



National Association for Youth Justice **Response to Review of the Youth Justice System:** **an interim report of emerging findings**

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.

The NAYJ welcomes the Review of the Youth Justice System Interim Report which, by focusing largely on youth custody, addresses one of the most significant areas of failures within that system and proposes a far reaching solution with the potential to improve significantly arrangements for children deprived of their liberty. The report also provides interesting commentary on a range of other issues, reform of which the NAYJ considers essential to render the youth justice system more child friendly and effective.

The following response concentrates on the proposals within the interim report. The NAYJ acknowledges that the final report will address a broader range of issues and, in particular, believes that the extension of the review's remit to include courts and sentencing is sensible. Given that we have already published an overview of the principles which we consider ought to underpin any further reform of the youth justice system, the current response does not attempt to speculate on issues not addressed in the interim report.¹ However, the NAYJ considers that it is important that the publication schedule for the final report should allow opportunities for full public consultation on the review proposals and looks forward to commenting further at the appropriate time.

1. Key principles informing the interim report

1.1 The NAYJ considers that the starting point of the interim report - to identify key principles that have underpinned the approach – is entirely appropriate and is consistent with our belief that youth justice arrangements should have an ethical, principled and child-focused base.

¹ See *Submission to the Review of Youth Justice by Charlie Taylor, December 2015* available at: <http://thenayj.org.uk/wp-content/uploads/2016/01/2015Submission-to-the-Taylor-Review-of-Youth-Justice.pdf>

- In our earlier submission to the review, we emphasised the importance of arrangements for children who break the law being separate and distinct from those for adults. We accordingly welcome wholeheartedly the report's confirmation of the principle that children who break the law should be treated differently from adults.
- The NAYJ is also sympathetic to the second principle propounded by the interim report that education should be central to an effective youth justice system. However, we are concerned that this should encompass education understood in its broadest sense rather than restricted to formal education. Many children in contact with the youth justice system will previously have had extensive negative previous experiences of the education system and their circumstances will, in many instances, militate against easy engagement with formal education, and educational establishments, until other needs have been met and requisite levels of trust with professionals established. In these circumstances, the NAYJ would encourage a modified version of the principle wherein the purpose of youth justice intervention is the education and healthy development of children in conflict with the law.
- The NAYJ considers that such an emphasis on education and development is not readily compatible with the current statutory aim of the youth justice system. Measuring effectiveness on the basis of a short term prevention of offending is a negative ambition that diverts practitioner's attention away from more important developmental and educative tasks that are consistent with a longer-term diminution of criminal behaviour. Focusing on a child's offending behaviour also risks reinforcing a delinquent identity and impeding, rather than promoting, the natural process of desistance. The NAYJ would accordingly encourage the review to propose in its final report that the statutory aim be amended to ensure a concentration of youth justice provision on ensuring education and child development.

2. **The use, and nature of, child imprisonment**

2.1 The NAYJ fully endorses the assertion in the interim report that the secure estate for children is in urgent need of 'fundamental change'. In particular we consider the abolition of young offender institutions to be an absolute priority. Recent revelations of abusive treatment of children by staff in Medway secure training centre (STC) have also confirmed earlier evidence of an unhealthy staff culture in STCs which can, in our view, only be addressed by a fundamental shift in the nature and purpose of those institutions. Conversely, the NAYJ considers that it is important to acknowledge the evidence that secure children's homes are able to achieve significant progress in children's educational attainment² and that research conducted in 2011 found that almost two thirds (65%) of children in secure children's homes felt that, if they had to be in custody, the establishment they were currently in was the best place for them; equivalent

² Justice Studio (2014) *'They helped me, they supported me' Achieving outcomes and value for money in secure children's homes*. London: Justice Studio

figures for secure training centres and young offender institutions were 32% and 28% respectively.³

2.2 The NAYJ accordingly welcomes the ambition of the proposal to supplant much of existing custodial provision by secure schools which are smaller than most current establishments. However, while supporting the rapid replacement of young offender institutions and secure training centres by alternative forms of provision, we would, given the backgrounds of the children in detention, prefer a model based on the premise of placement in secure child care establishment with high quality education provided on the premises, rather than a school that provides secure accommodation. In our view, such a model would better reflect the complexities of need experienced by this cohort of children and would reinforce the importance of healthy development and emotional support alongside education. It would also have implications for the way that such establishments were inspected. Given previous experience, the NAYJ considers that the importance of minimising the potential for maltreatment of children in any form of detention, through monitoring and inspection, cannot be underestimated and inspectors of custodial facilities accordingly require considerable expertise of this area of work.

2.3 Despite these differences of nuance, the NAYJ takes the view that the priority should be that transformation of existing custodial provision. In this context, the size of establishments within the newly configured estate and who is responsible for running them are important questions. The interim report notes that, in the short term, it is likely that new establishments will need to be commissioned by the government but that in the longer term some form of devolution is likely to be beneficial. The NAYJ believes that local authorities' role in child safeguarding and broader children's services make them ideally placed to provide secure facilities that respond to local need, although economies of scale are likely to require consortia arrangements, particularly in Wales and rural areas of England. Aligning secure provision to the broader range of children's services would facilitate high quality resettlement provision and expedite moves of children from secure to non-secure provision (see paragraph 2.9 below for further commentary in relation to the latter).

