



Payment by results and the youth justice system
An NAYJ position paper – July 2011

For a child-friendly youth justice system

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Executive summary

Introduction

The coalition government has given notice of a 'rehabilitation revolution'. At the heart of the proposals is a commitment to the widescale introduction of 'payment by results' (PBR) that will inform 'all work on offending', including that with children below the age of 18 years. The government argues that such an approach will deliver a range of benefits, but the rationale is largely rhetorical with few arguments of substance adduced in support. The NAYJ is concerned that the rapid introduction of a new, largely ideologically driven, model of service delivery for children in trouble that emphasises market mechanisms will:

- encourage a risk averse practice at the expense of interventions intended to enhance the wellbeing of children
- focus on short term reoffending at the expense of other longer term, developmental, outcomes
- require that issues of proportionality and children's rights are sidelined as material rewards come to take priority over matters of principle, and
- generate a range of unintended consequences without delivering the promised reductions in offending behaviour.

The rationale and purpose of payment by results

PBR links the extent of financial reward paid to service providers to outcomes. The model goes significantly further than previous initiatives to embed financial incentives within public sector administration. National Health Service providers for instance are paid according to 'output', such as the number of patients who are seen or treated. The criminal justice reforms are intended to focus on a small number of high level outcomes, primarily reoffending, so that payment is divorced from the level or nature of activity. The introduction of the profit motive will, the government contends, stimulate innovation and ensure cost effective service delivery. The erstwhile emphasis on processes and targets will be abandoned in favour of measuring interventions purely on the basis of outcomes, allowing greater discretion to front line professionals.

The promise of reduced bureaucracy and a corresponding increased opportunity to engage in meaningful work with children in trouble has an intuitive appeal. But the NAYJ does not believe that PBR is a necessary condition of increased discretion or effective youth justice intervention. Indeed, the introduction of PBR is likely to militate against good practice in a number of respects.

Reasons to be cautious

Philosophical concerns

PBR relies on the premise that human activity is motivated by material reward or the risk of not being rewarded. Without that motivation the public sector stifles innovation and panders to professional self interest. The NAYJ considers that such

assumptions are unwarranted. The large majority of youth justice staff are motivated by a desire to improve the lot of predominantly disadvantaged young people rather than purely material incentives. Evidence confirms that while poor pay does function to demotivate performance, increasing salary levels are not associated with continual increases in the quality of practice. Better performance is associated with having autonomy in the workplace, and a purpose that invests the work with meaning, over and above financial remuneration.

PBR is not, accordingly, a requirement of innovation, nor does it guarantee high quality outcomes. Indeed, competition between potential providers will tend to restrict the exchange of good practice and innovation. Appropriate, child friendly, youth justice provision should be regarded as an entitlement for those who require it rather than a product whose availability is contingent on whether delivery is financially attractive. PBR requires that issues of proportionality and children's rights are sidelined as the material rewards come to take priority over matters of principle.

What will be rewarded?

The government has confirmed that reoffending will be the primary indicator by which performance will be rewarded. The difficulties of measuring recidivism are well known but the NAYJ considers that there are particular concerns in relation to young people. Research has shown that the extent to which children enter the criminal justice system is sensitive to changes in policing and detected reoffending accordingly provides an inadequate base on which to evaluate the effectiveness of practice. If youth crime were to rise as a consequence of the financial recession, one might anticipate that reoffending would manifest a corresponding increase. PBR would lead to the imposition of financial penalties on providers in such circumstances just as logic would suggest that additional resources are required.

Any measure of reoffending will be relatively short term. This is problematic since childhood delinquency is significantly more likely to diminish over time and to show sharp fluctuations over short periods than that of adults. Linking financial rewards to the question of whether the child is apprehended for breaking the law will, moreover, divert attention from other important developmental, welfare- orientated, milestones. The wellbeing of disadvantaged children will be subordinated to an arbitrary focus on short term delinquency.

The government proposes two key youth justice outcomes in addition to reducing offending: reductions in first time entrants to the youth justice system and in the numbers of children imprisoned. The NAYJ favours diverting children from criminal proceedings and from custody wherever possible, but the three indicators are in tension. Reducing first time entrants is likely to lead to a rise in the rate of reoffending for those who do enter the youth justice system, since the former is most readily achieved by 'filtering out' lower risk children. By the same reasoning, the rate of reoffending for children subject to community supervision can be reduced

by an increase in the rate of custody, which would serve to remove high risk individuals from that cohort.

