

Children in conflict with the law

An overview of trends and developments – 2012

Dr Tim Bateman

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www.thenayj.org.uk

email: info@thenayj.org.uk

The NAYJ is a registered charity (no. 1138177) and membership organisation campaigning for the rights of – and justice for – children in trouble with the law.

• Introduction

Figures for detected youth crime fluctuate over time. The treatment of children in conflict with the law also shifts according to changes in legislation, policy and practice. It should be acknowledged therefore that increases, or falls, in detected offending may not directly mirror changes in young people's criminal activity. Similarly, variation in responses to children in trouble might not be a reaction to trends in youth crime; indeed, the nature of the response, in any period, will have a considerable impact on how many children are formally processed by the youth justice system. By the same token it should not be assumed that innovations in policy and practice are driven by developments in the evidence base; they may more commonly be a function of political or financial considerations.¹

The *National Association for Youth Justice* (NAYJ) campaigns for a child friendly youth justice system and advocates the establishment of a rights based statutory framework for children in conflict with the law to ensure that any shifts in policy are determined by issues of principle rather than pragmatic or political considerations. The NAYJ considers that an understanding of the changing context in which children in trouble are processed is a

¹ Goldson, B (2010) 'The sleep of (criminological) reason: knowledge-policy rupture and New Labour's youth justice legacy' in *Criminology and Criminal Justice* 10(1): 155–178

pre-requisite for assessing the extent to which services to that group are tending in a more (or less) child friendly direction.

This briefing paper aims to aid such an understanding. It provides an overview of what is known about the nature and extent of youth crime in England and Wales, drawing on the latest available data, and presents an analysis of trends suggested by the figures.² The paper also offers an assessment of the treatment of children who come to the attention of the youth justice system, considering recent developments in the context of whether they take adequate account of children's rights and best interests. The paper focuses on children aged 10-17 years, reflecting the minimum age of criminal responsibility in England and Wales and the age at which young people are considered adults for criminal justice purposes. To allow comparison, trends are for most purposes traced from 1992 onwards.³

The NAYJ welcomes some of the developments described, in particular:

- a continued decline in the use of custody for children
- a further decline in the number of children entering the youth justice system for the first time
- the replacement of the rigid final warning scheme by a more flexible system of youth cautioning, and
- more flexibility in sentencing.

At the same time, the organisation remains concerned that the underlying approach to children in trouble continues to be predicated on a punitive ethos, tempered by budgetary considerations, and a drive to privatisation and payment by results, rather than one that takes proper account of their best interests.⁴

● Assessing trends in youth crime

Measures of crime and recent trends

There are well-known problems with ascertaining the extent of youth crime and each of the available measures has its limitations.⁵ The *Crime Survey for England and Wales (CSEW)* (previously known as the *British Crime Survey*) is a large scale self-report study that asks respondents about their experiences as victims of crime during the previous 12 months.⁶ The survey was first conducted in 1981 and the most recent results relate to 2012. In recent years, victimisation data has been published, alongside figures for crime recorded by the police in as single volume.⁷

² Unless indicated otherwise, all figures cited in the paper are derived from Ministry of Justice/ Youth Justice Board (2013) *Youth Justice statistics 2011/12*, London: Ministry of Justice (and supplementary tables) or Ministry of Justice (2013) *Criminal Justice statistics England and Wales 2012*. London: Ministry of Justice

³ The Criminal Justice Act 1991 extended the jurisdiction of the youth court to include young people aged 17 years who had previously been treated as adults. The legislation was implemented during 1992. Comparison with earlier years is therefore problematic.

⁴ For an overview of the NAYJ's position on the 'marketisation' of youth justice services, see Bateman, T (2011) *Payment by results and the youth justice system: an NAYJ position paper*. London: NAYJ

⁵ See for instance, McGuire, M (2012) 'Criminal statistics and the construction of crime' in McGuire, M, Morgan, R and Reiner, R (eds) *The Oxford Handbook of Criminology* 5th edition. Oxford: Oxford University press. For difficulties with figures for youth crime specifically, see Bateman, T (2006) Youth crime and justice: statistical 'evidence', recent trends and responses' in Goldson, B and Muncie, J (eds) *Youth crime and justice*. London: Sage

⁶ The change of name better reflects the scope of the survey

⁷ The latest edition of this publication is: Office for National Statistics (2013) *Crime in England and Wales, year ending December 2012*. London: ONS

The survey has notable exclusions. It provides no information on white collar crime; offences that have no direct or explicit victim (such as possession of, or supplying, drugs) are not included; and persons living in institutions or other forms of non-household residences are not surveyed. Until 2012, commercial victimisation was not captured, but this omission has been addressed by the introduction of a survey of businesses, the results of which are given in the latest edition of the publication. Until 2009, children below the age of 16 years were similarly excluded; since that date estimates of crime against those aged 10-15 years have been reported on separately within the report. Despite these limitations, the *CSEW* is regarded as a good indicator of personal and household crime, not least because it which draws on a large sample: during 2012, for instance 36,625 adult respondents,⁸ and 3,013 children below the age of 16 years, were surveyed. As a measure of victimisation, one of the main advantages of the survey is that it takes account of incidents that that are not reported to the police. Moreover, since it does not rely on police recording, the data are not influenced by changes in policing practice.

The *CSEW* indicates that 8.93 million offences were committed against adults during 2012. This represents a fall of 5% over the previous year and suggests that victimisation is substantially lower than at any point since the survey began in 1981.⁹ The data show that crime peaked in 1995, at 19.1 million offences, and has fallen in most years since, leading to a reduction of more than 53% in the intervening period.

Police recorded crime, by contrast, covers a broader range of offence types than the *CSEW* but, because of a considerable shortfall in reporting by victims, it captures a significantly smaller volume of offending.¹⁰ This measure is also subject to variation as a consequence of changes in recording practice or policing more generally.

According to this measure, crime peaked somewhat earlier, in 1992 from which point there were annual falls until 1998/1999. Changes in counting rules in the following year, and the introduction of the National Crime Recording Standard in April 2002, were reflected in an increase in the number of incidents recorded by the police up to 2003/04: the Office for National Statistics attributes those rises to more stringent recording practice as a consequence of the revised guidelines.¹¹ More recently, following the bedding-in of these changes, the downward trend has continued with police recorded crime falling from 5.5 million offences in 2006/07 to 3.7 million in 2012, a reduction of almost one third.¹²

In combination, these two measures of the overall volume of crime suggest that offending has been falling since at least the mid-1990s. However, public perceptions do not necessarily reflect this statistical evidence. In 2010/11, for instance, 60% of adults believed that crime in England and Wales had risen in the past two years.¹³

⁸ From April 2012, the overall sample size of the survey was reduced from 46,500 to 35,000 by March 2013

⁹ The level of crime in 2012, suggested by the *CSEW*, was almost 20% lower than in 1981

¹⁰ The most common reasons cited by victims for not reporting offences to the police are: the incidents are regarded as too trivial; the victim suffered no, or little, material loss; and she/he did not think that the police could, or would, do anything to resolve the offence. See Osborne, S (2010) 'Extent and trends' in Flatley, J, Kershaw, C, Smith, K, Chaplin R and Moon, D (eds) *Crime in England and Wales 2009/10*. London: Home Office

¹¹ Office for National Statistics (2013) *op cit*

¹² *Ibid*

¹³ Innes, J (2011) 'Public perceptions' in Chaplin, R, Flatley, J and Smith, K (eds) *Crime in England and Wales 2010/2011: findings from the British Crime Survey and Police Recorded Crime 2nd Edition*. London: Home Office

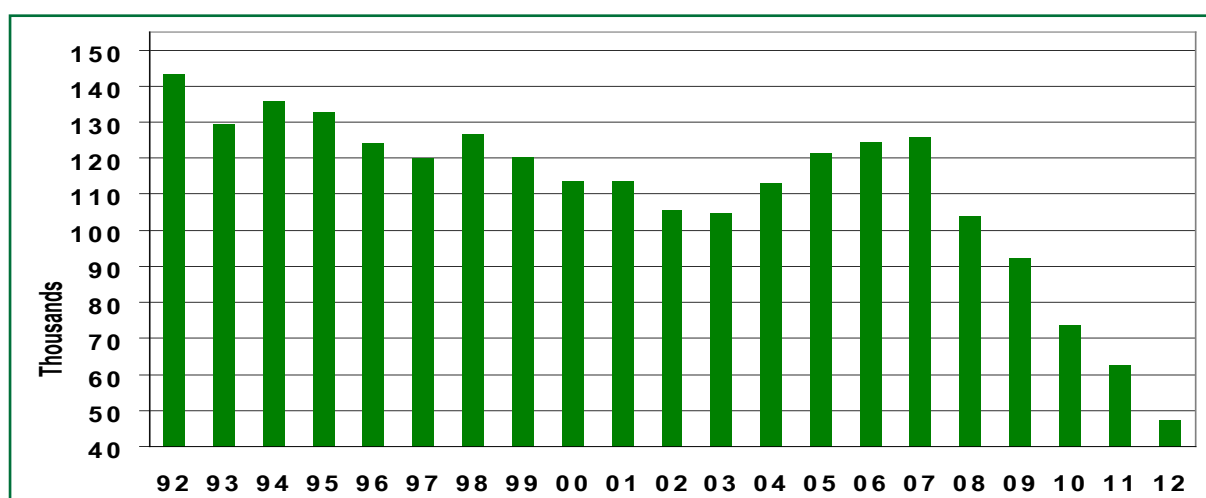
While this figure is lower than in previous years, it demonstrates a disconcerting lack of public awareness in relation to crime trends and/or a reluctance to accept official data in this area.¹⁴ This misunderstanding is also manifested in a tendency for people to overstate the risk of victimisation: for instance, 13% of respondents considered that they were fairly or very likely to be the victim of a violent offence within the next 12 months, while the actual risk was 3%.¹⁵

A pattern of falling youth crime over an extended period

Much public concern in relation to crime and disorder is focussed on the behaviour of young people. Thus, in 2009/10, 65% of respondents indicated that they considered a lack of parental discipline to be a major cause of crime. More than a third also believed that family breakdown and a lack of school discipline were important contributory factors.¹⁶ Such considerations would appear to relate specifically to youth offending. While there has been some reduction in worries about anti-social behaviour, in 2011/12 one in four respondents still identified teenagers hanging around on the street to be a problem, closely behind concerns about drug dealing and litter.¹⁷

Police recorded crime and CSEW do not provide a direct indication of the extent of youth crime since the age of the perpetrator is known only for cases that result in an arrest. Figures for detected youth offending however demonstrate consistent falls since at least the early 1990s.¹⁸ As shown in figure 1, the number of children given a pre-court disposal or convicted at court declined markedly throughout that decade. That trajectory was interrupted by a sharp rise in detected offending over a four year period commencing in 2004. However, for reasons outlined below, there are grounds to doubt whether this increase reflected any shift in the extent of children’s law breaking. In any event, from 2007 onwards, the data suggest a

Figure 1
Children cautioned, reprimanded, warned or convicted of an indictable offence: 1992-2012



