retain 16 and 17-year-olds within the youth justice system but without a consideration of the impacts they experience as a result of system contact and how engagement is connected to experiences of powerlessness and disenfranchisement, the likelihood of progression into the adult justice system will be higher.

²⁹ Formal orders include schools, social work, the police and court.

³⁰ Informal orders include parenting, peer interactions and street culture.

8.6. Gaps for those in Transition

This chapter has considered the tenuous place of 16 and 17-year-olds in-between the youth and adult criminal justice systems. Sixteen and seventeen year-olds also face other barriers and inconsistencies in relation to services such as housing and health. This interviewee reflected on the challenges of retaining 16 and 17-year-olds within the CHS, highlighting that in practice there is a perceived need ‘*to get them off supervision at 16*’ particularly so that looked after young people can access housing:

I think the problem is to do with housing cause if you have a looked after child who is still on supervision – housing will look at them [social work] for accommodation. So they’ll say that’s social workers’ responsibility. So, social workers will say ‘oh god, right, we better get them off supervision at 16 so they can have access to housing’. But then that leaves them wide open if they do offend again they’re straight back into the adult system. (Social worker 2)

A disconnect between children and adult systems clearly exists considering this example. Whilst the WSA is viewed to be about holistically addressing needs by both practitioners and policy actors and in the policy guidance, this gap in service provision is illustrative of Barry’s (2013) argument that it does not go far enough to emphasise the ‘whole system’ of policy responses.

When questioned on gaps in agency involvement for 16 and 17-year-olds, specifically in relation to housing, awareness of available services was identified as an issue with one interviewee stating: ‘*I’m not actually too aware of what systems are in place and I think that that in itself is a problem*’ (Education representative). The interviewee encapsulated this issue as being able to look at the ‘*bigger picture*’ stating: ‘*So em I suppose in a bigger picture that would be really good and I think that maybe that’s something that will come into place when you’re thinking of named persons for older young people*’ (Education representative). Inadequate housing support was perceived to lie behind breaching of anti-social behaviour orders by a legal representative (3).

8.7. Conclusion

Practitioners' perceptions of 16 and 17-year-olds were at times conflicting; for example, their perceptions often involved an adjunct that they should be more responsible and engage favourably in diversion measures. Whilst it was recognised that they should be treated first and foremost as children, they were differentiated from those under 16 as being expected to take more 'responsibility' for their offending behaviour. The practitioners' and policy actors' views discussed here suggest that there has been a discursive struggle around the construction of 16 and 17-year-olds, between a sympathetic portrayal and a position that this group should not be treated '*too soft*'. This sense of 'responsibilisation' sits uneasily with the concepts of early intervention and diversion and putting the child's needs first. Instead, it suggests that the focus is more on the deeds of young people.

The existence of a number of different professions within the multi-agency decision-making processes discussed in this chapter, each operating in terms of its own 'frames of relevance', has several implications for decision-making for this group. For example, legal representatives tend to place greater emphasis on the concept of responsibility which needs to be seen in light of the role of the Procurator Fiscal to prosecute in the public interest. Resonant of Halliday et al.'s (2009) conceptualisation of 'relative professional status', sheriffs and the COPFS are dominant in decision-making. These agencies legalistic frameworks, and greater authority in decision-making relating to 16 and 17-year-olds, for example as illustrated in the belief that their perspectives should hold primacy over Reporters in joint referrals, arguably limits a more holistic, child-focused approach being taken towards this group. Despite policy guidance which supports the use of processes to retain 16 and 17-year olds within the youth justice system, and some enthusiasm expressed by practitioners and policy actors to do so, it appears that there is still a level of apathy towards this group as they sit in a tenuous place at the interface between the youth and adult criminal justice systems.

Chapter 9: An Illustrative Case: Decision-Making on the use of Restorative Justice

9.1. Introduction

Restorative justice has been little used in youth justice in Scotland, particularly in comparison to England and Wales where it has been central to low-level diversionary disposals such as the youth restorative disposal. Prior to the introduction of Early and Effective Intervention (EEI) in the case study area, the police could only refer low-level cases to their own restorative warning scheme. With the introduction of EEI and Diversion from Prosecution, referrals could be made directly by the police and also by the pre-referral screening (PRS) and diversion multi-agency groups. There was a consensus amongst practitioners that there had been an increase in referrals to Sacro's Youth Restorative Justice Service (hereafter Sacro) particularly for 16 and 17-year-olds as a consequence of these new referral processes.

Chapter five revealed that one of the key benefits of the WSA was the sharing of expertise and increased awareness of services between agencies in the case study area. Relevant practitioners (those involved in the referral processes to Sacro) were asked in what circumstances restorative justice was used as a disposal and to give examples of types of cases which would be considered appropriate for a referral. Additionally, practitioners were asked whether there had been a perceived increase in the use of restorative justice as a result of the WSA. The influence of various factors on decision-making regarding the suitability of restorative justice will be considered including the type of offence, previous offending and children and young people's previous pathways through the youth justice system.

Interviews with practitioners involved in the EEI and diversion process are triangulated with data, provided by Police Scotland, on a small sample of 65 children and young people who were referred to Sacro in the case study area between March 2010 and November 2013. The purpose of this specific focus on the use of restorative justice as an EEI and as a diversion disposal was in order to explore how decisions were made and shaped in relation to the use of this specific process and how the WSA has impacted on the use of this specific low-level disposal. In doing so, issues considered in the previous chapters on decision-making in relation to flexibility and exercising discretion will be examined. This chapter will begin by providing an overview of the sample of 65 children and young

people and of Sacro's Restorative Justice Service in the case study area including how referrals were made to the service. It will then go on to examine how the EEI and diversion decision-making processes were perceived to have impacted on referrals to Sacro before lastly exploring the influence of various factors on decision-making.

9.2. An Overview of the Sample

Police Scotland provided data on cases of children and young people (aged 9-17) referred to Sacro from the month the WSA was introduced in the case study area, March 2010, to November 2013. After data cleaning, the dataset contains 65 cases of children and young people. The majority of children and young people referred during the time period were boys (77%) with 38% of the overall sample boys aged 15 to 17. At time of referral, 14% of the children/young people were aged 9-11, 54% aged 12-15 and 32% aged 16-17.

Two-fifths of children and young people were referred for more than one offence. Referrals related to a range of relatively minor offences. There were 77 separate offence referrals and 19 types of offence. The number of offence referrals was higher than the number of children and young people as each case in the dataset relates to one child/young person but due to the nature of how referrals were made this could actually relate to more than one referral and more than one offence per case. As children and young people could be referred for more than one offence, multiple response analysis was used to find out what the most frequent type of offence referrals were. The majority of offence referrals were for vandalism (47% of offences) with 55% of all cases involving a vandalism referral. The next most common offence was assault (12%) with 14% of all cases involving an assault referral. There were very few cases referred for a range of other offence categories.

9.3. Sacro's Restorative Justice Service

The main deliverer of restorative justice interventions for children and young people in Scotland is a third sector organisation which delivers a range of youth and adult criminal justice services called Sacro (Safeguarding Communities Reducing Offending).³¹ With the WSA focus on 16 and 17-year-olds, Sacro created a new transitions service specifically for

³¹ For an overview of youth justice services provided by Sacro in Scotland, see Sacro (2016).

this age group alongside their existent youth restorative service for 8 to 15-year-olds in the case study area. Sacro delivers four types of restorative justice processes: conferences, face-to-face meetings, shuttle dialogue and victim awareness. The purpose of these restorative justice processes is to establish the facts (what happened) and the consequences (how people have been affected) of an offence and to discuss the future (in relation to the offence and how things can be made better).³²

In the case study area, Sacro was utilised as an EEI direct measure for 8 to 17-year-olds where referrals were made directly by the police to Sacro. The use of EEI direct measures was extended to 16 and 17-year-olds in 2013. When PRS multi-agency meetings (for 8 to 15-year-olds) were in operation, a decision could be made for Sacro to be the lead agency to deal with the child/young person. The child was also referred to the named person as well as being referred to Sacro. Restorative justice was also a disposal option available to the Diversion from Prosecution multi-agency meeting for young people aged 16 and 17 where referrals could be made by a local Procurator Fiscal during the main fieldwork period.

9.4. Impacts of Direct Referrals and Multi-Agency Referral Processes on Referrals to Sacro's Restorative Justice Service

Pre-WSA, the Children's Reporter was the principal referrer to Sacro. Research conducted in 2008, with Sacro Youth Restorative Justice Services throughout Scotland, found that sixty-four per cent of cases had been referred by the Reporter, followed by direct referrals by the police (27%) and by social work (6%) (N = 1420) (Viewpoint, 2009). In the case study area, between March 2010 and November 2013, the largest referrer to Sacro was the police (43%). Therefore, restorative justice was most frequently referred to as the result of a single-agency decision. Twenty-nine per cent of referrals were made by the diversion multi-agency meeting and twenty-two per cent of referrals were made by the PRS multi-agency meeting for 8 to 15-year-olds.

