

The state of youth justice 2015

An overview of trends and developments

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** The author has produced the paper at the behest of the NAYJ Board of Trustees who have approved and adopted the contents.*

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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.

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• Shrinking youth justice

The youth justice system in 2015 is substantially smaller than it was a few years ago. Since 2008, there has been a sharp fall in the number of children receiving a formal youth justice sanction; a decrease that is explained, in large part, by a reduction in the number of children who enter the criminal justice system for the first time – so called first time entrants (FTEs).¹ Over the same period, there has been an equally dramatic decline in the use of imprisonment for children, generating a corresponding contraction in the population of the secure estate for children and young people.

This 'shrinkage' of youth justice is without doubt the most significant headline from any analysis of trend data from the recent period. It is important to recognise, however, that such statistical indicators do not necessarily reflect in any straightforward fashion changes in the volume or seriousness of children's criminal activity. Rather that behaviour is mediated through shifts in legislation, policy and practice which may, in themselves, have a significant impact on how many children are processed through formal youth justice mechanisms. Nor should it be assumed that changes in policy and practice constitute evidence-led responses to the nature and extent of children's law breaking; indeed, they may more commonly be explained as a function of political or financial concerns.²

The *National Association for Youth Justice* (NAYJ) campaigns for a child friendly youth justice system and advocates the establishment of a rights based statutory framework for children in conflict with the law.³ From that perspective, the trends described in the first paragraph of this paper are to be welcomed, as representing a reduction in the criminalisation of children and a shift towards a reduced reliance on incarceration, developments that are also in accordance with the evidence base. At the same time, given the above caveats about how these trends are to be understood, the *NAYJ* considers that an understanding of the context in which the contraction of the youth justice system has taken place is a pre-requisite for assessing the extent to which the delivery of services to children in trouble is tending in a more (or less) child friendly direction and whether policy shifts associated with the contraction of youth justice are determined primarily by a commitment to an evidence-informed, principled values base or by pragmatic and political considerations.

For example while the patterns shown in the data demonstrate that children are increasingly diverted from formal sanctions and that child custody is used more sparingly than hitherto, the *NAYJ* remains concerned that responses to children in trouble with the law continue to be tempered by an underlying punitive ethos that might render recent gains vulnerable to reversal. There is evidence too that system contraction might be driven at least in part by financial imperatives, associated with a perceived need for austerity, rather than by a considered assessment of how the wellbeing of children in conflict with the law might best be promoted.⁴ As a consequence, savings accrued in the youth justice sector are lost to children rather than reallocated to mainstream children's or youth provision.

Political considerations, in the shape of an ideological commitment to privatisation of large parts of the public sector and the introduction of market mechanisms – such as payment by results – have inevitably impacted on the youth justice landscape. The

1 A first time entrant is defined as a child 'resident in England and Wales, who received their first youth caution (previously reprimands and warnings) or conviction for an offence recorded on the Police National Computer by a police force in England or Wales or by the British Transport Police'. See Ministry of Justice (2015) *Youth justice statistics glossary*. London: Ministry of Justice

2 Goldson, B (2010) 'The sleep of (criminological) reason: knowledge-policy rupture and New Labour's youth justice legacy' in *Criminology and Criminal Justice* 10(1): 155–178; Bateman, T (2015) 'Trends in detected youth crime and contemporary state responses, in Goldson, B and Muncie, J (eds) *Youth crime and justice*. London: Sage, 67-82

3 NAYJ (2011) *For a child friendly youth justice system*. London: NAYJ

4 Bateman, T (2014) 'Where has all the youth crime gone? Youth justice in an age of austerity' in *Children and Society* 28(5): 416-424

Conservative government's policy in relation to children who break the law has, to date, shown considerable continuity with the approach of the Coalition administration which it replaced in May 2015.⁵ However, in September 2015, Michael Gove, the new Minister of Justice, announced a comprehensive review, led by Charlie Taylor, to determine '*whether the current system, which was created in 2000, remains able to meet the challenges we face in 2015*'.⁶ While, at the time of writing, the outcome of that review is unknown, it is unlikely to result in increased resources to support children in trouble.

It is not, moreover, possible to view youth justice in isolation from other policies that affect children. Although such considerations are largely beyond the scope of the current analysis, it may be that the logic of austerity that helps to explain an increased tolerance for children in trouble also dictates that wider policy developments are less compatible with children's wellbeing. For instance, the joint submission from the four UK Children's Commissioners to the United Nations Committee on the Rights of the Child, published in July 2015, registers concern about a failure on the part of the state:

'to protect the most disadvantaged children ... from child poverty.... Austerity measures have reduced provision of a range of services that protect and fulfil children's rights including health and child and adolescent mental health services; education; early years; preventive and early intervention services; and youth services'.⁷

In the longer term, the consequences of such failure have the potential to impact on levels of youth offending.

This briefing paper provides an overview of what is known about the nature and prevalence of youth crime in England and Wales, drawing on the latest available data. It aims to offer a contextual analysis of trends suggested by the figures that facilitates an assessment of the treatment of children who come to the attention of the youth justice system, considering the extent to which responses take adequate account of children's rights and best interests.⁸ The paper focuses on children aged 10-17 years, reflecting the minimum age of criminal responsibility in England and Wales and the age at which young people are considered adults for criminal justice purposes.⁹ Trends are for most purposes traced from 1992 onwards because of difficulties of comparison with the earlier period.¹⁰

• The extent of youth crime

As previously indicated, official statistics register a pronounced fall in children coming to the attention of the youth justice system in the recent period. Between 2008 and 2014, the number of children in receipt of a 'substantive youth justice disposal'¹¹ for an

5 The Conservative party manifesto, *Strong leadership, a clear economic plan, a brighter more secure future*, contained no explicit references to children who offend, youth crime or youth justice, suggesting that there would be no fundamental break with the policy of the previous administration

6 Gove, M (2015) *Announcement of a review into youth justice*. Written statement to Parliament, 11 September 2015, available at: <https://www.gov.uk/government/speeches/youth-justice>

7 UK Children's Commissioners (2015) *Report of the UK Children's Commissioners UN Committee on the Rights of the Child: Examination of the fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland*

8 Unless indicated otherwise, all figures cited in the paper are derived from either: Ministry of Justice/ Youth Justice Board (2015) *Youth Justice Statistics 2013/14, England and Wales*. London: Ministry of Justice (and supplementary tables); or Ministry of Justice (2015) *Criminal Justice statistics 2014 - England and Wales* (and supplementary tables), London: Ministry of Justice

9 At 10 years, the age of criminal responsibility in England and Wales is lower than in any other country in Europe except Malta and the other jurisdictions within the UK. See Child Rights International Network (undated) *Minimum ages of criminal responsibility in Europe* at: www.crin.org/en/home/ages/europe. For an overview of the NAYJ's position on the age of criminal responsibility, see Bateman, T (2012) *Criminalising children for no good purpose: the age of criminal responsibility in England and Wales*. London: NAYJ

10 The Criminal Justice Act 1991 extended the jurisdiction of the youth court to include young people aged 17 years. The legislation was implemented during 1992. Prior to this statutory change, 17-year-olds were considered to be adults for criminal justice purposes, rendering problematic any comparison with earlier year

11 Substantive youth justice disposals comprise: youth cautions, youth conditional cautions, reprimands and final warnings (until their abolition in 2013) and convictions

indictable offence¹² reduced by 71%. However, figures for detected youth crime are not a direct expression of the underlying level of youth offending, since they only capture those matters which receive a formal sanction. Moreover, while there are other measures which provide information in relation to youth crime, each has its (well known) limitations; there are accordingly considerable difficulties in ascertaining the extent of children's criminal activity.¹³ It follows that further investigation is required before concluding that the decline in detected offending demonstrates that youth crime has also fallen.

Official measures of crime and their limitations

The Crime Survey for England and Wales (CSEW) (known until 2012 as the British Crime Survey) is a large scale self-report study that asks respondents about their experiences as victims of crime during the previous twelve months.¹⁴ It was first conducted in 1982 and until 2001 results were published at two yearly intervals; from the latter date the survey became 'continuous' with results published annually.¹⁵ The most recent figures are derived from interviews conducted between October 2013 and September 2014.¹⁶

The CSEW has notable exclusions. It reports on respondents' experience of personal crime and offences against the household of which they are part. Accordingly, it provides no information on white collar crime; offences that have no direct or explicit victim (such as possession of, or supplying, drugs) are not included; it does not attempt to cover cyber-crime – which is likely to be perhaps the most rapidly expanding, and disproportionately unreported, form of criminal activity,¹⁷ (though there is ongoing work to address that particular gap¹⁸); and persons living in institutions or other forms of non-household accommodation are not surveyed.

Until 2012, commercial victimisation was not captured, but this omission has been rectified by the introduction of a survey of businesses. The results of the latter are given in the most recent editions of the publication but they are presented separately to the main body of data. Until 2009, children below the age of 16 years were similarly excluded; since that date estimates of crime against those aged 10-15 years have been reported on separately.

Despite these limitations, the CSEW is regarded as a good indicator of personal and household crime, not least because it draws on a large sample: during 2013/14, for instance, 35,000 respondents aged 16 years and older¹⁹ and 3,000 children below the age of 16 years were surveyed. One of the main advantages of the survey is that, as a measure of victimisation, it identifies incidents – a considerable proportion of the total – that are not reported to the police. Moreover, since it does not rely on police recording, the data are not influenced by changes in recording practice.

The CSEW indicates that seven million offences were committed against adults during 2013/14. This represents a fall of 11% over the previous year, from 7.9 million, and the lowest level of victimisation recorded since the survey began in 1981.²⁰ The data suggest that crime peaked in 1995 at 19.1 million offences; in the subsequent period, the number

12 Indictable offences are more serious matters that can, in the case of an adult, be tried in the crown court

13 See for instance, McGuire, M (2012) 'Criminal statistics and the construction of crime' in McGuire, M, Morgan, R and Reiner, R (eds) *The Oxford Handbook of Criminology* 5th edition. Oxford: Oxford University press, 206-244. For difficulties with figures for youth crime specifically, see Bateman, T (2015) *op cit*

14 The change of name better reflects the scope of the survey which did not routinely generate data for British jurisdictions other than England and Wales

15 Office for National Statistics (2014) *The 2013/14 Crime Survey for England and Wales: volume 1- technical report*. London: ONS

16 Office for National Statistics (2015) *Crime in England and Wales, year ending September 2014*. London: ONS

17 Office for National Statistics (2014) *Discussion paper on the coverage of crime statistics*. London: ONS; Yar, M (2013) *Cybercrime and society* 2nd edition. London: Sage

18 Office for National Statistics (2014) *Work to extend the Crime Survey for England and Wales to include fraud and cyber-crime. Methodological note*. London: ONS

19 This represents a reduction from 46,000 in 2011/12. See Office for National Statistics (2014) *The 2013/14 Crime Survey for England and Wales: volume 1- technical report*. London: ONS

20 In 1981, CSEW estimated 11.1 million episodes of criminal victimisation, more than a third higher than the volume of crime in 2013/4

of estimated offences has fallen in most years, leading to an overall decline of more than 63% since the high point. All crime types recorded by the survey have fallen during this period.

As indicated above, the CSEW has only recently collected data on the criminal victimisation of children below the age of 16 years. The data are however presented separately from those for older victims because of methodological problems of comparison. In addition, the survey questions changed during the first three years so that caution is required when considering trends. Nonetheless, early indications might be thought to suggest that child victimisation is also falling in line with the adult experience. While there has been some fluctuation over the period, the number of crimes experienced by children aged 10-15 years fell by more than 20% between 2010 and 2014, as indicated in table 1.

Table 1 CSEW offences experienced by children aged 10 to 15 years

Year	Number of offences (Thousands)	Difference over previous year
Apr 2010 - Mar 2011	918	
Apr 2011 - Mar 2012	1,066	+16.1%
Apr 2012 - Mar 2013	817	-23.4%
Apr 2013 - Mar 2014	810	-0.9%
Oct 2013 - Sept 2014	721	-11.8% (by comparison with April 2012- March 2013)

From the current perspective, a significant limitation of the CSEW is that, since it focuses on victimisation, it provides no information on the offender. As a consequence, it is not possible to determine what proportion of the total volume of offending captured by the survey can be attributed to children. Nonetheless, the falls in victimisation recorded are consistent with a reduction in youth crime, since there are no obvious grounds for thinking that adult offending has declined disproportionately. While there is evidence that children and adults may have differential involvement in different offence types – children are over-represented among those committing robbery offences, for instance, but under-represented for crimes of fraud²¹ - the consistent decline across all forms of offending might be thought to suggest reductions either side of the child/adult threshold.

The fall in the number of offences committed against 10-15 year-olds might be thought particularly significant in this context since:

- children in this age range are more susceptible to being victims of personal crime than adults;
- young people tend to commit offences against others close to their own age; and
- there is a significant overlap between victimisation and perpetration among children.²²

Falling youth victimisation might therefore be considered a strong indicator of declining youth offending.

21 Jones, D (2001) "Misjudged Youth": a critique of the Audit Commission's reports on youth Justice', *British Journal of Criminology* 41(2): 362-380

22 Wood, M (2005) The victimisation of young people: findings from the Crime and Justice Survey 2003. Findings 246. London: Home Office. See also Anderson F, Worsley, R, Nunney, F, Maybanks, N and Dawes, W (2010) Youth survey 2009: research study conducted for the Youth Justice Board for England and Wales. London: Youth Justice Board

Police recorded crime captures a significantly smaller volume of offending than the CSEW: in the year ending September 2014, 3.7 million offences were recorded by the police. The considerable gap between the two measures is largely explained by a significant shortfall in reporting by victims for a range of reasons.²³ HM Inspectorate of Constabulary has also drawn attention to the failure of police adequately to record offending when it is reported to them: 800,000 offences or 19% of the total that victims did report were not formally recorded.²⁴ The measure, because it depends on police input, can also be influenced by shifts in recording practice or policing more generally (an issue discussed in more detail below).

On the other hand, crime recorded by the police is not restricted to personal victimisation and accordingly captures a much broader range of offending than the CSEW. To give a more complete picture, in recent years, the results from both measures have been published alongside each other in a single volume. Since it is not possible to establish the age of a perpetrator unless he or she is apprehended, police recorded crime shares with the crime survey an inability to provide data on youth crime directly.

Despite their differences of emphasis, and magnitude, both measures suggest a similar trajectory in terms of crime trends, indicating a long term decline. Figures for police recorded crime indicate that offending peaked somewhat earlier, in 1992 as opposed to 1995, from which point there were annual falls until 1998/1999. Changes in counting rules in the following year, and the introduction of the National Crime Recording Standard in April 2002, were reflected in an increase in the number of incidents recorded by the police up to 2003/04: the Office for National Statistics attributes those rises to more stringent recording practice as a consequence of the revised guidelines.²⁵ More recently, following the bedding-in of these changes, the downward trend has continued with police recorded crime falling from 5.6 million offences in 2005/06 to 3.7 million in 2013/14, a reduction of one third.²⁶

In combination, these two indicators of crime suggest that overall levels of offending have been falling since at least the mid-1990s. Further confirmation of that trend is provided by figures for incidents of anti-social behaviour recorded by the police: such incidents fell by 48% between 2007/08 and 2013/14.²⁷ While it should be acknowledged that anti-social behaviour has been criticised as being a subjective concept²⁸, and that concerns have been expressed over the consistency and quality of police recording of this data,²⁹ the downward trajectory which they show might be thought to reinforce other evidence indicating a reduction in unlawful and other forms of problematic behaviour. While the figures are again not specific to young people, children are perceived to be disproportionately engaged in anti-social behaviour, a perception that is reflected in a higher use of anti-social behaviour sanctions for under-18s.³⁰

Down, down, down – detected youth crime

As previously noted, the extent and direction of youth offending cannot be inferred directly from the data presented in the previous section of the paper since none of the sources described captures information pertaining to those responsible for offending.

23 The most common reasons cited by victims for not reporting offences to the police are: incidents are regarded as too trivial; the victim suffered no, or little, material loss; and she/he did not think that the police could, or would, do anything to resolve the offence. See Osborne, S (2010) 'Extent and trends' in Flatley, J, Kershaw, C, Smith, K, Chaplin R and Moon, D (eds) *Crime in England and Wales 2009/10*. London: Home Office

24 HM Inspectorate of Constabulary (2014) *Crime-recording: making the victim count. The final report of an inspection of crime data integrity in police forces in England and Wales*. London: HMIC

25 Office for National Statistics (2015) *Crime in England and Wales, year ending September 2014*. London: ONS

26 Ibid

27 Ibid

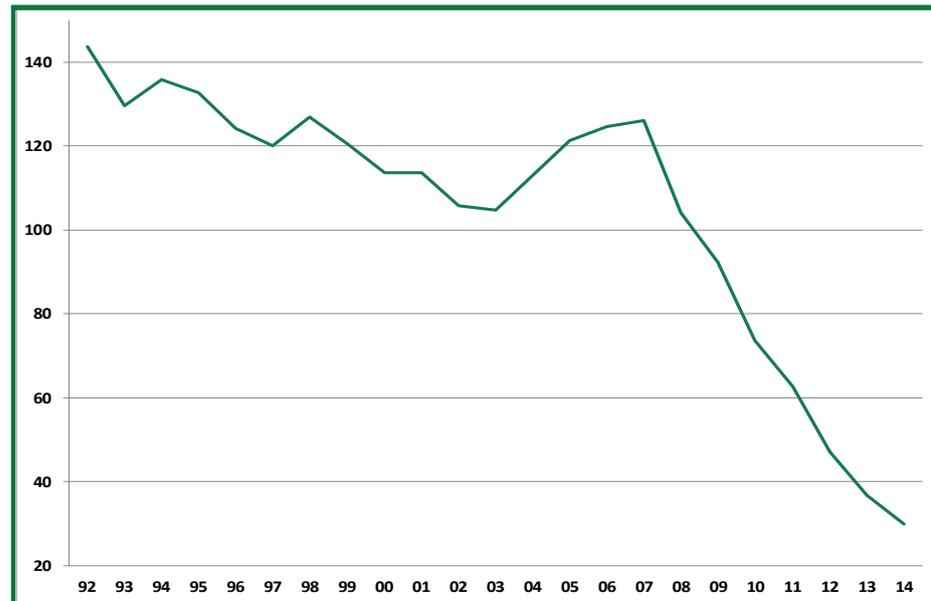
28 See for instance, Squires, P (2006) 'New Labour and the politics of antisocial behaviour' in *Critical Social Policy* 26(1): 144-16

29 HM Inspectorate of Constabulary (2012) *The crime scene: a review of police crime and incident reports*. London: HMIC

30 Wigzell, A (2014) 'Moving Beyond the ASBO? A review of the proposed anti-social behaviour measures and their implications for children' in *Safer Communities* 13(3): 73-82

More specifically the age of a perpetrator can only be ascertained where he or she is apprehended; as a consequence, commentary on trends in youth crime tends to rely on data for offences that have been detected. As with the other measures, these figures are consistent with a recent reduction in youth crime. However, as shown in figure 1, the pattern of decline shown has been sustained over a longer period, for at least two decades. (In fact, such figures suggest that youth crime was also falling throughout the 1980s but, for reasons outlined earlier in the briefing, comparison with earlier years is problematic.) During 2014, 29,800 children received a substantive disposal for an indictable offence compared with 143,600 in 1992, a reduction of more than 79%.³¹

Figure 1
Children receiving a formal pre-court disposal or convicted of an indictable offence: 1992-2014
 (thousands)



Figures for detected offending inevitably understate the extent of children’s lawbreaking for a number of reasons. First, a considerable proportion of offending is not reported. In 2009/10, 62% of offences revealed by the British Crime Survey were not notified to the police.³² Second, where offences are reported,³³ detection rates remain low: during 2013/14 for instance, just 29% of incidents recorded by the police led to a substantive ‘outcome’, ranging from 17% for criminal damage and arson, to 93% for drugs offences.³³ Such processes of ‘attrition’ mean that figures for detected youth crime do not capture all of children’s criminal activity. Put simply, many children who offend are never caught.

