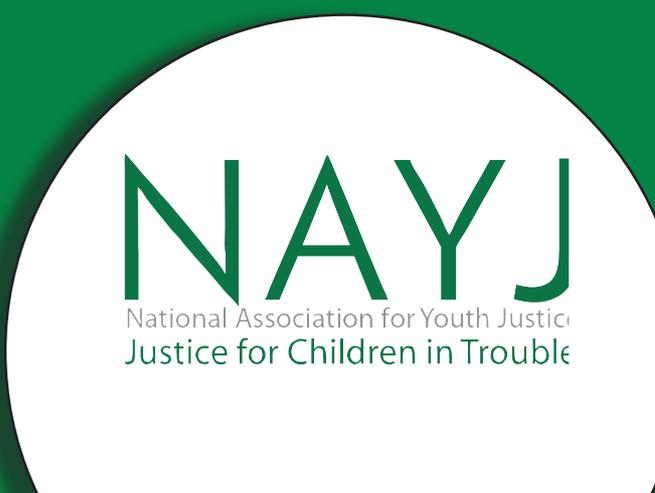




The state of youth justice 2017

An overview
of trends and
developments

Dr Tim Bateman



NAYJ
National Association for Youth Justice
Justice for Children in Trouble

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An overview of trends and developments

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The NAYJ is a registered charity (no. 1138177) and membership organisation campaigning for the rights of – and justice for – children in trouble with the law.

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

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chapter 1 A missed opportunity

At the time of publication (September 2017), the last two years appear as having been something of an uncertain period for youth justice. In September 2015, Michael Gove, then Justice Secretary, announced that Charlie Taylor, former Chief Executive of the National College of Teaching and Leadership, would lead a 'Departmental review' of the youth justice system.¹ The terms of reference were wide-ranging requiring consideration of:

- *'The nature and characteristics of offending by young people aged 10-17 and the arrangements in place to prevent it;*
 - *'How effectively the youth justice system and its partners operate in responding to offending by children and young people, preventing further offending, protecting the public and repairing harm to victims and communities, and rehabilitating young offenders;*
- and
- *'Whether the leadership, governance, delivery structures and performance management of the youth justice system is effective in preventing offending and reoffending, and in achieving value for money.'*

Disappointingly, and without any rationale being provided, the age of criminal responsibility, the treatment of children in courts and the sentencing framework were explicitly excluded from the review, but it was nonetheless clear that the exercise had the potential to herald significant change in arrangements for dealing with children in conflict with the law.² Moreover, following the publication by Charlie Taylor of an interim report in February 2016, which dealt largely with the state of custodial provision for children, the Justice Secretary confirmed that he had amended the terms of reference to include examination of *'the way young offenders are dealt with in court, and the sentences available to tackle their offending'*.³ (Predictably perhaps, the age at which children are held to be criminally responsible remained outside the remit of the review, despite repeated criticisms from within the jurisdiction and without.⁴)

It was anticipated that the review would report in the summer of 2016 and, as a consequence, developments in youth justice both nationally and at a local level were

effectively put on hold. This was particularly so because it was widely anticipated that any recommendations made by Taylor would have government endorsement. In the event, publication was delayed following ministerial changes in the aftermath of the referendum on membership of the European Union. The report eventually appeared in December 2016, but it no longer had the status of a Departmental review; government endorsement was no longer assured and the report was published alongside a government response.⁵ While the Taylor review was wide-ranging and, in some respects, quite radical, a number of key recommendations were rejected or ignored by the government and commitments to reform were for the most part couched in vague terms or put off for future consideration.⁶ For example, Taylor details a range of principles and assumptions which he considers should inform arrangements for dealing with children in conflict with the law. These include:

- A focus on the child first and the offender second;
- Children who break the law should be treated differently from adults;
- Because many of the causes of youth offending lie beyond the reach of the youth justice system; a broad range of agencies should provide an integrated response to preventing and addressing offending behaviour;
- Education should be at the heart of that response;
- Contact with the criminal justice system tends to increase the likelihood of offending and children should be diverted from it wherever possible;
- More persistent and serious offending often implies that the children concerned are deeply troubled, and responses to such offending should recognise that fact.

By contrast, the government, in the first line of its response, makes reference to the youth justice system's central role in *'punishing crime'* and later reiterates that the statutory aim of the system is to prevent offending and reoffending by children and young people.

Taylor calls for a clear division between the role of the court in establishing guilt where an offence is denied and deciding what action 'should be taken to repair harm and rehabilitate the child' once responsibility for the offending has been determined.

His report proposes that the latter process should be transformed through the creation of Children's Panels whose purpose would be to develop, and oversee until completion, a plan to address the causes of the child's behaviour, including 'any health, welfare and education issues'. The government's response, while claiming to support the principles that inform Taylor's recommendation, commits itself merely to consider how these might be integrated within the current statutory framework. In the view of the National Association for Youth Justice (NAYJ), this failure to address much of the substance of the Taylor review represents a missed opportunity.

The government's response to Taylor's proposals on youth custody is potentially more sympathetic. Building on the interim report, his final report maintains that the existing secure estate for children is in need of 'fundamental reform' and that young offender institutions (YOIs) and secure training centres (STCs) should be replaced by a network of 'secure schools'. The government has confirmed that two such schools are to be piloted, although little information is currently available as to what these might look like or on a likely timescale for the pilots.⁷ In the intervening period, responsibility for commissioning children's custodial provision has been removed from the Youth Justice Board (YJB) and transferred to a newly established Youth Custody Service which is to function 'as a distinct arm of HM Prison and Probation Service'.⁸ Charlie Taylor, who in his review recommended the abolition of the YJB, has been appointed as the Board's chair.

It is fair to say, then, that the future of youth justice has recently been clouded by a lack of clarity, which in turn has tended to inhibit innovation and allow a further diminution of resources. Meanwhile, the past two years have seen a continuation of the predominant trends that have characterised youth crime and responses to it for much of the past decade. Perhaps most notably, there has been a sharp fall in the number of children receiving a formal youth justice disposal every year between 2008 and 2016. Much of this decline can be seen as a function of a decrease in the number of children entering the system for the first time – so called first time entrants (FTEs).⁹ Whatever the reason for the contraction (and some suggestions are offered in due course), the size of the youth justice system is significantly reduced by comparison with a decade ago. Over the same period, there has been an equally dramatic decline in the use of imprisonment for children, generating a corresponding slimming-down in the population of the secure estate for children. The NAYJ has previously posited a relationship between these two trends.¹⁰

This 'shrinkage' in youth justice is without doubt the most significant headline from any analysis of recent

The NAYJ campaigns for a 'child-friendly' youth justice system and advocates the establishment of a rights-based statutory framework for children in conflict with the law.

trend data. It is important to recognise, however, that such statistical indicators do not necessarily reflect, in any linear fashion, changes in the volume of children's criminal activity. Rather, responses to such behaviour are mediated through shifts in legislation, policy and practice which determine to a significant degree which children – and how many of them – are processed through formal youth justice mechanisms. Nor should it be assumed that changes in policy and practice constitute evidence-led responses to the nature and extent of children's law breaking; indeed, they may more commonly be explained as a function of political or financial expediency.¹¹

The NAYJ campaigns for a 'child-friendly' youth justice system and advocates the establishment of a rights-based statutory framework for children in conflict with the law.¹² From such a perspective, the trends described above are to be welcomed: they represent a clear manifestation of increased diversion from formal criminal justice responses and a reduced reliance on child incarceration; developments that are, it is increasingly accepted, consistent with the evidence base.¹³ At the same time, given the caveats outlined above, the NAYJ considers that a proper understanding of those developments also necessitates an analysis of the context in which the contraction of the youth justice system has taken place in order to evaluate the extent to which the delivery of services to children in trouble is tending in a more (or less) child-friendly direction and whether policy shifts associated with a declining youth justice population are determined primarily by a commitment to an evidence-informed, principled, values base or by pragmatic and political considerations. Such an analysis will also inform an assessment of how embedded, or alternatively fragile and potentially subject to rapid reversal, recent gains might be. This is a particular concern given that the latest available figures at the time of writing, for June 2017, suggest that after eight years of consistent decline in the child custodial population, the use of imprisonment may have started to rise again, an issue considered in more detail in due course.¹⁴

For example, while the patterns shown in the data demonstrate that children are increasingly diverted from formal sanctions and that child custody is used more sparingly than hitherto, the NAYJ remains concerned that responses to children in trouble with

the law continue to be tempered by an underlying punitive ethos, as manifested for example by the introduction, in 2015, of mandatory custodial sentences for 16 and 17 year olds convicted for a second time of possession of a knife or offensive weapon.¹⁵ There is evidence too that system-contraction might be driven at least in part by financial imperatives, associated with a perceived need for austerity, rather than by any considered judgement of how the wellbeing of children in conflict with the law might best be promoted.¹⁶ As a consequence, savings accrued in the youth justice sector – funding to youth offending teams fell by more than a quarter between 2011 and 2016¹⁷ - are lost to children rather than reallocated to mainstream children’s or alternative forms of youth provision. Given the government’s response to the Taylor review, it would be overly optimistic to expect that any increased resources to support children who might be at risk of criminalisation or victimisation will be forthcoming in the coming period. The capacity of the voluntary sector to pick up the slack is, moreover, severely constrained and is, in any event, increasingly tied up in partnerships with private providers and payment-by-results (PbR) contracting.

Clearly, youth justice cannot be understood in isolation from other policies and services that impact on the same children. Indeed Charlie Taylor has made a persuasive case that responses to children in trouble with the law should be better-aligned with other children’s services. Although such considerations are largely beyond the scope of the current paper, it may be that the logic of austerity actually helps to explain an increased tolerance for children in trouble but at the same time dictates that wider policy developments are less compatible with children’s wellbeing. For instance, the United Nations Committee on the Rights of the Child, in its latest assessment of the UK’s compliance with the UN Convention on the Rights of the Child, published in June 2016, registered serious concern...

‘at the effects that recent fiscal policies and allocation of resources have had in contributing to inequality in children’s enjoyment of their rights, disproportionately affecting children in disadvantaged situations... [B]udgetary lines for children in disadvantaged or vulnerable situations ... may require affirmative social measures and [the state should] make sure that those budgetary lines are protected even in situations of economic recessions.’¹⁸

The failure to support and adequately-resource mainstream provision for children runs the risk that a withdrawal of youth justice interventions, although well-intentioned and in accord with the evidence base, might at the same time constitute a form of what Stanley Cohen referred to as ‘benign neglect’. Given the

relationship between crime and the economy, it should be added that the consequences of failure to attend to such concerns might include a longer term negative impact on levels of youth offending.¹⁹

Purpose of the report

This report provides an overview of what is known about the nature and prevalence of youth crime in England and Wales, drawing on the latest available data. It aims to offer a contextual analysis of trends suggested by the figures that facilitates an assessment of the treatment of children who come to the attention of the youth justice system, considering the extent to which responses take adequate account of children’s rights and best interests.²⁰ It deals with the following areas:

- The extent of youth crime shown in the statistical data and how those statistics might most usefully be understood;
- The nature of youthful offending and the characteristics of children who come to the attention of the youth justice system;
- The policing of children and the development of alternatives to arrest;
- The use of formal pre-court measures;
- Principles of sentencing and court community disposals;
- The use of custody for children and the treatment of children deprived of their liberty;
- The extent of reoffending following youth justice intervention and whether recidivism data provide a reliable indicator of effectiveness.

The paper focuses on children aged 10-17 years, reflecting the minimum age of criminal responsibility in England and Wales and the age at which young people are considered adults for criminal justice purposes.²¹ Trends are for most purposes traced from 1992 onwards because of difficulties of comparison with the earlier period.²²

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chapter 2 How much youth crime is there and how would we know?

As indicated in the previous section, official statistics register a pronounced fall in the number of children coming to the attention of the youth justice system in the recent period. According to YJB figures, the number of proven offences committed by children between 2007 and 2016 declined by 73%. However, assessing the extent of offending is not like measuring the volume of a material object since crime is a 'social construct' determined by the current state of legislative prohibition rather than the nature of the behaviour itself.¹ For instance, the banning of what were called 'legal highs' in 2016 increased the range of behaviours that could contravene the criminal law.² As a consequence what constitutes a crime at one time may not be considered so at another and vice versa.

What is perhaps more important from the current perspective, however, is that figures for detected youth crime are by no means a direct reflection of the underlying level of childhood criminal activity since they only capture those matters which receive a formal sanction. Children may escape apprehension or their behaviour may not attract a response that results in a criminal record. There are other measures that provide information in relation to youth crime but, as discussed in the following sections of the report, each also has its (well known) limitations. As a consequence, there are considerable difficulties in ascertaining the extent of children's lawbreaking and any estimates are of necessity inferential.³ It follows that further investigation would be required before we could conclude that the decline in detected offending demonstrates that youth crime has also fallen, or fallen to the same extent, as suggested by official statistics.

The crime survey, police statistics and their limitations

The Crime Survey for England and Wales (CSEW) (known as the British Crime Survey until April 2012⁴) is a large scale self-report study that asks respondents about their experiences as victims of crime during the previous 12 months.⁵ It was first conducted in 1982 and until 2001 results were published at two yearly intervals; from the latter date the survey became 'continuous' with results published annually in the first

instance⁶ and more recently quarterly.

The CSEW has notable exclusions. Historically it has reported on respondents' experience of personal crime and offences against the household of which they are part - although some more serious incidents, in particular homicide and sexual victimisation, are not included.⁷ Accordingly, it has not traditionally provided information on white collar offending or cyber-crime. Until 2012, commercial victimisation was not included either but this omission has been rectified by the introduction of a survey of businesses. Since October 2015, new questions on fraud and computer-misuse offences have been added but estimates derived from these are currently regarded as 'experimental' and have yet to be included in the headline figures.⁸ In any event, while these appear to be areas in which crime is growing, it seems intuitively likely that children's participation in these activities is lower than that of adults. Other offences are not captured by the survey: those which have no direct or explicit victim (such as possession of, or supplying, drugs) are not included; and persons living in institutions or other forms of non-household accommodation are not surveyed.

As described later in the paper, the victims of much youth crime are themselves children. Significantly, until 2009, individuals below the age of 16 years were also excluded from the survey. Since that date estimates of crime against those aged 10 – 15 years have been made but, because of difficulties of comparability as a result of different questions being asked, these continue to be reported on separately.

Despite these limitations, the CSEW is regarded as a good indicator of personal and household crime because the number of respondents is sufficiently large – around 50,000 households in 2015-2016⁹ - to ensure that the experiences of victimisation elicited in the interviews can be considered representative of the wider population. One of the main advantages is that, as a measure of victimisation, the survey identifies incidents that are not reported to the police – a considerable proportion of the total. Moreover, since it does not rely on police recording, the data are not influenced by changes in recording practice.¹⁰

The CSEW indicates that 6.1 million offences (excluding fraud and cyber-offences) were committed against

persons aged 16 or older in the year ending December 2016. This represents a 5% reduction from 6.4 million in the previous 12 month period. The fall is not, however, statistically significant other than for offences of theft. Over the longer period, the extent of the decline is much clearer: estimates of the current volume of crime are substantially below that in 1981 when the survey was first instigated. The number of offences as measured by the survey rose throughout the 1980s and the first half of the following decade, peaking in 1995 at 19.1 million. Since that high point, the overall volume of crime has fallen by more than two thirds. There has also been a significant decline in the rate of victimisation: in 1995, 40 adults in every 100 reported being the victim of a crime; the equivalent figure in 2016 was 14 in every 100. While the pattern has varied for different types of criminal behaviour, all of the offences measured by the survey have registered a decline over this period.¹¹

As indicated above, the CSEW has only recently collected data on the criminal victimisation of children below the age of 16 years and these continue to be presented separately from information on older victims for methodological reasons. In addition, the survey questions changed during the first three years, so some caution is required when considering trends. There has been some fluctuation over the period captured by the data and a marked rise in the most recent 12 month period of 17.6%, which is a potential source of concern. Nonetheless, as a whole, early indications might be thought to suggest that child victimisation is also falling in line with the adult experience, albeit more slowly: the number of crimes experienced by children aged 10-15 years fell by more than one fifth between 2010 and 2016, as indicated in table 1.

A significant limitation of the CSEW from the perspective of the current discussion is that, because it focuses on the experiences of victims, it provides no information on perpetrators. As a consequence, it is not possible to determine what proportion of the total volume of offences can be attributed to children. Nonetheless, the falls in victimisation recorded are

consistent with a reduction in youth crime since there are no obvious grounds for thinking that adult offending has declined disproportionately. While there is evidence that children and adults may have differential involvement in different offence types – children are over-represented among those committing robbery offences, for instance, but under-represented for crimes of fraud¹² - the consistent reduction across a wider range of different forms of victimisation is suggestive of falls in offending by both children and adults – at least in relation to those crimes covered by the survey.

The decline in the number of offences committed against 10-15 year-olds might be thought to provide additional support to that interpretation of the figures since:

- children in this age range are more susceptible to being victims of personal crime than adults;
- young people tend to commit offences against others close to their own age;¹³ and
- there is a significant overlap between victimisation and perpetration among children.¹⁴

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

Police recorded crime generates a markedly different picture; most obviously it indicates a much lower volume of offending than the CSEW. In the year ending December 2016, 4.8 million offences (including fraud) were recorded by the police, almost one quarter lower than the estimate provided by the victimisation survey in spite of the fact that the range of offences covered in the former is much broader (see below). The considerable gap between the two indicators is largely explained by a significant shortfall in reporting by victims for a range of reasons.¹⁵ HM Inspectorate of Constabulary has also drawn attention to the failure of police adequately to record offending when it is reported to them: in 2014 19% of the crimes that victims reported were not formally recorded.¹⁶ Because the measure depends on police input, the results it

Table 1

CSEW : Offences reported by children aged 10 to 15 years: 2010-2016

Source: Office for National Statistics (2017) Crime in England and Wales: year ending December 2016. London: ONS. Data are drawn from Appendix Tables. The figures provided here are from the 'preferred measure' which omits some 'low level incidents between children'. However, the trends in the 'broader measure' of children's victimisation is in the same direction, with the estimated fall between 2010 and 2016 being considerably higher at 39%

Year ending	Number of offences (000s)	Difference over previous year
March 2010	1,056	
March 2011	918	-13.1%
March 2012	1,066	16.1%
March 2013	817	-23.4%
March 2014	797	-2.5%
March 2015	718	-9.9%
March 2016	844	17.6%

generates can also be influenced by shifts in recording practice or policing more generally (an issue discussed in more detail below).

On the other hand, crime recorded by the police is not restricted to personal victimisation and it therefore provides data for a broader range of offending than the CSEW. To give a more complete picture, in recent years, the results from both measures have been published alongside each other (although it should be noted that because of concerns in relation to the quality of police recorded data, they are no longer designated as National Statistics). Since it is not possible to establish the age of a perpetrator unless he or she is apprehended, police recorded crime shares with the crime survey an inability to provide data on youth crime directly.

Despite their differences of emphasis, and magnitude, both measures suggest a similar trajectory in terms of crime trends, indicating a long term decline. Figures for police recorded crime show that offending peaked somewhat earlier, in 1992 as opposed to 1995, from which point there were annual falls until 1998/1999. Changes in counting rules in the following year, and the introduction of the National Crime Recording Standard in April 2002, were reflected in an increase in the number of incidents recorded by the police up to 2003/04: the Office for National Statistics attributes those rises to more stringent recording practice as a consequence of the revised guidelines.¹⁷ More recently, following the bedding-in of these changes, the downward trend has continued with police recorded crime falling from 6 million offences in 2003/04 to 4.8 million in 2016, a reduction of one fifth.¹⁸ There has been a corresponding decline in the rate of offences per 1,000 in the general population from 114 in the former year to 83 in 2016. It should be acknowledged that police recorded crime has registered increases since 2013/14, including a 9% rise in the latest year. However this is likely to be, at least in part, a reflection of:

‘the renewed focus on the quality of crime recording by the police. This follows inspections of forces by Her Majesty’s Inspectorate of Constabulary (HMIC), the Public Administration Select Committee (PASC) inquiry into crime statistics and the UK Statistics Authority’s decision to remove the National Statistics designation from police recorded crime statistics in 2014. This renewed focus is thought to have led to improved compliance with the National Crime Recording Standard (NCRS), leading to a greater proportion of reported crimes being recorded by the police.’¹⁹

In combination, the two primary indicators of the total volume of crime suggest that overall levels of offending

have been falling since at least the mid-1990s. Further confirmation of that trend is provided by figures for incidents of anti-social behaviour (ASB) recorded by the police which show a decline from 3.9 million in 2007/08 to 1.8 million in 2016.²⁰ It is widely accepted that ASB is a ‘contested concept’ which depends on subjective perceptions of what constitutes ‘alarm, harassment and distress’²¹ and some of the decline might derive from a reduced saliency of ASB in policy discourse. There has also been a 30% reduction in the number of police community support officers, part of whose remit was to respond to, and record, ASB.²² The quality of police recording in this area has varied considerably from one force to another in any event.²³ Nonetheless, the downward trajectory which the figures show reinforces, and is consistent with, other evidence indicating a reduction in unlawful and other forms of problematic behaviour. While the figures are again not specific to young people, children are perceived to be disproportionately engaged in anti-social behaviour, a perception that it is reflected in a higher use of anti-social behaviour sanctions for under-18s.²⁴

The kids are alright – falls in detected youth crime

As previously indicated, it is not possible to infer the extent and direction of youth crime directly from the data presented in the previous section of the paper since none of the sources described provides information on the individuals responsible for the offending reported-on. More specifically the age of a perpetrator can only be ascertained where he or she is apprehended; as a consequence, most commentary on trends in youth crime has tended to rely on data for offences that have been detected and where there is a recorded sanction against a particular individual. Trends derived from these figures are consistent with other measures in suggesting that there has been a substantial reduction in youth offending.

It is difficult to track changes over time because of modifications in the way that data are recorded and aggregated. This qualification notwithstanding, the available evidence indicates that the fall in detected youth crime has been sustained over a considerable period. As noted previously, figures for detected youth crime prior to 1992 do not include 17 year-olds since children of that age were considered to be adults for criminal justice purposes. Earlier data are accordingly not comparable with information on children’s criminal activity after that date. This difficulty aside, between 1980 and 1999 the number of children cautioned or convicted of an indictable offence fell by 37% from 175,700 to 110,800.²⁵ There was an inevitable sharp

increase in detected youth crime in 1992 as 17 year-olds were captured for the first time but thereafter, as shown in figure 1, there was a continued steady decline of 27% up to 2003. Following a short period when detected offending rose, the long term decline recommenced from 2007 onwards. During 2016, 21,372 children received a substantive disposal for an indictable offence compared with 143,600 in 1992, a reduction of 85%.

Figures for detected offending inevitably understate the extent of children’s lawbreaking for a number of reasons. There is a process of ‘attrition’ whereby offences committed by children are progressively filtered before reaching the stage where they are caught in the data for detected crime.