In comparison to before the WSA was introduced, a key benefit highlighted by interviewees was that the police were able to make a direct referral to Sacro rather than make a referral via the Reporter. It was commented that prior to the introduction of EEI, a

³² Words taken from Sacro's Restorative Justice Service face-to-face meeting preparation booklet.

police restorative warning would sometimes be used without having to make a referral to the Reporter but this was more ‘restrictive’ than what Sacro were able to offer (Police representative 1(a)). It was also commented that being able to make a direct referral to Sacro had prevented a ‘time lag’ between the referral, a decision being made and an intervention being decided upon (Legal practitioner 2(a)).

As previously mentioned, the use of EEI police direct measures for 16 and 17-year-olds were introduced in 2013, just before fieldwork commenced. When asked at this initial stage what impact this might have on referrals to Sacro for this age group, it was commented:

I think that’s a very difficult one for the police because the police have to be pretty confident that the incident isn’t going to result in charges by the fiscal cause obviously, you know, they can’t put it to us if they think it is ultimately going to be a charge so I don’t know. It will be interesting to see how it develops. (Third sector representative 5)

This quote identifies that there was initial uncertainty regarding the extent to which the police would refer 16 and 17-year-olds directly to Sacro. As the majority of interviews were conducted soon after direct measures were extended to this age group, it was not possible to identify how often restorative justice was utilised as a direct referral for 16 and 17-year-olds. However, for 8 to 15-year-olds, it was commented that restorative justice had been utilised as a police direct measure frequently with 43% of the 65 children and young people referred directly to Sacro by the police.

As well as direct referrals by the police to Sacro, the multi-agency PRS group and diversion meeting were able to refer children and young people to Sacro. One practitioner compared the referral processes to Sacro pre- and post-WSA, remarking that the pre-WSA process ‘*from our point of view things could be a bit slow*’ and that there had been a move from ‘*one agency deciding what’s best*’ to a more streamlined multi-agency approach (Third sector representative 4). The impacts of the multi-agency processes on the timeliness of referrals to Sacro were commented on:

I think, as well, getting paper work has been reasonably quick. If somebody’s referred then next week we get the paper work ... And also the process gives you more information so you’re not having to phone social work and find out what they’re doing – actually you already have that information cause they were at the meeting and

they've told you. So it saves time as well on that kind of aspect of it. (Third sector representative 6)

This quote illustrates the benefits of the multi-agency discussion in comparison to prior to the WSA where referrals were largely made by the Reporter. As well as a quicker referral process, the ability to share information and to be knowledgeable about what the work of other agencies involved with a young person was perceived to have led to a more efficient process. The impact of having a multi-agency decision-making process, involving representatives from agencies delivering services, meant that there was increased awareness of the available options and that Sacro could be utilised alongside other services, statutory and voluntary:

So they could have come to us from the Reporter or whoever else but it's just maybe Sacro wasn't under the remit or it was felt that they had other things going on so actually we won't deal with their offending, we'll deal with other stuff whereas, at the moment, we can work alongside social work, we can work alongside, you know, whoever else, to support the young person. (Third sector representative 5)

It was commented that Sacro regularly made referrals to other relevant agencies as well as utilised other interventions run by Sacro, including a cognitive-behavioural programme where appropriate. In a small sample of Sacro case files examined, there were several examples of other issues identified in the child or young person's life; for example, in relation to finding employment and housing, and evidence of Sacro referring young people on to relevant agencies. The third sector representatives interviewed all commented on working in partnership with one another so as to offer a range of services and not duplicate each other's work. For example, it was stated:

I think through really hard work, sweat and tears with Sacro, Barnardo's and Apex and the [third sector agency] – we've gone through a lot of, you know, quite a long journey together but we're now at the stage where we share resources, we share training, we share work, we certainly discuss a lot and do a lot of referring back and forward. (Third sector representative 2)

Amongst the relevant practitioners, there was a consensus that there had been an increase in referrals relating to 16 and 17-year-olds with the introduction of the diversion multi-agency process, which was attended by a Sacro restorative justice representative. The creation of a specific transitions service within Sacro for 16 and 17-year-olds had also led

to a greater focus on this group. When asked whether it was felt that the position of restorative justice in Scotland had changed over the previous five years, it was remarked:

I'm finding myself working with considerably more younger people 16/17 years old than ever I've done in my time here which obviously is a direct reflection on the WSA approach. Would those young people have been working with other services - aye you know separately to that? I'm not aware whether they would. Maybe they wouldn't. But yeah I've definitely seen it grow. And you know in a positive way, it's allowing young people in that age group, who have done something silly, a one-off, you know a mistake, to learn from that and make different choices in the future. (Third sector representative 5)

9.5. Factors Weighed in Decision-Making on Restorative Justice

This section will now go on to explore practitioners' perceptions of decision-making regarding the suitability of restorative justice. Firstly, the appropriateness of restorative justice as an intervention in relation to the type of offence will be explored. Secondly, the appropriateness of restorative justice in relation to previous offending and children and young people's previous pathways through the youth justice system will be explored.

Amongst the relevant practitioners, there was a consensus that a child/young person must accept responsibility for an offence before undertaking a restorative justice process with Sacro. As well as this, it was viewed as instrumental that the process was voluntary for the child or young person. It was commented that in the first meeting with a child/young person, a Sacro practitioner would establish whether they agreed with the incident which occurred. If they did not, then it was commented that they would be referred back to the police but that the police could take no further action.

Relevant practitioners were asked what types of cases would be given a police direct measure, including a verbal or written warning or a referral to Sacro. An interviewee stated that direct measures were usually used for children or young people who had committed minor offences and where concerns had not been raised by other agencies (Police representative 2). It was commented that decisions were made on the suitability of a case for restorative justice on a case-by-case basis, which would take into account the nature of the offence and previous offending. Sacro was one of six options available to the PRS

group, when it was in operation, and several practitioners said that it was usually chosen as the most appropriate option where there were no other concerns about the child/young person and where the offence involved an identifiable victim (which Sacro refer to as the person harmed). Sacro practitioners emphasised the primacy of considering the needs of the person harmed in decision-making regarding the appropriateness of restorative justice; where the person harmed did not want to take part in the service then this meant that a victim awareness process could be used which did not require their direct involvement.

It was felt that since the forming of the diversion multi-agency meeting, there had been an increase in the use of restorative justice for 16 and 17-year-olds. When asked whether restorative justice had been utilised as a diversionary measure for 16 and 17-year-olds, it was commented:

It definitely has. I mean there's certain crimes that we can't divert – road traffic for example – things like that – or sexual crimes – quite a lot of them are not appropriate. But for those crimes which it is appropriate I think that yes, we try to take every option to do that. (Legal representative 1(a))

As restorative justice involves the person harmed, this approach was not deemed appropriate for more serious offences; for example, sexual offences and high-level assault. When asked if there was any specific type of case where it might not be appropriate to refer to Sacro, it was stated that *'every person can be referred'* but that it wouldn't be suitable for serious offences (Legal representative 1 (a)). An agreement between Sacro and the Crown Office and Procurator Fiscal Service about arrangements for the Diversion from Prosecution of 16 and 17-year-olds to Sacro in Scotland stipulates that whilst restorative justice processes are generally not considered appropriate for more serious offences, there is some level of discretion, in consultation with the District Procurator Fiscal, depending on individual circumstances to consider the following offences for a diversion: sexual offences, domestic violence and hate crime (Sacro and COPFS, 2011).

It was also explored whether children and young people's previous offending and previous involvement in the youth justice system influenced a decision on whether to make a referral to Sacro. Three quarters of the sample of 65 children and young people had a history of previous offending. However, the median number of previous offences of the young people referred to the service was low at two offences. This corresponded with a practitioner's perception: *'To be referred to us, they've usually offended, had maybe one*

offence in the past or they've had a warning from the police or something like that' (Third sector representative 6).

A practitioner provided four circumstances where a young person who had previously offended would be considered for a diversion to Sacro: (i) the incident was minor in comparison to a previous offence; (ii) the previous offence was not previously diverted to any services; (iii) where previous offences related to a '*spree of incidents on the same day*' which would count as separate offences; and, (iv) the time-lapse since the previous offence(s) was also taken into consideration (Third sector representative 6). The needs of the person harmed in the decision making stage was highlighted as crucial.

