



Manifesto 2024

The National Association for Youth Justice (NAYJ) is the only individual member organisation within England and Wales which campaigns exclusively for the rights of and justice for children in trouble with the law. It seeks to promote the rights and welfare of children in the youth justice system and to advocate for youth justice processes and interventions which are child centred.

The NAYJ believes that any youth justice system should comply with the following principles.

*** Arrangements for dealing with children in trouble with the law must be distinct from and separate to the adult justice system**

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

Because children are vulnerable and continuing to develop, there is greater potential for criminal justice interventions to impair future prospects, negatively impact their development and adversely affect their identity through traumatisation, stigmatisation and labelling.

Conversely, children may be particularly receptive to benefiting from appropriate support that meets their particular developmental needs and reduces obstacles to healthy development.

For such reasons, the United Nations Convention on the Rights of the Child requires an approach that is specifically applicable to all children under the age of 18 years, who have, or are suspected of having, infringed the penal law.

Arrangements for dealing with children in trouble should accordingly be informed by ethical considerations and evidence of how children's wellbeing and long-term healthy development is best promoted, rather than a diluted reflection of responses to adult lawbreaking. In many instances, and in distinction to general practice in the adult justice system, evidence based and

ethical intervention will also involve working with families /carers of children who are in conflict with the law.

Institutional arrangements for dealing with children in trouble at all stages of the youth justice process should be separate, and distinct in character, from those that pertain to adults.

All professionals working with children in trouble, in preventive services, health and care services, decision-making and institutional settings, should be child specialists rather than generic criminal justice practitioners

While the needs of young adults, aged 18 years or older, are also different to those of older individuals involved in the criminal justice system, care needs to be taken that the introduction of any additional safeguards for this latter group does not undermine the principle of separate arrangements for children below the age of 18 years.

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

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

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

The involvement of criminal justice agencies is frequently a consequence of the failure of mainstream and specialist services to provide requisite levels of support. At the same time, such involvement tends to reduce the perceived need for those services to intervene, reinforcing the tendency for children in trouble to be inappropriately processed as 'offenders'.

For such reasons, children should be diverted wherever possible from criminal justice processes and where necessary provided with appropriate services to meet their needs as children.

In this context, efforts to reduce first time entrants are both welcome and sensible – but they should be matched by measures to ensure that, where necessary, children are signposted to alternative avenues of appropriate, non-stigmatising, support, education and care.

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

The current low age of criminal responsibility in England and Wales is in tension with the evidence that children are frequently insufficiently mature to be regarded as criminally culpable or sufficiently 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 or vote, until they are 18.

Criminalising young children is counterproductive and developmentally damaging.

The age at which children are held to be criminally accountable in England and Wales is out of step with international practice and in tension with international rights-based obligations. The UN Committee on the Rights of the Child has, for instance, determined that 14 years is the *lowest* age of criminal responsibility compatible with such obligations.

The principle of maximum diversion, outlined above, implies limiting criminal responsibility and invoking immunity from prosecution or other forms of intervention as a response to offending behaviour.

It is well established that the large majority of children 'grow out of crime' as part of the natural maturation process.

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

*** A child friendly, child-centered, approach**

Where children come into contact with agencies as a consequence of their offending behaviour, decisions about the nature, and intensity of, intervention should focus on their best interests and their longer-term healthy development.

Responses to children who have infringed the law or who are alleged to have done so, should reflect primarily their childhood status rather than the fact that they may have infringed the criminal law; they should be designed to provide appropriate support rather than delivering punishment.

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

Children have a right to lifelong anonymity; they should never be named at any stage of the youth justice process; or retrospectively when they become adults.

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

The nature and extent of youth justice interventions should be determined by:

- principled decision-making informed by an evidence-based understanding of why children engage in problematic behaviour;
- a recognition of the potentially counterproductive nature of contact with criminal justice agencies;
- an understanding of how children can be assisted to grow out of crime more effectively;

and

- a commitment to their long-term wellbeing and healthy development.

Instrumental approaches that incentivise service providers to focus on crude short-term measures of reoffending are inappropriate, unduly prioritise offending rather than childhood status. Such approaches undermine an ethical focus on future, more important child-centred, outcomes.

• **Ensuring, and advocating for, children's rights**

Children in conflict with the law do not lose their rights and entitlements (other than the right to liberty for those in detention). Responses to children in trouble should be compliant with, and informed by, international conventions and standards, in particular the UN Convention on the Rights of the Child.

Interventions should accordingly: be consistent with the child's best interests; take into account, and give due weight, to the views of the child; respect children's rights to privacy, a family life and freedom of association.

Children in conflict with the law are entitled to healthcare and education to the same standards as other children. These rights apply equally to those deprived of their liberty and custodial regimes must adhere to them.

Children, whether in custody or in the community, must be protected from all forms of physical or mental violence, injury or abuse, neglect, maltreatment or exploitation. Strip searching,

solitary confinement and pain compliant restraint are inconsistent with children's rights and must not be used.

Children are entitled to equality of treatment and protection from disadvantage.

All practitioners working with children in trouble should advocate on their behalf to ensure that their rights are upheld and they receive their entitlements.