First, a considerable proportion of criminal activity does not come to police attention. This is particularly true of crimes where there is no personal victim. These often go unnoticed. But, as noted above, even where victims are aware of having been offended against, many – accounting for 62% of offences captured by the British Crime Survey in 2010 - do not notify the police.²⁶

Second, where offences are reported, detection rates remain low: in the year ending March 2016, for instance, 48% of incidents recorded by the police were closed without any suspect being identified; in a further 13% of cases, proceedings were not pursued because the victim did not support such a course.²⁷ The effect of such filtering is that figures for detected youth crime fail to capture much of children’s criminal activity; most children who offend are simply not caught and a

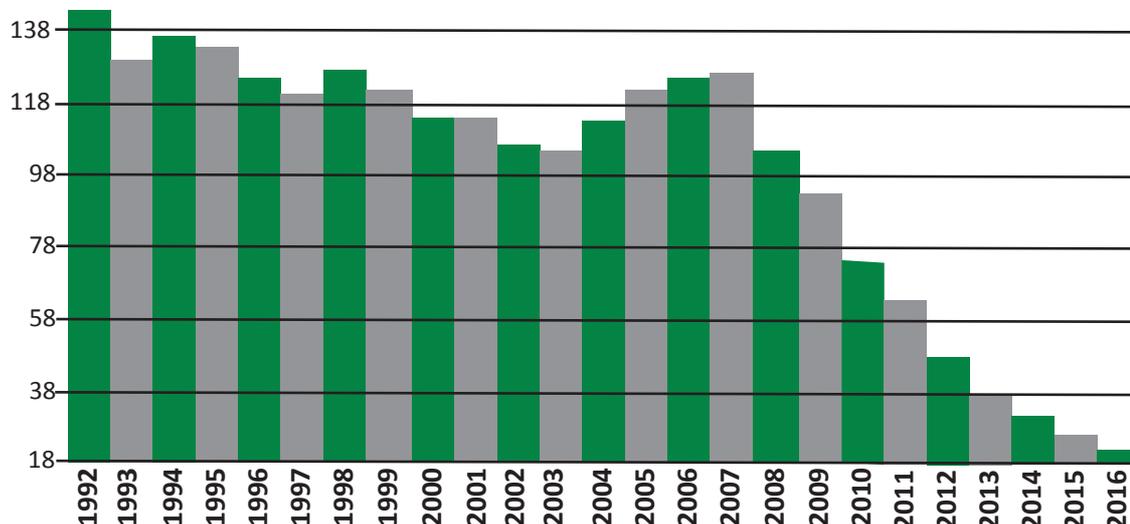
significant proportion of those who are do not receive a formal sanction.

Nonetheless, such difficulties do not in themselves provide grounds for dismissing the pattern shown in figure 1, since there is no reason to suppose that offences committed by young people are less likely to be reported and detected than those perpetrated by adults. Indeed, given that children tend to engage in relatively unsophisticated criminal activity, in public spaces, rendering their offending more visible to the authorities, the reverse may be true.²⁸

At the same time, variations in the level of detection can influence the extent of youth crime that receives a substantive outcome and ‘clear up’ rates do vary over time. The rate of detection fell during the early part of the 1990s and this might explain some of the reduction in children’s recorded offending in that period. Between 1993 and 1999, however, there was an upturn in the proportion of offences reported to the police that were detected, so improved policing could not have contributed to the continued downward trend in recorded youth crime in those years. From 2002/03 to 2013/14, the proportion of offences cleared up by the police rose again, from 23.1% to 29.4%.²⁹ One might accordingly have anticipated an increase in detected youth offending over that period; in the event, it fell by almost three quarters. As a consequence of the introduction of a new outcomes framework in the intervening years, more recent figures for police clear ups are not directly comparable. Nonetheless, it is apparent that trends in youth crime cannot be explained simply as a function of changes in

Figure 1

Children receiving a formal pre-court disposal for, or convicted of, an indictable offence: 1992-2016 (thousands)



Figures derived from the relevant editions of Criminal Statistics England and Wales to 2009 and the renamed (and modified) series Criminal Justice Statistics, England and Wales to 2016

the proportion of offences detected by the police.

It might be concluded with some confidence therefore that, while figures for detected youth crime do not provide an accurate picture of the extent of children’s offending, they provide a useful indication of broad trends, including whether youth crime is increasing or declining. Considered in the context of the data derived from CSEW and police recorded crime, both of which show declines in the overall volume of offending, one might reasonably conclude that the trajectory shown in the figures for detected youth crime represents a genuine reduction in children’s law breaking.

Confessions - self-reported offending

A further indicator of youth crime can be derived from self-report studies. Like victimisation surveys, these have the advantage that they are not dependent on offences being notified to the police or detected by them. Moreover, because they focus on offending rather than victimisation, they provide information on the age of the individual perpetrator, thus allowing a distinction between youth and adult crime. On the other hand, they rely on respondents giving an accurate account: young people may seek to exaggerate or minimise their engagement in delinquent activity and there is no definitive way of determining the extent to which such misrepresentations might distort the figures or in which direction.

A more significant limitation, however, is a lack of

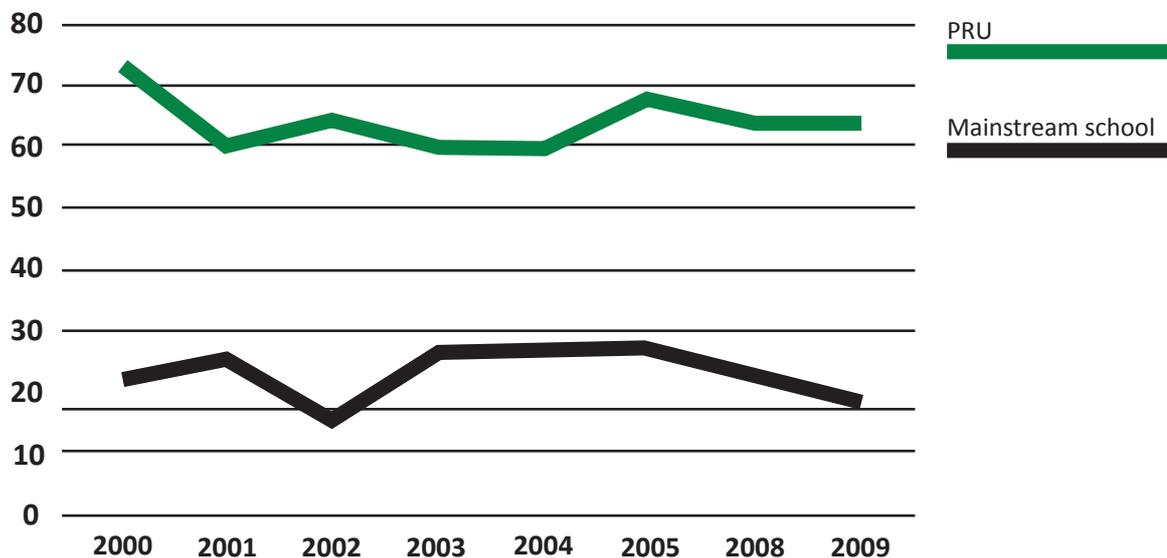
consistency in the available data: no regular surveys have been conducted over the longer term; self-report studies that did exist have been abandoned more recently; and methodologies for surveys that have been conducted vary considerably.

The Offender, Crime and Justice Survey was conducted annually by the Home Office between 2003 and 2006 but was subsequently discontinued. It was not focused purely on youth crime but had a sample range of 10 to 25 years. A longitudinal analysis of the results over the three years indicated a reduction in the prevalence of various forms of criminal activity: for instance, 17-18 year olds born between 1986 and 1988 reported lower levels of engagement in assault leading to injury than those born in 1983-1985. Similar analysis indicates that, at age 12-13 years, self-reported anti-social behaviour for children born between 1992 and 1996 was significantly below that for the equivalent cohort born in 1989-1991.³⁰

The Youth Justice Board commissioned MORI to undertake a self-report study of children aged 11-16 years in mainstream school and pupil referral units annually between 2000 and 2009, although no surveys were conducted in 2006 or 2007. The results show something of a different pattern to that suggested by other measures. They demonstrate that while offending by these two groups did fall over the relevant period, there was some fluctuation; moreover the decline was more modest than that shown in other sources. As indicated in figure 2, the proportion of children in alternative education who reported having committed any form of offence in the previous 12 months

Figure 2

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



registered a fall from 72% in 2000 to 64% in 2009; the equivalent figures for those in mainstream schooling were 22% and 18% respectively.³¹

One possible explanation for the apparent discrepancy between the MORI survey and other measures, in addition to the potential unreliability of children's reporting, is a limitation in methodology. A focus on children in educational settings is liable to miss those at the highest risk of becoming involved in delinquent behaviour, since research confirms that offending is more prevalent among children not in any form of education.³² Similarly, a failure to include children above school leaving age – 16 years at the time of the survey – means that the peak age of youth offending is not captured.³³ As a consequence, the results of the MORI exercise do not include information from those groups of children among whom rises or reductions in offending would be most pronounced.

The available self-report data is accordingly consistent with falls in the underlying level of youth offending over the periods to which they relate, albeit at a level which is more muted than given by other sources. Since 2009, no further national self-report studies have been undertaken.

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- 4 See National Statistics (2012) *British Crime Survey: methodology* available at: <https://www.gov.uk/government/statistics/british-crime-survey-methodology>
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chapter 3 Making sense of patterns of detected youth crime

A long-term trend with recent fluctuations

Given the contextual supporting evidence from an array of different sources, the conclusion that the long term trajectory registered in the data for detected youth crime represents a genuine decline in the underlying level of criminal activity by children over at least the last thirty or so years appears irresistible. This assumption is rendered even more credible when considered in the context of evidence that other problematic behaviour by children has also fallen. For example, after rises in the 1960s and 1970s, alcohol consumption by young people has contracted since the late 1980s.¹ According to the Health and Social Care Information Service, 38% of children aged 11-15 years reported ever having had an alcoholic drink in 2014 compared to 62% in 1988 when the survey was first conducted. The proportion of children in that age range who thought it was acceptable to drink alcohol once a week fell over the same period from 46 to 24%.² Trends for the use of illegal substances by young people have mirrored those for alcohol, albeit that the rise came a little later and the decline commenced more recently.³ During 2014, 15% of secondary school pupils said they had ever taken an illegal drug compared with 29% in 2001.⁴ If there have been reductions in the prevalence of these analogous forms of behaviour, it would not be unreasonable to surmise that lawbreaking would also be tending in the same direction, particularly as the links between drug taking and alcohol consumption and offending are well documented.⁵

If such conclusions as to the direction of youth offending run counter to general perceptions and media representations of children's lawbreaking, that is largely a consequence of a consistent tendency on the part the public to estimate continued rises in the volume of crime since 1995 in spite of incontrovertible evidence to the contrary (with the possible exception in the more recent period of cybercrime).⁶

However, if the overall trajectory is plain, the pattern shown in figure 1 on page 10 for more recent years may require a more nuanced analysis. Since 2003, two features are particularly striking:

- The relatively stable downward trend that had

persisted for more than a decade came to an abrupt end in 2003 with a pronounced, albeit short-lived, rise in detected offending. By 2007, the number of substantive youth justice disposals imposed on children was one fifth higher than it had been four years previously.

- Conversely, the period from 2008 onwards has been characterised by a further sharp reversal. But the decline associated with this shift has been significantly more pronounced than at any point since at least the early 1990s. Indeed, the fall during 2008 alone was steep enough to compensate for the cumulative increase over the previous four years. The rate of decrease has scarcely abated in the ensuing period although there are signs of a slight levelling-off in the past two years: detected youth offending has reduced by 83% since the highpoint in 2007.

These abrupt oscillations require some attention since it is intuitively implausible that fluctuations of such magnitude can be explained by changes in children's offending behaviour; young people, as a whole population, simply don't change that quickly. Significantly none of the other measures of offending reviewed above suggest that an abrupt short term rise in crime occurred in the four years from 2003. Equally, while those other indicators are consistent with a fall after that date, the reduction registered is significantly less pronounced than that in the data for detected youth crime.

In line with other commentators, the NAYJ has previously argued that the anomalous rise and subsequent fall in substantive disposals shown in official statistics can be convincingly explained in terms of shifts in the practice of the police and other agencies to accommodate successive performance indicators.⁷ Those shifts in practice have required a cultural adjustment and a redefinition of what constitutes 'good' youth justice practice. This in turn has tended to produce a different treatment of children who come to police attention.

The reforms of the New Labour government elected in 1997, which at the time were regarded as sufficiently radical to warrant being called a 'new youth justice'⁸, were predicated on pretensions of toughness that

manifested themselves in a determination to intervene early with children who infringed the criminal law, or were considered at risk of doing so, to *'nip... offending in the bud, to prevent crime from becoming a way of life for so many young people'*.⁹ Consistent with that ethos, once the reforms had bedded in, the government established a target to narrow the gap between offences recorded and those 'brought to justice' by increasing the number that resulted in a *'sanction detection'*.¹⁰ The indicator required a growth in annual sanction detections of almost a quarter of a million by March 2008 against a March 2002 baseline.¹¹ The extent of the required rise was, arguably, arbitrary since it was expressed in terms of absolute numbers rather than a percentage of offences that come to police attention; certainly no justification was provided at the time. The target was met a year early but this achievement was not indicative of improvements in police performance, since any rise in the rate of detection was insufficient to account for the increase in substantive outcomes; it was not in other words a consequence of more crimes being solved.¹² Rather, as is now generally accepted, the growth in sanction detections was a function of formal disposals being imposed for incidents that came to police attention that would previously have attracted an informal response.¹³ Government intervention thus led directly to net-widening, a phenomenon whereby increasingly minor forms of misdemeanour are drawn into the ambit of the formal criminal justice system.¹⁴

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

- as discussed below, youth offending is, on average, of a less serious character than that of adults
- children are less likely to have previous convictions (because they have had less time to accrue them); and
- the police may be more inclined to adopt a more lenient response to those who have yet to attain adulthood.

There was accordingly a greater scope to alter practice in the direction of an increased use of sanction detections in relation to children's offending since there had hitherto been a greater use of informal responses for that group. That shift is evidenced in the statistical data: while between 2003 and 2007, the number of adults entering the criminal justice system rose by less than 1%, the equivalent figure for those below the age of 18 years was 22%. Within the latter cohort, those populations who might previously have been expected to benefit from additional latitude

by the police (leading to a higher use of informal responses) were particularly adversely affected. They included younger children, girls and those arrested for petty transgressions. The introduction of the sanction detection measure accordingly resulted in the unnecessary criminalisation of large numbers of children by targeting 'the unusual suspects'¹⁵ or as Rod Morgan, previously chair of the Youth Justice Board put it, by harvesting the 'low-hanging fruit'.¹⁶

As its implications became clear, the sanction detection target was criticised precisely for this tendency to inflate the use of criminal sanctions for minor lawbreaking (as well as being an inappropriate use of police resources).¹⁷ The rapid rise in the numbers of children entering the criminal justice system led to corresponding pressures on courts and youth offending teams as workloads mushroomed. Though the punitive sentiment (and commitment to early formal intervention) behind its introduction were still apparent in policy and practice thereafter,¹⁸ pragmatic considerations ensured that the target was not renewed. Indeed so far as youth justice was concerned, it was replaced by a measure with a contrary, and from the perspective of the NAYJ a preferable, dynamic whose implications were more closely aligned to the research base, although it seems unlikely that its adoption was primarily evidence-driven.¹⁹

The Youth Crime Action Plan (YCAP), published in 2008, committed the government to achieving a reduction in the number of children entering the youth justice system for the first time – so called first time entrants (FTEs) – by 20% by 2020.²⁰ The target had been included earlier in the Youth Justice Board's Corporate and Business plan 2005/06 to 2007/08, but at that time appeared to have little impact, in part because the sanction detection indicator, which had a greater influence over police activity, was still in force. The FTE measure was subsequently adopted by the Coalition government as one of its three high level outcomes for youth justice in 2010,²¹ all of which were subsequently retained by the Conservative administration elected in May 2015. Since the June 2017 election, there have been few policy announcements specific to youth justice but, at the time of writing, there is no reason to anticipate that a reduction in FTEs will not continue to be a political priority for the foreseeable future.

If the sanction detection target was net-widening, promoting the criminalisation of minor delinquency, the indicator which replaced it had a converse impetus, encouraging the police to respond in an informal manner to children who had had no previous substantive disposals, whether or not they had previously come to police attention. The commitment to formal early intervention, which had characterised youth justice policy for more than a decade, was thus

suddenly replaced by a drive to divert from the formal mechanics of the criminal justice system children with no formal antecedent history.

YCAP failed to acknowledge that this was a policy reversal, simply asserting that *'reductions in youth crime will principally come about if we reduce the flow of young people entering the criminal justice system'* without explaining why that should be so. (Indeed, if the measure of youth crime is detected offending – the government’s preferred indicator for reoffending – the statement is tautological.) While unsustainable workloads were, as suggested above, a consideration in this sharp U-turn, it is hard to ignore the financial context in which the shift occurred: 2008 was also the year that economic crisis hit the UK economy. Packing the justice system with children who had engaged in what was often trivial delinquency was an unaffordable expense increasingly in tension with developing austerity in the public sector.²² Significantly, as Pitts has noted, the last period in which youth diversion received such high level political backing, during Margaret Thatcher’s administration, also coincided with the onset of austerity.²³

The new target had an immediate impact, and like its predecessor, was met early: the 20% reduction was achieved in the first 12 months after it was formally adopted by the government. The fall has continued in the period since. As shown in figure 3, the number of FTEs rose between 2003 and 2007 by almost one third in response to the sanction detection target; by contrast, as the new performance measure kicked in, the trajectory reversed. Between 2007 and 2016, the

number of children entering the system for the first time fell by 84% from 110,801 to 18,263. Since such children account for a sizeable proportion of all those who are given a formal sanction each year, there has been a corresponding impact on the overall volume of detected youth crime. The marked similarity in the patterns over this period shown in figures 1 and 3 is therefore unsurprising.

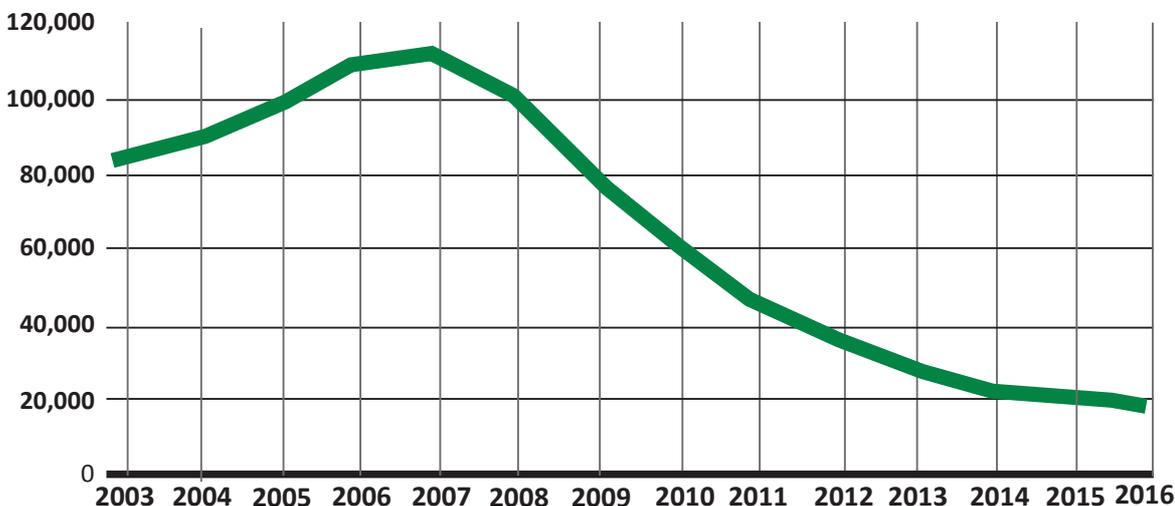
Targeting detected offending

The above analysis does not undermine the conclusion that there has been a long term fall in the underlying level of youth crime; rather it seeks to account for recent fluctuations in detected youth offending around that trend by reference to the predictable outcome of the successive implementation of two contrasting central government targets, without having to posit dramatic changes in children’s behaviour.²⁴

If the volume of detected youth offending can be so readily influenced by changes in performance indicators that have a direct impact on the practice of criminal justice agencies, a deeper question about the impact of policy on children in trouble is inevitably posed. As noted above, the New Labour administration of the late 1990s encouraged early intervention, through the use of formal sanctions, reinforcing an already punitive and interventionist climate towards children who broke the law that had emerged throughout that decade. The number of children who were prosecuted rose as a consequence, even while overall detected offending declined.²⁵

Figure 3

First time entrants to the youth justice system: 2003-2016 (year ending March)



Source: Ministry of Justice/Youth Justice Board (2017). Key characteristics of admissions to youth custody: April 2014 to March 2016. England and Wales. London: Youth Justice Board

The sanction detection target can legitimately be understood as a logical culmination of that approach, leading to a corresponding sharper expansion in the criminalisation of children. The rise in detected youth crime generated sensationalist and unhelpful media reporting, suggesting that children’s delinquent behaviour – and particularly offending by girls (an issue considered in more detail below)²⁶ – was spiralling out of control. This in turn exacerbated a process, noted by the United Nations Committee on the Rights of the Child, of demonising young people,²⁷ sustaining a cycle of intolerance.²⁸

Moreover, from the perspective of individual children, this effective lowering of the threshold for entry into the formal criminal justice system was potentially damaging since a criminal record represents a considerable constraint on future prospects.²⁹ There is a wider social concern too. A sizeable body of evidence confirms that early induction into the youth justice is ‘*criminogenic*’: it increases the risk of recidivism.³⁰ Net-widening provisions emanating from a determination to appear ‘tough’ on law and order, such as the sanction detection target, are thus both inherently unfair, contrary to the evidence and likely to increase overall levels of victimisation.

Conversely, strategies of maximum diversion, wherein youthful misbehaviour is met wherever possible by an informal response, are associated with desistance from serious offending.³¹ That understanding influenced responses to children in trouble during the 1980s which were largely informed by a philosophy of ‘minimum necessary intervention’, and were associated with a large reduction in the criminalisation of children without any rise in the level of youth crime.³² In this sense, the FTE target – which effectively raises the threshold for formal criminal justice intervention – both accords better with the research evidence and is indicative of a more child friendly approach to youth justice. Indeed, developments since the introduction of the measure might be thought to constitute something of a natural experiment in this regard. If, as New Labour contended in the 1997 White Paper ‘No More Excuses’³³ a failure to clamp down on early indicators of youth criminality, and a widespread use

of diversion from the justice system, would encourage further offending, then one would anticipate that any attempt to reduce significantly the number of FTEs could show only short-term gains: children benefitting from such lenience would be more likely to offend in future. On this account, one would therefore expect any diminution in FTEs to be time-limited and followed by a subsequent bulge as the failure to impose formal sanctions led to increases in lawless behaviour. The fact that such a dramatic reduction has been sustained for nearly a decade offers an empirical refutation of the purported benefits of early induction to the youth justice system.

A further indication that the FTE target might encourage desistance is to be found in the data showing a decline in detected offending by young adults aged 18-20. A credible explanation of the pattern shown in the figures is that it reflects the longer term benefits of the target as individuals who avoided criminalisation as a child are able more easily to make the transition to a non-offending adult lifestyle. The fall for young adults started later than that for children – accelerating from 2010 onwards – and has been more muted. Such a pattern would be consistent with the fall in the ‘child-offender’ population percolating through to the older age group since a delay of around two years would be anticipated.

There has also been a fall in detected offending by older adults, aged 21 and above, over the same period, but as shown in table 2, this has been considerably less pronounced than for either the child or young adult population. Interestingly, however, the rate of decline has quickened sharply since 2014, at the point when any beneficial impact from the introduction of the FTE target might be expected to filter through to those in their twenties.

The NAYJ therefore welcomes the FTE measure and the decriminalisation of large numbers of young people that has flowed from its introduction. (Some of the mechanisms through which success against the target has been achieved are considered in greater detail in due course.) However, the Association remains concerned that the rediscovery of diversion has been

Table 2

Decline in detected offending for different age groups: 2010-2016 (indictable offences)

Age range	Detected offending 2010	Detected offending 2016	Percentage reduction
10-17	73,724	21,372	71%
18-20	67,980	28,126	59%
21+	339,735	243,900	28%

Source: Derived from respective editions of Criminal Justice Statistics, published by the Ministry of Justice

largely a pragmatic response to the imperatives of austerity politics rather than an explicit endorsement of the benefits of minimum intervention. While punitive residues continue to influence youth justice policy, albeit at a lower level than hitherto, the gains of recent years may yet prove to be fragile and vulnerable to political reversal.

