A Submission to the Carlile Inquiry into the operation and effectiveness of the Youth Justice system, from The Michael Sieff Foundation

1. THE ROLE OF THE YOUTH COURT

Does the youth court operate effectively under the two principal statutory aims of the youth justice system: to reduce offending and have regard to the welfare of the child and in accordance with the UN Convention on the Rights of the Child?
Should there be a more holistic approach to dealing with children and young people that offend but are also in need of welfare intervention?

RESPONSE

1.1 Over many years, Sieff Foundation conferences and seminars have discussed the issue that whether children and young people end up in the welfare system (Family Court) or the Youth Court (crime) is chance.

1.2 The 2002 Sieff Foundation conference *'Child defendants: Is the law failing them?'*[1] was attended by many of the country's top legal minds, including a number of High Court Judges. The Conference heard eminent speakers call for a merger of the two jurisdictions or for a method of transferring cases from the Youth Court to the Family Court when there was overwhelming welfare need.

1.3 Mr Justice Toulson, then High Court Judge and Chairman designate of the Law Commission, said:
'I would like to see all criminal proceedings go through the Youth Court, and replace the murder/ manslaughter charges with one of culpable homicide. In practice, this would mean moving towards a system which takes children out of the criminal justice system. Instead of concentrating on the age of criminal responsibility, we could outflank it with other methods. If these were carefully piloted and developed, we could then convince Government that they do not represent a huge political risk and push them through'.

[1] http://www.michaelsieff-foundation.org.uk/content/conference.pdf

1.4 Dame Elizabeth Butler-Sloss (as she then was) supported a move to link the Family and Youth Courts together:
'Care proceedings take a child up to the age of 16 and occasionally beyond. So all children from 16 downwards, with whom we are primarily concerned, could potentially be within care proceedings if local authorities choose to make the application. Take a child aged 12, 13, 14 before the Youth Court, with a series of offences and social workers knowing the long family history. I would like to see Section 37 of the Children Act extended, to require the local authority to give a report on the welfare of the child and whether it should intervene. I would like the Youth Court to have the power to seek a Section 37 report. When the child comes back, they could have the dual role of Youth Court and Family Proceedings Court, and decide whether the latter court should take over or whether it is a sufficiently worrying case to go up to the circuit judge or even perhaps to the High Court judge, within the care proceedings'.

1.5 Christopher Kinch QC introduced the issue of adversarial or inquisitorial. He asked:
'Whether we should be looking at children as part of the adversarial system of criminal justice? Isn't there a real problem caused at the foundation of the present adversarial system by sweeping children into it and where inevitably they will be caught up in the strategic and tactical manoeuvring surrounding the trial process?'

1.6 Dame Elizabeth, commenting on the dilemma facing criminal courts when dealing with serious sexual offences, said *'even serious sexual offences might need help rather than punishment'.*

1.7 Lord Justice Kay in responding said:
'You really would have to bring about a different breed of defence lawyer who could deal with these two things. This makes the proposal even more attractive to me, as those who have a wider dimension of looking at the case and dealing with it on behalf of the child might actually be a help. I think those with dealings in Youth Courts recognise that sometimes (and this is not in any way a criticism of them) the fact that they are focused on the criminal case, gets in the way of reaching the right solution to the child's problems. Changing that might actually be the spin-off effect from this proposal that would bring further benefits. You would get a different type of person doing this work. It would not be the person spending every day in the criminal court no concept of family problems'.

1.8 Today, many people (District Judges, academics, magistrates and lawyers) working in the Youth and Family Courts systems believe there is a need for change. Some argue for a joining of the youth and family jurisdictions to form a Family Justice Court dealing with children holistically, with care and crime together. This is how the Scottish Children's Hearing system

has operated for over 40 years (paragraph 4.4). Children and young people who commit crimes are often the same children that are abused and neglected. Why not deal with them in one single jurisdiction?

1.9 Youth Court magistrates, week after week, see children and young people who they have to sentence for their criminal behaviour. They often come from very dysfunctional families with a multitude of problems. If the main principle of a Youth Court is to reduce reoffending, how can a purely criminal Court tackle these problems that are the underlying cause of the offending? A mainly criminal range of sentences does not address the needs of these families. Only by addressing these issues can we hope to make a start in reducing offending. Youth Courts do not even have the power to transfer cases (see paragraphs 5.3 – 5.5) that demonstrate overwhelming welfare need from the Youth Court to the Family Proceedings Court where the family issues can be addressed.

