

Children in police detention

Dr Di Hart

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www.thenayj.org.uk

email: info@thenayj.org.uk

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

• Introduction

As we all know from our experience as 'service users', the way we are treated at the point of initial contact sets the tone for our subsequent attitude towards the service. Do we feel listened-to and respected or powerless and frustrated? When our involvement with that service is involuntary, and we cannot just walk away, it is essential that the initial contact is as positive as it can be if the individual is going to engage in the future.

For children and young people under the age of 18¹, being arrested and taken to a police station can be a frightening and confusing experience. Apart from the vulnerability arising from their age, many will have additional problems such as developmental delay, communication disorders or mental health difficulties. Although children in these circumstances are entitled to a number of protections, they are unlikely to be fully aware of these and are dependent on adults to ensure that their rights are respected. If not fairly treated, their ability to trust the criminal justice system will be impaired and is a negative start to any programme of intervention.

This briefing:

- summarises the law regarding the detention of children in police custody;
- describes recent findings from research and inspection about what is happening in practice;
- explores the implications for services.

¹ The term 'children' will be used throughout the remainder of this briefing in recognition of their legal status

- **What does the law say about the detention of children in police stations?**

During enquiries and questioning

It was stated above that children are entitled to specific protection. This applies both to the power to detain them, and the way they should be treated during detention.

The United Nations Convention on the Rights of the Child (UNCRC) states that:

No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time².

The key legislation in ensuring that people are fairly treated after arrest is the Police and Criminal Evidence Act 1984 (PACE) and its associated codes³. The particular needs of children aged 16 and under are recognised, but 17 year olds are effectively treated as adults within PACE provision. This is at odds both with the UNCRC and other legislative definitions of childhood. It will be even more anomalous when the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) is fully implemented, as 17 year olds will then be treated as children in court decisions about remand. There has recently been a consultation regarding revisions to Code C but the Home Office rejected representations by Her Majesty's Inspectorates of Prisons (HMIP) and Constabulary (HMIC), to extend the provision to 17 year olds on the basis that it would have '*resource implications*' and '*require work with other government departments*'⁴. An amendment was tabled during the passage of the LASPO bill to extend appropriate adult provision to 17 year olds but withdrawn when the government said that work was under way to 'look at' the possibility⁵. However, on 16 July 2012, Nick Herbert, Minister of State for Policing and Criminal Justice, confirmed that the government, having considered '*the benefits, costs and risks of treating 17-year-olds as children under the Police and Criminal Evidence Act 1984*', had determined that it would not be appropriate to extend AA provision at the present time.⁶The only mechanism for consistently protecting the rights of 17 year olds in the meanwhile is to define them as 'vulnerable' adults within local protocols between Youth Offending Teams (YOTs) and the police.

PACE requires children aged 16 and under and 'vulnerable' adults to be accompanied by an 'appropriate adult' (AA) at specified points whilst in police detention. These include the explanation of the child's rights, during the police interview and when they are being charged⁷. The expectation is that the parent or carer will normally fulfil this role, and the police should make every effort to secure their attendance. If they cannot be contacted, refuse to attend or are considered to be unsuitable, the police must find an alternative who should be a local authority social worker or '*failing these, some other suitable adult*' not employed by the police⁸. Since the Crime and Disorder Act 1998, YOTs are responsible for coordinating local AA arrangements and have developed a variety of

² Article 37(b).

³ <http://www.homeoffice.gov.uk/police/powers/pace-codes/index.html>

⁴ Home Office (2012) *Responses to consultation requesting changes or re-consideration – Summary* <http://www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/revisions-pace-codes/consultation-responses?view=Binary>

⁵ Hansard, 15 February 2012: Amendment 185a moved by Lord Beecham. The assumed period for review was three years.

⁶ Hansard, 16 July 2012, column 549W

⁷ Although this is somewhat ambiguous: the Note for Guidance to Code C states that charge should not be delayed in order to wait for an appropriate adult to attend

⁸ PACE Code C, para 1.7

schemes, many relying on the last resort option of 'other' adults. This has resulted in a mixed economy of private, statutory and voluntary workers.

