

Children in conflict with the law An overview of trends and developments 2013

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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.

• A contracting youth justice system

The headlines from any analysis of trend data for youth crime over the recent period are clear. The number of children who come to the attention of the youth justice system has fallen sharply since 2008 as the volume of detected youth offending has contracted. These developments are largely explained by a decrease in the number of children who enter the system for the first time; a first time entrant (FTE) being defined as a child who receives his or her first substantive youth justice disposal¹. Over the same period, there has been dramatic reduction in the use of custody and a corresponding decline in the population of the secure estate for children and young people. In summary, the youth justice system has contracted rapidly.

It is important to recognise, however, that such statistical indicators do not necessarily reflect in any straightforward fashion changes in the volume or seriousness of children's criminal activity. Rather, that behaviour is mediated through shifts in legislation, policy and practice which may, in themselves, have a significant impact on how many children are processed through formal youth justice mechanisms. Nor should it be assumed that changes in policy

¹ Ministry of Justice (2014) Statistical notice: methodological changes to the calculation of statistics on first time entrants to the criminal justice system in England and Wales. London: Ministry of Justice. Substantive youth justice disposals include: convictions, youth cautions, youth conditional cautions and, prior to their abolition in the Legal Aid, Sentencing and Punishment of Offenders Act 2012, reprimands and warnings

and practice constitute evidence-led responses to the nature and extent of children's law-breaking; indeed, they may more commonly be explained as a function of political or financial concerns.²

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.³ It welcomes the trends described in the first paragraph of this paper as representing a movement towards a more child-friendly response to children who break the law which also accords with the evidence base. At the same time, given the above caveats about how such developments are to be interpreted, the NAYJ considers that an understanding of the context in which the contraction of the youth justice system has taken place is a pre-requisite for assessing the extent to which the delivery of services to children in trouble is tending in a more (or less) child friendly direction and whether policy shifts are determined primarily by a commitment to an evidence informed, principled, values base or by pragmatic and political considerations.

For example while the patterns shown in the data suggest that children are increasingly diverted from formal sanctions and that incarceration is used more sparingly than hitherto, the organisation remains concerned that responses to children who offend continue to be tempered by an underlying punitive ethos that might render recent gains vulnerable to reversal. There is evidence too that system-contraction might be driven at least in part by financial imperatives, associated with a perceived need for austerity, rather than by a considered assessment of how the wellbeing of children in conflict with the law might best be promoted. Moreover, political considerations, in the shape of an ideological commitment to privatisation of large parts of the public sector and the introduction of market mechanisms - such as payment by results - have inevitably impacted on the youth justice landscape.⁴

This briefing paper provides an overview of what is known about the nature and prevalence of youth crime in England and Wales, drawing on the latest available data. It aims to offer a contextual analysis of trends suggested by the figures that facilitates an assessment of the treatment of children who come to the attention of the youth justice system, considering the extent to which responses take adequate account of children's rights and best interests.⁵ 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.⁶

• Assessing trends in youth crime

As noted previously, the available data appear to indicate a significant recent fall in youth crime. Between 2008 and 2013, the number of children made subject of

2 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; Bateman, T (2014 forthcoming) 'Where has all the youth crime gone? Youth justice in an age of austerity' in *Children and Society* 28(5)

3 NAYJ (2011) *For a child friendly youth justice system*. London: NAYJ

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 Unless indicated otherwise, all figures cited in the paper are derived from either: Ministry of Justice/ Youth Justice Board (2014) *Youth Justice statistics 2012/13*, London: Ministry of Justice (and supplementary tables); or Ministry of Justice (2014) *Criminal Justice statistics 2013 - England and Wales (and supplementary tables)*, London: Ministry of Justice

6 The Criminal Justice Act 1991 extended the jurisdiction of the youth court to include young people aged 17 years. The legislation was implemented during 1992. Prior to this statutory change, 17-year-olds were considered to be adults for criminal justice purposes, rendering problematic any comparison with earlier years

a substantive youth justice disposal⁷ for an indictable offence⁸ reduced by 65%. However, there are well known problems with ascertaining the extent of criminal activity by young people since each of the available measures has its limitations.⁹ For reasons outlined more fully below, the figures cannot necessarily be taken at face value.

Measures of crime and what they tell us

The Crime Survey for England and Wales (CSEW) (known until 2012 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 twelve months.¹⁰ It was first conducted in 1981 and until 2001 results were published at two yearly intervals; from the latter date, however, the survey became 'continuous'.¹¹ The most recent figures relate to the year ending December 2013. In recent years, victimisation data have been published alongside figures for crime recorded by the police in a single volume.¹²

The CSEW has notable exclusions. It reports on respondents' experience of personal crime and offences against the household of which they are part. Accordingly, 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; it does not attempt to cover cyber crime – which is likely to be an expanding, and disproportionately unreported, area of criminal activity;¹³ and persons living in institutions or other forms of non-household accommodation 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.

Despite these limitations, the CSEW is regarded as a good indicator of personal and household crime, not least because it draws on a large sample: during 2013, for instance slightly more than 35,000 respondents aged 16 years and older¹⁴ and 3,000 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 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 7.5 million offences were committed against adults during 2013. This represents a fall of 15% over the previous year, the biggest ever annual reduction in the history of the survey. Victimisation was substantially lower than at any point since the survey began in 1981.¹⁵ The data suggest that crime peaked in

7 Substantive youth justice disposals comprise of youth cautions, youth conditional cautions, reprimands and final warnings (until their abolition in 2013) and convictions

8 Indictable offences are more serious matters that, in the case of an adult, can be tried in the crown court

9 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 (2014 forthcoming) 'Trends in detected youth crime and contemporary state responses' in Goldson, B and Muncie, J (eds) *Youth crime and justice*. London: Sage

10 The change of name better reflects the scope of the survey which did not routinely generate data for British jurisdictions other than England and Wales

11 Office for National Statistics (2012) *The 2012/13 Crime Survey for England and Wales: volume 1- technical report*. London: ONS

12 The latest edition of this publication is: Office for National Statistics (2014) *Crime in England and Wales, year ending December 2013*. London: ONS

13 Office for National Statistics (2014) *Discussion paper on the coverage of crime statistics*. London: ONS

14 This represents a reduction from 45,000 in 2012. See Office for National Statistics (2012) *op cit*

15 In 1981, CSEW estimated 11.1 million episodes of criminal victimisation, almost one third higher than the volume of crime in 2013

1995 at 19.1 million offences; in the subsequent period, the number of estimated offences has fallen in most years, leading to an overall decline of more than 60%.

As indicated above, the CSEW has only recently collected data on the criminal victimisation of children below the age of 16 years and trend information is not accordingly available over the longer term. Nevertheless, early indications might be thought to suggest that such victimisation is also falling. While there has been some fluctuation over the period, the number of crimes experienced by children aged 10-15 years fell by more than 20% between 2010 and 2013, as indicated in table 1.

Table 1
CSEW offences experienced by children aged 10 to 15 years

Year	Number of offences 0000s	Didifference over previous years
2009/2010	1,030	
2010/2011	893	-13.3%
2011/2012	1,023	+14.6%
2012/2013	821	-19.7%

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.¹⁶ 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 then reflected in an increase in the number of incidents recorded by the police up to 2003/4: the Office for National Statistics attributes those rises to more stringent recording practice as a consequence of the revised guidelines.¹⁷ 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 3.1 million in 2013, a reduction of almost one third.¹⁸

In combination, the two measures – the CSEW and police recorded crime – suggest that offending has been falling since at least the mid-1990s. More recently, the police have begun to record incidents of anti-social behaviour as a distinct category. While some concerns over the quality of the data have been acknowledged,¹⁹ these figures also indicate a clear downward trend, a decline of 44% between 2007/8 and 2013.²⁰

¹⁶ The most common reasons cited by victims for not reporting offences to the police are: 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

¹⁷ Office for National Statistics (2014) *Crime in England and Wales, year ending December 2013*. London: ONS

¹⁸ Ibid

¹⁹ HM Inspectorate of Constabulary (2012) *The crime scene: a review of police crime and incident reports*. London: HMIC

²⁰ Office for National Statistics (2014) *Crime in England and Wales, year ending December 2013*. London: ONS

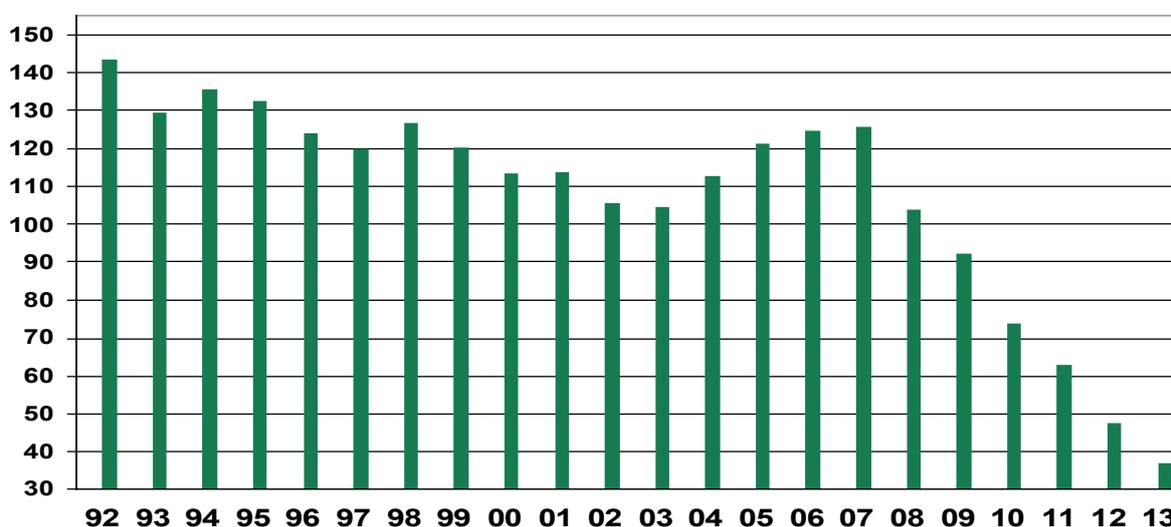
Detected youth crime: substantial falls over an extended period

The extent and direction of youth offending cannot be inferred directly from the data presented in the previous section of the paper since neither police recorded crime nor the CSEW captures information pertaining to those responsible for offending. More specifically the age of a perpetrator can only be ascertained where he or she is apprehended; as a consequence, the only consistent figures available for youth crime relate to offences that have been detected. These data however indicate a sustained and long-term contraction in the volume of youth crime over more than two decades.