2.4 In this context, the NAYJ considers that the size of the new units should reflect broadly those of existing secure residential provision for children with extremely complex needs: such establishments should accordingly offer placements for no more than 30 children, enjoy high staff to child ratios and attract a highly skilled and qualified professional workforce. Experience of fluctuating supply and demand in the children's secure welfare sector, and the need to maintain different specialisms across establishments of that size, suggests that while the responsibility for ensuring sufficient capacity, managing establishments, and case management of individual children within them should be a local one, there will remain a need for central co-ordination.

2.5 The NAYJ acknowledges that such a reduction in the size of custodial establishments will have significant resource implications in the short term, even if improved rehabilitation, reintegration and resettlement are likely to generate significant savings in the longer term. Short term resource implications can, in the NAYJ's view, be offset through reductions in the existing custodial population. Although significant progress has been achieved in recent years in

³ Youth Justice Board (2011) *Developing the secure estate for children and young people in England and Wales: young people's consultation report*. London: Youth Justice Board

reducing the number of children subject to incarceration, there is considerable scope for further contraction. Such contraction is likely to be a prerequisite of effective fundamental reform of the custodial estate.

2.6 More than one third of children deprived of their liberty are in custody for crimes that are not sexual or violent in nature. The NAYJ considers that this points to limitations of the current custodial threshold for children which is effectively the same as that which applies to adults. It allows the imposition of custody for relatively minor, persistent, property offending and breach of community orders for behaviour that did not warrant custody in the first instance. The NAYJ considers the statutory criteria that must be satisfied before a child can be imprisoned should be tightened considerably through:

- The introduction of a presumption of a community based response to offending by children; and
- Restricting custody to cases involving serious violent or sexual offending where:
 - The child poses a serious immediate risk of harm to the public;
 - Non-custodial options have been fully explored; and
 - Clear reasons are given in open court why such alternatives were not adequate to protect the public from serious harm.

2.7 The custodial population is a function not just of the number of children remanded or sentenced to imprisonment but also of the duration of their stay. As the use of imprisonment has declined, the proportion of children serving longer sentences imposed in the crown court of two years or more duration has risen from 17% in 2007/08 to 23% in 2014/15.⁴ Legislation provides that, where children are sentenced in the crown court, the two years upper limit in the youth court ceases to apply and the available maximum sentence becomes identical to that for an adult convicted of the same offence. As a consequence, children routinely receive lengthy sentences that would not be available in other jurisdictions.

2.8 The UK is one of just three European countries to retain the use of life imprisonment for children, and life sentences are mandatory in England and Wales for offences of murder, despite the fact that the UN Committee on the Rights of the Child (2007) has recommended that states 'abolish all forms of life imprisonment for offences committed by persons under the age of 18'. Significantly, in Cyprus, one of the other two European jurisdictions where life imprisonment of children is permitted, there is no evidence of the power having been used; in France just two boys have been subject to life imprisonment in the past 25 years. By contrast in England and Wales between 10 and 25 children *per annum* receive mandatory life sentences. Within those European states which have established a maximum custodial sentence for children, 29 have opted for an upper limit of 15 years, most Eastern European jurisdictions have a limit of ten years, and in Switzerland, the maximum permissible imprisonment of a child is four years.⁵ Given this wider context, the NAYJ considers that:

⁴ Ibid

⁵ Bateman, T (2015) 'Youth justice news' in *Youth Justice* 15(3): 294 -305

- the availability for children of adult length custodial sentences in England and Wales is hard to justify
- there should be a clear upper limit for sentences of imprisonment imposed on children that is consistent with international standards
- a maximum of ten years imprisonment is adequate to accommodate all forms of youth offending.

The NAYJ would urge the Review team to give serious consideration to such proposals when developing proposals on courts and sentencing in its final report.

2.9 Current arrangements for release of children subject to custodial sentences are relatively inflexible, typically occurring at a designated point of the sentence as a matter of course rather than being related to the child's progress or any reduction in risk posed to the public. A greater degree of flexibility as employed in other jurisdictions allows children to be moved from secure institutions to non-secure accommodation depending on assessed circumstances as early as is safe to do so. Such a system clearly has financial advantages, but also provides tangible incentives for children to engage with programmes of rehabilitation within the custodial environment.⁶ In this context, the NAYJ would urge the review to consider recommending such an approach in its final report.

3. Youth offending services in the community and youth justice governance

3.1 The NAYJ acknowledges that some areas have found the provisions of the Crime and Disorder Act in relation to youth offending teams overly prescriptive. However, we are concerned that any relaxation of these provisions should not undermine the statutory responsibilities of local authorities and partner agencies to children in trouble with the law which are required to meet the specific needs of this particularly vulnerable group. The NAYJ proposes that local authorities, in conjunction with statutory partners, should be required to publish an annual strategy detailing how those responsibilities are to be discharged.

