

RULES OF ENGAGEMENT

Changing the heart of youth justice

A policy report by the Youth Justice Working Group

January 2012



THE CENTRE FOR
SOCIAL
JUSTICE

Contents

About the Centre for Social Justice	3
Preface	4
Members of the CSJ Youth Justice Working Group	6
Special thanks	10
Executive summary	11
Introduction	26
I Prevention	29
1.1 Why prevention?	29
1.2 Children at risk	29
1.3 Prevention – what works?	31
1.4 Understanding prevention	33
1.5 A multi-agency affair	34
1.6 The youth justice system: picking up the pieces	34
1.7 A whole family approach	44
1.8 Letting other services 'off the hook'	48
1.9 Recommendations	50
2 Out-of-court	53
2.1 Introduction	53
2.2 The out-of-court framework – defining diversion	54
2.3 History and recent developments	55
2.4 Our findings	60
2.5 Antisocial behaviour	71
2.6 Recommendations	76
3 Courts and sentencing	79
3.1 Sentencing – justice by geography?	79
3.2 Arrangements for young defendants in court	82
3.3 The involvement of the young person's family in court	89
3.4 Remand	90
3.5 Transportation to and from court	91
3.6 Recommendations	92
4 Sentences in the community	97
4.1 The rationale for community sentences	97
4.2 The context	97

4.3	The importance of relationships	98
4.4	Sentencing	102
4.5	Breach – are children being set up to fail?	116
4.6	Recommendations	118
5	Custody	123
5.1	Young people in custody	124
5.2	Which children should be in custody?	124
5.3	The rationale for custody	125
5.4	Custodial sentencing	129
5.5	The juvenile secure estate (JSE)	131
5.6	The state of existing practice in the JSE	133
5.7	Recommendations	147
6	Resettlement	153
6.1	The importance of resettlement	153
6.2	Current resettlement provision	154
6.3	A stable and positive relationship	156
6.4	Somewhere to live	162
6.5	Something to do	167
6.6	Mental health	174
6.7	Multi Agency Public Protection Arrangements	175
6.8	Recommendations	176
7	Delivery	181
7.1	Position and make-up of YOTs	181
7.2	YOT worker practice	183
7.3	Inspection and monitoring	184
7.4	Devolution of financial responsibility	187
7.5	Research and dissemination	190
7.6	Lessons to be learnt from the Munro Review	191
7.7	Youth justice simulation findings	193
7.8	Recommendations	196
8	Age of criminal responsibility	201
8.1	Introduction	201
8.2	Culpability	202
8.3	Competency	203
8.4	Effectiveness	204
8.5	Inconsistencies	205
8.6	Discussion	206
8.7	Recommendations	211
	Annex A: The evidence of what works in youth crime prevention	215
	Annex B: An introduction to simulation	220
	List of thanks	223
	Bibliography	228

About the Centre for Social Justice

The Centre for Social Justice (CSJ) aims to put social justice at the heart of British society.

Our policy development is rooted in the wisdom of those working to tackle Britain's deepest social problems and the experience of those whose lives have been affected by poverty. Our Working Groups are non-partisan, comprising prominent academics, practitioners and policy makers who have expertise in the relevant fields. We consult nationally and internationally, especially with charities and social enterprises, who are the champions of the welfare society.

In addition to policy development, the CSJ has built an alliance of poverty fighting organisations that reverse social breakdown and transform communities.

We believe that the surest way the Government can reverse social breakdown and poverty is to enable such individuals, communities and voluntary groups to help themselves.

The CSJ was founded by Iain Duncan Smith in 2004, as the fulfilment of a promise made to Janice Dobbie, whose son had recently died from a drug overdose just after he was released from prison.

Executive Director: Gavin Poole

Rules of Engagement: Changing the heart of youth justice

© The Centre for Social Justice, 2012

Published by the Centre for Social Justice,

1 Westminster Palace Gardens, Artillery Row, SW1P 1RL

www.centreforsocialjustice.org.uk

ISBN: 978-0-9567426-8-1

Designed by Soapbox, www.soapbox.co.uk

Preface

Youth crime is a disturbing symptom and consequence of social breakdown. It is those young people who have experienced educational failure and family breakdown who overwhelmingly end up in the youth justice system. Many of the Centre for Social Justice's (CSJ) previous reports have highlighted the failures of services to prevent youth crime or to properly rehabilitate young offenders. These include those relating to family breakdown, educational exclusion, children in care, street gangs and criminal justice (courts and sentencing, prison and policing reform). It is these observations that prompted the CSJ to embark on a review of the youth justice system in early 2010.

We acknowledge that the past and present Governments have attempted, in recent years, to address the weaknesses of the youth justice system and reverse many of the mistakes of previous administrations, which resulted in vast numbers of children being needlessly criminalised and sentenced to custody. This report, however, reveals that reform of the youth justice system needs to go further and deeper. Many young people continue to fall into the system unnecessarily and do not receive the help they need to free themselves from it. Custody is sometimes neither a protective nor a productive place for children, and community orders can be equally as ineffective. Moreover, despite years of good intentions, many young people leaving custody are still not being provided with the basic support they require for rehabilitation. Many of these young people consequently become the life-long persistent offenders that are saturating our adult prisons. This cannot continue. We need to ensure that opportunity for transformation is maximised at every stage of the youth justice system.

It is the CSJ's judgement that a fundamental part of this must be raising the minimum age of criminal responsibility (MACR) from ten to 12; it is central to improving outcomes for young people and society. This would not mean that the crimes of ten to 12 year-olds went unsanctioned. Instead, their behaviour would be dealt with through more effective and robust measures outside of the system. Too often this issue has been sidestepped. We hope this report sparks the genuine debate that is long overdue.

While this review has focussed on the workings of the youth justice system, it is clear that it cannot achieve transformation alone: in many cases, the solutions to addressing youth crime and creating a society in which there are fewer victims lie outside of the system itself. Our schools, children's social care teams, mental health services, communities and families need to play a greater role in bringing about change than they currently do.

This review by no means seeks to excuse the behaviour of these young people. We strongly believe in young people taking responsibility for their actions and being appropriately penalised; no offender should ever be allowed to think they are immune from the law. However, if society wants to see youth crime tackled it must be prepared to make greater efforts to understand and address its drivers. As a society, we can do better than simply condemn these children for their crimes. We believe there are more effective and demanding ways of delivering justice than through punishment alone.

Whilst the youth justice system remains in need of innovative and transformative reform there is also much to be positive about. There are many individuals and organisations that are doing outstanding work and achieving transformation in highly challenging circumstances.

More often than not, we have found this exemplary work to be in the voluntary sector. In so doing, they prove that an effective youth justice system is within reach. It is this work that provides a template for transformation.

In publishing this report my thanks go to Alexandra Crossley, who has worked tirelessly to make this report a reality. I am also particularly grateful to the Youth Justice Working Group; our sponsor, the Lovering Charitable Trust; and the many individuals and organisations who gave evidence. This review would not have been possible without their support and commitment. We hope that this report brings about the change that we all want to see.

Gavin Poole

CSJ Executive Director

Members of the CSJ Youth Justice Working Group



Mike Royal (Chairman)

Mike Royal is the National Director of The Lighthouse Group, a charity working with children and young people at risk of exclusion from school in the UK. Mike has a first class degree in Urban Studies and a Masters in Applied Theology. Mike has considerable experience in youth work delivered by the faith sector and has worked as an advisor to statutory agencies on educational exclusion and gang related issues. He has considerable experience of policy formulation and was part of the CSJ Educational Failure Working Group.



Professor Rod Morgan (Editor)

Rod Morgan is Professor Emeritus of Criminal Justice, University of Bristol and Visiting Professor at the Police Research Institute, Cardiff University and the LSE. He was formerly HM Chief Inspector of Probation (2001-4) and Chairman of the Youth Justice Board (2004-7). He has written widely on criminal justice-related matters and is co-editor of the leading criminology text in the UK (*The Oxford Handbook of Criminology*, 5th Ed. Forthcoming). He was heavily involved in the CSJ report on imprisonment (*Locked Up Potential*, 2009) and is a trustee of several organisations working with troubled youth.



Alexandra Crossley (Author and Researcher)

Alexandra Crossley is a Senior Researcher at the CSJ. She has responsibility for the CSJ's gangs and children in care work, and led the pre-election implementation planning on the CSJ's

children in care policy. She has also supported the CSJ's Alliance and Awards. Prior to joining the CSJ in 2008, she spent time as a Research Assistant in the office of Gerald Howarth MP, then Shadow Defence Minister. Alexandra has been a mentor with the charity Chance UK and is an ambassador for MAC-UK, which provides 'on the street' mental health support to young people who offend and/or are gang involved. She read politics at the University of Nottingham.



Steve Crocker

Steve Crocker is Deputy Director of Children's Services in Hampshire. His responsibilities cover all social work services including child protection and children in care, youth offending, youth services, special educational needs services, residential and family placement services, adoption, services for children with disabilities and joint commissioning with health services. Steve has worked with children and young people since 1989 in both residential and community based social work teams. Most recently, Steve was the Head of Service for the Wessex Youth Offending Service, as well as vice chair and chair of the Hampshire Criminal Justice Board. He has spoken regularly on issues relating to youth crime at conferences and seminars.



Pam Hibbert OBE

Pam Hibbert has worked in practice, management and policy in the youth justice arena for over 25 years. Her experience includes publishing numerous reports on the area and co-managing a large secure unit and she was Assistant Director of Policy and Research at Barnardo's for ten years. She was chair of the Standing Committee for Youth Justice from 2005 to 2007 and remains a member of the committee to date. She is currently chair of the trustees for the National Association for Youth Justice and was co-chair of the Children's Advocacy Consortium (2003-2009). She is a member of the Ministry of Justice Restraint Advisory Board and she was awarded an OBE for services to children and families in June 2011.



Vicky O'Dea

Vicky O'Dea joined the Prison Service in 1984 on the Graduate Entry Programme and has worked in a variety of Public Sector Prisons as Governor. She joined the private sector (Serco) in 2002 to take charge of HMPYOI Ashfield, the largest juvenile prison in Europe. Vicky's current role is Operations Director within Serco Civil Government and is responsible for the smooth operations of the secure accommodation portfolio. This includes Kilmarnock prison in Scotland, five adult male prisons in England, one juvenile establishment, a secure training centre in Hassockfield as well as two immigration centres in England.

She also has professional oversight for two prisons in Australia – Acacia in Perth and Borallon in Brisbane together with Mount Eden in New Zealand. Vicky has a first class degree from the University of Bristol, a Masters in Criminology from the University of Cambridge (Fitzwilliam College). She is a qualified social worker and was the CBI People's Champion in 2007. She was awarded an Honorary Doctorate in Law in 2008 for her work in the criminal justice field.



Rob Owen

Rob Owen is Chief Executive of St Giles Trust, a multi award winning mid-sized charity that helps break the cycle of re-offending. The cornerstone of St Giles is their innovative use of trained ex-offenders who use their first hand experiences to provide services to others. Key services for St Giles revolve around housing and employment, providing intensive support to people leaving prison, work with gang members, and work with families and children. They also work with disadvantaged people in the community. Previously, Rob was an investment banker working in London, New York and Tokyo.



Chris Stanley

Chris Stanley is the former Head of Nacro's Policy and Research Division, where he was responsible for the Youth Crime Section, Mental Health Unit, Race Unit, Resettlement Team and Nacro Cymru's Youth Offending Unit. Chris worked for Nacro for nearly 20 years and has written extensively on youth justice. He was also a member of the Audit Commission's Youth Justice Study Advisory Group which produced the report *Youth Justice 2004 – A Review of the reformed Youth Justice System*. Prior to working for Nacro, Chris worked as a co-ordinator for a number of inter-agency alternatives to custody schemes, one of the first initiatives of this type. Chris is a Magistrate and until recently was Chair of his Youth Court Panel. He is currently a member of the Magistrates' Association Youth Courts Committee and advises the Prison Reform Trust on youth justice.



Malcolm Stevens

Malcolm Stevens was the Government's professional adviser and lead (HM) Social Services Inspector responsible for youth justice policy, children in custody and children detained during Her Majesty's Pleasure for 11 years until 1998. From 1998 until 2005 he was the Director and Chief Executive of various services for children, including those in the youth justice system.

He is the UK Commissioner for the International Juvenile Justice Observatory (Brussels), Director of the Diagrama Foundation (UK), and Director of JusticeCare Solutions Ltd which offers independent advice to providers of healthcare, youth justice and children's services. Malcolm has also authored various reports, including independent inquiries into the gang-related murder of a 15 year-old boy in London and child sexual exploitation in Yorkshire.



John Sutherland

John Sutherland has served as a Met Police Officer for more than 19 years and became Camden Borough Commander in October 2010. John has extensive experience of work relating to youth engagement and the reduction of serious youth violence. He has played a leading role in the police response to a number of youth murders, including those of Kodjo Yenga and Ben Kinsella.



Phil Thain

Phil Thain is Founder and Chief Executive of Future Skills Training (FST), a charity that seeks to empower and support disaffected and at risk young people, including those who are at risk of or who have offended. Following establishment in 2005, the organisation gained charitable status in June 2007, and has been developing and growing since. Prior to starting FST, Phil worked in retail and broadcasting. Between 2003 and 2005 he also helped to run an Entry2Employment programme for young people between 16-19 years old from Lambeth and Southwark.

Special thanks

The CSJ would like to thank the many individuals and organisations who kindly gave their time to submit evidence to this review through attending hearings, roundtables and hosting visits. Our thanks also go to the many young people who shared their experiences and insights. We extend particular thanks to the report's Working Group for their sustained commitment, support and enthusiasm, especially to Professor Rod Morgan for the time he spent editing the report. In addition, we would like to thank Marc Radley of CACI and Alex Chard of YCTCS for their contribution to the report: to them both for writing the article featured in Chapter Seven; to Marc for his work on the simulation exercise; and to Alex for his advice. We are particularly grateful to the five YOTs who kindly took the time to assemble the data we requested. Our thanks also go to the Youth Justice Board for the extensive information they have provided for our review.

The CSJ would also like to express special thanks to the Lovering Charitable Trust for their instrumental support of this paper. We are deeply grateful to them for their generosity. Finally, we extend our thanks to Autumn Forecast for her design assistance on this report.

Executive summary

This is the Executive Summary of *Rules of Engagement: Changing the heart of youth justice*. To download the full report and complete list of recommendations, visit www.centreforsocialjustice.org.uk

I. Introduction

The link between social breakdown and crime is well established. In the CSJ's seminal report *Breakthrough Britain*, we identified five common drivers of poverty and social breakdown – educational failure, family breakdown, addiction, worklessness and economic dependency, and debt. Addressing these pathways must be a priority if offending is to be tackled successfully. Of equal importance is the successful rehabilitation of those who fall within the auspices of the youth justice system. Thus, in February 2010 the CSJ launched a review of the youth justice system to identify how it might be reformed to improve outcomes for young people, victims and society.

We have spoken with over 200 professionals from the youth justice field, conducted many visits and convened over 70 hours of evidence hearings, ensuring that our findings and recommendations are robust and grounded in the experiences of those who work in youth justice on a daily basis. It is clear that there have been a number of improvements in recent years, yet there is still further work required to build on this progress and some glaring inadequacies remain. We have identified four key shortcomings, which must be addressed if outcomes are to be improved:

- The youth justice system continues to function as a backstop: sweeping up the problem cases that other services have failed, or been unable, to address;
- The system is often operating in a way which promotes rather than reduces offending;
- There continues to be too much focus on functional process at the expense of life-changing outcomes; and
- The importance of relationships to preventing offending and facilitating rehabilitation, emphasised to us consistently in our evidence hearings, continues to be overlooked.

Here we summarise the key messages and recommendations that have emerged from our evidence gathering across eight major aspects of the youth justice system:

- Prevention;
- Out-of-court activity;
- Court procedure;
- Community sentencing;
- Custodial sentences and the juvenile secure estate;
- Resettlement;
- Delivery; and
- The minimum age of criminal responsibility (MACR).

2. Polling

Our polling, in conjunction with YouGov, found that:

- Six in ten people think that addressing the causes of a young person's offending and/or antisocial behaviour is more effective than punishment alone;¹
- 74 per cent said that better supervision of young people by their parents would be the most effective way to address antisocial behaviour;
- Two-fifths said that the age of criminal responsibility should be higher than ten;
- Three-quarters think that making amends to the victim and confronting the offender with the consequences of their actions is an effective method with which to prevent reoffending by young people;
- Nearly six in ten believe that young people reoffend following custody because they return to the same negative circumstances and/or because they are inadequately supported on release;²
- 61 per cent of people would support the abolition of custodial sentences below six months and replacing them with tougher non-custodial sentences;
- Almost seven in ten think that minor convictions received as a juvenile should be removed from people's record when they reach adulthood, providing they have not reoffended in the meantime;
- 84 per cent said that work aimed at preventing young people from offending should target both young people involved and their families; and
- 85 per cent believe that young people in custody should be provided with 'mentors' who will help them access local services when they leave and give support.³

3. The youth justice system: picking up the pieces

There is a consistent failure by many local services to provide support to prevent offending and reoffending. The youth justice system is subsequently operating as a dumping ground, sweeping up the problem cases that other local authority services have failed to address. A large number of Youth Offending Teams (YOTs) have informed us of the difficulties they experience

1 CSJ/YouGov polling of 2,234 British adults, May 2011

2 CSJ/YouGov polling of 1,948 British adults, May 2010

3 CSJ/YouGov polling of 2,084 British adults, September 2011

in obtaining the necessary input from children's social services; children in trouble with the law are not seen as a priority and do not reach the thresholds required to access support. This is in spite of the high levels of welfare needs experienced by children involved with YOTs. Practitioners have similarly raised concerns to our review about the prevalence of school exclusion, questioning why greater efforts are not being made to prevent it given the strong links between exclusion and later offending. In addition, the youth justice system is often failing to provide a holistic, family-based approach to youth offending; opportunities are missed to work with families when parents or siblings are involved in the justice system; and there is significant variation in the extent to which YOTs are working with both young people and their families.

'We need to adopt a holistic approach and invest differently than we do. We do not yet have the systems in place to wrap around young people who are not at offending stage but need help. As a result, they end up being pushed into youth justice system.'

Director of Children's Services, in evidence to the CSJ

We have seen how the creation of YOTs and their transition into the delivery of prevention has often let other services off the hook, making it less rather than more likely that children who offend receive the support they need from such services. In too many cases YOTs are a team that other services will hand their 'problem' child over to as opposed to working with. This is encouraged by the funding arrangements and structure of YOTs: local agencies, particularly children's services, contribute a significant proportion of YOT budgets and are also expected to second their specialist staff (although this often does not happen). These arrangements are often assumed to indicate, perhaps understandably, that the YOT can and should exclusively address the problems of offenders and children at risk, but they were not designed for this purpose.

YOTs cannot and should not prevent offending on their own. Preventative interventions delivered by the criminal justice system in isolation can be both stigmatising (leading to difficulties with engagement) and increase the likelihood of offending.⁴ Moreover, the risk factors for offending are common to a wide range of adverse outcomes, such as mental ill-health and child maltreatment, which require comprehensive intervention from a range of services. The solutions to preventing youth offending lie outside of the youth justice system.

3.1 Our recommendations on prevention include:

- **Introducing a statutory duty on local authorities and their statutory partners to secure the sufficient provision of local early support services for children and their families who are engaged in or are likely to engage in criminal or antisocial behaviour.**

⁴ See for example McAra L and McVie S, 'Youth justice? The impact of system contact on patterns of desistance from offending', *European Journal of Criminology*, 4:3, 2007, pp315-45; Farrington D, 'The effects of public labelling', *British Journal of Criminology*, 17:2, 1977

- Removing from YOTs the responsibility for the *delivery* of preventative services in the *immediate term*; and control of the budget they allocate for youth crime prevention in the *medium term*. Instead, the local authority, in consultation with the forthcoming Police and Crime Commissioner and local voluntary sector organisations, should commission youth crime prevention services on the basis of the best available evidence of what works. Attention should be paid to commissioning services that provide help to both young people and their families. This would help ensure that prevention is understood as a multi-agency responsibility.
- Appointing a local independent entity to scrutinise the services provided by local agencies to prevent young people from offending and reoffending. We consider Local Safeguarding Children's Boards (LSCB) to be best placed to assume this responsibility. Given the significant demands on LSCBs we suggest that this duty is undertaken in the *medium term*.
- Including inspection of secondment practice from Children's Services and other partners to YOTs within the remit of the Children's Services Inspectorate (*immediate term*).
- Reviewing the structure and remit of YOTs to clarify their roles as well as the responsibilities of local partners to children at risk of or involved with offending (*immediate term*).

4. Promoting or preventing?

In some areas, criminal justice services operate in such a way that they contravene their stated purpose: they promote rather than prevent offending.

4.1 Out-of-court activity

'We recently had a case where a child had thrown a bowl of sugar puffs at his residential care worker, jumped out of the window and then re-entered through the window. This happened after a care worker had brought the child the cereal of his own preference, instead of what the child had asked for. The child was arrested for assault and burglary. Although the Crown Prosecution Service threw the case out, he was still kept in police custody for the entire weekend.'

Eddie Isles, Manager, Swansea YOS, in evidence to the CSJ

Despite increasing acknowledgement at a strategic level of the value of diversion – responding to minor youth offending through robust methods outside of criminal measures and the court system – we have received numerous examples of where this is not translating into practice on the frontline. This is resulting in unnecessary criminalisation of children. Unsuitable cases,

such as family disputes, residential care home incidents and minor playground altercations, are continuing to reach prosecution, leading sentencers to report that courts are being used to parent children. Further, although the police 'offences brought to justice targets' (OBTJ) targets, which incentivised the criminalisation of children, were abolished in 2010, police sanction-detection measures continue to act as a strong incentive to proceed formally against misbehaviour. This can mean that limited use is made of informal measures such as restorative justice (RJ), which has high victim-satisfaction rates and is more effective.

Our evidence gathering has revealed that this action is largely a result of the 'common sense deficit' that is too often apparent in the way the system responds to the misbehaviour of challenging young people: practitioners robotically follow processes without consideration of whether their actions are improving outcomes for young people and society.

4.1.1 Our recommendations on out-of-court activity include:

- Placing a common sense approach at the heart of responses to youth misbehaviour. The professional judgement and expertise of practitioners should be encouraged and supported to ensure that decisions are made in the best interests of young people and society.
- Counting the new RJ disposal for juveniles as a sanction-detection to remove the disincentive to responding to misbehaviour by means of RJ.
- Developing youth-led police youth engagement training in partnership with the voluntary sector at a local level. This should be refreshed by means of regular workshops with young people and police officers. We recognise that there is a cost here both in money and time but our view is that these are costs worth meeting.

55 per cent of those polled support making local services (such as schools and mental health services) accountable to a local independent body for the services they provide to stop children from becoming offenders.⁵

CSJ/YouGov polling, September 2011

4.2 Court

Children and young people are sentenced differently depending on where they offend in England and Wales. In 2008/09 the custody rate for those aged ten-17 in Newcastle was 1.6 per cent compared to 11.6 per cent in Liverpool, a matched area with a similar demographic.⁶ These discrepancies are not explained by differences in offence patterns but variation in local practice, such as inadequate community services, a lack of communication

⁵ CSJ/YouGov polling of 1948 adults in England and Wales, May 2010

⁶ Ministry of Justice, *Making it count in court Toolkit: Sentencing data toolkit 2010* [accessed via: <http://www.justice.gov.uk/guidance/youth-justice/courts-and-orders/making-it-count-in-court/toolkit.htm> (07/11/11)]

between courts and YOTs, and poor pre-sentence reports (PSRs).⁷ These problems are by no means new revelations, yet they remain unaddressed.

Further, youth-specialised training and expertise is minimal amongst sentencers and defence practitioners who participate in youth proceedings. Whilst magistrates and district judges must undertake specialist youth training to practice in the youth court it includes little or no content on issues such as child development, welfare, and speech, language and learning needs. The majority of Crown Court judges and legal practitioners representing child defendants remain untrained to deal with youth cases. Without such youth-specific expertise young people are less likely to receive the services and sentences appropriate to address their offending.

4.2.1 Our recommendations with respect to court procedure include:

- Introducing mandatory specialist youth training in the *immediate term* for all defence lawyers and Crown Court judges appearing in youth proceedings. Training for magistrates and district judges should be developed to include comprehensive understanding of the distinct vulnerabilities of children and young people. Youth specialised training for court practitioners should be based on the excellent youth-led approach of the charity Just for Kids Law.
- Bringing back offenders before the court at intervals during the sentence (to be implemented in the *medium term*). At least one of the sentencers who imposed the original sentence should be present at the review. Reviews could be piloted for high-risk offenders, such as those subject to alternatives to custody, and if successful could be rolled out to all those on other orders. This would boost sentencer confidence in community sentences as well as likely increasing compliance and reducing offending.
- Removing the requirement, in the *medium term*, for youth court magistrates (once selected) to continue sitting in the adult magistrates' court. This would ensure they had a high-level of youth-specific experience.
- Introducing obligatory twice yearly sentencer visits to youth custodial institutions and community services in the *medium term* to ensure that their understanding of the content of sentences is kept up to date.

In our polling 65 per cent of people said that defence practitioners should have specialist youth justice training before being allowed to appear in youth proceedings.

78 per cent of people we polled support bringing young people back before the court at intervals during their sentence to ensure that it is proving effective.

CSJ/YouGov polling, September 2011

⁷ PSRs make a sentence proposal to the court and are a vital source of information on the young person

4.3 Community sentences

‘He turned up on the wrong day and she breached him. He went straight back into custody. She will have followed every procedure and hit every national standard, but she hadn’t got the point of what it is was she was meant to be doing, which was getting alongside him, and focussing on his optimism and his strengths and helping him to stop offending.’

Dr Di Hart, National Children’s Bureau, in evidence to the CSJ

We have concluded that in a number of areas, community sentences and the provision supporting them are inadequate – they are insufficiently well resourced and lack credibility, which increase the likelihood of inappropriate use of custody. In particular, sentencers informed us of their continued lack of confidence in referral orders. There remains limited victim involvement in the referral order panels due to insufficient time and effort invested in contacting and preparing victims. Intensive fostering, one of the two alternatives to custody, is rarely available due to lack of funding. YOT practitioners reported that the use of the Scaled Approach process to indicate the appropriate level of intervention for community sentencers has stifled practitioner thinking by encouraging a passive mindset in which practitioners are required to follow processes and guidelines, instead of using their judgement and building relationships with young people and their families. An inflexible ‘three strikes and you’re out’ rule in response to young people who fail to comply with their orders, combined with a lack of support to achieve compliance, has been counterproductive for the many young people who genuinely struggle to do so: approximately one in ten youth custodial places are taken up by children whose primary offence is breach.⁸

‘It’s like they don’t give you the time of day. They don’t want to speak to you. My YOT worker, he didn’t really make the effort. He’d talk for ten minutes, then go. I didn’t really see the point – how did that make a difference?’

Ryan, age 16, in evidence to the CSJ

An overwhelming number of our witnesses emphasised that the presence of a positive and stable relationship between a young person and an adult is fundamental to successful rehabilitation. Yet in many areas the importance of supporting young people to engage, comply and succeed on community sentences through positive relationships with their YOT worker has become entirely neglected. Workers spend the vast majority of their time completing

⁸ Ministry of Justice, *Youth Justice Statistics 2009/10, England and Wales, 2011*, p4 [accessed via: <http://www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/yjb-annual-workload-data-0910.pdf> (26/11/11)]

paperwork as opposed to building relationships with the young people and families they seek to help. Youth offending will not be properly addressed until this shortfall is rectified.

4.3.1 Our recommendations on community sentences include:

- Reforming the referral order to be a more robust, restorative disposal. In the long term a restorative conferencing model, akin to that of Northern Ireland, should be adopted. Steps towards this aspiration should be taken in the *immediate* and *medium term*, including making greater efforts to involve victims; renaming it a 'restorative order'; and returning plans agreed to in panels to sentencers for ratification (so as to increase confidence).
- Ensuring that revised national standards afford YOT workers greater discretion to judge what comprises a breach and determine the intensity of community intervention. Workers' judgement should be supported and informed by regular supervision.
- Bolstering the Youth Rehabilitation Order in the *immediate term* to comprise a comprehensive programme focussing on supporting and building relationships with the young person and their family as well as monitoring and compliance. The voluntary sector is best placed to deliver this.

4.4 Custody

Too often custody operates as a 'backstop' for the non-violent and repeat offending children who arguably do not need to be there. Short sentences are widespread and were reported by many of our witnesses to be ineffective. Three-fifths of all children sentenced to custody in the latter half of 2008 were convicted for offences that usually result in non-custodial sentences.⁹ Their incarceration is a reflection of the inadequacy of services in the community, which have failed to address the root causes of their misbehaviour. Whilst punishment and justice for victims remain central rationales for custody, we consider there to be proportionate penalties for wrongdoing in the community that are both more demanding and effective. The CSJ believes that youth custody should be reserved only for the 'critical few': the most serious or violent young offenders, and those who are so prolific that custody is the place that can best safeguard potential victims and meet these young people's needs.

'They put me in segregation for a week after getting into a fight. It felt like months. It was the loneliest place; it was my hardest time in prison. All you have is a bed and a toilet; there is nothing to do. If you're good you're allowed out of the cell for an hour to eat with the prison officer; otherwise you're just locked up for 24 hours a day. You sleep to pass the time...it makes you feel kind of broken mentally.'

15 year-old boy recently released from a Young Offender Institution, in evidence to the CSJ

⁹ Jacobson J et al, *Punishing disadvantage: a profile of children in custody*, London: Prison Reform Trust, 2010, p20

The past ten years have witnessed improvements in practice and provision in the juvenile secure estate (JSE). However, shortcomings remain and many establishments are not fulfilling their rehabilitative potential. Too often custody operates as an interruption rather than a unique opportunity to transform lives. This is due to inadequate information sharing, varied service provision in custody, and an imbalance of support between custody and the community. There continues to be wide variation in the culture and standards of care between the three types of secure facility.¹⁰ This is considered to be particularly pronounced between Young Offender Institutions (YOIs), which are widely felt to offer the least scope for rehabilitation, and the rest of the secure estate. However, our visits demonstrated that there is both excellence and mediocrity in all three types of institution. In particular, numerous witnesses to our review expressed concern that prison officers in juvenile YOIs are not specially selected to work in such institutions and receive only seven days of training to do so (which a third of staff has not completed).¹¹ This inevitably results in some officers who neither want to work with children nor understand their distinct needs. Given the importance of relationships to successful rehabilitation, this is a significant failing. There is also a wider issue about variation in the type and level of training required of staff across the three types of secure facility.

4.4.1 To improve custody and ensure it is only used for the 'critical few' our recommendations include:

- Raising both the custody threshold and the minimum period in custody to six months in the *immediate term*. This would prevent the imposition of very short and unproductive custodial sentences and ensure that only the very serious and most prolific young offenders are sentenced to custody.
- Reforming the detention and training order so as to be a genuinely seamless sentence. It should comprise three stages: a period in full security (minimum of six months); a period in a halfway house; and a final community supervision element on release from the latter. This should be implemented in the *long term* when the configuration of the secure estate better allows it.
- Maximising the potential for rehabilitation in custody by ensuring that: juvenile secure facilities have access to a range of effective therapeutic provision; expanding and embedding restorative practices in the JSE; and allowing a greater number of children out on day release to enable them to make a successful transition to a law-abiding life in the community.
- Introducing judicial review of youth custodial sentences in the *long term* to ensure the sentence is fulfilling its full rehabilitative potential.
- Implementing a minimum standard of training for staff working in the JSE in the *immediate term*, and rolling out an application and selection recruitment procedure in juvenile YOIs as soon as is feasible. This should be extended to all juvenile secure facilities in the *long term*.
- Taking YOIs out of prison service management in the medium term to be run by a separate agency. In the *long term* there should be a single JSE with single standards and regulations based on Children Act principles. The estate should be commissioned by a single agency from the voluntary, private or public sectors. We would like to see a greater number of smaller local custody facilities, with local authorities playing a strong role in commissioning.

¹⁰ Secure children's homes (SCHs), secure training centres (STCs) and Young Offender Institutions (YOIs)

¹¹ Puffett, 2011, cited in Phoenix J, 'In search of a youth justice pedagogy? A commentary', *Journal of Children's Services*, Volume 6, 2011, p132.

4.5 Resettlement

Despite many initiatives during the past ten years, resettlement provision remains woefully inadequate. Almost three in every four young people are reconvicted following a custodial sentence.¹² Yet nine in ten young people in custody do not want to reoffend.¹³ Resettlement is one of the most under-resourced aspects of the youth justice system and too often fails to meet the basic needs of young people leaving custody: a trusting relationship, a safe and stable place to live, and something meaningful to do. This serves only to lead children back into criminality. Greater efforts need to be made to ensure that young people's aspiration to change their lives is a reality in more cases.

'My experience is that sometimes our system is almost the antithesis of one that prevents offending. If you were to think about what we would need to do to ensure future offending on release, you would find that we are doing a lot of it already.'

Tom Jefford, Manager, Cambridge YOT in evidence to the CSJ

In particular, our visits and evidence hearings revealed a striking lack of effort to maintain relationships and resolve difficulties between young prisoners and their families. This is largely due to the fact that many young people are detained considerable distances from home. Without such support, many young people are returning to the same negative circumstances from which their offending flows. We have found that this instability is often reinforced by inconsistent relationships with youth justice practitioners: there is often inadequate 'in-reach' into custody by YOT workers and limited capacity for 'outreach' in the community by secure staff.

80 per cent of those we polled support the introduction of family workers into youth custodial institutions to help prepare young people's families for their release.

CSJ/YouGov polling, September 2011

¹² Ministry of Justice, *Reoffending of juveniles: results from the 2008 cohort, England and Wales*, Ministry of Justice, Statistics bulletin, Ministry of Justice, 2010 [accessed via: <http://www.justice.gov.uk/publications/reoffendingjuveniles.htm> (04/11/10)]

¹³ A survey of 1,110 15-18 year-olds in prison custody found that 90 per cent wanted to stop offending, Summerfield A, HM Inspectorate of Prisons, Youth Justice Board: *Children and Young People in Custody 2008-2009: An analysis of the experiences of 15-18 year-olds in prison*. London: HM Inspectorate of Prisons, 2010, pp71-72.

4.5.1 Our recommendations to improve resettlement and put relationships at the heart of rehabilitation include:

- Introducing payment by results dedicated ‘family link worker’ posts in juvenile secure facilities in the *immediate term*. Workers would help to maintain links, aid reconciliation and liaise with the home local authority to ensure that families receive the required support in the community. In the *long term* or when the configuration of the JSE allows it, we recommend that workers adopt a family outreach role.
- Providing payment by results one-to-one support workers to young people in custody in the *immediate term*. Workers would provide practical and relational support to prepare young people for release and further assistance thereafter. There should be a particular focus on helping young people to engage in education, training and employment.
- Placing a statutory duty, akin to the Children (Leaving Care) Act 2000, on all local services (for example, schools, colleges, Child Adolescent Mental Health Services (CAMHS), housing, police and children’s services) in the *medium term* to support the rehabilitation of young people leaving custody.

4.6 Delivery

‘The one thing I took back was that the inspection process is cold. There is not actually any point talking to inspectors about relationships with young people, about distance travelled or outcomes, it’s about ticking boxes: did you do an Asset in time? Did you do a Risk Office Serious Harm assessment? Did you screen properly? Yes, no, yes, no. It’s just a quantitative assessment. They even asked me if I had put the right date in. There is no skill involved, anyone could have done it.’

YOT Manager, in evidence to the CSJ

Throughout this review YOT workers have consistently criticised the youth justice system’s preoccupation with keeping records, meeting targets and complying with prescribed national guidance. This has stifled the judgement and expertise of YOT staff, and incentivised workers to mechanistically tick boxes, as opposed to ensuring that the needs of young people are being met and their behaviour improved. It is apparent from our evidence gathering that training has often not given YOT practitioners the opportunity to develop the expertise and confidence to exercise good judgement. Many of our witnesses were also highly critical of the methodology of YOT inspections undertaken by HM Inspectorate of Probation (HMI Probation) since 2002, considering it to be a tick-box orientated assessment of process: checking to ensure that the correct details have been recorded and the right procedures undertaken, rather than observing practice and interactions between young people and their workers. Moreover, YOTs told us that the lengthy forewarning of inspections they receive

does not produce a genuine reflection of practice. As a result of these shortcomings, where there is excellent work it is often taking place in spite of the system, rather than because of it. We believe that many of the lessons from *The Munro Review of Child Protection* translate across to the management and practice of youth justice.

4.6.1 Our recommendations on delivery include:

- Ensuring training of YOT workers is skills based rather process driven, to reflect the fact that the relationship between the YOT worker and young person is central to successful rehabilitation. There also needs to be a much stronger emphasis on developing skills to work with the context and circumstances of individual children, including families, other professionals and communities.
- Introducing unannounced YOT inspections and increasing the focus on YOT workers' practice in the *immediate term*. Determining whether or not young people and their families, and thus society, are being effectively helped should be the central concern. This would ensure that inspections produce a more accurate reflection of practice and are more focussed on outcomes.
- Developing the inspection framework, in the *medium term*, to examine the effectiveness of contributions of all other local services to the prevention of youth offending and reoffending, including education, children's services, health, police, and probation. This would reflect the recommendation, accepted by the Government, made in the Munro Review with respect to child protection.

5. The minimum age of criminal responsibility

The CSJ's judgement is that at ten years the current minimum age of criminal responsibility (MACR) is too low and does not deliver the best outcomes for either society or children who offend. It is counterproductive and unjust. We believe it should be raised to 12 in reflection of the evidence. Robust responses to the offending of ten and 11 year-old children delivered outside of the youth justice system would better serve justice and be a more effective means of addressing criminality.

The MACR was raised from eight to ten years in 1963. By all accounts, that decision was reached on a somewhat arbitrary basis. There is no evidence, for example, to indicate that a ten year-old is substantially more developmentally mature than a nine year-old.¹⁴ Since 1963 the arbitrary foundation of the current MACR has, arguably, become increasingly questionable as our neuropsychological understanding of child development has advanced considerably.

5.1 Raising the MACR

First, children may be less responsible for their behaviour in early to mid-adolescence, particularly if they have been maltreated.¹⁵ This is because during this period children have

¹⁴ See for example, Vizard E, *Presentation on how do we know if young defendants are developmentally fit to plead to criminal charges – the evidence base*, Report on the Young Defendants Conference 2009, London: Michael Sieff Foundation, 2009 [accessed via <http://www.michaelsieffoundation.org.uk/content/Report%20-%20Eileen%20Vizard%27s%20presentation.pdf> (23/09/11)]; and Downes D and Morgan R, 'Waiting for Ingleby: the minimum age of criminal responsibility – a red line issue?', forthcoming, p5

¹⁵ Farmer E, 'The age of criminal responsibility: developmental science and human rights perspectives', *Journal of Children's Services*, Vol 6:2, 2011, p87

a propensity towards impulsivity, risk-taking and sensation-seeking behaviour.¹⁶ Capacity to accurately gauge the consequences of their actions¹⁷ and empathy is also still developing.¹⁸ These deficits are exaggerated in children who have been abused and/or neglected.¹⁹ Moreover, whilst most children can broadly differentiate between right and wrong from a very young age, their capacity to judge the magnitude of right and wrong is limited: that is, what is criminal and what is not. This is likely to be particularly true of children who have grown up in highly dysfunctional and/or abusive family circumstances and hence not learned law-abiding behaviour or conversely, learned to emulate violence. Second, children and adolescents are significantly less competent to participate (for example, to decide how to plead, instruct lawyers and respond to cross-examination) in criminal justice proceedings. They are more likely to make false confessions,²⁰ and have limited capacity to understand and follow court processes as well as the significance of questions asked and answers given.²¹ Without competence, the likelihood of determining the truth and achieving justice is decreased.

Third, the youth justice system can be both ineffective and harmful: it has been shown to increase the likelihood of offending.²² Robust welfare-based responses to the offending of less culpable children are therefore likely to be a more effective alternative to criminalisation, particularly as this cohort tends to have high welfare needs. The current low MACR makes it less likely that this will happen because it is possible for hard-pressed children's care teams to look to YOTs to intervene instead.²³

Fourth, the assumption that children, at age ten, are sufficiently responsible and competent to participate in the youth justice system is seriously inconsistent with other aspects of the law in England and Wales, the median MACR worldwide and the consensus of international human rights bodies. For example, a child is not deemed sufficiently competent to buy a pet until the age of 12, but can be tried in a court of law at the age of ten. The MACR in England and Wales is low compared with the rest of the world (it is 12 or above in many countries) and is contrary to the guidance of international human rights bodies (the principles of which we have signed up to), that an MACR below 12 is unacceptable.²⁴

5.2 Retaining the MACR

There is a strong desire amongst victims and wider society to see justice being done, an end that is often mistakenly presumed to be unachievable outside the criminal justice system.

¹⁶ Van Leijenhorst et al, 2010, cited in Farmer E, 2011, op. cit., p87

¹⁷ Steinberg et al, 2009, cited in Farmer E, 2011, op. cit., p87

¹⁸ Davis M H and Franzoi S L, 'Stability and change in adolescent self-consciousness and empathy', *Journal of Research in Personality*, 25, 1991, pp70-87

¹⁹ Vizard E, op. cit.

²⁰ Drizin S A and Leo, R A, 'The problem of false confessions in the post-DNA world', *North Carolina Law Review*, 82, 2004, pp891-1008

²¹ Farmer E, 2011, op. cit., p88

²² McCara L and McVie S, op. cit., pp315-345

²³ Downes D and Morgan R, op. cit., p10

²⁴ UN, *General comment no. 10: children's rights in juvenile justice*, Committee on the Rights of the Child, 44th session, 2007, pp6-11 [accessed via: <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf> (30/09/11)]; UN, *Consideration of reports submitted by states parties under Article 44 of the Convention, Concluding observations: United Kingdom of Great Britain and Northern Ireland*, Committee on the Rights of the Child, 49th session, 2008, p19, paragraph 78 [accessed via: <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO4.pdf> (30/09/11)]

There is a related concern that crime would increase if the MACR was raised, however there is no evidence to support this.²⁵ The appalling murder of James Bulger by two ten year-old boys in Liverpool in 1993 remains fresh in the public consciousness. As a result there appears to be little appetite amongst the general public for changing the law such that equivalent offenders would not be held criminally liable.

Any MACR is to some extent arbitrary; there is no perfect alliance between the science of child development and jurisprudential theory. Children vary greatly in their development. For example, practitioners have told us that they deal with some 15 year-olds who cannot gauge the consequences of their actions and some 11 year-olds who have greater capacity to do so. Some countries overcome this challenge by assessing competence and culpability on a case by case basis but there are many problems with this solution.

Even were the MACR raised, to 12 for example, this reform alone would not achieve the radical transformation in the system's response to the offending of ten and 11 year-olds that is desired. Whatever the MACR, the police must respond to the crimes of those above and below it. Furthermore, children below the MACR whose behaviour results in grave harm are likely to be incarcerated in the same accommodation (secure children's homes), alongside child offenders above the MACR.

5.3 Related issues

The criminal court tends to respond to the offending of children in isolation from the family problems from which criminality so often flows. For example, cases cannot be referred to the family proceedings court, even where there are serious child welfare concerns. This is partly a consequence of the adversarial nature of criminal proceedings in England and Wales, where the finding of guilt or innocence is prioritised rather than the truth. Children's offending is unlikely to be properly addressed until this disconnect is rectified.

5.4 Our recommendations on the MACR include:

- Raising the MACR to 12 for all offences in the *long term*. Alongside this reform, the youth and family court should be integrated to achieve a whole-family approach to offending. Implicit in this recommendation is that an inquisitorial approach be adopted. However, such a reform is currently implausible as the capacity of welfare services to provide support needs to be developed and public opinion remains uncertain on the issue. Therefore we recommend:
- Raising the MACR to 12 in the *immediate term* for all but the most grave offences (murder, attempted murder, rape, manslaughter and aggravated sexual assault). This reform should be implemented alongside the other proposals of this review which aim to address the weaknesses in the system, such as investment in early intervention services and development of custodial facilities to become more rehabilitative environments.

25 Department for Justice, Republic of Ireland in evidence to Barnardo's, op. cit., p8

We are conscious that in continuing to hold children who have committed the most heinous crimes responsible for their behaviour one likely criminalises those most in need of help. However, we think this solution offers the best prospect of improving outcomes for children in the *immediate term*.

- Developing a connection between the youth and family court in the *medium term* to allow young people's offending to be responded to in the context of their families. We recommend that this be achieved by affording to the youth court the power (under s.37 Children Act 1989)²⁶ to order the local authority children's service to investigate whether a child is at risk of suffering significant harm, and whether the local authority should intervene to safeguard and promote the child's welfare (s.47 investigation under the Children Act). This power would be available in cases where there were welfare concerns.²⁷

With a MACR of 12, children committing crimes below this threshold would continue to be held to account for their behaviour, but in a more effective manner. Responses available for less serious offending would include support from local services, restorative and family group conferencing and intensive wrap-around family interventions. For more serious offending, coercive welfare interventions could be imposed, such as supervision, care orders and detention in secure accommodation for the most serious offenders from whom the public require protection.²⁸

²⁶ At present this power only available to the family proceedings court

²⁷ That is, concern that the child was or was likely to suffer significant harm, attributable to the standard of care given to the child at home or because the child is beyond parental control

²⁸ Under s.25 of the Children Act 1989, available to children who have a history of absconding; if absconding is likely to cause them serious harm; and who would injure themselves or other persons if they were kept in any other description of accommodation

Introduction

The link between social breakdown and youth offending is well established. The lives of young people who offend are typically characterised by a catalogue of broken homes, domestic violence, educational exclusion, deprivation and fragmented communities. Such breakdown does not excuse offending but it does help to explain why it takes place and how it can be addressed. In the CSJ's seminal report, *Breakthrough Britain*, we identified five common drivers of poverty and social breakdown – educational failure, family breakdown, addiction; worklessness and economic dependency, and debt. Addressing these must be a priority if youth offending is to be successfully tackled.

Of equal importance is the successful rehabilitation of those who fall within the auspices of the youth justice system. With that goal, in February 2010 the CSJ launched a review of the youth justice system to identify how it might be reformed to improve outcomes for young people, victims and society. The major elements reviewed are: prevention, out-of-court activity, court procedure, community and custodial sentences, post-sentence support and delivery. We have also examined the minimum age of responsibility.¹ The review has comprised a comprehensive literature review as well as, importantly, evidence hearings and roundtables with more than 200 professionals from the youth justice field and visits to YOTs, secure institutions and voluntary sector organisations. In so doing, this review's findings and recommendations are heavily grounded in the experiences of those working on the frontline.

For too long youth justice policy has been a political football, resulting at times in a partisan 'arms race' of which political party can be tougher. During the past 50 years youth justice policy has been a pendulum: lurching from a welfare approach in the 1960s and 1970s to an emphasis on non-intervention in the 1980s and penal populism from the mid 1990s onwards, espoused by the slogans 'prison works' and 'tough on crime and tough on the causes of crime' (though this commitment in relation to causes went largely unmet). There are twice as many children in custody today as there were in 1989,² despite the level of crime falling since 1994.³

1 There are several important issues that were not in the remit of this review. These are the overrepresentation in the youth justice system of black and minority ethnic groups and girls; and in the adult criminal justice system, of young adults, due to receiving inadequate support in their transition to adulthood.

2 1989 figure taken from Hansard, as cited in Children and Young People Now, *Joint Working – 20 years on: The impact of the 1989 Children Act*, 29 October 2009; and Ministry of Justice, *Monthly Custody Report – September 2011* [available at: <http://www.justice.gov.uk/publications/statistics-and-data/youth-justice/custody-data.htm> (14/11/11)]

3 Smith D, 'The need for a fresh start', in D Smith (ed), *A New Response to Youth Crime*, Devon: Willan Publishing, 2010, p2

Three out of four people believe that crime is increasing.⁴ Further, though spending on the youth justice system increased by 45 per cent in real terms between 2000 and 2007⁵ there was not an equivalent improvement in outcomes; the custodial reconviction rate in particular has remained high over the past ten years.⁶ In youth crime policy, the interests of young people, victims and wider society have not been prioritised.

In more recent years the youth justice system has experienced a number of positive developments, such as a reduction in the youth custody population by over a third. Further, since this review commenced in early 2010 the Government has proposed a raft of reforms which seek to address many of the current failings of the youth justice system. In spite of this welcome progress it is clear from the evidence we have received that there remains need for innovative and transformative reform, with a number of glaring inadequacies apparent. Alongside our evidence, analysis of those involved in the recent riots provides a particularly stark reminder of the considerable work that is still required: of those aged ten-17 suspected of involvement in the riots over 16 per cent had between six and 49 previous convictions, six in ten had special educational needs and a third had been excluded at some stage in their lives. 64 per cent of young people appearing before the courts live in one of the 20 most deprived areas in the country.⁷

We have identified four key shortcomings in the youth justice system. First, it continues to function as a backstop: sweeping up the problem cases that other services have failed, or been unable, to address. Second, the system is operating in some cases to promote rather than prevent offending. For instance, there are examples where it is failing to ensure that young people's most basic resettlement needs are met, which therefore served only to reintegrate them back into offending. Third, there continues to be too much focus on process at the expense of outcomes: in many cases there is a common-sense deficit where procedures are robotically followed without consideration of whether they are improving outcomes for young people and society. Fourth, the importance of relationships in preventing offending and facilitating rehabilitation, emphasised consistently in our evidence hearings, continues to be overlooked. The human and economic cost to society of these shortcomings is staggering.

Our recommendations include both radical reforms to address these failings as well as proposals to build on recent progress. Together they comprise a strong blueprint for reform over the immediate, medium and long term. They are designed to create a system in which:

- Local services work together to ensure that young people and their families receive the early help they require to prevent entry into the youth justice system and, if already involved, the support to deliver their rehabilitation;

4 Walker A et al, *Crime in England and Wales 2008/09: Volume 1, Findings from the British Crime Survey and police recorded crime*, London: Home Office, 2009, p97

5 Centre for Crime and Justice Studies, *Ten Years of Labour's Youth Justice Reforms: An Independent Audit*, London: The Centre for Crime and Justice Studies, 2008, p19

6 Ministry of Justice, *Reoffending of juveniles: results from the 2009 cohort, England and Wales, 2011*, p26 [accessed via: <http://www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/juvenile-reoffending-statistics-09.pdf> (08/08/11)]

7 Ministry of Justice, *Statistical bulletin on the public disorder of 6th to 9th August 2011*, Ministry of Justice, 2011, pp5-12 [accessed via: <http://www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/august-public-disorder-stats-bulletin.pdf> (15/11/11)]

- Common sense is at the heart of responses to youth misbehaviour. Implicit in this is that the professional judgement and expertise of practitioners is encouraged and supported to ensure that decisions are made in the best interests of young people and society;
- A whole family approach is truly embedded in the youth justice system's response to youth offending;
- An understanding of the transformative effect of relationships informs the whole youth justice structure;
- Punishment and penalties are meaningful, robust and effective; and
- Custody is reserved for the critical few: the most serious or violent young offenders, and those who are so prolific that custody is the place that can best safeguard potential victims and meet these young people's needs.

chapter one

Prevention

1.1 Why prevention?

More than £164 million is spent daily picking up the pieces of crime, which totals £60 billion annually.¹ Preventative investment to tackle crime would be considerably more cost effective and immeasurably more beneficial to society. The Audit Commission calculated that if effective early intervention had been provided for just one in ten young offenders 'annual savings in excess of £100 million could have been made'.² Yet, England and Wales spends 11 times as much on locking young people up as on preventing their involvement in crime.³

1.2 Children at risk

Much research has been conducted to identify the 'causes' of youth crime. Evidence derived from a number of longitudinal studies and supporting research has demonstrated that there are identifiable factors that heighten a child's risk of offending.⁴ The link between these factors and later criminality is not, however, a simple matter of cause and effect. It is difficult to ascertain which risk factors are causes and which are merely correlated with causes. Risk factors also tend to co-occur, making it difficult to judge their individual impact.⁵

Nor does the existence of risk factors inevitably lead to future offending. Research shows that certain factors can protect children against involvement in crime, even in the presence of risk. The existence of these protective factors 'help to explain why some children are exposed to clusters of predictive risk factors... yet do not grow up to behave antisocially or commit criminal offences'.⁶ Given that much detailed analysis of risk and protective factors has been undertaken and is widely available, this chapter provides only very brief details in the table

1 Based on 1999/2000 figures; Brand S and Price R, *The economic and social costs of crime – Home Office Research Study 217*, London: Home Office, 2000, p9

2 Audit Commission, *Youth justice 2004: A review of the reformed youth justice system*, London: Audit Commission, 2004, p6

3 Youth Justice Board, cited in Margo J, *Make Me a Criminal: Preventing youth crime*, London: Institute for Public Policy Research, 2008, p57

4 For a discussion of this see Farrington D and Welsh B, *Saving Children from a Life of Crime: Early Risk Factors and Effective Interventions*, New York: Oxford University Press Inc, 2007; and Youth Justice Board, *Risk and Protective Factors*, London: Youth Justice Board, 2005

5 Farrington D and Welsh B, op. cit., pp19-22

6 Youth Justice Board, *Risk and Protective Factors*, 2005, op. cit., pp25-26

below. The CSJ has also completed work on the very early onset of risk factors, particularly in relation to the family environment, including *The Next Generation*⁷ and *Early Intervention: Good Parents, Great Kids, Better Citizens*.⁸

Studies show that offending increases rapidly during adolescence, peaking between the ages of 14 and 18 (with girls desisting at a lower age and boys at a higher age) and declining thereafter. This trend, known as the 'age-crime curve', has been found to apply in different countries and time periods.⁹ Although the majority cease offending as they reach adulthood (adolescent-limited) a small core continue doing so throughout adulthood (life-course persistent). The latter category is characterised by early onset of criminality and the presence of risk factors detailed below.¹⁰

Risk factors¹¹

Personal

- Low intelligence
- Low attainment and cognitive impairment
- Personality and temperament
- Lack of Empathy
- Impulsiveness and hyperactivity
- Attitudes that condone offending and drugs misuse
- Alienation and lack of social commitment
- Early involvement in crime and drug misuse

Family

- Criminal or antisocial parents/history of criminal activity
- Large family size
- Poor parental supervision and discipline
- Child abuse and neglect
- Parental conflict and family disruption
- Parental attitudes condoning antisocial and criminal behaviour

Environmental (the Youth Justice Board uses the categories School and Community)

- Growing up in a low socio-economic household
- Poor housing
- Living in a deprived neighbourhood/community disorganisation and neglect
- High population turnover and lack of neighbourhood attachment
- Associating with delinquent and drug misusing friends
- Attending a school with a high delinquency rate/school disorganisation
- Low achievement beginning in primary school
- Aggressive behaviour (including bullying)
- Lack of commitment to school (including truancy)

7 Centre for Social Justice, *Breakthrough Britain: The Next Generation*, London: Centre for Social Justice, 2008

8 Allen G and Duncan Smith I, *Early Intervention: Good Parents, Great Kids, Better Citizens*, London: The Centre for Social Justice and Smith Institute, 2008

9 Pople L and Smith D, 'Time trends in youth crime and in justice system responses', in D Smith (ed), *A New Response to Youth Crime*, Devon: Willan Publishing, 2010, pp55-57

10 For further information please see: Rutter M, 'Causes of offending and antisocial behaviour' in D Smith (ed), *A New Response to Youth Crime*, Devon: Willan Publishing, 2010 p183

11 See for example, Farrington D and Welsh B, op. cit.; and Youth Justice Board, *Risk and Protective Factors*, op. cit.

Protective factors¹²

Individual

- Female gender
- Resilient temperament
- Sense of self-efficacy
- Positive, outgoing disposition
- High intelligence

Social bonding

- Stable, warm, affectionate relationship with one or both parents
- Link with teachers, other adults and peers who hold positive attitudes, and 'model' positive social behaviour

Healthy standards

- Prevailing attitudes across a community (i.e. high social disapproval of drug misuse)
- Positive behaviour and views of parents, teachers and community leaders (who lead by example and have high expectations of young people's behaviour)
- Promotion of healthy standards within school
- Opportunities for involvement, social and reasoning skills, recognition and due praise

1.3 Prevention – what works?

The past 30 years have witnessed the development of a growing body of evidence of what works and what does not in relation to youth crime prevention. Whilst much of this evidence is from the USA, most of the findings are applicable to the UK.

Effective programmes share a number of key principles. They target multiple risk factors in several aspects of an individual's life¹³ over a sustained period of time.¹⁴ Families are engaged as well as the young people, equipping them jointly to solve the problems they share.¹⁵ The interventions need to be delivered as far as possible in the 'natural environments' of the children and families as opposed to being clinic-based.¹⁶ Therapeutic interventions are demonstrably more effective than those of a coercive nature.¹⁷ Quality of implementation is fundamental (i.e. high 'programme fidelity' and well trained staff): a well implemented but less effective programme can outperform a more effective initiative that has been poorly implemented.¹⁸ Programmes must also respond flexibly to the individual needs of recipients (though programme fidelity must not be lost).¹⁹

¹² Youth Justice Board, *Risk and Protective Factors*, op. cit., pp25-29

¹³ Tremblay and Craig, 2005, and Catalano et al, 1998, cited in Hawkins J, Welsh B and Utting D, 'Preventing youth crime: evidence and opportunities', in D Smith (ed), *A New Response to Youth Crime*, Devon: Willan Publishing, 2010, p234

¹⁴ Hawkins J, Welsh B and Utting D, op. cit., pp232-233

¹⁵ Utting D, *Interventions for children at risk of developing antisocial personality disorder: Report to the Department of Health and Prime Minister's Strategy Unit*, London: Policy Research Bureau, 2007, p83

¹⁶ Ibid, p82

¹⁷ Lipsey M, 2009, cited in Ross A et al, *Prevention and Reduction: A review of strategies for intervening early to prevent and reduce youth crime and anti-social behaviour*, London: Department for Education, 2011, pp17-18

¹⁸ Ibid, p19; and Utting D, op. cit., p82

¹⁹ Utting D, op. cit., p83

In contrast, punitive programmes, such as juvenile boot camps which use military-style discipline to 'correct' young offenders have been found to have no impact on recidivism.²⁰ Grouping 'problem' children together in unsupervised environments also increases the likelihood of offending.²¹

1.3.1 Obstacles to prevention

Knowledge of effective interventions and the risk factors for youth offending is itself insufficient to prevent youth crime. First, by targeting children as 'would be' offenders they are labelled as such. This is often both stigmatising (leading to difficulties with engagement) and criminogenic: that is, it may increase the likelihood of offending.²² The children are marked out at a critical stage in the formation of their identities, which can create a self-fulfilling prophecy: the criminal label not only shapes the child's identity and behaviour, but also how others perceive and then tend to treat them.²³ Second, even were this is not the case, there are difficulties identifying which children to target because there are 'substantial flows out of as well as *in to* the pool of children who develop chronic conduct problems'.²⁴ Targeted early prevention programmes result in both 'false negatives' (offend when not predicted to do so) and 'true positives' (offend when predicted to) but, most problematically, create many more 'false positives' (do not offend when predicted to). It follows that deficit-led interventions (those focussed predominantly on addressing risks as opposed to developing protective factors) are likely to be particularly stigmatising and harmful.²⁵

For these reasons preventative interventions are best presented and justified 'in terms of children's existing needs and problems, rather than future risk of criminality'.²⁶ However, preventative strategies should not generally place undue emphasis on individuals. They are better community-focussed, identifying and addressing key risk factors (and maximising protective factors) in particular localities (for there are local ecologies of crime)^{27, 28} Yet there are problems with this strategy. Though local communities are best placed to identify which programmes will suit their circumstances,²⁹ they often lack knowledge about effective programmes and 'the starting point for their crime prevention policy and practise is often flawed'.³⁰ Second, it is difficult to upscale proven preventions whilst both maintaining fidelity and allowing sufficient adaptability to suit local circumstances.³¹

20 Wilson and MacKenzie, 2006, cited in Hawkins J, Welsh B and Utting D, op. cit., p231

21 McCord, 1978; 2003, cited in Hawkins J, Welsh B and Utting D, op. cit., p209

22 See for example McAra L and McVie S, 'Youth justice? The impact of system contact on patterns of desistance from offending', *European Journal of Criminology*, 4:3, 2007, pp315-45; Farrington D, 'The effects of public labelling', *British Journal of Criminology*, 17:2, 1977

23 Erikson, 1968 cited in Farmer E, 'The age of criminal responsibility: developmental science and human rights perspectives', *Journal of Children's Services*, Vol 6, No 2, 2011, p90; and McAra L and McVie S, 2007, op. cit.

24 Sutton et al, *Support from the Start: Working with young children and their families to reduce the risks of crime and antisocial behaviour*, Norwich: The Stationery Office, 2004, p99; Based on research conducted by Stephen Scott (2002) on the continuity of antisocial behaviour from age five to 17

25 Losel F, *Offender Treatment and Rehabilitation*, in Maguire M, Morgan R and Reiner R (eds), *The Oxford Handbook of Criminology*, 5th edition, Oxford: Oxford University Press, forthcoming

26 Sutton et al, op. cit., p99

27 For discussion of the socio-spatial dimensions of crime see, Bottoms A, 'Developing socio-spatial criminology', in M Maguire, R Morgan and R Reiner (eds), *The Oxford Handbook of Criminology*, Oxford: Oxford University Press, forthcoming

28 See for example: Hawkins J, Welsh B and Utting D, op. cit., p234; and Farrington D and Welsh B, op. cit., p172

29 Hawkins J, Welsh B and Utting D, op. cit., p234

30 Wikstrom P, 2007, cited in Farrington D and Welsh B, op. cit., p172

31 Durlak J and DuPre E, 2008, cited in Ross A et al, op. cit., pp63-4

Finally whilst there is a robust evidence base of 'what works' in the USA it remains 'rather slender' in the UK.³² The main criticism levelled at research in the UK is that very few initiatives are assessed using good quality evaluation methods (i.e. where results are compared with that of a control group, such as randomised controlled trials (RCT)).³³ This is problematic: 'relying solely on US evaluations is not good enough, since conditions and cultures are significantly different in Britain and the US'.³⁴ It is therefore argued that investing in high quality evaluations is essential to our understanding of what works in the UK and ensuring that the interventions offered are effective.³⁵ This injunction is worthy. However, as the CSJ warned in a recent paper, undue reliance should not be placed on 'gold standard' measures to identify successful interventions: that approach is costly, time consuming and cannot always be applied. Moreover, it risks missing out outstanding programmes that have not been so evaluated.³⁶

I.4 Understanding prevention

It has become apparent in the course of this review that the terms 'early intervention' and 'prevention' are often misunderstood. Early intervention is particularly ambiguous: it refers both to help provided in the early years of a child's life and that provided 'early in the genesis of problems'.³⁷ Prevention is similarly misunderstood as action that can only take place prior to a young person's involvement in the youth justice system. In actual fact, it is a continuous process that takes place at any stage to prevent further offending which comprises 'stopping people starting' through to 'starting people stopping'.³⁸

I.4.1 Is it ever too late?

It is increasingly acknowledged that problems are best addressed early and, where possible, should be prevented from developing altogether. There has been particular emphasis on intervention between the ages of zero and three due to a growing body of evidence that people's life outcomes are heavily predicated on their experiences during this period.³⁹ However, as the CSJ emphasised in a recent paper a 'focus on the early years, while crucial is not in itself sufficient'.⁴⁰ Continued support throughout childhood and adolescence is essential to prevent both negative life outcomes and the cycle of disadvantage being passed down to subsequent generations.⁴¹ Adolescence is an important period of brain development and

32 Ross A et al, op. cit.

33 Ibid, p58

34 Ibid, p7

35 Ibid, p60

36 Centre for Social Justice, *Making Sense of Early Intervention*, London: Centre for Social Justice, 2011

37 Munro E, *The Munro Review of Child Protection, Part One: A Systems Analysis*, Norwich: The Stationery Office, 2010, pp25-26

38 Williamson H, Preventive Work in Youth Justice, in Bateman T and Pitts J (eds) *The RHP Companion to Youth Justice*, Dorset: Russell House Publishing, 2005, p205

39 See for example, Centre for Social Justice, *Breakthrough Britain: The Next Generation*, op. cit.; and Allen G, *Early Intervention: The Next Steps – An Independent Report to Her Majesty's Government*, London: HM Government, 2011

40 Centre for Social Justice, *Making Sense of Early Intervention*, op. cit., p4

41 Centre for Social Justice, *Breakthrough Britain: The Next Generation*, op. cit.; and Allen G and Duncan Smith I, *Early Intervention* op. cit., p29-75

thus a time of vulnerability when increased support is likely to be needed.⁴² Findings from the *Edinburgh Youth Transitions Study* strongly suggest that the experiences of teenage offenders are critical to whether they go on to become chronic offenders or desist.⁴³

1.5 A multi-agency affair

A number of our witnesses suggested that there is no such thing as specific youth crime prevention. The risk factors for offending are common to a wide range of adverse outcomes, such as mental ill-health, child maltreatment and long-term unemployment.⁴⁴ Effective prevention is therefore dependent on comprehensive intervention from a range of services: the solutions to preventing youth offending lie outside of the system itself. Legislation placing duties on local partners to prevent crime includes:

- **The Children Act 1989**

- s.17 provides that it is the duty of every local authority to safeguard and promote the welfare of children in their area who are in need.⁴⁵
- Schedule 2 provides that local authorities must take reasonable steps to: reduce the need to bring criminal proceedings against children; encourage children not to engage in criminal behaviour; and to avoid the need for children in their area to be placed in secure accommodation.⁴⁶

- **The Crime and Disorder Act 1998** provides that local authorities must exercise their functions with due regard to the need 'to do all that it reasonably can to prevent, crime and disorder in its area'.⁴⁷ This will be extended to the need to reduce reoffending under the **Policing and Crime Act 2009** (once implemented).⁴⁸

- **The Children Act 2004 (s.11)** provides that key local services and individuals (including Youth Offending Teams (YOTs), police, children's services, local probation board) must make arrangements to ensure that their functions are discharged having regard to the need to safeguard and promote the welfare of children.

1.6 The youth justice system: picking up the pieces

Whilst prevention is a multi-agency responsibility it is clear that welfare services, such as schools and children's services, are frequently failing to meet the needs of young people at risk of entering and in the youth justice system. As a result, many vulnerable children are needlessly falling into the justice system and once inside, are not being provided with the necessary help to stop offending. Thus, somewhat paradoxically, one of the most fundamental

42 Huttenlocher, 1979 and Gogtay et al, 2004, cited in Rutter M, 'Causes of offending and antisocial behaviour', in Smith D (ed) *A New Response to Youth Crime*, Devon: Willan Publishing, 2010, p191

43 McAra L and McVie S, 'Youth crime and justice: Key messages from the Edinburgh Study of Youth Transitions and Crime', 2010, volume 10, no 2, *Criminology and Criminal Justice*, volume 10, no 2, 2010, pp190-197

44 Youth Justice Board, *Risk and Protective Factors – summary*, London: Youth Justice Board, 2005, p3

45 A child is in need if he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority

46 Children Act 1989, Schedule 2, s.7

47 Crime and Disorder Act 1998, s.17

48 Chard A, *Jointly Delivering Services: YORs and Children's Social Care*, 2010, p19

flaws of youth crime prevention is due to failures outside of the youth justice system. The sections below explore why this is so.

1.6.1 Youth justice system delivered prevention

YOTs were conceived as a means to ensure that the needs of children at risk and young offenders, an often overlooked cohort, were addressed. YOTs transition to involvement in, and delivery of, prevention services in 2000 was similarly motivated: the fear was that without their involvement, vital opportunities to prevent youth offending would be missed. The Youth Justice Board (YJB) has rolled out a range of programmes to prevent youth crime, including Youth Inclusion Programmes (YIPs), parenting programmes and Youth Inclusion and Support Panels (YISPs) from 2002. These are overseen at a local level by YOTs and were, until recently, funded by a ring-fenced prevention grant provided to YOTs.⁴⁹ While these remain the youth justice system's core prevention schemes, the YJB has been part of a number of joint prevention initiatives. These include the Safer School Partnership programme (SSP) launched in 2002 (detailed later in this chapter). It also provided financial support for a large number of mentoring projects between 1999 and 2004. More recently, the YJB has jointly funded a number of family therapy sites. In addition, in 2008 Family Intervention Projects were extended to provide more support for families whose children are at greatest risk of offending (initially launched by the Home Office in 2007 as part of its agenda to tackle antisocial behaviour).⁵⁰ Brief explanations of each of the schemes and their reported effectiveness are provided below.