At the same, this failure to apprehend a proportion of children who break the law does not in itself provide grounds for dismissing the pattern shown in figure 1, since there is no reason to suppose that offences committed by young people are less likely to be detected than those perpetrated by adults. Indeed, given that children are more likely to engage in relatively unsophisticated criminal activity, in public spaces, the reverse may be true.³⁴

31 Figures derived from the relevant editions of *Criminal Statistics England and Wales* to 2009 and the renamed (and modified) series *Criminal Justice Statistics, England and Wales* to 2014

32 Parfremment-Hopkins, J (2011) ‘Extent and trends’ in Chaplin, R, Flatley, J and Smith, K (eds) *Crime in England and Wales 2009/10*. London: Home Office *op cit*. Later editions of *Crime in England and Wales* does not report on this issue

33 McKee, C (2014) *Crime outcomes in England and Wales 2013/14*. Home Office Statistical Bulletin 1/14. London: Home Office. Outcomes for these purposes are: charge or summons; caution; offence taken into consideration; penalty notice for disorder; cannabis warning; and other – consisting mainly of community resolutions

34 Jones, D (2001) *op cit*

Nonetheless, 'clear up' rates do vary over time and variations in the level of detection can accordingly influence the extent of youth crime as recorded by substantive outcomes. Thus, detection rates did fall during the early part of the 1990s and it could be argued, therefore, that this might explain some of the reduction in recorded children's offending in that period. Between 1993 and 1999, however, there was an upturn in the proportion of offences reported to the police that were detected, so this particular phenomenon could not have contributed to the continued downward trend in recorded youth crime in those years.³⁵ From 2002/03 to 2013/14, the proportion of offences cleared up by the police rose again, from 23.1% to 29.4%.³⁶ One might accordingly have anticipated an increase in detected youth offending over that period; in the event, it fell by almost 72%. It is accordingly not possible to explain trends in youth crime simply as a function of changes in the proportion of offences detected by the police.

Considered in the context of the data derived from CSEW and police recorded crime, both of which show declines in the total volume of offending, one might reasonably conclude that the trend shown in the figures for detected youth crime is indicative of a genuine reduction in children's law breaking.

'It was me': self-reported offending

A further indicator of youth crime can be derived from self-report studies. Like victimisation surveys, these have the advantage that the data they provide are not dependent on offences being reported or detected. Moreover, because they focus on offending rather than victimisation, they provide information on the age of the offender. On the other hand, they rely on respondents giving an accurate account – rather than seeking to exaggerate or minimise their engagement in delinquent activity. A more significant limitation, however, is that lack of consistency: methodologies vary from one survey to another and there is an absence of any long term trend data.

The *Offender, Crime and Justice Survey*, for instance, which relied on participants aged 10 to 25 years reporting on their own offending behaviour, was conducted by the Home Office annually between 2003 and 2006. A longitudinal analysis of the results indicates a reduction in the prevalence of various forms of criminal activity: for instance, 17-18 year olds born between 1986 and 1988 were much less likely to report having engaged in assault leading to injury than those born in 1983-1985. Similar analysis indicates that, at age 12-13 years, self-reported anti-social behaviour for children born between 1992 and 1996 was significantly below that for the equivalent cohort born in 1989-1991.³⁷

The Youth Justice Board commissioned MORI to undertake a self-report study of children aged 11-16 years in mainstream school and pupil referral units between 2000 and 2009 (no surveys were conducted in 2006 or 2007). The results show something of a different pattern to that suggested by other sources and indicate that offending by these two groups was relatively stable over the relevant period: as shown in figure 2, the proportion of children in alternative education who reported having committed any form of offence in the previous 12 months registered a slight decline from 72% in 2000 to 64% in 2009; the equivalent figures for those in mainstream schooling were 22% and 18% respectively.³⁸ However, the survey fails to capture those who are potentially most at risk of offending – namely those not in any form of educational provision – among whom any falls (or rises) in criminal activity would in all likelihood be most pronounced,

35 Bateman, T (2014) *Children in conflict with the law: an overview of trends and developments – 2013*. London: National Association for Youth Justice

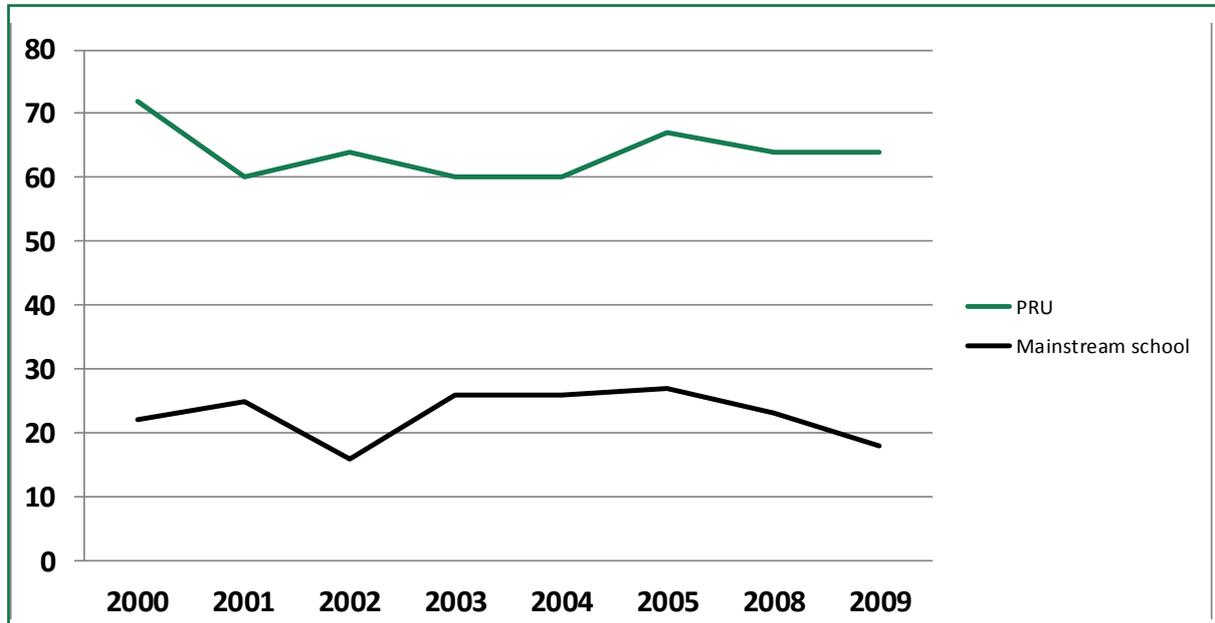
36 McKee, C (2014) *op cit*

37 Hales, J, Nevill, C, Pudney, S and Tippin, S (2009) *Longitudinal analysis of the Offending, Crime and Justice Survey 2003–06*. Research report 19. London: Home Office

38 Anderson, F, Worsley, R, Nunney, F, Maybanks, N and Dawes, W (2010) *Youth survey 2009: research study conducted for the Youth Justice Board for England and Wales*. London: Youth Justice Board

and children above the statutory school leaving age at the date of the survey, who tend to offend at a higher rate than their younger counterparts.

Figure 2 Proportion of children aged 11-16 self-reporting offending in the previous 12 months: 2000-2009 (2006 and 2007 excepted)



More recent self-report data are not available at a national level since both the MORI and the Offender Crime and Justice surveys have been discontinued.

• Understanding recent patterns of detected youth crime

A long-term trend with recent fluctuations

Combined with the contextual evidence deriving from other sources, it would appear reasonable to surmise that the long term trajectory registered in the data for detected youth crime represents a decline in the underlying level of criminal activity by children over the last quarter of a decade. However, interpreting that pattern shown in figure 1 for more recent years may require a more nuanced analysis. Since 2003, two features are particularly striking:

- Between 2003 and 2007, there was an abrupt departure from the underlying downward trend of the previous 15 year in the form of a pronounced, albeit short term, rise in detected offending. Thus in 2007, the number of substantive youth justice disposals imposed was 20% higher than in 2003;
- Conversely, the period from 2008 onwards has been characterised by a further drop in youth crime; but this has been significantly sharper than that at any point since at least the early 1990s. Indeed, the decline during 2008 alone was steep enough to more than compensate for the cumulative increase in the previous four years. The rate of decrease has scarcely abated in the ensuing period with detected youth offending reducing by more than three quarters in the space of just seven years.

It is intuitively implausible that the abrupt oscillations since 2003 might be explained by changes in children's offending behaviour; fluctuations of that magnitude over such a short time period are inherently unlikely. Moreover, none of the other measures

of offending reviewed above indicate an increase in the period up to 2007. While those measures are consistent with a fall after that date, the reduction registered is significantly less pronounced than that shown in figure 1.

The *NAYJ* has previously argued that the anomalous rise, and subsequent fall, in substantive disposals shown in official statistics can both be convincingly explained in terms of shifts in police, and other agencies', practice to accommodate successive performance indicators.³⁹

The 'new youth justice'⁴⁰ associated with the early years of the New Labour administration elected in 1997, was predicated on pretensions of toughness that manifested themselves in an array of more interventionist outcomes for children who infringed the criminal law.⁴¹ Most significantly for current purposes, in accordance with that ethos, the government established a target to narrow the gap between offences recorded and those 'brought to justice' by increasing the number that resulted in a 'sanction detection'.⁴² The indicator required a growth in annual sanction detections of almost a quarter of million by March 2008 against a March 2002 baseline.⁴³ The extent of the required rise was, on the face of it, arbitrary since it was expressed in terms of absolute numbers rather than a percentage of offences that come to police attention. The target was met a year early but this achievement was not indicative of improvements in police performance, since the rise in the rate of detection was insufficient to account for the increase in substantive outcomes.⁴⁴ Rather, as is now generally accepted, the growth in sanction detections was a function of formal disposals being imposed for incidents that would previously have attracted an informal response.⁴⁵ Government intervention thus led directly to net-widening, a phenomenon whereby increasingly minor forms of misdemeanour are drawn into the ambit of the formal criminal justice system.⁴⁶

The target applied both to adults and children but had a disproportionate impact on the latter population since adult offending would, in any event, have been more likely to be met with a formal response for a range of reasons:

- youth offending is, on average, of a less serious character
- children are less likely to have previous convictions; and
- the police may be more inclined to respond leniently to those who have yet to attain adulthood and to younger children in particular.

There was accordingly a greater scope to alter practice in the direction of an increased use of sanction detections in relation to children's offending. That shift is evidenced in the statistical data: while between 2003 and 2007, the number of adults entering the criminal justice system rose by less than 1%, the equivalent figure for those below the age of 18 years was 22%. Within the latter cohort, those groups who might previously have been expected to benefit from an additional latitude leading to higher use of informal responses – younger children, girls or those apprehended for petty transgressions – were particularly adversely affected. The introduction of the sanction detection measure accordingly resulted in the unnecessary criminalisation of large numbers of children by targeting '*the unusual suspects*'.⁴⁷

39 See Bateman, T (2014) *Children in conflict with the law: an overview of trends and developments – 2013*. London: National Association for Youth Justice

40 Goldson, B (2009) (ed) *The new youth justice*. Lyme Regis: Russell House publishing

41 See for instance, Pitts, J (2000) 'The New Youth Justice and the politics of electoral anxiety' in Goldson, B (ed) *op cit*, 1-13

42 Sanction detections for children included: cautions, conditional cautions, reprimands, final warnings, penalty notices for disorder, convictions, and offences taken into consideration

43 Office for Criminal Justice Reform (2004) *Strategic plan for Criminal Justice 2004*. Home Office

44 McKee, C (2014) *op cit*

45 Bateman, T (2008) 'Target practice: sanction detection and the criminalisation of children' in *Criminal Justice Matters* 73(1): 2-4

46 Kelly, P (2008) 'Net-widening' in Goldson, B (ed) *Dictionary of youth justice*. Cullompton: Willan, 244-245

47 Bateman, T (2008) *op cit*

Perhaps unsurprisingly, once the implications of the target became clear, it was criticised precisely for this tendency to inflate the use of criminal sanctions for minor lawbreaking (as well as being an inappropriate use of police resources).⁴⁸ The rapid rise in the numbers of children entering the criminal justice system led to corresponding pressures on courts and youth offending teams as workloads mushroomed. Though the punitive sentiment (and commitment to early formal intervention) behind its introduction were still apparent in policy and practice thereafter,⁴⁹ pragmatic considerations ensured that the target was not renewed. Indeed so far as youth justice was concerned, it was replaced by a measure with a contrary, and from the perspective of the NAYJ a preferable, dynamic.⁵⁰

The *Youth Crime Action Plan*, published in 2008, committed the government to achieving a reduction in the number of children entering the youth justice system for the first time – so called first time entrants (FTEs) – by 20% by 2020.⁵¹ The target had been included earlier in the Youth Justice Board's Corporate and Business plan 2005/06 to 2007/08, but at that time appeared to have little impact, in part because the sanction detection indicator which had a greater influence over police activity, was still in force. The FTE measure was subsequently adopted by the Coalition government as one of its three high level outcomes for youth justice. To date, all been retained by the Conservative administration elected in May 2015.⁵²

If the sanction detection target was net-widening, promoting the criminalisation of minor delinquency, the indicator which replaced it had a converse impetus, encouraging the police to respond in an informal manner to children who had had no previous contact with the youth justice system. The commitment to formal early intervention, which had characterised youth justice policy for more than a decade, was thus suddenly replaced by a focus on diversion from the formal mechanics of the criminal justice system of children who had not previously received a youth justice disposal.

The *Youth Action Plan* failed to acknowledge that this was a policy reversal, simply asserting that '*reductions in youth crime will principally come about if we reduce the flow of young people entering the criminal justice system*' without explaining why that should be so. (Indeed, if the measure of youth crime is detected offending, the statement is tautological.) While unsustainable workloads were, as suggested above, a consideration in this sharp U-turn, it is hard to ignore the financial context in which the shift occurred: 2008 was also the year that economic crisis hit the UK economy. Packing the justice system with children who had engaged in -what was often- trivial delinquency was an unaffordable expense increasingly in tension with developing austerity in the public sector.⁵³

The new target had an immediate impact, and like its predecessor, was met early: the 20% reduction was achieved in the first 12 months after it was formally adopted by the government. The fall has continued in the period since. As shown in figure 3 (see page 12), the number of first time entrants rose between 2002/3 and 2006/7 by almost one third in response to the sanction detection target; by contrast, as the new performance measure kicked in, the trajectory reversed. Between 2006/7 and 2013/14, the number of first time entrants fell by almost 80% from 110,757 to 22,393. Since such children

48 Flanagan, R (2008) *The review of policing: final report*. Home Office

49 Kelly, L and Armitage, V (2015) 'Diverse diversions: youth justice reform, localised practice and a 'new interventionist diversion'' in *Youth Justice* 15(2): 117-133

50 Pitts, J and Bateman, T (2010) 'New Labour and youth justice: what works or what's counted' in Ayer, P and Preston-Shoot, M (eds) *Children's services at the crossroads: a critical evaluation of contemporary policy for practice*. Lyme Regis: Russell House, 52-63

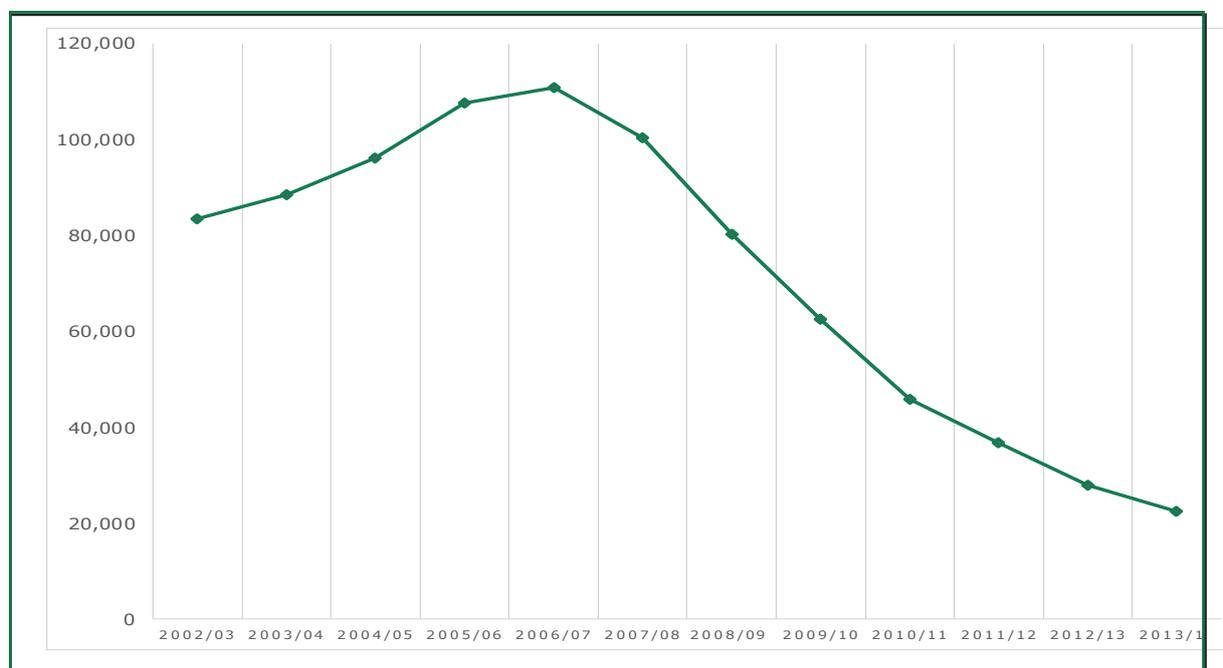
51 Home Office (2008) *Youth crime action plan*. Home Office. The reduction in first time entrants had earlier featured as a target for the Youth Justice Board had already established a first time entrant target in its Corporate and Business plan 2005/06 to 2007/08, but this appears to have had less of an impact, in part, because if the sanction detection target, which was the major driver for police activity was still in place

52 Ministry of Justice (2010) *Breaking the Cycle: effective punishment, rehabilitation of offenders and sentencing*. London: the Stationery Office. The other two high level outcomes are: reducing reoffending and reducing the number of children in custody

53 Bateman, T (2014) *op cit*

account for a sizeable proportion of all those who enter the system each year, there has been a corresponding impact on the overall volume of detected youth crime. The marked similarity in the patterns shown in figures 1 and 3 is therefore unsurprising.

