Independent Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court

Chaired by Lord Carlile of Berriew CBE QC

June 2014

Acknowledgements

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Foreword

It has been a privilege to chair such an informed and objective group of Parliamentarians in the preparation of this report. We have been assisted by expert advisers of very high calibre. My special tribute is to our researcher and rapporteur, Alexandra Wigzell. I believe that, all of us in working together with a very high degree of consensus, have produced a report on youth justice that any and all political parties could adopt as part of their policies for law reform in the Parliament that will start in mid-2015.

We believe that much good practice has developed over the years in relation to crime committed by children, who have not yet reached the age of majority. The Youth Justice Board has shown itself in recent years to be forward looking, and across the criminal justice spectrum there is an appetite for reform. I believe that all share the same broad motive for reform – that children who do commit crime should become adults who do not commit crime. That simple aspiration is easier stated than achieved, but few aspirations are more worthwhile.

In this report we have suggested a range of reforms. They are designed to divert children from the formalities of the criminal justice process, in which often they flounder with little understanding. Where possible, children should not be taken before a court. Diversionary schemes, tough options that oblige children and their parents and guardians to confront the problems in their lives, are probably better value than the sometimes clunking processes of the courts. Where a more formal disposal is required, it must be one that serves the interests of victims, perpetrators, and society as a whole.

That means that all must understand what is being said and done, why it is being said and done, and what are the consequences. A child asked recently in court if he 'felt remorse' replied 'No': when questioned later by his lawyer he asked the meaning of 'remorse': this is a small illustration of how honourable lawyers and judiciary, doing their best, fail to engage effectively with the person before them.

Nowhere is this disengagement and lack of comprehension more obvious than in the Crown Court. Even with determined special measures to make the court more child-friendly, there is strong evidence that an appearance in the Crown Court for a child is a negative and terrifying experience in terms of understanding and rehabilitation. Unfortunately the terror does not work as a deterrent. We have concluded that Crown Court appearances for under-18s should be the rare exception.

We were concerned too about the effect of convictions remaining on the individual's record after reaching the age of majority. We advise changes to the rules, so that on reaching 18, and in some cases after a period without further trouble, job prospects and other life chances should not be affected adversely by earlier contact with the criminal justice system.

Other matters of major concern to the panel are mental health and welfare issues. Many young people who offend have a range of needs, often derived from family circumstances and their consequences. Improved triage is needed, so that as many of these cases as is possible can be diverted into non-criminal opportunities and disposals.

I hope that all interested in the important subject of youth justice will read and value, and use this report and its many recommendations. We do not claim to be right on everything, but we do insist that the subject requires urgent attention, and reform on an apolitical and empirical basis.

Lord Carlile of Berriew CBE QC

June 2014

Contents

Summary

The Parliamentary Inquiry into the Operation and Effectiveness of the Youth Court was launched in September 2013. It seeks to determine whether the system of criminal courts for children who offend is meeting its stated aim of preventing offending and having regard to the welfare of the children that appear before them. The inquiry received a total of 55 written submissions and heard from 43 witnesses; these included academics, practitioners, policy makers and young people.

Challenges and opportunities

We heard that reductions in the number of children entering the system and coming to court as well as closures of courts has created particular challenges. A key issue of concern is that children are increasingly likely to appear in adult magistrates' courts when they are detained overnight and over the weekend, because there will be no youth court sitting. We were informed too that the youth courts are seeing a greater concentration of children with complex needs in court, likely due to the success in reducing the number of children coming into the system for low level matters. However, the decrease in critical mass offers an opportunity to better focus resources on improving the system for child defendants, victims and their families.

Diversion

There was wide support for high levels of diversion among inquiry respondents, with many referring to the strong body of evidence that contact with the criminal justice system can increase the likelihood of offending. There was concern that out-of-court diversion schemes share some of the same negative features as formal system contact, such as Disclosure and Barring Service disclosures, and that this was often not made sufficiently clear to children. Most believed that diversion was effectively preventing children from entering the criminal courts system unnecessarily. However a number of responses argued that some children were still 'falling through the net', leading to unnecessary prosecution, particularly children in care.

