

## Legal Aid Sentencing and Punishment of Offenders Act 2012 Implications for children

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### Contents

Introduction [page 1](#)

Legal Aid [page 2](#)

Out of court disposals [page 8](#)

- Implication of practice [page 4](#)

Remand [page 5](#)

Youth sentencing [page 6](#)

- Community options [page 6](#)
- Knife crime [page 7](#)
- Abolition of intermediate sentences [page 8](#)
- Breach of a DTO [page 8](#)
- Implications for practice [page 9](#)

Rehabilitation of offenders [page 10](#)

Conclusion [page 10](#)

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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.

### • Introduction

The Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 became law in May 2012 and will be implemented between December 2012 and April 2013. There is much to be welcomed within the Act. It marks a move towards greater flexibility in the state's response to offending behaviour by children and young people<sup>1</sup> and is therefore an opportunity for practitioners to adopt a more child-centred response<sup>2</sup> than the formulaic and rigid approach that has characterised the last decade.

*Breaking the Cycle*<sup>3</sup>, the Green Paper that preceded the LASPO Bill, was based on a pragmatic rather than overtly punitive approach to offending. It committed to reducing unnecessary and costly imprisonment because that was acknowledged to be ineffective in preventing further offending. Instead, the Paper proposed the increased use of restorative justice and greater flexibility in determining when to proceed to prosecution. The Youth Justice Board (YJB) has issued information explaining the new provisions<sup>4</sup> and additional guidance will be

1 The term 'children' will be used throughout the remainder of this report in recognition of their legal status under section 105 of the Children Act 1989

2 See for instance, NAYJ (2010) *For a child friendly youth justice system*. London: NAYJ

3 Ministry of Justice (2010) *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*. <http://www.justice.gov.uk/downloads/consultations/breaking-the-cycle.pdf>

4 Youth Justice Board (2012) Implementation of the LASPO Act 2012: Key Stakeholder Information <http://www.justice.gov.uk/youth-justice/courts-and-orders/legal-aid-sentencing-and-punishment-of-offenders-act-2012>

produced over the coming months as each measure is implemented. This briefing is not designed to repeat this detailed information but rather to consider the Act's implications for practitioners.

## • Legal Aid

Before doing so, however, it is important to mention that other elements of LASPO legislation may have an indirect effect on some children by increasing the problems faced by them or their families. This may lead to a greater risk of offending behaviour and/or make it more difficult for practitioners to provide supportive services to those children already in trouble.

The LASPO Act attempts to reduce expenditure on legal aid by restricting the types of case where it will be available. Although those facing criminal charges will still be eligible, subject to financial assessment, there are limitations to legal aid in certain types of civil or family matter. These include cases where parents are disputing contact arrangements with their children and some instances of domestic violence and child abduction. Where adults do not have access to legal support in such sensitive cases, children may ultimately be the ones to suffer. Similarly, although asylum seekers will still have recourse to legal aid, it will not be available for immigration issues. For some children, uncertainty about their right, or that of their parents, to remain in the country may have an adverse effect on their well-being<sup>5</sup>.

The remainder of this briefing concentrates on the measures directly concerned with youth justice – with the exception of the changes to remand arrangements. Remands will be explored in greater depth in a further NAYJ briefing, once the actual arrangements have been confirmed.

## • Out of court disposals<sup>6</sup>

The formulaic approach introduced by the Crime and Disorder Act 1998 (CDA) was epitomised by the inflexible tariff applied to early offending. Reprimands and final warnings were applied automatically and there was little scope for practitioner discretion. Children progressed through these stages regardless of their circumstances and could rapidly find themselves facing formal prosecution following one or two minor offences.<sup>7</sup> There was no going back once a child had stepped on the escalator. This was a response to the perception by the new Labour government of 1997 that children were not being made to face the consequences of their behaviour because they could receive repeated cautions. Tellingly, the White Paper that preceded the Crime and Disorder Act was entitled *No More Excuses*<sup>8</sup>, signalling an end to this 'leniency'.

Even before the LASPO Act, the limitations of the system ushered-in by the CDA had been recognised by the introduction of some new measures. In 2003, penalty notices for disorder (PNDs) were introduced for children below the age of 18 years<sup>9</sup>, having previously only been used with adults. PND's allow the police to

<sup>5</sup> Refugee Children's Consortium (2011) Second reading briefing: Legal Aid, Sentencing and Punishment of Offenders Bill June 2011

<sup>6</sup> Part 3, Chapter 7 – sections 135-138 of the LASPO Act.

