

Child-friendly youth justice?

A compendium of papers given
at a conference at the
University of Cambridge
in September 2017

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Justice for Children in Trouble

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‘Child-friendly youth Justice?’

disseminates some of the themes raised at the conference on child-friendly youth justice in September 2017 at Cambridge University and organised by the NAYJ, the Standing Committee for Youth Justice and the Institute of Criminology, Cambridge University.

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Foreword

It gives us great pleasure to be able to present this Compendium of articles from contributors to the 'Child-friendly Youth Justice?' conference hosted jointly by the Standing Committee for Youth Justice, the National Association for Youth Justice and the Centre for Community, Gender and Social Justice, Institute of Criminology, at the University of Cambridge, on 25 September 2017. We would like to thank all the contributors for sharing their knowledge, expertise and commitment with us on the day. The Compendium has been produced by an editorial team comprising trustees from the National Association for Youth Justice as a way of sharing some key papers from the day with a wider readership.

The event itself aimed to bring together people from across the field of youth justice to discuss and debate key contemporary research and practice issues across the youth justice sector. It attracted a wide ranging audience from all parts of the sector, including academics, policy professionals, practitioners and a number of people whose work crosses between these disciplines in useful and important ways. It was a collaborative effort bringing together strengths from our three organisations to deliver this event. One of the aims was to make the event and its content accessible to as many interested people as possible, which forms the basis for this publication.

We are very pleased to be able to start the Compendium with excellent contributions from two leading youth justice scholars. Professor Lesley McAra reviews the research evidence on what makes for 'child-friendly youth justice' while Professor Jo Phoenix questions the notion that such a thing can exist. Subsequent contributions broadly follow the chronology of children through the system, concluding with Dr Di Hart's brilliantly thoughtful article on the future of children's custody.

The youth justice sector is currently going through a period of rapid change, driven partly by austerity. The same is true of most other services for children and families. Together the changes are impacting significantly on vulnerable children and the people who work with them. We therefore felt it was more important than ever that we collaborate, to share these findings and insights on recent developments in youth justice policy and practice as widely as possible.

We want these articles to encourage discussion, inform your work and inspire action for a better youth justice system. Thank you for reading this Compendium and we hope to welcome you to future events!

- **Ross Little**, *Chair, The National Association for Youth Justice*

The National Association for Youth Justice is a membership organisation for individuals that promotes the rights of, and justice for, children in trouble with the law.

- **Ali Wigzell**, *Standing Committee for Youth Justice*

The Standing Committee for Youth Justice is a membership body for organisational members working in the field of youth justice.

- **Jane Dominey**, *CCGSJ, Cambridge*

Justice for young people in trouble is a key concern for academics at the Centre for Community, Gender and Social Justice.

Child-friendly youth justice?

By Professor Lesley McAra



Professor Lesley McAra is Assistant Principal Community Relations and holds the Chair of Penology in the School of Law at the University of Edinburgh. She is Co-Director of the Edinburgh Study of Youth Transitions and Crime, a longitudinal programme of research on pathways into and out of offending for a cohort of 4,300 young people. In recognition of the policy impact of the Study, Lesley was awarded the Howard League Research Medal (2013) and the inaugural Chancellor's Award for research impact (2016). Lesley is also a member of the new editorial team of the Oxford Handbook of Criminology (with Professors Alison Lieblich and Shadd Maruna), and is Editor-in-Chief (with Professor Ursula Kilkelly) of Youth Justice: An International Journal. She is currently a member of the Justice and Safety Human Rights Action Group and the Scottish Government's Justice Leaders Network, and is an Associate Director (Community Engagement) of the Scottish Crime and Justice Research Centre.

Introduction

The brief that I was given for my paper was to review the research evidence on what makes for child-friendly youth justice and, in particular, to review the evidence on the characteristics of systems and interventions which are supportive of pathways out of offending. In addressing this brief, the paper is structured around three key questions: firstly what do we know from research about what works in delivering child-friendly youth justice; secondly what in practice has impeded the implementation of best practice in this regard; and thirdly what needs to be done now to transform existing youth justice systems across the UK in order to better meet the needs of children and young people?

In answering these questions, the paper draws on findings from the Edinburgh Study of Youth Transitions and Crime. For readers not familiar with the Edinburgh Study, it is a longitudinal programme of research on pathways into and out of offending for a cohort of around 4,300 young people who started secondary school in the city of Edinburgh in 1998¹.

The Study has multiple data sources about all members of the cohort including: self-report questionnaires; semi-structured interviews; data from official records such as social work and the children's hearings system (the Scottish juvenile justice system); criminal conviction data; and finally a geographic information system based on police recorded crime and census data to enable understanding of the dynamics of the neighbourhoods in which young people live. The most recent phase of the Study has been especially focused on criminal justice careers and their impact on desistance from criminal offending. Importantly the Edinburgh Study cohort has grown to maturity over the course of the devolved settlement in Scotland. Born in the mid 1980s, they reached the age of criminal responsibility in the 1990s and the peak age of self-reported offending (14/15) during the first of the Labour/Liberal Democrat coalition devolved administrations (which ran from 1999 to 2003), and entered full adulthood in the first years of the SNP administration (from 2007 onwards). The longitudinal nature of the study places the research team in a unique position to observe the individual developmental impacts of secular policy change.

What works in delivering child-friendly youth justice?

Turning then to the first of my questions: what works in delivering child-friendly youth justice? As I aim to demonstrate in this section of the paper, there is a striking commonality between a number of the normative imperatives which frame international conventions on the rights of the child and the empirical evidence from research on what works. The implication

¹ The Edinburgh Study has been funded by grants from the Economic and Social Research Council (R000237157; R000239150), the Scottish Government and the Nuffield Foundation. Further details on the aims, methods and impacts of the Edinburgh Study can be found here: http://www.law.ed.ac.uk/research/making_a_difference/esytc

being that if UK jurisdictions fully implemented the international conventions to which they are signatory (and they do not at present fully implement them, see McAra 2017a), they would be far more effective in tackling the problems posed by youth crime.

Key imperatives from both the United Nations Convention on the Rights of the Child (UNCRC 1989) and the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules 1985) are that:

- in all actions the best interests of the child should be the primary consideration (UNCRC Article 3);
- juvenile justice should be an integral part of the national development process of each country and situated within a comprehensive framework of social justice (Beijing Rules 1.3);
- the age of criminal responsibility should not be fixed at too low a level (Beijing Rules 4.1);
- diversion away from formal measures should be a key consideration (Beijing Rules 11.1);
- there should be parsimony in the use of punishment, with restrictions on the liberty of the child only ever used as a last resort (Beijing Rules 17.1b).

These normative framings find strong empirical support from both the Edinburgh Study of Youth Transitions and Crime and a range of other international research (McAra 2017a, Farrall 2002, McNeill 2006). Indeed Edinburgh Study findings indicate that:

- 1 Youthful law breaking is a normal part of development and that most young people mature out of it without the need for formal intervention.
- 2 Only a very small proportion of young people become serious and persistent offenders and those that do have very deep seated needs, coming from backgrounds blighted by poverty and other forms of disadvantage.

- 3 Diversion can be effective in tackling youth offending (not least because it helps avoid the pernicious consequences of labeling).
- 4 For those young people who do become subject to formal measures, the least restrictive of these has better outcomes, and crucially, success is predicated upon the development of a strong and sustained relationship between the key worker and the young person.
- 5 Finally, to be effective all of this needs to be delivered in a broader context of educational inclusion and economic opportunity – fundamentally, to enable our young people to flourish we need to embrace a social justice paradigm for youth justice.

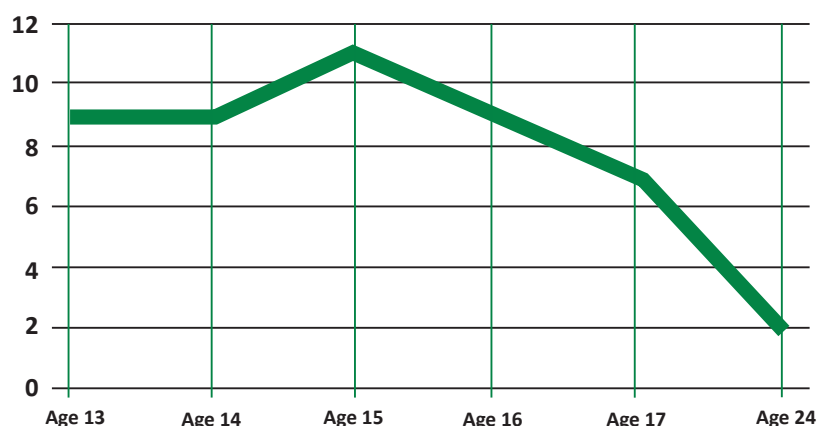
The evidence for these claims is set out below.

1 Youthful law breaking as a normal part of development

Edinburgh Study data indicates that rule-breaking behaviour and involvement in criminal offending is very widespread; a routine rather than an aberrant dimension of individual development. An overwhelming majority (96%) of the Edinburgh Study cohort of 4,300 young people admitted to at least one of the offences which was included in the questionnaire at some stage (up to age 24): and this is likely to be an underestimate of the prevalence of offending behaviour, given that the questionnaire only included 18 offence-types. Whilst offending was widespread in the teenage years most of this was petty in nature (for example minor shoplifting, graffiti, not paying the correct bus-fare, minor breach of the peace) and most of those involved grew out of it without any formal intervention. For example, 56% of the cohort had desisted completely from offending by age 18 and, of those we were able to follow-up in the most recent phase of the study, 90% of them had stopped by age 24. Only a small proportion of the cohort became involved in a high level of more serious

Figure 1

% cohort involved in highest level of violence (more than 10 incidents in one year)



types of offences (such as assault, robbery, or weapon carrying); peaking at only 11% of the cohort at age 15 and diminishing thereafter (see figure 1).

2 Those involved in persistent serious offending are the most vulnerable

The Edinburgh Study evidence demonstrates conclusively that those young people who did become involved in serious offending were much the most vulnerable, victimised and impoverished young people in the cohort as a whole. As illustration the following figures show the links between violence and a range of vulnerabilities at age 15.

In each of the figures the cohort has been split into 'High violence' (more than 10 incidents of assault/weapon carrying/robbery in one year); 'Low/moderate violence' (between 1 and 10 incidents reported in one year) and 'no violence' reported. As the figures demonstrate, both boys and girls reporting a high level of violence were significantly more vulnerable than most other groups in the cohort as indicated by rates

of self-harm (mostly cutting), suicidal intention (namely having made a serious attempt to end their lives); victimisation by violence; and victimisation by bullying. Particularly striking are the very high rates of self harm and suicidal intention reported by girls involved in violence – 62% of high violence girls regularly self-harmed; and 45% of them had made a serious attempt to kill themselves through such things as overdoses on pills, attempts at self-throttling, and cutting wrists. Similarly both boys and girls involved in violence (either a high level or low to moderate level) came from significantly more deprived backgrounds than those not reporting involvement in violence; and those involved in violence were more likely to have been excluded from school and to have left school at the earliest possible opportunity, often without qualifications.

In sum, violence towards others is strongly associated with violence towards the self, and dislocation from education means that these young people often lacked the skills and opportunities to lift themselves out of poverty (see also McAra 2017b). Fundamentally

Figure 2 Boys

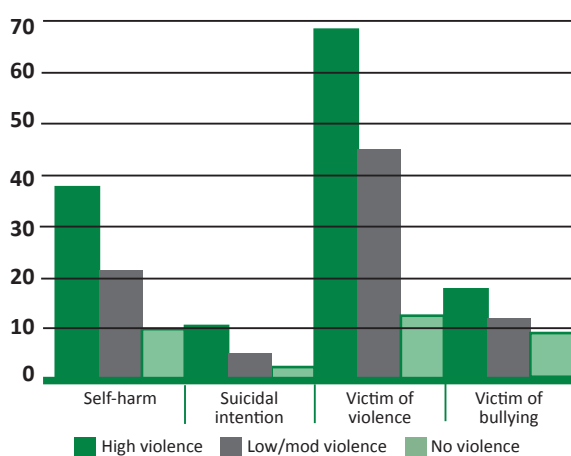


Figure 3 Girls

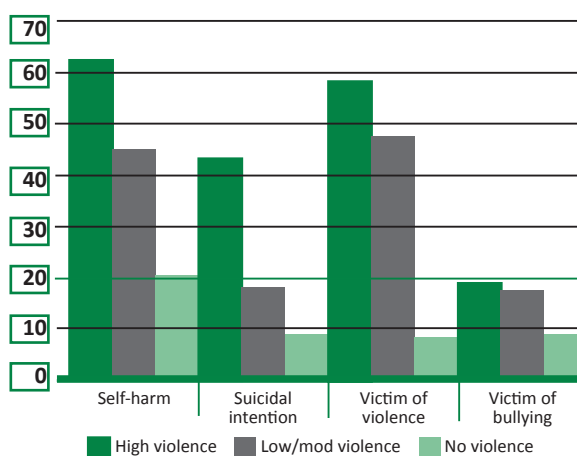


Figure 4 Boys

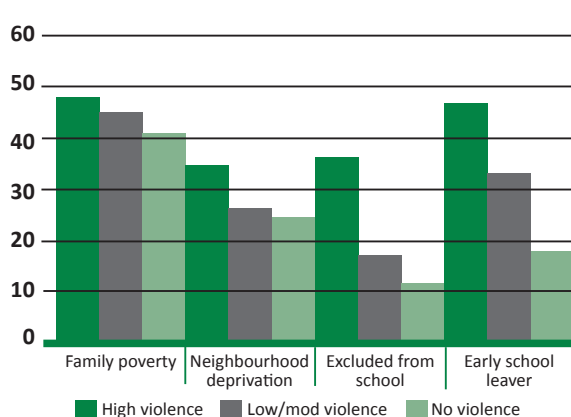
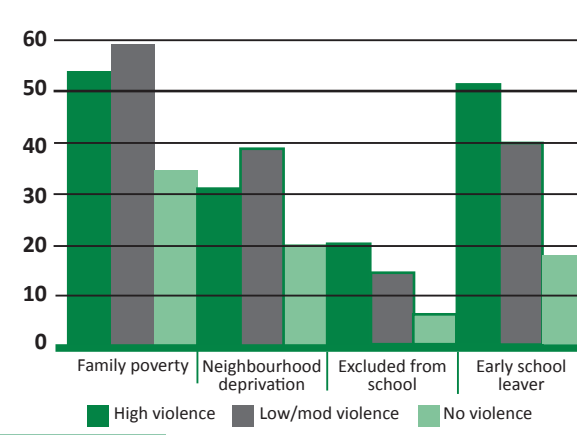


Figure 5 Girls



the very deep seated needs of these young people coupled with the structural supports for violence which lie beyond their control (such as family poverty and neighbourhood deprivation, see McAra and McVie 2016) illustrate very starkly the way that the current age of criminal responsibility in UK jurisdictions (for example age 10 in England and Wales and , at the time of writing, age 8 in Scotland) is both cruel and anomalous.

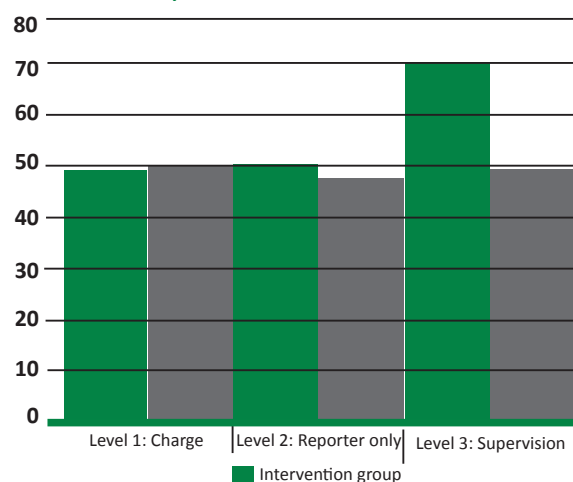
3 Diversionary practices are effective

As noted above, most of those in the Edinburgh Study cohort who were involved in offending stopped without any formal intervention from juvenile justice agencies. Indeed earlier published analysis has shown that 'less is more' when it comes to tackling offending (see McAra and McVie 2007, 2010). Using a form of quasi-experimental analysis based on propensity score matching, the Study was able to track the outcomes of different levels of system contact. Three sets of matched groups were created: at level 1 a group of young people who had been charged by the police but no further action taken were matched to

a control group who were as similar as possible to the intervention group (including their levels of self-reported offending) except that they had had never been charged by the police; at level two a group of young people who had been charged and then referred by the police to the youth justice system (but no further action was subsequently taken by the system) were matched to a control group of young people who had been charged by the police but not referred further; and finally at level 3 a group of youngsters who had been placed on compulsory measures of care via the juvenile system were matched to a group of young people who had been charged but not referred on into the system.

Looking at their self-reported offending one year later, there was no significant difference between the level 1 and level 2 matched groups in terms of prevalence of serious offending, but there was a significant difference between those sucked furthest into the system and their matches (figure 6). Similarly, when we looked at the change in mean volume of offending from the point of intervention to one year later, all groups had reduced their involvement in offending but the young people sucked furthest into the system were the only group where the drop in offending did not reach statistical significance (figure 7). What these findings show is that the further the young person is sucked into the system, the more this inhibits the normal pattern of desistance that occurs from the mid teenage years onwards (McAra and McVie 2007).

Figure 6 Outcomes: % involved in offending one year later



4 Relationships matter

Diversion is of course not suitable for all young people who come into conflict with the law. There will always be some young people who will require more intensive intervention because of the risk that they pose to others. So what then is known about the longer term effectiveness of interventions for those young people who do become subject to compulsory measures of care?

In keeping with other international research (for

Figure 7 Outcomes: % reduction in volume of offending

	Intervention group	Control group	Variables on which matched
Level 1 (Whether or not charged only)	-50 (.000)	-43 (.001)	Volume of serious offending Gender
Level 2 (Whether or not referred to the Reporter only)	-39 (.001)	-42 (.000)	Family structure Social deprivation (free school meal entitlement; neighbourhood deprivation) Hang around most evenings
Level 3 (Whether or not subject to compulsory measures of care only)	-31 (NS)	-49 (.001)	Persistent truant Illegal drug use Number of times in trouble with police

example McNeill 2006), the findings from the Edinburgh Study demonstrate that it not so much formal programmes but rather the quality of relationships that matter. Only around a quarter of the young people in our cohort made subject to supervision had regular one to one contact with a social worker. Importantly, however, such contact was associated with a sustained and significant reduction in self-reported offending behaviour. This is shown in Figure 8 below which compares the mean volume of serious offending one year on (from age 15 to 16) for those with regular one to one contact and those with less frequent contact. Those with regular contact reported a 54% reduction in volume of offending one year later: in contrast those with less regularity in contact reported only a 7% reduction (see also McAra and McVie 2017).

5 The need for social justice responses

Finally, what is the evidence that social justice responses are needed to tackle youth crime effectively and promote child-friendly youth justice? Here the

paper focuses on Edinburgh Study findings relating to desistance from offending for different groups of young people.

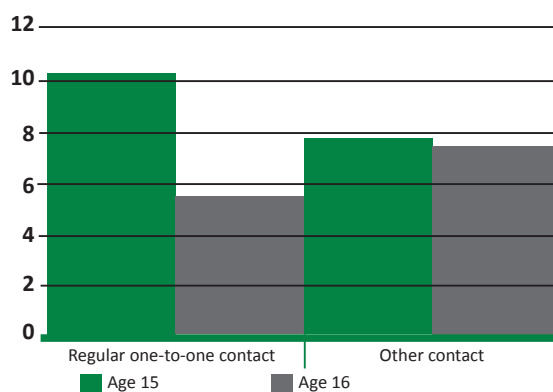
Using group-based trajectory modeling (see McAra and McVie 2017 and McAra 2014 for further details), the Study found five main groups based on their probability of self-reported involvement in serious offending²:

- a non-serious offender group (the ‘non-offender’ in figure 9 below),
- an ‘early onset’ group whose members desisted from offending from about age 14 onwards (the ‘early desisters’)
- a second ‘early onset’ group whose members had a high probability of involvement in serious offending over most of the teenage years (the ‘chronic’ group);
- an adolescent limited group (the ‘mid-teen limited’ group’); and
- a ‘late onset’ group.

As shown in figure 9, aside from the late onset group which exhibited a rising trajectory in the later teenage years, all the other groups were in the process of desisting. And it is the variables which characterise the rising and desisting trajectories of these young people which highlight the need for social justice responses.

Figure 10 (overleaf) summarises the most significant factors linked to these trends: for the three groups in the process of desistance, there were significant reductions between the ages of 15 and 17 in levels of family conflict, exclusion by peers, self-harming behaviours and stressful life events (such as bereavement), whereas for the late onset group

Figure 8 Outcomes for all allocated cases: change in serious offending



² The Study used the then Youth Justice Board definition of serious offending which includes housebreaking (burglary), theft of a vehicle, joy riding, fire-raising (arson), robbery, weapon carrying, and assault.

Figure 9 Self-reported serious offending trajectories

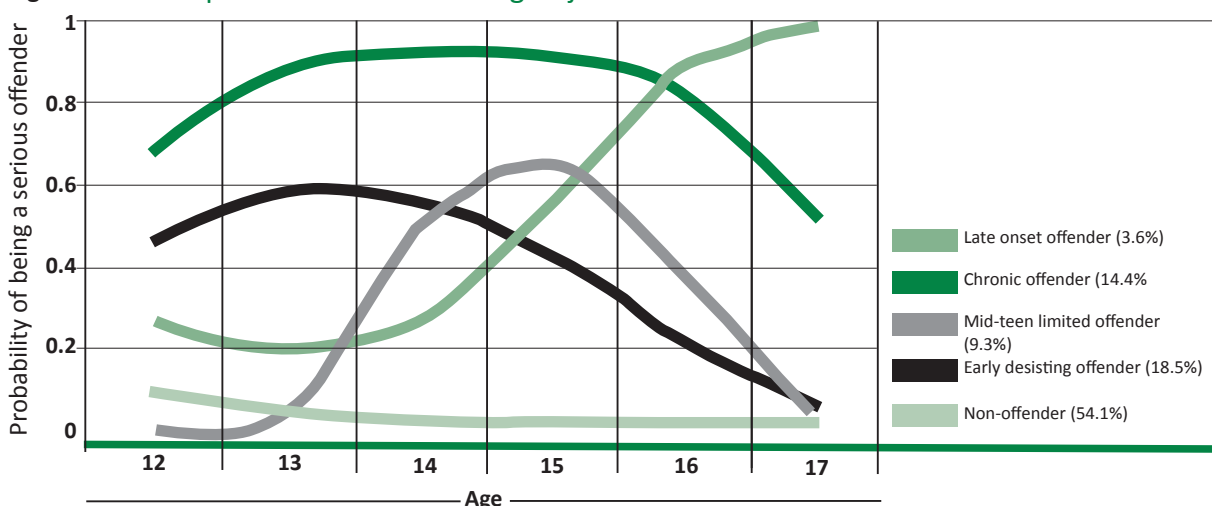


Figure 10 Changes linked to desistence

	The 3 desisting groups	The late onset group
Family conflict	Reduced	No change (high)
Exclusion by peers	Reduced	No change (high)
Self-harming behaviours	Reduced	No change (high)
Stressful life events	Reduced	No change (high)
Victimisation	Reduced	Increased

there was no change (each of these dimensions was and remained high). Similarly at the point at which the probability of offending reduced in the three desisting groups, victimisation from crime also reduced; by contrast for the late onset group, victimisation significantly increased. And in comparison with the desisting groups at age 17, the individuals in the late onset group were significantly more likely to be unemployed, to be homeless, in poor physical health, living in a neighbourhood with high levels of social stress, and to be socially isolated, with no serious long-term relationships (McAra 2017b).