Addressing underlying needs

Submissions emphasised that children's offending flows from a wide range of needs. There was a widely held view that welfare services are often failing to address such needs, which results in children falling into the youth justice system, and struggling to free themselves from it. Particular concern was expressed that resource constraints on children's social services are such that only the most acute cases receive support – typically babies and young children – while vulnerable older children are left out. Involvement of Youth Offending Teams (YOTs) frequently has the effect of further raising the threshold for support, as there is often a perception that YOTs should be the sole body tackling the welfare needs of children who offend. A number of organisations reported that there had been some improvement in children's services involvement with children who offend following the introduction of new remand arrangements. However, it is often the case that courts are only able to focus on the offence, and not the child and the wider circumstances contributing to their behaviour.

Lack of engagement and understanding

Submissions highlighted young people's lack of understanding of proceedings or language, owing to the prevalence of neuro-developmental disorders and other problems, that hinder participation and the lack of any systematic court processes to identify these. Additional factors that impede child defendant's understanding include their young age and developmental immaturity and the fact that the cohort of children in the youth court have had fewer educational opportunities.

Specialisation

Magistrates and District Judges in youth proceedings must undergo specialist youth training, yet there are no such requirements for defence practitioners or Crown Court judges. Youth specialist prosecutors are only used for part of the court process. To compound the issue, the youth court is often used as a place for legal practitioners to 'cut their teeth' and Crown Court judges tend to have little experience of dealing with youth cases. Respondents were virtually unanimous in their belief that all practitioners in youth proceedings should have youth specialist training; many believed that this should be a mandatory requirement.

Crown Court

The overwhelming majority of responses argued that the Crown Court was inappropriate for children; its intimidating nature and lack of youth specific expertise was said to prevent effective sentencing and participation and, ultimately, contravene the right of children to a fair trial. There was subsequently strong support for a presumption retaining youth cases in the youth court.

The role of the youth court

The prevailing view was that youth proceedings are struggling to meet their principal aim of preventing offending and their duty to have regard to the welfare of the child. Criminal courts do not possess the means to address the wide range of welfare issues that so often underlie a child's offending. There was subsequently wide support for the adoption of a more problem-solving approach to children who offend.

Key recommendations

- We recommend that Her Majesty's Courts and Tribunal Service direct all magistrates' courts to introduce a rota system, to ensure that a senior youth magistrate or youth ticketed District Judge is always sitting in the adult magistrates' court when the youth court is not in session

- Children who have committed non-serious and non-violent offences, who have stopped offending, should have their criminal record expunged when they turn 18.

- We recommend that all legal practitioners representing children at the police station and practising in youth proceedings be accredited to do so.

- There should be a clear presumption – in law – that all child defendants are dealt with in the youth court.

- We recommend the piloting of a problem solving approach in court for children, which would include judicial monitoring and continuity in cases, and powers to ensure children's underlying needs are met.

- We advocate building upon the existing referral order to place greater emphasis on the involvement of victims as well as the participation of families and wider support services to enable the process to address the harm of the offence as well as its underlying causes. The 'Problem Solving Conference' would be available to under-16s coming to court and should be initially piloted.

Introduction

The Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court was launched in September 2013 in response to long-held and growing concerns that criminal courts do not, in their current form, offer the most effective means of responding to youth offending. The inquiry was generously funded by the Michael Sieff Foundation and the Dawes Trust. Our terms of reference were to explore:[1]

- The effectiveness of diversion from the criminal court system;
- The extent to which children's services in England (and social services in Wales) are engaged in meeting the welfare needs of children who offend;
- The competence of practitioners in youth proceedings;
- The effectiveness of the youth court;
- The appropriateness of the Crown Court for child defendants;
- The extent to which youth proceedings are operating effectively under the principal statutory aim of the youth justice system – preventing offending – and their duty to have regard to the welfare of the child;
- Whether there are there viable alternatives to the criminal courts system for children who offend; and
- The views and experiences of children who have been through the criminal courts.