A referral to restorative justice was viewed as being most suitable for those children and young people where there were no other overarching concerns or a history of offending as illustrated in this quote:

It's just the police have concern about the offence – everybody else says aw John's great – he does well at school – there's no health concerns – parents are fantastic – parents maybe have been fantastic but in terms of the young person understanding the victim impact – let's go to Sacro – cause you don't have anything else. But Sacro can still be a decision as part of a multi-agency meeting. Well, if you still think well there are other concerns but we'll deal with that and get Sacro on board for the offence that triggered concern. (Police representative 1(a))

In the above quote, the practitioner argued that restorative justice could either be used as a single disposal, where there are no other concerns present, or used alongside other services, where other concerns are present. A practitioner was asked why the police would make a referral to a PRS multi-agency meeting rather than make a direct referral to Sacro; specifically whether that would be because there were other concerns present. It was commented:

Probably yes – if we wanted to find out how everybody else – education, how they were getting on, cause generally when you're having your PRS they're not open to social work. Education are here, Sacro are here so actually you could really just be having a meeting between ourselves, education and Sacro so why can't I just pick up the phone and speak to education and say – 'this is what I've got – are there any difficulties in school?' 'Yes there are'. 'Well I was thinking about Sacro – do you still think that would be ok – or would you rather deal with the offence within whatever

services you've got in place?' Cause you don't want to overload the child. And then we'll discuss it and if it's agreed that Sacro's right then I'll just send it direct to Sacro but it can be done at the meeting as well. (Police representative 1(a))

In this quote, the interviewee highlighted the importance of not 'overloading' the child in discussions which take place between the police and the named person. As described in chapter seven on decision-making, the police as gatekeeper to the EEI process have ultimate autonomy and discretion in deciding what disposal should be used. This is highlighted clearly in the above quote where the interviewee stated that a multi-agency discussion would take place *'if we wanted to find out how everybody else'* was working with the young person. As described in chapter six, in the case study area, the named person developed a key role in decision-making, which is conveyed in the above quote through the example given of a typical liaison between police and education.

Relevant practitioners were also asked whether children and young people could be referred again to an intervention such as restorative justice through a PRS or a diversion multi-agency meeting where they had previously been referred and then went on to reoffend. The dataset included information on the number of previous police direct measures used, previous referrals to the Reporter on any grounds and previous PRS discussions in relation to children and young people before their referral to Sacro. Whilst 20 children/young people had no previous system contact, there were some who had previously been given a police direct measure(s) (58%), who had been referred to the Reporter on any grounds³³ (29%), discussed at a PRS multi-agency meeting (17%) or had previous court appearances (11%). The data provided did not give details of what the previous offences were. There were 24 young people referred to Sacro who had previously offended more than three times. Based on this small sample, restorative justice appeared to be considered an appropriate intervention for young people who had low-level system contact previously.

Relevant practitioners were asked what would happen if a young person went on to reoffend subsequently to being given a police direct measure or being discussed at a multi-agency meeting. It was remarked that if a young person who had reoffended was already working with an agency then there was a discussion by the police with that agency as to whether they were able to deal with a new offence (Police representative 2). The level of

³³ Children and young people can be referred to the Reporter on a range of care and protection grounds, see Children's Hearings (Scotland) Act 2011.

discretion held by the police in deciding how to deal with a child/young person who reoffended was clear.

It was stated that young people could be discussed again at a diversion meeting and that diversion disposals, such as restorative justice, could be used on more than one occasion as illustrated in the following quotes:

They may have been referred before – I mean it's not a question of you're only referred once and that's it. (Legal representative 1(a))

They would be discussed again and it would be classed like a new case. If they were working with Sacro or Barnardo's, or one of the other agencies, social work, whoever they were referred on to, and they got a favourable report back from that agency, then they might be deemed appropriate to be re-referred to that agency to do a bit more work. If they received a fine or a letter the first time then it may be suitable for them to go on to receive an intervention from another service. (Police representative 2)

These quotes suggest that young people who reoffend were not precluded from being discussed again at the diversion multi-agency meeting. However, the argument that cases of young people who reoffend are '*classed like a new case*' and again discussed at a diversion multi-agency meeting is conflicting to the accounts of decision-making in relation to 16 and 17-year-olds in chapter eight. In chapter eight, it was suggested that non-engagement of 16 and 17-year-olds in a diversion process may lead to their prosecution. It was commented that there was potential that diversion cases could be up-tariffed and that net-widening might occur, with a practitioner feeling that some cases had gone to diversion which would have previously been dealt with by the police (Social worker 2). Drawing parallels with an argument made in chapter eight, there is an onus placed on young people to engage favourably with a service in order to be re-referred.

9.6. Conclusion

This illustrative case study has demonstrated the impacts of the introduction of new referral decision-making processes on the utilisation of a single agency's service. Based on interviewees' perceptions of decision-making on the use of restorative justice as an EEI or diversion disposal examined alongside data on a small sample of 65 cases of children and young people, it could be argued that these multi-agency decision-making processes have

led to a widening in the type of cases being considered and an increase in referrals to Sacro's Restorative Justice Service. Prior to the WSA, there was a restricted referral process where most children and young people were referred by the Reporter to Sacro, with time delays put down to the paper work this involved. After these new referral processes were introduced, and as described in chapter five, it became easier to refer to other services, in particular third-sector services, with increased awareness of what other services provided through these multi-agency discussions.

Based on a small sample, there was evidence that children and young people who had previously offended and had varying degrees of previous involvement in the youth justice system were referred to Sacro. Practitioners confirmed this, arguing that children and young people could be referred subsequent to another intervention for a previous offence and that flexibility in decision-making was vital. There was a consensus amongst the relevant practitioners that there had been an increase in referrals to Sacro since the introduction of the WSA. The PRS multi-agency meeting for 8 to 15-year-olds and the diversion multi-agency meeting allowed representatives from different agencies to feed in to a discussion and provide specific information in relation to their agency on the young person. The participation of a Sacro representative in a multi-agency discussion was perceived to have led to increased awareness and utilisation of restorative justice as an early intervention and diversionary measure.

Chapter 10: Conclusions

10.1. Introduction

This PhD provides a snapshot of the implementation of the Whole System Approach (WSA) in one local authority. This thesis addressed five research questions in empirical chapters five to nine. As the WSA represents a highly localised strategy to youth justice delivery, it firstly sought to address what practitioners' and policy actors' operational understandings of the WSA in practice were. Secondly, in the context of broader political, economic and organisational changes, this thesis sought to address how practitioners and professionals on the ground implement the WSA; particularly exploring what factors have impacted on the sustainability of the approach both locally and nationally. Next, this thesis addressed how actors involved in the multi-agency Early and Effective (EEI) and Diversion from Prosecution processes made decisions and what factors influenced these decisions. Given the WSA aim to retain 16 and 17-year-olds in the youth justice system, this thesis lastly sought to explore decision-making specifically in relation to 16 and 17-year-olds.

This final conclusion chapter will focus on the key themes to emerge from the findings in relation to these research questions. In doing so, Lipsky's (2010) and Asquith's (1983) frameworks, which informed the analysis of these findings, will be reflected upon specifically what was taken from drawing on these perspectives and how they were developed. A critique and analysis of key themes enables a discussion of the implications of this research for policy and practice specifically how these findings could take deliberations about youth justice in Scotland forward. This chapter also highlights limitations of the research and makes some suggestions for future directions in research based on gaps from the findings. Conclusions will be discussed with reference to the individual findings chapters although there is overlap in the key themes which emerged across these chapters. To conclude the chapter, key themes will be discussed alongside the overall relevance and significance of this thesis.

10.2. Operational Understandings of the WSA: A Return to Kilbrandon?

From 2007, with the move from a Labour to a SNP administration in Scotland, youth justice policy documents signalled a return to a welfarist and holistic approach (symbolic of Kilbrandon's philosophy), which culminated in the WSA. In chapter two, the policy timeline revealed that there was a growing tension between welfarism and punitivism towards children and young people in the early to mid-2000s. However, whilst the Antisocial Behaviour etc. (Scotland) Act 2004 introduced new disposals including the anti-social behaviour order, parenting order and anti-social behaviour contract, practitioners did not utilise these measures. Indeed, interviews with practitioners and policy actors suggest that opposing political and practice agendas at this time were one of the key drivers behind the WSA.

This thesis argues that the WSA represents a significant change in policy direction from the focus on public protection and anti-social behaviour under the Labour government. Interviews with practitioners and policy actors reveal that the WSA was perceived to have rekindled Kilbrandon's welfare model of youth justice through a focus on the needs and circumstances of children and people involved in offending and premised on early intervention and prevention. Whilst representing a return to a Kilbrandon ethos, this thesis argues that the WSA also represents a new direction in Scottish youth justice practice based on multi-agency working specifically sharing expertise and responsibility for youth offending across organisations. The Children's Reporter, gatekeeper to the CHS, no longer deals with the majority of offending cases. There has been an 83% decrease in the number of children and young people referred to the Children's Reporter on offence grounds between 2005/06 and 2014/15.³⁴ The increase in offence referrals to the Children's Reporter in the early 2000s was also perceived to be a key driver behind the WSA by several interviewees.