Figure 3 First time entrants to the youth justice system: 2002/03 to 2013/14



The impact of policy on detected offending

The above analysis suggests that, while there are good reasons to conclude there has been a long term fall in the underlying level of youth crime, fluctuations in detected youth offending since 2003 are best explained as the predictable outcome of the successive implementation of two contrasting central government targets, rather than as evidencing changes in children’s behaviour.⁵⁴

But if the volume of detected youth offending can be so readily influenced by shifts in practice on the part of criminal justice agencies (shifts which are in themselves a response to performance indicators), a question is inevitably posed as to the impact of policy on children in trouble. The election of New Labour in 1997 was associated with a focus on early intervention, through the use of formal sanctions, to ‘nip offending in the bud’,⁵⁵ which acted to reinforce an already punitive and interventionist climate towards children who broke the law, leading to increases in the number who were prosecuted even while overall detected offending declined.⁵⁶ The sanction detection target can legitimately be construed as a logical extension of that focus, with a corresponding rise in the criminalisation of children. The expansion in the figures for detected crime led to unhelpful media reporting, suggesting that youth crime – and particularly offending

⁵⁴ House of Commons Justice Committee (2013) *Youth justice*. Seventh report of session 2012-13. London: House of Common

⁵⁵ Home Office (1997) *No more excuses: a new approach to tackling youth crime in England and Wales*. London: The Stationery Office.

⁵⁶ Muncie, J (2008) The ‘punitive turn’ in juvenile justice: cultures of control and rights compliance in Western Europe and the USA in *Youth Justice* 8(2): 107-121

by girls (an issue considered in more detail below)⁵⁷ – was spiralling out of control. This in turn exacerbated a well attested process of the demonisation of young people,⁵⁸ encouraging a cycle of intolerance.⁵⁹

From the perspective of individual children, however, this effective lowering of the threshold for entry into the formal criminal justice system was potentially damaging since a criminal record represents a considerable constraint on future prospects.⁶⁰ There is a wider social concern too. A sizeable body of evidence confirms that early induction into the youth justice is '*criminogenic*': it increases the risk of recidivism.⁶¹ Net-widening provisions emanating from a determination to appear 'tough' on law and order, such as the sanction detection target, are thus both inherently unfair and likely to increase overall levels of victimisation.

Conversely, strategies of maximum diversion, wherein youthful misbehaviour is met wherever possible by an informal response, are associated with desistance from serious offending.⁶² Such an understanding influenced responses to children in trouble during the 1980s which were largely informed by a philosophy of minimum necessary intervention.⁶³ In this sense, the FTE target – which effectively raises the threshold at which formal criminal justice interventions are regarded as necessary – both accords better with the research evidence and is indicative of a more child friendly approach to youth justice. Indeed, developments since the introduction of the measure might be thought to constitute something of a natural experiment in this regard. If, as New Labour contended in the 1997 White Paper '*No More Excuses*',⁶⁴ a failure to clamp down on early indicators of youth criminality, and widespread use of diversion from the justice system, would encourage further offending, then one would anticipate that any attempt to reduce significantly the number of FTEs could show only short-term gains: children benefitting from such lenience would be more likely to offend in future. One would therefore expect any diminution in FTEs to be limited in time and followed by a subsequent rise as the failure to impose formal sanctions led to an increase in lawless behaviour. The fact that such a dramatic reduction has been sustained over a period of at least seven years offers an empirical refutation of the purported benefits of early induction to the youth justice system.

A further indication that the FTE target might encourage desistance is to be found in the decline in detected offending by young adults aged 18-20, which can be convincingly explained as the impact of the target feeding through to the adult system. The fall for young adults started later – accelerating from 2010 onwards – and has been more muted. Such a pattern would be consistent with the fall in the child population percolating through to the older age group since a delay of around two years would be anticipated.

It is true that there has also been a fall in detected offending by older adults over the same period, but as shown in table 2, this has been significantly less pronounced than for either the child or young adult population suggesting that the deflationary impetus has not to date affected the adult justice system in the same way.

57 Sharpe, G (2012) *Offending girls: young women and youth justice*. London: Routledge

58 Wisniewska, L and Harris, J (2006) *The voice behind the hood: young people's views on anti-social behaviour, the media and older people*. London: YouthNet

59 NAYJ (2011) *op cit*

60 Prince's Trust (2007) *The cost of exclusion: counting the cost of youth disadvantage in the UK*. London: Prince's Trust

61 McAra, L (2015) 'The case for diversion and minimum necessary intervention' in Goldson, B and Muncie, J (eds) *Youth crime and justice* 2nd edition. London: Sage, 119-13

62 *Ibid*

63 Haines, K and Drakeford, M (1998) *Young people and youth justice*. Basingstoke: MacMillan

64 Home Office (1997) *op cit*

Table 2 Decline in detected offending for different age groups 2010-2014 (summary and indictable)

Age range	Detected offending 2010	Detected offending 2014	Percentage reduction
10-17	126,670	53,341	58%
18-20	155,498	93,176	40%
21+	1,222,523	1,133,294	7%

The NAYJ is therefore encouraged by the decriminalisation of large numbers of young people as a consequence of the FTE measure. However, the organisation remains concerned that the rediscovery of diversion has been largely a pragmatic response to the imperatives of austerity politics rather than an explicit endorsement of the benefits of minimum intervention. While punitive residues continue to influence youth justice policy, albeit at a much lower level than hitherto, the gains of recent years may be vulnerable to political reversal.

• The nature of youth offending

Common but generally minor

While self-report studies indicate that teenage lawbreaking is quite common, they also confirm that much of this activity is relatively minor. The MORI youth survey for instance indicates that stealing is by far the most prevalent offence committed by school age children.⁶⁵ One inevitable by-product of the fall in FTEs, however, is that many trivial offences are filtered out of the formal youth justice system leading to an overrepresentation of more serious incidents in official statistics.

This filtering process, in turn, runs the risk that behaviour that does attract a formal responses will impact on public and political perceptions of youth crime as being more serious than hitherto even if the volume has declined. There is, in any event, a tendency for discussion of youth criminality to focus on high profile, more serious incidents, such as gang related activities, robbery, violence against the person and carry weapons. Indeed one of the reasons that public attitudes to youth crime are frequently punitive is that such offences are the first that spring to mind when youthful law breaking is considered in the abstract. (Research suggests that when members of the people are asked to consider individual cases, or are given information that allows them to take a more considered view of the issues, 'public judgement' – as informed public opinion is sometimes called – becomes significantly more lenient.⁶⁶)

Yet, despite the impact of the FTE target, property offending remains the most common offence type captured in the figures for detected youth crime: in 2014, theft alone accounted for more than four in 10 of all offences leading to a substantive youth justice disposal. The next largest group was drug related offending (accounting for just over one fifth of the total), much of it involving possession of relatively small amounts of cannabis. At the other end of the scale, very serious offences are rare: for instance, during 2014, just 17 children below the age of 18 years –all boys– were convicted of murder; one boy was convicted of attempted murder; and 10 children –including one girl– of manslaughter.

⁶⁵ Anderson, F et al (2010) *op cit*

⁶⁶ Jones, T (2010) 'Public opinion, politics and the response to youth crime' in Smith, D (ed) *A new response to youth crime*. Cullompton: Willan, 341-379

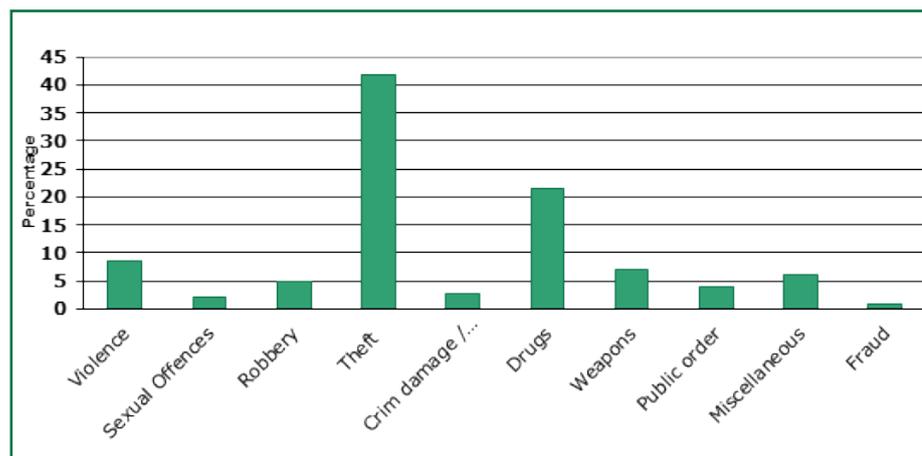
The volume of homicides committed by persons below 18 years of age fluctuates slightly from year to year, but has been remarkably stable over the longer term. For instance, the combined annual figure for children convicted of murder or manslaughter stood at 38 in 1989, 33 in 1999,⁶⁷ 38 in 2009,⁶⁸ and 27 in 2014.

As shown in figure 4, overall levels of violence against the person remain relatively low (8% of the total, the same proportion as in 2013). Robbery too is relatively infrequent (just 5% of all offences - representing a reduction over the previous year). Sexual offences accounted for just 2% of all detected youth crime in 2014. While some offences

in these categories can be serious, it would be a mistake to assume that they all are: during the year 47% of violent offences and 45% of sexual offences attracted a pre-court disposal, indicating that they were sufficiently minor that the public interest did not require prosecution.⁶⁹ It should be noted too that the pattern shown in figure 4, overstates considerably the gravity of youth crime since the chart excludes summary offences which are less serious than those displayed.

Furthermore, despite public concern over children’s involvement in serious offending, the preponderance of such crime is in fact committed by adults, who, in 2014, were responsible for 18-and-a-half times as many murders, and almost three times as many robberies, as were children.

Figure 4
Children receiving a pre-court disposal or conviction by offence type as a proportion of all indictable offences: 2014



Maturation and desistance

Many children will engage in behaviour that is illegal as part of the process of developing independence and associated risk taking. A seminal self-report study conducted for the Home Office in 1995, for instance, found that 55% of boys and almost a third of girls admitted that they had committed an offence at some point.⁷⁰ As a consequence, children are more likely to commit offences than their adult counterparts, although the latter are nonetheless responsible for a larger volume of crime because they outnumber the younger population. As shown in figure 5 (on page 16), during 2014, children aged 10-17 were responsible for less than one in 20 of all detected offences (summary and indictable), a proportion that has fallen from 11% since 2008 in line with the decline in FTEs.⁷¹ By contrast, 89% of crime was committed by adults aged 21 years and over.

67 Figures derived from Nacro (2002) *Children who commit grave crimes*. London: Nacro

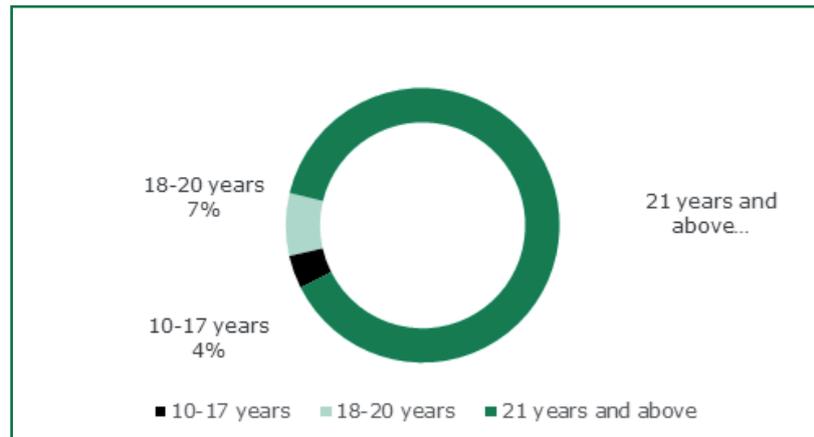
68 *Criminal statistics – England and Wales 2009*, supplementary table 5. London: Ministry of Justice

69 Figures derived from Ministry of Justice (2015) *Criminal Justice Statistics 2014*. London: Ministry of Justice

70 Graham, J and Bowling, B (1995) *Young people and crime*. London: Home Office

71 Nacro (2010) *Some facts about children and young people who offend – 2008*. London: Nacro

Figure 5
Detected offending by age
(indictable and summary
offences) 2014



While the prevalence of crime peaks during adolescence, it is clear that as young people make the transition to adulthood there is a corresponding shift to a more law-abiding lifestyle. Indeed, the idea that crime falls with age has been called 'one of the few certainties in criminology'.⁷² Although the explanations for this phenomenon remain contested, there are several potential mechanisms by which maturation is likely to be linked to desistance. Sociological explanations for instance tend to emphasise the changing social roles that children occupy as they approach their late teens, becoming increasingly independent of their parents, entering the jobs market, engaging in long term relationships and taking increasing responsibility for the care of others. These new roles are associated with expectations of different behaviour and, from a practical perspective, allow less time for hanging around the street with groups of friends, an environment that can readily give rise to activity that might attract police attention.⁷³ Other, more psychologically-leaning, accounts point to the impact of maturation on improved impulse control, a greater capacity for consequential thinking and increased empathy for others.⁷⁴ Whichever form of explanation is preferred, it seems clear that maturity leads to a shift in the young person's identity as they come to regard themselves as an adult and this shift is potentially one that promotes desistance.⁷⁵ However, as McNeill has recently pointed out, successful transition in this regard also involves a social element. This takes the form of a recognition on the part of the state and the community that the young person's identity has modified: legitimate opportunities for full participation in the adult world are shaped by such recognition.⁷⁶

In this context, youth justice policy and practice can hinder or contribute to the process of growing out of crime. The idea, that if left to their own devices, most children will naturally stop offending, was a central tenet of youth justice practice during the 1980s which aimed to minimise children's contact with the youth justice system precisely because it was understood to interfere with the natural process of development.⁷⁷ But that understanding was challenged by New Labour in developing a rationale for reform of the youth justice system after the 1997 election. Drawing on the Audit Commission's influential 1996 report, *Misspent Youth*,⁷⁸ the Home Office maintained that '*the research evidence shows that [growing out of crime] does not happen*'.⁷⁹

72 Farrall, S (2010) 'A short history of the investigation into the ending of the criminal career' in *Safer Communities* 9(3): 9-1

73 Rutherford, A (1992) *Growing out of crime: the new era*. Basingstoke: Waterside press

74 Steinberg, S, Cauffman, E and Monahan, KC (2015) *Psychosocial maturity and desistance from crime in a sample of serious juvenile offenders*. Washington: Office of Juvenile Justice and Delinquency Prevention

75 Bateman, T and Hazel, N (2013) *Engaging young people in resettlement*. London: Beyond youth custody

76 McNeill, F (2014) *Three aspects of desistance* available at: <http://blogs.iriss.org.uk/discoveringdesistance/2014/05/23/three-aspects-of-desistance>

77 Haines, K and Drakeford, M (1998) *op cit*

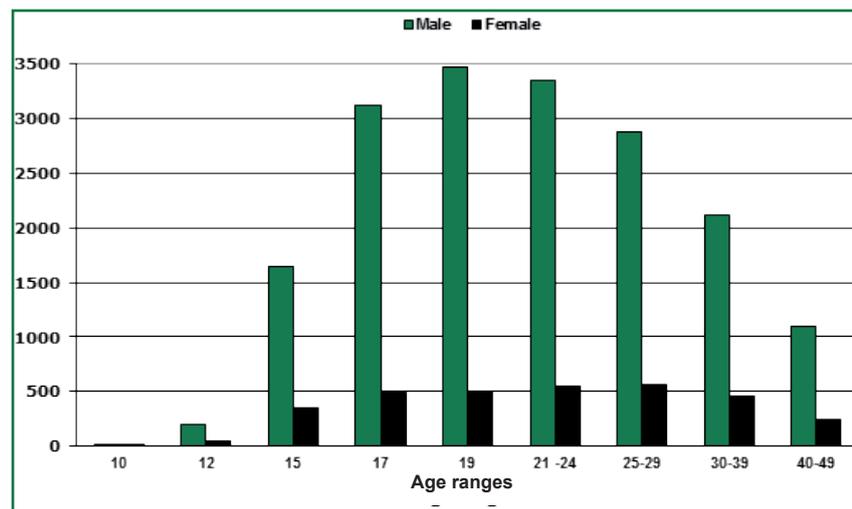
78 Audit Commission (1996) *Misspent youth: young people and crime*. London: the Audit Commission

79 Home Office (1997) *op cit*

This argument was derived largely from the fact that that the peak age of offending appeared to have risen, suggesting that maturation was no longer so readily associated with desistance. But such reasoning was questionable since the conclusion did not follow from the premise. The rise in the average age of those captured by the data for detected youth crime was in fact a predictable outcome of extensive diversion of younger children from the youth justice system rather than indicative of a failure of older children to give up offending.⁸⁰ New Labour policies predicated on that contention – such as the necessity of intervening early through the youth justice system to ‘nip offending in the bud’ – were accordingly vulnerable to criticism.