The inquiry heard from 43 witnesses. This included two focus groups with children who had experience of the youth court and Crown Court. These were kindly arranged and hosted by Just for Kids Law and Cookham Wood Young Offenders Institution, respectively. We also received 55 written submissions from a wide range of individuals and organisations, including practitioners, academics and policy makers. Our written and oral evidence was supplemented by observation of a youth court sitting and a visit to a Secure Training Centre. These provided first-hand experience of the operation of youth proceedings and an insight into their sentencing consequences.

[1] The inquiry's terms of reference were agreed by the Michael Sieff Foundation, National Children's Bureau and Lord Carlile CBE QC. It is termed an inquiry by parliamentarians' as it is not an official parliamentary inquiry by a Select Committee but rather a group of parliamentarians who have come together out of a shared interest in youth justice with a will to see the system improved for children, victims and society.

Chapter One – Challenges and opportunities

The present time is one of significant contraction in the youth court. In recent years, there has been a large reduction both in the number of children entering the youth justice system for the first time and being sentenced at court. Between 2002/03 and 2012/13, the number of first time entrants into the youth justice system fell by 67 per cent to 27,854 while the population of young people sentenced at courts decreased by 54 per cent to 43,601 (Ministry of Justice/Youth Justice Board, 2014: 9-10). This is understood to be a consequence of a reduction in offending by children, coupled with a fall in detected (recorded) youth crime, supported by a renewed government commitment to reducing the number of children entering the system and court, particularly for low level misdemeanours (Bateman, 2012: 5-20). Meanwhile, a Coalition Government court closure programme, implemented in 2011 as part of its deficit-reduction agenda, has led to the closure of 93 magistrates' courts, with more scheduled (MoJ, 2013a).

The decrease in the throughput of cases and number of courts provides considerable challenges as well as opportunities. We heard from Youth Offending Team (YOT) Managers Cymru and the Association of YOT Managers that child defendants, families, victims and witnesses were having to travel longer distances to court hearings, often at considerable cost. Leeds Youth Offending Service (YOS) said that 'at times' youth courts were heavily listed owing to the reduction in sittings, which was 'resulting in cases being dealt with as quickly as possible and perhaps without as much detailed consideration of all the young person's circumstances as required'.

YOT Managers Cymru and Leeds YOS noted too that the changes had led to delays in cases. One reason given for this was that 'on occasion' courts are so heavily listed that all the cases cannot be dealt with in one sitting and are accordingly deferred. However, we were told that a key driver for delays was children being remanded (detained) overnight as they now 'will often appear in an adult magistrates' court the next morning and their case will be postponed until the next youth court sitting'.

The increasing likelihood of children appearing in adult magistrates' courts was described by Jim Hopkinson, Head of Targeted Support Services in Leeds, to be their 'Achilles heel', because it undermines investment in the specialist youth court. The Association of YOT Managers similarly reported that child defendants were currently more likely to appear in adult magistrates' courts. They also highlighted the increasing problem of children sharing court accommodation with adults, including waiting rooms, custody suites and secure court transport:

> *...with youth court lists being shorter than was the case previously, this, coupled with the closure of court buildings, has made it more likely that cases will be dealt with in court rooms that are designed for adult defendants, and children share a waiting area with adult defendants...This is especially true for those unfortunate enough to be appearing from custody, where they are often in custody suites with adults because of the nature of the building and the court's timetable. Some of the transport arrangements are also inappropriate and we are aware of a case as recently as October 2013, where a young person was transported around various courts in the same vehicles as adult offenders before being finally delivered to the designated court some six hours later.*