The outcomes are also problematic because they require reductions year on year. If targets are met, the bar is raised: the scope for improvements diminishes over time. Areas experiencing the highest levels of deprivation will find it harder to meet targets, leading to reduced resources to deliver services to children in most need.

Who will be rewarded?

The government has made it clear that the public sector will not be the preferred provider. The NAYJ is concerned that rather than opening up youth justice to a 'mixed economy', PBR will lead to privatisation of services to young people in trouble.

Children are subject to a range of youth justice interventions, delivered by different agencies, and it is not possible to disaggregate the impact of those various inputs or to determine which service providers have intervened effectively. To avoid this difficulty, the government intends to commission 'prime' contractors to take the lead on service delivery who might then subcontract particular elements of provision. The financial risks of being a prime provider will significantly limit the capacity of the voluntary sector or public sector to put themselves forward, leaving the way open for larger scale private companies. The NAYJ considers that the profit motive is an inappropriate driver for delivering services to disadvantaged children since it will tend to undermine a principled practice in favour of one directed solely towards outcomes that generate a financial return.

Some unintended consequences

Even if it is conceded that reductions in reoffending should be the priority, it is not clear that PBR will deliver. The National Audit Office has pointed out that the evidence base for what works in reducing youth crime is uncertain. This 'knowledge gap' is partly a consequence of research focusing on effective programmes rather than broader systemic and contextual issues but it is also indicative of the fact that that, to a large extent, whether children offend or reoffend is a function of broader social and economic factors rather than the nature of youth justice intervention. This is not to deny that high quality, child friendly, provision will have a beneficial impact over the longer term, but 'incentivising' providers to focus on short term recidivism will do nothing to address the wider context that gives rise to youth crime.

The NAYJ believes that PBR is also likely to generate incentives counter to those intended. Tensions between key outcomes might lead to 'cherry picking' whereby providers focus their attention on young people more likely to contribute to meeting targets: children displaying highest levels of need may be least attractive to potential contractors since they will be viewed as a 'risk' to financial returns on investment.

More generally, PBR will generate pressures to lower the cost of providing a youth justice service to an absolute minimum. Because providers could not be assured that investing in higher quality staff and other resources beneficial to children would be associated with securing financial rewards, they will tend to reduce outgoings in order to minimise financial loss if targets are not met and maximise profit if they are. The NAYJ believes that, over time, PBR would lead to a significant deterioration in the quality of service provision to the detriment of children.

Conclusion

The NAYJ welcomes the government's commitment to divert more children from the youth justice system and to reduce further the population of the secure estate. It acknowledges that youth justice services would be improved substantially if practitioners were provided with greater discretion, albeit within a framework of accountability. The NAYJ does not however accept that a case has been made for PBR and is concerned the introduction of the profit motive may have potentially deleterious effects on children in conflict with the law.

Introduction

In July 2011, the Coalition government published proposals for criminal justice legislative reform, much of which will have implications for the treatment of children in conflict with the law.¹ While the proposals are far from delivering the ‘child friendly’ youth justice system that the NAYJ believes is required, the general thrust of the legislation is welcomed.² Arguably, however, the most radical changes envisaged for the delivery of youth justice services are not contained within the Bill and, to a large extent, do not depend on statutory authority for their implementation.

In December 2010, the government green paper, *Breaking the Cycle*, gave notice of a ‘rehabilitation revolution’ which has at its heart a commitment to introduce a philosophy of ‘payment by results’ (PBR) across the criminal justice system as a whole, including those parts of it dealing with children below the age of 18 years.³ The commitment was reiterated in the government’s response to consultation on the proposals. In his foreword to that response, Ken Clarke, Secretary of State for Justice, declared that the government would only ‘*reward and pay ... for what works in delivering reduced levels of crime.*’⁴ Elsewhere, the paper confirms that the principle of PBR will ‘*underpin all our work on reoffending*’ and that an ambitious timetable will be set out with the aim of taking the model forward as rapidly as possible.⁵ A programme for the delivery of non custodial services is to be published in the autumn.⁶

¹ *Legal Aid, Sentencing and Punishment of Offenders Bill 2011*

² NAYJ (2011) *For a child friendly youth justice system* available at <http://thenayj.org.uk/>