A similar dynamic is associated with the fall in FTEs which, as shown later in the paper, has impacted particularly sharply on younger children, leading to a rise in the age at which detected offending is most prevalent: during 2013, the peak age of offending (for indictable offences) was 19 years for males and 21-24 years for females. As argued in due course, the higher figure for females can also be explained as an artefact of the recent contraction of the youth justice system. Nonetheless, as shown in figure 6, offending continues to rise quickly during the early teenage years before falling sharply as young people reach their early 20s.⁸¹

Figure 6
Detected indictable offences per 100,000 population for selected age groups, 2013



- **What are they like? The characteristics of children in conflict with the law**

Children, class, risk and crime

As previously noted, behaviour that infringes the criminal law is quite widespread among teenagers from all backgrounds, but most of that illegal activity does not result in a formal youth justice sanction. A recent self-report study for instance found that less than half of children who admitted offending within the previous twelve months had been caught by the police. Moreover, the most common outcome for those who were apprehended, accounting for 28% of such cases, was that nothing happened as a consequence. A further 20% of children indicated that they had to apologise to the victim. (It is not clear from the report whether such apologies involved a formal disposal or an informal response such as a community resolution.)⁸²

80 Bateman, T (2015) *op cit*

81 Ministry of Justice (2014) *Criminal Justice Statistics 2013*. London: Ministry of Justice. The latest edition of Criminal Justice Statistics for 2014 does not provide comparable statistical information

82 Anderson et al (2010) *op cit*

Joe Yates has pointed out that those children who come to the attention of criminal justice agencies are 'disproportionately drawn from working class backgrounds with biographies replete with examples of ... vulnerability'.⁸³ The youth justice system, it has been argued, consists of a 'series of filters' that tend to operate to the disadvantage of children whose circumstances are embedded in 'economic adversity', and reinforce each other at every decision-making stage.⁸⁴ This tendency is compounded by the fact that neighbourhoods with a low socio-economic status are characterised by higher risks of crime, anti-social behaviour and victimisation.⁸⁵ Children brought up in poverty will accordingly be at heightened risk of experiencing criminal activity as part of the fabric of their everyday lives and may accordingly be more likely to engage in it.⁸⁶ Along with overt forms of discrimination, it is such processes that help to explain the over-representation of minority ethnic children within the youth justice system since the communities from which they derive are disproportionately poor.⁸⁷

The correlation with disadvantage becomes more pronounced in relation to children who are involved in more serious or persistent offending. A recent study of children in police custody for instance established that 'general entrants' to the youth justice system each experienced an average of 2.9 'vulnerabilities', but that the equivalent figure for boys affiliated to gangs was seven and, for girl gang affiliates, 9.5.⁸⁸ Similarly, children subject to higher levels of intervention and, in particular, those deprived of their liberty are far more likely to have previous experiences of deprivation. In 2008, more than half of children in custody were assessed by their youth offending team (YOT) worker as coming from a deprived household, compared with 13% of the general youth population. Almost 40% had experienced abuse and more than a quarter were living in care at the point of incarceration. Bereavement in the form of death of parents and/or siblings was three times as high as that in the general population; one fifth of those in custody had self-harmed and 11% had attempted suicide.⁸⁹

In recent years, this evidence of extensive welfare need has been recast in the form of 'risk factors' that are thought to be predictive of involvement in criminal activity, an approach that Jo Phoenix has characterised as 'oppressive welfarism'.⁹⁰ Such factors include the 12 domains captured by Asset, the current standard assessment tool for the youth justice system.

The risk factor paradigm, as it has become known, has been criticised for treating children as 'crash test dummies' whose fate is largely determined by their risk factors, rather than regarding them as active individuals with a capacity to make choices, albeit that their options may be constrained by their socio-economic position.⁹¹ The Youth Justice Board's (YJB) current intervention framework, for example, requires that where any of the twelve areas assessed using Asset generates a score of two or more, work to address that issue will be part of the intervention, irrespective of the views of the child. Conversely, there is no place within the framework for children to contribute meaningfully to their supervision plan.⁹² As a consequence, risk-led intervention inevitably tends to undermine engagement between children and their supervisors since it focuses attention

83 Yates, J (2010) 'Structural disadvantage, youth, class, crime and poverty' in Taylor, W, Earle, R and Hester, R (eds) *Youth Justice handbook: theory, policy and practice*. Cullompton: Willan

84 White, R and Cunneen, C (2015) 'Social class, youth crime and youth justice' in Goldson, B and Muncie, J (eds) *op cit*

85 Griggs, J and Walker, R (2008) *The costs of child poverty for individuals and society*. York: Joseph Rowntree Foundation

86 White, R and Cunneen, C (2015) *op cit*

87 Webster, C (2015) "Race", crime and youth justice' in Goldson, B and Muncie, J (eds) *op cit*

88 Khan, L, Brice, H, Saunders, A and Plumtree, A (2013) *A need to belong: what leads girls to join gangs*. London: Centre for Mental Health

89 Jacobson, J, Bhardwa, B, Gyateng, T, Hunter, G and Hough, M (2010) *Punishing disadvantage: a profile of children in custody*. London: Prison Reform Trust

90 Phoenix, J (2009) 'Beyond risk assessment: the return of repressive welfarism' in Barry, M and McNeill, F (eds) *Youth offending and youth justice*. London: Jessica Kingsley

91 Case, S and Haines, K (2009) *Understanding youth offending: risk factor research, policy and practice*. Cullompton: Willan

92 Youth Justice Board (2006) *Asset guidance*. London: YJB

on correcting supposed deficits rather than adopting a future orientation that aims to equip young people to achieve their entitlements.⁹³ In this context, opportunities are missed for more effective forms of supervision underpinned by the establishment of high quality relationships.⁹⁴ A focus on 'desistance', by contrast, understands children as 'subjects with whom youth justice workers should engage in their own interests' and involves an explicit recognition that children in trouble may have done wrong but are also likely themselves to have been victims of injustice in various guises.⁹⁵

The risk paradigm also involves targeting the supposed deficiencies of individual children and their families rather than understanding children's criminal behaviour as a normalised response to the environment within which they grow up, which itself is shaped by structural factors.⁹⁶ As a consequence:

'the responsibility (blame) for offending is placed with the young person and their inability to resist risk factors, rather than examining broader issues such as ... social class, poverty, unemployment, social deprivation, neighbourhood disorganisation, ethnicity'.⁹⁷

(It has been cogently argued that, as well as individualising responsibility for offending, risk assessments also paradoxically de-individualise children since they aggregate a range of different measures derived from statistical correlations that pertain to groups and attempt to apply them to the individual context.⁹⁸)

A further difficulty is that Asset functions on the assumption that each domain of risk is of equal weight in explaining offending – since each can attract the same score. This ignores the fact that domains are closely interrelated: children who have high levels of substance use are, for instance, more likely to participate in reckless activities precisely because of their drug taking. But these two 'risks' are scored independently of each other thereby 'double counting' what is, in effect, a single risk described in two ways. The same assumption inevitably understates the effect of socio-economic disadvantage since the domains in Asset which might capture poverty are outnumbered by domains that focus on individual deficit.

This is particularly problematic since the research evidence suggests that the neighbourhood effect is such as to mediate the impact of many individual risk factors. In one American study, boys with no identifiable risk factors from the most disadvantaged neighbourhoods were fifteen times as likely to have committed serious offences as those from the most affluent areas. As shown in table 3 (page 20), the presence of additional indicators of risk was accordingly likely to play a much bigger role in explaining the offending of boys residing in the latter type of neighbourhood than in poorer areas.⁹⁹

Table 3 Percentage of boys committing serious offences by socio-economic status of area of residence and number of risk factors

Number of risk factors	0	1-2	3 -6
Most disadvantaged neighbourhood	3.4%	32.8%	56.3%
Least disadvantaged neighbourhood	51.3%	53.1%	83.9%

93 Creaney, S (2014) 'The benefits of participation for young offenders' in *Safer Communities* 13(3):126-132

94 Creaney, S (2014) 'The position of relationship based practice in youth justice' in *Safer Communities* 13(3):120-125

95 McNeill, F (2009) 'Supervising young offenders: what works and what's right?' in Barry, M and McNeill, F (eds) *op cit*, 132-153

96 France, A, Bottrell, D and Armstrong, D (2012) *A political ecology of youth and crime*. Basingstoke: Palgrave Macmillan

97 Case, S and Haines, K (2015) 'Risk management and early intervention: a critical analysis' in Goldson, B and Muncie, J (eds) *op cit*, 100-118

98 Ibid

99 Knuutila, A (2010) *op cit*

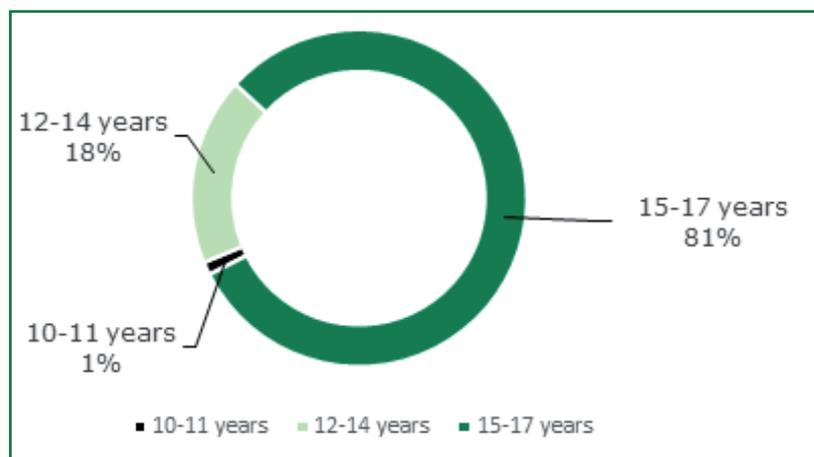
It is for such reasons that, while it is true that many children in contact with youth justice agencies will display more 'risks' than those who do not, predicting from an early age which children will or will not offend, on the basis of their risk profile, proves to be extremely difficult.¹⁰⁰

To its credit, the YJB has acknowledged the force of such criticism and has moved to develop a new assessment framework to replace *Asset*, reflecting evidence that suggests 'a greater focus on way in which a young person's positive influences can be enhanced so as to promote desistance' is preferable to 'a primary focus on risk'. Funding for implementation of the revised framework has been approved by the government and it is anticipated that deployment to youth offending teams will commence from the summer 2015.¹⁰¹ One of the improvements in the new framework is that the views of the child feature as one of four equally weighted sources of information, potentially encouraging the evolution of more participatory approaches to youth justice intervention. The extent to which this potential is realised remains to be seen.¹⁰²

Age

A number of factors combine to ensure that children who come to the attention of the youth justice system are clustered towards the upper end of that system's age range: the peak of offending coincides with the late teenage years; older children are more likely to come to the attention of police more frequently by dint of the fact that they have more access to public space; and any discretion exercised by the police to deal with behaviour that transgresses the law without resort to formal sanctions is more likely to be exercised in a way that favours younger children. In 2014, children aged 15-17 years accounted for almost 81% of those receiving a formal pre-court disposal or conviction for an indictable offence. Conversely, slightly more than 1% were below the age of 12 years. The full distribution is shown in figure 7.

Figure 7
Children receiving a substantive youth justice disposal by age (indictable offences), 2014



The preponderance of older children subject to youth justice sanctions is relatively enduring but, for reasons discussed earlier in this paper, the distribution is not static but subject to fluctuation in line with the vicissitudes of policy and practice that determine the circumstances under which children are criminalised. Most recently, for instance,

¹⁰⁰ Creaney, S (2013) 'Beyond pre-emptive criminalisation: towards a child-friendly youth justice' in *Safer Communities* 12(3): 101-110

¹⁰¹ Youth Justice Board (2014) *AssetPlus - Assessment and Planning Interventions Framework* at: <http://www.justice.gov.uk/youth-justice/assessment/assetplus>, accessed 3 July 2014

¹⁰² For some of the potential difficulties with *AssetPlus*, see Haines, K and Case, S (2015) *op cit*

the FTE target has tended to filter out younger children from the system at a faster rate than their older counterparts. Thus, in 2007, those aged 10-11 years accounted for three percent of all youth justice disposals compared with one percent in 2014.

Conversely, in the period prior to the shift in performance measures, the sanction detection target led to a more rapid rise in the number of younger children convicted or receiving a pre-court disposal. Since the target affected that group disproportionately, they would have been more likely to benefit from an informal response to their offending before it was introduced. Consequently, while the number of 10-14 years-olds receiving a formal sanction for an indictable offence increased by almost a third between 2003 and 2007, the equivalent growth for those aged 15-17 years was a more modest 20%.

While the reduction in the numbers of younger children who receive a formal sanction is welcome, the potential for any child to be criminalised remains subject to the age of criminal responsibility. In England and Wales, the threshold at which children become criminally liable is, at 10 years, considerably below that in most other European jurisdictions. The United Nations Committee on the Rights of the Child has consistently criticised the United Kingdom in this regard, indicating that 12 years is the absolute minimum acceptable age consistent with international standards of children's human rights.¹⁰³ The reduction in the number of children in the lower age ranges formally processed by the justice system makes reform in this regard appear increasingly sensible. On the other hand, given the evidence that shifts in policy and practice could rapidly lead to a reversal of recent trends and a recurrence of the criminalisation of large numbers of young children, it also appears increasingly necessary. The NAYJ considers that the age of criminal responsibility should be raised to 16 years in line with the age of consent.¹⁰⁴ Successive governments have however shown little appetite for reform in this regard. Indeed, the terms of reference of the recently announced review of youth justice explicitly preclude consideration of that issue.¹⁰⁵

Gender

The age-crime curve was described above as one of the few certainties in criminology. A second such certainty concerns the under-representation of females in the criminal justice system. Girls are consistently less likely than boys to come into contact with the youth justice agencies; they commit fewer and less serious offences, and grow out of crime more successfully and at a lower age.¹⁰⁶

There is a common perception that girls' offending is a bigger problem than hitherto.¹⁰⁷ Such a view is clearly not supported by the data - in 2014, detected offending by girls was 85% lower than in 1992 - but the misconception has been sustained by '*recurrent panics*' about the involvement of young female in delinquent activity. For a short period, moreover, such panics were encouraged by the impact of the sanction detection target, leading to media claims of an '*unprecedented crime wave among teenage girls*'.¹⁰⁸

Between 2003 and 2007, coinciding with the introduction of the performance indicator, there was a pronounced rise in the number of girls entering the youth justice system. Significantly, as detailed in figure 8 overleaf (which shows changes in girls' and boys' offending from a 2003 baseline), this increase was considerably sharper than that for boys, at 35% compared to 16%, suggesting that the target had a greater net-widening impact

¹⁰³ UN Committee on the Rights of the Child (1997) *General comment No 10: children's rights in juvenile justice*. Geneva: United Nations

¹⁰⁴ For the NAYJ's perspective on the age of criminal responsibility, see Bateman, T (2012) *Criminalising children for no good purpose: the age of criminal responsibility in England and Wales*. London: NAYJ

¹⁰⁵ Ministry of Justice (2015) *Youth justice review: terms of reference*. London: Ministry of Justice

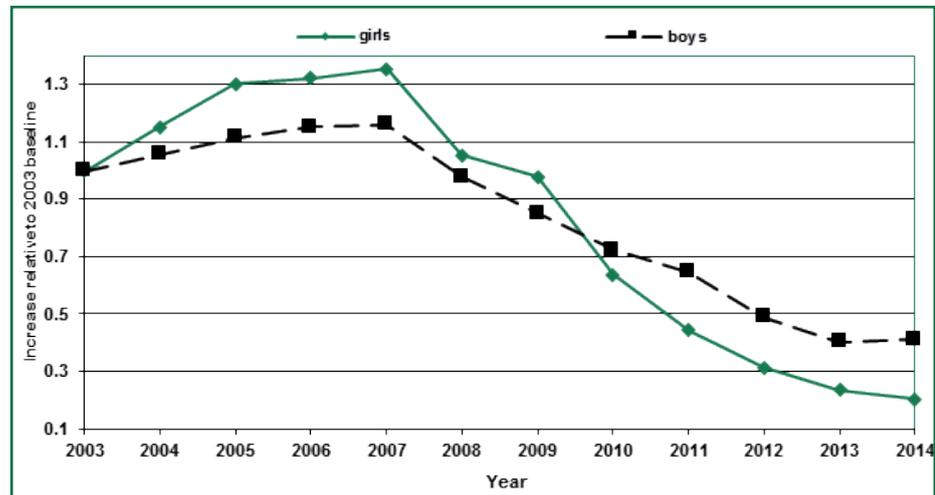
¹⁰⁶ Smith, D (2006) *Social inclusion and early desistance from crime*, report number 12 of the Edinburgh Study of Youth Transitions and Crime, University of Edinburgh

¹⁰⁷ Sharpe, G (2012) *op cit*

¹⁰⁸ Ibid

on the former population. This gendered pattern is readily explained by the fact that the more limited, less serious, nature of girls' offending (and the persistence of paternalistic attitudes) had traditionally been associated with a higher use of police discretion to deal informally with female behaviour; the scope for increasing the use of formal sanctions was accordingly more extensive in the case of girls.¹⁰⁹

Figure 8
Changes in
detected offending
relative to a 2003
baseline by gender:
Indictable offences



As the FTE target began to kick in, there was a marked decline in detected offending by all children. However, as shown in figure 7, the general fall masked a faster reduction for girls, as the logic of the old indicator was superseded by a reverse dynamic. Perhaps unsurprisingly, this dramatic fall did not garner as much press attention as the preceding rise.¹¹⁰ This same process explains why the peak age of female offending is higher than that for males in spite of evidence that girls grow out of crime at a younger age. As younger girls in particular have increasingly been diverted from formal sanctions, the average age of those within the justice system has inevitably risen.