AAs are expected to be more than mere observers: the role is meant to be a proactive one where they offer the child advice, make sure that the interview is conducted fairly and facilitate communication. They can intervene if they feel, for example, that questioning is aggressive or has not been understood - or if a child just needs a break. Parents' understanding of the AA role will inevitably vary but it is worrying that the way in which other AAs interpret the role is also left to their discretion with no consistent approach to quality assurance. Some good practice guidelines and standards have been produced; eg by NACRO⁹ and the National Appropriate Adult Network (NAAN)¹⁰. However, these are not enforceable and, in the NAAN paper, focus on the way schemes should be run rather than on good practice with children.

Children, in common with all other people arrested and taken to a police station, are entitled to free and independent legal advice. The role of a solicitor is different to that of an appropriate adult: the focus is on the allegations rather than the child's general welfare. The AA has the right to ask that a solicitor attend even if the child has not requested it, and they should encourage the child to take up the offer of legal advice. The child cannot be forced to speak to the solicitor but they are more likely to do so if they are told that the solicitor is physically present in the police station.

Following decisions about charge

A crucial element of PACE is the expectation that children will not remain in the police station any longer than necessary. Once a decision has been made about whether to charge them with an offence, they should not be further detained. They can be released with no further action, pending further enquiries or a diversionary¹¹ disposal or, if the case is sufficiently serious for them to appear in court, they can be released on police bail until the hearing. There is a presumption that bail will be granted except in the following specified circumstances:

- The charge relates to one of eight serious offences – including murder, manslaughter and rape – where the presumption in favour of bail is reversed;
- The child's identity or address cannot be verified;
- There are reasonable grounds for believing that the young person will fail to attend court, will commit further offences or interfere with the administration of justice;
- Police judge that the young person should be detained for their own protection or in their own interests.

Even if one or more of these circumstances applies, bail can still be granted and the police should consider whether imposing conditions, such as a curfew, would address their concerns.

If bail is refused, the child must be produced at the next available court. This will usually be within 24 hours but could mean two or three days in police detention if the arrest was made at a weekend or bank holiday. Whatever the timescale, however, the

⁹ Nacro (2003) "Acting as an appropriate adult" London; Nacro

¹⁰ <http://www.appropriateadult.org.uk/home>

¹¹ Often referred to by the YJB and practitioners as a 'pre-court disposal'

police have a duty to secure the transfer of children aged 16 and under to local authority accommodation pending the court appearance¹²– and the local authority has a duty to receive them¹³. The local authority has discretion as to the type of accommodation that should be provided: it could be a children’s home, foster carers or with family and friends. This is not a matter for the police unless the child is aged 12 years or older and secure accommodation is necessary to ‘*protect the public from serious harm*’, defined as ‘*death or serious personal injury, whether physical or psychological*’¹⁴, in which case they should ask the local authority to provide it. There are only two limitations to the police’s obligation to transfer the child to local authority accommodation:

- where it is ‘impracticable’ to do so: although not fully defined this does not include factors connected with the child’s behaviour, offences or the type of accommodation available^{15, 16}
- where, for 12 to 16 year olds who pose a risk of ‘serious harm’ to the public, the local authority is unable to provide secure accommodation¹⁷.

Local authorities are expected to have a range of both secure and non-secure accommodation available to meet this demand. The detention of children in police stations should therefore be very rare. This was confirmed by a High Court judgement in 2006, which stated that ‘*a young person should not, other than in exceptional circumstances, be held in the police station overnight*’¹⁸. Where transfer to local authority accommodation is considered to be impracticable, the custody officer must record the reasons in a certificate to be presented to the court when the child appears¹⁹. This is presumably intended to be a safeguard against unreasonable detention but will only be effective if the court is prepared to challenge the decision.

• What happens in practice?

The gap between theory and practice is illustrated by a response from British Transport Police to the recent PACE consultation. They suggested that:

For juveniles detained after charge, the section relating to finding secure accommodation before court should be removed as no Council can ever provide such accommodation²⁰.