Youth Inclusion Programmes

The programmes operate in 110 of the most deprived neighbourhoods in England and Wales and are targeted at the 50 young people, aged eight to 17, considered to be at the highest risk of offending in the area. Most commonly, YIPs engage the young people – who participate voluntarily – in activities such as group development, which includes offending behaviour work; sport; education and training; and, to a far lesser degree, mentoring, and parenting and family support.⁵¹

Youth Inclusion and Support Panels

The multi-agency panels comprise representatives from local agencies such as the YOT, police, children's services, and Child and Adolescent Mental Health Services (CAMHS). Panels identify children and young people aged eight to 13 at risk of offending and antisocial behaviour and construct a tailored package of support and interventions to address risk factors and, in so doing, prevent entry into the youth justice system. Dedicated key workers coordinate and monitor the implementation of the support.⁵² Children at risk are engaged in constructive activities such as sport and one-to-one work with key workers. Their families may also receive support, such as parenting education and social services support. There are currently 220 YISPs in operation in England and Wales.⁵³

49 In April 2011 the ring-fence was removed. All central funding to YOTs is now provided in a single local YOT grant

50 HM Government, *Youth Crime Action Plan 2008*, London: Central Office of Information, 2008, p6

51 Mackie A et al, *Evaluation of the Youth Inclusion Programme: Phase 2*, London: Youth Justice Board, 2008, p98

52 Walker J et al, *Youth Inclusion and Support Panels: Preventing crime and antisocial behaviour*, London: Department for Children, Schools and Families, 2007, pp10-13

53 Youth Justice Board, *Prevention, Youth Inclusion and Support Panels (YISPs)* [accessed via: <http://www.yjb.gov.uk/en-gb/practitioners/Prevention/YISP/> (06/05/11)]

Parenting programmes, orders and contracts

Following the introduction of parenting orders⁵⁴ in the Crime and Disorder Act 1998, the YJB funded 42 parenting programmes across England. The programmes are delivered both to parents of children at risk of offending and those who are already doing so. Only a minority of those engaged in the programmes are on a parenting order or contract;⁵⁵ the majority participate voluntarily. Their aim is to prevent offending. The programmes, run by YOTs in partnership with voluntary and/or statutory services, are diverse but essentially focussed on developing the same key parent skills: supervising behaviour; consistently enforcing rules; reducing family conflict, and improving communication between parents and children. Some also attempt to improve parental well-being.⁵⁶

YIPs

Two evaluations of YIPs have been carried out to date. Both concluded that the programmes had a mixed impact. Phase two of the evaluation found that the YIPs only met one of their four targets. The aim to engage 75 per cent of the 'core 50' was exceeded and the arrest rates amongst this group were found to have reduced by 66.5 per cent, not far short of their target of 70 per cent. However, the projects only engaged 59 per cent in full-time education, training and employment (ETE), falling significantly short of the 90 per cent target. Further, despite a target to engage 100 per cent of the 'core 50' in YIPs for an average of five hours a week, just 17 per cent did so. In addition, 54 per cent of those who had been arrested prior to involvement in the YIP had not been arrested subsequently. Conversely, 26 per cent of those young people who hadn't been arrested prior to engagement with the YIP were thereafter.⁵⁷ Furthermore, there was found to be significant variation in YIP practice: some seek to prevent offending simply by 'keeping young people off the streets' whereas others actively address risk factors.⁵⁸

YISPs

Analysis of risk assessment data on children before and after their involvement found that most had experienced some reduction in risk factors. Similarly, interviews with parents found that a majority thought their child's behaviour had improved a lot (38.5 per cent) or a little (46 per cent). However, the researchers cautioned that the improvements could not be attributed to YISPs *per se* and emphasised that the study could not answer the question of whether the panels prevent youth crime. Genuine multi-agency working was also difficult to realise in many cases, which had a negative impact on the interventions that YISPs were able to offer: key workers reported that buy-in to YISPs amongst agencies at a strategic level often failed to translate into resources and staff-time for children and families on the ground.⁵⁹

Parenting programmes, orders and contracts

An evaluation of 34 parenting programmes carried out between 1999 and 2001 produced positive findings. Parental attendance was high and the vast majority said that they found the

54 Parenting Orders can be given to parents of children who truant, are excluded, receive an ASBO or are convicted of a crime. They require parents to attend a parenting programme for up to three months. They can also make other requirements of parents such as to attend meetings with their child's teachers or keep their child at home during specific times. The orders can be made by both civil and criminal courts and can last up to 12 months. Their purpose is to support parents to improve their child's behaviour

55 Parenting Contracts are voluntary agreements made between the parent, child and youth offending team.

56 Ghate D and Ramela M, *Positive Parenting: The National Evaluation of the Youth Justice Board's Parenting Programme*, London: Policy Research Bureau for the Youth Justice Board, 2002, pp1-13

57 Mackie A et al, op. cit., p122

58 Morgan Harris Burrows, op. cit., pp79-107

59 Walker J et al, op. cit., pp125-163

programme very helpful. The attitudes of adults completing parenting orders were, perhaps surprisingly, just as positive as those who had participated voluntarily, even though most had negative or even hostile expectations at the outset. A year after parents had attended the programme, the reconviction rates of the young people had fallen to 61.5 per cent (from 89 per cent before referral) and there was a 50 per cent reduction in the number of offences they committed. However, the researchers concluded that it was impossible to know to what extent the reduced reconviction rate was a consequence of participation in the parenting programme due to the absence of a comparison group.⁶⁰

Mentoring

Mentoring involves the pairing of an older (screened) role model with a young person at risk, to befriend, offer positive guidance and engage in positive activities together. It has been shown to reduce offending, although is considered to be of most value as part of more comprehensive interventions.⁶¹ The YJB funded and evaluated two large scale mentoring initiatives from 2001 and 2004 in England and Wales. Evaluations found no clear evidence of an impact on reconviction.⁶² This is partly a result of limitations of the evaluation methodologies used. However, in one of the evaluations, other positive effects were apparent, such as increased participation in education and training.⁶³

Family intervention projects (FIPs)

FIPs comprise intensive one-to-one support (over an average of 12 months) from a key worker, who also coordinates services from other local partners.⁶⁴ Evaluation of the projects indicates that they are engendering positive outcomes: child protection concerns fell by 43 per cent and involvement in antisocial behaviour reduced by 64 per cent.⁶⁵

However, this apparent success should be treated with caution, largely due to questions about the robustness of the evaluation.⁶⁶ For example, the data is derived from reports from FIP staff and only representative of the 38 per cent of families who completed an intervention as opposed to all those engaged or were offered support. Finally, 15 per cent of families offered a FIP intervention refused to take part at different stages,⁶⁷ suggesting that the projects are failing to engage the 'hardest to reach' and most needy families.

Family therapy

Proven family-focussed interventions such as Multi-systemic Therapy (MST) and Functional Family Therapy (FFT) are currently being piloted and evaluated in some locations in England and Wales. The Government has committed to rolling out MST to 25 sites by 2014 in its gang strategy

60 Ghate D and Ramela M, op. cit., pp27-50

61 Losel F, 'Offender Treatment and Rehabilitation', in M Maguire, R Morgan and R Reiner (eds), *The Oxford Handbook of Criminology*, forthcoming op. cit; there is not yet clear evidence that reductions in offending are long term

62 Tarling R et al, *The National Evaluation of the Youth Justice Board's Mentoring Projects*, London: Youth Justice Board, 2004; St James-Roberts I et al, *National Evaluation of Youth Justice Board Mentoring Schemes 2001 to 2004*, London: Youth Justice Board, 2005

63 St James-Roberts I et al, op. cit., pp9-10

64 National Centre for Social Research, *ASB Family Intervention Projects: Monitoring and Evaluation*, London: Department for Children, Schools and Families, 2010, pp5-8

65 Ibid, figures are based on analysis of information on 1,013 families who completed a FIP intervention. Outcomes are measures between commencement of intervention and formal exit

66 Gregg D, *Family intervention projects: a classic case of policy-based evidence*, London: Centre for Crime and Justice Studies, 2010

67 Ibid, p5

following the August 2011 riots.⁶⁸ It is possible that local services will choose to set-up further sites through means of 'Community Budgets', rolled out in 16 areas in April this year, which will allow local authority services to pool various strands of Whitehall funding into a single 'local bank account' for tackling social problems around families with complex needs. The budgets are expected to be available nationwide by 2013/14.⁶⁹ Following the riots the Government pledged to 'turn around problem families', although these plans are yet to be announced. It is likely, nonetheless, that funding difficulties will continue to prevent extensive availability, as has been the case with Intensive Fostering (Multi-dimensional Treatment Foster Care).

Multi-systemic Therapy (MST)

MST is delivered to young people aged 12-17 who offend, including chronic, violent and sexual offenders. MST aims to treat youth offending by operating in all the multiple spheres of a young person's life: family, peers, school, and the community. Therapists are also on call 24 hours a day, seven days a week. Activities include increasing parenting skills; improving family relationships; supporting the family to build community support networks; involving the young person with positive peers and activities; and helping the young person to progress at school or find training or employment.⁷⁰ MST has been found to reduce offending and antisocial behaviour and lead to lower re-arrest rates and time in custody compared with other services.⁷¹ However replications of MST in Sweden and Canada found that it did not improve behaviour compared to other services.⁷² MST is being piloted in England in ten locations, which are jointly funded by the YJB, Department of Health (DH) and Department for Education (DfE).⁷³ In addition, MST has been in place for over five years in Cambridgeshire and the Brandon Centre in North London. The latter is subject of the first RCT of MST in the UK, which reported its initial findings in 2010: at two years follow-up there was a statistically significant decline in offending behaviour and improved family relationships. A cost offset analysis found that there were savings of £2,223 per participant over three years. The ten pilot sites are also the subject of a nationally commissioned RCT.⁷⁴

Functional Family Therapy

FFT is delivered to families of 11-18 year-olds who are either at risk of offending or offenders.⁷⁵ Therapists work closely with families to replace negative family interactions with positive family functioning. The first randomised controlled trial of FFT, conducted by the programme originators in 1973, found that FFT participants had a significantly lower reconviction rate compared than those assigned to other conditions, including one control group (26 per cent in the FFT group compared to 47-73 per cent in other groups.) Trials conducted since have shown similarly positive results. In England, FFT is being piloted in Brighton and Hove YOT and West Sussex YOT.⁷⁶

Multi-dimensional Treatment Foster Care

Young people are temporarily removed from their parents (for six to nine months) and placed with specially trained foster carers who provide a structured and nurturing environment to promote positive behaviour. Parents receive skills training and therapy separately so that they may learn how to provide positive and consistent discipline and reduce family conflict on their child's return to the

68 HM Government, *Ending Gang and Youth Violence: a Cross-Government Report*, Norwich: The Stationery Office, 2011

69 Communities and Local Government, *16 areas get 'Community Budgets' to help the vulnerable*, 2011 [accessed via: <http://www.communities.gov.uk/news/corporate/1748111> (23/06/11)]

70 Multisystemic Therapy, *MST Treatment Model*, [accessed via: <http://mstservices.com/index.php/what-is-mst/treatment-model> (12/04/11)]; and Henggeler S and Schoenwald S, 'Evidence-Based Interventions for Juvenile Offenders and Juvenile Justice Policies that Support Them', *Social Policy Report*, Vol 25, No 1, 2011, p6 [Accessed via: <http://207.235.77.113/files/SPR.pdf> (accessed 12.04.11)]

71 Curtis et al, 2004, cited in Hawkins J, Welsh B and Utting D, *Preventing youth crime: evidence and opportunities*, in Smith D (ed), 2010, op. cit, p221

72 Sundell et al, 2009; cited in Hawkins J, Welsh B and Utting D, *Preventing youth crime: evidence and opportunities*, in Smith D (ed), 2010, op. cit, p222

73 The sites are: Barnsley, Hackney, Greenwich, Merton and Kingston, Leeds, Peterborough, Plymouth, Reading, Sheffield and Trafford

74 National Mental Health Development Unit, *Multisystemic Therapy – New therapy brings results for troubled young people* [accessed via: <http://www.nmhd.uo.uk/news/multi-systemic-therapy-new-therapy-brings-results-for-troubled-young-people/> (03/11/11)]

75 Functional Family Therapy, *The Clinical Model* [accessed via: http://www.fftinc.com/about_model.html (12/04/11)]

76 Institute of Psychiatry, Kings College London, *Overview of the SAFE Study* [accessed via: <http://www.iop.kcl.ac.uk/departments/?locator=1120&context=1490> (12/04/11)]

family home.⁷⁷ A randomised controlled trial of MTFC found that juvenile offenders subject to the intervention had fewer arrests and lower rates of self-reported offending, as well as fewer arrests for violence and self-reported perpetration of violence than control groups.⁷⁸ The programme is being piloted in four areas in England as 'Intensive Fostering'; an alternative to custodial remand and sentence. This particular variant is explored further in Chapter Four.

1.6.2 Too often, children's social services do not prioritise those at risk of offending

Children's services and YOTs serve a similar and overlapping population.⁷⁹ Many young offenders and children at risk of offending are, or could be, defined as 'in need' and 50 per cent of them will have been in care or had substantial children's services involvement.⁸⁰

An overwhelming number of YOTs reported to the CSJ that they constantly struggle to access support from children's services for the children under their supervision – both for those at risk and those already in the youth justice system. We were informed of a number of examples where YOTs are exclusively addressing the welfare needs of children. These problems were reported by the Audit Commission in 2004.⁸¹ A recent survey, to which 98 YOTs responded, also showed that nearly one in five rated their ability to access children's services as poor.⁸² Respondents reported that, in their view, thresholds for children's social care services are too high, meaning that only the most acute cases are referred for support. In addition, the report found that where thresholds were met, core assessments were often delayed and the support 'consisted of the minimum – around money, benefits and accommodation, and did not encompass the full range of welfare and emotional support which their clients needed'.⁸³

The problem has arguably worsened since. Growing numbers of children in care and subject to child protection plans combined with reducing local authority budgets has put enormous pressure on children's social services – seen by the Association of Directors of Children's Services (ADCS) as a 'perfect storm'.⁸⁴ Such are the pressures on the service that they are only able to address those with urgent needs: that is, child protection cases, children in care, and the youngest (and accordingly, most vulnerable) children in need. As a result, children's services are often failing to adequately respond to the needs of older children at risk of offending who have considerable needs but fall below the high thresholds for support. As one YOT told the Working Group:

The political climate now is around child protection for the younger age groups so YOTs are being pushed to be the answer for this particular group. We recently carried out

77 Multidimensional Treatment Foster Care, MTFC Program Overview [accessed via: <http://www.mtfc.com/overview.html> (12/04/11)]

78 See Chamberlain P, 'The Oregon Multidimensional Treatment Foster Care Model: Features, Outcomes, and Progress in Dissemination', *Cognitive and Behavioural Practice* 10, 303-312, 2003, pp.307-308 [accessed via: <http://www.mtfc.com/Oregon%20MTFC%20Model%20Features,%20Outcomes%20&%20Progress.pdf> (12/04/11)]; and Eddy J et al, 'The Prevention of Violent Behaviour by Chronic and Serious Male Juvenile Offenders: A 2-Year Follow-up of a Randomized Clinical Trial', *Journal of Emotional and Behavioural Disorders*, Vol 12, No 1, 2004 [accessed via: <http://www.mtfc.com/2004%20Prevention%20of%20Violent%20Behavior%20by%20Male%20Juvenile%20Offenders.pdf> (12/04/11)]

79 Nacro, *Youth Crime briefing: The links between Yots and Social Services*, London: Nacro, 2003, p2

80 Summerfield A, *Children and Young People in Custody 2010-2011: An analysis of the experiences of 15-18-year-olds in prison*, Norwich: The Stationery Office, 2011

81 See for example, Audit Commission, 2004, op. cit., p78

82 Matrix Evidence, *A Review of YOTs and Children's Services' Interaction with Young Offenders and Young People at Risk of Offending*, London: Youth Justice Board, 2010, p42

83 Ibid, pp82-84

84 Association of Directors of Children's Services, *Children's Services Leaders call for investment to build a sustainable child protection service*, September 2010 [accessed via: <http://www.adcs.org.uk/download/press-release/sept-10/adcs-call-for-protection-of-early-intervention.pdf> (31/01/11)]

analysis on our custodial entrants: most of them came in as first time entrant's between ten to 13. 75 per cent of these had previous referrals to children's social care before they came to the attention of the YOT. You can see the link there between the apathy of other services. YOTs cannot solve this on our own'.

The different language and processes used in YOTs and children's services are not conducive to joint working. YOTs are primarily focussed on risk of children to others (using Asset⁸⁵ and Onset⁸⁶), whereas children's services are focussed on meeting the needs of children (as a result of the risk that others pose to them, through Common Assessment Framework (CAF) and the Assessment Framework). But, in reality, they are different sides of the same coin: need drives risk. As Chard observes:

'In reality whilst staff within the YOT may be using the language of risk and protective factors, and staff within social care may be using the language of children in need and improving outcomes, these are academic or professional lenses that describe the same underlying issues'.⁸⁷

The two services also use different language to refer to activity to promote children's wellbeing (what is commonly termed safeguarding):⁸⁸ 'The use of the term vulnerability creates a difference of language between YOT staff and other workers; where YOT staff are describing a child's vulnerability other workers are using the terms safeguarding, child in need or child protection'.⁸⁹ Within many YOTs there is limited understanding of the concept of safeguarding and a lack of the expertise required to identify and respond to children's welfare needs. As HMI Probation reported: 'many staff had not received training in child protection and safeguarding issues and this deficiency was reflected in their practice'.⁹⁰ In addition, there is limited secondment of children's services social workers to YOTs (as we shall explore in Chapter Seven).

'I am not going to defend children's services as they do not take sufficient responsibility for children who offend, but this is largely because they have not been held responsible for it... services won't take responsibility for children unless they are made to.'

Director of Children's Services, in evidence to the CSJ

1.6.3 PRU to EBD to YOI: the school to prison pipeline

Young peoples' experiences in school have a significant effect on offending behaviour. The link between exclusion from school and later offending is particularly well documented.

85 Asset is used to assess all young people involved in the youth justice system. It helps to identify the factors contributing to offending and the protective factors that can be maximised to prevent reoffending. [accessed via: <http://www.justice.gov.uk/guidance/youth-justice/assessment/index.htm> (25.11.11)]

86 Onset is an assessment tool used by youth justice prevention services for young people at risk of offending. It helps to identify the risk factors to be reduced and protective factors to be enhanced. [accessed via: <http://www.justice.gov.uk/guidance/youth-justice/assessment/onset.htm> (25.11.11)]

87 Ibid, p29

88 Safeguarding refers to action taken to protect children from maltreatment; prevent impairment of children's health or development; and ensuring children are growing up in circumstances consistent with the provision of safe and effective care; Department for Children, Schools and Families, *Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children*, HM Government: Department for Children, Schools and Families, 2010, p87

89 Chard A, op. cit., pp15-16

90 HMI Probation, 2009, cited in Chard A, 2010, op. cit., p5

Young people attending pupil referral units are almost three times more likely to self-report offending than those in mainstream schools.⁹¹ Whilst many excluded children are likely to be those at risk of such outcomes, the evidence indicates that exclusion itself leads to offending.⁹² Of those under-18s involved in the recent riots, over a third had been excluded from school.⁹³ The *Edinburgh Youth Transitions Study* found that uncontrolled misbehaviour at school led to later criminal conduct, whereas positive attachment to teachers and parental involvement in the educational process protected against it.⁹⁴ The unique position of schools in the community – generally close involvement with young people and their families, as well as connections to the police, local mainstream services, other schools and voluntary sector organisations – means that they have a central role to play in youth crime prevention.

‘Why are we so complacent about children dropping out of school when we know that there is such a strong link between exclusion and offending?’

A witness to the review

Yet it is clear that many schools are not fulfilling this potential role. The CSJ report *No Excuses* comprised an in-depth inquiry into educational exclusion. It found that a significant minority of children are being excluded because the underlying causes of their misbehaviour are misunderstood. Further, some schools are engaging in illegal and unscrupulous exclusion practices.⁹⁵ Given the correlation between exclusion and subsequent offending, many of those giving evidence to our review have questioned why greater efforts are not being made to prevent exclusion. Similar concerns are expressed in the literature.⁹⁶ Teachers often do not have adequate training or support to address misbehaviour. Indeed, in recent months there have been reports of teachers striking in protest against school management failing to support staff in dealing with challenging pupil behaviour.⁹⁷

However, there are many examples of effective or promising school practices: restorative approaches have been shown to be particularly effective. A YJB evaluation of the restorative justice model in schools concluded that teachers considered pupils’ behaviour to have improved and felt that they lost less teaching time dealing with behavioural problems.⁹⁸ Safer Schools Partnerships (SSPs) have also proved promising. SSPs involve police officers

91 Anderson F et al – Ipsos MORI, *Youth Survey 2009 Research study conducted for the Youth Justice Board for England and Wales*, London: Youth Justice Board, 2010, p93 [accessed via: <http://www.yjb.gov.uk/publications/Resources/Downloads/Ipsos%20MORI%20Youth%20Survey%202009.pdf> (09/05/11)]

92 McAra L and McVie S, 2007, op. cit.

93 Ministry of Justice, *Statistical bulletin on the public disorder of 6th to 9th August 2011 – October Update*, 2011, p21 [accessed via: <http://www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/august-public-disorder-stats-bulletin-241011.pdf> (31/11/11)]

94 Smith D, *School Experience and Delinquency at Ages 13 to 16 – Number 13, Edinburgh Study of Youth Transitions and Crime*, Edinburgh: Centre for Law and Society/The University of Edinburgh, 2006

95 Centre for Social Justice, *Breakthrough Britain: No Excuses*, London: Centre for Social Justice, 2011

96 See for example, Allen R, *From Punishment to Problem Solving*, 2006, London: Centre for Crime and Justice Studies; and House of Commons Education and Skills Committee, *Special Educational Needs: Third Report of Session 2005–06*, Volume I, Norwich: The Stationery Office, 2006.

97 See for example, National Union of Teachers, *Teachers’ Strike At Darwen Vale High School*, 2011 [accessed via: <http://www.teachers.org.uk/taxonomy/term/1479> (06/05/11)]

98 Youth Justice Board, *National Evaluation of the Restorative Justice in Schools Programme*, London: Youth Justice Board, 2004, pp43-45

working with schools (or located full-time within schools) to identify children at risk, address bad behavior and create a safer environment in which children can more effectively learn. SSPs have been found to reduce truancy rates and classroom incidents.⁹⁹ However, police officers have told us that reductions in police budgets will result in fewer SSPs. Indeed the CSJ's exclusion review found that responsibility for some SSPs is being subsumed to Safer Neighbourhood Teams (SNTs), which may be damaging for schools that have had, and need, a full-time dedicated safer school officer.¹⁰⁰

'We need to have more effective pathways for children excluded from schools that don't result in them being excluded to nothing or just disappearing from the school roll. This whole issue needs close attention as I fear that there will be more children moved out of schools for behavioural issues and there won't be sufficient and appropriate support for them. Society must understand the consequences of this – the school to prison pipeline.'

Enver Solomon, Policy Director, The Children's Society, in evidence to the CSJ

1.6.4 Failure to prevent or respond to mental ill-health

There is significant correlation between offending and poor mental health.¹⁰¹ A third of children in the criminal justice system have a recognised mental health disorder, compared to ten per cent of the general population.¹⁰² There is an especially strong correlation between the psychiatric condition 'conduct disorder' and offending: 80 per cent of those who offend have either been diagnosed with conduct disorder or experienced conduct problems during childhood and/or adolescence.¹⁰³

It is clear that there are a number of key weaknesses in relation to the provision of mental health services to children at risk of, and involved with, offending. The CSJ's recent mental health review reported that opportunities to address emerging mental health needs in childhood (and thus also to prevent offending) are being missed. There are insufficient links between local services and CAMHS. Moreover, mainstream professionals often lack understanding or ability to identify mental health needs (for example, in some schools the reasons behind behavioural problems are overlooked).¹⁰⁴ As one mental health expert told our review:

99 Bowles R et al, *Safer Schools Partnerships*, London: Youth Justice Board, 2005, p92 [accessed via: <http://www.yjb.gov.uk/Publications/Resources/Downloads/Safer%20Schools%20Partnerships%20-%20Full%20Report.pdf> (07/05/11)]

100 Centre for Social Justice, *Breakthrough Britain: No Excuses*, op. cit., pp95-96

101 See for example, Sainsbury Centre for Mental Health, *The chance of a lifetime: Preventing early conduct problems and reducing crime*, London: Sainsbury Centre for Mental Health, 2009; and Perry A et al, *Mental Health – source document*, London: Youth Justice Board, 2008, p11

102 Office for National Statistics, *Mental health of children and young people in Great Britain*, London: Department of Health, 2005

103 Sainsbury Centre for Mental Health, op. cit., p1

104 Centre for Social Justice, *Breakthrough Britain: Completing the Revolution*, London: Centre for Social Justice, 2011, pp123-124

'There is a lack of an integrated care pathway for young people at risk of offending. Typically, risk and vulnerability haven't been identified at pre-school; they exhibit challenging behaviour in school, which is misunderstood so they are excluded; they are therefore in the community with unmet needs; and then unsurprisingly they hit the youth justice system... Child mental health is and needs to be treated as everyone's business'.

There is a lack of general support for families to prevent or address children's mental health needs or parents' own complex needs. The CSJ's mental health review particularly emphasised that insufficient regard is paid to the needs of children of adult offenders, in spite of the fact that they are at greater risk of mental health problems and offending behaviour.¹⁰⁵ Further, where children with identified mental health problems are assessed as at risk of offending, they frequently do not receive the help they require: 75 per cent of children referred by YOTs to CAMHS do not receive an intervention.¹⁰⁶ Many practitioners were critical of the tendency of Asset to under-identify mental health needs, as well as speech and communication difficulties.

Part of the explanation for the variation in healthcare provision for young people who offend lies in the varying levels of financial investment by Primary Care Trusts (PCTs) and mental health trusts. This is reportedly due to 'lack of knowledge, low prioritisation or lack of interest on the part of commissioners about the needs of young people in the youth justice system'. Linked to this is a 'failure to undertake thorough needs assessments to inform commissioning decisions'.¹⁰⁷ Experts reported to us that commissioners sometimes fail to prioritise young people who offend because they regard them as an undeserving client group.



Young people from MAC-UK

Services are often poorly designed to engage 'hard to reach' young people: expecting them to attend clinic appointments, which invariably they do not. Failure to attend appointments on two or three occasions results in their cases being closed.¹⁰⁸ In some areas, however, mental health

¹⁰⁵ Ibid, pp104

¹⁰⁶ Healthcare Commission and Her Majesty's Inspectorate of Probation, *Actions Speak Louder: A second review of healthcare in the community for young people who offend*, London: Healthcare Commission and Her Majesty's Inspectorate of Probation, 2009, p15

¹⁰⁷ Khan L and Wilson J, *You just get on and do it: healthcare provision in Youth Offending Teams*, London: Centre for Mental Health, 2010, p39

¹⁰⁸ Ibid, p55

treatment is being delivered through outreach. This is proving to be far more successful in engaging young people who offend. One such example is MAC-UK, which has developed an innovative 'street therapy' approach, which takes psychological therapy and support out of clinics and into wherever in community young people feel comfortable, be it a coffee shop, park bench or a bus.

Case study: MAC-UK

MAC-UK aims to make mental health support accessible to young people who offend and/or are gang involved – those who may 'need help the most, but get it least'. MAC-UK is based in Camden and its projects are staffed by a range of mental health and non-mental health professionals and volunteers. The team builds relationships with young people in their environment, through activities such as music, gym and football. MAC-UK was founded in collaboration with young people from Camden, who have a strong stake in the development and implementation of the organisation and its activities. Young people move from MAC-UK's projects into roles of responsibility when they are ready. MAC-UK's founding project, Music and Change, targets 'antisocial' peer groups of young people and supports them to become positive entities in the community. The project has achieved the following outcomes: 75 per cent of young people into work experience, education or training; and the police have reported that reconviction rates have decreased by 70 per cent.

In January 2012, a three year pilot building on some of MAC-UK's learning will commence elsewhere in Camden to test whether the approaches adopted by MAC-UK staff can be facilitated by professionals from statutory services. The project will be led by a multi-agency partnership of realigned resources from Camden Council Integrated Youth Support Services, SOS (Camden and Islington NHS FT), CAMHS, the MET Police, the Anna Freud Centre and the Centre for Mental Health. The core elements of the model will remain: improving the mental health of young people to reduce youth violence and offending through youth-led, relational, street-therapy work. However, the project itself will be entirely new and owned by that community. For the initial few months of the project, staff will 'hang out' in the community to build relationships with the young people and gain their trust. Then staff and young people will work together to develop a project with an entirely new name and brand, which is meaningful to them. Street therapy will then be used to deliver innovative mental health intervention.

The project will be evaluated by the Centre for Mental Health with support from University College London. A national steering group of experts in the fields of serious youth violence and mental health will also be assembled to guide and contribute to the project.

1.7 A whole family approach

Working with both young people and their families is fundamental to addressing offending. Family problems are often the source of young people's offending behaviour. Further, positive change is unlikely to be sustained if it is not reinforced at home. The value of a family approach is clear. Recent analysis of the Family Pathfinder programme, in which 15 local authorities received additional funds between 2007 and 2010 to develop intensive support for families with multiple needs and embed family-focussed approaches across all services, reported a return of £1.90 for every £1 invested.¹⁰⁹ In recent years there has been increasing

¹⁰⁹ York Consulting, *Turning around the lives of families with multiple problems – an evaluation of the Family and Young Carer Pathfinders Programme*, London: Department for Education, 2011 [accessed via: <https://www.education.gov.uk/publications/eOrderingDownload/DFE-RR154.pdf> (26/11/11)]

acknowledgement of the importance of such work, reflected by the funding of parenting programmes, family intervention projects and more recently the piloting of intensive family therapies.

Despite the welcome innovations of FIPs and family therapies in recent years, we have come to the conclusion that the system continues to fail in many cases to provide a whole family-based approach to preventing youth offending. Too often, opportunities are missed to work with families when parents or siblings are involved in the justice system. As one YOT Manager told us: 'You have to marry youth crime prevention with the work you are doing with adult offenders as otherwise you are never going to address the problem'.

Numerous witnesses to our review reported that parents are desperate for early support to address their children's challenging behaviour but struggle to access help. This is particularly so when needs are relatively low level and do not accordingly reach the thresholds for support from mainstream children's services. As one Director of Children's Services told the Working Group:

'We need to adopt a holistic approach and invest differently than we do. We do not yet have the systems in place to wrap around young people who are not at offending stage but need help. As a result they end up being pushed into youth justice system'.

With respect to those in the youth justice system, our evidence indicates that there is significant variation in the extent to which YOTs are working with both young people and their families. Some teams have both parenting workers and access to intensive wrap-around interventions such as Multi-systemic Therapy. Others informed us that they had no parenting support provision in the YOT due to a lack of resources. Parenting workers tend to have limited capacity to address complex problems experienced by parents, such as mental health problems and worklessness. Their expertise (and time capacity) tends to lie in developing parenting skills. Further, parenting officers reported that their colleagues often fail to acknowledge the importance of involving a young person's family; perceiving such work as an optional extra as opposed to a fundamental element of the youth justice system's response.



A support worker from the CAFÉ project with a client. The project works with the families of adult offenders to aid rehabilitation and prevent intergenerational criminality

'Families say that they have always wanted to access services but no one has ever worked with them to play a co-ordination role to help them navigate the complex web of support. Mainstream children's services and YOTs often say that they do not have the time to this. There needs to be support for those young people who are not in the youth justice system, or on the cusp of it, or already in it at lower levels. . . YOTs and children's services must be reconfigured to deal with young people and families.'

Enver Solomon, Policy Director, The Children's Society, in evidence to the CSJ

Many witnesses informed our review that engagement with hard to reach families has been hindered by the culture of condemning and penalising parents (and in their absence, often grandparents) for their children's behaviour. Parents are deterred from taking part in interventions they consider critical and demeaning. However, coercive measures may be necessary for a minority of parents. In addition, the rationale that underpins the emphasis on parental responsibility is to some extent flawed: it assumes that parents have ultimate control of their children's behaviour when the contrary can be true. This particularly applies to children as they grow older and to those with behavioural disorders. 'The research evidence points to the value of supporting parents in respect of their overall relationship with their child and with difficulties in their own situation. It does not suggest that a coercive approach may be the best way forward.'¹¹⁰



Young people from the Enthusiasm Trust contributing to the community

We have come across a number of fantastic voluntary sector projects that are working with young people and families to address antisocial and offending behaviour:

¹¹⁰ National Family and Parenting Institute, 2005, pp29-31, cited in D Downes and R Morgan, 'Waiting for Ingleby: the minimum age of criminal responsibility – a red line issue?' Forthcoming, p13

Case study: Enthusiasm Trust

Enthusiasm Trust works with young people most at risk of offending between the ages of 11 and 19 – often those that other providers struggle to engage. The project strongly believes that what young people need most is for someone to believe in them. A central element of the project is giving young people positions of responsibility to raise their self-esteem. Many of the Enthusiasm Trust staff were thus formerly involved with the project as clients. The relationship between the young person and Enthusiasm Trust worker is considered central to transformation.

The project runs three main programmes:

- **Triple R:** targeted early intervention in the form of intensive mentoring of young people most at risk or who are gang associated. Mentors meet with young persons at least once a week, working with them to address their needs and also engaging in positive activities. Mentoring is a maximum of two years in duration.
- **The Key:** formalised educational programmes to children on the verge of exclusion.
- **Universal Services:** youth clubs, residentials, workshops and a double-decker mobile youth bus.

Running alongside these interventions is family work. The charity strongly believes that only limited success can be achieved with young people by working with them in isolation – a whole family approach is key. Family work comprises:

- One-to-one support to parents to address their needs e.g. helping them into employment or to address mental health problems;
- One-to-one parenting skills programmes – using the 'handling teenage behaviour programme'; and
- Group parenting skills programmes.

The young people we spoke to on 'Triple R' told us that as a result of Enthusiasm's Trust's support they were no longer in trouble with the police or at risk of being kicked out of school. They particularly valued having someone who listened to them and the help that had been provided to their parents to address the problems at home. 83 per cent of the children exiting the Triple R programme have had a significant reduction in their scored risk factors around criminality. Many have progressed in further ETE and have become positive contributors within their local communities (which have witnessed reductions in antisocial behaviour).

Case study: Children and Families Enterprise Project (CAFÉ), St Giles Trust

The CAFÉ project works with families in which an adult is involved with Probation, to reduce reoffending; prevent their children from also becoming involved in offending; and improve outcomes for children and young people. Families are assigned a CAFÉ support worker from whom they receive intensive support and help to access external services. Families are usually referred because their support needs are such that they cannot be met by mainstream services. Support workers provide assistance with a range of problems: managing finances, preparing CVs and job applications, applying for the assisted prison visits scheme, parenting problems; and securing safe and stable accommodation.

The project has been evaluated by the European Institute of Social Services.¹¹¹ It reported that: 'clients are at a critical stage in their lives and the flexible and targeted support they receive through the CAFÉ project appears to make an enormous difference to how they survive. The project workers make the clients feel "like they are the only one" and it appears to be the informal, personalised approach that creates the feeling of self-worth which was previously lacking.' Successful completion of community orders have risen to 90 per cent completion from only 50 per cent. The unit cost per family is approximately £2,300. The report identified the following factors as critical to the project's success:

- Takes a 'whole family' approach
- Non-judgemental
- Always do what they say they will do – reliable
- Flexible and responsive
- Always there (particularly at low points)
- Listens
- Explains options
- Empowers

Since CAFÉ was set up in 2006, it has helped more than 300 offenders and their families. It won the Charity Award and the Criminal Justice Award in 2009, and a Butler Trust Award in 2010. The project is funded by Kent County Council and Kent Probation.

1.8 Letting other services 'off the hook'

Whilst the existence of YOTs and their involvement in prevention has served to ensure that young people at risk receive at least some help, it is evident that young people are less, as opposed to more, likely to get the support they require from other services. This has also been reported in the literature.¹¹² As Chard writes:

'Because of involvement of the YOT, it may be tempting for CSC [children's social care] to underplay the level of need or risk for children with the criminal justice system working on the basis that a multi-disciplinary team is already involved. Where this happens, the effect is to set even higher thresholds for access to services for this group. Consequently this group are likely to be put at higher risk of harm or of poor outcomes and if their needs are not being met, they may also be more likely to re-offend'.¹¹³

This problem is not confined to children's services. Witnesses reported that schools use the existence of YOTs as a way of relinquishing responsibility for 'problem' children. The evaluation of the Youth Inclusion Programme (YIP, a YOT prevention programme), for example, found that authorised absences from school increased by 29 per cent amongst the 50 YIP-involved children.¹¹⁴ YISP key workers have reported that services use the YISP as a dumping ground

¹¹¹ European Institute of Social Services, *Evaluation Report: Kent Probation & Kent County Council Children and Families Project (CAFÉ)*, Kent: European Institute of Social Services, Kent University

¹¹² Allen R, *From Punishment to Problem Solving*, 2006, op. cit., p15

¹¹³ Chard A, 2010, op. cit., p8

¹¹⁴ Morgan Harris Burrows, op. cit., p11

for difficult cases and a means of disengaging from their families. Children's services, CAMHS and teachers were found to be particularly detached from the YISP.¹¹⁵

The problem is largely attributable to the funding and structure of YOTs. Local agencies, particularly children's services, contribute a significant proportion of YOT budgets in addition to seconding their specialist staff (although this often does not happen).¹¹⁶ These arrangements are often assumed to indicate that the YOT can exclusively address the problems of offenders and children at risk. It has been argued that this represents a disinvestment in 'social' responses to youth crime.¹¹⁷ We explore this problem in detail in Chapter Seven.

As a result, youth crime prevention is often falling predominantly to YOTs. It is arguably neither appropriate nor effective for the youth justice system to deliver preventative interventions in virtual isolation to children who have not offended or who are at very low risk of reoffending following low level criminal conduct. For the reasons explained at the outset of this chapter, criminal justice interventions can be stigmatising and increase the likelihood of offending.¹¹⁸ Prevention work via the justice system itself is therefore likely to be net-widening and counter-productive. As Solomon and Garside argue:

'If it [the government] had wanted to make a significant impact on youth crime, it would have also needed to invest in and support social programmes rather than task the YJB, whose primary purpose is to oversee work with children in the youth justice system, to fund projects'.¹¹⁹

In 2004 the Audit Commission similarly proposed that: 'Mainstream agencies, such as schools and health services, should take full responsibility for preventing offending by young people.'¹²⁰ If the Government is truly committed to preventing youth crime then it must consider the validity of the net-widening argument. In doing so it must act accordingly and heed calls that other services undertake much more, if not all, youth crime prevention work.

'I think every YOT here has experience of children and family services just closing the case and breathing a sigh of relief when YOT takes it on.'

YOT in evidence to the CSJ

¹¹⁵ Walker J et al, *Youth Inclusion and Support Panels: Preventing crime and antisocial behaviour*, London: Department for Children, Schools and Families, 2007, pp125-163

¹¹⁶ See for example, Audit Commission, 2004, op. cit., p63; and Solomon E and Garside R, *Ten years of Labour's youth justice reforms: an independent audit*, London: Centre for Crime and Justice Studies, 2008, p26; and Allen R, op. cit., *From Punishment to Problem Solving*, 2006, London: Centre for Crime and Justice Studies, 2006

¹¹⁷ Solomon E and Garside R, 2008, op. cit., p26

¹¹⁸ Farrington D, 1997, op. cit.; and McAra L and McVie S, 2007, op. cit.

¹¹⁹ Solomon E and Garside R, op. cit., p40

¹²⁰ Audit Commission, 2004, op. cit., p6

I.9 Recommendations

Immediate term

- Given the evidence that contact with the criminal justice system can increase the likelihood of reoffending, we recommend that responsibility for the delivery of preventative services be removed from YOTs (though they would retain sole control of the budget in the short term until successful prevention can be delivered).

YOT prevention funds should be used to commission services from the voluntary sector and mainstream children's services (i.e. schools, CAMHS, children's social care) based on the best available evidence of what works (outlined in this chapter and Annex A). Attention should be paid to commissioning prevention services that provide help to young people in the context of their families. In particular, we favour the delivery of prevention services by quality assured voluntary sector projects. The voluntary sector is generally better trusted, is often more able to reach the most disadvantaged than its public and private sector counterparts, and contact with it is less likely to be stigmatising. There must be robust monitoring and accountability structures in place to ensure that the preventative services delivered are of a high standard.

- There should be a duty on the local authority and its statutory partners to secure the sufficient provision of local early support services for children, young people and their families who are engaged in, or are likely to engage in criminal or antisocial behaviour. This would mirror the recommendation of the Munro Review to provide early help to children who are suffering or who are likely to suffer significant harm.¹²¹ The devolution of youth custody budgets to local services, which we explore in Chapter Seven, will also provide a financial incentive to invest further in youth crime prevention.
- As recommended in the recent CSJ report *No Excuses*, restorative approaches should be promoted in all secondary schools and research should be conducted with respect to its use in primary schools.¹²²
- Local authorities should conduct a needs analysis to prioritise the areas of risk in their community and identify the schools most needing SSP support (as recommended in *No Excuses*).¹²³
- We reiterate the guidance specifying that YOT Managers should sit on the Local Safeguarding Children's Boards (LSCB) in addition to the Directors of Children's Services.¹²⁴

Medium term

- In the medium term we recommend that the *budget* for youth crime prevention be removed from YOT control. Instead, we suggest that the local authority, in consultation with the Police and Crime Commissioner and local voluntary sector organisations, should commission youth crime prevention services. We strongly recommend that the money is only used to commission services from the voluntary sector and mainstream children's services, based on the best available evidence of what works.

¹²¹ Munro E, *The Munro Review of Child Protection: Final Report – A child-centred system*, Norwich: The Stationery Office, p15

¹²² Centre for Social Justice, *No Excuses*, op. cit., p120

¹²³ Ibid, p121

¹²⁴ Department for Children, Schools and Families, *Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children*, op. cit., 2010

- Given the poor track record of many local services with regards to crime prevention we consider there to be a need for a local independent entity to hold local agencies to account for the services they provide to prevent children and young people from offending and reoffending. Despite the significant demands on LSCB, we believe that they would be best placed to assume this responsibility due their role in scrutinising whether local partners are effectively safeguarding and promoting the welfare of children and young people. We recommend that this be achieved by the means of the following: the annual report submitted by the LSCB on the effectiveness of safeguarding in the local area should cover safeguarding issues as they pertain to young offenders and young people at risk of offending, including those in detention.

The Government has recently accepted the recommendation of the Munro Review that the reports be submitted to the Chief Executive and Leader of the Council (instead of to the Children's Trust Board as is currently the case), and, subject to the passage of legislation, to the local Police and Crime Commissioner and the Chair of the health and wellbeing board. Until such legislation is passed, Chief Officers of Police Authorities and cluster PCT chief executives will be considered as these local police and health leaders.

55 per cent of those polled support making local services (such as schools and mental health services) accountable to a local independent body for the services they provide to stop children from becoming offenders.

CSJ/YouGov polling, September 2011

General

This review reiterates the recommendations made by previous CSJ reports with regards to prevention. These include:

- Re-focussing Children's Sure Start Centres on families – Family Hubs;
- Access to relationship and parenting support for all couples – preferably delivered by third sector organisations;
- An enhanced role for health visitors in the delivery of both targeted and universal services – monitoring and providing advice on the physical development of the child, and providing support for the emotional health of the whole family;¹²⁵
- Reviewing and amending local youth provision to ensure that it is meeting the needs of local young people, e.g. that it is open at the evening and weekends when young people are more likely to access it. Furthermore, funding effective grassroots charities to deliver detached youth work;¹²⁶ and

¹²⁵ Centre for Social Justice, *Green Paper on the Family*, London: Centre for Social Justice, 2010

¹²⁶ Centre for Social Justice, *Breakthrough Britain: Dying to Belong*, London: Centre for Social Justice, 2009

- Introduction of an electronic education passport model to travel with pupils throughout their education to help mainstream schools, PRUs and other alternative providers to develop an informed understanding of each pupil's circumstances and needs.¹²⁷

¹²⁷ Centre for Social Justice, *No Excuses* op. cit

chapter two

Out-of-court

2.1 Introduction

Most criminal justice systems impose a proportion of penalties outside of court as a means of ensuring that finite resources are prioritised on the offences perceived to be of greater seriousness. In England and Wales, priority decisions are made on the basis of proportionality. That is, the level of criminal justice intervention must be proportionate to the seriousness of the offence and/or the culpability of the offender.¹ In practice, 'adherence to this principle means that the more serious the offence, the more onerous the sanction, and the greater the procedural safeguards to ensure that justice (ensuring that the defendant is not wrongly convicted, etc) is done'. While '...minor offences, either because they involved little harm or because the perpetrators are for whatever reason not deemed seriously culpable (for example, young or first time offenders), become candidates for diversion from the system or, if brought within its ambit, are dealt with leniently following a simplified, relatively non-stigmatic procedure'.²

On this basis out-of-court penalties, when appropriately deployed, can be an effective means of delivering fast, fair and cost-effective justice for victims and offenders. The use of out-of-court disposals is especially important for young people. There is now a strong body of evidence indicating that contact with the criminal justice system can exacerbate delinquency. The negative effect is particularly potent in relation to young people. They are at a critical point in the formation of their identities and thus more prone to influence. The negative consequences of system contact increase as young people are drawn further into it.³ There is also indication that diversion and custody rates are connected: that is, high use of diversion is associated with lower numbers in custody.⁴ Given that the majority of young people grow out of delinquent behaviour of their own accord, these links suggest it is prudent to respond to minor and first time offences committed by children and young people outside of court whenever possible.⁵

¹ Morgan R, *Summary Justice: Fast – but Fair?* London: Centre for Crime and Justice Studies, 2008, pp8-9

² Ibid, p8

³ See for example, Farrington D, 'The effects of public labelling', *British Journal of Criminology*, Volume 17, No 2, 1977; and McAra L and McVie S, 'Youth crime and justice: Key messages from the Edinburgh Study of Youth Transitions and Crime', *Criminology and Criminal Justice*, 2010, Vol.10: 2

⁴ Nacro, *Youth Crime briefing – Out of court: making the most of diversion for young people*, London: Nacro, 2005, p3

⁵ Bateman T, 'Living with Final Warnings: Making the Best of a Bad Job?' *Youth Justice*, Volume 2, No 3, 2002, p134

The use of out-of-court sanctions, however, has raised a number of concerns, including the suggestion that this is a largely 'justice-free zone', without the safeguards and accountability that characterise judicial decision making.⁶ There is arguably a lower test of certainty applied by police officers and the Crown Prosecution Service (CPS) when imposing out-of-court penalties (contrary to the 'basic principle of criminal law that people should only be convicted if guilt is proven "beyond reasonable doubt"'). While some commentators think this acceptable,⁷ others argue that 'no matter how minor the offence or sanction, a criminal conviction puts a stain on a citizen's character and reputation and should not be imposed without a high degree of certainty of their guilt'.⁸ It is also argued that the standard of proof is actually a lesser consideration because the use of out-of-court penalties relies on admission from the person in question. There is, however, likely to be questions about the reliability of admissions made by young people. Furthermore, there are important questions about the proportionality, accountability, fairness and efficacy of such decisions, which affect the lives of both offenders and victims. These issues have become increasingly salient in recent years following the enormous growth in the use of out-of-court sanctions.⁹

2.2 The out-of-court framework – defining diversion

'Diversion' encompasses two types of disposals in the out-of-court sphere:

1. Those non-criminal interventions largely used to respond to crime committed by those offenders not yet within the ambit of the youth justice system so as to prevent their entry into it. These diversionary measures, which may or may not follow arrest by the police, include informal warnings, restorative and (individual or family-based) supportive responses following assessment by means of custody suite triage or Youth Justice Liaison or Bureau arrangements.
2. Those used generally to respond to crime committed by those offenders already within the ambit of the system to prevent their being taken to court. These include: penalty notices for disorder (PND), reprimands, final warnings and youth conditional cautions (YCC) (pilot). The latter three appear on enhanced criminal records disclosures (i.e. for sensitive posts – see Chapter Eight for further explanation). PNDs are 'not disclosed routinely, but may be as part of an enhanced criminal records check if deemed relevant to the application by the Chief Officer of Police'.¹⁰

Both types of disposals seek to divert children from elements of the youth justice system and 'diversion' is commonly used to describe both. Use of the term can be misleading,

6 Roberts R and Garside R, *Punishment before justice? Understanding Penalty Notices for Disorder*, London: Crime and Society Foundation, 2006; and Morgan R, 2008, op. cit., p20

7 Halpern, for example, proposes that lower penalties should require a lesser standard of proof; Halpern D, *The Hidden Wealth of Nations*, Cambridge: Polity, 2010, p69

8 Padfield N, Morgan R, and Maguire M, 'Out of court, out of sight? Criminal sanctions and non-judicial decision making' in M. Maguire et al (eds), *The Oxford Handbook of Criminology*, 5th Edition, Oxford: Oxford University Press, forthcoming

9 Ministry of Justice, *Breaking the Cycle: Government Response*, Norwich: The Stationery Office Limited, 2011, p9

10 Ministry of Justice, *Circular 2010/01 Criminal Justice and Police Act 2011 (SI-11) Penalty Notice for Disorder Scheme: (I) De-prescription of the PND form, (II) Disclosure of Information about certain PNDs to third parties*, 2010 [accessed via: <http://www.justice.gov.uk/publications/docs/circular-01-2010-pnds.pdf> (05/08/11)]

however. Only the first category of responses (which may occasionally be used for children previously criminalised) is truly diversionary for these do not appear on criminal record disclosures.

The CSJ considers that a new vocabulary is required to distinguish between the types of out-of-court action. We will differentiate between the two by using the terms 'diversion from criminal justice' and 'court diversion'.

2.3 History and recent developments

2.3.1 Radical non-interventionism: the era of court diversion

During the 1980s, diversion was embraced enthusiastically by youth justice practitioners and the police in response to the powerful philosophy of minimum necessary intervention.¹¹ By 1990, two-thirds of 14-16 year-old boys and nearly 90 per cent of girls who committed offences were formally cautioned.¹² Informal (non-criminal) cautioning was also encouraged, but little is known even today about the extent of its use.

2.3.2 Three strikes and you're out

During the 1990s, however, there was a good deal of evidence that youth cautions were being used inconsistently, inappropriately and excessively: such practice was said to be bringing the system into disrepute.¹³ The incoming Labour Government radically changed the system of youth cautions through the Crime and Disorder Act 1998 (CDA). A 'three strikes and you're out' policy was in effect adopted. This allowed a reprimand for a first offence (if relatively minor), a final warning for a second, and prosecution for a third offence, no matter how trivial the subsequent offence.¹⁴

Children who offended and were caught were much more likely to be prosecuted than was previously the case.¹⁵ Concern was expressed that the reforms were resulting in young people 'entering court at a much younger age, arguably accelerating their progress through the system and contributing to the recent increase in the use of custody'.¹⁶ Too many minor offences were arguably taking up valuable court and YOT time.¹⁷

11 Graham J, 'Responding to youth crime,' in D. Smith (ed) *A New Response to Youth Crime*, Devon: Willan Publishing, 2010, p105

12 Ibid, p105

13 Home Office, *The Cautioning of Offenders – Home Office Circular 18/1994*, London: Home Office, 1994; Audit Commission, *Misspent Youth*, London: Audit Commission, 1996, p22; and Home Office, *No More Excuses: A New Approach to Tackling Youth Crime in England and Wales*, London, Stationery Office, 1997

14 The reprimand and final warning were introduced and implemented in 2000; they can only be imposed for relatively minor offences to which the young person admitted guilt and are citable in court

15 Morgan R and Newburn T, 'Youth Justice', in M. Maguire et al (eds) *The Oxford Handbook of Criminology*, 4th Edition, Oxford: Oxford University Press, 2007, p1043

16 Pragnall S, 'Reprimands and Final Warnings', in T. Bateman and J. Pitts (eds) *The RHP Companion to Youth Justice*, Dorset: Russell House Publishing, 2005, p81

17 Audit Commission, *Youth justice 2004: A review of the reformed youth justice system*, London: Audit Commission, 2004, p20

2.3.3 Penalty Notices for Disorder (PNDs)

New Labour pressed ahead with additional measures which, while 'diverting from court', would nevertheless ensure that offenders could not offend with impunity. The PND was their principal innovation.

The PND originated from an idea, first raised by the Prime Minister in 2000, that 'thugs' might think twice about behaving disorderly if they had to pay an on-the-spot fine. The PND is a financial penalty, which can be issued on the street or following arrest, in response to low-level, nuisance and antisocial behaviour as well as low level criminality, such as retail theft and criminal damage up to £500. PNDs were rolled out across England and Wales in 2004 for those aged 16 and above.¹⁸ The penalty is either £50 or £80, depending on the offence, to be paid within 21 days. Unpaid fines are increased by one and half times and, if still not paid, registered with the court and enforced in the same way as any court-imposed fine. If the recipient denies the offence the case is referred to the court for a hearing.

PNDs do not involve a formal admission of guilt or the acquisition of a criminal record. They are, however, recorded on the Police National Computer (PNC) and can be cited on future occasions, for example in antisocial behaviour proceedings or in an enhanced criminal records check. In other words, the recipient of a PND acquires a 'quasi-criminal record'.¹⁹ It seems unlikely that most 16 and 17 year-old recipients of PNDs and their parents appreciate the full implications of paying the fine. Payment seemingly carries no risk of a criminal record and there is little reason to think otherwise; the police are not required to advise recipients that they may wish to seek legal advice. It is, therefore, not surprising that only one per cent of PNDs are contested in the courts.²⁰

Questions have been raised as to whether PNDs constitute a form of justice by income, by enabling individuals with means to buy their way out of prosecution. There is a possibility, moreover, that PNDs save the system no money: 41 per cent of PNDs issued to juveniles are registered with the courts for enforcement action.²¹ What happens thereafter is unknown; court data does not distinguish between the enforcement of PNDs as opposed to court-imposed fines.

2.3.4 Offences brought to justice (OBTJ) targets

The New Labour Government committed itself to 'closing the justice' gap (reducing offenders' impunity) and in 2002 introduced a numerical OBTJ target to which cautions (reprimands and final warnings in the case of under 18 year-olds), PNDs and warnings for possession of cannabis (not available for young offenders) as well as prosecutions contributed. The out-of-court penalties were included because they were intended to deliver visible, rapid and

¹⁸ It is a sanction-detection but does not count as a first time entrant into the justice system (but since 2009 government statistics on FTEs have included PNDs)

¹⁹ Roberts R and Garside R, op. cit., p1

²⁰ Ministry of Justice, *Criminal Justice Statistics 2009*, London: Ministry of Justice, 2010, p23

²¹ Ibid, p22

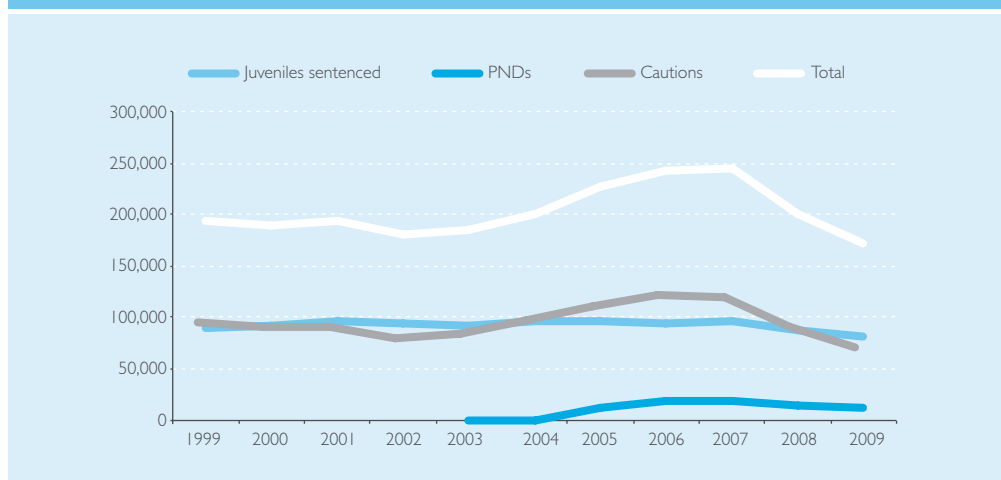
effective justice, reduce the amount of time spent on paperwork, reduce the burden on the courts and potentially increase public confidence in the criminal justice system.²²

The police were initially rewarded equally for all types of OBTJs. As a consequence, unsurprisingly, many focussed much of their attention on low-level offences relatively easy to detect and process: many of which were committed by young people, who tend to offend in groups in public places.²³ Between 2003 and 2007, there was a dramatic increase in the number of ten to 17 year-olds entering the youth justice system.²⁴ This was almost entirely accounted for by an increase in the use of out-of-court penalties as opposed to court convictions. It is now accepted that this increase involved substantial net-widening as a result of the OBTJ target, that is, the police were criminalising young people for misdemeanours that would not previously have led to a criminal justice response.²⁵

This net widening, which was of course consistent with the Government's aim of 'closing the justice gap', disproportionately affected young people. Between 2002 and 2006 there was a 25 per cent increase in the number of OBTJs for under-18s compared with a ten per cent increase for adults. The increase for ten to 14 year-olds was 35 per cent compared to 24 per cent for 15-17 year-olds.²⁶

In April 2008 the OBTJ target was revised to focus on more serious offences and in June 2010 was abolished altogether.²⁷ The number of out-of-court penalties declined significantly as did the number of first-time entrants (FTE) to the youth justice system.²⁸ The connections were clear for all to see.

Figure 2.1: Criminal sanctions imposed on young people aged 10-17, 1999-2009



22 Department for Constitutional Affairs, *Delivering Simple, Speedy, Summary Justice: Executive summary*, 2006, p42 [accessed via: http://webarchive.nationalarchives.gov.uk/+/http://www.dca.gov.uk/publications/reports_reviews/delivery-simple-speedy.pdf (11/11/11)]

23 See for example, *Ibid*; Morgan R and Newburn T, 2007, op. cit., p1044

24 Department for Children, Schools and Families, *First-time Entrants Aged 10-17 to the Criminal Justice System in England, 2000-01 to 2007-08*, 2008 [accessed via: <http://www.education.gov.uk/rsgateway/DB/STR/d000821/ftcjs-2008.pdf> (24/08/11)]

25 Newburn T, 'Policing youth anti-social behaviour and crime: time for reform?', *Journal of Children's Services*, Vol 6, 2011, p99

26 Farrington-Douglas and Durante, 2009, cited in Newburn T, op. cit. p99

27 Ministry of Justice, *Youth Justice Statistics 2009/10 – England and Wales*, p22 [accessed via: <http://www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/yjb-annual-workload-data-0910.pdf> (28/08/11)]

28 First-time entrants (FTEs) are young people who have not previously come into contact with the youth justice system, who receive their first reprimand, final warning or court disposal

2.3.5 Youth conditional cautions, youth restorative disposals and triage

During its third term the Labour Government introduced further penalties to divert offenders from court and the YJB encouraged initiatives to divert young offenders from court or criminal justice.

In 2010 YCCs, introduced by the Criminal Justice and Immigration Act 2008, were piloted in five areas for 16-17 year-olds.²⁹ The youth restorative disposal (YRD) was piloted in eight areas until 2009.³⁰ The YRD evaluation found that it was popular with both victims, (victim satisfaction rates ranged from 86 to 89 per cent) and police officers, who welcomed the disposal as a more proportionate, valuable and time-effective response to misbehaviour.³¹ In addition, two types of point of arrest diversion initiatives were introduced: police station-based 'triage' and 'Youth Justice Liaison and Diversion', piloted in 69 and six areas respectively.

Youth conditional cautions (YCC)

The YCC is available for young people who have previously had a reprimand and final warning or where the first offence is too serious to be dealt with by way of reprimand or final warning. The YCC has conditions attached to it, such as provisions to support rehabilitation, effect reparation or punishment and can also include a fine and/or an attendance requirement. Where the conditions attached to the YCC are complied with, the case is discharged and no further prosecution and/or proceedings for the offence(s) are commenced. Where they are not, the YCC can be withdrawn and the young person prosecuted.³²

Youth restorative disposal (YRD)

Use of the YRD can be decided on-the-spot or following arrest for minor offences for young people who have not previously received a reprimand or final warning. As its name suggests, the YRD involves a restorative justice response, such as action to make amends for the offence, facilitated by specially trained police officers and police community support officers.³³ It does not count as a sanction detection or result in a criminal record.

Triage

Triage involves police station-based assessment with a view to diverting young people who have committed minor offences from the youth justice system. Young people who admit offences with a low gravity score of one or two, who have not previously been arrested or received a reprimand or final warning, may receive a restorative intervention or, if needs are identified, be offered a support package which may involve work with the family. Triage assessments initially involve specially trained police officers or custody suite-based YOT officers.³⁴

Youth Justice Liaison and Diversion (YJLD)

YJLD aims to identify, divert and provide early help to young people with mental health, learning, communication difficulties or other vulnerabilities. The pilot is funded by the Department of Health,

29 Ministry of Justice, *Youth conditional caution (pilot scheme)* [accessed via: <http://www.justice.gov.uk/guidance/youth-justice/courts-and-orders/disposals/youth-conditional-caution-pilot-scheme.htm> (17/08/11)]

30 Ibid

31 Rix A et al, *Youth Restorative Disposal Process Evaluation*, London: Youth Justice Board, 2011, pp20-29

32 Ministry of Justice, *Youth conditional caution (pilot scheme)*, op. cit.

33 Rix A et al, op. cit.

34 KSA Consultancy, *YOT workers in custody suite – Frequently Asked Questions* [accessed via: <http://www.ksaconsultancy.co.uk/files/18920090083342157.pdf> (06/10/11)]

Youth Justice Board and Centre for Mental Health. At each site a YJLD worker collaborates with the police to screen under-18 year-olds who have come into contact with the system for a range of problems. For those with less complex needs, the worker assists young people and their parents to access the help they require. Where there are more complex needs, the YJLD worker has access to a specialist mental health worker who is able to rapidly assess the young person's needs and refer them to other services. The teams also take referrals from other local services, such as court and schools. While the service aims to provide early help to young people before they are drawn into the system, it also works with those who are already in the system, to prevent them being drawn further into it. The University of Liverpool is evaluating the pilots and is due to publish a final report later this year.³⁵

The Government is currently seeking to rationalise the out-of-court disposal framework of YRDs, reprimands, final warnings and YCCs with a simple system of informal restorative disposals, youth cautions (which may be issued on more than one occasion) and YCCs. Both the youth caution and youth conditional caution will be available for those who have previously been in court and convicted. There are also plans to expand both triage and Youth Justice Liaison and Diversion (YJLD) schemes.

In addition to these centrally coordinated diversion arrangements, a local innovation, the Swansea Bureau, was established jointly by the Swansea Youth Offending Service (SYOS) and South Wales Police (SWP) in 2009. It is now being extended to some other areas in Wales.

Case study: The Swansea Bureau

The Swansea Bureau aims to slow down youth justice decision-making with a view to reducing first time entry (FTE) into the youth justice system and devolve responsibility for tackling offending behaviour to the young persons concerned, their families and the local community. The model draws on the experience of the Northamptonshire Juvenile Liaison Bureau of the late '80s, the Scottish reporter system and police station-based triage schemes now operating in many areas, including South Wales.

If young people in the custody suite meet core criteria – first-time offenders admitting offences with a gravity score of 1-3 – they are bailed to participate in a Bureau clinic. The Bureau Co-ordinator gathers any relevant information from all the child-related agencies and talks to victims before meeting the child, after which a report is prepared for consideration by a closed meeting of the Bureau Panel. A provisional decision is made about appropriate action before the Bureau Clinic, comprising the Co-ordinator, a police sergeant and a community representative, meets with the child and their parents or carers. The aim is mutually to agree a course of action which might involve prosecution or a reprimand or final warning but may comprise a non-criminal intervention including a support package if required and agreed.

The SYOS enjoys a research partnership with Swansea University. The early results from the Bureau operation are promising. The number of FTEs are substantially down (by 44 per cent in 2009, compared to a reduction of 23 per cent in previous years) as are the overall number of reprimands and final. Non-criminal disposals, by contrast, have risen (from one in 2008/2009 to 121 in 2009/2010) though the overall number of interventions is down.³⁶

35 Centre for Mental Health, *Youth Justice Liaison and Diversion: A National Pilot Scheme*, [accessed via: http://www.centreformentalhealth.org.uk/criminal_justice/youthjustice_pilots.aspx (06/10/11)]

36 Davies K et al, 'The Swansea Bureau: A children first model of diversion', forthcoming

2.3.6 Police budget cuts

The Government has announced that police budgets are being reduced by 20 per cent between 2011 and 2015.³⁷ These cuts, implemented by local police areas, represent both a threat and an opportunity as far as young peoples' involvement in the youth justice system is concerned. Police officers with whom we have spoken have expressed concern that budget cuts will force the police to withdraw from innovative preventative and diversionary work, such as Safer Schools Partnerships (SSPs). Non police commentators fear that the police will 'talk-up' the crime problem so as to mobilise the public and the media against cuts to police budgets, as has been done previously.³⁸ This could significantly heighten public fear of crime and encourage penal populist attitudes, particularly towards youth misbehaviour. On the other hand, given that formal disposals consume considerable police time and money, cuts to police budgets may incentivise the police to respond to minor offences through informal means.³⁹ It could also improve efficiency by reducing bureaucracy, streamlining the police and increasing officer availability.⁴⁰

2.3.7 Police and Crime Commissioners

At the time of writing, the Government is planning to replace police authorities with directly elected Police and Crime Commissioners (PCCs).⁴¹ If the legislation is passed PCCs will be implemented in November 2012.⁴² The reform is intended to make the police more accountable and strengthen their relationship with the local communities in which they work. The CSJ recommended the introduction of a similar model to PCCs in *A Force to be Reckoned With*.⁴³ Nonetheless without strong leadership and reasoned consideration of the issues, there is a risk that their introduction could trigger increased criminalisation of young people. The fear is that PCC candidates will seek populist mandates regarding youth misbehaviour and subsequently pressure chief constables to use criminalising powers.⁴⁴ There are, however, plans to protect against such politicisation of PCCs with 'strict checks and balances'.⁴⁵

2.4 Our findings

Although there is increasing acknowledgement of the value of diversion at a strategic level we have received numerous examples of where this is not translating into practice on the frontline. Our evidence gathering has revealed that too often there is a 'common sense deficit'

37 HM Treasury, *Spending Review 2010*, Norwich: The Stationary Office, 2010, p11 [accessed via: http://cdn.hm-treasury.gov.uk/sr2010_completereport.pdf (01/09/11)]

38 Newburn T, op. cit., p101

39 Ibid

40 See for example, Sky News, *Police Told Pay Cut Needed 'To Keep Jobs'*, 2011 [accessed via: <http://news.sky.com/home/politics/article/15943983> (31/11/11)]; and Daily Mail, *Police officers will have to accept pay cuts or jobs will be lost, says Home Secretary as she warns of two-year pay freeze*, 2011 [accessed via: <http://www.dailymail.co.uk/news/article-1362023/Theresa-May-Police-officers-accept-pay-cuts-jobs-lost.html> (31/11/11)]

41 Police Reform and Criminal Responsibility Bill

42 Home Office, *Police and Crime Commissioners* [accessed via: <http://www.homeoffice.gov.uk/police/police-crime-commissioners/> (9/11/11)]

43 Centre for Social Justice, *Breakthrough Britain: A Force to be Reckoned With*, London: Centre for Social Justice, 2009, p15

44 Newburn T, op. cit., p102

45 Speech by Minister of State for Policing and Criminal Justice, Nick Herbert MP, *Who runs the police?* 28 March 2011

in the way the system responds to the misbehaviour of challenging young people resulting in their unnecessary criminalisation. Practitioners robotically follow processes without consideration of whether their actions are improving outcomes for young people and society. The following sections explore this problem in detail.