<sup>7</sup> The legislation did allow for a second warning in exceptional circumstances where two years had elapsed since the last warning. (The term 'final' warning does not appear in statute but the disposal is routinely described in this way in guidance.)

<sup>8</sup> Home Office (1997) *No more excuses: a new approach to tackling youth crime in England and Wales*.

<sup>9</sup> Section 87: Anti-Social Behaviour Act 2003

impose a financial penalty for certain minor offences rather than bringing criminal proceedings. These were first rolled out only for 16-17 year olds but were also piloted in seven areas for children aged 10 or above from 2005. Youth Conditional Cautions (YCC's) were introduced in 2008<sup>10</sup>, although subsequently only piloted in five areas and again only with 16 and 17 year olds. Subject to Crown Prosecution Service (CPS) approval, they enabled criminal proceedings to be halted if the child agreed to fulfil certain conditions, usually related to some reparative measure to the victim or the community. If the child failed to fulfil these conditions, they could be charged with the original offence. Other developments also acknowledged, albeit implicitly, the unhelpful rigidity of the pre-court system introduced by the Crime and Disorder Act. Youth restorative disposals – a police administered, informal, response to low level offences committed by children who had not previously been in trouble – were introduced on a pilot basis in eight police force areas in 2008.<sup>11</sup> The Youth Crime Action Plan, published in the same year, introduced a target to reduce the number of children entering the youth justice system for the first time, and established 'triage' schemes in 69 areas aimed at increasing diversion from the formal youth justice system through an early youth offending team assessment of children at the point of arrest.<sup>12</sup>

The LASPO Act abolishes both the reprimand and final warning scheme and PNDs. The former is replaced by a new **youth caution**, which can be issued by the police whenever there is sufficient evidence to charge a child who admits an offence where prosecution would not be in the public interest. This threshold is similar to that for reprimands and final warnings with the major difference that a youth caution can be used even where the child has previous pre-court disposals or convictions.

The Act also extends **youth conditional cautions** which will become available not just for 16-17 year olds in the pilot areas but 10-17 year olds across the country. The necessity to seek the approval of the Crown Prosecution Service is removed and a YCC may be issued even where the child has previous convictions. A draft Code of Practice has been issued to offer guidance about the way YCCs should be operated<sup>13</sup>. This indicates that there will be limitations to the discretion of decision makers. For example, there will be updated guidance issued by the Director of Public Prosecutions setting out which offences are **not** suitable for the administration of a Youth Conditional Caution and should, in fact, be prosecuted<sup>14</sup>.

The Code of Practice states that the initial criteria for assessing the suitability of a Youth Conditional Caution are:

- Sufficient **evidence** to provide a realistic prospect of conviction;
- **Admissions** made by the child (whilst stressing that a Conditional Caution must not be offered to secure an admission<sup>15</sup>);

<sup>10</sup> Section 48 of the Criminal Justice and Immigration Act 2008 amended the Crime and Disorder Act 1998 to allow for their use with 10-17 year olds

<sup>11</sup> Rix, A, Skidmore, K, Self, R, Holt, T and Raybould, S (2011) *Youth restorative disposal process evaluation*. London: Youth Justice Board

<sup>12</sup> HM Government (2008) *Youth crime action plan*. London: Home Office

<sup>13</sup> Ministry of Justice (2012) *Code of Practice for Youth Conditional Cautions*. [https://consult.justice.gov.uk/digital-communications/code-youth-conditional-cautions/consult\\_view](https://consult.justice.gov.uk/digital-communications/code-youth-conditional-cautions/consult_view)

<sup>14</sup> Although the draft Code says that they can still be given for serious offences 'in exceptional circumstances' (para 5.5).

<sup>15</sup> The draft Code of Practice emphasises that children must have access to legal advice before agreeing to accept a Conditional Caution and, if under 17, be accompanied by an appropriate adult. The consequences of accepting such a Caution must be explained to them, and they must be told of their right to withdraw their acceptance.

- Whether the **public interest** would be satisfied by giving a youth conditional caution.

If these tests are met, additional consideration should be given to the views of the victim, the child's history of offending, compliance with previous cautions or orders and the likely effect of a Youth Conditional Caution. The 'decision-maker', usually a police officer, should seek the views of the Youth Offending Team (YOT) when considering the suitability of a conditional caution, although (s)he is not bound by its recommendations. Decision-makers should also seek advice about suitable conditions to impose, which must be appropriate, proportionate and achievable. Preference should be given to conditions that are rehabilitative or restorative but, where these are unavailable, a fine or unpaid work / activity requirement can be given. Whatever the conditions, the child should be able to complete them within 16 or, exceptionally and for more serious offences, 20 weeks of the date of the offence.