There is evidence that girls in conflict with the law are significantly more vulnerable than their male counterparts on a range of indicators.¹¹¹ This, in combination with the fact that they are less likely than boys to reoffend, can prove problematic since that difference leads youth justice assessments based on risk factors to systematically over-predict the risk of reoffending in girls, potentially resulting in higher levels of intervention than is warranted by their lawbreaking.¹¹² Moreover, the limited research in this field suggests that at least some of the vulnerabilities displayed by girls in trouble have developed as a consequence of a history of 'welfare inaction' and 'their abandonment by helping professionals'.¹¹³

There has been a more recent recognition that 'gender neutral' responses to youth crime have disadvantaged girls, particularly where gendered assumptions continue to underlie decision making. It has been noted, for instance, that girls convicted of assault are more likely than their male counterparts to be imprisoned, implying that the lenience that is afforded to young women in many circumstances is withdrawn where their behaviour transcends female norms. In such cases, girls become 'doubly deviant' and the treatment meted out to them reflects the infraction of both the law and expectations of femininity.

¹⁰⁹ Nacro (2008) *Responding to girls in the youth justice system*. London: Nacro

¹¹⁰ Sharpe, G (2012) *op cit*

¹¹¹ Bateman, T and Hazel, N (2014) *Resettlement of girls and young women: research report*. London: Beyond Youth Custody

¹¹² Bateman, T, Melrose, M and Brodie, I (2013) 'Nothing's really that hard, you can do it'. *Agency and fatalism: the resettlement needs of girls in custody*. Luton: University of Bedfordshire

¹¹³ Sharpe, G and Gelsthorpe, L (2015) 'Girls, crime and justice' in Goldson, B and Muncie, J (eds) *op cit*

When they are incarcerated, girls are moreover subject to higher levels of restraint and are at heightened risk of self-harm.¹¹⁴ Such injustices have led to an increasing insistence on the importance of gender specific programmes. Sharpe and Gelsthorpe however argue that, whatever the good intentions of such developments, to the extent they operate within a criminal justice context, they are unlikely to combat the institutional adversity experienced by, and lack of welfare support offered to, girls from the most disadvantaged and victimised backgrounds.¹¹⁵

Race

It has long been recognised that criminal justice systems are disproportionately populated by people from black and minority ethnic (BME) backgrounds. One consequence of that recognition is that, since 1991, the government has been required to publish information that might assist criminal justice agencies to meet their duty to avoid discrimination on the grounds of race.

Within the youth justice system, BME children, viewed as a single group, are over-represented. It is however important to note that the picture varies by ethnic group. As shown in table 3, relative to their make up in the 10-17 population, Asian children are under-represented among those receiving a substantive youth justice disposal; by contrast 1.8 times as many black children come to the attention of the youth justice system as would be expected given the composition of the general youth population.

Table 3 Representation by ethnicity of children in the 10-17 population and in the youth justice system: 2009/10 to 2013/14

	White	Asian	Black	Mixed heritage
10-17 population (2011 – mid-year estimate)	81.4%	8.9%	4.5%	4.2%
Youth offending population				
2009/10	83.5%	4%	6.1%	3.5%
2010/11	81.6%	4.2%	7%	4.1%
2011/12	80.2%	4.4%	7.9%	4.6%
2012/13	81%	4.4%	8%	3.5%
2013/14	74.5%	4.5%	8%	4.9%

The extent of BME representation has increased in the recent period: between 2009/10 and 2013/14, the proportion of all children subject to a substantive youth justice disposal classified as white fell from 83.5% to 74.5% with a corresponding rise in the representation of minority children. At least some of this increase is explained by the fact that the fall in FTEs has not benefited minority ethnic children to the same extent as their white counterparts: in 2007/08, black children accounted for 7% of all first time entrants; the equivalent figure in 2013/14 was 10%.

An issue of further concern is that overrepresentation increases in line with the intensity of youth justice intervention. As shown in table 4, during 2013/14, black and mixed heritage children were particularly overrepresented among those receiving custodial sentences: while those two groups made up 12.9% of the youth offending population, they accounted for more than one fourth of those receiving a custodial sentence and 38%

¹¹⁴ Ibid

¹¹⁵ Ibid

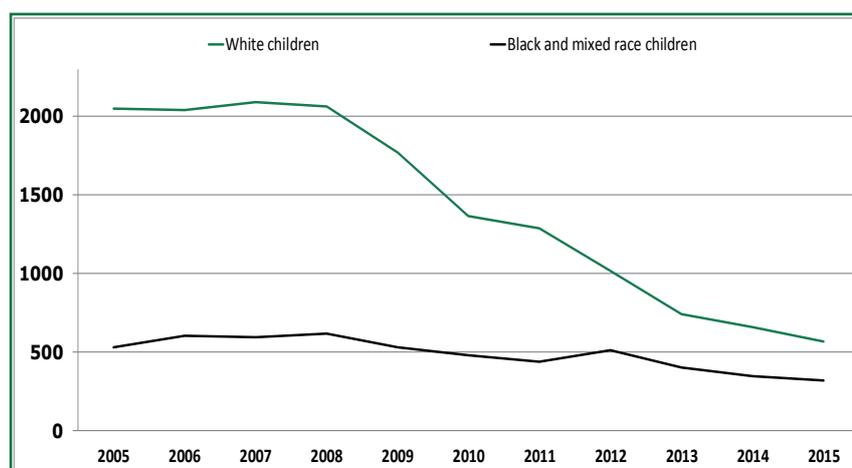
of those sentenced to more than two years. The latter proportion is almost six times as high as would be anticipated given the composition of the general population.

Table 4 Representation by ethnicity at different stages of the youth justice system: 2013/14

	White	Asian	Black	Mixed heritage
All youth justice disposals	74.5%	4.5%	8%	4.9%
Court convictions	73.8%	5%	10.4%	6.6%
Custodial sentences	66%	5.5%	17%	9.2%
Long term custody ¹	54.3%	6.6%	25.6%	11.4%

As discussed in a subsequent section of this paper, the fall in FTEs, and the consequent contraction of the youth justice system, has been accompanied by a corresponding, pronounced, decline in the number of children consigned to custody. While this overall reduction is overdue, it is important to recognise that the fall has been significantly less marked for black and mixed race children, as shown in figure 9. In June 2005, the latter two groups combined accounted for less than one in five (18.8%) of the total population of the secure estate for children and young people; by June 2015, that proportion had risen to almost one third (32.5%).

Figure 9 Population of the secure estate by (selected) ethnicity: 2005-2015 (June)



Self-report surveys provide no reason for supposing that the extent of over-representation can be explained by higher levels of offending by BME children.¹¹⁶ No doubt, discrimination in various guises helps to account for the statistics.¹¹⁷ Stop and search statistics are not disaggregated by age but because they spend more time in public space than adults, young people are more likely to be subject to the procedure. During 2013/14, nearly one quarter of stop and searches conducted under section 1 of the *Police and Criminal Evidence Act* (which allows searches where the police suspect that the person is in possession of stolen goods or a prohibited article) were on minority ethnic individuals.¹¹⁸ This is important because higher levels of searching of particular groups will inevitably yield increased rates of arrest, even if those populations have similar patterns of offending to the wider population. Once inside the system, there

¹¹⁶ Webster, C (2015) *op cit*

¹¹⁷ See for instance, May, T, Gyang, T and Hough, M (2010) *Differential treatment in the youth justice system*. Equality and Human Rights Commission

¹¹⁸ Data.police.uk (2015) *Stop and search statistics 2013/14* available at: <https://data.police.uk/data/stop-and-search/>

is further evidence of the impact of discrimination: for instance, research conducted in 2004, confirmed that a mixed heritage boy was 2.7 times more likely to be prosecuted than a white boy with a similar case characteristics; a black boy's chances of receiving a custodial sentence of longer than one year was almost seven times that of a white child for an equivalent offence.¹¹⁹

However, it seems unlikely that discrimination accounts for the full scale of the over-representation displayed in the official figures. A Home Affairs Committee inquiry into young black people and the criminal justice system in 2007 concluded that the primary cause of over-representation was social exclusion and disadvantage. Minority ethnic young people are more likely than their white counterparts to be raised in deprived neighbourhoods and to experience poverty, factors that are associated with increased levels of victimisation and offending.¹²⁰ More recent research has confirmed that black and mixed heritage children within the youth justice system have significantly higher levels of need than their white counterparts, suggesting that they have endured less favourable previous histories.¹²¹ Combined with standardised risk assessment, enhanced levels of need generate higher expectations in terms of compulsory intervention, which in turn are associated with increased potential for breach.

The NAYJ considers that addressing the over-representation of children from minority ethnic backgrounds is one of the most pressing issues faced by the youth justice system, since the prevailing pattern seriously undermines the ability of that system to deliver justice to children.¹²² The NAYJ is also concerned that other groups of children – including gypsies and travellers and unaccompanied asylum seekers – are also over-represented among those who come to the attention of criminal justice agencies. The lack of consistent data however means that less attention is paid to such groups. There is a strong correlation too between care status and criminalisation, providing a further indication that the youth justice system is, in effect, a repository for the punishment of the most vulnerable children.¹²³

• Keeping children out of the system

The NAYJ considers that wherever possible children in trouble should be dealt with outside the parameters of the formal youth justice system. There is compelling evidence that formal sanctioning – at least as currently configured – interferes with the natural processes of desistance through maturation, undermines the delivery of mainstream service provision, imposes punishment inappropriately on children who are overwhelmingly victims of social injustice, increases the prospect that the child will adopt a 'delinquent' identity and, accordingly, exacerbates the risk of further offending.¹²⁴

This understanding was widely accepted during the 1980s by practitioners, academics and, significantly, the government. Guidance to the police in 1985, for instance, endorsed the merits of keeping children out of the formal justice system, counselling against a presumption that youth offending should require a formal response, '*as against a decision to take less formal action or no further action at all*'.¹²⁵ One consequence was what has been called the '*successful revolution*' of that decade, whose characteristics pre-figured in a number of respects contemporary trends identified earlier in this paper. The gains associated with that earlier revolution were however subject to a rapid, and largely

119 Feilzer, M and Hood, R (2004) *Differences or discrimination*. London: Youth Justice Board

120 House of Commons Home Affairs Committee (2007) *Young Black people and the criminal justice system*. London: The Stationery Office

121 May, T, Gyateng, T and Bateman, T (2010) *Exploring the needs of young Black and Minority Ethnic offenders and the provision of targeted interventions*. London: Youth Justice Board

122 NAYJ (2015) *Manifesto 2015*. London: NAYJ

123 See for instance, NAYJ (2015) *Written submission to the Laming Review: Keeping children in care out of trouble*. London: NAYJ

124 McAra, L (2015) *op cit*

125 Home Office (1985) *The cautioning of offenders*. Home Office circular 14/85. London: Home Office

unanticipated, reversal following a 'punitive turn' and a corresponding shift towards early formal intervention that occurred in the early part of the following decade.¹²⁶

In this context, the recent reduction in FTEs represents a significant advance in terms of the treatment of children in trouble. It raises the question however of how that decline has been achieved. Understanding the underlying dynamics of the current contraction in the youth justice system might facilitate the development of safeguards to militate against any contemporary U-turn that could otherwise undermine recent progress.

The formal and informal policing of children

According to information obtained by the All Party Parliamentary Group for Children, more than one million children were stopped and searched between 2009 and 2013. The figure is almost certainly a substantial under-estimate since it is based on returns from just 26 of the 44 police services. Nonetheless, this estimate for stop and searches is considerably higher than the number of children (893,000) arrested over the same period. Moreover, the majority of arrests are not pursuant to a stop and search. As a consequence it is clear that many children are searched unnecessarily. (Of even greater concern perhaps is that data provided by 22 police services indicating that 1,136 of those searched were below the age of criminal responsibility.)¹²⁷

For current purposes, however, it is important to focus on the smaller group who are detained at the police station since it is clear that part of the explanation for the fall in detected youth offending is that fewer children are arrested by the police. As demonstrated in figure 10, the number of children arrested for a notifiable offence rose between 2002/03 and 2006/07 but began to fall sharply thereafter; leading to a reduction of 68% by 2013/14. This pattern broadly reflects the same policy shifts that have impacted on the treatment of children in trouble more broadly.¹²⁸

Figure 10
Children arrested for notifiable offences: 2002/03 to 2013/14



But using levels of arrest to explain the reduction in FTEs simply pushes the question back one stage since an explanation of this pattern is then also required. A number of factors might be thought relevant here. First, the longer-term reduction in children's criminal activity identified earlier in the paper is likely to have contributed to the fall in arrests, but it seems doubtful that this could account for the extent of the decline

¹²⁶ Muncie, J (2008) 'The "punitive turn" in juvenile justice: cultures of control and rights compliance in Western Europe and the USA' in *Youth justice* 8(2):107-121

¹²⁷ All Party Parliamentary Group for Children (2014) *"It's all about trust": building good relationships between children and the police*. London: NCB

¹²⁸ Ministry of Justice/ Youth Justice Board (2015) *op cit* and Home Office (2015) *Police powers and procedures England and Wales year ending 31 March 2014*. London: Home Office

from 2007/8 onwards. It is true that the Youth Justice Board did invest heavily in youth crime prevention in the form of highly targeted programmes such as Youth Inclusion Programmes (YIPs), which were established in 2000 to engage with the highest risk children in the most deprived and high crime neighbourhoods. The evaluation of YIPs, while generally positive, was a little equivocal on the impact of the programme on reoffending. It found that more than half of participants with an arrest history were not arrested again in the follow up period; however, 70% of children participating had no previous arrest history and, of these, almost half were arrested in the follow up period.¹²⁹ Moreover, the approach which YIPs embodied has been criticised for mirroring the risk factor paradigm that underpins interventions for adjudicated young offenders,¹³⁰ and consequently exposing children to the unintended consequences associated with stigmatisation and focusing on individual deficits as the cause of youth misbehaviour.¹³¹ Whatever the merits of such criticisms, or the impact on individual participants, it is clear that for the first six years of its existence, the programme had no discernible deflationary impact on the total number of children arrested.

It is moreover hard to ignore the fact that the fall in arrests coincided with the ending of the sanction detection target and the establishment of the FTE indicator, suggesting that modifications to policing practice to accommodate that policy change had a significant impact on the treatment of children who came into contact with the police.

Youth restorative disposals (YRDs) were piloted in eight police force areas between 2008 and 2009 to allow police 'more discretion with a quick and effective alternative means of dealing with low-level, anti-social and nuisance offending'. Usually delivered by officers on the street shortly after the incident, they were intended to contain a 'restorative' element with both the child and his or her 'victim' required to agree to the proposed course of action. An evaluation conducted for the Youth Justice Board found that more than half of YRDs were issued for theft and a verbal apology was the most frequent outcome. While pilot areas registered a contemporaneous fall in the number of formal pre-court disposals given to children, the authors were wary of attributing that reduction specifically to the introduction of YRDs since non-pilot areas also experienced substantial declines.¹³² In retrospect, it would appear that equivalent approaches were being developed at around this time outside of pilot areas: many police forces started to use what have become known as 'community resolutions' (which operate in a similar fashion to YRDs) to deal with low-level lawbreaking without the need for arrest.

Relatively little is known about the operation of community resolutions: no national data are currently published and it would appear that there are significant variations in practice at local level.¹³³ It is clear however that they account for a significant, and increasing, proportion of responses to children who come to police attention. In 2011 for instance, it was estimated that informal resolutions – going under a number of different designations depending on locality – made up 12% of all case disposals, a rise from 0.5% in 2008.¹³⁴ The figures include both adults and children but the latter are likely to have benefited disproportionately from this development, given the close affinity between community resolutions and YRDs and the fact that the youth crime is typically of a less serious nature.

The rapid growth in such disposals has coincided with the sharp fall in child arrests, suggesting that the two are related. Further indicative evidence in this regard derives

129 Morgan Harris Burrows (2008) *Evaluation of the youth inclusion programme – phase 2*. London: Youth Justice Board

130 Haines, K and Case, S (2015) *Positive youth justice: children first, offenders second*. Bristol: Policy press

131 Kelly, L (2012) 'Representing and preventing youth crime: intended and unintended consequences of targeted youth programmes in England' in *Youth Justice* 12(2):101-117

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

133 Acton, E (2015) 'Restorative justice a postcode lottery? – availability and quality of Service' in *Safer Communities* 14(3), forthcoming

134 Criminal Justice Joint Inspection (2012) *Facing up to offending: use of restorative justice in the criminal justice system*. London: HMIC

from the fact that the largest recorded declines in arrests between 2006/07 and 2012/13 are for theft/handling stolen goods (75%) and criminal damage (78%), offences considered to be the most appropriate for community resolution.

The *NAYJ* applauds the fact that fewer children are subject to arrest but considers that there may be scope for further reductions. The 29,800 formal youth justice sanctions imposed in 2013/14 was significantly below the number of child arrests (112,709). Some of the gap between these two figures no doubt reflects the greater use of informal measures post-arrest in recent years (an issue addressed below), but it also seems likely that a considerable number of children continue to be arrested where there is insufficient evidence to proceed to prosecution or the matter is too minor to warrant a formal sanction. In addition, while the fall in arrests has had a significant impact on reducing the number of children entering the youth justice system, it is not sufficient as a full explanation since the decline in FTEs, while contemporaneous with the drop in arrests, has been much sharper: in 2013/14, 68% fewer children were arrested than in 2007/08, the equivalent figure for FTEs was 80%.

Decriminalisation post arrest

The difference between trends in arrest and FTEs indicates that further diversionary mechanisms are at play once children are arrested. From the available evidence, it is apparent that evolving youth offending team practice has proven pivotal in expanding considerably the number of cases involving children at the police station that are resolved without the requirement for a formal pre-court sanction or prosecution.

