



National Association for Youth Justice

Submission to the Review of Youth Justice by Charlie Taylor, December 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 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 the current arrangements for dealing with children in trouble remain insufficiently child friendly. The NAYJ also recognises that the dramatic contraction in court throughput and in the number of children consigned to custody provides an opportune moment for considering the extent to which the existing system is best adapted to meet the needs of children in conflict with law. The NAYJ accordingly welcomes the fundamental review of youth justice and proposes that any reform of the youth justice system should be consistent with 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.

Conversely, 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 the evidence of how youth crime is best dealt with rather than a diluted reflection of responses to adult lawbreaking. At present, there is a default presumption that youth justice responses mirror those that apply in the adult criminal justice system, albeit with elements of mitigation for age. As a consequence, unless explicitly excluded, legislative developments in the adult system automatically apply to children irrespective of the implications for their wellbeing and future development. Moreover, many of the staff who make decisions about children are criminal justice generalists rather than child specialists, including the police, prosecutors, the non-lay judiciary and defence advocates. Recent reforms of the legal aid system have exacerbated the lack of access to specialist advocacy as many small practices have withdrawn from the scheme on the basis that criminal legal aid work is no longer economic. As a consequence, children in trouble have to travel further to secure representation and have less choice about who represents them.

The youth court, although in principle less formal than its adult equivalent, is essentially an adversarial arena, which is both intimidating for children subjected to court proceedings and inimical to meaningful children's participation. Children, moreover, regularly appear in adult courts: where they are accused of 'grave crimes'; they have adult co-defendants; or, increasingly as a consequence of recent youth court closures, where there are no youth courts sitting. The NAYJ considers that there is no justification for this state of affairs.

These elements of the existing system are not conducive to ensuring effective youth justice outcomes and fail adequately to recognise the distinction required by the UN Convention.

In practice, the above considerations imply that:

- All staff working with children in trouble should be specialists who have elected to work with children and are trained to do so. Adequate resources should be made available to ensure that such specialisms are developed and maintained.
- The decision-making framework, both pre-court and in the court arena, should focus on outcomes rather than process
- The decision-making process should be designed to enhance the experiences of children who pass through the system and to minimise the negative impact of system contact. Arrangements should ensure that children are able to participate meaningfully in proceedings rather than be determined by arcane principles of adversarial justice
- Children should never appear in adult courts
- The range of available disposals (out of court and following conviction) should be genuinely child specific rather than modified versions of those that exist for adults. As argued below, interventions should be directed towards

- maximising the child's longer term development, and ensuring his or her needs, are met rather than meting out punishment for past transgressions
- The framework for the local delivery of youth justice services should, whether or not the current youth offending team model is retained, facilitate close working relationships between youth justice staff, children's services and other agencies who contribute to children's wellbeing.

The NAYJ acknowledges that the review's terms of reference exclude consideration of courts and sentencing, but believes that any fundamental consideration of the purpose, underlying principles, decision-making processes and available interventions, will inevitably have direct implications for these areas. The NAYJ would accordingly encourage those conducting the review to make any such implications explicit and develop recommendations for courts and sentencing where appropriate.

The NAYJ recognises that the needs of young adults are also different in important respects from those of older offenders. Nonetheless, 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 and intervention should accordingly be predicated on nurturing and promoting that development.

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, poor indicators of effectiveness and tend to divert the attention of services providers away from the most important manifestations of progress. Measures of the effectiveness of youth justice intervention should focus on longer term developmental outcomes and the promotion of children's rights and 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 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 alternative provision to meet their needs. A statutory presumption of informal resolution and non-prosecution should be introduced in all cases other than those where there are grounds for considering that compulsory intervention is required to prevent further serious offending or to protect the public.

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 outside of the justice system.

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

The NAYJ acknowledges that consideration of the minimum age of criminal responsibility is excluded from the review's terms of reference. The organisation considers that this is a regrettable omission and would encourage those conducting the review to consider the impact of the current statutory provisions on the unnecessary criminalisation of children.