An interesting option is included in the Code of Practice whereby a decision to proceed to prosecution can subsequently be overturned by the CPS and they can direct that a Youth Conditional Caution be offered instead.

When a youth caution or youth conditional caution is given, the police should make a referral to the Youth Offending Team (YOT) as soon as is practicable. This is to allow the YOT to have a complete record of an individual's offending and to decide on any necessary intervention, including an application for a parenting order. On the first referral, assessment is voluntary but for subsequent referrals, the YOT **must** undertake an assessment, as with the current final warning. The YOT will also have overall responsibility for monitoring compliance with the conditions of a youth conditional caution and should refer cases of non-compliance back to the decision-maker. This will usually, but not inevitably, lead to prosecution for the original offence. If there has been partial compliance or there is a reasonable excuse, the decision-maker may vary the conditions or set a new time limit for their completion. They could even decide that enough of the conditions have been complied with to consider them completed or that it is not in the public interest to prosecute.

### Implications for practice

This new framework for out-of-court disposals is a real opportunity to reduce the unnecessary criminalisation of children. The key challenge for practitioners at local level will be to establish effective processes for decision-making, particularly between the police and the YOT. Issues to be determined include:

- How can it be ensured that a child receives the support they need at an early stage if they are not subject to formal intervention?
- How can the factors within the child's life that should influence a decision whether to prosecute or to impose a caution be ascertained within the necessary time-scales?
- When should the YOT undertake an assessment, over and above the statutory requirements? What form should this take?

- What is the future of triage schemes and how will they link with decision-making processes?
- Will the requirement to monitor compliance with youth conditional cautions be an additional demand on YOT resources?
- What mechanisms will there be to ensure consistency of decision-making and to challenge unfair or discriminatory practice, both locally and across the country?
- How can the CPS be supported to exercise their discretion to review a decision to prosecute and impose a youth conditional caution instead?

## • Remand

There are significant changes to the way that remands will operate. These arose from concerns that, although overall numbers of children in custody have been steadily reducing, remands to the secure estate had not reduced at the same rate as custodial sentences. The fact that more than 60% of custodial remands do not result in a custodial sentence clearly raises questions about the validity of the decision-making on remands. In order to reduce the use of custodial remands, the following measures will be implemented in April 2013:

- The introduction of a single custodial remand order (known as a remand to youth detention accommodation) for all remanded 12-17 year olds, replacing the current complex range of orders based on the child's age, gender and circumstances<sup>16</sup>;
- All children remanded to the secure estate will become 'looked after' children under the Children Act 1989 and **should be** entitled to the same care-planning processes as all other such children<sup>17</sup>;
- The cost of all custodial remands will be transferred to local authorities.<sup>18</sup>

Non-secure remands to local authority accommodation will continue to be available for children where bail is refused and the criteria for a remand to youth detention accommodation are not met. Seventeen year olds will, for the first time, be eligible for such remands so that a refusal of bail for a child of that age will not automatically, as at present, result in custody. As now, any condition that can be imposed if the child had been granted bail can be linked to any non secure remands to local authority accommodation and requirements can be placed on the relevant local authority. This is of particular relevance if a curfew condition is imposed.<sup>19</sup>

The threshold for remanding a child into a secure setting will also be raised.

Either:

<sup>16</sup> Children aged 10-11 can only be remanded to secure accommodation if they are refused bail and the local authority applies for a secure accommodation order under section 25 of the Children Act 1989

<sup>17</sup> S104 Legal Aid Sentencing and Punishment of Offenders Act 2012 makes lawful modification by the Secretary of State of statute or other instruments that apply to looked after children. Regulation may determine whether or not they apply to those remanded to youth detention accommodation. The impact of this is unknown at the time of writing.

<sup>18</sup> At present, local authorities are required to meet one third of the cost of court ordered secure remands; the other two thirds, and all of the costs of remands to custody, are met by the Youth Justice Board

<sup>19</sup> In this context, the time spent remanded subject to an electronically monitored curfew, for nine hours a day or longer, counts against any subsequent custodial sentence in much the same way as a remand to the secure estate, except that two days curfew is regarded as the equivalent of one day remanded to custody. (Section 21 Criminal Justice and Immigration Act 2008)

- the offence must be of a serious or violent nature, or be punishable if committed by an adult by a custodial sentence of at least 14 years

or

- there is a realistic prospect of the child being sentenced to custody for the offence **and** they have either a history of offending or absconding whilst on remand.