Pre-WSA, several interviewees highlighted that referrals to the Children's Reporter, and thereafter the CHS, could be inappropriate particularly for low to mid-level offending cases, where 'back logs' prevented these cases being dealt with effectively. One interviewee argued *'we've gone back to the way that it should have been – the way that Kilbrandon felt that it should be'* under the WSA as it was felt that referrals were no longer being made where there was not a need for compulsory measures (Legal practitioner 2(a)).

³⁴ Data from SCRA online statistical dashboard.

The EEI process was also perceived to be timelier enabling Children's Reporters to fulfil their role more appropriately as it was commented that many of the referrals pre-WSA were leading to no action and therefore were unnecessary. This is important because it reveals a commitment towards the ethos of the WSA to divert children and young people away from statutory measures. It also reveals a commitment towards changing engrained practices and working with other agencies to achieve the best processes for the child or young person.

From the perspectives of practitioners and policy actors, a key merit of the WSA is that it provides a holistic, child-centred approach based on utilising knowledge and resources of various agencies. One of the important findings in relation to multi-agency working was that there was a shared commitment amongst practitioners and policy actors towards providing a holistic approach predicated on understanding the individual circumstances of the child and being welfare-informed. The flexibility and adaptability this enables was viewed to be a key benefit of multi-agency working. In particular, third sector representatives highlighted the benefits of the WSA for them as it had increased awareness of local services and communication between third sector service providers in their delivery of services for children and young people.

However, when delving into practitioners' and policy actors' perceptions of decision-making in practice, this picture of a purely holistic approach, based on shared multi-agency working, does not emerge as clearly. A key theme to emerge from the findings was the continued responsabilisation of 16 and 17-year-olds under the WSA. Chapter eight reveals that decision-making on cases of 16 and 17-year-olds is not wholly based on the needs of individual young people; for example, where Diversion from Prosecution cases involved non-engagement or denial of an offence by a young person, prosecution was likely. There appeared to be a lack of consideration of the difficulties that this group of young people may face in complying and engaging with diversion referrals and disposals. In light of research which has evidenced that young people's offender identities stem from a range of influences including anti-authority issues and class (McAra and McVie, 2012), young people's non-engagement with criminal justice processes and services, needs to take into consideration challenges they may experience when engaging in interventions. Where not engaging with a diversion disposal may lead to prosecution being considered, there is a clear potential for the "up-tariffing" of cases which, as an interviewee reflected, might have been thrown out if they had gone to court (Social worker 2).

10.3. Implementation of the WSA in Street-level Practice - Working within a Shifting Structural and Organisational Landscape

In this thesis, the importance of considering how the WSA interacts with the wider structural/institutional context has been demonstrated. During fieldwork, it became clear that practitioners' and policy actors' perceptions represented their views on practice at a particular point in time in a period of flux to the WSA. A number of structural and organisational changes occurred including: the amalgamation of eight police forces into one single police service in Scotland; the centralisation of the COPFS marking system; and, the reorganisation of social work in the case study area, as well as nationally (Dolan, 2015), from youth justice teams to generic social work hubs. The WSA strategy also represents a new localised approach to youth justice as ring-fenced funding for youth justice services was discontinued in 2007. This thesis also provides a unique case-study in which to explore policy implementation in the context of central-local governance reform.

This thesis sheds light on organisational restructuring and changing practice within the Scottish youth justice landscape through unravelling a narrative of the development of EEI and Diversion from Prosecution processes over a period of time in one area. Considering both centralism and localism, in relation to consistency and flexibility, suggests that neither brings straightforward benefits. This thesis argues that increased local determination of youth justice has brought with it both benefits and challenges. On the one hand, increased local autonomy has brought flexibility with local authorities able to direct their own youth justice strategies and build processes and utilise services specific to their local area. On the other hand, variations in practice at a national level led to questions being raised, particularly by policy actors, of the implications this has had regarding a 'post-code lottery' effect. One policy actor argued that the key challenge was not about having flexibility and variations in practice locally but that ensuring that this did not mean variation in outcomes for children and young people. This is a significant point that this thesis is not able to reflect upon as it provides only a single case study of practice in one local authority area.

However, in interviews with policy actors, working at a national level, some key themes emerged around consistency and outcomes. Firstly, in relation to EEI, policy actors highlighted that practice differs across Scotland and concerns regarding the post-code lottery delivery of EEI were identified (these interviews largely took place before the publication of the *Early and Effective Intervention Framework of Core Elements* (Scottish

Government, 2015). Variations in practice in the set-ups of PRS processes were highlighted including: whether a face-to-face meeting took place or the process involved key practitioners communicating by email and phone; whether young people subject to supervision by the CHS could be referred to PRS; and some PRS processes locally included the discussion of both welfare and youth offending cases whilst others considered youth offending cases only. Variations in EEI processes across local authorities was raised as a concern by all of the policy actors interviewed as it was argued that this led to ‘justice by geography’.

Secondly, inconsistencies in the Diversion from Prosecution process locally and across the three COPFS federations was raised by several of the policy actors, and locally by practitioners too. Differences in commitment between those responsible for case marking and the availability of diversion programmes at local level were identified. It was commented that *‘there’s no clear guidance from the Procurator Fiscal Service about how they deal with 16/17 year olds’* (Policy actor 1). As a consequence of this, the levels of discretion in decision-making on diversion were high. Thirdly, policy actors argued that the introduction of new generic teams replacing youth justice teams, in some local authorities, had led to a decrease in youth justice specialism. This was also flagged as a potential concern by practitioners in the case study area although the restructuring had not yet taken place during fieldwork.

These variations and inconsistencies in decision-making processes show that across Scotland, children and young people are experiencing variations in how they are dealt with by the youth justice system dependent on the processes and services and the commitment to the WSA of key professionals locally. Concerns about national consistency led to the creation of the *Early and Effective Intervention Framework of Core Elements* in 2015: a document setting out ‘clear parameters of national expectations’ in relation to the use of EEI (Scottish Government, 2015a). The aim of this document was to seek to bring together a succinct framework of minimum standards in relation to various core elements to EEI processes across the country. This Framework was introduced during the latter stage of fieldwork and therefore practitioners’ perceptions on its use in practice were not gained. However, interviews with some policy actors at the latter stages of fieldwork highlighted that the framework was a ‘supportive document’ to enabling consistency (Civil servant 2). Further research to explore the impacts of the Core Elements in practice both locally and nationally is recommended in order to explore to what extent it has influenced practice and enabled greater consistency.

Concerns about consistency in COPFS case marking were viewed to lie behind the creation of the initial case processing hub in 2015. Again, as this restructuring was introduced after the main fieldwork with practitioners, perceptions on how this had impacted on the local implementation of Diversion from Prosecution were not gained. It was therefore only possible to gain the insights of a few practitioners and policy actors interviewed in the latter stages as to what the implications of the centralisation of case marking would be. At this very initial stage, some challenges were raised regarding consistency in the marking of cases for diversion with variation in communication between local offices and the initial case processing hub within the COPFS. However, in an update of this process post-fieldwork it was highlighted that a mailbox had been set up between local authorities and the hub which had enabled the fast-tracking of marking of cases.

Lipsky's (2010) model of street-level bureaucracy was drawn upon to provide a perspective based on analysing the 'entire policy environment in which street-level bureaucrats function' to fully understand how policy is "made" by those at street-level. Exploring the implementation of the WSA in the context of change reveals the impacts of organisational and structural change on the day to day work of practitioners. Whilst Lipsky (2010) advocates an examination of the differences and commonalities between public organisations such as the police and social work, there is little mention of how this impacts on the day to day street-level bureaucrat.

This thesis reveals many tangible impacts of multi-agency working on the day to day implementation of the WSA. Some key challenges in relation to the continued implementation of the WSA were raised around the continued commitment to multi-agency working. For example, the majority of practitioners commented on the importance of having a coordinator position to take a lead on the WSA across the differing agencies involved in its implementation. It was felt that the loss of this role locally had impacted on the ability of agencies to work successfully and communicate with each other. Practitioners argued that this position should consider the needs of different agencies; perhaps requiring a level of independence from the respective agencies. A need for clearer communication to sustain successful multi-agency working was identified particularly in relation to the review of the PRS process, which several practitioners were uncertain of the reasons behind this and what the implications for EEI practice might be.