As shown in figure 1, statistics for detected youth offending demonstrate, with some fluctuation, a pattern of decline since at least the early 1990s.²¹ During 2013, 36,738 children received a substantive disposal for an indictable offence compared with 143,600 in 1992, a reduction of more than 74%.²²

Figure 1

Children cautioned, reprimanded, warned or convicted of an indictable offence: 1992-2013 (thousands)



Figures for detected offending inevitably understate the extent of children's lawbreaking for a number of reasons. First, a considerable proportion of offending is not reported. In 2010/11, just 38% of offences revealed by the *British Crime Survey* were notified to the police.²³ Second, where offences are reported, detection rates remain low: during 2012/13 for instance, just 29% of robberies and 16% of domestic burglaries were 'cleared up'.²⁴ Such processes of 'attrition' mean that figures for detected youth crime do not offer a comprehensive reflection of children's underlying offending behaviour.

Nonetheless, a failure to apprehend children who break the law cannot, on its own, 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

21 In fact, such figures suggest that youth crime was also falling throughout the 1980s but, for reasons outlined earlier in the briefing, comparison with earlier years is problematic

22 Figures derived from the relevant editions of *Criminal Statistics England and Wales* to 2009 and the renamed (and modified) series *Criminal Justice Statistics, England and Wales* to 2013

23 Parfremment-Hopkins, J (2011) 'Extent and trends' in Chaplin, R, Flatley, J and Smith, K (eds) *Crime in England and Wales 2009/10*. London: Home Office *op cit*. Later editions of *Crime in England and Wales* does not report on this issue

24 Smith, K, Taylor, P and Elkin, M (2013) *Crimes detected in England and Wales 2012/13*. Home Office statistical bulletin 2/13. London: Home Office

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 2004/05 to 2012/13, the proportion of offences cleared up by the police rose again, by 5.5 percentage points. Indeed, in the latter year, the detection rate was the highest, at 28.9%, since the introduction of the National Crime Recording Standard in April 2002.²⁵ One might accordingly have anticipated an increase in detected youth offending over that period; in the event, it fell by almost 70%. 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 2004.²⁶ Given that children's self-reporting, adult victimisation studies and police recorded crime all point in the same direction, it would appear probable that the reduction shown in the figures for youth detected offending reflects a genuine decline. Moreover, although data have only been available since 2009/10, the fall in the number of offences committed against 10-15 year-olds might be thought particularly significant since children in this age range are more susceptible to being victims of personal crime than adults; young people tend to commit offences against others close to their own age, and there is a significant overlap between victimisation and perpetration among children.²⁷ Falling youth victimisation might therefore be considered a strong indicator of declining youth offending.

Understanding patterns of detected youth crime

If the scale of the decrease in detected crime and the contextual evidence provide good grounds for concluding that there has been a general reduction in criminal activity by children over the past two decades, analysis also suggests that other factors have influenced the trends shown in figure 1. Three features stand out.

- 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.
- 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. As discussed in the introductory section of this paper, that decline has been sustained in the ensuing period.

²⁵ Ibid

²⁶ 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

²⁷ Wood, M (2005) *The victimisation of young people: findings from the Crime and Justice Survey 2003*. Findings 246. London: Home Office. See also Anderson et al (2010) *op ci*

It is intuitively implausible that the abrupt oscillations since 2003 simply mirror changes in children's offending behaviour, since fluctuations of that magnitude over such a short time period are inherently unlikely. Self-report surveys, moreover, do not suggest a sharp escalation in youthful law breaking 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.²⁸ The latest sweep of the same survey suggests that there was a continuation of this trend during 2009, but the decline reported is significantly less pronounced than the 11% fall in detected offending for that year.²⁹

As argued in previous papers in this series, the NAYJ considers that a convincing case can be made that the anomalous rise, and subsequent fall, in substantive disposals shown in official statistics are both largely a consequence of changes in police practice to accommodate changing performance indicators.³⁰ 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'.³¹ Consistent with New Labour's determination to appear tough on crime,³² the indicator required a growth in annual sanction detections of almost a quarter million by March 2008 against a March 2002 baseline.³³ The target was met a year early but this achievement does not appear to have reflected any improvement in police detection,³⁴ since there was no corresponding rise in the proportion of offences reported to the police that were cleared up. Rather, the growth in sanction detections was a function of formal disposals being imposed for incidents that would previously have attracted an informal response.³⁵ The introduction of a government target thus led to net-widening, a phenomenon whereby increasingly minor forms of misdemeanour are drawn into the ambit of the criminal justice system.³⁶

The new target applied both to adults and children but it had a disproportionate impact on the latter population since 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 'give a second chance' to those who have yet to attain adulthood. As a consequence, there was a greater potential for police practice with children to alter to accommodate the target by shifting towards a greater use of formal responses. 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 particularly adversely affected. These included younger children, girls, and those apprehended for petty transgressions.³⁷ The introduction of the sanction detection target accordingly resulted in the unnecessary criminalisation of large numbers of children.

The target was justly criticised because of this tendency to inflate the use of formal criminal sanctions for minor offending.³⁸ Perhaps more significantly, the burgeoning workloads associated with the rapid rise in the numbers of children coming into

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

29 Anderson, F *et al* (2010) *op cit*

30 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

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

32 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

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

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

35 Bateman, T (2008) *op cit*

36 Kelly, P (2008) 'Net-widening' in Goldson, B (ed) *Dictionary of youth justice*. Cullompton: Willan,

37 Bateman, T (2008) *op cit*

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

the youth justice system proved unsustainable. Although a focus on increasing sanction detections accorded with New Labour's philosophy of early criminal justice intervention, pragmatic considerations ensured that the performance measure was not renewed.³⁹ In 2008, in the *Youth Crime Action Plan*, the government moved to adopt a different, and in the view of the NAYJ preferable, indicator that had precisely the opposite dynamic to the one it had replaced. The new measure required a reduction in the number of children entering the youth justice system for the first time (the initial target was to effect a decline in first time entrants of 20% by 2020).⁴⁰ The measure has subsequently been retained by the coalition government as one of its three high level outcomes for youth justice.⁴¹

If the sanction detection target was net-widening, promoting the criminalisation of minor delinquency, the indicator which replaced it had a converse impetus, 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 suddenly replaced by a focus on diversion from the formal mechanics of the criminal justice system of children who had not previously received a youth justice disposal. While unsustainable workloads were, as suggested above, a consideration in this sharp U-turn, it is hard to ignore the financial context in which the shift occurred: 2008 was also the year that economic crisis hit the UK economy. Net-widening was an unnecessary expense increasingly in tension with developing austerity in the public sector.⁴²

The new target had an immediate impact, and like its predecessor, was 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 2,

Table 2

First time entrants to the youth justice system: 2000/01 to 2012/13

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
2012/13	27,848

39 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

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

41 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

42 Bateman, T (2014 forthcoming) 'Where has all the youth crime gone? Youth justice in an age of austerity' in *Children and Society* 28(5)

the number of first time entrants rose between 2002/3 and 2006/7 by almost one third in response to the sanction detection target; by contrast, as the new performance measure kicked in, the trajectory reversed and between 2006/7 and 2012/13, the number of first time entrants fell by almost three quarters.

First time entrants contribute a sizeable proportion of the population that comes into contact with the youth justice system (accounting for almost half of indictable offences). There is accordingly a close relationship between the former and the level of recorded youth crime and the decline in FTEs was accompanied by a corresponding reduction in the overall volume of detected youth crime described earlier in the paper.

The impact of shifting responses to youth crime

The above analysis suggests that, while there are good reasons to conclude there has been a long term fall in the underlying level of youth crime, fluctuations in detected youth offending since 2003 are best explained as the predictable outcome of the successive implementation of two contrasting central government targets, rather than reflecting changes in children's behaviour.⁴³

But if the volume of detected youth offending can be so readily influenced by shifts in practice on the part of criminal justice agencies, themselves a response to performance indicators, the question as to the impact of different policies on children in trouble is inevitably posed. The election of New Labour in 1997 was associated with a focus on early intervention, through the use of formal sanctions, to '*nip offending in the bud*',⁴⁴ which acted to reinforce an already punitive and interventionist climate towards children who broke the law, leading to increases in the number who were prosecuted even while overall detected offending declined.⁴⁵ The sanction detection target can legitimately be construed as a logical extension of that focus, with a corresponding rise in the criminalisation of children. The expansion in the figures for detected crime led to unhelpful media reporting, suggesting that youth crime – and particularly offending by girls (an issue considered in more detail below)⁴⁶ – was spiralling out of control. This in turn exacerbated a well attested process of the demonisation of young people,⁴⁷ encouraging a cycle of intolerance.⁴⁸

From the perspective of individual children, however, this effective lowering of the threshold for entry into the formal criminal justice system was potentially damaging since a criminal record represents a considerable constraint on future prospects.⁴⁹ There is a wider social concern too. A considerable body of evidence confirms that early induction into the youth justice system is 'criminogenic'; ie it increases the risk of recidivism.⁵⁰ Net-widening provisions emanating from a determination to appear 'tough' on law and order, such as the sanction detection target, are thus both inherently unfair and likely to increase overall levels of victimisation.

Conversely, strategies of maximum diversion, wherein youthful misbehaviour is met

43 House of Commons Justice Committee (2013) *Youth justice*. Seventh report of session 2012-13. London: House of Commons

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

45 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)

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

47 Wisniewska, L and Harris, J (2006) *The voice behind the hood: young people's views on anti-social behaviour, the media and older people*. London: YouthNet

48 NAYJ (2011) *op cit*

49 Prince's Trust (2007) *The cost of exclusion: counting the cost of youth disadvantage in the UK*. London: Prince's Trust

50 McAra, L and McVie, S (2007) 'Youth Justice? The impact of system contact on patterns of desistance from offending', *European Journal of Criminology* 4(3)

wherever possible by an informal response, 'are associated with desistance from serious offending'.⁵¹ Such an understanding informed responses to children in trouble during the 1980s which were largely characterised by a philosophy of minimum necessary intervention.⁵² In this sense, the FTE target – which effectively raises the threshold at which formal criminal justice interventions are regarded as necessary – both accords better with the research evidence and is indicative of a more child-friendly system. Indeed, developments since the introduction of the measure might be thought to constitute something of a natural experiment in this regard. If, as New Labour contended in the 1997 White Paper 'No More Excuses',⁵³ a failure to clamp down on early indicators of youth criminality, and widespread use of diversion from the justice system, would encourage further offending, then one would anticipate that any attempt to reduce significantly the number of FTEs could show only short-term gains: children benefitting from such lenience would be more likely to offend in future. One would therefore expect any diminution in FTEs to be limited in time and followed by a subsequent rise as the failure to impose formal sanctions led to an increase in lawless behaviour. The fact that such a dramatic reduction has been sustained over a period of at least six years tends to offer an empirical refutation of the purported benefits of early induction to the youth justice system. Significantly, in this context, detected offending by young adults aged 18-20 has also fallen, with the decline accelerating from 2011 onwards: in 2013, 42,656 offences were attributed to that age group compared with 62,605 in the earlier year, a reduction of 32%. The fall for older adults over the same period has been much less pronounced, at just over 10%. One possible explanation of those figures is that the longer-term deflationary impact of the FTE target is starting to feed through to the adult criminal justice system.