A discussion on youth justice with voluntary sector organisations

2.4.1 Proportionality, fairness and effectiveness

2.4.1.1 Proportionality

There is evidence that some serious offences are being dealt with inappropriately by means of out-of-court disposals and, conversely, that some misbehaviour is being formally sanctioned in court which would better be dealt with out-of-court.

Over half of the young people appearing in court for the first time and pleading guilty to a minor offence have not previously received a reprimand or final warning. Although some of these may not have admitted guilt when charged by the police, this is unlikely to account for most of them.⁴⁶ This picture has been confirmed by several research studies.⁴⁷ One practitioner reported that 66 per cent of referral orders in their locality were imposed on young people who had not previously had a reprimand or final warning. We shall return to the issue of inappropriate prosecution below.

With respect to inappropriate use of out-of-court disposals, a recent thematic inspection undertaken jointly by the Constabulary and CPS inspectorates provides a good indication of current practice, albeit on the basis of a small sample size. The inspection focussed on adult disposals but it is likely that the findings apply equally to young people. The study found that one-third of the out-of-court disposals examined were applied inappropriately. This was most commonly because the disposal had been issued, contrary to guidance, to repeat offenders

⁴⁶ Cap Gemini, Ernst and Young, *Referral Orders Final Report*, cited in Audit Commission, *Youth justice 2004* op. cit., pp 19-20

⁴⁷ See for example, Youth Justice Board, *Final warning projects: the national evaluation of the Youth Justice Board's final warning projects*, Youth Justice Board, 2004; and Nacro, *Youth Crime briefing – Reducing Custody: a systemic approach*, London: Nacro, 2006

or for serious offences.⁴⁸ The study also reported concerns about the accuracy and consistency of recording out-of-court disposals on the PNC, a phenomenon which 'may have contributed to incorrect judgements on disposals'. In addition, the inspectorates found that the rationale for the decision was rarely recorded; oversight of decision making did not extend to disposals issued on the street; and there was 'a lack of quality assurance of the decisions made on out-of-court disposals'. In short, the report's found that out-of-court disposals are in some cases used inappropriately and there is a lack of transparency and quality assurance with respect to their use.

2.4.1.2 Fairness

There is significant variation in use of out-of-court disposals. The Constabulary and CPS Inspectorates found that use of out-of-court disposals across the 43 police areas in England and Wales in 2009 ranged from 26-49 per cent of all OBTJs. This variation, the inspectors concluded, could not be fully explained by differences in local crime and offending patterns.⁴⁹ 'Postcode justice' is unlikely to inspire public confidence. Moreover, it comprises inequitable criminalisation, which risks harming young people and society through reoffending.

We have received a great deal of evidence indicating substantial variation in the use of point of arrest diversion measures. We return to this issue in section 4.2 of this chapter. In addition, a number of practitioners raised questions about the quality of some diversion schemes due to inadequate or inaccessible local provision. In these circumstances diversion risks merely delaying first time entry into the system rather than changing behaviour.

2.4.1.3 Effectiveness and costs

Out-of-court disposals are typically advocated on the basis that they are an effective, cost-efficient, and swift means of delivering justice.⁵⁰ This requires examination.

The Constabulary and CPS Inspectorates' sample was too small and uncontrolled to provide any meaningful guide to the effectiveness, in terms of reoffending, of out-of-court penalties. However, the inspectorates were able to explore initial front-line police work savings resulting from out-of-court disposals. For example, a PND issued on the street takes the police three hours, 31 minutes (this pertains to paperwork and procedure; the process of issuing on the street is considerably quicker) compared to eight hours, 45 minutes for a charge. The restorative justice (RJ) disposal takes five hours one minute to administer, which, although low compared to a charge, is 'surprisingly high'.⁵¹ However, given the value of RJ in terms of lower reconviction rates, use of the disposal is likely to produce savings in police time and money that would otherwise be used to deal with reoffending. It is also apparent that there are benefits to informal out-of-court disposals: a YRD takes between one to two hours (depending on whether it is a conference or street-determined YRD, respectively) compared to 11 hours for a reprimand.⁵²

48 HM Inspectorate of Constabulary and HM Crown Prosecution Service Inspectorate, *Exercising Discretion: The Gateway to Justice*, London: Criminal Justice Joint Inspection, 2011, pp22-32

49 Ibid, p5

50 Lord Falconer, *Doing Law Differently*, London: Department for Constitutional Affairs, 2006

51 Ibid, pp29-30

52 Rix A et al, 2011, op. cit., p5

The apparent upfront savings in police time, however, will count for little if out-of-court penalties have to be referred to the court for enforcement, as is the case with 41 per cent of PNDs.⁵³ Indeed, given the initial net-widening impact of the new out-of-court penalties, the overall costs of the criminal justice system may well have increased, a possibility which the Ministry of Justice appears to have examined.

2.4.2 Sanction-detections and the legacy of the OBTJ targets

Though diversion measures have been encouraged in recent years and the OBTJ target was abolished in 2010, there remains a strong incentive to act formally against misbehaviour. This is due to the existence of a related performance measure, that of sanction-detections – the proportion of offences ‘cleared up’ by formal means.⁵⁴

Sanction-detection targets are a major obstacle to diversion from criminal justice schemes. Numerous diversion practitioners reported they are ‘constantly battling against them’. We were informed that they have become a firmly entrenched aspect of police culture in some areas which will likely persist even if the Home Office emphasis on sanction-detections is scaled back or removed. It was suggested to us, for example, that some police officers, especially those who have only ever served in the era of OBTJ targets and sanction-detection rates, do not feel comfortable exercising greater discretion with respect to diversion. One practitioner described the targets as like ‘Frankenstein, a monster that we have created and has now grown beyond control’. It was reported that some police officers are reluctant to divert young people from arrest: they perceive it to be ‘letting young people off the hook’. It is clear that the success of diversionary schemes is heavily dependent on the leadership of local police managers. Lorraine Khan from the Centre for Mental Health, who is overseeing the YJLD pilots, described her experience of the problem to the Working Group:

‘Many of the YOTs we’re in contact with are struggling with the legacy of police OBTJ targets. Even though the targets no longer apply nationally, some forces continue to pursue them at a local level. We’ve been told that sanction detections are encouraged because they’re linked to bonuses, police performance and pay structures. It takes strong leadership in the police at the top to reverse this culture of seeking more and more sanction detections.’

Police officers with whom we spoke agreed that the targets had been unhelpful. In their view, such a performance framework does not support the delivery of ‘what works’, such as diversion and RJ. They said that they would like to see a different suite of measurements which

⁵³ Ministry of Justice, *Criminal Justice Statistics 2009*, London: Ministry of Justice, 2010, p22.

⁵⁴ A sanction detection is granted at the point of charge/caution whereas an OBTJ reflects the court outcome: A ‘sanction detection’ is an offence cleared up through charge, summons, caution, reprimand, final warning, PND or offences taken into consideration. Not all sanction detections will necessarily result in a subsequent conviction. For example, in cases detected by ‘charge/summons’, the Crown Prosecution Service may not take forward proceedings or the offender might be found not guilty at court. In contrast, an OBTJ is an offence reported to the police that is resolved by means of a conviction, reprimand, final warning, PND or offences taken into consideration. In addition, OBTJ count individual offenders, whereas a sanction detection counts crimes. So, for example, if a crime is recorded and, as a result, three offenders are convicted, each for two offences, these count as a single recorded crime (and a single detection) but as six offences brought to justice. For further information see, Home Office, *User Guide to Home Office Crime Statistics*, 2011, p15 [accessed via: <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/user-guide-crime-statistics/user-guide-crime-statistics/view=Binary> (31/08/11)]

looked more positively at problem-solving instead of merely detecting. There was particular frustration that the targets curtailed efforts to increase the use of informal RJ responses to offending. One Superintendant told the review that:

'We know that RJ cuts youth offending and reoffending rates. We know that it gives victims a much greater sense of satisfaction. Despite this, it feels sometimes that there is a stronger emphasis that the OBJ targets and related targets, like sanction detections, are met. In recent times, that pressure on targets has led to hesitation about using restorative justice.'

Governments past and present have advocated greater use of informal RJ measures. Yet this aspiration has not been realised largely because informal RJ interventions have not contributed to sanction-detections.⁵⁵ For this reason, many of the police officers who gave evidence to this review said that they would like to see RJ disposals counted as a sanction-detection.

2.4.3 Parenting by court?

Our observations of court sittings as well as our discussions with magistrates and YOTs indicate that many unsuitable cases, such as family disputes and minor playground altercations, are increasingly reaching the youth court. This is expensive, time consuming and criminogenic. Many observers think the phenomenon reflects the fact that schools and parents are defaulting on their responsibilities to the police and courts, using them to 'parent' minor misdemeanours that would have previously been dealt with effectively by families or schools. Further, that the police have often been willing to take up the slack because of police target incentives. There is evidence that some young people are being inappropriately labelled as a risk to children for involvement in minor incidents such as playground fights, which results in lifelong restrictions to jobs or volunteering positions with children and vulnerable adults.⁵⁶

Real life examples of minor domestic and school incidents that reach court

CASE 1: Assault/Actual Bodily Harm (ABH) = playground fight

CASE 2: Robbery = 13 year-old boy who took another boy's school bag (bullying)

CASE 3: Criminal damage = child in care who threw a trainer at a wall in his care home. It did not even damage the wall

CASE 4: Assault – ABH = 14 year-old twins in court for pushing their mum. She didn't want any contact with them and refused to have them home

CASE 5: Assault – ABH = 16 year-old girl who punched another 16 year-old over a boyfriend

CASE 6: Assault – ABH = 15 year-old boy who punched his mum's new boyfriend

⁵⁵ See for example: Department for Constitutional Affairs 2006, op. cit., p42; and Ministry of Justice, 2011, op. cit., p9

⁵⁶ Individuals (formerly known as Schedule 1 offenders) judged to be a risk to children are those who commit offences against those under 18 years of age, such as those that result in bodily injury to the victim, to sexual assault and murder: Nacro, *Youth Crime Briefing – Children and young people who commit schedule 1 offences*, Nacro, 2003 [accessed via: <http://www.nacro.org.uk/data/files/nacro-2004120212-435.pdf> (26/01/11)]

Several of our witnesses commended SSPs, cited earlier in the report, for preventing school-related offences being criminalised. However, concerns were expressed that not all schools in need of such measures have been designated SSPs and some of those that have are in danger of losing that status as a result of cuts to police budgets. It was also argued that youth courts are failing to refer cases back to the police and CPS for a final warning, awarding an absolute discharge (which does not involve a penalty)⁵⁷ in cases where arguably they should.

'We recently had a case where a child had thrown a bowl of sugar puffs at his residential care worker, jumped out of the window and then re-entered through the window. This happened after a care worker had brought the child the cereal of his own preference, instead of what the child had asked for. The child was arrested for assault and burglary. Although the CPS threw the case out, he was still kept in police custody for the entire weekend.'

Eddie Isles, Manager, Swansea YOS, in evidence to the CSJ

2.4.3.1 Children in care

Several of our witnesses expressed particular concern that significant numbers of children in care are coming before the courts for 'domestic' offences. While only a minority (nine per cent) of children in care offend, they are, nonetheless, three times more likely than their non-looked after peers to be cautioned or convicted of an offence.⁵⁸ This is partly attributable to the fact that many of the same risk factors for offending behaviour apply to being taken into care (for example, parental abuse and neglect). However, the CSJ report on children in care, *Couldn't Care Less*, found that local authorities were often doing too little to address these needs, thereby increasing the likelihood of negative outcomes including offending.⁵⁹

There is also a strong indication that the response of the care system to misbehaviour, particularly in residential children's homes, precipitates criminalisation. This issue has been highlighted consistently by witnesses to this review and in the relevant literature.⁶⁰ Children's homes often respond to challenging behaviour by calling the police, which increases the likelihood that cared for children will be prosecuted for behaviour that, had it been committed in a family home, would have been dealt with by parents. Once again the OBTJ and sanction-detection targets have incentivised the police to act formally in these circumstances. We understand that there is forthcoming guidance from the Association of Chief Police Officers (ACPO) on appropriate police responses to incidents in children's homes. Its aim is to prevent unnecessary criminalisation of such children.

⁵⁷ Although both disposals could be cited in enhanced criminal record bureau checks

⁵⁸ Department for Education and Skills, *Care Matters: Transforming the Lives of Children in Care*, Norwich: The Stationery Office, 2006, p73

⁵⁹ Centre for Social Justice, *Breakthrough Britain: Couldn't Care Less*, London: Centre for Social Justice, 2008, pp130-134

⁶⁰ See for example, Department for Education and Skills, *Care Matters: Transforming the Lives of Children in Care*, Norwich: The Stationery Office, 2006, p81; and Research, Development and Statistics Directorate, *Preventative approaches targeting young people in local authority residential care: Development and Practice Report 14*, London: Home Office, 2004, p2

One youth court magistrate informed us that offences committed by young people in care homes against care workers, such as scoring a worker's car, are particularly problematic. In order for the care worker to get compensation or collect insurance they need a crime number; so they press charges. In addition, research studies indicate that many care placements, particularly residential, lack many of the emotional and social support features (for example, warm, accepting and secure relationships, praise and recognition) that protect children against involvement in crime. This is a particular problem where there are frequent placement moves and a high turnover of placement or residential staff.⁶¹

'The other day we had a case where a kid was given a referral order for throwing a plate in his children's home. So for the rest of his life if he ever wants to work for children, he's going to have a criminal record. If that young person hadn't been in care then he wouldn't have got into the criminal justice system.'

'We already know that kids in care have significantly poorer outcomes, around education for example... why do we then throw them into the youth justice system? What is really needed is for the incident to be dealt with in the home through means of restorative practices so the kid can understand the impact of his behaviour.'

YOT officer, in evidence to the CSJ

The implementation of restorative practices in children's homes has been shown to be an effective means of reducing the number of children drawn into the justice system. In Norfolk, for example, the number of looked-after young people charged with criminal offences has dropped by 52 per cent over the past two years following the introduction of restorative practice in children's homes.⁶² Such approaches and protocols are increasingly being implemented across England and Wales. This is to be welcomed, but the evidence submitted to us suggests that, due to high turnover rates, staff are often not aware of the protocols and have not received restorative training.⁶³ Likewise, though the CPS issued a protocol five years ago to reduce the number of children in residential care prosecuted for minor offences, practitioners have informed us that some courts are still unaware of it, or act contrary to guidance.

61 See for example, Research, Development and Statistics Directorate, op. cit., p2; and Taylor, 2006 and Marsh, 2008, cited in Chard A, *Jointly Delivering Services – YOTs and Children's Social Care*, Surrey: YCTCS, 2010, pp39-42

62 Community Care, *Restorative justice cuts criminalisation and police intervention among looked-after children*, 2011 [accessed via: <http://www.communitycare.co.uk/Articles/11/09/2011/117409/how-restorative-justice-can-improve-relationships-in-childrens-homes.htm> (09/10/11)]

63 The protocol specifies 'that a criminal justice disposal, whether a prosecution, reprimand or warning, should not be regarded as an automatic response to offending behaviour by a looked after child, irrespective of their criminal history... A criminal justice disposal will only be appropriate where it is clearly required by the public interest'. For further detail see: Crown Prosecution Service, *Youth Offenders: Legal Guidance* [accessed via: http://www.cps.gov.uk/legal/v_z/youth_offenders/#a21 (31/08/11)]

‘Unfortunately, we have a lot of solicitors who encourage young people to give a no comment interview. Young people in court are still eligible to be sent back for a final warning but 99 per cent of time courts don’t send them back.’

YOT Triage and YJLD officer, in evidence to the CSJ

2.4.4 ‘No comment’

Diversion from court is contingent on young people admitting offences on arrest.⁶⁴ Several witnesses have informed us that many minor offences reach court unnecessarily (where a guilty plea is then entered) because solicitors inappropriately encourage young people to make ‘no comment’ during police interviews. Such cases can be referred back to the police for a final warning or discharged from the court (by means of an absolute or conditional discharge). In practice this is rarely done.⁶⁵ As a result, young people are needlessly prosecuted, which has the potential to exacerbate delinquency and harm future employment prospects.

2.4.5 Police training on engaging with young people

Numerous witnesses, including several policemen, reported to us that some police officers lack the ability to engage effectively with young people. We were informed that poor, and in some cases, antagonistic, police handling of interactions with young people, such as disrespectful and discourteous ‘stop and search’ techniques, can lead to inflamed confrontations. In the worst examples it can provoke a physical altercation and charges being brought against the young person for police assault. Inspector Marc Davis from the Metropolitan Police Service described the problem to the Working Group:

‘We’re not youth workers, we’re not trained to work with young people. There are a number of officers out there who don’t know how to talk to young people and who feel intimidated when talking to them’.

The problem of ‘negative, discriminatory and aggressive police behaviour’ was identified in the CSJ report on street gangs, *Dying to Belong*. The review concluded that such behaviour was hindering attempts to tackle gang culture and possibly even perpetuating it.⁶⁶

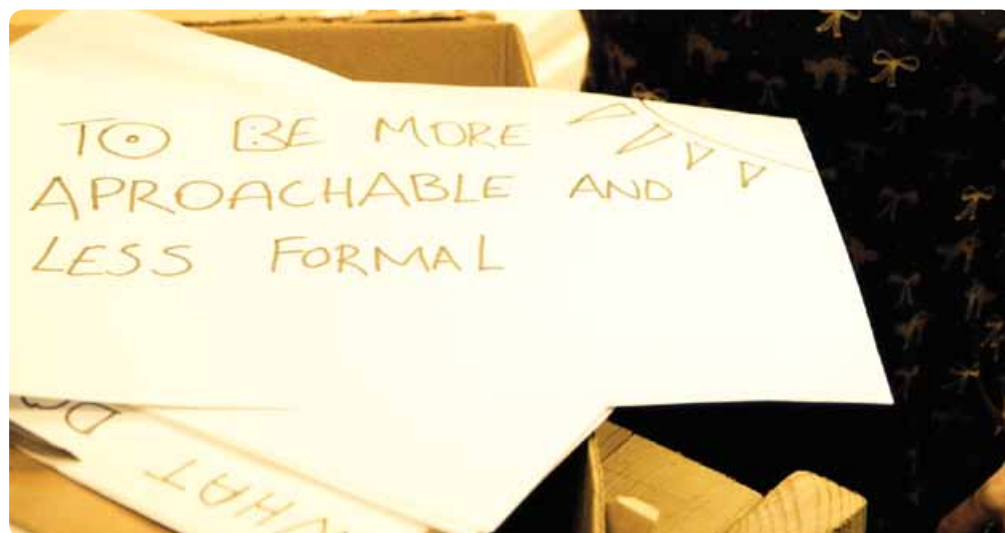
Practitioners also reported to us that the police often have little awareness of mental health and communication difficulties which are experienced by a large proportion of young people who offend. This prevents police from recognising their mental health and communication

⁶⁴ To qualify for diversion from court the offence must also be relatively minor and the young person should not have received more than one of each of the available out-of-court disposals (i.e. PND, YRD, reprimand, final warning and YCC), unless there are exceptional circumstances

⁶⁵ The court cannot issue a conditional discharge to a young person if they have received a final warning within the previous two years; see also Nacro, *Out of court: making the most of diversion for young people*, London: Nacro, 2005, p4

⁶⁶ Centre for Social Justice, *Breakthrough Britain: Dying to Belong*, London: Centre for Social Justice, 2009, pp116-120

needs. This can result in young people being drawn inappropriately into the youth justice system instead of receiving the treatment they require. Mental health and communication problems can be misunderstood as aggression, resulting in unnecessary confrontations between the police and young people. We have received anecdotal information that a significant proportion of police time is spent in contact with young people, possibly as much as 50 per cent.⁶⁷ This would suggest that officers need specialist training on effective engagement.



A young person giving her view on the police during a police-youth engagement exercise (Courtesy of Devon and Cornwall Police, Plymouth Youth Team; Routeways Equal Voices Project, Plymouth; and the Stonehouse Youth project, Plymouth)

Despite these concerns, there are examples of fantastic police officers successfully engaging and working with young people. A number of witnesses reported that PCSOs and Safer Neighbourhood Teams (SNT) are often better at engaging with young people than many of their colleagues (similar positive feedback about these community policing initiatives was reported in *Dying to Belong*).⁶⁸ This is likely because PCSOs do not have powers to arrest. They also police the same area on a daily basis, which better allows them to build up a mutually trusting relationship with young people in the community.

'Professionals often have a hard time from young offenders who can be exceptionally challenging. It's not surprising that I'm often told that the young people we work with are "bad not mad". Awareness needs to be raised of the reality that young people do have mental health issues and they need to be addressed.'

Dr Charlie Alcock, CEO, MAC-UK, in evidence to the CSJ

⁶⁷ Although we could not find data to corroborate this

⁶⁸ Centre for Social Justice, 2009 op. cit., p117

We have come across some innovative projects which are helping to foster positive relations between young people and the police, and developing the understanding and engagement skills of the police. The Islington Youth Engagement Team (YET) is a partnership of police and youth workers who engage with young people and coordinate support from local agencies to reduce incidents of serious youth violence and gangs. The initiative is explained in detail below. We also commend the youth-led training being delivered to the police in Camden by the charity MAC-UK: here young people who have experienced mental health problems train police officers about mental health issues, effective communication with young people, and conflict resolution. The young people are employed to deliver the training by the local authority.

Case study: Islington Youth Engagement Team

The YET is an innovative partnership of police and youth workers who engage with young people and coordinate support from local agencies to reduce incidents of serious youth violence and gangs. It was established in October 2008, following three high-profile murders of under 18s in a 12 month period.

The overall objective of the YET is to:

- Prevent harm by young people to young people – concern is held equally for victims and perpetrators of serious violence. Often young people are both; and
- To support identified young people to desist from offending and safeguard them from victimisation.

The YET provides a combined approach of enforcement and engagement. It is made clear to the young person that their current path will most likely end in prison or serious harm. They are given the option to engage with support or feel the full force of the law if they fail to do so. A typical day involves undertaking home visits to young people and their parents and providing advice and assistance to access support from local agencies. The YET works closely with local authority partners: sharing information and working together to engage and safeguard young people.

The YET has been successful in establishing and improving the relationship between the police and young people and helping families to access support. In addition, serious youth violence and knife crime has fallen considerably.⁶⁹ The following example illustrates the value of the YET:

The YET is currently working with Aaron (name changed to protect confidentiality) who has been the subject of repeated attempts by a local gang to 'recruit' him in his local area and at school. Though Aaron was adamant that he did not want to join the gang, threats were made to him and his behaviour began to change. His mother started to become concerned about what he was getting involved in and contacted the YET after noticing that he had a knife from the kitchen in his school bag. The YET subsequently visited the family and spoke with Aaron. The team introduced Aaron to a gang's prevention worker who is now working with him on a regular basis; enrolled him in a local knife awareness programme; and introduced him to the Arsenal Football club where he has been allocated a coach and a mentor. The YET has also worked with the school and the school's police officer to safeguard Aaron and other pupils whilst at school. There have been no further incidents and the team is continuing to monitor his progress.

69 Islington Council and the Metropolitan Police, *Young and Safe in Islington 2009-2011* [accessed via: http://www.islington.gov.uk/DownloadableDocuments/CommunityandLiving/Pdf/young_and_safe_report_nov_2009.pdf (14/11/11)]

2.4.6 Police and Criminal Evidence Act 1984 (PACE)

PACE and its accompanying codes of practice provide the 'framework of police powers and safeguards around stop and search, arrest, detention, investigation, identification and interviewing detainees.'⁷⁰ We conclude that PACE provisions for juveniles are out of date. First, the Act continues to treat 17 year-olds as adults, 'largely a historical legacy of the fact that, prior to the establishment of the youth court by the *Criminal Justice Act 1991*, those aged 17 years were processed as adults'.⁷¹ To continue to do so will be contrary to proposals in the Legal Aid, Sentencing and Punishment of Offenders Bill for all those aged 12 to 17 to be subject to the same bail and remand provisions.⁷²

Second, the extent that children and young people are kept in police stations overnight and not transferred to local authority accommodation is unclear. Evidence indicates that many children are detained in police cells overnight apparently in contravention of PACE and Children Act provision.⁷³ Analysis by Nacro found that over a three month period in 2000, 85 per cent of the 1,022 young people aged ten to 16 years refused bail by the police were detained in police cells.⁷⁴ A Freedom of Information request showed that over 50,000⁷⁵ children and young people (based on replies from half of police forces) were kept overnight in police cells in 2008 and 2009 (in England and Wales).⁷⁶ There is, however, no regular and consistent monitoring at a local or national level. This is an important issue. Detention increases the likelihood that the court will remand the young person to custody. Where a child appears in court from the cells, normally accompanied by security guards, courts are less inclined to grant bail.⁷⁷

PACE provides that in the case of juveniles (currently under-17 year-olds for purposes of PACE) who are refused bail, the custody officer must seek their transfer to local authority accommodation.

In addition, the Children Act 1989, s.21, provides that local authorities have a statutory duty to provide accommodation to juveniles who are to be detained under s.38(6) of the Police and Criminal Evidence Act 1984. Whereas this is an absolute duty in relation to non-secure accommodation, it is only 'incumbent' on the local authorities to have a reasonable system in place to respond to requests for secure accommodation.

Detention in police cells is permitted only if:

- It is 'impracticable' to transfer to local authority accommodation (i.e. extreme weather conditions or it is impossible to contact the local authority, despite repeated attempts).⁷⁸
- In the case of a young person aged 12 to 16, secure local authority accommodation is unavailable and a non-secure bed would not be adequate to protect the public from serious harm from him.⁷⁹

70 Home Office, *Police and Criminal Evidence Act 1984 (PACE) and accompanying codes of practice*, [accessed via: <http://www.homeoffice.gov.uk/police/powers/pace-codes/> (08/10/11)]

71 Nacro, *Youth Crime Briefing – Police bail, detention after charge and the duty to transfer to local authority accommodation*, London: Nacro, 2008, p7 [accessed via: <http://www.nacro.org.uk/data/files/nacro-2008081301-521.pdf> (14/11/11)]

72 Legal Aid, Sentencing and Punishment of Offenders Bill, Section 74-85

73 The Guardian, *Thousands of children held in police cells overnight*, 13 June 2011 [accessed via: <http://www.guardian.co.uk/society/2011/jun/13/thousands-children-held-prison-cells-overnight> (07/11/11)]

74 Nacro, 2008, op. cit.

75 Although this figure includes young people who were on a properly monitored rest period

76 Howard League for Penal Reform cited in the Guardian, 2011, op. cit.

77 Gibbs P and Hickson S, *Children: Innocent until proven guilty? A report on the overuse of remand for children in England and Wales and how it can be addressed*, London: Prison Reform Trust, 2009, p14

78 Nacro, *Youth Crime Briefing – Police bail, detention after charge and the duty to transfer to local authority accommodation*, 2008, p4 [accessed via: <http://www.nacro.org.uk/data/files/nacro-2008081301-521.pdf> (14/11/11)]

79 Police and Criminal Evidence Act 1984, s.38(6)

On many occasions, police are reluctant to interview young people late at night and designate that they require a rest period overnight. When asked, local authorities are not able to respond to requests for either form of accommodation due to a combination of limited resources, the small numbers of children needing them and the consequential difficulty resourcing dedicated PACE beds.⁸⁰ In addition, the current PACE provision does not acknowledge the significant decline in secure children's homes over the past 12 years – from 30 to just ten. There are now areas, such as London, which do not have a secure children's home or availability nearby. Until this fact is addressed, detention in police cells will be inevitable when secure accommodation is genuinely required. It is, however, 'highly improbable' that those in [police] custody all posed a risk of serious harm, or that transfer was impracticable in the sense required by the legislation'.⁸¹ Evidence indicates a police reluctance for young people to be transferred and a tendency for the police to make unwarranted demands for secure beds due to misapplication of the 'risk of serious harm' criteria. In cases where young people are detained in police cells, the police rarely⁸² provide certification in court to explain why even though they have a statutory duty to do so.⁸³

2.5 Antisocial behaviour

Antisocial behaviour (ASB) is the public's primary concern when it comes to local crime issues. Research commissioned by HM Inspectorate of Constabulary found that 63 per cent of people feel that ASB is a big problem in their area and 36 per cent take active steps to adapt their daily routine through fear of ASB.⁸⁴ Perceptions of what comprises ASB are highly subjective. It is legally defined as behaviour causing 'harassment, alarm or distress'. But this definition encompasses a broad range of behaviour, ranging from teenagers 'hanging around' on the streets to examples of vandalism more typically classified as crime.⁸⁵ Though ASB can be used to describe the behaviour of both adults and under-18s, 'there is no doubt that for many adults antisocial behaviour is synonymous with youth'.⁸⁶

2.5.1 The strengths and weaknesses of existing ASB measures

Over the past 15 years a multiplicity of measures have been introduced with which to address antisocial behaviour. These include the Antisocial Behaviour Order (ASBO), the Acceptable Behaviour Contract (ABC) and warning letters, the Individual Support Order (ISO) and the dispersal order. PNDs, parenting orders and contracts, and FIPs are also available for perpetrators of ASB (see Chapter One). At the time of writing the Government is consulting on proposals to reform these ASB measures.⁸⁷

80 Nacro, 2008, op. cit., p6; and Hucklesby A and Goodwin T, *Pre-trial accommodation for young people*, London: Youth Justice Board, 2004, p41

81 Nacro, 2008, op. cit.

82 Ibid, p6; and Hucklesby A and Goodwin T, op. cit., p41

83 Home Office, *Pace Code C: Code of Practice for the detention, treatment and questioning of persons by police officers*, 2008 [accessed via: [, p55](http://www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/pace-code-c/view=Binary%20(09/10/11))

84 HM Inspectorate of Constabulary, *Policing anti-social behaviour: The public perspective*, London: HM Inspectorate of Constabulary, 2010, p4

85 Pople L, 'Responding to antisocial behaviour', in D. Smith (ed), 2010, op. cit., pp 143-146

86 Ibid

87 Home Office, *More effective responses to antisocial behaviour*, 2011, p5

2.5.1.1 ABCs and warning letters, ISOs and dispersal orders

ABCs and warning letters

ABCs and warning letters are the most common form of response to ASB. The former are informal voluntary agreements, which can be renewed every six months, between a person who has been involved in ASB, the police, and the local services whose role it is to prevent such behaviour. They are not legally binding but breach can result in an application for an ASBO or eviction proceedings.⁸⁸ The evidence is that ABCs are not particularly effective for young people. One study of their use found that 61 per cent went on to receive a further ASB intervention. ABCs sometimes include conditions extremely difficult to comply with. Furthermore, contracts are often accompanied by little or no support to meet the conditions or address the underlying causes of the behaviour, thereby setting young people up to fail.⁸⁹

ISOs

ISOs are civil orders lasting for up to six months for ten to 17 year-olds subject to ASBOs and have been available since May 2004. They are designed to address the underlying causes and prevent the reoccurrence of the behaviour which led to the ASBO.⁹⁰ Research from 2006 found that ISOs were little used; indeed most sentencers were unaware of their existence.⁹¹ In 2006, only 18 per cent of young people with relevant ASBOs (stand alone) received an ISO.⁹² Their uptake is being encouraged by the Ministry of Justice (MoJ) and YOTs.⁹³ Our evidence indicates that they remain underused. Whilst research has not been carried out on their effectiveness, witnesses to our review reported that, where properly administered, ISOs are valuable: the support provided to address the causes of ASB counterbalances the prohibitions contained in the ASBO.

Dispersal orders

Dispersal orders were created in the Anti-Social Behaviour Act 2003. They give police and community support officers the power to disperse groups of two or more people within a designated area for 24 hours (though the dispersal zone can be designated for six months). To make an order the officer must have reasonable grounds to believe that their presence or behaviour has resulted, or is likely to result, in a member of the public being harassed, intimidated, alarmed or distressed. In addition, under-16s found unsupervised in a designated area between 9pm and 6am can be taken home by the police.⁹⁴

The main dispersal powers have been widely utilised in relation to young people (the power to take under-16s home has been little used). The orders carry the benefit of providing brief respite from the behaviour as well as a valuable opportunity to address the underlying causes of the misbehaviour and engage young people with the police, community and local agencies.

88 Pople L, op. cit., pp 165-166

89 Ibid

90 Solanki et al, *Anti-social behaviour orders summary*, London: Youth Justice Board, 2006, p 14

91 Ibid

92 Pople L, op. cit., p 162

93 Ministry of Justice, *Individual support orders* [accessed via: <http://www.justice.gov.uk/guidance/youth-justice/prevention/anti-social-behaviour/individual-support-orders.htm> (31/11/11)]

94 Pople L, op. cit., pp 167-169; Pople's commentary is based on Crawford and Lister's (2007) study on the use of dispersal orders

However, the evidence indicates that the powers often only serve to displace the behaviour to nearby areas (for example in one area neighbouring a 'displacement zone' crime rose by 148 per cent on the previous six months).⁹⁵

2.5.1.2 ASBOs

The ASBO, introduced by the Crime and Disorder Act 1998, is a civil order that can be imposed on an individual aged ten or over who has behaved antisocially to protect the public from further such behaviour. They 'contain prohibitions considered necessary to prevent a repetition of a person's antisocial behaviour'. They must run for a minimum of two years and can last indefinitely.⁹⁶ Since 2009 there has been a legal requirement that ASBOs issued to under-18s be reviewed after the first year. Orders are issued in a magistrates' court subsequent to an application by a relevant authority, such as the police. In addition to the stand alone ASBO, three other variants were introduced in 2002:

- ASBOs in criminal proceedings: made on conviction in criminal proceedings. They now account for the majority of ASBOs;
- Interim ASBOs: before a full hearing, the court can make an interim order. This can impose the same impositions as a full ASBO, and carry the same penalty for breach; and
- Orders in the county court: where the principal proceedings involve some form of ASB. These are rarely used with young people and are therefore not considered here.⁹⁷

Though it was expected that ASBOs would be issued principally to adults, between 2000 and 2010 under-18s were the recipients of 38 per cent of all orders made.⁹⁸ The use of ASBOs has fallen by half since 2005.

Many objections to the ASBO have been raised. The very high breach rate (68 per cent) by young people has attracted particular criticism.⁹⁹ Often to 17 year-olds breaching their ASBOs, 39 per cent receive a custodial sentence.¹⁰⁰ Some of the prohibitions included in ASBOs are reportedly 'unreasonable, "undoable" or so long in duration that breach is almost inevitable.' In so doing, the orders arguably facilitate entry into the youth justice system, including, most worryingly, custody, instead of providing a constructive response to behaviour.¹⁰¹ Evidence indicates that ASBOs are used disproportionately against the most vulnerable and troubled young people, such as those with mental health problems and learning difficulties.¹⁰² A Home Office review of ASBOs, for example, found that 60 per cent of those young people issued with an ASBO were experiencing mental distress, addiction or learning difficulties.¹⁰³

⁹⁵ Ibid

⁹⁶ Youth Justice Board, *Antisocial behaviour orders – summary*, London: Youth Justice Board, 2006

⁹⁷ Ibid, p3

⁹⁸ Ministry of Justice, *Statistical Notice: Anti-Social Behaviour Order (ASBO) Statistics England and Wales 2010*, 2011 [accessed via: <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/asbo-stats-england-wales-2010/> (31/11/11)]

⁹⁹ Ibid, p2

¹⁰⁰ Home Office, *Anti-social behaviour order statistics – England and Wales 2010*, Table 12: *Anti-Social Behaviour Orders (ASBOs) proven at all courts to have been breached by type of sentence received, age group(1) and sex, 1 June 2000 to 31 December 2010(2)*. Of the 3,555 ten to 17 year-olds who breached their ASBO between June 2000 and December 2010, 1,384 received a custodial sentence [accessed via: <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/asbo-stats-england-wales-2010/asbo10-xls?view=Binary> (14/11/11)]

¹⁰¹ Pople L, op. cit., pp158-160

¹⁰² Hughes G and Follett M, 'Community Safety, Youth and the "Anti-Social"', in B. Goldson and J. Muncie (eds) *Youth Crime and Justice*, London: SAGE Publications, 2007, p166

¹⁰³ Campbell S, *Implementing Anti-Social Behaviour Orders: Messages for practitioners*, 2002, cited in Lord Bradley, *The Bradley Report: Lord Bradley's review of people with mental health problems or learning disabilities in the criminal justice system*, London: Department of Health, 2009, p37

There is significant concern that the civil proceedings, by which ASBOs are issued, lack the full procedural safeguards (such as rigorous evidential requirements) that are required in criminal proceedings. Yet breach constitutes a criminal offence carrying a maximum penalty of five years in custody. This is a more severe penalty than is available for many criminal offences.¹⁰⁴ In addition, children on ASBOs are not afforded the same support to fulfil the conditions of their order as children on criminal orders: there is no statutory requirement to monitor or support progress of a child ASBO recipient, unless they have received an ISO.¹⁰⁵

Several of our witnesses have reported that ASBOs are often imposed before other measures, such as ABCs, have been considered or tried. Little or no early intervention work is carried out to address the underlying causes of ASB. One YOT informed us that in their areas individuals are paid by housing associations to start proceedings for ASBOs. A recent study, however, has reported that preventative work is increasingly being carried out before decisions to seek ASBOs are taken.¹⁰⁶

The 'naming and shaming' of child recipients of ASBOs (publicising their identity in the local and national press) has drawn criticism, most notably from the UN Committee on the Rights of the Child.¹⁰⁷ Moreover, it can clearly hinder successful rehabilitation: we have heard of examples where young people have experienced difficulties gaining employment as a consequence of being 'named and shamed'. Police officers have nevertheless informed us that distributing leaflets to local residents with the faces and details of the restrictions of young people on ASBOs is an effective way of policing the orders.

There is vast geographical variation in the usage of ASBOs, which cannot be accounted for by differences in population size and is unlikely to be due to discrepancies in the behaviour of young people. Such variation indicates troubling inconsistency in approach.¹⁰⁸ The use of ASBOs in criminal proceedings, which now comprise the majority of those imposed, has also caused concern: the measure is seen by young people as a 'double punishment' increasing the risk of non-compliance.¹⁰⁹

The ASBO nonetheless has some advantages. Police officers report that they have empowered the police to respond to ASB, whereas they previously often felt helpless to address community concerns. The order can be more effective than other measures as it enables the imposition of tough and meaningful restrictions on behaviour. As one officer told us: 'The order can stop a young person from seeing their best friend, thereby preventing them from doing the very thing they love doing most. This can have more impact on behaviour than any other penalty'. It is of note that ASBOs are highly supported by the public: polling conducted by Ipsos Mori in 2005 showed that 59 per cent of adults agreed that ASBOs were a good way of dealing with teenagers responsible for ASB. However, a similar proportion, 55 per cent, admitted that they knew little or nothing about ASBOs.¹¹⁰

¹⁰⁴ Although a House of Lords judgement in 2002 decreed that ASBO proceedings should be subject to the equivalent standard of proof as criminal law – that is, beyond reasonable doubt – other safeguards are still lacking, such as the right to question witnesses

¹⁰⁵ Hart D, *Into the Breach: the enforcement of statutory orders in the youth justice system*, London: Prison Reform Trust, 2011, p33

¹⁰⁶ Ibid, p29

¹⁰⁷ See for example, Pople L, op. cit., p158

¹⁰⁸ Ibid, pp157-158

¹⁰⁹ Youth Justice Board, 2006, op. cit., p9

¹¹⁰ Pople L, op. cit., p156

2.5.4 Innovative responses to antisocial behaviour

A particular shortcoming of the ASB framework is the lack of informal measures and provision of early help to address causes. We have come across several initiatives to address this problem. The YJLD pilot in Lewisham YOT is one such example. The scheme has extended its early intervention and diversion work to young people at risk of receiving, or who have received, a warning letter, ABC and ASBO. They report that such work is 'crucial' as there is often nothing for young people at this stage of the system. In addition the CSJ has encountered a number of examples of excellent restorative work being carried out in relation to ASB to prevent recourse to formal measures.



Young people from the Children's Participation Project, Wessex

Neighbourhood Agreement Model – Wigan Youth Offending Team

When antisocial behaviour is causing significant distress to a community, the YOT wherever possible organises a restorative neighbourhood meeting instead of imposing an ABC or starting ASBO proceedings. The meeting is facilitated by the YOT and the police, and is attended by members of the community, including the persons responsible for the distress. It gives the opportunity for all to say how the behaviour has affected them and find a positive way forward through a neighbourhood agreement. The agreement sets out how members of the community can reasonably be expected to behave and may include an element of reparation. The agreement is not imposed on the ASB perpetrator but is an impartial agreement between all parties. It is signed by all in the presence of a police officer and is enforceable; the police and YOT officer return to the community every few months to ensure that it is being adhered to. The agreement effectively enables the community to police itself.

The YOT highlighted an example of the model's success:

Community residents were angry and frightened because a halfway house for under-18 custody leavers had been established in their area and some of the young people were engaged in low level misbehaviour, such as rowdiness and drunkenness. The police were constantly being called

by residents. In response, the YOT spoke to residents individually and subsequently organised a neighbourhood meeting.

Young people apologised for their behaviour and agreed to improve; they had not realised how much distress it was causing. The meeting also helped residents to improve their perception of young people in the youth justice system. Subsequently, the community became very supportive of the halfway house, even baking cakes for the young people. Some of the residents have also started mentoring youth offenders.

Case study: Children's Participation Project Wessex (Children's Society)

Children's Participation Project works in disadvantaged communities in Bath and North East Somerset to address low levels of ASB amongst young people and prevent its escalation. It is part of a national charity, The Children's Society. The project engages the whole community – both young people and elderly residents – to find a solution to low level ASB. Referrals to the project mainly come from the police and housing providers or are self-made. Project workers engage with young people and residents separately, before bringing them together in a restorative conference.

Workers get to know the young people through outreach work and engage them in positive and community-focussed activities such as washing cars or holding a community street party. Intensive one-to-one case work and mentoring is also undertaken to identify and address the root causes of ASB. In one case, for example, the project identified that one of the young people involved in ASB had a completely broken relationship with his mother and was being bullied at school. Accordingly, his case worker mediated with the young person and his mother, worked on developing coping strategies for the bullying, and set goals for attendance at school. As a result, the young person is now attending school regularly, his relationship with his mother is improving and his ASB has ceased.

In addition, an intergenerational worker engages with older residents to understand their concerns and reduce their fear of ASB. Strategies that they use to address fear of ASB include 'stories and memories' where older residents are asked to consider and describe how they behaved when they were younger. Often residents realise that they behaved in a similar way in their youth. They also encourage older residents to engage with the young people.

We spoke with members of the local council, the YOT manager and head of the neighbourhood safety team who told us that the project's 'superb' work was a vital tool in addressing both the fear and reality of ASB. Calls about ASB and the perception of ASB have reduced dramatically in the communities they have been working with. The local YOT also said that the scheme had contributed to a reduction in crime and first time entrants into the youth justice. Thanks to the project's work support agencies and communities are more likely to respond in a creative, responsive and less punitive way.

2.6 Recommendations

Placing common sense at the heart of out-of-court responses to youth misbehaviour must be a priority. The professional judgement and expertise of practitioners should be encouraged and supported to ensure that decisions are made in the best interests of young people and society rather than on the basis of inflexible processes.

2.6.1 Improving Diversion

- We recommend that the new restorative justice (RJ) disposal for juveniles counts as a sanction-detection.
- Diversion schemes should be extended to all areas as soon as it is feasible to do so.
- Whilst we are strongly in favour of the RJ disposal and triage arrangements, sight should not be lost of the value of informal responses to low level antisocial behaviour and criminality, such as a verbal reprimand. We therefore reiterate the recommendation made in our report *A Force to be Reckoned With* that there should be a 'commitment to intervene' style of policing whereby every observed act of antisocial behaviour or crime, however minor, is met with an appropriate response to ensure that clear boundaries of what constitutes acceptable behaviour are reinforced continuously. Implicit in this proposal is that discretion is restored to officers to enable them to make decisions that will bring about the most positive outcome for young people, victims and society.¹¹¹
- We encourage local authorities to implement restorative approaches in their children's homes. They should ensure that all staff are adequately trained in such approaches, and aware of and understand the importance of protocols to reduce the involvement of looked after children in the youth justice system.
- We reiterate the recommendations made in our report *Dying to Belong* with respect to developing police youth engagement skills and improving relations between the police and young people:
 - At a local level youth-led police youth engagement training should be developed in partnership with the voluntary sector;¹¹²
 - Such training should be refreshed by means of regular workshops with young people and police officers. The exact content of the workshops should be decided at a local level. The workshop should be the product of collaboration between police and one or more grassroots youth projects. We recognise that there is a cost here both in money and time but our view is that these are costs worth meeting; and
 - Every Basic Command Unit (BCU) should have, as part of their policing strategy, partnerships with local youth projects working with at risk young people. Specifically, we suggest the establishment of youth advisory groups. These would provide an opportunity for young people to provide feedback to police, and for police to provide information (where appropriate) on initiatives and operations.
 - BCUs may also want to consider police participation in local voluntary sector projects and provision of funding for joint initiatives.¹¹³
- The CPS legal guidance concerning prosecution of looked after children should be reiterated.

¹¹¹ Centre for Social Justice, *Breakthrough Britain: A Force to be Reckoned With*, London: Centre for Social Justice, 2009, pp103-109

¹¹² *Dying to Belong* recommended that it should be put together by the National Policing Improvement Agency but we understand that the future of this body is uncertain

¹¹³ Centre for Social Justice, *Dying to Belong*, 2009, op. cit., pp177-188

2.6.2 PACE

- We recommend that the following duty outlined in the PACE Codes of practice be reiterated:
 - Where a young person is not transferred to local authority accommodation, the police custody officer must record the reasons and complete a certificate to be produced before the court with the juvenile, explaining why he or she was detained at the police station.
- We recommend that PACE provision relating to juveniles be reviewed and clarified to ensure proper application by local authorities and the police. The updated codes of practice should provide for 17 year-olds. It should also reflect the shortage of secure children's homes and the consequential difficulties of transferring children to such accommodation.

2.6.3 Government reforms

- We welcome and endorse the Government's proposals outlined in the Legal Aid, Sentencing and Punishment of Offenders Bill to:
 - Promote the use of informal restorative disposals by the police;
 - Repeal PNDs for 16 and 17 year-olds; and
 - Replace the reprimand and final warning with a system of youth cautions and youth conditional cautions.

We particularly welcome the provision allowing the youth caution to be issued for minor offences committed by young offenders who have previously been convicted.

We note that under the Government proposals the YCC can be issued by the police instead of the CPS. This would significantly increase police powers without a great deal of accountability. Whilst we support this provision we think it would be sensible to put in place comparable increases in accountability to ensure that the new police powers are used appropriately.

- Accordingly, we call for an independent oversight of police use of the YCC. This could follow the Camden model, where an independent group scrutinises police Stop and Search practice, or oversight could be given to youth court magistrates.

2.6.4 Antisocial behaviour

- We recommend that there be greater focus on addressing the causes of ASB and more use made of graduated sanctions such as warnings and restorative justice. Formal ASB powers should only be used as a last resort.
- We propose that the ASBO replacement, whatever it may be, should be time limited for under-18s.
- We strongly recommend that the 'naming and shaming' presumption when children and young people are made subject to ASBOs is removed (unless exceptional circumstances apply, such as a serious public safety risk).

chapter three

Courts and sentencing

3.1 Sentencing – justice by geography?

It seems that children are sentenced differently depending on where they offend in England and Wales. These discrepancies are not explained by differences in offence patterns locally.¹ In 2008/09 the custody rate in Newcastle was 1.6 per cent compared with 11.6 per cent in Liverpool, a matched area with a similar demographic.² High and low custody areas have distinctive features. Low custody areas tend to make greater use of lower tier court penalties (i.e. discharges), lower use of community sentences and have higher average case gravity scores for community sentences (and thus a higher threshold for custody). The reverse is generally true in high custody areas.

Postcode sentencing calls into question the justice which the public look to the criminal courts to provide.

In the sections that follow we consider the factors that influence sentencing decisions and what might be done to achieve greater consistency.

3.1.1 The quality of local services

80 per cent of magistrates said that the effectiveness of local community programmes influenced their sentencing decisions.³

Sentencers' perception of both the quality of local services and the ability of YOTs to deliver and enforce community sentences has a direct affect on sentencing. Areas that make low use of custody tend to have a higher regard for the quality of local services and greater

¹ Bateman T and Stanley C, *Patterns of Sentencing: Differential sentencing across England and Wales*, London: Youth Justice Board, 2002, pp21-25

² Ministry of Justice, *Making it count in court Toolkit: Sentencing data toolkit 2010* [accessed via: <http://www.justice.gov.uk/guidance/youth-justice/courts-and-orders/making-it-count-in-court/toolkit.htm> (07/11/11)]

³ Audit Commission, *Youth Justice 2004: A review of the reformed youth justice system*, London: Audit Commission, 2004, p40

confidence in their ability to fully deliver and enforce community sentences. The opposite is true in high custody areas.⁴

Aside from sentencer perception, inadequate community provision, particularly lack of suitable accommodation, also increases the likelihood of custodial sentences.⁵ YOT managers estimate that a lack of suitable accommodation is a key factor in decisions to sentence to custody for over 800 young people each year, at an annual cost of at least £16 million.⁶

3.1.2 The relationship between the court and YOT: communication and confidence

The quality of communication and the nature of the relationship between courts and YOTs also influence the use of custody. The primary means of such exchange is the Court Users' Group and the pre-sentence report. Other channels include: youth panel meetings; joint training events; YOT newsletters and bulletins; and informal contact between court and YOT staff.⁷

High custody rate areas tend to have a lower regard for the quality of information provided by YOTs about local provision and are less likely to rate the Court Users' Group as an excellent or good forum for the provision of information about youth justice services.⁸ YOTs with specially designated YOT court officers (as opposed to generic YOT staff who attend court on an *ad hoc* basis) are more likely to build positive relationships with sentencers and other court staff.⁹

It is clear to the CSJ that many YOTs still do not communicate effectively with the courts they serve. One study reported that 25 per cent of magistrates consider their Court Users' Group to be an unsatisfactory or poor forum for the provision of information about youth justice services.¹⁰ A striking number of our witnesses reported that sentencers are rarely provided with individual progress reports on the young people they sentence to community penalties, outcomes that many sentencers aspire to track. This is despite the fact that such reviews were championed by the 2008 *Youth Crime Action Plan* on the grounds that they would 'increase feedback to sentencers, building their confidence in alternatives to custody'. Such reviews would also 'strengthen monitoring of young offenders on community sentences, which may increase compliance and reduce offending'.¹¹ Regular court reviews of those on community orders (or ongoing contact with imprisoned offenders) are currently operational in the North Liverpool Community Justice Court (NLCJC) (which originated from the Red Hook CJC in New York). The CSJ detailed the NLCJC in its report *Order in the Courts*.¹²

4 Ibid, pp29-42

5 Youth Justice Board, *Fine art or science? Sentencers deciding between community penalties and custody for young people*, London: Youth Justice Board, 2009, pp48-49

6 Cap Gemini, Ernst Young, *Survey of the Housing Needs of Young Offenders*, Youth Justice Board (unpublished) as cited in Audit Commission, op. cit., p91

7 See for example, Audit Commission, op. cit., p25; Bateman T and Stanley C, op. cit., pp43-48; and Youth Justice Board, 2009, p28

8 Bateman T and Stanley C, op. cit., pp44-45

9 See for example, Bateman T and Stanley C, op. cit., p47; and Youth Justice Board, 2009, op. cit., p67

10 Bateman T and Stanley C, op. cit., pp44-46

11 HM Government, *Youth Crime Action Plan 2008*, London: Central Office of Information, 2008, p53

12 Centre for Social Justice, *Breakthrough Britain: Order in the Courts*, London: Centre for Social Justice, 2009, pp119-122

The value of sentencer reviews is evident from the evaluation of the dedicated drug court pilots. These involved reviews of drug-misusing offenders by the same panel of magistrates or district judge throughout their court order. The reported benefits included:

- Improved judiciary knowledge and understanding of individual offenders and how to work with them;
- Improved engagement due to the positive relationship with the judiciary;
- Improved self-esteem and confidence due to the structure and encouragement provided by the judiciary;
- Motivation – offenders took the threat of prison more seriously from a judiciary with which they had a positive relationship, which meant that they worked harder to comply with their orders;
- Accountability – reviews gave sentencers a degree of influence over how practitioners were addressing offenders' needs; and
- Lower risk of breach associated with a continuous judiciary.¹³

Regular reporting would be logistically complex and expensive to deliver. But more could be done by way of occasional reports to Court Users' Groups.

3.1.4 Pre-sentence reports (PSR)

The PSR is a critical part of the sentencing process. Good PSRs make a sentence proposal to the court based on the nature and seriousness of the offence, the drivers of the offending, and the likelihood of further offending. They are the primary source of information about the personal circumstances of the young person, such as levels of parental support and family background.¹⁴ There is a direct link between the quality of PSRs and the rate of custody: sentencers in low custody areas have a substantially higher regard for the quality and content of PSRs than their counterparts in high custody areas.¹⁵

Yet a recent joint inspectorates report recently judged that 75 per cent of youth PSRs reviewed were of inadequate quality. Deficiencies included: poor spelling, grammar and language (65 per cent of cases); not undertaking a home visit (82 per cent); not providing details of the young person's response to previous sentences; and not addressing safeguarding and vulnerability issues (68 per cent). In some areas, information on parenting was not provided in any of the PSRs and, where it was, the need for parenting support was not given sufficient consideration. One report cited an example where parenting support was said to be unnecessary even though the young person's mother was the victim of the offence.¹⁶

¹³ Kerr J et al, *The Dedicated Drug Courts Pilot Evaluation Process Study*, London: Ministry of Justice, 2011, p27-28 [accessed via: <http://www.justice.gov.uk/publications/docs/ddc-process-evaluation-study.pdf> (17/07/11)]

¹⁴ Audit Commission, op. cit., p40

¹⁵ See for example, Bateman T and Stanley C, op. cit., p49; Youth Justice Board, 2009, op. cit., p66; and Youth Justice Board, 2000, as cited in Nacro, *Youth Crime briefing: Pre-sentence reports and the use of custody*, London: Nacro, 2005, p4

¹⁶ All statistics in this paragraph taken from: HM Inspectorate of Probation et al, *Not Making Enough Difference: A Joint Inspection of Youth Offending Court Work and Reports*, 2011, pp46-54 [accessed via: http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmiprob/Court_Work_and_Reports_Thematic_Report-rps.pdf (10/11/11)]

There is little in the way of national training and guidance to aid effective PSR writing. The YJB toolkit, *Making It Count in Court*, provides some guidance and NACRO has developed a PSR good practice document.¹⁷ Most YOTs do not appear to have a gate-keeping strategy to check PSRs before they are submitted to the court: the inspectorates reported that 64 per cent of reports had not been quality assured.¹⁸ Evidence submitted to this review and other research indicate that where these types of procedures have been introduced, the standard of PSRs has improved dramatically and the custody rate fallen accordingly.¹⁹ The inspectorates have recommended that national training packages on PSR writing be devised.²⁰



A youth justice evidence hearing, with Chief Executive of the YJB, John Drew

3.2 Arrangements for young defendants in court

Children and young people in the youth justice system often have multiple needs, and are also inherently vulnerable by virtue of their age.

In recognition of this it is a clear principle of law that youth cases should wherever possible be heard in a youth court – ideally by a 'bench' of three youth court magistrates (the trained volunteers who undertake the majority of youth cases) or by a district judge (a full-time professional).²¹ The only exception to this standard is where a young person has committed a 'grave crime' or is being tried alongside an adult, in which case they are usually heard by a Crown Court judge in either the Crown Court or adult magistrates' court.²²

17 Her Majesty's Court Service and The Youth Justice Board, *Making it Count in Court, Second Edition*, London: Youth Justice Board, 2010, pp39-43; and Nacro, *Pre sentence reports for Young People: A Good Practice Guide*, 2nd edition, London: Nacro, 2003

18 HM Inspectorate of Probation et al, 2011, op. cit., p59

19 See for example, Halsey K, *Evaluation of the Children in Trouble programme (LGA report)*, Berkshire: National Foundation for Educational Research, 2010, pp26-27

20 HM Inspectorate of Probation et al, 2011, op. cit., p59

21 Youth courts generally have a less formal layout and atmosphere than that of adult magistrates' courts; the environment is intended to make the child or young person feel comfortable, rather than intimidated or threatened. Everyone may sit on the same level around a large table and the case should be conducted so as to encourage the active participation of the child or young person, and their family

22 Youth Justice Board, *Youth Justice System: Crown Court*, [accessed via: <http://www.yjb.gov.uk/en-gb/yjs/Courts/CrownCourt.htm> (23/02/11)]

Court hearings held on Saturday's may also not be youth specialised.²³ CPS representatives dealing with youth cases should be specialist youth prosecutors who have received youth specific training.²⁴

In addition, young defendants and their families are actively encouraged to participate in courtroom proceedings (unlike adult cases). Practice guidance to the Crown²⁵ and youth court²⁶ emphasises that courts should adapt their layout and conduct to facilitate the engagement of young defendants. This includes arranging courtrooms so that all participants are on the same level, sitting defendants next to their parents/guardians and ensuring that the hearing is conducted in language that the defendant can understand. Youth court magistrates have a statutory duty to follow this guidance.²⁷ It is also clearly stated that young defendants should not be subjected to homilies or intimidated in court.²⁸ District judges and youth magistrates are expected to complete training on how to engage with young defendants in court.

3.2.1 Youth specific training of court practitioners

3.2.1.1 Magistrates and district judges

Youth court magistrates are required to attend a specialist youth training course of at least six hours before they can be authorised as youth magistrates, as well as further training within nine to 18 months of the initial course.²⁹ District judges are expected to attend specialist youth training before they may practise in the youth court.³⁰ Recent research shows that 95 per cent do so.³¹ However, both training courses include only minimal content on child welfare, child development, mental health problems or speech, language and learning needs.³²

Magistrates and district judges are also encouraged to attend further voluntary youth-specific training and take part in Court Users' Group and/or youth panel meetings. Where sentencers are committed to ongoing training, greater use is made of community penalties, as opposed to custody.³³ A few district judges in London are dedicated youth court judges. However, this is not so elsewhere and we have received evidence that in many parts of England and Wales, especially those with high custody rates, district judges who occasionally sit in the youth court are inadequately prepared to do so.

23 Gibbs P and Hickson S, *Children: Innocent until proven guilty? A report on the overuse of remand for children in England and Wales and how it can be addressed*, London: Prison Reform Trust, 2009, p15

24 Her Majesty's Court Service and The Youth Justice Board, *Making it Count in Court*, Second Edition, op. cit., p25

25 Lord Chief Justice, *The Trial of Children and Young Persons in the Crown Court*, 2000, [accessed via: http://www.courtsni.gov.uk/NR/rdonlyres/3459A090-A339-4CF5-80F4-C881450BD53C/0/j_j_PD0211.htm (02/03/11)]

26 Home Office and Lord Chancellor's Department, *The Youth Court 2001: The Changing Culture of the Youth Court – Good Practice Guide*, Home Office Communication Directorate, 2001 [accessed via: <http://www.yjb.gov.uk/NR/rdonlyres/64F1B930-9B06-48BF-91C0-223492EFC88/0/YouthCourt2001.pdf> (02/03/11)]

27 Judicial Studies Board, *Youth Court Bench Book*, London: Judicial Studies Board, 2010, p94 [accessed via: <http://www.estudo.co.uk/jsb/course/view.php?id=9&topic=5> (02/03/11)]

28 Home Office and Lord Chancellor's Department, 2001, op. cit., p7

29 Judicial Studies Board, *National Training Programme for Magistrates*, London: Judicial Studies Board, 2010, pp26-27 [accessed via: <http://www.estudo.co.uk/jsb/file.php/9/National%20Training%20Initiative/National%20Training%20Programme%20for%20Magistrates/National%20Training%20Programme%20for%20Magistrates.pdf> (02/03/11)]

30 See for example, Youth Justice Board, 2009, op. cit., p28; and Her Majesty's Court Service, *Youth Court*, [accessed via: <http://www.hmcourts-service.gov.uk/infoabout/magistrates/youth.htm> (23/02/11)]

31 Personal communication

32 See for example, Jacobson J and Talbot J, op. cit., p38

33 See for example, Youth Justice Board, 2009, op. cit., p28

3.2.2.2 Crown Court judges

Though it is generally recognised that sentencers dealing with young offenders should have youth specific training, the overwhelmingly majority of Crown Court judges have not.³⁴ Furthermore, because they deal with so few youth cases they have very little experience of dealing with young people in court and often do not see the value in undertaking youth specific training. In 2003 the Home Office proposed that Crown Court judges should be specialised ('ticketed') to preside over youth cases through selection and training.³⁵ Yet they remain untrained and 'unticketed'.

In our polling 89 per cent said that children and young people who offend should always appear in front of a magistrate or judge with specific experience and training in dealing with young people.³⁶

3.2.2.3 Legal practitioners

Unlike the family proceedings court where legal practitioners representing children are required to have youth specific accreditation,³⁷ those operating in youth courts are not. It is not surprising that we have received both strong oral evidence and witnessed practice to suggest that defence practitioners (solicitors, barristers or paralegals) who represent children and young people in court are often very newly qualified and lack awareness of the distinct vulnerabilities and needs of children who offend.³⁸

In CSJ polling 65 per cent of people said that defence practitioners should have specialist youth justice training before being allowed to appear in youth proceedings.³⁹

Such lack of training is particularly concerning in defence practitioners. They have to take instructions from young persons, as well as from their families and other professionals.⁴⁰ Both our research and wider studies have shown that inexperienced defence practitioners who lack youth specific expertise are often unaware of alternatives to custody and of other support services that could be available for the young person; the issues concerning the mental capacity of child defendants; or relevant legislation. They are consequently unable to represent the child or young person effectively in court. This reduces the

34 Ibid, p28

35 Home Office, *Youth Justice – The Next Steps*, London: Home Office, Juvenile Offenders Unit, 2003, p6

36 CSJ/YouGov polling of 1948 adults in England and Wales, May 2010

37 Hart D, *Into the breach: the enforcement of statutory orders in the youth justice system*, London: Prison Reform Trust, 2011, p60

38 See for example, Prison Reform Trust, *Children: Innocent until proven guilty?* London: Prison Reform Trust, 2009, p16; and Shauneen Lambe, *Just for Kids Law*, in evidence to the CSJ

39 CSJ/YouGov polling of 2084 British adults, September 2011

40 Youth Justice Board, *Youth Justice System: Youth Court*, [accessed via: <http://www.yjb.gov.uk/en-gb/yjs/Courts/Youthcourt.htm> (23/02/11)]

likelihood that the defendant will receive the services and sentence appropriate to address their offending.⁴¹

Youth specialised training for legal practitioners has demonstrable value. Shauneen Lambe of Just for Kids Law, a registered charity which provides legal advice and representation to children and young people who find themselves in difficulty, reported to us that in 2010 they provided comprehensive youth justice specific training to legal practitioners in ten cities in England and Wales. The training involved former clients (as opposed to use of DVDs or the role plays that are so often employed). This provided practitioners: with insight into the youth court experience from the client's point of view; helped to develop a real understanding of young peoples' distinct capacities; and improved their ability to communicate with young people and thus represent them more effectively. Feedback from the training was overwhelmingly positive: 81 per cent of those present said the content of the course was new to them and 90 per cent said that they would change their practice as a result. A third said they would increase their contact with YOTs and support services, and almost two thirds said they would involve psychiatrists and psychologists more.⁴²

Case study: Just for Kids Law (JfK Law) training

Training comprises modules on the following:

- 'Lost in translation' on youth language (i.e. 'shank' meaning a knife);
- Role play with former JfK Law clients;
- Legal provisions for young people who offend (i.e. PACE, court jurisdiction, intermediaries);
- Effective participation – how to deal with vulnerability, learning difficulties, learning disabilities and mental health problems (including fitness to plead);
- When to instruct a psychologist and/or psychiatrist and how;
- How to relate to and deal with young clients in the youth justice system, focussing on how best to interview and represent a child and help them engage in the process;
- The role of YOTs;
- The impact of new legislation;
- How to reduce young people being remanded in custody; and
- How to reduce custodial sentences and win appeals against custodial sentences.

The training is accredited by the Solicitors Regulation Authority (SRA) and is worth 4.5 continued professional development (CPD) points.⁴³

3.2.2 Engaging with young defendants in court

The engagement of young defendants together with their parents or guardians is fundamental to justice and defendants' rights. Engagement can help sentencers to establish why young persons offend and what support they may need to stop offending.⁴⁴ It may also encourage the young person and their parents or guardians to take responsibility for and recognise the

41 Annabel Jackson Associates Ltd, *PRT Out of Trouble Programme – Training of Defence Solicitors: Analysis of Feedback Forms*, July 2010

42 Ibid, p6

43 Just for Kids Law, *Youth Justice Training* [accessed via: <http://www.justforkidslaw.org/pages/training.html> (24/11/11)]

44 Judicial Studies Board, *Youth Court Induction Training Delegate Workbook*, London: Judicial Studies Board, 2006, p12

consequences of their actions.⁴⁵ Young people who are not properly engaged in the court process are less likely to respond to efforts to prevent reoffending subsequently.⁴⁶ Increasing training sentencers on engaging with young defendants has been found, amongst other practices, to contribute in a fall in the use of custody and an increase in conditional and absolute discharges.⁴⁷

‘Young people with communication difficulties often struggle to understand the meaning of plain criminal justice language such as “guilty” or “remand”’.

Jane Mackenzie, England Policy Officer, Royal College for Speech and Language Therapists, in evidence to the CSJ

Youth court guidance advises that effective engagement can be achieved by ensuring that plain language is used and questions are at a level that the young person can understand.⁴⁸ The court should also identify and understand any needs (such as communication and learning difficulties, and mental health problems) that are likely to affect the young defendant’s behaviour and understanding of what is said in court. Between 60 and 90 per cent of youth justice defendants have communication difficulties which often go unrecognised;⁴⁹ 25 to 81 per cent have mental health problems; and 31 per cent have literacy levels akin to those expected of a seven year-old.⁵⁰

The most recent inspection of youth court practice reported that in the majority of courts magistrates try to explain to young defendants what is happening in court.⁵¹ An earlier inspection reported that young people said they understood what was being said in court.⁵² Research, however, has shown that young defendants often say they understand what is being said but do not; they are too embarrassed to admit it or want to ‘get out of there’ as quickly as possible.⁵³

The inspectorates have found that there is no evidence in courts of a screening process for young people to identify communication difficulties, or learning disabilities and difficulties.⁵⁴ Intermediaries, who assist vulnerable persons in court with understanding and communication

45 Ibid, p7

46 Hazel N as cited in Plotnikoff J and Woolfson R, *Young defendants’ pack: scoping study for the Youth Justice Board*, London: Youth Justice Board, 2002, pp25-27 [accessed via: <http://www.michaelsieff-foundation.org.uk/content/Relevant%20Report%204%20%20Young%20Defendants%20Pack%20%20Scoping%20Study%20Exec%20Summary.pdf> (24/02/11)]

47 Allen C et al, *Home Office Research Study 214: Evaluation of the Youth Court Demonstration Project*, London: Research, Development and Statistics Directorate, Home Office, 2000, p64; other changes in court practices included altering the court layout and providing feedback to sentencers through the form of a newsletter

48 Judicial Studies Board, 2010, op. cit., p2

49 Bryan K Freer J and Furlong C, 2007, cited in Jacobson J and Talbot J, 2009, op. cit., p38; and Crew M and Ellis N, *Speech and Language Therapy: Summary of Findings of a 6 month project in Bradford YOT*, 2008 [accessed via: http://bradford-yot.co.uk/new_pdf/2008/speech_language_therapy_nov_2008.pdf (24/02/11)]

50 HM Inspectorate of Prisons and Ofsted, 2002, as cited in Jacobson J and Talbot J, 2009, op. cit., p37

51 HM Inspectorate of Probation et al, 2011, op. cit., p39

52 HM Inspectorate of Court Administration, *HMICA thematic inspection of Youth Courts: Implementation of the Youth Court Good Practice Guide 2001*, London: HMICA, 2007

53 Plotnikoff J and Woolfson R, 2002, op. cit., p27

54 HM Inspectorate of Probation et al, 2011, op. cit., p39

so as to provide their best evidence, are not presently available for young defendants (they are for child victims and witnesses).⁵⁵

Even where difficulties are identified, we have heard that many sentencers fail to appreciate just how little understanding young people with communication and learning difficulties have, and do not amend their use of language accordingly. This is largely due to the minimal training received. The result is that young defendants often do not understand the proceedings, cannot participate effectively and are unclear about what is going to happen to them. In a minority of cases this leads young people to resort to aggressive behaviour as a means of expressing themselves. It can leave them isolated and alienated from the court process.⁵⁶

3.2.3 Court layout

Seating young defendants with their parents and arranging all participants to sit on one level affects the culture of the youth court. Contrary to some expressed opinions,⁵⁷ court layout may be as important as the communications skills of participants (though both factors seem likely to reinforce each other). It generates a more open and less formal atmosphere.