³ Ministry of Justice (2010) *Breaking the cycle: effective punishment, rehabilitation and sentencing of offenders*. London: The Stationery Office

⁴ Ministry of Justice (2011) *Breaking the cycle: government response*. London: The Stationery Office, page 2

⁵ *Ibid*, page 7

⁶ Ministry of Justice (2011) *Competition strategy for offender services*. London: Ministry of Justice

The government's apparent confidence that PBR will deliver the anticipated reductions in reoffending is not, however, grounded in any arguments of substance and relies to a considerable extent on rhetoric. Unusually for a green paper, *Breaking the Cycle* was accompanied by an evidence report.⁷ Just over two pages of the document (of a total of 93) are devoted to PBR and these contain few grounds for believing that the *rehabilitation revolution* will necessarily achieve what is claimed for it. The government notes, for instance, that a PBR approach has been developed by the Department for Work and Pensions for welfare-to-work provision but acknowledges that *'there has been insufficient time to assess fully the impact of provision commissioned in this way'*.⁸ A US scheme to enhance levels of employment of ex offenders, according to which the not-for-profit provider is paid differentially according to the period that employment is sustained, is also cited. But here too, despite the fact that the scheme has operated in its current form since 2001, the report concedes that evaluations to date have been inconclusive since they are *'limited by problems of self-selection of participants'*.⁹

Given the lack of a convincing evidence base, the NAYJ is concerned at the potential impact of a rapid introduction of a new, largely ideologically driven, model of service delivery for children in trouble. For reasons outlined in this paper, we consider that placing market mechanisms at the heart of such provision will:

⁷ Ministry of Justice (2010) *Green paper evidence report - Breaking the cycle: effective punishment, rehabilitation and sentencing of offenders*. London: The Stationery Office

⁸ Ibid, page 70

⁹ Ibid, page 71

- encourage a risk averse practice at the expense of interventions intended to enhance the wellbeing of children
- focus on short term reoffending at the expense of other longer term, developmental, outcomes
- require that issues of proportionality and children's rights are sidelined as material rewards come to take priority over matters of principle, and
- generate a range of unintended consequences without delivering the promised reductions in offending behaviour.

The rationale and purpose of payment by results

In essence, PBR links the extent of financial reward paid to service providers to outcomes. It might be noted that provision of financial incentives has been a feature of elements of public sector administration for some years, but it is important to be clear that the model proposed goes significantly further than some of these earlier developments. Since the early 2000s for instance, providers in the National Health Service have received rewards according to output or the extent of various forms of agreed activity as a mechanism for increasing the number of patients who are seen or treated. The intention, so far as the criminal justice system is concerned, is to move away from indicators of throughput and focus on a small number of high level outcomes, the most important of which is reoffending, so that payment is divorced from the level or nature of activity.

The government argues that such an approach is preferable to that promoted by New Labour in two principal respects. On the one hand, the introduction of the profit motive, through competitive market mechanisms, will ensure that the '*knowledge, expertise and innovation of a much broader set of*

*organisations*¹⁰ is brought to bear on the problem of developing effective services, placing ‘*downward pressure on costs*’ and forcing ‘*providers to be more focussed on meeting customer needs*’.¹¹ At the same time, the managerialism of the past, with its emphasis on processes and targets, will be abandoned in favour of measuring effectiveness (and determining the extent of payment) on the basis of high level outcomes or results. This reduction in ‘unnecessary bureaucracy’ will allow greater discretion to front line professionals to determine how best to do their jobs.

As Nick Herbert, Minister for Policing and Criminal Justice, put it:

*We must stop telling criminal justice professionals how to do their job, and start holding them firmly to account for the results they deliver. The huge gain will be a reduction in bureaucracy, greater discretion and more local innovation. We must trust professionals, but that cannot mean giving up on the drive for higher standards.*¹²

The promise of reduced bureaucracy and a corresponding increased opportunity to engage in meaningful face to face work with children in trouble will have an intuitive appeal to youth justice practitioners who have in recent years been burdened by paperwork. But it is far from clear that PBR is a necessary condition of increased discretion or that the profit motive is the only effective mechanism for ensuring accountability. Indeed, the NAYJ considers that the introduction of PBR might militate against good youth justice practice in a number of respects. These are considered in the remainder of the paper.

