

The 'transformation' of youth custody: a discussion paper

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Contents

- **Background 1**
 - Current policy position 3
- **Do the reforms constitute a 'vision' for youth custody? 4**
 - Is education the answer? 5
 - What about 'welfare'? 6
 - Recognising vulnerability 7
 - Artificial distinctions? 9
- **Who should be responsible for the secure estate? 10**
 - The role of local authorities 10
 - Can child prisons be reformed? 11
 - Are the recently-proposed arrangements an improvement? 11
- **Conclusions 12**

* This discussion paper has been produced by the author at the behest of the NAYJ Board of Trustees.

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May 2017

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.

This paper offers an analysis of current proposals to reform custodial provision for children under 18 in England and Wales. Intended to inform and stimulate debate, it draws on lessons learned from visits to Spain, Finland and the USA - a trip funded by the Winston Churchill Memorial Trust¹ - undertaken in order to understand their approaches to removing children from home following offending behaviour. The paper also makes reference to other children who find themselves in secure care through different legal pathways, arguing that the reform of custody should prompt us to ask fundamental questions about what we hope to achieve when we incarcerate children, and the answers to those questions should shape the secure estate we then create.

● Background

These are complicated times to embark on social reform. Political attention and resources are increasingly absorbed by planning for Brexit and austerity in public spending is set to continue for the foreseeable future. Yet the Government's proposal to 'transform youth custody' has been rumbling on for more than three years. The intention has been widely supported: for example, the case for change is clearly articulated in the National Association of Youth Justice's (NAYJ) briefing on *The State of Youth Custody*². Stubbornly high reconviction rates of about 70% for children following a custodial sentence, combined with evidence of poor safeguarding practice, led the Youth Justice Board (YJB) to

1 Hart, D (2016) Correction or care? the use of custody for children in trouble. London: Winston Churchill Memorial Trust. <http://www.wcmt.org.uk/fellows/reports/approaches-secure-care-troubled-children>
2 Bateman, T (2016) The state of youth custody. NAYJ Briefing. London: NAYJ. <http://thenayj.org.uk/wp-content/uploads/2016/10/NAYJ-Briefing-State-of-Youth-Custody-2016.pdf>

report in mid-2016 that the young people's secure estate was no longer 'fit for purpose'³.

The last major reform of the secure estate was in 1998 with the Crime and Disorder Act. The newly established YJB took on responsibility for placing children in the three types of establishment available to them: Young Offender Institutions (YOIs) run by the prison service, Secure Training Centres (STCs) run by private providers and Secure Children's Homes (SCHs) run by local authority Children's Services Departments. The overall numbers of children requiring a placement peaked at over 3,000 in 2008 but then declined to less than 900 currently with about three-quarters being placed in YOIs⁴.

Proposals for reform date back to 2013. Initially, despite widespread opposition, the government's plan was to build large 'secure colleges' for 12-17 year olds accommodating more than 300 children each⁵. The idea was abandoned at the eleventh hour when Michael Gove took over as Minister of Justice in 2015. He established the Youth Justice Review, led by education expert Charlie Taylor, to look at the youth justice system from sentencing to custody. The publication of the review was delayed by more political upheavals and yet another ministerial change in mid-2016. When it was finally published⁶, it was ostensibly welcomed by Liz Truss, the new Justice Secretary, but plans for implementation are vague⁷. As the Standing Committee for Youth Justice (SCYJ) points out, some of Taylor's proposals have apparently been ignored while others have received only a partial response⁸. The recommendations for custody received more attention than most, however, and have resulted in a plan for reform.

Taylor concluded that the opportunities presented by a reduced demand for placements had not been grasped and that the remaining secure estate has simply evolved rather than being designed. As more children are diverted from custody, a higher proportion of those that remain have complex needs yet they are often placed far from home and cared-for by over-stretched staff who lack the necessary skills and training. Taylor recommended a radical overhaul of the youth custodial estate, with YOIs and STCs being replaced by a network of secure schools with 60-70 places each. Although Taylor acknowledged that central commissioning would be required initially, responsibility for commissioning these schools would eventually be devolved to local areas, along with the budget. In line with his perspective that children in trouble should be seen as 'child first, offender second', he proposed a reversal to the current approach:

Rather than seeking to import education into youth prisons, schools must be created for detained children which bring together other essential services, and in which are then overlaid the necessary security arrangements⁹.

Despite the emphasis on education, Taylor recognised that secure schools needed to be essentially therapeutic environments, with mental health services playing a much more significant part than at present.

As the Taylor Review concluded its work in mid-2016, the Ministry of Justice (MoJ) established the Youth Custody Improvement Board (YCIB) to explore the current state of the youth custodial estate (excluding SCHs) and to recommend improvements. This appears to have been prompted by immediate concerns about the safety and well-being of children detained within STCs and YOIs. Revelations of abuse within Medway STC, combined with increasing levels of violence, demoralised staff and generally poor care across the remaining eight establishments suggested that intervention could not wait for any more far-reaching programme of change. Her Majesty's Chief Inspector of Prisons (HMIP) reported that 46% of children in YOIs surveyed in 2015-2016 had felt unsafe – more than ever before¹⁰. Individual inspections had also revealed a worrying decline in standards across both STCs and YOIs in measures such as children reporting that they were victimised by peers

3 Youth Custody Improvement Board (2017) Findings and recommendations of the Youth Custody Improvement Board. London: MoJ. <https://www.gov.uk/government/publications/youth-custody-improvement-board-findings-and-recommendations>