Young people from MAC-UK performing at the Roundhouse in Camden

It is standard practice in many courts for young people remanded or detained in police custody to sit in a secure dock encompassed by a glass screen (if the court has one), regardless of whether their offence was violent. Whilst it may be necessary in a minority of cases to make use of secure docks to protect the court from violent behaviour or prevent escape, it seems excessive for the majority of cases and a prime example of where the norm

⁵⁵ Section 104 of the Coroners and Justice Act 2009 provides for intermediaries for young defendants but the MoJ has deferred implementation of this; Royal College for Speech and Language Therapists, *Registered Intermediaries briefing, England and Wales*, December 2010, 2010 [accessed via: http://www.rcslt.org/about/docs/rcslt_registered_intermediary_faqs_-_dec_10 (01/11/11)]

⁵⁶ Plotnikoff J and Woolfson R, 2002, op. cit., p27

⁵⁷ HM Inspectorate of Court Administration, op. cit., p17

has been dictated by the exception. The security of the court has not been affected where informal layouts have been adopted.⁵⁸

Secure docks undoubtedly inhibit the engagement of young defendants in proceedings; we observed young people putting their ears to the slats in the screen to hear what was being said, suggesting that they had difficulty hearing. Similar difficulties were reported in the HMICA inspection.⁵⁹ The fact that the secure dock effectively segregates the young person from the main court is also unlikely to promote participation.

3.2.3.1 Layout and engagement in the Crown Court

The CSJ is particularly concerned that despite guidelines issued to the Crown Court in 2000 to dispense with formalities for young defendants, there continues to be great variation both in the degree to which these are followed and who is regarded as young or immature (and whether formalities should accordingly be dispensed with).⁶⁰ Even were the guidelines followed exactly, Crown courtrooms would continue to be highly intimidating places for children and young people (as a result of the large presence of adults, including spectators in the public gallery and a jury of 12 for trials), and lack of youth specialist trained judges and lawyers.⁶¹ Further, the evidence indicates that Crown Court judges sentence far more severely than magistrates in like for like cases; they 'imposed more than seven times as much custody in comparable cases'.⁶² For these reasons, we share the view of both Lord Auld and the more recent Salz Commission report that the Crown Court is a too intimidating and inappropriate an environment for either the trial or sentencing of young defendants.⁶³

3.2.4 Saturday courts

Convening a youth court (involving youth magistrates, youth trained CPS etc) for youth cases is commonly dispensed with on Saturday's because youth trained practitioners are less likely to be available at the weekends. This means that young people who commit a crime and are subsequently detained on a Friday are often heard on Saturday by an adult court with no youth specific experience. This practice is one of the key drivers of custodial remands.⁶⁴

58 Allen C et al, *Home Office Research Study 214: Evaluation of the Youth Court Demonstration Project*, London: Research, Development and Statistics Directorate, Home Office, 2000, p41

59 HM Inspectorate of Court Administration, op. cit., p18

60 The Lord Chief Justice's Practice Direction called on the Crown Court to take account of the age, maturity and development (emotional and intellectual) of young defendants. If the defendant is perceived to be too immature or young to understand and participate in formal proceedings, formalities should be dispensed with. Changes include the removal of wigs and gowns by those in the court; frequent breaks in proceedings; seating participants on the same level; seating young defendants with their parents or guardians; restricting attendance at the trial to a small number if necessary; and explaining proceedings to the young defendant. For Further information please see, Lord Chief Justice, *The Trial of Children and Young Persons in the Crown Court*, op. cit.

61 The Police Foundation and JUSTICE, *Time for a new hearing: A comparative study of alternative criminal proceedings for children and young people*, London: The Police Foundation, 2010, p36

62 Hedderman C and Moxon D, *Home Office Research Study 125: Magistrates' court or Crown court? Mode of trial decisions and sentencing*, London: Her Majesty's Stationery Office, 1992, p8

63 Lord Justice Auld, *A Review of the Criminal Courts of England and Wales by the Right Honourable Justice Auld*, Norwich: The Stationery Office, 2001, Chapter 5, pp214-215; and The Police Foundation and JUSTICE, 2010, op. cit., pp35-36

64 Gibbs P and Hickson S, 2009, op. cit., pp14-29

3.3 The involvement of the young person's family in court

The family environment is generally a key factor in children's offending behaviour. Their criminality is unlikely to be effectively addressed in isolation from family considerations. Parental attendance at court is therefore desirable if not essential. It gives the court an opportunity to encourage and provide support to parents to address their child's behaviour (although, as we shall explore in Chapter Eight the youth court has limited means to achieve this). Parental attendance is moreover looked on favourably by sentencers and can, accordingly, mitigate against the use of custody.⁶⁵

The attendance of at least one parent or guardian at court is expected with all under-18s (both parents is desirable) and is required with defendants aged ten to 15 years. The courts can adjourn to secure attendance and have powers (summons, warrants and letters) to require it. Courts can impose a parenting order where parenting is a significant factor in the young person's offending. This can be made with or without parental attendance.⁶⁶ In practice, however, these powers fail to address the entrenched problems faced by some of the families of those in the youth justice system. It is rare for both parents, especially fathers, to attend court.⁶⁷ A recent thematic inspection found that in some courts young people regularly appeared without their parent.⁶⁸ YOTs often make insufficient effort to get parents to attend court, but when they do attendance rates improve significantly. Nor is it the case that looked after children are always accompanied by either a social worker or a foster carer; a particularly troubling finding given the disproportionate representation of children in care in the justice system.

Where parents do attend court, YOT court staff generally prioritise the bureaucratic element of their job instead of spending time engaging with parents and young people to familiarise them with the court process.⁶⁹ In addition, relatively little use is made of parenting orders.⁷⁰ One study found that this was because sentencers 'believed that parents would have made considerable efforts to modify their children's behaviour and that it was unrealistic to expect them to exercise greater control over a teenager'.⁷¹ Although such orders are only likely to be required for a small minority of parents who refuse to engage with voluntary support, it appears that they are not currently being used for all such relevant cases. A number of practitioners have reported to us that even where parenting orders are made it is virtually impossible to breach parents who refuse to engage due to the bureaucracy involved in doing so. Whilst it is our view that breach should only be used as a last resort, it is important that such a sanction is available in these circumstances; without it the order is less meaningful.

65 Youth Justice Board, *Fine art or science?* 2009, op. cit., p50

66 Ministry of Justice, Youth Justice Board and Department for Children, Schools and Families, *Parenting Contracts and Orders Guidance*, London: Ministry of Justice, Department for Children, Schools and Families, and Youth Justice Board, 2007, p17 [accessed via: <http://www.education.gov.uk/publications/eOrderingDownload/Parenting-contracts.pdf> (10/03/11)]; and Watkins M and Johnson D, *Youth Justice and the Youth Court: An Introduction*, Hampshire: Waterside Press, 2010, p129

67 Allen C et al, op. cit., p94

68 HM Inspectorate of Probation et al, 2011, op. cit., p32

69 Ibid pp29-32

70 Home Office, Dataset asb-cdrp [accessed via: www.homeoffice.gov.uk/publications/non-personal-data/anti-social-behaviour/asb-cdrp?view=Binary (10/03/11)]

71 Youth Justice Board, *Antisocial behaviour orders – summary*, London: Youth Justice Board, 2006, p14

3.4 Remand

The detention (custodial remand) of young people between the point of arrest and sentence is enormously overused in England and Wales: in the past year 466 young people have been remanded in custody, yet around 75 per cent will subsequently be either acquitted or given a community sentence. The drivers of inappropriate custodial remand are explored in detail in the comprehensive Prison Reform Trust (PRT) report *Innocent until proven guilty*.⁷² The Government is giving this issue much attention and a number of proposals for reform are currently being considered. For these reasons, this review gives only a brief summation of the issues.

Aside from the shortcomings detailed in this and previous chapters, which are factors in the overuse of custodial remand, it is argued by the PRT that the key driver is inadequate investment in community alternatives. When a child is remanded into custody (into a YOI) or subject to a court-ordered secure remand (COSR (into an STC or SCH)), central government (via the YJB) pays for all or two-thirds of the cost respectively. The local authority pays for one-third of the cost of COSRs. Yet, when a child is given conditional bail (which includes supervision and support, and/or electronic tagging, and/or an intensive supervision and surveillance order) or remanded to local authority accommodation (RLAA),⁷³ the local authority foots the whole bill. Local authorities consequently have little financial incentive to invest in specialist accommodation or services for those on bail or RLAA. This can leave sentencers with few options other than a COSR or custodial remand.⁷⁴ However, we have received evidence from a number of sources that some sentencers are actively seeking custodial remand as a means of providing a 'short, sharp, shock'. This suggests there are important drivers beyond a lack of community alternatives.



A youth justice
evidence hearing

⁷² Gibbs P and Hickson S, 2009, op. cit.

⁷³ Non-secure local authority accommodation (RLAA) may be a secure children's home or a remand fostering placement. Notably, the local authority can choose to put RLAA children in a bed-and-breakfast or hostel, or even leave them with their parents, despite the court making a RLAA because they are concerned about the child's home situation; in these circumstances, sentencers are likely to opt for a COSR instead. For further information, see Gibbs P and Hickson S, 2009, op. cit.

⁷⁴ Gibbs P and Hickson S, 2009, op. cit.

The Government proposes incentivising 'local authorities to invest in alternative strategies' for young offenders. First, they are to be made financially responsible for all remands to youth detention. Second, the juvenile remand framework will be simplified by replacing the current framework (remand to non-secure local authority accommodation with and without conditions, court-ordered secure remand and custodial remand) with remand to local authority accommodation or 'youth detention accommodation'. Third, a tighter set of conditions is proposed to restrict use of the latter order; namely that it must appear to the court that there is a real prospect of a custodial sentence. Fourth, all young people who are securely remanded will become 'looked after' by the local authority. Finally, 17 year-olds will no longer be treated as adults (as is currently the case) for these purposes.⁷⁵

The CSJ welcomes this initiative to reduce custodial remands. However, it is essential that investment is made into the 'right' kind of community services and accommodation: that is, those that are able to provide intensive support and improve young peoples' behaviour. Children's homes are often not the best option. We are particularly impressed by remand fostering, detailed in Chapter Five.

3.5 Transportation to and from court

Case study: A 16 year-old boy's experience of court to custody transport

[I] listened to 'Adam', a 16-yr old in his cell in a YOI. He told me he had been transported from court to prison in a 'sweat box' – a steel-lockered van – in which adults as well as children were transported; he sat for many hours on a hard metal bench, his knees touching the wall in front; seat belts were not provided for risk of self harm; and because the van was not allowed to stop, he had to pee and defecate on the floor. Others in the van vomited through travel sickness. He described his humiliation at being strip-searched in front of several prison officers when he arrived.

Professor Sir Al Aynsley-Green, former Children's Commissioner, in evidence to the CSJ

We have heard that children who offend and are remanded in custody are frequently detained in cramped and dirty cubicles in secure vehicles for long periods of time whilst they are transported from court to custody or vice versa.

Just 16 per cent of boys in YOIs said that they were allowed toilet breaks during their most recent secure journey; only 11 per cent were comfortable during their journey; and only 32 per cent were offered something to eat or drink.⁷⁶ Conditions are often worse for girls: eight per cent of girls in YOIs spend more than four hours in a secure van compared to four per cent of boys; and one in four girls do not feel safe during their journeys. In one unit, none of the girls had been allowed a toilet break compared to 18 and 25 per cent in others.⁷⁷

⁷⁵ Ministry of Justice, 2011, op. cit., p10

⁷⁶ Cripps H, *Children and Young People in Custody 2009–10: An analysis of the experiences of 15–18-year-olds in prison*, London: Stationery Office, 2010, p24

⁷⁷ Ibid, p74

Many of these girls will likely have had to endure the humiliating experience of urinating or defecating in a pot in full view of custody officers.

Children transported alongside adults experience worse still. Adult prisons have cut-off points in the evening for prisoner delivery. There are no such restrictions for juveniles. Adults, therefore, are prioritised by the escort companies with children being made subject to longer journeys than average, often reach their destinations late at night. This affects the ability of staff to properly settle them and address safeguarding issues.⁷⁸ Witnesses to this review reported that late night arrivals sometimes result in inappropriate strip-searching practice, largely because the regular staff responsible for induction are off duty.

'It's worrying, because if you think that a child may not be dealt with [in court] until four or five in the afternoon... one went up to Durham and got there at one in the morning, she'd never been away from home, she doesn't even know where Durham is; the fear factor must have been terrifying.'

Area Manager, Wessex Youth Offending Team, in evidence to the CSJ

3.6 Recommendations

3.6.1 Immediate term

6.1.1 Youth specific training of court practitioners

- All defence lawyers appearing in youth and Crown Court proceedings should complete specialist youth training before they are allowed to practice. This could be achieved by means of a requirement (from the Bar Standards Council and Law Society) that all new defence practitioners complete a minimum of ten hours continuing professional development-accredited youth training. For experienced defence practitioners this would be reduced to a minimum of 5.5 hours training. This should be refreshed annually by ring fencing two hours CPD points for accredited training in this field.
- Crown Court judges should be 'ticketed' to deal with youth cases following successful completion of specialist youth training. Adoption of this recommendation would reflect the Home Office's 2003 proposal to develop the specialisation of Crown Court judges in youth cases.⁷⁹
- We recommend that training for youth sentencers (lay magistrates and district judges) be developed beyond the current focus on sentencing aims, structure and options to include comprehensive understanding of the distinct vulnerabilities of children and young people.

⁷⁸ HM Inspectorate of Probation et al, 2011, op. cit., p19

⁷⁹ Home Office, *Youth Justice – The Next Steps*, London: Home Office, 2003, p6

- Youth specialised training for court practitioners should be based on the excellent youth-led approach of Just for Kids Law. It should include elements on:⁸⁰
 - The distinct needs of children in trouble with the law (such as mental health needs, communication and learning needs, welfare issues and child development);
 - Effective participation to enable defendants to participate fully and fairly in courtroom proceedings. This should include how to manage learning and communication difficulties, mental health problems and vulnerability, and fitness to plead;
 - The role of the family and importance of parental engagement;
 - Appropriate responses to breach; and
 - Jurisdiction (i.e. young defendants should only be sent to the Crown Court in exceptional circumstances) and practice directions.
- We recommend it be made obligatory for sentencers (magistrates and district judges) to attend a certain proportion of youth panel meetings per year to remain sitting in the youth court.

3.6.1.2 Pre-sentence reports

- A comprehensive national good practice document on PSR writing, such as an updated version of that completed by Nacro, should be disseminated to all YOTs.
- All practitioners writing PSRs should have to complete accredited training of a national standard on PSR writing.
- All PSRs should be quality assessed by a managerial gate-keeper within the YOT before going to court.

3.6.1.3 A whole-family approach

- We recommend that parenting orders are reviewed in order to: improve understanding of why they are little used; clarify their nature and role; and devise a means of simplifying the breach process.
- There should be joint training for family and youth magistrates.
- Every youth court should be linked with a number of voluntary sector organisations to which it can refer families in need of support. A similar approach is exemplified by the North Liverpool Community Justice Centre: it is in effect a 'one-stop-shop' where a range of community organisations to support victims and offenders are located on-site. A less cost intensive version of this approach was recently piloted in 40 magistrates' courts across England and Wales. Her Majesty's Court Service recommended the approach be implemented nationwide:

⁸⁰ In addition to the existing training for magistrates and district judges

HMCS recently reported on its six month pilot of Problem Solving, implemented in January 2010, in 40 magistrates' courts. HMCS Problem Solving aims to tackle the issues behind low-level offender behaviour (for example, addiction, unemployment or debt) and improve the availability of support for victims and witnesses by connecting courts to a network of external service providers who are able to assist with such issues. There are essentially three steps to this:

- *Identification* of appropriate cases for problem solving;
- *Direct judicial engagement* between the magistrate and the defendant to identify the underlying causes of offending behaviour; and
- *Referral* to a service provider to address the underlying issue(s) identified.

The approach is reported to be 'a low cost, sustainable initiative that can simply be built into the core business of the court'. Additionally, the majority of those involved in the initiative – magistrates, legal advisors, defence solicitors and service providers – thought the HMCS Problem Solving approach was 'worthwhile... because stakeholders felt it could potentially reduce reoffending and help some offenders avoid escalating to crimes that lead to more serious punishment'.⁸¹

3.6.1.4 Court layout

- There should be a presumption against the use of secure (closed, glassed-in) docks in court unless the young person is a violent offender judged at risk of behaving violently again.

3.6.2 Medium term

3.6.2.1 Youth specific training

- We suggest that sentencers visit youth custodial institutions and community services at least twice a year so as to ensure that their understanding of the content of sentences is kept up to date. Magistrates are neither required nor resourced to make such visits beyond their initial training and are unlikely to be so at present due to budget constraints. However if political priority was given to this it could be implemented in the immediate term.

Sentencers who sit in the youth court should do so regularly to ensure they have sufficient youth-specific experience.

- This will best be achieved if lay magistrates specialise in youth court sittings and also sit in the family court so as to promote welfare awareness.
- Youth court magistrates are currently required to sit in the adult court for two years before becoming eligible to sit in the youth court. This requirement should remain, but there should no longer be a requirement for them to continue sitting in the adult court once selected for the youth court.

81 Her Majesty's Court Service, *HMCS Problem Solving Pilot Post Implementation Review: Final Report*, London: HMCS, 2011

51 per cent of people we polled said that youth courts should be presided over by magistrates who specialise in youth justice (as opposed to also sitting in the adult magistrates' court).

CSJ/YouGov polling, September 2011

3.6.2.2 Youth-family court link

- We consider it essential that there be a connection between the youth and the family proceedings courts to enable a whole family approach to youth offending.
- We recommend that consideration be given to affording the youth court the power (under s.37 Children Act 1989)⁸² to order the local authority children's service to investigate whether a child is at risk of suffering significant harm, and whether the local authority should intervene to safeguard and promote the child's welfare (s.47 investigation under the Children Act). This power would be available in cases where there were welfare concerns.⁸³ This recommendation is detailed further in Chapter Eight.

3.6.2.3 Remand

- We strongly recommend the use of remand fostering as an alternative to custodial remand. In areas where young people requiring such accommodation are few, the possibility of establishing provision by means of consortium should be explored.

3.6.2.4 Communication and confidence

- We propose bringing back offenders before the court at intervals during the sentence. At least one of the sentencers who imposed the original sentence should be present at the review. Reviews could be piloted for high-risk offenders, such as those subject to alternatives to custody, and if successful could be rolled out to all those on community orders, including those undertaking the community element of Detention and Training Orders. This recommendation reflects the Government proposal made in the Youth Crime Action Plan 2008 and in the CSJ's report *Order in the Courts*.

⁸² At present this power only available to the family proceedings court

⁸³ That is, concern that the child was or was likely to suffer significant harm, attributable to the standard of care given to the child at home or because the child is beyond parental control

78 per cent of people we polled support bringing young people back before the court at intervals during their sentence to ensure that it is proving effective.

CSJ/ You Gov polling, September 2011

3.6.2.5 Court composition

- No judge should decide on guilt alone in trials. Where cases are presided over by district judges, they should be flanked by two youth court magistrates.
- All grave cases against under-18s should be removed from the Crown Court and instead be heard in the youth court, constituted by a Crown Court judge with specialist youth training and at least two experienced youth panel magistrates.⁸⁴ This echoes the recommendation made by Lord Justice Auld in his major review of the criminal courts⁸⁵ and the Salz Commission.⁸⁶

3.6.3 Long term

- We recommend that youth court and family court proceedings be integrated to enable a whole family approach to addressing youth offending. Further detail is provided in Chapter Eight.

⁸⁴ Unless the charges are inseparably linked to those against adults

⁸⁵ Lord Justice Auld, *op. cit.*, p214

⁸⁶ Independent Commission on Youth Crime and Antisocial Behaviour, *Time for a fresh start: The report of the Independent Commission on Youth Crime and Antisocial Behaviour*, London: Police Foundation, 2010, p65

chapter four

Sentences in the community

4.1 The rationale for community sentences

A vital first step to discussing community orders is to understand their value relative to custodial sentences. As outlined in the following chapter, the evidence indicates that in some respects custodial sentences are of limited effectiveness, for example, they lead to higher reconviction rates compared to community sanctions.¹ For that reason, custodial sentences should be reserved for the critical few young offenders from whom the public require protection. Yet more appropriate use of custody is unlikely to be achieved unless there are credible, effective, professional and well resourced community sentence alternatives. This chapter reviews the current state of community sentences.

4.2 The context

Throughout this review YOT workers consistently criticised the youth justice system's preoccupation with keeping records, meeting targets and complying with prescribed national guidance by the Governments of the 1990s and since. The failure of this top-down approach has been profound. It has: stifled the judgement and expertise of YOT staff; incentivised workers mechanistically to tick boxes rather than use their skills to ensure that the needs of young people are being met and a positive outcome achieved; and driven YOT workers to spend increasing amounts of their time behind desks and in front of computers, rather than build relationships with the young people and families they seek to help. This bureaucratisation has 'deprofessionalised' the YOT workforce.² Too often the right boxes have been ticked but

¹ Losel F, 'Offender Treatment and Rehabilitation', in M Maguire, R Morgan and R Reiner (eds), *The Oxford Handbook of Criminology*, 5th Edition, Oxford: Oxford University Press, forthcoming

² See: Eadie and Canton, 2002, cited in Phoenix J, 'In search of a youth justice pedagogy? A commentary', *Journal of Children's Services*, Vol 6, No 2, 2011, p130; and Pitts J, *The new politics of youth crime: discipline or solidarity?*, Dorset: Russell House Publishing, 2003, pp43-44

the behaviour of the young person has been left unchanged. 'Practitioners have been too concerned with doing things right rather than doing the right thing.'³

Yet in spite of this culture of managerialism there has been some excellent YOT work. This excellence is not sufficiently widespread, however, and exists in spite of the system rather than because of it. The Government has made clear its intention to move away from central prescription, instead favouring local solutions and increased discretion with more time spent working with young offenders.⁴ We understand from the YJB that a national trial of a revised, reduced set of national standards which allows for this will begin in April 2012. Subject to the outcome of this trial, it is intended that a final revised set of standards will be issued across England and Wales in April 2013. This development is welcome. But it is also clear that the 'tick box' culture is deeply entrenched in many areas. Robust action will, therefore, be necessary to engender change at a local level, but it is not yet clear what measures will be taken.

'It is not productive when only a third of practitioners' time is spent working with young people and two-thirds of the time on administration. That ratio has got to go the other way. There has got to be more trust and less emphasis on minute micro-management process orientated management.'

Eddie Isles, Manager, Swansea YOS, in evidence to the CSJ

4.3 The importance of relationships

Throughout our review it has become clear that positive, stable relationships between young people and practitioners are fundamental to successful rehabilitation. The centrality of relationships is identified consistently in the literature and has been emphasised in an overwhelming number of the CSJ's evidence hearings and visits. As one Secure Home Manager told us:

'The major issue for the young people we work with is that they come from chaotic families that are unable to look after their children. They have only had negative experiences of relationships through abuse, neglect, and loss. They have attachment problems and a lack of self esteem. No one cares about them, they don't care about themselves and accordingly, they don't care about anyone else. Positive emotional attachments are fundamental to rehabilitation. That is what the system should be focussing on.'

3 Munro E, *The Munro Review of Child Protection – Part One: A Systems Analysis*, Norwich: The Stationery Office, 2011 [accessed via: <http://www.education.gov.uk/munroreview/downloads/TheMunroReviewofChildProtection-Part%20one.pdf> (24/06/11)]

4 Ministry of Justice, *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*, Norwich: The Stationery Office, 2010, p76

Given that broken relationships are so often at the heart of offending behaviour it is not perhaps surprising that they should also be an integral part of the solution.

*'Results of the analysis show that long-term improvements which many young people experience appear to be due to three main things about Fairbridge. The most important factor appears to be the quality of relationships that young people experience in Fairbridge, most notably a mutually trusting and respectful relationship with a staff member.'*⁵

– Fairbridge

*'Essential to success was the quality of the relationship between a young person and an adviser teacher or key worker who could provide continuity of support and guidance to help them find a new direction and purpose.'*⁶

– Ofsted

*'The relationships which had developed between young people and carers, and between young people and one or more members of the Intensive Fostering team, were also viewed as an important ingredient in the process of change for over half of the young people.'*⁷

– Intensive Fostering

It is clear that the most successful relationships are those that provide one point of continuous support, are formed over time, are stable and build mutual trust. Young people particularly value workers who: they can speak openly without fear of punishment to; will listen without judging; can relate to their situation; provide advice and support; and are not perceived to be enforcement or authority figures.⁸ Such relationships can instill self-belief, confidence, develop motivation to change, facilitate engagement with programmes and, ultimately, reduce offending.⁹

'It's like they don't give you the time of day. They don't want to speak to you. My YOT worker, he didn't really make the effort. He'd talk for ten minutes, then go. I didn't really see the point – how did that make a difference?'

Ryan, age 16, in evidence to the CSJ

In spite of this evidence, our review has concluded that in many areas the centrality of YOT worker relationships with young people and their families has become entirely neglected. This is largely a consequence of the preoccupation with completing paperwork. However, there

5 Knight B, *Back from the Brink: How Fairbridge transforms the lives of disadvantaged young people*, Newcastle: The Centre for Research and Innovation in Social Policy and Practice, 2010, p23

6 Ofsted, *Transition through detention and custody: Arrangements for learning and skills for young people in custodial or secure settings*, Manchester: Ofsted, 2010, p6

7 Youth Justice Board, *A Report on the Intensive Fostering Pilot Programme*, London: Youth Justice Board, 2010, p11 [accessed via: <http://www.yjb.gov.uk/Publications/Resources/Downloads/A%20Report%20on%20the%20Intensive%20Fostering%20Pilot%20Programme.pdf> (10/06/11)]

8 See for example, Cooper K et al, *Keeping Young People Engaged: Improving education, training and employment opportunities for serious and persistent young offenders*, London: Youth Justice Board, 2007, pp8-177; and Ofsted, 2010, op. cit.

9 See for example, Batchelor S and McNeill F, op. cit., p166; Cooper K et al, op. cit., p179; and Youth Justice Board, *An Evaluation of Resettlement and Aftercare Provision*, London: Youth Justice Board, 2010, p26

'Lots of good things can come out of the youth justice system, but the way that it is configured at the moment, it is almost like a by-product. Success can be in spite of youth justice system rather because of it. For example, a good YOT worker can achieve wonders but not because of the programmes put in place to achieve this; it's because of the one to one relationship that they have got with the young person. One of the boys that I was working with, he said 'she's gone the extra mile for me' – he'd moved out of the area and his YOT worker had fiddled things so she could still continue to work with him. But the YOT worker was not doing what she was meant to do; why should practitioners be having to get under the wire to do what they think needs doing?'

Dr Di Hart, Principal Officer, Youth Justice and Welfare, National Children's Bureau, in evidence to the CSJ

has also developed a misguided tendency to fixate on the power of programmes to transform young peoples' behaviour; the notion that the programme is only ever as good as the person delivering it has, in many cases, been disregarded. There are typically a series of practitioners involved with young offenders moving in and out of their lives. This is highly counterproductive. It serves to reinforce the inconsistency of many young offenders' relationships with adults.

Youth offending will not be properly addressed until this shortfall is rectified.



An Enthusiasm Trust mentor with her mentee

4.3.1 The importance of voluntary support

Our visits have convinced us that there are often benefits to providing one-to-one support to young people in addition to that of their YOT case worker. YOT managers reported that more

intensive support is often required to effect change in a young person than is possible through a one or two hour weekly YOT supervision. In addition, voluntary relationships with young people are often able to achieve more than statutory supervision. Relational support is commonly facilitated by voluntary sector organisations by means of mentoring or one-to-one support workers.

We have encountered a number of innovative examples where voluntary sector organisations are working with statutory services to ensure that youth-justice-involved young people receive wrap-around support to meet their needs.

Case study: The 'team around the worker' – MAC-UK

The project (cited in Chapter One) works closely with other agencies in the community to support young people. Uniquely, this is achieved by means of a 'team around the [MAC] key worker' as opposed to a team around the young person. Other agencies pool their resources to the key worker and impart their expertise to that worker by means of supervision and training in specific techniques. The rationale behind MAC-UK's approach is that young people can be better helped through a trusting relationship with one practitioner instead of multiple agency and worker involvement. This is achieved by means of Adolescent Mentalisation-based Integrative Therapy (AMBIT), an approach which has been developed over the past five years by mental health professionals based at the Anna Freud Centre in London. The approach is designed to provide evidence-based help to very hard to reach young people who have needs in multiple spheres of their lives, such as mental health, substance misuse, education, welfare and offending. At present, a number of teams have been trained in the approach nationwide.¹⁰

The support provided to young people in the youth justice system by the charity, Midlands-based Youth Support Services in partnership with the local YOS's is another example of such practice.

Case study: Youth Support Services (YSS)

YSS is a medium sized charity working in the West Midlands with young people, adults and families at risk of social exclusion. The charity works closely with Worcestershire and Herefordshire YOS, Shropshire, Telford and Wrekin YOS; and West Mercia Probation Trust. Over the last ten years the charity has delivered significant elements of service provision either through being directly commissioned by these agencies or through joint business development activity that has secured funding through bids and grants to deliver a range of projects. These agencies have taken the view that working with offenders does not necessarily need to be undertaken directly by the public sector in isolation and that it is often better undertaken in partnership with voluntary sector organisations within the community.

At present seven YSS staff are co-located and/or seconded with YOS staff and have access to each other's information systems. Seven staff are currently seconded from West Mercia Probation Trust into YSS. In addition, YSS has been appointed as West Mercia Probation Trust's 'preferred partner'. This means that YSS can be commissioned by the Trust to deliver any services across West Mercia if required but more importantly gives YSS a remit to develop the capacity of the voluntary sector to provide offender based services and to take the lead on service user voice. By working in this way YSS is building trust and breaking down the cultural barriers and professional silos that can exist between

¹⁰ Anna Freud Centre, *AMBIT* [accessed via: <http://www.annafreud.org/pages/ambit.html> (05/10/11)]

agencies and the voluntary sector. In so doing it is helping to realise a model of truly integrated service delivery which is fundamental to achieving the best outcomes for young people in the criminal justice system and the wider community.

YSS currently delivers the following schemes to specifically prevent youth offending:

- **Volunteer Mentoring** for young people in the youth justice system or at risk of being involved in the criminal justice system. YSS offers a range of projects including prevention mentoring, mentoring as part of court orders or mentoring support on release from custody. Young people see their mentor once or twice a week following a personalised SMART action plan. Volunteer mentors have one-to-one and group support as well as supervision;
- **Intensive Supervision and Surveillance:** formerly a YJB funded West Mercia Intensive Supervision and Surveillance Programme (ISSP) consortium between YSS and the two YOS's providing 25 hours supervision per week per young person;
- **Specified Activities** as part of a Youth Rehabilitation Order;
- **Volunteer Appropriate Adult Service** (seven days a week 9am – 9pm) for young people detained in police custody;
- **Worcestershire and Herefordshire Junior Attendance Centre:** which is based at the YSS vocational training centre in Worcester and provides vocational skills and positive activity programmes in partnership with the Officer In Charge;
- **Bail Information** (at court Monday to Saturday) and **Bail Supervision and Support programmes** for young people at risk of being remanded to custody;
- **Divert** (formerly the Shropshire YISP) – a tailor-made youth prevention project offering intensive one-to-one support, parenting support, mentoring and outreach group work (commissioned by Shropshire County Council);
- **T2A (Transition 2 Adulthood) West Mercia:** a project that supports young people in their transition between the local YOS's and West Mercia Probation Trust (part of a national pilot project). YSS also works with the police, local services and other voluntary sector organisations to support young peoples' needs whilst transitioning; and
- **AIM:** YSSs work intensively with the family members of adult offenders to aid rehabilitation and prevent children's involvement in offending or reoffending. YSS is co-delivering this support with the local Family Intervention Project. YSS delivers this project in partnership with West Mercia Probation Trust.

A cohort of young people involved with T2A West Mercia are being tracked over a 12 month period to monitor reconviction. At the six month stage none of the young people had been reconvicted. YSS anticipates that the final evaluation will provide further evidence of the project's success.

4.4 Sentencing

4.4.1 First tier penalties

Courts have a number of first tier measures available for responding to low level offences such as vandalism and graffiti. These include:

- **Absolute discharge:** involves no further action beyond the prosecution finding of guilt and prosecution;
- **Conditional discharge:** similar to the above, but the discharge is conditional on no further offence being committed during a period of time specified by the court (of not more than three years); and

- **Reparation order:** requires the young person to make reparation to either the victim or the community at large. Reparation should be in kind rather than financial.¹¹ It can be imposed on any child or young person aged ten to 17. The order requires the young person to work for no more than 24 hours within three months of the start of the sentence.¹²

Absolute discharges are a useful means of responding to low level offences that cannot be diverted from court (for example, a minor offence committed by a child in residential home who has exhausted the out-of-court framework). The conditional discharge is a potentially valuable means of responding to: minor offences committed by those on community sentences and following completion of community or custodial sentences; and offences not dealt with prior to sentence. The reparation order is a useful form of restorative justice (RJ).

The Working Group is concerned that, despite their utility, these penalties are little used: in 2009/10 they comprised 2,175; 7,367 and 3,606 respectively of all 57,357 first-tier disposals.¹³ We have received evidence that many magistrates do not have the confidence to use the absolute discharge. The conditional discharge is underused as a result of the sentencing restrictions, which prohibits their use for first time guilty pleas in court and within two years of receipt of a final warning (unless there are 'exceptional circumstances').¹⁴ Though there are proposals to make the conditional discharge available for first-time guilty pleas in court this would not address the final warning issue. It is unclear as to why the reparation order is so underused.



Young people from the Enthusiasm Trust

11 Ministry of Justice, *Reparation order* [accessed via: <http://www.justice.gov.uk/guidance/youth-justice/courts-and-orders/disposals/reparation-order.htm> (26/11/11)]

12 First tier penalties include the absolute discharge, conditional discharge, reparation order, referral order, bind over, deferred sentence, fine and compensation order

13 Ministry of Justice, *Youth Justice Statistics 2009/10, 2011*, p21 [accessed via: <http://www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/yjb-annual-workload-data-0910.pdf> (26/11/11)]

14 The Crime and Disorder Act 1998

4.4.1.2 Referral orders

What is a referral order?

A referral order is given to a young person who pleads guilty to an offence when it is their first time in court. Exceptions are made if the offence is so serious that the court decides a custodial sentence is absolutely necessary or the offence is relatively minor, in which case an alternative such as an absolute discharge may be given.

Guidance issued in 2009 now also allows sentencers to use referral orders for second time court appearances. In exceptional circumstances, young people may receive a second referral order after their first.

When a young person is given a referral order, they are required to attend a youth offender panel (YOP), made up of two volunteers from the local community and a panel adviser from a YOT. The panel, with the young person, their parents/carers and the victim (where appropriate), agree a contract lasting between three and 12 months (although the court sets the length of the order). The contract will include reparation as well as interventions to address the causes of the offending behaviour.

The evidence is that the quality of referral orders varies across YOTs due to the availability and quality of programmes such as reparation.¹⁵ There is concern amongst sentencers that YOP members lack the skills or training to deal with serious offenders.¹⁶ The Audit Commission found that many panels were not convened within the required 15 (now 20) working days following sentencing, and some were taking more than two months to meet.¹⁷ A more recent survey of 64 sentencers in 16 YOTs found that these concerns about delays remain.¹⁸ Nonetheless, young people and their parents have reported that they have a significantly higher level of understanding of the referral order process and a greater opportunity to participate than in the Youth Court.¹⁹ YOP members are also more representative of the local population in which they work than magistrates: they tend to be younger, female and from ethnic minorities.²⁰

Many of the magistrates we received evidence from said they lacked confidence in the referral order because: they know little of the specifics of panel practice; frequently hear negative reports about the way in which they are conducted; and are concerned that some panel members are insufficiently trained. Their lack of confidence is compounded by what is typically limited communication between magistrates and YOP members. Some sentencers told us that such is their lack of confidence that they sometimes feel they have little choice but to sentence young people in court for the first time to custody. Nevertheless the magistrates with whom we spoke were optimistic about the introduction of a more rigorous referral

15 Audit Commission, *Youth Justice 2004: A review of the reformed youth justice system*, London: Audit Commission, 2004, p26

16 Youth Justice Board, *Fine art or science? Sentencers deciding between community penalties and custody for young people* Youth Justice Board, 2009, p71

17 Youth Justice Board, *National Standards for Youth Justice Services*, 2010, p69 [accessed via: <http://www.yjb.gov.uk/Publications/Resources/Downloads/National%20Standards%20for%20Youth%20Justice%20Services.pdf> (20/06/11)]; Audit Commission, *Youth Justice 2004: A review of the reformed youth justice system*, London: Audit Commission, 2004, p27

18 Youth Justice Board, *Fine art or science?*, 2009, op. cit., pp64-70

19 Newburn T et al, *Home Office Research Study 242 – The Introduction of Referral Orders into the Youth Justice System: Final report*, London: Home Office RDSD 2001, p36

20 Audit Commission, 2004, op. cit., p24

order comprising intensive professional support. As Ken Melsom, former Vice Chairman of the Magistrates' Association Youth Courts told us:

'Communication is a key issue – magistrates don't know what goes on in referral order panels; there are no progress reports; magistrates can't sit in; and YOTs give general presentations but don't give details (although the latter point is acceptable). When referral orders first came in there was a steering group which magistrates sat on and gave us more of a handle on what went on in the panel. We are encouraging magistrates to get closer to YOTs and communicate better but still haven't got into referral panels themselves so magistrates generally still lack confidence in referral orders.'

'We want to encourage retired former magistrates to join the panel, but we have documented situations where they are told that they are either too experienced or do not have the right type of experience! This doesn't instill confidence in members of referral panels from the magistracy. We hear stories of young people not attending YOP meetings and having to wait a long time for the initial panel meeting so that the order can actually start.'

The MoJ plans to increase the training given to YOP members, but it is likely that this will do little to allay the above concerns.

Reparation is the essence of referral orders, and this may take the form of RJ. The involvement of victims, either directly or indirectly, is implicit.²¹ Evaluations of the referral order indicate that success rates (in terms of young people successfully completing their contract) were significantly higher where the victim attended (80 per cent) as opposed to where they did not (63 per cent).²²

The most recent data (albeit from 2001) indicates that victim participation in referral orders is generally low: victims contribute to panels (i.e. by means of a statement) in only 26 per cent of cases and attend in only 13 per cent. Further, there continues to be significant variation in the levels of victim participation between panels. Victim participation is higher where significant time and effort is invested in contacting victims and preparing both them and offenders ahead of panel meetings.²³ Yet we were informed that many YOTs make little effort to involve victims, often doing no more than sending them a letter. National standards require only that the victim be contacted, not that they be involved.²⁴ In other words, the default setting of many YOTs is to ensure that only the minimum standard, not excellence, is reached. Pressure on YOT budgets may mean that even fewer resources are invested in securing victim involvement in the future. We have also been informed that the current target to convene referral order panels within 20 days of sentence prevents many victims from being involved because they are not yet ready to engage.

21 Home Office, 1997, cited in Newburn T et al, 2001, op. cit.

22 Newburn T et al, *Home Office Research Study 242 – The Introduction of Referral Orders into the Youth Justice System: Final report*, London: Home Office Research, Development and Statistics Directorate, 2001, p42.

23 Ibid, pp41-43

24 Youth Justice Board, 2010, op. cit., p69

Where YOTs have invested in personnel dedicated to achieving victim involvement they have achieved high levels of participation. The Working Group considers there to be particular merit in partnerships between YOTs and the voluntary sector to bring about increased victim participation. Such organisations are often better trusted than the statutory agencies and well placed to meet the needs of victims of crime.

Case study: Victim Support: Essex YOS partnership, Ingatestone

Since March 2010, Essex YOS (Harlow, Basildon, Chelmsford and Colchester YOTs) have referred all victims of lower end crimes to three caseworkers at Victim Support. Victims of more serious crimes continue to be supported in-house by each YOT's dedicated RJ worker.

The Victim Support caseworkers are solely responsible for all aspects of victim involvement: contacting and supporting victims, explaining the RJ process and accompanying or representing victims at panel meetings.

The caseworkers are professionals employed by Victim Support, not volunteers. They completed three weeks of intensive training prior to beginning their roles, which covered all areas of the criminal justice system, the youth justice process and victim casework. The training was delivered jointly by Victim Support and YOT trainers.

At the end of the project's first year, the Victim Support caseworkers supported 180 victims to participate in the RJ process. A third of victims attended a face-to-face meeting with the offender.

This standalone project is funded for two years by Essex County Council, following a tendering process, who contributes an average of £120,000 per annum.

In addition, we are particularly impressed with the model in Wigan:

Case study: Wigan YOT – A Restorative Justice Service

RJ is firmly embedded at every step of Wigan YOT's response to offending, from the earliest stages of system involvement through to resettlement. All staff have received three to four days of accredited training in RJ from the International Institute of Restorative Practices. All case managers are trained to deliver their own restorative conferences.

The YOT has a linked RJ worker both for each of the residential children's units and the high schools in the area, with the aim of reducing offending by looked after children and developing restorative options within the schools, respectively. The YOT also undertakes joint training with the police and staff in both local authority and privately run residential children's home. RJ is used to respond to antisocial behaviour both to prevent escalation to formal ASB disposals and alongside them. In addition, Family Group Conferences used with YISP cases can include an RJ element. The YIP is heavily involved in community reparation work.

All victims of youth crime are offered a home visit by the YOT in order to offer restorative interventions. These include RJ conferences, letters of apology as well as direct and indirect reparation. Case managers undertake the victim contact and facilitate any restorative work themselves for all YRD's, final warnings and referral orders. With respect to the latter, victims are offered the opportunity to complete a victim impact statement and attend Referral Order Panel Meetings at either the same time or prior to the young person attending the panel.

For all orders above a referral order and serious, violent or sexual offences, the Service has a dedicated victim worker. RJ conferences are arranged if appropriate, when the victim is ready; victim-offender contact is not constrained by impractical timescales imposed by the system. The worker spends significant time with the victim, providing support, gaining their trust and preparing them for the meeting. Equivalent work is undertaken with the offender. Preparation is fundamental. In many cases, victims and offenders have developed close relationships following conferences. In one example, the victim attended the young person's planning meetings in custody and played a key role in facilitating their resettlement, providing a work placement at their business (which the young person had robbed) and mentoring.

4.4.2 Restorative justice

When undertaken systematically (facilitated by trained coordinators with good preparation of both victims and offenders) RJ can produce high levels of victim satisfaction and reduce the frequency of reoffending.²⁵ We share the view of the Salz Commission that RJ is likely to offer a more demanding and effective alternative to conventional sentences.²⁶ The CSJ is a strong advocate of RJ and recommended in previous reports on prison, police and sentencing reform that greater use be made of it. We proposed that RJ conferencing should be available for inclusion in sentences.²⁷ The youth restorative conferencing service in Northern Ireland has frequently been cited as a model of best practice. Members of the Working Group visited Northern Ireland in 2011 to observe conferences and speak with staff and service users.

The CSJ was particularly impressed with several elements of the model, which we think would be valuable to England and Wales:

Northern Ireland Youth Conferencing model

A youth conference is an informal meeting which primarily brings together the young person who committed the crime and the victim of the crime (or a proxy) as well as a representative of the community where possible. A youth conference coordinator and a diversionary police officer (who is specially youth trained) also attend. The purpose of a conference is to devise a plan (which is a statutory order following ratification by the court) that will specify how the young person will make amends for their offence and how the causes of their offending will be addressed. A conference can take place pre-court or post-court. To qualify for a diversionary conference the young person must admit guilt and consent to the conference. Sentencers are required by law to refer young people who are found guilty to court-ordered conferences.

- Victims participate in 69 per cent of conferences (of these, 47 per cent were victim representatives, 40 per cent personal victims and 13 per cent were representatives attending where there was no identifiable victim);

25 See for example: Shapland J et al, *Restorative Justice: the views of victims: The third report from the evaluation of three schemes*, London: Ministry of Justice, 2007, p5; and *Restorative Justice: Does Restorative Justice affect reconviction: The fourth report from the evaluation of three schemes*, London: Ministry of Justice, 2008

26 Smith D, 'Key reforms: principles, costs, benefits, politics', in D. Smith (ed), *A New Response to Youth Crime*, Devon: Willan Publishing, 2010, p387

27 Centre for Social Justice, *Breakthrough Britain: Locked Up Potential*, London: Centre for Social Justice, 2009, p196; Centre for Social Justice, *Breakthrough Britain: Order in the Courts*, London: Centre for Social Justice, 2009, pp99-100; and Centre for Social Justice, *Breakthrough Britain: A Force to be Reckoned With*, London: Centre for Social Justice, 2009, p112

- 92 per cent of young offenders express remorse and 97 per cent responsibility for their actions;
- Only a small minority (six per cent) of plans are revoked due to non-compliance;
- It is clear from the victims we spoke to and indeed the available data on victim satisfaction (84 per cent are satisfied) that victims are very supportive of the model;
- There is anecdotal evidence that victims feel less frightened and have a better understanding of why young people offend following participation in a conference. Some of those we spoke to also felt compassion for the offender subsequently;
- 91 per cent of young people and 81 per cent of victims prefer the conference over court;²⁸ and
- Sentence plans can be particularly innovative – for example, one victim that we spoke to had asked the young people who committed the offence to write a journal to describe how they were getting on with the plan and how the conference had affected them.

- **The conference coordinator role** is clearly valued highly by both victims, young people and their families. They build positive and trusting relationships with both parties to encourage their engagement in the process (notably, they play a key role in encouraging the parents of young offenders to attend); they prepare both the victim and young offender for the conference so that they know what to expect; they ensure the young person is engaged in the plan after the conference; and they update the victim on the offender's progress;
- **Sentencers have the power to amend, reject or ratify the plans** agreed in conferences and consequently have a high level of confidence in the process;
- **Substantial training for conference coordinators:** to practice they must complete an intensive accredited nine day course. Once accredited and practising as a conference coordinator the individual must complete a diploma in restorative practice either at undergraduate or post-graduate level depending on their level of higher education;
- **Participatory** nature of conferences: compared with traditional judicial models. And, importantly, youth conferences are not adversarial unlike our existing youth court model; and
- **Unbiased:** unlike some forms of RJ, the process is not overly biased towards the needs of the victim – it is balanced between the victim, the offender and the community.

4.4.3 The Youth Rehabilitation Order (YRO)

The YRO was heralded by the previous Government 'as a far-reaching departure that would allow courts to tailor sentencing to the individual circumstances of young defendants.'²⁹ This claim has not yet been borne out in practice. First, as many of the YRO requirements were previously available as stand-alone orders or as conditions of supervision, the new order is not quite the radical reform first claimed.³⁰ Second, the innovative elements included in the menu of requirements, such as intensive fostering, are more often than not absent because there are not the resources available to support them in the community. The YRO is, as

28 Campbell C, *Evaluation of the Northern Ireland Youth Conference Service*, Belfast: Statistics and Research Branch of the Northern Ireland Office, 2006

29 Nacro, 2010, as cited in Bateman T, 'Punishing Poverty: The 'Scaled Approach' and Youth Justice Practice', *The Howard Journal*, Vol 50 No 2, 2011, p171

30 Ibid

one magistrate put it to us, 'the same thing under a different name'.³¹ Third, professionals reported that having to impose a new YRO each time a new offence is committed as opposed to amending the current YRO is adding unnecessary paperwork to the already heavy bureaucratic burden on YOTs.

What is the Youth Rehabilitation Order?

The YRO is the standard community sentence used for the majority of young people who offend (i.e. those for whom a referral order is not available) which came into effect on 30 November 2009. It comprises a menu of requirements and interventions that can be chosen so as to tailor the sentence to the needs of the young person subject to it. A YRO can be given on multiple occasions, but a young person can only be subject to one YRO at a time. If a new offence has been committed the old order has to be revoked and the young person sentenced to new YRO with additional requirement. A YRO can last for up to three years.

The menu of YRO possible requirements comprises:

- | | |
|---------------------------------|--|
| ■ Activity | ■ Supervision |
| ■ Curfew | ■ Electronic Monitoring |
| ■ Exclusion | ■ Prohibited Activity Drug Treatment |
| ■ Local Authority Residence | ■ Residence |
| ■ Education | ■ Programme Requirement |
| ■ Mental Health Treatment | ■ Attendance Centre Requirement |
| ■ Unpaid Work (16/17 years) | ■ Intensive Supervision and Surveillance (based on the current ISSP) |
| ■ Drug Testing | ■ Intensive Fostering |
| ■ Intoxicating Substance Misuse | |

There is some indication, however, that the YRO could help keep young people out of custody by flattening the sentencing tariff: that is, providing one sentence that can be imposed on multiple occasions in proportion to the offender's circumstances as opposed to, under the previous system, a ladder of sentences further escalated after each offence, no matter how serious.³²

'The particular issue at the moment is that there are lots of options on the menu, but many are not available. For example, you can't offer an intensive fostering condition to a Youth Rehabilitation Order, because of lack of funding, and you cannot make an education requirement if you do not have prior permission of the local authority, to make the education element available. This delays matters and is absolute, total nonsense.'

Ken Melsom, youth court magistrate (former Vice Chairman of the Magistrates' Association Youth Courts Committee), in evidence to the CSJ

31 Verbal evidence submitted to the CSJ

32 Graham J, 'Responding to youth crime', in Smith D (ed), 2011, op. cit., p120

4.4.4 The Scaled Approach

What is the Scaled Approach?

The Scaled Approach is a new model of working in which the intensity of YOT supervision in the community is correlated to the young person's assessed risk of reoffending and risk of serious harm to others. In so doing, the approach aims to ensure that the greatest resources are focussed on those considered most likely to reoffend and most dangerous.

The level of intervention – standard, enhanced or intensive – is determined by the young person's Asset assessment score. The final judgement informs the YOT's proposal to the court (the pre-sentence report) or the referral order panel regarding the length and intensity of the sentence. The approach only applies to the referral order, youth rehabilitation order and the community element of Detention and Training Orders.

Closely linked to the YRO is 'the scaled approach' implemented in November 2009. Though many practitioners and commentators have welcomed the general principle of the approach – focussing resources and support on the most needy and serious cases – the model has also been the subject of a great deal of criticism.³³ As a result the YJB reviewed the framework and in Spring 2011 proposed a number of modifications, including enhancing the scope for professional judgment and discretion.³⁴ It is unclear when and how these modifications will be promulgated, and thus the concerns outlined below remain.

4.4.4.1 *It is inappropriate*

A purely risk based approach is an inappropriate and insufficient response to youth offending. Childhood and adolescence is a period of profound neural and social development, during which the 'likelihood of impulsivity, sensation-seeking and risk-taking behaviours is raised'.³⁵ Young people are much less able than adults to make what might be termed sensible judgments. Capacity to reason is also limited until at least late adolescence or early adulthood. This means that children and adolescents are less likely to understand the processes of the system and their possible consequences.³⁶

4.4.4.2 *It is unjust*

The Scaled Approach is in tension with sentencing principles and international rights legislation that the sentence should be proportionate to the seriousness of the crime.³⁷ Seriousness is the 'starting point' in sentencing guidelines with the decision of the court being informed by a PSR recommendation regarding the level of compulsory intervention. Yet PSRs are informed by Asset (the risk assessment tool employed in the youth justice system) which focusses on the risk of reoffending. In practice, therefore, the approach encourages penalisation of young people for what they might do as opposed to the seriousness of the offence at hand. The

33 See for example, Bateman T, 2011, op. cit.

34 Youth Justice Board, *Assessment and planning interventions: review and redesign project*, unpublished

35 Farmer E, 'The age of criminal responsibility: developmental science and human rights perspectives', *Journal of Children's Services*, Vol 6, No 2, 2011, pp86-95

36 Ibid, pp87-88

37 The United Nations Convention on the Right of the Child and The Beijing Rules; and Standing Committee on Youth Justice, *Responses to Sentencing Advisory Panel Consultation Paper on Principles of Sentencing for Youths*, 2009, pp7-8 [accessed via: <http://www.scyj.org.uk/pubs> (14/05/10)]

potential for inequitable outcomes is clear, particularly with respect to children who have committed the same offence but judged to be at differing risk of reoffending.³⁸

This implicitly discriminates against the most disadvantaged young people. Those judged to be at the highest risk of offending, and consequently made subject to the most intensive community sentences with the greatest potential for breach (i.e. the highest number of supervision sessions), are generally those with the most chaotic and troubled lives, and the least family support to help them comply.³⁹ The table below illustrates the potential for disparity: a young person on a standard YRO can breach 30 per cent of their appointments before triggering breach action, whereas a young person on an intensive YRO can attend more than 90 per cent and still be breached.⁴⁰ While the YJB is proposing to reduce the minimum contact requirement for those in the intensive banding to 30, it seems likely that the potential for discrimination will remain.⁴¹

Table 4.1: Proportion of required contacts that can be missed without breach being triggered⁴²

Asset level of risk	Contacts required in first three months	Proportion of appointments that can be missed before breach
Low	6	33%
Medium	12	17%
High	36	6%

Sources: Youth Justice Board, *Youth Justice: the Scaled Approach: A framework for assessment and interventions*, Youth Justice Board, 2010; Youth Justice Board, *National Standards for Youth Justice Services*, Youth Justice Board, 2010

4.4.4.3 Is Asset an asset?

Doubts about the mechanistic application of the Scaled Approach are closely related to the use of Asset as the key determinant of the intervention level. Asset is a valid indicator of likelihood of reoffending but is nonetheless only an indicator with an estimated one in three cases proving to be 'false positives' (do not reoffend when predicted to do so) or 'false negatives' (reoffend when not predicted to).⁴³ That is, use of Asset risks both unnecessarily stigmatising young people and missing opportunities for early intervention. The predictive capacity of Asset is not as great as is often assumed. The tool predicts future risk of offending for individual children on the basis of aggregated data drawn from diverse groups of young people (broad age ranges, different genders and ethnic backgrounds).⁴⁴ It is for this reason that Asset is currently under review.⁴⁵ Thus, though the model was intended to facilitate a more tailored approach to young peoples' needs, it has arguably further de-personalised responses to offending by grouping young people into general categories of risk.

38 Bateman T, 2011, op. cit., pp173-178

39 House of Commons Justice Committee, *Draft Sentencing Guideline: overarching principles – sentencing youths: Tenth Report of Session 2008-09*, Norwich: The Stationery Office Limited, 2009, p7

40 Bateman T, 2011, op. cit., p180

41 Youth Justice Board, unpublished, op. cit

42 Bateman T, 2011, op. cit.

43 Standing Committee on Youth Justice, , 2009, op. cit., pp7-8

44 Case S and Haines K, *Understanding Youth Offending: Risk factor research, policy and research*, Devon: Willan Publishing, 2009, p275-322

45 Youth Justice Board, in evidence to the CSJ

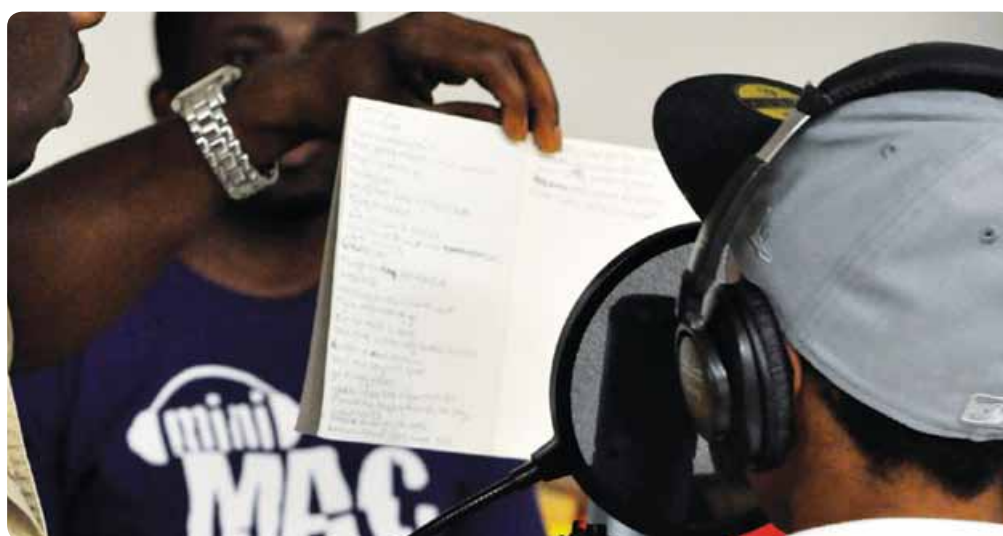
4.4.4.4 Undermining professional judgement and relationships

Practitioners told the CSJ that the model's heavy reliance on Asset to indicate the appropriate level of intervention has stifled practitioner thinking. It has encouraged a passive mindset in which practitioners are required to follow processes and guidelines, instead of using their judgement and building relationships with young people and their families.

'It's the nature of the relationship between the worker and the family that matters: good workers will see that family very frequently if they are able to, regardless of whether the national standards say I must 'tick' three times a week, four times a week because it's the scaled approach. The focus on the arbitrary scale on an asset takes away from the workers understanding that this about a young person and their family – that's the important piece of work, not the ticks and risk factors that indicate this number of times you've got to see the person...that's what we've got to get back.'

London YOT worker, in evidence to the CSJ

Supporters of Asset argue that the tool is intended to complement professional judgement, not replace it.⁴⁶ They maintain that current moves to increase YOT practitioners' discretion reflects this. However, guidance that variation from the levels of intervention prescribed by the Asset and the Scaled Approach should 'be signed off' by the manager calls into question the commitment to enhancing practitioner judgement.



Recent event MAC-UK held at Tate Britain, where young people ran music production sessions for guests

⁴⁶ Kerry B, 2005, as cited in Case S and Haines K, 2009, op. cit; Ibid, p271

4.4.5 Alternatives to custody

4.4.5.1 Intensive Supervision and Surveillance

What is Intensive Supervision and Surveillance (ISS)?

ISS consists of intensive supervision, which contains five core elements to address the underlying causes of offending – education, training and employment, family support, RJ, offending behaviour work, interpersonal skills, and surveillance – usually through means of electronic monitoring and curfew.

ISS can be imposed as a condition of bail where the young person is at risk of remand into custody; as a requirement attached to a YRO (only if the offence is punishable with imprisonment; the offence is so serious that but for ISS a custodial sentence would be appropriate; or the young person is a persistent offender); and a condition of a Notice of Supervision on release from custody.

ISS usually runs for six months although a 12 month option is also available.

ISS, formerly termed ISSP, is the principal alternative to custody for young people, the frequency or seriousness of whose offending places them on the cusp of custody. The programme has been systematically evaluated and shown to improve some of the factors (family and personal relationships, attitudes to offending and motivation to change) associated with offending. In addition, analysis of reconviction data before and after commencement of ISS found that both frequency and seriousness of recorded offending decreased significantly after ISS (by 39 per cent and 13 per cent after two years respectively).⁴⁷

However, frequency and seriousness reduced by similar levels in comparison groups (those eligible for ISS but subject to other interventions such as a DTO). The benefits gained in ISS were also found to decrease over time. In addition, analysis indicates that while ISS operates as a diversion from custody, it has, to some extent, replaced less intensive community sentences. This is commonly known as 'net widening' (offenders are subjected to increased levels of intervention which they might not have previously received.)⁴⁸

The study also found that ISS staff were concerned that the quality of ISS (and thus its ability to meet the needs of young people) was often 'critically undermined by a lack of access to key resources'; there were difficulties providing a comprehensive ISS package in more than 25 per cent of cases. External resources were often particularly sparse in relation to mental health, substance misuse and accommodation. Consequently staff felt that external services needed to be 'more forthcoming in their support of young people on ISS'.⁴⁹ These concerns were echoed by those who gave evidence to this review. Practitioners reported finding it difficult to access adequate educational provision and it is clear that the quality of ISS

⁴⁷ Youth Justice Board, 2004, op. cit., p33

⁴⁸ Gray E et al – Probation Studies Unit, Centre for Criminology, University of Oxford, *Intensive Supervision and Surveillance Programme: The final report*, London: Youth Justice Board, 2005, p40

⁴⁹ Ibid, pp29-104

programmes varies significantly across the country.⁵⁰ Nonetheless some ISS schemes include particularly innovative elements, such as the intensive dance programme run by the charity, Dance United.

Case study: Dance United

Dance United runs intensive dance-led interventions for young people aged 13-19 at risk of or involved with offending and/or who have disengaged from education and learning. Its flagship Academy programme was set up in Bradford, West Yorkshire in 2006. Further Academies have since been established in Wessex and London.

The Academy comprises 12 weeks of high-quality professional contemporary dance training and two public performances, which aim to increase participants' confidence, commitment, motivation, communication, coping skills, self-discipline and sense of achievement. During the programme, young people work towards an OCN qualification. They attend the programme for six hours a day, five days a week. Staff work with young people to address underlying needs that are linked to negative behaviour. In addition, each young person is matched with a mentor who provides relational support and practical help to apply for employment, training and education.

The Academy begins with a three-week intensive performance project, which culminates in a professionally staged theatre production. Following the performance, the young people use their new-found skills to help deliver dance workshops to primary school children. In the final part of the programme, young people continue developing their dance techniques and new choreography whilst also attending workshops from employers, training providers, colleges and dance academies. The charity has links with a range of employers and training providers to help young people move onto positive opportunities following the programme. This culminates in a final performance, the 'Graduation', to an invited audience of family and friends where the young people showcase all they have achieved.

Less than 33 per cent of young offenders who have had significant engagement with the programme (from 2006 to 2009) have subsequently re-offended. This compares to overall recidivism rates of 70 per cent for those on a community sentence and 50 per cent for less serious offenders. 80 per cent of those who graduate from the programme have returned to education, training and employment. These 'hard' outcomes are underpinned by measurable increases in participants' capacity to learn and the development of a range of key life skills.

4.4.5.2 Intensive Fostering

Intensive Fostering (IF) is the other principal alternative to custody. In practice, however, it is rarely available due to limited funding. The three IF pilots were evaluated in 2006/7. Young people in IF were found to have lower rates of reconviction and to have achieved better outcomes than those in comparison groups (to IF or ISS) in the year after sentence or release from custody: 48 per cent of the IF group were reconvicted (including breach) compared with 79 per cent of those in the comparison group. Those in the latter were also convicted for five times as many offences and for more serious offences than the IF group. In addition, 70 per cent of those in IF were engaged in education or training compared to 30 per cent of members of the comparison group living in the community.⁵¹

⁵⁰ Ibid, pp10-13

⁵¹ The study comprised interviews with IF staff, young people, carers and birth parents, as well as outcome data on the IF group (23 young people) and comparison groups (24 young people, of whom 20 were on DTOs and four were on ISS); Youth Justice Board, 2010, op. cit



Young people at the London Dance United Academy in rehearsal (courtesy of Pari Naderi)

Interviews conducted with families indicated that family therapy had been difficult to realise during the placement: parents had either been unwilling to receive therapy, resulting in the withdrawal of the therapist, or parents had engaged, but appeared to be disappointed with its quality. Concerns about lack of family support were most pronounced after the IF placement had concluded. Some families reported they had not received adequate aftercare support from the IF team, which should have been provided for three months following completion of the foster care placement. Families also reported that they received too little support from the YOT team after the aftercare period had ended.

What is Intensive Fostering?

IF is intended for young people at risk of custody whose offending is, in large part, due to dysfunctional parenting and lifestyle. It is available as an alternative to both custodial remand and sentence. The estimated cost of IF is £68,736 for a nine month placement, which is higher than the cost of £53,980 for a YOI of the same period.

In the programme young people are temporarily removed from their parents (for six to nine months) and placed with specially trained foster carers who provide a structured and nurturing environment to promote positive behaviour. A central element of the scheme is the points and levels system used by carers to reward and incentivise appropriate behaviour. Birth parents also receive skills training and therapy separately so that they may learn how to provide positive and consistent discipline and reduce family conflict on their child's return to the family home.

The programme was developed in the US, where it is known as Multi-dimensional Treatment Foster care (MTFC).

Progress made by the IF group was not sustained following conclusion of the placement. In the year after programme completion the reconviction rates for IF and control groups were almost identical (74 and 75 per cent respectively). This indicates that the provision of long term support following placements – whether in the community or custody – is fundamental

to maintaining progress. Since the pilot evaluation was conducted, aftercare provision has reportedly been improved.⁵²

4.5 Breach – are children being set up to fail?

What is breach?

Breach proceedings are initiated in response to a young person's non-compliance with some or all conditions of their order. For example, they may have failed to attend or have been late to appointments, not observed a curfew, or stayed at a different address during supervision from that listed.

The National Standards which guide YOT practice recommend that two warnings be given for unacceptable violations of an order before breach action is commenced in the courts. Formal breach can be initiated for first or second violations if they are particularly serious. YOT Managers are able to stop a breach case going to court, known as 'staying' a breach, in exceptional cases.

If the breach is formally proved at court, sentencers may formally breach the young person but allow them to continue their order; or they may revoke it and issue a new order (either community or custody). They may also issue another sentence for the breach offence additionally.⁵³

In England and Wales approximately one in ten youth custodial places are taken up by children whose primary offence is breach of their antisocial behaviour or criminal justice order.⁵⁴ Indeed there are more children in custody for breach than for domestic burglary.⁵⁵ In many cases, the child's original offence did not warrant a custodial sentence.

We do not deny the necessity of custody in response to persistent, willful non-compliance in cases where all other options have been exhausted. Yet given the failings of custody (the 72 per cent reconviction rate)⁵⁶ and the considerable cost (between £69,600 and £193,600 per place per annum)⁵⁷ it is legitimate to question whether breach, and particularly the ensuing use of custody, is currently used appropriately. The evidence we have received indicates that it is not.

Many children who breach their sentence conditions and end up in custody as a result, do not willfully do so. It is often, instead, a result of their chaotic lives and lack of family.⁵⁸ Anecdotal evidence suggests that children in care are particularly at risk of breach (though we could find no data to confirm this). Furthermore, the lives of some young people 'are so bleak that they have no reason to comply': they neither have hopes for the future nor any family to worry about letting down.⁵⁹ Custody does not concern them; it is a norm in their lives.