Importantly, in policy terms, not one of the above factors comes primarily within the purview of youth justice: but rather these factors fall within the remit of health, housing, economic and educational policy. Together they highlight the need for holistic approaches to the problem of youth crime: approaches which cut across discrete policy portfolios: social justice rather than criminal justice responses.

What are the impediments to the implementation of child-friendly youth justice?

Given what is known from both the normative imperatives set out in international conventions and the research evidence about best practice, what then are the impediments to its implementation?

In this section of the paper I'm going to argue that there are three key impediments: (i) the dynamics of statecraft – in other words how governments behave (particularly when first elected); (ii) institutional working cultures, and specifically those of the police and the courts; and (iii) the continued failure of successive governments to integrate youth justice into a wider social justice agenda in such a way as to support pathways out of offending for children and young

people who come into conflict with the law. Evidence for each of these arguments is as follows:

1 The dynamics of statecraft

A review of youth justice policy-making across all UK jurisdictions highlights five key dynamics which emerge and then re-emerge each time a new government takes office: differentiation from the past; construction of new or revised institutional architecture; selection and nurturing of new audiences (groups to whom policy 'speaks'); introduction of greater complexity into policy discourse – adding new paradigms onto the extant framework; and looping – re-presenting older youth justice narratives as something new and distinctive (McAra 2017a). Fundamentally youth justice policy is characterised by constant renewal and increased complexity³. Taken together, these dynamics mean that it is very difficult for research to gain traction in policy circles and should it ever succeed it is unlikely that any research-informed policy could or would be sustained beyond the political cycle within which it was implemented (McAra 2017c). As noted, these dynamics can be found across all UK jurisdictions, but in this paper I'm going to use Scotland as an illustration. Indeed the Scottish case demonstrates very starkly the ways in which particular paradigms are recycled over time but always represented by politicians as something new and original.

Put at its simplest, there have been three main phases of policy in Scotland over the past 30 years or so. The first of these was a welfarist phase (between 1968 and 1998) with a strong commitment to rehabilitation, parsimony in punishment and the provision of alternatives to custody. As Malcolm Rifkind (the Secretary of State for Scotland in the late 1980s) stated:

Whilst the use of imprisonment may be inescapable when dealing with violent offenders and those who commit the most serious crimes we must question to what extent short sentences of imprisonment are an appropriate means of dealing with offenders. Prisons are expensive both to build and run and do not provide the ideal environment in which to teach an offender how to live a normal and law abiding life, to work at a job, or maintain a family.

3 There is also some evidence for a sixth and seventh set of dynamics. Sixth, to introduce a review (when running out of ideas) and then, at worst, ignore or, at best, water-down, the findings (as may be happening with the Taylor Review in England/Wales, probably happened in Northern Ireland after the 2011 review, and certainly happened with the parliamentary inquiry into juvenile justice in Scotland 2004). And seventh, that research evidence is utilised in the policy process only to the extent that it makes sense according to the ambition of government – knowledge therefore rarely drives politics, rather governments select research findings which justify what they already want to do (McAra 2017b, 2017c).

Perhaps some of these offenders could be dealt with by a community based disposal without posing any undue risk to society, providing the courts can be satisfied that the sentence imposed is sufficiently firm and robust in view of the circumstances of the crime. (Kenneth Younger Memorial Lecture, 1988)

Within youth justice the phase between 1968 and 1998 was the hey-day of the Kilbrandon ideals – deeds were considered to be symptomatic of deeper seated needs, with the children’s hearing system valorising early and minimal intervention predicated on an educational model of care (McAra 2017a). Key policy audiences were troubled children and their families, with a strong emphasis on communities having ownership of the problems presented by those coming into conflict with the law.

The second phase of policy (between 1999 and 2006) began in the post-devolutionary period. Here youth crime and punishment were utilised in a much more self-conscious and populist way by the newly established Scottish Government (a Labour/Liberal Democrat coalition), predicated on an exclusionary set of practices borrowed mostly from developments south of the border in England. The pre-devolution commitment to welfarism was watered down and a range of new paradigms were grafted onto the system, including actuarialism, just deserts, and restorative justice, all overlaid by managerialist imperatives. Such practices now spoke to an imagined set of publics or new audiences comprising concerned citizens, victims of crime (viewed as a morally discrete category from offenders), and fearful communities. The policy narrative shifted away from Kilbrandon’s notion of the troubled child to the ‘persistent’ offender and their ‘failing parents’, and in an attempt to establish its power to punish, the new coalition government embarked on a massive programme of institutional construction. Over 100 new institutions linked to justice were created; many with overlapping competencies.

Much of this policy narrative and emergent institutional infrastructure was abandoned when the Scottish National Party took office in 2007, ushering in the third policy period characterised in youth justice by diversion, prevention and early and effective intervention and a refocus on the troubled child. In this phase there has been a return to more progressive policy-making with the ‘rediscovery’ of rehabilitation. Indeed, Michael Mathieson, the current Cabinet Secretary for Justice returned to some familiar themes in his Apex Lecture 2015, but presented them as ‘new’ and radical thinking:

Short term prison sentences simply do not work (my emphasis) in terms of rehabilitating

offenders or reducing the risk of their re-offending. They disrupt families and communities and greatly affect employment opportunities and stable housing. That is why my vision is one which reflects the values of a modern and progressive nation in which prison, in particular short term imprisonment, is used less frequently as a disposal and where there is a stronger emphasis on *robust community* sentences focused on addressing the underlying causes of offending.

Accompanying these discursive shifts there has also been a rationalisation of architecture (a largely unanticipated centralising tendency) as exemplified by the creation of the single national police force (via the Police and Fire Reform [Scotland] Act 2012), the National Children’s Panel (via Children’s Hearing [Scotland] Act 2011), and Community Justice Scotland (via Community Justice [Scotland] Act 2016).

The rapidly changing policy environment as illustrated by the ‘Scottish case’, the need to present policy solutions as novel and radical, and the tendency to focus on institutional architecture as a principal driver of transformation, means that the more nuanced, longer-term, slower-burn solutions deriving from the research evidence on what works, largely fall on deaf ears (see also McAra 2017c). That such dynamics can be found across all UK jurisdictions demonstrates the scale of the challenges facing researchers and human rights activists in attempting to realise efficacious and ethical policy and practice.

2 Institutional working cultures

The second impediment to child-friendly policies lies in institutional working cultures. Indeed, findings from the Edinburgh Study show that, in contrast to the ruptures and transformations characterising policy discourse (outlined above), the decision-making practices of youth justice institutions exhibit a high level of continuity over time. These continuities result in a degree of institutional inertia, as practices lag significantly behind policy imperatives.

Figure 11 (overleaf) shows police decision-making practices at different time points and across the variant policy phases. It demonstrates that police decisions to warn or charge have been shaped by the same cultural rules over many years including whether the young person has previous form (been known to the police in previous years), and whether they come from a deprived background (as measured here by family socio-economic status). For example at age 11 during the immediate pre-devolution (welfarist) era, young people who had previous form had almost 8 times greater odds of being warned or charged than

Figure 11 Effect of prior police contact and social background on later police contact taking account of involvement in serious offending

	Age 11	Age 15	Age 22
Policy era	Welfarism	Punitive	Prevention, EEL, diversion
Odds of being warned if from lower socio-economic status background	2 times greater	1.4 times greater	4 times greater
Odds of being warned or charged by the police if this had happened in the previous year	8 times greater	10 times greater	10 times greater

Figure 12 Effect of prior convictions and social background on later convictions, taking account of involvement in serious offending

	Age 11	Age 15	Age 22
Policy era	Welfarism	Punitive	Prevention, EEL, diversion
Odds of being convicted if from lower socio-economic status background	6 times greater	3 times greater	9 times greater
Odds of being convicted if this happened in the previous year	–	3 times greater	14 times greater

youngsters with no such history, even when controlling for volume and seriousness of offending. At age 15 during the punitive turn in policy, the odds of further warning and charges for those with previous form rose to over 10 and a similar dynamic was evident at age 22 in the early years of the SNP administration.

Again a review of key predictors of being brought to a hearing and admitting an offence (which at the time of the Study, counted as a criminal conviction) or in later years being convicted in court, reveals that they too remain static over time, with early adversarial police contact and low socio-economic status again featuring strongly in decisions, even when controlling for serious offending, including violence (figure 12).

These drivers of decision-making have become subsumed within institutional folkways and customary practices, taking on a self-referential dynamic which often belies the shifting political context. Indeed it is this dynamic which has resulted in a group of young people, the usual suspects, who are recycled into the system again and again – in effect this is criminalisation of the poor.

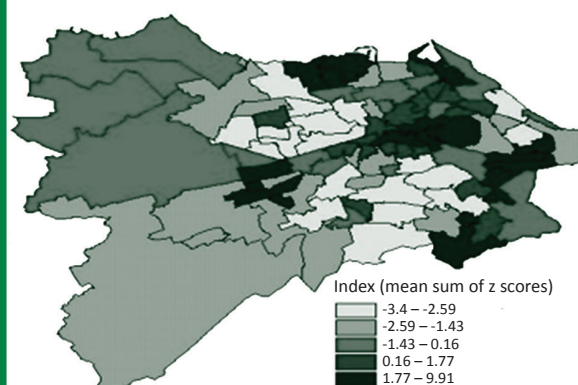
3 Failure to integrate social justice into responses to offending

On then to the last of the impediments to child-friendly youth justice; namely the failure of successive governments to integrate youth justice into a social justice policy framework.

This failure is starkly evidenced by a range of maps

derived from the geographic information system set up by the Edinburgh Study which highlight longstanding spatial disparities in terms of social disadvantage, crime and institutional behaviours.

The first of the maps (figure 13) shows deprivation across Edinburgh based on census data (the darker the shading the greater the levels of poverty). These darker shaded areas are replicated on maps showing concentrations of police recorded violent crime (a measure of police activity and of the spatial dispersion of victimisation by violence, figure 14) and incivilities reported by the Edinburgh cohort (such as graffiti,

Figure 13 Spatial distribution of social deprivation in Edinburgh City

Based on census date: score derived from 6 indicators of social and economic stress population turnover; % households lone parents and children; % households overcrowded; % population aged 10-24; % households live in local authority housing; % population unemployed

Figure 14 Spatial distribution of police recorded violent crime in Edinburgh City

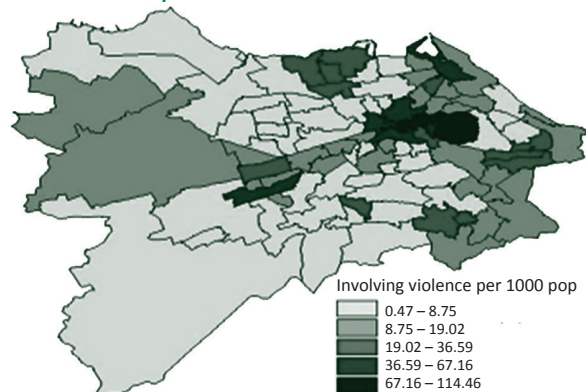


Figure 16 Spatial distribution of school exclusion amongst the Edinburgh Study Cohort

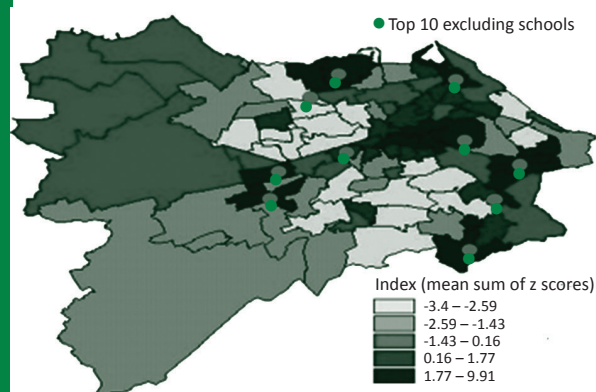


Figure 15 Spatial distribution of incivilities observed by Edinburgh Study Cohort

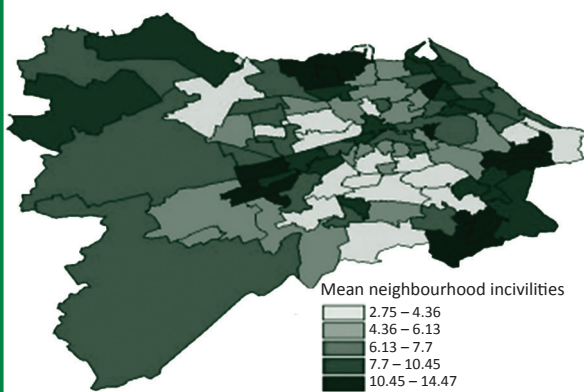
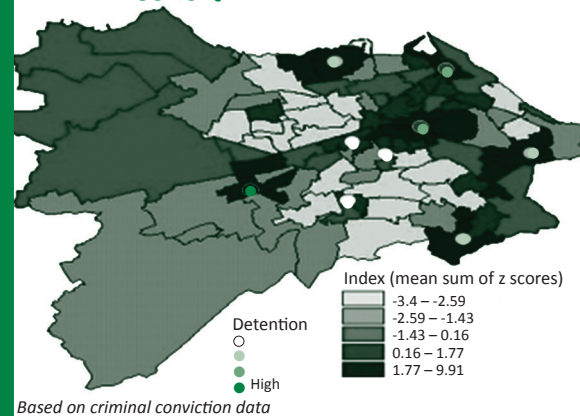


Figure 17 Spatial distribution of detention amongst the Edinburgh Study Cohort



vandalism, needles in the street, and burnt out cars, figure 15). Significantly school exclusions (expulsions) are also concentrated on those areas (figure 16), with the Edinburgh Study data showing that decisions to expel young people from education are biased against those coming from areas of high neighbourhood deprivation. (Poverty remains a significant predictor of exclusions even when controlling for levels of bad or disruptive behaviour in school, McAra and McVie 2012.) Finally, youngsters with experience of detention also cluster in these areas (figure 17) – indeed a quarter of all those who have been in secure care or imprisoned or both, come from only a few streets in a particularly deprived neighbourhood on the west-side of Edinburgh.

The patterns of multiple deprivation displayed on the above maps are long standing in nature. Not only do they highlight the ways in which poverty continues to form the backdrop to the lives of many of our most vulnerable young people, they also symbolise the ways in which it functions as one of the drivers of institutional exclusion and disadvantage. In sum, the

maps demonstrate the need to develop solutions for crime that look beyond criminal justice process and practice; eloquent testimony to the failure of successive governments to understand the problem of crime within a wider set of policy portfolios.

Concluding reflections: what needs to be done now?

Given that there is strong and compelling evidence about what works (empirically and normatively) in tackling the problem of youth crime, and the impediments to its delivery, what then could be done now to transform existing youth justice systems across the UK in order to better meet the needs of children and young people.

As highlighted above, the dynamics of governing – the impulse for differentiation, the introduction and re-introduction of greater complexity in policy

narratives and the constant remaking and rebuilding of institutional architecture – have inevitably meant that governments have focused more attention on their own projected image and capacity to command and control, rather than on making deep and meaningful changes to organisational cultures and promoting better understanding of their real world impact on young people. The fact that there have been longstanding rights violations, as well as continuities in decision-making processes which criminalise the poor, highlights the key failures of a democracy project which has been long on promise and short on direct action to transform inequalities. A major challenge facing policy-makers is to deconstruct some of the more deleterious practices which have evolved within institutions dealing with children who come into conflict with the law, and to understand their animating philosophies and the ways in which these have been reproduced over time.

But more than this, the evidence from the Edinburgh Study strongly suggests that there are five key steps needed now to implement child-friendly youth justice: firstly, raise the age of criminal responsibility; secondly, increase the use of diversion from formal measures wherever possible, and provide meaningful alternatives at every stage of the youth justice process; thirdly, promote educational inclusion and meaningful economic opportunity for young people; fourthly, value and support social workers/youth workers/children and family workers (better pay, greater respect for their knowledge and skills, manageable workloads); and fifthly and finally keep faith with research informed

policy and, by extension, keep politics out!

References

- Farrall, S.** (2002) Rethinking What Works with Offenders: Probation, Social Context and Desistance from Crime, Cullompton: Willan
- McAra, L.** (2017a) Youth Justice, in Liebling, A., Maruna, S. and McAra, L. (eds.) *The Oxford Handbook of Criminology*, 6th Edition, Oxford: Oxford University Press
- McAra, L.** (2017b) Can Criminologists Change the World? Critical Reflections on the Politics, Performance and Effects of Criminal Justice, *British Journal of Criminology*, 57: 767-788
- McAra, L.** (2017c) Criminological Knowledge and the Politics of Impact: Implications for Researching Juvenile Justice in Armstrong, S., Blaustein, J. and Henry, A. (eds.) *Reflexivity and Criminal Justice: Intersections of Policy, Practice and Research*, Palgrave: London
- McAra, L.**, (2014) Crime and Justice: A Vision for Modern Scotland, <https://www.apexscotland.org.uk/wp-content/uploads/2014/10/apex-annual-lecture-2014.pdf>
- McAra, L. and McVie, S.** (2017) Life-course and Developmental Criminology: Innovations, Impacts and Applications, in Liebling, A., Maruna, S. and McAra, L. (eds.) *The Oxford Handbook of Criminology*, sixth edition, Oxford: OUP
- McAra, L. and McVie, S.** (2016) Understanding Youth Violence: The Mediating Effects of Gender, Poverty and Vulnerability, *Journal of Criminal Justice* DOI: 10.1016/j.jcrimjus.2016.02.011
- McAra, L. and McVie, S.**, (2012) Negotiated Order: A Groundwork for a Theory of Offending Pathways, *Criminology and Criminal Justice*, 1(4): 347-376
- McAra, L., and McVie, S.** (2010) Youth Crime and Justice: Key Messages from the Edinburgh Study of Youth Transitions and Crime, *Criminology and Criminal Justice* 10: 211-230
- McAra, L. and McVie, S.** (2007) Youth Justice? The Impact of Agency Contact on Desistance from Offending, *European Journal of Criminology*, 4 (3): 315-345
- McNeill, F.** (2006) A Desistance Paradigm for Offender Management, *Criminology and Criminal Justice*, 6(1): 39-62

A child-friendly youth justice?

By Professor Jo Phoenix

Introduction

The term ‘child-friendly justice’ has its origins in international human rights legal frameworks, specifically the Council of Europe guidelines for implementing the United Nations Convention on the Rights of the Child in relation to justice. In England, the notion of a ‘child-friendly’ youth justice has also been used to critique the practices for dealing with youth crime that have their origins in the Crime and Disorder Act 1998.

Yet, exactly what does child-friendly youth justice mean? Does it necessarily ensure a more just way of dealing with youth crime or a more just response to the children and young people who populate it? This essay takes a closer look at the critique offered of the current way of dealing with youth crime, the agenda for reform and ends by suggesting that it does not necessarily mean a more just response to young people or youth crime.

Child-friendly youth justice: the critique

There have been many different critiques of the ‘new youth justice’ established by the Crime and Disorder Act 1998. For some, it meant the de-professionalisation of an entire workforce (Pitts 2001). For others, it meant a youth justice system devoid of any higher goals or principles (such as welfare), primarily interested in preventing offending, heavily audited, managed and monitored and characterised by an obsessive focus on managing and reducing the risks of (re)offending presented by some young people (Muncie 1999, Goldson 2002, Goldson and Muncie 2006, Muncie 2006, Kemshall 2008). For these critics, there was no surprise when the new youth justice expanded, sucking scores of black, Asian and minority ethnic (BAME), working class and marginalised young men into its punitive net, if only because the standardised assessment tools conflated economic and social marginalisation and exclusion with an individualised risk of offending (Kemshall 2008).

As time would tell, many of these early criticisms were not far off the mark. The first seven years of the new youth justice saw more and more young people coming into the youth justice system for the first time – and more and more young people being incarcerated (Goldson 2009, Phoenix 2015, Bateman 2017). As the new youth justice matured, the realities became known and we saw what system expansion meant in real life. Between the years 1999–2007, there were 102 self-inflicted deaths of young people (see <https://www.inquest.org.uk/deaths-of-children-and-young-people-in-prison> accessed 1st March 2018). The use of physical restraint in custodial settings seemed to be on the rise (UNCRC 2008). All this took place against the backdrop of a raft of new civil measures (ASBOs, dispersal orders, mosquitoes and so on) in which the message was loud and clear: youth crime and ‘troublesome’ young people will be dealt with via the criminal



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justice system with little regard to the social or economic context that surrounds them. Although the last 10 years have witnessed ‘system shrink’, with fewer young people coming into the youth justice system and progressively fewer children and young people being incarcerated, the basic criticisms of youth justice in practice have remained the same.

Against this, some academics and reformers began calling for a ‘rights-based’ or ‘child-friendly’ approach to youth justice. The calls are not naive to the problematic nature of both a universalising human rights discourse and the practice of enforcement (Goldson and Muncie 2012). Nevertheless, at a time when the key criticisms of English youth justice are that it lacks ‘sympathetic understanding’ of children and young people, does not ensure their wellbeing or welfare or deal with the circumstances that surround their less than law-abiding behaviour, reminders that England is systematically and routinely violating children’s human rights (as specified in the UNCRC) serve as a useful point of resistance.

Child-friendly youth justice: the agenda for reform

According to its advocates, how is a child-friendly youth justice more ‘just’? Framed by and within the guiding principles set out by the UNCRC and adopted by the Council of Europe, ‘child-friendly youth justice’ is a form of justice based on the recognition that, developmentally, children and young people are not adults and therefore ought not to be subjected to adult-style criminal justice processes or held to the same level of accountability for their less than law-abiding behaviour as adults, nor should the state’s responsibilities for protecting children’s welfare and wellbeing come as anything other than the principal aim of state intervention.

In the context of recent history in England, this translates into a call to make youth justice more welfare oriented and more aware of children’s unique developmental status. Take, for instance, the National Association for Young Justice briefing report (Bateman 2012) or the Ministry of Justice’s (as yet not implemented) review of youth justice (Taylor 2016). Both documents start from an explicitly stated, philosophical position claiming that whatever else a youth justice system ought to do, it must ensure the well-being and welfare of the child. They state further that a child-friendly youth justice system must be separate to adult criminal justice, be focused on securing the best possible future for the child, be aware of the child’s human rights and not be concerned with retributive or vengeful forms of punishment. A child-friendly youth justice would also actively work for the

social inclusion of all children and against the social injustices that children experience – whether or not these exclusions and injustices are based on gender, class, ethnicity, geography and so on. In keeping with the UNCRC, a child-friendly youth justice would ensure that all the processes and procedures that children experience in the justice system do not alienate them but seek to ensure their active participation. Finally, in a child-friendly youth justice, there would be no place for custodial sentences. For many, the most effective way of producing a child-friendly youth justice might also be to simply raise the age of criminal responsibility to 18 years.