At the same time, the fall in the throughput of the youth justice system has been used to legitimise considerable reductions in resources to youth offending teams, despite the fact that much of the recent decline in detected offending reflects a different response to youth crime rather than its absolute attenuation. The successes in relation to the FTE target have in part been realised precisely because youth offending teams have increasingly focused on non-statutory, informal, preventive work, delivery of which - in the absence of a healthy youth work sector - has tended to fall to youth justice staff.³⁴ Workload has not accordingly fallen to the extent suggested by statutory caseloads, and budget cuts now put at risk services provided to children who come to the attention of the police but are not formally criminalised.

Finally, the political commitment to diversion has arguably relied in part on the reality that youth crime is in any event falling. To the extent that there is a relationship between the economy and crime, albeit a mediated one, the continuation of that contextual backdrop cannot be guaranteed. The development of a rights-compliant, evidence-informed, ethically defensible underpinning for youth justice practice is urgently required.

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chapter 4 The face of youth crime

It's not unusual

If the precise measurement of youth crime is rendered problematic by a range of epistemological difficulties, two things are clear. First, risk-taking behaviour — including lawbreaking — is quite common during the period of transition associated with the teenage years and such behaviour has generated concern among adults consistently throughout history.¹ This increased prevalence of offending during adolescence is confirmed by self-report studies: for instance, the Offending Crime and Justice Survey found that, over a four-year period, almost half of young people aged 10- 25 years had committed at least one offence.² Such surveys also highlight the second most significant fact about youth crime: most of it is relatively minor.

While, as outlined above, official statistics understate the extent of youth crime, they also, and for similar reasons, tend to exaggerate its seriousness. Minor incidents are more likely to remain undetected because victims are less inclined to report them and, where the police are notified, they may not merit the allocation of resources necessary for detection and processing. Where children engaged in such activities are apprehended, the authorities frequently use their discretion to avoid a formal outcome. This latter dynamic has been reinforced by the FTE target which has involved a filtering of more trivial matters out

of the system and a corresponding rise in the over-representation of more serious lawbreaking among those incidents that continue to attract a formal disposal. Data for detected youth crime hence give a distorted picture of youthful offending. In this context, self-report studies provide a more balanced portrayal. The MORI youth survey, for instance, demonstrates that stealing is by far the most common offence committed by school-age children.³

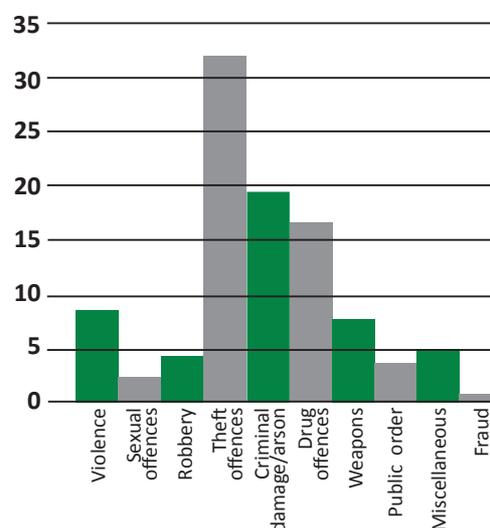
Discussion of youth criminality tends to focus on high profile, more serious incidents, such as gang-related activities, robbery, violence against the person and, particularly in the recent period, knife-crime. As indicated above, this focus is not warranted by the pattern of behaviour captured by self-report studies. Moreover, in spite of the impact of the FTE target, which has led to fewer less-serious matters entering the system, property offending remains the most common indictable offence type captured in the figures for detected youth crime: in 2016, theft alone accounted for almost one in three indictable matters leading to a substantive youth justice disposal. The second largest category, accounting for one in five incidents, was drug-related offending, the majority of which are likely to involve possession of relatively small amounts of illicit substances.

As shown in figure 4, the number of violent crimes remains relatively low, accounting for slightly more

Figure 4

Children receiving a youth caution, youth conditional caution or conviction by offence type as a percentage of all indictable offences: 2016

Source: Ministry of Justice (2017) Criminal Justice statistics 2016 - England and Wales. London: Ministry of Justice



than one in 10 of all indictable detected offending (a slight increase of around 2% over the previous year). Robbery too is relatively infrequent at less than 5% of all offences (a reduction from the previous two years). Just 3% of indictable incidents involved sexually harmful behaviour. While some offences falling within these categories can be serious, it would be a mistake to assume that they all are: during the year 2016 44% of violent offences and 35% of sexual offences attracted a youth caution or youth conditional caution, indicating that they were below the level of seriousness that requires prosecution in the public interest. It should be emphasised, that, since these figures omit summary offences, they considerably overstate the gravity of youth offending because large numbers of less serious incidents are excluded. Nonetheless, it is a matter of some concern that there has been a rise, from 8% to 12% over the past two years, in the proportion of offences that are weapons-related. Part of this increase might be understood as a consequence of a growing policy focus on the extent of knife crime, leading to a higher level of reporting to the police by other agencies, such as schools, who might previously have dealt with the issue internally. Detection is also likely to have increased as a consequence of the introduction of various forms of enforcement-related activities – such as the deployment of knife arches. The nature of the current discourse is also such that possession of a weapon is rarely met with an informal response from the police.

In any event, there has been a substantial increase in the number of children given a formal youth justice disposal for knife possession since the introduction of mandatory custodial penalties for a second offence for children aged 16-17 years, from 757 in the first quarter of 2015, to 1,150 in the equivalent period of 2017. There has also been an associated growth in the number of custodial sentences imposed for such offences, from 505 to 613, an issue discussed further in due course.⁴ In this context, it should be noted that research has suggested that, in some high crime areas, children report carrying knives for self-protection.⁵

The rise in weapons offences has not been reflected in

an increase in homicides. Seven children below the age of 18 years – of whom one was a girl - were convicted of murder; three children were convicted of attempted murder and six children (all boys) were convicted of manslaughter. As with all ‘rare’ crime types, the actual number of homicides committed by persons below 18 years of age fluctuates from year to year - but it has tended to be remain relatively stable recently, with what appears to be a reduction in the most recent period. The combined annual figure for children convicted of murder or manslaughter stood at 38 in 1989, 33 in 1999,⁶ 38 in 2009,⁷ 27 in 2014, 19 in 2015 and 13 in 2016.

Growing up

The nature of adolescent risk-taking, described above, is such that children are more likely to commit offences than their adult counterparts. Nonetheless, because the former constitute a minority of the overall population, adults are responsible for a much greater volume of crime. As shown in figure 5, during 2016, children committed less than one in 20 of all detected offences (summary and indictable), a proportion that has fallen from 11% since 2008 in line with the decline in FTEs.⁸ By contrast, 90% of crime was committed by adults aged 21 years and over.⁹

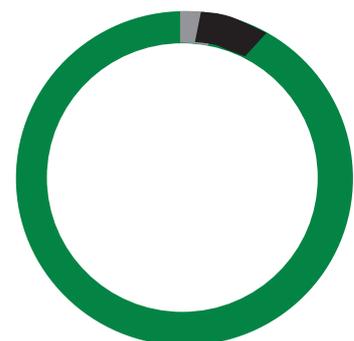
One obvious yet seldom-remarked implication of offending-rates ‘peaking’ during adolescence is that they diminish thereafter. There is substantial evidence that as young people make the transition to adulthood there is an accompanying shift to a more law-abiding lifestyle. Indeed, falling criminality as age increases has been called ‘one of the brute facts of criminology’.¹⁰ In 2016, for instance, the rate of offending per 100,000 of the population aged 15-17 years was four and a half times higher than that for those aged 21 years or older (see figure 6 on page 20). Although the reasons for this phenomenon remain contested, there are several potential mechanisms by which maturation might be linked to desistance. Sociological explanations, for instance, tend to emphasise the changing social roles

Figure 5

Detected offending by age range (indictable and summary offences): 2016

Source: Ministry of Justice (2017)

Aged 10-17: **3%**
 Aged 18-20: **7%**
 Aged 21 and over: **90%**

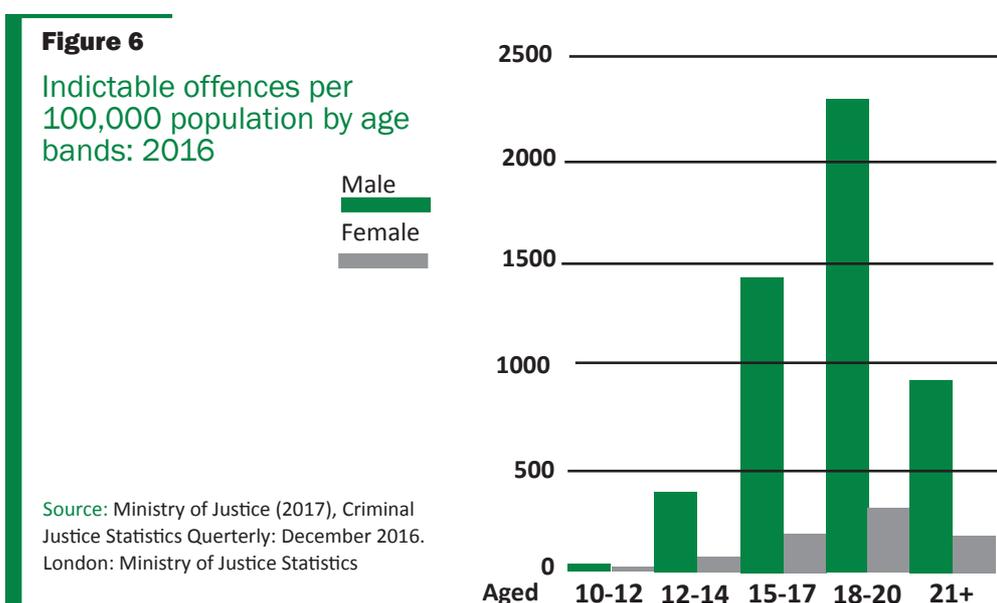


that children increasingly occupy as they approach their late teens and early adulthood: becoming independent of their parents, entering the jobs market, engaging in long term relationships and taking additional responsibility for the care of others. These new roles are associated with expectations of different behaviours and, from a practical perspective, allow less time for hanging around the street with groups of friends; an environment that can readily give rise to activity that might attract police attention.¹¹ Other more psychologically-leaning accounts point to the impact of maturation on improved impulse control, a greater capacity for consequential thinking and increased empathy for others.¹² These forms of explanation are not, of course, mutually exclusive since social and psychological changes are contemporaneous and may be mutually reinforcing.

Implicit in both types of account is the idea that maturity leads to a shift in the young person's identity as they come to regard themselves as an adult; the shift being one that promotes desistance in most cases.¹³ However, as McNeill has recently pointed out, successful transition in this regard also involves an element of reciprocity. This takes the form of a recognition by the state and the community that the young person's identity has modified: the provision of legitimate opportunities for full participation in the adult world is a crucial element of such recognition.¹⁴ Where employment opportunities are fewer, access to independent accommodation restricted, and discrimination against young people with criminal records more entrenched, there is an associated risk of 'extended adolescence' that might inhibit the natural processes of growing out of crime.¹⁵ Austerity measures have the potential to exacerbate such outcomes.

For current purposes, it is also clear that youth justice policy and practice can themselves encourage or hinder maturational development. The idea that, if left to their own devices, most children will naturally stop offending, was a central tenet of youth justice practice during the 1980s which aimed to minimise children's contact with the youth justice system precisely because such contact was understood as interfering with natural developmental processes.¹⁶ New Labour's rationale for reform of the youth justice system challenged this consensus. Relying on the Audit Commission's influential 1996 report, *Misspent Youth*,¹⁷ the Home Office asserted that 'the research evidence shows that [growing out of crime] does not happen'.¹⁸

The Audit Commission's position derived from a simplistic reading of the data on detected crime to conclude that the peak age of offending had risen, implying that maturation was no longer so clearly associated with desistance. But, as outlined above, the link between detected offending and actual lawbreaking is highly attenuated. While it was true that figures for the former showed an increase in the age at which children were subject to youth justice outcomes, such a pattern was consistent with a number of developments not considered by the authors of the report. The period selected by the Audit Commission was one in which young people were increasingly diverted from the formal justice system; younger children were particularly likely to benefit from such diversionary impulses, leading to an increase in the average age of those entering the system. The data were accordingly not indicative of a failure of older children to give up offending but of the effective decriminalisation of large numbers of their younger counterparts.¹⁹ New Labour policies predicated on the



necessity of intervening early through the youth justice system to ‘nip offending in the bud’ were accordingly vulnerable to criticism and based on a flawed understanding of the evidence.

A similar dynamic is associated with the fall in FTEs which, as shown later in the paper, has impacted particularly sharply on younger children, leading to a rise in the average age of those receiving substantive disposals: in 2007, the peak age of offending for males was 17 years;²⁰ by 2013, it had risen to 19 years. More recent figures are not available at this level of (age specific) detail but, as shown in figure 6, the peak age of both male and female offending in 2016 was between 18 and 20 years. The pattern thereafter continues to show clear evidence of growing out of crime.²¹

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chapter 5 What are they like?

The characteristics of children in conflict with the law

Poverty is risky

As previously noted, behaviour that infringes the criminal law is quite widespread among teenagers from all backgrounds, but most of that illegal activity does not result in a formal youth justice sanction. A recent self-report study for instance found that less than half of children who admitted offending within the previous 12 months had been caught by the police. Moreover, the most common outcome for those who were apprehended, accounting for 28% of such cases, was that nothing happened as a consequence. A further 20% of children indicated that they had to apologise to the victim. (It is not clear from the report whether such apologies involved a formal disposal or an informal response such as a community resolution.)¹

But if youth criminal behaviour is common, children who typically come to the attention of criminal justice agencies are *'disproportionately drawn from working class backgrounds with biographies replete with examples of vulnerability'*.² A number of reasons have been proposed for this disproportion. First, there is a correlation between economically deprived areas, characterised by above-average levels of unemployment and poor access to services, and higher levels of crime and victimisation.³ Residence in such neighbourhoods is accordingly much more likely to bring children into contact with forms of illegal behaviour which become part of the fabric of their everyday lives. It is this geographical concentration that explains, at least in part, the significant overlap between young people who offend and those who are victims of crime: they are frequently the same cohort from the same deprived areas.⁴ Second, the experience of growing up poor is one that is typically associated with characteristics such as adverse family circumstances, poor schooling and higher levels of ill health, (as well as subjective wellbeing⁵) each of which increases the likelihood of offending. Moreover, the longer a child lives in poverty, the higher the chance that he or she will engage in delinquent activity. As Kingston and Webster have argued:

'It is the longevity and recurrence of poverty that adversely influences family processes causing disruption and emotional stress. Long-term poverty influences the resources and therefore

*opportunities available to children and young people and their emotional security, and has the strongest impact on criminal involvement.'*⁶

Children living in areas of high density housing are more likely to socialise in larger groups, and in public spaces, thereby attracting the attention of the authorities for behaviour which might be overlooked in other settings. This is exacerbated by the operation of the youth justice system itself which, it has been argued, consists of a *'series of filters'* that tend to operate to the disadvantage of children whose circumstances are embedded in *'economic adversity'*, and reinforce each other at every decision-making stage.⁷ Similar behaviour by middle-class and working class children might, as a result of such filtering, attract quite different forms of response.

Such processes also help to explain the over-representation of minority ethnic children within the youth justice system (an issue considered further in due course) since the communities from which such children derive are disproportionately poor. In this instance, direct and indirect forms of discrimination, on the basis of ethnicity, exacerbate the impact of disadvantage.⁸

The disproportionate criminalisation of looked-after children, a subject that has rightly received considerable attention over the course of the past year,⁹ is consistent with accounts predicated on a relationship between socio-economic status and contact with the youth justice system since their life experiences as children in care are typically characterised by high levels of abuse, victimisation, deprivation and other forms of adversity. According to figures collated by the Department for Education, looked-after children are five times more likely than their peers in the general population to be subject to a formal youth justice disposal.¹⁰ Moreover, these figures are almost certainly an underestimate since they relate to those who have been continuously in care for 12 months or longer and more than half (52%) of children who acquire care status are looked-after for periods shorter than one year.¹¹ At the upper end of the youth justice system, the extent of over-representation increases: 37% of children in secure training centres and 39% of boys in young offender institutions report having care experience.¹²

Broadly speaking, attempts to account for higher levels of criminalisation among the care population have tended to focus on two forms of explanation. The first notes that children in care share with other young people who offend histories grounded in various forms of disadvantage which appear to make delinquent behaviour more likely; the factors that lead to children coming into care are associated with emotional and behavioural difficulties and lowered resilience. A second approach highlights the potentially negative consequences of the care experience itself on children and points to structural features of the care and justice systems which increase the prospect of criminalisation. Placement instability, negative peer group influences, a lower threshold for involving the police as a mechanism of control and service shortcomings combine to make it more likely that children's behaviour will be managed through a criminal justice lens. Such dynamics are particularly at play for children placed in residential provision which can intensify, create and promote criminal behaviour.¹³ While logically distinct, it is clear that these explanatory models are intertwined in practice. As Jo Staines for instance, has convincingly argued:

Children who enter care having experienced abuse and trauma are then particularly vulnerable to being negatively influenced by relationships and experiences within care. [The] impact of this interaction is then exacerbated by involvement in the youth justice system itself, which can further criminalise looked after children'.¹⁴

The correlation with disadvantage becomes more pronounced in relation to children who are involved in more serious or persistent offending. A recent study of children in police custody for instance established that 'general entrants' to the youth justice system each experienced an average of 2.9 'vulnerabilities', but that the equivalent figure for boys affiliated to gangs was seven and, for girl gang affiliates, 9.5.¹⁵ Analysis by the Youth Justice Board of youth offending team assessments at the point of admission to the secure estate, between 2014 and 2016, found that 61% of children were not engaging in education, 45% had problems with substance misuse and one third were suffering from mental ill health.¹⁶

Such findings might suggest that responses to children in trouble should focus on ensuring their longer term wellbeing. In recent years, however, this evidence of extensive welfare need has been recast in the form of 'risk factors' that are thought to be predictive of involvement in criminal activity, an approach that Jo Phoenix has characterised as 'oppressive welfarism'.¹⁷ The development of Asset, until recently the standardised youth justice assessment tool, was

designed explicitly to capture such risks within its 12 domains.¹⁸

The 'risk factor paradigm', as it has become known, has come under extensive criticism for treating children as 'crash test dummies' whose fate is largely determined by the risks which they embody, rather than regarding them as active individuals with a capacity to make choices, albeit that their options may be constrained by their socio-economic position.¹⁹ As a consequence, risk-led intervention inevitably tends to undermine engagement between children and their supervisors since it focuses attention on correcting supposed deficits within the child and his or her family rather than adopting a future orientation that aims to ensure that young people achieve their entitlements, equip them to develop a sense of agency and empower them to develop an alternative, pro-social, personal narrative, equivalent to a shift in identity.²⁰ In this context, opportunities are missed for more effective forms of supervision underpinned by the establishment of high quality relationships.²¹ A focus on 'desistance', by contrast, understands children as 'subjects with whom youth justice workers should engage in their own interests' and involves an explicit recognition that children in trouble may have done wrong but are also likely themselves to have been victims of injustice in various guises.²²

The risk paradigm, because it targets the supposed deficiencies of individual children and their families rather than understanding children's criminal behaviour as a normalised response to the environment within which they grow up,²³ thus locates:

'...the responsibility (blame) ... with the young person and their inability to resist risk factors, rather than examining broader issues such as ... social class, poverty, unemployment, social deprivation, neighbourhood disorganisation, ethnicity'.²⁴

While it is true that there is a statistical correlation between supposed risk factors — such as not attending school or taking drugs — and offending, research evidence suggests that the influence of the child's material surroundings is often sufficient to mediate the impact of many individual deficits. In one American study, boys with no identifiable risk factors from the most disadvantaged neighbourhoods were fifteen times as likely to have committed serious offences as those from the most affluent areas. As shown in table 3 (on the next page), the presence of additional indicators of risk was accordingly likely to play a much bigger role in explaining the offending of boys residing in the latter type of neighbourhood than of those living in poorer areas.²⁵ Risk is, it would appear, much more prevalent in poorer areas; but such areas generate significantly

Table 3

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

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

higher levels of youth crime whether or not the individuals who engage in such behaviour display such risks.

More recent evidence, derived from the Edinburgh Study of Youth Transitions provides confirmation of this hypothesis. At age 13, youth violence is ‘strongly associated with poverty at the individual and household level’. Significantly, for the current context, these relationships persist even when individual risk and protective factors are controlled for. While boys are much more likely to engage in violent behaviour than girls, the relationship between poverty and violence applies to both males and females: girls living in poverty are also ‘at elevated risk of being violent’.²⁶

It is for such reasons that, while it is true that many children in contact with youth justice agencies will display more ‘risks’ than those who do not come to the attention of the justice system, predicting from an early age which children will or will not offend, on the basis of their risk profile, proves to be extremely difficult.²⁷

Such criticisms have begun to influence youth justice policy. AssetPlus, for example, developed by the Youth Justice Board to replace Asset, is designed to balance risk alongside ‘consideration of a young person’s needs, goals and strengths’ and to reflect elements of the desistance literature.²⁸ While the risk paradigm is still evident within the revised framework,²⁹ one welcome development is that the child’s own understanding of their situation features as one of four equally weighted sources of information, potentially promoting the evolution of more participatory approaches to youth justice intervention. Further encouragement in this regard has come more recently in the form of a ‘Participation strategy’, published by the Board in November 2016 which makes explicit reference to the right in Article 12 of the UN Convention on the Rights of the Child that children’s views should be taken into

account in relation to all matters that affect them and commits the Board to:

- ‘embedding young people’s participation in how we support, advise and monitor the youth justice system;
- helping government and our strategic partners when they make decisions - to take more notice of young people’s voices;
- giving young people a say in how we plan, deliver and evaluate our own activities’.³⁰

The strategy represents a considerable advancement given that a previous study, conducted in 2009, found that expectations within youth justice practice were that children should be engaged rather than enabled to have a genuine say in planning their intervention. The authors of that report noted a number of obstacles to embedding participation including ambivalence as to whether children who offend ‘deserve’ to have their voices heard, and an ambiguity between the enabling and enforcement role of youth justice practitioners.³¹ To what extent the Board’s strategy will mitigate those obstacles remains to be seen.

Age

By definition, all children processed for offending fall within the 10-17 age bracket. A number of factors combine to ensure that those who receive youth justice disposals are clustered towards the upper end of that range: older children are more likely to come to the attention of police more frequently by dint of the fact that they have more access to public space; the peak age of offending coincides with the late teenage years; and any discretion exercised by the police to deal with illegal behaviour without resort to formal sanctions will tend to be exercised where the suspect is a younger child. In 2016, children aged 15-17 years accounted for almost 78% of those receiving a formal pre-court disposal or conviction for an indictable offence. Conversely, just over 1% were below the age of 12 years. The full distribution is given in figure 7.

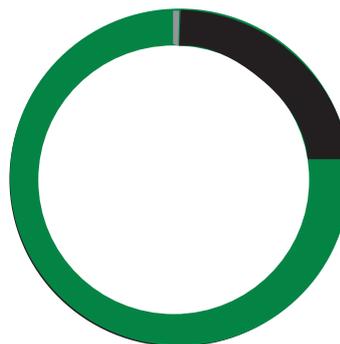
At a broad level, this age-clustering is an enduring feature of the youth justice system. However, for reasons discussed earlier in the paper, the distribution is not static but subject to fluctuation in line with the vicissitudes of policy and practice that determine the circumstances under which children are criminalised. Most recently, for instance, the FTE target has tended to filter out younger children from the system at a faster rate than their older counterparts, leading to a reduction in the representation of this cohort: in 2008, children aged 10-11 years accounted for 3% of all youth justice disposals but, as indicated above, the equivalent figure for 2016 was just 1%.