This has not always been the case. Long-serving youth justice practitioners consulted by the NAYJ confirm that, prior to the reforms introduced by the (New Labour) government in 1998, failure to transfer to local authority accommodation was rare.

Little is known about the experiences of children in police detention but recent studies that have begun to cast some light on this hidden topic confirm that there is cause for concern.

¹² PACE S38(6)

¹³ Children Act 1989 S21(2)b

¹⁴ PACE 1984 Para 38 (6A)

¹⁵ Home Office circular 78/1992

¹⁶ Revised PACE Code C states that impracticability means transport and travel requirements - not the lack of secure accommodation

¹⁷ Section 38 (6) b of PACE

¹⁸ R vs Gateshead Council (2006) EWCA Civ 221

¹⁹ PACE Code C s16(10)

²⁰ Home Office (2012) *Responses to consultation requesting changes or re-consideration – Summary* <http://www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/revisions-pace-codes/consultation-responses?view=Binary> (response 89)

The extent of overnight detention

Even basic data on the number of children who are detained overnight in police stations is not routinely collected. The Howard League for Penal Reform sought to establish the extent of the practice through a series of Freedom of Information Requests to police services in England and Wales and an analysis of police custody records²¹. They found that in 2008 and 2009, 53,000 children aged 16 or under had been detained overnight. Of these:

- 10,845 were girls (21%)
- 10,050 were black and minority ethnic children (20%)
- Four children were under the age of 10, the age of criminal responsibility
- 1,674 were aged 10 and 11 years.
- 11,540 were under the age of 15.

Children below the age of criminal responsibility cannot be lawfully arrested, let alone detained overnight, and as the police cannot request a transfer to secure accommodation for those aged 10 or 11, there should be no barriers to their transfer to a local authority placement. It appears, then, that the law is being regularly flouted.

Worryingly, the likelihood of being detained overnight was not restricted to the more serious offences: in fact *'the least serious offences also saw the most overnight detentions'*. The likelihood of being detained does not therefore appear to be a direct result of the need for public protection, as required by legislation, and more analysis is needed to establish the profile of the children affected, and the underlying reasons for their detention. For example, are disadvantaged children more likely to be detained because of a perceived lack of supervision at home?²²

A study looking at the extent to which children request legal advice during police detention revealed that 10 to 13 year olds were less likely to request advice than older young people²³. The authors speculate that this could be because relatives are more likely to act as AA for this age group or because, for a child of this age, their priority is to get out of the police station and they refuse any help that they perceive will cause delay, confirming the importance of the AA exercising the right to request legal advice on behalf of the child.

The true extent of police detention is unknown: not all police forces responded to the request for data. In addition, many more children will have spent time in the police station whilst enquiries are made, during questioning or following charge but will not be represented in these statistics because it was not classified as an 'overnight' stay, defined by the authors as spending at least four hours in police custody between the hours of midnight and 08.00²⁴. This cannot be considered the exceptional event that it was intended to be.

²¹ Howard League (2011) *The Overnight Detention of Children in Police Cells*.

²² See PRT (2010) *Punishing disadvantage*

²³ Kemp, V. Pascoe, P. and Balmer, N. (2012) Children, Young People and Requests for Police Station Legal Advice: 25 years on from PACE. *Youth Justice* 2011.11:28

²⁴ This is not defined in law or Codes of Practice

The experience of children in police detention

Police custody suites are jointly inspected by Her Majesty's Inspectorate of Constabulary (HMIC) and Her Majesty's Inspectorate of Prisons (HMIP). The latest version of the set of expectations against which the facilities are assessed, although covering all age ranges, includes specific criteria relating to children²⁵ including, for example, that children are kept separately from those who may pose a risk to them and that custody officers are trained in child protection. In 2010, HMIC and HMIP, along with HMI Probation, the Care Quality Commission, the Healthcare Inspectorate Wales and the Care and Social Services Inspectorate Wales, undertook a thematic inspection of appropriate adult provision and children in detention after charge in six YOT and police force areas²⁶.