The NAYJ therefore welcomes the decriminalisation of large numbers of young people as a consequence of the FTE measure. However, the organisation remains concerned that the rediscovery of diversion has been largely a pragmatic response to the imperatives of austerity politics rather than an explicit endorsement of the benefits of 'informalism'.⁵⁴ While punitive residues continue to influence youth justice policy, albeit at a much lower level than hitherto, the gains of recent years may be vulnerable to political reversal.⁵⁵

Two further implications of the reduction in detected youth offending merit attention. First, as more minor offending is diverted from the ambit of the formal system, children who remain in it are, on average, likely to have committed more serious offences, have a more extensive offending history, and have experienced higher levels of disadvantage than the youth justice population prior to the changes. For example, in 2006/7 just 2.5% of those receiving a substantive youth justice disposal had 15 or more previous convictions; by 2013, the proportion had risen to 4.6%. This changing profile is significant when assessing the prospects for the reduction in rates of reoffending – one of the three high level targets for youth justice established by the coalition government. This issue is considered in more detail below.

Second, the impact of austerity is also evidenced in the contraction of resources available to work with the remaining, more problematic, group, and to engage in preventative work with children who might otherwise become first time entrants. Between 2007/8 and 2012/13, partnership funding to youth offending teams fell by

51 Ibid

52 Haines, K and Drakeford, M (1998) *Young people and youth justice*. Basingstoke: MacMillan

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

54 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

55 It might be noticed in this context that the Criminal Justice and Courts Bill before Parliament at the time of writing, contains provision that would restrict considerably the use of cautioning for adults

5.4%; the reduction in staffing has been considerably sharper: in 2012, the number of full time equivalent posts within youth offending teams was 63% lower than in 2007.

• **The nature of youth offending**

Most youth offending is relatively minor

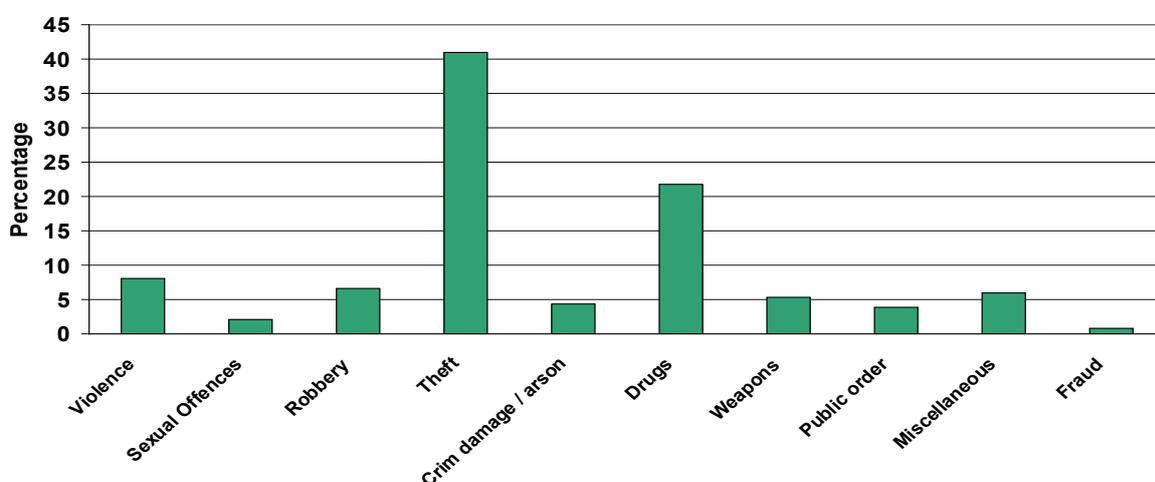
Perhaps inevitably, discussions of youth crime frequently tend to focus on high profile and serious offences, such as gang-related activities, robbery and violence against the person. Public opinion in relation to youth crime, which is frequently considered to be punitive, can be explained in part because it is such offences that first spring to mind when youthful law breaking 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.⁵⁶)

This focus on more serious offending detracts from the fact that the majority of offences committed by young people are directed against property. In recent years, with rising diversion, more minor offences have increasingly been filtered out of the figures for youth detected crime. Nonetheless, in 2013, theft accounted for 41% of all indictable offences leading to a substantive youth justice disposal. At the other end of the scale, very serious offences are rare: for instance, during 2013, just 12 children below the age of 18 years – all boys – were convicted of murder, a further two of attempted murder, and 13 – including one girl – of manslaughter. The volume of homicides committed by persons below 18 years of age fluctuates slightly from year to year, but has been relatively stable over a substantial period. For instance, the combined annual figure for children convicted of murder of manslaughter stood at 38 in 1989, 33 in 1999,⁵⁷ 38 in 2009,⁵⁸ and 25 in 2013.

As shown in figure 2, overall levels of violence against the person remain relatively

Figure 2

Children receiving a pre-court disposal or conviction, by offence type. Indictable offences: 2012



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

57 Figures derived from Nacro (2002) *Children who commit grave crimes*. London: Nacro

58 *Criminal statistics – England and Wales 2009*, supplementary table 5. London: Ministry of Justice

low (8.1% of the total, representing a reduction over the previous two years). Robbery too is relatively infrequent (6.6% of the total) and sexual offences accounted for just 2.1% of all detected youth crime in 2013. While some offences in these categories can be serious, it would be a mistake to assume that they all are. In 2013, 51% of violent offences and 48% of sexual offences attracted a pre-court disposal, indicating that they were of a less serious nature, where the public interest did not require prosecution.⁵⁹ The pattern shown in figure 2, moreover, overstates the gravity of youth crime since the chart excludes summary offences which are less serious than those displayed.

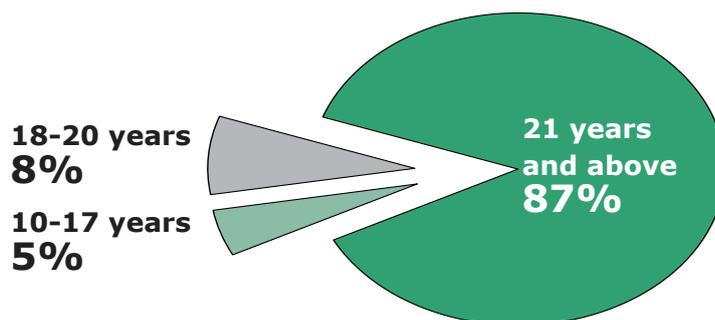
It is also important to note that the majority of serious crimes are not committed by children. In 2013, adults were responsible for 23 times as many murders, nine times as many violent offences, and more than two and a half times as many incidents of robbery, as were children.

Children ‘grow out of crime’

Many children will engage in behaviour that is illegal as part of the process of developing independence and associated risk-taking. A seminal self-report study conducted for the Home Office in 1995, for instance, found that 55% of boys and almost a third of girls admitted that they had committed an offence at some point.⁶⁰ As a consequence, children are more likely to commit offences than their adult counterparts, although the latter are nonetheless responsible for a larger volume of crime because they outnumber the younger population. As shown in figure 3, during 2013, children aged 10-17 were responsible for around one in twenty of all detected offences (summary and indictable). By contrast, 87% of crime was committed by adults aged 21 years and over.

Figure 3

Detected offending by age (indictable and summary offences) – 2013



One of the tenets of youth justice policy and practice during the 1980s was that, left to their own devices, most children who offend will naturally ‘grow out of crime’ as they mature.⁶¹ The idea that crime falls with age has been called ‘one of the few certainties in criminology’.⁶² In developing a rationale for its reforms of the youth justice system associated with the *Crime and Disorder Act 1998*, New

⁵⁹ Figures derived from Ministry of Justice (2014) *op cit*, supplementary tables

⁶⁰ Graham, J and Bowling, B (1995) *Young people and crime*. London: Home Office

⁶¹ Haines, K and Drakeford, M (1998) *op cit*; see also Rutherford, A (1992) *Growing out of crime: the new era*. Basingstoke: Waterside press

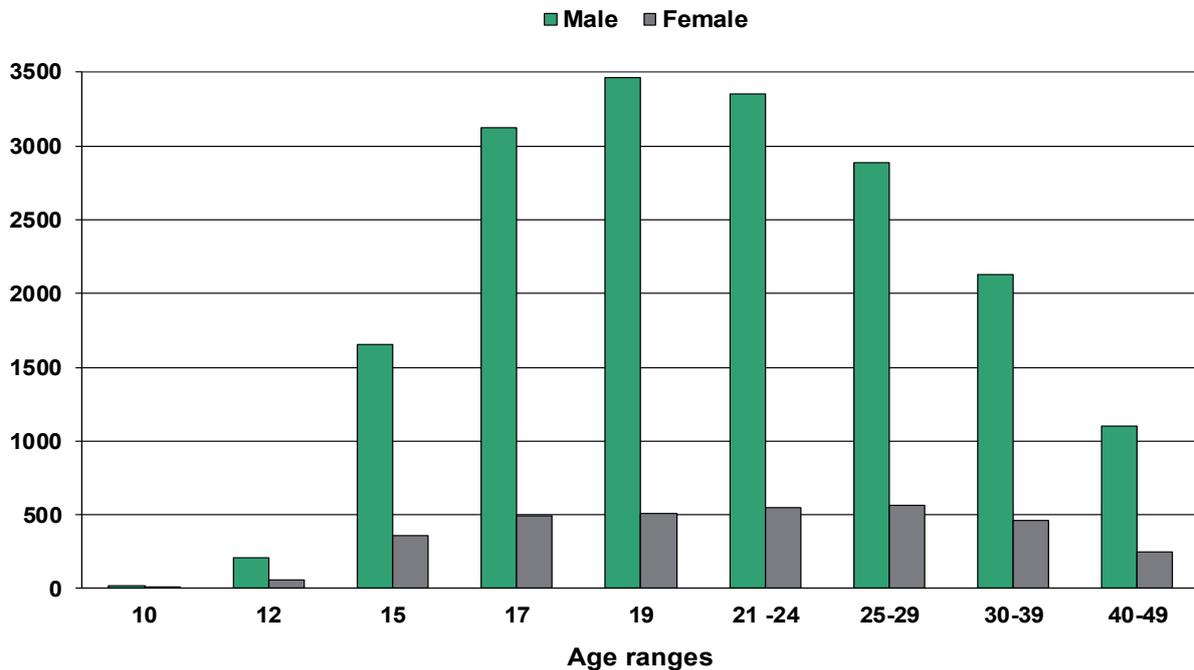
⁶² Farrall, S (2010) ‘A short history of the investigation into the ending of the criminal career’ in *Safer Communities* 9(3): 9-16

Labour distanced itself from this understanding. Drawing on the Audit Commission’s influential 1996 report, *Misspent Youth*,⁶³ the Home Office maintained that ‘*the research evidence shows that [growing out of crime] does not happen*’.⁶⁴ The argument was based largely on the fact that the peak age of offending had risen. To the extent that this was true, it was a consequence of a faster reduction in the number of younger children processed for detected offending, leading to an overall rise in the average age of those appearing in the official data, rather than a failure on the part of older children to give up offending.⁶⁵ 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.