14 In an attempt to address public lack of confidence in government figures on crime, responsibility for the compilation and publication of the crime statistics for England and Wales was transferred from the Home Office to the Office for National Statistics in April 2012

15 Innes, J (2011) *op cit*

16 Parfremment-Hopkins, J and Green, B (2010) 'Public perceptions' in Flatley, J, Kershaw, C, Smith, K, Chaplin R and Moon, D (eds) *op cit*

17 Office for National Statistics (2013) *Short story on anti-social behaviour 2011/12*. London: ONS

18 In fact, such figures suggest that youth crime was also falling throughout the 1980s

return to the longer term trend (or more accurately a more pronounced decline). During 2012, 47,503 children received a substantive disposal for an indictable offence, 67% fewer than the 143,600 in 1992.¹⁹

Figures for detected offending inevitably understate the extent of children's lawbreaking for a number of reasons. In 2010/11, just 38% of offences revealed by the *British Crime Survey* were reported to the police.²⁰ Where offences are reported, detection rates remain low: during 2009/10 for instance, just 20% of robberies and 13% of burglaries were 'cleared up'.²¹ Such processes of 'attrition' mean that figures for detected youth crime do not offer a comprehensive reflection of children's underlying offending behaviour. A failure to apprehend children who break the law cannot however account for the pattern of decline shown in figure 1. Clear up rates did fall during the early part of the 1990s and it could be argued, therefore, that this might explain some of the reduction in recorded children's offending in that period. Between 1993 and 1999, however, there was an upturn in the proportion of offences reported to the police that were detected, so this particular phenomenon could not have contributed to the continued downward trend in recorded youth crime in those years. From 2003/04 to 2009/10 (after a period of further decline), the proportion of offences cleared up by the police rose again, by 4.5%, while detected youth crime fell by almost a third.²² It is accordingly not possible to explain trends in youth crime simply as a function of changes in the proportion of offences detected by the police.

Moreover, we do have good evidence - registered in both the *CSEW* and police recorded data - that *overall* levels of crime have fallen since at least the mid-1990s. While these figures cannot distinguish between adult and children's offending, there are no grounds for supposing that the latter would have taken a markedly different path to the former. Further confirmation that youth crime has broadly followed the trajectory of overall offences in the recent period derives from self-report studies. A survey of children aged 11-16 years in mainstream school found that 18% admitted committing an offence within the past 12 months in 2009 compared with an equivalent figure of 26% in 2004.²³ Given that self-reports, victimisation studies and police recorded crime all point to falling levels of crime, it would appear probable that the reduction shown in the figures for youth detected offending reflects a genuine decline.

Government targets and detected youth crime

Three features stand out from the above analysis of trends in detected youth crime.

- First, the overall pattern is one of a long term fall, which in all probability is representative of an underlying decrease in offending by children.

19 Figures derived from the relevant editions of *Criminal Statistics England and Wales* to 2009 and *Criminal Justice Statistics, England and Wales* 2011 and 2012

20 Parfremment-Hopkins, J (2011) 'Extent and trends' in Chaplin, R, Flatley, J and Smith, K (eds) *op cit*. The latest edition of *Crime in England and Wales* does not report on this issue

21 Ogunbor, I and Taylor, P (2010) 'Detection of crime' in Flatley, J, Kershaw, C, Smith, K, Chaplin R and Moon, D (eds) *op cit*. More recent editions of *Crime in England and Wales* do not report on this issue

22 *Ibid*

23 Anderson, F, Worsley, R, Nunney, F, Maybanks, N and Dawes, W (2010) *Youth survey 2009: research study conducted for the Youth Justice Board for England and Wales*. London: Youth Justice Board

- Second, the years 2004 to 2007 witnessed a departure from this general picture in the form of a pronounced, but short term, rise in detected offending. Thus in 2007, the number of substantive youth justice disposals was 20% higher than in 2003.
- Third, the period since 2007 has been characterised by a drop in youth crime that is significantly sharper than that at any point since at least the early 1990s. The decline was so steep that the fall during 2008 alone was sufficient to compensate for the cumulative rises in the previous four years.

The question arises as to whether these abrupt oscillations since 2003 mirror changes in children's offending behaviour or whether other factors play an explanatory role.

It is intuitively implausible that children's criminal activity should fluctuate so markedly over such a short period. Certainly, self-report surveys do not suggest a sharp escalation in such behaviour during the period when detected offending registers an increase. The MORI youth survey shows a significant reduction in the proportion of children in mainstream schooling who self-report offending in the previous 12 months, from 26% in 2004 to 23% in 2008, a contrary trajectory to that displayed in official figures.²⁴ The same survey suggests that there was a continuation of this trend during 2009, but the decline reported is nowhere near large enough to account for the fall in detected offending registered in this period.²⁵

In line with other commentators, the NAYJ considers that a convincing case can be made that the anomalous rise, and subsequent fall, in substantive disposals shown in government statistics are both largely a consequence of changes in police practice to accommodate changing performance indicators.²⁶ In 2002, the government established a target to narrow the gap between offences recorded and those 'brought to justice' by increasing the number that resulted in a 'sanction detection',²⁷ consistent with New Labour's determination to appear tough on crime.²⁸ The indicator required a growth in annual sanction detections by almost a quarter of million by March 2008 against a March 2002 baseline.²⁹ The target was met a year early.³⁰ However, this was not achieved through improved police detection since there was no rise in the clear up rate. Instead, the growth in sanction detections was a function of formal disposals being imposed for '*behaviour that would previously not have attracted such an outcome*'.³¹ In other words, the imposition of a performance indicator led to an artificial expansion in the number of people drawn into the criminal justice system.

While the target applied both to adults and children, there was inevitably a disproportionate impact on the latter population since, for a variety of reasons,

24 Phillips, A, Powell, H, Anderson, F and Popiel, A (2009) *Youth survey 2008: young people in mainstream education*. London: Youth Justice Board

25 Anderson, F, Worsley, R, Nunney, F, Maybanks, N and Dawes, W (2010) *Youth survey 2009: research study conducted for the Youth Justice Board for England and Wales*. London: Youth Justice Board

26 See Bateman, T (2008) "Target practice": sanction detection and the criminalisation of children' in *Criminal Justice Matters* 73 and Nacro (2010) *Some facts about children and young people who offend -2008*. London: Nacro

27 Sanction detections for children include: cautions, conditional cautions, reprimands, final warnings, penalty notices for disorder, convictions, and offences taken into consideration

28 See for instance, Pitts, J (2000) 'The New Youth Justice and the politics of electoral anxiety' in Goldson, B (ed) *The new youth justice*. Lyme Regis: Russell House publishing

29 Office for Criminal Justice Reform (2004) *Strategic plan for Criminal Justice 2004*. Home Office

30 Home Office (2007) National community safety plan 2008 -2011. Home Office

31 Bateman, T (2008) *op cit*

adult offending would have been more likely to be met with a formal response in any event: youth offending is, on average, of a less serious character; children are less likely to have previous convictions; and the police may be more inclined to use informal measures with those below the age of 18 years. So while between 2003 and 2007, the number of adults entering the criminal justice system rose by less than 1%, the equivalent figure for those below the age of 18 years was 22%. Among children, those groups who might previously have been expected to benefit from a degree of informality were particular adversely affected. These included younger children, girls, and those apprehended for petty transgressions.³² The introduction of the sanction detection target accordingly resulted in the unnecessary criminalisation of large numbers of children.

The target was justly criticised for being 'inflexible and clumsy in the seemingly rigid use of criminal justice sanctions against what the public sees as a varied basket of minor offences'.³³ Perhaps more significantly, the burgeoning workloads associated with the rapid rise in the numbers of children coming into the youth justice system proved unsustainable. Although a focus on increasing sanction detections accorded with New Labour's determination to appear tough and its philosophy of early criminal justice intervention, pragmatic considerations ensured that the performance measure was not renewed.³⁴ In 2005, in an attempt to counter the inflationary impact of expanding sanction detections, the Youth Justice Board (YJB) had already introduced a contrary, and in the view of the NAYJ a much preferable, target to reduce the number of children entering the criminal justice system for the first time.³⁵ The government moved to adopt this new indicator in 2008, committing itself to a reduction in first time entrants of 20% by 2020.³⁶ It has subsequently been retained by the coalition government as one of its three high level outcomes for youth justice.³⁷

If the sanction detection target was 'net-widening', promoting the criminalisation of minor delinquency, the indicator which replaced it had the opposite dynamic, encouraging the police to respond in an informal manner to children who had had no previous contact with the youth justice system. The commitment to formal early intervention, which had characterised youth justice policy for more than a decade, was thus replaced by a focus on diversion from the formal mechanics of the criminal justice system of children who had not previously received a formal youth justice disposal. Since such children account for a sizeable proportion of all those who enter the system each year, there was a corresponding impact on the overall volume of detected youth crime. The new target was also met early: the 20% reduction was achieved in the first 12 months after it was formally adopted by the government. The fall has continued in the period since. As shown in Table 1 (overleaf), the number of first time entrants rose between 2002/3 and 2006/7 by almost one third in accordance with the sanction detection target; by contrast, as the new performance measure kicked in, the trajectory reversed and between 2006/07 and 2011/12, the number of first time entrants fell by 67%.

³² *ibid*

³³ Flanagan, R (2008) *The review of policing: final report*. Home Office

³⁴ Pitts, J and Bateman, T (2010) 'New Labour and youth justice: what works or what's counted' in Ayer, P and Preston-Shoot, M (eds) *Children's services at the crossroads: a critical evaluation of contemporary policy for practice*. Lyme Regis: Russell House

³⁵ Youth Justice Board (2005) *Corporate and Business plan 2005/06 to 2007/08*. Youth Justice Board

³⁶ Home Office (2008) *Youth crime action plan*. Home Office

³⁷ Ministry of Justice (2010) *Breaking the Cycle: effective punishment, rehabilitation of offenders and sentencing*. London: the Stationery Office. The other two high level outcomes are: reducing reoffending and reducing the number of children in custody

Table 1**First time entrants to the youth justice system: 2000/01 to 2011/12**

Year	Number of first time entrants
2000/01	90,180
2001/02	88,984
2002/03	83,374
2003/04	88,454
2004/05	96,199
2005/06	107,695
2006/07	110,826
2007/08	100,393
2008/09	80,329
2009/10	62,555
2010/11	45,910
2011/12	36,677

Implications of government targets

Far from the fluctuations in detected youth crime since 2003 reflecting changes in children's criminal activity, it seems clear that they are a predictable outcome of the successive implementation of two contradictory targets by central government, which had, in turn, significant implications for the policing of children. The impact on figures for detected crime is apparent, and the apparent rise shown during the early to mid-2000s led to some unhelpful media reporting, particularly in relation to girls (an issue considered further below). Perhaps more important, however, are the direct implications for children in trouble since the thresholds for entry into the formal criminal justice system shift as the basis on which decisions are made adjusts to conform to changing performance measures.