1.10 The recent Centre for Social Justice (CSJ) report, 'Rules of Engagement, Changing the heart of the Youth Justice System', calls for radical change, saying 'the CSJ believes that a joined up approach to youth offending is unlikely to be realised unless care and crime matters are addressed in the same court environment'[2] . The Report goes on to recommend that Youth Court and Family Court proceedings be integrated and that an inquisitorial approach be adopted.

1.11 Sieff believes that Youth Courts are mini adult courts, and much of the legislation is drafted for adults and handed down to the Youth Court with no regard for the particular needs of children. Therefore, the Youth Court is often an inappropriate venue to deal with children and young people whose criminal behaviour has brought them to the notice of the criminal court that cannot then address the underlying causes of that behaviour.

1.12 Sieff therefore recommends that:

- A Royal Commission be set up to investigate the way our courts deal with children and young people that offend.

[2] http://www.centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20reports/CSJ_Youth_Justice_Full_Report.pdf , p212.

2. THE USE OF THE CROWN COURT FOR CHILDREN

Is the Crown Court the best venue for children and young people that commit serious offences?

RESPONSE

2.1 No, the Crown Court is not the best venue for children and young people who commit serious crimes.

2.2 The formal surroundings of a Crown Court are not the appropriate place for the trial and sentence of children and young people. Despite judges and lawyers being able to remove gowns and wigs, the Crown Court is very intimidating for children and young people. This prevents the essential communication that is necessary if the child or young person is to have a fair hearing.

2.3 The Youth Court is less formal, with experienced Magistrates and court officers who are used to dealing with children and young people. The Youth Court can impose a maximum custodial sentence (Detention and Training Order) of two years. For sentencing very serious offences, when the youth court consider the defendant should receive substantially more than two years, the child or young person is sent to the crown court as a 'grave crime'[3] . 'Grave crimes' are offences that are punishable in the case of an adult with 14 years imprisonment or more, e.g. robbery, serious assaults, sexual offences, arson and burglary.

2.4 To reduce the human rights issues that a trial in the Crown Court brings with it, with the formal, intimidating surroundings restricting communication and therefore the understanding that the child or young person has of the proceedings, Sieff recommends that for 'grave crimes' four or six Youth Court magistrates sit with a specially trained Crown Court judge in the Youth Court to decide guilt or innocence and sentencing.

2.5 Whilst some will be concerned by the loss of the right of a jury trial, in many other jurisdictions a 'jury' of seven is not unusual.

3. SHOULD THERE BE MORE SPECIALISM IN THE YOUTH COURT AND CROWN COURT?

Youth Court Law is complex. But often it is considered the place for new barristers to start. Whilst the CPS has specialist prosecutors, solicitors and barristers do not have to have a 'ticket' to practice in the Youth Court or Crown Court. Similarly, judges have no special training to sit on youth cases. Magistrates, whilst receiving training on youth court matters, increasingly sit less frequently; should they specialise in youth courts only?

[3] Grave crimes, Section 91 Powers of Criminal Courts (Sentencing) Act 2000.

Should there be a separate 'youth' division in the courts system as in the Family Division with a President of the Youth Division?

RESPONSE

3.1 The current Youth Court deals with 10 to 17 year olds. Youth Court magistrates sentence all young people other than for the most serious 'grave crimes' (i.e. they sentence over 99% of all crimes committed by young people). As mentioned earlier, the Youth Court has a maximum custodial sentence of two years (Detention and Training Order). 'Grave crimes' are sent to the Crown Court where non-specialist judges hear the cases, defended and prosecuted by barristers with no specialist training for dealing with children and young people. This contrasts to the Family Division, where the most complex cases are handled by specialist judges and barristers in a jurisdiction presided over by the President of the Family Division.

3.2 Magistrates sitting in the Youth Court are experienced at dealing with children and young people and undergo specialist training for this role. Youth Court law is among the most complex in any jurisdiction, yet often it is considered the place for recently qualified barristers to start. Solicitors do not have to have a specialist 'ticket' to practice in the Youth Court. The CPS does have specialist practitioners. Judges have no special training to sit on youth cases.