A similar dynamic is associated with the fall in FTEs which, as shown later in the paper, has impacted particularly sharply on younger children, leading to a slight rise in the age at which detected offending is most prevalent: during 2013, the peak age of offending (for indictable offences) was 19 years for males and 21-24 years for females. As argued in due course, the higher figure for females can also be explained as an artefact of the recent contraction of the youth justice system. Nonetheless, as shown in figure 4, offending continues to rise quickly with age before falling sharply in the early 20s.

Figure 4

Detected indictable offences per 100,000 population for selected age groups - 2013



63 Audit Commission (1996) *Misspent youth: young people and crime*. London: the Audit Commission

64 Home Office (1997) *op cit*

65 Bateman, T (2014 forthcoming) ‘Trends in detected youth crime and contemporary state responses’ in Goldson, B and Muncie, J (eds) *Youth crime and justice*. London: Sage

• The characteristics of children in conflict with the law

Children, disadvantage, risk and crime

Criminal behaviour is quite widespread among teenagers from all backgrounds, but most of that illegal activity does not result in a formal youth justice sanction. A recent self-report study for instance found that less than half of young people who admitted offending within the previous twelve months had been caught by the police. Moreover, for this latter group, the most common outcome (28% of cases) was that nothing happened as a consequence of having been apprehended. A further 20% indicated that they had to apologise to the victim.⁶⁶

Joe Yates has pointed out that those children who come to the attention of criminal justice agencies are '*disproportionately drawn from working class backgrounds with biographies replete with examples of ... vulnerability*'.⁶⁷ 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.⁶⁸ Nonetheless, disadvantaged neighbourhoods experience higher risks of crime, anti-social behaviour and victimisation.⁶⁹ Accordingly, '*increased crime [is] disproportionately experienced by [children] in poverty*'.⁷⁰

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, 9.5.⁷¹ 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.⁷²

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, an approach that Jo Phoenix has characterised as '*oppressive welfarism*'.⁷³ Such factors include the twelve domains captured by *Asset*, the current standard assessment tool for the youth justice system (although, as noted below, there are plans to replace this framework with a substantially revised *AssetPlus*).

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,

66 Anderson *et al* (2010) *op cit*. The questions are not framed in a way that indicates whether apologising to a victim involved a formal sanction

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

68 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

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

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

71 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

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

73 Phoenix, 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

albeit that that their options may be constrained by their socio-economic position.⁷⁴ The Youth Justice Board's (YJB) 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.⁷⁵ 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.⁷⁶ In this context, opportunities are missed for more effective forms of supervision underpinned by the establishment of high quality relationships.⁷⁷ 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.⁷⁸

The risk paradigm also involves targeting the supposed deficiencies of individual children and their families rather than understanding children's criminal behaviour as a normalised response to the environment within which they grow up, which itself is shaped by structural factors.⁷⁹ It fails to recognise that risk factors themselves are frequently the '*effects of other social and economic causes*'.⁸⁰ Assumptions that the range of risk factors are of equal weight significantly understates the impact of socio-economic disadvantage. Research 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.'*⁸¹

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 3, 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.⁸²

Table 3

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%

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

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

76 Creaney, S (2014) 'The benefits of participation for young offenders' in *Safer Communities* 13(3)

77 Creaney, S (2014) 'The position of relationship based practice in youth justice' in *Safer Communities* 13(3)

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

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

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

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

82 Knuutila, A (2010) *op cit*

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.⁸³

Despite extensive 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 that 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.⁸⁴

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'. 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 from June 2015.⁸⁵

Age

Given the peak age of detected offending, one would anticipate that children within the youth justice system are largely concentrated towards the top of the youth justice age range. In 2013, children aged 16 and 17 years accounted for almost 62% of those receiving a formal pre-court disposal or conviction for an indictable offence. Conversely, less than 1% were below the age of 12 years. However, for reasons already considered, 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.

During the latter part of the 1990s and first part of the subsequent decade, the interventionist nature of youth justice policy drew increasing numbers of very young people in the ambit of the formal youth justice system. This tendency was exacerbated by New Labour's abolition of 'doli incapax' in 1998, a legal principle that had afforded a measure of special protection to children over the age of criminal responsibility but below the age of 14 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. 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.⁸⁶

⁸³ Creaney, S (2013) 'Beyond pre-emptive criminalisation: towards a child-friendly youth justice' in *Safer Communities* 12(3)

⁸⁴ Ministry of Justice (2012) *Youth Justice statistics 2010/11*. London: Ministry of Justice

⁸⁵ Youth Justice Board (2014) AssetPlus - Assessment and Planning Interventions Framework at: <http://www.justice.gov.uk/youth-justice/assessment/assetplus>, accessed 3 July 2014

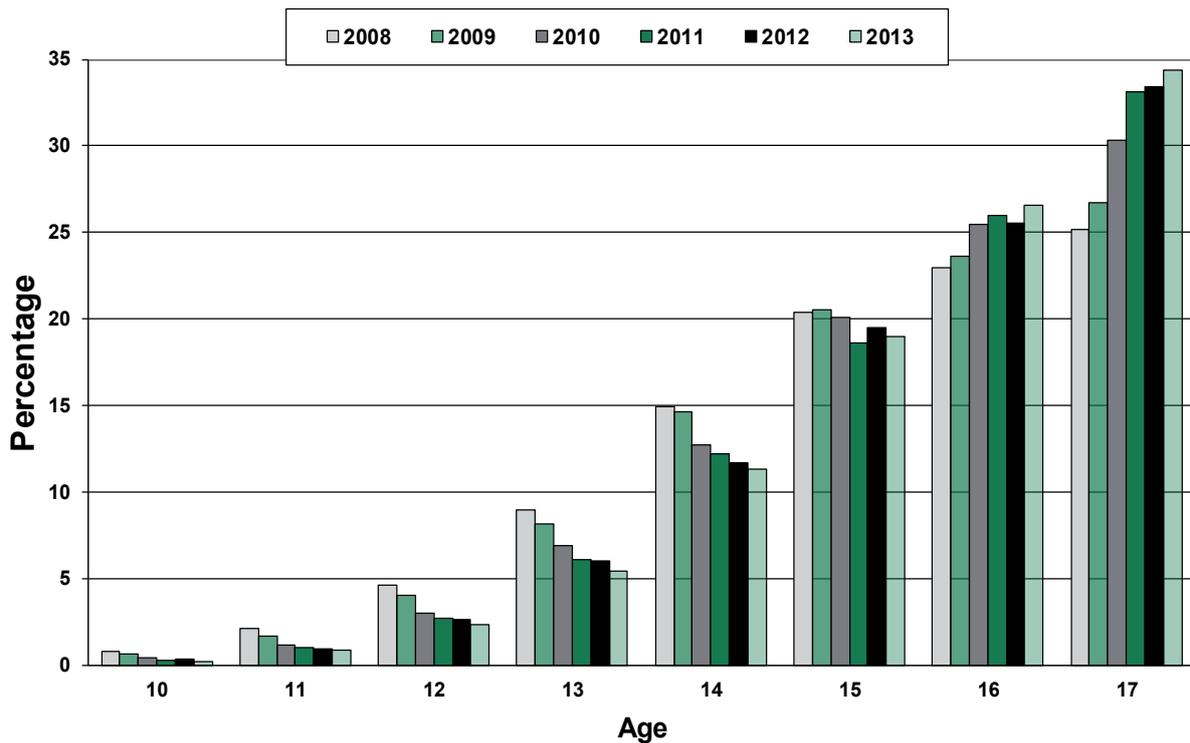
⁸⁶ Home Office (2001) *Criminal statistics: England and Wales 2000*. London: The Stationery Office. Criminal Statistics do not provide distinct figures for 10-13 year olds, those most directly impacted by the abolition of doli incapax

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, whereas the equivalent figure for those aged 15-17 years was 20%.

Conversely, 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 2013, detected offending attributed to children aged 10-14 years fell by 83%, 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 remains 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 other European jurisdictions. The United Nations Committee on the Rights of the Child has consistently criticised the United Kingdom in this regard, indicating that 12 years is the absolute minimum acceptable age in order to comply with international

standards of children's human rights.⁸⁷ The reduction in the number of children in the lower age ranges formally processed by the justice system makes reform in this regard appear increasingly sensible. The NAYJ considers that the age of criminal responsibility should be raised to 16 years in line with the age of consent.⁸⁸

Gender

If, as noted previously, the age-crime curve represents one of the few certainties in criminology, the lower level of female offending is another. This pattern is reflected in the fact that girls have been consistently less likely than boys to come into contact with the youth justice system and have tended to commit less serious offences and grow out of crime more successfully and at a lower age.⁸⁹ At the same time, there is evidence that girls in conflict with the law are significantly more vulnerable than their male counterparts.⁹⁰ The combination of these two features can prove problematic for those involved in the youth justice system since assessments based on risk factors tend to over-predict risk in girls, sometimes leading to higher levels of intervention than is warranted by their offending.⁹¹

In spite of this longstanding pattern, there appears to be a common perception that girls' offending is a bigger problem than hitherto.⁹² That perception is not supported by the data – in 2013, detected offending by girls was 83% lower than in 1992 – but has been sustained by 'recurrent panics' about young females increasing involvement in delinquent activity.⁹³ The sanction detection target played a significant role in generating negative media comment in this regard that depicted an 'unprecedented crime wave among teenage girls'⁹⁴. From 2003 and 2007, coinciding with the introduction of the performance indicator, there was a pronounced rise in detected girls' offending that encouraged sensationalist headlines. Significantly, as detailed in figure 6 on page 19 (which shows changes in girls' and boys' offending from a 2003 baseline), this increase was considerably sharper than that for boys, at 35% compared to 16%, suggesting that the target had a greater net-widening impact on the former population. This gendered pattern is readily explained by the fact that the more limited, less serious, nature of girls' offending (and the persistence of paternalistic attitudes) had been associated with a higher use of police discretion to deal informally with female behaviour; the scope for increasing the use of formal sanctions was accordingly more extensive in the case of girls.⁹⁵

As the first time entrants target began to kick in, there was a marked decline in detected offending for both sexes, but that for girls was substantially faster, as the logic of the old indicator was superseded by a reverse dynamic. In 2013, the level of girls' detected offending was 83% below that at the highpoint of 2003; the equivalent figure for boys was 67%. This dramatic fall did not however garner as much press attention as the preceding rise.⁹⁶ This same process explains why the peak age of female offending is higher in spite of evidence that girls grow out of crime at a younger age. As younger girls in particular have increasingly been