Such contingencies impinge on the individual child since a criminal record represents a considerable constraint on future prospects. But there is a wider social concern too. There is a considerable body of evidence that early induction into the youth justice is '*criminogenic*'; it increases the risk of recidivism.³⁸ Conversely, strategies of maximum diversion, wherein youthful misbehaviour is met wherever possible by an informal response, '*are associated with desistance from serious offending*'.³⁹ Net-widening provisions emanating from a determination to appear 'tough' on issues of law and order, such as the sanction detection target, are thus both inherently unfair and likely to increase overall levels of victimisation from youth crime. In this sense, the first time entrant target both accords better with the research evidence and is indicative of a more child friendly system. The NAYJ is however concerned that while punitive residues continue to influence youth justice policy, albeit at a much lower level than hitherto, and in the absence of an

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

39 *Ibid*

explicit recognition of the benefits of 'informalism',⁴⁰ the gains of recent years may be vulnerable to political, and pragmatic, reversal.

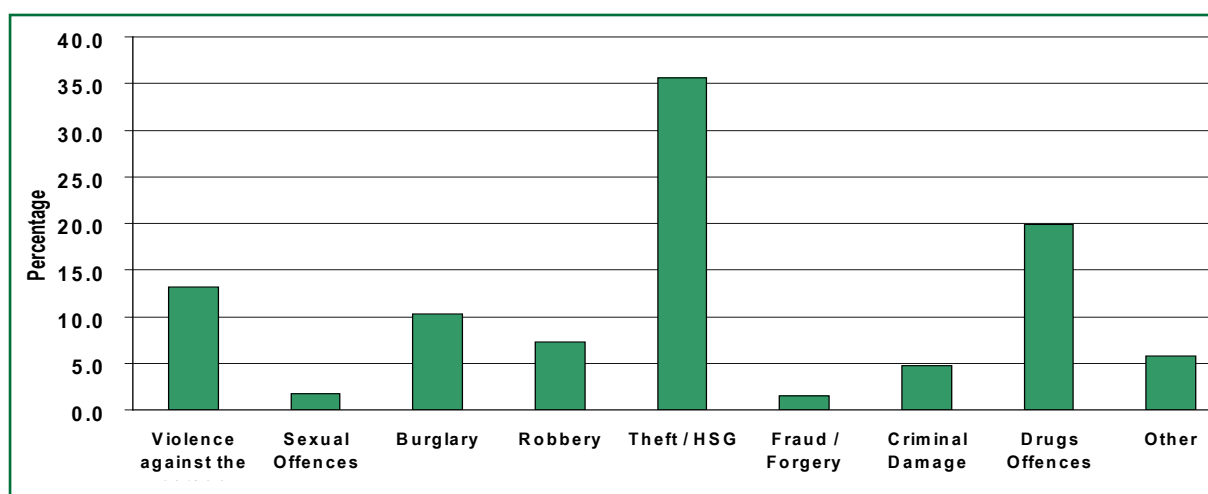
- **Most youth offending is relatively minor**

Perhaps inevitably, discussions of youth crime frequently tend to focus on high profile and serious offences, such as gang related activities, robbery and violence against the person. Public opinion in relation to youth crime, which is frequently considered to be punitive, can be explained in part because it is such offences that first spring to mind when youthful lawbreaking is considered in the abstract. (Research suggests that when members of the people are asked to consider individual cases, or are given information that allows them to take a more considered view of the issues, 'public judgement' – as informed public opinion is sometimes called – becomes significantly more lenient.⁴¹)

This focus on more serious offending detracts from the fact that the majority of offences committed by young people are directed against property. In 2012, for instance, theft and handling offences accounted for 35.7% of all indictable youth offending. That proportion has moreover declined somewhat in recent years, in large part as a consequence of the fall in first time entrants, many of whom would have been arrested for offences of this nature. At the other end of the scale, very serious offences are rare: for instance, during 2012, just 13 children below the age of 18 years were convicted of murder, a further five of attempted murder, and nine of manslaughter.

As shown in Figure 2, overall levels of violence against the person remain relatively low (13.2% of the total, representing a reduction over the previous year). Robbery, too, is relatively infrequent (7.2% of the total). And while some offences in these categories can be serious, it would be a mistake to assume that they all are.

Figure 2
Children receiving a pre-court disposal or conviction by offence type as a proportion of all indictable offences: 2012



40 Goldson, B (2005) 'Beyond formalism: towards 'informal' approaches to youth crime and youth justice' in Bateman, T and Pitts, J (eds) *The RHP Companion to Youth Justice*. Lyme Regis: Russell House

41 Jones, T (2010) 'Public opinion, politics and the response to youth crime' in Smith, D (ed) *A new response to youth crime*. Cullompton: Willan

In 2012, 43% of violent offences attracted a pre-court disposal, indicating that they were of a less serious nature.⁴² The pattern shown in figure 2, moreover, overstates the gravity of youth crime since the chart excludes, less serious, summary offences.⁴³

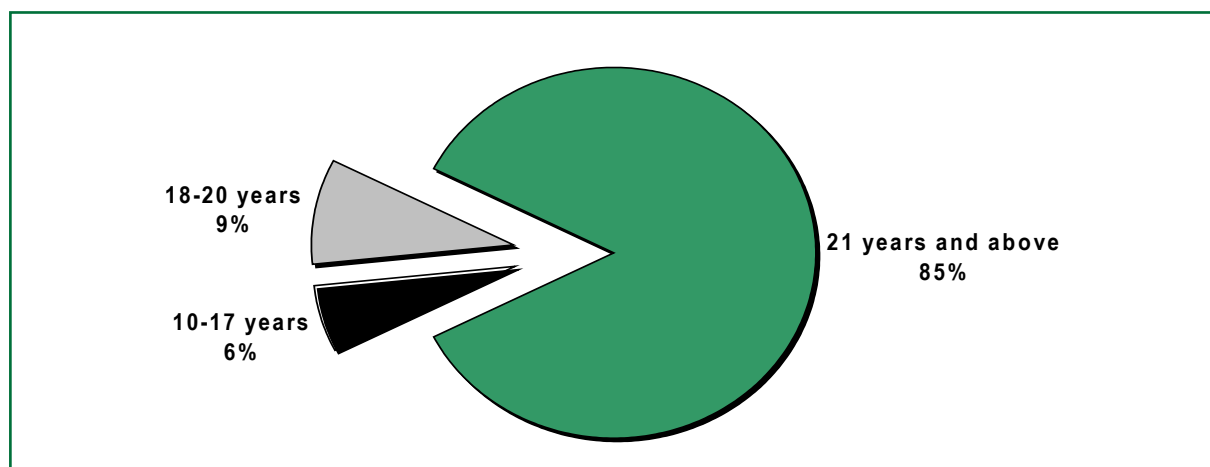
It is also important to note that the majority of serious crimes are not committed by children. In 2012, adults were responsible for 26 times as many murders, seven times as many violent offences, and one and half times as many incidents of robbery, as were children.

• **Children grow out of crime**

If youth crime involves predominantly minor incidents, self-report surveys confirm that law breaking among teenagers is nonetheless widespread. A seminal study conducted for the Home Office in 1995, for instance, found that 55% and almost a third of girls admitted that they had committed an offence at some point.⁴⁴ More recently, in 2006, the *Offender Crime and Justice Survey* found that 30% of 10-17 year old boys reported offending within the past year.⁴⁵ The age at which offending is most common has risen slightly in recent years (largely as a consequence of the decline in detected youth crime): during 2012, the peak age of offending (for indictable offences) was 19 years for males and 21-24 years for females.

While offending is more common among children and young adults, it is important to note that adults are nonetheless responsible for a larger volume of crime because they outnumber the younger population. As shown in Figure 3, during 2012, children aged 10-17 were responsible for around one in twenty of all detected offences (summary and indictable). By contrast, 85% of crime was committed by adults aged 21 years and over.

Figure 3
Detected offending by age (indictable and summary offences) – 2012



42 Figures derived from Ministry of Justice (2013) *op cit*, supplementary tables

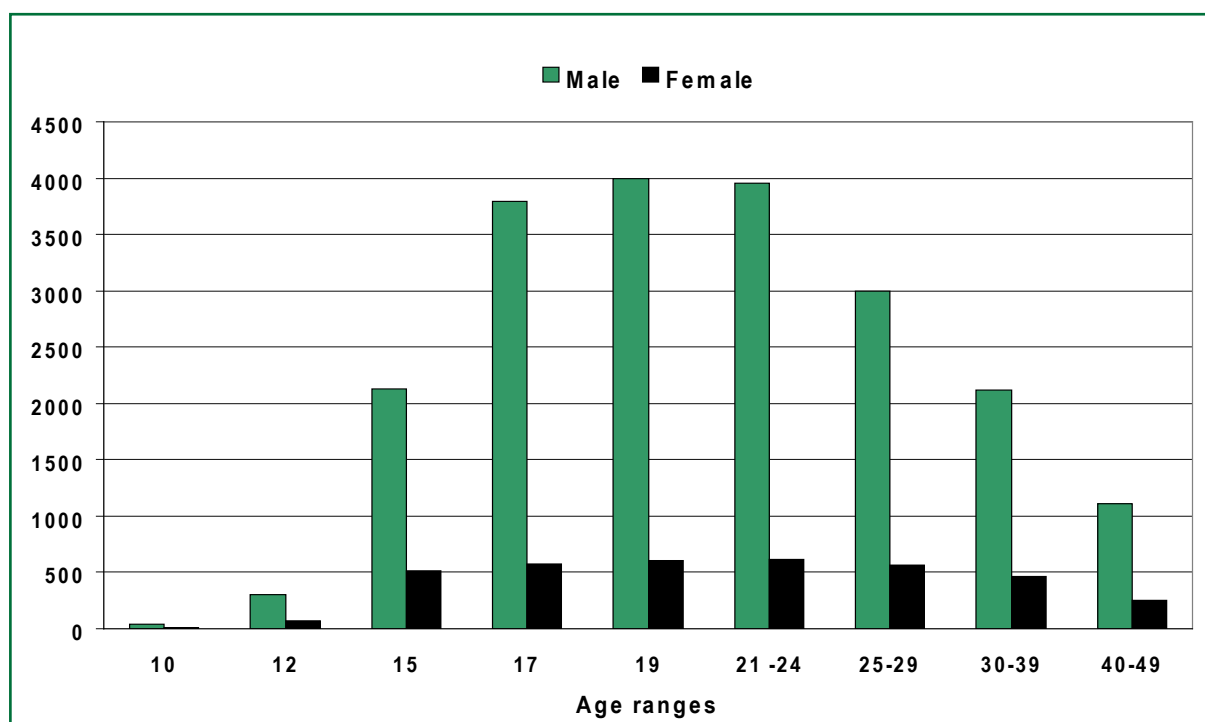
43 Summary offences are those which cannot, in the case of an adult, be tried in the Crown Court

44 Graham, J and Bowling, B (1995) *Young people and crime*. London: Home Office

45 Roe, S and Ash, J (2008) *Young people and crime: findings from the 2006 Offending Crime and Justice Survey*. Statistical bulletin 9/08. Home Office