Figure 7

Children receiving a substantive youth justice disposal by age (indictable offences) – 2016

Source: Ministry of Justice/Youth Justice Board (2017). Key characteristics of admissions to youth custody: April 2014 to March 2016. England and Wales. London: Youth Justice Board

Aged 10-11: **1%**
 Aged 12-14: **20.8%**
 Aged 15-17: **78.10%**



Conversely, in the period prior to the adoption of the FTE target, the focus on maximising sanction detections led to a more rapid rise in the number of younger children subject to formal outcomes since this group had previously benefited from a higher use of informal responses. Consequently, while the number of 10-14 years-olds receiving a substantive disposal for an indictable offence increased by almost a third between 2003 and 2007, the equivalent growth for those aged 15-17 years was a more modest 20%.

Despite the welcome reduction in the number of younger children who enter the system, the potential for any child to be criminalised remains subject to the age of criminal responsibility. In England and Wales, the threshold at which children become criminally liable is just 10 years of age; considerably below that in most other European jurisdictions. The United Nations Committee on the Rights of the Child has consistently criticised the United Kingdom in this regard, indicating that 12 years is the absolute minimum acceptable age consistent with international standards of children’s human rights.³² In its most recent report on the UK’s compliance with the Convention, published in 2016, the Committee noted that, while Scotland was in the process of raising its age of criminal liability, there had been no progress in the rest of the United Kingdom. The Committee again recommended that the age of criminal responsibility should be increased ‘in accordance with acceptable international standards’.³³

The relatively small number of children in the lower age-ranges formally processed by the justice system makes reform in this regard appear increasingly sensible. On the other hand, given the evidence that shifts in policy and practice could rapidly lead to a reversal of recent trends and a recurrence of the criminalisation of large numbers of young children, it also appears increasingly necessary. The NAYJ considers that the age of criminal responsibility should be raised to 16 years in line with the age of consent.³⁴ Successive governments have however shown little appetite for reform in this regard. Indeed, as noted earlier in the

paper, the terms of reference of the Taylor review explicitly precluded consideration of the issue and in the course of its 56 pages, the report does not mention the age of criminal responsibility once.³⁵

Girls and boys

If, as suggested earlier, the age-crime curve is one of the few certainties in criminology, a second enduring truth is that offending is predominantly a male activity. Girls are consistently less likely than boys to come into contact with youth justice agencies; they commit fewer and less serious offences; and grow out of crime more successfully and at a lower age.³⁶ In 2016, 2,742 girls received a substantive youth justice disposal for an indictable offence, representing less than 13% of the total; 26% of girls’ offending that led to a formal disposal involved theft, compared to 18% for boys; and the female reoffending rate within 12 months of caution or conviction was 27.6% compared to a male rate of 40.3%.

Over the longer period, there has been a substantial decline in the number of females entering the system, with detected offending by girls falling by 92% since 1992. This pattern is hard to square with a common perception, frequently inflamed by the media, that girls’ behaviour is a bigger problem than it has been hitherto.³⁷ Much of the recent moral panic in this regard, derives from a short period during which the sanction detection target led to rapidly rising criminalisation, generating media claims of an ‘unprecedented crime wave among teenage girls’.³⁸

Between 2003 and 2007, coinciding with the introduction of the sanction detection indicator, there was a pronounced escalation in the number of girls entering the youth justice system. Significantly, as detailed in figure 8 (which shows changes in girls’ and boys’ offending from a 2003 baseline), this increase was considerably sharper than that for boys, at 35% compared to 20%, suggesting that the target had a

greater net-widening impact on the female population. This gendered pattern is readily explained by the fact that the more limited, less serious, nature of girls’ offending (and the persistence of paternalistic attitudes) had traditionally been associated with a higher use of police discretion to deal informally with female behaviour; the scope for increasing the use of formal sanctions was accordingly more extensive in the case of girls.³⁹

As the FTE target took hold, there was an associated marked decline in detected offending by all children. However, as shown in figure 8, the general fall masked a faster reduction for girls as the logic of the new performance measure encouraged higher levels of diversion, which inevitably had larger consequences for females since their offending tends to be less serious and prolific. Perhaps unsurprisingly, this dramatic decline, although it has persisted for a far longer duration than the preceding short term rise, has not garnered as much press attention as that earlier increase.⁴⁰

A similar process explains why the peak age of female offending is higher than that for males in spite of the evidence, cited above, that girls tend to grow out of crime at a younger age. The decriminalisation of many children that has accompanied the increased focus on diversion, has served to prevent younger girls, in particular, from being made subject to substantive disposals, thereby ensuring that the average age of

females within the justice system has risen more rapidly than that for boys.

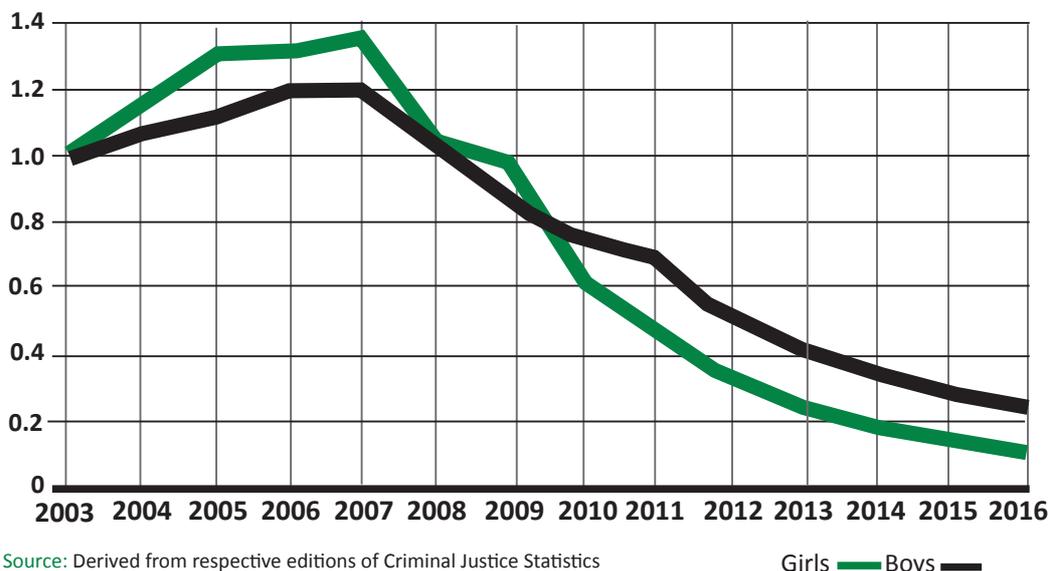
The history of child incarceration also demonstrates that the treatment of girls is particularly sensitive to shifts in policy and practice. Between 1992 and 2001, for instance, youth custodial sentencing rose by more than 90% (in spite of the fact that youth crime was falling) but the impact on girls of this punitive dynamic was considerably more alarming, with an increase in sentences of imprisonment imposed on females – albeit from a low baseline – of 500%.⁴¹ Conversely, with the onset of decarceration from 2008 onwards, the fall in the number of girls detained in the secure estate has, as shown in figure 9, dropped much more sharply than the number of boys.

Evidence suggests that girls in conflict with the law are significantly more vulnerable than their male counterparts on a range of indicators.⁴² This is certainly true for those deprived of their liberty: as table 4 demonstrates, girls admitted to custody are more than twice as likely as boys to be considered at risk of suicide or self-harm and are more likely to have identified concerns in relation to physical and mental ill health.⁴³

Such extensive need among the female offending population, in combination with the fact that girls are less likely than boys to reoffend, can prove problematic: youth justice assessments predicated on risk factors will systematically over-predict the likelihood of recidivism in girls, potentially resulting

Figure 8

Changes in detected offending relative to a 2003 baseline by gender (1.5 represents a rise of 50%; 0.5 a fall of 50%): indictable offences



Source: Derived from respective editions of Criminal Justice Statistics

Girls — Boys —

Figure 9

Changes in the population of the secure estate relative to a 2008 baseline by gender- (1.5 represents a rise of 50%; 0.5 a fall of 50%): May of each year)

Source: Derived from Youth Justice Board (2017) Youth custody report – June 2017. London: Youth Justice Board

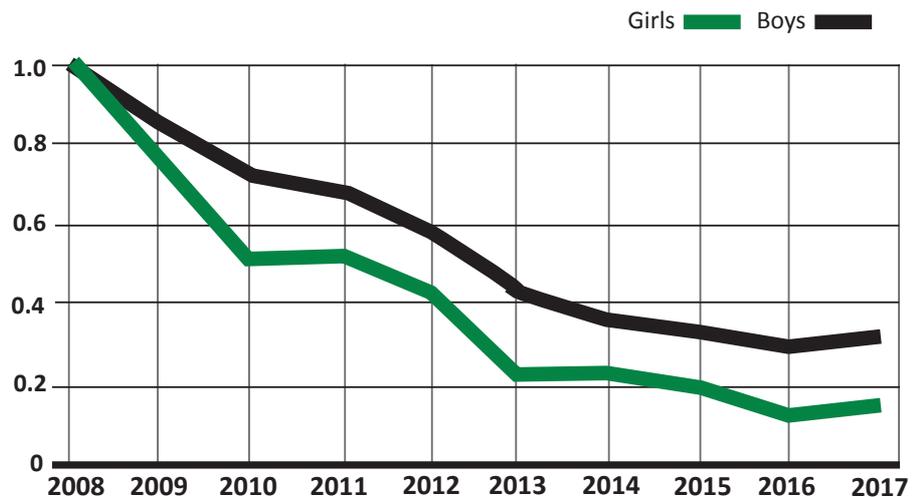


Table 4

Assessed characteristics of children admitted to custody by gender: April 2014-March 2016 (selected indicators of concern)

Indicator of concern	Percentage of admissions	
	Boys	Girls
Suicide or self-harm concerns	30%	63%
Physical health concerns	29%	39%
Substance misuse concerns	45%	50%
Mental health concerns	33%	41%
Sexual exploitation concerns	6%	60%

to be imprisoned, implying that the lenience that is afforded to young women in many circumstances is withdrawn where their behaviour transcends female norms. In such cases, girls become ‘doubly deviant’ and the treatment meted out to them reflects their contravention of both the law and expectations of femininity.⁴⁶ Such injustices have led to an increasing insistence on the importance of gender-specific programmes but Sharpe and Gelsthorpe have cautioned that, however well-intentioned such developments are, to the extent that they operate within a criminal justice context, they are unlikely to combat the institutional adversity experienced by, and lack of welfare support offered to, girls from the most disadvantaged and victimised backgrounds.⁴⁷ At the end of May 2017, for instance, there were just 31 girls in the custodial estate; this small number – while welcome on one level – generates significant systematic difficulties for the provision of appropriate levels of care and support such as those that arise from the probability that girls will be placed, on average, significantly further from home than their male counterparts.

in higher levels of intervention than would otherwise be warranted by their law breaking.⁴⁴ Moreover, the limited research in this field suggests that at least some of the vulnerabilities displayed by girls in trouble have developed as a consequence of a history of ‘welfare inaction’ and ‘their abandonment by helping professionals’.⁴⁵

There has been a more recent recognition that ‘gender neutral’ responses to youth crime have disadvantaged girls, particularly where gendered assumptions continue to underlie decision making. It has been noted, for instance, that girls convicted of assault are more likely than their male counterparts

Race, ethnicity and criminalisation

It has long been recognised that criminal justice systems are disproportionately populated by people from black, Asian and minority ethnic (BAME) backgrounds. One consequence of that recognition is that, since 1991, the government has been required to publish information to assist criminal justice agencies to meet their duty to avoid discrimination on the grounds of race. More recently, in January 2016, the government asked David Lammy, MP for Tottenham,

to lead an independent review to investigate the treatment of, and outcomes for, BAME individuals within the criminal justice system. The review is expected to publish its final report in September 2017 but in an open letter to the Prime Minister in November 2016, describing his early findings, Lammy notes that, particularly as regards the use of custody, the problem of minority ethnic overrepresentation is ‘worse for under 18s’.⁴⁸

Consistent with that observation, BAME children, viewed as a single group, are over-represented in the youth justice system. It is however important to note that the picture varies by ethnic background. As shown in table 5, relative to their make up in the 10-17 population, Asian children are under-represented among those receiving a substantive youth justice disposal; by contrast 1.8 times as many black children come to the attention of the youth justice system as would be expected given the composition of the general population within the relevant age range.

The extent of BAME representation has tended to rise over time: between 2009/10 and 2015/16, the proportion of all children subject to a substantive youth justice disposal classified as white fell from 84% to 75% with a corresponding expansion in the representation of minority children. At least some of the increase is explained by the fact that the fall in FTEs has not benefited minority ethnic children to the same extent as their white counterparts: in 2007/08, black children

accounted for 7% of those receiving a substantive youth justice disposal for the first time; the equivalent figure in 2015/16 was 12%. (Although of the course, the slower fall is itself in need of explanation.)

A further issue of concern is that overrepresentation increases in line with the intensity of youth justice intervention: BAME children who enter the system are in other words more likely to receive higher levels of punishment. As shown in table 6, during 2015/16, BAME children comprised 19% of children receiving a caution or conviction but accounted for more than one third of those receiving a custodial sentence and more than half of those imprisoned for more than two years. Black children are seven-and-a-half times more likely to receive a long term custodial sentence⁴⁹ than would be anticipated from their representation in the general 10-17 population.

The over-representation of BAME children among those receiving custodial disposals has increased sharply in recent years. This rise is reflected in the composition of the population of the secure estate: while the overall number of children consigned to custody has declined, that decline has been significantly less marked for BAME children. Population figures reflect the length of stay in the secure estate as well as the numbers of children entering it and, as a consequence, the fact that the majority of long term prison sentences are reserved for BAME children has further exacerbated the overall trend. As shown in figure 10, while in May 2005,

Table 5

Representation by ethnicity of children in the 10-17 population and in the youth justice system: 2009/10 to 2015/16

	White	Asian	Black	Mixed heritage
General 10-17 population (2011 mid-year estimate)	81%	9%	4%	4%
Youth offending population				
2009/10	84%	4%	6%	4%
2010/11	82%	4%	7%	4%
2011/12	80%	4%	8%	5%
2012/13	81%	4%	8%	4%
2013/14	75%	5%	8%	5%
2014/15	78%	5%	9%	5%
2015/16	75%	5%	9%	6%

Source: Ministry of Justice/Youth Justice Board (2017). Key characteristics of admissions to youth custody: April 2014 to March 2016. England and Wales. London: Youth Justice Board

Table 6

Representation by ethnicity at different stages of the youth justice system: 2015/16

	White	Asian	Black	Mixed heritage
All youth justice disposals	75%	5%	9%	5%
Court convictions	73%	5%	11%	7%
Custodial sentences	62%	7%	18%	9%
Long term custody	46%	13%	30%	10%

Source: Ministry of Justice/Youth Justice Board (2017). Key characteristics of admissions to youth custody: April 2014 to March 2016. England and Wales. London: Youth Justice Board

minority ethnic children accounted for one quarter of those in custody, by the same month in 2007, that proportion had risen to 45%.

One might anticipate that the high levels of disadvantage experienced by minority ethnic communities would lead to higher levels of contact with the youth justice system. A Home Affairs Committee inquiry into young black people and the criminal justice system in 2007 concluded that the primary cause of over-representation was social exclusion and disadvantage. Minority ethnic young people are more likely than their white counterparts to be raised in deprived neighbourhoods and to experience

poverty; factors that are, as noted earlier, associated with increased levels of victimisation and offending. Consistent with this evidence, more recent research has confirmed that black and mixed heritage children within the youth justice system have significantly higher levels of need (as measured by scores in the different domains of Asset⁵⁰) than their white counterparts, suggesting that they have endured more adverse previous histories.⁵¹ There is evidence, too, that BAME children may be less likely to trust authority, feeling that criminal justice agencies – in particular the police – discriminate against them: such sentiments go some way to explain the fact that minority ethnic children are less likely to make admissions in police interviews, meaning that they are not eligible for pre-court disposals and may be regarded as unsuitable for interventions such as restorative justice.⁵²

At the same time, self-report surveys cast considerable doubt as to whether the extent of over-representation shown in the figures can be fully explained by the pattern of offending by BAME children.⁵³ It is hard to avoid the conclusion that discrimination in various guises accounts for at least some of the ‘disproportionality’ registered in the statistics.⁵⁴

As part of his independent review, David Lammy commissioned an analysis of disproportionality by ethnicity across the criminal justice system, which includes findings in relation to children that shed some light on the stages of the youth justice process that have the biggest impact on overrepresentation.⁵⁵

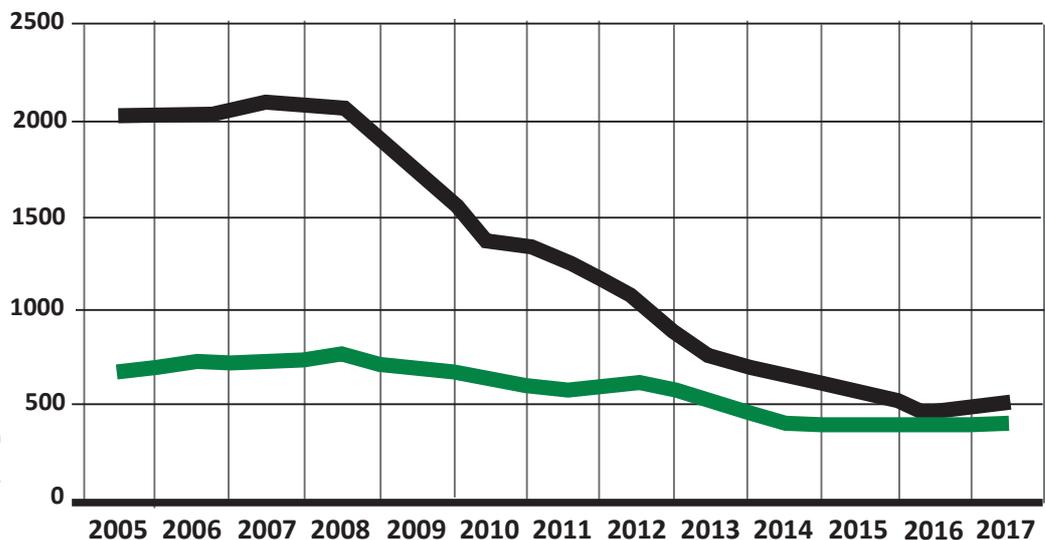
The analysis found that BAME children were almost three times as likely to be arrested as their white

Figure 10

Population of the secure estate by ethnicity: 2005-2017 (May of each year)

White children
BAME children

Source: Derived from Youth Justice Board (2017) Youth custody report – June 2017. London: Youth Justice Board



counterparts. This broad figure however disguised variations between ethnic groups: Asian boys were significantly less likely than their white peers to be arrested. Disproportionality at this point in the system is particularly significant because it 'influences the raw number of defendants proceeding through the courts system and ultimately into prison if convicted and sentenced'. As a consequence of higher arrest rates, BAME children would thus be overrepresented in custody even if no disproportionality occurred at other decision-making points.

In the event, the analysis did find evidence of disproportionate outcomes elsewhere but at later stages these were not so marked as those at the gateway to the system. Black and mixed heritage boys were more likely to be charged than white male children. Once cases proceeded to prosecution, the overrepresentation of BAME boys among those sent to Crown Court – where long term sentences are available – was particularly stark: black young males were almost 60% more likely than white boys to be committed to the Crown Court and Asian boys were nearly 2.5 times more likely to be tried in that venue by comparison with white young males.

Black boys proceeded against in the youth court were less likely to be found guilty and, if convicted, were significantly more likely to be sentenced to custody. For every white boy imprisoned, 1.2 black and 1.4 mixed heritage young males received a DTO. BAME children tried in the Crown Court were significantly more likely to plead not guilty but rates of imprisonment were broadly comparable to those for white children. The overrepresentation of BAME children among those receiving sentences of long term detention would thus appear to be largely a function of the decision as to where the case should be tried.

The NAYJ considers that addressing the overrepresentation of children from minority ethnic backgrounds is one of the most pressing issues faced by the youth justice system, since the prevailing pattern seriously undermines the ability of that system to deliver justice to children.⁵⁶ The NAYJ is also concerned that other groups – including gypsies, travellers and unaccompanied asylum seekers - are also overrepresented among those who come to the attention of criminal justice agencies. The lack of consistent data however means that less attention is paid to such communities.⁵⁷ Nonetheless, the data which are available provide further compelling evidence that the youth justice system is, in effect, a repository for the punishment of the most vulnerable children in society.

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chapter 6 Keeping children out of the system

The NAYJ considers that wherever possible children in trouble should be dealt with outside the parameters of the criminal justice system. There is compelling evidence that formal sanctioning – at least as currently configured - interferes with the natural processes of desistance through maturation, undermines the delivery of mainstream service provision, imposes punishment inappropriately on children who are overwhelmingly victims of social injustice, increases the prospect that the child will adopt a ‘delinquent’ identity and, accordingly, exacerbates the risk of further offending.¹

Such an understanding was widely accepted during the 1980s by practitioners, academics and, significantly, the government. Guidance to the police in 1985, for instance, endorsed the merits of decriminalisation, counselling against a presumption that youth offending should require a formal response, ‘*as against a decision to take less formal action or no further action at all*’.² One consequence was what has been called the ‘*successful revolution*’ of that decade, whose characteristics pre-figured in a number of respects contemporary trends identified earlier in this paper. The gains associated with that earlier revolution were however subject to a rapid, and largely unanticipated, reversal following a ‘*punitive turn*’, and a corresponding shift towards early formal intervention, that occurred in the early part of the following decade.³ The origins of that turn pre-dated the murder of two year old James Bulger, by two 10 year old boys in 1993, but were undoubtedly reinforced, and fuelled by it.

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

Policing children’s behaviour

It is widely acknowledged that childhood is one of the most regulated aspects of human activity and one important element of that regulation is policing. (Other

agencies, such as those associated with social care, education and youth justice, also play a regulatory role). As noted above, the manner in which this function is performed is critical for the subsequent pathways of children in conflict with the law, since the police are effectively the gatekeepers who, albeit sometimes in deliberation with other agencies, determine whether the individual will enter the formal youth justice system or be diverted from it.