Unsurprisingly, given the impact of austerity, resources available to youth offending teams have fallen as the throughput of the youth justice system has declined. Between 2008/09 and 2013/14, total YOT funding reduced by more than 15%. The professional workforce shrunk more rapidly: a 25% reduction in staffing between 2008 and 2013. Nonetheless, the scale of the system contraction has outstripped that of resources, so that, on one estimate, statutory caseloads have fallen from an average 21 to 11.¹³⁵ While those children who remain within the formal system are likely to be those with higher levels of need whose offending is most entrenched, this pattern has nonetheless allowed a shift from an exclusive focus on children receiving formal youth justice sanctions to a broader concern with prevention. By 2015, at least three quarters of YOTs were delivering preventive activities in one form or another;¹³⁶ of 20 YOTs visited by the Youth Justice Board in early 2015, just one worked exclusively with statutory cases.¹³⁷

Relatively little detail is known in relation to the nature of that activity at a local level partly because since it has not been centrally driven in the same way as YIPs and other earlier forms of prevention were, but has to a large extent evolved piecemeal as a response to falling caseloads, ensuring a YOT contribution to the FTE target and a more general 'reinvention' of diversion.¹³⁸ In this context, the publication by the Youth Justice Board of guidance on out of court disposals (in the wake of the abolition of the rigid final warning scheme - see below), helped to legitimate youth justice intervention that was not tied to a formal outcome. The new guidelines encouraged joint decision-making between the police and YOTs and clarified that an informal outcome might be appropriate whatever the child's previous offending history.¹³⁹ The Board has also acknowledged the

¹³⁵ Deloitte (2015) *Youth offending team stocktake*. London: Ministry of Justice

¹³⁶ Ibid

¹³⁷ Youth Justice Board (2015) *Youth offending teams: making the different for children and young people, victims and communities*. London: Youth Justice Board

¹³⁸ Smith, R (2014) 'Re-inventing diversion' in *Youth Justice* 14(2):109-121

¹³⁹ Ministry of Justice / Youth Justice Board (2013) *Youth out of court disposals: guide for police and youth offending services*. London: Ministry of Justice

impact of austerity, prompting YOTs to become integrated with wider services rather than operating as stand-alone partnerships, and encouraging a reconfiguration of provision around prevention.¹⁴⁰

New Labour's 2008 *Youth Crime Action Plan* might in retrospect be seen as a major impetus for the diversionary shift. As well as establishing the FTE target, the plan provided funding for the development of 'triage' in 69 areas in England. Although triage schemes operate in a variety of ways, the shared purpose is to provide the police with a YOT assessment, usually accompanied by the offer of a preventive intervention. This can, in appropriate circumstances, allow the diversion of low level cases away from a formal criminal justice sanction and permit the recording of 'no further action'.¹⁴¹

Triage can operate at three levels depending on the assessed seriousness of the offending, although not every area offers the full range of provision. Level one involves children committing low level offences, usually for the first time, and attempts to divert them from the justice system, frequently through some form of restorative intervention. Level two involves more serious offending; following assessment, children can be offered a range of supportive intervention, provided or accessed by the YOT, which may persuade the police to record the disposal as no further action. Level three involves higher level offending and generally leads to pre-court disposal or prosecution. The evaluation of the pilot found that most schemes focussed on level one, dealing mainly with children with no antecedent history who had typically committed offences such as theft, criminal damage or low level assaults.

While triage areas demonstrated a greater reduction in FTEs than the national figure (28.5% against 23%), those conducting the evaluation were not able definitively to attribute that difference to the scheme since the fall in FTEs had commenced prior to its introduction. According to the Department of Education there were 55 triage schemes in operation in England at January 2011 but, as with the YRD, it seems clear that similar initiatives were developed in areas that had not received dedicated funding for this purpose and this accounts for at least part of the recorded falls in FTEs outside of triage areas.

A separate initiative has encouraged increased diversion of particularly vulnerable children from formal youth justice intervention. *Youth Justice Liaison and Diversion Schemes* were piloted in six YOT areas from 2008 and aimed to provide enhanced support for children who come to the attention of the youth justice system with mental health and developmental problems, speech and communication difficulties, learning disabilities and other similar vulnerabilities, by referring them to appropriate provision.¹⁴² It was intended that assessment by staff at the police station and the provision of such support would, in appropriate cases, function to divert children from criminal sanction. An evaluation found that the extent to which such diversion was achieved was variable and depended on police commitment to the scheme. Nonetheless, while the evaluators were not able to provide independent verification because of a paucity of data, staff estimates suggested that diversion was achieved in around 20% of cases referred. Moreover, access to the scheme was associated with an '*improvement in the mental health and wellbeing of young people*', particularly in relation to self-harm, depression and anxiety.¹⁴³ Following the pilot a national roll out of liaison and diversion schemes, encompassing all age groups, was commenced and, by April 2015, such schemes were live in 26 areas.¹⁴⁴

140 Youth Justice Board (2015) *op cit*

141 Institute for Criminal Policy Research (2012) *Assessing young people in police custody: an examination of the operation of Triage schemes*. London: Home Office

142 Haines, A, Goldson, B, Haycox, A, Houten, R, Lane, S, McGuire, J, Nathan, T, Perkins, E, Richards, S and Whittington, R (2012) *Evaluation of the Youth Justice Liaison and Diversion (YJLD) pilot scheme: final report*. Liverpool: University of Liverpool

143 *Ibid*

144 NHS England (2015) *Liaison and Diversion Bulletin: May 2015* available at: www.england.nhs.uk/2015/05/26/ld-bulletin-may-2015/

These two initiatives were promoted at a government level, but it is clear that similar provision has emerged across England and Wales, albeit with local variation. Roger Smith, for instance, describes developments in Durham and Hull that both offer prevention activities targeted at avoiding formal entry to the youth justice system.¹⁴⁵ Kelly and Armitage similarly provide an overview of non-statutory interventions in two unnamed YOTs to support informal disposals for low level offending.¹⁴⁶ Perhaps the best known of these diversionary innovations is the Bureau model established in Swansea that aims to blend '*promising features of previous and contemporary*' initiatives with the explicit objective of diverting children from the formal youth justice system and from further offending.¹⁴⁷

Where diversion is successfully achieved, outcomes from the above interventions are not reflected in the figures for detected offending, and they accordingly provide alternative options to formal youth justice disposals for children who might otherwise become FTEs, as well as those who have previously received formal sanctions. However, as noted above, no national figures are available for the extent of such practices or how many children receive services through such mechanisms. No doubt there is considerable variation in the availability of diversion focused prevention provision, the underlying philosophy of such initiatives and their effectiveness. Such variability is likely to explain at least part of the geographic differences in the trend data for FTEs. While all YOTs recorded substantial falls between 2007/08 and 2012/13, the magnitude of the decline ranged from over 90% in Monmouthshire to less than 50% in Pembrokeshire. Nonetheless the overall impact is evident: a recent stocktake of youth offending teams commissioned by the Ministry of Justice confirmed that '*YOTs undertaking prevention work had lower FTE numbers than those that do not*'.¹⁴⁸

In spite of the clear advances, the lack of data is of concern for a number of reasons. First, the absence of any systematic aggregation of outcomes for children who have been successfully diverted through these innovative means represents a missed opportunity to gather further evidence of the benefits of decriminalisation. Second, the rediscovery of diversion appears to encompass a range of different practices and underlying philosophies. Smith for instance identifies several different rationales: '*needs-based arguments; restorative principles; and the idea of minimum intervention*'.¹⁴⁹ Haines and Case maintain that the Swansea Bureau encapsulates an ethos of '*inclusion, engagement and participation*'.¹⁵⁰ Kelly and Armitage, conversely, discern residues of the influence of risk management and early interventionism embedded in the new practices so that: '*it is not possible to understand current trends as simply the rebirth*'¹⁵¹ of the '*progressive minimalism*' of the 1980s.¹⁵² Further clarity on this broad range of potentially competing approaches is required to determine the extent to which outcomes are influenced by the conceptual model adopted.

Finally, the extent, and efficacy, of preventive work undertaken by YOTs with children at the gateway to the justice system to prevent criminalisation is not captured in the indicators by which the performance of the youth justice system is currently measured. As a recent 'stocktake' of YOTs put it, '*there is a discrepancy between what YOTs do and what is measured*' by central government.¹⁵³ A survey of YOTs conducted in 2014 confirmed practitioner fears that, since much diversionary activity was '*motivated by*

145 Smith, R (2014) *op cit*

146 Kelly, L and Armitage, V (2015) *op cit*

147 Haines, K and Case, S (2015) *Positive youth justice: children first, offenders second*. Bristol: Policy press

148 Deloitte (2015) *op cit*

149 Smith, R (2014) *op cit*

150 Haines, K and Case, S (2015) *op cit*

151 Kelly, L and Armitage, R (2015) *op cit*

152 Pitts, J (2005) 'The recent history of youth justice in England and Wales' in Bateman, T and Pitts, J (eds) *op cit*, 2-11

153 Deloitte (2015) *op cit*

fiscal pressure rather than an ideological shift away from default use of the formal system', the lack of an evidence base for the cost effectiveness of non-statutory work renders recent advances vulnerable to reversal.¹⁵⁴ A consultation published by the Youth Justice Board in August 2015 on how to reduce central government expenditure on youth justice by £13.5 million, within the financial year ending March 2016, is testament to the reality of that vulnerability.¹⁵⁵ While the precise impact of such stringent cutbacks on youth justice services is as yet unclear, the NAYJ is naturally troubled as to the implications for children in trouble. Linn Hinnigan, Chief Executive of the Youth Justice Board, in a letter to YOT Management Boards dated 28 July 2015, conceded that the cuts might:

'lead to a reversal of the positive trends we have seen over recent years. This would see more young people coming in to the system; rising costs for police, courts and other justice agencies and, ultimately, risk increasing custodial populations which would mean new places in secure establishments must be commissioned.'¹⁵⁶

The NAYJ considers this pessimistic assessment to be a realistic one.

Keeping children out of court

The NAYJ believes that a primary objective of progressive youth justice practice should be to avoid formal contact with the youth justice system in favour, where necessary, of support and assistance from mainstream children's provision. If decriminalisation is not however possible, opportunities to divert children from prosecution to a formal pre-court disposal should be maximised. Broadly speaking, the extent to which a commitment to diversion from court is apparent in youth justice policy and practice has followed the contours of the wider ethos that informs any particular period.

Such a commitment was, for instance, a key principle of provision for children in trouble during much of the 1980s. For instance, Home Office guidance to the police, issued in 1985, indicated that prosecution of juveniles should not be undertaken:

'without the fullest consideration of whether the public interest (and the interests of the juvenile concerned) may be better served by a course of action which falls short of prosecution'.¹⁵⁷

This constituted a consensus that extended from government to policy makers, academics and practitioners and was manifested a rise in the proportion of children given a police caution with the consequence that 'substantially fewer in number were ... prosecuted'.¹⁵⁸ Thus as a proportion of substantive disposals cautions accounted for less than half in 1980 but more than three quarters in 1990.¹⁵⁹

The allegiance to diversion waned rapidly from the early 1990s onwards, as part of the process of repoliticising youth crime under the 'punitive turn'. Revised guidance discouraged the use of cautions for serious offences and noted that multiple cautioning could undermine confidence in pre-court disposals.¹⁶⁰ The shift in mood was reflected in falling rates of diversion in the first part of the decade and was given statutory expression in New Labour's Crime and Disorder Act 1998. The legislation mandated that informal action was to be used only in exceptional circumstances. The Act also introduced

¹⁵⁴ Estep, B (2014) *Youth diversion: YOT survey briefing*. London: New Economics Foundation

¹⁵⁵ Youth Justice Board (2015) *Proposal to reduce the Youth Justice Board's expenditure in 2015/16: consultation paper*. London: Youth Justice Board

¹⁵⁶ Hinnigan, L (2015) *RE: Youth Justice (YOT) Grant 2015/16*. Letter to YOT Management Boards, 28 July 2015. London: Youth Justice Board

¹⁵⁷ Home Office (1985) *The cautioning of offenders*. Home Office circular 14/85. London: Home Office

¹⁵⁸ Smith, R (2014) *Youth justice: ideas, policy, practice*. Abingdon: Routledge

¹⁵⁹ Allen, R (1991) 'Out of jail: the reduction in the use of penal custody for male juveniles 1981 – 1988' in *Howard Journal for Penal Reform* 30(1): 30-52

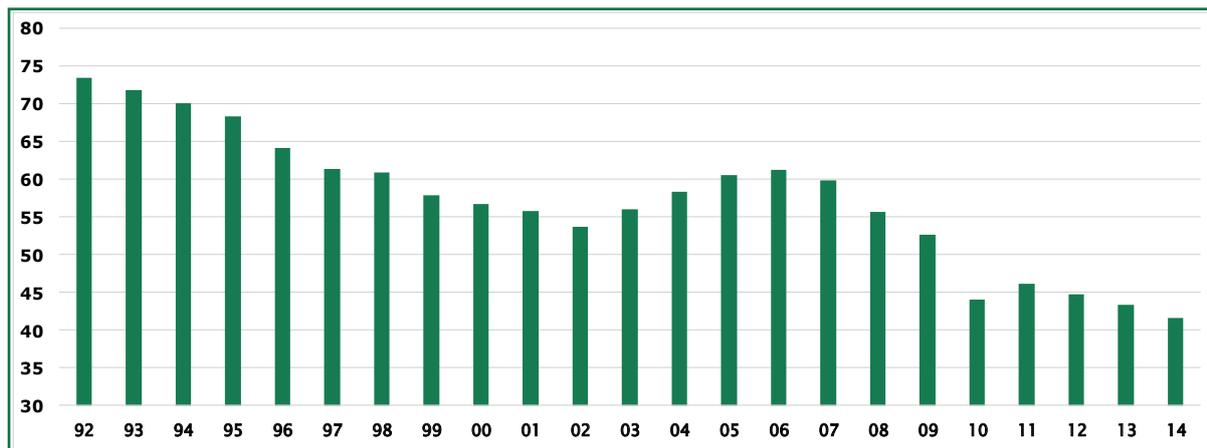
¹⁶⁰ Home Office (1994) *The cautioning of offenders*. London: Home Office

a 'three strikes' mechanism in the form of reprimands and final warnings which replaced police cautioning for those below the age of 18 years. Henceforth, prosecution would be required on the third offence at the latest, irrespective of the circumstances of the child or the nature of the behaviour involved. Moreover, where a child had a conviction, he or she was not eligible for a pre-court disposal in relation to any subsequent offending, however minor. One commentator has argued in this context that '*New Labour was so bent on intervention that ... the notion of diversion had been completely forgotten*'.¹⁶¹ The consequence was an increasing proportion of children unnecessarily prosecuted – and in many years of the decade - the actual number also rose in spite of the overall decline in detected youth offending.

The rationale presented for change was far from compelling, consisting largely of assertions that cautioning did not work and that early intervention was necessary if youth crime was not to spiral out of control, in spite of evidence to the contrary.¹⁶² In spite of its largely rhetorical justification, the legislative change had a real impact, acting to reinforce a trend of increased prosecution. As shown in figure 11, between 1992 and 2002, the rate of diversion for indictable offences fell from almost three quarters (73%) to just over half (54%).¹⁶³

Figure 11

Rate of diversion 1992 to 2014 as percentage of all substantive disposals: indictable offences



The pattern from that date onwards is a little more complex. The chart reflects the impact of the sanction detection target, which can be seen in the four year period from 2002. Large numbers of minor offences, that would previously have been dealt with informally, were drawn into the formal youth justice process so that the use of reprimands and final warnings grew more rapidly than convictions. The increased use of pre-court measures is accordingly evidence of net-widening rather than demonstrating that children were less likely to be prosecuted.

From 2007, as the need to expand sanction detections came to have less impact on police decision making, the chart becomes more difficult to interpret. It suggests that there has been a reversion to the earlier trend of falling diversion. But whereas during the 1990s such a trajectory was indicative of an increased tendency to prosecution, in the more recent period, it is an artefact of a greater use of informal responses to youth

161 Robinson, A (2014) *Foundations for youth justice: positive approaches to practice*. Bristol: Policy press

162 Goldson, B (2000) 'Wither diversion? Interventionism and the New Youth Justice' in Goldson, B (ed) *op cit* 35-57 and Bateman, T (2003) 'Living with final warnings: making the best of a bad job' in *Youth Justice*, 2(3):131-14

163 The rate of diversion is pre-court disposals – that is cautions, conditional cautions, reprimands, and warnings - as a proportion of all substantive youth justice outcomes

offending that are not captured in the official data. The dramatic reduction in first time entrants during this latter period has been achieved, in large part, by dealing informally with children who would otherwise have received a reprimand, final warning or, more recently, a caution. Convictions of children have in other words fallen at a slower rate than pre-court disposals, leading to an increase in the rate of prosecution. In each year from 2010 onwards, more than half of children who received a substantive disposal have been those subject to court proceedings.

In one sense, this pattern is an expected one. Where the use of informal responses becomes more prevalent, it is inevitable that children in trouble for the first time or committing minor infractions of the law are more likely to benefit. This is particularly true where a focus on reducing first time entrants is a significant driver of evolving practice. However, it also suggests an instructive contrast with the earlier period in which diversionary impulses were to the fore. It is clear that during the 1980s, there was also a considerable expansion in the use of non-formal mechanisms.¹⁶⁴ Nonetheless, as noted above, the rate of diversion did not fall as it has in the most recent period, suggesting that there was both a decriminalising and a diversionary (as in diversion from court) tendency. From 2007 onwards, the former has tended to dominate. A lack of robust data for either period prevents any credible comparative analysis of the extent of offending successfully kept outside the formal youth justice apparatus. Nonetheless, the difference in diversionary trends does raise the prospect that there is considerable potential –as yet untapped- for a more rapid reduction in present levels of prosecution.

One pertinent distinction that might help to explain the differential trends is the statutory pre-court framework that applied in each period. During the 1980s, the only available formal pre-court disposal was the police caution, which could be used at any point in criminal proceedings if the police determined that it was appropriate to do so. Until 8 April 2013, however, the final warning scheme remained in place – so that children who did enter the formal system were entitled to no more than two disposals before prosecution was mandated even for trivial offending. Moreover, those with a previous conviction were not eligible for a reprimand or warning even if they had not previously had the benefit of that option.¹⁶⁵ As a consequence, a large number of cases that might, during the 1980s, have been deemed suitable for caution, could not be considered for a pre-court option prior to 2013.