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

88 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

89 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

90 Khan, L, et al (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

91 Bateman, T, Melrose, M and Brodie, I (2013) *op cit*

92 Sharpe, G (2012) *op cit*

93 *Ibid*

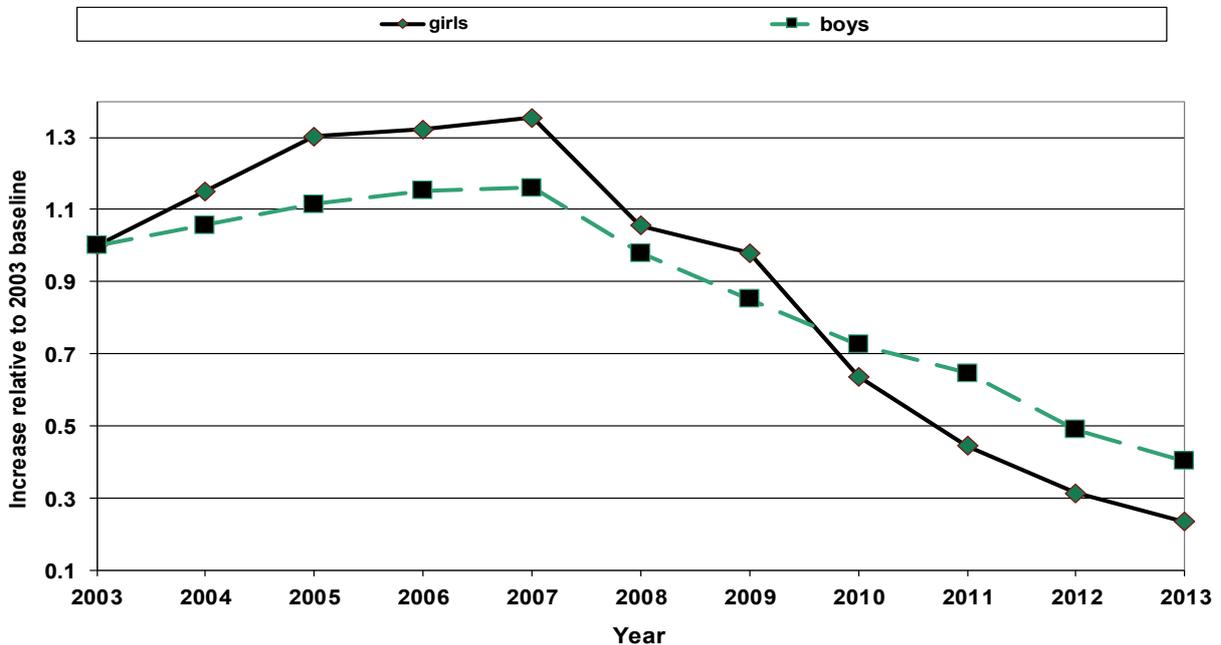
94 Daily Telegraph, 10 May 2008, cited in Sharpe, G (2012) *op cit*

95 Nacro (2008) *Responding to girls in the youth justice system*. London: Nacro

96 Sharpe, G (2012) *op cit*

Figure 6

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



diverted from formal sanctions, the average age of those within the justice system has inevitably risen.

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.⁹⁷ It is less commonly appreciated 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 2012/13, the proportion of those supervised by youth offending teams who are recorded as white has fallen from 88% to 81% with a corresponding rise in the BME caseload from 12% to almost 16%, albeit with a slight reduction in the most recent year. 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 4 on page 20, in 2012/13, black and mixed heritage children were particularly overrepresented among those receiving custodial sentences: while black/black British children made up 8.1% of the youth offending population, they accounted for almost one in six of those receiving a custodial sentence and nearly one third of those subject to long term detention of two years or longer. Although these figures are disturbing they represent something of an improvement over the previous year.

⁹⁷ 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 4

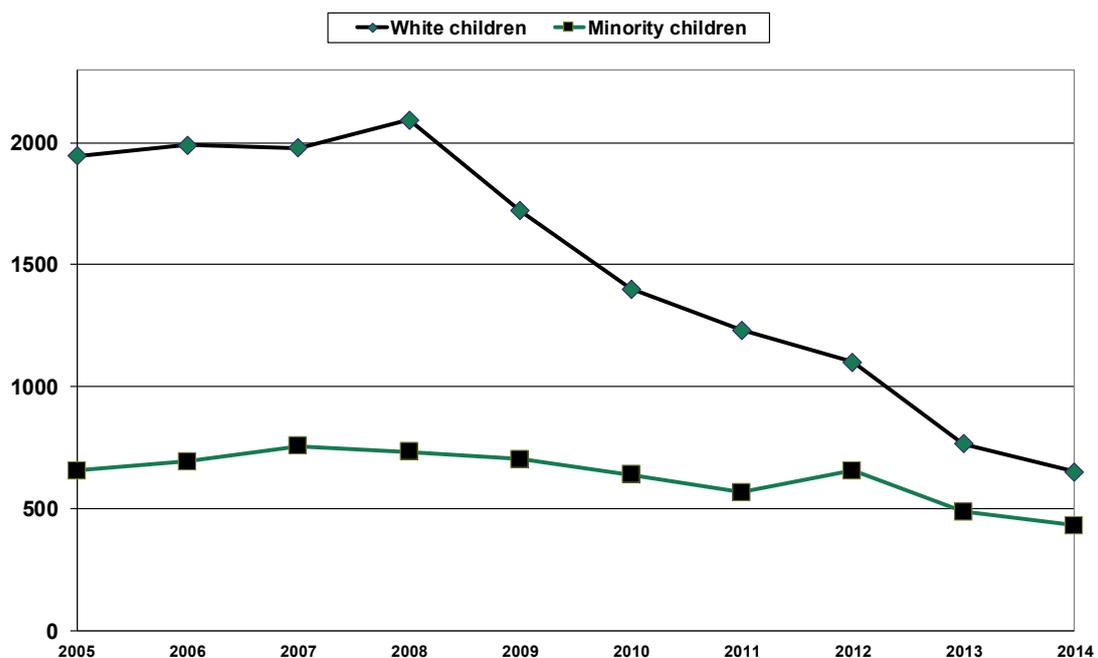
Representation of BME groups in the general under 18 population and at various stages of the youth justice system: 2012/2013

	White	Asian / Asian British	Black / Black British	Mixed heritage
Under 18 population (2011)	79.6%	9.2%	4.7%	4%
Youth offending population	81.4%	4.3%	8.1%	3.5%
Court population	78.7%	4.7%	10.1%	4.3%
Custodial sentences	68.9%	6.5%	16.8%	6.3%
Long term detention ¹	51.7%	8.9%	30.6%	6.3%

Since the onset of the contraction of the youth justice system, there has been a significant reduction in the number of children consigned to penal custody, an issue discussed in greater detail later in the paper. For current purposes it is important to acknowledge that the fall in the minority ethnic population of the secure estate for children and young people has been substantially less rapid than that of the white youth population, with the consequence that, as shown in figure 7, the proportion of incarcerated children from a minority ethnic background has grown. In April 2005, black and minority ethnic children accounted for less than one in four of those in the secure estate (24.4%); by April 2014 that had risen to more than one in three (38.9%).

Figure 7

Population of the secure estate by ethnicity: 2005-2014 (April)



No doubt, discrimination in various guises helps to explain the statistics.⁹⁸ Research conducted for the YJB in 2004, for instance, established that a mixed heritage boy was 2.7 times more likely to be prosecuted than a white boy with a similar case characteristics; and that a black boy's chances of receiving a custodial sentence of longer than one year were almost seven times those of a white counterpart for a similar offence.⁹⁹ Nonetheless, a 2007 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.¹⁰⁰ More recent research has confirmed that black and mixed heritage children within the youth justice system have significantly higher levels of need than their white counterparts.¹⁰¹

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. The NAYJ is also concerned that other groups of children – including gypsies and travellers, unaccompanied asylum seekers and looked after children – are also overrepresented among those who come to the attention of criminal justice agencies. The lack of consistent data however means that less attention is paid to such groups.

• At the gateway to the system

Diversion

The NAYJ believes that the criminalisation of children should be minimised by 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'.*¹⁰²

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'.¹⁰³

This policy had significant practical consequences for children in conflict with law. As Roger Smith notes:

*'1. Fewer young people were the subject of formal interventions by the police;
2. a much greater proportion of those processed were being cautioned;
3. substantially fewer in number were being prosecuted...'*¹⁰⁴

⁹⁸ See for instance, May, T, Gyateng, T and Hough, M (2010) *Differential treatment in the youth justice system*. Equality and Human Rights Commission

⁹⁹ Feilzer, M and Hood, R (2004) *Differences or discrimination*. London: Youth Justice Board

¹⁰⁰ House of Commons Home Affairs Committee (2007) *Young Black people and the criminal justice system*. London: The Stationery Office

¹⁰¹ 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

¹⁰² Home Office (1985) *The cautioning of offenders*. Home Office circular 14/85. London: Home Office

¹⁰³ Ibid

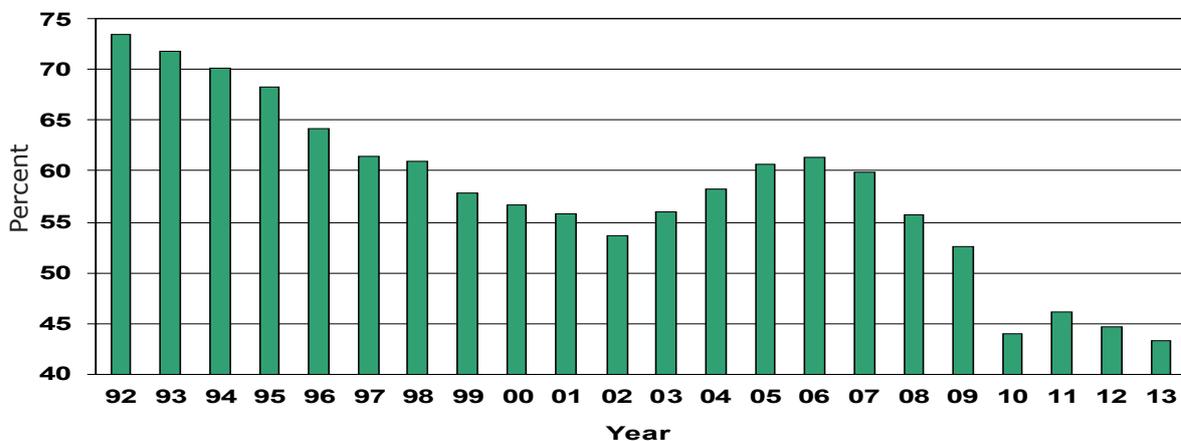
¹⁰⁴ Smith, R (2014) *Youth justice: ideas, policy, practice*. Abingdon: Routledge

The commitment to diversion waned rapidly from the early 1990s onwards, as part of the process of repoliticising youth crime that has subsequently become known as the 'punitive turn'.¹⁰⁵ Revised guidance discouraged the use of cautions for serious offences and noted that multiple cautioning could undermine confidence in pre-court disposals.¹⁰⁶ 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. The legislation 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. One commentator has argued in this context that 'New Labour was so bent on intervention that ... the notion of diversion had been completely forgotten'.¹⁰⁷

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.¹⁰⁸ Nonetheless, the legislative change acted to reinforce a trend of increased prosecution. As shown in figure 8, between 1992 and 2002, the rate of diversion for indictable offences fell from almost three quarters (73%) to just over half (54%).¹⁰⁹

Figure 8

Rate of diversion 1992-2013: indictable offences



The chart reflects the impact of the sanction detection target, which can be seen 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 increased use of pre-court measures is accordingly evidence of net-widening rather than demonstrating that children were less likely to be prosecuted.