The findings, contained a report entitled *Who's looking out for the children?*, are worrying. In setting the scene, the report comments on the number of people that may be involved in a child's journey from arrest to charge or release due to recent changes in police practice. Each task, such as transporting the child to the police station or taking fingerprints, may be undertaken by a different person with the risk that vital information about the child's needs may be lost. It is also likely to contribute to the child's confusion.

The appropriate adult

The only person who is required to be present to support the child throughout different stages of the process is the AA, making their role even more crucial. The thematic inspection concluded that the role is not consistently safeguarding children in the way that it should. Arrangements for recruitment and training were variable and could result in AAs not being equipped for the task. This was compounded by a focus within most local procedural guidance on complying with the process rather than on the child's welfare. For example, most local guidelines advised that the AA (unless the role was being fulfilled by a YOT worker) should not challenge a decision to refuse bail.

• Timeliness of AA attendance

The inspection found that the timeliness of the AA's attendance at the police station also varied, with some rota systems not working well and a lack of provision during the night. AA schemes are not normally commissioned to operate for 24 hours a day and most run from around 08.00 to 23.00 so a child arrested late in the evening is likely to be detained overnight. This may be compounded by the PACE rules allowing for detainees to have eight hours uninterrupted rest, usually at night. It is debatable whether, given a choice, children would choose to 'rest' rather than get on with the proceedings so that they could leave the police station. The possible tension between the 'rest' entitlement and the requirement to keep detention to a minimum is highlighted in the Nacro Good Practice Guide²⁷. Further delays were caused by agreements in some areas that the AA should only be requested when the police were ready to proceed with interview to avoid the AA 'hanging around' at the police station. This is contrary to PACE, which requires the AA to be informed (and asked to attend) as soon as is practicable after arrest. This may be an indication of limited understanding of the role: an effective AA could use the time to find out more about the child, to identify any safeguarding issues and to act as a reassuring presence.

²⁵ HMIP and HMIC (2012) *Expectations for Police Custody: Criteria for assessing the treatment of and conditions for detainees in police custody*.

²⁶ HMIC (2011) *Who's looking out for the children: a joint inspection of appropriate adult provision and children in detention after charge*.

²⁷ p25 Nacro (2003) *Acting as an appropriate adult* London; Nacro

• Identifying vulnerability

When the AA did attend, the inspectors found that they were not always fully informed about the child and their circumstances²⁸. It is possible to receive information from the YOT if the arrest is in working hours – and if the AA is contacted at an early enough point in the proceedings – but this cannot be guaranteed and the main source of information for non local authority staff is likely to be the police custody record. Although it is a requirement that the AA be shown this, the inspectors found that they normally only received the front sheet containing basic demographic details and that, in any event, *'at all sites, police custody records were less than adequate'* (p27). They found many shortcomings, such as a failure to explain why parents were not acting as the AA. In the absence of this detail, the AA is hampered from properly ensuring the child's well-being or in challenging inappropriate decisions. Although the AA was required to document their observations after each call-out, these records also tended to be process-driven, serving as a checklist rather than a record of the child's needs that could then be taken forward by the YOT.

One reason for the poor quality of the custody record is connected with the next finding: that custody staff lacked both the physical resources and skills to assess the children's difficulties. One young person interviewed as part of the inspection said:

I suffer from ADHD and claustrophobia. I didn't feel confident about telling police staff about this because they don't like me (p29).

Healthcare professionals were not routinely involved in assessing the vulnerability of children and, in all but one of the six inspection areas, in any event lacked understanding of safeguarding issues.

This lack of understanding about the vulnerability of children, particularly their ability to understand and communicate effectively²⁹, affected the quality of the police interview. When inspectors reviewed the recordings of interviews they found that, although the caution tended to be explained thoroughly, the rest of the interview did not indicate any concessions to the child's age or level of understanding. Legal terms such as *'allegation'*; *'mitigation'*; *'disclosure'*; *'affray'* were used without any attempts to aid communication. This was also the case for written documentation explaining the detainee's rights, with no age-appropriate versions being offered. The inspectors were also critical of the Home Office guidance to parents acting in the role of AA.