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) provided for the abolition of the strictures of the final warning scheme and its replacement by youth cautions and youth conditional cautions with the changes implemented from 8 April 2013.¹⁶⁶ The principal distinction between the new provisions and those they replaced is that a youth caution can be issued, where the police consider it an appropriate outcome, irrespective of any previous pre-court disposals or convictions. (The legislation does however retain the restriction on a court imposing a conditional discharge for any further offending within 24 months on a child who has received a second youth caution – a proscription that did not apply to cautions prior to the Crime and Disorder Act.) Youth conditional cautions, which had hitherto been limited to 15 and 16 year-olds in pilot areas, also became available for all children following implementation of LASPO.¹⁶⁷ Although it is too early to draw firm conclusions, figure 11 disappointingly does not register any immediate shift towards a greater use of cautioning as an alternative to court proceedings: during 2014, the rate of prosecution continued to decline as a consequence of the statutory change. It may be that the focus on FTEs and the rigid use

¹⁶⁴ See for instance, Smith, R (2007) *op cit* and Pitts, J (2003) *The new politics of youth crime*. Lyme Regis: Russell House publishing

¹⁶⁵ Hart, D (2014) *Pre-court arrangements for children who offend*. London: NAYJ

¹⁶⁶ HM Government (2013) *The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 6) Order 2013*. London: The Stationery Office

¹⁶⁷ Hart, D (2014) *Pre-court arrangements for children who offend*. London: NAYJ

of offence gravity scores (which have survived the abolition of the final warning regime) in some areas, continues to discourage a use of formal pre-court measures.

The NAYJ broadly welcomes these recent developments towards decriminalisation and diversion as being consistent with the research evidence and representing a significant advance towards a more child friendly approach. At the same time, it is unfortunate that the rediscovery of diversion, at the level of policy and among some practitioners (although no doubt underlying philosophies vary considerably from area to area), appears to be a largely pragmatic response to workload and financial constraint rather than a principled recognition that the youth justice system should be used as a mechanism of last resort.¹⁶⁸ In particular, there has been little or no attempt to redirect the capacity to work with children in trouble towards mainstream services. Such a shift in resources is required to ensure that disadvantaged and vulnerable children who are diverted from formal sanctions receive appropriate assistance and support in the longer term,¹⁶⁹ since, as the Centre for Social Justice has pointed out, the youth justice system has become 'a *backstop, sweeping up the problem cases that other services have failed, or been unable, to address*'.¹⁷⁰ Such extended provision is also a practical prerequisite of being able to argue convincingly for a substantial rise in the age of criminal responsibility.¹⁷¹ In the immediate term, the swingeing cuts proposed for youth offending teams endanger much of the progress that has been made to date.

• Children subject to prosecution

Where prosecution ensues, the NAYJ considers that any sentences imposed by the court, or delivered by youth justice agencies, should be governed by the principle of minimum necessary intervention. The level of compulsory restriction on the child should be proportionate to the seriousness of the offending behaviour rather than reflecting assessed risk. Supervisory processes and the content of any order should be directed to maximising the child's long term potential rather than confined to the restrictive, and negative, ambition of attempting to avoid particular forms of future illegal behaviour in the short term. All court-ordered interventions should have the best interests of the child as a primary focus and conform to a children's rights perspective.

The referral order was implemented on a national basis from April 2002¹⁷² as a mandatory disposal where a child appears in court for a first offence and pleads guilty other than in exceptional circumstances or where the child is imprisoned. As a consequence, the disposal rapidly established itself as the most frequently used sentencing option. From April 2009, the referral order became available for a second offence if the child had not been sentenced to one at first conviction; legislative change in the same year allowed the imposition of a second order in particular circumstances. LASPO continued this process of lifting the restrictions on the referral order, and while it remains the primary disposal for a first conviction, the court may now also impose such an order irrespective of antecedent history or the number of previous referral orders, providing the child pleads guilty.¹⁷³ Mirroring this progressive loosening of the statutory criteria, the use of the penalty has expanded over time: during 2013/14, the referral order accounted for more than 37% of all sentences imposed on children, a 2.4% increase over the previous year and a rise from 27% in 2003/4.

¹⁶⁸ Kelly, L and Armitage, R (2015) *op cit*

¹⁶⁹ Goldson, B and Muncie, J (2006) 'Critical anatomy: towards a principled youth justice' in Goldson, B and Muncie, J (eds) *Youth crime and justice*. London: Sage

¹⁷⁰ Centre for Social Justice (2012) *Rules of engagement: changing the heart of youth justice*. London: Centre for Social Justice

¹⁷¹ Bateman, T (2012) *op cit*

¹⁷² First tier penalties include: discharges, financial penalties, reparation orders and referral orders. They are not subject to the restriction which applies to community sentences that the offending should be 'serious enough' to warrant a community sentence.

¹⁷³ Hart, D (2012) *op cit*. The provisions apply to offences committed after 3 December 2012.

The referral order has inevitably displaced a range of other disposals. This is particularly true for (some) penalties below the community sentence threshold. Between 2003/04 and 2013/14, the use of the reparation order reduced from 3.2% of all disposals to less than one percent. By contrast the use of discharges (absolute and conditional – the figures do not distinguish between the two disposals) has remained relatively constant, at around 15%. An amendment in LASPO allowed courts to impose a conditional discharge as an alternative to a referral order for a first offence where they consider it appropriate to do so. (Courts were already able to make an absolute discharge in such circumstances.) However, and in the view of the NAYJ disappointingly, this legislative change goes not, as yet, appear to have a significant impact on sentencing practice.

The most significant displacement effect has been in the use of financial penalties which declined, between 2003/04 and 2013/14, from 16% of all disposals to 7.8%. The NAYJ considers that fines are an inappropriate punishment for children (or their parents) who overwhelmingly already experience severe economic hardship. Nevertheless, since the referral order requires a minimum of three months and up to a year intervention, it is of some concern that, in a considerable number of cases, children are being subjected to higher levels of intervention than hitherto which may not always be warranted by the offending.

The range of then extant community sentences was replaced by a single disposal for offences committed after 30 November 2009. In making a youth rehabilitation order (YRO), the court can, in principle, select from a menu of 18 different forms of intervention. Despite what was ostensibly, at least, a significant change, most of the requirements were already available in the form of other disposals. Moreover, the new order appears to have made little impact on the distribution of patterns of sentencing, with community orders continuing to account for around 30% of the total.¹⁷⁴

During 2013/14, 9,767 YROs were imposed: one quarter contained just one requirement, with a further 35% containing two. By comparison with the previous year, this represents a slight shift towards the latter. There has moreover been a rise in the proportion of orders that contain five or more requirements from 2% in 2010/11 to 6% in 2013/14. While this might be a reflection of higher end community sentencing being used in place of custodial disposals, it also raises concerns that community disposals may be becoming more intrusive.

The most commonly used requirement in 2013/14 was supervision which accounted for more than a third of the total, suggesting that in many cases, the YRO has become a functional replacement for the supervision order. At the other end of the scale, most requirements are used infrequently. As shown in table 4 (overleaf), 10 requirements each constituted less than 2% of the total number made.

At the same time, growing numbers of children are subject to electronically-monitored curfews whose use has risen sharply since 1998, long before the introduction of the YRO. During 2013/14, almost 15% - 2,635 in total - of all YRO requirements were curfews. The NAYJ considers that a curfew is rarely an appropriate sentence for a child since its primary purpose is generally punitive rather than rehabilitative¹⁷⁵ and it can frequently operate to the detriment of the child's wellbeing. The organisation accordingly regards with disquiet the extension, through LASPO, in the maximum duration of a curfew requirement from six to 12 months and the maximum daily curfew period from 12 to 16 hours.¹⁷⁶ No figures are currently available to ascertain the extent to which these increased powers are being used.

¹⁷⁴ For these purposes, a community order is defined as one which can only be imposed if the court considers that the offending is serious enough to warrant such a penalty as provided in the Criminal Justice and Immigration Act 2008

¹⁷⁵ HM Inspectorate of Probation (2012) *It's complicated: the management of electronically monitored curfews*. London: HMIP

¹⁷⁶ Hart, D (2012) *op cit*

Table 4 The 10 least commonly used requirements of a YRO: 2013/14

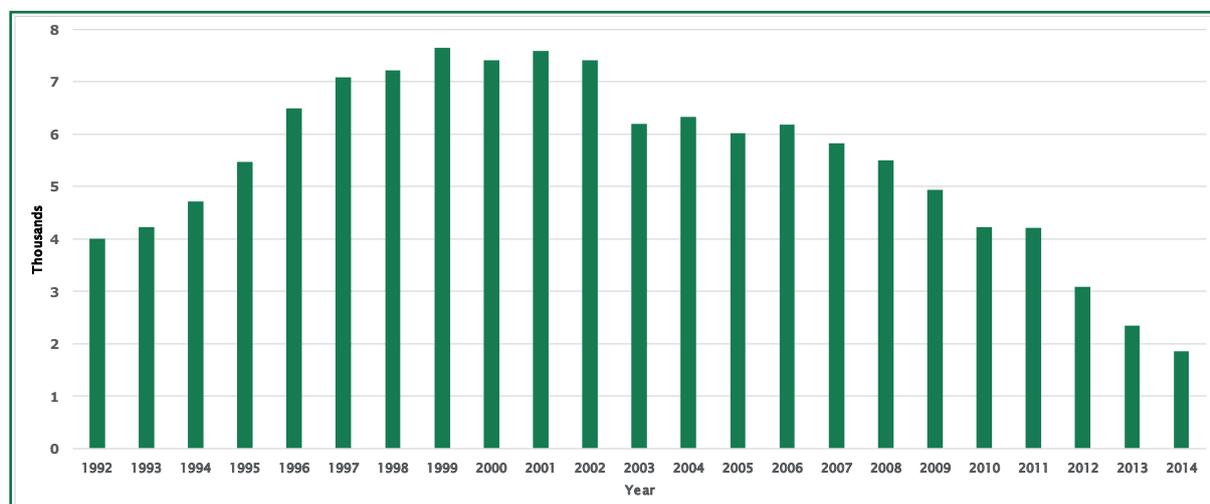
Type of requirement	Number of requirements made	Proportion of total requirements
Prohibited activity	303	1.7%
Exclusion	256	1.4%
Education	128	0.7%
Residence	105	0.6%
Drug treatment	57	0.3%
Drug testing	46	0.3%
Local authority residence	43	0.2%
Intoxicating substance treatment	22	0.1%
Intensive fostering	9	0.0%
Mental health treatment	7	0.0%

• **Children deprived of their liberty**

Reducing the number of children in custody is one of the three high level targets established by the coalition government in 2010 by which youth justice performance is measured. The indicator has been retained by the Conservative administration elected in May 2015. The adoption of this measure is an important indicator of a shift in political tone. One of the manifestations of the ‘punitive turn’ was that for more than a decade child incarceration expanded rapidly. More recent years, however, have witnessed a considerable reduction in the number of children deprived of their liberty, with the fall commencing well before formal recognition that it should be a youth justice target. As shown in figure 12, custodial sentences began to tail off from 2002, but the decline accelerated rapidly from 2008 onwards, coinciding with the introduction of the FTE target and the onset of the financial recession.

During 2014, 1,860 children were sentenced to detention, representing a fall of 20% by comparison with the previous 12 months and a 76% reduction from the highpoint (7,653 custodial sentences) in 1999.

Figure 12
Number of custodial sentences: 1992-2014



As might be anticipated, the largest reductions have been in short term (up to two years) sentences, in the form of the detention and training order, which accounts for the large bulk of custodial disposals. But the use of longer-term detention (penalties of more than two years) has also fallen. Orders under sections 90 and 91 of the Powers of Criminal Courts (Sentencing) Act 2000 (for children convicted of murder and other grave crimes respectively), extended sentences and detention for public protection (for children assessed as posing a significant risk of substantial harm) reduced by half, from 563 in 2007/08 to 279 in 2013/14 from 563. The latter penalty, which provided for children to be imprisoned indefinitely, subject to release at the discretion of the Parole Board, was abolished by LASPO, a move welcomed by the NAYJ.

The reduction in sentences of imprisonment was not immediately reflected in an equivalent decline in the population of children held in the secure estate. Indeed, as a consequence of an expansion in custodial remands, and an increase in the average length of detention, the number of children incarcerated at any one time continued to grow until 2008, as shown in table 5, in spite of the tailing off in custodial sentences.

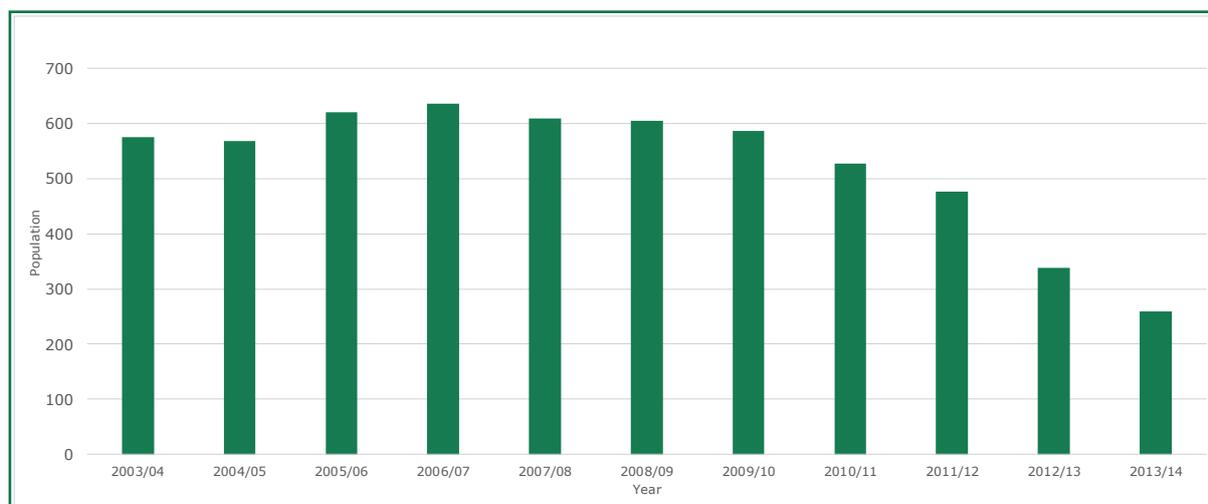
Table 5 Average under 18 population of the secure estate for children and young people

Year	Average Population	Year	Average Population
2000/01	2,807	2008/09	2,881
2001/02	2,801	2009/10	2,418
2002/03	3,029	2010/11	2,040
2003/04	2,771	2011/12	1,963
2004/05	2,745	2012/13	1,544
2005/06	2,832	2013/14	1,216
2006/07	2,915	2014/15	1,048
2007/08	2,932	2015/16 to June 2015	994

As noted above, the use of custodial remands remained at a high level for a period while the decline in custody was already underway. As figure 11 demonstrates, the number of children in the secure estate following a refusal of bail was as high in 2009/10 as it had been in 2003/04. As a consequence, the proportion of children deprived of their liberty who were subject to remand began to rise as custodial sentencing fell: in 2003/04, remands accounted for 21% of those in custody; the equivalent figure in 2010/11 was 26%. Once the remand population began to contract, however, it did so more rapidly than the sentenced population. By 2013/14, remanded children constituted one fifth of those incarcerated. The fall in remands has in the interim period kept pace with the general contraction in the number of children deprived of their liberty. In June 2015, 986 children was detained in the secure estate of whom 207 (21%) were remanded.

A number of interlocking factors have no doubt contributed to the fall in the use of child imprisonment.¹⁷⁷ There have been legislative changes that constrain courts' decision making. In respect of sentencing, the Criminal Justice and Immigration Act 2008 imposed a new duty on the court that requires it, where it imposes a custodial sentence on a child, to make a statement that *'it is of the opinion that a sentence consisting of or including a youth rehabilitation order with intensive supervision and surveillance or fostering cannot be justified for the offence'*.¹⁷⁸ The court must also indicate why it is of that opinion.

177 Allen, R (2011) *Last resort? Exploring the reduction in child imprisonment 2008-11*. London: Prison Reform Trust
 178 *Criminal Justice and Immigration Act 2008*, schedule 4, part 1, 80(3)

Figure 13**Average remand population (children aged under 18 years) in the secure estate**

In relation to remands, there have been two relevant modifications. A provision in LASPO, implemented from December 2012, tightened the criteria that had to be satisfied for a remand to the secure estate and made available, for the first time, non-secure remands to local authority accommodation to 17-year-olds, who had previously been treated as adults for remand purposes. In addition, from April 2013, remand budgets were devolved to local authorities who became liable to pay the costs of custody for children remanded to the secure estate.¹⁷⁹ While both these measures might have reinforced a downward trajectory, it is clear that they did not trigger it since the remand population had already declined considerably in advance of implementation. In December 2012, for instance, the remand population of the secure estate was 35% below that of 12 months previously.¹⁸⁰

Perhaps more significant, however, is the context in which these statutory provisions were introduced. Three points in particular stand out.