As education was brought to the fore of youth justice decision-making with the embedding of the named person role in the case study area, the police, as key gatekeepers to the youth

justice system, reflected on how this had changed the EEI decision-making process in terms of the key players involved. In the first meeting of the Advancing the Whole System Approach implementation group, created as a result of the Scottish Government's (2015b) *Preventing Offending – Getting it Right for Children and Young People*, it was agreed that one of the key actions of this group would be to ensure the integration of EEI with named person and the Children and Young People Scotland Act 2014 nationally.

10.4. Multi-Agency Decision-Making and the Discretionary Power of Gatekeepers in the Criminal Justice System

The police remain as the main gatekeeper for EEI and Diversion from Prosecution processes. However, the field of decision-making has changed from from being largely based on the involvement of one or two key agencies to involving a range of practitioners in multi-agency decision-making processes. A key finding in relation to multi-agency decision-making is that despite the shared commitment to working together, individuals work within institutional frameworks in which they derive respective 'frames of relevance' to decision-making (Asquith, 1983). Asquith's framework on criminal justice decision-making was central to informing the analysis of the empirical findings. As a perspective, it offered a range of concepts through which to understand how decisions are made by individuals operating within different institutional frameworks. His own research explored how youth justice professionals subscribed to particular accounts of delinquent behaviour exploring the themes of welfarism and personal responsibility in particular.

Asquith's conceptualisation of 'informal ideologies' aided thinking on how professionals work within institutions through which they derive their professional knowledge and experience. The concept of 'professionalism' is particularly interesting to reflect upon when examining how decisions are made in practice involving multi-agency working. His perspective provided an understanding of how practitioners draw on frames of relevance in decision-making which influence how a case is dealt with. For example, legal representatives drew primarily on legalistic frames guided primarily by their protection of the public and focused on the nature of the offence and the child/young person's engagement.

However, Asquith's framework was based on the 'collective decision-making' activity of actors within organisations and does not include a focus on the influence of multi-agency power dynamics between agencies. Chapters seven and eight in this thesis revealed that 'competing frames of relevance' in decision-making occur within and between organisations. The implications of individuals coming from different institutional levels and institutions emerged in the themes of power and relative authority. His work also lacked an appreciation of influences in what Hawkins (2003) terms 'the surround' on decision-making. Influences in 'the surround' impacted professionals' frames of relevance beyond their institutional frameworks and the example of diversion decision-making in relation to sex offences in chapter seven shows how political and media concerns affect prosecutorial decision-making.

Commitment to multi-agency working was strong and relationships between agencies largely perceived to be positive amongst practitioners. It was felt that over time this had led to a 'more streamlined' way of dealing with cases (Social worker 2). However, a key theme to emerge from the findings was the relative positions of power between agencies. Hawkins' (2002, p. 54) conceptualisation of decision-making as a 'layered phenomenon' was also evident in relation to the COPFS with those higher up in the organisation holding ultimate autonomy with regards to which offences be considered eligible. 'Relative autonomies' in decision-making were apparent with the police and the COPFS, the key gatekeepers to the system, retaining ultimate autonomy in decision-making through the power to make discretionary decisions on the use of EEI and diversion, albeit situated with context of legal frameworks and guidance (Lipsky, 2010). What has changed is that the Children's Reporter is arguably no longer a key actor in the youth justice process with fewer cases referred to the Reporter by the police. However, it is important not to overemphasise the role the Reporter had pre-WSA as many low-level offending cases were dealt with by the police prior to the WSA.

Lipsky's (2010) perspective on the exercise of discretion by street-level bureaucrats informed the analysis around individual and organisational decision-making. Lipsky's (2010) perspective on discretion was very much a positive one in that he saw the existence of discretion within professionals as both inevitable and required when facing ambiguity and unpredictably in front-line practice. Regarding EEI decision-making, practitioners viewed that having a flexible decision-making process enabled the consideration of children and young people's backgrounds rather than being purely offence focused. This is alike to Ashworth's (2010) perspective on sentencing decision-making and discretion in

which he argued that discretion ensures that unlike cases are not treated alike as it allows a focus on individual circumstances.

Lipsky's (2010) two levels of discretion in decision-making, individual-level and 'agency behaviour' as the result of the collective effect of discretion, were evident in practitioners' perspectives. At the individual-level, practitioners highlighted the effects of individual personalities on decision-making. In terms of the existence of 'agency behaviour', examples of the collective effect of discretion with the COPFS on decision-making were apparent. In Lipsky's (2010) reworking of his perspective on street-level bureaucracy, he sought to emphasise the 'coproduction' of policy by individuals as a consequence of the greater number of organisations involved in implementation. In recent years, literature has explored situations where professionals must work alongside each other (see, for example, Souhami, 2007, 2010). Although little elaborated on by Lipsky (2010), this concept provided a useful way of conceptualising how the WSA has been developed by professionals in collaboration. The creation of a number of multi-agency implementation groups in the initial stages of the WSA, in the local authority area, detailed in chapter four, arguably encouraged a new type of policy making across organisations.

This thesis argues that alongside the WSA, GIRFEC has brought education to the foreground of youth justice decision-making. In the case study area, education has become a key actor with a requirement that all offending cases be referred to the child or young person's named person who may then make a decision on whether a GIRFEC multi-agency meeting was required. With the requirement for named persons to be in place for all young people aged under 18 by August 2017, their central role in multi-agency decision-making will be established. One of the challenges to this, highlighted by several interviewees, is that education may lack youth justice expertise and will need assistance in making decisions regarding children and young people involved in offending.

Going forward, deliberations in youth justice will need to consider how the named person scheme will have implications for practice. During the course of this fieldwork the named person role became embedded in the EEI process in the case study area. Therefore this PhD provides an illustrative example of some of the implications involved in the named person role on EEI practice. It is not known how the key information sharing will operate between agencies and in relation to youth justice. Some practitioners expressed particular concern that education may lack youth justice specialism. As an illustrative case study it reveals that there are likely to be challenges in the implementation of the named person

scheme around appropriate sharing of information. The relationship between the police, as the key gatekeeper to the youth justice system, and the named person will particularly be an important area of development.

10.5. 16 and 17-year-olds - Children or Adults?

The WSA has smoothed the transitioning process for 16 and 17-year-olds through taking a more holistic approach to this group. However, a sense of hopelessness was evident in practitioners' and policy actors' perceptions of this group. Despite a shift in the definition of childhood to the age of eighteen, this group were perceived as 'mini-adults' rather than as children. The responsabilisation of 16 and 17-year-olds was clearly evident across the empirical findings chapters on decision-making. In 1964, the Kilbrandon Report stated that criminal courts are 'inherently unsuited to meeting the needs of troubled young people' but 16 and 17-year-olds continue to be prosecuted in adult courts despite a recommendation by the Scottish Prison Commission (McLeish, 2008), which was never auctioned, that the government should divert 16 and 17-olds to specialist youth hearings.

This thesis argues that whilst the WSA has fostered smoother transitions for 16 and 17-year-olds, this group is still disadvantaged. They sit at the interface between two justice systems and there continues to be a level of apathy and conditionality towards decision-making for this age group. A lack of coherency and clarity to dealing with this transitioning group was reflected on by practitioners. A clear example of this was the issuing of Community Payback Orders to 16 and 17-year-olds already subject to supervision under the CHS. This means that 16 and 17-year-olds were made subject to two supervision requirements under the youth and adult systems. An example given of the use of incompetent Community Payback Orders for this group further evidences a lack of coherency to dealing with this group.

The use of EEI specifically in relation to 16 and 17-year-olds was not a key issue highlighted by practitioners or policy actors. Practitioners and policy actors shed light on joint referrals to COPFS and the Children's Reporter, Diversion from Prosecution and remittals to the CHS by the court in relation to this age group. Significant challenges were highlighted in relation to each.

This thesis reveals that there have been challenges to diverting 16 and 17 year-olds from prosecution and there have also been variations in the number of young people being diverted nationally. Further research looking at how the centralisation of case marking works in practice, particularly how the initial case processing hub works alongside local authorities in the marking of cases and decision-making on disposals, would enable a more up-to-date picture of some of the issues explored in this thesis around discretionary decision-making, the autonomy of PFs and consistency.

During interviews with practitioners and policy actors, particular challenges to the use of diversion were raised including the availability of services for diversion as well as the commitment and personalities of those working in the field. In order for these challenges to be addressed, this thesis recommends a mapping study of current diversion disposals available across local authorities and to what degree these are utilised. In the case study area, two third sector agencies were represented at a diversion multi-agency meeting, which took place during the main fieldwork period, and this was argued to give PFs a greater awareness of the appropriate services available. With respect to the other challenge highlighted around the impacts of the personalities of specific PFs on the varied use of diversion, it is posited that a similar Core Elements Framework to that introduced to instil consistency in EEI nationally, may serve to counter some of the challenges around ambiguity in decision-making and differences in perceptions on the appropriateness of diversion.