For many children, encounters with the police take the form of stop and search, a procedure which Authorised Professional Practice issued by the College of Policing acknowledges may be more traumatic for children and can have ‘*long-term effects on their perceptions of the police*’.⁴ Stop and search is also one of the four priority areas for the National Police Chiefs’ Council’s ‘*National strategy for the policing of children and young people*’, which confirms that an inappropriate use of the power can undermine confidence in the police and ‘*give rise to strong feelings and resentment*’.⁵

Statistics on stop and search are not disaggregated by age but the All Party Parliamentary Group for Children has concluded that more than one million children were stopped and searched between 2009 and 2013. The figure is almost certainly a substantial under-estimate since it is based on returns from just 26 of the 44 police services. Nonetheless, the estimate is still considerably higher than the number of children (893,000) arrested over the same period. Conversely, the majority of arrests are not pursuant to a stop and search. It is therefore clear that many children are searched unnecessarily. (Of even greater concern perhaps is data provided by 22 police services indicating that 1,136 of those searched were below the age of criminal responsibility.)⁶

The use of stop and search has fallen in recent years: in 2001/02, 741,000 searches were conducted (on children and adults) under section 1 of the Police and Criminal Evidence Act; by 2009/10, that figure had risen to 1,177,327, but subsequently it began to decline rapidly so that, in 2015/16, the procedure was used on 386,474 occasions.⁷ The latter trend is largely explained by increasing criticism that stop and search is used in a discriminatory fashion and is largely ineffective.⁸ Research undertaken in 2017 confirmed that young BAME men believe they are unfairly targeted by the

police through stop and search.⁹ There are some indications of a change of mood in this regard: the Commissioner of the Metropolitan police, for instance, indicated in May 2017 that she was in favour of an increased use of stop and search to address the issue of knife crime.¹⁰

For current purposes, however, it is important to focus on the smaller group who are detained at the police station since it is apparent that part of the explanation for the fall in detected youth offending is that fewer children are arrested by the police than hitherto. As demonstrated in figure 11, the number of children arrested for a notifiable offence rose between 2002/03 and 2006/07 but began to fall sharply thereafter; from 351,644 to 88,517 in 2015/2016, a reduction of three quarters. This pattern is broadly similar to that for FTEs, though at a higher level.¹¹

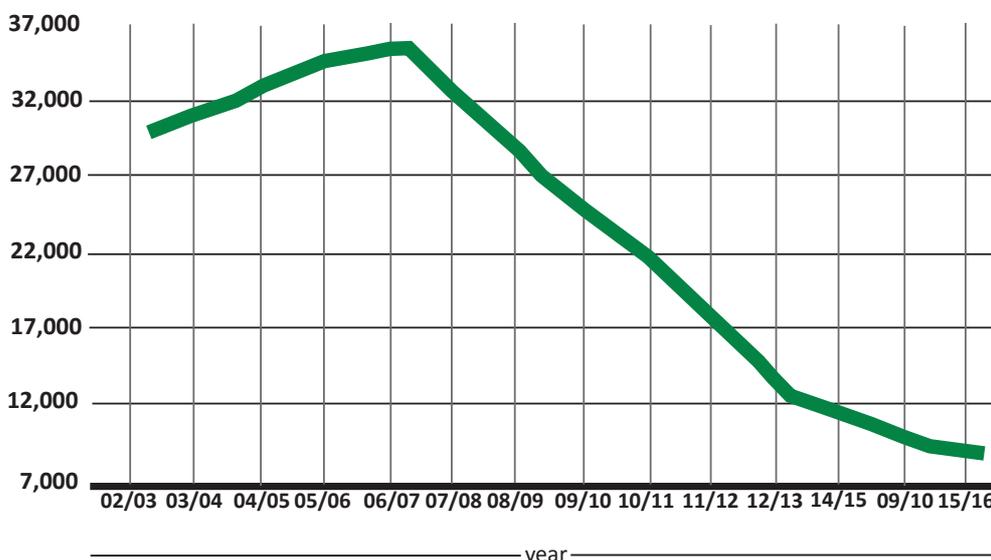
But suggesting that a decline in arrests explains the reduction in FTEs simply pushes the question back one stage since some account of arrest trends is then also required. A number of factors might be thought relevant here. First, the longer-term reduction in children’s criminal activity identified earlier in the paper is likely to have contributed to the fall in arrests, but it is doubtful that this could account for the extent of the decline from 2007/08 onwards. It is true that the Youth Justice Board did invest heavily in youth crime prevention in the form of highly targeted interventions such as Youth Inclusion Programmes (YIPs), established in 2000 to engage with the highest risk children in

the most deprived and high crime neighbourhoods. The evaluation of YIPs, while generally positive, was a little equivocal on the impact of the programme on reoffending. It found that more than half of participants with an arrest history were not arrested again in the follow up period; however, 70% of children participating had no previous arrest history and, of these, almost half were arrested in the follow up period.¹² Moreover, the approach which YIPs embodied has been criticised for mirroring the risk factor paradigm that underpins interventions for adjudicated young offenders,¹³ and consequently exposing children to the unintended consequences associated with stigmatisation and focusing on individual deficits as the cause of youthful misbehaviour.¹⁴ Moreover, whatever the merits of such criticisms, or the impact on individual participants, it is clear from the data shown in figure 11 that for the first six years of their existence, YIPs had no discernible deflationary impact on the total number of children arrested.

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

Youth restorative disposals (YRDs) were piloted in eight police force areas between 2008 and 2009 to allow police ‘more discretion with a quick and effective

Figure 11
Children arrested for notifiable offences: 2002/03 to 2015/16



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

alternative means of dealing with low-level, anti-social and nuisance offending. Usually delivered by officers on the street shortly after the incident, they were intended to contain a 'restorative' element with both the child and his or her 'victim' required to agree to the proposed course of action. An evaluation conducted for the Youth Justice Board found that more than half of YRDs were issued for theft and a verbal apology was the most frequent outcome. While pilot areas registered a contemporaneous fall in the number of formal pre-court disposals given to children, the authors were wary of attributing that reduction specifically to the introduction of YRDs since non-pilot areas also experienced substantial declines.¹⁵ In retrospect, it would appear that equivalent approaches were being developed simultaneously outside of pilot areas. Many police forces started to use what have become known as '*community resolutions*' (which operate in a similar fashion to YRDs) to deal with low-level lawbreaking without the need for arrest.

Relatively little is known about the operation of community resolutions. The Youth Justice Board defines them as a measure that enables the police to deal '*more proportionately with low-level crime and ... primarily aimed at first-time offenders where there has been an admission of guilt, and where the victim's views have been taken into account*'. The same guidance suggests that the disposal may be used with or without a restorative element. Community resolutions do not constitute a formal disposal and do not contribute to the figures for detected offending; they are however recorded locally and may be disclosed for the purposes of an enhanced Disclosure and Barring Service check.¹⁶ (This potential for disclosure is significant given that many children and their families are unlikely to be aware of the implications of accepting a community resolution.¹⁷)

National statistics on the use of community resolutions do not currently distinguish between children and adults but, in 2016/17, they accounted for 2.4% of all recorded police outcomes.¹⁸ One might reasonably anticipate that the proportion for children would be considerably higher than this global figure, given that youth crime is typically of a less serious nature. It would also appear that there are significant variations in practice at local level, as one might expect given the high level of police discretion in decision-making at this stage.¹⁹ In any event, it is apparent that community resolutions account for a significant, and increasing, proportion of responses to children who come to police attention.

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

The NAYJ applauds the fact that fewer children are subject to arrest but considers that there may be scope for further reductions.

in arrests between 2006/07 and 2015/16 are for more minor offences that might be considered most appropriate for community resolution.

The NAYJ applauds the fact that fewer children are subject to arrest but considers that there may be scope for further reductions. The 21,372 formal youth justice sanctions imposed in 2015/16 was significantly below the number of child arrests (88,517). Some of the gap between these two figures no doubt reflects the greater use of informal measures post-arrest in recent years (an issue addressed below), but it also seems likely that a considerable number of children continue to be arrested where there is insufficient evidence to proceed to prosecution or the matter is too minor to warrant a formal sanction. The National Police Chiefs' Council's children's strategy confirms that other options should always be explored before a child enters police custody and that children should not be criminalised for behaviour that could be dealt with by other means.²⁰

In any event, while the fall in arrests has had a significant impact on reducing the number of children entering the youth justice system, it is not, in isolation, sufficient as a full explanation since the decline in FTEs, while contemporaneous with the drop in arrests, has been much sharper. In 2015/16, 75% fewer children were arrested than in 2007/08. The equivalent reduction for FTEs was 84%.

Where a child is arrested, there are also grounds for concern as to their treatment while at the police station. On 6 July 2017, for instance, the Metropolitan Police announced that they intended to roll-out the use of spit hoods to all custody suites in London following a pilot and that their use would be available for children. The Children's Rights Alliance for England (CRAE) pointed out that this decision had been taken without public consultation and that no evaluation of the initial trial had been published. CRAE described the use of spit hoods for children, which doubled across the country in the first nine months of 2016, as '*distressing and dangerous*'.²¹

All children in police custody are entitled to the services of an appropriate adult who is not their legal adviser and is independent of the police. The role is frequently filled by a parent or carer, but where these are unable or unwilling to attend, the youth offending team has a statutory responsibility to co-

ordinate non-familial provision. Appropriate adults are central to safeguarding the rights and wellbeing of children while at the police station. In recent years, however, concerns have been raised as to the extent of delay prior to the arrival of the appropriate adult, during which period the child is usually left on their own locked in a police cell without adult support. In 2015, for instance, HM Inspectorate of Constabulary noted that children waited, on average, five and half hours for the appropriate adult to attend.²² Some later inspections suggest that the delay in some areas may be considerably greater than this figure: the most recently published (at the time of writing) inspection of custody suites described an average wait time in West Midlands for an appropriate adult of 11 hours and 35 minutes.²³ In such circumstances, the entitlement to an appropriate adult can sometimes contribute to children spending longer in police custody than would otherwise be the case.

The Taylor review expressed concern that children are frequently held in police custody for *'far longer than is necessary'*.²⁴ At present the maximum periods of detention are identical for adults and children: unless authorisation is obtained for extended detention, suspects must be released or charged within 24 hours. Taylor proposes the introduction of a separate limit for children of six hours, other than in exceptional circumstances, consistent with his view that the treatment of children in conflict with the law should be distinct from that of adults. The NAYJ considers that police stations are unsuitable places to hold children and police custody should be used as a last resort, where no other suitable options are available, and detention should be for the shortest period necessary. The Association accordingly welcomes Taylor's proposal which would also, where there are delays in obtaining legal representation or an appropriate adult, encourage the police to release children to return to the station at a pre-arranged time when all parties would be ready to proceed expeditiously. Disappointingly, the government, in its response to Taylor, makes no reference to this recommendation.²⁵

A further concern relates to overnight detention. Despite a clear statutory requirement that children who are refused bail by the police after charge should be transferred to local authority accommodation rather than remain at the police station, it is clear that the legislation is rarely complied-with. The NAYJ highlighted this failure as an issue requiring attention in 2013, noting that a lack of available local authority accommodation tended to discourage police requesting it,²⁶ but there appears to have been little improvement in the interim period. Of 636 cases examined by HM Inspectorate of Constabulary involving such children in 2015, just one had resulted in a confirmed transfer.²⁷ As

a consequence, many children remain in police custody overnight when they should be in local authority accommodation. In recognition of the difficulty, the Home Office and the Department for Education have produced a 'Concordat on Children in Custody', which restates the legal provisions and commits signatories to comply with them. The document was approved by the relevant ministers in April 2016 but has never been published. (The draft is however available on the Howard League's website.²⁸) The NAYJ takes the view that the Concordat should be published as a matter of urgency and steps taken to ensure that children do not remain in police custody illegally.

Hidden diversion

The different trends we see for arrests and FTEs indicate that further diversionary mechanisms are at play once children are arrested. The available evidence shows clearly that evolving youth offending team practice has been pivotal in increasing the number of cases (involving children in police detention) resolved without a formal pre-court sanction or prosecution. The functions of YOTs, as envisaged by the Crime and Disorder Act 1998, focused exclusively on children subject to formal sanctions. Nonetheless, by 2015, at least three-quarters of services were delivering preventive activities in one form or another;²⁹ of 20 YOTs visited by the Youth Justice Board in early 2015, just one worked exclusively with statutory cases.³⁰

Precisely because it has not been centrally driven in the same way that YIPs and other earlier forms of prevention were, YOTs involvement in diversionary activities has tended to evolve piecemeal in response to falling statutory caseloads; contributing locally to the FTE target and a more general *'reinvention'* of diversion.³¹ The Youth Justice Board's guidance on out of court disposals has no doubt helped to legitimate youth justice practice that is not tied to a formal outcome while being far less prescriptive than that which governs statutory interventions. The guidelines encourage joint decision-making between the police and YOTs and clarify that an informal outcome might be appropriate whatever the child's previous offending history.³² The Board has also acknowledged the impact of austerity, prompting YOTs to become integrated with wider services rather than operating as stand-alone partnerships, and encouraging a reconfiguration of provision around prevention,³³ leading in some areas to what has been called *'post-YOT youth justice'*.³⁴

In retrospect, New Labour's 2008 Youth Crime Action Plan can be seen as a major impetus for the diversionary shift. As well as establishing the FTE target, the plan provided funding for the development of

'triage' in 69 areas in England. Although triage schemes operate in a variety of ways, the shared purpose is to provide the police with a YOT assessment, usually accompanied by the offer of a preventive intervention. This can, in appropriate circumstances, allow the diversion of low level cases away from a formal criminal justice sanction and permit the recording of 'no further action'. An evaluation of the pilot found that most schemes focussed on such low level offending dealing mainly with children with no antecedent history who had typically committed offences such as theft, criminal damage or low level assaults.³⁵ While triage areas demonstrated a greater reduction in FTEs than the national figure (28.5% against 23%), those conducting the evaluation were not able definitively to attribute that difference to the scheme since the fall in FTEs had commenced prior to its introduction. Moreover, it seems clear that, as with the YRD, similar initiatives were developed in areas that had not received dedicated funding for this purpose. The emergence of such schemes no doubt accounts for at least part of the recorded falls in FTEs outside of formally recognised triage locations.

A separate initiative has encouraged increased diversion of particularly vulnerable children from formal youth justice intervention. Youth Justice Liaison and Diversion Schemes were piloted in six YOT areas from 2008 and aimed to provide enhanced support for children who come to the attention of the youth justice system with mental health and developmental problems, speech and communication difficulties, learning disabilities and other similar vulnerabilities, by referring them to appropriate provision.³⁶ It was intended that assessment by staff at the police station and the provision of such support would, in appropriate cases, function to divert children from criminal sanction. An evaluation found that the extent to which such diversion was achieved was variable and depended on police commitment to the scheme. Nonetheless, while the evaluators were not able to provide independent verification because of a paucity of data, staff estimates suggested that diversion was achieved in around 20% of cases referred. Moreover, access to the scheme was associated with an *'improvement in the mental health and wellbeing of young people'*, particularly in relation to self-harm, depression and anxiety.³⁷

A subsequent evaluation of a national roll-out to all age groups of liaison and diversion schemes across 10 trial sites established that some services had widened their referral criteria for children to include those subject to community resolutions or referred by schools or children's services. A total of 3,636 children were seen by liaison and diversion staff across the 10 sites during 2014/15, and, of these, 2,143 (59%) had no needs identified.³⁸ However:

'among the minority who did have needs, multiple needs were frequently identified, with up to nine needs in a single case. Among those cases with one or more needs identified, a large proportion had mental health needs. ... [T]he second most common need identified ... was parental or family conflict'.

A total of 789 children were offered appointments to address identified need. Criminal justice outcomes were, however, only recorded for 137 cases, making it difficult to ascertain the impact of the service on effecting diversion.³⁹ One might reasonably assume, however, that some of the fall in FTEs might be attributed to children being referred to emotional or mental health support as an alternative to a criminal justice sanction.

A greater use of such informal responses has been facilitated by the introduction, in April 2015, of a new government-endorsed outcome that provides an additional mechanism whereby the police can record a disposal without the imposition of a formal sanction. Outcome 20 *'is for offences where further action is taken by another body or agency other than the police'*. The outcome is not restricted to children but its introduction might be seen in part as a response to criticism by the All Party Parliamentary Group for Children that the potential for diversion from formal sanctions was reduced as a consequence of the limited options available to police as to disposal when they recorded an offence.⁴⁰ Figures for the use of Outcome 20 are not disaggregated by age but it seems intuitively likely that triaged cases and children subject to diversion as a consequence of mental health concerns will feature prominently among those disposed of in this manner. In 2016/17, 34,763 offences were recorded as having such an outcome, a rise of 75% over the previous year.

Triage and liaison and diversion were promoted at a government level, but it is clear that similar provision has emerged across England and Wales, albeit with local variation. Roger Smith, for instance, describes developments in Durham and Hull that both offer prevention activities targeted at avoiding formal entry to the youth justice system.⁴¹ Kelly and Armitage similarly provide an overview of non-statutory interventions in two unnamed YOTs to support informal disposals for low level offending.⁴² Surrey has developed what it refers to as a youth restorative intervention, which avoids a formal criminal record and is most commonly offered for incidents of theft, handling stolen goods and violence.⁴³ Perhaps the best known of these diversionary innovations is the Bureau model established in Swansea that aims to blend *'promising features of previous and contemporary'* initiatives with the explicit objective of diverting

children from the formal youth justice system and from further offending.⁴⁴

Where diversion is successfully achieved, outcomes from the above interventions are not reflected in the figures for detected offending, and they accordingly provide alternative options to formal youth justice disposals for children who might otherwise become FTEs, as well as a smaller number who have previously received formal sanctions. As noted above, there is little consistent, national information available on the extent or nature of diversionary practice - or on the number of children receiving services through such mechanisms. However, there can be no doubt that the availability of diversion-focused prevention provision varies considerably between areas and that the underlying philosophy of such initiatives and their effectiveness is equally variable. (It is also impossible to ascertain whether informal outcomes are always used to divert children from formal criminalisation or whether their development allows for an element of net-widening, where community resolutions and other equivalent interventions are given to children who might otherwise have had no action taken against them.) Such variability is likely to explain at least a part of the geographic differences in the trend data for FTEs. While the level of FTEs fell across all YOTs between 2007/08 and 2015/16 by almost 82%, the magnitude of the decline ranged from almost 95% in Monmouthshire to just over 62% in Swindon (as shown in table 7). London YOTs, in particular, are overrepresented among those with lower reductions. (The fall in FTEs

should not in itself be taken as an absolute measure of the extent of diversion in a particular area since the baseline figures will represent different starting points: some of those areas registering a relatively low drop in FTEs, in other words, will have had high levels of diversion prior to 2007 and vice versa.) Despite such geographical variability, the overall impact is evident. Moreover a 'stock-take' of youth offending teams commissioned by the Ministry of Justice confirmed that 'YOTs undertaking prevention work had lower FTE numbers than those that do not'.⁴⁵

In spite of clear progress, the lack of consistent information is of concern for a number of reasons. First, the absence of any systematic aggregation of outcomes for children who have been successfully diverted though these innovative means represents a missed opportunity to gather further evidence of the benefits of decriminalisation. Second, the rediscovery of diversion appears to encompass a range of different practices and underlying rationales. Smith for instance identifies several philosophical underpinnings: 'needs-based arguments; restorative principles; and the idea of minimum intervention'.⁴⁶ Haines and Case maintain that the Swansea Bureau encapsulates an ethos of 'inclusion, engagement and participation'.⁴⁷ Kelly and Armitage, conversely, discern residues of the influence of risk management and early interventionism embedded in the new practices so that: 'it is not possible to understand current trends as simply the rebirth'⁴⁸ of the 'progressive minimalism' of the 1980s.⁴⁹ This assessment is largely confirmed by Coyle's study in

Table 7
Percentage falls in full time entrants by highest and lowest youth offending team areas: 2007/08 to 2015/16

Source: Derived from Ministry of Justice / Youth Justice Board (2017) *op cit*. The table excludes the City of London and the Isles of Scilly, both of which recorded just two FTEs in 2015/16

YOTs showing a percentage fall greater than 90%		YOTs showing a percentage fall of less than 70%	
YOT	Fall in FTEs (%)	YOT	Fall in FTEs (%)
Monmouthshire	94.8	Barking and Dagenham	69.3
Derbyshire	92.0	Camden	69.0
Surrey	91.6	Northamptonshire	68.8
Ceredigion	91.3	Hounslow	68.8
Pembrokeshire	90.8	Tower Hamlets	68.8
Stockton on Tees	90.7	Telford and Wrekin	68.6
Rutland	90.5	Peterborough	68.5
Wirral	90.3	Hillingdon	67.9
		Enfield	66.7
		Lewisham	65.6
		Harrow	64.2
		Stoke on Trent	62.3
		Swindon	62.2

two YOT areas which concludes that:

'formal and informal forms of diversion were interpreted through pre-existing interventionist mindsets rather than in relation to the diversionary evidence base'.⁵⁰

Further clarity on this broad range of potentially competing approaches is required to determine the extent to which outcomes are influenced by the conceptual model adopted.

Finally, it seems evident that the extent and efficacy of preventive work undertaken by YOTs with children at the gateway to the justice system to prevent criminalisation is not captured in the indicators by which the performance of the youth justice system is currently measured. As the 'stocktake' of YOTs put it, *'there is a discrepancy between what YOTs do and what is measured'* by central government.⁵¹ A survey of YOTs conducted in 2014 confirmed practitioner fears that, since much diversionary activity was *'motivated by fiscal pressure rather than an ideological shift away from default use of the formal system'*, the lack of an evidence base for the cost effectiveness of non-statutory work renders recent advances vulnerable to reversal.⁵² The NAYJ considers this pessimistic assessment to be a realistic one.

Avoiding prosecution

The NAYJ believes that a primary objective of a progressive response to children's offending behaviour should be to avoid formal contact with the youth justice system; instead favouring support and assistance from mainstream children's and youth provision where necessary. As argued in the previous section, much of the current focus on informal diversionary mechanisms continues to be a function of criminal justice agencies. While such arrangements may not be ideal, they nonetheless clearly represent a more child-friendly approach than that which characterised youth justice until quite recently.

If decriminalisation is not possible, the Association considers that opportunities to divert children from prosecution by means of a formal pre-court disposal should be maximised. Broadly speaking, the extent to which diversion from court is apparent in youth justice policy and practice has followed the contours of the wider ethos that informs any particular period. A commitment to avoid children appearing in court was, for instance, a key principle during much of the 1980s. Thus Home Office guidance to the police, issued in 1985, indicated that prosecution of juveniles should not be undertaken:

'...without the fullest consideration of whether the public interest (and the interests of the juvenile concerned) may be better served by a course of action which falls short of prosecution'.⁵³

This constituted a consensus that extended from government to policy makers, academics and practitioners and was manifested by a rise in the proportion of children given a police caution with the consequence that *'substantially fewer in number were ... prosecuted'*.⁵⁴ As a proportion of substantive disposals, cautions accounted for less than half in 1980 but more than three quarters in 1990.⁵⁵

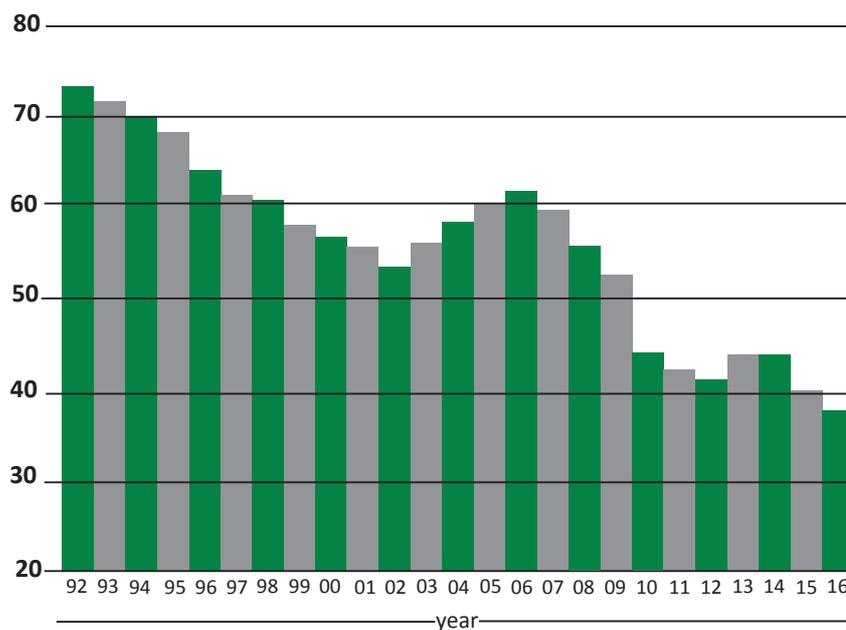
The allegiance to diversion waned rapidly from the early 1990s onwards, as a by-product of the re-politicisation of youth crime under the 'punitive turn'. Revised guidance discouraged the use of cautions for serious offences and noted that multiple cautioning could undermine confidence in pre-court disposals.⁵⁶ The shift in mood was reflected in falling rates of pre-court diversion in the first part of the decade and was given statutory expression in New Labour's Crime and Disorder Act 1998. The legislation mandated that informal action was to be used only in exceptional circumstances. The Act also introduced a 'three strikes' mechanism in the form of reprimands and final warnings which replaced police cautioning for those below the age of 18 years. Henceforth, prosecution would be required on the third offence at the latest, irrespective of the circumstances of the child or the nature of the behaviour involved. Moreover, where a child had a conviction, he or she was not eligible for a pre-court disposal in relation to any subsequent offending, however minor, even if they had not previously had their 'quota' of pre-court options. (This might occur, for instance, where a child gave a 'no comment' interview to the police for a first time low level offence, rendering them ineligible for reprimand or warning.) One commentator has argued in this context that *'New Labour was so bent on intervention that ... the notion of diversion had been completely forgotten'*.⁵⁷ The consequence was an increase in the proportion of children needlessly caught up in the court process and - in most years of that decade - the actual number of prosecutions also rose in spite of the overall decline in detected youth offending.