In other words, whatever else a child-friendly youth justice system should be, it ought to strive to do no harm and, at a minimum, ensure the protection, well-being and welfare of the children, qua children, that it is responsible for. It is, therefore, a form of justice that treats children as children first and as offenders second. This is not without precedent in the UK. Since Welsh devolution, there have been several reforms to Welsh youth justice practice that claim to treat young lawbreakers as children first and offenders second and put their welfare as a top priority (Haines 2010, Case and Haines 2015). Generally, however, child-friendly youth justice is a form of justice that assumes a greater role for welfare agencies as well as other mainstream children’s and young people’s agencies – such as education, youth work, and social services.

Is a child-friendly youth justice necessarily more just?

Given the well-known deleterious effect of contact with the youth justice system – as currently configured (McAra and McVie 2007) – very few people would argue against creating a youth justice system that is somehow more ‘child-friendly’ according to the criteria above. Yet, would a youth justice system oriented to welfare and children’s services be, in and of itself, better, less harmful or more just? Or do other issues also need to be considered?

How differently would welfare-oriented child-friendly youth justice be organised at the local level?

At this level of organisation, youth justice already relies on a separation from both adult justice organisations and processes and from mainstream, statutory children’s services. Children’s services input is still most commonly provided by staff (including trained social workers) located within youth offending teams

though this model is now less dominant than it was. In this context what does the call for a child-friendly youth justice mean? Perhaps it means an organisational form in which the currently separate youth justice system is folded into statutory children's services? What would this look like in terms of the organisation of professional knowledge and expertise? One possibility – already in use in some areas – is for youth justice workers to work within children's services but nevertheless be a specialist area. A slightly different configuration might be to abolish the youth offending team structure altogether and fully integrate it within children's services. Whatever the case, it is very likely that those working with children and young people being dealt with in the youth courts are likely to remain professionally and practically distinct from other social workers or youth workers. Much of this is likely to be driven by the work required by the youth courts vis-à-vis risk assessments, pre-sentence reports, and other court work. In other words, organisational configuration alone is not likely to produce a more welfare-oriented or just response to youth crime given that much of the work of those working with young offenders is shaped by the demands and processes of the youth court. Hence, a second assumption is that in addition to organisational change there would need to be a change in the practices (if not the structures) of the youth court so that it, and the sentences it passes, would be more attuned to individual children's welfare needs, qua children, rather than to risk or the prevention of offending.

Organisational and court changes such as these are not without historical precedent in the UK. The 1933 Children and Young Persons Act required courts to have regard to children's welfare. The 1969 Children and Young Persons Act introduced care orders and supervision orders explicitly to ensure the well-being and welfare of young people who had come to the attention of the police and courts. Throughout the 1980s there was a gradual restriction of the use of custodial sentences for children and young people. Yet it was also during this time period that these supposedly more welfarist oriented practices of dealing with youth crime came under considerable critique as being a less than just response to young people – from both left and right of the political spectrum. Those on the left claimed that the supposedly more welfarist form of youth justice facilitated the expansion of a cadre of professionals who widened the net of social control through institutionalising highly particularised forms of class and gender-based normalising gazes (Donzelot 1979, Cohen 1985). The critique then was that welfare interventions were little more than the velvet glove of oppression, as the expansion of social control was targeted at marginalised, oppressed poor

With the uncertainty of Britain's position economically, following Brexit, there seems little prospect that the public sector will be able to provide much to ensure the wellbeing and welfare of children and young people in the justice system.

and working-class neighbourhoods, families and young people. From the other side of the political spectrum, sentencing children and young people based on their welfare needs was called into question on the grounds that it offended young people's right to due process – particularly when such sentences were expressed in the form of indeterminate sentences. The point is a simple one: the call for a more welfarist approach to dealing with youth crime does not, in and of itself guarantee a more 'just' response to young people. Recent juvenile justice history in England and Wales provides ample evidence.

Leaving history to one side, there is the question of what a child-friendly youth justice would look like in contemporary England. At the point of writing, statutory social services have morphed into Children's Trusts that commission out children's services which are often condemned as inadequate (Toynbee 2018). The National Health Service is on the point of collapse. Years of austerity politics and budgets have seen local authority finances slashed to near breaking point (Butler 2017). Changes to educational services have witnessed the hollowing out of public sector schools with the highest ever rate of children attending fee-paying school (Council 2017). In addition, the reforms to welfare benefits such as universal credit, changes to disability benefits and the bedroom tax have further immiserated those who are already economically marginalised and excluded. These and other changes have, arguably, signified the death of Britain's post-war welfare state and its public sector (Cooper and Whyte 2017). With the uncertainty of Britain's position economically, following Brexit, there seems little prospect that the public sector will be able to provide much to ensure the wellbeing and welfare of children and young people in the justice system. In this context, shifting the organisation of youth justice into an already stretched children's and young people's services cannot, logically, ensure a more just response even with the raft of changes to how youth courts function. It may be that reform of children's and young people's services is also required.

There are more questions that need to be asked. The case of Rita might help to draw these out. In 2009, when Rita was 16, she was prosecuted and convicted of criminal damage – she had smashed the windows and

Without fundamental social and structural change, a child-friendly youth justice is in danger of replicating the injustices that children already experience.

headlamps, scratched the paintwork and slashed the tyres of a nearly new Mercedes-Benz. She was given a community-based sentence supervised by the youth offending team. At the time of sentencing the youth offending team recommended to the court that her sentence should include programmes to help her deal with anger, her drug and alcohol issues and that they work with her to obtain employment and/or return to education. As part of the sentence, she was required to write a letter of apology to the owner of the Mercedes-Benz. Rita failed to engage with the programmes and missed many of her YOT appointments. Within a few months, the youth offending team threatened to start breach proceedings.

Rita's background is typical of young women who find themselves involved with England's youth offending services. Having been sexually abused as a child, Rita spent her early years in and out of foster homes until she settled in a group children's home. According to social workers and teachers she was very bright but had behavioural difficulties – she was aggressive and disruptive. By the time she was 13, she was excluded from school. Soon after she developed alcohol and drug problems.

Meanwhile, what the youth offending team did not know was that 18 months before she smashed up the car, Social Services had referred Rita to a voluntary organisation that worked with young sexually exploited girls in the hope that the service could help her to stop selling sex. Since she was 15 years old, Rita had been selling sex to boys and men – usually ones she knew, or who knew her slightly older boyfriend.

I interviewed the practitioner who worked in the voluntary organisation as part of a research project looking at the links between sexual exploitation and criminalisation. During the interview, the practitioner told me about Rita, about Rita's criminal conviction and sentence and expressed concerns that social services and the youth offending team weren't working together. She told me that a few weeks earlier when she and Rita were sitting together doing a craft project, Rita told her that the week before she was arrested her boyfriend had taken her to a hotel so that she could sell sex to one of his friends. When she arrived six men were waiting for her. They took turns to rape her anally. When they were done, Rita's boyfriend drove her back to the children's home. She did not tell anyone what

had happened to her. Three days later she smashed up her boyfriend's Mercedes-Benz.

How would a child-friendly youth justice have helped Rita? Could it have prevented her being prosecuted? Probably not. After all, she had committed a crime. Would a more child-friendly youth justice have helped Rita to disclose to the police, the youth offending team worker or to the courts the context in which she committed her crime? Probably not, particularly given everything that is known about the struggle that adult women have to report rape, much less young women. Historically, the British Crime Survey estimates that only around 29% of rapes are reported to the police. For many, the fear of reprisal, not being believed, not believing that the police will do anything, not having enough proof all contribute to such low levels of reporting. For Rita, those struggles would have been compounded by the psychology of grooming, and by being emotionally and developmentally immature. Moreover, given that what shaped Rita's experiences of sexual exploitation were the failures and challenges of social work and educational services, providing her with more of the same in the name of a child-friendly youth justice would not have changed the outcome for Rita. What might have changed things for Rita was if her experiences of victimisation were recognised and dealt with – something that would require deep structural changes in class and gender-based violence and inequalities.

In the end, maybe a call for a child-friendly youth justice system is simply not ambitious enough? Very few people would object to making the youth justice system more attuned to children's welfare and wellbeing. Yet as a destination – a youth justice system that is more child-friendly – the ground is already ceded to the idea that the way to deal with youth crime is via criminal justice. Without fundamental social and structural change, a child-friendly youth justice is in danger of replicating the injustices that children already experience.

Children and young people, crime and justice: some concluding thoughts

Leaving aside the UNCRC, there are two fundamental ideas underpinning the notion of justice: equal access to the law and equal protection by the law. Yet, two centuries of research have confirmed that these ideas of justice are not capable of being realised in societies structured by profound gendered, cultural and material inequalities.

Those who are routinely prosecuted, convicted and punished in criminal justice systems across the world

tend to be the already marginalised, the oppressed and the excluded. This is the case because social processes of criminalisation occur within existing classed, gendered and cultural structural inequalities (Box 2002). Hence, it is those who commit crimes on the street who populate our penal realms—even though, arguably, the crimes of the powerful have more far-reaching effects on wider groups of people (eg especially environmental crime, state crime and white collar crime) (Hillyard 2004). In the USA, the Black Lives Matters (<https://blacklivesmatter.com/>) and Trans Lives Matters (Lourenco 2017) movements demonstrate the fatal and unjust consequences of differential policing on grounds of race and sexualities. Closer to home, there is the abrogation of the state's duties of care in immigration detention centres (Lampard and Marsden 2016) and the (perhaps criminal) encouragement of profit and cost-cutting above health and safety in relation to housing (for instance, the Grenfell Tower Fire). These are all examples of crimes and social harms that are seldom, if ever, dealt with via criminal justice. Against this, two centuries of research confirm the over-policing of young, marginalised communities and the under-policing of the crimes committed against them – especially relevant in relation to young working-class women and young women of colour. Rita above is one of several young women whose experiences of the policing of sexual violence can only be described as a form of radical non-interventionism that coincides with the experience of being criminalised (Phoenix 2012). These dynamics of under-protection and over-policing occur based on many forms of social inequality (ethnicity, culture, gender, age and so on). (Christie 1986)

Part of the injustice of current forms of youth justice is that children and young people are held to account (prosecuted, convicted and given a court-ordered disposal) for their actions when many of those actions are shaped by conditions which, because they are children, they are legally and developmentally utterly unable to change or affect. BAME children and young people cannot move to areas that are less heavily policed. Children cannot simply leave local authority care or abusive families to create a more stable life for themselves. They cannot claim economic benefits to support themselves in the face of poor schooling and youth unemployment. They cannot vote for politicians whose political policies might address key issues shaping their lives, for instance, youth unemployment.

A truly just response to youth crime would take all of this into account and not limit itself to reforms that leave the rest of the social, economic, political and ideological context intact.

References

- Bateman, T. (2012). *For A Child-Friendly Youth Justice System*. London, The National Association of Youth Justice.
- Bateman, T. (2017). *The State of youth justice 2017: an overview of trends and developments*, National Association for Youth Justice.
- Box, S. (2002). *Power, crime and mystification*, Routledge.
- Butler, P. (2017). Councils 'at breaking point' due to budget cuts and rising social care bills. *The Guardian*.
- Case, S. and K. Haines (2015). 'Children first, offenders second positive promotion: Reframing the prevention debate.' *Youth Justice* 15(3): 226-239.
- Christie, N. (1986). *The ideal victim. From crime policy to victim policy*, Springer: 17-30.
- Cohen, S. (1985). 'Visions of Social Control: Crime Punishment and Classification (New York.) Polity: 1.
- Cooper, V. and D. Whyte (2017). *The violence of austerity*, Pluto Press.
- Council, I. S. (2017). *The Independent Schools Council Annual Census*. London.
- Donzelot, J. (1979). 'Policing the family.' Pantheon, New York.
- Goldson, B. (2002). 'New Labour, Social Justice and Children: Political Calculation and the Deserving-Undeserving Schism.' *British Journal of Social Work* 32(6): 683-695.
- Goldson, B. (2009). 'Counterblast: Difficult to understand or defend': A reasoned case for raising the age of criminal responsibility.' *The Howard Journal of Crime and Justice* 48(5): 514-521.
- Goldson, B. and J. Muncie (2006). 'Rethinking youth justice: Comparative analysis, international human rights and research evidence.' *Youth Justice* 6(2): 91-106.
- Goldson, B. and J. Muncie (2012). 'Towards a global 'child-friendly' juvenile justice?' *International Journal of Law, Crime and Justice* 40(1): 47-64.
- Haines, K. (2010). 'The dragonization of youth justice.' *Youth justice handbook: Theory, policy and practice*: 231-242.
- Hillyard, P. (2004). *Beyond criminology: Taking harm seriously*, London: Pluto Press; Black Point, NS: Fernwood Pub.
- Kemshall, H. (2008). 'Risks, rights and justice: Understanding and responding to youth risk.' *Youth Justice* 8(1): 21-37.
- Lampard, K. and E. Marsden (2016). 'Independent investigation into concerns about Yarl's Wood immigration removal centre.' *Veritas*.
- Lourenco, D. (2017). 'Trans Lives Matter.' *Prandium: The Journal of Historical Studies at U of T Mississauga* 5(1).
- McAra, L. and S. McVie (2007). 'Youth justice? The impact of system contact on patterns of desistance from offending.' *European journal of criminology* 4(3): 315-345.
- Muncie, J. (1999). 'Institutionalised intolerance: youth justice and the 1998 Crime and Disorder Act.' *Critical Social Policy* 19(2): 147-175.
- Muncie, J. (2006). 'Governing young people: Coherence and contradiction in contemporary youth justice.' *Critical social policy* 26(4): 770-793.
- Phoenix, J. (2012). *Out of Place: The Policing and Criminalisation of Sexually Exploited Girls and Young Women: a Report for the Howard League for Penal Reform, Howard League for Penal Reform*.
- Phoenix, J. (2015). 'Against youth justice and youth governance, for youth penalty.' *British Journal of Criminology* 56(1): 123-140.
- Pitts, J. (2001). 'Korrectional karaoke: New Labour and the zombification of youth justice.' *Youth Justice* 1(2): 3-16.
- Taylor, C. (2016). *Review of the Youth Justice System in England and Wales*. M. o. Justice. London, Ministry of Justice.
- Toynbee, P. (2018). *Has the UK become a country that really doesn't like children?* *The Guardian Newspaper*.
- UNCRC (2008). *Consideration of Reports Submitted by State Parties Under Article 44 of the Convention (United Kingdom of Great Britain and Northern Ireland)*. C. o. t. R. o. t. Child. Geneva, United Nations.

Enhancing problem-solving practice in the youth court

By Ben Estep and Carmen D'Cruz

Introduction

Recent years have seen a welcome decline in the size of the youth justice system in England and Wales. The paradox of this success is that those remaining in the system tend to have a more extensive history of offending, with a greater concentration of vulnerabilities and complex needs. The drop in court volume offers a prime opportunity to develop new approaches to better respond to this more challenging caseload. Problem solving is a promising option, and one with momentum, backed as it is by Carlile (2014) in his inquiry into the operation and effectiveness of youth court, and the Taylor review of the youth justice system, which covered devolution, courts, sentencing and custody (Ministry of Justice, 2016a). Aspects of problem solving are already somewhat embedded in the youth court, but improving practice can better align aspiration with reality on the ground. This forms the basis of a new project of the Centre for Justice Innovation and the Institute for Criminal Policy Research. This paper outlines both the research and the policy case for enhancing problem-solving practice in the youth court. It then goes on to discuss what forms this practice could take, before setting-out the aims of the project.



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A smaller youth justice system and a new challenge

The youth justice system has become dramatically smaller in recent years. In the year ending March 2017, the number of first time entrants into the system fell to 16,500, amounting to an 85 per cent reduction over the last decade (Ministry of Justice/ Youth Justice Board, 2018). There were around 35,200 children proceeded against at magistrates' courts in the year ending March 2017, down 72 per cent compared with the year ending March 2007 (Ministry of Justice/ Youth Justice Board, 2018). This large reduction both in the number of children entering the youth justice system for the first time and being sentenced at court is understood to be a consequence of a reduction in offending by children, coupled with a fall in detected (recorded) youth crime, supported by a renewed government commitment to reducing the number of children entering the system and court, particularly for low level offending. This is not a phenomenon unique to England and Wales – there are similar trends across most of the western world (Van Dijk, Tseloni and Farrell, 2012). These developments are very welcome. Indeed, evidence suggests that prosecution can itself be criminogenic for children, extending and deepening their involvement in offending and damaging their life chances (Petitclerc et al, 2013).

However, there is a paradox to this success. Those children remaining in the system are, according to the Ministry of Justice (2015), 'on balance, more challenging to work with' (p9). They tend to have a more extensive history of offending, with children cautioned or convicted in the year ending March

2017 having on average 2.1 previous convictions or cautions compared to 1.7 a decade ago (Ministry of Justice/ Youth Justice Board, 2018). They have some of the highest reoffending rates: at 42.2 per cent, the reoffending rate for children is four percent higher than a decade ago and compares to 28.2 per cent for adults (Ministry of Justice/ Youth Justice Board, 2018). Furthermore, the proportion of violence against the person offences has been steadily increasing over the last ten years, accounting for 28% of all proven offences by children in the year ending March 2017 (Ministry of Justice/ Youth Justice Board, 2018). It is unsurprising, then, that youth court practitioners report a greater concentration of children with complex needs.

In a smaller, better-targeted system, this is to be expected. Indeed, the fact that, for example, reoffending has only risen slightly, against the backdrop of a dramatically shrinking system, suggests youth justice work has had a positive impact. Nonetheless, youth courts have to deal with the new reality: a smaller caseload, but of children who have a greater concentration of complex needs driving their offending behaviour. There remain a significant number of children sentenced in youth courts (almost 24,700 in 2016/17), who must be effectively supervised and rehabilitated (Ministry of Justice/Youth Justice Board, 2018).

The pressing question is, having successfully moved low level cases out of the system, how do we best deal with those children who remain? The drop in youth court volume offers a prime opportunity to enable youth court practice to keep pace with the changing youth court cohort. As Carlile (2014) identified, ‘the reduction in critical mass offers an opportunity to better focus resources on addressing such challenges to improve the system for the public, child defendants and victims’ (p6). One option for leveraging this opportunity is the enhancement of problem-solving practice within the youth court.

What is problem solving?

Problem solving seeks to yoke together the authority of the court with the services necessary to address the underlying issues that drive crime, reduce re-offending, and promote integration. At the Centre for Justice Innovation, we note that the way that problem solving is implemented differs from court to court and model to model, but the approach always includes a number of the following elements:

- *Specialisation*: targeting a specific population; using specialised assessments to identify risks, needs, and assets; conducting specialised court proceedings involving specially trained court professionals;

- *Collaborative intervention and supervision*: use of strengths-based programming (i.e. interventions to tackle the root causes of the problems in hand, with a focus on client agency and desistance); coordinated case management;
- *Fairness*: emphasising clear understanding, respectful treatment, and neutrality; involving clients in the process and ensuring they have a voice in proceedings;
- *Accountability*: use of judicial monitoring of compliance; use of a structured regime of incentives and sanctions; and
- *Focus on outcomes*: monitoring outcomes and using findings to improve services.

Enhancing problem-solving practice in the youth court is an option with momentum. Indeed, Carlile (2014) recommended ‘piloting of a problem-solving approach in a small number of youth courts, with a view to rolling this out across England and Wales’ (p56). Promisingly, the government’s response to the Taylor review advocated ‘Adopting, where possible, the characteristics of a problem-solving approach’, although what this might mean in practice is not entirely clear (Ministry of Justice, 2016b, p20).

Existing problem-solving practice in youth court

Many if not all of the problem-solving elements detailed above will be familiar to youth court practitioners. Indeed, problem solving is already somewhat embedded in youth courts. Take specialisation, a key marker of problem solving: youth court cases are informed by youth-specific assessments and heard by specially-trained magistrates and district judges often in a specialised courtroom designed to promote engagement with children. In terms of collaborative intervention and supervision, youth offending teams (YOTs) are present at court, inform decision-making, supervise orders, and are typically involved with youth court user groups where these exist. Moreover, youth courts’ mandate encourages a problem solving orientation, i.e. an approach that targets the underlying issues of a child’s offending. The principal aim of the youth justice system is to prevent offending and youth courts must pursue this aim while having regard to the welfare of the child. One of their six key objectives according to the Youth Justice Board (as cited in the Judicial College’s Youth Court Bench Book, 2017) is to order ‘intervention that tackles particular factors that lead youths to offend’. Guidelines from the Sentencing Council (2017) – directing courts to pay greater attention to the child’s background and

personal circumstances – further enable youth courts to address the inter-connectivity between offending and life circumstances.

However, there are some shortcomings in practice. As a landscape review of problem solving in youth court found, practitioners are concerned that youth court specialism is declining (Centre for Justice Innovation, 2015). This extends to professionals in the court – for example, while the Bar Standards Board (2017) has set out the crucial competences for barristers in youth proceedings, there are currently no requirements that defence practitioners undergo youth-specific training, and specialist prosecutors are not widely used. Compounded with the drop in youth court volume, the Government's court closure programme has meant that many youth-trained magistrates are less able to sit in youth courts, leading to potential skill erosion. To take collaborative intervention and supervision as another example, it appears that youth courts have limited recourse to strengths-based programming (Centre for Justice Innovation, 2015). This could potentially feature in programme or activity requirements attached to youth rehabilitation orders (YROs); however, local resource constraints limit availability in practice. Furthermore, sentencers were concerned that information on compliance with orders, and, in the case of referral orders, the content of contracts, is not regularly communicated back to the bench.

Noting broader failings, Carlile (2014) stated that 'courts do not possess the means to address the wide range of welfare issues that so often underlie a child's offending' (px). Similarly, the Taylor review noted that 'magistrates frequently report that they impose a sentence without having a real understanding of the needs of the child' (Ministry of Justice, 2016a, p28). It is clear that more work needs to be done to better align the youth court's problem-solving aspirations with reality.

Enhancing problem-solving practice in youth court

In contrast with adult problem-solving courts, there is limited research evidence regarding the comparative effectiveness of specific problem-solving youth court models (Madell, Thom and McKenna, 2013). However, wider research suggests that the principles of the problem-solving approach may help courts better address youth offending (Butts, Roman, and Lynn-Whaley, 2011). These principles could inform enhancements and include the following:

- **Enhanced accountability.** We know that accountability matters with children (Sapouna, Bisset and Conlong, 2011). Post-sentence reviews, where the court continues to be involved in

monitoring orders via periodic reviews of a sentenced person's progress (ideally involving the same sentencer continuously to allow for the development of a relationship between the client and the sentencer), are a very common component of problem-solving court models. Research in other court settings has identified that the role of the sentencer in engaging people in a consistent and meaningful process of supervision, can have a particularly strong impact on compliance and reduced reoffending (Rossman et al, 2011). This principle might promote the development of post-sentence review protocols within existing legislative constraints.

- **Enhanced specialisation.** It is well established in the research literature that individualised assessment and treatment targeted at children's specific risk factors – a principle known as risk-need-responsivity – can work to promote rehabilitation and reintegration (Brogan et al, 2015). This suggests that assessments and interventions in use in youth proceedings should be closely tailored to the populations they serve. Enhancements informed by this principle might include: increased participation from outside agencies; development of existing assessment tools and programming to more specifically identify and address unmet aspects of the risk, need and asset profile of the current youth court population; and pre-hearing collaborative meetings between involved agencies (prosecutors, defence lawyers, children's services, the youth offending team, and sentencers) to share information and improve case management.
- **Procedural fairness.** People's feelings regarding the legitimacy of state authority are closely tied to their perceptions of the fairness of the justice system process. Legitimacy, in turn, is strongly associated with future adherence to the law (Tyler, 1990). This concept, known as procedural fairness, suggests that it is important for youth courts to develop a better understanding of the court experience from the perspective of court users toward increasing understanding and engagement with the court process. Recent research suggests that procedural fairness may be particularly important to children (Murphy, 2015). Enhancements guided by this principle might include the development of improved courtroom communication and engagement and adaptations to the courtroom environment intended to improve engagement.