* **Equality of treatment**

Arrangements for dealing with children in trouble must conform with, and be seen to conform with, principles of equality of treatment. This does not require that children are treated the same for similar alleged offending but they should not be disadvantaged as a consequence of their characteristics. As recommended by the Lammy review, where disparities are apparent, they should be explained or reforms should be introduced to address the disparity.

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. Reductions in first time entrants, and in the number of children in the secure estate, has not benefited minoritised, including Gypsy, Roma and Traveler children, to the same extent as their non-minority counterparts, exacerbating levels of disproportionality.

A national target should be established for youth justice agencies, and other services that provide for children, to reduce such over-representation. Local agencies should agree and publish a multi-agency strategy to monitor and ensure equality of treatment in their area.

Other forms of disproportionality – including the over-representation of care experienced children and those with neuro-divergent needs – should similarly be monitored and addressed.

Unequal treatment is not always evidenced through over-representation. Girls are under-represented in the criminal justice system but a failure to take account of gender frequently disadvantages them and leads to their needs being ignored or exacerbated. A positive focus on the implications of particular responses to lawbreaking for girls is required if inequities are to be avoided.

* **Acknowledging social injustice and 'victimisation'**

Arrangements for dealing with children in trouble should be underpinned by an understanding that most such children 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 of crime and victims are more likely to engage in offending.

Youth justice interventions, while not undermining children's agency, should acknowledge their status as victims of social injustice and attempt to address social disadvantage.

*** No punishment for children who offend**

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

Youth justice interventions should be determined on the basis of what has been referred to as 'just welfare': they should be designed in the best interests of the child to maximise their wellbeing 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. A child-focused approach to proportionality requires that the extent of any compulsory intervention should always be considerably lower than that which would be imposed on an adult in similar circumstances.

*** Engaging children through participation**

Children have the right to express their views and have their opinions taken into account where decisions are made regarding all matters that affect them. Adults working with children have a duty to ensure that: children are informed about issues that will impact upon them; children's voices are promoted; and children's perspectives are influential and incorporated in decision-making processes.

Youth justice interventions should be experienced by children as supportive and in their best interests; children should regard the process of supervision as legitimate. Children should understand the purpose of supervision and recognise the longer-term benefits for themselves of engaging with the supervisory process.

High quality relationships are at the heart of effective youth justice practice.

In this context, participatory approaches should be central to all youth justice services and interventions. Children should be involved in shaping their own outcomes setting their own goals in line with their interests and aspirations; the supervisory process should aim to enhance children's ability to become agents of their own change.

*** A child centred court system and ‘sentencing’ framework**

No child should ever be remanded, tried or sentenced in an adult court. Children should never appear in the crown court.

Court rooms, where they are used, should be child friendly spaces and facilitate the involvement of children in the process.

All practitioners, in the youth court and other decision-making forums, should be child specialists. Youth magistrates and other decision makers should also have experience of, and expertise in, family proceedings rather than the adult criminal justice system.

Where any significant decision is to be made that has implications for the child, they should attend in person and be provided with adequate and appropriate adult support to ensure their full understanding of, and participation in, proceedings. Video link or other forms of technology that allow hearings at a distance should only be used where no substantive decisions about the child’s future are to be made and the child does not wish to attend.

Punishment and deterrence have no role in responding to children’s offending behaviour. The purpose of any compulsory interventions should be to promote the child’s wellbeing, education and longer-term healthy development but disposals must also be proportionate. The content of any sentence (or other ordered intervention) should be determined by this purpose; the extent and duration of such intervention should never exceed that which is warranted by the seriousness of the offence. Where the child has outstanding welfare needs, these should be met through mainstream, not criminal justice, services.

Guidelines as to proportionate sentences or other compulsory interventions should be child specific and reflect the evidence as to children’s culpability and maturation, and take into account the potentially criminogenic impact of youth justice involvement. Children should never be subject to mandatory sentences or imprisonment for life; and the maximum available sentence should always be substantially lower than that available for adults.

*** Custody as a genuine last resort**

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

The NAYJ welcomes the substantial reductions over the past 15 or so years 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.

Deprivation of liberty should 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.

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

Custody should not be available for persistent minor offending or for 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 Department. No children should be detained in police stations overnight, in prison service establishments or in custodial institutions run for profit.

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. The focus of intervention while the child is in detention should be to ensure effective reintegration of the child back into the community at the earliest opportunity: 'resettlement' should be seen as a process that starts at the beginning of the sentence.

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.

*** Allowing children to move on**

Current arrangements for disclosure of criminal records make it difficult for children to leave their involvement with the criminal justice system behind them. The Rehabilitation of Offenders Act 1974 does allow convictions to become spent once designated rehabilitation periods are passed but these are unnecessarily lengthy and have no evidence base. Moreover, for many types of employment, criminal records must, in most circumstances, be disclosed indefinitely, seriously limiting the opportunities that will be available to children to allow them to make a successful transition to a non-offending, fulfilling adulthood.

Reform of the criminal records system is urgently required to ensure that children have the right to leave childhood criminal records behind them and to embark on life as an adult with a clean slate.