Furthermore, while offending does escalate quickly during the teenage years, it then tails off equally rapidly in line with the natural maturation process. This pattern, shown in figure 4, is frequently described as '*growing out of crime*'.⁴⁶ Nor is this process of desistance with age a recent phenomenon, or one confined to England and Wales. As long ago as 1983, Hirschi and Gottfredson, two eminent American criminologists, referred to this 'age-crime' curve as '*one of the brute facts of criminology*'.⁴⁷ Despite this obvious pattern, in introducing its reforms of the youth justice system, the New Labour administration asserted bluntly that '*the research evidence shows that [growing out of crime] does not happen*'.⁴⁸ New Labour policies predicated on that contention – such as the necessity of intervening early through the youth justice system to 'nip offending in the bud' – are accordingly vulnerable to criticism.⁴⁹

Figure 4
Detected indictable offences per 100,000 population for selected age groups – 2012



- **Children in conflict with the law, disadvantage, and risk**

As Joe Yates has argued, children who come to the attention of criminal justice agencies are '*disproportionately drawn from working class backgrounds with biographies replete with examples of ... vulnerability*'.⁵⁰ Offending is not of course the sole preserve of the disadvantaged, although the focus of the criminal justice system on the crimes of the powerful is much less pronounced.⁵¹ Nonetheless,

⁴⁶ See for instance, Rutherford, A (1992) *Growing out of crime: the new era*. Basingstoke: Waterside press

⁴⁷ Cited in Newburn, T (2007) *Criminology*. Cullompton: Willan

⁴⁸ Home Office (1997) *No more excuses: a new approach to tackling youth crime in England and Wales*. London: The Stationery Office

⁴⁹ See for instance, Goldson, B (2010) *op cit*

⁵⁰ Yates, J (2010) 'Structural disadvantage, youth, class, crime and poverty' in Taylor, W, Earle, R and Hester, R (eds) *op cit*

⁵¹ Dorling, D, Gordon, D, Hillyard, P, Pantazis, C, Pemberton, S and Tombs, S (2008) *Criminal obsessions: why harm matters more than crime*. 2nd edition. London: Centre for Crime and Justice Studies

disadvantaged neighbourhoods experience higher risks of crime, anti-social behaviour and victimisation.⁵² Accordingly, '*increased crime [is] disproportionately experienced by [children] in poverty*'.⁵³

The correlation with disadvantage becomes more pronounced in relation to children who are involved in more serious crime. A recent study of children in police custody for instance established that 'general entrants' to the youth justice system each experienced an average of 2.9 'vulnerabilities', but that the equivalent figure for boys affiliated to gangs was seven and, for girl gang affiliates, 9.5.⁵⁴ Similarly, children subject to higher levels of intervention and, in particular, those deprived of their liberty are far more likely to have previous experiences of deprivation. In 2008, more than half of children in custody were assessed by their youth offending team (YOT) worker as coming from a deprived household, compared with 13% of the general youth population. Almost 40% had experienced abuse and more than a quarter were living in care at the point of incarceration. Bereavement in the form of death of parents and/or siblings was three times as high as that in the general population; one fifth of those in custody had self harmed and 11% had attempted suicide.⁵⁵

In recent years, this evidence of extensive welfare need has been recast in the form of '*risk factors*' that are thought to be predictive of involvement in criminal activity.⁵⁶ Such factors include the twelve domains captured by *Asset*, the current standard assessment tool for the youth justice system.

The risk factor paradigm, as it has become known, has been criticised for treating children as '*crash test dummies*' whose fate is largely determined by risk factors, rather than regarding them as active individuals with a capacity to make choices, albeit that their options may be constrained by their socio-economic position.⁵⁷ The YJB's current intervention framework, for example, requires that where any of the twelve areas assessed using *Asset* generates a score of two or more, work to address that issue will be part of the intervention, irrespective of the views of the child. Conversely, there is no place within the framework for children to contribute meaningfully to their supervision plan.⁵⁸ As a consequence, risk-led intervention inevitably tends to undermine engagement between children and their supervisors since it focuses attention on correcting supposed deficits rather than adopting a future orientation that aims to equip young people to achieve their entitlements. In this context, opportunities are missed for more effective forms of supervision underpinned by the establishment of high quality relationships. A focus on '*desistance*', by contrast, understands children as '*subjects with whom youth justice workers should engage in their own interests*' and involves an explicit recognition that children in trouble may have done wrong but are also likely themselves to have been victims of injustice in various guises.⁵⁹

The risk paradigm also involves targeting the supposed deficiencies of individual

52 Griggs, J and Walker, R (2008) *The costs of child poverty for individuals and society*. York: Joseph Rowntree Foundation

53 HM Treasury (2010) *Ending child poverty: mapping the route to 2020*. London: HM Treasury

54 Khan, L, Brice, H, Saunders, A and Plumtree, A (2013) *A need to belong: what leads girls to join gangs*. London: Centre for Mental Health

55 Jacobson, J, Bhardwa, B, Gyateng, T, Hunter, G and Hough, M (2010) *Punishing disadvantage: a profile of children in custody*. London: Prison Reform Trust

56 Pheonix, J (2009) 'Beyond risk assessment: the return of repressive welfarism' in Barry, M and McNeill, F (eds) *Youth offending and youth justice*. London: Jessica Kingsley

57 Case, S and Haines, K (2009) *Understanding youth offending: risk factor research, policy and practice*. Cullompton: Willan

58 Youth Justice Board (2006) *Asset guidance*. London: YJB

59 McNeill, F (2009) 'Supervising young offenders: what works and what's right?' in Barry, M and McNeill, F (eds)

children and their families rather than understanding children's criminal behaviour as a normalised response to their environment, or the 'political ecology' within which they grow up, which is in turn influenced by structural factors.⁶⁰ It fails to recognise that risk factors themselves are frequently the 'effects of other social and economic causes'.⁶¹ Regarding the range of risk factors as being of equal weight significantly understates the impact of socio-economic disadvantage. A study published by the YJB, for instance, concluded: 'It can be said with certainty that living in a disadvantaged neighbourhood increases the level of exposure to eight of the risk factors identified in the research'.⁶² In one American study, boys with no identifiable risk factors from the most disadvantaged neighbourhoods were fifteen times as likely to have committed serious offences as those from the most affluent areas. As shown in Table 2, the presence of additional indicators of risk was accordingly likely to play a much bigger role in explaining the offending of boys residing in the latter type of neighbourhood than in the former.⁶³

Table 2
Percentage of boys committing serious offences by socio-economic status of area residence and number of risk factors

Number of risk factors	0	1-2	3-6
Most disadvantaged neighbourhood	3.4%	32.8%	56.3%
Least disadvantaged neighbourhood	51.3%	53.1%	83.9%

It is for such reasons, that predicting from an early age which children will or will not offend, on the basis of their risk profile, proves to be problematic.⁶⁴

Despite such evidence indicating that poverty is a more important determinant of coming to the attention of the youth justice system than other forms of risk, the *Asset* process treats all factors as equally weighted. Moreover, it is apparent youth justice practitioners tend to prioritise types of risk that focus on the individual child in preference to those that reflect structural concerns. In 2008/09, 72% of children subject to YOT supervision were assessed as displaying a moderate to substantial risk (*Asset* score 2-4) in relation to their thinking and behaviour; 58% in relation to their lifestyle; and 45% in relation to their attitudes to offending. By contrast, just over one in five children was allocated an *Asset* score of two or higher as a consequence of the neighbourhood in which they lived. This focus on the individual is probably encouraged by the fact that any identification of a risk factor as a feature that explains the child's offending should be addressed in the supervision plan: attitudinal change may be more easily addressed than structural disadvantage. Yet the reoffending rate for those children where neighbourhood of residence was recognised as a problem was higher than that for the other three categories of risk.⁶⁵

60 France, Bottrell, D and Armstrong, D (2012) *A political ecology of youth and crime*. Basingstoke: Palgrave Macmillan

61 Knuutila, A (2010) *Punishing costs: how locking up children is making Britain less safe*. New Economics Foundation

62 Communities that Care (2005) *Risk and protective factors*. London: Youth Justice Board

63 Wikström, P (1998) 'Communities and Crime' in Tonry, M (eds) *The handbook of crime and punishment*. Oxford University Press

64 Creaney, S (2013) 'Beyond pre-emptive criminalisation: towards a child-friendly youth justice' in *Safer Communities* 12(3)

65 Ministry of Justice (2012) *Youth Justice statistics 2010/11*. London: Ministry of Justice

To its credit, the YJB has acknowledged the force of such criticism and has moved to develop a new assessment framework to replace *Asset*, reflecting evidence that suggests 'a greater focus on way in which a young person's positive influences can be enhanced so as to promote desistance' is preferable to 'a primary focus on risk'.⁶⁶ Funding for implementation of the revised framework has been approved by the government and it is anticipated that deployment to youth offending teams will commence in the first quarter of 2014/15.

• The characteristics of children in conflict with the law

Age

Detected offending among children is largely concentrated among those towards the top of the youth justice age range. In 2012, children aged 16 and 17 years accounted for almost 60% of those receiving a formal pre-court disposal or conviction for an indictable offence. Conversely, fewer than 2% were below the age of 12 years. However, the age distribution of children who come to the attention of the youth justice system, does not reflect in any straightforward manner the extent of criminality among different age ranges. Variations in that distribution over time are explained, at least in part, by the influence of shifts in policy and practice that impact on the treatment of children in trouble.