Enhancing problem-solving practice in line with these principles within the existing multi-agency supervision practice of YOTs – and using them in combination to develop a more-welfare oriented approach to youth offending – is likely to improve outcomes.

The project

The Centre for Justice Innovation, together with the Institute for Criminal Policy Research, has devised and secured funding for a project through which we hope to: identify what kinds of problem-solving practice could best meet the changing needs of court-involved children in three pilot sites; identify local needs and opportunities for change; and consider new or enhanced practice models. Subject to research approval being granted by the Judicial Office and HMCTS, the specifics of what enhanced practice could look like are to be developed in conjunction with pilot sites, and in response to specific local problems, the configuration of services, and assets.

Conclusion

Youth courts are already working to prevent future offending by those children who come before them. However, given the smaller but more challenging youth court caseload, there is now a real need and opportunity to enhance problem-solving practice – in line with the principles of enhanced specialisation, enhanced accountability, and procedural fairness – in response. Doing so has the potential to reduce crime and improve wider outcomes for children, victims, and families, thereby better aligning the youth court's aspirations with reality.

References

- Bar Standards Board (2017). Youth Proceedings competencies.
- Brogan L, Haney-Caron E, NeMoyer A, DeMatteo D (2015). Applying the Risk-Needs-Responsivity (RNR) Model to Juvenile Justice. *Criminal Justice Review*, September 2015, 40:3, 277-302.
- Butts, J, Roman, J, Lynn-Whaley, J (2011). *Varieties of Juvenile Court: Non-specialised Courts, Teen Courts, Drug Courts, and Mental Health Courts*, in *The Oxford Handbook of Juvenile Crime and Juvenile Justice*, Barry C. Feld and Donna M. Bishop (Editors). New York: Oxford University Press.
- Lord Carlile CBE QC (2014). *Parliamentarians Inquiry into the Operation and Effectiveness of the Youth Court*. London: National Children's Bureau.
- Centre for Justice Innovation (2015). *A problem-solving youth court landscape review* (unpublished).
- Judicial College (2017). *Youth Court Bench Book*.
- Madell, D., Thom, K., & McKenna, B. (2013). A systematic review of literature relating to problem-solving youth courts. *Psychiatry, Psychology and Law*, 20 (3), 412-422.
- Ministry of Justice/Youth Justice Board (2018). *Youth Justice Statistics 2016/17: England and Wales*.
- Ministry of Justice (2016a). Taylor, C. *Review of the Youth Justice System in England and Wales*.
- Ministry of Justice (2016b). *The government response to Charlie Taylor's Review of the Youth Justice System*.
- Ministry of Justice (2015). *Proven Re-offending Statistics Quarterly Bulletin, October 2012 to September 2013, England and Wales*.
- Murphy K. (2015). Does procedural justice matter to youth? Comparing adults' and youths' willingness to collaborate with police. *Policing and Society*, 25(1), 53-76.
- Petitclerc, A, Gatti, U, Vitaro, F, Tremblay, R (2013). Effects of juvenile court exposure on crime in young adulthood. *Journal of Child Psychology and Psychiatry* 54:3, 291-297.
- Rossman, Shelli B., Roman, John K., Zweig, Janine M., Rempel, M., and Lindquist, Christine H. (2011). *The Multi-Site Adult Drug Court Evaluation*. National Institute of Justice.
- Sapouna M, Bisset C, Conlong A (2011). *What Works to Reduce Reoffending: A Summary of the Evidence*. Justice Analytical Services, Scottish Government.
- Sentencing Council (2017). *Sentencing Children and Young People: Overarching Principles and Offence Specific Guidelines for Sexual Offences and Robbery*.
- Tyler T (1990). *Why People Obey the Law*. Yale University Press.
- Van Dijk, J. J. M., Tseloni, A., & Farrell, G. (Eds.) (2012). *The international crime drop: new directions in research*. Basingstoke: Palgrave Macmillan.

A social ecological approach to 'child-friendly' youth justice

By Diana Johns



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This paper draws on research on young people's prolific offending in Wales, and youth justice responses to it, between 2009 and 2015. A case study of twelve young people, and the YOT workers who supervised and supported them through their teenage years, illustrates how seeing young people through the lens of interactions and relationships – with family, peers, community and the broader socio-cultural-political context – gives insight into the type of interventions that can most effectively disrupt their offending and enhance their wellbeing. These insights have implications for the way in which youth offending teams engage with young people, to bring about positive change in their lives. We argue that interrupting persistent and prolific offending patterns requires a long-term, relationship-focused approach that supports young people's positive identity development, in its social context. I outline the key features of such an approach and how and why it exemplifies 'child-friendly' youth justice.

This paper draws on a 2015 study of 'prolific' offending by young people in Wales (Johns, Williams & Haines 2016). Following this study, using a case study of twelve young people and their YOT workers, we applied a social ecological lens to understand how and why youth justice interventions may have a positive impact in young people's lives (Johns et al 2017). Through this analysis, we identify the keys to effective 'child-friendly' practice.

As background to this project, in 2012, the Youth Justice Board (Wales) profiled a group of young men and women deemed 'prolific' in their offending, identifying those who in 2009 had already recorded 25 or more offences and who reoffended in 2010. This group of 303 young people represented 4% of the total Welsh youth justice cohort, which at that time numbered over 7,600. Of these 303, the YJB profiled approximately one third (n117).

In 2015, the number of justice-involved children in Wales had shrunk dramatically, to around 2,600 (YJB 2015). At the same time, however, reoffending amongst a small proportion of young people had been increasing, mirroring trends elsewhere. This concentration highlighted both 'long-standing deficiencies in the youth justice system' and 'an opportunity to better focus resources on addressing such challenges' as meeting the needs of this complex cohort (Lord Carlile 2014: 6). The sample of 117 of this group provided the basis of the 2015 study, which aimed to trace the trajectories of those young people through YOT case file analysis, in-depth case studies, PNC reoffending data, interviews with YOT workers and some of the young people themselves.

Four of the young men, interviewed at the age of 21 to 23, had grown up in the same area and had been involved in prolific offending that had escalated in seriousness through their teenage years. They had all participated in a culture of 'street Valium' misuse, which drove their escalation from low-level property and vehicle-related offending to increasingly serious violence. In 2015, however, all four had created gaps in their offending and, although one was in custody at the time of his interview, the three older boys had managed to stay out of trouble for at least two years. What, we wondered, had helped them stay out of trouble?

A risk-focused approach?

Narrowly risk-focused approaches to working with young people tend to individualise the causes of crime, seeking to remedy these by addressing a child's areas of risk and deficit, such as their substance use, attitudes or impulsiveness. From this perspective, the offending child becomes 'the problem' and the target of youth justice 'treatment' or individualised intervention. This model, however, tends to sideline wider economic, social and political factors – poverty, family violence, neighbourhood disadvantage, for instance – that may be influencing a child's behaviour or constraining their capacity to make other choices. Such approaches thus attempt to responsibilise young people for things that are beyond their social, economic or developmental capacity to control, treating children and young people as if they were adults (Gray 2013; Haines and Case 2015; Kemshall 2008). In contrast, more effective behavioural change strategies focus on the young person as a child, developing through adolescence, and requiring consistent guidance and support in the process of growth and transition towards adulthood.

A social ecological lens

Social ecological theory (Bronfenbrenner 1979, 1992, 1994) offers a useful way of seeing a young person, in the process of development, as embedded within a set of five interrelated ecologies or 'nested' systems. From this perspective, young people's actions, interactions and identities – whether 'criminal' or not – are shaped by factors and processes operating at various levels, simultaneously and across time – not only within the individual and their immediate environment. Bronfenbrenner (1994) describes these systems below:

- 1 *The microsystem* – the individual and their ties to family, friends, school and the neighbourhood.
- 2 *The mesosystem* – links between a young person's close settings, including their family and

neighbourhood ties, or friends and school, for instance.

- 3 *The exosystem* – interactions between settings outside the young person, yet which have a direct influence on their microsystem, such as the links between a child's home life and their parents' social and/or work life.
- 4 *The macrosystem* – the social-cultural setting within which the first three systems are embedded, and the norms, customs, beliefs, resources, opportunities and options available to a young person.
- 5 *The chronosystem* – the temporal and historic context of all these systems, whereby time is an aspect of the growing person but also of their surrounding environment, including changes in family structures and day-to-day changes.

Importantly, a young person's 'environment' is seen, not as a single setting, but as a constellation of interconnected settings within which their development unfolds and which is shaped through progressively closer, deeper involvement with others (Bronfenbrenner 1994; France et al 2012). In a youth justice context, interrupting prolific or persistent offending patterns requires deep understanding of how these systems operate and influence a young person's life, in broad terms and in terms of their everyday decision-making. Such understanding develops through regular interactions with the young person, in ways that are meaningful to them, to build a relationship that grows through increasingly complex interactions, or what Bronfenbrenner (1995) describes as 'proximal processes'. The idea – supported by a growing literature in the fields of offender supervision and desistance, and drawing on social work principles (see Johns et al 2017: 5-6) – is that positive, stable relationships with caring adults may eventually diminish the influence of negative, inconsistent or harmful interactions in young people's lives.

A child-friendly approach?

The social ecological approach to understanding children's high-volume or persistent offending is 'child-friendly' because it decentres the young person as 'the problem', instead seeing the young person in different contexts. That is, focusing on aspects of the young person's social ecology, understanding how these systems interact and influence the young person, and seeking to identify and support areas and potential sources of positive identity development. The worker's role, from this perspective, is not simply to identify and manage 'risk factors' or 'criminogenic

needs' but, rather, to try and understand the child as a growing human being and to guide and support them in their transition towards adulthood. In this way, by recognising that a young person's identity is shaped through their interactions with others, a social ecological perspective tends to invite a strengths-based approach – building up a child's capacity to trust and be trusted by others, rather than 'filling in' their deficits.

At the individual level, this means getting to know a young person to understand their strengths, interests, skills, hopes and abilities. It also means understanding their developmental stage and level of maturity. From a socio-cultural perspective (the interplay between micro- and mesosystems), the worker's role is to engage with and strengthen a young person's supportive relationships, including within their family and peer group. In terms of the wider economic context (the exo- and macrosystems), the effective worker will seek out and advocate for young people's access to opportunities to develop skills, to pursue pathways and identities away from offending, and to succeed. And being aware of broader social and political conditions within which young people's lives are unfolding (the macro- and chronosystems), the worker's role is to consider the range of familial, social and cultural models available to young people in their area and at the time. This is the depth of understanding required for effective working relationships to develop, over time, between adults and young people in youth justice settings. Let's consider examples of some of these elements, from the prolific offending study.

The case study

Four of the young men from the prolific offending sample – let's call them 'Dylan', 'Elis', 'Gareth' and 'Rhydian' – and two YOT workers (YW17 and YW18) who had supported them through their teenage years – participated in face-to-face semi-structured interviews, in which I asked about what had helped and what had made it hard for them to stay out of trouble. The interview data revealed an approach to engaging young people, in a youth justice context, in ways that we would describe as child-friendly. Not because they treated the young men as children, per se, but that they engaged with them on a human level, with a focus on building relationships with the boys in their social ecologies. In this way, workers developed a deep understanding of the young people's lives, circumstances, hopes and desires, which enabled workers to tailor interventions to meet the young people's needs and thus help guide them towards sustainable, pro-social ways of growing into adulthood. The following examples show some aspects of this

context and this approach to youth justice work.

All four boys spoke of feeling let down and excluded by local schools, which had failed to meet their basic educational needs, as these quotes suggest:

I would have probably stuck my head down if they would have given me the support and put me on the right track. [The schools] don't want to help, do they? (Gareth)

I couldn't read, I couldn't write, I couldn't do nothing, till up to the age of like fifteen, I was illiterate... (Elis)

At the YOT, in contrast, these needs were identified and met:

...the YOT put me in courses and stuff like that... (Elis)

I learned a lot more things here than I learned in school, they used to come down here on a Sunday... (Gareth)

In addition, at the YOT, boundaries and expectations were clear:

...if you were doing well they would let you know you were doing well... (Gareth)

...if you were doing badly they would let you know you were doing badly, they wouldn't just leave you to get away with it... (Dylan)

Because the YOT workers provided encouragement and support, which was lacking elsewhere in the young people's lives, the boundaries that the YOT also put in place were perceived as legitimate, and therefore accepted by the young people. As Gareth explained, the YOT was:

...good at getting you on the right track, and keeping you here, making you feel rewarded, and that's all you need to do really isn't it?

The volume of the boys' offending meant frequent and sustained contact with the YOT, which allowed workers to get to know them as individuals but also to understand the peer group dynamics. Shared backgrounds of family violence and dysfunction meant the peer group was 'everything' to them (YW18), the basis of their social identity. The boys talked about what drove them – the notoriety, the excitement – being 'one of the boys':

[We] thought we was invincible – just robbing things, showing off, I was just there with the boys, just getting dragged into it. (Rhydian)

Without family support, a sense of loyalty and belonging bound the group together:

We were a good bunch of boys, and ... a few of

us ... were blood brothers, we'd touch our cuts together. (Gareth)

We all bounced off one another ... like once he's gonna do something, you're always, you've got his back, you're with him a hundred percent. (Elis)

This group dynamic amplified the boys' offending:

We'd still do stupid things on our own but when we were together would be the worst definitely. (Dylan)

If he has done something and been arrested I will get arrested with him next time. That's the reason we'd do it. (Gareth)

For others, it became a competition:

We thought it was big and hard ... If he's been nicked I want to get nicked for something better. You've got to do something worse then, to make it a bit better. (Gareth)

And being locked up, rather than a deterrent, reinforced their offending identity:

Jail ... never scared me out of doing crime – not at all ... all my boys [were] in there... (Elis)

Part of the YOT's strategy to interrupt these patterns involved strict boundaries and containment: 'we'd tie them down so tight – but they wanted that' (YW18). As Elis explained:

They tried to keep me as occupied as possible...

But not with worksheets or learning modules or anger management programmes; rather,

...they used to take me kayaking, stuff like that, they used to do practical stuff with me, keep me busy, keep my mind off other things, and I'd always have something planned for the week, as a target for me to look forward to, instead of thinking 'oh I haven't got nothing to do, I'll just go and rob some[one]'... they used to take me over to the monkey sanctuary, and I loved that, working with animals, it weren't like work.

Through activities that symbolised pro-social risk-taking and relationship-building – such as time spent kayaking and working with animals – positive relationships developed between YOT workers and the young people. And eventually trust started to grow. As well as the young person learning to trust adults, this also meant workers trusting young people – relinquishing a degree of control with the aim of 'responsibilising' the young person, but in a child-friendly, positive development-focused sense. This meant giving young people time and opportunities to practice the skills the workers were helping them to develop, as Elis explained:

They tried to keep me as occupied as possible, but there's still always a gap ... That's what they need to do, they need to give you a gap, to see if you're gonna do crime, or otherwise how are they gonna know if it's working or not?

This approach – persisting with young people and allowing them time to grow and mature – eventually paid off for Elis. He talked about this in terms of 'pushing the gaps' between his offending:

The first time I went to jail I went for four months, but there was like a gap of say eleven months, then I went back to jail for like eight months, then there'd be another gap for like a year, so every time I was making progress, even though I was going back to jail, and I was getting longer sentences ... the gaps was pushing...

Though he expresses regrets – 'for what I've done when I were younger' – he admits he was young and foolish:

I didn't realise what I were doing when I was younger ... [I was] just stupid is all, wrecking my life.

Now, aged 23, he is maturing, and looking forward:

I want respect now. I want to be in with a social group ... I want people to say like, 'he's a nice boy', d'you know what I mean? Not like 'he's a criminal, he lives on the streets and he robs people' ... I want to have a social standing. (Elis)

He has made new friends and – I ask – do they see him like that?

Yeah, now they do ... yeah you're a good boy now.

In conclusion...

These quotes from young men with prolific offending histories give insight into the way workers can intervene effectively in young people's lives. They show how YOT workers can help young people develop non-offending identities, by seeing and understanding them in the context of their relations and interactions with others and the world around them. The boys described in positive terms their experience of YOT support, which responded to their human needs, beyond 'criminogenic needs' and 'offender' labels. Such interactions were in stark contrast to the young people's experience of being abandoned, excluded and marginalised by schools, agencies, the local community and – very often – their own families. The worker's role, taking this social ecological systems approach, is to focus on relationship-building and the young person's positive development through relationships. Seeing young people as

embedded within interconnected social ecologies invites a depth and breadth of engagement with each young person, in these multiple contexts. The individual offending child is no longer seen as ‘the problem’, in isolation, but a small part of a much bigger puzzle.

References

- Australian Institute of Health and Welfare (AIHW) (2016) Youth Justice in Australia 2014-15. Bulletin 133. Cat. no. AUS 198. AIHW: Canberra.
- Bronfenbrenner U (1979) *The Ecology of Human Development: Experiments by Nature and Design*. Cambridge, MA: Harvard University Press.
- Bronfenbrenner U (1992) Ecological systems theory. In: Vasta R (ed.) *Six Theories of Child Development: Revised Formulations and Current Issues*. London: Jessica Kingsley Publishers, 187–249.
- Bronfenbrenner U (1994) Ecological models of human development. In: Gauvain M and Cole M (eds) *Readings on the Development of Children*, 2nd Edition. New York: Freeman, 37–43.
- Bronfenbrenner U (1995) Developmental ecology through space and time: A future perspective. In: Moen P, Elder GH and Luscher K (eds) *Examining Lives in Context: Perspectives on the Ecology of Human Development*. Washington, DC: American Psychological Association, 619–647.
- Carlile, Lord (2014) *Independent Parliamentarians’ Inquiry into the Operation and Effectiveness of the Youth Court*. London: National Children’s Bureau.
- France A, Bottrell D and Armstrong D (2012) *A Political Ecology of Youth and Crime*. Basingstoke: Palgrave Macmillan.
- Johns, D, Williams, K & Haines, K (2017) Ecological Youth Justice: Understanding the Social Ecology of Young People’s Prolific Offending, *Youth Justice*, 17(1) 3–21.
- YJB (2012) Profiling young people with prolific offending histories in Wales (2009-10 cohort), YJB Cymru [Wales].
- YJB (2015) *Youth Justice Statistics 2013/14, England and Wales Youth Justice Board/ Ministry of Justice Statistics Bulletin*. Home Office, UK.



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How can England and Wales achieve a child-friendly criminal record disclosure system?

By Claire Sands, Jen Twite and Christopher Stacey

Introduction

It is unquestionably the case that a criminal record in England and Wales holds people back from getting on in life, impacting on a wide-range of areas including employment and housing with knock-on effects on mental, emotional and even physical health. For those who acquire a criminal record in childhood, the negative effects will intersect with key moments in their life as they transition into adulthood, affecting university, career and other prospects with profound and long-term implications for that person's life (Justice Committee, 2017; Working Links, 2010).

The authors of this paper take a critical look at the current childhood criminal record system in England and Wales and explore the potential for reform. Claire Sands, author of the Standing Committee for Youth Justice's report on childhood criminal records in other jurisdictions, provides an overview of alternative regimes, many of which take a much less punitive, more child-friendly approach than England and Wales. Jen Twite, Head of Strategic Litigation at Just for Kids Law, considers what is wrong with the current system in England and Wales and reviews recent challenges that have been brought against its legitimacy. Finally, Christopher Stacey, Co-director of Unlock, considers whether it is possible to achieve a more child-friendly system in this country and suggests ways in which this might be achieved.

Comparative approaches: comparing the system in England and Wales with regimes in other jurisdictions

Claire Sands

Growing Up, Moving On: The international treatment of childhood criminal records (Sands, 2016) examined how children's contact with the criminal justice system was treated in 16 broadly comparable jurisdictions. The childhood criminal records system in England and Wales stood out as being one of the most punitive if not *the* most punitive of all the regimes under review. A criminal record acquired by a child in England and Wales could affect that person for longer, and more profoundly, than in any of the other jurisdictions. The research demonstrated that there are more rehabilitative systems elsewhere that seem to work successfully and provide ideas for reform.

Some of the most significant differences between the regime in England and Wales and more rehabilitative and child-friendly systems are briefly summarised as follows:

Point 1 England and Wales impose criminal records on high numbers of children

Compared to other places, children in England and Wales receive formal disposals, which have serious criminal records implications, comparatively frequently. In 2013/14, some 60,000 cautions and convictions, all attracting a criminal record, were given out to children in England and Wales. In New Zealand, by comparison, the number of children given a criminal record with equivalent consequences that year was just 48.

Point 2 England and Wales does not substantially differentiate between child and adult records

In England and Wales, criminal records acquired in childhood are treated substantially the same way as those acquired in adulthood, regardless of the offence category. The only difference is that childhood records become 'spent' and can be 'filtered' more quickly than those of adults in some cases. Most jurisdictions that were examined had separate systems for child and adult criminal records and treated the two types very differently. In a number, childhood criminal records were held on entirely separate databases to those of adults (with some rare exceptions, generally for the most serious crimes), with access restricted. Under many systems, separate access and disclosure policies apply for adult and childhood records. For example, in Texas, 'juvenile' records are held on the *Juvenile Justice Information System*; these records are not available to the general public and they generally benefit from far greater protections than adult records.

Point 3 Childhood records handed down in England and Wales can never be deleted

England and Wales has no provision for destroying childhood criminal records. A record of a childhood caution or conviction, however minor, is kept by the state for life (until 100 years) and can never be erased. Again, we stand out in this regard with 11 of the 16 jurisdictions under review having provision for expunging childhood criminal records. Among these 11 there is significant variation in the timeframes, conditions and processes that apply to expungement policies. Italy is perhaps the most liberal, deleting all records that do not relate to a custodial sentence when the holder turns 18, even if the child has offended again before their 18th birthday. In France, most childhood records are deleted after three years; in Germany most are removed from the Register when the young person turns 24. In some jurisdictions deletion happens automatically. For example, in Canada, the system is programmed to automatically delete records at the end of the 'access period'.

Point 4 England and Wales allows relatively unrestricted disclosure of childhood criminal records

England and Wales also has one of the most unrestricted regimes in terms of childhood criminal records disclosure. Childhood records, even for relatively minor offences must frequently be disclosed for many years, and often throughout a person's lifetime. Even spent convictions may, if they are not eligible for filtering, be disclosed on standard and enhanced checks, which account for about 80 per cent of all criminal record disclosures. The disclosure of childhood criminal records is far more limited in most of the other jurisdictions under review. In New Mexico, childhood records can be 'sealed' preventing subsequent disclosure. In Spain, once a child reaches 18 it is almost impossible for anyone, even a judge, to access the record.