105 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)

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

107 Robinson, A (2014) *Foundations for youth justice: positive approaches to practice*. Bristol: Policy press

108 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)

109 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

From 2007, as the need to expand sanction detections came to have less impact on police decision making, the chart becomes more difficult to interpret. It suggests that there has been a reversion to the earlier trend of falling diversion. But whereas during the 1990s such a trajectory was indicative of an increased tendency to prosecution, in the more recent period, it is an artefact of a greater use of informal responses to youth offending that are not captured in the official data. The dramatic reduction in first time entrants during this latter period has been achieved, in large part, by dealing informally with children who would otherwise have received a reprimand, final warning or, more recently, a caution; between 2007 and 2013, the number of formal pre-court disposals imposed for indictable offences fell by 75% while convictions decreased by a more modest 45%. As a consequence the ratio of the former to the latter has fallen – but the lower rate of diversion is not associated with increased prosecution.

The focus on reducing the numbers of children entering the youth justice system for the first time necessitated consideration of the possibilities of dealing with children who commit minor offences without recourse to formal criminal sanctions. It was accordingly accompanied by a rediscovery of diversion in its widest sense – diversion from the system, rather than simply diversion from court. A range of informal pre-court mechanisms have been introduced and, according to the House of Commons Justice Committee, areas that have adopted alternative means of case disposals have achieved large reductions in FTEs.¹¹⁰ The new measures include the following:

- *Youth restorative disposals (YRDs) or community resolutions* (as they are now more commonly known) were piloted in eight police force areas between 2008 and 2009 in order to provide police with 'more discretion with a quick and effective alternative means of dealing with low-level, anti-social and nuisance offending'.¹¹¹ Usually delivered by officers on the street shortly after the incident, they are intended to contain a restorative element so that both the child and his or her victim are required to agree to the proposed course of action. While an evaluation for the YJB noted that areas where YRDs were piloted registered a contemporaneous fall in reprimands, the authors were wary of attributing that fall to the introduction of YRDs since non-pilot areas also experienced substantial declines in FTEs. They concluded that the disposal was often imposed for incidents where previously nothing might have happened. More than half of YRDs were issued for theft and a verbal apology was the most frequent outcome. Victim satisfaction was high at over 80% in most areas, suggesting the public may be less punitive than is sometimes supposed. Although youth offending teams were usually informed of the outcome, their involvement in the process was generally minimal.¹¹²
- 'Triage' was introduced by New Labour's *Youth crime action plan* to a number of pilot areas. According to the Department of Education there were 55 triage schemes in operation in England at January 2011.¹¹³ Although schemes operate in a variety of ways, the shared purpose is to provide the police with an assessment – usually conducted by the YOT – which can, in appropriate cases allow the diversion of low level cases away from a formal criminal justice disposal and permit the recording of 'no further action'.¹¹⁴

¹¹⁰ House of Commons Justice Committee (2013) *op cit*

¹¹¹ Rix, A, Skidmore, K, Self, R, Holt, T, and Raybould, S (2011) *Youth restorative disposal process evaluation*. London: Youth Justice Board

¹¹² *Ibid*

¹¹³ Home Office (2008) *op cit*

¹¹⁴ Institute for Criminal Policy Research (2012) *Assessing young people in police custody: an examination of the operation of Triage schemes*. London: Home Office

There are three levels of triage, although not all are available in every area. Level 1 involves children committing low level offences, usually for the first time, and attempts to divert them from the justice system, frequently through the incorporation of restorative interventions. Level 2 involves more serious offending and, following assessment, children are offered a range of supportive intervention, provided or accessed by the YOT, although this does not always result in a non-criminal justice outcome. Level 3 involves higher level offending and generally leads to pre-court disposal or prosecution. During the pilot stage, most areas focused on level one triage, dealing mainly with children with no antecedent history who had typically committed offences such as theft, criminal damage or low level assaults. While triage areas demonstrated a greater reduction in FTEs than the national figure (28.5% against 23%), those conducting the evaluation were not able definitively to attribute that difference to the scheme since the fall in FTEs had commenced prior to its introduction. Reoffending rates for children subject to triage were also considerably lower at 7% than the national average of 21.3% for FTEs, but limitations of the data, and the lack of a proper control group, did not allow for any firm conclusions to be drawn as to whether this was due to the impact of the intervention. Nonetheless the evaluation concluded that the potential benefits of diversionary mechanisms were more likely to be realised where there was a good working relationship between the police and the YOT.¹¹⁵

Liaison and diversion schemes were piloted in six youth offending team areas from 2008 and aimed to provide enhanced support for children who come to the attention of the youth justice system with mental health and developmental problems, speech and communication difficulties, learning disabilities and other similar vulnerabilities, by referring them to appropriate provision.¹¹⁶ It was intended that assessment by staff at the police station and the provision of such support would, in appropriate cases, function to divert children from criminal sanction. An evaluation found that police commitment to the scheme varied from area to area and that this could impact on the ability of the intervention to divert children referred to it, with some practitioners reporting difficulties with accessing children at the point of arrest. Staff estimates suggested that diversion was achieved in around 20% of cases referred but data limitations meant that this could not be confirmed by the evaluators. However access to the scheme was associated with an '*improvement in the mental health and wellbeing of young people*', particularly in relation to self-harm, depression and anxiety.¹¹⁷

In addition to the above, better known, initiatives, it is clear too that many YOTs have established their own local arrangements designed to improve support to children at the point of arrest. These include for instance the Bureau model in Wales, originally developed in Swansea.¹¹⁸

Where diversion is successfully achieved, outcomes from the above interventions are not reflected in the figures for detected offending, and they accordingly provide alternative options for children who might otherwise become first time entrants, as well as those who have previously received formal sanctions. It is difficult to establish any national figures for the extent of such practices or how many children receive services through such mechanisms. Not all areas have access to the full range of informal options, and the previously cited evaluations confirm that there

¹¹⁵ Ibid

¹¹⁶ 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

¹¹⁷ Ibid

¹¹⁸ For an evaluation of the Swansea model, see Haines, K, Case, S, Davies, K and Charles, A (2013) 'The Swansea Bureau: A model of diversion from the youth justice system' in *International Journal of Law, Crime and Justice* June 2013

is considerable inconsistency of implementation in those areas that do. But it is apparent that the use of non-criminal justice 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 2011.¹¹⁹

In spite of this clear impact, the lack of data is of concern for a number of reasons. First, the absence of any systematic follow up of children who have been successfully diverted through these innovative means represents a missed opportunity to gather further evidence of the benefits of decriminalisation. Second, without such evidence, existing policy that promotes diversion may be more susceptible to challenge in the event that youth crime and justice again become major political issues. Finally, there is currently no national record of the extent, or efficacy, of work being undertaken by YOTs with children at the gateway to the justice system to prevent criminalisation. Given the dramatic falls in detected youth crime, and the continued grip of austerity in the public sector, such services are likely to be vulnerable to cuts in the absence of statistical support for that provision. In the short term, however, it seems likely that this resurgence of informal diversionary activity will continue while reduction in FTEs remains a performance indicator.

The impetus associated with diversion might also offer further scope for using formal pre-court disposals to divert more children from court. *The Legal Aid, Sentencing and Punishment of Offenders Act 2012* (LASPO) provided for the abolition of the restrictive final warning scheme and its replacement by youth cautions and youth conditional cautions with the changes implemented from 8 April 2013.¹²⁰ 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 are available for all children aged 10-17 years.¹²¹ Although it is too early to draw firm conclusions, there is some evidence in the data that the new arrangements are encouraging a use of cautioning in place of prosecution. The number of children convicted during 2013 was 24% lower than that in the previous 12 months; this decline represents a significant acceleration and is larger than the combined fall (18.5%) in the four years from 2008 to 2012.

The NAYJ broadly welcomes these recent developments to divert children from court and the youth justice system as being consistent with the research evidence and representing a significant move towards a more child-friendly approach. At the same time, it is unfortunate 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.¹²² 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

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

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

121 Hart, D (2014) *Pre-court arrangements for children who offend*. London: NAY

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

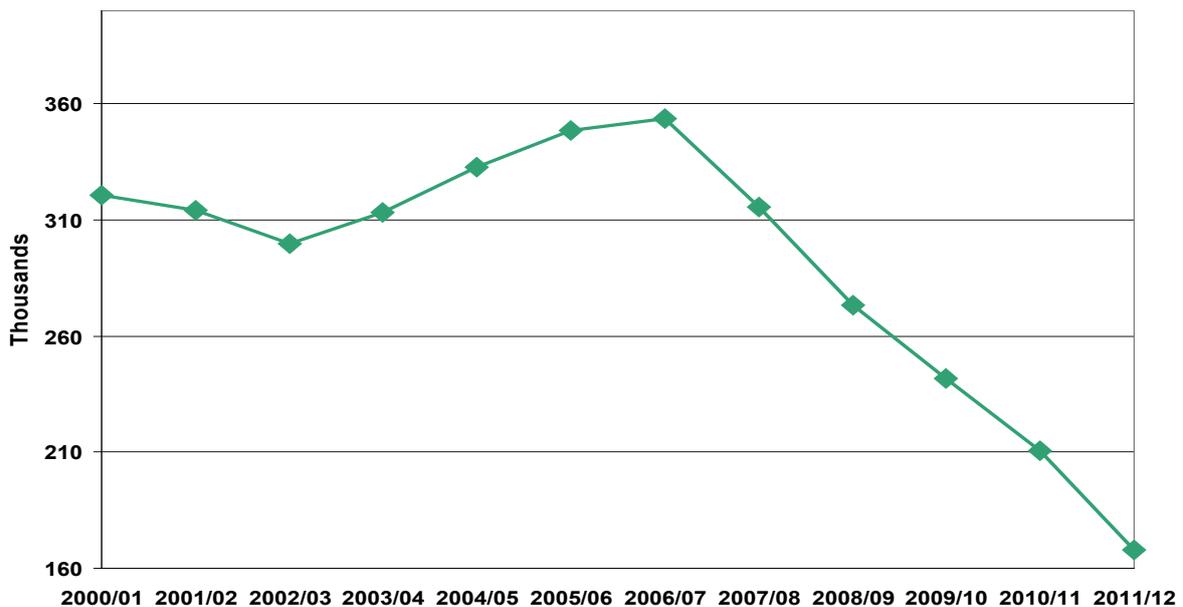
from formal sanctions receive appropriate assistance and support in the longer term,¹²³ since, as the Centre for Social Justice has pointed out, the youth justice system has tended to become 'a backstop, sweeping up the problem cases that other services have failed, or been unable, to address'.¹²⁴ Such extended provision is also a practical prerequisite of being able to argue convincingly for a substantial rise in the age of criminal responsibility.¹²⁵

Children and the police

Part of the explanation for the fall in detected youth offending is that fewer children are arrested by the police. As demonstrated in figure 9, between 2000/01 and 2011/12, the number of 10-17 year-olds arrested for a notifiable offence fell by 48%. The pattern shown is not, however, a consistent one over that period and the trend broadly tracks the shifts in detected crime, reflecting the same policy changes. Much of the recent decline is likely to reflect the increased discretion of police to use *community resolutions* to deal with low level matters without the need for arrest. The biggest reductions relate to offences of fraud and forgery (a fall of 68.8%), theft and handling stolen goods (67%5) and criminal damage (58%).