⁵² Ibid

⁵³ Youth Justice Board, 2010, op. cit., pp8-62

⁵⁴ Ministry of Justice, 2011, op. cit., p4

⁵⁵ Ibid, p28

⁵⁶ Ministry of Justice, *Reoffending of juveniles: results from the 2009 cohort, England and Wales*, 2011, p26 [accessed via: <http://www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/juvenile-reoffending-statistics-09.pdf> (08/08/11)]

⁵⁷ Figures calculated from the Youth Justice Board's Annual Report and Accounts for 2008/09 and its 2008/09 Corporate Business Plan as cited in The Independent Commission on Youth Crime and Antisocial Behaviour, *Time for a fresh start: The report of the Independent Commission on Youth Crime and Antisocial Behaviour*, London: The Police Foundation, 2010, p76

⁵⁸ See for example, Hart D, *Into the Breach the enforcement of statutory orders in the youth justice system*, London: Prison Reform Trust, 2011

⁵⁹ Ibid, p52

It is clear that central guidance and the practices of some YOTs sentencers increased the likelihood of unnecessary breach and ensuing use of custody. Several of our witnesses reported that the previous Government's emphasis on enforcement and consistent practice, embodied in the 'three strikes and you're out' approach to non-compliance, was counterproductive for young people who genuinely struggled to comply. When adhered to rigidly, with limited scope for (and thus little exercised) practitioner discretion, the standards failed and penalised the most disadvantaged young offenders.⁶⁰ The very problems that the community sentence was originally put in place to address were neglected; enforcement and breach operated as a fast track into custody instead of the alternative to it.

A minority of YOTs have innovatively worked round the minimal scope for professional discretion represented by the national standards. For example, a number have introduced breach panels chaired by the YOT manager, which has the ability to 'stay' a breach if it is triggered. More often than not, however, practitioner decisions are driven by concerns that they will be deemed culpable if something happens and they have not taken breach action. Compliance becomes misguidedly viewed as an end in itself rather than a means to an end. The case study that follows, related to the CSJ by Dr Di Hart, illustrates the reality of this culture.

Case study: 14 year-old boy

He had really started to make progress in custody – he was modelling himself on the 'good' boys rather than the 'bad'. He had started to believe in himself. His mum had moved in with a new boyfriend and so he had to sleep on the settee, yet his YOT worker said she would have to breach him if he stayed there as it wasn't the address she had recorded for him. She wouldn't engage with the reality of his life. When he was released from custody, she said he would have to visit the YOT immediately. He wanted to see his little brother before he went there, yet his worker said that if he did she would have to breach him. On release, the YOT worker gave him a list of his appointments. He lost it but he thought he could remember. He turned up on the wrong day and she breached him. He went straight back into custody. She will have followed every procedure and hit every national standard, but she hadn't got the point of what it is was she was meant to be doing, which was getting alongside him, and focussing on his optimism and his strengths and helping him to stop offending.

A second consequence of the focus on enforcement has been the neglect, in many areas, of the centrality of providing for young people to achieve compliance. Practical and emotional support is plainly necessary for those young people living chaotic lives without their own support structures. Having a YOT worker who believes in and cares for them engenders commitment and motivation to comply, as well as self-belief that they can. Many young people described their YOT workers as doing the minimum necessary (sending them no more than a list of appointments, for example) and 'catching them out' rather than providing support. Elsewhere, however, YOT workers facilitated compliance by arranging transport, texting reminders for appointments and rewarding compliance.

⁶⁰ National Standards for Youth Justice Services issued in 2000 and 2004 gave YOT practitioners the scope to exercise their discretion in response to non-compliance: instances of non-compliance (e.g. failure to attend an appointment) could be excused provided that the young person had an acceptable reason

'You can breach as much as you like but with most of these young people it won't make an ounce of difference because their lives are so disordered. You want to know what does? Engaging them, letting them know you care – that might mean taking them for something to eat because it might be the only thing they eat that day – and doing everything in your power to support them, even if that means going out to find them.'

YOT officer, in evidence to the CSJ

Sentences may also increase the likelihood of young people being unduly breached and consequently sent to custody. A recent study of breach practice reported that YOT managers claimed they 'were rarely challenged in court either about the work that they had done to support the child's compliance or the recommendations.'⁶¹ The same study reported that many of the orders imposed were lengthy and intense, which overwhelmed young people to such an extent that they would give up. In other words, there was a sense that young people were inadvertently being set up to fail. Further, though most sentencers are reluctant to use custody for breach cases, some are not using it as a last resort.⁶² One magistrate who gave evidence reported that 'some youth sentencers go into "adult punitive autopilot" in response to breach and forget they're sentencing young people'. The provision of more youth specific training would help address this.

'One of the things that I have been struck by whilst doing a project on breach is that children are held to account by means of breach. But how are YOT workers held to account for the efforts that they have made?'

Dr Di Hart, Principal Officer, Youth Justice and Welfare, National Children's Bureau, in evidence to the CSJ

4.6 Recommendations

Conditional discharge

- We welcome the Government's intention to make the conditional discharge available for first-time guilty pleas in court. However, we suggest the removal of the caveat that conditional discharges be available only for offenders who have not received two or more youth cautions in the previous two years.

⁶¹ Hart D, op. cit., p27

⁶² Ibid, p27-29

- In the *immediate term* we recommend that use of the conditional discharge be widened so that it may be imposed throughout the sentencing framework as opposed to exceptional circumstances only. We suggest that the maximum length of conditional discharges should be limited to one year, instead of the current three years. Such changes would increase the flexibility of the sentencing tariff and help prevent young people being needlessly escalated up the sentencing ladder.

Referral order

We endorse the Government's proposals to 'make the referral order a more restorative disposal by increasing the training that is given YOP panel members'. However, we think more needs to be done to make the order into a robust, restorative disposal. We would like to see a restorative conferencing model, akin to that of Northern Ireland, in place.

- In the *immediate term* we recommend that the following changes be made to the referral order:
 - Given the potential benefits, for victims and young people, of victim involvement we would like to see a higher proportion of victims involved in referral order programmes with greater support provided to them throughout the process. We suggest that the voluntary sector is particularly well placed to assist with the task of engaging victim involvement;
 - The current target to convene referral order panels within 20 days of sentence prevents many victims being involved. We suggest that greater flexibility be adopted to solicit increased victim-engagement;
 - We recommend that the referral order be renamed the 'restorative order' so as to reflect that objective; and
 - We recommend that contracts drawn up by panels are referred to the youth court for approval. Sentencers should be able to amend, reject or ratify the contract, as is practised in Northern Ireland. This would increase sentencer confidence in the order, which, to date, remains limited.
- In the *medium term* we recommend that the order be altered further so as to resemble the restorative youth conference model in Northern Ireland.

We recommend that a role similar to the conference coordinators in Northern Ireland be established and that referral order panels be phased out. Coordinators would focus on building relationships with victims, families and young defendants and supporting them through the process. Coordinators could be drawn from existing panel members, YOT officers or voluntary sector professionals. They would require a high standard of training in restorative justice techniques, such as that completed by coordinators in Northern Ireland.

- Thereafter the order should be available as a YRO requirement as soon as is feasible.

The Scaled Approach

- We are firmly in favour of much increased practitioner discretion with respect to determining the intensity of community intervention. Sentencing should always be proportionate to the seriousness of the offence committed.

Youth Rehabilitation Order

- We consider the existence of stable and supportive relationships between the young person and practitioner to be fundamental to preventing reoffending. We recommend in the *immediate term* that every YRO comprises a comprehensive programme focussing on monitoring and compliance, as well as supporting and building relationships with the young person and their family. We think the voluntary sector best placed to assist with the support task.
- Whether the support is provided by the statutory or voluntary sector, there must be robust monitoring and accountability structures in place to ensure that support networks are of a high standard.
- In the *immediate term* legislation should be amended to allow additional requirements to be added to a YRO in response to a new offence. At present, if a young person on a YRO has committed a new offence, the YRO has to be revoked and the young person sentenced to a new YRO with additional requirements.

Breach

Immediate term

- The CSJ advocates the following good practice in relation to breach: practical support mechanisms to enable compliance (i.e. reminders of appointments via text), and carrots (opportunities to engage in positive activities) as well as sticks (i.e. breach proceedings).
- Given that inflexible national guidelines have contributed to the increased rates of breach, we propose that the revised national standards give practitioners the discretion to judge what comprises an acceptable number of missed appointments. Practitioners should take into account any welfare considerations underlying non-compliance, the distance travelled by the young person up to the point of non-compliance and the overall likelihood of the young person completing the order.
- At breach hearings we recommend that YOTs be required to explain in court what they have done to facilitate compliance with the order.
- We recommend that at the point of sentencing YOTs should be required to specify what support they will give the young person to comply with the sentence.
- We recommend that obligatory joint youth specialist training for defence practitioners and sentencers (see recommendations in Chapter Three) include a module on appropriate responses to breach cases.
- We recommend that a more flexible conditional discharge (see earlier recommendation) be available for responding to breaches of orders: it could be imposed so as to provide young people with an opportunity to demonstrate compliance.

Participation

Evidence indicates that participation – giving young people a voice and influence in the youth justice system – can increase the likelihood of successful rehabilitation. Participation helps young people to understand the processes and procedures they are involved in and encourages them to play a part in planning the interventions they are subject to. In so doing, participation can increase engagement and compliance with orders, and develop young people's self-belief and motivation to change.⁶³

- We recommend that young people subject to community sentences and their families be given the opportunity to share their views of the YOT and to make suggestions as to how it might be improved. This can be achieved by a number of means, such as youth forums, involving young people in decision making (such as recruitment of staff) and 'meet the manager' meetings.⁶⁴

⁶³ National Youth Agency, *Voice and Influence in the Youth Justice System*, Leicester: National Youth Agency; Local Government Association, 2010, p18; and Nacro Cymru Youth Offending Unit, *Youth Justice and Participation in Wales*, Nacro Cymru Youth Offending Unit, p6

⁶⁴ Ibid pp9-10; and Ibid pp22-24

chapter five

Custody

Of the children and young people in custody:

- Around half are imprisoned for non-violent crimes;¹
- Approximately a fifth are imprisoned for breach;²
- The average length of time spent in custody on a DTO, the most common sentence, is 109 days; nearly four months;³
- 80 per cent have experienced five or more factors of disadvantage;⁴
- One in three girls and one in 20 boys in YOLs report having been sexually abused;⁵
- 90 per cent of boys and 75 per cent of girls in YOLs have been excluded from school at some stage;
- 42 per cent of boys and 55 per cent of girls were aged 14 or younger when they last attended school;⁶
- Nearly half have literacy and numeracy levels below those of the average 11 year-old, and over a quarter equivalent to those of the average seven year-old or younger;⁷
- Before coming into custody, 16 per cent were getting drunk every day;
- Almost one in ten were regular crack users;⁸
- 27 per cent of young men and 55 per cent of young women said they had spent some time in local authority care;⁹
- 76 per cent have an absent father and 33 per cent an absent mother;¹⁰
- 39 per cent have been on the child protection register or experienced neglect or abuse at some stage;¹¹
- 28 per cent have witnessed domestic violence;¹²
- 51 per cent are living in a deprived household (i.e. dependent on benefits) and/or unsuitable accommodation (i.e. overcrowded, lacks basic amenities); and¹³
- 18 per cent have a father or step-father involved in criminality.¹⁴

1 Ministry of Justice, *Offender Management Caseload Statistics 2010*, London: Ministry of Justice, 2011

2 Ministry of Justice, *Youth Justice Statistics 2009/10 – England and Wales*, 2011, p28 [accessed via: <http://www.justice.gov.uk/publications/docs/yjb-annual-workload-data-0910.pdf> (09/06/11)]

3 Ibid, p31

4 Jacobson J et al, *Punishing disadvantage: a profile of children in custody*, London: Prison Reform Trust, 2010, p72, based on analysis of a sample of 200 randomly selected sentenced children in custody in the last 6 months of 2008

5 Arnall E et al, *Housing Needs and Experiences*, London: Youth Justice Board, as cited in Legal Action, February 2008

6 Summerfield A, *Children and Young People in Custody 2010-2011: An analysis of the experiences of 15-18-year-olds in prison*, Norwich: The Stationery Office, 2011, p9

7 ECOTEC, *An Audit of Education Provision within the Juvenile Secure Estate: A Report to the Youth Justice Board*, London: Youth Justice Board, 2001, p9

8 Galahad SMS, *Substance misuse services in the secure estate – summary*, London: Youth Justice Board, 2009, p8

9 This data refers to a survey of 15-18 year-olds. Summerfield A, 2011 op. cit. p9

10 Jacobson J et al, 2010, op. cit., p51

11 Ibid

12 Ibid

13 Ibid

14 Ibid

5.1 Young people in custody

Most of the children and young people in custody in England and Wales are not violent offenders. Three-fifths of all children sentenced to custody in the latter half of 2008 were convicted of offences that usually result in non-custodial sentences.¹⁵ Further analysis of a smaller sample of children in custody during the same period found that only one-fifth were assessed as posing a 'high' or 'very high' risk of causing serious harm to others.

'To a large extent there are young people in custody that shouldn't be in there, they are in there for volume crimes, breach, breaching ASBO. If there were the necessary resources in the community then these young people would never have to be sent to custody.'

YOT manager, in evidence to the CSJ

At least 70 per cent of children in custody were assessed as repeat offenders – that is, 'it is the persistence of their offending, rather than the seriousness of the specific offences for which they were sentenced, which would seem to explain the use of custody in many or most instances'.¹⁶ Their offending is typically driven by a combination of disadvantage: abuse, neglect, domestic violence, educational exclusion and fragmented families. This is not an excuse for their behaviour; but it does help to explain it. Their incarceration is too often a reflection of the inadequacy of services in the community, which have failed to address the root causes of their behaviour. Custody becomes much more likely as a result.

5.2 Which children should be in custody?

There are broadly two categories of children and young people in custody: a minority of dangerous offenders, from whom the public, undeniably, requires protection; and a majority of less serious or non-violent repeat offenders, for whom the use of custody is questionable.

The CSJ is not complacent about the considerable harm that the repeat offending of some children and young people inflict on the communities around them. There are nonetheless doubts that a custodial sentence, following which over seven out of ten young people reoffend, comprises the most effective sentencing option. A key consideration about custody is whether it assists in building a society in which there are fewer victims. Effectiveness, however, is by no means the only consideration. Justice for victims and punishment remain key rationales and are accordingly explored below.

The CSJ believes that youth custody should be reserved only for the 'critical few': the most serious or violent young offenders and those who are so prolific that custody is the place that

¹⁵ Ibid, p20

¹⁶ Ibid, pp28-30

can best safeguard potential victims and meet these young people's needs. Custody should not be used as a 'backstop' for the non-violent and repeat offending children who do not need to be there.

5.3 The rationale for custody

5.3.1 Incapacitation

Many people have argued that prison reduces crime because it takes criminals out of circulation. This is said to be shown by the fact that crime has fallen 'in tandem' with the increase in the prison population in England and Wales.¹⁷ Custody is also 'represented as a sure-fire way of protecting the public from dangerous criminals'.¹⁸ Both these arguments are flawed. First, the reduction in crime, to which many refer, has been experienced by most developed countries with both high and low custody rates around the world since the mid 1990s. The declining crime levels in England and Wales are part of a broader global crime trend.¹⁹ Second, incarcerating larger numbers of criminals is ultimately ineffective: the majority reoffend on release. It follows that custodial sentences only protect the public from criminality and risk only while a minority of offenders are detained, not thereafter.

Most active offenders are not in custody and offenders typically commit a large number of offences before they are caught. Society would have to make very high use of incarceration indeed to effect even a marginal reduction in the incidence of crime: the Home Office has calculated that a one per cent increase in imprisonment would reduce crime by approximately 0.15 per cent.²⁰ The costs of such levels of incarceration are acknowledged to be prohibitive. The length of sentences would also need to be increased by enormous and financially impracticable proportions to produce substantial reductions in convictions.²¹ Smith contends that even these estimates probably overstate the reductions in crime brought about by incapacitation, 'because crimes that prisoners would have committed had they been at large are not always prevented by locking them up. Someone else may step in to commit the crime instead' (e.g. other people stepping in to handle the distribution of drugs).²²

5.3.2 Deterrence

Custody might plausibly act as a deterrent to offending in one of two ways: general deterrence, whereby the presence and use of custody may discourage potential offenders from committing crimes, and individual deterrence, whereby the experience of custody may deter convicted offenders from reoffending for fear of further incarceration.

17 The Daily Mail, *Mr Clarke and the Lib Dems are wrong. Prison DOES work – and I helped prove it*, 30 June 2010 [accessed via: <http://www.dailymail.co.uk/debate/article-1290758/Mr-Clarke-Lib-Dems-wrong-Prison-DOES-work--I-helped-prove-it.html#ixzzISju4KQzn> (21/07/11)]

18 Smith D, 'The need for a fresh start', in Smith D (ed) *A New Response to Youth Crime*, Devon: Willan Publishing, 2010, p9

19 Ibid, pp2-8

20 Spelman, 1994, as cited in Smith D, 2010, op. cit., p9

21 Brody and Tarling, 1989, as cited in Smith D, 2010, op. cit., p9

22 Smith D, 2010, op. cit., pp9-10

5.3.2.1 *Is it severity or certainty that deters?*

The existence of a functioning criminal justice system, including the penalties meted out under its auspices, is part of the socialisation process: citizens learn what is meant by right and wrong, law abiding and law breaking behaviour. Yet, the deterrent impact of particular sentences is a much more uncertain business. The evidence is inconclusive because most empirical studies of deterrence can neither reliably distinguish between the effect of severity and certainty of sanctions, nor between deterrence and incapacitation.²³ Major reviews of the issue have concluded that although there is some evidence of the deterrent effect of sanction severity, there is considerably stronger evidence of the link between the certainty of detection, sanction and crime rates. One review argued strongly that it is time to accept the null hypothesis that sentence severity has no influence on the crime rate.²⁴ This is important given the frequently expressed tabloid press view that increases in the severity of sanctions, particularly custodial sentences, amplifies their general deterrent effect.



A London Dance United Academy performance (courtesy of Pari Naderi)

In terms of individual deterrence effects, the evidence strongly indicates that custody generally increases offending, that it is criminogenic in effect. Custody 'can be seen as a learning environment in which people absorb a criminal culture, including the attitudes, ways, means and social contacts needed to offend successfully in the future'.²⁵ In addition, custody labels people as 'bad and deviant'. This is likely to be particularly harmful for young offenders, who are typically vulnerable and at a 'critical turning point' in the formation of their identities.²⁶ In a major review of the evidence from the small number of good quality studies on the effects of imprisonment, Nagin et al concluded that 'experimental studies point more toward a criminogenic rather than preventive effect of custodial sanctions'.²⁷

23 Ibid, pp7-12

24 Von Hirsch et al, as cited in Ashworth A, 'Sentencing', in M. Maguire, R. Morgan and R. Reiner (eds), *The Oxford Handbook of Criminology*, 4th edition, Oxford: Oxford University Press, 2007, p994; and Doob and Webster, 2003, as cited in Smith D, 2010, op. cit., pp10-12

25 Smith D, 2010, op. cit., pp12-13

26 Ibid

27 Nagin D, Cullen F T, and Jonson C L, 'Imprisonment and Reoffending', in M. Tonry (ed) *Crime and Justice: A Review of Research*, vol 28, 2009, p145

Furthermore, the evidence does not support the use of particularly punitive custodial regimes. For example, juvenile boot camps, which use tough military-style discipline to 'correct' young offenders, have been found to have no impact on recidivism compared with control groups.²⁸ Likewise, Scared Straight, a prison tour programme, which aims to deter young people from offending by exposing them to prison life and lectures from rapists and murderers, has been found to increase the likelihood of offending.²⁹

5.3.2.2 *A badge of honour?*

Even assuming that it is the certainty of sanction that has the strongest deterrent impact, it is clear that other important factors have an influence, such as the stigma attached to the sanction, and the perceptions and knowledge of the potential offender. For example, a sanction such as custody, which is intended to 'stigmatise and degrade' the offender loses its deterrent power if it is used so widely that it becomes the norm. This is particularly so in minority ethnic neighbourhoods where custody is commonplace: imprisonment can become a rite of passage.³⁰

5.3.2.3 *Scared to leave*

Some witnesses to this review reported that many children and young people feel safer in custody than they do in the community and are scared to leave custody. Custody can be a place that 'meets all the needs' of the most chaotic and troubled children: it provides them with all that they do not have in the community – accommodation, regular meals and structure. The secure home or YOI is not a deterrent, but a place of asylum. This might suggest that more custodial places are needed. We take the opposite view. The fact that some children feel safer in custody than at home is a sad indictment of some of society's families, parenting and community services, not an invitation to make greater use of custody.

5.3.3 Punishment and public attitudes

Whatever the effects of imprisonment, punishment remains an important aspect of any criminal justice system and a key rationale for custody. The desire to see crime punished is a deep-seated emotion. Public attitudes, however, are far from uniformly punitive. Custody may generally be perceived to be the ultimate punishment because it is the 'most familiar punishment in the public mind'.³¹ But there is little indication that the public particularly wants tough responses to crime; above all people want effective responses.³² For those who want proportionate penalties for wrongdoing that are both more demanding and effective there are alternatives, such as restorative justice (see Chapter Four).³³

28 Wilson and MacKenzie, 2006, cited in Hawkins J, Welsh B and Utting D, 'Preventing youth crime: evidence and opportunities', in D. Smith (ed), 2010, op. cit., p231; the study consisted of a review of the evidence and quantitative outcomes of 17 high-quality evaluations focussed on juvenile participants in boot camps

29 Petrosino et al, 2006, p98, cited in Hawkins J, Welsh B and Utting D, op. cit., pp230-231; the study comprised a review of the evidence and outcomes of Scared Straight, including 9 randomised controlled trials

30 Smith D, 2010, op. cit., p8; and Hagell A, 'The Use of Custody for Children and Young People', in T. Bateman and J. Pitts (eds) *The RHP Companion to Youth Justice*, Dorset: Russell House Publishing, 2005, pp155

31 Roberts J and Hough M, 'Public attitudes to punishment: the context', in J.V. Roberts and M. Hough (eds), *Changing Attitudes to Punishment: Public opinion, crime and justice*, Devon: Willan Publishing, 2002, pp5-6

32 Morgan R, 'Privileging public attitudes to sentencing?' in J.V. Roberts and M. Hough (eds), 2002, op. cit., p221

33 Smith D, 'Key reforms: principles, costs, benefits, politics', in D. Smith (ed), 2010, op. cit., p387

64 per cent of adults in Britain believe that addressing the causes of a young person's offending and/or antisocial behaviour is more effective than punishment alone.

CSJ/YouGov polling, May 2011

5.3.4 Rehabilitation

Nevertheless, custodial establishments do have the potential to change lives. The elements central to an effective custodial regime include:

- An ethos that promotes rehabilitation;
- Good educational and work activities;
- Promotion of healthy peer group interactions;
- Provision of opportunities to develop self-esteem and responsibility;
- Assistance with resisting drugs; and
- Assistance with maintaining and promoting links with families.³⁴

Most youth custodial regimes in England and Wales, however, comprise few of the above features. Any progress made in custody often stops at the prison gate due to inadequate resettlement support: 72 per cent of young prisoners are reconvicted within one year and this figure has remained fairly constant over the past ten years.³⁵ Provision would likely not be so poor were there fewer children and young people in custody and fewer, as a result, to support on release (the obstacles to successful resettlement are explored in the subsequent chapter). Custody is enormously expensive, costing between £69,600 and £193,600 per place per annum.³⁶ For these reasons, even the rehabilitation argument cannot justify custody for anymore than the 'critical few' young people who are either dangerous or so seriously prolific that all attempts to address their behaviour in the community have failed.

34 Ditchfield and Catan, 1992; Losel, 1993; and Hazel et al, 2002, cited in Hagell A, op. cit., p156

35 Ministry of Justice, 2011, op. cit., p26

36 Figures calculated from the Youth Justice Board's Annual Report and Accounts for 2008/09 and its 2008/09 Corporate Business Plan as cited in The Independent Commission on Youth Crime and Antisocial Behaviour, *Time for a fresh start: The report of the Independent Commission on Youth Crime and Antisocial Behaviour*, London: The Police Foundation, 2010, p76

5.4 Custodial sentencing

Sentences available in England and Wales for those aged under 18³⁷

Detention and Training Order (DTO)

The DTO can be for a term of four to 24 months, half of which is served in detention, and half in the community under the supervision of a probation officer, social worker or a member of a YOT. It is available for young offenders who have been convicted of an offence punishable by imprisonment in the case of someone aged 21 or over. This is the most common form of custodial sentence given to young people: in 2009/10 it accounted for 92 per cent of all sentences imposed.³⁸

Section 90/91

Section 90

For convictions of murder the mandatory life sentence applies under the Powers of the Criminal Courts (Sentencing) Act 2000, s.90. The court sets a minimum term (also known as the tariff) to be spent in custody, after which the young person can apply to the Parole Board for release. Once released, the young person is subject to a supervisory licence for an indefinite period.

Section 91

If a young person is convicted of an offence for which an adult could receive at least 14 years in custody, they may be sentenced under the Powers of the Criminal Courts (Sentencing) Act 2000, s.91. The length of the sentence can be anywhere up to the adult maximum for the same offence, which for certain offences may be life. The young person will be released automatically at the halfway point and could be released up to a maximum of 135 days early on a Home Detention Curfew, if they meet the eligibility criteria and pass a risk assessment. Once released, the young person will be subject to a supervisory licence until their sentence expires, if the sentence is 12 months or more; or a Notice of Supervision for a minimum of three months, if their sentence is less than 12 months.

Section 226/228 (created by the Criminal Justice Act 2003)

The below sentences are available for young people deemed dangerous, but whose offences are not so serious that they would qualify for a life sentence under section 90 or 91.

Section 228: extended sentence for certain violent or sexual offences

This sentence is available for young people who have committed certain violent or sexual offences, and who are considered 'dangerous' by the court. The sentence comprises a period in custody followed by an extended licence period. Under the Criminal Justice and Immigration Act 2008, this sentence must result in a minimum of two years in custody (save some exceptions). However, since those subject to such sentences must be released at the halfway point of their custodial term, the notional period is at least four years.

Section 226: detention for public protection

This sentence enables the courts to imprison for an indefinite period those convicted of violent and sexual offences who are deemed dangerous. It can be ordered if the court feels that a section 228 sentence is insufficient for the purposes of protecting the public. The court orders a minimum custodial period, after which release is at the discretion of the Parole Board. Once released the young person can be supervised indefinitely. However, an application may be made after ten years to remove the licence restrictions if the young person's behaviour and progress warrants it.³⁹

³⁷ Courts and Orders, Disposals, adapted from the Ministry of Justice website [accessed via: <http://www.justice.gov.uk/guidance/youth-justice/courts-and-orders/disposals/index.htm> (9/11/11)]

³⁸ Ministry of Justice, *Youth Justice Statistics*, 2011, op. cit., p4

³⁹ Ministry of Justice, *Courts and orders*, [accessed via: <http://www.justice.gov.uk/guidance/youth-justice/courts-and-orders/disposals/index.htm> (28/07/11)]

5.4.1 Short sentences

Short custodial sentences were an issue of significant concern for many of the practitioners with whom we spoke.⁴⁰ Juvenile secure estate (JSE) practitioners reported that short periods gave them too little scope to address the root causes of offending behaviour that had become entrenched over many years. Many YOTs reported that short sentences tend to do more harm than good because the time spent in custody is often unproductive and further disrupts education and family life in the community. Many suggested that rigorous community orders could offer a more effective alternative.

'Four to six month DTOs are very concerning. Being placed in custody even if only for two weeks disrupts their schooling; they are often excluded once they go into custody. More often than not they reoffend when they return.'

YOT manager, in evidence to the CSJ

Concerns about short sentences are also evident in the literature. A number of studies have found that JSE services, such as healthcare, are limited in what they can achieve with those on short sentences because their problems are too complex and entrenched.⁴¹ Ofsted reported that most institutions had a range of short courses to cater to the needs of young people on short sentences. However, in one YOI the curriculum was designed for those with 12 week sentences, which meant that those on short sentences could not gain accreditation.⁴²

'We aren't going to reverse these kids' problems in 90 days. Many children would have needed more like double or treble their sentence to give us a chance of addressing their needs.'

Manager, Secure Children's Home, in evidence to the CSJ

⁴⁰ The matter of short custodial sentences only pertains to the detention and training order

⁴¹ See for example, Youth Justice Board, *A Health Needs Assessment for Young Women in Young Offender Institutions*, London: Youth Justice Board, 2006, p77; and Policy Research Bureau, *Detention and Training: Assessment of the Detention and Training Order and its impact on the secure estate across England and Wales*, 2002, p60 [accessed via: <http://www.yjb.gov.uk/Publications/Resources/Downloads/DTORReport.pdf> (02/06/10)]

⁴² Ofsted, *Transition through detention and custody: Arrangements for learning and skills for young people in custodial or secure settings*, Manchester: Ofsted, 2010, pp16-18

5.4.2 Detention for Public Protection (DPP)

The Detention for Public Protection (DPP) sentence is available for young people identified as dangerous but whose offences do not carry a life sentence. It is indeterminate in nature. There are 31 children currently detained on this basis.⁴³ The sentence has drawn much criticism. First, the indefinite length of the sentence can be highly distressing and difficult for children to comprehend.⁴⁴ Second, only a small proportion (four per cent⁴⁵) of DPP prisoners have so far been released due to a combination of failings.⁴⁶ Release decisions, a form of quasi-sentencing, are made by the Parole Board behind closed doors, without the accountability and transparency that would characterise judicial decision making. Moreover, the large majority of DPP young prisoners would have received a determinate sentence if they had been sentenced prior to the implementation of the Criminal Justice Act 2003.⁴⁷

The DPP arguably contravenes the provisions of the international human rights convention (to which the UK is a signatory) that children should only be in prison for the shortest appropriate period of time and that sentences should be proportionate to the seriousness of the offence.⁴⁸ In addition, research indicates that children on indeterminate sentences are significantly disadvantaged in comparison to adults. There are very few offending behaviour programmes available in the JSE (which must be completed to secure release), making release doubly difficult to attain.⁴⁹ Furthermore, separating children from their families and making them indeterminately subject to an institutional environment in their formative years is likely to impair their development and potentially increase offending.⁵⁰ This raises questions about the rationality of the DPP – to protect the public – if in practice it increases the risk the offender poses to society in the longer term.

5.5 The juvenile secure estate (JSE)

Children who receive a custodial sentence are detained in one of three types of establishments. Together they comprise the JSE:⁵¹

43 Ministry of Justice, *Youth custody report July 2011, Legal basis*, [accessed via: <http://www.justice.gov.uk/publications/statistics-and-data/youth-justice/custody-data.htm> (11/10/11)]

44 Centre for Mental Health, *In the dark: the mental health implications of Imprisonment for Public Protection*, London: Centre for Mental Health, 2008

45 This figure relates to adults as data is not available on DPPs but the proportion is likely similar

46 These include long delays for parole hearings; the tendency of the Parole Board to make risk-averse decisions (somewhat understandably); the limited availability of offending behaviour programmes, particularly in the juvenile secure estate; the limited ability of such programmes to address the underlying contextual causes of offending; and the 'inherent difficulty' in demonstrating reduced risk; Jacobson J and Hough M, *Unjust Deserts: imprisonment for public protection*, London: Prison Reform Trust, 2010

47 Ibid

48 The United Nations Convention on the Rights of the Child and the UN Standard Minimum Rules for the Administration of Juvenile Justice

49 Howard League for Penal Reform, *Children and long sentences: a briefing by the Howard League for Penal Reform's legal team*, 2010 [accessed via: http://www.howardleague.org/fileadmin/howard_league/user/pdf/Briefings/Children_and_long_sentences_briefing.pdf (11/10/11)]

50 Tracy and Kempf-Leonard, 1996, cited in Farmer E, 'The age of criminal responsibility: developmental science and human rights perspectives', *Journal of Children's Services*, Vol 6, No 2, 2011, p89

51 Table adapted from: Ministry of Justice, 'Types of custodial establishment', [accessed via: <http://www.justice.gov.uk/guidance/youth-justice/placing-young-people-in-custody/types-of-custodial-establishment.htm> (09/08/11)]; and Pitts J and Stevens M, 'The custodial labyrinth', *Journal of Children's Services*, Vol 6, 2011, p118

Table 5.1: Types of juvenile custodial establishments in England and Wales

	Secure Children's Homes (SCH)	Secure Training Centres (STC)	Young Offender Institutions (YOI)	
			Male YOIs	Female YOI units
Age group	Girls aged 10-16 Boys aged 10-14 and those assessed as 'vulnerable' aged 15-16	12 -17 year-olds	15-18 year-olds	17 year-old girls
No. of beds per establishment (smallest to largest)	8-38	53-87	150-300 (30-60 young people on each wing)	16-26
Population at October 2011 ⁵²	169	279	1,573	
Staff: Child ratio Max: Min:	6:8 4:9	3:8 2:7	3:30 3:60	4:16 6:16
Length of time out of room per day	14 hours	14 hours	10 hours (at most)	
Training required of staff	Care staff must be qualified to a minimum level three NVQ health and social care, and, from September 2010, a Children and Young Peoples Workforce Diploma. Since April 2011 all new staff must hold a level three Children and Young Peoples Workforce Diploma, or be working towards it within three months of employment	Care staff are required to have four GCSEs on appointment and undertake a nine-week employer provided training course. Managerial staff are required to have a social work qualification ⁵³	Personnel in YOIs complete generic prison service training. Staff who spend more than 50 per cent of their time in juvenile YOIs must also complete a seven-day juvenile awareness staff programme (JASP) ⁵⁴	
Regime	30 hours of education and key worker to meet individual offending behaviour and emotional needs	25 hours per week of education; one hour per day of crime avoidance; 24 hours per week of basic domestic skills training; and 24 hours per week of social education	25 hours per week of educational and constructive activity, including evening and weekend activities (at most)	
Regulated by	Governed by regulation and guidance pertaining to The Children Act 1989 (TCA 1989)	Operating contract to the TCA 1989 and STC rules. Can incur financial penalties for breaches	Prison ACT/YOI Rules	
Inspected by	Ofsted	Ofsted	Prison Inspectorate	
Managed by	Local Authorities, although they can be operated by the voluntary or private sectors	Currently operated by the private sector	NOMS (7 establishments) Private sites (2)	NOMS (3)
Average annual cost per person	£200,000	£160,000	£60,000	

52 Ministry of Justice, *Monthly data and analysis custody report – October 2011* [accessed via: <http://www.justice.gov.uk/publications/statistics-and-data/youth-justice/custody-data.htm> (05/01/12)]

53 Phoenix J, 'In search of a youth justice pedagogy? A commentary', *Journal of Children's Services*, Volume 6, 2011, p126

54 Ministry of Justice, *Workforce development: Juvenile awareness staff programme* [accessed via: <http://www.justice.gov.uk/guidance/youth-justice/workforce-development/hr-and-learning/juvenile-awareness-staff-programme.htm> (11/08/11)]

5.6 The state of existing practice in the JSE

5.6.1 Achievements to be applauded

The CSJ acknowledges that there have been improvements with respect to practice in the JSE since responsibility for commissioning was transferred from the Home Office to the YJB in April 2000. Last year the Government launched a consultation on the Strategy for the *Secure Estate for Children and Young People*, which contains promising proposals. These include:

- Recognition that engagement with families should be a 'staple part' of the work of secure establishments;
- Extension of the use of release on temporary licence (ROTL) by developing a number of satellite sites to aid release;
- Exploration of the possibility of s.34 to place young people with particularly complex needs outside of the JSE;
- Enhancing training for secure estate staff, underpinned by a vision for the JSE workforce to be recruited specifically for and committed to working with children and young people; and
- Creating 'a more coherent inspection regime and joined up approach across all types of accommodation in the secure estate for children and young people'.⁵⁵

A particularly significant development has been the fall, by over a third, in the average monthly population of children under 18 in custody in England and Wales during the last three years.⁵⁶ This presents both opportunities and challenges to the current and future governments.⁵⁷ Progress has been made with regards to the below.⁵⁸

5.6.1.1 A distinct secure estate for young people

The youth justice system is significantly closer to fulfilling the YJB's commitment to develop a distinct secure estate for under 18 year-olds: currently only ten per cent of juvenile secure places are commissioned in split-site YOIs (in which young people are co-located with 18-21 year-olds on the same land but in separate housing units) compared to 71 per cent in April 2000.⁵⁹

5.6.1.2 The establishment of specialist provision in YOIs

YOIs for juveniles now have a more distinct focus on young people. For example, specialist units (the Keppel Unit at Wetherby YOI and the Willow Unit at Hindley YOI) have an open design to provide intensive support to those who for various reasons have difficulty engaging with the normal YOI regime. The units differ from the standard YOI regime in several ways: they have a less institutional feel, with open spaces and more natural light; staffing ratios are

55 Ministry of Justice, *Strategy for the Secure Estate for Children and Young People in England and Wales – Plans for 2011/12 – 2014/15 Consultation Document*, 2011 [accessed via: http://www.justice.gov.uk/downloads/consultations/consultation_-_secure_estate_strategy.pdf (25/07/11)]

56 Ministry of Justice, *Youth custody data*, [accessed via: <http://www.justice.gov.uk/publications/statistics-and-data/youth-justice/custody-data.htm> (25/07/11)]

57 Allen R, *Last resort? Exploring the reduction in child imprisonment 2008-11*, London: Prison Reform Trust, 2011

58 Developments with respect to resettlement are explored in the subsequent chapter

59 Ministry of Justice, *Secure Estate*, 2011, op. cit., p15

higher (1:6 compared to 1:10); the staff receive specialist training on how to identify and work with those with complex needs, and young people receive extensive mental health support.⁶⁰ The MoJ proposes developing similar units elsewhere.⁶¹

5.6.2 Shortcomings to be addressed

Whilst the CSJ welcomes these developments, other areas of practice continue to be wholly neglected, and excellence remains insufficiently widespread. The sections below explore the areas of practice where there is still much work to be done.

5.6.2.1. *Joined up care?*

It is vital that the potential to change lives in custody is maximised and that any progress made is built on following release. Too often, however, this process is disconnected. The following statement by one YOT manager in evidence to the CSJ illustrates the problem: 'custody is just an interruption to the services that will be going on before and after; they will always be coming back to the community'.

The inadequacy of Asset

Asset is a key source of information about young people entering custody. Yet numerous studies have reported that Asset does not help institutions determine how best to manage the needs of young prisoners.⁶² This is because the tool is principally focussed on criminogenic risk. Comprehensive information on need (mental health problems, or details about past and current learning and attainment) is not provided. Practitioners repeatedly reported this problem to us. Furthermore, Asset is being used to determine the secure placement needs of young people, despite being an inappropriate tool for this purpose.⁶³ The YJB is addressing this issue by rolling out a new suite of 'admission to custody' forms that provide much more specific information concerning needs.⁶⁴ There are also plans to fine-tune Asset.

Poor information sharing

The information received by secure institutions is often out-of-date, incomplete or absent, despite these defects being highlighted as a problem in reviews dating back to 2001.⁶⁵ The introduction of eAsset⁶⁶ has reportedly done little to improve the situation, though the

60 Youth Justice Board, *How is the Keppel Unit different? Regime and Provisions* [accessed via: <http://www.justice.gov.uk/downloads/guidance/youth-justice/specialist-resources/keppel-unit/KeppelUnitregimeandprovisions.pdf> (accessed July 25, 2011)]

61 Ministry of Justice, *Secure Estate*, 2011, op. cit., p23

62 See for example Ofsted, op. cit., p11; Office of the Children's Commissioner, *I think I must have been born bad: Emotional wellbeing and mental health of children and young people in the youth justice system*, 2011, p42 [accessed via: http://www.childrenscommissioner.gov.uk/content/publications/content_503 (20/07/11)]; and Youth Justice Board, *Substance abuse and the juvenile secure estate*, London: Youth Justice Board, 2004, p20

63 Ministry of Justice, *Custody: Placing young people in custody*, [accessed via: <http://www.justice.gov.uk/guidance/youth-justice/placing-young-people-in-custody/index.htm> (26/07/11)]; The risk that a young person might be harmed in some way, either through their own behaviour or because of the actions or omissions of others

64 Personal communication

65 See for example, Ofsted, op. cit., p11; Office of the Children's Commissioner, op. cit., p42; and Hobbs and Hook Consulting, *Research into Effective Practice with Young People in Secure Facilities: Report to the Youth Justice Board*. London: Youth Justice Board, 2001, p17

66 Ministry of Justice, *Information sharing and technology: eAsset sentence management system*, [accessed via: <http://www.justice.gov.uk/guidance/youth-justice/information-sharing-and-technology/easset-sentence-management-system.htm> (accessed July 26, 2011)]; eAsset is an electronic sentence management system that collates all the separate sentence planning processes and information on the young person into one system. It can be constantly updated throughout the young person's stay in custody, by both the custodial establishment, and by the YOT following sentence reviews. Information comprised in the database includes Asset, young person case notes, and incident reports.

sharing of information has allegedly improved.⁶⁷ Inadequacies relating to sharing information about mental health needs and education are detailed below.

Some practitioners in secure establishments reported feeling overwhelmed by the number of documents received; it was said to be as confusing and problematic to have lots of documents to sift through as receiving inadequate information. Information sharing is also problematic at the resettlement stage.⁶⁸

Inconsistent or incompatible data systems have been identified as the main obstacle to effective information sharing.⁶⁹ However, studies have consistently highlighted that joined up care is contingent on strong working relationships between the custodial institution and the services responsible for delivery in the community.⁷⁰ This was emphasised by many of the practitioners with whom we spoke. Relationships are often poor and have not been improved by a focus on technological solutions to bridge the divide.

An imbalance of services between custody and the community

Whilst there is much variation in the quality of services in custody, it is clear that custodial facilities are often able to offer services and care to young people who offend that are not available in the community. As Alison Smailes, team manager for North West Hampshire YOT told us:

'Sadly, we have found that children from secure children's homes have done exceptionally well in those units but the problem comes when they come out because there is no middle ground between being in there and having all of that support and being placed directly back in the place you were before.'

Another YOT manger commented: 'It is absurd that so much education provision can be provided in custody and yet they often return to only one hour back in the community'. Numerous studies have highlighted the same problem:

*'Needs were temporarily lower for those in custody due to the level of supervision provided. There was evidence to suggest that some services were more readily available in secure facilities.'*⁷¹

*'The primary obstacle to a seamless transition between custody and community was an imbalance of resources between the two halves of the DTO. It was argued that local authorities [services] were often unable to provide the same level of services as the institutions, with the result that YOTs were unable to fully capitalise on the progress made inside.'*⁷²

67 Ibid

68 Khan L, *Reaching out, reaching in: Promoting mental health and emotional well-being in secure settings*, London: Centre for Mental Health, 2010, p55

69 Ibid

70 Hazel N et al, *Key lessons from the RESET programme – Executive summary*, London: Catch 22, 2010, p8; Cooper, K et al, *Keeping Young People Engaged: Improving education, training and employment opportunities for serious and persistent young offenders*, London: Youth Justice Board, 2007, pp173-177; and Healthcare Commission and HM Inspectorate of Probation, *Actions Speak Louder: A second review of healthcare in the community for young people who offend*, London: Healthcare Commission and Her Majesty's Inspectorate of Probation, 2009, pp26-7

71 Harrington R and Bailey S et al, *Mental Health Needs and Effectiveness of Provision for Young Offenders in Custody and in the Community*, London: Youth Justice Board, 2005, p8

72 Hazel N et al, *Detention and Training: Assessment of the Detention and Training Order and its impact on the secure estate across England and Wales*, London: Youth Justice Board, 2002, p74

5.6.2.2 Education

For most young people in custody the classroom has negative associations. Custody presents an opportunity for reengagement and improving educational attainment

Many witnesses told us that the standard of education in the JSE has improved. A recent Ofsted study reported there to be a good range of education and accredited vocational training opportunities on offer in the 23 juvenile secure establishments it visited.⁷³ It is clear, however, that weaknesses remain and the quality of provision varies. Less than half of sentenced young people (aged 15-18) surveyed in YOIs say that they have done something in prison to make them less likely to offend in the future.⁷⁴

Information sharing

Many young people arrive without personal educational plans. This often leads to reassessment of the young person's needs, repetition of earlier learning and delays to starting education.⁷⁵ Obtaining statements of educational need (SEN) is also widely reported to be problematic.⁷⁶ One SCH informed us that they only receive 50 per cent of statements and have to 'fight' for the remainder:

Poverty of aspiration

'In the past I have heard teachers, social workers and other professionals say about emotionally and behaviourally disordered (EBD) children, "They don't really need an education; their other needs are so much greater". I view this as utter nonsense for the vast majority of EBD young people. They not only need education; they need educational success, and I have rarely, if ever, come across a child who didn't want to succeed, to be considered worth the effort, to be seen as like other 'normal' children. They don't want to be different; they don't want to be a 'hard man' and they do want to succeed...'

Steve Osmond, Head of Education, Barton Moss SCH, submitted as written evidence to the CSJ⁷⁷

We heard from practitioners that there is often a lack of higher level courses in custody due in part to low expectations of what young people can achieve educationally. Ofsted has reported that much accreditation offered in YOIs is at a low level. Literacy and numeracy sessions are often at a low level compared to young peoples' previous attainment.⁷⁸ The

73 Ofsted, *Transition through detention and custody: Arrangements for learning and skills for young people in custodial or secure settings*, Manchester: Ofsted, 2010, p16

74 Summerfield A, 2011, op. cit., p8

75 Ofsted, 2010, op. cit., pp11-12

76 Ibid

77 Osmond S, 'Learned Helpfulness', *Human Givens Journal*, vol 14, issue 4, 2007

78 Ofsted, op. cit., p16

Prisons Inspectorate has similarly observed that accreditation at higher levels is limited in juvenile YOIs.⁷⁹ A recent study reported there to be a 'lack of ambition and leadership, and low aspirations on behalf of young people' with respect to education in secure facilities.⁸⁰

Reduced educational provision in YOIs

In recent years the number of education hours in YOIs funded by the YJB has reduced from 25 to 15 a week. YOIs are expected to provide purposeful activity to 'top-up' the provision.⁸¹ Practitioners expressed concern that YOIs are likely to struggle to provide additional activity in the current economic climate. The Prisons Inspectorate recently reported that the impact of the changes in funding arrangements is variable:

*'Generally, it meant that young people spent either a morning or an afternoon in education or vocational training. There was great variation in the way that establishments made up the balance of ten hours a week with activity delivered by prison staff, but some young people spent much of the time unoccupied or carrying out domestic tasks on their wing.'*⁸²

By providing only a few hours of education and purposeful activity a day, the transformative potential of custodial sentences is significantly diminished.

Disrupted education

Transfers between institutions disrupt educational engagement. Ofsted has reported that young people transferred between establishments are often unable to complete programmes or progress to courses at a higher level because the subjects and qualifications offered differ. Even where this was is not a problem, transfer of information between establishments concerning previous courses undertaken and accreditation gained often 'lacked detail and frequently failed to identify what level of accreditation had been achieved... the effective transfer of information often depended too heavily on strong commitment from individuals rather than on a clear, well-planned system'.⁸³ This shortcoming serves to frustrate and de-motivate the young people.

5.6.2.3 Physical and mental health

Though it is clear that mental health provision has improved significantly in YOIs following receipt of additional funding from the Department of Health, nonetheless it is suggested that 'YOIs were only scratching the surface of the true extent of mental health and multiple needs'.⁸⁴ There is significant variation in the availability and quality of mental health provision throughout the JSE. Disparities in provision are largely explained by variation in the way services are commissioned in different facilities,⁸⁵ and the fact that SCHs and STCs receive no extra funding.⁸⁶

⁷⁹ HMI Prisons, 2011, op. cit., p64

⁸⁰ Office of the Children's Commissioner, op. cit., p51

⁸¹ HMI Prisons, *Annual Report 2008-09*, Norwich: The Stationery Office, 2010, p69

⁸² HMI Prisons, *Annual Report 2010-11*, Norwich: The Stationery Office, 2011, p64

⁸³ Ofsted, op. cit., pp17-18

⁸⁴ Khan L, op. cit., p27

⁸⁵ Office of the Children's Commissioner, op. cit., p39

⁸⁶ Khan L, op. cit., p34

Staff and young people from the innovative Reflex music and theatre programmes delivered in ten juvenile and young offender YOs



Poor information sharing between the community and custody remains a key barrier to addressing mental health needs in custody. A number of secure institutions reported that they almost never receive copies of the Asset mental health screening tools, SIFA and SQUIFA.⁸⁷ This is corroborated by the evidence, though YOTs are 'adamant' that such information is routinely shared.⁸⁸

In some institutions relevant health information on young people is not shared between staff. Furthermore, mental healthcare staff are sometimes seen as a separate entity as opposed to part of the mainstream service; mental health is considered a matter only for mental health professionals.⁸⁹ Khan has reported that:

'Support for young people's mental health and emotional well-being still tended to be addressed in a separate silo, using separate assessment processes and fragmented interventions, with no recognition that substance misuse or mental health or educational difficulties were likely to be inter-related and required a coordinated, integrated approach with other teams within the unit'.⁹⁰

There is a lack of mental health training amongst frontline staff. One study found that primary health workers in secure settings, such as nurses and GPs, often lacked the skills and competence necessary to identify emerging mental health needs. Most mental health workers 'agreed that they were better at reacting to clear cut needs and had limited capacity for early identification and preventive work'.⁹¹ Another study reported that: 'There were significant differences in the quantity and quality of supervision and training and in the input for front line staff on understanding and dealing with children with complex needs'.⁹²

87 Screening Interviews For Adolescents (SIFA) and Screening Questionnaire Interview For Adolescents (SQUIFAs)

88 See for example, Khan L, op. cit. p55; and Office of the Children's Commissioner, op. cit., p42

89 Office of the Children's Commissioner, op. cit., p40; and Khan L, op. cit., p47

90 Khan L, op. cit., p47

91 Ibid, pp37-40

92 Office of the Children's Commissioner, op. cit., p36

Secure institutions frequently identify young people with speech and language needs, but these needs are not 'being addressed through any systematic commissioning process.'⁹³ Instead, facilities adapt services or have a member of staff with experience of speech and language needs by chance. The Royal College of Speech and Language Therapists explained to the Working Group the fundamental nature of such services:

'It's very difficult for young people to engage with education or rehabilitation if they have communication difficulties. They cannot benefit from interventions if they have these kinds of difficulties. Over 60 per cent of young offenders don't have sufficient verbal skills to cope with the regime and/or to benefit from the education or rehabilitation programmes because of their poor language and literacy skills. Over three quarters of those taking part in enhanced thinking skills programmes, neither have the listening and speaking skills that these programmes demand, nor the concentration and understanding of the vocabulary used'.

Where speech and language therapists are in place, they not only work closely with young people but are heavily involved in training other staff so that they develop the skills necessary to deliver interventions in a form accessible to young people. Currently, only a small number youth custodial establishments have access to speech and language therapists. The case study below demonstrates their value.

Case study: The transformative effect of speech and language therapy in custody

In Red Bank SCH five out of seven young people had been assessed as having behavioural difficulties. On two to three occasions everyday staff were having to restrain young people due to these difficulties. With the help of a speech and language specialist who provided communication training to the staff, incidents of restraint were reduced to two occasions per week.

Andy Copp, Manager of Red Bank SCH said that 'SLT had a positive impact on whole regime at Red Bank. When SLT was first employed I was very unclear about the role that they would play. But I cannot over-estimate their valuable role in working with the young people and training staff'.

5.6.2.4 Recruitment and training of prison officers in YOIs

We recognise that there are many committed prison officers in juvenile YOIs who are doing their best in challenging circumstances. However, numerous practitioners expressed concern that they are not specifically recruited and adequately trained to work with young people. While staff are expected to complete the juvenile specific awareness programme (JASP) a third of staff in YOIs still have not done so.⁹⁴ Until recently, staff were recruited as general prison officers to work in the prison service estate, which mainly comprises adult facilities. Juvenile YOIs are consequently staffed, at least partly, by officers who neither want to work with children nor understand their distinct needs. Given the centrality of relationships to successful rehabilitation, this is a significant failing.

⁹³ Khan L, op. cit., p36

⁹⁴ Puffett, 2011, cited in Phoenix J, 'In search of a youth justice pedagogy? A commentary', *Journal of Children's Services*, Volume 6, 2011, p132

JASP comprises modules on safeguarding, mental health, substance misuse, vulnerability assessment, resettlement and training planning, and managing difficult behaviour; totaling seven days training.⁹⁵ Numerous witnesses to this review believe the programme to be inadequate. Dame Sue Street indicates in her review that the JASP offers insufficient training to develop a workforce that is equipped to meet the needs of young people. She highlights the eight week training programme provided to the specially recruited staff in the Keppel Unit as a model that has proven very successful and could be further extended across the JSE.⁹⁶ Concerns about JASP have been reported elsewhere:

*'It was felt not to address key issues of child and adolescent development, attachment and experiences of maltreatment and their link to behavioural and emotional problems, the extent of the mental health, learning and communication challenges faced by children and young people in the youth justice system, and how secure care staff might contribute to young people's emotional well-being in a manner consistent with a comprehensive CAMHS approach.'*⁹⁷

Significant steps have recently been taken to address these shortcomings. In 2010 a juvenile-specific element was introduced to the Job Simulation Assessment Centre, a stage of the prison officer recruitment process; all new applicants must pass the element to work in the juvenile prison estate. Like the adult simulation, the juvenile element tests competencies such as 'showing understanding', 'respecting others', and 'acting with integrity'. The difference is that the juvenile element is based on young people's issues and the role player is briefed to act as a young person to test the candidate in the juvenile YOI environment.

'The (youth specialised) training didn't translate to reality; it goes in one ear and out of the other side. There's no understanding of youth work, and very much an emphasis on control. But I'm not convinced that training is the key anyway...

The real problem is that there are staff who don't want to work there [juvenile YOIs] and are not interested in working with young people. The prison officers I've worked with often resent working in juvenile YOIs. There was very much a culture of us and them among prison officers – and if prison officers befriended or advocated for the young people other prison officers would bully them.'

Prison officer who had recently stopped worked in a juvenile YOI, in evidence to the CSJ

⁹⁵ Youth Justice Board, *Workforce development* op. cit.

⁹⁶ Department for Children, Schools and Families, *Safeguarding the Future: A review of the Youth Justice Board's Governance and Operating Arrangements*, London: Department for Children, Schools and Families, 2010, p53

⁹⁷ Khan L, op. cit., p44

The JASP has been reviewed: NOMS is working with the Children's Workforce Development Council to develop a new young person-specific course to replace JASP. The new course will include training on attachment, speech, language and communication needs, as well as the links between behavioural problems and mental health difficulties.⁹⁸ It will begin in April 2012. NOMS is also planning to offer the option of completing further youth specialist modules thereafter.⁹⁹ These developments are to be commended. However, there is still a considerable distance to go before juvenile YOIs are staffed by a dedicated and specialised workforce.



CSJ Executive Director; Gavin Poole, talking with the Working Group

Though the majority of our witnesses highlighted the inadequacies of recruitment and training of prison officers in YOIs, the CSJ recognises that there is also the wider issue about whether the staff training arrangements across the secure estate are adequate. There is a 'high degree of variability in the type and level of training and qualifications required' in the three different types of secure facility, as detailed in the table on page 118.¹⁰⁰ There is little justification for this. Though the three types of secure institution cater for different age groups and young offender characteristics, all are children and should be cared for by equally trained and qualified staff.

5.6.2.5 Culture

The more effective custodial regimes are those that provide young people with a positive and caring regime in which to engage in rehabilitation and change their lives. Environments that are open with a less institutional feel are considered more conducive to good emotional well-being, which can in turn aid rehabilitation.¹⁰¹ One example is the custodial model in Missouri of small, (i.e. 40 young people) therapeutic and 'home-like' secure facilities: these produced substantially lower reconviction rates than larger alternatives.¹⁰²

98 Ibid

99 Conversation between CSJ and Children and Young People Division, NOMS, in 2011

100 Phoenix J, 2011, op. cit., p126

101 See for example, Office of the Children's Commissioner; op. cit., p50; and Youth Justice Board, *Keppel Unit*, op. cit., p1

102 Peterson J, *A Blueprint for Juvenile Justice Reform: Second Edition*, Youth Transition Funders Group, 2006, p9 [accessed via: http://www.ytfg.org/documents/JEHT_SecondEdition.pdf (08/08/11)]

Many of those with whom we spoke commented on the contrast between the culture and standards of care in the three types of secure facility. There was said to be significant variation in the balance between care and control. The difference was felt to be particularly pronounced between YOIs and the rest of the secure estate (the STCs and SCHs). However, it is clear from the visits conducted by the CSJ that there is both excellence and mediocrity in all three types of institution. This review does not support the often promulgated mantra that all YOIs are bad, and all STCs and SCHs good. We do, however, think there is an argument for saying that all establishments that care for children and young people should be subject to the same governance framework and that this should be that which applies to any other child in the care of the state.

‘Rather than trying to make prisons suitable for children, it’s about developing safe, secure placements where the few children who have committed serious and violent crimes can be held. When detained, children must have the opportunity to grow up in a tolerably healthy way. Vulnerable children are particularly impressionable and, if you surround them with a prison, they are going to come out with the identity of a former child prisoner. And that gives us immense problems as a society.’

Juliet Lyon, Chief Executive, Prison Reform Trust, in evidence to the CSJ

YOIs: a culture of control?

Despite the significant improvements in juvenile YOIs it is apparent from our evidence gathering that a default setting of control still prevails. One juvenile YOI Governing Governor reported there to be a lack of clarity of what is expected of juvenile YOIs with respect to the balance between care and control. The former Children’s Commissioner, Professor Sir Al Aynsley-Green described his experiences of one YOI to the Working Group:

‘I saw an unkempt, poorly maintained estate, with no effort to humanise its appearance or atmosphere. Adam slept with his head three feet away from an open, filthy, stinking lavatory; he had not been allowed any cleaning materials. His few belongings were in a black bin bag under his bed, the paintwork of his cell discoloured and peeling. He had no access to fresh air through the secured window... He spent hours locked in his cell, told me he had no personalised education plan and refused to make any complaints for perceived fear of being victimised by prison officers’.

Our witnesses told us that of the three types of institution in the JSE, YOIs are generally the least safe and offer the least scope for rehabilitation. Concern was expressed about the length of segregation allowed in YOIs: the YJB contracts allow a young person to be segregated for a maximum of three hours in SCHs and STCs whereas the service specification for YOIs

permits segregation for several weeks.¹⁰³ Almost a third of young men and over a fifth of young women in juvenile YOIs report feeling unsafe and a substantial minority have been victimised by other young people. 15 per cent of young men and 11 per cent of young women report being victimised by staff.¹⁰⁴ Few YOIs for young men are able to provide the stipulated ten hours each day out of cell. Young women fare better.¹⁰⁵

'They put me in segregation for a week after getting into a fight. It felt like months. It was the loneliest place; it was my hardest time in prison. All you have is a bed and a toilet; there is nothing to do. If you're good you're allowed out of the cell for an hour to eat with the prison officer; otherwise you're just locked up for 23 hours a day. You sleep to pass the time, it makes you feel kind of broken mentally.'

15 year-old boy recently released from a YOI, in evidence to the CSJ

Our witnesses consistently reported that the low staffing ratio (10-15:1) in YOIs are a key determinant of their safety and security problems. One Governing Governor commented that improved staffing ratios was number one on their wish list of reforms. Institutional size is said to be another important determinant of culture. A recent review of mental health provision and emotional wellbeing found that 'smaller units allowed staff to develop closer and more supportive relationships, and fostered a more caring environment; larger facilities were expected to function as institutions'.¹⁰⁶ It is clear, however, that there is variation in the culture and practices of juvenile YOIs. One witness reported 'sharp contrasts' in the culture of YOIs between 'deeply punitive' YOI regimes, which were 'very alienating and isolating' and those that had a more caring approach. Leadership and staff training appear to be key factors in such variation.¹⁰⁷

Nevertheless our evidence about YOIs raises questions about the rationality of the extensive decommissioning of places in SCHs that has taken place over the past 12 years – from 30 to ten. The recent secure estate consultation indicates that further reduction of the SCH resource (and decommissioning of STCs places) is likely to occur.¹⁰⁸ We particularly criticise the decision to decommission places in the newly built Aycliffe SCH following major investment in its development. Its design and facilities are second to none in England and Wales. We have received evidence that part of the reason for the closure of SCHs is that

103 Lord Carlile, *An independent inquiry into the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children's homes*, London: The Howard League for Penal Reform, 2006, p64

104 Summerfield A, *Children and Young People in Custody 2010-11: An analysis of the experiences of 15-18-year-olds in prison*, London: HMI Prisons and Youth Justice Board, 2011, p10

105 HMI Prisons, 2011, op. cit., p63

106 Khan L, op. cit.

107 Ibid, pp43-45; and Office of the Children's Commissioner, op. cit., pp35-37

108 Ministry of Justice, *Strategy for the Secure Estate for Children and Young People in England and Wales – Plans for 2011/12 – 2014/15 Consultation Document*, 2011, op. cit.

they are not being adequately used for court-ordered secure remands even though this should be the priority placement. Instead STCs are often used for this purpose. Yet it is our understanding that STCs are only intended to accommodate such placements in special cases (and with the consent of the Secretary of State), where the SCHs are full or cannot manage the young person.¹⁰⁹ In so doing, there are also fewer STC places for sentenced young people (for which they were established), resulting in a greater number being placed in YOIs. Three of the four STC contracts are due to be renewed in 2013, which will provide opportunity to further consider this issue.

It is clear from our evidence gathering that there is significant variation in practice between the different types of custodial institutions. Some establishments, for example, allow dressing gowns to be worn during strip searches, others require the young person to be entirely naked.¹¹⁰ It was evident during one visit that strip searching was taking place without any form of privacy. This is wholly inappropriate. The practice of strip searching can be very distressing. It is likely to be all the more so for young people who have experienced sexual abuse, who comprise a significant minority of those in custody. Some institutions too often rely on physical procedures such as segregation to manage risk and pay too little attention to the role that good relationships between staff and young people can play.¹¹¹ We have also found there to be very patchy use of restorative approaches to manage conflicts between young people in custody, though one YOI is making wide use of RJ for this purpose.¹¹² RJ can be an effective non-physical means to diffuse conflict.¹¹³ We also note the addition of rolled razor wire and internal prison fencing to some of SCHs we visited, which some witnesses argued gave the impression of 'mini-prisons' rather than secure therapeutic homes.

'Overall, there need to be more prison officers, then there would be less need to inflict pain on someone. One prison officer isn't going to stop 12 boys fighting.'

15 year-old boy recently released from a YOI, in evidence to the CSJ

The MoJ is currently carrying out a major study (*Relative Effectiveness within the Secure Estate*) of the regimes, interventions and experiences of young people in the three categories of secure institution.¹¹⁴ It is notoriously difficult accurately to compare outcomes given the differences in the populations catered for; but the RESE study 'will attempt to make within-establishment comparisons and identify the key variable(s) in influencing recidivism separately for each type of establishment'.

109 As provided for by The Children and Young Peoples Act 1969; for further detail see: Youth Justice Board, *Court-Ordered Secure Remands and Remands to Prison Custody Guidance note to youth offending teams and secure establishments*, 2008 [accessed via: <http://www.justice.gov.uk/downloads/guidance/youth-justice/custodial-remand/CourtOrderedSecureRemandsandRemandstoPrisonCustody.pdf> (02/11/11)]

110 Office of the Children's Commissioner, *op. cit.*, p45

111 *Ibid*, pp45-50

112 HMI Prisons, *Report on full unannounced inspection of HMYOI Ashfield*, London: HMI Prisons, 2010, p14

113 Youth Justice Board, *Managing the behaviour of children and young people in the secure estate*, London: Youth Justice Board, 2006, p12

114 Ministry of Justice, *Relative Effectiveness within the Secure Estate (RESE)*, [accessed via: <http://www.justice.gov.uk/publications/research-and-analysis/yjb/relative-effectiveness-secure-estate.htm> (08/08/11)]

5.6.2.6 Mobility

Many of our witnesses have emphasised the importance of allowing young people in custody to attend college or accommodation interviews and family meetings in the community. They facilitate the realisation of resettlement plans and can help young people make a gradual transition to the community.¹¹⁵ They can also ease the concerns of education and training providers: interviews allow them to meet with and assess the suitability of young people prior to employing them.¹¹⁶ For these reasons the 2008 *Youth Crime Action Plan* recommended that the use of day release be increased.¹¹⁷ Temporary release exists in the form of ROTL in YOIs, and 'mobility' in STCs and SCHs. Mobility entails being accompanied by a member of staff, whereas ROTL, in its standard form, is unaccompanied. In practice, however, both forms of day release almost always involve the young person being accompanied.¹¹⁸

'We [the placements team] authorise ROTL and mobility. Practice is quite patchy, some places use it a lot, others not really. But it's very important that young people have that, particularly if on a long term sentence – to go and see where they are going to live, go to visit their new school – it is a very important part of the process of rehabilitation and resettlement.'

Peter Minchin, Head of Placements, YJB, in evidence to the CSJ

Despite the benefits of temporary release it is damagingly under used in the JSE.¹¹⁹ The Prisons Inspectorate recently reported that the use of ROTL is improving but the number of young people to which it is granted remains low.¹²⁰ Practitioners reported that the main obstacle has been the risk-averse culture in some secure establishments and the MoJ: the fear that day release could attract criticism from the mass media and public. The overly bureaucratic and time-consuming process of applying for day release also operates as a disincentive. It is therefore encouraging that the Government's consultation paper on the strategy for the JSE includes a proposal to make more use of ROTL.¹²¹

¹¹⁵ See, for example, Youth Justice Board, *Barriers to engagement in education, training and employment*, London: Youth Justice Board, 2006, p77; Ofsted, *Transition through detention and custody: Arrangements for learning and skills for young people in custodial or secure settings*, Manchester: Ofsted, 2010, p20; and HM Government, *Youth Crime Action Plan 2008*, p62 [accessed via: <http://www.justice.gov.uk/publications/docs/youth-crime-action-plan.pdf> (28/07/11)]

¹¹⁶ Cooper K et al, *Keeping Young People Engaged: Improving education, training and employment opportunities for serious and persistent young offenders*, London: Youth Justice Board, 2007, p69

¹¹⁷ HM Government, *Youth Crime Action Plan 2008*, p62 [accessed via: <http://www.justice.gov.uk/publications/docs/youth-crime-action-plan.pdf> (28/07/11)]

¹¹⁸ Peter Minchin, Head of Placements, YJB, in evidence to the CSJ

¹¹⁹ Ofsted, 2010, op. cit., p20

¹²⁰ HMI Prisons, 2011, op. cit., p64

¹²¹ Ministry of Justice, *Secure Estate*, 2011, op. cit.

5.6.2.7 Distinct groups

Children in care and care leavers

In the CSJ report *Couldn't Care Less* we found that children in care and care leavers were often inadequately supported by children's social care teams during their time in custody and following release.¹²² Evidence received by this review suggests that there have been few improvements in the three years since the publication of that report. An expert who had conducted numerous visits to secure units told us that staff often did not know whether children were looked after or care leavers, and were unaware of the support that this group is entitled to, which, he said, 'was almost capitalised on by some local authorities'. This is confirmed in the literature. One study noted that YOI staff were 'generally unaware of the details of the looked after children system'.¹²³

'One of the things that I think is most shocking is that three or four years ago there was a great plan to have a social workers in each YOI (many of the children and young people in prisons were looked-after children) but Directors of Children's Services refused to meet the very tiny costs involved. That seems to me to be about that dissonance between the people who are actually responsible for that child and what happens to them next.'

Dame Anne Owers, former Chief Inspector of Prisons, in evidence to the CSJ

In 2005 social work posts were introduced to YOIs, initially funded by the YJB in response to concerns that the rights of looked after children in custody were being neglected. The evaluation of the YOI posts found there to be a clear need for them, in large part because the workers played a fundamental role in identifying children in care, and ensuring that they received the services to which they were entitled to from their home local authority.¹²⁴ In 2009 attempts were made to transfer responsibility for funding these posts to local authorities, but no formula has been agreed with the consequence that many social workers have left YOIs. In early 2011 the MoJ announced that it would provide funding for the posts for three years. This is welcome but a long-term solution must be found.