Point 5 There is a punitive culture of checks in England and Wales

The culture surrounding criminal records and criminal record checks compounds the situation in England and Wales. Criminal record checks are comparatively frequent here – in 2015/16, 4.3 million certificates were issued by the Disclosure and Barring Service ('DBS') (DBS, 2017a). Employers in some other jurisdictions do not place the same emphasis on criminal records. For instance, in Spain, it is unusual for employers to ask for a criminal records check; in France, the 'right to be forgotten' is a dominant attitude; and in Germany a relaxed approach is often taken by employers to minor or irrelevant convictions.

Summary

Under our current system, a childhood criminal record is very likely to negatively affect vulnerable children in ways which comparable jurisdictions actively seek to avoid. Other, more rehabilitative and child-friendly systems are possible and there is much that we can learn from the regimes in other jurisdictions.

Challenging the current system in England and Wales Jen Twite

The most recent challenge to the criminal records system was the case of *R (P, G, W and Krol) v SSHD & SSJ* [2017] EWCA Civ 321 (hereafter referred to as '*P and others*'). In this case the Court of Appeal found the current regime to be unlawful; this decision is being challenged by the Secretaries of State and the case is due to be heard in the Supreme Court in June 2018.

• The system under challenge

At present all convictions and cautions are retained

on the Police National Computer (PNC). This includes cautions and previous out of court disposals such as youth reprimands and final warnings that were replaced by youth cautions. In some cases, other information, such as acquittals or investigations, can be stored on the PNC, although such records are usually stored on local records.

Police intelligence is recorded on local police systems but is retained on the Police National Database (PND). Police intelligence can be anything from an informal resolution of a criminal matter, an acquittal for an offence, a fixed penalty notice, an arrest that led to no further action being taken, or even an unsubstantiated allegation that the police never pursued. All information is held until the individual is 100 years old, at which point it is wiped (i.e. permanently removed) from the system.

● Disclosure of information

The Rehabilitation of Offenders Act 1974 as amended by the Criminal Justice and Immigration Act 2008 introduced the concept of spent convictions. Most convictions and cautions become spent after a period of time (the rehabilitation period) after which they are not disclosed to employers on basic checks. Childhood convictions generally become spent sooner than those of adults. Exceptions to this regime apply for certain professions, where a standard or enhanced check can be made which would disclose spent convictions. The Rehabilitation of Offenders Act (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013 (SI 2013/1198) allows for all convictions and cautions to be disclosed when applying for certain roles.

There are thus three types of checks that an employer can carry out: A basic check discloses any unspent convictions and cautions; a standard check discloses all convictions and cautions, spent or unspent; and an enhanced check discloses all convictions and cautions, as well as any police intelligence that is deemed to be relevant by the disclosure officer.

This regime was found to be unlawful in *R (T) v Chief Constable of Greater Manchester Police* [2014] UKSC 35 (hereafter referred to as '*T*'). The Supreme Court found that the regime was indiscriminate and therefore a breach of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (right to respect for private and family life). As such, the Court held that the 1975 Order was *ultra vires*.

● Filtering

Following the Court of Appeal judgment in *T* the government introduced the filtering regime (see DBS/MoJ, 2013 for further information). Under this system

convictions and cautions can be filtered meaning they will not be disclosed on a standard or an enhanced check. The system has been criticised for being indiscriminate and not allowing for any discretion.

Cautions have the potential to be filtered six years after they have been administered, or after two years in the case of childhood records. Cautions for any offence listed under Schedule 15 Criminal Justice Act 2003 cannot be filtered; the list includes most violent offences (but not common assault) and most sexual offences.

Convictions have the potential to be filtered 11 years after they are received, or after 5.5 years if received as a child. The conviction will only be filtered if the individual did not receive a custodial sentence, if the offence is not listed in Schedule 15 (see above) and providing the individual does not have more than one conviction. If an individual has two convictions, even if they relate to the same incident, all their convictions will be disclosed.

● *P v Others*: The facts of the case

The Court of Appeal in the case of *P and Others* found that the filtering regime does not adequately meet the concerns of the Supreme Court in *T*.

The case concerns a number of joined appeals. In the case of *P* the appellant received two convictions, one for shoplifting and one for failing to surrender to court in respect of that shoplifting charge. As she has two convictions neither are filtered. *G* received two reprimands for sexual offences committed when he was 12 years old, and *W* has a conviction for ABH which he committed when he was 16 and for which he received a conditional discharge.

In respect of all three cases all the reprimands and/or convictions will be disclosed to all employers who carry out standard or enhanced checks for the rest of the individuals' lives. There is no appeals mechanism, and no assessment of risk. Both *G* and *W* were children when they offended. Age is not a factor in deciding whether a conviction or caution will be filtered.

● The Court of Appeal judgment

In *P and Others* the Court of Appeal found that a far more nuanced system is needed. Whilst the Court emphasised that it is parliament's role to find a system that is compatible with Article 8, the Court did suggest a number of possible solutions (at paragraph 124 of the Judgment). For example, there could be a mechanism to review decisions to disclose particular information that would allow individuals affected to apply to have their convictions or cautions filtered. Such a review mechanism could then take into account all relevant

factors including age at the time of the offence.

Lord Dyson, in the case of *T*, at paragraph 38, suggested what factors are relevant when deciding whether to disclose a conviction, these include:

- the seriousness of the offence;
- the age of the offender at the time of the offence;
- the sentence imposed or other manner of disposal;
- the time that has elapsed since the offence was committed;
- whether the individual has subsequently re-offended;
- the nature of the work that the individual wishes to do.

Should the Supreme Court agree with this approach, then it will be for the government to revise the current system to allow for a more nuanced approach to disclosure that would allow a far greater proportion of offences to be filtered.

Achieving a more child-friendly system in England and Wales: is this possible and how might it be achieved? Chris Stacey

The problem

It is a sad irony that a criminal record only becomes a problem when someone decides to get on in life; a criminal record check is not required to sell drugs or join a gang, but it can be crippling for employment (Justice Committee, 2017).

The intention of the DBS filtering system was to prevent the disclosure of old and minor offences on standard and enhanced criminal record checks and, since the system was introduced in 2013, it has helped many people be free of the stigma and discrimination of having to disclose these types of record. However, as shown above, there are many problems with the system; it is still the case that childhood criminal records, even for relatively minor offences, may continue to be liable for disclosure throughout a person's lifetime. The response to a Freedom of Information request revealed that relatively minor under-18 convictions are routinely and widely disclosed: Between 2013 and 2015 under-18 shoplifting was disclosed 34,000 times; there were over 2,795 disclosures of under-18 convictions for theft of a cycle (DBS, 2017b).

Achieving a better system

In his review of the youth justice system in 2016, Charlie Taylor recommended a distinct system for the

disclosure of criminal records acquired in childhood. David Lammy MP, in his review of outcomes for Black, Asian and Minority Ethnic individuals in the criminal justice system (2017) recommended a process of 'sealing' criminal records. Unlock has made specific recommendations for the childhood criminal records system.¹ In relation to the filtering process, we have recommended that:

- 1 All under-18 cautions are automatically filtered out after two years, at most.
- 2 There is no limit on the number of under-18 convictions that can be filtered out providing they did not result in a prison sentence.
- 3 Where filtering is not automatic, a review mechanism should be introduced to consider offences for filtering. This could be performed by the police with the possibility of appeal

Given the ongoing legal challenges described above, the government has been sitting on the current system, defending it to the hilt, including in its recent response to the Justice Committee's inquiry into the disclosure of youth criminal records. It is hoped that once the Supreme Court has ruled later this year, the government will undertake proactive work to establish a much more proportionate framework. Unlock recommends that an appropriate statutory framework would be one that has the following three broad characteristics:

- 1 *Transparent and fair*: Clear to all parties, including individuals and employers. Individuals are able to understand what will be disclosed on a certificate.
- 2 *Proportionate*: Old, minor or irrelevant information is removed from the disclosure where it does not relate to the purpose of the check being undertaken.
- 3 *Flexible*: For enhanced checks, the police can disclose relevant information if necessary (even if filtered).

The way forward – Discretionary filtering

The filtering system should, principally, be an automatic process that gives clarity and certainty. However, any system that is wholly dependent on automatic rules, without discretion or review, is going to be inflexible with people on the margins being unfairly affected. That is why a discretionary process to establish a more nuanced approach needs to be built into the system.

Scotland and Northern Ireland have already taken steps towards a fairer system and their initiatives show what is possible. Under the Scottish system there

1 <http://www.unlock.org.uk/tag/childhoodcriminalrecords/>

is a 'review process' by way of an 'application to a sheriff' that allows those with a spent conviction for an offence on the 'rules list' to apply to a sheriff to have this information removed from their disclosure certificate if they think it is not relevant to the role for which they have asked for the disclosure. In March 2016, the Department for Justice in Northern Ireland introduced a criminal records filtering review scheme which provides an opportunity for independent review. Despite issues and limitations with both systems, these review processes nevertheless provide a strong basis for a similar process to be introduced in England and Wales.

At the launch of the Law Commission's report into their review of the DBS filtering system in February 2017, the National Police Chiefs Council indicated support for the idea of chief officers being given responsibility to apply similar tests of relevance and proportionality as they currently do with non-conviction information. Building on the existing quality assurance framework for enhanced checks, the police could assess individual DBS Service applications and apply a discretionary filtering process, determining whether unfiltered convictions/cautions are relevant to the role (and so disclosed) or not relevant (and so not disclosed). The discretionary filtering process would need to be subject to independent review. This could be carried out by the Independent Monitor, receiving appeals from applicants who believe information is no longer relevant and so should not be disclosed.

The Home Office would need to undertake an assessment of the costs of introducing a discretionary filtering process, which it has yet to do. The current DBS system is self-financed by employers. In addition to the fixed fee charged by the DBS (£26 for standard, £44 for enhanced), employers pay an additional cost if they use the services of an umbrella body, often between £10 and £25. A small rise in the fixed cost of DBS checks (eg 50p per check) could cover the additional resources of an expanded role for the Independent Monitor.

'Wiping' the slate clean

Alongside a more proportionate disclosure system, the question remains about whether and for how long information should be retained on police systems. It seems very punitive to keep records until individuals reach 100 years old, particularly in the case of childhood records. All childhood criminal records that

are spent should have the potential to be 'wiped' at some point. If certain conditions are met (for example, if they have not offended in the 10 years following the end of their sentence) the record should be physically deleted from police computers.

Conclusion

A fairer and more flexible system would be one with expanded automatic filtering rules and a discretionary filtering process with a review mechanism so that individual circumstances can be considered. This would enable those with old and minor convictions to move on positively with their lives and to more easily gain employment. It is common sense that, while certain offences need to be disclosed to employers, we should not be unnecessarily blighting the lives of people who are trying to get on in life by disclosing old, minor and irrelevant information that holds them back and stops them from reaching their potential. It seems particularly punitive when those records were obtained during childhood.

References

- Disclosure and Barring Service (2017a) *Disclosure and Barring Service Annual Report and Accounts for the period 1 April 2016 to 31 March 2017*. London: Disclosure and Barring Service
- Disclosure and Barring Service (2017b) *Information about standard and enhanced disclosures: 2013 to 2015*. London: Disclosure and Barring Service
- Disclosure and Barring Service and Ministry of Justice (updated 2013) *DBS Filtering Guide*. London: Disclosure and Barring Service/ Ministry of Justice
- House of Commons Justice Committee (2017) *Disclosure of Youth Criminal Records. First Report of Session 2017-19*. London: House of Commons
- Lammy, D. (2017) *The Lammy Review. An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System*. London: HM Government
- Sands, C. (2016) *Growing Up, Moving On: The international treatment of childhood criminal records*. London: Standing Committee for Youth Justice
- Taylor, C. (2016) *Review of the Youth Justice System in England and Wales*. London: Ministry of Justice
- Working Links (2010) *Prejudged: Tagged for Life. A research report into employers' attitudes to ex-offenders*. Middlesbrough: Working Links

Cases

- R (P, G, W and Krol) v SSHD & SSJ* [2017] EWCA Civ 321
- R (on the application of T and another) (Respondents) v Secretary of State for the Home Department and another (Appellants)* [2014] UKSC 35

Why a participatory, rights-based approach is the best way to protect children in trouble with the law

By Dr Laura Janes

Children in prison in England and Wales are vulnerable as a result of their backgrounds (*R (on the application of the Howard League) v Secretary of State for the Home Department and the Department of Health* [2003] 1 FLR 484). They are also vulnerable to abuse while in prison, as demonstrated by the recent Medway exposé in which the BBC filmed officers abusing children (BBC, 2016).¹ The risk of abuse continues despite sophisticated monitoring, complaint and child protection systems overseen by a range of statutory and independent bodies. Something different is required to protect children in prison. Lessons from the Howard League for Penal Reform's specialist legal advice and participation work suggests that a rights-based approach that empowers children and is consistent with the principles underpinning child-friendly justice is the best way to protect children in prison.

The vulnerability of children in prison

In 2002 the Howard League brought a judicial review that emphasised the significant mental health needs of children in prison (*R (on the application of the Howard League) v Secretary of State for the Home Department*). As part of that case, Mr Justice Munby (as he then was) accepted the Howard League's evidence that:

'[Children in custody] are, on any view, vulnerable and needy children. Disproportionately they come from chaotic backgrounds. Many have suffered abuse or neglect...they need help, protection and support if future offending is to be prevented.'

Over half of the children in YOIs [Young Offender Institutions] have been in care. Significant percentages report having suffered or experienced abuse of a violent, sexual or emotional nature. A very large percentage have run away from home at some time or other. Very significant percentages were not living with either parent prior to coming into custody and were either homeless or living in insecure accommodation. Over half were not attending school, either because they had been permanently excluded or because of long-term non-attendance. Over three-quarters had no educational qualifications. Two-thirds of those who could be employed were in fact unemployed. Many reported problems relating to drug or alcohol use. Many had a history of treatment for mental health problems. Disturbingly high percentages had considered or even attempted suicide.'

Little has changed in this regard since the 2002 judgment, as Sir James



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¹ <http://www.bbc.co.uk/programmes/b06ymzly>

Munby recognised in his Parmoor lecture (Howard League, 2017).² Youth Justice Board statistics for children entering custody between April 2014 – March 2016 show that a significant proportion of children had mental health problems, two thirds were not engaging in education and almost half had substance misuse concerns (Ministry of Justice, 2017a).³

Children are not safe in prison

The prison system in England and Wales is experiencing ongoing and persistent crisis. Although figures for the last ten years show a drop in the number of children being sent to prison, the rate is still high for a European country and the levels of black, Asian and minority ethnic (BAME) children entering the system have not decreased: the reduction in the number of children entering custody has related largely to white boys. In 2017, on average 870 children were in penal detention at any one time, three quarters of whom were held in prisons and half of whom are from BAME backgrounds (Ministry of Justice, 2018).⁴ Black children are seven-and-a-half times more likely to receive a long term custodial sentence (Bateman, 2017).⁵

Thirty-seven children have died in secure penal establishments since 1990. According to data from the Youth Justice Board (YJB) published in 2017, the use of force on children in prison increased by 36 per cent in the five years leading up to 2015/2016. In the same period, assaults increased by 95 per cent and self-harm increased by 120 per cent (Ministry of Justice, 2017b).⁶ Exposure to, let alone experience of this level of violence would give rise to a child protection referral in the community.

In his annual report published in July 2017, the Chief Inspector of Prisons said that ‘by February 2017, we concluded that there was not a single establishment that we inspected in England and Wales in which it was safe to hold children and young people.’⁷

In September 2017, the Local Government Association (LGA) called for urgent action to improve safety in young offender institutions following Her Majesty’s Chief Inspector’s damning report about unsafe conditions in all YOIs. Richard Watts, Chair of the LGA’s

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Children and Young People Board, stated: ‘There is no other situation in which children and young people would be placed into environments that are known to be unsafe, and youth custody should be no exception.’⁸ He called upon the government to take urgent remedial action. In November 2017, when Her Majesty’s Inspectorate of Prisons (HMIP) published an analysis of 12–18-year-olds’ perceptions of their experiences in secure training centres and young offender institutions between 1 April 2016 and 31 March 2017, the situation had not changed. 39 per cent of the boys in prison and more than one in five (22%) of the children in secure training centres did not feel safe (HMIP, 2017).⁹

The risk of abuse of children in prison

Children in closed institutions such as prisons are inherently vulnerable to abuse due to the nature of the environment. Citing Lord Justice Sedley, Kaufmann and Owen talk of the ‘sense of impotence and isolation’ experienced by prisoners when informed by prison officials of an unpleasant truth—‘I’m the law here’ (Kaufmann and Owen, 2013).¹⁰ The very fact of incarceration creates a power paradigm in which the risk of abuse is great. Sedley was writing in the 1990s about the institutional reluctance by the Courts to interfere with prison matters prior to the 1970s. Yet, just last year, a prison officer responsible for children told the legal director at the Howard League that he had ‘all the power’. In the uniquely coercive environment of prison, not only do human rights abuses occur but the abused will often feel unable to speak out about them.

In December 2017, seven former prison officers were charged in court for the alleged abuse of teenage boys at Medomsley Detention Centre in the 1970s

2 <https://howardleague.org/wp-content/uploads/2017/10/children-across-the-justice-systems.pdf>

3 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/585991/key-characteristics-of-admissions-april-2014-to-march-2016.pdf

4 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/676072/youth_justice_statistics_2016-17.pdf

5 <http://thenayj.org.uk/wp-content/uploads/2017/09/State-of-Youth-Justice-report-for-web-Sep17.pdf>

6 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/585897/youth-justice-statistics-2015-2016.pdf

7 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/629719/hmip-annual-report-2016-17.pdf

8 <https://www.local.gov.uk/about/news/councils-call-urgent-action-improve-safety-youth-offending-institutions>

9 https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2017/11/6.3903_HMIP_Children-in-Custody-2016-17_FINAL_WEB_011117.pdf

10 The price of dignity and liberty: legal aid for prisoners, Kaufmann and Owen, [2013] E.H.R.L.R., 5, 482-493

and 1980s (The Guardian, 2017).¹¹ In January 2018, the Independent newspaper reported on the alleged physical and sexual abuse of boys in other prisons in the 1970s and 1980s (The Independent, 2018).¹² The alleged abuse at Medway Secure Training Centre (STC), highlighted by Panorama in 2016 again revealed just how vulnerable children in prison are to abuse, despite checks and balances to prevent it.

The Medway Improvement Board, set up following the Panorama programme, conceded that the revelations of abuse in the programme ‘were, by common consent, deeply shocking’.¹³ The broadcast showed evidence of children held in custody in Medway, some of whom were highly vulnerable, ‘being physically and emotionally abused by those who were employed to protect and care for them’.¹⁴

Abuse at Medway occurred despite child protection measures, strict safeguarding procedures and regular scrutiny from external bodies including HMIP, Ofsted and the Youth Justice Board who had monitors on site. In fact, the joint report by HMIP and Ofsted published prior to the Panorama broadcast found that the ‘overall effectiveness of Medway ...STC... to meet the needs of young people is judged good with outstanding features’ (HMIP and Ofsted, 2014).¹⁵

A different approach: some lessons from the Howard League’s legal and participation work

Child protection protocols are important safeguards. In the context of youth custody, they tend to be triggered by negative events that have already happened. Based on the legal work of the Howard League it is possible that the abuse could be prevented in the first place by empowering individuals to be aware of their rights and to be able to speak out against injustice before it occurs.

The 2002 legal challenge brought by the Howard League established that the protections of The Children Act applied to children in prison. As a result of that case, the Howard League established a rights-based legal service for children and young people in detention.¹⁶

The Howard League advice line is the only dedicated legal service for children and young people in prison. The legal service takes over 1000 enquiries each year from children in custody. The Howard League’s lawyers represent young people under the age of 21 in prison or at risk of going to prison.

The legal work has improved outcomes for children by challenging in court the treatment of and conditions for children in custody; major issues including the use of isolation, the resettlement of children on release and legal representation for children facing parole or adjudications.

The case of AB, a child who was isolated for 55 days in his cell at Feltham prison is an example of how the Howard League’s rights-based work has resulted in wider change, resulting in all instances of de facto segregation having to be brought under the formal YOI rules to ensure appropriate safeguards are in place. The Howard League argued that such treatment was ‘inhuman or degrading’ contrary to the requirements of Article 3 of the European Convention on Human Rights (ECHR). In July 2017 the Court decided that certain periods of the child’s isolation and the inadequate access to education breached prison rules. It did not accept that the child’s isolation for over 22 hours a day for periods of over 15 days at a stretch was inhuman or degrading and therefore found no breach of Article 3 of the ECHR (R (AB) v Secretary of State for Justice [2017] EWHC 1694 (Admin)).

Calls to the Howard League advice line since that case suggest that children and professionals in secure penal settings have become increasingly aware of the risks and legal requirements around isolation and are empowered to take legal action to prevent prolonged isolation.

Alongside the legal work, the Howard League has embedded a participatory approach into the organisation’s work. This has taken the form of participation workshops with young people in prisons, STCs and secure children’s homes which not only fill the gaps in their legal knowledge identified through the legal work but also captures young people’s views and experiences. The Howard League’s participation has underlined the importance of speaking to children themselves to understand the full extent and limitations of their knowledge or understanding.

This model of participatory legal education allows young people to learn current law and practice. It provides an opportunity for them to know they are listened to and feed into a programme of change. For example, the Howard League used this model to influence the Sentencing Council’s revised guideline for children and then used the information from children to inform a sentencing toolkit for adults and children

11 <https://www.theguardian.com/uk-news/2017/nov/21/former-medomsley-detention-centre-staff-charged-with-abuse-and-misconduct>

12 <https://www.independent.co.uk/news/uk/crime/detention-centre-torture-boys-youth-sexual-physical-abuse-inquiry-kirklevington-medomsley-a8142456.html>

13 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/523167/medway-report.pdf

14 Ibid.

15 <https://reports.ofsted.gov.uk/sites/default/files/documents/secure-training-centre-reports/medway/Medway%20STC%20Ofsted%20report%20September%202014.pdf>

16 The Howard League case [2003] 1 FLR 484

to help achieve better outcomes for children facing sentence (Howard League, 2018).

The Howard League is currently working on a European Union funded project with partners, including Defence for Children International in Belgium and Italy and the Helsinki Foundation in Poland, on a programme of participation work for children in prison: Children's Rights Behind Bars. It aims to enhance the rights of children in prison and improve outcomes for them by also working with professionals who support them in custody and on release.

Through the legal and participation work, the Howard League has tried to convert the law from something that is only associated with punishment to something that can support and assist children in trouble. However, it appears that children often appreciate the equalising nature of the law once they understand it and can see how it can be used to uphold their rights. There are a range of other potential benefits that come with that appreciation.

The value of a child-friendly rights-based approach

The opportunity for children to see law and rights in practice is important to counter the risk that human rights are seen as a remote concept disconnected from everyday life. According to Elizabeth Stanley, there is an intrinsic link between human rights and the chance of a better life (Stanley, E in Weber, L., 2016).¹⁷ The legal framework governing children's rights builds on human rights and acknowledges that children have enhanced rights because of the special nature of the child. The United Nations Convention on the Rights of the Child (UNCRC) has been signed by all UN member states bar the United States of America. Critically, Article 12 of UNCRC provides that children should have the right to express their views freely in all matters affecting the child with support if necessary. With regard to children in trouble with the law, Article 40 of the UNCRC states that children need to be treated in a way which promotes their sense of 'dignity and worth'.¹⁸ It identifies the importance of 'promoting the child's reintegration and the child's assuming a constructive role in society'.¹⁹

A rights-based approach can help to prevent abuse because it empowers children to recognise it. Failure to recognise abuse as such is a fundamental barrier preventing children from speaking out about the harm they have suffered. For example, the Howard League has worked with young people who have been abused

in restraint situations, who have said they did not recognise the situation as abusive or potentially illegal before obtaining legal advice: they did not think they could complain or raise their concerns.