These measures will need careful managing at a local level, particularly to ensure that local authorities fulfil their new responsibilities. A further NAYJ Briefing on remands will be issued shortly.

- **Youth sentencing**<sup>20</sup>

In spite of the challenges, the more flexible approach to out-of-court disposals provides the opportunity to deliver a proportionate response to troublesome behaviour. This approach extends to the new options available to courts, with one or two exceptions.

### Community options

Firstly, sentencers will have the option under the LASPO Act of giving a child a **conditional discharge** if they plead guilty to a first offence instead of automatically having to make a referral order. This response more accurately reflects the fact that children can commit low level offending as part of adolescent development, and allows them the opportunity to 'grow out of it' without over-intervention. It means that the child will not automatically be subject to an action plan where there is no need for one and will reduce the use of breach proceedings. In the same spirit, the LASPO Act makes provision for **repeated use of a referral order** where the child has pleaded guilty to an offence. This increased flexibility allows for children's individual circumstances to determine the most useful sentence rather than the one-size-fits-all approach previously in evidence. It also acknowledges that children in particular may need a second – or third – chance to change their behaviour rather than being trapped in a cycle of escalating intervention.

Secondly, the Act makes some changes to changes to the way **youth rehabilitation orders** (YROs) operate. In the spirit of increased flexibility, the length of the order can now be amended to fit with the timescale of any attached requirements. This can work both ways: the order can be ended early without returning to court for a formal revocation if all the requirements have been completed. Similarly, the end date can be extended by up to six months to allow requirements that have not been completed within the overall three year maximum to be finished. Such an extension does, however, require a return to court and can only be imposed on one occasion.

Another minor change that may allow for greater flexibility within YROs is the **removal of the necessity for evidence from a medical practitioner approved under the Mental Health Act 1983** when seeking a mental health

<sup>20</sup> Part 3, Chapter 1 – sections 79-84 of the Act.

treatment requirement, although the consent of the child is still required.

These measures mirror amendments in the legislation to the community order for adults. Unfortunately, so do two other changes to the YRO. The LASPO Act increases the **maximum daily length of a curfew** from 12 to 16 hours, and the maximum period from six to twelve months. We know that children already struggle to comply with curfew requirements and that it is a major source of breach for non-compliance<sup>21</sup>. This is particularly true of children living in chaotic circumstances, where adults cannot be relied upon to support compliance or, even more worryingly, are the cause of the chaos. For children living in violent homes, perhaps where parents have mental health or substance misuse problems, or those in alternative care with indifferent supervision, to insist that children remain trapped there for 16 hours a day will not only lead to an increased risk of breach but could have a negative effect on their safety and well-being.

*On anger management, they taught me to walk away but I can't because I'm on a tag. I just have to stay there – in the situation (boy quoted in <sup>14</sup>).*

Curfews are popular with sentencers, particularly where they feel that children need more surveillance, supervision or punishment, and may already be setting-up the most vulnerable to fail. These extensions can only make matters worse.

Another adult measure now extended to the Youth Court sees the **maximum fine for breach of a YRO** increased dramatically - to £2500. Previously the figure was £250 for those under 14 and £1000 for 14 to 17 year olds. The courts are meant to take into account the offender's financial circumstances when determining the most suitable amount for a fine, and it is difficult to think of many children who could access this amount, but it remains to be seen how it will be applied in practice. Large fines have the potential to increase family tensions where parents feel obliged to help out or the court makes them responsible for payment.

### Knife crime

The rehabilitative elements of the LASPO legislation must also be weighed against another, more punitive, measure. In response to political concern about knife crime, the government introduced a late amendment creating a new offence of the aggravated use of an *'offensive weapon or an article with a blade or point'*<sup>22</sup>. This relates to situations in which a person *'intentionally uses such a weapon or article to threaten another person creating an immediate risk of serious physical harm'* in a public place or on school premises. Such offences will now be subject to a maximum penalty of four years imprisonment and, for children aged 16 or 17 on the date of conviction, a **mandatory minimum sentence of a four month detention and training order** (DTO). In spite of this being a mandatory sentence, however, the court can consider an alternative community sentence if imprisonment would be unjust. Examples cited by the YJB<sup>23</sup> where this could be argued are situations where the child pleads guilty at an early stage in the proceedings. It will therefore be important for the court to be given all the facts about the child's circumstances if they are to be protected from unnecessary imprisonment. We know that there are a range of reasons why children carry

<sup>21</sup> Hart, D. (2011) *Into the Breach: the enforcement of statutory orders in the youth justice system*. London: Prison Reform Trust

<sup>22</sup> Part 3, Chapter 9 – section 142 of the Act.