One of the reforms introduced by New Labour's Crime and Disorder Act 1998 was to abolish 'doli incapax'. The doctrine afforded a measure of special protection to children over the age of criminal responsibility but below the age of fourteen years. In such cases, the prosecution had been required to adduce evidence not only that the child had committed the act alleged, but also that he or she knew that the behaviour in question was seriously wrong, rather than just naughty or mischievous. Following abolition, all children from the age of ten years were considered '*unequivocally responsible and accountable for choices made and harm caused*' and subject to punishment accordingly.⁶⁷

The impact was immediate: in 1999, the number of 10-14 year olds criminalised for indictable offences was 29% higher than it had been in the year prior to implementation, whereas for older children there was a 2% fall.⁶⁸ The influence continued to be felt over the longer term. Between 1997 and 2007, there was an 87% rise in convictions for 10-12 year olds and a 55% increase for those aged below fifteen years. The growth in respect of children aged 16-17 years was by comparison just 8%.⁶⁹

More recently, changes in police practice, consequent to the introduction of the performance indicators described earlier in this paper, have impacted on the age profile of those in the youth justice system. The sanction detection target had a disproportionate effect on younger children since this group was more likely to have benefited from informal responses to their offending before the target was introduced. So the number of children aged 10-14 years receiving a reprimand, warning or conviction for an indictable offence rose by 31% between 2003 and 2007; the equivalent figure for those aged 15-17 years was 20%. Conversely,

66 Youth Justice Board (2013) *AssetPlus - Assessment and Planning Interventions Framework*. London: Youth Justice Board

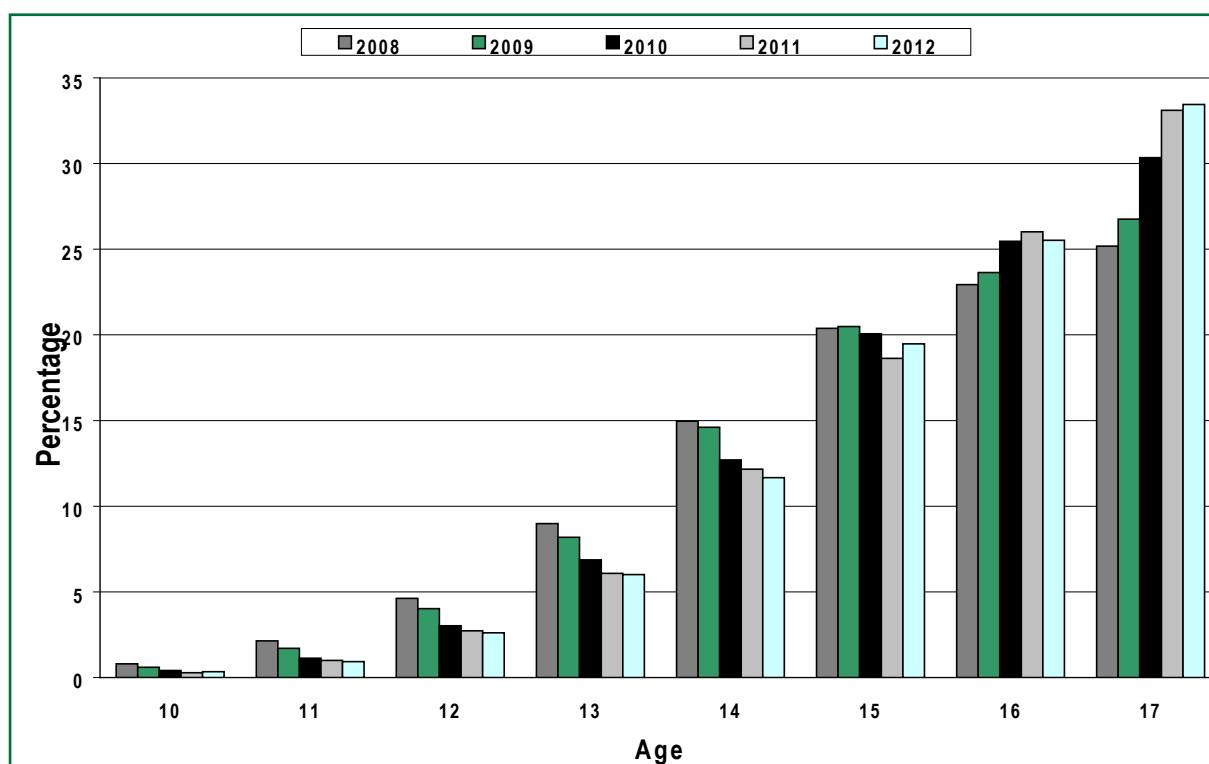
67 Bandalli, S (2000) 'Children, responsibility and the new youth justice' in Goldson, B (ed) *op cit*

68 Home Office (2001) *Criminal statistics: England and Wales 2000*. London: The Stationery Office. Criminal Statistics do not provide distinct figures for 10-13 year olds, those most directly impacted by the abolition of *doli incapax*

69 Puffett, N (2009) 'Child crime convictions nearly double in ten years' in *Children and Young People Now*, 13 August 2009

the first time entrant target has led to greater diversion from the system of those below the age of 15 years because children in that age range are less likely to have received a previous substantive disposal. Thus between 2007 and 2012, detected offending attributed to children aged 10-14 years fell by 76%, while the equivalent reduction for those aged 15-17 was significantly lower, at 56%. As shown in figure 5, this has been reflected in a progressive shift towards an older age profile within the youth justice system over that period.

Figure 5
Distribution of total detected youth crime (indictable offences) by age of the child responsible for the offence: 2008-2012



While the reduction in the numbers of younger children who receive a formal sanction is welcome, the potential for any child to be criminalised is a function of the age of criminal responsibility. In England and Wales, the threshold at which children become criminally liable is, at 10 years, considerably below that in most European jurisdictions: in Belgium and Luxemburg, the minimum age of criminal responsibility is 18 years; in Portugal it is 16; in Finland and Norway, 15; and in Italy, Germany, Lithuania and Romania, it is 14 years.⁷⁰ The United Nations Committee on the Rights of the Child has consistently criticised the United Kingdom in this regard, indicating the 12 years is the minimum acceptable age in order to comply with international standards of children’s human rights.⁷¹ The NAYJ considers that the age of criminal responsibility should be raised to 16 years.⁷²

⁷⁰ Goldson, B (2009) ‘Difficult to understand or defend. A reasoned case for raising the age of criminal responsibility’ in *Howard Journal* 48(5)

⁷¹ UN Committee on the Rights of the Child (1997) *General comment No 10: children’s rights in juvenile justice*. Geneva: United Nations

⁷² For the NAYJ’s perspective on the age of criminal responsibility, see Bateman, T (2012) *Criminalising children for no good purpose: the age of criminal responsibility in England and Wales*. London: NAYJ

Gender

In spite of what have been called ‘*recurrent panics about apparent increases in [their] offending*’, girls have been consistently less likely than boys to come into contact with the youth justice system.⁷³ During 2012, almost 84% of those receiving a substantive youth justice disposal for an indictable offence were male. Girls also tend to stop offending at an earlier age than their male peers, to commit less serious offences and have lower rates of reoffending.⁷⁴ At the same time, there is considerable evidence that girls in conflict with the law have significantly greater welfare needs than their male counterparts.⁷⁵

The common public perception that girls involvement in criminal activity has risen in recent years is not supported by the evidence: between 1992 and 2002, the number of girls receiving a disposal for an indictable offence fell from 33,700 to 23,300, a decline of almost 31%. However, over the same period, court convictions of girls rose sharply from 4,200 to 6,000. This contrast was a direct result of a declining use of pre-court measures for females, reflecting an increasingly interventionist stance towards girls’ offending.⁷⁶ It seems likely that the increased visibility, associated with such a rapid expansion in the female court population, contributed to the perception that girl’s criminality was a greater concern than it had previously been.

The sanction detection target and its replacement by a commitment to reduce first time entry have both had a greater impact on girls than on their male counterparts. From 2003, coinciding with the introduction of the former measure, there was a rise in detected female youth offending. The expansion up to 2007 was considerably sharper than that for boys (35% compared to 16%) and generated a raft of headlines depicting an ‘*unprecedented crime wave among teenage girls*’.⁷⁷ As the first time entrants target began to kick in, there was a marked decline in detected offending of both groups, but that for girls was more pronounced. (This fall did not, it would appear, garner as much press attention as the preceding rise.⁷⁸) The pattern shown in Figure 6 (which shows changes in girls’ and boys’ offending from a 2003 baseline) is, accordingly, a predictable outcome of the two targets, reflecting in the first instance a reduction in informal responses to female misbehaviour and more recently an expansion in the use of informal mechanisms. The shift from one performance measure to another has had a gendered impact precisely because the more limited, less serious, nature of girls’ criminality (as well as the persistence of sexist attitudes) provides greater potential for outcomes to be influenced by the extent to which police have discretion to respond informally to instances of misbehaviour.

73 Sharpe, G (2012) *Offending girls: young women and youth justice*. London: Routledge

74 Smith, D (2006) *Social inclusion and early desistance from crime*, report number 12 of the Edinburgh Study of Youth Transitions and Crime, University of Edinburgh

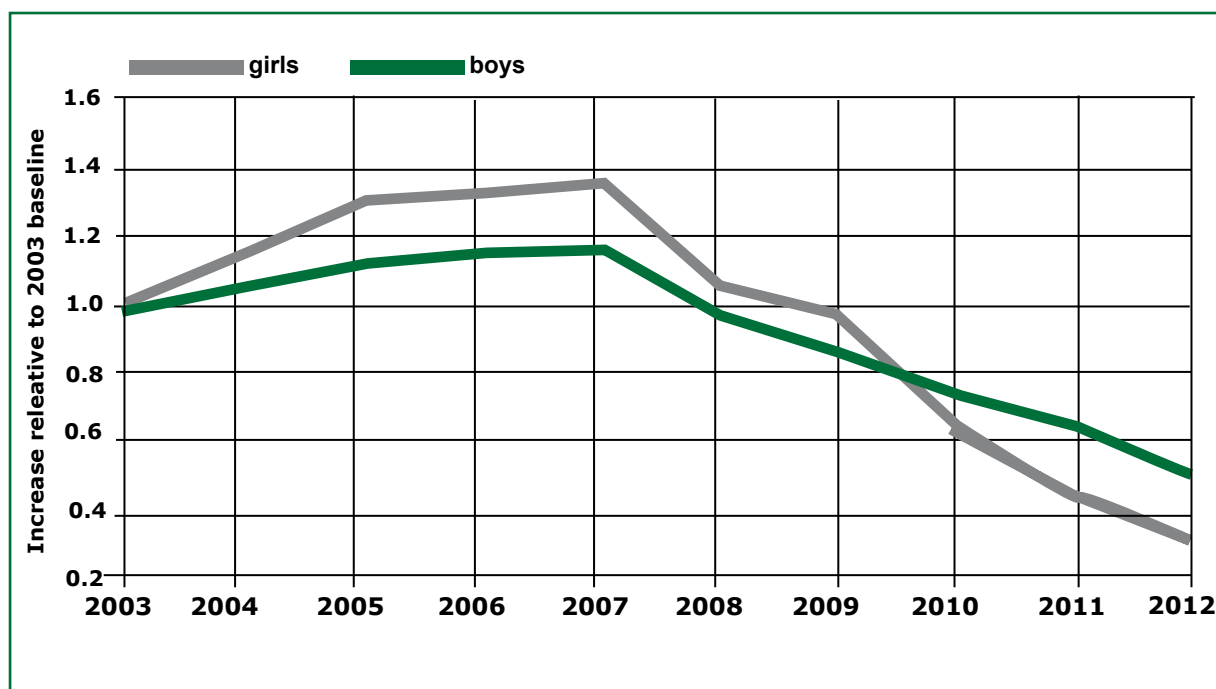
75 Khan, L, Brice, H, Saunders, A and Plumtree, A (2013) *op cit* and Bateman, T, Melrose, M and Brodie, I (2013) ‘*Nothing’s really that hard, you can do it*’. *Agency and fatalism: the resettlement needs of girls in custody*. Luton: University of Bedfordshire

76 Nacro (2008) *Responding to girls in the youth justice system*. Youth crime briefing, July 2008. Nacro

77 Daily Telegraph, 10 May 2008, cited in Sharpe, G (2012) *op cit*

78 Sharpe, G (2012) *op cit*

Figure 6
Changes in detected offending relative to 2003 baseline by gender: indictable offences



Race

The overrepresentation of black and minority ethnic (BME) young people within the youth justice system has long been recognised as a matter of concern.⁷⁹ It is less commonly recognised that representation varies by ethnic group: relative to their make up in the general child population, children classified as Asian or Asian British are *under*-represented among those receiving a substantive youth justice disposal; by contrast black and black British children are significantly over-represented. Between 2006/07 and 2011/12, the proportion of those supervised by youth offending teams who are recorded as white has fallen from 88% to 82% with a corresponding rise in the BME caseload from 12% to almost 17%. It seems probable that this worrying trend is a consequence of the reduction in first time entrants being less pronounced for minority ethnic children, but figures are not broken down in a manner that would allow this hypothesis to be tested.