In addition, information provided by the child that should have raised alarm bells about their vulnerability or need for protection was not shared with custody staff to enable them to fulfil their duty of care.

• Effectiveness of AA support

It is the role of the AA to challenge in these circumstances, and to assist the communication between the child and the police. Although focus groups of volunteer AAs indicated that they felt confident to do this, it was not borne out by the case examples that the inspectors reviewed, with the AA generally being passive during the police interview. In the absence of quality assurance processes, a lack of complaint by the

²⁸ Where the AA is a local authority employee, they are more likely to have access to relevant databases to determine whether the child or family is known to services.

²⁹ Talbot, J (2010) *Seen and Heard: supporting vulnerable children in the youth justice system*. Prison Reform Trust

police about the AA service was taken as an indication that it was working effectively. The inspectors only found one inspection area where feedback was actively sought from the children themselves. When inspectors asked focus groups of children what they had thought of the AA, there was little sense that they had valued their presence in the interview, tending to see the AA as passive or on the side of the police rather than 'sticking up' for the young person.

There were some differences according to the local model of AA provision, particularly where the service was provided by YOT workers and emergency duty social workers. For example, where a worker from the emergency duty team acted as the AA, she was able to assess that it was not in a young person's best interests to return home on his release from the police station, arranged a foster home and took him there accompanied by the solicitor.

Weaknesses of the AA service are largely hidden. Although police may complain to the YOT if there are problems with availability, the quality of the service is rarely questioned. Directors of Children's Services and Local Safeguarding Children Boards appeared not to have considered the issue. The same applies to the police, with the ACPO strategy for children failing to mention those in police detention at all³⁰.

The overall conclusion of the inspection was that AA provision has become focussed on supporting the police to comply with PACE rather than on safeguarding children.

Detention after charge (PACE accommodation)

The second area that *Who's looking out for the children?* considers is that of the transfer - or not - of children aged 16 and younger to local authority accommodation. In this regard, the report is critical of all agencies involved - the police, AAs, local authorities and YOTs. As noted earlier, numbers are not routinely collected: although the Youth Justice Board (YJB) did request information from YOTs in 2000 about the numbers of children held overnight in police cells, this was subsequently discontinued³¹. The request through Freedom of Information legislation, as described above by the Howard League for Penal Reform, appears to be the only way of securing this important data.

The thematic inspection looked at police force data in the six study areas for a six-month period in 2010 and found that 15% (n=154) of the 1005 children charged with an offence were denied bail. Within a sample of 117 individual cases examined in more depth by inspectors, bail was denied in 49 cases. A number of decisions appeared to be unlawful. For example, a 12 year old girl was kept in a cell overnight because police judged that her single dad was struggling to cope and that she might 'fail to appear', in spite of the fact that she had kept all previous appointments. Neither of these are legitimate grounds for refusing bail.

There were marked differences across the six inspection areas in decisions about police bail, with Lincolnshire being significantly less likely to refuse. Inspectors attributed this to a sustained challenge by the YOT, which has had a marked impact on local police who now proactively seek alternatives to police detention.

From the overall 1005 children charged, it could not be ascertained how many remained

³⁰ ACPO (2010) *Children and young people strategy 2010-13*.

³¹ The NAYJ has long been concerned about the selective nature of YJB performance measures. They measure processes, such as the timing of pre-sentence reports, rather than the quality of services or their promotion of children's human rights.

in a police cell following a decision to refuse bail rather than being transferred to local authority accommodation, or even (apart from one area) whether the police had made a request for such accommodation. As described earlier, PACE requires the police to secure the child's transfer to local authority accommodation pending their appearance in court except in exceptional circumstances. Only if there is a risk to the public of serious harm should the police request that the local authority provide 'secure' accommodation for a child³²; otherwise it is up to the local authority to determine the most suitable placement. The inspectors found that custody staff seemed unaware of this and thought that only 'secure' accommodation was a suitable alternative to police detention in *all* cases. Because this was generally not available police had stopped asking for accommodation at all:

Eight out of 10 times I don't even bother to phone the local authority for accommodation because it's just not worth it, there is no accommodation available (p40).