3.2 The NAYJ concurs there is considerable merit in strengthening links between youth justice and other mainstream services for children. Given the central role of the local authority in such provision, we take the view that any devolution of custody and other youth justice budgets should be to local authority level or, to maximise economies of scale, to consortia of local authorities. Locating budgets within, and aligning statutory responsibilities to, local authorities would help to erode the boundaries between provision for children with similar needs and circumstances but who may, often as a consequence of contingency, have a different legal status. Such arrangements would also facilitate the development of youth justice services, including custodial provision, as elements of a wider spectrum of support to children with a range of needs that includes children in conflict with the law and those who require care and protection.

⁶ Hart, D (2015) *Correction or care? The use of custody for children in trouble*. London: Churchill Memorial Trust

3.3 As a non-departmental public body (NDPB), the role and future of the Youth Justice Board has been under considerable scrutiny in recent years. The NAYJ accepts that increased devolution of youth justice budgets will result in a reduced role for central co-ordination, particularly if custodial provision is provided through small, local, establishments. At the same time, it is important to recollect the unfortunate trajectory of youth justice throughout the 1990s and first half of the following decade. That trajectory included netwidening, a low priority afforded to diversion, increasingly punitive treatment of children in trouble and a corresponding, and dramatic, escalation in the use of child imprisonment. These were attributable at least in part to a politicisation of youth crime, leading to what has been termed an ‘arms race’ between the major political parties to establish themselves as being the toughest on children who broke the law.⁷

3.4 In this context, the NAYJ considers that there are considerable advantages to retaining some form of specialist central body, with a degree of independence from political pressures, to disseminate good practice and knowledge which, as the National Audit Office has confirmed, is a continuing need.⁸ Indeed, such a role may be more important in a devolved context, promoting a degree of consistency, developing professional practice standards, and ensuring that the interests of children in conflict with the law – who constitute a small minority of children in need – continue to receive the focus that is required as services become more integrated and resources increasing stretched.

4. The response of the youth justice system to children who break the law

4.1 The NAYJ endorses the report’s acknowledgement that formal contact with the youth justice system frequently has a tainting effect and considers that opportunities to divert children from the formal sanctions should be maximised. In this context, the shift from a focus on sanction detection (which had particularly adverse implications for children) and its replacement 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. Moreover, it should be strengthened by the introduction of a statutory presumption of informal resolution and non-prosecution in all cases other than where there are grounds for considering that compulsory intervention is required to prevent further serious offending or to protect the public.

4.2 The NAYJ also welcomes the recognition in the report that current arrangements for the provision of appropriate adults to children in police detention may contribute unnecessarily to the length of time that children spend in custody. Any consideration of the appropriate adult role should also focus on how children’s welfare is safeguarded in the period immediately after their arrival at the police station. In addition, the NAYJ considers that all children in custody require high quality and well informed independent advocacy. While the support of parents is

⁷ Independent Commission on Youth Crime and Anti-Social Behaviour (2010) *Time for a fresh start: the report of the Independent Commission on Youth Crime and Antisocial Behaviour*. London: Police Foundation

⁸ National Audit Office (2010) *The youth justice system in England and Wales: reducing offending by young people*. London: The Stationery Office

clearly important, we take the view that children should also be entitled to the provision of a 'professional', non-familial, appropriate adult.

4.3 The NAYJ is pleased that the review recognises concerns in relation to the failure to provide local authority accommodation to children refused bail by the police and the lack of appropriate mental health provision that increases the risk that children may come to police attention. In our view, such weaknesses provide strong evidence of the continued requirement for a specific focus on the particular needs of children in conflict with the law.

5. Implications of contact with the youth justice system

5.1 The NAYJ echoes the reservations in the report about the current arrangements for retaining formal records of children's criminal behaviour. In our view, such arrangements significantly limit children's opportunities to leave their criminal career behind and require them continually to revisit their past, thereby increasing the risk to the public and employers by impeding the natural process of desistance. Work for the Standing Committee on Youth Justice has confirmed that the risk averse practices which inform disclosure of criminal records acquired as a child in England and Wales are not common in other jurisdictions. The NAYJ considers that there should be a statutory presumption that criminal convictions of children becoming spent at the termination of the sentence. Any exceptions to that principle should be based on demonstrable evidence of a serious risk to the public.

5.2 The NAYJ welcomes the report's recognition of the unacceptable over-representation of some groups of children, including those who are in public care and those from minority ethnic backgrounds. We look forward to concrete proposals on how such forms of over-representation can be reduced in the final report. In this context, the NAYJ believes that it would be helpful for the review to adopt a third principle to inform its deliberations - in addition to the two principles discussed at paragraph 1.1 - of equality of treatment. We further consider that a national target should be established to address overrepresentation of affected groups of children and that providers of youth justice services, and their partner agencies, should be required to develop strategies to reduce such over-representation at the local level.