4 Youth Justice Board (2016) Monthly youth custody report January 2017: England and Wales. London: YJB. <https://www.gov.uk/government/statistics/youth-custody-data>

5 Ministry of Justice (2014) Transforming Youth Custody: government response to the consultation. London: MoJ. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/273402/transforming-youth-custody-consultation-response.pdf

6 Taylor, C (2016) Review of the Youth Justice System in England and Wales. London: MoJ. <https://www.gov.uk/government/publications/review-of-the-youth-justice-system>

7 Ministry of Justice (2016) The government response to Charlie Taylor's Review of the Youth Justice System. London: MoJ. <https://www.gov.uk/government/publications/review-of-the-youth-justice-system>

8 Standing Committee for Youth Justice (2017) SCYJ response to Charlie Taylor's review of the youth justice system and the government's response. London: SCYJ. <http://scyj.org.uk/2017/02/scyj-responds-to-taylor-review-government-response/>

9 Taylor, C (2016) *ibid.* para 141.

10 Her Majesty's Chief Inspector of Prisons (2016) Children in Custody 2015-16. London: HMIP. <http://www.justiceinspectorates.gov.uk/hmiprisons/inspections/children-in-custody-2015-16/>

or treated disrespectfully by staff.

The YCIB confirmed the YJB view that the young people's secure estate is not fit for purpose and lacks vision. Recommendations included:

- Ministers to define what they believe the youth custodial system is attempting to achieve.
- The creation of a single system for governance and accountability of the Youth Secure Estate, led by a Director and staffed by people with appropriate skills and knowledge.
- A needs-analysis of young people in custody, including their health needs, and additional measures to tackle safety in YOIs and STCs and to address the specific issues facing black and minority ethnic young people.
- Replace the requirement for 30 hours of education with a national framework to ensure young people master the basics of learning.
- The secure schools' pilot to be directly managed and designed so that it can test specific evidence-based approaches.

To date, there has been no detailed response from the government but, again, some suggestions appear to have been adopted.

Current policy position

In response to the Taylor Review, the government said that it shared his vision about 'putting education at the heart of youth custody'¹¹. It has agreed to pilot two secure schools, but with no commitment as to when (or if) they will be rolled out nationally to replace STCs and YOIs. For an indefinite period, there will therefore be four types of secure establishment rather than the current three, increasing yet further the potential for fragmentation. Meanwhile, there are to be 'improvements' to existing YOIs and STCs including:

- the introduction of a new pre-apprenticeship pathway;
- boosting numbers of front-line staff in YOIs by 20%;
- developing additional specialist support units for the most vulnerable;
- introducing multi-disciplinary Enhanced Support Teams of health and psychology staff;
- introducing a new Youth Justice officer role, with specific training to work with young people;
- assigning each young person a dedicated officer to challenge them and support their reform¹².

Whilst these steps may improve the existing situation they can hardly be described as radical. Of greater significance, perhaps, are the planned changes to governance arrangements. Without directly responding to Taylor's recommendation for the custody budget to eventually be devolved, the government appears to have moved towards greater centralisation in the short term. It has announced the creation of a Youth Custody Service as an arm of the new HM Prison and Probation Service (HMPPS) – responsible for managing and monitoring but not commissioning secure establishments. The commissioning function will transfer to the MoJ, leaving the YJB with responsibility for setting standards. In accordance with the recommendations of the YCIB, the Youth Custody Service will have its own workforce, specifically recruited and trained to work with young people.

At this stage, there is very little detail about what the new arrangements will look like in practice but should we be optimistic that the reforms will improve life for children in custody? Some of the changes appear to be more cosmetic than significant: for example, how is a 'dedicated officer' any different to the 'personal officer' or 'key worker' that children are already assigned? And is the increase in staffing in YOIs merely a reversal of the cuts made since 2010? Others changes are more substantial, such as the development of new specialist units and the introduction of a youth justice officer role; a move which suggests that there is no appetite to get rid of STCs or YOIs any time soon. Even if the secure school pilots are successful – and there is no detail about how or when this judgement will be made – how will they be measured against these 'reformed' establishments?

¹¹ MoJ (2016) *ibid.* para 7

¹² MoJ (2016) *ibid.* para 19

- Do the reforms constitute a 'vision' for youth custody?

The suggestion that the current system of youth custody lacks 'vision' has been made in a number of quarters. The Medway Improvement Board, established in the wake of abuse within Medway STC, was concerned that a culture of control and contract compliance had taken precedence over safeguarding and rehabilitation.

The Board recommends that a new Vision is developed for STCs, or any arrangement that replaces STCs, that clearly articulates the purpose of these establishments, their focus on education and rehabilitation, and cultural values that promote a nurturing and safe environment. The operationalisation of this vision must be set out in a strategic plan¹³.

Similarly, the YCIB's first recommendation¹⁴ urges Ministers to define what they believe the youth custodial system as a whole, not just STCs, is attempting to achieve. Without this, it argues, it is impossible to determine how the service should be delivered and how its success can be measured.

This lack of vision emerged as one of the most significant differences between our system and that of other countries visited by the author in 2015. The youth justice system in England and Wales has the prevention of offending and re-offending as its main purpose. It is worth questioning whether this is a sufficiently aspirational goal. The NAYJ has criticised it as an essentially negative approach, particularly when it means that success is measured primarily in terms of reoffending rates rather than more holistic outcomes for children. If a child is supported on a more positive trajectory, then reduced offending is likely to be a by-product.