This is confirmed by the data from the in-depth case analysis: in 33 of the 49 case studies where bail was denied, no attempt was made to transfer the child to local authority accommodation. In only three cases was local authority accommodation provided although 65% of the children were considered suitable for bail when they did appear in court. The requirement for the police to provide a certificate explaining why a child could not be transferred to local authority accommodation does not appear to be serving as a deterrent to poor practice. Indeed, it is unclear whether such certificates are routinely produced - or whether courts, defence solicitors and YOTs take steps to request them where they are not provided.

It would therefore appear that many children spend unnecessary periods in police detention, with a pervasive failure to comply with the Children Act 1989, or PACE. Bail may be refused without good reason: the problem is then compounded by a failure on the part of the police to request a transfer to local authority accommodation. This failure cannot be attributed solely to the police: the YOT, AA, local authority, defence lawyers and the courts are all in position to challenge the status quo. In fact, they have a duty to do so in order to safeguard and promote the welfare of vulnerable children.

• Promising initiatives

There have been two recent initiatives that potentially improve the experience of children in police custody. Both involve another tier of assessment aimed at identifying children who may benefit from interventions other than the criminal justice system³³.

Triage

The 'triage' scheme proposed by the Youth Crime Action Plan³⁴, and piloted in a number of areas, involves the YOT at an earlier point after arrest than would normally be the case³⁵. The YOT can find out if the child is already known to them or to Children's Services and advise the police of factors that may be relevant when deciding whether to

³² ...and those aged 10 or 11 should never be detained after charge apart from where transfer is truly impracticable

³³ They are not, however, to be seen as alternatives to compliance with PACE and the Children Act 1989

³⁴ HM Government (2008) *Youth Crime Action Plan*.

³⁵ KSA consultancy. *YOT workers in custody suite – Frequently Asked Questions*. <http://www.ksaconsultancy.co.uk/files/18920090083342157.pdf>

bring charges. If the child has been arrested for an offence with a gravity score of one or two, admits guilt and has no previous record, the YOT should attend the police station to assess their suitability for triage. As part of this assessment, the YOT worker should form an initial view of the reasons for offending and the likelihood of the child and their family cooperating with intervention. If so, they can propose to the police and Crown Prosecution Service (CPS) a restorative justice-based approach as an alternative to a criminal justice response. Although the final decision rests with the police and CPS, anecdotal evidence from the pilots suggests that they are often positive about the suggestion and that re-offending rates for the young people involved are low. Two local schemes have been independently evaluated and indicate a reduction in first-time entrants to the criminal justice system and that initial scepticism by both police and YOTs has been reduced.

It is difficult to track the impact of triage, partly due to problems with recording³⁶, but it should reduce detention if police have more confidence in the support that is available in the community.

There is no nationally determined model for triage schemes and it remains to be seen how they will develop. Although perhaps associated primarily with early entrants into the youth justice system, there is no reason why triage cannot be applied to all children. Information about a child's home circumstances, history and individual needs will always be of use to those making decisions. Where it is clear that a child has unmet welfare needs, and that these are a cause of the offending behaviour, there could be a consensus that it will be more effective to tackle these than to prosecute. There are examples of good practice where YOTs have taken advantage of the opportunity that triage presents:

When relatives were unavailable, AA arrangements, including out of hours, for detainees aged under 17 were very good, especially at Priory Road, where there was a YOT based on-site; in Hull, anyone under the age of 17 was taken to Priory Road ... for this reason. The YOT workers checked for juvenile detainees several times each day and those who were suitable were diverted away from the formal criminal justice process and instead worked with the YOT on interventions that included a restorative element³⁷.