Figure 9

Children arrested for notifiable offences: 2000/01 to 2011/12



The NAYJ welcomes the fact that fewer children are subject to arrest, but considers that there may be scope for further reductions. Of the 168,000 arrests of children in 2011/12 just 28% led to the imposition of a substantive youth justice disposal. Some of this gap no doubt reflects the greater use of informal measures in recent years, but even prior to the establishment of the FTE target, around two thirds of arrests consistently did not lead to a formal sanction, suggesting that there was insufficient evidence or the matter was too minor to warrant a formal sanction in many cases.

123 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

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

125 Bateman, T (2012) *op cit*

Arrests do not constitute the sum of children's adverse experience of policing. According to information obtained by the All Party Parliamentary Group on Children, more than 1 million children were stopped and searched between 2009 and 2013. The figures are almost certainly a substantial underestimate since they are drawn from returns provided by just 26 of the 44 police services in England and Wales. Over this period, more than 893,000 children were arrested. Given that most arrests are not triggered by a stop and search, it is clear that many children are searched unnecessarily. Of even greater concern perhaps is that data provided by 22 police services indicate that 1,136 of those searched were below the age of criminal responsibility.

Moreover, the NAYJ 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 brought 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.¹²⁶ 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.¹²⁷ 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.¹²⁸ Almost half of police forces have no separate facilities for children in their custody suites, including the Metropolitan police who are responsible for a disproportionate number of arrests of children.¹²⁹

Despite 17-year-olds being given the right to an appropriate adult, the government has elected not to extend the statutory provisions that require 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*. This decision, which defies the logic of the High Court ruling, has been described by the NAYJ as:

'a wasted opportunity that betrays a lack of interest on the part of the authorities in older children's wellbeing'.¹³⁰

It would appear too that the statutory provisions for younger children are 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.¹³¹ Data obtained by the Howard League has ascertained that, in the two-year period 2008-2009, approximately 53,000 children below the age of sixteen 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.¹³² The figure is almost certainly an underestimate since the study was based on incomplete police returns. As Her Majesty's Inspectorate of Constabulary maintains:

*'[I]n practice, the reciprocal duty on the police to transfer ... and 'on the local authority to receive' ... has been reduced to a short (or no) call to local authority staff requesting secure accommodation followed by the now standard response that none is available; and that under these circumstances, the [appropriate adult] is often precluded (by local policy) from making any representations at all.'*¹³³

¹²⁶ 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

¹²⁷ Hart, D (2012b) *Children in police detention*. London: NAYJ

¹²⁸ HM Inspectorate of Constabulary (2011) *Whose looking out for children? A joint inspection of appropriate adult provision and children in detention after charge*.

¹²⁹ All Party Parliamentary Group for Children (2014) *op cit*

¹³⁰ Bateman, T (2013) *Detaining children at the police station: a failure to comply with legislation*. London: NAYJ

¹³¹ HM Inspectorate of Constabulary (2011) *op cit*

¹³² Skinnis, 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 [w](#)

¹³³ HM Inspectorate of Constabulary (2011) *op cit*

● 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 – a first tier disposal below the community sentence threshold – was implemented on a national basis from April 2002.¹³⁴ 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 continued this process of lifting the restrictions on the referral order, and while it remains the primary disposal for a first conviction, the court may now also impose such an order irrespective of antecedent history or the number of previous referral orders, providing the child pleads guilty.¹³⁵ During 2013, the referral order accounted for more than 36% of all sentences imposed on children, an increase from 27% in 2003. This represents an increase of two percentage points over the previous year, reflecting the relaxation in the statutory provisions at the end of 2012.

The referral order has inevitably displaced a range of other disposals, particularly those below the community sentence threshold. Between 2002 and 2013, the use of the reparation order reduced from 6.6% of all disposals to less than one percent. 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 less than 16% in 2013. As a consequence, children who would previously have received such disposals 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 for a first offence where they consider it appropriate to do so.¹³⁶ There has been a marginal increase in the use of discharges during 2013 (from 14.3% of disposals below the community sentence threshold to 15.9%), but whether this is a consequence of the legislative change is unclear.

The range of community sentences existing at the time 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 2012/13, 20,395 YROs were imposed: almost one third (31%) contained two requirements, with a further 28% containing just one. There has been a rise in the proportion of orders that contain five or more requirements from 2% in 2010/11 to 6% in 2012/13. While this might be

¹³⁴ First tier penalties include: discharges, financial penalties, reparation orders and referral orders. They are not subject to the restriction which applies to community sentences that the offending should be 'serious enough' to warrant a community sentence.

¹³⁵ Hart, D (20012) *op cit*. The provisions apply to offences committed after 3 December 2012.

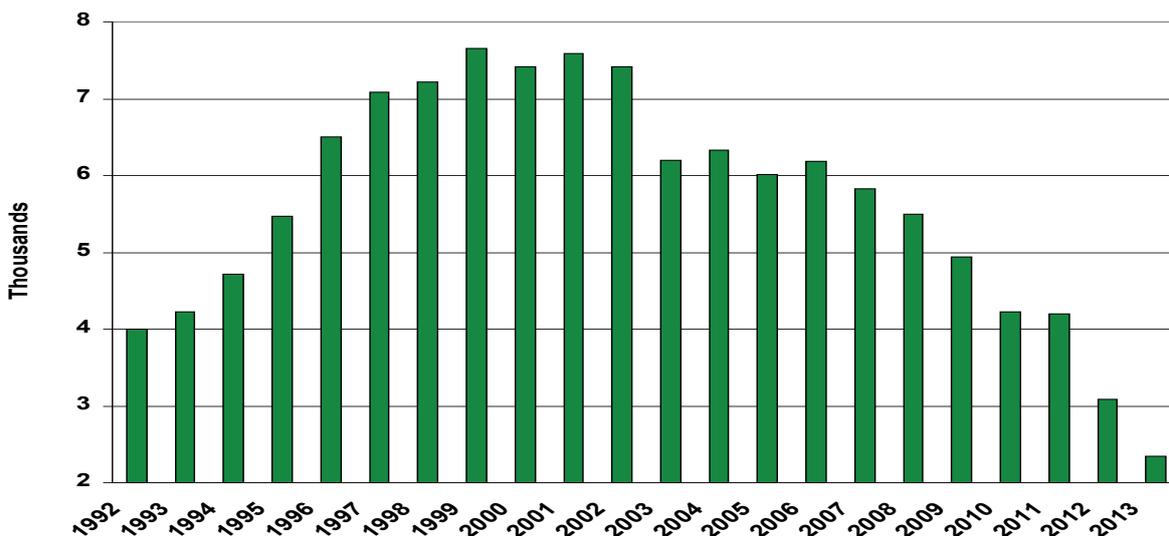
¹³⁶ *Ibid*

a reflection of higher-end community sentencing being used in place of custodial disposals, it also raises concerns that community disposals may be becoming more intrusive. The most frequently used requirement was supervision, which featured as an element in 36% 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 since 1998. During 2012/13, 15% of all YRO requirements – 3,060 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.¹³⁷ The organisation accordingly regards with disquiet the extension, through LASPO, in the maximum duration of a curfew requirement from six to 12 months and the maximum daily curfew period from 12 to 16 hours.¹³⁸ No figures are available to ascertain the extent to which these increased powers are being used.

• **Children deprived of their liberty**

Reducing the number of children in custody is one of the three high level targets established by the coalition government by which youth justice performance is measured. The adoption of this measure is an important indicator of a shift in political tone. 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 reduction in the number of children deprived of their liberty. As shown in figure 10, custodial sentences began to fall from 2002, but the decline accelerated rapidly from 2008 onwards, coinciding with the introduction of the FTE target and the onset of the financial recession.

Figure 10
Custodial sentences imposed on children: 1992-2013



¹³⁷ HM Inspectorate of Probation (2012) *It's complicated: the management of electronically monitored curfews*. London: HMIP
¹³⁸ Hart, D (2012) *op cit*

During 2013, 2,340 children were sentenced to detention, representing a fall of almost one quarter by comparison with the previous 12 months and a 70% reduction from the highpoint (7,653 custodial sentences) in 1999. The number of orders for long term imprisonment has also fallen, by 61%, from 732 in 2002 to 283 in 2013. These include:

- sentences under sections 90 and 91 of the Powers of Criminal Courts (Sentencing) Act 2000, for children convicted of murder and other grave crimes respectively;
- extended sentences;
- detention for public protection – imposed on children assessed as posing a significant risk of substantial harm.

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. No orders of that nature were made in 2013.

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 5, the number of children deprived of their liberty at any one time has also started to fall, by 59% since 2008.¹³⁹ 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.¹⁴⁰ It would appear however that the rise was temporary since the population of the secure estate has continued to drop markedly in the period since.