It is also possible that empowering children may have additional benefits in terms of positive outcomes for their lives and behaviour in line with desistance theory, and procedural justice theories about legitimacy. This may especially be the case if children see how they can become active users of the law for their own benefit rather than simply being punished by legal processes.

In that way they may be seen to participate in what McNeil and Schinkel (2016) refer to as a third level within desistance theory, namely a sense of belonging to a law abiding society. On a more immediate level, it is possible that being in a position to make the law work for, rather than against them, may simply give children a sense of legitimacy based on a positive experience of procedural justice that can enhance their trust in the system and their willingness to comply with the law in future (Fagan and Tyler, 2005).

The Supreme Court in the UK recognised the wider benefits to society of people knowing their rights and responsibilities (*R (UNISON) v Lord Chancellor* [2017] UKSC 51: para 71):

'People and businesses need to know, on the one hand, that they will be able to enforce their rights if they have to do so, and, on the other hand, that if they fail to meet their obligations, there is likely to be a remedy against them. It is that knowledge which underpins everyday economic and social relations. That is so, notwithstanding that judicial enforcement of the law is not usually necessary, and notwithstanding that the resolution of disputes by other methods is often desirable.'

Using child-friendly methods to encourage and enable children to complain can help to create a culture where it is recognised that children have inalienable rights and should be listened to.

There are fundamental differences between a rights-based approach and a child protection approach (see Figure 1 overleaf).

What is preventing a rights-based approach?

Giving children in custody information about their universal rights can be a challenge, particularly in a prison environment where there is a marked imbalance of power. Some professionals fail to see the reasons for educating children about their rights or worry that it might give children 'a sense of

¹⁷ The Routledge International Handbook of Criminology and Human Rights. Routledge

¹⁸ Article 40 of United Nations Convention Rights of the Child

¹⁹ Ibid.

Figure 1 Differences between a rights-based approach and a child protection approach

Rights	Child protection
Reactive but also can be preventative	Reactive
Non-judgemental – inalienable, universal	Individualised and subjective – risk that child may not be believed
May facilitate a sense of agency	Child is the subject to be protected
Can encourage lawfulness/restore faith in the law/ give rise to a remedy	Safety is the sole aim

entitlement’ that could result in a legal challenge. A senior member of prison staff for example told Howard League lawyers that ‘courts and rights have nothing to do with safety’. Some professionals have told Howard League lawyers that they are not allowed to facilitate access to lawyers for children in prison as if that would somehow amount to a conflict of interest rather than fulfil the duty of every citizen to ensure children have a voice and access to justice. We still have a long way to go until a rights-based culture has been fully embraced.

Reflections

England and Wales has advanced structures in terms of monitoring abuses of human rights and children’s rights. The UK National Preventative Mechanism was established in 2009 to strengthen the protection of people in detention through independent monitoring. HMIP annually inspect prisons for children.

Yet despite our advanced monitoring structures and child protection measures, the reality for children’s rights in prison does not match the sophisticated rights framework.

It is beyond doubt that we urgently need to bring children’s rights in real life closer to the legal framework that supports their rights. Empowering children and the professionals who work with them, giving them knowledge about their legal rights in a child-friendly way and creating a culture where children feel safe to speak out and be heard is a good start and may go some way to preventing abuse.

References

- Allison, E & Hattenstone, S (2017) The Guardian, ‘Former detention centre staff face abuse and misconduct charges’ [online] Available at: <https://www.theguardian.com/uk-news/2017/nov/21/former-medomsley-detention-centre-staff-charged-with-abuse-and-misconduct> [Accessed 22 March 2018]
- Bateman, T. (2017) The state of youth justice 2017 [online] Available at: <http://thenayj.org.uk/wp-content/uploads/2017/09/State-of-Youth-Justice-report-for-web-Sep17.pdf> [Accessed 22 March 2018]

- Dearden, L. (2018) The Independent, ‘Hundreds of boys ‘tortured’ at youth detention centres in 1970s and 1980s’ [online] Available at: <https://www.independent.co.uk/news/uk/crime/detention-centre-torture-boys-youth-sexual-physical-abuse-inquiry-kirklevington-medomsley-a8142456.html> [Accessed 22 March 2018]
- Fagan, J. & Tyler, T.R. (2005). Legal socialisation of children and adolescents. *Social Justice Research*, 18(3), 217-242.
- HM Chief Inspector of Prisons for England and Wales (2017) Annual Report 2016-2017 [online] Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/629719/hmip-annual-report-2016-17.pdf [Accessed 22 March 2018]
- HM Inspectorate of Prisons (2017) Children in Custody 2016-2017 [online] Available at: https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2017/11/6.3903_HMIP_Children-in-Custody-2016-17_FINAL_WEB_011117.pdf [Accessed 22 March 2018]
- Local Government Association (2017) Councils call for urgent action to improve safety in youth offending institutions [online] Available at: <https://www.local.gov.uk/about/news/councils-call-urgent-action-improve-safety-youth-offending-institutions> [Accessed 22 March 2018]
- McNeill, F. and Schinkel, M. (2016) ‘Prisons and desistance’ in *Handbook on Prisons*. Bennett, J., Crewe, B. and Jewkes, Y., (eds.). Cullompton: Willan Publishing
- Medway Improvement Board (2016) Final Report of the Board’s Advice to Secretary of State for Justice [online] Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/523167/medway-report.pdf [Accessed 22 March 2018]
- Ministry of Justice (2017a) Key Characteristics of Admissions to Youth Custody April 2014 to March 2016 [online] Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/585991/key-characteristics-of-admissions-april-2014-to-march-2016.pdf [Accessed 22 March 2018]
- Ministry of Justice (2017b) Youth Justice Statistics 2015/2016 England and Wales [online] Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/585897/youth-justice-statistics-2015-2016.pdf [Accessed 23 March 2018]
- Ministry of Justice (2018) Youth Justice Statistics 2016/17 England and Wales [online] Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/676072/youth_justice_statistics_2016-17.pdf [Accessed 23 March 2018]
- Munby, J. (2017) Children Across the Justice Systems [online] Available at: <https://howardleague.org/wp-content/uploads/2017/10/children-across-the-justice-systems.pdf> [Accessed 22 March 2018]

Statute, regulations and codes of practice

- The Children Act 1989
United Nations Convention Rights of the Child

Cases

- The Howard League case [2003] 1 FLR 484
R (G) v Southwark [2009] UKHL 26
R (AB) v Secretary of State for Justice 2017
R (UNISON) v Lord Chancellor [2017] UKSC 51.

Child-friendly resettlement: difficult by definition?

By Pippa Goodfellow

Introduction

The 'Child-Friendly Youth Justice?' Conference in September 2017 marked my last day leading youth justice policy and programmes at Nacro, including the Beyond Youth Custody (BYC) programme. This offered a timely opportunity to reflect on five years of work to challenge, advance and promote better thinking in policy and practice for the effective resettlement of young people leaving custody. BYC was a National Lottery-funded learning and awareness programme, delivered in partnership by Nacro, the social justice charity, the universities of Salford and Bedfordshire, and ARCS (UK).

In this paper, I consider some of the challenges in defining and achieving effective resettlement, drawing on evidence developed by the BYC partnership, my interactions with a wide network of stakeholders and crucially, the experiences of young people themselves. I examine the concept of child-friendly resettlement and the tough questions it poses for policy and practice – and I offer some suggestions for how the lessons we learned about effective resettlement might be interpreted and applied. Throughout this paper I use quotations from some of the many children and young people who have played such a crucial role in this work. However, in the absence of a clear, consistent and comprehensive definition of resettlement and its objectives, those working hard to achieve it find themselves in a policy vacuum.



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Duplicitous semantics

'The word resettlement is a difficult concept – it implies that the aim is to help someone get back to where they once were. In reality this is very different – it's about helping someone move on and make change from previous situations.'

Resettlement practitioner, Goodfellow and Liddle, 2017, p34

Across wide-ranging areas of public policy, the term resettlement is used in diverse ways, encapsulating a broad range of activities. For those with an interest in the youth justice system, the term resettlement has been adopted as part of the everyday vernacular of policy and practice for children leaving custody. And given the myriad of custodial and community-based services working together in a resettlement context, how might that ultimately impact those they are seeking to 'resettle'?

In England and Wales, the term resettlement is a relatively recent adoption in a criminal justice context, as well as being inconsistent with many other jurisdictions, such as the USA, who use the term 're-entry'. Here, the favoured term was previously 'throughcare' or 'aftercare', until the Home Office indicated their preference for this work to be called resettlement in a 1998 consultation paper focused on better integration and improved

effectiveness of joint work between the prison and probation services (Home Office, 1998). Their stated reason for the change was an attempt to clarify this misunderstood term and consequently improve public and sentencers' confidence, through a renewed focus on the ultimate goals of what services were trying to achieve.

A continued drive towards integration between custodial establishments and community partners was evident in the introduction of the Detention and Training Order in 2000 for 12-17-year-olds, further emphasising continuity of interventions beyond the period of incarceration. The concept of a 'seamless sentence' with the first half spent in custody and the second half continued in the community aimed to provide consistency and bridge the stark divide (Hazel et al, 2002). The following year HM Inspectorates of Prisons and Probation (2001) offered some clarification about resettlement (see extract on the right) describing the essential aim as 'effective reintegration of imprisoned offenders back into the community'. Furthermore, the note acknowledged the key difficulties arising from the term. Firstly, concern was raised about the apparent move away from a more caring tone, potentially signalling a more punitive approach. Secondly, the terminology attracted criticism for the implied aim of 'restoration of a condition that never was' (HM Inspectorates of Prison and Probation, 2001). Perhaps what the new term also did, however, was recognise the disruptive and unsettling nature of periods in custody to people's lives, and the need for support to address this.

In the two decades since the introduction of 'resettlement' to criminal justice discourse, the youth justice system has evolved, and resettlement continues to be a key feature of its work. The Youth Justice Board (YJB) have consistently recognised the importance of resettlement as the use of youth custody has, first, increased substantially, then fallen again. This commitment has seen additional resources dedicated to resettlement work, through a number of pilot programmes such as the Resettlement and Aftercare Provision (RAP) initiative, and the RESET (Resettlement, Education, Support, Employment and Training) initiative (see Bateman et al, 2013). More recently, in 2014 the YJB launched four new resettlement consortia as part of the Transforming Youth Custody programme (Ministry of Justice, 2014). Originally funded for a pilot phase of three years, these were regional groups of cross-sector organisations from custody and the community, tasked to work together and develop an 'enhanced offer' to improve the life chances and resettlement outcomes of young people leaving custody (Gray et al, 2018). However, the YJB withdrew the funding for the pilots a year early in 2017, demonstrating that there were limits to its commitment to resettlement in the context

A word about terminology

'There will be those who look to older terminology – such as aftercare and throughcare – and who may see the use of resettlement as an example of a general tendency to introduce less tender or morally more neutral language. Others may feel that resettlement is as much open to objection as rehabilitation and reintegration on the grounds that it implies restoration of a condition that never was: many imprisoned offenders were not habilitated, integrated or settled prior to their incarceration. We understand these doubts. But we nevertheless favour the use of resettlement. It focuses attention on the desired outcome as well as the processes which allegedly promote the outcome'.

Taken from the foreword of *Through the Prison Gate: A joint thematic review*, HM Inspectorate of Prisons and Probation (2001)

of falling custody numbers and increased pressures on budgets.

The most recent YJB custody and resettlement case management guidance (2014) identifies 'seven pathways to successful resettlement', outlining the key areas to be considered as part of all intervention planning for children leaving custody. However, a lack of overall direction has recently been highlighted as a result of concerns about how the sum of the disparate pathways might affect a successful progression away from offending and towards social integration (Hazel et al, 2017).

In the period since the inception of the current youth justice system, the principal statutory aim of preventing offending by children and young people (Crime and Disorder Act, 1998) has provided the only consistent direction for resettlement practice. This narrow focus on reducing reoffending on release from custody has also been the blunt measure of success or failure. According to the binary measure of recidivism, the results are consistently poor and demonstrate that many young people are caught in a destructive cycle of crime from which they struggle to escape. (Goodfellow et al, 2015). Reoffending rates after custody are consistently high, with 68.7 per cent of under 18-year olds released in 2015 proven to have reoffended within 12 months (Ministry of Justice 2017a). HM Inspectorate of Probation asserted in their thematic inspection of resettlement that these statistics are 'shocking because we have known for at least a decade what helps children leaving custody to stop offending; and shocking because too few of these children are being

provided with what they need to lead crime-free lives’ (HMIP, 2015 foreword).

Do the consistently high reoffending rates demonstrate that the warnings about the departure from ‘throughcare’ were well founded? The current set of challenges facing resettlement practice may indeed indicate that these concerns are more relevant to children in the current context than ever before.

Contemporary context and challenges

The numbers of young people in custody in England and Wales have seen a substantial overall reduction to approximately a third of those of a decade ago. In December 2017, the number of children incarcerated in the secure estate was 876, with 69 per cent of this population held in YOIs, 19 per cent in Secure Training Centres (STCs) and 11 per cent in Secure Children’s Homes (SCHs) (Ministry of Justice 2018). Following his review of the youth justice system, Charlie Taylor recognised that the makeup of the youth custodial estate was ‘one which has been arrived at by adaptation of an existing unsatisfactory estate rather than by design’ (Taylor, 2016). The significant reduction in the use of custody is certainly welcome, but it poses new and significant challenges for resettlement services.

- **Distance from home**

‘A lot more individuals would get a lot more support if they were closer to home.’

The closure of some institutions and restructuring of the secure estate more generally has meant that a substantial proportion of young people end up in custody a long way from home. During his review, Charlie Taylor found that ‘on average most children are now accommodated further from home, increasing journey times to and from court and undermining efforts at resettlement’ (Taylor 2016). According to a recent inspection report (HMIP 2016), in the year ending March 2016 the average distance from home for children was 49 miles, an increase of 9% from 45 miles a decade earlier. The inspection found that further distances from home created difficulties in maintaining contact with families, carers and community-based professionals, as well as creating additional challenges for professionals trying to put a suitable release package in place.

- **A complex cohort**

‘Nobody’s getting to the root of the problem.’

Professionals working in resettlement are faced with trying to reduce offending by young people with multiple needs and entrenched offending patterns.

Many children in custody have had chaotic lives and experienced trauma, abuse, bereavement, periods in the care system, school exclusion, drug or alcohol dependency and mental health problems (Jacobson et al 2010; Liddle et al 2016; Ministry of Justice 2017b). Young people who have experienced adversity need appropriate support to guide them through the criminal justice system and to address their offending behaviour and change their lives. Only by ensuring their needs are identified and equipping staff to respond effectively can we ensure the system does not compound the impediments to young people’s chances of moving on from crime. As the number of incarcerated children has declined, many of those with less complex problems who might previously have been sent to custody have been diverted into community-based alternatives, leaving a higher proportion of children in custody with complex needs. Bateman (2016, p2.) notes that the children ‘left behind’ in youth custody are ‘typically more vulnerable, more disadvantaged and serving longer sentences’ with correspondingly more complex resettlement needs. This change in the profile of the custodial population has not been met with a fundamental reconfiguration of the secure estate to more effectively respond to their vulnerabilities through a therapeutic approach in childcare establishments. The National Association for Youth Justice (NAYJ) has argued that this represents a ‘failure to take advantage of the opportunity offered by the overall decline in the use of custody to ensure a substantial transfer to more child-appropriate forms of secure provision’ (Bateman 2016, p2).

- **Youth custody in crisis**

‘It’s about survival, getting through the day in one piece.’

The above challenges are made more difficult because young people are experiencing a custodial process that exacerbates problems, with many being held within a custodial estate which makes the task of resettlement more problematic. Following allegations of abuse at Medway Secure Training Centre in 2016, a new Youth Custody Improvement Board (YCIB) was asked by the then Justice Secretary, Michael Gove, to explore and report on the state of the youth custodial estate and recommend how the system could be improved, particularly focusing on any current risks to safety and wellbeing. Their assessment of YOIs and STCs was that they had found ‘a deterioration in the quality of provision, a demoralised staff group, insufficiently good leadership and an increase in violence’ (YCIB, 2017 p1). The overarching problem that the Board found was a lack of national vision for the youth secure estate which led them to recommend that ‘Ministers should clearly define what they believe the youth

custodial system is attempting to achieve, and only then how the success criteria can be developed in order to deliver it' (YCIB, 2017 p4). Following a series of further damning inspection reports of YOIs and STCs, the Chief Inspector of Prisons for England and Wales, Peter Clarke, concluded in his 2016-17 annual report that 'there was not a single establishment that we inspected in England and Wales in which it was safe to hold children and young people' (HMIP, 2017 p9). In this alarming context, the focus on resettlement and working towards future aspirations upon release is critically undermined.

- **Inconsistency between youth and adult systems**

'It all changes when you turn 18.'

The transition from the youth justice system to the adult justice system further impacts on the consistency and quality of support provided and can cause young people to fall unsupported through the cracks. Transition to adulthood can be a major obstacle to the resettlement of young people, many of whom report feeling that the system had dropped them on their 18th birthday, when much of the support they had received up to that point was withdrawn (Clinks, 2016).

- **Windows of missed opportunity**

'People don't appreciate how much it can feel like you are being set up to fail.'

There is a 'window of opportunity' following release when young people are enthusiastic to change (Bateman et al, 2013; Hazel et al, 2002; Hazel and Liddle, 2012) but there can also be quick disillusionment if support is not sufficient, relevant and timely. Central to overcoming these problems is making sure resettlement is the consistent driving force of sentence planning, but all too often this is not the case. Services are patchy or poorly coordinated, too little attention is given to preparing children for release and planning for resettlement doesn't start early enough in their sentence, when it is most effective (HMIP, 2015). Interventions that address multiple and complex problems do not work in isolation, yet young people report that joined-up working rarely happens in practice (Clinks, 2016). All too often those leaving custody experience a disjointed and inconsistent resettlement system, driven by competing priorities and characterised by difficulties like clashing appointments or repeatedly being asked the same questions that push young people further away from the support they crucially need.

- **The after-effects of incarceration**

'You can do every course in the jail, but you also come out with a label.'

Custody itself has impacts that are detrimental to longer term desistance, both in terms of practical issues and emotional wellbeing (Goodfellow and Liddle, 2017). Research has found that young people often find it hard to cope and feel disorientated when adjusting to life in the community. They struggle to adjust to the sudden change in environment and life regime, and with the renegotiation of relationships (Hazel and Bateman, 2015). For many young people, there are substantial structural challenges to contend with upon their release, including the significant barriers faced because of their (often extensive) criminal records. In their thematic inspection of resettlement, HM Inspectorate of Probation found that a lack of suitable, settled and supported accommodation, a deficiency in services to meet mental health and substance misuse issues and an absence of education, training and employment meant children missed opportunities during their transition (HMIP, 2015). The impact of imprisonment on relationships, both personal and with professionals, including breakdown of placements for looked-after children, often compounded these challenges even further. These factors might go some way to explaining why the experience of custody has a criminogenic effect, with children incarcerated for six to twelve months being significantly more likely to reoffend compared to those in receipt of an intensive community sentence (Ministry of Justice 2012).

'Prison just changes you altogether. You don't think the same, you don't act the same any more. I just think it sends you a bit crazy really. Always stays with you. I think it's the year missed.'

Reframing resettlement through research

- **Promoting desistance and sustainable positive outcomes**

'Now all I care about is my future.'

Research from BYC found that for resettlement to be effective and sustainable, we need to look 'beyond' the short-term aim of preventing reoffending. There needs to be longer term understanding of resettlement as a process promoting desistance, wellbeing and social inclusion (Goodfellow et al, 2015). Desistance is increasingly understood as being produced by an interplay between age and maturation, life transitions and social bonds, and personal and social identity. The binary measure of reoffending within twelve months of release captures a relatively short-term symptom rather than an early indicator of desistance or achievement of a longer-term sustainable goal (Factor, 2016). If sustained resettlement can be understood

Another word about terminology

Alternative definitions of what it means to 'settle' offer some paradoxical synergies with the challenges facing young people on release from custody:

Settle (US slang): To sentence (a person) to imprisonment, put in prison:

'I went back to jail because I had nothing else.'

'If you've got nowhere to go, nowhere to live, and nobody there for you, then the only place there is for you is jail really.'

Settle (for): Accept or agree to (something that one considers to be less than satisfactory):

'I had nothing when I came out, nothing to go to.'

'There's no point going to prison and being rehabilitated if you come out to nothing.'

'I'd rather be inside, it's easier than life.'

Settle: To silence (a troublesome person) by some means:

'I keep telling people what's wrong but no-one's listening.'

'It's really hard to get your voice heard.'

Oxford English Dictionary 2018

in terms of effecting a process involving a shift in how young people construct their identity and how that is manifested in behaviour, it follows that existing indicators of success might not capture the complexity of the resettlement journey (Hazel et al 2017).

Consistent with other research, BYC found that for a young person to commit to a desistance pathway, the development of confidence and agency over time is crucial (Bateman and Hazel, 2013). Professionals can provide personal support, including vital hope and resilience when a young person is in short supply of these emotional resources, helping to underpin the resettlement process and keep them on track (Goodfellow and Liddle, 2017). The adverse experiences of many young people – before, during and after periods in custody – further require resettlement work to focus on rebuilding or strengthening resilience, by identifying and responding to their needs including pre-existing trauma, mental ill-health and emotional difficulties (Liddle et al 2016; Goodfellow and Liddle, 2017).

'Many of the young people in prison have never been

in a position to sustain a place in society and achieve successful independence, as a result of circumstances that left us at a huge disadvantage.'

In understanding the desistance process, it is also vital to consider the structural impediments to change, rather than a focus entirely on individual agency. It is crucial to consider the practical difficulties that can present obstacles to effective resettlement. By focusing only on behaviours, a wide range of contextual factors which can complicate successful change move into the background, and this can act as an impediment to the desistance process. Crucially, and consistent with other research, this involves reframing resettlement interventions beyond a focus on individualised risk, recognising barriers and limited life chances, developing social capital and promoting inclusion (Gray, 2010; Haines and Case, 2015; Manchester Centre for Youth Studies, 2017).

• Key characteristics for resettlement support

There are characteristics of all resettlement support which BYC research has consistently shown are key to effectiveness and sustainability. The effectiveness of resettlement support is not just dependent on what elements of personal and structural support are provided at various stages of the sentence, but the characteristics of *how* they are provided. If interventions demonstrate the following key characteristics, they are more likely to be able to promote a young person's desistance process:

Constructive: Centred on exploring, building and reinforcing a positive identity, being future-focused, strengths-based, empowering and motivating.

Co-created: The young person as central to the resettlement process, focused on engagement and active participation of the young person and their supporters.

Customised: Individual and diverse wraparound support, recognising barriers and responding to diverse needs.

Consistent: Support runs through the resettlement journey, with all service providers focused on resettlement. A seamless programme featuring consistent relationships and enhanced support at transitions.