The increasing use of adult courts for children is an issue of serious concern to the panel. It frustrates the principle that children will be treated differently from adults in reflection of their young age and makes poor use of the resource of specialist youth courts. It can also have grave consequences as the below story demonstrates. We are particularly grateful to the parents of the young girl who, despite their grief, agreed for their daughter's experience to be shared with the inquiry:

This case involves the suicide of a vulnerable 17-year-old girl who had a history of self-harm and depression (she had in the summer time been admitted to a unit for 16-17 year olds regarding mental health). She was arrested by the police on a Saturday and provided with an appropriate adult (from a volunteer service) as well as access to the duty solicitor. She was detained at the police station for 36 hours. There was concern about her emotional state and history of self-harm. She was presented before the adult court on the Monday and was released on bail to attend the youth court the next day. She was not released into anyone's care. She was found hanging the next day. The inquest into the case is listed for October this year.

While we recognise that this tragic story is an extreme case, it nonetheless undermines the potentially harmful consequences of a child appearing in an adult court, where the normal protections (such as a youth specialist judiciary and YOT presence) available to children are not in place. This increases the likelihood that children's vulnerabilities will be overlooked and inappropriate decisions made.

Children are also more likely to associate with adult offenders as a result of appearing in the adult magistrates' court, which is inappropriate and unlawful in certain circumstances. A recent court judgement has found that it is unlawful for children to be detained in the same area in police custody cells as adults, under the provision of section 31 of the Children and Young Persons Act 1933 (T v Birmingham Magistrates Court). The transport of children and adults in the same secure vehicles breaches of Article 37 of the UN Convention of the Rights of the Child (UNCRC), to which the UK is a signatory, which provides that 'every child deprived of liberty shall be separated from adults'.

As a result of the smaller numbers of courts and child defendants some YOTs now share a court and attend on a rota basis. This typically means that each YOT will have an allocated court day for its own cases but any cases arising that day from other YOTs in the court area will also be heard and managed in court by the YOT. The Justices' Clerks' Society said that YOTs often had limited access to children's records from other areas, resulting in YOT court workers with poor awareness of children's case details. On the contrary, Paul Sutton, Head of Enfield Youth and Family Support Service, asserted that the system was working well in London. Nonetheless, we were informed that the advent of shared courts and, accordingly, the larger number of professionals using each court - judges, lawyers, and YOTs – had weakened working relationships; [2] yet strong partnership working is seen to be the foundation of 'efficient and effective court work' (YJB/ HMCS, 2010: 16).

[2] Paul Sutton, Head of Enfield Youth and Family Support Service; Youth Justice Board (YJB)

A further challenge highlighted repeatedly by respondents was that those coming into the youth justice system and to court 'tend to have greater and more complex needs';[3] what was described as a 'thicker soup'. Ministry of Justice statistics support this: since 2006/07, the average number of proven previous offences and the likelihood of reoffending have steadily increased among children in the system (MoJ/YJB, 2014: 26). This is likely a reflection of the fall in the number of children entering the system, particularly for low level matters; there is now a greater concentration of children in the system with higher level offending behaviour and more complex needs. Lin Hinnigan, Chief Executive of the Youth Justice Board (YJB) informed the panel that it was becoming increasingly difficult for courts to respond to such needs and ensure young people are engaged in the process:

> *It's harder and harder, I think, for magistrates and judges looking at those young people to understand their needs, to make sure that they're properly engaged in the process in the court, and to do their best to meet the needs...we have young people with more complex needs, that's creating real challenges for us across the whole piece in terms of what we do in youth offending teams, and what we do in custody, and ditto in the courts.*

However, such challenges are unlikely to be a new phenomenon given that children with complex needs have always been in the system. Instead, our contention is that the greater concentration of children with such needs has put some of the long-standing deficiencies in the youth justice system under the spotlight. But it is likely that the difficulties engaging children with complex needs have been aggravated by the developments outlined above, including the reduced time to deal with cases, and the greater likelihood that children will appear in adult courts or in a court where their home YOT is not represented. This suggests that the current system is in serious need of revisions, to meet both the changing profile of the complex cohort of children who face the courts and the altered nature of court proceedings involving children. The reduction in critical mass offers an opportunity to better focus resources on addressing such challenges to improve the system for the public, child defendants and victims. One question we need to address in this context is the place and role of youth courts in any reformed system of justice.