An issue of further concern is that overrepresentation increases in line with the intensity of youth justice intervention. As shown in Table 3 (overleaf), in 2011/12, all minority groups were overrepresented in custody: while black/black British children made up 8.2% of the offending population, they accounted for almost one in five of those receiving a custodial sentence and nearly one third of those subject to long term detention of two years or longer.

⁷⁹ See for instance, Pitts, J (1986) 'Black young people and juvenile crime: some unanswered questions' in Matthews, R and Young, J (eds) *Confronting crime*. London: Sage

Table 3**Representation of BME groups in the general under 18 population and at various stages of the youth justice system: 2011/12**

	White	Black/Black British	Black/Black British	Mixed heritage
Under 18 population (2011)	79.6%	9.2%	4.7%	4%
Youth offending population	80.2%	5.1%	8.2%	4.2%
Court population	76.8%	6.3%	10.4%	4.6%
Custodial sentences	65.1%	8.9%	18.9%	6%
Long-term detention	49.3%	8.3%	32.6%	8.7%

No doubt, discrimination in various guises helps to explain the statistics,⁸⁰ but the Home Affairs Committee inquiry into young black people and the criminal justice system concluded that the primary cause of over-representation was social exclusion and disadvantage. Minority ethnic young people are more likely than their white counterparts to be raised in deprived neighbourhoods and to experience poverty.⁸¹ More recent research has confirmed that black, and in particular mixed heritage, children within the youth justice system have significantly higher levels of need than their white counterparts.⁸² The NAYJ considers that addressing the overrepresentation of children from minority ethnic backgrounds is one of the most pressing issues faced by the youth justice system, since the prevailing pattern seriously undermines the ability of that system to deliver justice to children.

- **Diversion from the youth justice system and diversion from court**

The NAYJ considers that the criminalisation of children should be minimised through diverting them from the formal mechanisms of the youth justice system into suitable mainstream provision wherever possible. Where children are processed formally, opportunities to divert them from prosecution should be maximised. To a large extent, such an understanding informed the treatment of children in trouble from the latter part of the 1970s through to the end of the 1980s. For instance, Home Office guidance to the police, issued in 1985 indicated that prosecution of juveniles should not be undertaken:

*without the fullest consideration of whether the public interest (and the interests of the juvenile concerned) may be better served by a course of action which falls short of prosecution.*⁸³

80 See for instance, May, T, Gyateng, T and Hough, M (2010) *Differential treatment in the youth justice system*. Equality and Human Rights Commission

81 House of Commons Home Affairs Committee (2007) *Young Black people and the criminal justice system*. London: The Stationery Office

82 May, T, Gyateng, T and Bateman, T (2010) *Exploring the needs of young Black and Minority Ethnic offenders and the provision of targeted interventions*. London: Youth Justice Board

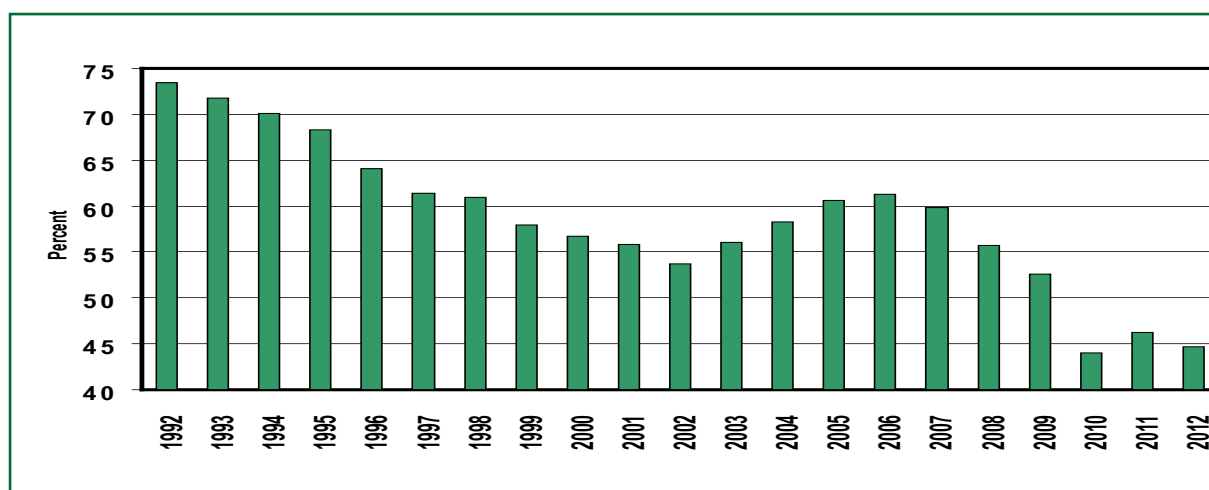
83 Home Office (1985) *The cautioning of offenders*. Home Office circular 14/85. London: Home Office

The guidance went on to say that when a child was arrested, there should be no presumption that any formal response was required, 'as against a decision to take less formal action or no further action at all'.⁸⁴

That commitment to diversion waned rapidly from the early 1990s onwards, as part of a process of repoliticising youth crime that has subsequently become known as the 'punitive turn',⁸⁵ manifested in revised guidance that discouraged the use of cautions for serious offences, and noted that multiple cautioning could undermine confidence in pre-court disposals.⁸⁶ The shift in mood was reflected in falling rates of diversion in first part of the decade and was given statutory expression in New Labour's Crime and Disorder Act 1998 which mandated that informal action was to be used only in exceptional circumstances. The Act also introduced a 'three strikes' mechanism in the form of reprimands and final warnings which replaced police cautioning for those below the age of 18 years. Henceforth, prosecution would be required on the third offence at the latest, irrespective of the circumstances of the child or the nature of the behaviour involved. Moreover, where a child had a conviction, he or she was not eligible for a pre-court disposal in relation to any subsequent offending, however minor.

The rationale presented for change was far from compelling, consisting largely of assertions that cautioning did not work and that early intervention was necessary if youth crime was not to spiral out of control, in spite of evidence to the contrary.⁸⁷ Nonetheless, the legislative change acted to reinforce a trend of increased prosecution. As shown in Figure 7, between 1992 and 2002, the rate of diversion for indictable offences fell from 73% to 54%.⁸⁸

Figure 7
Rate of diversion 1992 to 2012: indictable offences



⁸⁴ *Ibid*

⁸⁵ Muncie, J (2008) 'The "punitive turn" in juvenile justice: cultures of control and rights compliance in Western Europe and the USA' in *Youth Justice* 8(2)

⁸⁶ Home Office (1994) *The cautioning of offenders*. London: Home Office

⁸⁷ Goldson, B (2000) 'Wither diversion? Interventionism and the New Youth Justice' in Goldson, B (ed) *op cit* and Bateman, T (2003) 'Living with final warnings: making the best of a bad job' in *Youth Justice*, 2(3)

⁸⁸ The rate of diversion is pre-court disposals – that is cautions, conditional cautions, reprimands, and warnings - as a proportion of all substantive youth justice outcomes

The impact of the sanction detection target can be seen in the chart in the four year period from 2002. Large numbers of minor offences, that would previously have been dealt with informally, were drawn into the formal youth justice process so that the use of reprimands and final warning grew more rapidly than convictions. The chart also shows that from 2007, as sanction detections came to have less impact on police decision making, there has been a reversion to the earlier trend of a falling rate of diversion. This picture is somewhat misleading, however, since the dramatic reduction in first time entrants during this period has been achieved, in large part, by dealing informally with children who would otherwise have received a reprimand or final warning: between 2007 and 2012, the number of formal pre-court disposals imposed for indictable offences fell by 74.5% while convictions decreased by a more modest 45.3%. According to one estimate:

if just half of the fall in first time entrants in 2010 represents children who would otherwise have received a formal pre-court disposal, the rate of diversion for that year would, in the absence of the new outcome measure, have been higher than at any point since 1993.⁸⁹

Indeed, the focus on reducing the numbers of children entering the youth justice system for the first time has been accompanied by a rediscovery of diversion in its widest sense. A range of informal pre-court mechanisms have been introduced, including: youth restorative disposals, or community resolutions, delivered by the police;⁹⁰ 'triage' which allows a recording of 'no further action' in appropriate cases following a youth offending team assessment;⁹¹ and liaison and diversion schemes aimed at diverting young people with mental health and developmental problems, speech and communication difficulties, learning disabilities and other similar vulnerabilities, by referring them to more appropriate provision.⁹² Such disposals are not reflected in the figures for detected offending, but provide alternative options for children who might otherwise become first time entrants, as well as those who have previously received formal sanctions. It is clear that the use of such alternatives has had a significant impact on the number of children who enter the youth justice system. For instance, a joint thematic inspection of six police force areas found that there had been a 'dramatic increase' in the use of informal resolutions without the need for arrest, which had risen from 0.5% of all case disposals (for children and adults) in 2008 to 12% in 2011.⁹³ More recently, research has established that areas that operate triage schemes have shown greater reductions in first time entrants than those that do not.⁹⁴ A joint thematic inspection of six police force areas found that there had been a 'dramatic increase' in the use of informal resolutions without the need for arrest.

At the same time, the use of penalty notices for disorder for children aged 16 and 17 years, has fallen substantially, from 13,977 in 2005/6 to 5,571 in 2011/12, a decline of 46%. This reduction is almost certainly a consequence of such notices

89 Bateman, T (2012) 'Who pulled the plug. Towards an explanation of the fall in child imprisonment' in *Youth Justice* 12(1)

90 Rix, A, Skidmore, K, Self, R, Holt, T, and Raybould, S (2011) *Youth restorative disposal process evaluation*. London: Youth Justice Board

91 Institute for Criminal Policy Research (2012) *Assessing young people in police custody: an examination of the operation of Triage schemes*. London: Home Office

92 Haines, A, Goldson, B, Haycox, A, Houten, R, Lane, S, McGuire, J, Nathan, T, Perkins, E, Richards, S and Whittington, R (2012) *Evaluation of the Youth Justice Liaison and Diversion (YJLD) pilot scheme: final report*. Liverpool: University of Liverpool

93 Criminal Justice Joint Inspectorates (2012) *Facing up to offending use of restorative justice in the criminal justice system*. London: CJI

94 Institute for Criminal Policy Research (2012) *op cit*

being displaced by informal measures. From 8 April 2013, as a consequence of the implementation of the relevant provisions of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), penalty notices are no longer available for persons below the age of 18 years.⁹⁵

While not all areas have access to the full range of informal options, and evaluation suggests that there is considerable inconsistency of implementation in those areas that do,⁹⁶ it seems likely that this resurgence of diversionary activity might continue. The coalition government has confirmed its commitment to the further reduction in first time entrants as being one of three high level outcomes by which the performance of the youth justice system will be measured. Moreover, increased diversion from court through formal pre-court disposals will be facilitated by abolition of the final warning scheme and its replacement by youth cautions and youth conditional cautions.