- A more tolerant climate to children in trouble was made permissible by the de-politicisation of youth crime and justice, which was, in turn, encouraged by a desire to curb excessive cost.
- The introduction of the FTE target and the promotion of decriminalisation, itself a reflection of that increased tolerance, led to a sharp reduction in court throughput which was reflected in fewer children being deprived of their liberty.
- Delaying the point at which children entered court ensured that they were less likely to amass a criminal history that would make custody appear inevitable.¹⁸¹

The continuation of current trends in relation to youth detention is thus dependent to a large degree on continued falls in the number of children entering the system, which in turn relies on the persistence of a more lenient environment. One potential threat derives from the proposed budgetary reductions to YOTs remains to be seen. The introduction in July 2015 of mandatory custodial sentences for children aged 16 and 17 years convicted of a second offence of offensive weapon, unless such a penalty would be 'unjust', poses another.¹⁸² The provision is likely to generate an increase in the number of children

¹⁷⁹ Hart, D (2012) *op cit*

¹⁸⁰ Ministry of Justice (2014) Youth custody report: April 2014. London: Ministry of Justice

¹⁸¹ Bateman, T (2012) 'Who pulled the plug? Towards an explanation of the fall of child imprisonment in England and Wales' in *Youth justice* 2(1):36-52

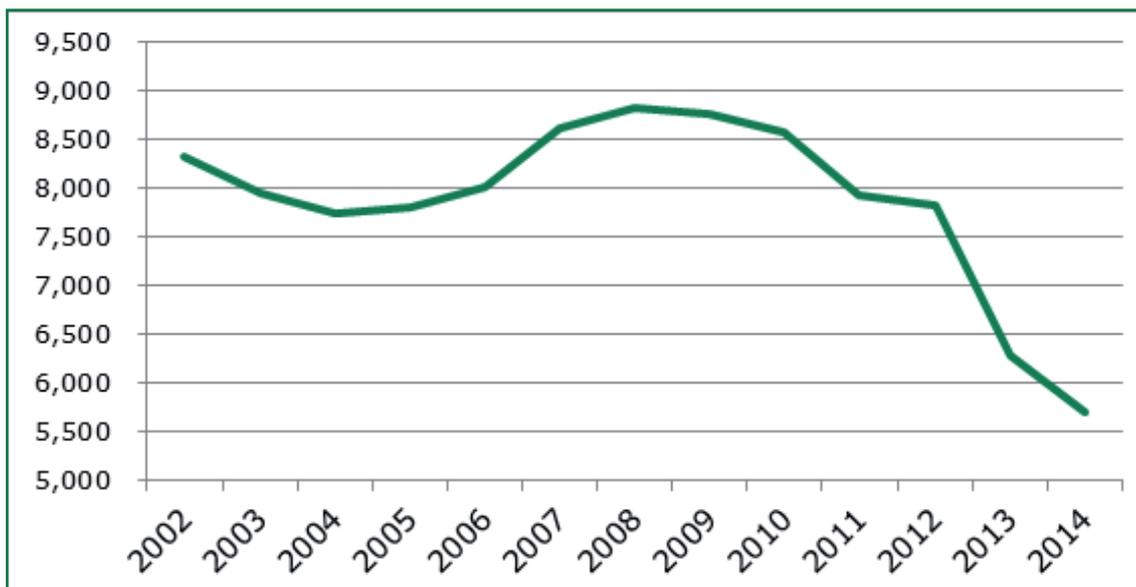
¹⁸² The provisions are contained in section 28 and schedule 5 of the Criminal Justice and Courts Act 2015

prosecuted for such offences and encourage a harsher response by the courts to children convicted of crimes that hitherto would rarely attract a sentence of detention.

It was noted earlier in the report that there was some evidence that the reduction in child FTEs had had a delayed, positive, impact on the number of young adults entering the criminal justice system. It has been suggested that the fall in child imprisonment might have a similarly beneficial influence through an indirect deflationary pressure on the number of young adults in custody: the decline in the number of children deprived of their liberty having an impact on the older age group through a process of ‘filtering through’.¹⁸³ The suggestion has an intuitive plausibility. It is generally acknowledged that custodial sentences are associated with increased recidivism and deprivation of liberty is thought to disrupt the natural process of maturation and the corresponding tendency to ‘grow out of crime’, described above. Alternatively, it is also possible that the lower use of imprisonment in the youth justice system might simply ‘delay the inevitable’, leading to a later spike as young people make the transition to adulthood. It is accordingly important to ascertain what empirical support there might be in the available published data to support the notion of ‘filtering through’.

The first point to note is that while the incarcerated child population has contracted sharply since 2008, there has been no equivalent reduction in the overall number of people imprisoned. Indeed the latter continued to grow, albeit more slowly than previously, by 3% between 2008 and 2014.¹⁸⁴ It is thus clear that developments within youth justice are not simply a manifestation of broader processes in the treatment of offenders. The picture in relation to young adults is however rather different to that which pertains to children or the older adult offending population. There has been a significant decline in the 18-20 prison population, but significantly, it commenced later than that for children, as demonstrated in figure 14. Between 2008 and 2010, while the number of detained children fell by almost a third, the equivalent reduction for young adults was small in comparison – at less than 3%. There was, however, a

Figure 14
Young adult custodial population: 2002-2014 (June each year)



183 Bateman, T and Hazel, N (2014) *Resettlement of young people leaving custody: lessons from the literature – update November 2014*. London: Beyond Youth Custody

184 Bateman, T and Hazel, N (2014) *op cit*

pronounced acceleration from 2010 onwards: over the next four years, the young adult population declined by more than a third (by comparison with a 47% reduction in the child population). The delay of two years would appear to be consistent with a 'filtering through' process: the large majority of children deprived of their liberty are within the 16-8 year old age bracket and would become young adults within the relevant time frame. The more modest fall for young adults is also what might be expected if this was largely explicable in terms of what was happening to the child population since a proportion of those receiving custodial disposals at a later age will not have been in trouble as children.

Further support for such an explanation derives from the fact that, more recently still, the 21-24 prison population has also begun to reduce, though at a correspondingly slower rate, from 14,005 in June 2012 to 12,007 in March 2015, a fall of 14%. This too is a pattern that might have been predicted from the original premise.¹⁸⁵

Finally, additional backing for the hypothesis that trends in the use of custody for children are driving similar – albeit delayed and more muted – reductions for older cohorts, might be found in the fact that, for all three age groups, the fall in incarceration has been greater for females than for males, as shown in table 6.186 Such a pattern, would be anticipated if the later falls in the 18-20 and 21-24 age ranges of the adult custodial population were a 'knock on' effect of earlier reductions in the child populations, since one would anticipate a demographic follow through.

Table 6 Custodial population by age and gender

Age range	Gender	December 2012	December 2014	Reduction (%)
Under 18 years	Male	1,291	923	28.5%
	Female	58	34	41.4%
18-20 years	Male	6,447	5,727	11.2%
	Female	236	188	20.3%
21-24 years	Male	12,708	12,014	5.5%
	Female	504	420	16.7%

The risk that financial cuts will undermine recent progress in delivering a more progressive, evidence-based, child friendly response to children in trouble thus has broader ramifications that extend beyond the boundaries of the youth justice system.

The NAYJ naturally celebrates the considerable recent advances that have been made in keeping children out of prison but believes that, this progress notwithstanding, child imprisonment remains too high and that incarceration is still not used as '*a measure of last resort and for the shortest appropriate period of time*' as required by the United Nations Convention on the Rights of the Child. A further comparison with the 1980s is instructive in this regard. During that decade, not only did the number of children consigned to custodial provision fall, but so too did the rate of imprisonment as a

¹⁸⁵ Ministry of Justice (2015) *Offender management statistics bulletin, England and Wales 2014*. London: Ministry of Justice

¹⁸⁶ Bateman, T (2015) *Resettlement of young people leaving custody: lessons from the literature – update March 2015*. London: Beyond Youth Custody

proportion of all convictions.¹⁸⁷ By contrast, in the present period, the rate of custody has remained relatively constant: it was 6.1% in 2007/08, rising slightly to 6.6% in 2013/14. Moreover, there is still evidence of high levels of justice by geography: children in some areas have a higher likelihood of imprisonment than those in other parts of the country, suggesting that further reductions in at least some areas are possible.

It is thus entirely appropriate that the Conservative government should retain a reduced reliance on custody as one of its three key performance indicators for the youth justice system. The *NAYJ* considers that the powers of the court to imprison children should be limited by further tightening the legislative criteria as a mechanism for achieving that target.¹⁸⁸

More generally, however, statutory provisions in England and Wales continue to permit 'inhumane' sentencing of children through the maximum length of detention available. International comparisons demonstrate that sentencing legislation in England and Wales is out of step with normative practice. For instance, many jurisdictions have established an upper limit to child imprisonment: three years in Uganda, Brazil, Bolivia and Peru, four years in Switzerland, and 10 years for most Eastern European countries. Many states impose a custodial cap equivalent to a proportion of the maximum sentence permissible for an adult. By contrast, in England and Wales, where a child is convicted of what is deemed a 'grave crime', the maximum penalty available is identical to the adult term. More shamefully, perhaps, children can be subjected to sentences of life imprisonment; indeed where a child is convicted of murder, such a punishment is mandatory. This contrasts sharply with the situation in the rest of Europe. Outside of the United Kingdom, just two states – France and Cyprus – have legislation that provides for life imprisonment of a child. Moreover, in those countries the provisions are rarely used. According to Child Rights International Network, just two children in France have been sentenced to life in the last quarter of a century and there is no record of any such sanctions having been imposed in Cyprus.¹⁸⁹

The *NAYJ* is concerned too that, as the level of child incarceration has fallen, those who remain in detention are, in certain respects, increasingly vulnerable. For instance, between 2008/9 and 2013/4, the proportion of boys in custody with a history of local authority care rose from 24% to one third. Moreover, this group was more likely to report having problems with substance misuse and experiencing emotional and mental difficulties than those without care experience.¹⁹⁰ Reference has already been made to the fact that the falls in imprisonment have not been experienced equally by all children in trouble, with the consequence that a higher proportion of those deprived of their liberty come from minority ethnic populations. BME children in prison are also more likely to report difficulties in maintaining contact with their families, and Muslim children are less likely to know where they will be living on release.¹⁹¹

The *NAYJ* is also troubled by what it regards as the unacceptable treatment of incarcerated children, particularly outside of secure children's homes. Rates of violence within custodial institutions have escalated as the imprisoned population has dropped. As shown in table 7, in 2013/14 rates of assault, self-harm and episodes of physical restraint were all considerably higher than five years earlier.

¹⁸⁷ Rutherford, A (2002) *op cit*

¹⁸⁸ For discussions of how the custody threshold might be tightened, see Standing Committee on Youth Justice (2010) *Raising the custody threshold*. London: SCYJ and Centre for Social Justice (2012) *Rules of engagement: changing the heart of youth justice*. London: Centre for Social Justice

¹⁸⁹ Child Rights International Network (2015) *Inhumane sentencing: life imprisonment of children around the world*. London: CRIN

¹⁹⁰ Tye, D (2009) *Children and young people in custody 2008–09: an analysis of 15–18 year-olds' perceptions of their experiences in young offender institutions*. London: HM Inspectorate of Prisons; Prime, R (2014) *Children in custody 2013–14: an analysis of 12–18-year-olds' perceptions of their experience in secure training centres and young offender institutions*. London: HM Inspectorate of Prisons

¹⁹¹ Prime, R (2014) *op cit*

Table 7 Incidents of self-harm, assault and restrictive physical restraints per 100 children in custody

Type of incident	Number of incidents per 100 population				
	2009/10	2010/11	2011/12	2012/13	2013/14
Self-harm	5.3	4.1	5.1	5.2	6.6
Assault	9.1	10.1	10.0	10.1	14.6
Physical restraint	17.6	20.5	25.1	23.8	28.4

The *NAYJ* supports the abolition of penal custody for children: the few who need to be in secure provision, because they represent a serious risk to others, should be placed in small settings that prioritise their wellbeing rather than in prisons and establishments that exist to make profit. While the cancellation of the proposed secure college – which would have replaced most existing provision by larger institutions, holding up to 320 children – is to be welcomed, the existing configuration of the secure estate leaves much to be desired. At June 2015, 67% of incarcerated children were detained in young offender institutions (YOIs) and a further 26% were held in secure training centres (STCs). Secure children’s homes (SCHs) by contrast – residential child care establishments whose primary orientation is care based rather than correctional – accommodated just 11% of children deprived of their liberty.¹⁹² The decline in the custodial population might have provided an opportunity to place a higher proportion of those detained in more child friendly facilities. It has instead been accompanied by a reduction in the use of SCHs in favour of STCs: between 2010 and 2015, the number of places contracted by the Youth Justice Board within SCHs fell from 191 to 138, a reduction of 28%.¹⁹³ It is accordingly a major source of disquiet that one of the areas in which it is proposed that further financial savings - to the sum of £400,000 - might be made, is through purchasing no further SCH beds for the remainder of the current financial year.

● Reoffending as a (dubious) measure of effectiveness

As previously indicated, the current administration has three high level indicators by which the performance of the youth justice system is assessed. The *NAYJ* considers that that two of these – reducing FTEs and reducing the number of children in custody – are eminently sensible as these both promote child friendly practice in accordance with the evidence base. The extent to which either of those characteristics applies to the third target is however questionable.

The final indicator established by the government involves progressive reductions in the rate of reoffending. In the year ending 2013, 37.4% of children who received a substantive youth justice disposal reoffended within twelve months, an increase from 33.4% in 2002.¹⁹⁴ Accordingly, while considerable headway has been made against the other two performance indicators, there has been no ostensible progress in relation to the third measure.

¹⁹² Ministry of Justice (2012) *Youth Custody data: monthly data and analysis custody report – June 2015*. London: Ministry of Justice

¹⁹³ DfE (2015) *Children accommodated in secure children’s homes at 31 March 2015: England and Wales*. London: DfE

¹⁹⁴ Ministry of Justice (2015) *Proven reoffending statistics – October 2012 to September 2013*. London: Ministry of Justice

Recidivism varies significantly according to the nature of sanction to which young people are subject. As shown in table 8, pre-court disposals are associated with the lowest level of reoffending while custody generates the highest.

Table 8 Proven rates of reoffending by type of disposal: 12 months ending September 2008 and 2013

Disposal	Percentage reoffending within 12 months	
	Year to Sept 2008	Year to Sept 2013
Pre-court disposal	24.8%	28.3%
First tier sentence	45.5%	44%
Community sentence / YRO	65.9%	64.5%
Custody	72.8%	66.5%
All	32.9%	37.4%

One would anticipate that there would be a correlation between disposals involving greater restrictions on liberty and increased rates of reoffending since children subject to higher end penalties are likely to be those whose offending is more serious or persistent. However, analysis by the Ministry of Justice suggests that when relevant factors are controlled for, lower level community sentences are associated with significantly better reoffending outcomes than higher intensity community based disposals (recidivism rates are 4% lower for the former type of order). Moreover, children who receive custodial sentences of between six and 12 months are significantly more likely to reoffend than a comparison group sentenced to a high level community penalty (again a four percentage point difference). The evidence would thus appear to support an approach to youth justice that maximises diversion from court and from custody, promotes a strategy of minimum intervention within the court arena, and aims at avoiding the use of incarceration in conformity with the principles endorsed by the NAYJ.¹⁹⁵

The NAYJ is, in any event, not convinced that a focus on recidivism is necessarily a helpful way of approaching work with young people in trouble. Indeed there are good reasons for supposing that the target is counterproductive since it does not provide a reliable measure of the quality and effectiveness of youth justice practice.

- Binary measures of reoffending, that simply record whether or not children are reconvicted within a certain period, are an incredibly blunt indicator of progress that is unable to capture changes in the nature, frequency, or gravity of criminal activity.
- Like other official data, figures for reoffending are influenced by government targets and changes in police practice. One consequence of successful decriminalisation is that the youth offending population in 2013 is likely to have a more entrenched pattern of offending behaviour than their peers prior to the introduction of the FTE target.¹⁹⁶ A rise in rates of reoffending is a predictable outcome of this dynamic and the same logic would lead one to anticipate that reoffending following a pre-court disposal would demonstrate a more pronounced increase than other sanctions, since the reduction in FTEs impacts primarily on the cohort of children who would otherwise receive reprimands, warnings and cautions. That is precisely the pattern shown in table 8.

¹⁹⁵ Ministry of Justice (2012) *2012 compendium of reoffending statistics and analysis*. London: Ministry of Justice

¹⁹⁶ Bateman, T (2010) 'Reoffending as a measure of youth justice intervention: a critical note' in *Safer Communities* 9(3)

- If the two targets are indeed in tension, as the above suggests, the NAYJ believes that the compelling evidence of the negative consequences of system contact, outlined earlier in the paper, ought to incline us to prefer the FTE measure over recidivism.
- As argued above, most children grow out of crime and the proper role of youth justice intervention within a child friendly framework is to give them the space to mature and where possible to promote processes that support that maturation. Attempting to influence short-term recidivism is not obviously relevant to that endeavour, since behavioural evidence of real change is likely to take longer.
- Moreover, focusing on the target might be positively harmful: it leads to an identification of the child with his or her criminal behaviour, which is unhelpful in terms of fostering a non-delinquent identity; it detracts too from establishing relationships of trust directed towards shared goals; and undermines interventions aimed at supporting longer term developmental processes. Yet each of these is a marker of effective youth justice interventions.¹⁹⁷

In these circumstances, while the NAYJ is pleased to endorse two of the three current indicators for youth justice as being consistent with the evidence-base and the development of a more child friendly framework for the delivery of services to children who offend, the organisation views the target to reduce reoffending as misplaced and believes that the current review of youth justice should give serious consideration to amending it.

There is however something of a conundrum posed by the data in table 8. While recidivism rates for custody remains higher than for any other disposal, rates of reoffending for imprisonment nonetheless appear to have declined between 2008 and 2013. One might reasonably have anticipated that, during this period, children within the custodial cohort would be increasingly characterised by more entrenched patterns of offending as those committing less serious offences and with a less established antecedent history were diverted to community sentences. Just as the reduction in FTEs has led to a rise in reoffending for pre-court disposals, so too one would expect an analogous increase in recidivism for children leaving custody.

Three related factors help to explain why this expected outcome has not transpired, none of which imply that custody has become more effective in terms of preventing further offending. First, one of the consequences of increasing decarceration is that the average age of those in prison has risen: in April 2008, almost 7% of the imprisoned population was aged 10-14 years; by April 2015, that proportion had fallen to below 5%. Second, the reduction in detention and training orders has been much more rapid than the fall in longer term sentences, 67% against 50% respectively. As a consequence, an increasing proportion of children are deprived of their liberty for lengthy periods. Finally, while the average length of a detention and training order remained constant, that average duration of longer term sentences rose by 107 days between 2009/10 and 2013/14. The combined effect of such changes is such as to entail that children are, on average, considerably older at the point of release than they were before the fall in the custodial population.

This is significant when understood in the context that children desist from offending as they mature. The apparent paradox in the data is thus resolved by the fact that those children who are currently deprived of their liberty will – by dint of their age – be more likely to have grown out of crime than the custodial cohort of a few years ago. Empirical

¹⁹⁷ McNeill, F (2006) 'Community supervision: context and relationship matters' in Goldson, B and Muncie, J (eds) *op cit*

evidence for this explanation is, as shown in table 9, provided by the fact that the reduction in recidivism for youth imprisonment is associated primarily with sentences in excess of one year.

Table 9 Proven rates of reoffending for custodial disposals by sentence length: 12 months ending September 2008 and 2013

Length of custodial sentence	Percentage reoffending within 12 months	
	Year to Sept 2008	Year to Sept 2013
6 months or less	75.7%	76.7%
More than 6 but less than 12 months	76.1%	71%
More than 12 but less than 48 months	66.2%	57.7%