¹⁰ Ministry of Justice (2010) *Breaking the cycle: effective punishment, rehabilitation and sentencing of offenders*. London: The Stationery Office, page 8

¹¹ Ministry of Justice (2011) *Competition strategy for offender services*. London: Ministry of Justice, page 5

¹² Herbert, N (2010) *Speech to the Policy Exchange*, London, 23 June 2010

Reasons to be cautious

Philosophical concerns

Although these are rarely made explicit by the government, PBR carries with it a range of questionable assumptions. It relies on the premise that human activity is motivated primarily by material reward or the risk of not being rewarded. In the absence of such mechanisms, public sector provision will lack the necessary incentives to produce effective and efficient practice, stifling innovation and pandering to professional self interest. The NAYJ considers that such an assumption is unwarranted. The large majority of youth justice staff enter the work in order to improve the life chances of a group of young people who predominantly come from very disadvantaged backgrounds. They have frequently chosen that career path in preference to others that offer higher material incentives. Such a perception is consistent with recent evidence that suggests that while poor pay does function to demotivate performance, increasing salary levels are not associated with continual increases in the quality of practice. Research suggests rather that better performance is associated with having autonomy in the workplace, recognising oneself – and being recognised by others – as an expert in the field, and having a purpose that invests the work with meaning over and above that provided by the financial remuneration received.¹³ An evaluation of the introduction of performance related pay into the Inland Revenue Service, a measure that also presumes a relationship between material reward and effective performance, similarly concluded that the positive motivational impact was at best very modest and that a net negative motivational effect could not be ruled out. The failure of the policy was attributed to the fact that the system was regarded by many as inherently

¹³ Pink, D (2009) *Drive: the surprising truth about what motivates us*. Edinburgh: Canongate books

unfair and that the prospect of additional financial reward made little impression on staff who considered that their practice was of a high standard in any event.¹⁴

PBR is not, accordingly, a requirement of innovation, efficiency or of a concern to ensure high quality outcomes. Moreover, the introduction of market mechanisms cannot in themselves guarantee such outcomes. Indeed, given that the logic of PBR is to establish competition between potential providers, the model will tend to restrict the exchange of good practice and innovation, a tendency that will become more pronounced to the extent that private sector operators – who have an obligation to maximise returns to their shareholders – are successful in winning contracts to deliver services.

More generally, the NAYJ believes that predicating the delivery of services on material motivation tends to divert attention from the fact that society has a moral (rather than financial) obligation to promote the wellbeing of children who face adversity. Appropriate, child friendly, youth justice provision should be regarded as an entitlement for those who require it rather than a product whose availability is contingent on whether or not delivery is financially attractive to agencies commissioned to provide it. (Such provision is also more likely to promote desistance from offending.)¹⁵ PBR requires that issues of proportionality and children’s rights are sidelined as materially rewarded ends come to take priority over the means by which they are achieved. Principled practice will have to make way for instrumental intervention.

¹⁴ Marsden, R and Richardson, R (1992) *Motivation and performance related pay in the public sector: a case study of the Inland Revenue*. Discussion paper 75. London: Centre for Economic Performance

¹⁵ For a discussion of this issue, see NAYJ (2011) op cit

What will be rewarded?

The operation of PBR in practice depends in large part on the selection of measurement outcomes against which payment will be made. Across the criminal justice system as a whole, the government has made it clear that reoffending will be the primary indicator by which performance will be assessed and rewarded.

There are significant – and well known – problems associated with measuring recidivism and the extent to which any chosen indicator will provide an accurate indication of improved practice is a matter of contention.¹⁶ But the NAYJ considers that there are particular issues of concern in relation to young people.

First, it is apparent that relative to adults children may be more immediately impacted by changes to policing policy and practice than adults. It has been cogently argued, for instance, that the ‘sanction detection’ target – introduced by the previous government in 2002 to reduce the ‘justice gap’ between the number of crimes reported to the police and those resulting in an offender receiving a penalty – led to a substantial increase in the number of children drawn unnecessarily into the justice system for behaviour which would not previously have been thought to warrant formal disposal.¹⁷ At the same time, it has been suggested that data purporting to show a decline in reoffending for children in the recent past can be explained by the fact that the same target resulted in the processing of a cohort of young people

¹⁶ For more detailed discussions of the implications for PBR, see Collins, J (2011) ‘Payment by results in the criminal justice system: can it be delivered?’ in *Safer Communities* 10(2) and Disley, E, Rubin, J, Scraggs, E, Burrowes, N, and Culley, D (2011) *Lessons learned from the planning and early implementation of the Social Impact Bond at HMP Peterborough*. London: Ministry of Justice

¹⁷ Bateman, T (2008) ‘Target practice: sanction detection and the criminalisation of children’ in *Criminal Justice Matter 73*

through the system who would be less likely to get into further trouble.¹⁸ But if such shifts in policy can make a substantial difference to reoffending as determined by official figures, the latter provide an inadequate base on which to evaluate the effectiveness of practice.