The rationale presented for change was hardly compelling, consisting largely of assertions that cautioning did not work and that early intervention was necessary if youth crime was not to spiral out of control, in spite of evidence to the contrary.⁵⁸ This largely rhetorical justification notwithstanding, the legislative change had a real impact, reinforcing rising levels of prosecution. As shown in figure 12, between 1992 and 2002, the rate of diversion for indictable

Figure 12

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

Source: Derived from respective editions of Criminal Statistics and Criminal Justice Statistics



offences fell from almost three quarters (73%) to just over half (54%).⁵⁹

The pattern from that date onwards is a little more complex. The chart reflects the impact of the sanction detection target, which can be seen in the four year period from 2002. Large numbers of minor offences, that would previously have been dealt with informally, were drawn into the formal youth justice process so that the use of reprimands and final warnings grew more rapidly than convictions, which also rose. The increased use of pre-court measures is accordingly evidence of net-widening rather than demonstrating that children were less likely to be prosecuted. Paradoxically, the growth in diversionary measures was no longer indicative of a diversionary impetus.

From 2007, as the focus on sanction detection has waned, the chart becomes more difficult to interpret. It suggests that there has been a reversion to the earlier trend of falling diversion. But whereas during the 1990s such a trajectory signalled an increased tendency to prosecution, in the more recent period it is an artefact of a greater use of informal responses to youth offending that are not captured in the official data. The dramatic reduction in FTEs during this latter period has been achieved, in large part, by dealing informally with children who would otherwise have received a reprimand, final warning or, more recently, a youth caution or youth conditional caution. Convictions of children have in other words fallen at a slower rate than pre-court disposals, leading to an increase in the rate of prosecution. In each year from 2010 onwards, more than half of children who received a substantive

disposal have been those subject to court proceedings. In this context, a reduced use of pre-court outcomes is a consequence of increasing diversion outside the formal parameters of the system.

In one sense, this pattern is an expected one. Where the use of informal responses becomes more prevalent, it is inevitable that children in trouble for the first time and those committing minor infractions of the law will derive the greatest benefit. This is particularly true where a focus on reducing FTEs is a significant driver of evolving practice. However, an earlier period when diversionary impulses were again to the fore provides an instructive contrast. During the 1980s, there was also a considerable expansion in the use of non-formal mechanisms (although as in the present period it is difficult to quantify the extent of that growth).⁶⁰ Yet, the rate of diversion did not fall in the former decade, suggesting that there was both a decriminalising *and* a diversionary (as in diversion from court) tendency. From 2007 onwards, the former has expanded while the latter has contracted in proportionate terms. The lack of robust data for either period prevents any detailed comparative analysis of the extent of offending successfully kept outside the formal youth justice apparatus. Nonetheless, the difference in diversionary trends does raise the prospect that there is considerable potential –as yet untapped– for a more rapid reduction in present levels of prosecution than has so far been achieved.

One pertinent distinction that might help to explain the differential patterns described in the previous paragraph is the statutory pre-court framework that

applied in each period. During the 1980s, the only available formal pre-court disposal was the police caution, which could be used at any point in criminal proceedings if the police determined that it was appropriate to do so. From 2000 until 2013, however, the final warning scheme remained in place: children who entered the formal system between those dates were entitled to no more than two disposals before prosecution was mandated even for trivial offending.⁶¹ As a consequence, a large number of cases that might, during the 1980s, have been deemed suitable for caution, could not be considered for a pre-court option.

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) abolished the strictures of the final warning scheme. Warnings and reprimands were replaced by youth cautions and youth conditional cautions from 8 April 2013 onwards.⁶² The principal distinction between the new provisions and those they replaced is that a youth caution can be issued, where the police consider it an appropriate outcome, irrespective of any previous pre-court disposals or convictions. (The legislation does however retain the restriction on a court imposing a conditional discharge for any further offending within 24 months on a child who has received a second youth caution – a proscription that did not apply to cautions prior to the Crime and Disorder Act 1998.) Youth conditional cautions, which had hitherto been limited to 15 and 16 year-olds in pilot areas, also became available for all children following implementation of LASPO.⁶³ Although it is difficult to draw firm conclusions, the slight increase in the rate of diversion shown in Figure 11 during 2013 and 2014 might reflect the impact of these statutory changes. Disappointingly the subsequent trend does not register any further shift towards a greater use of cautioning as an alternative to court proceedings. It may be that the focus on FTEs and the rigid use of offence gravity scores (which have survived the abolition of the final warning regime) in at least some areas, continues to discourage a use of formal pre-court measures where a decision not to use an informal option has been taken.

The NAYJ welcomes the recent developments towards decriminalisation and diversion as being broadly consistent with the research evidence and representing significant progress towards a more child-friendly approach. At the same time, it is concerning that the rediscovery of diversion, at the level of policy and among some practitioners, appears to be a largely pragmatic response to workload and fiscal constraint rather than a principled recognition that the youth justice system should be used as a mechanism of last resort.⁶⁴ In particular, there has been little or no attempt to redirect the capacity to work with children in trouble towards mainstream provision. Indeed,

in 2016, it was estimated that expenditure on youth services had shrunk by £387 million over the previous six years.⁶⁵

Ensuring that any savings from increased diversion are retained for services to young people is necessary to ensure that disadvantaged and vulnerable children who are diverted from formal sanctions receive appropriate assistance and support in the longer term,⁶⁶ since, as the Centre for Social Justice has pointed out, the youth justice system has become ‘a backstop, sweeping up the problem cases that other services have failed, or been unable, to address’.⁶⁷ Such extended provision is also a practical prerequisite of being able to argue convincingly for a substantial rise in the age of criminal responsibility.⁶⁸

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chapter 7 Children in court

The framework for trial (and error)

Where prosecution ensues, the NAYJ considers that the trial process should be underpinned by child-friendly practice. While considerations of space preclude an exhaustive treatment of this issue, it is a matter of acute concern that children alleged to have committed ‘grave crimes’ and those who have adult co-defendants, continue to be tried in the Crown Court; a venue designed to deal with more serious adult offending, where adult sentences become available irrespective of the age of the defendant.¹

Despite adjustments to accommodate children, the Crown Court remains a distinctly inappropriate setting for those below the age of 18 years. The arrangements that allow children to be tried in adult courts have previously attracted criticism from the UN Committee on the Rights of the Child.² Within the jurisdiction, concerns have also been raised by Lord Carlile’s parliamentarians’ inquiry report, published in 2014, into the operation of courts dealing with children’s criminal behaviour. Charlie Taylor, in his review of youth justice, similarly observed that:

‘[t]he Crown Court is an intimidating atmosphere for children and its processes and physical layout are not easily adapted for children. I spoke recently to a barrister involved in the trial of two girls accused of murder who described the atmosphere in the court – which is open to the public and reporters – as ‘like a circus’. It is difficult to see how, in such circumstances, the court can fulfil its statutory duty to promote the welfare of the child.’³

Taylor concluded that, wherever possible, children should be tried in the youth court and that, in the longer term, ‘consideration could be given to trials involving children no longer taking place in the Crown Court’. The government, in its response, notes the concern but adds that removing children from that venue would deny children access to jury trial, without recognising that a range of commentators have previously suggested that, in cases of grave crimes, youth court proceedings might be modified to include a form of jury.⁴ As a consequence, the government

has made no commitment other than to discuss these issues ‘with the judiciary and other interested parties’. In the meantime, more than 1,000 children each year (1,320 in 2016) continue to be tried in a venue that most parties consider is ill-adapted to meet their needs; extends the time before a decision is reached; precludes their effective participation in proceedings; while subjecting them to the risk of custodial penalties of the same duration as those available for adults.

Concerns remain however even when children are processed in the youth court which, Taylor argues, merely provides ‘an essentially modified’ version of arrangements that pertain in the adult magistrates’ court. He takes the view that youth courts are not equipped, and sentencing options too rigid, to deal with the complexity of needs that many children in trouble present. Courts frequently have little understanding of children’s circumstances and magistrates report that they rarely know if the disposals they impose have been effective. As Taylor puts it:

‘There is little scope for the courts actively to manage a child’s sentence and rehabilitation, to reward success or to amend the terms of the sentence where the child is not responding, or to hold agencies to account for providing the necessary support.’⁵

As noted in the introduction, as a consequence of such observations, the final report of the youth justice review proposed the replacement, for most purposes, of the youth court by a system of Children’s Panels; a recommendation that is not being pursued by the government.

In one area, however, some progress has been made. In the recent period, the standard of legal representation available to children, both in the youth and the Crown court, has regularly attracted criticism. A review commissioned by the Bar Standards Board, for instance, found that, despite a patent need for child-specific skills, 60% of advocates interviewed had not received specialist training (while a further 11% could not recall whether or not they had had such training). Youth court advocacy was relatively unpopular: one third of respondents had little interest in continuing to undertake such work, largely because it attracted low status and reduced levels

of remuneration. Moreover, while participants were generally confident in their own ability to represent children in criminal proceedings, they were less complimentary about the standard of services provided by their peers, citing a lack of knowledge about youth specific legislation; poor communications skills with children; limited preparatory work being undertaken; and the youth court being used as a training ground for less experienced, or less capable, lawyers.⁶ Similar reservations have previously been raised by Lord Carlile’s parliamentarians’ inquiry, the Centre for Social Justice and, more recently, the Taylor review itself.⁷ The latter notes that inadequate representation is the inevitable consequences of the fact that a solicitor conducting a two-day robbery trial in the youth court would be paid approximately one-third of the fee for a similar case in the adult magistrates’ or Crown court.⁸

Such criticisms have prompted some promising developments. The Bar Standards Board (BSB) is, at the time of writing, consulting on making it mandatory for barristers, when applying for a practising certificate, to register if they are undertaking, or intend to undertake in the following year, work in proceedings involving children. The BSB considers that this requirement will improve standards of advocacy in youth proceedings by making it easier to monitor the extent to which barristers registered to engage in such work undertake continuing and professional development to maintain or develop their specialist competence, and by providing transparency as to which barristers are registered to do youth work.⁹ In late 2016, the Solicitors Regulatory Authority launched ‘a specialist support package for solicitors working in youth courts, to help them when representing young people’, although the Authority has fallen short of making specialist training compulsory for solicitors working in that venue.¹⁰ The NAYJ welcomes these developments as steps in the right direction but shares Charlie Taylor’s doubts as to the potential of criminal courts, as currently constituted, to provide a mechanism capable of delivering child-friendly justice.

Principled sentencing?

In the event that a child is convicted, the NAYJ believes that sentences imposed by the court, or delivered by youth justice agencies, should be governed by the principle of minimum necessary intervention. The level of compulsory restriction on the child should be proportionate to the seriousness of the offending behaviour rather than reflecting assessed risk. Supervisory processes and the content of any order should be directed to maximising the child’s long term potential and wellbeing rather than confined to the

restrictive, and overtly negative, ambition of attempting to avoid particular forms of future illegal behaviour in the short term. All court-ordered interventions should have the best interests of the child as a primary focus and conform to a children’s rights perspective.

The existing legislative sentencing framework for children combines an amalgam of potentially incompatible principles that are meant to inform the court’s decision-making. These include: the seriousness of the offence, taking into account aggravation, mitigation and previous offending; the welfare of the child; and, potentially most problematically, the statutory aim of preventing offending and reoffending, introduced by the Crime and Disorder Act 1998.¹¹ No doubt this array of competing considerations contributes to the phenomenon of ‘justice by geography’, whereby outcomes for offending of a similar nature diverge significantly between areas.¹² The NAYJ considers that, in practice, any tensions in these principles are frequently resolved through a primary focus on punishment. Although not enshrined in legislation, courts are also required to take account of obligations under international children’s rights instruments, and in particular, the UN Convention on the Rights of the Child. Too often, such obligations receive little attention.¹³

In 2017, the Sentencing Council, following extensive consultation, published revised guidance on the overarching principles for sentencing children, and while the constraints of existing statutory arrangements inevitably limit the extent to which the guidelines mandate a child-friendly response, it nonetheless represents a significant advance over the previous edition published in 2009.¹⁴ It is disappointing, however, that the document still allows deterrence as a rationale that might legitimately influence sentencing, in spite of considerable evidence that children rarely consider the consequences when they offend and that deterrence is accordingly unlikely to play a significant role.¹⁵ The NAYJ also has substantial reservations about the inclusion of offence specific guidelines for robbery and sexual offences, which it considers have the potential to undermine individualised sentencing of children, a pre-requisite of ensuring that their wellbeing is adequately attended to. Conversely, other elements of the guideline constitute a considerable improvement over that which it replaces.

There has, for instance, been a shift in terminology with the new guideline consistently referring to ‘children’ and ‘young people’ as opposed to ‘youth’ and ‘young offenders’. (Significantly, this change was made as a consequence of the consultation, with the Howard League making particularly forceful representations

on this issue: the draft guideline continued to use the old linguistic formulations.¹⁶) While such amendments are largely symbolic, the NAYJ considers that revised terminology has the potential to send a powerful message that children should be treated differently to adult offenders and should be understood as ‘*children first*’.

The document also contains a considerable elaboration of the factors which the court should take into account when considering the child’s welfare. Other welcome changes include acknowledgement that:

- the unnecessary criminalisation of children should be avoided;
- a child’s lack of maturity might reduce his or her culpability and this should be reflected in a reduced severity of sentencing;
- children should be given an opportunity to learn from their mistakes;
- BAME children are over-represented in the justice system and may have previous experience of discrimination, and adverse treatment, by authorities; and
- due weight should be given to the impact of care, or leaving-care, status, on children’s offending behaviour and the potentially different impact of any sentence imposed.

The revised guideline came into force from 1 June 2017 and it is, accordingly, too early to tell whether, and in what ways, it will impact on the sentencing of children.

At the point of conviction

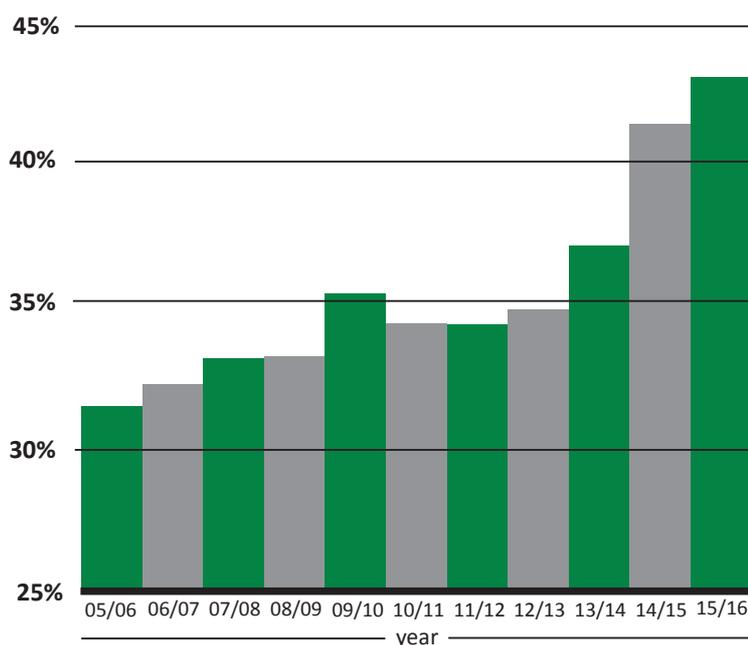
The referral order was implemented on a national basis from April 2002 as a mandatory disposal where a child appears in court for a first offence and pleads guilty unless the court imposed an absolute discharge, a hospital order or imprisonment. As a consequence of the almost automatic requirement to impose it in a large number of cases, the disposal rapidly established itself as the most frequently-used sentencing option. From April 2009, the referral order became available for a second offence if the child had not been sentenced to one at first conviction; legislative change in the same year allowed the imposition of a second order in particular circumstances. LASPO continued this process of lifting the restrictions on the referral order; it remains the primary disposal for a first conviction but the court may now also impose such an order irrespective of antecedent history or the number of previous referral orders, providing the child pleads guilty.¹⁷ Mirroring this progressive loosening of the statutory criteria, the use of the penalty has expanded over time: in the year ending March 2016, 11,970 children were made subject to a referral order accounting for 42.9% of all court disposals; equivalent to a greater than five percentage point rise over the past two years and a rise of more than 10 percentage points since 2006, as shown in figure 13. The impact of the LASPO changes since 2012/13 are clearly visible in the chart.

The referral order has inevitably displaced a range of other disposals. This is particularly true for (some)

Figure 13

Referral orders as a percentage of all sentences imposed on children (for summary and indictable offences): 2005/06 to 2015/16

Source: Ministry of Justice/Youth Justice Board (2017): Key characteristics of admissions to youth custody: April 2014 to March 2016. England and Wales. London: Youth Justice Board



penalties below the community sentence threshold. Between 2003/04 and 2015/16, the use of the reparation order reduced from 3.2% of all disposals to less than half of one percent. By contrast the use of discharges (absolute and conditional – the published figures no longer distinguish between the two disposals) has remained relatively constant, at around 15%. An amendment in LASPO allowed courts to impose a conditional discharge as an alternative to a referral order for a first offence where they consider it appropriate to do so. (Courts were already able to make an absolute discharge in such circumstances.) However, and in the view of the NAYJ disappointingly, this legislative change does not, as yet, appear to have had a significant impact on sentencing practice by increasing the court's use of discharges.

The most significant displacement effect, in terms of overall numbers, has been in the use of financial penalties which declined, between 2003/04 and 2015/16, from 16% of all disposals to 7.4%. The NAYJ considers that fines are an inappropriate punishment for children (or their parents) who overwhelmingly already experience severe economic hardship. Nevertheless, since the referral order requires a minimum of three and up to 12 months intervention, it is of concern that, in a considerable number of cases, children are being subjected to higher levels of intervention than hitherto which may not always be warranted by the offending.

The referral order and other sentencing options referred-to in the previous paragraph are sometimes known as '*first tier disposals*' since they can be imposed without the seriousness of the offence having to meet a statutory threshold. Community sentences, by comparison, can only be made where the offending is deemed by the court as being '*serious enough*' to warrant that level of intervention.¹⁸ The extensive range of then extant community sentences was replaced by a single disposal, the youth rehabilitation order (YRO) for offences committed after 30 November 2009. In making a YRO, the court can, in principle, select from a menu of 18 different forms of intervention. Though the YRO was ostensibly a significant change, most of the requirements were already available in the form of other disposals, many of which could be combined. Moreover, the new order appears to have had a limited impact on the distribution of patterns of sentencing over and above that which might be anticipated as a consequence of the growth of the use of the referral order: in 2015/16, the YRO accounted for one quarter of all disposals compared with an equivalent figure of 30% in the year ending March 2009.

During 2015/16, 6,958 YROs were imposed: 19% contained just one requirement and a further 28% contained two. This represents a decline over time

which is explained by a rapid, and alarming, escalation in the proportion of orders that contain five or more requirements: from 2% in 2010/11 to 6% in 2013/14, and 11% in 2015/16. While this might, for some cases, reflect the use of higher-end community sentencing as an alternative to a custodial disposal, thereby contributing to the reduction in child imprisonment, it may also be an indication that community disposals, in at least some instances, are becoming more intrusive.

The most commonly-used requirement in 2015/16 was supervision which accounted for a third of the total, suggesting that in many cases, the YRO has become a functional replacement for the supervision order. In addition, growing numbers of children are subject to electronically-monitored curfews whose use has risen sharply since 1998, long before the introduction of the YRO. During 2015/16, almost 14% — 2,279 in total — of all YRO requirements were curfews. The NAYJ considers that requiring a child to remain at home during particular times, subject to a tag, is rarely an appropriate sentence for a child since its primary purpose is generally punitive rather than rehabilitative,¹⁹ and it can frequently operate to the detriment of the child's wellbeing where being within the home environment for extended period, without the option to leave, may generate safeguarding concerns. The Association accordingly regards with disquiet the extension, through LASPO, in the maximum duration of a curfew requirement from six to 12 months and the maximum daily curfew period from 12 to 16 hours.²⁰ No figures are currently available to ascertain the extent to which these increased powers are being used.

At the other end of the scale, most requirements are used infrequently. As shown in table 8 (on the following page), eight requirements each constituted less than 1% of the total number made. The minimal use of intensive fostering is largely a consequence of funding being discontinued after piloting of the disposal as an alternative to custody. The even lower use of mental health treatment requirements is likely to be explained by the high statutory threshold for imposing such a condition, which includes the court having access to a psychiatric report on the basis of which it is satisfied that the mental condition of the child is such as requires, and may be susceptible, to treatment and that arrangements have been, or can be, made for the proposed treatment. At the same time, given the extensive evidence of the prevalence of mental ill health within the youth justice cohort, such a low take-up of the disposal might be considered disappointing and a reflection of the inadequate provision for child and adolescent mental health. The most recent report from the UN Committee on the Rights of the Child on the UK's compliance with the UN Convention, for instance, pointed to a need to '*rigorously invest in child*

Table 8

Distribution of YRO requirements: 2015/16

Type of requirement	Number of requirements made	Proportion of total requirements
Supervision	5,448	33.3%
Activity	3,069	18.8%
Curfew	2,279	13.9%
Electronic Monitoring	2,145	13.1%
Programme	1,230	7.5%
Unpaid Work	747	4.6%
Attendance Centre	445	2.7%
Prohibited Activity	355	2.2%
Exclusion	291	1.8%
Education	141	0.9%
Residence	60	0.4%
Drug Treatment	53	0.3%
Drug Testing	40	0.2%
Local Authority Residence	16	0.1%
Intoxicating Substance Treatment	12	0.1%
Intensive Fostering	6	>0.0%
Mental Health Treatment	4	>0.0%

Source: Ministry of Justice/ Youth Justice Board (2017). Key characteristics of admissions to youth custody: April 2014 to March 2016. England and Wales. London: Youth Justice Board

and adolescent mental health services’. This assessment is confirmed within a youth justice context by a recent study of mental health provision available to youth offending teams, which concluded that there was:

*‘...widespread evidence of the inadequacy of existing resources to address the full extent of the health needs of these young people. An important opportunity is clearly being missed to reduce future health and criminal justice costs through prevention and early identification and intervention with this high risk group’.*²¹

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chapter 8 Children deprived of their liberty

Custodial trends

The UN Convention on the Rights of the Child requires that child imprisonment should be used as ‘a measure of last resort and for the shortest appropriate period of time’ and policy and practice within England and Wales has, in recent years, become increasingly aligned with that international obligation. Reducing the number of children in custody is one of the three high level targets, established by the coalition government in 2010 and retained by the Conservative administrations elected in 2015 and 2017, by which youth justice performance is measured. The adoption of this measure is an important indicator of a shift in political tone. One of the manifestations of the ‘punitive turn’ was that for more than a decade child incarceration expanded rapidly. The more recent period, however, has witnessed a considerable reduction in the number of children deprived of their liberty, with the fall commencing well before formal recognition that it should be a youth justice target. As shown in figure 14, custodial sentences began to tail off from 2002, but the decline accelerated rapidly from 2008 onwards, coinciding with the introduction of the FTE target and the onset of the financial recession.

