



National Association for Youth Justice: Manifesto 2015

The National Association for Youth Justice (NAYJ) is the only membership organisation which exclusively campaigns for the rights of, and justice for, children in trouble with the law. It seeks to promote the welfare of children in the youth justice system in England and Wales and to advocate for child friendly responses where children infringe the law.

There have been some welcome developments in the field of youth justice in recent years but the NAYJ remains concerned that current arrangements for dealing with children in trouble remain insufficiently child friendly. The NAYJ accordingly calls on any incoming government to conduct a full review of the youth justice system based on the following principles.

- **A separate and distinct youth justice system**

Children are distinct from adults in important ways. Their cognitive functioning is less well developed and they lack the fund of experience available to adults. As a consequence they should be considered less culpable when they transgress the law.

Because children are continuing to develop, there is greater potential for criminal justice interventions to impair future prospects and adversely affect their identity.

For such reasons, the United Nations Convention on the Rights of the Child requires an approach that is specifically applicable to children who have, or are suspected of having, infringed the penal law.

Arrangements for dealing with children in trouble should accordingly be informed by ethical considerations and evidence of how youth crime is best dealt with rather than a diluted reflection of responses to adult lawbreaking.

While the needs of young adults are also different from those of older offenders, care needs to be taken that the introduction of any additional safeguards for this group does not undermine the principle of a distinct youth justice system.

- **A children first approach**

Where children do come into contact with the youth justice system, decisions about intervention should focus on their best interests and their longer term development. It is well established that the large majority of children 'grow out of crime' as part of the natural maturation process.

Responses to children who have infringed the law should reflect primarily their childhood status rather than emphasising their offending behaviour.

Short term reoffending metrics are inadequate, and inappropriate, measures of the effectiveness of youth justice interventions whose efficacy should be evaluated by longer term developmental outcomes and the promotion of children's wellbeing.

- **A commitment to maximum diversion from criminal justice processes and to universal access to mainstream service provision**

The evidence that involvement with criminal justice systems itself increases the risk of offending is overwhelming.

Children in trouble should be entitled to access to the full range of mainstream services to meet their needs. The adverse circumstances, and disadvantaged backgrounds, of most children in trouble mean that they are particularly vulnerable when access to such services is denied.

The involvement of criminal justice agencies is frequently a consequence of the failure of mainstream services to provide requisite levels of support. At the same time, such involvement tends to reduce the perceived need for those mainstream services to intervene.

For such reasons, children in trouble should be diverted wherever possible from the criminal justice system and where necessary provided with appropriate services to meet their needs outside that system.

In this context, the target to reduce first time entrants is both welcome and sensible – but it should be matched by measures to ensure that, where appropriate and necessary, children are signposted to alternative avenues of appropriate support.

- **A considerable rise in the minimum age of criminal responsibility and immunity from prosecution**

The current low age of criminal responsibility in England and Wales is in tension with the evidence that children are frequently insufficiently mature to be regarded as criminally culpable or competent to participate in criminal processes to the required degree.

It is inconsistent with other domestic legislation that deals with children's safeguarding and responsibilities. For instance while children are deemed sufficiently mature at age

ten to be held criminally liable, they are not regarded as competent to consent to sex until the age of 16 or to make decisions as to the consumption of alcohol until they are 18.

The criminogenic nature of the criminal justice system implies that routinely criminalising young children is counterproductive and developmentally damaging.

The age at which children are held to be criminally accountable in England and Wales is out of step with international practice and in tension with international rights based obligations. The UN Committee on the Rights of the Child has, for instance, determined that 12 years is the *lowest* age of criminal responsibility compatible with such obligations.

The principle of maximum diversion, outlined above, implies limiting criminal responsibility and invoking immunity from prosecution.

There should accordingly be a considerable rise in the minimum age of criminal responsibility. The NAYJ has argued elsewhere that it should be set at 16 years to align with the age of consent.

- **Ethical and evidence-based rather than instrumental intervention**

The nature and extent of youth justice interventions should be determined by principled decision-making based on an evidence-based understanding of why children engage in offending behaviour, the potentially counterproductive nature of contact with criminal justice agencies, how children can be assisted to grow out of crime more effectively, and their long term wellbeing.

Instrumental approaches that provide financial incentives to service providers on the basis of crude short term measures of reoffending are inappropriate because they unduly prioritise offending rather than childhood status and undermine an ethical focus on longer term development

- **Acknowledging social injustice and victimisation**

Arrangements for dealing with children in trouble should be underpinned by an understanding that most are victims of multiple forms of social injustice and disadvantage.

There is compelling evidence of a relationship between victimisation and offending. Children who offend are more likely to be victims and victims are more likely to engage in offending.

Youth justice interventions should acknowledge children's status as victims and attempt to address social disadvantage.

- **No punishment for children who offend**

Retributive responses to children who offend are unethical, inappropriate, unnecessary and ineffective. While it is inevitable that children will experience many youth justice interventions as punitive because of their compulsory, and in some cases intrusive, nature, punishment should not be the rationale for such intervention.

Youth justice interventions should be determined on the basis of what has been referred to as 'just welfare': they should be designed in the best interests of the child to maximise their wellbeing and longer term development, but the extent and nature of any compulsory intervention should be limited by considerations of proportionality, with the level of intrusion consistent with that warranted by the seriousness of the offence.

- **Custody as a last resort**

Incarceration is extremely damaging for children in both the short and longer term. It is ineffective in terms of reducing reoffending or promoting desistance.

Deprivation of liberty should accordingly be used only as a last resort and for the shortest necessary period in rare cases where the child places herself / himself, or others, at *demonstrable* risk of *serious* harm and where, after thorough examination, it is deemed that no other alternative is possible. There should be a strong presumption that youth justice intervention should occur in the community.

The NAYJ welcomes the substantial recent reductions in the use of child imprisonment and acknowledges that there has been a corresponding shift to prioritising community based responses. Nonetheless, the use of custody remains too high: further reductions should be promoted and to this end the statutory custody threshold should be tightened considerably.

Courts should be required, when considering a custodial sentence, to explore all possible alternatives and, if they impose custody, to give detailed reasons why no other form of disposal was appropriate.

Custody should not be available for persistent minor offending and or non-compliance with community sentences where the original offence was not sufficiently serious to warrant deprivation of liberty.

- **Deprivation of liberty only in child care establishments**

The small number of children for whom custody is deemed unavoidable should be accommodated in premises that are designed first and foremost as child care establishments; managed in accordance with Children Act duties and regulations and provided by Children's Services Departments.

Children subject to custodial remands or sentences should be accommodated in small units, close to their friends and families, with high staff to child ratios and access to all relevant mainstream and therapeutic services. No child should be detained in police stations overnight, in prison service establishments or in custodial institutions run for profit.

There should be flexibility to allow children to serve part of any custodial sentence in non-secure conditions as soon as they no longer pose a serious risk to others.

- **Equality of treatment**

The over-representation of children from minority ethnic communities in the youth justice system in general, and in the secure estate in particular, is unacceptable and requires urgent attention. The recent reductions in first time entrants, and in the number of children in the secure estate, have not benefited black and minority ethnic children to the same extent as their white counterparts, exacerbating levels of disproportionality.

The government should conduct a review to explore the reasons for the differences in the treatment of minority ethnic children who break the law and develop a strategy to address the over-representation of such children. A national target should be established for youth justice agencies and other services that provide for children to reduce such over-representation.