By the same token, all the evidence suggests that offending by children has been declining for some years and this pattern, in itself, is liable to be reflected in the reoffending data.¹⁹ Conversely, if youth crime were to rise as a consequence of the financial recession and its aftermath, one might anticipate that reoffending would manifest a corresponding increase.²⁰ The NAYJ believes that imposing financial penalties on providers as a consequence of that trend, as PBR implies, would tend to undermine services to children in trouble at precisely the point when additional resources might be merited.

More generally, any measure of reoffending will, of necessity, be relatively short term given its relationship to payments made to, or withheld from, providers. From a youth justice perspective, this is problematic since patterns of children's and adult offending differ substantially. In particular, childhood delinquency is significantly more likely to diminish over time, as young people 'grow out' of crime. At the same time, it may also be subject to sharp fluctuation over short periods in a way that adult offending is not.²¹

Detected reoffending is therefore a less reliable indicator of the effectiveness of intervention in the case of a child. Further, linking financial rewards and

¹⁸ Bateman, T (2010) 'Reoffending as a measure of effectiveness of youth justice interventions: a critical note' in *Safer Communities* 9(3)

¹⁹ Ibid

²⁰ Albertson, A, Ellison, M and Fox, C (2011) 'How will the recession affect crime rates in Greater Manchester' in *Safer Communities* 10(3)

²¹ McVie, S (2005) 'Patterns of deviance underlying the age-crime curve: the long term evidence' in *British Journal of Criminology e-journal* 7

penalties to the question of whether the child is apprehended for breaking the law will tend to divert attention from other important developmental, welfare orientated, milestones with which best youth justice practice has traditionally been concerned. The wellbeing of disadvantaged children will accordingly be subordinated to a relatively arbitrary focus on short term delinquency. As noted above, one of the by-products of this process is that issues of principle – proportionality, children’s rights and so on – will inevitably be seen as meriting reduced priority.

In the event, the government’s proposal is that, for youth offending teams, two additional key outcomes will be factored into the revised performance management framework: alongside reductions in reoffending, PBR will also be applied to promoting reductions in first time entrants to the youth justice system and to reducing the numbers of children in custody. While the NAYJ is in favour of diverting children from criminal proceedings wherever possible and protecting them from the harmful effects of incarceration, difficulties nonetheless arise in relation to the application of PBR in these contexts.

In the first place, the three indicators are not necessarily consistent.

Reducing the number of first time entrants is likely to lead to a rise in the rate of reoffending for those who do enter the youth justice system, since the former is most readily achieved by ‘filtering out’ those children whose risk of reoffending is lower and who would otherwise tend to have a dampening effect on the overall rate of recidivism. By the same token, assuming children subject to community based and custodial outcomes would be measured separately, the rate of reoffending for the former can be reduced by an increase in the rate of custody, since this would have the effect of removing

from the community-based cohort those higher risk individuals most likely to impact adversely on the performance measure.²²

The youth justice outcomes are also problematic because of their progressive nature: on the face of it, at least, they require reductions year on year. As Davies and Gregory have argued this dynamic ensures that if targets '*are met, the bar must be raised. Thus all parties are locked into a narrative of perpetually increasing productivity*'.²³

Given the financial context, one might be excused for considering that this counter-intuitive consequence is an intended one, designed to ensure that PBR is a mechanism for delivering more for less. (As noted above, the government is quite explicit that one of the advantages of opening up the criminal justice system to competition is that it will tend to reduce costs.) If first time entrants, rates of reoffending, and levels of custody all fall, that will generate considerable savings to the public exchequer. Alternatively, if targets are not met, the financial risks are defrayed to service providers. As the scope for improving on the previous year's performance diminishes over time, the government is likely to make savings on both counts. The NAYJ takes the view that there is a real danger in the process that areas experiencing the highest levels of deprivation and disadvantage will struggle more than others to meet targets and will, in consequence, have reduced resources in the next 'round' to deliver services to those children in most need.