There have also been challenges to remitting 16 and 17-year-olds from court for advice and disposal within the CHS. Between 2009 and 2014 on average only 5 % of young people were remitted from court to the Children's Hearing System (Dyer, 2016a). In order to retain 16 and 17-year-olds in the CHS, sheriffs should refer for advice or disposals by the CHS in all cases relating to this age group and the role of social work's advice should be given full consideration and their views given equal standing as judges. At present, 16 and 17-year-olds can still only be retained on supervision if they were already subject to a CSO. This is inconsistent with a practitioner's belief that there should be 'stickability' towards working with this group and retaining 16 and 17-year-olds on supervision 'to take them with you' (Social worker 2).

Based on these findings, there are several areas which should be focused on in relation to retaining this group in the youth justice system. Before seeking to change practice on the ground, perceptions towards this group particularly those which seek to 'responsibilise'

them, need to be challenged. Perhaps the legislation of the named person and the requirement for single plans to be put in place for 16 and 17-year-olds will act as a catalyst to changing perceptions of this group away from being seen as mini-adults to being seen as children.

In order for offending behaviour to be holistically addressed, a consideration of the reality of young people's 'lived experiences' (Eadie and Canton, 2002, p. 22) requires an understanding of the challenges of engagement with services for young people whose lives are often chaotic and unstable. There is a clear tension between this current process of continuing to route this group through the adult courts and the treating of 16 and 17 year-olds as children as under the UNCRC.

10.6. The Emerging use of Restorative Justice as a Low-level Measure

Exploring decision-making on the use of restorative justice as an EEI or diversion disposal provided an illustrative case study of how decisions were made in practice in relation to this specific disposal. The police data of sixty-five cases of young people given a restorative justice disposal through either of these processes, although small, enabled triangulation with the interview data to explore factors weighed in decision-making. Themes emerged around the suitability of restorative justice relating to the seriousness of the offence and young people's previous offending and pathways through the youth justice system. Discretion was exercised by key gatekeepers to the EEI and diversion process in relation to suitability of cases for a referral to restorative justice. There was a consensus amongst the interviewees that restorative justice was only appropriate for minor offences partly due to the involvement of the person harmed and for cases where there were no wider concerns about the child/young person. However, it was commented that restorative justice could be used appropriately alongside other interventions and therefore practitioners recommended that it be used alongside other supports for young people where there were broader concerns. It was not evident to what degree this was happening in practice but the Sacro service had good working relationships with other third sector providers in the case study area and representatives commented on making referrals onto other services.

In relation to previous offending and youth justice system contact, the EEI process was presented as a tiered process with children and young people likely to be referred to Sacro where they had one or two previous offences and had been given a police direct measure

previously but unlikely to be referred if their previous offending was more significant. Interestingly, however, there were 24 children/young people recorded as have three or more previous offences. Forty-five of the 65 children/young people had some level of previous system contact.

As the WSA was coproduced by youth justice partners in the case study area, the Sacro restorative justice service developed its own transitions service specifically for 16 and 17-year-olds, who had previously been dealt with through Sacro's adult service. This meant that in cases where the person harmed did not want to be involved, the transitions service would still deal with 16 and 17-year-olds through a victim awareness process instead. In relation to 16 and 17-year-olds, there was support and approval for utilising restorative justice as a diversion disposal amongst those involved in this process. Evidence of decision-making around 16 and 17-year-olds being distinct to that of 8-15-year-olds was evident in a practitioner's questioning of how many direct referrals by the police to the restorative justice there would be for this group as the police would have to be confident that it would not result in charges by the fiscal.

Whilst conclusions on the use of restorative justice across Scotland cannot be made, this research has demonstrated that the WSA led to an increased use of restorative justice in the case study area as a disposal utilised in EEI and Diversion from Prosecution. The change in referral processes to Sacro's restorative justice service in the case study area meant that the police could make a direct referral, rather than a more lengthy referral being made via the Reporter. There were also issues here around the involvement of the person harmed in a restorative justice process where the referral took a long-time to be made.

10.7. Thesis Conclusion

The final section of this thesis will bring together the key themes which emerged from the findings in order to explore the overall significance and relevance of this thesis particularly focusing this on implications for future practice and policy. Critically engaging with the conceptual themes of discretion, relative professional status in decision-making and localism in policy implementation, this thesis provides a narrative of the initial period of development of the WSA.

The WSA represents not only a new strategy to youth justice in Scotland but also an evolving one in that processes and practices have (i) developed within the context of broader political, economic and organisational change and (ii) been formed locally and undergone review and changes over time. At the same time as this development of a new strategy to youth offending in Scotland, there have been coinciding relevant practice developments in relation to GIRFEC specifically the development of the named person. Both policies are based on effective joint working between partner agencies. In the context of this period of policy and practice change, the importance of exploring the implementation of the WSA and the implications of these changes are crucial. A thread that permeates many aspects of the research is the constant nature of flux in which practitioners and policy actors work and how they must adapt to changes and deal with ambiguity within their own respective organisational realities as well as the agencies that they work with.

Significantly, this thesis has explored how a new and continuously developing strategy to youth justice was translated into practice by those involved in its implementation on the ground. This thesis has revealed the role of practitioners at street-level as key actors in the determining of youth justice policy. The localised nature of the WSA means that it is on the ground that practitioners “make” policy. Unlike previous research on criminal justice decision-making, often focused on decision-making within institutional contexts, this thesis explores how decisions are being made in multi-agency decision-making forums by individuals operating within different institutional frameworks and with differing professional identities. This thesis has also added to the literature and research in policy implementation. The WSA provides a unique case study of a new approach to policy making and implementation. This research has revealed an interesting tension between central and local approaches to policy making and implementation across different policy settings and institutional arrangements. The literature on policy making in the Scottish context has focused on complexity of policy making systems, particularly post devolution (Cairney and McGarvey, 2013; Mooney et al., 2015). This thesis provides a case study of the implementation of youth justice policy within the complex systems. It draws out issues in relation to achieving national consistency versus having a more flexible local approach. It also identifies challenges and opportunities regarding the more long-term sustainability of locally developed policy.

By drawing on multiple frameworks of Asquith, Lipsky and Hawkins, it has sought to show the influence of the broader surround on policy implementation. There is also very

little written about gatekeeper decision-making and the exercise of discretion, particularly in the Scottish context, and this thesis highlights that the autonomy of key decision-makers in the system and the implications this has. Lastly, the focus on the role played by front-line staff in the operational implementation of WSA provides a narrative of the WSA from the eyes of those in practitioners particularly important as youth justice literature has been criticised for lacking the perspectives of practitioners themselves and their accounts of how policy unfolds (Case and Haines, 2015).

The key aim of the WSA is to divert children and young people from statutory and formal measures including compulsory supervision by the CHS, prosecution, and secure care and custody through the use of EEI and Diversion from Prosecution. This thesis reveals that practitioner and policy actor operational understandings of the WSA were based on the ethos of minimum intervention and diversion signalling a return to the Kilbrandon principle that compulsory measures only be used where necessary. The establishment of multi-agency decision-making processes also signalled a new direction in youth justice practice in Scotland to one based on sharing expertise and responsibility for youth offending. This should not understate, however, the continued autonomy of key gatekeepers into the youth justice system namely the police and the COPFS. This thesis has also highlighted that the long running tension between welfare and responsabilisation in youth justice is still apparent in relation to 16 and 17-year-olds who continue to sit at the interface between the youth and adult justice systems. For this group of young people in transition, there are opportunities to increase the use of Diversion from Prosecution and to promote joint weight in decision-making between social work and the judiciary in remittals from court to the CHS for disposal.

This thesis has provided a narrative of the development of the WSA in one local authority. In so doing, it presents a unique case study but one that has wider relevance to youth justice across Scotland. Whilst the aim of the research was not to generalise findings to Scotland as a whole, it has important implications which may be drawn upon with the continued Scottish Government commitment to the WSA. In particular, in the context of continuing funding cuts and resource constraints, this research highlights some significant challenges around sustainability of the WSA strategy particularly given the fact that all local authorities were given only one year's funding to implement the WSA and have been working with the context of organisational restructuring and changing practice described in this thesis. It also raises some pertinent issues on achieving both consistency and flexibility in local and national practice.

Moving forwards, and with the creation of a national *Advancing the WSA* implementation group in January 2016, there are several challenges and also opportunities to sustaining the WSA. This thesis has highlighted some of these key challenges and in doing so has opened up a platform for discussion of opportunities for developing and improving the WSA in the future.