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

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.

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-informed 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, prioritise an undue focus on the child's offending rather than their childhood status, and undermine an ethical focus on longer term development.

- **Acknowledging social injustice and victimisation: empowering children**

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. Such an approach should aim to empower children to be the agents of their own rehabilitation, so that they can dispense with labels of both victim and offender. A commitment to participation, to the involvement of children in the development of their intervention plans and the wider development of youth justice service provision, is an essential element of such an approach. It is also consistent with the tenets of 'procedural justice' based on evidence that children are more likely to accept the goals of intervention and comply with authority, where they consider that authority to be legitimate.

In this context, it is significant that testimony from children themselves highlights the importance to them of consistent relationships with staff who demonstrate that they genuinely care. The probation, psychotherapy, social work, and youth work research and practice literatures also identifies the relationship between the worker and the service user as central to effective engagement and positive outcomes.

High quality relationships are premised on mutual respect, trust, honesty and clear boundaries, as well as the worker's demonstration of empathy, warmth, a caring attitude and a genuine interest in the young person. Research suggests that such relationships are more likely to develop where the child has one key worker, sees the

same worker throughout his or her order, and there are opportunities to spend one-to-one and informal time together over the long-term. At their best, positive young person – worker relationships can foster self-belief, confidence, motivation to change, engagement and, ultimately, desistance.

While existing youth justice arrangements do not preclude the development of such relationships, neither do they promote them. High turnover of youth offending team staff in many areas, complex caseloads, and a focus on process and meeting targets, necessitating completion of extensive paperwork at the expense of face-to-face work, limit contact time and mitigate against the formation of good relationships. Within the secure estate, and particularly in young offender institutions, high levels of violence, low staff to child ratios and inadequate levels of youth-specific staff training are similarly uncondusive to the development of beneficial relationships between children and staff.

The NAYJ considers that the underlying rationale for current youth justice interventions is to ‘responsibilise’ children for behaviour that is frequently a consequence of social disadvantage and prior victimisation. Such an approach treats rehabilitation as something done to children rather than as a process in which they are the key actors. It tends to undermine the prospect of establishing empathetic child-worker relations, discourages participatory forms of working, makes engagement less likely and increases the risk that children will not regard youth justice supervision as legitimate. Reversing this dynamic requires a cultural shift in terms of policy and practice but is a prerequisite of effective youth justice provision.

- **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 the provision of youth justice services.

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 no greater than that warranted by the seriousness of the offence.

- **Custody as a last resort**

Incarceration is extremely damaging for children and communities 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. Commissioning of custodial provision should take account of the fact that children in trouble are frequently also children in need and secure accommodation for justice purposes should be considered as part of a spectrum of residential provision and family placements required locally for children who are not able to live with their families for a variety of reasons.

Recent inspection reports have confirmed that young offender institutions in particular are incapable of providing a safe environment for incarcerated children with levels of violence and self-harm at unprecedented levels. The NAYJ considers that all children should be withdrawn from such establishments as a matter of urgency.

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. In the recent past, the reduction in the number of justice beds commissioned within the secure children's homes estate has increasingly rendered the continued existence of some of these, more suitable, establishments unviable; this process should be reversed.

No child should be detained in police stations overnight, in prison service establishments or in custodial institutions run for profit.

To ensure that children are not deprived of their liberty for any longer than is necessary, 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. Legislation is already in place that would permit such flexibility but has, to date, not been used. The NAYJ considers that this is a missed opportunity.

- **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 held in the secure estate, have not benefited minority ethnic children to the same extent as their white counterparts, exacerbating levels of disproportionality. Children in care are also overrepresented in the justice system and that overrepresentation has similarly risen in the recent period.

The NAYJ encourages the youth justice review to place equality of treatment at the heart of its recommendations. A national target should be established to address overrepresentation of affected groups of children; providers of youth justice services, and their partner agencies, should be required to develop local strategies to reduce such over-representation at the local level.