²² For reasons outlined later in the paper, it is also likely that an increase in imprisonment would reduce the rate of recidivism for those leaving custody

²³ Davies, K and Gregory, M (2010) 'The price of targets: audit and evaluation in probation practice' in *Probation journal* 57(4), page 405

Who will be rewarded?

PBR raises the question of who stands to reap the rewards of effective intervention or runs the risk of not being paid for services where these do not deliver the headline outcomes. The government has made it clear that the public sector will not be the preferred provider as it has, in practice at least, hitherto been. The response to the consultation on the green paper puts it this way:

... we will no longer provide rehabilitation services directly without testing where the private, voluntary or community sector can provide them more effectively and efficiently.²⁴

But commissioning in a manner that allows PBR to operate in a transparent fashion is problematic. The NAYJ considers that there is a real danger that rather than opening up youth justice to a 'mixed economy', PBR will be associated with privatisation of services to young people in trouble.

Typically children within the youth justice system are subject to a range of interventions delivered by different agencies and it is difficult, if not impossible, to disaggregate the impact of those various inputs. It is therefore no easy matter to determine which service providers have contributed to the performance against target. The most obvious response to this difficulty is to commission 'prime' contractors to take the lead on service delivery in a particular area who might then subcontract particular elements of provision from other agencies.²⁵ But the financial risks associated with contracting as a prime provider will place significant limits on the capacity of the voluntary sector or public sector to put themselves forward for that role.²⁶ This will

²⁴ Ministry of Justice (2011), op cit

²⁵ This is the model adopted in the social impact bond resettlement pilot at HMP Peterborough

²⁶ For a more detailed argument on this point, see Collins, J (2011), op cit

tend to leave the way open for larger scale private companies to win a significant tranche of the market since such providers will be capable of withstanding short term losses should they occur. As their market share increases, economies of scale will moreover provide a further competitive advantage over other potential smaller scale providers. As indicated above, the NAYJ considers that the profit motive is an inappropriate driver for delivering services to disadvantaged children since it will tend to undermine a principled practice in favour of one directed solely towards those outcomes that generate a financial return.²⁷

Some unintended consequences

Proponents of PBR contend that ‘incentivisation’ will ensure that practice with children in conflict with the law focuses on what ‘really matters’. As previously indicated, the NAYJ believes that identifying what is important in youth justice service delivery is not an uncontested question; it is not a straightforward exercise to divorce means from ends. But even if it is conceded that reductions in reoffending should be the priority, it is not clear that PBR will deliver ‘what works’.

The fact that large increases in expenditure on youth justice under the last administration generated relatively modest reductions in reoffending²⁸ is not, as the government implies, a consequence of self-serving, conservative, practice that refused to adapt to the evidence base. It is rather a function of the fact that developing an adequate understanding of youth crime is

²⁷ In reality, the interrelation between the three outcomes is complicated by the fact that the proposed system of financial reward and sanctions will not apply directly to those agencies with arguably the most influence over two of the targets: the police in relation to first time entrants and the courts in respect of levels of custody

²⁸ Solomon, E and Garside, R (2008) *Ten years of Labour’s youth justice reforms: an independent audit*. London: Centre for Crime and Justice Studies

complex and devising strategies to reduce it, even more so. As the National Audit Office (NAO) has complained the research base for what works in reducing youth crime is uncertain; three quarters of youth offending teams reported that it was difficult to find evidence to inform effective practice; and half indicated that practice guidance disseminated by the Youth Justice Board did not have a convincing evidence base. Indeed, when the NAO compared the performance of those youth offending teams rated most highly in terms of the national indicators comprising the Board's performance framework with those most poorly rated:

the results were surprising, showing that the top ten teams for process efficiency performed significantly worse [in terms of reducing first time entrants, reoffending and custody] than the bottom ten.²⁹

This 'knowledge gap' is in part a consequence of the nature of the research that has been funded by government in the recent period, which has tended to focus on effective programmes rather than broader systemic and contextual issues.³⁰ But it is also indicative of the fact that:

those factors that appear to be most closely associated with persistent and serious youth crime, like disadvantaged neighbourhood, poverty... are least amenable to intervention by agents of the youth justice system.³¹