Co-ordinated: A widespread partnership across sectors providing a wraparound package of support, with dedicated resettlement staff to broker the engagement of partners across sectors, involving high-level buy-in, joint planning and information sharing.

(For further details see Hazel et al 2017)

A changing youth justice landscape

Charlie Taylor's review of the youth justice system recognised many of the significant challenges to resettlement and suggested that the proposed development of Secure Schools would play a principal role in offering future solutions, eg through closer ties to education and other services in the community (Taylor, 2016). The government says it is currently committed to the vision of a network of Secure Schools, but details of the forthcoming pilots and plans for a further rollout are currently unknown. As the Secure Schools programme develops and as details emerge, the issue of how to address the necessary changes to resettlement remains, at least in the more immediate term, largely unaddressed.

The current focus on reform clearly provides an important opportunity for lessons from resettlement research to be incorporated into the development of future solutions, as well as to address current problems. However, careful attention needs to be paid to how lessons from research become embedded into policy and practice in the context of broader developments. Concern was expressed during the review about the potential for unintended consequences of the new Secure Schools model. Young people cautioned that reforms might increase the attractiveness of this option for sentencers to 'educate the uneducated' (Clinks 2016, p19) and consequently generate an increase in the numbers of young people receiving custodial sentences, or in the length of sentences imposed, in a misguided effort to help troubled children who have disengaged from education. Sentencing guidelines must therefore emphasise and ensure that custody is reserved as an absolute last resort, where all other options are exhausted. This is imperative in order to guard against potentially damaging longer-term consequences for children, if the lessons from resettlement research are applied and unintentionally compound the attractiveness of custody through a perception of the increased effectiveness of reintegration back into the community.

In conclusion

A foundation of research evidence about *how* to design and deliver effective support has been established, so the ensuing test is to ensure that these lessons become embedded into the youth justice system of the future. The inherently disruptive nature of incarceration, compounded by the current crisis in the secure estate, poses significant challenges to resettlement services in mitigating against the effects of custody itself. The way in which we interpret and apply the lessons from resettlement research is crucial to the development

A final word about terminology

To realise youth justice policy and practice that is genuinely focused on the best interests of children, consideration might further be given to an alternative explanation of what it means to look 'beyond' youth custody. To do so underlines the incontestable point that achieving 'child-friendly' resettlement is inherently impeded by the experience of custody itself:

'Beyond': Having progressed or achieved more than.

'Beyond': Apart from; except.

'Beyond': Outside the physical limits or range of.

of appropriate solutions. A renewed commitment to custody as a last resort is vital, as is a recognition that those young people at risk of custody will also have complex needs necessitating complex solutions (Gray et al 2018; Hampson 2016). A critical, honest and inclusive debate is needed about how we should respond to children in trouble, to address their needs, help them to move on from crime and enable them to flourish. At the heart of such a debate lies the question of the place of youth custody as part of either an effective or a child-friendly response.

References

- Bateman, T., Hazel, N. and Wright, S. (2013) Resettlement of young people leaving custody – Lessons from the literature. London: Beyond Youth Custody
- Bateman, T. and Hazel, N. (2013) Engaging young people in resettlement: Research Report. London: Beyond Youth Custody
- Bateman, T. (2016) The state of youth custody 2016. London: National Association for Youth Justice
- Haines, K. and Case, S. (2015) Positive youth justice: Children first, offenders second. Policy Press
- Clinks (2016) Clinks submission to the review of the youth justice system. Online: [last accessed 25/02/18]
- Crime and Disorder Act (1998) section 37
- Goodfellow, P, Wilkinson, S., Hazel, N., Bateman, T., Liddle, M., Wright, S. and Factor, F. (2015) Effective resettlement of young people: Lessons from Beyond Youth Custody. London: Beyond Youth Custody
- Goodfellow, P and Liddle, M. (2017) Lessons from Youth in Focus. London: Beyond Youth Custody
- Gray, P (2011) Youth custody, resettlement and the right to social justice. *Youth Justice*, 11(3), pp235-249.
- Gray, P, Smithson, H., McHugh, R. and Smyth, G. (2018) 'There's Not Going to Be a Single Solution': The Role of Resettlement Consortia in Improving the Resettlement Outcomes of Young People Leaving Custody, *Youth Justice* 18(1).
- Hampson, K. (2016) From the Mouths of Dragons: How Does the

- Resettlement of Young People from North Wales Measure Up... In Their Own Words?. Youth Justice, 16(3), pp246-262.
- Hazel, N., Hagell, A., Liddle, M., Archer, D., Grimshaw, R. and King, J. (2002) Assessment of the Detention and Training Order and its Impact on the Secure Estate Across England and Wales London: Youth Justice Board
- Hazel N and Liddle M (2012) Resettlement in England and Wales: Key policy and practice messages London: Youth Justice Board
- Hazel, N. and Bateman, T. (2015) Custody to community: How young people cope with release. London: Beyond Youth Custody
- Hazel, N. with Goodfellow, P, Liddle, M., Bateman, T. and Pitts, J. (2017) 'Now all I care about is my Future' – supporting the shift: Framework for the effective resettlement of young people leaving custody. London: Beyond Youth Custody
- HM Inspectorate of Prisons and Probation (2001) Through the Prison Gate: A joint thematic review. London: HM Inspectorate of Prisons and Probation
- HM Inspectorate of Probation (2015) Joint thematic inspection of resettlement services to children by youth offending teams and partner agencies. London: HM Inspectorate of Probation
- HMIP (2016) The impact of distance from home on children in custody, London HMIP
- HMIP (2017) HM Chief Inspector of Prisons for England and Wales Annual Report 2016–17, London: HMIP
- Home Office (1998) Joining Forces to Protect the Public: A consultation paper. London: Home Office
- Jacobson, J. et al (2010) Punishing Disadvantage A profile of children in custody, London Prison Reform Trust
- Liddle, M., Boswell, G., Wright, S. and Francis, V. with Perry, R. (2016) Trauma and young offenders: a review of research and practice literature. London: Beyond Youth Custody
- Manchester Centre for Youth Studies (2017) Greater Manchester Youth Justice University Partnership; Participatory Youth Practice, Available from: <http://www2.mmu.ac.uk/mcys/gmyjup/pyp/> [last accessed 10/03/2018]
- Ministry of Justice (2012) 2012 Compendium of Reoffending Statistics and Analysis. London: Ministry of Justice
- Ministry of Justice (2014) Transforming Youth Custody: Government Response to the Consultation. London: Ministry of Justice.
- Ministry of Justice (2017a) Proven Reoffending Statistics Quarterly Bulletin – April 2014 to March 2015: England and Wales. London: Ministry of Justice
- Ministry of Justice (2017b) Key Characteristics of Admissions to Youth Custody April 2014 to March 2016, London: Ministry of Justice
- Ministry of Justice (2018) Monthly Youth Custody Report: December 2017. London: Ministry of Justice
- Oxford English Dictionary Online (2018) Available from: <http://www.oed.com/view/Entry/163529?redirectedFrom=resettlement> [last accessed 28/02/2018]
- Oxford Dictionaries Online (2018) Available from: <https://en.oxforddictionaries.com/definition/settle> [last accessed 28/02/2018]
- Taylor, C. (2016) Review of the Youth Justice System in England and Wales London: Ministry of Justice
- Thomas, I. (2015) Rehabilitation or 'abilitation'? Beyond Youth Custody [online blog], 14/07/2015 Available at: <http://www.beyondyouthcustody.net/blog/rehabilitation-or-abilitation> [last accessed 28/02/2018]
- Youth Justice Board (2014) Custody and resettlement: section 7 case management guidance. London: Youth Justice Board



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Family characteristics and experiences of children entering secure settings

By Dr Caroline Andow and Ben Byrne

This paper explores the family characteristics and childhood experiences of children entering secure settings. The emphasis is on the similarities and differences between children entering secure environments via different legislative pathways. The settings considered in this paper are those which make up the youth justice secure estate, welfare secure, and mental health secure care. The findings presented are based on a case study of Surrey children, and the data is drawn from a case file analysis of children who have previously entered secure settings from this local authority.

This paper finds that children entering a secure environment on welfare and justice legislative orders are broadly similar in terms of their socio-demographic characteristics and background experiences, and yet they enter institutions with significant differences in terms of resource and rationale. This finding suggests that the situation has not changed since research on this topic more than 15 years ago (Goldson, 2002). However, the same clear overlaps are not seen with children detained on mental health grounds. And further work is needed to interrogate the data and explore any potential commonalities between children entering secure care on mental health grounds and those detained under welfare and justice legislation – as well as a potential relationship between pathway and socio-economic status.

Secure settings for children

A secure setting is the term used for locked institutions where residents are deprived of their liberty. The focus of this paper is particularly on the use of secure settings for children aged between 10 and 17. Children enter different secure settings on welfare, justice, or mental health grounds under related legislation, as follows:

- **Welfare orders**

A child can be detained on welfare grounds – on the basis of Section 25 of the Children Act 1989 – if

- i) he or she has a history of absconding from open provision or is thought likely to do so,
- and
- ii) he or she is likely to suffer significant harm as a result of absconding.

Children who are detained on this basis are colloquially referred to as 'at risk', though a precise definition of this term is elusive. A child can be detained on the basis of perceived risk of harm, which can either be self-inflicted (as in the case of self-injury) or caused by others (as in the case of children subject to sexual exploitation).

Children deprived of their liberty on welfare grounds are placed within Secure Children's Homes (SCHs), which are registered children's homes falling under the remit of the Department for Education (DfE). SCHs form one part of the secure estate in England and Wales, catering for children aged 10 to 17. The ethos of SCHs derives from child care, rather than custody, and there is a high ratio of staff to children (one to two, respectively) (Bateman, 2016). In the somewhat sparse research literature, professionals have reported viewing the purpose of secure placements for welfare orders as to 'keep children safe', 'restore some stability to their lives' and 'assess their needs and identify the supports needed in the future' (Hart and Valle, 2016, p8). Earlier research found that staff working within secure units in England saw the purpose of the institution as providing an 'escape or sanctuary from risks in the community' for those placed on welfare orders (O'Neill, 2001, p121). These small residential institutions, which have ranged in size over time from a minimum of five to a maximum of 45 beds (Jane Held Consulting Ltd, 2006; Deloitte, 2008; Secure Accommodation Network, 2014) can, in some cases, also accommodate children accommodated on the basis of justice legislation.

• Justice orders

Children are usually detained on the grounds of either a Detention and Training Order, a Youth Detention Accommodation Order or Sections 90 and 91 of the Powers of the Criminal Courts (Sentencing) Act 2000. Children detained on justice grounds can be accommodated in either SCHs, Secure Training Centres (STCs), or Young Offender Institutions (YOIs), and these placements fall under the remit of the Ministry of Justice's Youth Custody Service. All boys and girls under the age of twelve are accommodated in SCHs. Otherwise, a child remanded or sentenced on the basis of a criminal offence would only be placed in an SCH if he or she was considered particularly vulnerable or presented with complex needs. However, even then, the perceived purpose of their placement within SCHs is understood as focused on addressing offending behaviours, which is different from their purpose as conceived for children on welfare orders (O'Neill 2001). STCs and YOIs are exclusively for children detained on youth justice grounds. STCs accommodate children aged between 12 and 17 in larger groups (50-80 children per STC) and have a staff to child ratio of 3:8 (Bateman 2016). YOIs, which cater for boys aged 15-18 (and young adults age 18 to 21), are similar to adult prisons; they are large (in some cases in excess of 300 beds) and have a custodial ethos (Bateman 2016). YOIs have a much lower ratio of staff to young people (1:10) and of the three types of youth justice institution, have the lowest cost per placement (SCHs cost on average £204,000 per bed per year, STCs average £162,000 per

bed per year, and YOIs average £75,000 per bed per year)¹. As of December 2017, there were 876 children detained on justice grounds; 100 in SCHs, 171 in STCs and 605 in YOIs (Ministry of Justice, 2018).

The purpose of imprisonment has long been debated, but the connections to punishment, retribution, rehabilitation and deterrence are inherent in any such philosophising. STCs and YOIs are characterised by the need to control – rather than care for – their juvenile occupants. Many children have reported feeling unsafe in STCs and YOIs, and this is linked to the size of, and staffing levels within, these institutions (Bateman 2016). Her Majesty's Inspectorate of Prisons (2017) recently reported parlous conditions currently experienced by children in STCs and YOIs. The inspectorate did not identify any STC or YOI as 'safe to hold children and young people' and said that within these institutions, 'The current state of affairs is dangerous, counterproductive and will inevitably end in tragedy' (HMIP, 2017, p9,10).

• Mental health orders

Almost without exception, children involuntarily detained in mental health facilities will have been sectioned under the Mental Health Act. Children can be held in high dependency and intensive care facilities or medium and low secure environments. This mix of secure mental health provision includes a further sub-division of settings including those which specialise in the care of children with eating disorders, learning disabilities and those for younger children (under the age of thirteen). The defining philosophy of the mental health secure system is one of treatment (detention is only possible for assessment or treatment) within hospital settings predominantly staffed by medical practitioners.

The range of secure mental health facilities contrasts with the limited diversity of provision for children accommodated on the basis of welfare and justice legislation. To a degree this reflects the established heterogeneity of children requiring mental health treatment, but also indicates the limited nature of the offer to children in the welfare and justice systems.

Research

• Research rationale

The different legislative orders can be thought of as different pathways into secure settings. More than 15 years ago, Goldson (2002) suggested that there are overlaps between these pathways. Goldson only looked at similarities and differences between children detained on welfare and justice grounds. He

¹ HC Deb, 19 January 2016, C 23107 WA

concluded that the same children were being directed into different pathways, therefore entering secure institutions with different rationales and resources:

... to expect that children placed under ... welfare statute in secure accommodation are qualitatively different to those held on penal remands under ... youth justice legislation is profoundly erroneous. There is significant interaction and overlap within and between welfare-justice constituencies, and the backgrounds, social circumstances and experiences of such children are both complex and often similar.... the similarities that such children share in their damaged backgrounds, their multiple vulnerabilities, and their manifest needs, are quite extraordinary. Furthermore, although they may be processed along different legal routes, their patterns of behaviour are often strikingly similar. Once such similarity is established, not only does the differentiation between the two constituencies become more opaque, but it is also more difficult to fathom the starkly contrasting resources, conditions and treatment that characterise their respective institutional experiences.

Goldson 2002: 155-156

Since Goldson's (2002) publication, very little research has focused on the comparative characteristics and backgrounds of children entering different types of secure setting. Recently, Hart (2017, p9) asserted that some children meet the criteria of secure placement through either a welfare or justice route, and that it is 'arbitrary which system gets to them first' (2017, p9). However, the evidence on which this assertion is based is not made explicit, and the reference is only relevant to welfare and justice placements.

Descriptors of adolescent forensic settings – which present as catering for children who pose a risk to themselves and/or others – suggest a high degree of overlap between children detained on mental health legislation and those who enter SCHs (either on welfare or justice grounds), and STCs and YOIs (on justice grounds). Children entering these settings are said to have social backgrounds that are often characterised by socio-economic deprivation, multiple losses and traumas, adverse life events, family discord, poor scholastic achievements, learning difficulties, substance misuse and criminality. More broadly, the empirical evidence indicates that a proportion of the mental health cohort have adverse childhood experiences and will share characteristics with children in welfare and justice settings (Dolan and Smith, 2001; Rutter, 2004; Khan, 2010; Department of Health and NHS England, 2015).

As yet, there has been no attempt to collate and compare any of the characteristics of children in secure settings, plausibly because they come under the responsibility of different government departments; The Ministry of Justice (justice placements), the Department for Health (mental health placements) and the Department for Education (welfare placements). Hales and Warner have also recognised this gap and are soon to publish a national study funded by NHS England on the characteristics of children in secure settings. However, their study is based on a census survey of different institutions. The research presented here explores shared and differential characteristics through case file analysis of children from Surrey who have entered secure settings on the three pathways identified above.

• Method

The findings presented in this paper are based on a systematic review of case files of children in Surrey who entered secure care between 2010 and 2017. The sample included case files relating to 71 children. The numbers entering justice and mental health secure settings were considerably larger than those going into welfare secure. All welfare cases dating back to 2010 were included in the study (11 cases). The justice cohort were randomly selected from this period (32 out of 40 cases) with a comparable cohort in size drawn from the most recent entrants to mental health secure (last 31 cases sectioned under the Mental Health Act)². The data gathering and analysis took place between April 2017 and August 2017. Given the nature of the methodology, it was not possible to achieve a matched stratified sample for the different types of legislative order. The findings from this analysis are not representative, and the small numbers prevent generalisations, however the sample findings indicate trends for further exploration.

• Research findings

Three significant findings emerged from the data analysis. As discussed in turn below, these are i) the gendering of secure placements, ii) overlaps between children on welfare and justice orders, and iii) differences associated with children on mental health placements.

• The significance of gender

First, the findings of the case file analysis suggest a gendering of secure placements on justice grounds. In the entire cohort sampled, there were 47 boys and 24 girls. Thirty-two of the boys were placed in a secure setting on justice grounds, which represents 100% of all the justice cases sampled (in fact, the total population

2 Three children had entered more than one type of care, which is why the total of the cases adds to 74.

of 40 youth justice cases were all male). In other words, over the time period reviewed, no females from Surrey entered a secure setting on the basis of justice legislation. Of the 11 children who entered secure care on welfare grounds, 64% (7) were female, and of the 29 that entered a secure setting on mental health grounds, 59% (17) were female. These latter results are less conclusive because of the small size of the sample, however, it is possible to say that girls were only placed in welfare or mental health secure settings, whilst boys were most likely to be placed in youth justice secure institutions (71% of all boys in the sample). The finding fits with existing research which suggests that girls are more likely than boys to enter secure care via the welfare route because boys are stereotypically considered to be more likely 'a risk' to others, whereas girls are perceived as more likely to be 'at risk' to themselves (O'Neill, 2001; Jane Held Consulting Ltd., 2006; Roesch-Marsh, 2011; Hart and Valle, 2016). It also ties with the view, supported by youth custody data, that 'offending is a predominantly male activity' (Bateman, 2017, p60). In other words, these findings arguably reflect the social construction of deviance in children, and gendered interpretations of behaviour.

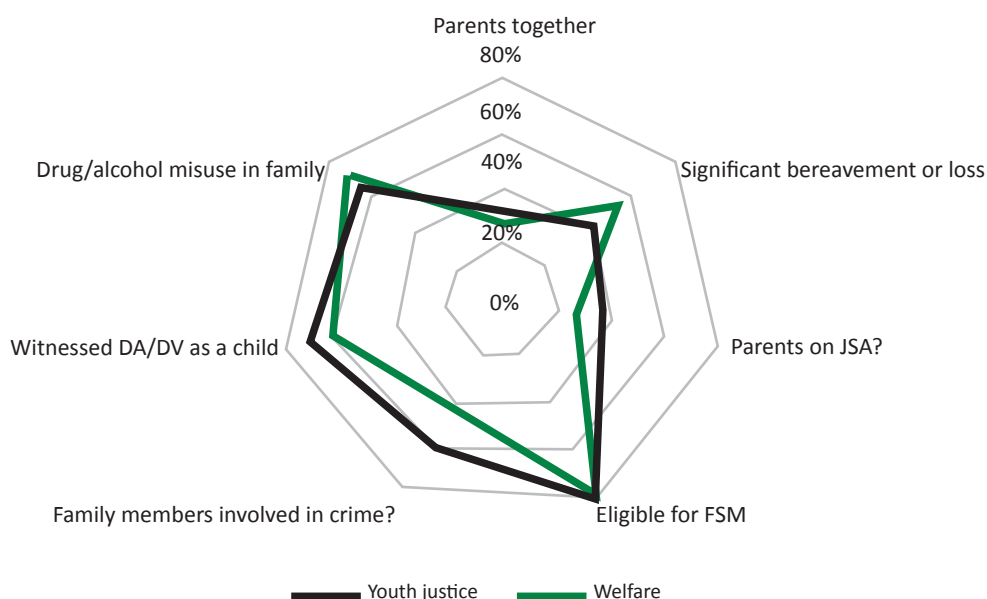
- **Overlaps between children on welfare and justice pathways**

Second, the results of the case file analysis suggest significant overlaps between children entering a secure setting on the grounds of welfare and justice legislation according to family circumstances, as demonstrated in figure 1.

This graph demonstrates that 54% of the children on welfare orders, and 41% of the children accommodated on the grounds of youth justice legislation had experienced significant bereavement or loss within the family. In only 27% of welfare cases, and 34% of justice cases, the parents of the child were still living together. With regard to financial circumstances, there were again similarities between children detained on welfare and justice grounds. Eighty per cent of children detained on welfare grounds were eligible for free school meals (a standard measure of socio-economic circumstance); a similar proportion as compared with children on justice grounds (75%). Further, 28% of the children on welfare orders had a parent in receipt of government benefits, as compared to 38% of those with justice orders. With regard to criminality, 46% of the welfare cases came from families where at least one other member was known to be involved in crime, and this was also the case for 59% of the justice cases. In 72% of the welfare cases, there was known drug or alcohol misuse within the family, as compared to 66% of the welfare cases. Finally, 63% of the children on welfare orders and 72% of the children on justice orders had witnessed domestic abuse as a child.

Taken together, this data demonstrates that there are commonalities between children entering secure settings on welfare and justice grounds in terms of adverse backgrounds and experiences, just as Goldson (2002) found more than fifteen years ago. While those on welfare orders were accommodated in SCHs, all 32 of the boys who entered a secure setting under youth justice legislation were placed in either a STC or

Figure 1 Comparison of family circumstances: welfare and justice placements.



YOI. Therefore, in line with Goldson, this paper argues that to separate these children into entirely different regimes – in SCHs characterised by care and STCs/YOIs characterised by control and punishment – is arbitrary, and unjust.

• The differences associated with the mental health placements

The data does not however suggest that the children who entered a secure setting in Surrey on mental health grounds shared commonalities with those entering under welfare and justice legislation. Figure 2 shows that children detained on mental health orders demonstrated differences as compared to the welfare and justice cases with regard to family characteristics.

The data demonstrated that children who entered a secure setting on the basis of mental health legislation were more likely to come from families where the parents remain together (59%), less likely to be eligible for free school meals (45%) and were less likely to have witnessed domestic abuse as a child (45%) as compared to children on welfare and justice orders. Children on mental health orders were, according to the data, much less likely to have experienced a significant bereavement or loss (7%), to have parents receiving government benefits (9%), to have family members involved in crime (10%) or for there to be known drug or alcohol misuse within the family (29%).