Youth justice liaison and diversion

The second scheme that has involved people other than the AA following a child's arrest is coordinated by the Centre for Mental Health³⁸. The aim of Youth Justice Liaison and Diversion (YJLD) is to identify children exposed to the highest levels of risk and to divert them from the youth justice system towards other services – or, if this is not possible, to ensure that their needs are addressed within the system. A checklist has been developed to assist front line staff, including those in custody suites, to identify those high-risk children who should be referred to the scheme for more detailed screening. Factors that should prompt referral include a mixture of social factors and indicators of emotional or mental health problems. Once identified, services can be mobilised or, if they are already involved, can be better co-ordinated through multi-agency planning processes. Scheme workers have access to a specialist mental health worker if necessary. Pilots have taken place in six YOT areas and the evaluation showed some positive effects. Although there was no reduction in overall reoffending rates in comparison with control groups, there

³⁶ At the moment there is no specific category for recording triage diversion as an outcome and it is recorded as 'no further action'.

³⁷ HMIP and HMIC (2012) *Report on an unannounced inspection visit to police custody suites in Humberside*

³⁸ http://www.centreformentalhealth.org.uk/criminal_justice/youngpeople.aspx

was a delay in its onset. There were clear benefits, however, in other aspects of the young person's life:

There were statistically significant reductions in overall need, levels of depression and levels of self-harm and a significant association between improvements and the amount of YJLD contact³⁹.

• **Conclusions: implications for practice**

Whilst these initiatives are extremely promising, they are not in operation across the country and it is unfair that a child's early experiences of the youth justice system should be subject to a postcode lottery in this way. This is not just because a bad experience in police detention can be traumatic and distressing, but also because it may have a negative impact on the child's subsequent pathway through the justice system. The risks associated with a refusal of police bail are noted in a report on remand within the youth justice system⁴⁰. If a child is detained in the police station, they must appear at the next available court. In some cases this will mean an adult rather than a youth court, which will have less specialist expertise and may deliver a more punitive response. There are also dangers in the message that is given to the court about the child:

The risk of the court giving a custodial remand is likely to be increased if a child is detained by the police. One factor is that the child appears in court from the cells, normally accompanied by security guards. This gives signals about the remand decision most appropriate for the court.

Front-line services owe it to children to challenge the current climate of complacency and to implement the legislation in the way that it was intended so that:

- children receive proactive support from committed adults following arrest;
- police detention becomes a genuinely rare event.

The joint inspectors made a number of recommendations in *Who's looking out for the children?* Most are simple to deliver, requiring changes in practice rather than legislation although the Home Office are asked to extend the provisions to 17 year olds and to clarify the PACE codes of practice about secure and non-secure accommodation⁴¹. Other recommendations include:

- better arrangements for identifying children's needs and vulnerabilities whilst in police custody, including the involvement of health professionals;
- improved information sharing between YOTs, police and AAs;
- age-appropriate methods for interviewing and communicating information to children and their parents;
- ensuring that the AA service is of high quality and focussed on the needs of the child rather than police processes.

39 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: Executive Summary to Final Report*. University of Liverpool

40 Gibbs, P & Hickson, S (2009) *Children: Innocent until proven guilty. A report on the overuse of remand for children in England and Wales and how it can be addressed*. Prison Reform Trust

41 PACE code C has recently been the subject of consultation but the Home Office rejected most representations regarding children and young.

The recommendations are relatively weak, however, when it comes to holding agencies to account; eg the police for their decisions to refuse bail; YOTs and AAs for their narrow interpretation of the role; the courts for neglecting to examine reasons why children are produced from the cells; and local authorities for their failure to provide accommodation for children in these circumstances. Although there is mention of the need for 'improved decision making', and monitoring by the Local Safeguarding Children's Board, this will only have the desired effect if practitioners are prepared to challenge those situations where children have been treated unfairly. Part of that process should involve YOTs ensuring that courts require the police to provide a certificate explaining why it was 'impracticable' to transfer a child to local authority accommodation where he or she has been detained at the police station overnight. This would serve to open up decision-making for scrutiny, make the problem visible and provide evidence for ongoing monitoring of compliance with the law.

Too often, child suspects are being held for hours at police stations without anyone recognising and responding to their distress or explaining their charges to them in a way that they can understand. Too often they are being kept overnight without any real effort being made to find a local authority placement for them. This unlawful situation should be a cause for collective shame.