Black and minority ethnic children

Black and minority ethnic (BME) children are significantly over-represented in custody. Black young people account for 14 per cent of the custodial population compared to three per cent of the general ten to 17 population.¹²⁵ Furthermore, there is evidence that Black young people often end up in prison for offences that, had they been committed by a white person, would have resulted in a non-custodial or shorter custodial sentence.¹²⁶ The decline in the

¹²² Centre for Social Justice, *Couldn't Care Less: A policy report from the Children in Care Working Group*, London: Centre for Social Justice, 2008, pp134-144

¹²³ Fielder C et al, *An Evaluation of Social Work Posts in Young Offender Institutions*, London: Youth Justice Board, 2008, p50

¹²⁴ Ibid, pp42-52

¹²⁵ Ministry of Justice, *Youth Justice Statistics*, 2011, op. cit. p29

¹²⁶ Home Office, 1992 and 1997; Hood, 1992; Graham and Bowling, 1995; Penal Affairs Consortium, 1996; and Bowling and Philips, 2002, cited in Wilson D and Moore S, *'Playing the Game' – The Experiences of Young Black Men in Custody*, London: The Children's Society, 2003, p3

juvenile custody population earlier referred to have notably not applied equally to BME children and young people.¹²⁷ This discrepancy requires urgent attention.

Gangs

The presence of gangs in the JSE is not within the scope of this review. However, this report would not be complete without acknowledging their existence and the resultant challenges.

Although there is an absence of centrally held data on the prevalence of gangs in the JSE it is clear that they are an increasingly salient problem. Gang-involved young people have distinct risks and require tailored support (e.g. to be kept apart from gang rivals). They also present unique risks to other young people (e.g. recruitment). A joint inspectorates review of the management of gangs in YOIs has found that a distinct approach to gangs in the JSE is currently lacking. The key findings were:

- Approaches to address gangs in the JSE were fragmented across YOIs and there was little coordination from the centre;
- There was a 'dearth' of centrally-led strategic guidance and training for prisons concerning how to address gangs;
- No aggregated data on young people with gang affiliations or gang-related offending and their movements were held through the secure estate;
- There was a general lack of recognition in YOIs of the involvement of under-18s in gang culture and 'a belief that young men tended to exaggerate their involvement in gangs';
- Where gang affiliations were identified, institutions kept apart the young people affected as opposed to attempting to resolve the issues;
- Poor intelligence sharing between YOIs, YOTs, the police and other agencies; and
- A lack of understanding of gang-related safeguarding concerns and arrangements to address them.¹²⁸

5.7 Recommendations

5.7.1 Custodial sentencing

Immediate term

- We recommend that a higher custody threshold is set by the Sentencing Council so that only the very serious and most prolific young offenders are sentenced to custody.
- We recommend that the minimum period in custody be raised to six months, as part of a 12 month DTO. This proposal clearly risks increasing the numbers of young people serving six months sentences in custody. Accordingly, we recommend that the change to sentence length not take place until the custody threshold has been raised.¹²⁹ These recommendations, adopted

¹²⁷ Allen R, *Last resort? Exploring the reduction in child imprisonment 2008-11*, op. cit., 2011

¹²⁸ HMI Prisons, Probation, and Constabulary Inspectorates, *The management of gang issues among children and young people: A joint thematic review*, London: HMI Prisons, 2010

¹²⁹ The Independent Commission on Youth Crime and Antisocial Behaviour, *Time for a fresh start: The report of the Independent Commission on Youth Crime and Antisocial Behaviour*, London: The Police Foundation, 2010, p75

together, would prevent the imposition of very short, highly destabilising and unproductive custodial sentences. They echo the proposal made by the Independent Commission on youth crime and antisocial behaviour.

Long term

- We recommend that the DTO be reformed so as to be a genuinely seamless sentence. The sentence should comprise three stages: a period in full security (minimum of six months); a period in a halfway house (preferably in the young person's home community and nearby to the custodial facility to achieve continuity); and a final community supervision element on release from the latter. This reform would, however, be impracticable in the context of the current juvenile secure estate and sentencing framework. We recommend implementation following the development of smaller, localised facilities and sufficient numbers of local halfway houses to meet need.

61 per cent of those we polled said that short custodial sentences (below six months) should be replaced with tougher non-custodial sentences.

CSJ/You Gov polling, September 2011

5.7.2 Custodial regimes

Joined up care – information sharing

- In the *immediate term* there should be a requirement that within 48 hours of reception every juvenile facility should receive a single file on the young person in custody. This should include: the most recent Asset from the YOT; the most recent core assessment or care plan from children's services; the most up-to-date health record, including mental health assessments; and the most up-to-date intelligence on the child from the police.
- We endorse the Ofsted recommendation that a statutory education plan be in place for every young person in the youth justice system. This requirement should be introduced in the *immediate term*. This should accompany them as they move through the system (both in the community and custody) to ensure greater continuity in their education by agencies and institutions.

Restorative justice

- We propose that in the *immediate term* restorative practices are expanded and embedded within the Juvenile Secure Estate.

Mobility

- In the *immediate term* we recommend that the use of mobility/ROTL in the juvenile secure estate be increased to allow young people to make a gradual transition to the community – i.e. attend work placements, college interviews, family meetings and accommodation interviews – subject to their meeting the eligibility criteria and passing the risk assessment.

Mental health provision

- In the *immediate term* we recommend that speech and language therapy provision be introduced in all YOIs.
- In the *medium term* the NHS should ensure that all juvenile secure facilities have adequate access to a range of specialist therapeutic services provided by psychiatrists, psychologists, learning disabilities staff, art and drama therapists, and substance misuse workers.

Participation

- We recommend that all facilities in the juvenile secure estate be required to have participative arrangements (for example, youth forums and regular meetings with senior staff) in place in the *immediate term*, enabling young people to provide feedback on how the custodial regime could be improved. Participation can improve engagement, raise self-esteem and increase motivation to change.¹³⁰ It also helps to develop services that better meet offenders' needs and reduce reoffending.¹³¹

Accountability

- We recommend that consideration be given in the *long term* to facilitating judicial review of youth custodial sentences. The purpose of such reviews would be to ensure that institutions were meeting the needs of young people and to monitor the young person's progress. Special attention should be paid to educational and health provision, and young people's engagement to ensure the sentence is fulfilling its full rehabilitative potential. Sentencers should be able to refer to the inspectorate or other independent oversight body if the support provided by the custodial institution is found unsatisfactory. This would better hold custodial institutions to account for the services they provide; improve sentencers' knowledge and understanding of custody; and help engender the engagement of the young person. This recommendation is currently impracticable and should be taken forward as smaller, localised facilities are developed.

67 per cent of those we polled support temporary release to aid young people's rehabilitation

CSJ/You Gov polling, September 2011

5.7.3 Training of juvenile secure estate staff

We recommend that the recruitment of prison officers in juvenile YOIs be further strengthened so as to achieve a truly distinct and dedicated juvenile specific workforce.

Prison officer training

- We recommend that in the *immediate term* a recruitment procedure, similar to that in place at the Keppel Unit, where all officers undertake an application and selection process, is implemented in all juvenile YOIs;

¹³⁰ National Youth Agency, *Voice and Influence in the Youth Justice System*, National Youth Agency: Local Government Association, 2010, p18

¹³¹ UserVoice, *The Power Inside: the role of prison councils*, UserVoice, 2010, p11

- In the *long term* only officers recruited via this process should be working in the JSE.
- We would like to see prison officers completing a mandatory, recognised professional refresher training every two years in children and young people issues. This would be akin to training to maintain social worker accreditation.

Juvenile secure estate staff training

- In the *immediate term* a minimum standard of youth training for all staff working throughout the JSE models should be introduced. Training should be underpinned and rooted in the principle that children in custody are:
 - Children first and foremost – in law and maturation;
 - Staff have a duty of care and responsibility to balance the best interests of the individual child and the safety and the well being of others in the establishment.
- Training should include:
 - Recognising and understanding that their own behaviour and responses will affect how children and young people behave;
 - A basic understanding of child development and how a child's development is affected by their life experiences;
 - Understanding the limitations of children's cognitive abilities – their ability to hear, interpret and act upon information given;
 - Mental health, learning disability, and speech and language disability awareness;
 - How to develop positive relationships and the importance of this;
 - The use of language, tone of voice and body language, and its impact on children; and
 - Understanding the main causes of behavioural problems in children.

5.7.4 Local authority responsibility to children in custody

- In the *immediate term* legislation should be amended so that children accommodated under the 1989 Children Act s.20 immediately prior to receiving a custodial sentence continue to receive services throughout their sentence as if they were still so accommodated. This should include their case remaining open to a children and families social worker, care reviews and planning held comparable to those for a looked after child (LAC) and an assessment of their needs on release, including a further period of s.20 accommodation.
- We welcome the Government's intention to give all remanded children LAC status. However, it must be a priority to bestow LAC status on all sentenced children in the secure estate as soon as it is feasible. It is illogical to grant LAC status only to the under-18 remand population: it implies that all remanded children are vulnerable while those sentenced are not. This is clearly incorrect.

5.7.5 Configuration of the secure estate

- In the *immediate term* s.34 of the Offender Management Act should be implemented so that young people with complex needs can be accommodated outside of the JSE.

- In the *medium term* we propose that independent living units, otherwise known as ‘step-down units’ from custody are introduced where possible. Such units help to ease young peoples’ transition back to the community. We recommend that such units be jointly commissioned by the JSE and partners.
- In the *long term* we would like to see a greater number of smaller local custody facilities.

5.7.6 Governance of the juvenile secure estate

- In the *medium term* YOIs should be taken out of prison service management and run by a separate agency. The agency could run them directly or commission the private or voluntary sectors to do so.
- In the *long term* there should be a single JSE with single standards and regulations based on Children Act principles. The estate should be commissioned by a single agency from the voluntary, private or public sectors.
- If all sentenced children become looked after, local authorities are likely to want a strong role in JSE commissioning. Governance models accordingly need to be explored that would give local authorities such a role. We suggest that the option be considered of an elected commissioning board of local authority representatives.

chapter six

Resettlement

'My experience is that sometimes our system is almost the antithesis of one that prevents offending. If you were to think about what we would need to do to ensure future offending on release, you would find that we are doing a lot of it already. For example, not finding accommodation for young people until the last minute, releasing them on Fridays when the office is most likely to close early and not telling other agencies they are being released.'

Tom Jefford, Manager, Cambridge YOT, in evidence to the CSJ

6.1 The importance of resettlement

Nine in ten young people in custody do not want to reoffend on release.¹ Yet, 74 per cent are reconvicted within one year.² This shocking reconviction rate is the consequence of a toxic combination of inadequate resettlement support and the dysfunctional circumstances to which many young people return. Providing resettlement support is essential if we are to prevent young prisoners from becoming prolific, life-long adult offenders. It is crucial if victims and communities are to see the reductions in crime they desire. Achieving effective resettlement would save our spending vast sums of money on the costs associated with crime, repeated stays in custody, benefits payouts, damage to property, and most importantly, losing the positive contribution to society that persistent offenders might otherwise make.³

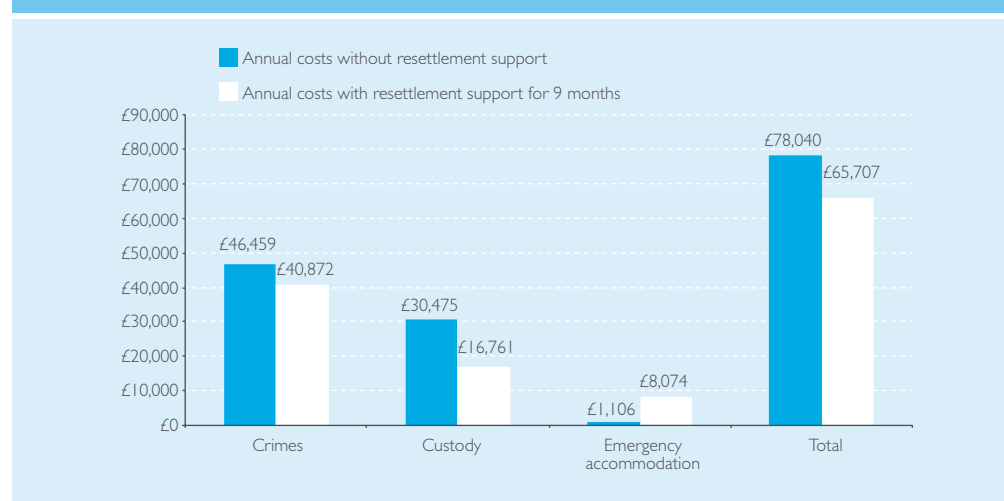
1 A survey of 1,110 15-18 year-olds in prison custody found that 90 per cent wanted to stop offending, Tye D, *Children and Young People in Custody 2008-2009: An analysis of the experiences of 15-18-year-olds in prison*. London: HM Inspectorate of Prisons and Youth Justice Board, 2010, p43

2 Ministry of Justice, *Reoffending of juveniles: results from the 2008 cohort, England and Wales*, Ministry of Justice, Statistics bulletin, Ministry of Justice, 2010 [accessed via: <http://www.justice.gov.uk/publications/reoffendingjuveniles.htm> (04/11/10)]

3 Working Links, *Prejudged: Tagged for life – A research report into employer attitudes towards ex-offenders*, London: Working Links, p8

The likely savings have been calculated. RESET, a national project led by Catch 22 providing resettlement support to young people leaving custody between 2005 and 2007 calculated that annual savings of £80 million could be achieved if the scheme was rolled out nationally.⁴ Frontier Economics' evaluation of the St Giles Trust's 'Through the Gates' project – which provides resettlement support for adult prison leavers – found a benefits-to-costs ratio of at least ten to one.⁵

Figure 6.1: Data from RESET demonstrating the costs of release from prison without resettlement support, compared to the costs (i.e. savings) with resettlement support



*Figures based on the assumption that resettlement support would reduce the frequency of offending by 35 per cent, the seriousness of offending would reduce by ten per cent, which would lead to a 45 per cent fall in time spent in custody, representing a saving of £20,407 per offender per annum.

6.2 Current resettlement provision

Resettlement services are one of the most under-resourced aspects of the youth justice system.⁶ There have been incremental improvements to provision in recent years (see Figure 6.2) but, as we will show, the system remains woefully inadequate in many parts of England and Wales.

This seems likely to continue for the foreseeable future. Ring-fenced funding for Integrated Resettlement Support (IRS) was absorbed into the main YJB YOT grant this year. A number of YOTs have told us that as a result they have been unable to maintain a dedicated and separate resettlement worker, which we have heard to be invaluable. Only limited funding will be provided to some resettlement consortia and until local authorities become responsible for the costs of custody there will be little incentive for significant investment in resettlement in future.

4 RESET, *The costs and benefits of effective resettlement*, Catch 22, [accessed via: <http://www.catch-22.org.uk/Files/RESET-Costs-Benefit-Analysis.pdf?id=a43c2070-b650-456a-b277-9dac00a34894> (04/11/10)]

5 Frontier Economics, *St Giles Trust's Through the Gates – An analysis of economic impact*, 2009 [accessed via: http://www.frontier-economics.com/_library/pdfs/frontier%20news%20-%20through%20the%20gates.pdf (11/11/11)]

6 Graham J, 'Responding to youth crime', in D Smith (ed) *A New Response to Youth Crime*, Devon: Willan Publishing, 2010, p132.

Figure 6.2: A recent history of resettlement policy

- **2003-present: Keeping Young People Engaged**
 - Partnership programme between YJB and Connexions to provide support to YOTs to deliver education, training and employment (ETE) services to at least 90 per cent of young offenders, especially to those on DTOs and ISSPs.
- **2004-09: Resettlement and Aftercare Provision (RAP) schemes**
 - Ran in 59 YOT areas.
 - Particularly targeted at young people with substance abuse, and mental-health related resettlement needs.
- **2008: Youth Crime Action Plan**
 - £6 million made available to develop IRS.
- **2009-April 2011: Integrated Resettlement Support (IRS)**
 - 107 schemes in operation in YOTs across England and Wales.
 - Targeted at all young people in custody (although not generally those on remand).
 - Funds could be used to fund an IRS worker to provide dedicated resettlement support (in addition to the case worker) in preparation for release and thereafter. Or IRS could be used to buy-in or provide additional support such as mentors, accommodation, and ETE.
- **2009: Resettlement Consortia**
 - In London, the North West, South West, Wessex and West Yorkshire, the IRS is supplemented by resettlement consortia. They aim to develop strategic relationships between local services and custodial institutions to better to integrate working to provide young people with enhanced resettlement support.
 - In addition to this, the YJB is supporting a halfway house in the South West, set up by the Making the Change charity. This will be able to accommodate up to eight young men leaving Ashfield YOI and will be staffed by Ashfield workers.
- **2009: The Daedalus Programme**
 - A specialist resettlement provision known as the Heron Unit has been developed in Feltham YOI to provide intensive support to young people. The programme is open to young people aged 15-17 with a demonstrable willingness to change who are from one of the London boroughs. The programme is the product of partnership between the London Criminal Justice Board, the London Development Agency and Greater London Assembly. Young people are assigned resettlement brokers from the voluntary sector, who provide intensive one-to-one support to the young people whilst in custody and following their release.⁷
- **Wales** is also piloting resettlement support panels (RSPs) in addition to the IRS. These will operate like the YISP model: an individual support plan will be developed for young people, which will be owned and resourced by a range of agencies.

⁷ Ipsos MORI, *Evaluation of the London Youth Reducing Reoffending Programme (Daedalus): Emerging findings*, 2010 [accessed via: http://www.londoncjb.gov.uk/publications/2010_06_02_LYRRPEmergingFindingsRpt.pdf (11/11/11)]

6.2.1 Resettlement – what works?

There is a wealth of evidence surrounding effective resettlement practice for adult prison leavers, but comparatively little research concerning 'what works' for the younger age group that is the focus of this report.⁸ Yet the lessons about what works with adults almost certainly applies equally to children and young people. Young people leaving custody have much the same problems as adults – the absence of trusting relationships, a safe and stable place to live, and something meaningful to do. Indeed these deficits are arguably more acute and debilitating for young offenders. It is expected that young people will live at home so if their parents refuse to accommodate them, there is little or no accommodation market catering to them. Moreover, young people lack experience of dealing with the agencies and institutions to access support. It is clear from the evidence we have taken that in far too many cases the basic needs of young people leaving custody go unmet. The bare essentials need to be put in place before 'add-ons' are even considered.

Although the recipe for successful resettlement is understood making these key elements a reality is hard to achieve. As one practitioner told us, 'resettlement is very easy to write and very hard to do'. It is clear from our evidence that resettlement is rarely effectively realised without strong working relationships between the individuals and services responsible for delivery. This fact is consistently highlighted across the literature.⁹ Yet, too often, such links are not in place.

6.3 A stable and positive relationship

6.3.1 Fragmented and inadequate family work

As family problems are often the root cause of youth offending, they are also a crucial part of the solution. Where a young person's relationship with their family is strong and stable they are more likely to achieve a positive resettlement outcome. Studies have found that:

- Prisoners who receive visits from their family or partner are 39 per cent less likely to reoffend;¹⁰
- 90 per cent of young offenders receiving visits from family or partners have accommodation arranged, compared with 75 per cent of those not receiving visits; and
- 40 per cent of those with at least one visit per month in custody have ETE arranged, compared with just 16 per cent of those without visits.¹¹

Involving families in a young person's mental health treatment during and post custody is also identified as critical to successful rehabilitation.¹²

8 For further information on effective resettlement of adults see Centre for Social Justice, *Breakthrough Britain: Locked Up Potential*, London: Centre for Social Justice, 2009

9 Hazel N et al, *Key lessons from the RESET programme – Executive summary*, London: Catch 22, 2010, p8; Cooper K et al, *Keeping Young People Engaged: Improving education, training and employment opportunities for serious and persistent young offenders*, London: Youth Justice Board, 2007pp173-177; Healthcare Commission and HM Inspectorate of Probation, *Actions Speak Louder: A second review of healthcare in the community for young people who offend*, London: Healthcare Commission and Her Majesty's Inspectorate of Probation, 2009, pp26-7; and Youth Justice Board, *Barriers to engagement in education, training and employment*, London: Youth Justice Board, 2006, p27

10 Ministry of Justice and Department for Children, Schools and Families, *Reducing reoffending: supporting families, creating better futures*, London: Ministry of Justice, 2009, p21

11 Based on a sample of 1,945 prisoners – male, female and young offenders; Niven S and Stewart D, *Resettlement outcomes on release from prison in 2003*, London: Home Office, 2005

12 See for example, Perry A et al, *Mental Health: Source document*, London: Youth Justice Board, 2008, p53; and Khan L, *Reaching out, reaching in: Promoting mental health and emotional well-being in secure settings*, London: Centre for Mental Health, 2010, p60

'The reoffending rate is high because generally speaking they are returned to exactly the same circumstances that contributed to their offending in the first place. Unless we look at families, this isn't going to change... This should be the focus. Yet, capacity to work with families has been much reduced.'

YOT, in evidence to the CSJ

Secure facilities have a critical role to play in helping to maintain and nurture links and including the family in rehabilitation efforts. In spite of this, many of the institutions we visited reported that their capacity to work with and maintain links with the families of young people in custody was limited or non-existent. Research studies during the last decade have consistently identified this failure, yet little has been done to address it.¹³ A recent review summarised the position thus:

*'Family work in secure settings in England and Wales tends to be restricted to parents attending reviews, awards ceremonies or 'fun days' organised by family liaison officers. Family liaison officers are frequently secure care officers, who reported to this study that the work could be de-prioritised in favour of core duties.'*¹⁴

The Prisons Inspectorate reported that there is little activity by YOIs to increase the attendance of families at review meetings in custody (families attend approximately 50 per cent) and few routinely monitor whether young people are receiving regular family visits. In YOIs almost a third of young men and nearly half of young women said they had never been visited or had not been so in the last month.¹⁵ However, in one young women's unit excellent pre- and post-release family support is provided by a community links worker.¹⁶ Some SCHs are also able to offer 'enhanced and prolonged family visits'. Moreover some family work is carried out by resettlement workers 'in the form of conciliation and practical support in preparation for release'.¹⁷

Virtually all the secure establishments with whom we spoke recognised the importance of family work but struggled to put such work into practice. The main obstacle was said to be the significant distances which many young people are detained from home. A quarter of boys and half of girls in custody are held over 50 miles from home and only a third of young prisoners think it easy for their families to visit.¹⁸ Similar obstacles are reported in the literature.¹⁹ Whilst the CSJ welcomes the decline in the number of young people in custody

¹³ See for example, Hobbs and Hook Consulting, *Research into Effective Practice with Young People in Secure Facilities – Report to the Youth Justice Board*, London: Youth Justice Board, 2001, p23; and Youth Justice Board, *Substance misuse and the juvenile secure estate – summary*, London: Youth Justice Board, 2004, pp41-51

¹⁴ Khan L, op. cit., p61

¹⁵ HM Inspectorate of Prisons, *Annual Report 2010-2011*, Norwich: The Stationery Office, 2011, p65

¹⁶ Ibid

¹⁷ Ibid, p61

¹⁸ Youth Justice Board, 2007, as cited in Smith, 2010, op. cit., p5

¹⁹ Hobbs and Hook Consulting, op. cit., p23

we are concerned that the resultant decommissioning of juvenile secure facilities may further reduce capacity to work with families.

Effective work can be carried out with young people in custody and their families separately. One example is multi-dimensional treatment foster care, known as Intensive Fostering in England and Wales.²⁰ There has been some suggestion that this would be an 'appropriate model for family work' with young people in the secure estate, though no such programme is currently available to those in custody. In addition, the family-focussed programmes cited in the previous chapter such as Multi-systemic Therapy and Family Functional Therapy 'are rarely made available to support resettlement'. They should be.²¹

6.3.2 In-reach and outreach

'You need a professional making significant contact and building a relationship with the young person whilst in custody at least two to three months prior to release. What tends to happen is YOTs adhere to the YJB standards and attend visits once a month – to attend review meetings – rather than build a relationship with the young person.

You need to have a two-way route: in-reach from the community and outreach from the custodial establishment. But the relationships developed in custody with custodial professionals are severed. We tried to pilot a scheme where workers visit young people for three months or so once a week for a month following release and then reduce contact. It was just to provide some normality so as to ease them out of custody, and emotional support and understanding, which is essential for these kids, most of whom come from chaotic families that are unable to look after their children. If no one cares about them, then they are not going to care about themselves and they certainly won't care about anyone else.'

Secure Children's Home manager, in evidence to the CSJ

Young people often also experience inconsistent relationships with youth justice practitioners: there is often inadequate 'in-reach' into custody by YOT workers and limited capacity for 'outreach' in the community by secure staff.

²⁰ For further detail see Chapter Four

²¹ Khan L, op. cit., pp60-61

YOTs are failing to attend obligatory sentence review meetings in custody and when they do attend they spend little time with the young people. Ofsted has reported that 22 per cent of young people in custody had not received any visits from their YOT worker. 'When they did attend, in too many cases the youth offending team workers had not established an effective working relationship with the child or young person and did not have the knowledge they needed to inform the process.'²² This issue has also been reported in other recent research.²³ Failure to attend review meetings and spend more substantial time with young people results in poor preparation for release and consequential uncertainty, which can trigger deterioration in the young person's behaviour. Such practice fails to reflect the evidence, detailed elsewhere in this review, of the critical role that a good quality relationship between a young person and practitioner plays in successful rehabilitation.

In addition, practitioners reported that, too often, custody was treated by local services as a form of respite care, as opposed to an opportunity to transform. Secure institutions frequently expressed frustration that there was not more engagement by YOTs to prepare young people for release.

We have nevertheless come across exemplary examples of YOT staff maintaining a high level of involvement with young people in custody and working relentlessly to broker provision in the community in the face of significant reluctance from other partners. In-reach is often hindered by the enormous amount of time (most of it spent travelling) and money that visiting a young person in custody often demands. There is some indication that some YOT managers refuse to resource distant visits.²⁴

Custodial staff often develop close relationships with the young people in their care and gain a unique understanding of their needs. Yet secure staff reported that they struggled to maintain the relationship or contribute to the young person's care following release. This problem is highlighted in the literature.²⁵ A recent study reported that:

*'In all the establishments visited, staff commented on their inability to be involved in any follow up. At the most some individual staff were able to attend the eight-week community meeting for young people on DTOs. A number of young people talked to us about the relationships they built up with staff while in custody and also expressed regret that they were unable to keep in contact after release.'*²⁶

This was the cause of much frustration and regret. Moreover, it is illogical to let such relationships fall by the wayside given what we know about the transformative influence of continuous support within young peoples' otherwise chaotic lives. Practitioners reported that the central

22 Ofsted, *Transition through detention and custody: Arrangements for learning and skills for young people in custodial or secure settings*, Manchester: Ofsted, 2010, p12

23 Office of the Children's Commissioner, 'I think I must have been born bad': Emotional wellbeing and mental health of children and young people in the youth justice system, 2011, pp53-54 [accessed via: http://www.childrenscommissioner.gov.uk/content/publications/content_503 (20/07/11)]

24 Hazel N et al, *Detention and Training: Assessment of the Detention and Training Order and its impact on the secure estate across England and Wales*. London: Youth Justice Board, 2002, p63

25 Ofsted, op. cit., p22; Hobbs and Hook Consulting, op. cit., p30; and Office of the Children's Commissioner, op. cit., pp53-54

26 Office of the Children's Commissioner, op. cit., pp53-54

obstacle to undertaking outreach work was a lack of resources to cover either the travel involved or the additional custodial staff needed to stand in for those away. We were particularly impressed with one secure unit that had implemented a scheme where custodial staff visited young people for three months after their release to ease their transition to the community. Although the scheme was reportedly successful, it had had to end: the secure unit did not have the resources to take custodial staff off shift. Nonetheless, the scheme provides valuable lessons.

6.3.3 One-to-one voluntary support

As a consequence of the problems identified above many young people in custody do not have the stable and positive relationship with adults that are fundamental to successful rehabilitation.



Reflex staff and young people working together on lyrics

One-to-one voluntary support, such as mentoring, can help fill these gaps. When delivered by well trained and professionally backed-up individuals mentoring can provide young people with a positive role model, support and help build confidence and motivation to change.²⁷ In addition, one-to-one support workers can play a vital role in coordinating the delivery of resettlement services and advocating on young peoples' behalf, operating as the 'glue' between the different agencies and institutions. High-quality mentoring is considered by some to be the most important factor in helping young people to stop reoffending.²⁸ The value of such support has been identified in the independent evaluation of Nacro's resettlement programmes in Portland YOI: just 39 per cent of 15-17 year-olds who received and maintained dedicated resettlement support in custody and following release were reconvicted compared with 73 per cent of those who did not maintain contact.²⁹ Early evaluations of the Daedalus project are also promising (see Figure 6.2): brokers were reported to be fundamental to successful resettlement; young people particularly valued having a single source of support as opposed to working with many different agencies.³⁰ The evidence we have received suggests

27 See for example, Cooper et al, *Keeping Young People Engaged: Improving education, training and employment opportunities for serious and persistent young offenders*, London: Youth Justice Board, 2007, pp88-9; and Ipsos MORI, 2010, op. cit., p6; Hazel N et al, 2002, op. cit., pp75-6

28 Ofsted, op. cit., p24

29 Nacro, *Nacro's resettlement programme for young people leaving Portland Young Offender Institution*, London: Nacro, 2006

30 Ipsos MORI, 2011, op. cit., pp26-54

that one-to-one relationships are most effective when they are empowering, task-focussed (i.e. provide assistance with practical problems as opposed to just befriending) and developed over time, usually beginning whilst in custody.³¹

A recent Ofsted review reports that only two YOIs out of 22 juvenile secure establishments visited are offering mentoring to young people to support their transition.³² This is partly attributable to the short-term funding that many voluntary sector providers are forced to rely on: when funding ends, so does the service, leaving young people confused.³³ The situation is likely to have been further aggravated by the recent cuts. Our witnesses also reported that mentors frequently struggle to gain access to the JSE, in some cases for many months, especially if they are ex-offenders (criminal record issues are discussed below).³⁴ Yet the following are promising one-to-one support schemes designed to facilitate successful resettlement:

Case study: Resettlement Brokers

Resettlement Brokers work with the young people in the Heron Unit, Feltham YOI and in the community. They are provided by a consortium of charities – Rathbone, St Giles Trust and St Mungo's. Whilst in custody, the broker visits the young person at least once a week, enabling them to build a trusting relationship and identify their needs and aspirations. Brokers help the young person with practical skills (writing their CV, coaching for interviews and in some cases, facilitating ROTL, etc) so that they can attend interviews for future college places or work experience. The broker also works with the young person's local YOT and other community services, to establish a positive environment and structure post-release. This may include arranging suitable accommodation; working with the young person and their family to address family problems; and building relationships with local businesses and colleges to access education, training and employment opportunities. Once released, the relationship between the young person and the broker continues on a voluntary basis. Most young people continue to see their broker weekly after the end of their sentence.³⁵

Case study: Reflex

Reflex is a national faith-based voluntary sector organisation that aims to empower young people between the ages of 14 and 21 to break the cycle of offending and re-offending by offering education, outreach and mentoring to participants. As a social franchise, Reflex trains and resources organisations to deliver interventions, youth work and workshop based arts and life-skills courses in both YOIs and in the community. The charity works in ten juvenile and young offender YOIs, and they have a vision to place an outreach worker in every YOI.

Reflex works with young people in custody and following release in three key ways:

- **Dedicated outreach workers** delivering structured outreach on YOI wings. Characterised by purposeful interaction with young people, outreach is a method of delivering informal and social education. Reflex outreach workers are the central hub for all Reflex delivery, whether running

³¹ Cooper K et al, 2007, op. cit., p88; Nacro, 2006, op. cit., p4

³² Ofsted, op. cit., p24

³³ Ibid, p23

³⁴ See for example, Ipsos MORI, 2011, p34

³⁵ Ibid, p6

programmes themselves or coordinating others to do so. Reflex are concerned with addressing the needs presented by each individual, building trust before signposting onto tailored programmes. Emphasis is placed on individuals taking ownership over their own thinking, behaviour and attitudes. On the Reflex myLife programme, for example, young people learn how to live independently, relate to others, plan and review tasks, and make good decisions. Participants work towards a nationally recognised accredited award.

- **Urban Skillz music and theatre programmes** delivered in YOIs, run by non-formal education tutors who are established urban artists. The programmes involve lyric writing, performing and recording music and drama. 92 per cent of participating young people achieve an accreditation. Programmes offer young people a means to reflect on their life experiences, express emotions positively, build confidence and develop literacy skills.
- **A unique mentoring framework** overseen by Reflex and delivered in partnership with the charity, Caring for Ex-Offenders. Young people are surrounded by a circle of support on release:
 - A principal mentor, who provides care and support and oversees their resettlement;
 - A practical helper, who assists the young person to engage with education, training and resettlement and supports them on a day to day basis; and
 - A befriender, who provides peer-to-peer support.

An extract from lyrics written by a young person on the Reflex urban skillz

This is from the heart and this ones true,
to the people that don't know and the people that do,
I was six years old dad and writing to you,
And them visits to the jail left me crying for you,
Me an my mum lived on liptrott estate-harestone avenue four doors up from number two,
Them mullen murders happened and she got arrested and I was crying for you,
But what could you do,
U was on remand for armed robbery charges with at least six years there to do,
And I know you done them bad things when I was a kid just to put clothes on my back,
But now your 42 years old you got a granddaughter dad lets be happy there's no looking back,

Dad yo were was you then,
U was in jail ye serving a ten,
I didn't have a positive role growing up,
that's why I left school an stopped learning at ten,
Dad yo were was you then,
U was in jail ye serving a ten,
I didn't have a positive role growing up,
that's why I left school an stopped learning at ten

6.4 Somewhere to live

Having a safe and stable place to live is vital to successful resettlement. Without it, young people struggle to engage with ETE, as well as substance abuse and mental health treatment. Many research studies have highlighted the increased risk of offending that homelessness

brings.³⁶ It is estimated that the provision of stable and suitable accommodation could reduce reoffending rates by more than 20 per cent.³⁷

Of those released from custody in need of housing, 93 per cent are so due to broken family relationships.³⁸ The family home is the best place for the majority of young people. Working with families during the custodial sentence to maintain links and aid reconciliation, and in the community to support the placement is therefore often the solution to homelessness.

6.4.1 Delays in finding accommodation on release

Accommodation is regularly not found for young people until weeks or days before and in some cases on, the day of their release. In one study nearly a quarter of YOTs said that accommodation was not arranged until the day of the young person's release and seven per cent indicated that it was not arranged until after their release.³⁹ Part of the problem, practitioners informed us, is that most housing providers will not visit the young person in custody to carry out an assessment and young people cannot be classed as homeless until the day of their release. Lack of accommodation makes it difficult to access and arrange other services such as education and training places.⁴⁰ Apart from the practical difficulties such uncertainty creates, it is unsettling and de-motivating for young people and often negatively affects their behaviour. This can result in disengagement from services.

6.4.2 Lack of suitable accommodation for young people

Because young offenders in custody often exhibit chaotic behaviour and have high levels of welfare need, if they cannot live with their families, they require accommodation that is safe, supportive, and able to manage challenging behaviour. The YJB website details the range of housing options deemed appropriate (such as supported lodgings) and inappropriate (such as bed-and-breakfast accommodation) for young offenders.⁴¹ In most areas the provision of suitable housing is severely limited, and, where it exists, it is nearly always full.⁴² A number of local authorities, however, report that they are developing their stock of supported housing because it makes greater financial sense than using bed-and-breakfast accommodation. A recent Barnardo's report found that the provision of supported accommodation to young people leaving custody can produce savings upwards of £67,000 over a three-year period.⁴³

36 See for example Social Exclusion Unit, *Reducing Reoffending by Ex-Prisoners*, London: Social Exclusion Unit, 2002; and Youth Justice Board, *Accommodation: A vital need* [accessed via: <http://www.justice.gov.uk/guidance/youth-justice/accommodation/> (31/01/11)]

37 Social Exclusion Unit, op. cit., p94

38 National Youth Agency & Perpetuity Group, *Audit of accommodation provision for young people who offend*, London: Youth Justice Board, 2010, p17

39 National Audit Office, *Youth Offending: The delivery of community and custodial sentences*, Norwich: The Stationery Office, 2004, p36

40 See for example, Hobbs and Hook Consulting, op. cit., p30; and, Ofsted, op. cit., pp23-24; and National Youth Agency & Perpetuity Group, op. cit., p51

41 Youth Justice Board, *Accommodation – Housing options for young people*, 2010, [accessed via: <http://www.justice.gov.uk/guidance/youth-justice/accommodation/housing-options-for-young-people.htm> (11/11/11)]

42 See for example, Arnall E et al, *Housing Needs and Experiences*, London: Youth Justice Board, 2007, p26; and, National Youth Agency & Perpetuity Group, op. cit., p15

43 Glover J and Clewett N, *No Fixed Abode: The housing struggle for young people leaving custody in England*, London: Barnardo's, 2011, p4

6.4.3 Reluctance to house young offenders

Some housing providers are reluctant or ill equipped to manage the multiple needs of those in the youth justice system. This results in vulnerable young people being refused a place, or being quickly evicted once they have one. Young people who have committed arson or sexual offences are particularly difficult to house.⁴⁴ Housing providers tend to 'cherry-pick' the least needy applicants, leading to the paradoxical situation of the most vulnerable young people being least likely to be provided with safe, supportive accommodation.⁴⁵ Some local authorities we spoke with are successfully tackling this problem by monitoring accommodation placements and specifying the target group (young offenders) in the contracts agreed with providers.

6.4.4 Placement in unsuitable accommodation

Bed-and-breakfast accommodation and hostels are widely recognised as unsuitable for young offenders, and should be used as a very last resort. Indeed, in 2006 it was agreed that bed-and-breakfast accommodation for under-18 year-olds would be phased out by 2011.⁴⁶ Yet such accommodation continues to be commonly used. We received evidence from one secure facility, for example, that a third of the children being released were going to 48 hour bed-and-breakfast accommodation.⁴⁷ This is a particularly serious problem for 16 and 17 year-olds, as we shall later explore. One YOT described the bed-and-breakfast accommodation in their area (which had been assessed as suitable) as 'where you wouldn't even want your dog to be'. A YJB review reported that many hostels were 'unsupervised environments where young people might be exposed to prostitution, violence and drug dealers'.⁴⁸

6.4.5 Eviction and 'intentional homelessness'

Young people evicted from accommodation are in some cases deemed 'intentionally homeless' by housing services, meaning that the local authority no longer has a duty to provide accommodation for them (although the local authority is usually still required to provide information or advice about housing, and in some cases temporary accommodation).⁴⁹ There is evidence that some housing services have a fairly loose interpretation of the criteria for intentional homelessness with regard to young people (not following parental rules or offending, for example).⁵⁰

6.4.6 Poor measurement of need

The proportion of young people in suitable⁵¹ accommodation on release from custody in 2009/10 was 93 per cent⁵² (as shown by data collected from the YJB's previous performance

44 HM Inspectorate of Prisons, *Resettlement provision for children and young people: Accommodation and education, training and employment*, London: HM Inspectorate of Prisons, 2011, p49

45 National Youth Agency & Perpetuity Group, op. cit., pp49-50

46 Youth Justice Board, *Suitable, Sustainable, Supported: A strategy to ensure provision of accommodation for children and young people who offend*, London: Youth Justice Board, 2006, p14

47 Personal communication

48 Youth Justice Board, *Substance misuse and the juvenile secure estate*, op. cit., 2004, p38

49 Arnall E et al, op. cit., p14

50 Diaz R, Factsheet: *Young people and homelessness*, London: Shelter, 2005 p5; Nacro, 2005 cited in Arnall E et al, op. cit., p79

51 The YJB defines suitable accommodation in accordance with the Children (Leaving Care) (England) Regulations 2001. On this basis, the assessment of suitability should take into account: whether the accommodation is suitable for the child in the light of his or her needs; the child's wishes and his or her education, training or employment needs; and the character of the landlord or other provider

52 Data provided by the YJB to the CSJ

indicator National Indicator, 46 (NI 46)). This represents significant progress since 2003.⁵³ However, a number of individuals who gave evidence told us that the data does not accurately reflect the serious housing problems experienced by young people in the youth justice system. The literature suggests the same.⁵⁴ The problem is that NI 46 only measures the number of young people in suitable housing at a single point – at the end of their disposal – and thus disguises the young person's earlier and wider housing needs.⁵⁵ Several YOT surveys have also revealed that the data is subjective: some YOT officers assess accommodation as suitable when it is manifestly not.⁵⁶

Though NI 46 is ceasing in 2011/12 following the recent reduction in youth justice performance indicators, we understand that information on access to suitable accommodation will continue to be collected from YOTs using a broadly similar measurement. The abovementioned concerns therefore remain salient.

6.4.7 16 and 17 year-olds

16 and 17 year-olds tend to experience the most acute accommodation difficulties on release from custody.⁵⁷ There has always been both ambiguity and controversy as to who has accommodation responsibility for this age group. The Children Act 1989 stipulates that children's services have a duty to accommodate those over 16 whose welfare would be seriously prejudiced without it. However, the Homelessness Act 2002 made 16 and 17 year-olds a priority need group for housing services. This resulted in uncertainty about which service was primarily responsible for accommodating this age group. Young people were 'ping-ponged' between the two services, often getting lost in between and not receiving the support to which they are entitled.⁵⁸

Whichever service takes responsibility has important ancillary implications. Housing services only offer accommodation, whereas children's services can, in addition to accommodation, provide financial assistance, mental and substance abuse treatment, and help with accessing ETE.⁵⁹ Moreover, if a 16 or 17 year-old is accommodated by children's services (under section 20 of the Children Act 1989) for 13 weeks or more they will also be entitled to ongoing support up to the age of 21 or 24 under the Children (Leaving Care) Act 2000.⁶⁰ It follows that it is more onerous and costly for children's services to accommodate 16 and 17 year-olds.

In recent years a number of House of Lords rulings have clarified the issue: children's services are primarily responsible for lone, homeless, 16 and 17 year-olds.

53 National Youth Agency & Perpetuity Group, op. cit., p12

54 Ibid, pp46-47

55 See for example, Arnall E et al, op. cit., p27; and National Youth Agency & Perpetuity Group, op. cit., p46

56 Ibid

57 Arnall E, op. cit., p28; and Youth Justice Board, *Suitable, Sustainable, Supported*, 2006 op. cit.

58 See for example, Britz H, *From Pillar to Post*, Inside Housing Magazine, 2010, [accessed via: <http://www.insidehousing.co.uk/need-to-know/care-and-support/from-pillar-to-post/6509944.article> (29/11/10)]

59 Shelter, 'Support for 16 and 17 year-olds' [accessed via: http://england.shelter.org.uk/get_advice/homelessness/help_from_social_services/support_for_16_and_17_year_olds (29/11/10)]

60 Section 20 of the Children's Act 1989; and Children (Leaving Care) Act 2000

Children's services duty to accommodate 16 and 17 year-olds

R (G) v Southwark [2009] UKHL 26 ('the Southwark judgement')

The House of Lords made it clear that if a lone young person of 16 or 17 years of age presents themselves to children's services as homeless – i.e. they meet the criteria under Section 20 (s.20) – they must be accommodated and 'looked after' by children's services unless the young person does not want to be. The ruling makes clear that the majority of homeless 16 and 17 years olds will fall under s.20, rather than s.17 of the Housing Act 1996, which is usually used for children who need to be accommodated with their families. If a homeless 16 or 17 year-old presents themselves to housing services, they should immediately be provided with interim accommodation and referred to children's services for an assessment (unless they do not want to be).

R (M) v Hammersmith and Fulham [2008] UKHL 14

If a 16 or 17 year-old presents his or herself to housing services as homeless they must – after being placed in interim accommodation under homelessness legislation – be referred to children's services for an assessment under the Children Act 1989.⁶¹

The response to these judgements has been mixed. In some localities they are being followed. However, there is evidence that in others, children's services are not fulfilling their responsibilities and are 'even prepared to face judicial review before amending their practice'.⁶² Due to scarce resources, some children's services are delaying the assessment process leaving young people inadequately supported.⁶³ In the worst cases services are 'just batting children off, waiting for them to turn 18 when they will no longer be eligible for s.20 accommodation'.⁶⁴

'One of the key factors that leads to reoffending is lack of housing. One boy called me on a Sunday evening to say he was going to offend again just so he could go back inside and have somewhere to stay. The system needs to recognise that we need to provide more suitable accommodation for those leaving custody; some sort of halfway house for example.'

Voluntary sector organisation, in evidence to the CSJ

In other areas s.17 assessments of 16 and 17 year-olds have increased significantly. But the numbers accommodated have not. There are a number of reasons for this. Some young people reject s.20 accommodation because they misunderstand or have concerns about it (many have negative perceptions of care), which are not addressed by children's services. In

61 Shelter; *Shelter Children's Legal Service briefing: Responding to youth homelessness following the G v LB Southwark judgment, 2009* [accessed via: http://england.shelter.org.uk/__data/assets/pdf_file/0005/231269/G-v-Southwark--ChildrenLegalService_briefing-Nov09.pdf (16/10/11)]

62 National Youth Agency & Perpetuity Group op. cit., p63

63 Glover J and Clewett N, op. cit., p35

64 Evidence received by the CSJ

other cases young people reject what is offered simply because they want a flat as opposed to the care (an allocated social worker and multiple reviews) that is part and parcel of s.20.

The reluctance of some local authorities to fulfil their responsibilities is understandable. Since 2007/08 children's social services have seen a 33 per cent increase in the number of children subject to child protection plans, and a 17 per cent uplift in the numbers coming into care.⁶⁵ The average cost of a child in care is £46,000 per year, which added to the cuts in local government funding, has led to 'perfect storm' of rising workloads and falling budgets.⁶⁶ Those children in serious need but not at crisis point are subsequently unable to access the support that they both need and are entitled to.

6.5 Something to do

The research has unequivocally shown that engagement with ETE is central to successful resettlement.⁶⁷ The Social Exclusion Unit reported that employment could reduce the risk of offending by between one third and a half.⁶⁸ A study tracking 336 young people on DTOs found that those in education, training or work during the community period of their sentence were 36 per cent less likely to be rearrested than their NEET counterparts.⁶⁹ Education and training is particularly relevant to this age group because many young people leaving custody are either of compulsory school age or, if above it, have been little engaged in education.⁷⁰

'Getting a job was cited by young men as the most likely factor in preventing them reoffending.'⁷¹

Accessing ETE for young people in the youth justice system is particularly problematic as youth unemployment is at an all time high⁷² and the labour market is becoming increasingly volatile. Even the most qualified young people are struggling to find jobs. It follows that those who have little or nothing that is positive on their curricula vitae face acute difficulties. The Social Exclusion Unit estimated that ex-offenders have an unemployment rate approximately 13 times that of the general population.⁷³

65 Association of Directors of Children's Services, *Children's Services Leaders call for investment to build a sustainable child protection service*, September 2010, [Available at: <http://www.adcs.org.uk/download/press-release/sept-10/adcs-call-for-protection-of-early-intervention.pdf> (accessed 31st January 2011)]

66 Ibid

67 See for example, ECOTEC, *An Audit of Education and Training Provision within the Youth Justice System*, London: Youth Justice Board, 2001, p170; Lipsey, 1995, as cited in The Howard League for Penal Reform, *Out for good: The resettlement needs of young men in prison*, London: The Howard League for Penal Reform, 2006, p70

68 Social Exclusion Unit, op. cit., p52

69 Hazel N et al, op. cit., p94

70 Social Exclusion Unit, op. cit., p167

71 Summerfield A, *Children and Young People in Custody 2010-2011: An analysis of the experiences of 15-18-year-olds in prison*, Norwich: The Stationery Office, 2011, p8

72 Office for National Statistics, Summary of key labour market statistics published on 12 October 2011, [Accessed via: <http://www.ons.gov.uk/ons/rel/lms/labour-market-statistics/october-2011/summary-of-key-statistics.pdf> (11/11/11)]

73 Social Exclusion Unit, op. cit., p53

6.5.1 The current state of provision

Despite the established benefits, the provision of ETE for young people leaving custody is often absent, severely delayed or inadequate.⁷⁴ Delays are sometimes so severe that the young person has finished the community element of their DTO before education or training has been arranged.⁷⁵ This is de-motivating and increases the likelihood of reoffending.⁷⁶ It also leads to the disengagement of young people in ETE; one YJB sponsored study reported that lack of access to suitable provision affects the engagement of 95 per cent of young people below school leaving age and 88 per cent of those above it.⁷⁷

6.5.2 Reluctance amongst providers to accept youth justice involved young people

It is clear that there is a widespread reluctance amongst schools and training providers to accept young people who have left custody.⁷⁸ In some cases this is because schools and providers feel ill-equipped – both in terms of skills and resources – to meet the often intensive support need of young custody leavers.⁷⁹ In other cases reluctance flows from concern that young offenders will negatively affect outcome targets,⁸⁰ be a harmful influence on other pupils⁸¹ or simply be 'less desirable' than other applicants.⁸²



Young people restoring a motorbike at the youth justice centre set up by Swansea YOS to provide support and meaningful activities to those on YOT orders and following custody

74 Hazel N et al, op. cit., pp77-8

75 Ibid, p77

76 Cooper K et al, 2007, op. cit., p86

77 Youth Justice Board, *Barriers to engagement in education, training and employment*, London: Youth Justice Board, 2006, p69

78 See for example, Ofsted, op. cit., p21; Youth Justice Board, *Barriers to engagement in education, training and employment*, 2006, op. cit., p85; and Hobbs and Hook Consulting, op. cit., p31

79 Cooper K et al, op. cit., p69

80 See for example, Ibid, p66; and Social Exclusion Unit, op. cit., pp167-8

81 Stephenson M, *Rethinking Crime and Punishment Briefing – Unlocking Learning: Examining public and professional attitudes towards the role of education in relation to crime and punishment of young offenders*, 2005, [accessed via: <http://www.rethinking.org.uk/informed/Unlocking%20learning.pdf> (14/01/11)]

82 Youth Justice Board, *Barriers to engagement in education, training and employment*, 2006, op. cit., p67

6.5.3 Lack of appropriate provision

The reluctance of education and training providers to take on young offenders is in large part a reflection of the paucity of good quality vocational training places generally (the lack of places on particular courses, and shortfalls in the number of apprenticeships for those aged 16 and over)⁸³ as well as lack of appropriate provision for this often highly needy group (custody leavers tend to have dysfunctional educational histories requiring provision that can meet their distinct needs)⁸⁴. There are concerns over the quality of some alternatives to traditional educational provision as explored in the recent CSJ report on educational exclusion.⁸⁵ In addition, there is difficulty in moving young people from work-based learning into full-time employment.⁸⁶

These challenges mean that there is typically a disconnect between the provision available in custody and what is offered on release. Young offenders cannot build on any progress they have made in custody and become de-motivated as a result.⁸⁷ The National Audit Office found that only six per cent of YOTs were able to continue the education that young people had started in custody.⁸⁸ Schools and courses commonly have fixed start dates. Many young offenders are consequently not able to begin courses for a substantial time after their release, or have a much reduced choice as to which courses are open to them.⁸⁹

There have nevertheless been improvements in provision in recent years: a recent Ofsted review reported that the Keeping Young People Engaged programme had improved access to education and training and increased the number of young people engaged in ETE following their release.⁹⁰

6.5.4 The problem of school rolls

School rolls are commonly identified as the root cause of many of the difficulties that young people experience in accessing education on release from custody.⁹¹ Once a young person has been removed from a school roll it is difficult to get back onto one on release. They can wait lengthy periods of time to access education and in the worst cases, are never reallocated a school place or the funding that accompanies it.⁹²

One of the key concerns and the impetus for changing regulations in 2006, was that head teachers were able to take a young person off a school roll far too readily – after four weeks

83 Ofsted, *op. cit.*, pp20-21; Cooper K et al, *op. cit.*, pp70-84; and Youth Justice Board, *Barriers to engagement in education, training and employment*, *op. cit.*, p68

84 See for example, *Ibid*, pp63-64; and Edcoms, *Education, Training and Employment – Source document*, London: Youth Justice Board, 2008, p19; and Cooper K et al, *op. cit.*, p71

85 Youth Justice Board, *Barriers to engagement in education, training and employment*, *op. cit.*, p84; Centre for Social Justice, *Breakthrough Britain: No Excuses*, London: Centre for Social Justice, 2011

86 Cooper K et al, *op. cit.*, pp70-72; and Youth Justice Board, *Barriers to engagement in education, training and employment*, 2006, *op. cit.*, p68

87 Youth Justice Board, *Barriers to engagement in education, training and employment*, *op. cit.*, p87

88 National Audit Office, *Youth Offending: the delivery of community and custodial sentences*, London: Stationery Office, 2004, p26

89 HM Inspectorate of Prisons, 2011, *op. cit.*, p58; Ofsted, *op. cit.*, p21; and Cooper K et al, *op. cit.*, p72

90 Ofsted, *op. cit.*, p21

91 See for example, Hazel N et al, *op. cit.*, p79; and Social Exclusion Unit, *op. cit.*, p168

92 See for example, Youth Justice Board, *Barriers to engagement in education, training and employment*, 2006, *op. cit.*, pp66-88; and Social Exclusion Unit, *op. cit.*, p168

of being in custody.⁹³ The regulations were amended in 2006. Today head teachers are legally able to remove a young person from a school roll only if they are in custody (including remand) for four months or more and are not reasonably expected to return to school thereafter.⁹⁴ However, in spite of the 2006 amendments, 'there remains wide variation in interpretation locally', suggesting that young people are still being prematurely removed from school rolls in some areas.⁹⁵ Witnesses also reported that schools sometimes circumvent the regulations by excluding young people whilst they are in custody.

Young people not removed from their school roll while in custody may nevertheless encounter difficulties on release. Their school places may have been reallocated and need to be renegotiated.⁹⁶ It is also important to note that some young people will not have been on a school roll prior to their entrance into custody (an estimated 10,000 children are missing from school rolls).⁹⁷ They are therefore likely to experience difficulties re-accessing provision on their release no matter what the regulations regarding school rolls. Finally, children in custody with special educational needs (SEN) face particularly difficulties on release. Statements of need (which provide SEN young people with additional provision) are retracted when a young person enters custody and often not reinstated for significant periods following release.⁹⁸ The Apprenticeships, Skills, Children and Learning Act 2009 includes provision to address this problem: SENs should now go on hold whilst the young person is in custody (the host authority should provide SEN during the custodial sentence) and revived on release.⁹⁹

6.5.5 Criminal records and the Rehabilitation of Offenders Act 1974

Following the *Rehabilitation of Offenders Act 1974* (ROA), it has been an established principle in law that people who have offended should, in most cases, be given a second chance and helped to overcome the significant barrier that a conviction and criminal record presents to gaining employment. However, the systems in place to protect ex-offenders from discrimination in the labour market are inadvertently making it harder for them to enter it. Young people are especially vulnerable to these failures: their age and immaturity predisposes them to engage in risky behaviour, which can subsequently ruin their future employment prospects.

The ROA is outdated and increasingly ineffective. It gives ex-offenders the right not to declare their conviction(s) to employers after a fixed period of time (except for certain positions, see section below) – known as the period of disclosure – providing they are not reconvicted. Convictions that do not have to be declared are termed 'spent' convictions and those required to be declared 'unspent'. Disclosure periods vary according to the type and/ or length of sentence given.¹⁰⁰

93 Youth Justice Board, *Education, training and employment: Re-engagement after custody – changes to regulations*, Youth Justice Board, 2010, [accessed via: <http://www.yjb.gov.uk/en-gb/practitioners/Educationtrainingandemployment/Re-engagement/> (18/11/10)]

94 *The Education (Pupil Registration) (England) Regulations 2006* Section 8(1)(i) [accessed via: <http://www.legislation.gov.uk/uksi/2006/1751/regulation/8/made> (18/11/10)]

95 EdComs, op. cit., p13

96 Ibid, p47

97 Ofsted, 2004, as cited in Ogg T and Kaill E, *A New Secret Garden? Alternative Provision, Exclusion and Children's Rights*, Civitas, 2010, p7 [accessed via: <http://www.civitas.org.uk/pdf/NewSecretGarden.pdf> (02/02/11)]

98 Youth Justice Board, *Barriers to engagement in education, training and employment*, 2006, op. cit., p67

99 Apprenticeships, Skills, Children and Learning Act 2009, Section 50

100 Home Office, *Breaking the Circle: A report of the review of the Rehabilitation of Offenders Act*, London: Home Office, 2002, p41

The crux of the problem is that nowadays offenders are receiving substantially longer sentences for the same offences than they would have done previously.¹⁰¹ This means that many more offenders are subject to lengthy disclosure periods and thus unable to gain employment. For example, whereas 3,537 offenders received custodial sentences of more than two and half years in 1974, this figure rose to over 11,000 in 2000; an increase of 211 per cent.¹⁰² It follows that the ROA is increasingly operating as a barrier as opposed to a means into employment. Lastly, the MoJ committed itself to reforming the ROA in its green paper.¹⁰³ We understand that plans are currently under consideration.

The following table details the periods of time during which young people are obligated to disclose their offence.

Table 6.1: Rehabilitation of Offenders Act 1974 – provisions for those under 18 when convicted

Sentence	Period of disclosure (from date of conviction)
Reprimands and final warnings	Immediately spent (Introduced in the CJIA 2008) ¹⁰⁴
Fine	2 ½ years
Referral Orders	The period of the order
Youth Rehabilitation Order	1 year or when order ceases to have effect, whichever is longer ¹⁰⁵
Custody of 6 months and under	3 ½ years
Custody over 6 months to 2 ½ years	5 years
Custody over 2 ½ years	Never spent

6.5.5.1 Working with children and vulnerable adult groups

Some types of employment, due to their sensitive nature (working with children and vulnerable adults, as well as some legal, financial and security posts), are exempt from the ROA under an Exceptions Order. Applicants to 'excepted positions' are subject to either a Standard or Enhanced Criminal Records Bureau (CRB) check, which will disclose details of all spent and unspent convictions, and information of cautions, reprimands and final warnings.¹⁰⁶ This will not necessarily result in an applicant being rejected, but it makes it significantly more likely, a topic to which we shall return.

101 Ministry of Justice, *Sentencing Statistics: England and Wales 2009*, Ministry of Justice, 2010, p30 [accessed via: <http://www.justice.gov.uk/publications/docs/sentencing-stats2009.pdf> (15/11/10)]

102 Home Office, op. cit., p6

103 Ministry of Justice, *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*, Norwich: The Stationery Office, 2010, p32

104 Section 8A of the Rehabilitation of Offenders Act 1974 as amended by Schedule 10 of the Criminal Justice and Immigration Act 2008

105 Section 5(5)(da) of the Rehabilitation of Offenders Act 1974 as amended by Schedule 4, paragraphs 20–22 of the Criminal Justice and Immigration Act 2008

106 Home Office, op. cit., p13

Over the past ten years the number of positions exempt from the ROA has increased by roughly 50 per cent, leading to concern within the youth justice community that the 'principle of allowing a criminal record to be spent has almost been entirely lost'.¹⁰⁷ Many law-abiding young people wishing to work in sensitive positions such as social care or nursing are prevented from doing so by the offences they committed – minor, such as petty shoplifting, or more serious, such as arson – in their teenage years. These reformed young people often wish to use their experiences of the criminal justice system to prevent children from making the same mistakes as they did or help turn the lives around of youngsters embarked on a similar path.

The Vetting and Barring Scheme (VBS – an enhanced method of checking individuals who wish to work or volunteer with vulnerable groups), introduced in October 2009, widened the number of activities and workplaces (known as 'regulated activities') subject to enhanced CRB checks. There are fears that its introduction will make it almost impossible for rehabilitated ex-offenders to work with vulnerable groups even where this could be appropriate. Last year, however, the Government announced a series of proposals (following its review of the VBS) designed to scale back the VBS to 'common sense levels'. These include significantly reducing the number of positions requiring enhanced checks.¹⁰⁸ Some of these proposals are included in the Protection of Freedoms Bill, which is currently making its way through Parliament.¹⁰⁹ The current measures remain in place.

Further proposals for reform were recently made in the first phase of the independent review of the criminal records regime. The report recommended that employers who knowingly make unlawful criminal records applications be penalized. This proposal has been accepted by the Government. It is also recommended that old and minor convictions should be filtered out of criminal records; a proposal which the Government is considering implementing. These developments are to be welcomed. The report also proposed the introduction of basic criminal record checks for a wide array of positions for which standard and enhanced checks are not available. These would disclose unspent convictions and would be available before an individual has commenced work.¹¹⁰ The Government has accepted this recommendation in principle.¹¹¹ There are understandable concerns that implementation of this proposal would create further barriers to employment for ex-offenders. Nacro emphasized that if it is fully accepted, reform to the ROA would need to be 'as radical as is possible to offset the additional barrier that basic disclosures' would present.¹¹²

6.5.5.2 Employer attitudes to employing ex-offenders

Whilst the majority of employers are open to employing ex-offenders in principle, few do so in practice: a recent study found that nine in ten employers (of a sample of 300) were open to recruiting an ex-offender; yet only 18 per cent had knowingly done so.¹¹³ A conviction

¹⁰⁷ Nacro, op. cit., p8

¹⁰⁸ Home Office, Department for Education and Department of Health, *Vetting & Barring Scheme Remodelling Review – Report and Recommendations*, 2011 [accessed via: <http://www.homeoffice.gov.uk/publications/crime/vbs-report/view=Binary> (16/10/11)]

¹⁰⁹ Protection of Freedoms Bill, Section 63

¹¹⁰ Mason S, *A Common Sense Approach: A review of the criminal records regime in England and Wales*, Home Office, 2011 [accessed via: <http://www.homeoffice.gov.uk/publications/crime/criminal-records-review-phase1/> (11/11/11)]

¹¹¹ <http://www.homeoffice.gov.uk/publications/crime/gov-resp-indep-rev-crim-records/view=Binary>

¹¹² Nacro, *The impact of the Protection of Freedoms Bill and the Common Sense Approach review of the criminal records regime* [Accessed via: <http://www.nacro.org.uk/change-the-record/facts-and-stats/> (02/11/11)]

¹¹³ Working Links, *Prejudged: Tagged for Life – A research report into employer attitudes towards ex-offenders*, London: Working Links, 2010, p12

continues to be used by many employers to discriminate against applicants: 75 per cent reported that they would use a conviction to either reject an applicant outright or (arguably more understandably) to discriminate against him or her if faced with two equally qualified applicants.¹¹⁴

The limited recruitment of ex-offenders is explained by several factors: many ex-offenders do not feel confident enough to 'fully disclose their convictions' and thus employers are unknowingly recruiting them; there is a negative perception of ex-offenders amongst employers; and, linked to this, there are concerns that the company image will be damaged if ex-offenders are employed. It is of note therefore that 60 per cent of employers with experience of recruiting ex-offenders reported that they worked as hard as or harder than employees with no convictions. Many employers reported that they would be inclined to recruit ex-offenders if they were offered more expert advice, support and incentives.¹¹⁵ This suggests that more needs to be done to make employers aware of the benefits of employing ex-offenders.



Young people at Swansea YOS youth justice centre with the bikes they restored, ready for donation to charity

Enterprise Plc, a utility company, actively seeks to recruit ex-offenders onto its apprenticeship scheme. The company believes it has a duty to give such young people a second chance. Whilst only a small number of ex-offenders are currently engaged in the scheme (the first intake was August 2010), it is clearly helping to transform the lives of these young people. It is an exemplar of private sector philanthropic practice.

Enterprise, however, reported that there are financial obstacles to young people taking part in such opportunities. During the first 12 weeks of the scheme young people are not paid because they are on trial as opposed to on an apprenticeship. Yet, they also lose their state financial support (Job Seekers Allowance (JSA)) because they are not available for work. This either prevents the young person from taking part or forces the participating company to pick up these initial costs. This is a real disincentive, particularly to smaller companies or contractors.

¹¹⁴ Ibid, pp12-15

¹¹⁵ Working Links, op. cit., pp13-16

Under-18s are entitled to claim Income Support (IS) in exceptional circumstances if they are accessing work training over 12 hours per week. However, this can only be accessed if the company is an accredited training provider, which, once again, can be difficult for smaller companies and contractors to attain. Solutions to this problem are currently being explored by the Government.

Case study: Enterprise

Enterprise allocates 50 per cent of its two year water apprenticeship placements to ex-young offenders directly following release from Hindley YOI. The company seeks to employ young people at the end of the apprenticeship. Young people complete on-the-job training and attend college to achieve their NVQ level two. They are provided with additional support to achieve qualifications if required.

Enterprise and Wigan YOT work closely together to support young people during their apprenticeship. For example, the recruitment manager rings the young people in the morning to ensure they are awake in the first few months of the scheme. Similarly, if young people are experiencing problems in their home lives, the YOT and Enterprise will work with the young person to address them. Young people and new apprentices are mentored by enterprise employees. One of the participants on the programme has now trained as a mentor.

Enterprise reported that young people from an offending background are highly motivated, loyal and thrive in the working environment, often more so than their non-convicted peers. One of the young people has recently been nominated for a top apprentice award within the business. The young people told us that the company 'is really supportive' and described their resettlement worker and the recruitment manager at Enterprise as 'like aunties'. They said that 'they would be prison' if it wasn't for the scheme. Only one of the young people on the scheme has reoffended.

6.6 Mental health

Where mental health problems apply lack of treatment is likely to prejudice accommodation, ETE engagement and desistance from offending.¹¹⁶ Several recent studies have found that the provision of mental health treatment for young people immediately following their release from custody is highly variable. In some areas, young people experience long delays or never receive the care they require whereas others display good and innovative practice.¹¹⁷ Moreover, young peoples' mental health needs tend to increase once they are released back into the community, suggesting that they are only temporarily reduced while in custody.¹¹⁸

116 Bradley K, *The Bradley Report: Lord Bradley's review of people with mental health problems or learning disabilities in the criminal justice system*, London: Department for Health, 2009, p117

117 See for example, Harrington R et al, *Mental Health Needs and Effectiveness of Provision for Young Offenders in Custody and in the Community*, London: Youth Justice Board, 2005, p27; and Healthcare Commission and HM Inspectorate of Probation, *Actions Speak Louder: A second review of healthcare in the community for young people who offend*, London: Healthcare Commission and HM Inspectorate of Probation, 2009, pp26-7

118 Harrington R et al, op. cit., p27

The most recent review of provision found that ten per cent of YOTs 'did not provide sufficient and appropriate health provision to children and young people, following release from a secure environment'.¹¹⁹ Several studies have found that those with emotional and mental health issues are often the least likely to receive the interventions they need following release; one study of 75 young offenders found that only a third of those recommended a mental health intervention following release received it. Those that were treated were usually subjected to delays, on average, of three and a half months.¹²⁰

16 and 17 year-olds are particularly vulnerable. They are sometimes unable to access any mental health treatment because they are incorrectly perceived by CAMHS to be too old for their support, and are too young for adult mental health services.¹²¹ This problem has been widely reported for over a decade yet there is little evidence of any improvement.

6.7 Multi Agency Public Protection Arrangements (MAPPA)

Several witnesses reported that some children who have committed violent or sexual offences are not receiving sufficient provision to manage their risk to the community following their release from custody. Children whose behaviour is exceptionally severe receive long sentences and should receive provision to address their needs and behaviour whilst in custody. Yet individuals whose behaviour falls just below this level (but nevertheless serious) and only spend a few years in custody and a few months on licence in the community are often overlooked. There are only a small number of child MAPPA cases, but failing adequately to address their needs risks storing up problems for the future.

Witnesses reported that one problem is that YOTs are not allowed to chair MAPPA meetings because they are not a 'Responsible Authority'. The police therefore chair meetings. Yet, in many cases the police do not understand the distinct characteristics and vulnerabilities of children – for example, that a dramatic change in their behaviour can occur very quickly. Children are reportedly often treated as adults. In addition, we have received evidence that important child protection issues are sometimes overlooked in management plans, because MAPPA are not compatible with child protection plans. For these reasons some MAPPA management plans are not appropriate for children and do not, therefore, protect society from the risk that some children pose.