<sup>23</sup> Kerslake, B and Walker, S (2012) *Briefing Note: Legal Aid, Sentencing and Punishment of Offenders Act 2012*. London: Youth Justice Board

knives. Some perceive the world to be a dangerous place; others are driven by the need to conform:

*Children and young people carrying knives do so for reasons of fear and fashion and have little understanding of the distant consequences of the courtroom and prison cell* <sup>24</sup>.

### Abolition of indeterminate sentences

One of the more positive aspects of the legislation is that children can no longer be given indeterminate sentences for public protection. This option was introduced by section 226 of the Criminal Justice Act 2003 and allowed young people to be detained for an indeterminate period, but at least two years, in order to protect the public.

It was expected that these orders would rarely be used. In fact they proved worryingly popular with sentencers and *Breaking the Cycle* recognised the need for reform. Not only did imprisonment with no certainty about release place a huge psychological burden on such children but it made it difficult to plan for their return to the community. The whole notion of 'sentence planning' becomes meaningless when it is not accompanied by a timescale. The legislation is not retrospective so consideration will need to be given to safeguarding children currently serving section 226 sentences.

Although indeterminate sentences have been repealed completely, there is a new sentence that effectively replaces the old section 228. The **new section 226(b)** sentence allows for children who are convicted of a serious sexual or violent offence, and where the court considers there to be a significant public risk, to be sentenced to a custodial sentence with an extended licence period. This should only be used where a discretionary life sentence under section 91 would not be suitable, and where the requisite custodial term for the offence is at least four years. These extended sentences differ from previous provisions in that, in most cases, children will be automatically released once they have served two thirds of the custodial element, rather than at the half way stage. However, if a child is sentenced to 10 years or more, or has been convicted of one or more of the serious sexual or violence offences listed in schedule 15B of the Criminal Justice Act 2003<sup>25</sup>, then release is subject to a decision by the parole board with the two thirds mark acting as the threshold for referral. As previously, the period of extended licence following release is a maximum of five years for a violent offence and eight years for sexual offences.

### Breach of a DTO

There was a perception that some children were 'getting away' with breaching the community element of DTOs, particularly towards the end, because they could not previously be returned to court once the order had finished. If breach proceedings could not be taken in time, this meant that there was no effective sanction. It is difficult to know the extent to which this was happening but it was decided that LASPO legislation would close this apparent loophole. Breaches can now be

<sup>24</sup> The Standing Committee for Youth Justice. *Briefing - The Legal Aid, Sentencing and Punishment of Offenders Bill – Clause 128*. <http://www.scyj.org.uk>

<sup>25</sup> Schedule 15B of the CJA 2003 is a new list of offences detailed in schedule 18 of LASPO

prosecuted even if the case will not be heard until after the DTO has finished. If the breach is proved, the court can, as previously, return the child to custody but also has the new option of imposing **a further period of supervision**. The maximum period of detention or supervision is three months OR the period between the date when the child failed to comply and the end of the DTO, whichever is shortest.

The most worrying aspect of this new provision is that it is not a one-off. If the child still does not comply, further periods of detention, supervision or fines can be imposed until the order is deemed to have been completed. For some who struggle to comply, this could lead to children feeling increasingly hopeless about their situation. We know that orders that are perceived as long and onerous put a burden on the most disadvantaged. It will be important for YOTs to operate within the spirit of the new National Standards currently being trialled, which suggest that enforcement is reserved more for cases where there is a 'pattern of non-compliance' and that, even then, a manager can endorse a decision not to bring proceedings<sup>26</sup>. This is a radical shift from previous versions where the third incidence of non-compliance, whether part of a pattern or not, must result in prosecution unless circumstances were 'exceptional'. A much greater use of discretion is sanctioned. If the child is no longer at serious risk of offending and the overall purpose of the intervention has been achieved, there is no need to breach just for the sake of it.