Even if we accept that the main purpose of custody is the prevention of further offending, there is no evidence of a coherent theory of change within current policy as to *how* this will be achieved. What do we think will transform a child's behaviour so that they will not commit further offences when they are released? This should be the starting point for designing a secure estate that can bring about this transformation, from the size and design of the buildings, to the nature and skills-set of the staff and the nature of the services that the children will need. If the system is not driven by a clear sense of purpose, we cannot criticise if it becomes driven instead by processes and the 'contract compliance' noted by the Medway Improvement Board.

By contrast, Spain, Finland and progressive establishments in the US all appeared to have a more clearly-developed sense of what they wanted for their children. The common thread was a type of quasi-parenting: supporting healthy and positive development towards maturity. This was articulated in different ways: a policy-maker in Spain put it simply by saying that he wanted children to 'learn how to live' during their time in custody. The Diagrama establishments in Spain saw themselves as providing 'love and boundaries' until children learned to manage their behaviour and re-join the community. This process of re-integration was gradual, rather than the abrupt and rigid release arrangements to which children in England and Wales are exposed.

There is no 'youth justice system' in Finland: youth offending is seen as a child protection issue because of the risk it poses to children's health and development. It is therefore the child welfare service that is responsible for supporting the child and their family, and for providing out of home placements. Only for exceptionally severe violent offences will a child be placed in a custodial setting – less than 10 at any one time. Instead, there are several specialist children's homes providing 'care, upbringing and education' for those with challenging or criminal behaviour. These are open settings, although they contain a number of Special Care Units where children can be detained for up to 90 days:

... in order to interrupt a vicious circle of intoxicant abuse or crime or when the children's own behaviour otherwise seriously endangers their lives, health or development¹⁵.

The US inevitably offers a more complex picture, with each State having autonomy to determine its own approach to youth custody. Even in the most punitive states there is an increasing recognition that mass incarceration in 'correctional' facilities is not only expensive but ineffective¹⁶. There is a movement towards

13 Medway Improvement Board (2016) Final report of the Board's Advice to Secretary of State for Justice: p.27. <https://www.gov.uk/government/publications/medway-improvement-board-report-and-moj-response-to-its-recommendations>

14 YCIB (2017) *ibid.* p.6.

15 Finnish Child Welfare Act: s71

16 Justice Center and Public Policy Research Institute (2015) Closer to home: An Analysis of the State and Local Impact of the Texas Juvenile Justice Reforms. <https://csjusticecenter.org/wp-content/uploads/2015/01/texas-JJ-reform-closer-to-home.pdf>

a more therapeutic approach and the Missouri model¹⁷ is being adopted in a number of states. That model is based on clearly articulated beliefs about the way children in secure care can be supported to develop in a positive way. These can be summarised as:

- Young people must be emotionally and physically safe before they can engage in a process of change.
- This safety is generated by stable and trusting relationships within a small group of young people and staff.
- Group treatment provides an opportunity for young people to practice new ways of communicating and develop healthy relationships.
- Staff must maintain constant 'eyes-on, ears-on supervision' to de-escalate tensions and offer opportunities for young people to learn and mature.
- Facilities must provide a full range of daily activities, with minimal 'down' time.

So, do the current proposals for youth custody reform in England and Wales constitute a 'vision' for the service? Taylor certainly addresses the question of what youth custody is 'for' in his review. Any element of punishment lies in the deprivation of liberty – the custodial experience itself should not be punitive. Neither should a child be incarcerated in order to 'fix' them, but if they *are* incarcerated:

The aim then is to help them to overcome their difficulties, address the causes of their offending and prepare them for successful reintegration into society when they are released. Many of the children who offend come from complex and chaotic families, they are entrenched in established patterns of offending and need considerable help to change¹⁸.

Is education the answer?

Taylor sets out how the change he envisages can be achieved through the provision of the 'highest quality education from outstanding professionals'. He cites examples of successful 'alternative' schools for children unable to manage in mainstream education as a model for his proposed network of secure schools. Headteachers would have the authority to commission the services they need and recruit their own staff so that children can be offered more-individualised packages of support than is presently the case.

Leaving aside more general criticisms of current education policy, there is certainly a lot wrong with education in the secure estate now. Taylor describes a catalogue of structural problems and outmoded teaching methods. A review by the Prisoners' Education Trust came to similar conclusions and recommended a more flexible, individualised approach¹⁹. There are international examples of how this can be achieved. The Maya Angelou Academy in a youth prison in Washington DC has an innovative curriculum specially designed to meet the needs of children in custody. Educational advocates continue to support children once they are released to help them to settle back into mainstream education and the aspiration is that all children will graduate from high school and go to college²⁰.

Taylor's vision has ostensibly been adopted by the government but the plans announced so far do not reflect his aspiration. Apart from an agreement to pilot secure schools, the announced changes are an attempt to 'tweak' the existing education offer. Governors will be given responsibility for managing contracts with education providers; each child will have a learning plan; there will be a new Youth Custody Apprenticeship Pathway; governors will be encouraged to offer more sporting opportunities, and post-custody mentoring partnerships will be developed.

There are risks, however, in the way that these changes have been framed. Taylor's focus on an education based system in which secure schools would be commissioned and inspected like any other alternative provision or free school has contributed to this. Media reports have seized on the terminology of 'schools' to interpret the reforms as offering education in its narrowest sense and there is a real danger that expectations will be too limited as a result. For example:

18 Taylor, C (2016) *ibid.* para 124

19 Taylor, Clare (2016) *Great Expectations: Towards better learning outcomes for young people and young adults in custody.* London: Prisoners' Education Trust. <http://www.prisonerseducation.org.uk/resources/great-expectations>

20 The journey in creating the academy is described in Domenici, D and Forman, J (2011) 'What It Takes to Transform a School Inside a Juvenile Facility: The Story of the Maya Angelou Academy' in *Justice for Kids: Keeping Kids Out of the Juvenile Justice System.* Ed. Nancy Dowd: pp. 283-306. New York University Press.