3.3 Magistrates, particularly Youth Court magistrates, have become increasingly concerned in recent years about the effect of the reduction in the number of children and young people appearing in the Youth Court. Between 2008/09 and 20011/12 there was a 47% reduction in the number of young people receiving substantive outcomes[4] in the Youth Court[5] . More recently, some areas have reported a reduction of over 70%. This has been caused by an increase in out of court disposals and a reduction in youth crime.

3.4 The reduction in youth crime is welcome, but it is causing particular difficulties for Youth Panel magistrates who have seen their sittings reduce dramatically, sometimes sitting a handful of times only in a year. It is obvious that magistrates' competence must deteriorate, particularly with the increasing complexities and changes in youth court law.

3.5 The Audit Commission in its report: *'Youth Justice 2004, A review of the reformed youth justice system'*, covered this issue[6] . It said it was encouraged by the changes in the Youth Court, particularly the increased engagement with young people, but specialisation should be considered:

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[4] A substantive outcome is one where young people have to engage with the Youth Offending Team. It typically excludes reprimands and final warnings.

[5] Youth Justice Statistics 2011/12 England and Wales, Ministry of Justice/Youth Justice Board.

[6] http://archive.audit-commission.gov.uk/auditcommission/subwebs/publications/studies/studyPDF/3144.pdf p5.

'It is important that the courts engage young offenders and their parents and ensure that they understand fully what happens in court. We found some welcome changes, but felt that more needed to be done. We concluded that magistrates, like other professionals who work with children and young people, should be more specialised.
This would fit better with a greater focus on serious and persistent young offenders, whose lives are often chaotic and complex. With fewer, more specialised magistrates, persistent young offenders could benefit from being assigned to one of the same magistrates on every court appearance. Magistrates could also review progress on specific cases, provide encouragement to those who are doing well and change the intervention programmes of those who are not'.

3.6 Sieff recommends that:

- all lawyers and judges dealing with children and young people should be ticketed after training in child welfare and youth court law;
- a youth crime division, led by a senior judge, should be created;
- magistrates should be able to opt for specialising in the Youth Court after three years in the adult court.

4. THE MERITS OF A NON-ADVERSARIAL APPROACH SUCH AS THE CHILDREN'S HEARING / REPORTER SYSTEM IN SCOTLAND.

Is the use of restorative justice an alternative to the criminal courts system for children and young people?
Is a non-adversarial approach preferable to our present adversarial system?
Is there a need for additional court powers to require investigation?

RESPONSE

4.1 Much of Europe has an holistic approach to dealing with children who are troubled or are in trouble. Some jurisdictions have inquisitorial systems. We believe the way we treat children and young people should be considered the most important legal jurisdiction. The system needs to protect children that have been abused and neglected and prevent them committing further offences.

4.2 This 'Cinderella of the courts system' needs a complete overhaul. Some would argue that we have, in some respects, gone backwards since the 1908 Children's Act.

4.3 The 1908 Act set up the first Juvenile Courts, separating children from adult offenders, where specially trained magistrates sat, dealing with youngsters' criminal behaviour and welfare needs. Over subsequent decades the pendulum swung between welfare and

punishment until the Children Act 1989. The 1989 Act changed the holistic approach that had been taken over 80 years, splitting the jurisdictions into the Juvenile Court (crime), (soon to become the Youth Court) and the Family Proceedings Court (care).

4.4 This contrasts with the situation in Scotland. Following the 1964 Kilbrandon report[7], a radical welfare approach was adopted in Scotland, making the welfare of the child paramount. The principle was set out in the Social Work (Scotland) Act 1968 and was implemented in 1971. The adversarial process has been retained for those pleading not guilty, when a trial is held in the Sheriff Court. After more than 40 years, the inquisitorial welfare based approach is considered, in Scotland, to be an enlightened and successful approach.

4.5 Youth Courts in England and Wales are mini adult courts, with hand-me-down adult legislation. An inquisitorial system is more appropriate for our children and young people, having the added benefit, by addressing their welfare needs in an holistic way, of being more effective in reducing their offending behaviour.