Recommendations

- We are concerned about evidence we have received that children are increasingly likely to appear in adult magistrates' courts following overnight police detention, owing to the reduction in youth court sittings. Such practice contravenes the principle, explicit in s.31 of the Children and Young Persons Act 1933, that children should be treated differently from adults, in recognition of their young age. It makes no sense to have a resource of specialist youth court magistrates and District Judges that are insufficiently used. **We recommend that Her Majesty's Courts and Tribunal Service direct all magistrates' courts to introduce a rota system, to ensure that a senior youth magistrate or youth ticketed District Judge is always sitting in the adult magistrates' court when the youth court is not in session.** As this would not result in any additional cost to the system or require legislation, we recommend that this is implemented within the next year.

[3] Tom Whitworth (YOT Manager); Paul Sutton; Buckinghamshire Children and Young People Services; Association of YOT Managers (AYM); YJB; Alex Williams (YOT-based probation officer); Jim Hopkinson, Head of Targeted Services, Leeds; Keith Towler, Children's Commissioner for Wales

- We propose that a requirement is introduced that all children are represented by a youth specialist lawyer at the police station. This should be introduced and monitored by the Chartered Institute of Legal Executives (CiLEx) and the Solicitors Regulation Authority (SRA).

Chapter Two - Diversion

Since the late 2000s there has been significant expansion of diversion in England and Wales in an effort to reduce the number of children entering the system for the first time and appearing in court for low level matters or in inappropriate circumstances. This development was a renewal of diversionary practice rather than the invention of it. Concern during the 1990s that diversion was being used excessively and inappropriately, led to the radical contraction of such activity by the incoming Labour Government via the Crime and Disorder Act 1998, which saw the adoption of a 'three strikes and you're in court' policy, no matter how trivial the offences. This combined with the introduction of police targets to increase the number of offences 'brought to justice' (formally responded to), led to a dramatic increase in the number of children entering the system, many for minor misdemeanours that would not have previously warranted a formal response (Newburn, 2011, cited in Crossley, 2012: 57). The Legal Aid, Sentencing and Punishment of Offenders Act 2012 further assisted the recovery of diversion by introducing a more flexible out of court disposal framework (caution and conditional cautions), which removed the escalator process that required children to appear in court for a third offence, no matter how minor.

There are two types of diversion in England and Wales: first, diversion from the criminal justice system via means of informal warnings, as well as welfare based and restorative responses, such as Youth Justice Liaison and Diversion services and Triage (which do not attract a criminal record). Both of these involve police-station based assessment at the point of arrest, by a health worker and YOT worker, respectively, to identify children with vulnerabilities and divert them away from the criminal justice system into appropriate interventions.[4] These schemes may also be used for identifying and accessing support for needs in parallel with formal criminal justice disposals. The second type is diversion from court via means of community resolution (and informal agreement between the parties involved to address the harm caused), youth cautions and youth conditional cautions (all of which are citable on enhanced criminal records checks). Both cautions are given by the police and do not need to be authorised by the Crown Prosecution Service;[5] conditional cautions include compulsory conditions, such as a curfew, for which non-compliance can result in prosecution (Ministry of Justice, 2014).

Children must admit their offence to qualify for the above diversion from court measures and Triage. Importantly, only a first caution or conviction in court counts as a first time entry in the system (MoJ/ YJB, 2014: 23); thus point of arrest system diversion avoids formal system contact.