Teenage criminals will be sent to 'secure schools', instead of prison, where they will be taught English and Maths lessons, under plans to be unveiled this week²¹.

At the centre of the shake-up is the launch of two new secure schools, where youngsters will receive tuition in core subjects including English and maths and have access to work training and apprenticeship schemes to help them find jobs on release²².

Or health?

As those who understand the profile of children in custody well know, it is not the failure to offer English and Maths lessons that has led to their incarceration. There are many barriers to learning, including structural disadvantage, poverty, unmet health needs, developmental disorders, emotional pain and a sense of hopelessness. Taylor does acknowledge that children cannot begin to engage in education if they have other unmet needs, particularly the mental health problems experienced by at least one-third of the population. Health input would therefore be a much more integral part of life in secure schools, which would offer a 'psychologically informed approach'.

Improving children's mental health needs to be a seam that runs through the culture and operation of the entire institution, and not just a bolt-on service delivered through weekly therapy sessions. To make real progress, children need to be in a therapeutic environment in which everyone who works in an establishment understands what is needed to help children to cope better and to address the root causes of their offending, and has the expertise and the commitment to achieve this²³.

This could be described as education in its broadest sense, more akin to the holistic models of care described in other countries. It is not entirely clear, however, that the government proposals have fully embraced this intention, at least in the interim until secure schools are developed. The need to improve mental health care is recognised, and there will be new

Enhanced Support Teams of health and psychology staff working alongside the Department of Health's 'Secure STAIRS' approach aiming to improve mental health outcomes. The purpose of the Enhanced Support Teams, however, is to 'stabilise young people much more quickly through the provision of specific evidence-based interventions to address their offending'²⁴. This is not the same as a therapeutic environment, where all aspects of day to day life are seen as opportunities to improve children's emotional and psychological well-being.

In Spain, front line staff are called 'educators'. They spend all day with the children: eating with them, supporting them in the classroom, sharing activities and looking after the building - and pets - together²⁵.

No matter how good the quality of education and health services, their benefits will be undermined if they are not provided within a culture based on positive relationships, unconditional support and advocacy²⁶. During an interview for a project on the secure placement system, one boy told me that he had done well in education whilst in an STC but could not learn anything when moved to the 'wild' setting of a YOI because he was too busy 'watching his back'.

What about 'welfare'?

So far, the suggestion within our youth justice policy appears to be that education, health care and possibly offender desistance programmes are the way to transform children's behaviour. Other aspects of children's experience, such as the need to feel safe and to have positive relationships with staff, are not fully explored. This wider perspective on what children need to thrive can be found within the policy framework of children's

21 Daily Telegraph. 11 December 2016. <http://www.telegraph.co.uk/news/2016/12/11/teenage-criminal-spared-prison-sent-secure-school-learn-maths/>

22 Daily Mail. 11 December 2016. <http://www.dailymail.co.uk/wires/pa/article-4021180/Secure-schools-planned-young-offenders-alternative-jails.html#ixzz4cN25fKim>

23 Taylor, C (2016) *ibid.* para 131.

24 MoJ (2016) *ibid.* para 97.

25 Hart, D (2016) *ibid.* p.2.

26 Approaches which are evident in other services, such as good quality youth work

services²⁷ where the Assessment Framework identifies seven universal aspects of children's developmental needs:

- health;
- education;
- emotional and behavioural development;
- identity;
- family and social relationships;
- social presentation;
- self-care skills.

The Framework also describes the elements of parenting and the wider environment that are needed to support this healthy development: it is not an isolated intervention that will shape children's outcomes but the whole context in which they are living. These concepts underpin the approach of local authority children's services, including residential care, but have not been explicitly adopted by the youth justice system.

The focus of the current reforms to custody has been entirely on YOIs and STCs. Neither the Taylor Review nor the YCIB address the question of whether SCHs also need to be reformed, and the implication seems to be that these are *not* unfit for purpose. The government states its intention to continue to place the most vulnerable children in SCHs, acknowledging that they already work in an integrated way²⁸. Bateman suggests that:

... the performance of SCHs, at their best, demonstrates that a model of secure accommodation based on a child care ethos can provide a safe environment that has the potential to minimise the damage caused by custody while preparing children for a positive future on release²⁹.

In which case, he asks, why do we need yet another type of establishment? Why not just fund SCHs to take all the children remanded or sentenced to custody?

SCHs are not schools: they are children's homes operated by local authority children's services departments. They are therefore designed to care for children in a holistic sense rather than just to educate them, although education is an important element in any child's upbringing.

The notion that children who commit offences should primarily be cared for was discarded with the advent of the Crime and Disorder Act 1998. The White Paper which preceded it was entitled *No More Excuses* and Jack Straw, the then Home secretary, set the tone for his reforms as follows:

An excuse culture has developed within the youth justice system. It excuses itself for its inefficiency, and too often excuses the young offenders before it, implying that they cannot help their behaviour because of their social circumstances. Rarely are they confronted with their behaviour and helped to take more personal responsibility for their actions³⁰.