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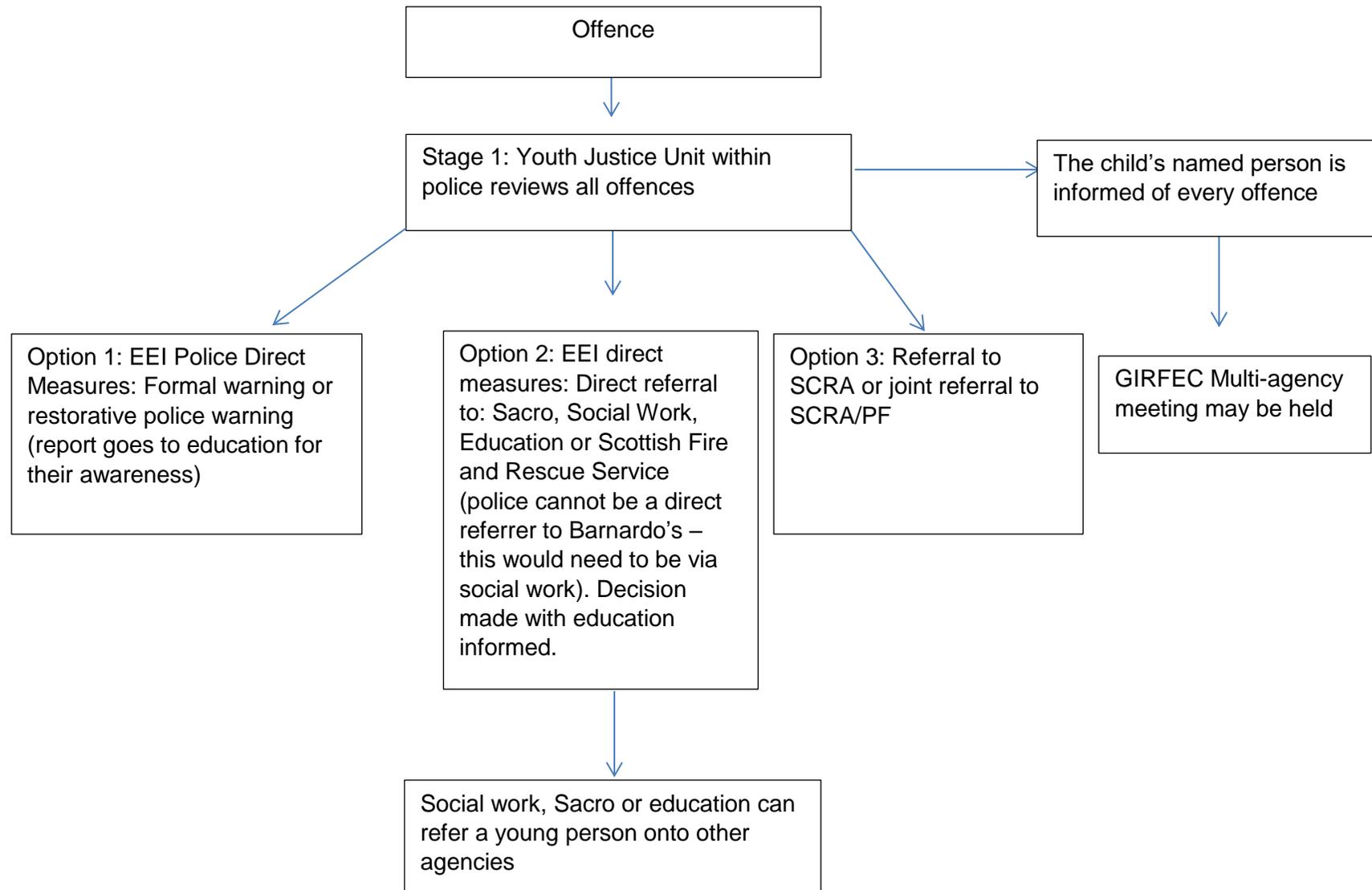
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Appendix A: Chronology

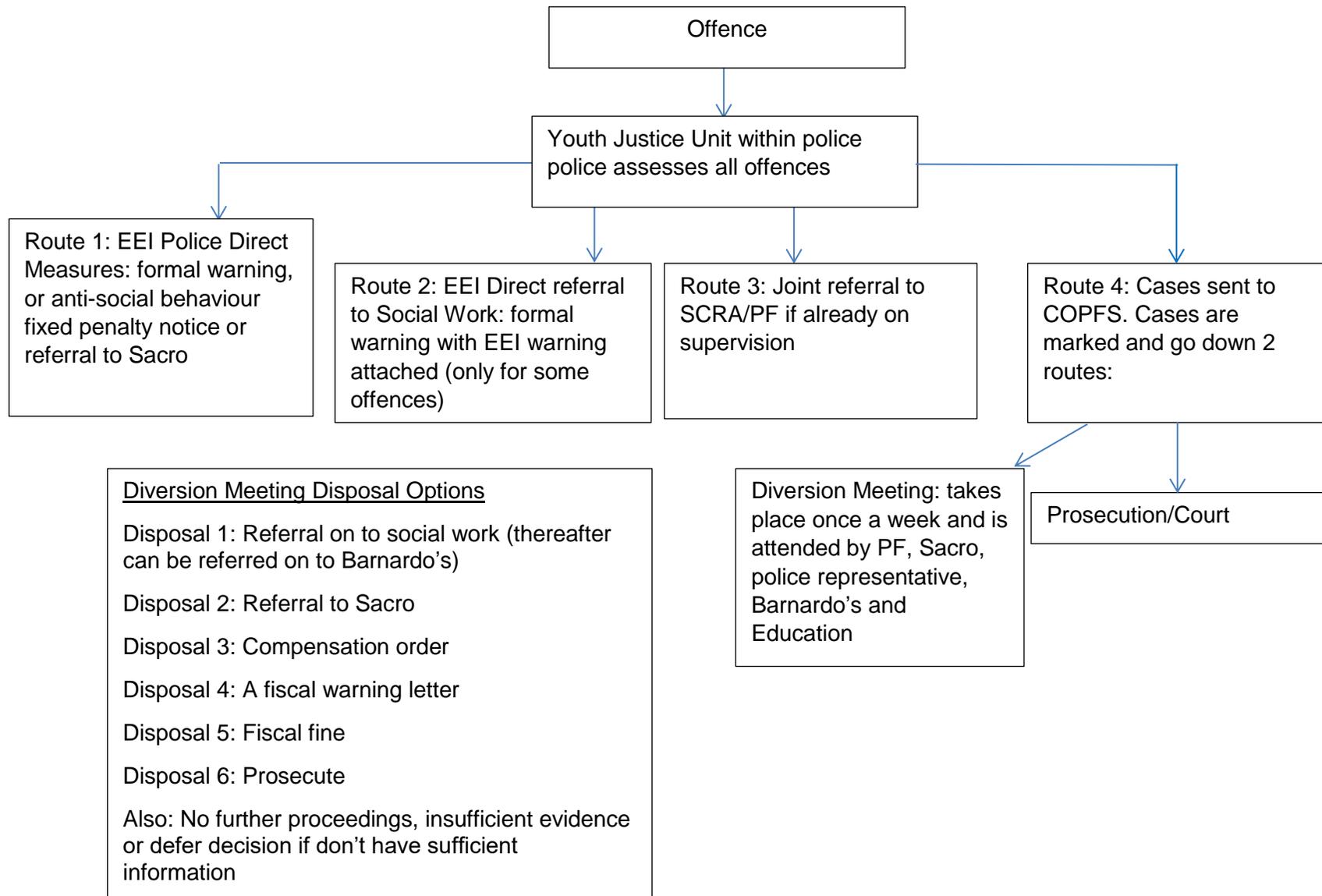
Year	National level	Case-study area	My research
2009	<p><i>Preventing Offending by Young People – a Framework for Action</i></p> <p><i>Multi-agency Early and Effective Intervention Implementation Guidance</i></p> <p>Evaluation of PRS models in six local authorities</p>		
2010		PRS and diversion	
2011	WSA guidance documents published	multi-agency meetings introduced	
	One-year pilot of WSA		
	National roll out of WSA		
2012	<i>A Guide to Getting it Right for Every Child</i>		Studentship research proposal advertised
	Police and Fire Reform (Scotland) Act 2012		Initial meetings with Scottish Government
			July 2013 – meet with YJ coordinators in case study area
2013		Summer 2013 – EEI police direct measures extended to 16/17 year olds	November 2013 – attend youth justice strategy group in case study area
		Autumn 2013 – Pre-referral screening meetings (8-15 year olds) discontinued	September 2013 – begin fieldwork
		Review of PRS ongoing	December 2013 – access Police Scotland data
		Autumn 2013 – YJ coordinators leave	

2014	Children and Young People (Scotland) Act 2014	February 2014 – reorganisation of social work first highlighted Multi-agency screening process formed	July 2014 – attended YJ strategy day
2015	January 2015 – Refresh Youth Justice Strategy event run by government January 2015 – Court of session overturned legal action regarding named person National Initial Case Processing hub introduced for diversion case marking <i>Early and Effective Intervention Framework of Core Elements</i> <i>Preventing Offending – Getting it Right for Children and Young People</i>	Early 2015 - diversion multi-agency meetings discontinued	April – September 2015 - interviews with policy actors on organisational changes
2016	January 2016 – first meeting of the Advancing the Whole System Approach implementation group April 2016 – Children and Young people (Scotland) Act 2014 to come into force August 2016 – named person scheme delayed by a year		

Appendix B: WSA Process for 8-15 Year-olds in Case Study Area



Appendix C: WSA Process for 16/17 Year-olds in Case Study Area



Appendix D: Interview Schedule Template

Introductory questions

First of all, I would like to know a bit about your job and responsibilities? How long in the position? What is your role within the WSA?