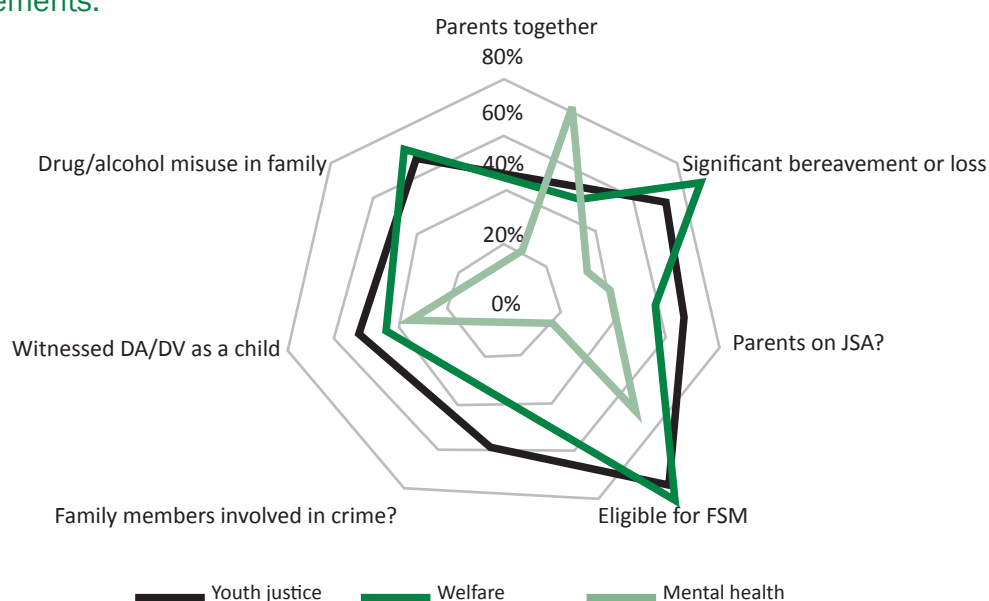
This data suggests that the children who are placed in a secure setting on mental health grounds do not

share the same socio-economic indicators and have not experienced the same adverse experiences in childhood as those who enter secure institutions on the grounds of welfare and justice legislation. The difference in socio-economic circumstance might reflect different interpretations of behaviour, where children from more affluent backgrounds attract a more treatment-oriented response. Further, given the known heterogeneity of secure placements for children on mental health orders, it could be that (a) particular sub-cohort(s) share characteristics with children on welfare and justice orders. These tentative hypotheses set the stage for the next phase of research.

• Conclusion

This research found that children who entered a secure setting in Surrey between 2010 and 2017 under welfare and justice legislation shared many commonalities in terms of family characteristics and childhood experiences, which confirms the findings of earlier research (Goldson, 2002). The only clear distinction between these two groups of children was gender; no girls in this research entered a secure setting on the grounds of justice legislation, which again ties with existing research which identified a gendering of welfare and justice secure placements (O'Neill 2001; Jane Held Consulting 2006; Roesch-Marsch 2014; Hart and La Valle 2016). However, despite being qualitatively similar, the children on welfare orders entered SCHs which have a child-care ethos, whilst the children on justice orders entered STCs and YOIs which are

Figure 2 Comparison of family circumstances: welfare, justice and mental health placements.



characterised by control and have been found to be unsafe. The rationale for this separation is unclear and unjust, and not in line with any notion of child-friendly justice.

The data also demonstrated that the children who entered secure care on mental health grounds had different experiences and backgrounds, as compared to the welfare and justice cohorts. In relation to these findings, this first phase of research has successfully identified important areas for further exploration, particularly in terms of i) the significance of socio-economic background in determining secure pathway, and ii) potential overlaps between sub-groups of the mental health cohort and those on welfare and justice placements. More generally, this paper has established an important area for comparative research which has, to date, evaded sustained academic attention.

References

- Bateman, T. (2016) *The State of Youth Custody*. London: National Association for Youth Justice.
- Bateman, T. (2017) *The State of Youth Justice 2017: An overview of trends and developments*. London: NAYJ.
- Deloitte (2008) *Developing the Market for Welfare Beds in Secure Children's Homes*. London: Department for Children, Schools and Families.
- Department of Health (2013) *2013/14 NHS Standard contract for secure mental health services for young people*, London, DoH
- Department of Health and NHS England (2015) *Future in mind*. London: NHS England.
- Dolan, M. and Smith, C. (2001) 'Juvenile homicide offenders: 10 years' experience of an adolescent forensic psychiatry service', *The Journal of Forensic Psychiatry*, 12(2).
- Goldson, B. (2002) *Vulnerable Inside: Children in Secure and Penal Settings*. London: The Children's Society.
- Hart, D. (2017) *The 'Transformation' of Youth Custody: a Discussion Paper*. London: National Association for Youth Justice.
- Hart, D. and Valle, I. La (2016) *Local authority use of secure placements*. London: Department for Education.
- HMIP (Her Majesty's Inspectorate of Prisons) (2017) *HM Chief Inspector of Prisons for England and Wales Annual Report 2016-17*. London: HMIP
- Jane Held Consulting Ltd. (2006) *Qualitative Study: The Use by Local Authorities of Secure Children's Homes, Research Report 749*. Nottingham: DfES.
- Khan, L. (2010) *Reaching out, reaching in: Promoting mental health and emotional well-being in secure settings*. London.
- Ministry of Justice (2018) 'Youth Custody Report: December 2017'. London: Ministry of Justice.
- O'Neill, T. (2001) *Children in Secure Accommodation: A Gendered Exploration of Locked Institutional Care for Children in Trouble*. London: Jessica Kingsley Publishers.
- Roesch-Marsh, A. E. (2011) *Crossing the 'threshold of risk': A study of local secure accommodation decision making in Scotland*. unpublished PhD thesis: University of Edinburgh.
- Rutter, M. (2004) 'How the environment affects mental health', *The British Journal of Psychiatry*, 186(1).
- Secure Accommodation Network (2014) 'They helped me, they supported me.' *Achieving Outcomes and Value for Money in Secure Children's Homes*. London: Justice Studio.

‘Transforming’ youth custody?

By Dr Di Hart

This paper offers an analysis of current proposals to reform custodial provision for children under 18 in England and Wales – and suggests that these perpetuate a flawed model rather than being genuinely transformative.

The case for change

The rationale for change is clearly articulated in the National Association for Youth Justice (NAYJ) briefing on The State of Youth Custody (Bateman, 2016). Not only do most custodial sentences fail to rehabilitate, with stubbornly high reconviction rates of about 70% following release, they also put children at risk of harm. Peter Clark, Her Majesty’s Chief Inspector of Prisons (HMIP) (2016) reported that 46% of children in Young Offender Institutions (YOIs) surveyed in 2015-2016 had felt unsafe – more than ever before. Self-harm and assault rates had more than doubled in five years, and children reported both victimisation by other children and a lack of respect from staff. In 2017, the Chief Inspector expressed his disquiet at the alarming deterioration in the quality of care afforded to children in custody:

By February [2017] we had reached the conclusion that there was not a single establishment that we inspected in England and Wales in which it was safe to hold children and young people (HMIP, 2017: 9).



Dr Di Hart now works on a freelance basis but has a background in children’s social work and management. Most recently, she was employed for 10 years in a practice development post at the National Children’s Bureau where she undertook a number of projects on youth justice, safeguarding and looked after children. She has a particular interest in children in secure settings and undertook a safeguards review of children in custody in partnership with the YJB. In 2015, Di was awarded a Winston Churchill Memorial Trust travel fellowship to look at the use of custody for children in Spain, Finland and the US. Recent work has included a report on the ‘naming and shaming’ of children in trouble, a literature review of children’s residential care and a study of local authority decision-making on the use of placements into secure children’s homes.

Proposals for reform

In 2015 Michael Gove, the then Justice Secretary, appointed education expert Charlie Taylor to lead a Youth Justice Review. By the time the ensuing report was finally published in December 2016 (Taylor, 2016a), the Youth Custody Improvement Board (YCIB) had also been created to recommend improvements to YOIs and Secure Training Centres (STCs) following urgent concerns about children’s safety and well-being.

These reviews and reports – as well as some well-publicised problems in STCs and YOIs – have contributed to the emergence of a general consensus that the secure estate is not ‘fit for purpose’ but what shape should reform take? Taylor recommended that YOIs and STCs be replaced by a network of secure schools with 60-70 places each and based on the principle of ‘child first, offender second’ (Taylor, 2016a).

Meanwhile, YCIB recommendations were focused on more immediate reforms, including:

- Ministers to define what they believe the youth custodial system is attempting to achieve.
- The creation of a single system for governance and accountability of the Youth Secure Estate, led by a Director and staffed by people with appropriate skills and knowledge.

- A needs-analysis of young people in custody, including their health needs, and additional measures to tackle safety in YOIs and STCs and to address the specific issues facing black and minority ethnic young people (Youth Custody Improvement Board, 2017).

Current policy position

In response to the Taylor Review, the Ministry of Justice (MoJ) said that it shared his vision about ‘putting education at the heart of youth custody (Ministry of Justice, 2016)’. It agreed to pilot two secure schools, but with no commitment as to when (or if) they will replace STCs and YOIs.¹ For an indefinite period, there will therefore be four types of secure establishment rather than the current three². Meanwhile, there are to be ‘improvements’ to existing YOIs and STCs including:

- the introduction of a new pre-apprenticeship pathway;
- boosting numbers of front-line staff in YOIs by 20%;
- developing additional specialist support units for the most vulnerable children;
- introducing multi-disciplinary Enhanced Support Teams of health and psychology staff;
- introducing a new Youth Justice Officer role, with specific training to work with young people;
- assigning each young person a dedicated officer to challenge them and support their reform (Ministry of Justice, 2016).

Whilst these steps may improve the existing situation they can hardly be described as radical. Some changes appear to be more cosmetic than significant: for example, how is a ‘dedicated officer’ different to the ‘personal officer’ or ‘key worker’ that children are currently assigned? And how large an increase in YOI staffing is planned? Will it even be sufficient to offset the cuts made since 2010?

Of greater significance, perhaps, are the changes to governance arrangements, with a move towards greater centralisation. Government has created a Youth Custody Service as an arm of the new HM Prison and Probation Service (HMPPS) – to be responsible for managing and monitoring (but not commissioning) secure establishments. The commissioning function has transferred to the MoJ, leaving the YJB with responsibility for setting standards but with no operational role.

1 The Government response to Taylor was interpreted as giving such a commitment that STCs and YOIs would be replaced, but given that there have been several changes of Justice Secretary in the interim period, this is now less clear
2 A number of the youngest and most vulnerable children are placed in Secure Children’s Homes (SCHs)

• Do the reforms constitute a ‘vision’ for youth custody?

The suggestion that the current system of youth custody lacks ‘vision’ has been made in a number of quarters. The Medway Improvement Board, established in the wake of abuse within Medway STC, was concerned that a culture of control and contract compliance had taken precedence over safeguarding and rehabilitation (Medway Improvement Board, 2016).

Similarly, the YCIB urged Ministers to define what they believe the youth custodial system is attempting to achieve (Youth Custody Improvement Board, 2017). Without this, it argued, it is impossible to determine how the service should be delivered and how its success can be measured.

So, do the reforms constitute a ‘vision’ for the service? Taylor addresses the question of what youth custody is ‘for’ in his review:

The aim ... is to help [children] to overcome their difficulties, address the causes of their offending and prepare them for successful reintegration into society when they are released. (Taylor, 2016a: 36).

The big question is how?

• Is education the answer?

Taylor envisages that change can be achieved through the provision of the ‘highest quality education from outstanding professionals’ (Taylor, 2016a: 39). Taylor describes a catalogue of structural problems and outmoded teaching methods within the current educational arrangements, supported by findings from a review by the Prisoners’ Education Trust (Taylor, 2016b).

Taylor’s vision has ostensibly been adopted by the government but, apart from an agreement to pilot secure schools, the changes announced so far are simply modifications of the existing education offer. More fundamentally, there are inherent risks in Taylor’s assertion that education is the route to change. Media reports have seized on the terminology of ‘schools’ to interpret the reforms as offering education in its narrowest sense and there is a real danger that expectations will be too limited as a result. For example:

Teenage criminals will be sent to ‘secure schools’, instead of prison, where they will be taught English and Maths lessons’. (Daily Telegraph, 11 December 2016)

• Or health?

As those who understand the profile of children in custody well know, it is not the failure to teach

English and Maths that has led to their incarceration. There are many barriers to learning, including structural disadvantage, poverty, unmet health needs, developmental disorders, emotional pain and a sense of hopelessness. Taylor does acknowledge that children cannot engage in education if they have other unmet needs, particularly the mental health problems experienced by at least one-third of the population. Health input would therefore be a much more integral part of life in secure schools, which would offer a 'psychologically informed approach' in a 'therapeutic environment' (Taylor, 2016a: 35).

This could be described as education in its broadest sense, more akin to the holistic models of care evident in other countries (Hart, 2016). It is not entirely clear, however, that the government proposals have embraced this intention, at least in the interim until secure schools are developed. The need to improve mental health care is recognised, and there will be new Enhanced Support Teams of health and psychology staff. The purpose of these teams, however, is the 'provision of specific evidence-based interventions to address ... offending' (Ministry of Justice, 2016: 26). This is not the same as a therapeutic environment, where all aspects of day to day life are seen as opportunities to improve children's well-being.

● What about 'welfare'?

The reforms appear to suggest that education, health care and offender desistance programmes are the way to transform children's behaviour. Other aspects of children's experience, such as the need to feel safe and to have positive relationships with staff, are not fully explored. This wider perspective on what children need to thrive can be found within the policy framework of children's services where the Assessment Framework identifies seven universal aspects of children's developmental needs:

- health;
- education;
- emotional and behavioural development;
- identity;
- family and social relationships;
- social presentation;
- self-care skills. (HM Government, 2015)

All local authority children's services, including residential care, are underpinned by this approach. Not so the youth justice system. The so-called 'welfarist' approach to child offenders was rejected with the advent of the Crime and Disorder Act 1998. The preceding White Paper asserted that:

An excuse culture has developed within the

youth justice system. It ... too often excuses the young offenders before it, implying that they cannot help their behaviour because of their social circumstances. Rarely are they confronted with their behaviour and helped to take more personal responsibility for their actions. (Home Office, 1997: Preface)

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

Related to this is the emerging body of knowledge about brain development; a process which is not complete until the mid-20s. This explains why 'normal' adolescent behaviour is characterised by impulsivity and risk-taking, and a reduced ability to assess the consequences of our actions: all of which increase the risk of offending behaviour. These characteristics are exacerbated by early abuse and neglect which affect both the structure and chemistry of the brain, resulting in abnormal reactions to stress and difficulty in trusting others (Anda et al, 2006).

A review of trauma in the backgrounds of children who offend found that child abuse, loss, victimisation, mental health conditions and brain injury were particularly prevalent. As more becomes known about the impact of trauma, the way in which it can lead to behavioural problems – and offending – is clear. Effects include:

- reckless and self-destructive behaviour;
- aggression;
- inability to assess danger;
- difficulty in imagining/planning for the future. (Liddle et al, 2016)

Happily, there are signs that the 'tough' tone of the last 20 years is being modified:

Of course it is right that young offenders who commit crimes must face the consequences of their actions and that the justice system delivers reparation for victims. Yet those 900 in custody represent some of the most complex and damaged children within society. Broken homes, drug and alcohol misuse, generational joblessness, abusive relationships, childhoods

spent in care, mental illness, gang membership and educational failure are common in the backgrounds of many offenders. (Ministry of Justice, 2016: 3)

The revised sentencing guidelines for children also represent a shift in tone (Sentencing Council, 2017). Although criminal courts have had a statutory obligation to consider the welfare of young defendants since 1933³, this version of the sentencing guidelines goes into more detail than ever before about what this means in practice.

This belated adoption of ‘welfarist’ principles is welcome but raises the question: if there is a genuine desire to support troubled children, why are they dealt with through a purely justice-based system? A study of children in breach of their orders found that sentencers often recognised children’s multiple difficulties but had no tools at their disposal to address them. They could order criminal justice interventions but could not direct health, welfare or education services to offer children the help they needed (Hart, 2011). In many countries, like Finland for example, there is no such dilemma: offending behaviour is seen primarily as a child welfare problem and the only court likely to be involved is a Family Court.

• The place of SCHs

SCHs, like other children’s homes, are meant to care for children in a holistic way so that all their developmental needs are met. They accommodate children considered to need secure care because of the risk they pose to themselves, as well as those remanded or sentenced by a criminal court. There seems to be tacit agreement that they, unlike STCs and YOIs, are fit for purpose and the MoJ acknowledges that they work in an integrated way (Ministry of Justice, 2016). Bateman (2016: 12) suggests that:

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

In which case, he asks, why not just fund SCHs to take all the children remanded or sentenced to custody? Yet SCHs are in crisis: not because of concerns about the quality of provision as with STCs and YOIs but because escalating demand has led to a situation where more children need a welfare secure placement than there are beds (Hart and LaValle, 2016). To make matters worse, the overall number of SCH places available has fallen even as welfare demand has risen,

with a number of SCHs closing altogether. The reasons are largely financial and many argue that the money spent on keeping children in unsafe and ineffective STCs and YOIs would be better-spent on SCH places; thereby also protecting SCH capacity for ‘welfare’ children.

The ‘offending’ and ‘welfare’ populations are not two distinct groups: the origins of their difficulties are the same and many have experience of both the child welfare and youth justice systems. Some children have lost control of their behaviour to such an extent that it is arbitrary which system gets to them first: they meet the criteria for detention through either route. Others are also known to child mental health services, with disputes about whether they should be admitted instead to an in-patient psychiatric unit: also a scarce resource (NHS England, 2014).

A graphic example of the failure of the current fragmented arrangements is child X, subject of a recent judgement by Mr Justice (now Sir James) Munby (2017). This 17 year old girl was detained in an SCH subject to both a custodial sentence and a care order. She also had considerable mental health difficulties and was assessed as presenting a risk to herself and others. Yet no suitable placement could be identified for her on release.

What this case demonstrates, as if further demonstration is still required of what is a well-known scandal, is the disgraceful and utterly shaming lack of proper provision in this country of the clinical, residential and other support services so desperately needed by the increasing numbers of children and young people afflicted with the same kind of difficulties as X is burdened with. (Munby, 2017: para 37)

Children with attachment disorders, post-traumatic stress disorder and emerging personality disorder often display the chaotic and harmful behaviour that is evident across all three types of placement, with time and resources wasted on inter-agency squabbles about responsibility.

Conclusions

It is difficult to describe the currently proposed reforms as truly transformational. Firstly, the principle of ‘child first, offender second’ advocated by Taylor is not explicitly adopted in the government response. In fact, with the removal of any operational or policy responsibility from the YJB, and the missed opportunity to give a meaningful role to local authority children’s services, we are getting a service that is even more adult-focused than the one we have now (Standing Committee for Youth Justice, 2017).

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

Government has stated a commitment to ‘put education and health at the heart of youth custody’. The specific proposals, however, suggest that these principles have been interpreted narrowly rather than in the broader sense implicit within the Taylor review. He identified the need for the secure estate to provide a ‘therapeutic environment’ not just adding some additional resources to the struggling services we have now. Perhaps this is unfair, and the reforms are just interim measures to improve children’s experiences while we’re waiting for the real transformation that secure schools might bring. There is no route map as to how or when this will happen, however, and the fact that the government intends to develop new specialist units within the existing system would suggest that the wait will be a long one.

Secondly, rather than providing vision and leadership, governance changes will simply replace one fragmented system with another with functions split across a confusing array of departments. Rob Allen (2017a), an independent expert on criminal justice, notes the risk that separating policy makers from those with operational responsibility can put them seriously out of touch. He puts the failure of the YJB to bring about lasting improvements in the secure estate down to the lack of leverage they had over the prison service, who will continue to care for most children in custody (Allen, 2017b).

Finally, although there are welcome indications that the punitive approach towards children in trouble of the last 20 years is shifting, the reforms do not follow this through to its logical conclusion. It is increasingly apparent that most children in custody fit the definition of a ‘child in need’ within child welfare legislation⁴ and there is little to distinguish them from children needing secure care on ‘welfare’ grounds. Given that the combined populations within secure care are now only about 1000, it seems irrational to continue to deal with them under totally different systems. The same could be said about children detained in psychiatric provision, also in crisis. A much more streamlined – and therefore cost effective – approach would be to undertake a needs assessment across the whole secure population and for local partnerships of welfare, health and youth justice agencies to expand and adapt SCH provision to meet those needs.

So will the reforms lead to a system of child custody that is better or worse than the one we have now? The short-term changes may address some of the worst deficiencies within STCs and YOIs but without

embracing Taylor’s vision of a more child-centred approach. We are still waiting for the truly radical transformation that would break down the barriers between the welfare and justice systems, and genuinely tackle the reasons for troubled and troublesome behaviour amongst our children.

References

- Allen, R (2017a) NOMS to HMPPS: Rebadging or real reform?, <http://reformingprisons.blogspot.co.uk/2017/02/noms-to-hmpps-rebadging-or-real-reform.html>
- Allen, R (2017b) Youth custody changes: progress or retreat?, <http://reformingprisons.blogspot.co.uk/2017/02/youth-custody-changes-progress-or.html>
- Anda, R, Felitti, R, Walker, J, Whitfield, C, Bremner, D, Perry, B, Dube, S and Giles, W (2006) ‘The enduring effects of childhood abuse and related experiences: a convergence of evidence from neurobiology and epidemiology’, *European Archives of Psychiatric and Clinical Neuroscience* 256 (3), pp174 – 186
- Bateman, T (2016) *The state of youth custody*. London: National Association for Youth Justice
- Hart, D. (2011) *Into the breach: the enforcement of statutory orders in the youth justice system*. London: Prison Reform Trust
- Hart, D (2016) *Correction or care? The use of custody for children in trouble*. London: Winston Churchill Memorial Trust
- Hart, D and LaValle, I (2016) *Local authority use of secure placements*. Research report. London: DfE
- HM Chief Inspector of Prisons for England and Wales (2017) *Annual Report 2016–17*. London: HMIP
- HM Government (2015) *Working together to safeguard children: A guide to inter-agency working to safeguard and promote the welfare of children*. London: The Stationery Office
- Home Office (1997) *No More Excuses: A new approach to tackling youth crime in England and Wales*. London: Home Office
- Hope, C (2016) ‘Teenage criminals to be spared prison and sent to ‘secure school’ to learn Maths and English under new reforms’, *Daily Telegraph*, 11 December 2016
- Liddle, M, Boswell, G, Wright, S, and Francis, V with Perry, R (2016) *Trauma and young offenders: A review of the research and practice literature*. London: Beyond Youth Custody
- Medway Improvement Board (2016) *Final report of the Board’s Advice to Secretary of State for Justice*. London: MIB
- Ministry of Justice (2016) *The government response to Charlie Taylor’s Review of the Youth Justice System*. London: Ministry of Justice
- Munby (2017) EWHC 2036 (Fam): *In the matter of X (A Child)* (No 3). <https://www.judiciary.gov.uk/wp-content/uploads/2017/08/x-a-child-no-3-2017-ewhc-2036-fam-20170803.pdf>
- NHS England (2014) *Child and Adolescent Mental Health Services (CAMHS) Tier 4 Report*. London: NHS England
- Sentencing Council (2017) *Sentencing children and young people. Overarching principles and offence specific guidelines for sexual offences and robbery: Definitive Guideline*. London: Sentencing Council
- Simmonds, J (2016) *Children in custody 2015-16: an analysis of 12-18-year-olds’ perceptions of their experiences in secure training centres and young offender institutions*. London: HMIP
- Standing Committee for Youth Justice (2017) *SCYJ response to Charlie Taylor’s review of the youth justice system and the government’s response*. London: SCYJ
- Taylor, C (2016) *Review of the Youth Justice System in England and Wales*. London: Ministry of Justice
- Taylor, C (2016b) *Great Expectations: towards better learning outcomes for young people and young adults in custody*. London: Prisoners’ Education Trust.
- Youth Custody Improvement Board (2017) *Findings and recommendations of the Youth Custody Improvement Board*. London: YCIB

4 Children Act 1989: section 10.