¹¹⁹ Healthcare Commission and HM Inspectorate of Probation, *Actions Speak Louder: A second review of healthcare in the community for young people who offend*, op. cit., 2009, p27

¹²⁰ Ibid, p41

¹²¹ See for example, Youth Justice Board, *Evaluation of Resettlement and Aftercare Provision*, London: Youth Justice Board, 2010, p141

6.8 Recommendations

Immediate term

Provision of family support

It should be a priority to provide support to young people in the context of their families to address the problems that are so often the root cause of their offending behaviour.

- To realise provision of such support we recommend that funds be made available for dedicated 'family link worker' posts in juvenile secure facilities. These should operate on a Payment by Results (PbR) basis. Within a PbR framework for family support workers we highlight the following implementation considerations. First, an attachment fee could be awarded for the engagement of the young person and the family. Following successful attachment, subsequent payment outcomes in relation to a worker's interaction with young people could include sustained engagement in ETE. In relation to parents or close family members, this could include their involvement in relationship support and parenting courses. The workers' role would comprise:
 - Providing support to young persons to maintain links with their families;
 - Facilitating reconciliation;
 - Working therapeutically with young people and their families during visits; and
 - Operating as a link between family work being carried out in custody and the community, including referring families to local authority services in home areas and championing their needs.

Ideally, such workers would spend a significant proportion of their time working with young offenders' families in the 'home' local authority. Such an outreach role is largely impractical at present: (though it could be developed in some institutions for some children) the great distances that many young people are detained from their families' mean that much of outreach workers' time would be spent travelling as opposed to working with families.

The skills required to carry out family support work are often greatest in the voluntary sector. In addition to possessing extensive experience of working with hard-to-reach families, the sector has the added advantages of generally being better trusted, more able to reach the most disadvantaged and a great deal more innovative than its public and private sector counterparts. We recommend that custodial institutions consider outsourcing the role to the voluntary sector.

One-to-one support

- We strongly recommend that funds be made available to secure establishments to provide practical and relational one-to-one support workers to young people to prepare them for release and support them thereafter. There should be a particular focus on helping young people to engage in ETE. Such support should continue beyond the conclusion of the community element of DTOs as appropriate. These should operate on a PbR basis. The required outcomes within such a PbR model could include successful engagement of a young person in custody, with graded payments based on proximity to release. It could also include payments based on sustained personal support following release from custody, purposeful and sustained engagement in ETE, and a reduction in the frequency and seriousness of re-offending over an agreed period of time.

- We think the voluntary sector particularly well placed to provide such support. The relational network provided to young people leaving custody by the charity, Reflex, is a particularly innovative example.

80 per cent of those we polled support the introduction of family workers into youth custodial institutions to help prepare young people's families for their release.

CSJ/You Gov polling, September 2011

In-reach and outreach

- This review has concluded that a model of secondments – from YOTs into custodial institutions and from the latter into YOTs – would help to improve the connection between the two environments and thus outcomes for young people.
- Where prison officers have been seconded to YOTs they have acted as a powerful reminder to young people of their experience in custody and their commitment to change. Secondment also facilitates understanding between the two arenas: professionals in custody are more likely to listen to someone in the community who is 'one of their own' and vice versa; and practitioners benefit from the experience of a justice environment that is different from the one to which they are accustomed to. This can only improve outcomes for young people.
- However, we recognise that this is largely impracticable at this point in time. Custodial facilities would be unable to afford to replace seconded officers. The secondment of YOT officers to the JSE is unfeasible in its current configuration: most YOTs do not have a secure institution in their locality; and their young people are typically distributed in institutions across England and Wales.
- We nonetheless consider that there is a strong case for making resources available in the *immediate term* for children who have been on longer sentences, to allow secure facilities to attend all follow-up meetings in the community and continue to meet young people on release, alongside the YOT or Probation, to provide continuity. Such continuity is especially important in these cases: the young people will have been removed from the community and their family for many years; secure facility staff will have become almost a substitute family and it is appropriate that they should take a major support role following release.

85 per cent of people we polled support the provision of mentors to young people in custody to help them access services on release and provide support and advice.

CSJ/You Gov polling, September 2011

Accommodation

- We recommend that local authorities consider piloting host family placements for young people leaving custody. Such placements provide young people with a stable and caring environment, which can protect against further offending. Moreover, supported lodgings do not generally face the objections from local residents that halfway houses tend to. The family-focussed Supported Lodgings scheme offered by East to West is one such example.

Case study: East to West

East to West runs a Supported Lodgings scheme which places homeless young people aged 16-17 referred by the local authority into the home of a 'host'.

Hosts do more than just provide young people with accommodation. They provide: guidance; emotional support; a safe and stable relationship; and help to nurture skills, such as budgeting and cooking. Hosts are akin to surrogate families. One young man who was placed in Supported Lodgings with East to West said that without it: 'I would be living at one of my parents' and getting into trouble, or be in prison or involved in drugs. I would have given up college if I wasn't living with them'. Living in supported lodgings had transformed his life: he had been able to complete his college course and able to rebuild his relationship with his family.

The charity operates in the Surrey boroughs of Elmbridge, Runnymede and Spelthorne. The East to West Supported Lodgings team trains and supports the hosts, and works alongside the young people. The team also provides informal relational support to the birth family to aid reconciliation. The end goal is for the young person to move into supported housing or independent living when they are ready, or back to the family home once family problems have been addressed. Many young people remain with host families for a number of years.

Host families do not have parental responsibility for the young people. Families are not paid but receive the housing benefit that is allocated to the young person in addition to a contribution of £20 a week from the young person.

- We recommend that the current means of measuring housing need amongst young offenders be reviewed and replaced with a more meaningful measure. Consideration should be given to recording the young person's accommodation status at interim stages throughout their order (for example every three months) as opposed to a single point. This should, in principle, be straightforward to achieve; it need not add another layer to the already heavy administrative burden on YOT workers.

Criminal records

- We endorse the recommendation made in the Home Office's report *Breaking the Circle* that young offenders be given a clean sheet at 18. The clean sheet would only be available to those who had committed minor offences below the age of 18 and if a specified period of time had elapsed in which there had been no further convictions. It would not be available to persistent offenders unless a specified period of time had elapsed since the last conviction. We also recommend that the proposals be adopted to shorten the disclosure periods for sentenced

young people.¹²² The review estimated that implementing these reforms would generate a cost-benefit ratio of one to 11 and annual savings of at least £125 million. These figures do not include calculations of the increased output from increased levels of ex-offenders in employment.¹²³

69 per cent of those we polled said that minor convictions received by children should be removed from their criminal record when they reach adulthood.

CSJ/You Gov polling, September 2011

MAPPAs

- We recommend that YOTs become a Responsible Authority in MAPPA.
- We think that further consideration needs to be given to the way in which the post custody arrangements are managed of young people whose behaviour is serious but spend relatively short periods on licence in the community.

Medium term

- The Government should place a statutory duty on all local services – schools, colleges, CAMHS, housing, police, children’s services etc – to support the rehabilitation of young people leaving custody (akin to the Leaving Care Act). This would comprise the following duties:
 - To ensure a leaving custody plan is in place prior to release. The plan should detail (following assessment) how they will meet the young person’s needs;
 - To provide one-to-one support as appropriate from a quality-assured provider;
 - To ensure that safe and suitable accommodation is in place;
 - To ensure the young person is in ETE, and help with the living/associated costs if necessary; and
 - To maintain contact for a minimum of six months following the conclusion of DTO supervision.
- We recommend that support and information be provided to employers to encourage employment of ex-offenders.

Over half of those we polled think that a responsibility should be put on local services to support the rehabilitation of young offenders on release from custody.

CSJ/You Gov polling, September 2011

¹²² Home Office, op. cit., pp41-43

¹²³ Ibid, pp90-91; this does not include estimates of the increased output from increased levels of ex-offenders in employment

Long term

Family support

- Following the development of smaller local custody centres with distinct catchment areas (as recommended in Chapter Five), we recommend that family link workers adopt a dedicated family outreach role.

In-reach and outreach

- We recommend that the model of secondments detailed in the earlier recommendation is implemented when resources and the configuration of the secure estate better allow it.
- If bringing back young people before the court at intervals during their sentence to review their progress is successful (as we recommended in Chapter Three), it should be extended to young people on DTOs during the period of supervision following release from custody.
- As part of the growth strategy there should be special incentives for employing ex-offenders to maximise their positive input to society and reduce the financial burden of reoffending on the economy. In the CSJ's previous report *Locked Up Potential* we recommended that tax breaks be given to employers (by means of a credit against their National Insurance Contributions) who take on any prisoner who has served more than six months in prison.¹²⁴

¹²⁴ Centre for Social Justice, *Breakthrough Britain: Locked Up Potential*, London: Centre for Social Justice, 2009, pp237-238

chapter seven

Delivery

7.1 Position and make-up of YOTs

It is evident from our roundtables and visits that too many YOTs are no longer the multi-agency entities they were intended to be. They have become silos in their own right: a team that other services hand their 'problem' children over to as opposed to working together with.

We have seen how this is an approach encouraged by the funding arrangements and structure of YOTs, factors that have also been reported in the literature.¹ Local services (particularly children's services) contribute a significant proportion of funding to YOTs and are also expected to second a number of specialist staff. These arrangements are often assumed to indicate that the YOT can exclusively address the problems of offenders and children at risk. Local services, particularly schools and children's services accordingly seem to feel that they can relinquish responsibility for these young people's offending behaviour.

However, YOTs are neither structured nor resourced to be the sole service working with children at risk and young offenders. They were established to provide a clear focus on youth justice-involved young people by coordinating support from other services to address their offending behaviour.² In areas where the YOT is operating as an all-encompassing hub, children are therefore likely not to be receiving the support that they need from other services.

This is likely to be particularly true where there is limited secondment of professionals from local agencies (mainly children's services) to YOTs. Such practice is generally fundamental to realising the multi-agency structure and coordinator function of YOTs. Seconded staff bring the benefits of both specialist skills to address young people's needs and a connection to their parent agency, thereby enabling young people in trouble to access additional support from mainstream children's services. To ensure such expertise and relationships remain up-to-date

¹ See for example, Audit Commission, *Youth justice 2004: A review of the reformed youth justice system*, London: Audit Commission, 2004, p63; and Solomon E and Garside R, *Ten years of Labour's youth justice reforms: an independent audit*, London: Centre for Crime and Justice Studies, 2008, p26; and Allen R, *From punishment to problem solving: A new approach to children in trouble*, London: Centre for Crime and Justice Studies, 2006

² Audit Commission, op. cit., p55

it was expected that secondees would rotate every two or three years. Evidence submitted to the CSJ indicates this has not happened in many areas. Original secondees have either become permanent YOT workers (in many instances, ever since the YOTs were created) or returned to their parent agency, never to be replaced. This problem was identified by the Audit Commission in 2004 and remains unaddressed.³ It is of note that a number of YOTs and children's services reported that children and families social worker secondees were unwanted in YOTs as they lacked the competence to manage troubled adolescents and their families. This would likely be less of a problem if secondments were more widely utilised. The failure to second has undermined the multi-disciplinary nature of YOTs.

'There has been a huge dumbing down of youth justice workers. When YOTs formed, everyone was told to do the same thing. We had police officers writing PSRs. No one really knew what they were doing. I don't think we've ever escaped that, it's just become embedded. Secondments haven't been renewed across the country in some YOTs, so people stop being secondees and have stopped having their specialism as everyone is doing the same thing. But other agencies look at the YOT (which is held to be this multi-agency specialist targeted support team) and they say to us why are you referring to us? You've got it all there, you should be doing it. But we haven't got it all there anymore, because we haven't got the specialists, we've all become one thing – a YOT worker.'

Lorna Hadley, Manager, YOT Newham, in evidence to the CSJ

There is no straightforward solution to this problem. Whilst YOTs were not intended to be the sole service working with children who offend, it is understandable that when local services (particularly children's social care) are struggling to cope with increased demands and falling budgets suggestions are made that either: YOTs should meet the welfare needs of children who offend, particularly as local authority children services provide such a significant proportion of their funding; or local services should reduce their funding to YOTs so as to increase the resource available to meet the welfare needs outside of the youth justice system. Problems with both approaches exist: where there is limited secondment or specialists in YOTs it is likely there will be insufficient multi-agency expertise necessary to address welfare needs in isolation. Conversely, were local services to reduce funding to YOTs there would likely be a return to the unfavourable situation (which led to the creation of YOTs) whereby the needs of young offenders were overlooked or de-prioritised in favour of, perhaps understandably, 'more deserving' children (e.g. vulnerable young children). The CSJ believes that the structure and remit of YOTs requires further attention to resolve this tension.

3 Ibid, p63

7.1.2. Funding formula

We question whether the current funding arrangements for YOTs are appropriate. There is no overall funding formula and we are concerned that the contributions made by some agencies are out of proportion with the savings and benefits they reap from YOT work. To illustrate, YOTs should play a vital role in preventing young offenders from becoming adult criminals, yet probation is one of the lowest contributors. In addition, despite the current economic climate there remains almost no relationship between resources and performance.⁴

7.2 YOT worker practice

Over the past 15 years the judgement and expertise of YOT staff has been stifled by overly prescriptive national guidance (as detailed in Chapter Four). We are encouraged by the Government's intention to tackle this by rolling back central prescription and increasing the scope for local discretion.⁵

However, if increased discretion is to achieve improvement in outcomes, service delivery must be led by a professional workforce with the expertise and confidence to exercise good judgement. It is apparent from our evidence gathering that many YOT practitioners have not had the opportunity to develop these skills within the current culture. Training (neither professional nor YOT specific) does not place sufficient emphasis on developing them. Without such competence, Government reforms risk creating a void in which practitioners have the freedom to exercise discretion but lack the expertise to do so appropriately.

National YOT training has been criticised for providing practitioners with skills to follow procedures as opposed to developing the expertise to exercise good judgement. The training has also tended to understate the degree to which areas of policy and practice are contested, shaping practitioners who adhere to approved methods of practice rather than encouraging critical and reflexive thinking. This has been observed in the literature.⁶ Some progress is being made. For example the Foundation Degree in Youth Justice has replaced the Professional Certificate in Effective Practice (PCEP) and provides a more open curriculum.⁷

YOT managers have also informed the CSJ that national training is too focussed on theory and insufficiently grounded in practice. The result is that qualified staff are frequently poor practitioners: they do not possess the skills or confidence required to manage and engage with troublesome teenagers.

4 Ibid, pp60-61

5 Ministry of Justice, *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*, Norwich: The Stationery Office, 2010, p76

6 Phoenix J, 'In search of a youth justice pedagogy? A commentary', *Journal of Children's Services*, Vol 6, No 2, 2011, pp131-132; and Pitts J, *The new politics of youth crime: discipline or solidarity?*, Dorset: Russell House Publishing, 2003, pp43-44

7 Phoenix J, op. cit., pp131-2

Voluntary sector roundtable
on youth justice at the CSJ



YOTs also comprise a variety of different professional backgrounds – health professionals, educators, probation and police officers, children and family social workers, drugs, alcohol misuse and youth workers – in addition to generic workers recruited directly into YOTs. Such diversity is beneficial, but in many cases training commissioned by YOTs does not acknowledge this. It has tended to be designed around the notion of a uniform YOT worker as opposed to building upon particular professional expertise. One of the reasons for this is that within YOTs there is generally a small number of persons from each professional background, which makes it difficult to commission profession specific training on a YOT level (for example, training for health professionals in YOTs).

7.3 Inspection and monitoring

7.3.1 YOT Inspection

7.3.2.1 *Inspection methodology*

We have been informed of examples where HM Inspectorate of Probation (HMI Probation) has been a 'prime driver' of improvement in YOTs. However, many of those who gave evidence were highly critical of the methodology of YOT inspections undertaken by the inspectorate since 2002.^{8,9} The inspection methodology is a tick-box orientated assessment of process: checking case files and interviewing the relevant practitioner to ensure that the correct details have been recorded and the right procedures undertaken. Observation of practice and interactions between young people and their workers is absent. There is a perception amongst many of the YOTs with whom we spoke that there is insufficient focus on the outcomes of young people. This is also evident in inspection reports: though YOT outcomes comprise one of three focusses of inspection,¹⁰ analysis tends to centre on whether appropriate action has been taken by the YOT to achieve positive outcomes. One senior

⁸ Although there have been two different inspection methodologies during this period

⁹ HMI Probation leads the Core Case Inspection programme of YOTs, in which the key aspects of youth offending work – public protection and safeguarding – in all 157 YOTs are inspected by means of announced inspections over a three year period

¹⁰ Along with assessment and sentence planning, and delivery and review of interventions

YOT officer, who had recently been a peer assessor in a YOT inspection team, described his experiences:

'The one thing I took back was that the inspection process is cold. There is not actually any point talking to inspectors about relationships with young people, about distance travelled or outcomes, it's about ticking boxes: did you do an Asset in time? Did you do a ROSH? Did you screen properly? Yes, no, yes, no. It's just a quantitative assessment. They even asked me if I had put the right date in. There is no skill involved, anyone could have done it.'

Such focus on process does not place value on expertise and the capacity of practitioners to engage with young people; qualities that are fundamental to effective practice. As the Working Group heard from Di Hart of the National Children's Bureau,

'The way performance is monitored means that a lack of reaching out by YOTs to support young people may go unnoticed. The fact that you could, in an inspection, get loads of ticks but you haven't actually taken on board the fundamental aspects of what you're supposed to be doing in terms of engaging individual young people is a flaw in the system.'

YOT managers informed the CSJ that inspectors often have a fixed view of what comprises good practice; practice that deviates from that standard is given limited recognition, even where it is producing positive outcomes. Many YOTs reported that the inspection process is somewhat artificial. The lengthy forewarning of an inspection allows them to prepare extensively as opposed to being a genuine reflection of practice. As one YOT Manager said:

'Many of us just think, if you're really serious about inspection why do you tell us six months ahead that you're coming... why don't you just turn up to see what is happening? That would allow you to get a truer picture rather than the niceties that everybody goes through with this whole tranche of inspections.'

The YOTs also said that protracted inspection preparation detracted from meeting the needs of young people. One manager described the process as one that 'grinds you to a halt'.

Many YOT Managers reported situations where they have been marked down by HMI Probation for having procedures in place that are specified in YJB guidance. Whatever the professional differences in opinion between the YJB and HMI Probation, such contradictions are confusing and obstructive to good practice on the ground.

Some managers commented that the process was very risk averse, driven by preoccupation with defensible decision making. This is understood to have arisen out of concern about public harm and political ramifications following high profile failures in criminal justice. In addition, a number of YOTs commented that the use of inflexible, mechanistic assessment is partially reinforced by the lack of expertise of some inspectors. Managers cited recent examples of inspectors who were mediocre and did not represent or understand recent practice and issues, often because they had spent extensive periods as inspectors.

7.3.1.2 The inspectorate

Though the YOT inspection methodology is the main bone of contention amongst practitioners, many consider that it is inappropriate that HMI Probation leads the process. The current arrangements are objected to on principle: that is, an agency geared to adults should not be leading the inspection of a young peoples' service. Some YOTs maintained that the probation inspectorate lacks understanding of child-related issues such as safeguarding, and as a result is unable to identify key failings.

7.3.2 Performance information and monitoring

Historically, YOT performance has been assessed against a fixed national set of indicators of what comprises good and bad practice in the view of the YJB. This data alone cannot provide measures of quality, or reflect the nuances in local performance and outcomes for young people, their families and victims. Such indicators neither allow YOTs to be held properly to account for the service they provide nor help YOTs to identify the specific areas in which their practice could be improved. Further, YOT performance monitoring has tended to be 'dictated more by external pressures, such as the reporting cycles of either the local authority or the YJB, than by the need to improve their own services'.¹¹

The CSJ welcomes the reduction in performance indicators to the three core areas of first time entrants, custody levels and reoffending, and thinks they are suitable areas. However, there is still more work to do to ensure that indicators provide a holistic and meaningful picture of practice. For example, there is a risk that reoffending rates will increase as a result of expanding diversionary practice (because only the more serious offenders are remaining in the system). In these circumstances, a static indicator of reoffending is unlikely to help YOTs to understand or improve their services.

7.3.3 Custodial facilities

There are different inspection arrangements for the three types of juvenile custodial facilities: Ofsted inspects SCHs and STCs, as well as the education element of YOIs; HMI Prisons inspects YOIs and is also occasionally involved with STCs.¹² The framework lacks coherence.¹³ Two reviews have recently suggested that the effectiveness of inspection would be increased were the joint inspection arrangements that apply to YOIs 'extended to other areas'. The review of the YJB's operating arrangements specifies that they should be applied to STCs.¹⁴ By the same token, we note that there is considerable scope to rationalise the number of bodies involved in independent oversight of the juvenile secure estate (see Figure 7.1).

¹¹ Audit Commission, *op. cit.*, p64

¹² Department for Children, Schools and Families, *Safeguarding the Future: A review of the Youth Justice Board's Governance and Operating Arrangements*, London: Department for Children, Schools and Families, 2010, p53

¹³ *Ibid.*, pp52-53

¹⁴ *Ibid.*, p53; and Independent Commission on Youth Crime and Antisocial Behaviour, *Time for a fresh start: the report of the Independent Commission on Youth Crime and Antisocial Behaviour*, London: The Police Foundation, 2010, p102

Figure 7.1: Monitoring arrangement in the JSE

YJB Performance Monitors – SCHs, YOIs (regional) and STCs (on-site)

Monitor the performance of all secure establishments both against the requirements of each individual contract or service level agreement (SLA) and in comparison with other establishments.¹⁵

Independent Monitoring Boards (IMBs) – YOIs only

Members are independent, unpaid and work an average of two to three days per month. There is a Board for each prison and YOI. A member's role is to monitor the day-to-day life in their establishment and ensure that proper standards of care and decency are maintained. They have unrestricted access to their establishment at any time and can talk to any prisoner they wish to, out of sight and hearing of members of staff if necessary. IMBs can also assist prisoners with issues that have not been resolved internally.¹⁶

Regulation 33 independent visitors – SCHs only

A senior manager from local authority that has no direct line management for that service undertakes a monthly inspection of the local SCH. Their duties include interviewing children, relatives and staff to form an opinion of the standard of care provided in the home; inspecting the premises of the children's home, its daily log of events and records of any complaints; and preparing a written report on the conduct of the home (which are copied to Ofsted).¹⁷

Advocates – all types of institutions

Independent advocates visit institutions to offer assistance and support to young people with any issues relating to their welfare, care or treatment whilst in detention. The service is generally delivered by voluntary sector organisations.

7.4 Devolution of financial responsibility

At present, there is little financial incentive for local services to invest in preventative youth justice services since custodial places are paid for by the YJB.¹⁸ This is often particularly apparent in the case of looked after children (LAC) in trouble with the law.¹⁹ As the Standing Committee on Youth Justice asserts 'the fact that a difficult child, causing a lot of trouble and using a lot of local authority resources, is put into custody for a number of months may be viewed as a welcome respite by the local authority'.²⁰

It has long been argued that devolving responsibility for the costs of custody would encourage local authorities to invest in community services to prevent young people from committing crime and being sent to custody.²¹ The model, albeit in a variety of different forms, has helped

15 Ministry of Justice, Secure estate performance monitoring [accessed via: <http://www.justice.gov.uk/guidance/youth-justice/monitoring-performance/secure-estate-performance-monitoring/index.htm> (9/11/11)]

16 Ministry of Justice, *Independent Monitoring Boards* [accessed via: <http://www.justice.gov.uk/about/imb.htm> (03/10/11)]

17 Children's Homes Regulations 2001

18 Standing Committee on Youth Justice, *The Funding of Custody for Children: Devolving the Budget*, 2009, p6; Policy Exchange, *Arrested Development: Reducing the number of young people in custody while reducing crime*, London: Policy Exchange, 2009, p18; Centre for Social Justice, *Breakthrough Britain: Couldn't Care Less*, London: Centre for Social Justice, 2008, p138

19 Policy Exchange, op. cit., p19

20 Standing Committee on Youth Justice, op. cit., p7

21 See for example: Ibid; and Policy Exchange, op. cit.

to reduce the number of young people incarcerated in a number of states in the USA.²² The utility and logistics of devolution of financial responsibility has long been the subject of debate. Some have argued that devolving costs to the local authorities would be unfair because it is the courts, not the local authorities, which decide whether or not to sentence to custody.²³ Linked to this is the concern for the potential of 'freak' events, such as the August riots, to devastate local authority budgets. Third, there is disagreement about how budgets could be distributed equitably across local authorities.²⁴ Fourth, some argue that the quoted costs of custody (YOLs in particular) are a significant underestimate, which has the potential to impact negatively on local authorities were budgets to be devolved.²⁵ Fifth, there is the risk that national policy will shift to supporting greater numbers of children in custody, in which case, it would be unreasonable to expect local authorities to bear the financial costs. Whilst the CSJ acknowledges these concerns and difficulties, we support the principle of devolving custody budgets: it would provide a financial incentive to invest in prevention and rehabilitation as well as likely increasing local authority influence in the nature and configuration of the juvenile secure estate.

'Children's social services really wouldn't mind some of the kids going to custody, who are their 'problem' kids, and it doesn't cost them. A number of times we have had very punitive social workers saying it would do them good to go to custody.'

A witness to the CSJ review

The Government is keen to see financial responsibility for youth custody devolved to local authorities. Proposals are currently before Parliament to make local authorities responsible for all youth remands to secure accommodation.²⁶ Furthermore, in October 2011 a two-year Youth Justice Reinvestment Pathfinder Initiative was launched in four consortia of local authorities. The consortia have agreed a target reduction in the use of custody with the YJB and MoJ, and have received funds additional to their youth justice grant to help them achieve this. If custody numbers are reduced to the agreed target, pathfinders will retain the funding; if not, they will share the financial risks.²⁷

Central to the pathfinder model is the principal of 'payment by results' – where funding is directly linked to the delivery of outcomes. This is a key element of the Government's strategy to deliver reforms. The approach clearly has the potential to shift the focus from process

22 Solomon E and Allen R, *Reducing child imprisonment in England and Wales – lessons from abroad*, London: Prison Reform Trust, 2009, pp48-51

23 House of Commons Justice Committee, *Cutting crime: the case for reinvestment, First report of the session 2009-10*, London: House of Commons 2010, p18

24 Standing Committee on Youth Justice, op. cit.; and Policy Exchange, op. cit.; for example, if budgets were distributed on the basis of historic use of custody those YOTs with high custody rates would be 'rewarded' with a relatively large slice of the budget, whereas YOTs making low use of custody would effectively be penalised

25 The Foyer Federation, *Young Offenders: A Secure Foundation*, Foyer Federation, 2009 pp56-59

26 Ministry of Justice, *Breaking the Cycle: Government Response*, Norwich: The Stationery Office, 2011, p10

27 Ministry of Justice, *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*, Norwich: The Stationery Office, 2010, p73

towards outcomes and incentivise innovative delivery systems. In some cases it offers the added benefit of transferring risk from the taxpayer to the provider.²⁸ However, without careful implementation payment by results also brings with it a number of risks, including:

- 'Cherry-picking' where providers focus on young people more likely to contribute to their particular outcomes, thereby neglecting those who display the highest levels of need;²⁹
- Financial pressures to lower the cost of providing a youth justice service to an absolute minimum, which may lead to lower quality service;³⁰
- Pricing out grassroots voluntary sector providers (who often deliver the most innovative and effective service) because they are unable to either provide the upfront capital or carry the financial risk;³¹ and
- Difficulty with measuring outcomes – the extent to which any chosen indicator will provide an accurate indication of improved practice.³²

Other examples of recent payment by results initiatives in the criminal justice arena are the Daedalus Project (detailed in Chapter Six) and the Social Impact Bond pilot around HMP Peterborough. This latter example involves upfront investment from charitable foundations and private individuals used to pay providers to reduce reconviction rates of short-term prisoners (less than 12 months). If the project reduces reconviction rates by 7.5 per cent or more, the MoJ will return to investors their initial investment as well as an additional return, with a greater reduction (up to a maximum of 13 per cent) leading to a higher payment. If reconviction rates do not fall by at least 7.5 per cent, investors will not recoup their investment.³³



London Dance United
Academy rehearsal
(courtesy of Nick Gurney)

28 Ministry of Justice, *Payment by Results Innovation pilots – Prospectus* [accessed via: <http://www.justice.gov.uk/downloads/guidance/prison-probation-and-rehabilitation/payment-by-results/innovation-pilots-brochure.doc>, p3 (14/11/11)]

29 National Association of Youth Justice, *Payment by results and the youth justice system: An NAYJ position paper – July 2010*, National Association of Youth Justice 2011, p19

30 Ibid, p20

31 J Collins, 'Payment by results in the criminal justice system: can it deliver?', *Journal of Learning Difficulties and Offending Behaviour* vol 10, issue 2, 2011, p21

32 National Association of Youth Justice, op. cit., p12

33 Ibid, p20

7.5 Research and dissemination

Three recent reviews of the youth justice system have highlighted the lack of both a cohesive and comprehensive research base and dissemination of best practice as key weaknesses that must be addressed if cost-effectiveness and outcomes for young people are to improve.³⁴

The studies assert that there are substantial gaps in the youth justice research base. The variable quality and quantity of evidence in the field has also been highlighted as problematic.³⁵ The National Audit Office (NAO) identified that the YJB has spent less than 0.5 per cent of its budget on research, despite being in a position to offer 'vital support' to YOTs by identifying and disseminating best practice. It also reported that research undertaken by the Board between 2006 and 2009 focussed on processes rather than evaluating the outcomes of interventions.³⁶ Both of these shortcomings have been highlighted in evidence submitted to the Working Group. One YOT Manager, for example, expressed concern that there is a tendency for the system to use evaluations to confirm viability instead of admitting that the programme does not work as well as had been hoped and ceasing funding. Another witness commented that:

'Where the YJB has failed terribly, is that it has rolled out new programmes and assessments but has not conducted systematic reviews of them when it really needed to have done'.

This has improved recently. The Scaled Approach model, for example was reviewed earlier this year following implementation and there are consequential modifications planned.

There is a lack of a coordinated approach to research into youth justice across the relevant government departments, leading to some duplication.³⁷ The same failing has been noted with reference to coordination between research funders.³⁸ Dame Sue Street's recent report claims that the YJB's research budget could be halved to 0.5 million if research was better coordinated across government.³⁹

When research is completed and best practice identified, it is not used by the YJB to advise YOTs on the most effective interventions or approaches beyond informing the formation of general national standards.⁴⁰ Accordingly, there have been multiple calls from stakeholders for clearer guidance from the YJB on what works and under what conditions, as well as on what doesn't work.⁴¹ The NAO, for example, reported that:

*'Seventy-six per cent of Youth Offending Team managers agreed with the statement, 'it is difficult to find evidence on 'what works' for certain areas of our work.' There has been little research published in this area by the Board or Ministry since 2006'.*⁴²

34 Department for Children, Schools and Families, op. cit., pp18-22; Independent Commission on Youth Crime and Antisocial Behaviour, op. cit., p100; and National Audit Office, *Report by the comptroller and auditor general – The youth justice system in England and Wales: Reducing offending by young people*, Norwich: The Stationery Office, 2010

35 Independent Commission on Youth Crime and Antisocial Behaviour, op. cit., p100

36 National Audit Office, op. cit., p36

37 Department for Children, Schools and Families, op. cit., p21

38 Independent Commission on Youth Crime and Antisocial Behaviour, op. cit., p100

39 Department for Children, Schools and Families, 2010, op. cit., p66

40 Ibid, p20

41 Ibid; and Independent Commission on Youth Crime and Antisocial Behaviour, 2010, op. cit., p100

42 National Audit Office, op. cit., p8

This concern has been widely echoed by practitioners in evidence to the CSJ. The NAO noted that such a limited evidence base is particularly relevant in the context of reducing resources as it puts the youth justice system 'in a weak position to know which activities to cut and which to keep to ensure that outcomes do not deteriorate'.⁴³

Many YOTs reported that they are conscious that they have little awareness of practice in other YOTs (something the current inspection methodology employed by HMI Probation does little to assist with) and there is a need to more effectively share good practice between teams. They consider it to be the role of the 'centre' to help with this by 'scanning, supporting, and disseminating good practice' as opposed to providing top-down instruction and heavy handed monitoring. A peer review model, such as that being developed by the Department for Education and local partners for the child protection system, would be a helpful means of better disseminating good practice from the bottom-up. However, we have not come across such a model in YOTs, beyond the involvement of peer assessors in YOT inspection. In addition, a number of witnesses highlighted the existence of the robust evidence of 'what works' from the Washington State Institute of Public Policy and urged that national and local government effect their implementation.⁴⁴ As Enver Solomon, Policy Director at the Children's Society told the Working Group:

'We know what works in terms of community interventions – the Washington State Institute and others such as the Blueprints project at the University of Colorado have provided robust evidence. Yet, there has never been a coherent package from the YJB or central government to drive through these proven interventions, and ensure that they are adequately resourced and effectively implemented. There tend to be isolated pockets of best practice but no universal up-scaling. We don't need to reinvent the wheel; we know what works and we need to apply it.'

7.6 Lessons to be learnt from the Munro Review

The CSJ strongly believes that many of the findings and recommendations of *The Munro Review of Child Protection* translate across to the youth justice system. Alex Chard and Marc Radley, from YCTCS and CACI respectively, kindly offered to write the below piece to summarise both the parallels between the two systems and Munro's key learning's.

Many of the findings from *The Munro Review of Child Protection* have significant resonance for the management and practice of youth justice. Given the similarities between the systems of youth justice and child protection this is not perhaps surprising. They serve a similar and overlapping population.⁴⁵ Both are complex multi-agency and multi-disciplinary systems which provide services to highly vulnerable children and young people, their families and victims.

⁴³ Ibid

⁴⁴ Although it should be noted that there can be difficulties transplanting interventions from the US in the UK due to differences in culture between the US and UK

⁴⁵ Chard A, *Guide to jointly delivering services: Youth offending teams and children's social care*, Community Care Inform, 2010 [accessed via: <http://www.ccinform.co.uk/Articles/2010/04/08/4816/Guide+to+jointly+delivering+services+Youth+offending+teams+and+children%e2%80%99s+social.html> (18/09/11)]; and Day C et al, *A Literature Review into Children Abused and/or Neglected Prior Custody*, London: Youth Justice Board, 2008

Both manage high levels of risk, including those to children and young people and particularly in the youth justice system, the risks that young people may pose to others. They are also systems with the power to remove children and young people from their families, although the reasons are very different; one acts in the name of child protection, the other in the name of public protection and punishment.

The Munro Review applied a complex adaptive systems approach⁴⁶ to reviewing child protection in England. The review used this approach to identify that a range of drivers, including well intentioned reform, have produced a defensive, risk averse system that has created obstacles to achieving the primary objective of protecting children. The youth justice system has been subject to similar influences, such as political vying for being *tough on crime*, the media response to high profile cases, a quest for certainty in assessment and the standardisation of responses to offending behaviour. In recent years the youth justice system has arguably lost sight of its primary objective of preventing offending by young people as well as its statutory responsibility to safeguard young people.⁴⁷

Over the last two decades child protection and youth justice can both be seen as areas where assumptions about management and certainty have increasingly prescribed policy and practice.⁴⁸ Munro argues that a managerial approach has been one of the major drivers that distorted practice in the child protection system. In addition, practice has sought to be improved through targets and performance indicators. This has led to a managerial focus on monitoring of process. Until very recently, the youth justice system has been driven by the YJB using a similarly process-driven range of performance measures together with an inspection regime that has focussed on the process of case recording rather than the effectiveness of direct practice.

Munro reports that 'many professionals describe themselves as working in an over-standardised framework that makes it difficult for them to tailor their responses to the specific circumstances of individual children'.⁴⁹ As detailed elsewhere in this review, youth justice workers similarly protest about the bureaucracy of the system and the lack of time for direct work with young people. This has been driven by National Standards, Case Management Guidance, increasingly prescribing interventions based on the 'Scaled Approach' and narrow application of Asset criminogenic risk factor assessment. The recent move by the MoJ to significantly reduce youth justice performance indicators is evidence of a political recognition that the approach has failed. Munro has recommended a scaling back of central prescription to address such standardisation. This equally applies to the youth justice system.

46 A systems approach involves analysis of how a system functions as a whole rather than examining elements of it in isolation, for further information see: Munro E, *The Munro Review of Child Protection – Part One: A Systems Analysis*, Norwich: The Stationery Office, 2010, Appendix 2

47 The Children Act 2004 s.11 (s.28 for YOTs in Wales) and Children and Young Persons Act 1933, s.44

48 Chard and Ayre, *Managerialism: At the Tipping Point*, in Preston-Shoot M and Ayre P, *Children's Services: At the Crossroads*, Russell House Publishing, 2010; *The Independent*, *Lessons learnt, boxes ticked, families ignored*, 16 November 2008 [accessed via: <http://www.independent.co.uk/opinion/commentators/eileen-munro-lessons-learnt-boxes-ticked-families-ignored-1020508.html> (14/11/11)]; McLaughlin, E et al, 'The Modernization of Criminal Justice The Permanent Revolution: New Labour; New Public Management and the Modernization of Criminal Justice', *Criminology and Criminal Justice*, vol 1, no.3, 2001, pp301-318; and Pitts J, 'Correctional Karaoke: New Labour and the Zombification of Youth Justice', *Youth Justice*, Vol.1, No.2, 2001, pp3-16

49 E Munro, *The Munro Review of Child Protection: Final Report, A child-centred system*, Norwich: The Stationery Office, 2011, p37

Munro argues for a shift away from a process driven technocratic approach within child protection to an approach that recognises the fundamental importance of human relations. Equally it can be argued that youth justice has lost sight of the central importance of the professional relationship with the young person and their family to understanding the context of their life, and using this knowledge and the relationship to influence the family dynamic and change the young person's behaviour. There is also a need within youth justice to move away from a centrally prescribed approach and allow practitioners to innovate in order to meet local need and address offending behaviour. In terms of moving forward, Munro proposes that:⁵⁰

'Children's social care organisations need to move towards being adaptive, learning organisations that keep a clear focus on creating the work environment that helps frontline social workers have the skills, time and resources to visit families, engage with them, develop a good understanding of their problems and provide effective help'.

Drawing on findings from Munro we suggest that the goals and features of a reformed youth justice system would therefore include:

- A system that learns whether children, young people and victims are being helped, and how they have experienced the help, innovating in response to feedback;
- A system free from unnecessary central prescription over professional practice but with clear rules about where and how to co-ordinate to protect the public as well as children and young people;
- A system where professional practice is informed by research and evidence, with competent judgement informing action when the work is too varied for rules;
- A system that expects errors and so tries to catch them quickly; and
- A system that is 'risk sensible'.

The reforms that Munro recommends recognise that the child protection system, like the youth justice system, is a complex human system that needs to have the flexibility to continue to adapt. This is an opportunity not to set the 'right' system in stone, but to build an adaptive, learning system which can evolve as needs and conditions change.⁵¹

7.7 Youth justice simulation findings

In June 2011 this review was offered CACI's youth justice software simulation model to help develop thinking and understanding about our recommendations (for further explanation of the simulation model please see Annex B). We requested data from five YOTs, including rate of entry to the system, reoffending rates for different disposals and system pathways following disposals (for example the percentage of offenders sentenced to custody following a YRO). We used data from the case study areas and applied these to a typical youth justice system managing an average of 600 incidents per annum. The worst simulation parameters were applied and the results are as follows.

⁵⁰ Munro asserts that this requires a fundamental shift from a technocratic process based approach to a socio-technical practice based approach

⁵¹ E Munro, *The Munro Review of Child Protection – Interim Report: The Child's Journey*, p20 [accessed via: <http://www.lcrnhs.uk/Library/MunroInterimReview.pdf> (15/11/11)]

1. Worst parameters

- Typical 25 per cent diversion in 2011
- Remand into custody: average 7 per cent
- Reoffending following final warning/reprimand: 50 per cent
- Reoffending following referral order: 60 per cent
- Reoffending following youth rehabilitation order: 80 per cent
- Reoffending following ISS: 90 per cent
- Reoffending following custody: 100 per cent

The simulation run showed such a youth justice system generates activity flows as follows:

- Diversion: 132 per annum
- Final warning/reprimand: 420 per annum
- Referral order: 216 per annum
- Youth rehabilitation order: 150 per annum
- ISS: 18 per annum
- Custody: 21 per annum

Using NAO unit costs the total cost will be circa £2,715,600 per annum

2. Best parameters

- Enhanced 50 per cent diversion involving triage
- Reduced remand into custody: average 4.5 per cent
- Reoffending following final warning/reprimand: 20 per cent
- Reoffending following referral order: 40 per cent
- Reoffending following youth rehabilitation order: 66 per cent
- Reoffending following ISS: 70 per cent
- Reoffending following custody: 75 per cent

The simulation run stabilised after 48 months as follows:

- Triage: 264 per annum
- Final warning/reprimand: 300 per annum
- Referral order: 96 per annum
- Youth rehabilitation order: 60 per annum
- ISS: 6 per annum
- Custody: 6 per annum

Using NAO unit costs, the total cost of this youth justice system is circa £1,197,600 per annum (less than half the cost of the comparison above).

The custody costs for the worst simulation run is indicated to be just over £1 million per annum compared with £300,000 indicated for the best system simulation run.

The worst system simulation run generates circa 324 offending incidents per annum: 144 following court sentences and 180 following pre court decisions. In contrast the best simulation parameters generate 192 offending incidents (a 40 per cent reduction) per annum: 72 following court sentences and 120 following pre court decisions.

This represents a 50 per cent reduction in court activity and in addition to a saving of over £30,000 in court processing costs per annum.

7.7.1 Youth justice reform

We assume reduced activity in court also provides opportunities to improve proposals to the court at remand stage, such as remand fostering. In the best simulation run if six of the 12 young people were suitable for intensive fostering this is equivalent to at least £120,000 in reduced custody remand costs over four years. Further, reduced YOT case loads could enable improved court work. For example, more carefully prepared bail and remand options and pre-sentence reports, which offer sentencers better information about programmes.

We also assume reduced flows enable YOTs and other local resources to concentrate on aspects of high risk of reoffending. For example, increased focus on resettlement activity to reduce the flows of repeat offending behaviour flowing into the adult system. The costs and benefits of can also be examined via this simulation, but this was beyond the scope of the study.

The above cost results were based on a relatively high unit cost of triage at £500 per event. The purpose of this was to illustrate that the extra cost of more effective face-to-face practice (for example, specialist advice, RJ and early help to address needs) is affordable at this point in the system and at the same time achieves lower overall system costs.

The results indicate the better system flows comprise a reduction of 120 Final Warning and Reprimands each year. Over four years this represents about £80,000 savings in police time (at a local level).

7.7.2 Understanding seriousness

The simulation also confirms the extent to which successful diversionary work is highly sensitive to changing interpretations of the seriousness of incidents and attitudes to diversion. For example, a five per cent shift in the handling of pre-court decisions can result in more than a ten per cent increase in court cases and up to a 40 per cent increase in overall youth justice system service costs over time (four years).

This highlights the impact of national dialogues about youth crime and local perception, which could drive how the police and the other agencies work together. Application of Munro's 'risk sensible' approach to responses to crime would help to address this.

7.8 Recommendations

Immediate term

Governance

- The future of the YJB has remained outside the remit of this review. However, we welcome the Government's decision to reprieve the YJB from planned abolition. The slimmed down board should now build on progress made in recent years and ensure there is a dedicated focus on young people in the justice system.

YOT structure

- We recommend that every local authority reviews its secondment policy from children's services to YOTs. We strongly suggest that children and families social workers (CFSWs) should be seconded to YOTs for no more than three years. This would benefit both services. Seconded CFSWs would carry out low tier children's services work instead of referring young people to children's services. This would increase the likelihood that YOT-involved young people receive the support they require. It would also likely reduce the quantity of referrals from the YOT to children's services. CFSWs returning to children's services from YOT secondment would bring with them vital expertise regarding young people. This would help refresh the skills of the service, which has become increasingly focussed on babies and very young children at the expense of young people.
- To ensure that there is continuity and expertise built within YOTs, we do not propose that all CFSWs are seconded on a three year basis. Instead we suggest that a proportion of local authority CFSWs are rotated to the local YOT every three years.
- We recommend that inspection of secondment practice from Children's Services and other partners to YOTs is included in the remit of the Children's Services Inspectorate.
- We recommend that the structure and remit of YOTs be reviewed to clarify their roles as well as the responsibilities of local partners to children at risk of or involved with offending.
- Funding to YOTs should be calibrated so that all contributors donate roughly proportionately. We recommend that a funding formula be developed to achieve this.

Training of YOT workers

- Local areas should develop better training programmes for their staff that fit their professional background and qualifications. Consideration should be given to developing specific training across areas.
- Training should provide YOT practitioners with both practical skills and generalised understanding relevant to good practice; should generate certain 'habits of mind'; and instil in individual practitioners the capacity to critically reflect on practice.

- Given that we know the relationship between the YOT worker and young person is central to successful rehabilitation, training must be skills-based not process-driven. There also needs to be a much stronger emphasis on developing skills to work with the context and circumstances of individual children, including families, other professionals and communities.
- It is crucial that managers and supervisors understand and have skills, experience and/or training in reflective practice. Managing practitioners must incorporate opportunity to discuss and consider practice.

Performance information and data management

- We propose that the YOT performance data framework be restructured using the same principle of a 'twin core' of nationally collected and locally published data, recommended in the Munro Review. The small national set should remain but YOTs should collect and interrogate local performance information to enable them to benchmark performance and support improvement and promote accountability. Data systems that are commissioned should enhance frontline practice and create efficiencies, in terms of reducing the amount of time spent inputting data and maximising the time spent face-to-face with young people.

YOT inspection

- We recommend that there be unannounced inspections of a more comprehensive nature instead of having a two or three year comprehensive cycle of inspection of all YOTs. These should be focussed on both apparently well and poorly performing YOTs. Such judgements should be made on the basis of close scrutiny of all data sources available with respect to performance (i.e. nationally collected and locally published performance information), as opposed to static indicators of what comprises good or bad practice.

This would mirror some of the improvements proposed in the Munro report on Child Protection and would also place the same emphasis on the intelligent use of data.

- We suggest that the introduction of unannounced inspections be accompanied by a much greater focus on practice: examining the quality of interactions between YOT staff, young people and their families; and the capabilities of YOT staff to exercise professional judgement. Determining whether or not young people and their families, and thus society, are being effectively helped should be the central concern.
- This review has concluded that HMI Probation needs to take a greater role in the improvement process. Particular emphasis should be placed on:
 - Identifying good or promising practice and understanding how it has come about;
 - Identifying failure and the reasons behind it; and
 - Sharing the lessons from success and failure in order to promote peer led improvement.

Inspectors

- It is essential that that HMI Probation represents, reflects and understands recent practice and issues. We recommend that the make-up of inspection teams be reviewed to ensure this is so. This should apply to Ofsted, HMI Prisons and HMI Probation.

Involvement of ex-offenders

- Ex-offenders possess a wealth of knowledge and a unique insight into how young offenders can be helped. We propose that greater efforts be made to encourage ex-offenders to contribute to the work of the JSE, including mentoring, governance of the secure estate and inspection.

Medium term

Inspections

- We believe that the inspection of children's services – both YOTs and the JSE – be led by the children's inspectorate.
- We recommend that the inspection of the JSE and YOTs should be included within the remit of the future inspection framework for children, whatever that might be. We acknowledge the expertise of HMI Prisons and HMI Probation concerning inspection of the juvenile secure estate and YOTs respectively. We suggest that inspectors with youth specific experience from HMI Prisons and HMI Probation are seconded to the children's inspectorate.
- We recommend that the inspection framework examines the effectiveness of contributions of all other local services to the prevention of youth offending and reoffending, including education, children's services, health, police and probation. This would reflect the recommendation, accepted by the Government, made in the Munro Review with respect to child protection. Work is currently being carried out by the Department for Education and the inspectorates to determine how the proposal could be achieved within available resources. Munro suggests that multi-inspectorate teams are the ideal solution but may not be achievable in the current financial climate, in which case, the next best solution would be inspection by the children's inspectorate of the contribution of other agencies to youth justice.⁵²

Research

- We recommend that a model of peer reviews, akin to that being developed for the child protection system, should be implemented in the youth justice system to promote the sharing of best practice and learning from the bottom-up.

52 Munro E, *The Munro Review of Child Protection: Final Report, A child-centred system*, op. cit., pp46-7

- We suggest that a central organisation be given responsibility for commissioning and collating research on effective youth justice practice, and promulgating such practice on the basis of well accrued evidence. Primary responsibility for research should rest with the YJB. However, there might be value in commissioning an agency such as that recommended in the Salz Commission.
- We recommend that research personnel in different agencies from across the UK and Ireland should liaise and share efforts and data.

Long term

Monitoring arrangements in the JSE

- As and when the secure estate is reconfigured, there should be a review of the independent oversight of both the organisation and the needs of the children within it. That is, a review of the role of independent monitors, independent visitors, advocates and YJB monitors. We suggest that a review of the content of Regulation 33 is included to explore whether any other duties should be included in its remit.
- In addition, we recognise that local authorities are likely to want a greater voice with regard to the monitoring (and commissioning, see Chapter Five) of secure facilities if all sentenced children become looked after. We suggest that the option is explored of extending the role of Regulation 33 to STCs and YOIs.

chapter eight

Age of criminal responsibility

8.1 Introduction

The question of whether the current minimum age of criminal responsibility (MACR) is appropriate has long been a taboo subject in England and Wales. The prospect of vilification from the tabloids, such as that which Maggie Atkinson, the Children's Commissioner experienced last year when she advocated raising the MACR to 12, have reportedly made senior commissions and bodies shy away from advocating its increase.¹ As a result there is little genuine debate, at least in the political arena, about the subject. This review considers that full examination of the issue is essential for determining whether or not the current law delivers the best outcomes both for children who offend and wider society.

The MACR in England and Wales was raised from eight to ten years in 1963. By all accounts, that decision was reached on a somewhat arbitrary basis.² There is no evidence, for example, to indicate that a ten year-old is substantially more developmentally mature, thus more able to participate in criminal proceedings, than a nine year-old.³ Since 1963 the arbitrary foundation of the current MACR has, arguably, become increasingly questionable as our neuropsychological understanding of child development has advanced considerably. There is now a significant body of research evidence indicating that early adolescence (under 13-14 years of age) is a period of marked neurodevelopmental immaturity, during which children's capacity is not equivalent to that of an older adolescent or adult. Such findings cast doubt on the culpability and competency of early adolescents to participate in the criminal process and this raises the question of whether the current MACR, at ten, is appropriate.

¹ Downes D and Morgan R, 'Waiting for Ingleby: the minimum age of criminal responsibility – a red line issue?', forthcoming, p15

² See for example, Vizard E, *Presentation on how do we know if young defendants are developmentally fit to plead to criminal charges – the evidence base, Report on the Young Defendants Conference 2009*, London: Michael Sieff Foundation, 2009 [accessed via <http://www.michaelsieff-foundation.org.uk/content/Report%204%20-%20Eileen%20Vizard%27s%20presentation.pdf> (23/09/11)] and Downes D and Morgan R, op. cit., p5

³ Vizard E, op. cit., p8

This chapter seeks to address the following questions, which are of critical relevance to the MACR debate:

- How culpable young people are for the unlawful behaviour they engage in;
- How competent they are to participate in the youth justice system;
- What is the impact, including that on reoffending, of involving young children in the criminal justice system?⁴
- To what extent is the MACR consistent with other rights and responsibilities bestowed on this age group in England and Wales?
- What are the obstacles to amending the MACR?

8.2 Culpability

Early to mid-adolescence is a period during which the domains that control and coordinate thoughts, behaviours and emotional responses undergo significant development. In particular, the likelihood of impulsive, sensation-seeking and risk-taking actions is greatly increased.⁵ Capacity to accurately gauge the consequences of actions is developing,⁶ as is the ability to empathise.⁷ Young people are also much more susceptible to the influences of others, especially their peers;⁸ they find it harder to resist or say no to behaviours that in the adult world would be called crimes. This does not mean that children bear no responsibility for their behaviour, but that they may be less responsible.⁹

Young people drawn into the criminal justice system typically have additional vulnerabilities, for example learning disabilities and mental health problems, stemming from adverse developmental experiences.¹⁰ These vulnerabilities serve 'in addition to developmental immaturity to constrain the ability to act freely and maturely, raising further questions about culpability'.¹¹

Experience of child abuse and/or neglect, for example, is thought to impair brain development leading to anxiety, impulsivity, poor affect regulation, hyperactivity, poorer problem-solving and impoverished capacity for empathy.¹² Childhood experience of abuse is strongly associated with early delinquency (as opposed to adolescence-onset offending) and the development of later psychopathy.¹³ Children who begin offending at a young age are also likely to commit more serious crimes.¹⁴ All of this means that young children who offend, particularly those

4 Steinberg, 2009, cited in Farmer E, 'The age of criminal responsibility: developmental science and human rights perspectives', *Journal of Children's Services*, Vol 6:2, 2011, p86

5 Van Leijenhorst et al, 2010, cited in Farmer E, 2011, op. cit., p87

6 Steinberg et al, 2009, cited in Farmer E, 2011, op. cit., p87

7 Davis M H and Franzoi S L, 'Stability and change in adolescent self-consciousness and empathy' *Journal of Research in Personality*, 25, 1991, pp70-87

8 See for example: Aseltine, R H, 'A reconsideration of parental and peer influences on adolescent deviance' *Journal of Health and Social Behaviour*, 36, 1995, pp103-121; and Tolan P H, Gorman-Smith, D and Henry D, 'The developmental ecology of urban males' youth violence, *Developmental Psychology*, 39, 2003, pp274-291

9 Farmer E, 2011, op. cit., p87

10 Examples of developmental adversity include abuse, neglect and exposure to violence. Young people in the youth justice system are more likely than other children to experience abuse and neglect

11 Farmer E, 2011, op. cit., p89

12 Vizard E, op. cit.

13 Moffitt and Caspi, 2001; Raine et al, 2005, cited in Farmer E, 2011, op. cit., p89; and Vizard E, op. cit.

14 Wiesner and Windle, 2004, cited in Farmer E, 2011, op. cit., p89

who commit the most serious crimes, are likely to be the most vulnerable (often being victims themselves) and least competent to engage with the criminal justice system.¹⁵

The above issues are distinct from the question of the age at which children understand the difference between right and wrong, a question on which the MACR debate often misguidedly centres. Most children can broadly differentiate between right and wrong from a very young age. Children, however, have a limited capacity to judge the magnitude of right and wrong: that is, what is criminal and what is not. This is likely to be particularly true of children who have grown up in highly dysfunctional family circumstances and hence not learned law abiding behaviour in the home.¹⁶ There is also some indication that children who have experienced abuse may 'learn through modelling and reinforcement (social learning theory) that aggressive behaviour is linked to attention and status', leading them to emulate such behaviour themselves.¹⁷

8.3 Competency

Defendants are required to have particular competencies to participate in criminal justice proceedings. These include the ability to understand 'court processes, charges, defences and their possible consequences, deciding how to plead, challenging jurors, instructing lawyers, giving evidence and responding to cross-examination'. In addition, children must meet fitness-to-be-interviewed criteria (under the Police and Criminal Evidence Act 1984 (PACE)), so as to be able to understand the 'purpose of the interview, to comprehend what is being asked and to appreciate the significance of any answers given and make rational decisions about whether they want to say anything'.¹⁸ In all these respects children and adolescents are significantly disadvantaged.

First, children are both more suggestible ('the tendency to change one's mind as a result of pressure or suggestion from others') and compliant ('the tendency to go along with others' propositions or instructions without internal agreement').^{19, 20} This threatens the identification of truth: 'individuals provide distorted or incomplete versions of events'.²¹ Children are more likely to make false confessions.²² Removing the bias of the questioner is crucial to reducing the influence of these tendencies, yet one-sidedness is a core feature of the adversarial system.²³

Second, children's ability to decide how to plead and instruct lawyers is compromised by their impulsivity and limited capacity to determine the consequences of their decisions. Limited attention span and intellectual functioning restrict their capacity to understand and follow court processes and the significance of questions asked and answers given.²⁴ Children may also find

¹⁵ Farmer E, 2011, op. cit., p92

¹⁶ Vizard E, op. cit.

¹⁷ Farmer E, 2011, op. cit., p89; Farmer in evidence to the CSJ

¹⁸ Home Office, *Police and Criminal Evidence Act 1984 (PACE): Codes of practice – Code C Detention, treatment and questioning of persons by police officers*, 2008, p82 [accessed via: <http://www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/pace-code-c?view=Binary> (14/09/11)]

¹⁹ Farmer E, 2011, op. cit., p88

²⁰ Gudjonsson G H, *The Gudjonsson Suggestibility Scales Manual*, Hove: Psychology Press, 1997

²¹ Drake, 2010, cited in Farmer E, 2011, op. cit., p89

²² Drizin S A and Leo, R A, 'The problem of false confessions in the post-DNA world', *North Carolina Law Review*, 82, 2004, pp891-1008

²³ Farmer E, 2011, op. cit., p88

²⁴ Farmer E, 2011, op. cit., p88

it difficult to give evidence: their ability to accurately recall past events is limited.²⁵ A US study of 1,400 young people aged 12-24 years found that one-third of children aged 11-13 did not have the competency to stand trial.²⁶ There is also some indication that the relative vulnerability of children is such that participation in criminal proceedings can impair their development.²⁷

Although child defendants (above the MACR) can be protected from a trial in the Crown Court by being assessed as unfit to plead, there is no specific procedure to do so in youth courts (and magistrates courts more generally).²⁸ Moreover, fitness to plead provisions tend to be undertaken only with children who are psychologically disturbed or severely learning disabled, as opposed to those who are developmentally immature.²⁹

Young people continue to be inadequately protected in police interviews. They are more likely to waive their right to legal representation than adults (62 per cent of children waived representation versus 34 per cent of adults³⁰) and have less knowledge of their rights. Research in the US found that in two-thirds of jurisdictions understanding rights information presented to defendants required the reading age of a 15 year-old.³¹

Children's ability to engage in the youth justice system is further compromised by the limited understanding of children's capacities amongst the police, sentencers and defence practitioners, most of whom have little or no training in the matter. There are particular concerns about Crown Court judges, who preside over the most serious youth cases but have no specialised youth training: they often employ inappropriate formalities for child defendants despite guidelines allowing them to be dispensed with.³² These issues are explored in detail in Chapters Four and Five.

8.4 Effectiveness

The criminal justice system is often not an effective means to reduce reoffending. Contact with the criminal justice system has been shown to increase the likelihood of reoffending.³³

Given that young child offenders above the age of ten typically have high welfare needs, they are arguably better dealt with by children's social care teams who, because of the current low

25 Blandon-Gitlin and Pezdek, 2009, cited in Farmer E, 2011, op. cit., p88

26 Grisso et al, 2003, cited in Downes D and Morgan R, op. cit., p7

27 Farmer E, 2011, op. cit., p89; Steinberg, 2009, cited in Downes D and Morgan R, op. cit., p6

28 If assessed as unfit to plead the jury must decide whether the accused perpetrated the act or not and either acquit them or deal with them by means of a disposal (under section 5 of the Criminal Procedure (Insanity) Act 1964) respectively. Disposals include a hospital order and absolute discharge; For further information, see, Royal College of Psychiatrists, *Child defendants*, London: Royal College of Psychiatrists, 2006, p45

29 Ibid

30 Medford et al, 2003, cited in Farmer E, 2011, op. cit., p88; study compared samples of young people and adults with appropriate adults

31 Rogers R et al, 'An analysis of *Miranda* warnings and waivers: Comprehension and coverage', *Law & Human Behavior*, 31, pp177-192, 2007. This evidence is indicative only: the nature of children's procedural rights, and the manner in which they are required to be communicated, is different in the USA

32 The Lord Chief Justice's Practice Direction (*The Trial of Children and Young Persons in the Crown Court*, 2000, [Available at: http://www.courtsni.gov.uk/NR/rdonlyres/3459A090-A339-4CF5-80F4-C881450BD53C/0/j_j_PD0211.htm accessed 2 March 2011]) called on the Crown Court to take account of the age, maturity and development (emotional and intellectual) of young defendants. If the defendant is perceived to be too immature or young to understand and participate in formal proceedings, formalities should be dispensed with. Changes include: the removal of wigs and gowns; frequent breaks in proceedings; seating participants on the same level; seating young defendants with their parents or guardians; restricting, if necessary, attendance; and explaining proceedings to the young defendant

33 McCara L and McVie S, 'Youth Justice? The Impact of System Contact on Patterns of Desistance from Offending', *European Journal of Criminology*, Vol. 4:3, 2007, pp315-345

MACR and being hard-pressed, tend currently to look to YOTs to intervene instead.³⁴ That is, the current MACR arguably exposes vulnerable children to ineffective and harmful youth justice system intervention whilst simultaneously making it less likely that they will receive help from, arguably, more effective, welfare services.

8.5 Inconsistencies

The assumption that children, at age ten, are sufficiently responsible and competent to participate in the youth justice system is seriously inconsistent with other aspects of the law in England and Wales, the median MACR worldwide and the consensus of international human rights bodies.

The criminal sphere is the only field in which ten year-olds are deemed competent to make informed decisions and take full responsibility for their actions. In all other aspects of the law children are not judged to have this capacity until later adolescence. For example:

- The Pet Animals Act 1951 provides that a child is not entitled to buy a pet until age 12;³⁵
- The 2003 Sexual Offences Act provides that a child is not competent to make choices about sexual activity and cannot be held to have consented to any such activity below the age of 13;³⁶
- The minimum age for leaving school is 16; and
- The minimum age for jury service is 18.³⁷

Further, there is an asymmetry between the support available to child defendants and child witnesses in criminal proceedings. The latter are 'automatically considered to be vulnerable' (entitling them to assessment of need and support to facilitate understanding) 'yet no such assumption exists for child defendants'.³⁸

The MACR in England and Wales is low compared with the rest of the world. Though the MACR has different meanings in different jurisdictions (in some countries, for example, measures can be imposed on those below the MACR on welfare grounds, but are punishments to all intents and purposes) Table 8.1 illustrates that the MACR is 12 or above in many countries. Scotland and the Republic of Ireland have both effectively raised their MACR to 12 in recent years.³⁹ A recent review of the youth justice system in Northern Ireland recommended that the MACR be raised from ten to 12. We understand that this proposal is under consideration.⁴⁰

34 Downes D and Morgan R, op. cit., p10

35 Pet Animals Act 1951

36 Sexual Offences Act 2003

37 Jacobson J and Talbot J, *Vulnerable Defendants in the Criminal Courts: a review of provision for adults and children*, London: Prison Reform Trust, 2009, p41

38 Royal College of Psychiatrists, op. cit., p55

39 The Criminal Justice and Licensing (Scotland) Bill, 2010 increased the age of prosecution in Scotland to 12, although children are still considered mentally capable of committing a crime at the age of eight; and in 2006 the MACR in Ireland was raised to 12 for all offences except murder, manslaughter, rape and aggravated sexual assault

40 *A Review of the Youth Justice System in Northern Ireland*, 2011, p165 [accessed via: <http://www.dojni.gov.uk/index/publications/publication-categories/pubs-criminal-justice/report-of-the-review-of-the-youth-justice-system-in-ni.pdf> (25.11.11)]

Table 8.1: Minimum age of criminal responsibility across the world⁴¹

Countries	MACR
South Africa	7 (but has <i>doli incapax</i> provision to age 14 i.e. there is a presumption in law that children under 14 are incapable of forming the intent to commit a crime and therefore cannot be prosecuted unless proved otherwise)
US	6 to 12
Australia	10
England and Wales	10
New Zealand	10 (but addresses offending of most children through restorative justice)
Netherlands	12
Sweden, Finland, Denmark, Norway	15
Italy, Germany	14

There is consensus amongst international human rights bodies (the UN Committee on the Rights of the Child (CRC), the Human Rights Committee which monitors the International Covenant on Civil and Political Rights (ICCPR), the Committee Against Torture, the UN Standard Minimum Rules for the Administration of Juvenile Justice (commonly known as the Beijing Rules)) that a MACR below 12 is unacceptable, and that arrest and detention should be used as measures of last resort.⁴² This stance is based on the proposition that ‘the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection’.⁴³

8.6 Discussion

8.6.1 Raising the MACR

Some commentators have argued that raising the MACR would increase the cost-effectiveness of the youth justice system. It would remove a cohort of children from its remit (in 2009/10, 2,886 children aged ten and 11 received a youth justice disposal⁴⁴) whose offending behaviour would more effectively be dealt with outside it. Barnardo’s, for example, uses the example of a child, ‘James’, to demonstrate that, had he been provided with early support instead of

41 Cipriani D, 2009, adapted from table 1 in Downes D and Morgan R, op. cit., p13

42 UN, *General comment no. 10: children’s rights in juvenile justice*, Committee on the Rights of the Child, 44th session, 2007, pp6-11 [accessed via: <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf> (30/09/11)]; UN, *Consideration of reports submitted by states parties under Article 44 of the Convention, Concluding observations: United Kingdom of Great Britain and Northern Ireland*, Committee on the Rights of the Child, 49th session, 2008, p19, paragraph 78 [accessed via: <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf> (30/09/11)]

43 UN Declaration of the Rights of the Child

44 Ministry of Justice, *Youth Justice Statistics 2009/10 England and Wales: Youth Justice Board/Ministry of Justice Statistics Bulletin*, London: Ministry of Justice, 2011, p21; 396 were convicted and sentenced in court

criminal justice responses, some or all of his offending could have been prevented and upfront savings of more than £110,000 made.⁴⁵

Similar emphasis has been given to our International Human Rights obligations. Our MACR is contrary to the guidance. Arrest and incarceration in England and Wales are frequently not used as a last resort, resulting in further criminalisation of vulnerable children. This raises the question as to why we signed up to the principles if we do not believe in them.

Proponents of raising the MACR insist that robust welfare-based responses to the offending of less culpable children would be a more effective alternative to criminalisation. In particular they emphasise the need for a whole family approach to ensure that the causes of behaviour are addressed in the context of the family. A welfare based approach would not mean that children 'get away with' their offending. Instead it might better ensure that the causes of behaviour were addressed, actions confronted and rehabilitation supported. Welfare responses would comprise support delivered by local partners (such as children's services and voluntary sector organisations) as well as coercive welfare interventions (for example, parenting, supervision and care orders for more serious offenders).⁴⁶ Children below the MACR could also be detained in secure accommodation (under Section 25 of the Children Act 1989).⁴⁷



A Youth Justice Working Group meeting

8.6.2 Retaining our MACR

8.6.2.1 Public opinion

There is a strong desire amongst victims and wider society to see justice being done, an end that is often presumed to be unachievable outside the criminal justice system. There is

45 Barnardo's, *From playground to prison: the case for reviewing the age of criminal responsibility*, Ilford: Barnardo's, 2010; the 'James' case study was originally used in the Audit Commission's 2004 review

46 A supervision or care order requires that a child is supervised by the local authority or placed in local authority care, respectively. The orders can be imposed if the child is suffering or is likely to suffer significant harm (including as a consequence of their own behaviour), which is attributable to the standard of care they are receiving at home or they are beyond parental control; Watkins D and Johnson D, *Youth Justice and the Youth Court*, Hampshire: Waterside Press, 2010, pp87-88

47 s.25 accommodation is available to children who have a history of absconding; if absconding is likely to cause them serious harm; and who would injure themselves or other persons if they were kept in any other description of accommodation; Children Act 1989

a related concern that crime would increase if the MACR was raised. These concerns rest on the fallacy that children below any MACR are able to offend with impunity or are likely to be exploited by adults sheltering behind children's legal status. The latter is not unknown in other jurisdictions⁴⁸ but children below the current MACR in England and Wales are not able to offend with impunity and there is no evidence that raising the MACR would have an adverse effect on the incidence of crime.⁴⁹ On the contrary, reoffending rates would arguably reduce were children spared the criminogenic consequences of criminal justice interventions. Such public concerns, often the product of particularly horrific cases, nevertheless remain important considerations in the MACR debate. The murder of James Bulger by two ten year-old boys, Jon Venables and Robert Thompson, in Liverpool in 1993 remains fresh in the public consciousness. There appears to be little appetite for changing the law such that equivalent offenders would not be held criminally liable. To ignore this fact would be politically naive.