Table 5

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	2013	1,239

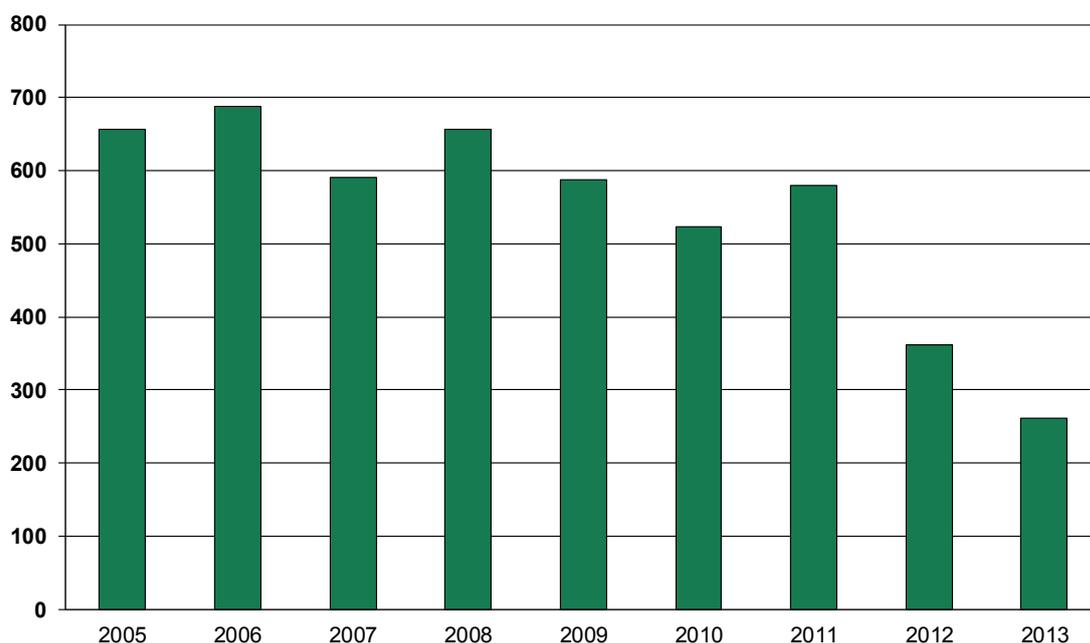
As noted above, the use of custodial remands remained at a high level for a period while the decline in custody was already under way. As shown in figure 11 on page 31, the number of children in the secure estate following a refusal of bail was almost

¹³⁹ Ministry of Justice (2014) *Youth custody report: April 2014*. London: Ministry of Justice

¹⁴⁰ For further details, see Briggs, D (ed) *The English riots of 2011: a summer of discontent*. Hook: Waterside press

Figure 11

Custodial remands on children: 2005- 2013 (August)



as high in 2011 as it had been in 2007. As a consequence, the proportion of children deprived of their liberty who were remanded to the secure estate rose, over that period, from 18% to 28%. Once the remand population began to fall, however, it fell more rapidly than the population in detention under sentence. By August 2013, those on remand constituted 21% of incarcerated children.

A number of interlocking factors have no doubt contributed to the fall in the use of child imprisonment.¹⁴¹

- A more tolerant climate to children in trouble was made permissible by the depoliticisation of youth crime and justice, which was, in turn, encouraged by a desire to curb excessive cost.
- The Criminal Justice and Immigration Act 2008 imposed a new duty on the court that requires it, where it imposes a custodial sentence on a child, to make a statement that *'it is of the opinion that a sentence consisting of or including a youth rehabilitation order with intensive supervision and surveillance or fostering cannot be justified for the offence'*. The court must also indicate why it is of that opinion.¹⁴²
- The introduction of the FTE target and the promotion of diversion led to a sharp reduction in court throughput.
- Delaying the point at which children entered court ensured that they were less likely to amass a criminal history that would make custody appear inevitable.¹⁴³

It would thus appear that the continuation of current trends in relation to youth detention is dependent to some degree on the continued falls in the number of

¹⁴¹ Allen, R (2011) *Last resort? Exploring the reduction in child imprisonment 2008-11*. London: Prison Reform Trust

¹⁴² Criminal Justice and Immigration Act 2008, schedule 4, part 1, 80(3)

¹⁴³ Bateman, T (2012) 'Who pulled the plug? Towards an explanation of the fall of child imprisonment in England and Wales' in *Youth justice* 12(1)

children entering the system, which in turn relies on a continuation of a more lenient environment.

In respect of remands there were two additional factors. Provisions of LASPO, implemented in December 2012, tightened the criteria that must be satisfied for a remand to the secure estate and made available, for the first time, non-secure remands to local authority accommodation to 17-year-olds, who had previously been treated as adults for remand purposes. In addition, from April 2013, remand budgets were devolved to local authorities who became liable to pay the costs of custody for children remanded to the secure estate.¹⁴⁴ While both these measures might have reinforced a downward trajectory, it is clear that they did not trigger it since the remand population had already declined considerably in advance of their implementation. In December 2012, for instance, the remand population of the secure estate was 35% below that of twelve months previously.¹⁴⁵

The NAYJ believes that, recent progress notwithstanding, child imprisonment remains too high and that incarceration is still 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. It is accordingly appropriate that the coalition government should select a reduced reliance on custody as one of three key indicators for youth justice. The NAYJ considers that the powers of the court to imprison children should be limited by further tightening the legislative criteria as a mechanism for achieving that target.¹⁴⁶

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 are, in certain respects, increasingly vulnerable. For instance, the proportion of the custodial population who have 15 or more previous convictions or cautions rose from 11% to 15% between 2008/9 and 2012/3. Over the same period, the proportion of boys who reported that they had spent time in local authority care rose from 24% to 33%. For girls, the respective figures were higher still, at 49% and 61%. There was also an increase, from 8% to 11% in the proportion of boys who said that they had children of their own.¹⁴⁷ 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.

This more vulnerable group is also increasingly disadvantaged by being deprived of their liberty. 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 2014, 67% of the population of the secure estate were detained in young offender institutions (YOIS) and a further 23% 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 11% of children deprived of their

¹⁴⁴ Hart, D (2012) *op cit*

¹⁴⁵ Ministry of Justice (2014) Youth custody report: April 2014. London: Ministry of Justice

¹⁴⁶ 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

¹⁴⁷ Tye, D (2009) *Children and young people in custody 2008–09: an analysis of 15–18 year-olds' perceptions of their experiences in young offender institutions*. London: HM Inspectorate of Prisons; Kennedy, E (2013) *Children and young people in custody 2012–13: an analysis of 15–18 year-olds' perceptions of their experiences in young offender institutions*. London: HM Inspectorate of Prisons

liberty.¹⁴⁸ 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 reduction in the use of SCHs. This is consistent with a longer term shift in provision from SCHs to STCs: while there has been no decommissioning of STC provision between 2010/11 and 2013/14, the number of youth justice places available in SCHs has fallen by thirty-two, equivalent to one quarter of the SCH custodial population at February 2014.¹⁴⁹

Moreover, the government's proposals, outlined in the consultation paper *Transforming Youth Custody*,¹⁵⁰ for the future of the secure estate for children and young people, are likely to exacerbate the situation. The plans involve the development of a network of 'secure colleges' that would replace both YOIs and STCs and hold at least some of those currently detained in SCHs. The first pathfinder secure college is to be built at a cost of £80 million on a site in the East Midlands and is scheduled to open in 2017. It is envisaged that the establishments will be large, certainly by comparison with STCs and SCHs. The first establishment will hold 320 children, boys and girls, aged 12 to 17 years, equivalent to almost 30% of the custodial population at April 2014. Assuming a pro-rata distribution, about 15 girls would be accommodated alongside more than 300 boys; an equivalent number of children below the age of 15 would also be detained within the institution, vastly outnumbered by older teenagers. This is a source of particular disquiet given that research has confirmed that children are more likely to fear for their safety in larger establishments.¹⁵¹

The NAYJ opposes the development of secure colleges and considers that the costs savings generated by the decline in custody should be deployed to ensure that any children deprived of their liberty through the youth justice system are accommodated in small units whose primary function is care-based rather than penal.

• Reoffending as a measure of effectiveness

The third high-level target established by the coalition government as a measure of the performance of the youth justice system involves reductions in the rate of reoffending.¹⁵² Thirty six per cent of children who received a substantive youth justice disposal imposed in the year ending March 2012 reoffended within twelve months of that disposal, a slight increase over the equivalent figure for 2000. Accordingly whilst considerable headway has been made against the other two performance indicators (FTEs and custody) progress in relation to the third is limited.

Recidivism varies significantly according to the nature of sanction to which young people are subject. As shown in table 6 on page 34, pre-court disposals are associated with the lowest level of reoffending while custody generates the highest.

One would anticipate that there would be a correlation between disposals involving greater restrictions on liberty and increased rates 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 still

¹⁴⁸ Ministry of Justice (2012) *Youth Custody data: monthly data and analysis custody report –April 2013*. London: Ministry of Justice

¹⁴⁹ Bateman, T (2014) 'Youth justice news' in *Youth Justice* 14(2)

¹⁵⁰ Ministry of Justice (2013) *Transforming youth custody: putting education at the heart of detention*. London: Ministry of Justice

¹⁵¹ Youth Justice Board (2008) *A review of safeguarding in the secure estate*. London: Youth Justice Board

¹⁵² *Breaking the Cycle: effective punishment, rehabilitation of offenders and sentencing*. London: the Stationery Office

Table 6

Proven rates of reoffending by type of disposal: 12 months ending March 2012

Disposal	Percentage reoffending within 12 months
Reprimand / final warning	25.7%
First tier sentence	42.1%
Community sentence (predating YRO)	63.7%
Youth rehabilitation order	63.6%
Custody	69.3%
All	35.5%

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.

The NAYJ is in any event not convinced that a focus on recidivism is necessarily a helpful way of approaching work with young people in trouble.

- Binary measures of reoffending, that simply record whether or not children are reconvicted within a certain period, are an incredibly blunt indicator of progress; one that is unable to capture changes in the nature, frequency, or gravity of criminal activity
- Like other official data, figures for reoffending are influenced by government targets and changes in police practice. One consequence of successful diversion is that the youth offending population in 2013 is likely to have a more entrenched pattern of offending behaviour than their peers prior to the introduction of the FTE target.¹⁵³ One would accordingly anticipate a rise in reoffending rates as a predictable outcome: the two targets are effectively in tension. The NAYJ believes that the FTE target is to be preferred.
- As argued earlier in the paper, most children grow out of crime and the proper role of youth justice intervention within a child-friendly framework is to give them the space to mature and where possible to promote processes that support that maturation. Attempting to influence short-term recidivism is not obviously relevant to that endeavour, since behavioural evidence of real change is likely to take longer
- Moreover, focusing on the target might be positively harmful: it leads to an

¹⁵³ Bateman, T (2010) 'Reoffending as a measure of youth justice intervention: a critical note' in *Safer Communities* 9(3)

identification between the child and his or her criminal behaviour, which is unhelpful in terms of fostering a non-delinquent identity; it detracts too from establishing relationships of trust directed towards shared goals; and undermines interventions aimed at supporting longer term developmental processes. Yet each of these is a marker of effective youth justice interventions.¹⁵⁴

In these circumstances, while the NAYJ is pleased to endorse two of the three current indicators for youth justice as being consistent with the evidence-base and the development of a more child-friendly framework for the delivery of services to children who offend, the organisation considers that the target to reduce reoffending is misplaced.

¹⁵⁴ McNeill, F (2006) 'Community supervision: context and relationship matters' in Goldson, B and Muncie, J (eds) *op cit*