The changes were introduced by LASPO⁹⁷ and implemented from 8 April 2013.⁹⁸ The principle difference between the new provisions and those they replace is that a youth caution can be issued, where the police consider it an appropriate outcome, at any point in a young person's criminal career, irrespective of any previous pre-court disposals or convictions. (The legislation does however retain the restriction on a court imposing a conditional discharge for any further offending within 24 months on a child who has received a second youth caution.) Youth conditional cautions were previously limited to 15 and 16 year-olds in pilot areas. Following implementation, they will be available for all children aged 10-17 years.

The NAYJ broadly welcomes these recent developments as being consistent with the research evidence that contact with the youth justice system is itself '*criminogenic*'.⁹⁹ At the same time, it is a matter of concern that the rediscovery of diversion appears to be a largely pragmatic response to workload and financial constraint rather than a principled recognition that the youth justice system should be used as a mechanism of last resort.¹⁰⁰ In particular, there has been little or no attempt to redirect the capacity to work with children in trouble towards mainstream services. Such a shift in resources is required to ensure that disadvantaged and vulnerable children who are diverted from formal sanctions receive appropriate assistance and support,¹⁰¹ since, as the *Centre for Social Justice* has pointed out, the youth justice system has tended to become '*a backstop, sweeping up the problem cases that other services have failed, or been unable, to address*'.¹⁰² Such extended provision is also a practical prerequisite of effecting a substantial rise in the age of criminal responsibility.¹⁰³

95 HM Government (2013) *The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 6) Order 2013*. London: The Stationery Office

96 See footnotes 91-93

97 Hart, D (2012a) *Legal Aid Sentencing and Punishment of Offenders Act 2012: implications for children*. London: NAYJ

98 HM Government (2013) *op cit*

99 McAra, L and McVie, S (2007) *op cit*

100 Pitts, J and Bateman, T (2010) *op cit*

101 Goldson, B and Muncie, J (2006) 'Critical anatomy: towards a principled youth justice' in Goldson, B and Muncie, J (eds) *Youth crime and justice*. London: Sage

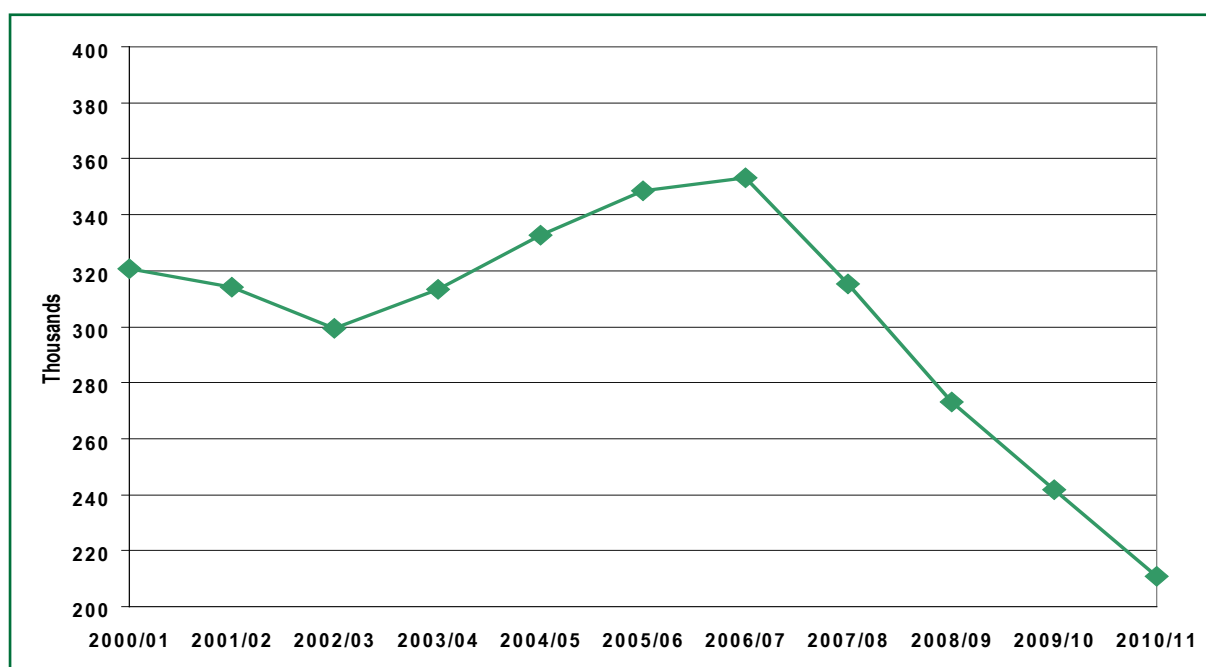
102 Centre for Social Justice (2012) *Rules of engagement: changing the heart of youth justice*. London: Centre for Social Justice

103 Bateman, T (2012) *op cit*

• Children at the police station

Part of the explanation for the fall in detected youth offending is that fewer children are arrested by the police. As shown in Figure 8, between 2000/1 and 2010/11, the number of 10-17 year-olds arrested for a notifiable offence fell by more than one third. The trend is not a consistent one however: a rise in arrests between 2002/03 and 2006/07 again reflects the impact of the sanction detection target. The overall trajectory is likely to reflect a genuine decline in youth crime, the impact of the first time entrant target, and greater use of informal measures such as youth restorative disposals which allow the police to deal with low level matters without the need for arrest. The sharpest reductions relate to offences of fraud and forgery (a decline of 65%), theft and handling stolen goods (62%) and burglary (37%).

Figure 8
Children arrested for notifiable offences: 2000/01 to 2010/11



The NAYJ welcomes the fact that fewer children are subject to arrest, although there is clearly scope for further reductions. During 2010/11, 210,660 children were arrested but less than a third of these cases led to the imposition of a substantive youth justice disposal, suggesting that there was insufficient evidence or the matter was too minor to warrant a formal pre-court or prosecution.

Moreover, the organisation has considerable concerns as regards the treatment of children in police detention. A significant advance for children's rights was achieved in April 2013 when the High Court ruled, in a case taken by *Just for Kids Law*, that the arrangements whereby children aged 17 years were not entitled to an appropriate adult was incompatible with the European Convention on Human Rights.¹⁰⁴ By implication, one would anticipate the statutory provisions that require

¹⁰⁴ R(C) v SSHD and Metropolitan Police. The full judgement of the court is available at: www.judiciary.gov.uk/Resources/JCO/Documents/Judgments/c-v-sshd-and-met-police-judgment.pdf

the transfer of children denied bail by the police to be transferred to local authority accommodation, under section 38(6) of the Police and Criminal Evidence Act 1984, will also be extended. The Association of Chief Police Officers has written to Chief Constables advising them that 17 year-olds should be provided with an appropriate adult with immediate effect rather than waiting for legislative change to take effect.¹⁰⁵

Despite this landmark judgement, it is clear that the attendance of an appropriate adult is not sufficient to guarantee that children's rights and wellbeing are adequately safeguarded.¹⁰⁶ In many cases, the support offered by appropriate adult schemes is undermined by a 'process driven environment' that sometimes diverts attention from the welfare of the child.¹⁰⁷ Moreover, it seems evident that the statutory requirement requiring the transfer of children who are refused bail to local authority accommodation is regularly flouted, leaving them in police custody unlawfully. In two thirds of the cases reviewed by Her Majesty's Inspectorate of Constabulary, where bail was denied, no attempt was made to access local authority accommodation.¹⁰⁸ Data obtained by the Howard League has ascertained that, in the two-year period 2008/09, approximately 53,000 children below the age of 16 years were held in police detention following charge, including 1,654 children aged 10-12 years. This latter group cannot legally be detained in police custody under any circumstances.¹⁰⁹ The figure is almost certainly an underestimate since the study was based on incomplete police returns.

• Children in court

Where prosecution ensues, the NAYJ considers that any sentences imposed by the court, or delivered by youth justice agencies, should be governed by the principle of minimum necessary intervention. Sentencing should be proportionate to the seriousness of the offending behaviour rather than reflecting assessed risk. Supervisory processes should be directed to maximising the child's long term potential rather than confined to the restrictive, and negative, ambition of attempting to avoid particular forms of future illegal behaviour in the short term. All court-ordered interventions should have the best interests of the child as a primary focus and conform to a children's rights perspective.

The referral order was implemented on a national basis from April 2002. It is, in most instances, a mandatory disposal where a child appears in court for a first offence and pleads guilty. As a consequence, the disposal rapidly established itself as the most frequently used sentencing option. From April 2009, the referral order became available for a second offence if the child had not been sentenced to one at first conviction; legislative change in the same year allowed the imposition of a second order in particular circumstances. LASPO lifts previous restrictions, and while the referral order remains the primary disposal for a first conviction, for

¹⁰⁵ Copley, D (2013) *Judicial review: the treatment of 17-year-olds in custody*. Letter to all Chief Constables, Heads of Criminal Justice and Heads of Crime. 13 June 2013. Manchester: Association of Chief Police Officers

¹⁰⁶ Hart, D (2012b) *Children in police detention*. London: NAYJ

¹⁰⁷ HM Inspectorate of Constabulary (2011) *Whose looking out for children? A joint inspection of appropriate adult provision and children in detention after charge*.

¹⁰⁸ *Ibid*

¹⁰⁹ Skins, L (2011) *The overnight detention of children in police cells*. London: Howard League for Penal Reform. See also Bell, C (2013) *Arrested and detained children: a case for urgent review of arrangements between children's services and the police* in *Youth Justice Matters*, available at <http://youthjusticematters.info/hot-off-the-press/index.html>

offences committed after 3 December 2012, the court may also impose such an order irrespective of antecedent history or the number of previous referral orders, providing the child pleads guilty.¹¹⁰ During 2012, the referral order accounted for almost 35% of all sentences imposed on children, an increase from 27% in 2003. Given the relaxation in the statutory provisions, a further rise in the proportionate use of the order might be anticipated in future years.