### Implications for practice

This mixed bag of sentencing measures carries implications for practitioners. Youth Offending Teams should encourage courts to take advantage of the provisions that allow for a greater use of conditional discharge and repeated referral orders in appropriate cases. The greater flexibility regarding the length of the YRO means that a more creative approach to requirements can also be taken. The emphasis can be on interventions that are timely, purposeful and likely to engage young people rather than simply 'doing their time', and the opportunity to end an order when interventions have been successfully completed, can be used to incentivise young people. At the other end of the spectrum YOTs must ensure that they are not applying to extend orders when requirements have not been fulfilled if the requirements were serving no useful purpose. The more that children are involved in the process of contributing to decisions about their interventions, the more motivated they are likely to be to engage with them.

*They didn't ask me if I could manage. I would have said: 'I don't think I can do that!'* (boy quoted in <sup>14</sup>).

It is also essential that YOTs recognise the adverse risks that onerous curfews and fines can present. Pre-sentence and breach reports must be rigorous in presenting an accurate analysis of the challenges facing vulnerable children and encourage sentencers to impose achievable sentences. Where children are set up to fail by the imposition of penalties they do not feel they can manage, they may give up before they start and rehabilitation accordingly becomes increasingly difficult.

Particular risks are associated with the more punitive approach being taken

<sup>26</sup> YJB (2012) *National Standards Trial*. April 2012-April 2013. 8.16.c

towards knife crime. The 'default' sentence for a 16 or 17 year old is a four month DTO. YOTs must not accept this as an inevitable outcome: pre-sentence report writers must fully describe the context in which any threats with a knife are made and develop a credible range of community alternatives to custody. The same principles apply to extended sentences and breaches of DTO. YOTs have a responsibility to assess the risks posed by the children they work with but, at the same time, it is not in anyone's interests to set them up to fail. Although the legislation permits breach of a DTO once the order has expired, practitioners should consider carefully what is to be gained by returning children to court in such circumstances, particularly where there have been no further offences

### • Rehabilitation of offenders<sup>27</sup>

A number of changes have been made to the Rehabilitation of Offenders Act 1974, amending both the timescale for determining when specified offences will become 'spent' and extending the scope of the legislation to custodial sentences of four years or less. This will increase the prospect of rehabilitation for children and allow them to consign their offending to the past. In recognition that offending can be a feature of adolescent development, the timescales for deeming offences committed by children to be spent are shorter than for adults.

### • Conclusion

The LASPO Act does not specifically focus on children and young people: a departure from other recent criminal justice legislation which evidenced a greater acknowledgement that children required a different approach. During the passage of the LASPO Bill, the government were warned that it potentially breaches children's rights under the UN Convention on the Rights of the Child (UNCRC) which states that there should be a distinct youth justice system<sup>28</sup>. Some of the changes ushered-in by LASPO suffer from this apparent desire to align aspects of sentencing provision for children with that of adults and it will be worrying if this trend continues.

The Act also represents a missed opportunity; some significant problems have not been tackled. In particular the refusal to acknowledge the right of 17 year olds to be treated as children when in police detention remains a major anomaly. Indeed, it is even starker now that they have been recognised as children for remand purposes.

In spite of this, and the language of 'toughness' that peppers the government's response to the *Breaking the Cycle* consultation<sup>29</sup>, there are a number of measures with the LASPO Act that have created the conditions for a more progressive youth justice service. Instead of the rigidity introduced by the Crime and Disorder Act 1998, compounded by the increasingly prescriptive National Standards issued by the YJB, there is now recognition that practitioners can be

<sup>27</sup> Chapter 8 – section 19 of the LASPO Act

<sup>28</sup> See, for example, Justice (February 2012) *Legal Aid, Sentencing and Punishment of Offenders Bill: part 3. Briefing for Committee Stage House of Lords* (para 10)

<sup>29</sup> MoJ (2011) *Breaking the Cycle: Government Response*. June 2011

trusted to do their job. There is room for professional discretion in determining a proportionate and effective response to children's troublesome behaviour. With flexibility there comes a risk of inconsistency, however, and practitioners will need to make sure that individual children are treated fairly. Some could miss out on services that would benefit them if they are allowed to drift when their behaviour indicates that all is not well: others could be penalised by an overly harsh response.

Local services need to seize the freedom that the LASPO Act presents. When practice has been tightly regulated, it can become institutionalised and there is a risk that people will continue to operate in old familiar ways. This would be a serious betrayal of the children we work with.