Could you tell me a bit about what your understanding of what the Whole System Approach is? How has youth justice practice changed in comparison to pre-WSA?

What do you think the agenda behind the WSA was?

General questions

What in your opinion have been the main impacts of the WSA in the local authority area?

Why has there been such a big drop in youth offending? Do you think children/young people have genuinely changed their behaviour?

Benefits of WSA for (i) practitioners and (ii) young people?

Do you think the restructuring of Police Scotland has impacted on the implementation of the WSA?

What has been the role of local and national youth justice groups in the development of the WSA?

Multi-agency working

The Whole System Approach is about different areas working together – to what extent do you see this happening?

Do you see any gaps in agency involvement and in services provided to young people who offend?

What are the main agencies that you work with?

Have there been any issues with regards to information sharing between agencies?

Could you tell me a bit about what you think the role of education and the named person is in WSA decision-making processes?

Early and Effective Intervention

What do you perceive to be the key aims of EEI?

Can you describe to the process in the local authority? What disposals are available?

The EEI process has been reviewed in the case study area – What has this review involved? What has been the consequences of this review?

Diversion from Prosecution

What do you perceive to be the key aim of Diversion from Prosecution?

Can you describe to me the process in the local authority? What disposals are available?

How well do you think this has been implemented?

If any, what barriers do you think there are to the use of Diversion from Prosecution?

What happens in the process if young person doesn't admit offence or does not engage?

16 and 17 year-olds

What are the benefits of retaining 16 and 17-olds in the youth justice system?

What options are there for retaining this group in the youth justice system?

How successfully do you think 16/17 year olds are being retained within the youth justice system?

Restorative Justice

In your role, what options do you have to make a referral to Restorative Justice? Is there a particular type of case that you would refer to Restorative Justice?

How do you think restorative justice is positioned within Scottish Youth Justice as an approach to dealing with youth offending?

Do you think its position has shifted since the introduction of the WSA?

Concluding questions

What are the challenges around sustaining the WSA in the local authority area and in Scotland?

What are your views on the local autonomy of the implementation of the WSA? What does this mean for consistency of youth justice practice nationally?

Do you think the WSA should be extended to 21 year olds?

Appendix E: Variables List

Variables	Notes
1. Unique ID for each young person	
2. Gender	
3. Date of birth	
4. Number of previous offences	To include all previous offences on young person's crime file
5. Number of previous SCRA referrals	If this information is held by the youth justice unit
6. Number of previous court appearances/prosecution	
7. Number of previous police direct measures	
8. Number of previous pre-referral screening meetings held	
9. Young person subject to a compulsory supervision order at time of referral to Sacro RJ service	Is young person subject to a compulsory supervision order at time of referral to Sacro RJ service?

Variables relating to the Sacro Restorative Justice Intervention case:

Variables	Notes
10. Offence(s) that led to Sacro RJ referral	If young person is referred to Sacro RJ service for more than one offence then to include all offences.
11. Referrer to Sacro RJ service	Police, Pre-referral screening meeting, Procurator Fiscal, GIRFEC multi-agency meeting etc.
12. Date of referral to Sacro RJ	
13. Sacro RJ intervention type	1.RJ conference 2.Face to face meeting 3.Shuttle dialogue
14. Date of completion of Sacro RJ service	

Variables on young person 12 months after the end date of the Sacro Restorative Justice Intervention:

Variables	Notes
15. Number of reoffences that have occurred in 12 months post RJ	
16. Number of police direct measures that have occurred in 12 months post RJ	
17. Number of pre-referral screening meetings held in 12 months post RJ	
18. Whether young person has been diverted from prosecution in 12 months post RJ	How many times young person has been diverted from prosecution by PF.
19. Whether young person has been prosecuted in 12 months post RJ	
20. Whether young person is in Young Offenders' Institution in 12 months post RJ	
21. Young person subject to a compulsory supervision order 12 months post RJ	Is young person subject to compulsory supervision order at 12 months point from completion of Sacro RJ service?

<p>22. Young person referred to other services in 12 month period post RJ</p>	<p>*If information is held by police For example any information held on whether young person has gone onto other services (e.g. mental health services, drugs/alcohol services) in 12 month period following completion of Sacro's RJ service.</p>
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Appendix F: Participant Information Sheet



Research Information Sheet for Managers/Practitioners

Case Study of the Whole System Approach

Researcher's name: Laura Robertson

Research Supervisors: Professor Michele Burman (University of Glasgow) and Professor Susan McVie (University of Edinburgh)

You are being invited to take part in a research study. Before you decide whether or not to take part, it is important for you to understand why the research is being done and what it will involve. Please take time to read the following information carefully.

Overview of Research

I am a research student at the University of Glasgow co-funded by the Economic and Social Research Council and the Scottish Government. I am undertaking research to explore the implementation of the Whole System Approach (WSA) to dealing with young people involved in offending. This research involves a specific focus on the use of restorative justice for young people within Scotland. It is important to find out your views on how you think the WSA is working in practice.

I am conducting interviews with managers, practitioners and civil servants to discover your views on:

- How the WSA policy is being understood?
- How the WSA is being implemented?
- What have been the impacts of the WSA on inter-agency working and referral routes and processes?
- What are the benefits or otherwise of the WSA?
- How the inception of the WSA may have impacted on the use of Sacro's restorative justice practices and processes?

The information that I get will be used to help me to form conclusions on the implementation of the WSA specifically how restorative justice is implemented and positioned within this new approach.

Do I have to take part?

It is your choice whether or not to take part in the research. If you do decide to participate, you will be given this information sheet to keep and be asked to sign a consent form. If you decide to take part you can withdraw at any time and you do not need to give a reason.

Participants also have the right to decline to answer any question at any point without having to give a reason.

What will happen to me if I take part?

If you agree to take part in this study you will be asked for your consent to be interviewed. The interview should take approximately 30 to 45 minutes. For the purposes of this research, all interviews will be recorded. All recordings and data associated with this research will be stored securely within the University of Glasgow, in accordance with the Data Protection Act 1998, and accessed only by myself. All recordings will be kept on a password protected computer to which only I will have access. In addition, any physical files will be kept in locked filing cabinets within a locked office.

Will my taking part in this study be kept confidential?

All participants can be assured that their confidentiality will be strictly maintained at all times. What you say during the interview will be used in my research but you will not be referred to by name. All research material will be anonymised immediately and throughout the project.

What will happen to the results of the research study?

Data gathered during the course of the research will be incorporated in my PhD thesis which will be completed in 2015. The results of the research study will also be made available in a shorter document for research participants.

Who has reviewed the study?

This project has been approved by the Ethics Committee of the College of Social Sciences, University of Glasgow.

Contact for Further Information

If you have any questions about the research or what is involved, please contact me, Laura Robertson, at l.robertson.3@research.gla.ac.uk, mobile: 07913629339, Scottish Centre for Crime and Justice Research, Ivy Lodge, 63 Gibson Street, Glasgow, G12 8LR.

You can also contact my supervisors, Professor Michele Burman, at Michele.Burman@glasgow.ac.uk and Professor Susan McVie at S.McVie@ed.ac.uk.

Finally, if you are concerned about any aspect of how the research for this project was conducted, please contact Dr Valentina Bold, College of Social Sciences Ethics Officer, Valentina.Bold@glasgow.ac.uk

Appendix G: Participant Consent Form



Consent Form
PhD Research on the Whole System Approach
Managers/Practitioners

Name of Researcher: Laura Robertson

1. I confirm that I have read and understand the research information sheet for the above study and have had the opportunity to ask questions.
2. I understand that my participation is voluntary and that I am free to withdraw at any time, without giving any reason.
3. I agree to the interview being recorded and to the use of anonymised quotes in publications.
4. I agree / do not agree (delete as applicable) to take part in the above study.

 Name of Participant

 Date

 Signature

 Researcher

 Date

 Signature