In the year ending March 2016, 1,687 children were

sentenced to detention, representing a fall of 9% by comparison with the previous 12 months and a 78% reduction from the highpoint (7,653 custodial sentences) in 1999. It should be noted, however, that the rate of decline appears to have slowed over the past 12 months.

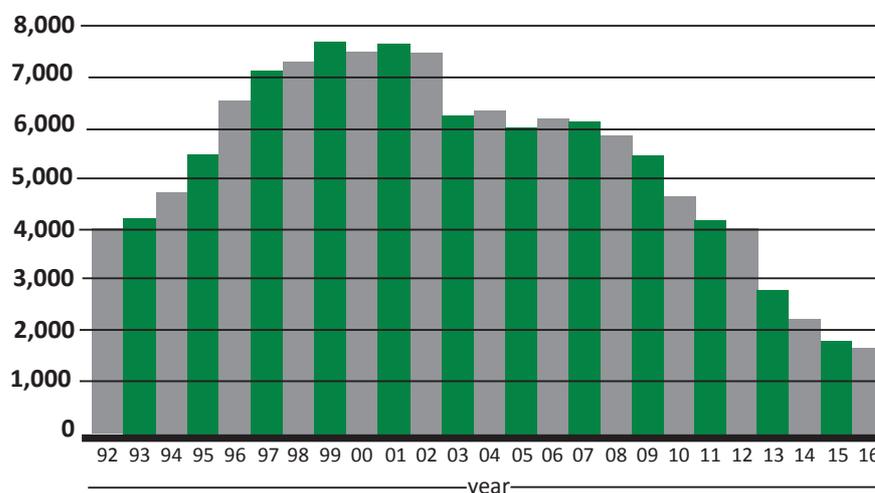
As might be anticipated, the largest reductions have been in short term (up to two years) sentences, in the form of the detention and training order, which accounts for the large bulk of custodial disposals. But the use of longer-term detention (penalties of more than two years) has also fallen. Orders under sections 90 and 91 of the Powers of Criminal Courts (Sentencing) Act 2000 (for children convicted of murder and other grave crimes respectively) and sentences for children deemed to be ‘dangerous’ (because they pose a significant risk to the public of serious harm)¹ have reduced by more than half, from 569 in 2006/07 to 265 in 2015/16, a reduction of 53%. However, this overall trend masks a slight rise in the use of long term sentences in the most recent 12 months period.

The reduction in sentences of imprisonment was not immediately reflected in an equivalent decline in the population of children held in the secure estate. Indeed, as a consequence of an expansion in custodial

Figure 14

Number of custodial sentences imposed on children: 1992-2016

Note: The figures are not directly comparable throughout the whole period. Until 2006, they are for full calendar years; thereafter, they relate to the year ending March of the given year. Derived from respective editions of Criminal Statistics and Youth Justice Annual Statistics



remands, the number of children incarcerated at any one time continued to grow until 2008, as shown in figure 15, despite the tailing off in custodial sentences. An increase in the average length of custodial episode – largely a consequence of a slower decline in long term sentences than in DTOs – will also have made a small contribution to maintaining the custodial population. It should be noted, however, that the shift towards longer custodial episodes has continued while the secure estate population has dwindled: in 2008/09, the average number of days associated with each period of detention was 81; in 2015/16, the equivalent figure was 118.

As noted above, the use of custodial remands remained at a high level for a period while the overall decline in custody was already underway. As figure 16 (opposite) demonstrates, the number of children in the secure estate following a refusal of bail was at the same level in 2009/10 as it had been in 2003/04. As a consequence, the proportion of children deprived of their liberty who were on remand began to rise as custodial sentencing fell: in 2003/04, remands accounted for 21% of those in custody; the equivalent figure in 2010/11 was 26%. Once the remand population began to contract, however, it did so more rapidly than the sentenced population. By 2015/16, the proportion of the imprisoned population on remand had return to earlier levels accounting for slightly more

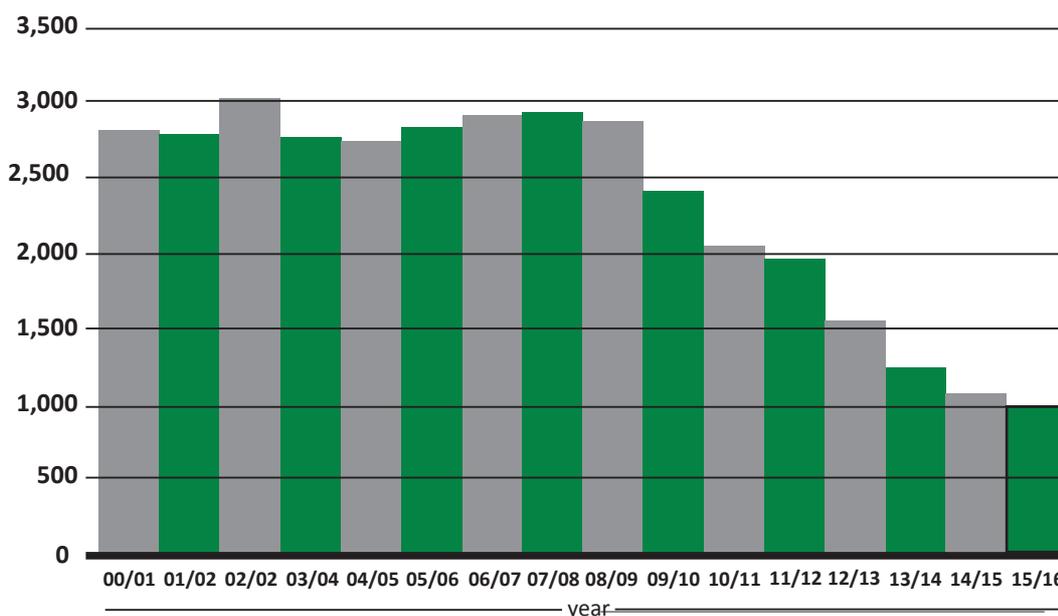
than one fifth of the total (22% in 2015/16)

A number of interlocking factors have no doubt contributed to the fall in the use of child imprisonment.² There have been legislative changes that constrain courts’ decision making. In respect of sentencing, the Criminal Justice and Immigration Act 2008 imposed a new duty on the court that requires it, where it imposes a custodial sentence on a child, to make a statement that ‘it is of the opinion that a sentence consisting of or including a youth rehabilitation order with intensive supervision and surveillance or fostering cannot be justified for the offence’.³ The court must also indicate why it is of that opinion that neither of these alternatives to custody is appropriate.

In relation to remands, there have been two relevant statutory modifications. A provision in LASPO, implemented from December 2012, tightened the criteria that had to be satisfied for a remand to the secure estate and made available, for the first time, non-secure remands to local authority accommodation to 17-year-olds, who had previously been treated as adults for remand purposes. In addition, from April 2013, remand budgets were devolved to local authorities who became liable to pay the costs of custody for children remanded to the secure estate.⁴ While both these measures might have reinforced

Figure 15

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

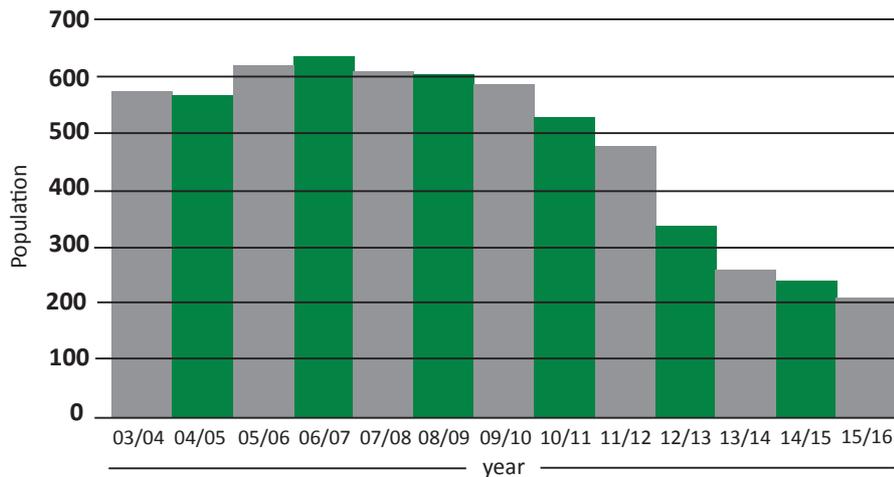


Source: Ministry of Justice /Youth Justice Board (2017). Key characteristics of admissions to youth custody: April 2014 to March 2016. England and Wales. London: Youth Justice Board

Figure 16

Average remand population (children aged under 18 years) in the secure estate: 2003/04 to 2015/16

Source: Ministry of Justice/ Youth Justice Board (2017). Key characteristics of admissions to youth custody: April 2014 to March 2016. England and Wales. London: Youth Justice Board



a downward trajectory, it is clear that they did not trigger it since the remand population had already declined considerably in advance of implementation. In December 2012, for instance, the remand population of the secure estate was 35% below that of 12 months previously.⁵

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

- A more tolerant climate to children in trouble was facilitated by the de-politicisation of youth crime and justice, which was, in turn, encouraged by a desire to curb excessive cost.
- The introduction of the FTE target and the promotion of decriminalisation, itself a reflection of that increased tolerance, led to a sharp reduction in court throughput which was reflected in fewer children being deprived of their liberty.
- Delaying the point at which children entered court ensured that they were less likely to amass a criminal history that would make custody appear inevitable as a consequence of persistent offending.⁶

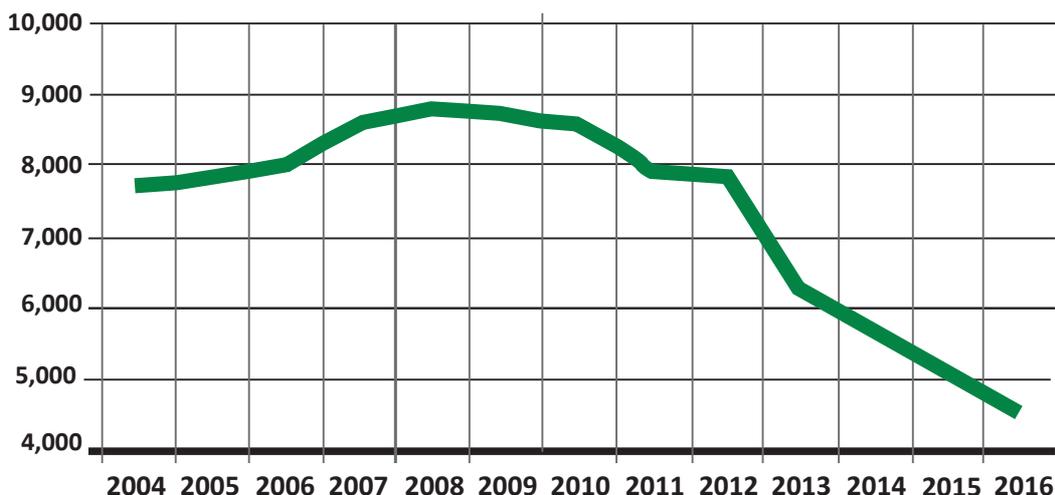
It was noted earlier in the paper that there is evidence that the reduction in child FTEs has had a delayed, positive, impact on the number of young adults entering the criminal justice system. It has been suggested that the fall in child imprisonment might have a similarly beneficial influence through an indirect deflationary pressure on the number of young adults in custody: the decline in the number of children deprived of their liberty would accordingly have a ‘knock on’ impact on the older age group.⁷ The suggestion has an intuitive plausibility. It is generally acknowledged that custodial sentences are associated

with increased recidivism and deprivation of liberty is thought to disrupt the natural process of maturation and the corresponding tendency to ‘grow out of crime’, described above. An alternative hypothesis, however, would hold that the lower use of imprisonment in the youth justice system might simply ‘delay the inevitable’, leading to a later spike in levels of incarceration as young people make the transition to adulthood. It is accordingly important to ascertain what empirical support there might be in the available published data to support the notion of reduced levels of custody for children having a knock on effect at a later stage, or vice versa.

The first point of significance, in this context, is that while the detained child population has contracted sharply since 2008, there has been no equivalent reduction in the overall number of people imprisoned. Indeed the latter continued to grow, albeit more slowly than previously, by 3% between 2008 and 2014 and has subsequently remained relatively stable. It is thus clear that developments within youth justice are not simply a manifestation of broader shifts in the treatment of offenders. The picture in relation to young adults is, however, rather different to that which pertains to children or the older adult offending population. There has been a recent decline in the 18-20 prison population, but significantly, it commenced later than that for children as demonstrated in figure 17 overleaf and was more muted when it came. Between 2008 and 2016, while the number of detained children fell by almost a third, the equivalent reduction for young adults was small in comparison – at less than 3%. There was, however, a pronounced acceleration from 2010 onwards: over the next four years, the young adult population declined by more than 48% (compared to a 67% reduction in the child population). The delay of two years would appear to be consistent with

Figure 17

Young adult custodial population: 2004-2016 (June each year)



Source: Ministry of Justice (2017) Offender management statistics quarterly – December 2016. London: Ministry of Justice

a ‘filtering through’ process: the large majority of children deprived of their liberty are within the 16-18 year old age bracket and would become young adults within the relevant time frame. The more modest fall for young adults is also what might be expected if the reduction was largely explicable in terms of what was happening to the child population since a proportion of those who receive a custodial disposal at a later age would not in any event have been in trouble as children: the fall in child imprisonment will not accordingly have a subsequent impact on this group.

Further support for such an explanation derives from the fact that, more recently still, the 21-24 prison population has also begun to reduce, though at a correspondingly slower rate, from 14,005 in June 2012 to 10,481 in March 2017, a fall of 25%. This too is a pattern that might have been predicted from the original premise.⁸

Finally, additional backing for the hypothesis that

trends in the use of custody for children are driving similar – albeit delayed and more muted – reductions for older cohorts, might be found in the fact that, for all three age groups, the fall in incarceration has been greater for females than for males, as shown in table 9. Such a pattern, would be anticipated if the later falls in the 18-20 and 21-24 age ranges of the adult custodial population were a ‘knock on’ effect of earlier reductions in the child populations, since one would also anticipate a demographic follow through.⁹

A continuation of current trends in relation to youth detention thus has broader ramifications that extend beyond the boundaries of the youth justice system. But maintaining that progress is, as argued above, contingent in large part on sustained reductions in the number of children entering the system, which in turn relies on the persistence of a more tolerant climate. One potential threat to that continuation derives from budgetary reductions to YOTs. The longer

Table 9

Custodial population by age and gender

Source: Ministry of Justice (2017) Offender management statistics bulletin, England and Wales October to December 2016. London: Ministry of Justice

Age range	Gender	December 2012	December 2016	Reduction (%)
Under 18 years	Male	1,291	806	37.65%
	Female	58	31	46.6%
18-20 years	Male	6,447	4,242	34.2%
	Female	236	115	51.3%
21-24 years	Male	12,708	10,121	20.4%
	Female	504	343	31.9%

term impact of those cuts has yet to be fully realised. The introduction in July 2015 of mandatory custodial sentences for children aged 16 and 17 years convicted of a second offence of possessing an offensive weapon, unless such a penalty would be ‘unjust’, poses another threat to recent progress.¹⁰ The latter provision is likely to generate an increase in the number of children prosecuted for weapons offences (a scenario already evident in the data on detected youth crime over the past year) and encourage a harsher response by the courts to children in relation to such matters than would hitherto have been anticipated.

Although it would be precipitate to draw any firm conclusions, the rises (mentioned earlier in the paper) in the population of the secure estate recorded in April to June 2017, the latest months for which data are available, may be an early indication that the threats outlined in the previous paragraph are beginning to bear bitter fruit. As shown in figure 18 the decline in the number of children deprived of their liberty appears to have stalled over the past year. As indicated earlier in the paper, a rise in the use of custody for knife crime is likely to have contributed to this development. The rise over the same period in the use of long term detention (again noted above) might also be seen as significant. It may be that philosophical clarity and further committed action is required if further reductions in child imprisonment are to be achieved.

Whatever the future holds, while the NAYJ naturally celebrates the considerable recent advances that have been made in keeping children out of prison, the Association continues to believe that child imprisonment in England and Wales remains too high and that incarceration is still not being used as a measure of last resort as required by the UN

Convention on the Rights of the Child. A further comparison with the 1980s is instructive in this regard. During that decade, not only did the number of children consigned to custodial facilities fall, but so too did the rate of imprisonment as a proportion of all convictions.¹¹ By contrast, in the present period, the rate of custody has remained fairly constant: it was 6.1% in 2007/08, exactly the same as in 2015/16, with some modest fluctuation in the intervening years.

In the year ending March 2016, almost one in three children in custody were imprisoned for non-violent and non-sexual offending. It seems likely that, in such cases, it is the persistence of offending, rather than the gravity of the offence itself, which has triggered incarceration. Moreover, as the NAYJ has previously argued, there is still evidence of high levels of ‘justice by geography’: children in some areas have a higher likelihood of imprisonment than those in other parts of the country, suggesting that further reductions in at least some areas are possible.¹² The extent of the disparities is shown in table 10 (overleaf): rates of custody ranged from 2.28 per every 1,000 children in the 10-17 general population in Islington, to 0.02 in Somerset and 0.00 in Wokingham. While the extent and nature of crime varies from one area to another, it seems intuitively implausible that such extreme variation simply reflects patterns of youth offending and suggests that there is considerable scope for further reductions in child imprisonment by aligning outcomes in areas with a higher use of custody to those where deprivation of liberty is low.¹³

If further progress is to be achieved, and a reversion to increased levels of child imprisonment avoided, it is imperative that the Conservative government should retain a reduced reliance on custody as one of its

Figure 18
Monthly population of the children’s secure estate: June 2016 to June 2017

Source: Youth Justice Board (2017)

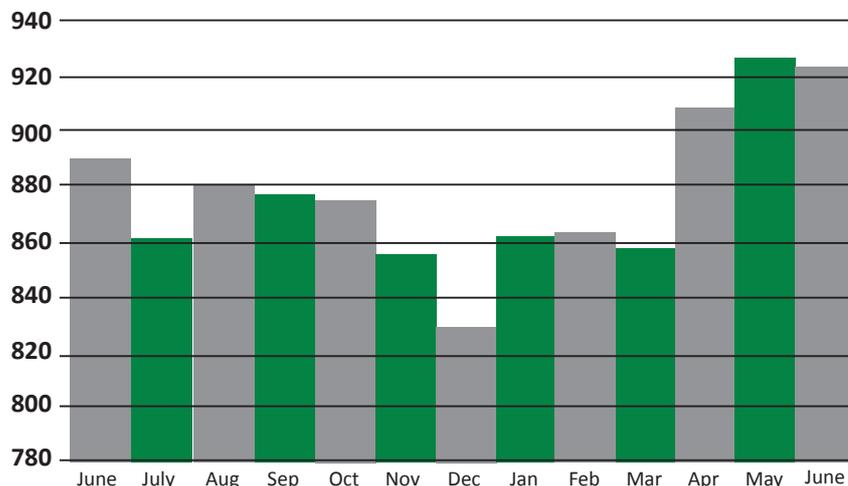


Table 10

Rates of custodial sentencing per 1,000 10-17 population by region and by highest and lowest rates of custody in each region: 2015/16

Region/ country	Rate of custody per 1,000 children	10 highest users of custody in region	Rate of custody per 1,000 children	10 lowest users of custody in region	Rate of custody per 1,000 children
East Midlands	0.31	Derby	1.39	Derbyshire	0.10
Eastern	0.26	Peterborough	0.66	Cambridgeshire	0.09
London	0.68	Islington	2.28	Bexley	0.13
North East	0.43	Newcastle	1.05	Northumberland	0.15
North West	0.61	Manchester	1.2	Salford	0.16
South East	0.24	Southampton	0.76	Wokingham	0.00
South West	0.19	Bristol	0.80	Somerset	0.02
Wales	0.39	Newport	1.05	Powys	0.09
West Midlands	0.51	Birmingham	0.94	Warwickshire	0.1
Yorkshire	0.41	Leeds	0.62	East Riding	0.24
England & Wales	0.41				

Source: Derived from Ministry of Justice/ Youth Justice Board (2017). Key characteristics of admissions to youth custody: April 2014 to March 2016. England and Wales. London: Youth Justice Board

three key performance indicators for the youth justice system. The NAYJ considers that such a target should be reinforced by the introduction of additional limitations on the powers of the court to imprison a child, further tightening the legislative criteria to ensure that less serious offences do not meet the custody threshold. As the Association has previously maintained, there should be a statutory presumption of a community based response to children’s offending, combined with a legal purpose of custody as being necessary for public protection, rather than for purposes of punishment. Deprivation of liberty should only be permitted:

- in cases that involve serious violent or sexual offending;
- where the child poses a serious immediate risk of harm to the public;
- after non-custodial options have been fully explored; and
- on condition that clear reasons are given in open court why such alternatives are not adequate to protect the public from serious harm from the child.

Such a threshold would in effect preclude the use of imprisonment for less serious, but persistent, offending, and for more serious offending unless the child posed a continuing risk to the public. Custody for children would no longer be a punishment but a genuine last resort.

The existing statutory provisions in England and Wales as they stand also permit sentencing outcomes that,

in the view of the NAYJ, constitute a clear breach of international obligations as a consequence of the maximum length of imprisonment available, amounting to ‘inhumane’ treatment. Comparative analysis reveals the extent to which sentencing provisions within the home jurisdiction are out of step with normative practice. Amending those provisions to align with international norms would further limit the child custodial population. Many jurisdictions have established an upper limit to child imprisonment: three years in Uganda, Brazil, Bolivia and Peru, four years in Switzerland, and 10 years for most Eastern European countries. Other states impose a custodial cap equivalent to a proportion of the maximum sentence permissible for an adult. By contrast, in England and Wales, where a child is convicted of what is deemed a ‘grave crime’, the maximum penalty available is identical to the adult term.

Even more shamefully, perhaps, children can be subjected to sentences of life imprisonment; indeed where a child is convicted of murder, such a punishment is mandatory, despite the UN Committee on the Rights of the Child having recommended that states ‘abolish all forms of life imprisonment for offences committed by persons under the age of 18’. The situation contrasts sharply with that in the rest of Europe. Outside of the United Kingdom, just two states – France and Cyprus - have legislation that provides for life imprisonment of a child. Moreover,

in those countries the provisions are rarely used. According to Child Rights International Network, just two children in France have been sentenced to life in the past quarter of a century and there is no record of any such sanctions having been imposed in Cyprus.¹⁴ The contrast with England and Wales, where between 10 and 25 children are given mandatory life sentences per annum, could not be more stark.¹⁵ The introduction of child-specific maxima, and the abolition of life imprisonment for offences committed by persons below the age of 18 years, would lead to further falls in the child custodial population.