8.6.2.2 *Isn't any age arbitrary?*

Any MACR is to some extent arbitrary; there is no perfect alliance between the science of child development and jurisprudential theory. Children vary greatly in their development. Jacobson and Talbot provide a clear explanation of the problem:

*'It is extremely difficult to set a definitive age of criminal responsibility, given that the processes of intellectual, emotional, social and physical development of children are highly complex, multi-faceted and uneven. An enormously wide range of factors – both environmental (such as experiences of abuse and neglect) and biological (such as genetic and neuro-cognitive deficits), and the interaction between them – can have an impact on these different aspects of development.'*⁵⁰

Practitioners have told us that they deal with some 15 year-olds who cannot gauge the consequences of their actions and some 11 year-olds who have greater capacity to do so. Some countries, such as France, overcome this difficulty in theory by assessing competence and culpability on a case by case basis: France has no fixed MACR. However, French legal theory is belied by routine practice. Leading experts have told us that they know of no tests that could accurately determine competence. Moreover, we were informed that such tests can often be readily manipulated so as not to make the subject appear criminally responsible.⁵¹

8.6.2.3 *How raising the MACR would affect children and society*

Even were the MACR raised, to 12 for example, it is unlikely that this reform alone would achieve the radical transformation in the system's response to the offending of ten and 11 year-olds that is desired. Whatever the MACR, the police must respond to the crimes of children above and below it and those whose behaviour results in grave harm (fire-setting, for example) below the MACR are likely to be incarcerated in the same accommodation (secure children's homes) alongside child offenders above the MACR: the only distinction is that criminally responsible children are detained under criminal legislation and children below the MACR, under child welfare legislation (i.e. Section 25 of the Children Act 1989). The reform would therefore do little to allay concerns about the harmful impact of police contact and custody.

48 Cipriani op. cit., pp151-2

49 Department for Justice, Republic of Ireland in evidence to Barnardo's, op. cit., p8

50 Jacobson J and Talbot J, op. cit., p41

51 Personal communication; and Farmer F, op. cit., p92



A Youth Justice Working Group meeting

Nonetheless, raising the MACR would achieve important changes. Young children would not be tarred with the stigmatising 'offender' label, which, the evidence shows can exacerbate delinquency, and would more likely have their victim status and welfare needs addressed, which the evidence suggests are currently often neglected.⁵²

Raising the MACR would also remove a cohort of children from adversarial criminal court proceedings (particularly the traumatising character of Crown Court trials) and the possibility of being publicly named and shamed.

The table below details the number and types of disposals imposed on ten to 11 year-olds as compared with ten to 17 year-olds:⁵³

Table 8.2: Disposals imposed on juveniles in England and Wales, 2009/10

Age	Out of court disposals	Convicted and sentenced in court	Sentenced to custody	Total
10-11 year-olds	2,490	396 (285 received first-tier penalties)	2	2,886
10-17 year-olds	63,152	92,705	5,130	160,987

8.6.3 Related issues

The criminal court system tends to respond to child offending in near isolation from the family problems from which criminality so often flows. This is partly a consequence of the adversarial character of criminal proceedings in England and Wales, a system which 'prioritises

⁵² Barnardo's, op. cit.; Margo J and Stevens A, *Make Me a Criminal: Preventing youth crime*, London: Institute for Public Policy Research, 2008

⁵³ Ministry of Justice, *Youth Justice Statistics 2009/10 England and Wales: Youth Justice Youth Justice Board/Ministry of Justice Statistics Bulletin*, London: Ministry of Justice, 2011, p21

the finding of guilt or innocence and sentencing for a particular offence⁵⁴ and which some commentators maintain is inappropriate for proceedings involving vulnerable children.⁵⁵ The youth court cannot refer cases to the family proceedings court, even where there are serious child welfare concerns. Children regularly appear in the youth court without parental support and Parenting Orders, which give sentencers the power to direct parents to support, are little used. This disconnect is of concern to the CSJ. Without a holistic system that addresses both the risks and needs of young people who offend, their behaviour is unlikely to be effectively addressed.

'I think we should scrap the adversarial nature of the system. The idea that two people clashing together is in the best interests of the child or will reach the truth is absurd. The current system is almost like a game.'

Shauneen Lambe, *Just for Kids Law*, in evidence to the CSJ

Though the MACR fell outside the scope of Lord Justice Auld's major review of the criminal courts, he nonetheless acknowledged the strength of such arguments in relation to the MACR:

*'There are strong arguments that, even for grave crimes, a different form of tribunal should be provided. The younger the young defendant, the stronger the case for it, and the more it overlaps with arguments for raising the criminal age of liability in England and Wales above the age of 10.'*⁵⁶

He went on to recommend that all grave cases against young defendants should be removed from the Crown Court and instead be heard in the youth court, constituted by a judge of an appropriate level and at least two experienced youth panel magistrates.⁵⁷

8.6.4 Conclusion

The evidence indicates strongly that the current low MACR in England and Wales is unsafe, unjust and harmful to wider society.

Yet it can also be argued that preoccupation with the MACR is a red herring. Raising it would do little to alter some of the fundamental flaws in the system; it would merely shield a group of vulnerable children from some aspects of the system. It is evident that radical, long term reform of the youth justice system is necessary to achieve significant improvement in outcomes for children.

⁵⁴ Jacobson J and Talbot J, op. cit., p61

⁵⁵ Michael Sieff Foundation, *Young Defendants Conference Report*, 2009 [accessed via: <http://www.michaelsieff-foundation.org.uk/content/REPORT%20-%20Young%20Defendants%20Conference%2028%20April%202009.pdf> (30/09/11)]

⁵⁶ Lord Justice Auld, op. cit., p214

⁵⁷ Unless the charges are inseparably linked to those against adults; *Ibid*, p26

8.7 Recommendations

The CSJ's judgement, reached on the basis of considerable evidence, is that at ten years the present MACR is too low. Its consequences are harmful and it should be raised to 12. However, we recognise that such a reform is implausible in the immediate term: the capacity of welfare services to provide support needs to be developed and public opinion remains uncertain on the issue (although a significant minority of those we polled, 39 per cent, said the MACR should be raised⁵⁸). We therefore recommend the following steps for the immediate, medium and long term.

Immediate term

- Raise the MACR to 12 for all but the most grave offences (murder, attempted murder, rape, manslaughter and aggravated sexual assault).

This approach (also advocated by Barnardo's in 2010) offers the best prospect of improving outcomes for children and society in the immediate term if implemented alongside other proposals outlined below. We acknowledge the contradictions implicit in such a recommendation: that is, in continuing to hold children who have committed the most heinous crimes responsible for their behaviour one likely criminalises those most in need of help.

However, the number of children under 12 who would be prosecuted would be very small and we think the proposal sends an important message, namely that:

- Children under 12 are generally immature, often vulnerable and should be treated by the system as such; and
- Welfare services, particularly children's social care, should be the principal provider of support in the lives of this age group.

We recommend that this reform be implemented alongside the following proposals which aim to address other weaknesses in the system:

- Investment in early intervention, particularly family focussed prevention schemes;
- Expansion of diversion schemes for children aged above the MACR;
- Provision of specialised youth training for courtroom practitioners, specifically sentencers and defence practitioners;
- Joint training and meetings for family and youth magistrates;
- Linking all youth courts with voluntary sector organisations to which families in need of support can be referred; and
- Development of custodial facilities to become more rehabilitative environments.

58 CSJ/YouGov polling of 1948 adults in England and Wales, May 2010

Medium term

The CSJ considers that the establishment of a connection between the youth and family proceedings court is essential for the prevention of youth crime.

- We recommend that consideration be given to affording the youth court the power (under s.37 Children Act 1989⁵⁹) to order the local authority children's service to investigate whether a child is at risk of suffering significant harm, and whether the local authority should intervene to safeguard and promote the child's welfare (s.47 investigation under the Children Act). This power would be available in cases where there were welfare concerns.⁶⁰

The local authority, in their investigation, would be required to consider whether they should:

- Apply for a care order or supervision order with respect to the child;
- Provide services or care to the child or his family; or
- Take any other action with respect to the child.⁶¹

We suggest that this power be available to the youth court at any point in criminal proceedings, running in parallel to them. We would expect that in most cases the youth court would adjourn sentencing until the local authority investigation had concluded and notified the court of their findings. The youth court could dispose of the case with its existing powers or take no further action (for example, where care proceedings were initiated). For further details, see the comprehensive paper on this proposal completed by The Centre for Child and Family Law Reform.⁶²

- We also recommend that youth court magistrates should generally sit in both the youth court and the family court so as to promote welfare awareness.

Long term

The CSJ believes that a joined-up approach to youth offending is unlikely to be realised unless care and crime matters are addressed in the same court environment.

- We recommend that youth court and family court proceedings be integrated. Implicit in this recommendation is that an inquisitorial approach be adopted.

This is a radical proposal the implementation of which would require detailed exploration beyond the capacity of this Working Group.

- We recommend that the MACR be raised to 12 years for all, including grave, offences as soon as it is feasible to do so.

59 At present this power only available to the family proceedings court

60 That is, concern that the child was or was likely to suffer significant harm, attributable to the standard of care given to the child at home or because the child is beyond parental control

61 Children Act 1989, s.37(2)

62 Green K and Brasse G, *A proposal to extend the Powers of the Court in relation to Needy Children in Criminal Proceedings*, London: Centre for Child and Family Law Reform, 2004

The new system

Under our proposed reforms the offending of children below 12 years would be responded to through means of a more appropriate and effective whole-family approach outside of the criminal justice system. Responses to less serious offending would include restorative and family group conferencing; intensive wrap-around family interventions such as MST and FIPs; and support from local services, such as schools, CAMHS, children's services and voluntary sector organisations. Coercive welfare interventions would also be available for more serious offending, such as parenting, supervision and care orders. Detention in secure accommodation would continue to be available for the most serious offenders from whom the public require protection (under Section 25 of the Children Act 1989).⁶³

⁶³ s.25 accommodation is available to children who have a history of absconding; if absconding is likely to cause them serious harm; and who would injure themselves or other persons if they were kept in any other description of accommodation; Children Act 1989

Annex A

The evidence of what works in youth crime prevention

The evidence for the most effective youth crime prevention programmes has been outlined in a number of reports. This annex draws on these and provides a brief summation. To gain a more in-depth understanding, consult the chapter on prevention in the recently published book edited by David Smith, *A New Response to Youth Crime* or the Department for Education review of effective youth crime strategies.^{1,2}

Given the subject focus of this report on youth crime, each summary outlines the known effects on delinquency and reoffending. It should be noted, however, that programmes produce benefits far beyond this, including reduced levels of family breakdown, mental ill-health, welfare dependency and substance abuse.

1. Individual prevention

There are two types of individual-focussed programmes which are found to be effective at preventing criminal behaviour:

- Pre-school initiatives which aim to get three to four year-olds 'school-ready', improve social and emotional development, and develop cognitive skills such as reasoning.³ Proven examples include the HighScope Perry Preschool programme and the Child-Parent Center (CPC) programme.

1 Hawkins J, Welsh B and Utting D, 'Preventing youth crime: evidence and opportunities', in Smith D (ed), *A New Response to Youth Crime*, Devon: Willan Publishing, 2010, pp209-246

2 Ross A et al, *Prevention and Reduction: A review of strategies for intervening early to prevent and reduce youth crime and anti-social behaviour*, London: Department for Education, 2011

3 Currie, 2001, cited in Hawkins J, Welsh B and Utting D, 'Preventing youth crime: evidence and opportunities', in Smith D (ed), 2010, op. cit., p212

- Programmes provided to adolescents which aim to develop their social, emotional and cognitive competence through teaching effective problem-solving techniques, social skills and anger management.⁴ The most effective skills training models are acknowledged as being Life Skills Training, and Participate and Learn (PALS).

Meta-analysis⁵ of four pre-school programmes found that they achieved a 12 per cent reduction in criminal behaviour amongst participants compared to control groups (those with similar risk factors who did not participate in the programmes).⁶ Meta-analysis and a systemic review of four skills training programmes showed that they achieved a ten per cent reduction in the incidence of criminality amongst participants compared with control groups. Skills training programmes were found to be most effective when delivered to those aged 13 or over.⁷

2. Family prevention

Family-focussed prevention programmes address the familial risk factors associated with delinquency, such as poor parental supervision and discipline, parental conflict, low income and poor housing. They are grouped into two categories:

- Those that educate and support parents to improve their own wellbeing and that of their child's, often through means of home visits.

The most well known home visits programme is the Family Nurse Partnership (FNP). Evaluation of the US-originated FNP found that the 15 year-old children of FNP-mothers received 56 per cent fewer arrests, and 81 per cent fewer convictions or breaches of parole than those of non-FNP mothers.⁸ The programme was implemented in the UK in 2007 and is currently delivered to more than 6,000 families in the UK (this is due to increase to 13,000 by 2015).⁹

- Those that aim to strengthen parenting competencies such as positive discipline, supervision and confidence.¹⁰

Proven programmes that aim to improve parental management skills include The Incredible Years, Triple P (the Positive Parenting Programme) and Guiding Good Choices. The former two programmes are operational in the UK. A meta-analysis of ten evaluations

4 Webster-Stratton and Taylor, 2001, cited in Hawkins J, Welsh B and Utting D, 'Preventing youth crime: evidence and opportunities', in Smith D (ed), 2010, op. cit., p214

5 Collective analysis of the statistical results of a number of studies

6 Farrington D and Welsh B, *Saving Children from a Life of Crime: Early Risk Factors and Effective Interventions*, New York: Oxford University Press, 2007, p108

7 Losel and Beelmann, 2003, 2006, cited in Hawkins J, Welsh B and Utting D, 'Preventing youth crime: evidence and opportunities', in Smith D (ed), 2010, op. cit., p214

8 Olds et al, 1998, cited in Utting D et al, *Interventions for children at risk of developing antisocial personality disorder: Report to the Department of Health and Prime Minister's Strategy Unit*, London: Policy Research Bureau, 2007, p53

9 Department of Health, *The Family Nurse Partnership Programme* [accessed via: http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_118530 (11/04/11)]

10 Farrington D and Welsh B, op. cit., p121

of parent management training programmes found that this form of early intervention brought about a 20 per cent reduction in antisocial behaviour and/or delinquency (from 50 per cent in the control group to 30 per cent in the participant group).¹¹

There are also several effective family interventions delivered to the families of adolescents who are already in trouble with the law, which were explained in Chapter One. These include MTFC, FFT and MST.

3. Situational prevention

3.1 Prevention in schools

Four types of school-based programmes have been found to be effective at preventing later offending: school and discipline management to improve the school environment, such as sharing decision making in schools and increasing the competence of teachers; training to improve classroom management and instruction; reorganisation of grades and classes to improve the school environment; and cognitive-behavioural methods to increase social competence and self-control. Examples of effective programmes in each category are: Project PATHE (Positive Action Through Holistic Education); the Seattle Social Development Project Student Training Through Urban Strategies (STATUS); and the Promoting Alternative Thinking Strategies curriculum (PATHS), respectively. The latter programme is used in primary schools in the UK.¹²

3.2 Prevention in communities

Community prevention encompasses a broad range of programmes, including mentoring, community mobilisation and initiatives to increase employment amongst young people.

An analysis of the outcomes of 18 mentoring programmes found a ten per cent reduction in reconvictions. Schemes were more effective in reducing offending when the average duration of each contact between mentor and mentee was greater and when mentoring was combined with other interventions.¹³ Big Brothers/Big Sisters, a US scheme, is the most frequently cited proven example of effective mentoring. After 18 months on the scheme young people were less likely to have hit someone (32 per cent), use drugs (46 per cent), use alcohol (27 per cent), or truant from school (30 per cent).¹⁴ For every \$1 spent on the programme, more than \$3 was saved to the government and crime victims.¹⁵ However, evaluations of the mentoring schemes in the UK, such as Mentoring Plus, have found no clear evidence of an impact on reconviction.¹⁶

¹¹ Ibid, p127

¹² As cited in Hawkins J, Welsh B and Utting D, 'Preventing youth crime: evidence and opportunities', in Smith D (ed), 2010, op. cit., pp222-224

¹³ Joliffe and Farrington, 2008, cited in Hawkins J, Welsh B and Utting D, *Preventing youth crime: evidence and opportunities*, in Smith D (ed), 2010, op. cit., p226

¹⁴ Grossman J and Tierney J, 1998, cited in Hawkins J, Welsh B and Utting D, 'Preventing youth crime: evidence and opportunities', in Smith D (ed), 2010, op. cit., p226; These outcomes were compared against the outcomes of a 'control' group of children who were on the waiting list

¹⁵ Aos et al, *Benefits and Costs of Prevention and Early Intervention Programs for Youth*, Olympia, WA: Washington State Institute for Public Policy, 2004, p6

¹⁶ Shiner et al, *Mentoring disadvantaged young people: An evaluation of mentoring plus*, York: Joseph Rowntree Foundation, 2004 pp48-70

The Communities that Care (CTC) model is an example of an effective community mobilisation scheme that prevents later offending. In the model key community stakeholders are brought together – such as schools, local services, police, voluntary sector organisations, young people, parents – to identify local prevention needs and implement proven interventions and activities in response. Evaluations have found that young people in CTC communities were 31 per cent less likely to have engaged in delinquent acts.¹⁷ The model is currently operational in some areas of the UK.

Programmes which aim to increase employment amongst young people at risk of offending have also found to be effective means of preventing offending, particularly intensive residential training schemes. One example of such a scheme is Job Corps, available across the US, which has been found to result in substantial reductions in criminal conduct.¹⁸

Figure A1, from the Washington State Institute for Public Policy, provides a helpful analysis of the costs and benefits of different crime prevention programmes.

¹⁷ Hawkins J, Welsh B and Utting D, *Preventing youth crime: evidence and opportunities*, in Smith D (ed), 2010, op. cit., p228

¹⁸ Schochet et al, 2008, cited in Hawkins J, Welsh B and Utting D, *Preventing youth crime: evidence and opportunities*, in Smith D (ed), 2010, op. cit., p229

Figure A1: The comparative costs and benefits of programmes to reduce crime

	Number of program effects in the statistical summary	Average size of the crime reduction effect* and (standard error) note that a negative effect size means lower crime	Net direct cost of the program, per participant	Net benefits per participant (i.e. benefits minus costs)		
				Lower end of range: includes taxpayer benefits only		Upper end of range: includes taxpayer and crime victim benefits
	(1)	(2)	(3)	(4)		(5)
Early Childhood Programs						
Nurse Home Visitation (for low income single mothers)	2	-0.29 (0.21)	\$7,733	-\$2,067	to	\$15,918
Early Childhood Education for Disadvantaged Youth	6	-0.10 (0.04)	\$8,936	-\$4,754	to	\$6,972
Middle Childhood and Adolescent (Non-Juvenile Offender) Programs						
Seattle Social Development Project	1	-0.13 (0.11)	\$4,355	-\$456	to	\$14,169
Quantum Opportunities Program	1	-0.31 (0.20)	\$18,964	-\$8,855	to	\$16,428
Mentoring	2	-0.04 (0.05)	\$1,054	\$225	to	\$4,524
National Jobs Corps	1	-0.08 (0.03)	\$6,123	-\$3,818	to	\$1,719
Job Training Partnership Act	1	0.10 (0.05)	\$1,431	-\$4,562	to	\$12,082
Juvenile Offender Programs						
<i>Specific "Off the Shelf" Programs</i>						
Multi-Systemic Therapy	3	-0.31 (0.10)	\$4,743	\$31,661	to	\$131,918
Functional Family Therapy	7	-0.25 (0.10)	\$2,161	\$14,149	to	\$59,067
Aggression Replacement Training	4	-0.18 (0.14)	\$738	\$8,287	to	\$33,143
Multidimensional Treatment Foster Care	2	-0.37 (0.19)	\$2,052	\$21,836	to	\$87,622
Adolescent Diversion Project	5	-0.27 (0.07)	\$1,138	\$5,720	to	\$27,212
<i>General Types of Treatment Programs</i>						
Diversion with services (vs. regular juvenile court processing)	13	-0.05 (0.02)	-\$127	\$1,470	to	\$5,679
Intensive Probation (vs. regular probation caseloads)	7	-0.05 (0.06)	\$2,234	\$176	to	\$6,812
Intensive Probation (as alternative to incarceration)	6	0.00 (0.05)	-\$18,478	\$18,586	to	\$18,854
Intensive Parole Supervision (vs. regular parole caseloads)	7	-0.04 (0.06)	\$2,635	-\$117	to	\$6,128
Coordinated Services	4	-0.14 (0.10)	\$603	\$3,131	to	\$14,831
Scared Straight Type Programs	8	0.13 (0.06)	\$51	-\$6,572	to	-\$24,531
Other Family-Based Therapy Approaches	6	-0.17 (0.04)	\$1,537	\$7,113	to	\$30,936
Juvenile Sex Offender Treatment	5	-0.12 (0.10)	\$9,920	-\$3,119	to	\$23,602
Juvenile Boot Camps	10	0.10 (0.04)	-\$15,424	\$10,360	to	-\$3,587

Source: Aos S et al, *The comparative costs and benefits of programmes to reduce crime*, Washington State Institute for Public Policy, 2001, p14

Annex B

An introduction to simulation

by Marc Radley of CACI

The world of managing public services is complex and interconnected. The youth justice system is no exception. When considering reform it is therefore vitally important to explore assumptions about making changes and to avoid unintended consequences.

CACI has developed a youth justice software simulation model and this has been offered to the CSJ review to help develop thinking and understanding about the reform proposals, and to help manage the risk and uncertainty involved in implementation.

So far the simulation has been used to test assumptions about policy and practice options and help make predictions. However, it can also be used to assist with managing a local system; to help with improvement; to establish smarter investment; and the metrics that can be used to track successful implementation in different local contexts.

Methodology

Software simulation modelling is derived from the theory of system dynamics. The key aspect is to distinguish the human process of developing thinking and understanding from the computer software model, which can represent complex process and interactions known about in the real world and process these very quickly.

In this way the computer simulation can be used to test changes and assumptions about managing differently in the real world, to produce immediate feedback and make predictions about these. This can include testing innovation, measuring sensitivity to key variables, understanding volumes, thresholds and system equilibrium.

Marc Radley, Strategic Director Children's Services at CACI, created the youth justice software model with input from Alex Chard, Director of YCTCS, based on over 25 years experience

of managing practice and youth justice and prevention information systems design. Together with Matt Gardiner at CACI they created a full simulation model using Powersim software. The model was reviewed and validated by comparing with real world functioning and this involved colleges from several YOTs and Working Group member Professor Rod Morgan.

Case study data issues

Data was requested from five case study YOTs which could be derived from existing local information systems such as YOIS (this has been cross checked with data from YJB/YJMIS where available).

Data capture in YOTs (and aggregation by the YJB) focusses on process measures. In contrast, data for the simulation emphasises system flows throughout the system. As a result it has been challenging to obtain detailed data for this study about police diversionary actions (for example, PNDs, YRDs and triage) and so this has been estimated by the YOT. This data is not available via YJMIS. Similarly, whilst reoffending data is available from the YJB for local YOT cohorts these currently cannot distinguish between pre-court and specific court sentences and YOT interventions.

The case study YOTs have commented on the national audit unit costs, however the variation of actual unit costs in YOTs was not readily available for comparison. Importantly, the simulation offers potential to compare actual costs with the results of this study, but this was beyond the scope of this exercise.

Developing future performance

The youth justice system can be considered to comprise two essential aspects to performance:

1. Entry to informal and formal youth justice process; and
2. Arranging intervention for repeat and persistent offenders.

The simulation begins to illustrate how informal action can significantly reduce effort and the cost of responding to offending behaviour. Further, where the full range of formal intervention is reserved for repeat offenders, this results in a reduction in numbers of repeat offending incidents as well as the use of custody.

However, it will be necessary to address the current difficulties collating key system data. In terms of entrants, data sharing across police and YOTs can critically distinguish entrants receiving informal police action, pre court decision and those directly entering court. This begins to illustrate that effective and proportionate responses to offending behaviour drives overall performance. Further, in terms of reoffending, specific pre-court and court interventions must also be distinguished to indicate how local judgements affect reoffending behaviour and volumes, and how resources may be effectively concentrated on persistent offenders in order to maximise the success of rehabilitation work.

Multi-agency working

The simulation group has also found that the behaviour of other local authority services, such as the police, children's social care and health, is of particular importance. For example, effective diversion operated by the police accrues benefits to YOTs. Effective prevention by mainstream welfare services can similarly reduce demand in the courts and YOTs. Further, effective youth justice interventions that reduce reoffending will bring savings to adult criminal justice and welfare services.

What next

CACI have also started work on complementary simulations to explore other associated systems such as children's social care, community safety and policing.

These models can be easily combined to explore and test predictions about interaction and costs, and potentially enable the formulation of pooled budgets and multi-agency strategies for early intervention. We believe these formulations will be relevant for stimulating new sources of funding such as social investment.

Importantly, and perhaps surprisingly, the success of this modelling work depends on the experience and engagement of skilled practice managers in creating suitable representations of service systems (including practice knowledge and research). It also depends on the ability of software modelling designers to abstract this knowledge into suitable software models using tools such as Powersim.

List of thanks

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Darrin Reece, Senior Youth Programme Coordinator, Fight for Peace

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Bibliography

Written sources

- Allen C et al, *Home Office Research Study 214: Evaluation of the Youth Court Demonstration Project*, London: Research, Development and Statistics Directorate, Home Office, 2000
- Allen R, *From punishment to problem solving: A new approach to children in trouble*, London: Centre for Crime and Justice Studies, 2006
- Allen R, *Last resort? Exploring the reduction in child imprisonment 2008-11*, London: Prison Reform Trust, 2011
- Annabel Jackson Associates Ltd, *PRT Out of Trouble Programme – Training of Defence Solicitors: Analysis of Feedback Forms*, July 2010
- Apprenticeships, Skills, Children and Learning Act 2009
- Arnall E et al, *Housing Needs and Experiences*, London: Youth Justice Board, 2007
- Asteltine, R H, 'A reconsideration of parental and peer influences on adolescent deviance', *Journal of Health and Social Behaviour*, 36, 1995
- Audit Commission, *Misspent Youth*, London: Audit Commission, 1996
- Audit Commission, *Youth justice 2004: A review of the reformed youth justice system*, London: Audit Commission, 2004
- Barnardo's, *From playground to prison: the case for reviewing the age of criminal responsibility*, Ilford: Barnardo's, 2010
- Bateman T and Stanley C, *Patterns of Sentencing: Differential sentencing across England and Wales*, London: Youth Justice Board, 2002
- Bateman T, 'Living with Final Warnings: Making the Best of a Bad Job?' *Youth Justice*, 2, 3, 2002
- Bateman T, 'Punishing Poverty: The 'Scaled Approach' and Youth Justice Practice', *The Howard Journal*, 50, 2, 2011
- Bateman T and Pitts J (eds), *The RHP Companion to Youth Justice*, Dorset: Russell House Publishing, 2005
- Bradley K, *The Bradley Report: Lord Bradley's review of people with mental health problems or learning disabilities in the criminal justice system*, London: Department for Health, 2009
- Campbell C, *Evaluation of the Northern Ireland Youth Conference Service*, Belfast: Statistics and Research Branch of the Northern Ireland Office, 2006
- Case S and Haines K, *Understanding Youth Offending: Risk factor research, policy and research*, Devon: Willan Publishing, 2009
- Centre for Mental Health, *In the dark: the mental health implications of Imprisonment for Public Protection*, London: Centre for Mental Health, 2008
- Centre for Social Justice, *Breakthrough Britain: A Force to be Reckoned With*, London: Centre for Social Justice, 2009
- Centre for Social Justice, *Completing the Revolution*, London: Centre for Social Justice, 2011
- Centre for Social Justice, *Couldn't Care Less*, London: Centre for Social Justice, 2008
- Centre for Social Justice, *Dying to Belong*, London: Centre for Social Justice, 2009

- Centre for Social Justice, *Locked Up Potential*, London: Centre for Social Justice, 2009
- Centre for Social Justice, *No Excuses*, London: Centre for Social Justice, 2011
- Centre for Social Justice, *Order in the Courts*, London: Centre for Social Justice, 2009
- Chard A, *Jointly Delivering Services – YOTs and Children's Social Care*, Surrey: YCTCS, 2010
- Children (Leaving Care) (England) Regulations 2001
- Children (Leaving Care) Act 2000
- Children Act 1989
- Children Act 2004
- Children and Young Peoples Act 1969
- Children and Young Persons Act 1933
- Children's Homes Regulations 2001
- Collins J, 'Payment by results in the criminal justice system: can it deliver?', *Journal of Learning Difficulties and Offending Behaviour*, 10, 2, 2011
- Cooper et al, *Keeping Young People Engaged: Improving education, training and employment opportunities for serious and persistent young offenders*, London: Youth Justice Board, 2007
- Coroners and Justice Act 2009
- Crime and Disorder Act 1998
- Criminal Justice and Immigration Act 2008
- Criminal Justice and Licensing (Scotland) Bill, 2010
- Criminal Procedure (Insanity) Act 1964
- Cripps H, *Children and Young People in Custody 2009–10: An analysis of the experiences of 15–18-year-olds in prison*, Norwich: The Stationery Office, 2010
- CSJ/YouGov polling of 1948 adults in England and Wales, May 2010
- CSJ/YouGov polling of 2084 British adults, September 2011
- Davies K et al, 'The Swansea Bureau: A children first model of diversion', forthcoming
- Davis M H and Franzoi S L, 'Stability and change in adolescent self-consciousness and empathy', *Journal of Research in Personality*, 25, 1991
- Day C et al, *A Literature Review into Children Abused and/or Neglected Prior Custody*, London: Youth Justice Board, 2008
- Department for Children, Schools and Families, *Safeguarding the Future: A review of the Youth Justice Board's Governance and Operating Arrangements*, London: Department for Children, Schools and Families, 2010
- Department for Education and Skills, *Care Matters: Transforming the Lives of Children in Care*, Norwich: The Stationery Office, 2006
- Diaz R, *Factsheet: Young people and homelessness*, London: Shelter, 2005
- Downes D and Morgan R, 'Waiting for Ingleby: the minimum age of criminal responsibility – a red line issue?', forthcoming
- Drizin SA and Leo RA, 'The problem of false confessions in the post-DNA world', *North Carolina Law Review*, 82, 2004
- ECOTEC, *An Audit of Education Provision within the Juvenile Secure Estate: A Report to the Youth Justice Board*, London: Youth Justice Board, 2001
- Edcoms, *Education, Training and Employment – Source document*, London: Youth Justice Board, 2008
- Farmer E, 'The age of criminal responsibility: developmental science and human rights perspectives', *Journal of Children's Services*, 6, 2, 2011
- Farrington D, 'The effects of public labelling', *British Journal of Criminology*, 17, 2, 1977
- Felder C et al, *An Evaluation of Social Work Posts in Young Offender Institutions*, London: Youth Justice Board, 2008
- Galahad SMS, *Substance misuse services in the secure estate – summary*, London: Youth Justice Board, 2009

- Gibbs P and Hickson S, *Children: Innocent until proven guilty? A report on the overuse of remand for children in England and Wales and how it can be addressed*, London: Prison Reform Trust, 2009
- Glover J and Clewett N, *No Fixed Abode: The housing struggle for young people leaving custody in England*, London: Barnardo's, 2011
- Goldson B and Muncie J (eds), *Youth Crime and Justice*, London: SAGE Publications, 2007
- Gray E et al, Probation Studies Unit, Centre for Criminology, University of Oxford, *Intensive Supervision and Surveillance Programme: The final report*, London: Youth Justice Board, 2005
- Green K and Brasse G, *A proposal to extend the Powers of the Court in relation to Needy Children in Criminal Proceedings*, London: Centre for Child and Family Law Reform, 2004
- Gudjonsson GH, *The Gudjonsson Suggestibility Scales Manual*, Hove: Psychology Press, 1997
- Halpern D, *The Hidden Wealth of Nations*, Cambridge: Polity, 2010
- Halsey K, *Evaluation of the Children in Trouble programme (LGA report)*, Berkshire: National Foundation for Educational Research, 2010
- Harrington R et al, *Mental Health Needs and Effectiveness of Provision for Young Offenders in Custody and in the Community*, London: Youth Justice Board, 2005
- Hart D, *Into the breach: the enforcement of statutory orders in the youth justice system*, London: Prison Reform Trust, 2011
- Hazel N et al, *Detention and Training: Assessment of the Detention and Training Order and its impact on the secure estate across England and Wales*, London: Youth Justice Board, 2002
- Hazel N et al, *Key lessons from the RESET programme – Executive summary*, London: Catch 22, 2010
- Healthcare Commission and HM Inspectorate of Probation, *Actions Speak Louder: A second review of healthcare in the community for young people who offend*, London: Healthcare Commission and Her Majesty's Inspectorate of Probation, 2009
- Hedderman C and Moxon D, *Home Office Research Study 125: Magistrates' court or Crown court? Mode of trial decisions and sentencing*, London: Her Majesty's Stationery Office, 1992
- Her Majesty's Court Service and The Youth Justice Board, *Making it Count in Court, Second Edition*, London: Youth Justice Board, 2010
- Her Majesty's Court Service, *HMCS Problem Solving Pilot Post Implementation Review: Final Report*, London: Her Majesty's Court Service, 2011
- HM Government, *Youth Crime Action Plan 2008*, London: Central Office of Information, 2008
- HM Inspectorate of Constabulary and HM Crown Prosecution Service Inspectorate, *Exercising Discretion: The Gateway to Justice*, London: Criminal Justice Joint Inspection, 2011
- HM Inspectorate of Constabulary, *Policing anti-social behaviour: The public perspective*, London: HM Inspectorate of Constabulary, 2010
- HM Inspectorate of Court Administration, *HMICA thematic inspection of Youth Courts: Implementation of the Youth Court Good Practice Guide 2001*, London: HM Inspectorate of Court Administration, 2007
- HMI Prisons, *Resettlement provision for children and young people: Accommodation and education, training and employment*, London: HMI Prisons, 2011
- HMI Prisons, *Annual Report 2008-09*, Norwich: The Stationery Office, 2010
- HMI Prisons, *Annual Report 2010-11*, Norwich: The Stationery Office, 2011
- HMI Prisons, Probation, and Constabulary Inspectorates, *The management of gang issues among children and young people: A joint thematic review*, London: HMI Prisons, 2010
- HMI Prisons, *Report on full unannounced inspection of HMYOI Ashfield*, London: HMI Prisons, 2010
- Hobbs and Hook Consulting, *Research into Effective Practice with Young People in Secure Facilities: Report to the Youth Justice Board*, London: Youth Justice Board, 2001

- Home Office, *Breaking the Circle: A report of the review of the Rehabilitation of Offenders Act*, London: Home Office, 2002
- Home Office, *More effective responses to antisocial behaviour*, 2011
- Home Office, *No More Excuses: A New Approach to Tackling Youth Crime in England and Wales*, Norwich: The Stationery Office, 1997
- Home Office, *The Cautioning of Offenders – Home Office Circular 18/1994*, London: Home Office, 1994
- Home Office, *Youth Justice – The Next Steps*, London: Home Office, Juvenile Offenders Unit, 2003
- House of Commons Justice Committee, *Cutting crime: the case for reinvestment, First report of the session 2009-10*, London: House of Commons 2010
- House of Commons Justice Committee, *Draft Sentencing Guideline: overarching principles – sentencing youths: Tenth Report of Session 2008-09*, Norwich: The Stationery Office Limited, 2009
- Hucklesby A and Goodwin T, *Pre-trial accommodation for young people*, London: Youth Justice Board, 2004
- Independent Commission on Youth Crime and Antisocial Behaviour, *Time for a fresh start: the report of the Independent Commission on Youth Crime and Antisocial Behaviour*, London: The Police Foundation, 2010
- Jacobson J and Hough M, *Unjust Deserts: imprisonment for public protection*, London: Prison Reform Trust, 2010
- Jacobson J and Talbot J, *Vulnerable Defendants in the Criminal Courts: a review of provision for adults and children*, London: Prison Reform Trust, 2009
- Jacobson J et al, *Punishing disadvantage: a profile of children in custody*, London: Prison Reform Trust, 2010
- Judicial Studies Board, *Youth Court Induction Training Delegate Workbook*, London: Judicial Studies Board, 2006
- Khan L, *Reaching out, reaching in: Promoting mental health and emotional well-being in secure settings*, London: Centre for Mental Health, 2010
- Knight B, *Back from the Brink: How Fairbridge transforms the lives of disadvantaged young people*, Newcastle: The Centre for Research and Innovation in Social Policy and Practice, 2010
- Legal Aid, *Sentencing and Punishment of Offenders Bill*
- Lord Carlile, *An independent inquiry into the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children's homes*, London: The Howard League for Penal Reform, 2006
- Lord Falconer, *Doing Law Differently*, London: Department for Constitutional Affairs, 2006
- Lord Justice Auld, *A Review of the Criminal Courts of England and Wales by the Right Honourable Justice Auld*, Norwich: The Stationery Office, 2001
- Maguire M et al (eds), *The Oxford Handbook of Criminology*, 4th Edition, Oxford: Oxford University Press, 2007
- Maguire M, Morgan R and Reiner R (eds), *The Oxford Handbook of Criminology*, 5th Edition, Oxford: Oxford University Press, forthcoming
- Margo J and Stevens A, *Make Me a Criminal: Preventing youth crime*, London: Institute for Public Policy Research, 2008
- McAra L and McVie S, 'Youth crime and justice: Key messages from the Edinburgh Study of Youth Transitions and Crime', *Criminology and Criminal Justice*, 2010, 10: 2
- McLaughlin, E et al, 'The Modernization of Criminal Justice The Permanent Revolution: New Labour, New Public Management and the Modernization of Criminal Justice', *Criminology and Criminal Justice*, 1, 3, 2001
- Ministry of Justice and Department for Children, Schools and Families, *Reducing reoffending: supporting families, creating better futures*, London: Ministry of Justice, 2009
- Ministry of Justice, *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*, Norwich: The Stationery Office, 2010
- Ministry of Justice, *Breaking the Cycle: Government Response*, Norwich: The Stationery Office, 2011
- Ministry of Justice, *Criminal Justice Statistics 2009*, London: Ministry of Justice, 2010

Ministry of Justice, *Offender Management Caseload Statistics 2010*, London: Ministry of Justice, 2011

Ministry of Justice, *Youth Justice Statistics 2009/10 England and Wales: Youth Justice Board/Ministry of Justice Statistics Bulletin*, London: Ministry of Justice, 2011

Morgan R, *Summary Justice: Fast – but Fair?* London: Centre for Crime and Justice Studies, 2008

Munro E, *The Munro Review of Child Protection – Part One: A Systems Analysis*, Norwich: The Stationery Office, 2010

Munro E, *The Munro Review of Child Protection: Final Report, A child-centred system*, Norwich: The Stationery Office, 2011

Nacro Cymru Youth Offending Unit, *Youth Justice and Participation in Wales*, Nacro Cymru Youth Offending Unit

Nacro, *Nacro's resettlement programme for young people leaving Portland Young Offender Institution*, London: Nacro, 2006

Nacro, *Out of court: making the most of diversion for young people*, London: Nacro, 2005

Nacro, *Pre sentence reports for Young People: A Good Practice Guide*, 2nd edition, London: Nacro, 2003

Nacro, *Youth Crime briefing – Out of court: making the most of diversion for young people*, London: Nacro, 2005

Nacro, *Youth Crime briefing – Reducing Custody: a systemic approach*, London: Nacro, 2006

Nacro, *Youth Crime briefing: Pre-sentence reports and the use of custody*, London: Nacro, 2005

National Association of Youth Justice, *Payment by results and the youth justice system: An NAYJ position paper – July 2010*, National Association of Youth Justice 2011

National Audit Office, *Report by the comptroller and auditor general – The youth justice system in England and Wales: Reducing offending by young people*, Norwich: The Stationery Office, 2010

National Audit Office, *Youth Offending: the delivery of community and custodial sentences*, Norwich: The Stationery Office, 2004

National Youth Agency, *Voice and Influence in the Youth Justice System*, National Youth Agency: Local Government Association, 2010

National Youth Agency & Perpetuity Group, *Audit of accommodation provision for young people who offend*, London: Youth Justice Board, 2010

Newburn T et al, *Home Office Research Study 242 – The Introduction of Referral Orders into the Youth Justice System: Final report*, London: Home Office Research, Development and Statistics Directorate, 2001

Newburn T, 'Policing youth anti-social behaviour and crime: time for reform?', *Journal of Children's Services*, 6, 2011

Niven S and Stewart D, *Resettlement outcomes on release from prison in 2003*, London: Home Office, 2005

Ofsted, *Transition through detention and custody: Arrangements for learning and skills for young people in custodial or secure settings*, Manchester: Ofsted, 2010

Osmond S, 'Learned Helpfulness', *Human Givens Journal*, 14, 4, 2007

Perry A et al, *Mental Health: Source document*, London: Youth Justice Board, 2008

Pet Animals Act 1951

Phoenix J, 'In search of a youth justice pedagogy? A commentary', *Journal of Children's Services*, 6, 2, 2011

Pitts J, 'Korrectional Karaoke: New Labour and the Zombification of Youth Justice', *Youth Justice*, 1, 2, 2001

Pitts J, *The new politics of youth crime: discipline or solidarity?*, Dorset: Russell House Publishing, 2003

Police and Criminal Evidence Act 1984

Police Reform and Criminal Responsibility Bill

Policy Exchange, *Arrested Development: Reducing the number of young people in custody while reducing crime*, London: Policy Exchange, 2009.

Preston-Shoot M and Ayre P, *Children's Services: At the Crossroads*, Russell House Publishing, 2010

Prison Reform Trust, *Children: Innocent until proven guilty?* London: Prison Reform Trust, 2009

Protection of Freedoms Bill

Rehabilitation of Offenders Act 1974

- Research, Development and Statistics Directorate, *Preventative approaches targeting young people in local authority residential care: Development and Practice Report 14*, London: Home Office, 2004
- Restorative Justice, *Does Restorative Justice affect reconviction: The fourth report from the evaluation of three schemes*, London: Ministry of Justice, 2008
- Rix A et al, *Youth Restorative Disposal Process Evaluation*, London: Youth Justice Board, 2011
- Roberts J V and Hough M (eds), *Changing Attitudes to Punishment: Public opinion, crime and justice*, Devon: Willan Publishing, 2002
- Roberts R and Garside R, *Punishment before justice? Understanding Penalty Notices for Disorder*, London: Crime and Society Foundation, 2006
- Rogers R et al, 'An analysis of Miranda warnings and waivers: Comprehension and coverage', *Law & Human Behaviour*, 31, 2007
- Royal College of Psychiatrists, *Child defendants*, London: Royal College of Psychiatrists, 2006
- Sexual Offences Act 2003
- Shapland J et al, *Restorative Justice: the views of victims: The third report from the evaluation of three schemes*, London: Ministry of Justice, 2007
- Smith D (ed), *A New Response to Youth Crime*, Devon: Willan Publishing, 2010
- Social Exclusion Unit, *Reducing Reoffending by Ex-Prisoners*, London: Social Exclusion Unit, 2002
- Solanki et al, *Anti-social behaviour orders summary*, London: Youth Justice Board, 2006
- Solomon E and Allen R, *Reducing child imprisonment in England and Wales – lessons from abroad*, London: Prison Reform Trust, 2009
- Solomon E and Garside R, *Ten years of Labour's youth justice reforms: an independent audit*, London: Centre for Crime and Justice Studies, 2008
- Speech by Minister of State for Policing and Criminal Justice, Nick Herbert MP, *Who runs the police?*, 28 March 2011
- Standing Committee on Youth Justice, *The Funding of Custody for Children: Devolving the Budget*, 2009
- Summerfield A, *Children and Young People in Custody 2010–11: An analysis of the experiences of 15–18-year-olds in prison*, London: HMI Prisons and Youth Justice Board, 2011
- The Education (Pupil Registration) (England) Regulations 2006 Section 8(1)(i)
- The Foyer Federation, *Young Offenders: A Secure Foundation*, Foyer Federation, 2009 [accessed via: http://www.foyer.net/pdf/Young_Offenders_A_Secure_Foundation.pdf (24/11/11)]
- The Howard League for Penal Reform, *Out for good: The resettlement needs of young men in prison*, London: The Howard League for Penal Reform, 2006
- The Independent Commission on Youth Crime and Antisocial Behaviour, *Time for a fresh start: The report of the Independent Commission on Youth Crime and Antisocial Behaviour*, London: The Police Foundation, 2010
- The Police Foundation and JUSTICE, *Time for a new hearing: A comparative study of alternative criminal proceedings for children and young people*, London: The Police Foundation, 2010
- The United Nations Convention on the Right of the Child
- The United Nations Declaration of the Rights of the Child
- The United Nations Standard Minimum Rules for the Administration of Juvenile Justice
- Tolan PH, Gorman-Smith, D and Henry D, 'The developmental ecology of urban males' youth violence', *Developmental Psychology*, 39, 2003
- Tonry M (ed) *Crime and Justice: A Review of Research*, 28, 2009
- Tye D, *Children and Young People in Custody 2008-2009: An analysis of the experiences of 15-18 year olds in prison*, London: HM Inspectorate of Prisons and Youth Justice Board, 2010
- UserVoice, *The Power Inside: the role of prison councils*, UserVoice, 2010
- Watkins M and Johnson D, *Youth Justice and the Youth Court: An Introduction*, Hampshire: Waterside Press, 2010

- Wilson D and Moore S, *'Playing the Game' – The Experiences of Young Black Men in Custody*, London: The Children's Society, 2003
- Working Links, *Prejudged: Tagged for life – A research report into employer attitudes towards ex-offenders*, London: Working Links
- Youth Justice Board, *A Health Needs Assessment for Young Women in Young Offender Institutions*, London: Youth Justice Board, 2006
- Youth Justice Board, *An Evaluation of Resettlement and Aftercare Provision*, London: Youth Justice Board, 2010
- Youth Justice Board, *Antisocial behaviour orders – summary*, London: Youth Justice Board, 2006
- Youth Justice Board, *Assessment and planning interventions: review and redesign project*, unpublished
- Youth Justice Board, *Barriers to engagement in education, training and employment*, London: Youth Justice Board, 2006
- Youth Justice Board, *Evaluation of Resettlement and Aftercare Provision*, London: Youth Justice Board, 2010
- Youth Justice Board, *Final warning projects: the national evaluation of the Youth Justice Board's final warning projects*, Youth Justice Board, 2004
- Youth Justice Board, *Fine art or science? Sentencers deciding between community penalties and custody for young people*, Youth Justice Board, 2009
- Youth Justice Board, *Managing the behaviour of children and young people in the secure estate*, London: Youth Justice Board, 2006
- Youth Justice Board, *Substance misuse and the juvenile secure estate – summary*, London: Youth Justice Board, 2004
- Youth Justice Board, *Suitable, Sustainable, Supported: A strategy to ensure provision of accommodation for children and young people who offend*, London: Youth Justice Board, 2006

Web Sources

- Anna Freud Centre, AMBIT [accessed via: <http://www.annafreud.org/pages/ambit.html> (05/10/11)]
- Association of Directors of Children's Services, *Children's Services Leaders call for investment to build a sustainable child protection service*, September 2010 [accessed via: <http://www.adcs.org.uk/download/press-release/sept-10/adcs-call-for-protection-of-early-intervention.pdf> (31/01/11)]
- Britz H, *From Pillar to Post*, Inside Housing Magazine, 2010 [accessed via: <http://www.insidehousing.co.uk/need-to-know/care-and-support/from-pillar-to-post/6509944.article> (29/11/10)]
- Centre for Mental Health, *Youth Justice Liaison and Diversion: A National Pilot Scheme* [accessed via: http://www.centreformentalhealth.org.uk/criminal_justice/youthjustice_pilots.aspx (06/10/11)]
- Chard A, *Guide to jointly delivering services: Youth offending teams and children's social care*, Community Care Inform, 2010 [accessed via: <http://www.ccinform.co.uk/Articles/2010/04/08/4816/Guide+to+jointly+delivering+services+Youth+offending+teams+and+children%e2%80%99s+social.html> (18/09/11)]
- Community Care, *Restorative justice cuts criminalisation and police intervention among looked-after children*, 2011 [accessed via: <http://www.communitycare.co.uk/Articles/11/09/2011/117409/how-restorative-justice-can-improve-relationships-in-childrens-homes.htm> (09/10/11)]
- Crew M and Ellis N, *Speech and Language Therapy: Summary of Findings of a 6 month project in Bradford YOT*, 2008 [accessed via: http://bradford-yot.co.uk/new_pdf/2008/speech_language_therapy_nov_2008.pdf]
- Crown Prosecution Service, *Youth Offenders: Legal Guidance* [accessed via: http://www.cps.gov.uk/legal/v_to_z/youth_offenders/#a21 (31/08/11)]
- Daily Mail, *Police officers will have to accept pay cuts or jobs will be lost, says Home Secretary as she warns of two-year pay freeze*, 2011 [accessed via: <http://www.dailymail.co.uk/news/article-1362023/Theresa-May-Police-officers-accept-pay-cuts-jobs-lost.html> (31/11/11)]

- Department for Children, Schools and Families, *First-time Entrants Aged 10-17 to the Criminal Justice System in England, 2000-01 to 2007-08*, 2008 [accessed via: <http://www.education.gov.uk/rsgateway/DB/STR/d000821/ftcjs-2008.pdf> (24/08/11)]
- Department for Constitutional Affairs, *Delivering Simple, Speedy, Summary Justice: Executive summary*, 2006 [accessed via: http://webarchive.nationalarchives.gov.uk/+http://www.dca.gov.uk/publications/reports_reviews/delivery-simple-speedy.pdf (11/11/11)]
- Frontier Economics, *St Giles Trust's Through the Gates – An analysis of economic impact*, 2009 [accessed via: http://www.frontier-economics.com/_library/pdfs/frontier%20news%20-%20through%20the%20gates.pdf (11/11/11)]
- HM Inspectorate of Probation et al, *Not Making Enough Difference: A Joint Inspection of Youth Offending Court Work and Reports*, 2011 [accessed via: http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmiprob/Court_Work_and_Reports_Thematic_Report-rps.pdf (10/11/11)]
- HM Treasury, *Spending Review 2010*, Norwich: The Stationary Office, 2010 [accessed via: http://cdn.hm-treasury.gov.uk/sr2010_completereport.pdf (01/09/11)]
- Home Office and Lord Chancellor's Department, *The Youth Court 2001: The Changing Culture of the Youth Court – Good Practice Guide*, Home Office Communication Directorate, 2001 [accessed via: <http://www.yjb.gov.uk/NR/rdonlyres/64F1B930-9B06-48BF-91C0-223492EF1C88/0/YouthCourt2001.pdf> (02/03/11)]
- Home Office, *Anti-social behaviour order statistics – England and Wales 2010, Table 12: Anti-Social Behaviour Orders (ASBOs) proven at all courts to have been breached by type of sentence received, age group(1) and sex, 1 June 2000 to 31 December 2010(2)* [accessed via: <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/asbo-stats-england-wales-2010/asbo10-xls?view=Binary> (14/11/11)]
- Home Office, *Dataset asb-cdrp* [accessed via: www.homeoffice.gov.uk/publications/non-personal-data/anti-social-behaviour/asb-cdrp?view=Binary (10/03/11)]
- Home Office, Department for Education and Department of Health, *Vetting & Barring Scheme Remodelling Review – Report and Recommendations*, 2011 [accessed via: <http://www.homeoffice.gov.uk/publications/crime/vbs-report?view=Binary> (16/10/11)]
- Home Office, *Police and Crime Commissioners* [accessed via: <http://www.homeoffice.gov.uk/police/police-crime-commissioners/> (9/11/11)]
- Home Office, Police and Criminal Evidence Act 1984 (PACE): Codes of practice – Code C Detention, treatment and questioning of persons by police officers, 2008 [accessed via: <http://www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/pace-code-c?view=Binary> (14/09/11)]
- Home Office, *User Guide to Home Office Crime Statistics*, 2011 [accessed via: <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/user-guide-crime-statistics/user-guide-crime-statistics?view=Binary> (31/08/11)]
- Howard League for Penal Reform, *Children and long sentences: a briefing by the Howard League for Penal Reform's legal team*, 2010 [accessed via: http://www.howardleague.org/fileadmin/howard_league/user/pdf/Briefings/Children_and_long_sentences_briefing.pdf (11/10/11)]
- Ipsos MORI, *Evaluation of the London Youth Reducing Reoffending Programme (Daedalus): Emerging findings*, 2010 [accessed via: http://www.londoncjp.gov.uk/publications/2010_06_02_LYRRPEmergingFindingsRpt.pdf (11/11/11)]
- Islington Council and the Metropolitan Police, *Young and Safe in Islington 2009-2011* [accessed via: http://www.islington.gov.uk/DownloadableDocuments/CommunityandLiving/Pdf/young_and_safe_report_nov_2009.pdf (14/11/11)]

- Judicial Studies Board, *National Training Programme for Magistrates*, London: Judicial Studies Board, 2010 [accessed via: <http://www.estudo.co.uk/jsb/file.php/9/National%20Training%20Initiative/National%20Training%20Programme%20for%20Magistrates/National%20Training%20Programme%20for%20Magistrates.pdf> (02/03/11)]
- Judicial Studies Board, *Youth Court Bench Book*, London: Judicial Studies Board, 2010 [accessed via: <http://www.estudo.co.uk/jsb/course/view.php?id=9&topic=5> (02/03/11)]
- Just for Kids Law, *Youth Justice Training* [accessed via: <http://www.justforkidslaw.org/pages/training.html> (24/11/11)]
- Kerr J et al, *The Dedicated Drug Courts Pilot Evaluation Process Study*, London: Ministry of Justice, 2011, [accessed via: <http://www.justice.gov.uk/publications/docs/ddc-process-evaluation-study.pdf> (17/07/11)]
- KSA Consultancy, *YOT workers in custody suite – Frequently Asked Questions* [accessed via: <http://www.ksaconsultancy.co.uk/files/18920090083342157.pdf> (06/10/11)]
- Lord Chief Justice, *The Trial of Children and Young Persons in the Crown Court*, 2000 [accessed via: http://www.courtsni.gov.uk/NR/rdonlyres/3459A090-A339-4CF5-80F4-C881450BD53C/0/j_j_PD0211.htm (02/03/11)]
- Mason S, *A Common Sense Approach: A review of the criminal records regime in England and Wales*, Home Office, 2011 [accessed via: <http://www.homeoffice.gov.uk/publications/crime/criminal-records-review-phase1/> (11/11/11)]
- Michael Sieff Foundation, *Young Defendants Conference Report*, 2009 [accessed via: <http://www.michaelsieff-foundation.org.uk/content/REPORT%20-%20Young%20Defendants%20Conference%2028%20April%202009.pdf> (30/09/11)]
- Ministry of Justice, *Circular 2010/01 Criminal Justice and Police Act 2011 (S1- 11) Penalty Notice for Disorder Scheme: (I) De-prescription of the PND form, (II) Disclosure of Information about certain PNDs to third parties*, 2010 [accessed via: <http://www.justice.gov.uk/publications/docs/circular-01-2010-pnds.pdf> (05/08/11)]
- Ministry of Justice, *Courts and orders* [accessed via: <http://www.justice.gov.uk/guidance/youth-justice/courts-and-orders/disposals/index.htm> (28/07/11)]
- Ministry of Justice, *Custody: Placing young people in custody* [accessed via: <http://www.justice.gov.uk/guidance/youth-justice/placing-young-people-in-custody/index.htm> (26/07/11)]
- Ministry of Justice, *Independent Monitoring Boards* [accessed via: <http://www.justice.gov.uk/about/imb.htm> (03/10/11)]
- Ministry of Justice, *Individual support orders* [accessed via: <http://www.justice.gov.uk/guidance/youth-justice/prevention/anti-social-behaviour/individual-support-orders.htm> (31/11/11)]
- Ministry of Justice, *Information sharing and technology: eAsset sentence management system* [accessed via: <http://www.justice.gov.uk/guidance/youth-justice/information-sharing-and-technology/easset-sentence-management-system.htm> (26/7/11)]
- Ministry of Justice, *Making it count in court Toolkit: Sentencing data toolkit 2010* [accessed via: <http://www.justice.gov.uk/guidance/youth-justice/courts-and-orders/making-it-count-in-court/toolkit.htm> (07/11/11)]
- Ministry of Justice, *Monthly data and analysis custody report – July 2011* [accessed via: <http://www.justice.gov.uk/publications/statistics-and-data/youth-justice/custody-data.htm> (09/08/11)]
- Ministry of Justice, *Payment by Results Innovation pilots – Prospectus* [accessed via: <http://www.justice.gov.uk/downloads/guidance/prison-probation-and-rehabilitation/payment-by-results/innovation-pilots-brochure.doc> (14/11/11)]
- Ministry of Justice, *Relative Effectiveness within the Secure Estate (RESE)* [accessed via: <http://www.justice.gov.uk/publications/research-and-analysis/yjb/relative-effectiveness-secure-estate.htm> (08/08/11)]
- Ministry of Justice, *Reoffending of juveniles: results from the 2008 cohort, England and Wales*, Ministry of Justice, *Statistics bulletin*, Ministry of Justice, 2010 [accessed via: <http://www.justice.gov.uk/publications/reoffendingjuveniles.htm> (04/11/10)]

- Ministry of Justice, *Reoffending of juveniles: results from the 2009 cohort, England and Wales*, 2011 [accessed via: <http://www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/juvenile-reoffending-statistics-09.pdf> (08/08/11)]
- Ministry of Justice, *Reparation order* [accessed via: <http://www.justice.gov.uk/guidance/youth-justice/courts-and-orders/disposals/reparation-order.htm> (26/11/11)]
- Ministry of Justice, *Secure estate performance monitoring* [accessed via: <http://www.justice.gov.uk/guidance/youth-justice/monitoring-performance/secure-estate-performance-monitoring/index.htm> (9/11/11)]
- Ministry of Justice, *Sentencing Statistics: England and Wales 2009*, Ministry of Justice, 2010 [accessed via: <http://www.justice.gov.uk/publications/docs/sentencing-stats2009.pdf> (15/11/10)]
- Ministry of Justice, *Statistical Notice: Anti-Social Behaviour Order (ASBO) Statistics England and Wales 2010*, 2011 [accessed via: <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/asbo-stats-england-wales-2010/> (31/11/11)]
- Ministry of Justice, *Strategy for the Secure Estate for Children and Young People in England and Wales – Plans for 2011/12 – 2014/15 Consultation Document*, 2011 [accessed via: http://www.justice.gov.uk/downloads/consultations/consultation_-_secure_estate_strategy.pdf (25/07/11)]
- Ministry of Justice, *Workforce development: Juvenile awareness staff programme* [accessed via: <http://www.justice.gov.uk/guidance/youth-justice/workforce-development/hr-and-learning/juvenile-awareness-staff-programme.htm> (11/08/11)]
- Ministry of Justice, *Youth conditional caution (pilot scheme)* [accessed via: <http://www.justice.gov.uk/guidance/youth-justice/courts-and-orders/disposals/youth-conditional-caution-pilot-scheme.htm> (17/08/11)]
- Ministry of Justice, *Youth custody data* [accessed via: <http://www.justice.gov.uk/publications/statistics-and-data/youth-justice/custody-data.htm> (25/07/11)]
- Ministry of Justice, *Youth custody report July 2011*, Legal basis [accessed via: <http://www.justice.gov.uk/publications/statistics-and-data/youth-justice/custody-data.htm> (11/10/11)]
- Ministry of Justice, Youth Justice Board and Department for Children, Schools and Families, *Parenting Contracts and Orders Guidance*, London: Ministry of Justice, Department for Children, Schools and Families, and Youth Justice Board, 2007 [accessed via: <http://www.education.gov.uk/publications/eOrderingDownload/Parenting-contracts.pdf> (10/03/11)]
- Ministry of Justice, *Youth Justice Statistics 2009/10 – England and Wales*, 2011 [accessed via: <http://www.justice.gov.uk/publications/docs/yjb-annual-workload-data-0910.pdf> (09/06/11)]
- Munro E, *The Munro Review of Child Protection – Interim Report: The Child's Journey* [accessed via: <http://www.lcr.nhs.uk/Library/MunroInterimReview.pdf> (15/11/11)]
- Nacro, *The impact of the Protection of Freedoms Bill and the Common Sense Approach review of the criminal records regime* [accessed via: <http://www.nacro.org.uk/change-the-record/facts-and-stats/> (02/11/11)]
- Nacro, *Youth Crime Briefing – Children and young people who commit schedule 1 offences*, Nacro, 2003 [accessed via: <http://www.nacro.org.uk/data/files/nacro-2004120212-435.pdf> (26/01/11)]
- Nacro, *Youth Crime Briefing – Police bail, detention after charge and the duty to transfer to local authority accommodation*, London: Nacro, 2008 [accessed via: <http://www.nacro.org.uk/data/files/nacro-2008081301-521.pdf> (14/11/11)]
- Ogg T and Kaill E, *A New Secret Garden? Alternative Provision, Exclusion and Children's Rights*, Civitas, 2010, p7 [accessed via: <http://www.civitas.org.uk/pdf/NewSecretGarden.pdf> (02/02/11)]
- Office for National Statistics, *Summary of key labour market statistics published on 12 October 2011* [accessed via: <http://www.ons.gov.uk/ons/rel/lms/labour-market-statistics/october-2011/summary-of-key-statistics.pdf> (11/11/11)]

- Office of the Children's Commissioner, *'I think I must have been born bad': Emotional wellbeing and mental health of children and young people in the youth justice system*, 2011 [accessed via: http://www.childrenscommissioner.gov.uk/content/publications/content_503 (20/07/11)]
- Peterson J, A *Blueprint for Juvenile Justice Reform: Second Edition*, Youth Transition Funders Group, 2006 [accessed via: http://www.ytfg.org/documents/JEHT_SecondEdition.pdf (08/08/11)]
- Plotnikoff J and Woolfson R, *Young defendants' pack: scoping study for the Youth Justice Board*, London: Youth Justice Board, 2002 [accessed via : <http://www.michaelsieff-foundation.org.uk/content/Relevant%20Report%204%20%20Young%20Defendants%20Pack%20%20Scoping%20Study%20Exec%20Summary.pdf> (24/02/11)]
- Policy Research Bureau, *Detention and Training: Assessment of the Detention and Training Order and its impact on the secure estate across England and Wales*, 2002 [accessed via: <http://www.yjb.gov.uk/Publications/Resources/Downloads/DTORReport.pdf> (02/06/10)]
- RESET, *The costs and benefits of effective resettlement*, Catch 22 [accessed via: <http://www.catch-22.org.uk/Files/RESET-Costs-Benefit-Analysis.pdf?id=a43c2070-b650-456a-b277-9dac00a34894> (04/11/10)]
- Royal College for Speech and Language Therapists, *Registered Intermediaries briefing*, England and Wales, December 2010 [accessed via: http://www.rcslt.org/about/docs/rcslt_registered_intermediary_faqs_-_dec_10 (01/11/11)]
- Shelter, *'Support for 16 and 17 year olds'* [accessed via: http://england.shelter.org.uk/get_advice/homelessness/help_from_social_services/support_for_16_and_17_year_olds (29/11/10)]
- Shelter, *Shelter Children's Legal Service briefing: Responding to youth homelessness following the G v LB Southwark judgment*, 2009 [accessed via: http://england.shelter.org.uk/_data/assets/pdf_file/0005/231269/G-v-Southwark--ChildrenLegalService_briefing-Nov09.pdf (16/10/11)]
- Sky News, *Police Told Pay Cut Needed 'To Keep Jobs'*, 2011 [accessed via: <http://news.sky.com/home/politics/article/15943983> (31/11/11)]
- Standing Committee on Youth Justice, *Responses to Sentencing Advisory Panel Consultation Paper on Principles of Sentencing for Youths*, 2009 [accessed via: <http://www.scyj.org.uk/pubs> (14/05/10)]
- Stephenson M, *Rethinking Crime and Punishment Briefing – Unlocking Learning: Examining public and professional attitudes towards the role of education in relation to crime and punishment of young offenders*, 2005 [accessed via: <http://www.rethinking.org.uk/informed/Unlocking%20learning.pdf> (14/01/11)]
- The Daily Mail, *Mr Clarke and the Lib Dems are wrong. Prison DOES work – and I helped prove it*, June 30 2010 [accessed via: <http://www.dailymail.co.uk/debate/article-1290758/Mr-Clarke-Lib-Dems-wrong-Prison-DOES-work--I-helped-prove-it.html#ixzzISju4KQzn> (21/07/11)]
- The Guardian, *Thousands of children held in police cells overnight*, 13 June 2011 [accessed via: <http://www.guardian.co.uk/society/2011/jun/13/thousands-children-held-prison-cells-overnight> (07/11/11)]
- The Independent, *Lessons learnt, boxes ticked, families ignored*, 16 November 2008 [accessed via: <http://www.independent.co.uk/opinion/commentators/eileen-munro-lessons-learnt-boxes-ticked-families-ignored-1020508.html> (14/11/11)]
- The Lord Chief Justice's Practice Direction, *The Trial of Children and Young Persons in the Crown Court*, 2000, [accessed via: http://www.courtsni.gov.uk/NR/rdonlyres/3459A090-A339-4CF5-80F4-C881450BD53C/0/j_j_PD0211.htm (02/03/11)]
- The United Nations, *General comment no. 10: children's rights in juvenile justice*, Committee on the Rights of the Child, 44th session, 2007 [accessed via: <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf> (30/09/11)]
- The United Nations, *Consideration of reports submitted by states parties under Article 44 of the Convention, Concluding observations: United Kingdom of Great Britain and Northern Ireland*, Committee on the Rights of the Child, 49th session, 2008 [accessed via: <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf> (30/09/11)]

- Vizard E, *Presentation on how do we know if young defendants are developmentally fit to plead to criminal charges – the evidence base*, Report on the Young Defendants Conference 2009, London: Michael Sieff Foundation, 2009 [accessed via <http://www.michaelsieff-foundation.org.uk/content/Report%204%20-%20Eileen%20Vizard%27s%20presentation.pdf> (23/09/11)]
- Youth Justice Board, *A Report on the Intensive Fostering Pilot Programme*, London: Youth Justice Board, 2010 [accessed via: <http://www.yjb.gov.uk/Publications/Resources/Downloads/A%20Report%20on%20the%20Intensive%20Fostering%20Pilot%20Programme.pdf> (10/06/11)]
- Youth Justice Board, *Accommodation – Housing options for young people*, 2010 [accessed via: <http://www.justice.gov.uk/guidance/youth-justice/accommodation/housing-options-for-young-people.htm> (11/11/11)]
- Youth Justice Board, *Accommodation: A vital need* [accessed via: <http://www.justice.gov.uk/guidance/youth-justice/accommodation/> (31/01/11)]
- Youth Justice Board, *Court-Ordered Secure Remands and Remands to Prison Custody Guidance note to youth offending teams and secure establishments*, 2008 [accessed via: <http://www.justice.gov.uk/downloads/guidance/youth-justice/custodial-remand/CourtOrderedSecureRemandsandRemandstoPrisonCustody.pdf> (02/11/11)]
- Youth Justice Board, *Education, training and employment: Re-engagement after custody – changes to regulations*, Youth Justice Board, 2010 [accessed via: <http://www.yjb.gov.uk/en-gb/practitioners/Educationtrainingandemployment/Re-engagement/> (18/11/10)]
- Youth Justice Board, *How is the Keppel Unit different? Regime and Provisions* [accessed via: <http://www.justice.gov.uk/downloads/guidance/youth-justice/specialist-resources/keppel-unit/KeppelUnitregimeandprovisions.pdf> (25/07/11)]
- Youth Justice Board, *National Standards for Youth Justice Services*, 2010 [accessed via: <http://www.yjb.gov.uk/Publications/Resources/Downloads/National%20Standards%20for%20Youth%20Justice%20Services.pdf> (20/06/11)]
- Youth Justice Board, *Youth Justice System: Crown Court* [accessed via: <http://www.yjb.gov.uk/en-gb/yjs/Courts/CrownCourt.htm> (23/02/11)]

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