Recognising vulnerability

As more young people are diverted from the youth justice system, the proportion of those remaining with multiple difficulties has risen. With this shift in the nature of the population has come an acknowledgement that children may very well have 'excuses' for their behaviour. As noted by Bateman, there have been increases in the proportion of boys in YOIs with drug problems, emotional or mental health problems or, most strikingly, a history of being in the care system (now 38%)³¹. There has also been a sharp rise in the proportion of minority ethnic children in custody: from 25% in May 2005 to almost 45% in 2016.

Related to this is the emerging body of knowledge about adolescent brain development. It is now known

27 HM Government (2015) Working together to safeguard children: A guide to inter-agency working to safeguard and promote the welfare of children. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/592101/Working_Together_to_Safeguard_Children_20170213.pdf

28 MoJ (2016) *ibid.* Para 21.

29 Bateman, T (2016) *ibid.* p.12.

30 Home Office (1997) *No More Excuses: A new approach to tackling youth crime in England and Wales.* <http://webarchive.nationalarchives.gov.uk/20130128103514/http://www.homeoffice.gov.uk/documents/jou-no-more-excuses?view=Html>

31 Bateman, T (2016) *ibid.* p.3

that brain development is not complete until the mid-20s. Adolescent brains are still maturing, and 'normal' teenage development is characterised by increased impulsivity and risk-taking, and an inability to assess the consequences of actions. These characteristics already increase the risk of offending behaviour, but are exacerbated by early abuse and neglect. Both the structure and chemistry of the brain are affected, with reports of children having abnormal reactions to stress and difficulty in trusting others³².

A review of trauma in the backgrounds of young people who offend found that child abuse, loss, victimisation, mental health conditions and brain injury were particularly prevalent³³. As more becomes known about the impact of trauma, the way in which it can lead to behavioural problems becomes clearer. Effects may include:

- reckless and self-destructive behaviour;
- aggression;
- inability to assess danger;
- difficulty in imagining/planning for the future.

It may be that these factors not only increase the likelihood of a child's involvement in offending behaviour but also make their engagement in mainstream education and compliance with the expectations of stable employment much more difficult. They also characterise the types of risky behaviour that lead to children being detained through child welfare legislation³⁴.

The effects of trauma and adolescent brain development were well known to staff in the US establishments visited for the *Correction or care?* report. Front line staff often described their efforts to ensure their practice was 'trauma-informed'. The way this knowledge has become mainstream is not yet evident across our secure estate, although there are signs that this may be changing. In contrast to the 'tough' tone of Jack Straw's announcement of youth justice reform, Liz Truss, the current Justice Secretary, acknowledged the troubled nature of the population we are now dealing with.

Of course it is right that young offenders who commit crimes must face the consequences of their actions and that the justice system delivers reparation for victims. Yet those 900 in custody represent some of the most complex and damaged children within society. Broken homes, drug and alcohol misuse, generational joblessness, abusive relationships, childhoods spent in care, mental illness, gang membership and educational failure are common in the backgrounds of many offenders³⁵.

The revised sentencing guidelines for children and young people also represent a shift in tone³⁶. Although criminal courts have had a statutory obligation to consider the welfare of young defendants since 1933³⁷, this version of the sentencing guidelines goes into more detail than ever before about what this means in practice. It sets out the principles of the UN Convention on the Rights of the Child, and emphasises the importance of supporting the child's re-integration into society rather than criminalising them. Sentencers are urged to consider the factors in a child's background that may have led to their offending, including any developmental or health problems, a history of deprivation or abuse and neglect. They are reminded of the over-representation of looked after children and those with a minority ethnic background in the youth justice system and required to give them special consideration - although it is unclear what this will mean in practice. The fact that children may be less culpable than adults because of their immaturity, inability to fully appreciate the impact of their actions on victims and susceptibility to peer pressure is also acknowledged. Directly contradicting Jack Straw³⁸, the guidelines state that children *do* often grow out of crime, so care must be taken not to alienate them from society. Finally, it is stated that an equivalent sentence will weigh more heavily on a child than an adult and must be proportionate. Sentencing decisions should be determined by how best to

32 For example, Anda, R. Felitti, R. Walker, J. Whitfield, C. Bremner, D. Perry, B. Dube, S. Giles, W (2006). The enduring effects of childhood abuse and related experiences: a convergence of evidence from neurobiology and epidemiology. *European Archives of Psychiatric and Clinical Neuroscience* 256 (3) pp.174 – 186.

33 Liddle, M. Boswell, G. Wright, S. and Francis, V. with Perry, R (2016) Trauma and young offenders: A review of the research and practice literature. *Beyond Youth Custody*. <http://www.beyondyouthcustody.net/wp-content/uploads/Trauma-and-young-offenders-a-review-of-the-research-and-practice-literature.pdf>

34 Children Act 1989: section 25.

35 MoJ (2016) *ibid.* para 4.

36 Sentencing Council (2017) *Sentencing Children and Young People. Overarching Principles and Offence Specific Guidelines for Sexual Offences and Robbery: Definitive Guideline*. https://www.sentencingcouncil.org.uk/wp-content/uploads/Sentencing-Children-and-young-people-Definitive-Guide_FINAL_WEB.pdf

37 Children and Young Persons Act 1933: section 44(1).

38 Home Office (1997) *ibid.*

support vulnerable children:

When considering a child or young person who may be particularly vulnerable, sentencers should consider which available disposal is best able to support the child or young person and which disposals could potentially exacerbate any underlying issues. This is particularly important when considering custodial sentences as there are concerns about the effect on vulnerable children and young people of being in closed conditions, with significant risks of self harm, including suicide³⁹.

