



Manifesto 2019/2020

The National Association for Youth Justice (NAYJ) is the only individual member organisation which campaigns exclusively 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 believes that any child friendly youth justice system should comply with the following principles.

- **Arrangements for dealing with children in trouble with the law that are 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 adults. As a consequence they should be considered less culpable when they transgress the law.

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

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

Arrangements for dealing with children in trouble should accordingly be informed by ethical considerations and the evidence of how youth crime is best dealt with, and their wellbeing and long-term healthy development is best promoted, rather than a diluted reflection of responses to adult lawbreaking. In many instances, an in distinction to general practice in the adult justice system, evidence based and ethical intervention will also involve working with families of children who are in conflicted 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 from those of older offenders, care needs to be taken that the introduction of any additional safeguards for this group do 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 services to meet their 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 services to provide requisite levels of support. At the same time, such involvement tends to reduce the perceived need for those mainstream services to intervene, reinforcing the tendency for children in trouble to be processed as 'offenders'.

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

In this context, the target to reduce first time entrants is both welcome and sensible – but it should be matched by measures to ensure that, where appropriate and necessary, children are signposted to alternative avenues of appropriate, 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 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 12 years is the *lowest* age of criminal responsibility compatible with such obligations.

The principle of maximum diversion, outlined above, implies limiting criminal responsibility and invoking immunity from prosecution 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 argued elsewhere that it should be set at 16 years to align with the current age of consent.

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

Where children do come into contact with agencies as a consequence of the 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 should reflect primarily their childhood status rather than emphasising their offending behaviour; 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 anonymity; they should never be named at any stage of the youth justice process.

Children have a right to leave their offending behind them and the arrangements for disclosure of previous convictions should allow for 'wiping the slate clean' in all but the most exceptional circumstances.

- **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 provide financial incentives to service providers on the basis of crude short term measures of reoffending are inappropriate, unduly prioritise offending rather than childhood status and undermine an ethical focus on future, more important, outcomes.

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

Children in conflict with the law do not lose their rights and entitlements. 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 a rights based approach and should 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 they receive their rights and 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. The principle that where disparities are apparent, they should be explained or reforms introduced to address the disparity, as recommended by the Lammy Review, should be adopted.

The over-representation of children from minority ethnic communities in the youth justice system in general, and in the secure estate in particular, is unacceptable and requires urgent attention. The recent reductions in first time entrants, and in the number of children in the secure estate, has not benefited black, Asian and minority ethnic children, 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 looked after children – should be monitored and addressed.

- **Acknowledging social injustice and ‘victimisation’**

Arrangements for dealing with children in trouble should be underpinned by an understanding that most such might legitimately be constructed as 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.

- **Engaging children through participation**

Child friendly 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, a participatory approach should be central to all interventions; children be involved in 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 friendly court system and 'sentencing' framework**

No child should ever be 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 and facilitate the involvement of children in the process.

Decision makers, and other 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 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 last resort**

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

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

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

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

Custody should not be available for persistent minor offending 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 child 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 from their offending**

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 the 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 adulthood.

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