To a large extent, whether children offend or reoffend is unrelated to the youth justice interventions that they receive – although there is strong evidence that system involvement can exacerbate criminal behaviour.³² This

²⁹ National Audit Office (2010) *The youth justice system in England and Wales: reducing offending by young people*. London: The Stationery Office, page 35

³⁰ McNeill, F (2019) 'Supervising young offenders: what works and what's right?' in Barry, M and McNeill (eds) *Youth offending and youth justice*. Research highlights 52. London: Jessica Kingsley publishers

³¹ Bateman, T and Pitts, J (2005) 'Conclusion: what the evidence tells us' in Bateman, T and Pitts, J (eds) *The RHP companion to youth justice*. Lyme Regis: Russell House publishing

³² McAra, L and McVie, S (2007) 'Youth Justice? The Impact of System Contact on Patterns of Desistance from Offending', in *European Journal of Criminology*, 4(3)

is not to deny that high quality, child friendly, provision will have a beneficial impact over the longer term, but an instrumental, short term, focus on recidivism is unlikely to deliver. ‘Incentivisation’ of providers will do nothing to address the broader social and economic context that gives rise to youth crime.

The NAYJ accepts, with the government, that elements of the current arrangements contain perverse financial incentives. For the instance, the fact that the costs of custody are centrally borne means that when a child is imprisoned, there can be material advantages for local authorities and other local providers.³³ Such perverse inducements should be eliminated. However, given that there is no guaranteed mechanism by which providers can reduce reoffending to reap the material rewards of PBR, the proposed arrangements might also generate incentives counter to those intended.

It was noted earlier that the proposed key outcomes for youth justice are in tension with each other. This might lead to a form of ‘cherry picking’ whereby providers focus their attention on young people who are more likely to contribute to their particular outcomes. In this scenario, those children who display the highest levels of need may be least attractive to service providers since they will be considered as constituting a ‘risk’ to meeting the target which generates the financial reward.

More specifically, depending on the weighting of financial incentives, providers might encourage increases in first time entrants in order to generate a cohort of ‘offending’ people who would be less likely to reoffend

³³ For an extensive discussion of the issue, see Standing Committee for Youth Justice (2009) *The funding of custody for children: devolving the budget*. London: SCYJ

than if large numbers of lower risk children were filtered out. Similarly, encouraging the use of detention for children close to custodial threshold – and thereby sacrificing the custody reduction target – would make it easier to meet the targets for reoffending of both the population of children in the community and those within the secure estate since it would remove the most ‘risky’ young people from the former and expand the proportion of lower risk young people (by comparison with most of those in custody) in the latter.

Moreover, since targets are predicated on reduction from a baseline, existing providers would have an incentive to raise first time entrants and allow custody to increase in the period prior to implementation of PBR to maximise the chance of effecting significant reductions. Similarly, areas with relatively high levels of reoffending and custody would be more attractive to potential contractors than areas that have consistently performed well against these measures, since the scope for achieving reductions will be substantially greater.

More generally, however, PBR would generate financial pressures to lower the cost of providing a youth justice service to an absolute minimum. Because of the lack of a direct correlation between different forms of practice and improved outcomes, providers could not be assured that investing in higher quality staff, and other resources to the benefit of children in trouble, would be associated with securing financial rewards. As a consequence, there would inevitably be a tendency to reduce expenditure in order to minimise the risk of financial loss in the event of key indicators not being met, and to maximise profit in the event that they were. The NAYJ accordingly is

concerned that, over time, PBR would lead to a significant deterioration in the quality of service provision, a reduction in staff-to-child ratios and the recruitment of a workforce with less experience, training and expertise, to the detriment of children.

Conclusion

The NAYJ considers that there are grounds for considering how current perverse incentives that operate to increase the number of children behind bars might be reversed. It welcomes the government's commitment to divert more children from the youth justice system and to reduce further the population of the secure estate. It acknowledges that youth justice services would be improved substantially if practitioners were provided with greater discretion, albeit within a framework of accountability. The NAYJ does not however accept that a case has been made for the benefits of PBR and is concerned the introduction of the profit motive and market mechanisms may have potentially deleterious effects on the experience of, and outcomes for, children who come to the attention of the youth justice system.