This adoption of 'welfarist' principles is welcome but does raise the question: if there is a genuine desire to support troubled children, why are they dealt through a purely justice-based system? In Finland, there is no such dilemma: offending behaviour is seen primarily as a child welfare problem and the only court likely to be involved is a Family Court. A study of children in breach of their orders found that sentencers in England and Wales did often recognise children's multiple difficulties but the only tools at their disposal to address them were criminal justice orders: they could not order health, welfare or education services to offer children the help needed⁴⁰.

Taylor went some way towards acknowledging that criminal courts are not the right place to resolve welfare problems in his recommendation that the court's role would be to establish guilt but that a Children's Panel would be the main forum for determining a plan for the child. This plan would be based on an analysis of the causes of the child's behaviour and the Panel would have an ongoing role in monitoring the child's progress, as is the case in Spain. There judges and prosecutors continue to visit children in custody and can amend the plan, including granting home leave or early release if the child is doing well⁴¹. The Children's Panel proposed by Taylor resembles those in Scotland but would not deal with welfare and justice cases alike. Taylor's Panel would remain part of the youth justice system and be 'staffed' by lay magistrates. This proposal has not been accepted by the government which has agreed only to look at the spirit of Taylor's proposals but within the existing legislation. This would appear to rule out Panels whilst the proposals in the Prisons and Courts Bill for increased use of live 'video' links – which apply to children – would appear to run counter to Taylor's ideas.

Artificial distinctions?

In England and Wales, meanwhile, there is a similar cohort of children, with the same troubled backgrounds or developmental problems, who are dealt with by the welfare system: those considered to need secure care because of the risk they pose to themselves or others. These children are detained in SCHs⁴², often alongside their peers who have been remanded or sentenced by a criminal court. They are not two distinct groups – many children experience a secure welfare placement before later being dealt with by the criminal justice system. Others have lost control of their behaviour to such an extent that it is arbitrary which system gets to them first: they meet the criteria for detention through either route. Some children are also known to child mental health services, with frequent disputes about whether they should be admitted instead to an in-patient psychiatric unit. Those with attachment disorders, post-traumatic stress disorder and emerging personality disorder often display the chaotic and harmful behaviour that is evident across all three types of placement, with no agency wanting to take responsibility.

The system of welfare secure placements is in crisis but for different reasons from those affecting custody. Rather than concerns about the quality of provision, escalating demand has led to a situation where more children are judged to need a secure placement than there are beds. Given that there must be a real risk of harm before such a placement can be requested, this is putting an immense strain on local authority children's services in their attempts to keep children safe⁴³. The reasons for this crisis in supply and demand are complex. The de-commissioning of beds by the YJB has destabilised the funding arrangements, as has the pressure on budgets: local authorities are reluctant to bear the cost of running a Secure Children's Home when they are at the mercy of market forces. Another pressure is the lack of a long-term system for co-ordinating requests for placements: until mid-2016 local authorities had to ring every SCH to seek a vacancy and the current co-

39 Sentencing Council (2017) *ibid.* para 1.20.

40 Hart, D. (2011) *Into the breach: the enforcement of statutory orders in the youth justice system*. London: PRT. <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Into%20the%20Breach.pdf>

41 Hart, D (2016) *ibid.*

42 Children Act 1989: section 25.

43 Hart, D and LaValle, I (2016) *Local authority use of secure placements*. Research report. London: DfE. <https://www.gov.uk/government/publications/secure-placements-for-children-how-local-authorities-use-them>

ordination by a volunteer authority is only an interim solution. It may also be that improved diversion from the youth justice system means more children with troublesome behaviour being recognised as children in need rather than offenders.

Research into the way that local authorities use secure welfare placements showed that they cater for a small but extremely high-risk population⁴⁴. By the time a child is considered for secure care, there will usually have been unsuccessful attempts to care for them in a range of open fostering and residential placements where they have proved too chaotic to engage with the help on offer and have continued to present a serious risk. Sexual exploitation, gang-related violence, persistent absconding, serious self-harm, offending behaviour and substance misuse may all be reasons to consider 'holding' the child for a short period in an SCH. The aim of such a placement is to keep them safe, stabilise them and allow a thorough assessment of their needs so that a plan can be made.

Despite rising demand, the number of SCH places in England and Wales has declined significantly since 2004 when there were more than 25 SCHs. On 31 March 2016, there were only 15 SCHs remaining with a total of 254 beds – of which 138 were contracted by the YJB⁴⁵ leaving only 116 welfare beds. Since June 2016, referrals have been channelled through a National Secure Welfare Co-ordination Unit operated by Hampshire Council. They are gathering data on the patterns of supply and demand, but also trying to establish a clearer picture of the children's needs in order to inform future decisions about how the service can best be provided. It is already becoming clear that there are indeed insufficient placements and that the children referred have a range of complex needs, including mental health problems, that require highly skilled intervention.

If there is an increasing recognition of the wider needs of children in trouble - seeing them as 'child first, offender second' - then a logical consequence would be a realignment in resources from youth justice to welfare services. It seems ironic that the type of secure care that is most likely to meet those welfare needs is in crisis, and that the agencies running those services are not central to the planning process for a reformed secure estate.

- Who should be responsible for the secure estate?

The role of local authorities

This question of who is tasked with taking the reforms forward is important. In Spain and Finland, local authorities are responsible for children in trouble including the commissioning of residential placements. In New York, responsibility for youth justice has recently been transferred to the NY City Administration for Children's Services – the equivalent of a local authority children's services department. They have launched the 'Close to Home' initiative whereby children removed from home because of their offending behaviour are placed in therapeutic children's homes close to their communities rather than 'correctional' facilities, which are essentially prisons, miles from the city⁴⁶.