The state of the estate

The urgency of taking action to reduce further the number of imprisoned children is emphasised by the deterioration in the conditions endured by those confined to custodial establishments.¹⁶ Almost half (46%) of boys in YOIs in 2015/16 reported feeling unsafe within the establishment; the highest recorded level since the survey began in 2006-08, and representing an 18 percentage point rise since 2011/12.¹⁷ This subjective concern of the children themselves reflects an underlying objective reality as the custodial estate has become an increasingly volatile and violent environment: as shown in table 11, relative to the number of children incarcerated, the use of restraint, levels of assault and the prevalence of self-harm have all shown alarming rises over the past six years.

Other indicators also show a marked deterioration over time. The proportion of boys in YOIs who felt safe on the journey to the establishment fell from 82%

in 2014/15 to 76% in 2015/16. Just 21% of children responding in the latter year reported that their cell call bell was answered within five minutes by comparison with 39% 12 months earlier. The proportion who said that they could speak to an advocate had fallen from almost half to just over one third. Fifteen percent of boys, by comparison with 10% in the previous year, indicated that they were too scared or intimidated to make a complaint. There had also been a significant reduction in the proportion of children in YOIs having access to daily association from 67% to 54%.

The experience of custody also varies according to the characteristics of the imprisoned child. If BAME children are over-represented in custody, they are also subject to less favourable treatment within the secure estate. For example, minority ethnic children are less likely to think that staff treat them with respect than their white peers (58% against 68%) and more likely to consider that they have been victimised by staff (39% compared to 26%). This is no doubt reflected in the fact that more than half of BAME boys indicate that they have been physically restrained by comparison with just over one in three white boys.¹⁸ Earlier research by the Children’s Commissioner for England also established that black and mixed-race children are subject to being removed from the standard regime, and kept in isolation, at three times the rate of their white peers.¹⁹

The use of single separation limits the positive work that might potentially be done to help prepare children for the return to the community. While some reduction in the proportionate use of segregation was in evidence in the early part of the current decade, the trend has more recently reversed: during 2016, there were 52.3 incidents of isolation each month in custody per 100 children detained compared with 39 in 2014. During

Table 11

The prevalence of physical restraint, assault and self-harm in the secure estate: 2010-2016

Year	Number of monthly physical restraints per 100 children in custody	Number of monthly assaults per 100 children in custody	Number of monthly episodes of self-harm per 100 children in custody
2010	17.6	9.0	5.3
2011	20.5	9.7	4.1
2012	25.1	9.7	5.1
2013	23.8	10.2	5.2
2014	28.4	14.3	6.6
2015	28.2	16.2	7.7
2016	27.8	18.9	8.9

Source: Ministry of Justice/ Youth Justice Board (2015) op cit and Home Office (2015) Police Powers and Procedures England and Wales year ending 31 March 2014. London: Home Office

2016, the European Committee for the Prevention of Torture noted that, at Cookham Wood YOI:

*'High levels of violence were managed primarily through locking juveniles up for long periods of time, on occasion for up to 23.5 hours per day.... [J]uveniles on a normal regime spent on average only five hours out of their cells each day. The situation was particularly austere for those juveniles who were placed on 'separation' lists (denoted by vivid pink stickers of 'do not unlock' on their cell doors), who could spend up to 23.5 hours a day locked up alone in their cells. In the CPT's view, holding juveniles in such conditions amounts to inhuman and degrading treatment.'*²⁰

The Chief Inspector of Prisons, in his most recent annual report, noted that such findings were not confined to one institution: within YOIs *'around a third of children [were] locked in their cells on each inspection'*.²¹

One example of this now common practice was drawn to the attention of the High Court who, in July 2017, determined that Feltham YOI had acted unlawfully in keeping a boy in his cell for over 22 hours a day over a period of 127 days. The court also declared the failure to provide the child with adequate education to be in breach of the YOI rules. The latter require that a minimum of 15 hours education is provided each week, but the child in question received no education during his first 55 days at Feltham, and only 15 hours in total in a two-month period before the court hearing.²²

Perhaps unsurprisingly, such egregious conditions in the secure estate are reflected in poor resettlement outcomes when children return to their communities. As indicated in the next section of the report, levels of reoffending associated with imprisonment are worse than for any other form of youth justice intervention. While a full explanation of this pattern is no doubt complex, it is clear that there is a lack of capacity within the prison environment to undertake future-orientated work that aims to prepare the child for the transition back into the community. Intervention is typically limited by short term concerns to deliver what is routinely available within the institution with a focus on managing behaviour leading to high levels of segregation. The outcomes associated with this failure to provide adequate resettlement support, and the inability to deliver interventions in accordance with the evidence base, have been described as 'shocking' by HM Inspectorate of Probation.²³

The NAYJ supports the abolition of penal custody for children: the few who need to be in secure provision, because they represent a serious risk to others, should be placed in small, child-focused establishments that

prioritise their wellbeing rather than in prisons and similar establishments that exist to make profit. HM Inspectorate of Prisons, which inspects YOIs and STCs - but not secure children's homes (SCHs) - reports that 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.... The fact that we had reached a position where we could not judge any institution to be sufficiently safe was bad enough, but the speed of decline has been staggering. In 2013-14 we found that nine out of 12 institutions were graded as reasonably good or good for safety.'

Significantly, well over half of recommendations made for improvements in YOIs in the previous year's round of inspections had not been achieved.²⁴

In this context, the existing configuration of the secure estate leaves much to be desired. At May 2017, 72% of incarcerated children were detained in YOIs and a further 17% were held in STCs. SCHs by contrast – residential child care establishments whose primary orientation is care based rather than correctional – accommodated just 11% of children deprived of their liberty though the youth justice system.

The decline in the custodial population might have provided an opportunity to place a higher proportion of those detained in more child-friendly facilities. It has instead been accompanied by a reduction in the number of places contracted in Secure Childrens Homes by the Youth Justice Board, from 225 in 2008 to 117 in 2017; a fall of 48%.²⁵ This is particularly concerning in the light of the findings of a government-commissioned independent review Board, with a remit to consider the situation in all STCs following the disclosure of serious maltreatment of children by staff at the Medway secure training centre. The Board's report highlighted that the culture within STCs prioritised *'control and contract compliance over rehabilitation'* and that *'too little emphasis was given to safeguarding'*. This was contrasted with the ethos in SCHs which was characterised as being *'driven by moral purpose'* and focused on creating a *'nurturing, family atmosphere'*.²⁶

Charlie Taylor's proposal to replace the existing array of YOIs and STCs with a network of 'secure schools', and the government's commitment to develop two pilot establishments in line with that proposal, are described above. While few concrete details have emerged as to what is envisaged for these new forms of custodial institution, it is clear that they will be smaller than YOIs, function with a schools-based legislative framework and have a focus on education: as Taylor puts it:

‘Rather than seeking to import education into youth prisons, schools must be created for detained children which bring together other essential services, and in which are then overlaid the necessary security arrangements.’²⁷

The NAYJ welcomes the ambition of the proposal for the rapid replacement of YOIs and STCs by alternative forms of provision but notes with some unease that the proposed size of schools – with a capacity to hold 60 -80 children²⁸ – is not markedly different from that of STCs and significantly larger than even the biggest SCH. Research suggests that the size of establishment and staff-to-child ratio (in combination with a care-based ethos) are fundamental to ensuring a child-friendly provision.²⁹ It should be remembered too, in this context, that the defining characteristic of STCs, at their inception, was to ensure a focus on education and training for younger children deprived of their liberty.³⁰ History has recorded the failure of that endeavour.

The NAYJ has argued at length elsewhere that an emphasis on education falls short of a vision for children deprived of their liberty, and that the proposals, as currently presented, lack any clearly-articulated theory of change. The Association has suggested that issues of health, wellbeing and vulnerability are equally as important as formal educational achievement to children’s long term healthy development (a proposition that is recognised to some extent in Taylor’s review) and has questioned the extent to which structural distinctions between children deprived of their liberty on grounds of offending and those detained in response to welfare or mental ill health concerns, are necessarily well founded³¹ and we have to ask therefore why they should result in placement in different types of institution. Considerations of space preclude a detailed rehearsal of those arguments here. For current purposes, it is sufficient to reaffirm the conclusion that the provision of adequate funding to expand and develop SCHs — which at their best, have demonstrated that a model based on a child care ethos can provide a safe environment with the potential to minimise the damage of custody while preparing children for a positive future — may be preferable to ‘reinventing the wheel’.³²

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chapter 9 Reoffending as a (dubious) measure of effectiveness

Reference has already been made to the fact that government policy is focused around three high-level indicators by which the performance of the youth justice system is assessed. The NAYJ considers that that two of these – reducing FTEs and reducing the number of children in custody – are eminently sensible; they are consistent with child- friendly practice and in accordance with the evidence base. The extent to which either of those characteristics applies to the third target is however questionable.

The government’s final target involves progressive reductions in the rate of recidivism, measured in terms of the level of proven reoffending within 12 months of youth justice disposal. In the year ending March 2015, 37.9% of children who received a substantive youth justice sanction reoffended within 12 months, a substantial increase from 24.6% in 2008 (although a marginal reduction over the equivalent figure for 2014).¹ Accordingly, while considerable headway has been made against the other two performance indicators, progress in relation to the third measure has been negative.

Recidivism varies significantly according to the nature of sanction to which young people are subject. As shown in table 12, pre-court disposals are associated with the lowest level of reoffending while custody generates the highest.

One would anticipate a correlation between disposals involving greater restrictions on liberty and increased

rates of reoffending since children subject to higher-end penalties are likely to be those whose offending is more serious or persistent. However, analysis by the Ministry of Justice suggests that, even when relevant factors such as these are controlled for, lower level community sentences are associated with significantly better reoffending outcomes than high intensity, community-based disposals. (Recidivism rates are 4% lower for the former type of order.) Moreover, children who receive custodial sentences of between six and 12 months are significantly more likely to reoffend than a comparison group sentenced to a high level community penalty (again a four percentage point difference).³

It would accordingly appear that the pattern shown in table 12 is not explicable purely in terms of the extent to which more serious offending is indicative of a potential for lawbreaking, but is also a function of the ‘criminogenic’ nature of youth justice interventions themselves. The evidence would thus appear to support an approach to children in trouble that maximises diversion from court, promotes a strategy of minimum intervention within the court arena, and aims at avoiding the use of incarceration, in conformity with the principles endorsed by the NAYJ.⁴ Encouragingly, the Taylor review arrives at similar conclusions:

‘Evidence shows that contact with the criminal justice system can have a tainting effect on some children and can increase the likelihood of reoffending. Wherever possible minor crimes

Table 12

Proven rates of reoffending by type of disposal: 12 months ending March 2008 and 2015

Disposal	Percentage reoffending within 12 months	
	Year to March 2008	Year to March 2015
Pre-court disposal	24.6%	30.7%
First tier sentence	45.9%	42.3%
Community sentence / YRO	66.2%	64.0%
All custody	74.0%	68.7%
Custodial sentences of six months or under	76.7%	77.2%
All disposals	32.4%	37.9%

Source: Ministry of Justice/Youth Justice Board. Key characteristics of admissions to youth custody: April 2014 to March 2016. England and Wales. London: Youth Justice Board

should be dealt with outside the formal youth justice system, and when a criminal justice response is required children should be dealt with at the lowest possible tier.⁵

Regrettably, the government response appears not to have appreciated the import of this finding, arguing that the best way to reduce youth crime is ‘clearly ... to intervene early’. Liaison and diversion services are described, in this context, as ‘providing “critical information to decision-makers in the justice system, in real time, **when it comes to charging and sentencing** these vulnerable people” rather than in terms of their diversionary potential [emphasis added]’.⁶

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

- Binary measures of reoffending, that simply record whether or not children are reconvicted within a certain period, provide an exceptionally blunt indicator of progress that is unable to capture changes in the nature, frequency, or gravity of criminal activity.
- Like other official data, figures for reoffending are influenced by government targets and changes in police practice. One consequence of the successful shift towards decriminalisation of large numbers of children engaged in low-level lawbreaking is that the youth offending population in 2015 is likely to have a more entrenched pattern of offending behaviour than their peers prior to the introduction of the FTE target.⁷ A rise in rates of reoffending is a predictable outcome of this dynamic, since the cohort being measured is a very different one to that pre-2008. The same logic would lead one to anticipate that reoffending following a pre-court disposal would demonstrate a more pronounced increase than

other sanctions, since the reduction in FTEs impacts primarily on children who would otherwise receive reprimands, warnings and (more recently) cautions. This is precisely the pattern shown in table 13.

- If the two targets are indeed in tension, as the above suggests, the NAYJ believes that the compelling evidence of the negative consequences of system-contact, outlined earlier in the paper, ought to signal a preference for the FTE indicator over measuring trends in recidivism.
- If children naturally tend to grow out of crime, the proper role of youth justice intervention, within a child-friendly framework, is to give them the space to mature and where possible to promote mechanisms that support that process of maturation. Attempting to influence short-term recidivism is not obviously relevant to that endeavour, since evidence of real behavioural change is, in many cases, unlikely to emerge within 12 months and will take a variety of forms rather than simply whether or not the child continues, on occasion, to engage in delinquent activity.
- Focusing on the target might be positively harmful: it leads to an identification of the child with his or her criminal behaviour, which is unhelpful in terms of fostering a non-delinquent identity; it detracts too from establishing relationships of trust between staff and children directed towards shared goals; limits the potential for engaging children as participants in their own rehabilitation; and undermines interventions aimed at supporting longer term developmental processes. Yet each of these is a marker of effective youth justice intervention.⁸

Such considerations mean that, while the NAYJ is content to endorse two of the three current indicators for youth justice as being consistent with the evidence-base and the development of a more child-friendly framework for the delivery of services to children who offend, the Association views the target to reduce reoffending as misplaced.

Table 13

Proven one year rates of reoffending for custodial disposals by sentence length: years ending March 2008 and 2015

Length of custodial sentence	Percentage reoffending within 12 months	
	Year to March 2008	Year to March 2015
6 months or less	76.7%	77.2%
More than 6 but less than 12 months	76.7%	75.4%
More than 12 but less than 48 months	68.5%	57.5%

Source: Ministry of Justice/Youth Justice Board (2017). Key characteristics of admissions to youth custody: April 2014 to March 2016. England and Wales. London: Youth Justice Board

It is, however, important to recognise that the data shown in table 12 pose something of a challenge for the interpretation offered thus far. While levels of recidivism for custody are higher than for any other disposal, in line with the above argument, overall rates of reoffending for imprisonment appear to have declined since 2008. One might reasonably have anticipated that, during this period, children within the custodial cohort would increasingly display more entrenched patterns of offending as those committing less serious offences, and with a less established antecedent history, have been diverted to community sentences. Just as the reduction in FTEs has led to a rise in reoffending for pre-court disposals, so too one would expect a comparable increase in recidivism for children leaving custody.

Two related factors help to account for why this expected outcome has not transpired, neither of which implies that custody has become more effective in terms of preventing further offending. (The evidence in relation to developments within the secure estate, outlined above, would in any event render any explanation that posits improvements in custodial provision exceedingly implausible.)

First, one of the consequences of the fall in child imprisonment is that the average age of those detained has risen: in the year ending March 2007, 6.7% of children held in the secure estate were aged between 10-14 years; by April 2016 that proportion had fallen to just below 4%. Conversely, over the same period, there has been a corresponding rise in the proportion of detained children aged 16 or 17 years, from 78% to 83%. Second, the decline in DTOs has been much more rapid than the fall in longer term custodial sentences (a reduction of 74% against 53%, respectively, between 2006/07 and 2015/16). As a consequence, an increasing proportion of children are deprived of their liberty for lengthy periods. The combined effect of these two shifts is such as to entail that children are, on average, considerably older at the point of release than they were before the fall in the custodial population.

This is significant when understood in the context that children desist from offending as they mature. The apparent paradox in the data is thus resolved by the fact that those children who are currently deprived of their liberty will – by dint of their age – be more likely to have begun the process of growing out of crime, by the time they leave the secure estate, than the custodial cohort of a few years ago. Empirical evidence for this account can be derived from two sources. First the overall one-year recidivism rate for the year ending March 2015 was slightly lower for older children (37.5% for those aged 15-17 years) than for younger children (39% for those aged 14 years or younger).

Perhaps more significantly, as indicated in table 13, the reduction in recidivism associated with custodial penalties is particularly marked in relation to sentences of more than one year (indeed reoffending for the shortest custodial episodes has increased slightly), suggesting an inverse correlation between age at release and further offending. This is not to suggest that longer periods in custody are beneficial: the continued high rates of reoffending following release are themselves indicative of the fact that incarceration, by comparison with community interventions, is likely to impede rather than promote, the natural process of desistance.

Abandoning the reoffending target, and replacing it with one, or more, alternative measures of improvements in children's longer term wellbeing and healthy development, would:

- Ensure that youth justice performance indicators are internally consistent and in accord with lessons from research;
- Avoid a narrow focus on negative, short-term, legalistic outcomes;
- Help to promote a child-friendly youth justice practice that embraces children's rights, encourages participation, engages practitioners' skills in developing relationships and fostering agency, and looks to the longer-term wellbeing of vulnerable and disadvantaged children as the primary gauge of success.

Such a shift in focus would also help to align more closely the outcomes sought for children within youth justice to those that pertain in other forms of provision for children where the promotion of stability, resilience and wellbeing is typically the central focus of intervention.

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chapter 10 Concluding remarks

The announcement of the Taylor review, in September 2015, ensured that developments in youth justice legislation and policy would, effectively, be put on hold for the following two years in anticipation of what that review would bring. To those who hoped for radical reform, the government's response to Taylor's report came as a severe disappointment, amounting to a missed opportunity. The nine months since the report was published have seen few developments, suggesting that government commitments to consider further some of Taylor's recommendations may have been disingenuous. Progress in relation to piloting secure schools has been very slow.

But if the framework for youth justice remains largely unchanged as a consequence of this period of stasis, children have inevitably continued to come into conflict with the law and criminal justice agencies have continued to process them. Analysis of the available data confirms that the dominant trends of the past decade remain in place – in particular a falling volume of detected youth crime and an associated reduction in the use of child imprisonment.

From the perspective of the National Association for Youth Justice, the latest balance sheet is largely positive. The evidence suggests that the reduction in detected youth crime reflects both a genuine fall in offending by children and a shift towards a greater use of informal responses to youth crime. There has in effect been something of a rediscovery of the benefits of diverting children wherever possible, manifested most strikingly in the target to reduce the number of children who enter the system for the first time. Success against this measure has been associated with fewer children arrested, a much-diminished court throughput and a substantially smaller custodial population.

There are, moreover, some early indications that the advantages of decriminalisation and decarceration are beginning to filter through to an older population, providing further empirical confirmation of the premise that contact with the youth justice system is frequently criminogenic and that left to their own devices most children will mature out of crime.

This 'good news' is, however, tempered by some less-encouraging features of the contemporary youth justice

landscape. While most types of youth offending have fallen, there has been a rise in detected possession of knives, and a corresponding increase in the use of custodial disposals for such matters. The extent to which this trend represents a greater propensity for children to carry weapons or a growing policy focus on the issue, leading to increased formal reporting of such incidents to the police and tougher enforcement, is unclear. In either event, the figures are grounds for concern.

The strategic orientation of the police towards children in trouble has improved demonstrably in recent years. The reduction in the number of children subject to arrest is, in part, a manifestation of a growing tendency for using informal responses to children's offending where formal sanctions would previously have been utilised. While this is clearly preferable to criminalisation, a lack of robust data precludes adequate monitoring of the extent, nature and effectiveness of such measures. Given that the fall in FTEs for children from minority ethnic communities has been less pronounced than that for white children, the discriminatory use of informal responses to youth crime cannot be ruled out. It is apparent too that an array of inconsistent practices has developed in different areas, some of which may encourage net-widening as well as diversionary outcomes.

While fewer children enter police custody, the treatment of those in police detention does not appear to have improved; children frequently spend considerable periods of time without the support of an 'appropriate adult' and those refused bail nearly always remain at the police station overnight rather than being transferred to local authority accommodation as required by the legislation.

In the court arena, new guidelines on sentencing are a marked improvement on those they replace. It is too early to tell what difference the revised guidance will make to courts' decision-making but, in the interim, the welcome decline in the overall use of detention is somewhat marred by an increase in the length of custodial episodes and a recent rise in the use of custodial remands. Worryingly, there are some earlier indications that the limits of decarceration, without further systemic or philosophical change, may have

been reached and that the contraction in the use of imprisonment may have stalled.

At the same time, conditions for children who continue to be imprisoned have deteriorated alarmingly; to such an extent that the Chief Inspector of Prisons has felt compelled to describe the situation as ‘dire’. The NAYJ considers that the treatment of those deprived of their liberty is entirely unacceptable and that radical action is urgently required, most critically to close YOIs and STCs.¹ In this context, the government’s response to the proposals in the Taylor review has, to date, been wholly inadequate.

More generally, the decline in first time entrants, court throughput and imprisonment has not benefited all children to the same extent. As the youth justice system has contracted, the overrepresentation of minority ethnic children, in particular black and mixed heritage children, has become more pronounced. More disturbingly, the extent of overrepresentation rises with the level of intervention: almost half of child deprived of their liberty come from a minority background. Children in care are also more likely than their peers in the general population to be criminalised. Inequalities are evident too in the treatment of children from different backgrounds when they are detained in the secure estate. Although disproportionality, in its various guises, has received considerable attention in recent years, concrete action to address it has been limited and progress disappointingly hard to discern. The absence of improvement in this regard raises important questions as to the ability of the youth justice system to provide justice for all children and casts a shadow that detracts from the advances made in other areas.

Finally, it is important not to divorce youth justice from broader developments that affect poor and disadvantaged children in myriad ways. The rapid shift away from a reliance on formal sanctions to address children’s troublesome behaviour has led, perhaps understandably, to a siphoning-off of resources from youth justice services; but these have not been deployed to buttress mainstream provision. This is particularly concerning given that the capacity of mainstream service providers to deliver the personal and systematic support that disadvantaged children so badly require has simultaneously been gravely undermined as a consequence of austerity. Where the youth system withdraws intervention – albeit that such intervention is delivered through a potentially problematic criminal justice lens - and suitable support is less available elsewhere, the prospect that youth crime will increase as opportunities for young people from the most hard-pressed communities diminish, cannot be ruled out.

These wider misgivings are fuelled by, and provide confirmation of, a sense that advances within the youth justice arena are fragile, and susceptible to reversal, because they are largely driven by a pragmatic accommodation to changing political and fiscal priorities rather than rooted in a principled, and evidence based, commitment to achieve the best long term outcomes for children in conflict with the law. Punitive undercurrents, that might readily provoke a sharp, regressive shift, remain discernible within youth justice discourse. These are seen most obviously in:

- the lukewarm reception afforded to the Taylor review and the endorsement of ‘punishing crime’ as a central role for youth justice;
- the enforcement-focussed reaction to apparent rises in knife possession;
- the increasing use of curfews and electronic monitoring whose main purpose appears to be punitive; and
- a continued adherence to a risk-based model of assessment and intervention rather than practice embedded in a future-orientated, strengths-focused, child-centred and young person directed understanding of how to address the difficulties experienced by children who come to the attention of the youth justice system.

Recent history, in the form of the sanction detection target, provides concrete evidence of the potential for political signals, motivated by a desire to appear tough on youth crime, to trigger a rapid escalation in the number of children drawn into the justice system and a corresponding growth in child imprisonment. The NAYJ accordingly believes that consolidating recent progress requires the urgent development of a child-friendly, rights-compliant, philosophically-coherent and evidence informed youth justice policy and practice that eschews short term punishment as a rationale for intervention. Decriminalisation, diversion and decarceration should be promoted on their own merits because of the longer term benefits for children’s wellbeing that adherence to such principles will deliver, rather than as pragmatic mechanisms that make it more likely that politically and financially motivated performance indicators will be met.

Reference

- 1 For a fuller discussion of the NAYJ’s position, see Bateman, T (2016) *The state of youth custody*. London: NAYJ