4.6 As mentioned previously, the Sieff Foundation recommends that a Royal Commission should be set up to examine the way we treat our children and young people under 18, particularly examining how an inquisitorial system could better operate in England and Wales when dealing with children and young people. Drawing on the experience of Scotland and Europe, the Commission should aim to propose a more appropriate system for the 21st Century.

5. HOW IS THE WELFARE PRINCIPLE DELIVERED IN CRIMINAL PROCEEDINGS IN THE YOUTH JUSTICE SYSTEM?

How engaged are children's services in England (and Social Services in Wales) in meeting the welfare needs of children who offend?'

RESPONSE

5.1 The welfare principle is not adequately addressed in youth courts. Youth Offending Teams (YOTs) have been losing their multi-agency approach with the result that providing for the welfare needs of children and young people appearing before the youth court is limited. This is because the links to children's social services (CSS) are often poor. CSS are currently very pressured and see YOTs as being well resourced. The link between CSS and YOTs could be much improved by seconding children and family social workers into YOTs, thus creating a firm link to the CSS children and family teams. Children and young people appearing in the youth

[7] http://www.scotland.gov.uk/Resource/Doc/47049/0023863.pdf

court will often have welfare needs revealed by YOTs that cannot be adequately addressed because of poor links with CSS.

5.2 Another additional approach would be for a transfer arrangement to be created between youth and family courts.

5.3 In 2012, the Centre for Social Justice recommended that:

'Consideration be given to affording the Youth Court the power (under s.37 Children Act 1989) to order the local authority children's service to investigate whether a child is at risk of suffering significant harm, and whether the local authority should intervene to safeguard and promote the child's welfare (s.47 investigation under the Children Act). This power would be available in cases where there were welfare concerns. The local authority, in their investigation, would be required to consider whether they should:

- *Apply for a care order or supervision order with respect to the child;*
- *Provide services or care to the child or his family; or*
- *Take any other action with respect to the child.*

We suggest that this power be available to the Youth Court at any point in criminal proceedings, running in parallel to them. We would expect that in most cases the Youth Court would adjourn sentencing until the local authority investigation had concluded and notified the court of their findings. The Youth Court could dispose of the case with its existing powers or take no further action (for example, where care proceedings were initiated)'[8].

5.4 In 2004, The Centre for Child and Family Law Reform produced a paper under the Chairmanship of Prof Hugh Bevan making detailed proposals to change the law to enable this transferring of cases to take place[9].

5.5 We recommend that:

- children and family social workers are seconded to YOTs;
- a section 37 transfer arrangement between Youth Courts and Family Courts is created[10];
- Youth Court and Family Court panels should be merged.

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[8] Centre for Social Justice (2012) *'Rules of engagement, change the heart of youth justice'*, p 212.

[9] Centre for Child and Family Reform (2004) *Needy Children in the Criminal System. A proposal to extend the Powers of the Court in relation to Needy Children in Criminal Proceedings*. Department of Law, City University. http://www.city.ac.uk/__data/assets/pdf_file/0020/164090/Needy-Children-Paper-2004.pdf

[10] For the full Sieff Foundation proposal see http://www.michaelsieff-foundation.org.uk/content/Youth-court-to-acquire-Family-Court-Powers.pdf

6. THE USE OF DIVERSION FROM THE CRIMINAL COURT SYSTEM.

Is the use of pre-court diversion, triage, conditional cautions etc. effective at preventing young people from entering the criminal courts system?
Should it be extended still further?

RESPONSE

6.1 There is a danger that extending the use of diversion still further will create due process problems. Currently police have powers to divert children and young people from the courts system. Police can 'sentence' to unpaid work, fine and restrict young people's movements in given areas. This can create inconsistencies between police forces. Arguably, children and young people who commit offences should all be 'sentenced' in a court; even with good training it is unlikely that police officers can perform the same independent role as courts. Diversion is often very effective in stopping children and young people reoffending when they have committed minor criminal offences. However, there is a danger that children and young people from difficult backgrounds will be less likely to be diverted and therefore end up in court.

6.2 The current arrangements are probably as far as this approach should go.

The Michael Sieff Foundation
15 October 2013