In his proposals for secure schools, Taylor clearly paved the way for greater engagement by local authority children's services. The Association of Directors of Children's Services (ADCS) welcomed his interim proposals and made it clear that they saw a more central role for children's services in a reformed secure estate⁴⁷. A particular frustration was the fact that Directors of Children's Services have a duty to safeguard and promote the welfare of children in custody but limited opportunities to fulfil this responsibility: they neither commission nor scrutinise secure settings other than SCHs. This was confirmed by the Medway Improvement Board, who found that agencies were confused about where responsibility lay for ensuring that children in Medway STC were adequately safeguarded. They did not think that this was unique to Medway but a structural problem, and contrasted the drivers for those running SCHs and STCs:

The ethos of SCHs is to create a nurturing, family atmosphere in which young people can be helped to

44 Hart, D and LaValle, I (2016) *ibid*.

45 Department for Education (2016) Children accommodated in secure children's homes at 31 March 2016: England and Wales. London: DfE. <https://www.gov.uk/government/statistics/children-accommodated-in-secure-childrens-homes-31-march-2016>

46 <https://www1.nyc.gov/site/acs/justice/close-home.page>

47 Association of Directors of Children's Services (2016) Submission to Charlie Taylor's review of the youth justice system. ADCS. http://adcs.org.uk/assets/documentation/CTYJ_review_ADCS_submission.pdf

overcome the educational, social and emotional issues that led to their offending behaviour. The leaders of the best SCHs are driven by moral purpose rather than contractual compliance⁴⁸.

ADCS also expressed the view that the youth justice system should be more closely aligned to the infrastructure and practice of children's services, and welcomed the possibility raised in Taylor's interim report of greater devolution. Nonetheless, the government has instead decided to retain the service at national level.

The 'best' way of ensuring an adequate level of suitable provision is unclear. The market-driven crises in adult social care and welfare SCH placements show the problems that can arise if local authorities carry sole responsibility, whereas national commissioning results in children being cut off from local services and militates against any sense of 'ownership' or ongoing responsibility by home agencies. New arrangements need to be developed but, crucially, can only work if there is a commitment to provide adequate funding.

Can child prisons be reformed?

The question of where responsibility for youth custody should lie is currently being debated in the US. They have also seen a fall in youth crime and the numbers of children being remanded or sentenced to custody in recent years. As in England and Wales, reoffending rates following incarceration are stubbornly high and there is evidence that it is less effective than community sentences in preventing further crimes. Repeated scandals about the way children in prison are treated, with concerns about levels of violence (including sexual violence), self-harm and inhumane conditions, have resulted in repeated attempts at reform but McCarthy et al (2016) suggest that these are doomed to failure:

That these facilities have been impervious to reform efforts suggests that the harmful effects of incarceration are embedded in the physical facilities themselves and the nature of institutionalization. Changes in leadership, training, or enriched programming ultimately are trumped by correctional physical plants, the great distance most facilities are from families and oversight mechanisms, and the bureaucratization and institutionalization such facilities engender⁴⁹.

McCarthy et al suggest that the 'toxic' effect of imprisonment is particularly true for adolescents. Given their reduced capacity for self-regulation and sensitivity to environmental triggers, the worst place they could be in is noisy, harsh surroundings with a culture of coercion. It is important to recognise this essential unsuitability of a prison environment for troubled adolescents when assigning blame for recent failures. The YCIB describe their 'astonishment' that the secure estate was unfit for purpose after the YJB had been responsible for more than a decade. The YJB certainly tried hard to bring about positive change, as did the many dedicated staff working within the sector, but perhaps the model is inherently unsuitable.

Are the recently-proposed arrangements an improvement?

Little will change at local level. YOTs will continue to deliver community-based youth justice services (although the government will explore with local authorities how there could be greater flexibility) and the ring-fenced grant that central government contributes will continue. The real change comes centrally with the establishment of the new Youth Custody Service as a 'distinct arm' of the HMPPS, which replaces the National Offender Management Service (NOMS). Meanwhile policy development and the commissioning of the secure estate for children will transfer to the MoJ; the YJB will retain a role in setting standards but will no longer have any operational responsibility.

To many, these proposals simply replace one fragmented system with another. Rob Allen, an independent expert on criminal justice, questions whether the shift from NOMs to HMPPS is rebranding or real reform and notes the risk that separating policy makers from those with operational responsibility can put them seriously out of touch⁵⁰. There are also concerns about responsibility for youth custody sitting within government departments dealing primarily with adults:

The transfer of all youth custody responsibilities from the YJB to the Ministry of Justice and Her Majesty's

48 Medway Improvement Board (2016) *ibid.* para 2.70.

49 McCarthy, P. Schiraldi, V and Shark, M. (2016) *The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model.* New Thinking in Community Corrections Bulletin. Washington D.C.: U.S. Department of Justice, National Institute of Justice. p.10. <https://www.ncjrs.gov/pdffiles1/nij/250142.pdf>

50 <http://reformingprisons.blogspot.co.uk/2017/02/noms-to-hmpps-rebranding-or-real-reform.html>

*Prison and Probation Service risks the development of an adult-centric and fragmented approach to children who offend*⁵¹. The government's announcement that the Youth Custody Service will have its own workforce separately recruited to work with children and young people⁵², implies that this is a completely new approach, but NOMS too had a separate Young People's Group. Allen puts the failure of the YJB to bring about lasting improvements in the secure estate down to the lack of leverage they had over the prison service, who will continue to care for most children in custody:

*... there were and no doubt are some excellent staff and good models of practice in the youth estate. When I left the YJB in 2006, I concluded that these could be very much more effective within an organisational ethos and structure dedicated to the secure care of young people. By that I meant a new service outside the prison system. We are not getting that, so the question is whether transformation can be driven from within it. I have my doubts*⁵³.