The referral order has inevitably displaced a range of other disposals, particularly those below the community sentence threshold. Between 2002 and 2012, the use of the reparation order reduced from 6.6% of all disposals to 1.2%. The referral order has also contributed towards the continued decline of absolute and conditional discharges: discharges accounted for almost one in five penalties imposed on children in 2002, but just over 14% in 2012. As a consequence, children who would previously have received discharges are now subject to statutory intervention, under the referral order, for a period of between three months and a year. The NAYJ accordingly welcomes the provision in LASPO that allows courts to impose a conditional discharge as an alternative to a referral order where they consider it appropriate to do so.¹¹¹

The existing range of community sentences was replaced by a single disposal for offences committed after 30 November 2009. In making a youth rehabilitation order (YRO), the court can, in principle, select from a menu of 18 different forms of intervention. In 2011/12, almost one third of YROs contained two requirements, with a further 29% containing just one. Only 4% of orders had five or more requirements attached; however this represents an increase from 2% in the previous year, raising concerns that community sentences may be becoming more intensive. The most frequently used requirement was supervision, which featured as an element in 37% of YROs, suggesting that in many cases, the disposal has become a functional replacement for the supervision order. Nonetheless, significant numbers of children were also subject to electronically-monitored curfews, whose use has risen progressively each year since 1998. During 2011/12, 15% of all YRO requirements – 4,935 in total – involved a curfew. The NAYJ considers that a curfew is rarely an appropriate sentence for a child since its primary purpose is generally punitive rather than rehabilitative.¹¹² The organisation therefore regards it as a matter of concern that LASPO has extended the maximum duration of a curfew requirement from six to 12 months and the maximum daily curfew period from 12 to 16 hours.¹¹³

• Children deprived of their liberty

One of the manifestations of the 'punitive turn' was that for more than a decade child incarceration expanded rapidly. In recent years however there has been a considerable decline. As shown in Figure 9, custodial sentences began to fall from 2002. During 2012, 3,085 children were given a custodial disposal, representing a 26% fall by comparison with the previous 12 months and a 60% reduction from the highpoint (7,653 custodial sentences) in 1999. The number of orders for long term imprisonment – sentences under sections 90 and 91 of the Powers

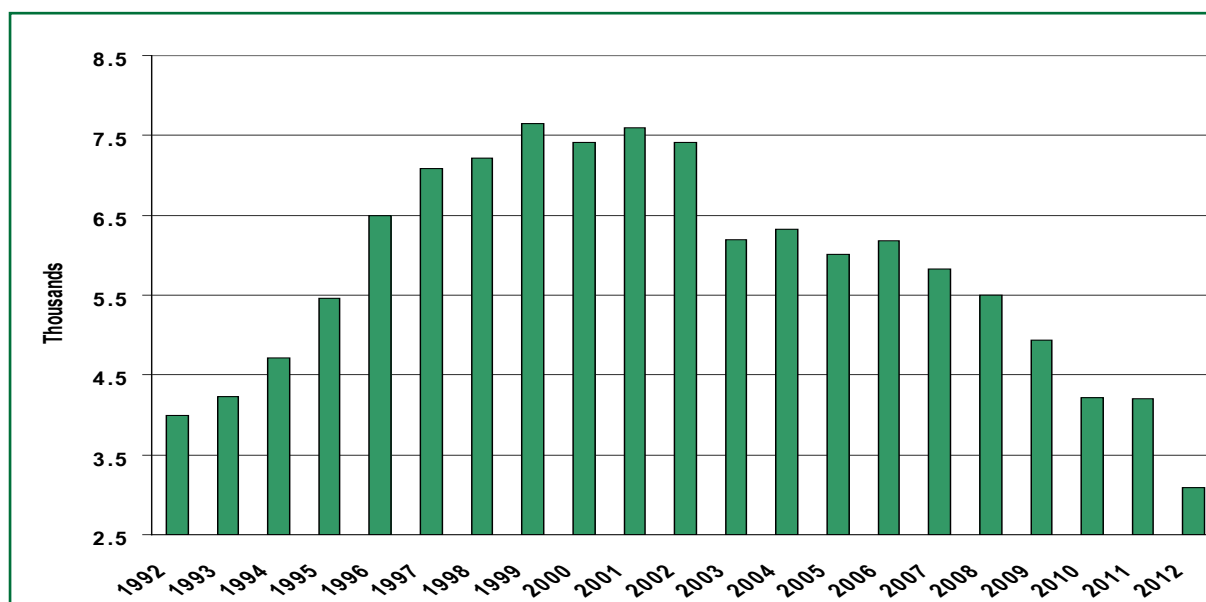
110 Hart, D (20012a) *op cit*

111 *Ibid*

112 HM Inspectorate of Probation (2012) *It's complicated: the management of electronically monitored curfews*. London: HMIP

113 Hart, D (2012a) *op cit*

Figure 9
Custodial sentences imposed on children: 1992-2012



of Criminal Courts (Sentencing) Act 2000 (for children convicted of murder and other grave crimes respectively), extended sentences and detention for public protection (for children assessed as posing a significant risk of substantial harm) – have also fallen, by 55%, from 732 in 2002 to 327 in 2012. The latter penalty, which provided for children to be imprisoned indefinitely, subject to release at the discretion of the Parole Board, was abolished by LASPO, a move welcomed by the NAYJ.

The reduction in sentences of imprisonment was not immediately reflected in an equivalent decline in the population of children held in the secure estate. Indeed, as a consequence of an expansion in custodial remands, and an increase in average sentence length, the population continued to grow until 2008 in spite of the tailing off in custodial sentences. More recently, as indicated in Table 4, the number of children deprived of their liberty at any one time has fallen, by almost

Table 4
Under 18 population of the secure estate for children and young people: August of the relevant year

Year	Population	Year	Population
2000	2,968	2007	2,991
2001	2,928	2008	3,019
2002	3,104	2009	2,504
2003	2,833	2010	2,099
2004	2,785	2011	2,066
2005	2,930	2012	1,643
2006	3,067		

46% since 2008.¹¹⁴ The riots that occurred in parts of England during August 2011 interrupted that trend, leading to an increase of 129 in the number of children locked up during that month.¹¹⁵ It would appear however that the rise was relatively temporary since the population of the secure estate continued to fall in the following year.

While welcoming the reduction in the use of imprisonment for children, the NAYJ is concerned that, as the level of child incarceration has fallen, those who remain in detention have, in certain respects, become increasingly disadvantaged. The closure of custodial units makes it increasingly likely that children will be placed further from home, family, friends and professionals who can provide support. In March 2010, 24% of those detained in the secure estate were held more than 50 miles from their home, with 7% more than 100 miles away. By March 2011, those figures had increased to 30% and 10% respectively.¹¹⁶ Reference has already been made to the fact that the falls in imprisonment have not been experienced equally by all children in trouble, with the consequence that a higher proportion of those deprived of their liberty come from minority ethnic populations. Evidence also suggests that, as less serious offending is diverted from custody, the dwindling population of the secure estate has higher level needs and becomes more vulnerable on a range of indicators.¹¹⁷

The NAYJ believes that, recent progress notwithstanding, child imprisonment remains far too high and that incarceration is not used as '*a measure of last resort and for the shortest appropriate period of time*' as required by the United Nations Convention on the Rights of the Child.¹¹⁸ It is accordingly appropriate that the coalition government should select a reduced reliance on custody as one of three indicators by which the performance of the youth justice system will be measured. The NAYJ considers that the powers of the court to imprison children should be limited by tightening the legislative criteria as a mechanism for achieving that target.¹¹⁹ It is clear that one of the explanations for the decline in the use of custody is the reduction in the number of children prosecuted, itself a function of the first time entrant target. The continuation of current trends in relation to youth detention is thus dependent to some degree on the continued falls in the number of children entering the system.¹²⁰

The NAYJ supports the abolition of penal custody: the few children who need to be in secure provision, because they represent a serious risk to others, should be placed in settings that prioritise their wellbeing rather than in prisons and establishments that exist to make profit. At April 2013, 69% of the population of the secure estate were detained in young offender institutions and a further 20% were held in secure training centres (STCs). Secure children's homes (SCHs) by contrast – residential child care establishments whose primary orientation is care based rather than correctional – accommodated just 10% of children deprived of their

114 Ministry of Justice (2013) *Youth custody data*. London: Ministry of Justice

115 For further details, see Briggs, D (ed) *The English riots of 2011: a summer of discontent*. Hook: Waterside press

116 Bateman, T, Hazel, N and Wright, S (2013) *Resettlement of young people leaving custody: lessons from the literature*. London: Beyond youth custody

117 *Ibid*

118 Article 37b

119 For discussions of how the custody threshold might be tightened, see Standing Committee on Youth Justice (2010) *Raising the custody threshold*. London: SCYJ and Centre for Social Justice (2012) *Rules of engagement: changing the heart of youth justice*. London: Centre for Social Justice

120 Bateman, T (2012) *op cit*

liberty.¹²¹ The decline in the custodial population might have provided an opportunity to place a higher proportion of those detained in child friendly facilities. It has instead been accompanied by a decommissioning of SCHs. This is consistent with a longer term shift in provision from SCHs to STCs: in April 2002, just 4% of children in the secure estate were held in STCs.¹²² Since 2003, 12 secure children’s homes have lost their contract with the YJB.¹²³

• **Avoiding a cycle of reoffending**

The third high level target established by the coalition government as a measure of the performance of the youth justice system relates to the rate of reoffending.¹²⁴ Thirty six per cent of children who received a substantive youth justice disposal imposed in the year ending March 2011 reoffended within 12 months of that disposal, a slight increase over the equivalent figure for 2000.¹²⁵ Recidivism varies significantly according to the nature of sanction to which young people are subject. As shown in Table 5, pre-court disposals are associated with the lowest level of reoffending while custody generates the highest. For children who have never been imprisoned the rate of proven reoffending is 34.2%; for those who have experienced six or more episodes of incarceration, it rises to 88.1%.

Table 5
Proven rates of reoffending by type of disposal 2010/11

Disposal	Percentage reoffending within 12 months
Reprimand/final warning	25.7%
First tier sentence	44.7%
Community sentence pre-YRO	56.7%
Youth rehabilitation order	67.7%
Custody	72.6%
All	35.8%

One would naturally anticipate that disposals associated with greater restrictions on liberty would be associated with higher levels of reoffending since children subject to higher end penalties are likely to be those whose offending is more serious or persistent. However, analysis by the Ministry of Justice suggests that when relevant factors are controlled for, lower level community sentences are associated with significantly better reoffending outcomes than higher intensity community based disposals (recidivism rates are 4% lower for the former type of order). Moreover, children who receive custodial sentences of between six and twelve months are significantly more likely to reoffend than a comparison group sentenced to a high level community penalty (again a four percentage point difference). The evidence would thus appear to support an approach to youth justice that maximises diversion from court and from custody, and promotes a strategy of minimum intervention within the court arena, in conformity with the principles endorsed by the NAYJ.

121 Ministry of Justice (2012) *Youth Custody data: monthly data and analysis custody report –April 2013*. London: Ministry of Justice

122 Youth Justice Board (2006) *Secure trends to 31.5.05*. London: YJB

123 Howard League (2012) *Future insecure: secure children’s homes in England and Wales*. London: Howard League

124 *Breaking the Cycle: effective punishment, rehabilitation of offenders and sentencing*. London: the Stationery Office

125 Like other official data, it is likely that figures for reoffending are influenced by government targets and consequent changes in police practice.

See, for instance, Bateman, T (2010) ‘Reoffending as a measure of youth justice intervention: a critical note’ in *Safer Communities* 9(3)