• Conclusions

Will this package of reforms address the current problems in the secure estate and transform it into a 'safe, secure environment in which young people can learn and reform'⁵⁴? It is too soon to judge the full impact: detailed arrangements for the secure school pilots is yet to come, and a period of transition is inevitable if they are eventually to replace YOIs and STCs as Taylor envisaged. We can comment, however, on whether the signs are positive. Do the proposals create the right strategic and operational framework within which a transformed – and improved – system of custody could emerge?

Let us start with the revised governance arrangements. It is widely accepted that current arrangements for managing the secure estate (from setting the policy agenda to managing and inspecting establishments) are fragmented, dysfunctional and unfit for purpose. They help to explain why the abuse within Medway STC not only took place but continued unchallenged for so long. Yet the existing confusion about who is responsible for what seems likely to continue with the split between strategic, operational and scrutiny functions and responsibilities spread across so many departments and agencies: the MoJ, HMPPS, YJB, Ofsted, HM Inspector of Prisons, DfE, DH, NHS England, private providers and individual local authorities – all will continue to be involved in some capacity. For the reforms to have any chance of success, there needs to be clear leadership and a shared sense of purpose. With so many stakeholders, this will require a commitment of time and resources that might not be available in the current context.

Secondly, can it be said that we are heading in the right direction in embedding the principle of 'child first, offender second' advocated by Taylor? Despite a greater recognition that children who offend have often been failed by those with responsibility for their care, the principle is not explicitly adopted in the government response. In fact, with the removal of any operational or policy responsibility from the YJB, and the missed opportunity to give a meaningful role to local authority children's services, we are getting a service that is even more adult-focused than the one we have now. It is not clear whether the government sees its latest proposals as demonstrating a new 'vision' for youth custody or whether this is still a work in progress, but it will need to be based on evidence about child and adolescent development rather than adult criminality. Many fear that this essential shift in emphasis is made more complicated and less likely by the decision to site the work within adult, criminal justice services; an outcome which may owe more to 'turf wars' within the MoJ than to any rational policy decision on what will provide the best outcomes.

There are some clues – and some grounds for cautious optimism - about what the government's vision may look like, in the rhetoric about a commitment to 'put education and health at the heart of youth custody'. The specific proposals, however, suggest that these principles have been interpreted narrowly rather than in the broader sense implicit within the Taylor review. He identified the need for the secure estate to provide a 'therapeutic environment' not just adding some additional resources to the struggling services we have now. If we compare the proposals to the more holistic approach to children's needs adopted by the child welfare system, there are several dimensions that appear to be lacking. For example, supporting children to have a

51 <http://scvj.org.uk/2017/02/scvj-responds-to-governments-plans-to-break-up-the-yjb/>

52 <https://www.gov.uk/government/speeches/youth-justice-update>

53 <http://reformingprisons.blogspot.co.uk/2017/02/youth-custody-changes-progress-or.html>

54 MoJ (2016) *ibid.* para 8.

positive identity or carers who offer emotional warmth may be implicit in Taylor's intentions for secure schools but the risk of not making them explicit means that they can be lost.

Perhaps this is unfair, and the reforms are just interim measures to improve children's experiences while we're waiting for the real transformation that secure schools might bring. There is no route map as to how or when this will happen, however, and the fact that the government intends to develop new specialist units within the existing system would suggest that the wait will be a long one. It may be that STCs and YOIs are inherently unsuited to fulfil the task asked of them, with or without additional resources, in which case any significant improvement in outcomes is unlikely.

Finally, there are welcome indications that the pendulum has swung away from the more punitive approach towards children in trouble of the last 20 years. Knowledge about adolescent brain development and the impact of trauma, combined with evidence about the harm that children in custody have often experienced in their lives, suggests that a more problem-solving approach to behavioural change is needed. It has long been apparent that most children in custody fit the definition of a 'child in need' within child welfare legislation⁵⁵ and there is little to distinguish them from children needing secure care on 'welfare' grounds. Indeed, most SCHs care for them side by side without identifying a need to offer fundamentally different services. Given that the combined populations within justice and welfare secure care are now only about 1000, it seems extraordinary to continue to deal with them under totally different systems. The same could be said about children detained in psychiatric provision, also in crisis⁵⁶. A much more streamlined – and therefore cost effective – approach would be to undertake a needs assessment across the whole secure population and for local partnerships of welfare, health and youth justice agencies to expand and adapt SCH provision to meet those needs. Overall numbers of children for all three categories are small but they are amongst the most vulnerable in society – and the most complex to care for.

To return to the question: will the reforms lead to a system of child custody that is better or worse than the one we have now? There are short-term changes that may address some of the worst deficiencies within STCs and YOIs but do not constitute a fundamentally different way of doing things. The Taylor recommendations go further and suggest a shift to more child-centred secure schools, albeit stopping short of a truly radical transformation that would break down the barriers between the welfare and justice systems. So, the answer is uncertain at this stage: all we can say is that the door has at least opened a little to the possibility.

⁵⁵ Children Act 1989: section 10.

⁵⁶ CAMHS Tier 4 Report Steering Group (2014) Child and Adolescent Mental Health Services (CAMHS) Tier 4 Report. London: NHS England. <https://www.england.nhs.uk/wp-content/uploads/2014/07/camhs-tier-4-rep.pdf>