Respondents to the inquiry were unanimous in their support for the principle of a higher level of diversion. The arguments for diversion are well-rehearsed so we will only cite them briefly here. Many submissions highlighted the strong body of international evidence that contact with the criminal justice system can increase the likelihood of offending (Farrington, 1977;

[4]Department of Health-led Cross-Government Liaison and Diversion Programme; The focus of the two schemes is slightly different: Youth Justice Liaison and Diversion is intended to provide early intervention to children who offend with health and social care needs, whereas Triage is aimed at diverting children who have committed minor offences away from the system into restorative interventions.

[5] Unless it is an indictable-only offence

McAra and McVie, 2011: Petrosino et al, 2010).[6] System contact can stigmatise and label individuals as offenders. This may be particularly harmful for children who are at a critical point in the formation of their identities and thus more prone to influence. The negative consequences of system contact increase as children are drawn further into it (ibid). Given that the majority of children will naturally 'grow out' of delinquent behaviour, the evidence suggests that it is prudent to respond to minor and first time offences by diverting them away from the system (Bateman, 2012).

Confusion

We heard evidence that the use of the common term 'diversion' for a variety of practice is causing confusion in the field.[7] The term is used for diversion out of the system, diversion within the system into interventions, and out-of-court disposals. Arguably, only diversion out of the system is 'truly diversionary for these do not appear on criminal record disclosures' (Crossley, 2012: 54-5) and it does not involve significant criminal justice system contact. For this reason, it is important that discussion of diversion differentiates between its various incarnations.

Reducing unnecessary entry and prosecution

Overall, there was a widely held view that the various types of diversion were effective, with some citing as evidence of this the reduction in the number of first time entrants and their experience that fewer inappropriate cases were coming to court.[8]

However, Professor Jo Phoenix and colleagues asserted that there was inadequate evidence that the reduction in first time entrants was brought about by diversion practices:

> *To conclude, whilst a professional wisdom is being developed that diversion has reduced First Time Entrants (FTEs) (i.e. that diversionary practices have prevented young people coming into the youth court), there is no robust evidence on the ground that contemporary practices of diversion are responsible for the reduction in FTEs, in part because of the diversity, variability and complexity of what is being practised.*

We are aware that an ongoing research study, commissioned by the Ministry of Justice, is exploring the factors in the decline in first time entrants (MoJ/ YJB, 2014: 9). Our view is that diversion schemes have almost certainly played a key role, but there may also be other factors that have been given less prominence in professional debate. A real fall in levels of youth offending is an obvious possibility, given the scale of reductions in types of crime committed by young people.

Nevertheless, there was considerable support for the expansion of the various types of diversion practice.[9] A number of submissions from sentencers proposed that courts be more proactive in diverting inappropriate cases from court. YOT Managers Cymru and the Association of YOT Managers asserted that there was scope to divert cases directly to

[6] See, for example: National Association for Youth Justice (NAYJ); Standing Committee for Youth Justice (SCYJ); Prison Reform Trust; Lorraine Khan, Centre for Mental Health; Roger Smith; Just for Kids Law; Department for Health; Youth Justice Board (YJB).
[7] Professor Phoenix, Dr Kelly and Dr Armitage.
[8] Steve Waters (YOT Manager); Lin Hinnigan, YJB; Association of YOT Managers (AYM); Tom Whitworth (YOT Manager)
[9] See, for example: Jonas Roy Bloom, AYM, YOT Managers Cymru, YJB; North London Youth Panel; Tom Whitworth (YOT Manager); Department for Health; Alex Williams

referral orders, thus bypassing the court. A significant number of organisations and individuals advocated raising the minimum age of criminal responsibility as this was felt to the best way of removing children from the negative effects of system involvement.[10]

However, some submissions said that was 'ample flexibility in the current arrangements' and no extension of diversion was necessary.[11] Research being conducted by Professor Jo Phoenix and colleagues suggests that any expansion of diversion should be carefully considered. One of the preliminary research findings is that young people may be drawn into the system needlessly through diversion:

> *However, in the case of those young people for whom the diversionary outcomes were the first time they came into contact with police, it is not at all clear that they would have gone on to commit offences. To put it bluntly, diversion may be used with young people who were never going to become an FTE. In both research sites, practitioners talked about those young people aged 10-14 who were given diversionary measures and postulated that such measures 'nipped it in the bud'. There is, however, no robust evidence for this professional wisdom.*

The key contention here is that these children have received unnecessary diversionary interventions: that is 'system contact (albeit with a 'light touch') for actions and behaviour that, had the threshold been set at reprimand and court level, they might not otherwise have had'.[12]

Some respondents, including former district judge David Simpson, said that there was 'residual concern in the courts that we might return to the former times of repeated ineffective cautioning'.[13] The YJB reported that it had 'encouraged' the development of scrutiny panels, whereby representatives from youth support services, youth court panels, and the police, among others, assess the appropriateness of decisions on a sample of out-of-court disposals to protect against such concerns and instil confidence in out-of-court disposals. Submissions expressed support for such arrangements.[14]

Falling through the net

Despite the progress, many respondents reported that some children were continuing to 'slip through the net' ending up in court unnecessarily.[15] As youth court magistrate Sharon Ereira remarked 'some matters are still appearing before the court that should not be there, such as stealing a sandwich when living on the street.' Likewise, Paul Sutton, Head of Enfield Youth and Family Support Service, said that despite the decreases in numbers of children entering the youth justice system and courts:

> *...our experience is that there are still occasionally young people who could have received a police out of court disposal...who are instead bailed to attend a youth court resulting in an unnecessary use of the court's time when they make the decision that the case should be referred back to the police for such a disposal.*

[10] The Law Society, Professor Barry Goldson; Peter Hungerford Welch, David Chesterton, Childhood First; CRAE
[11] See, for example: Michael Sieff Foundation, Prison Reform Trust; Hertfordshire Constabulary
[12] Professor Phoenix, Dr Kelly and Dr Armitage
[13] See also, Avon and Somerset Constabulary and Crown Prosecution Service South West
[14] AYM; David Simpson; YJB; Magistrates' Association
[15] David Simpson; Sharon Ereira JP; SCYJ; Just for Kids Law; AYM; Paul Sutton, Head of Enfield Youth and Family Support Service; Alex Williams; Nick Hunt. CPS; Children's Rights Alliance for England (CRAE)

There were thought to be a variety of reasons for this, including inconsistent diversion practice and evidence that the Crown Prosecution Service (CPS) do not always have regard to the best interest of the child when making prosecutorial decisions.[16] These are explored below.

The post-code lottery

Lorraine Khan of the Centre for Mental Health said that a key problem was that 'it's a patchwork system of diversion that's in place'. This is because 'system diversion' schemes are not universally implemented across England and Wales. The Department for Health told us that it currently funds 37 Liaison and Diversion schemes with the aim of achieving 50% coverage by 2015/16. There are also between 50 and 70 Triage schemes in operation.[17] In a similar vein, the Prison Reform Trust expressed concern that cuts to services could negatively impact upon diversion provision: 'diversionary services are vulnerable to cuts when public funds are limited but a diversionary approach cannot be pursued if there are no services to which to divert children who offend'. The British Association of Social Workers shared this fear.

Just for Kids Law argued that diversion practice was inconsistent owing to the discretion exercised by decision makers:

> *Diversion, used properly, should be used consistently. This is not currently the case due to the new 'out of court disposal' regime being at the discretion of the individual station or area. This can lead to a postcode lottery of intervention with young people in one area being criminalised where for the same crime in another area they are diverted.*

National Policing Lead for Children and Young People, Chief Constable Jacqui Cheer, stated that the new out of court framework was clearer, increasing the consistency of decision making. We fully support the principle of discretion, however our evidence suggests there is further work to be done to achieve equitable outcomes.

Crown Prosecution Service (CPS) decisions

When deciding whether to prosecute a child, the CPS is required to consider the interests of the child – including her welfare and the system's aim of preventing offending – 'among other public interest factors' (CPS, no date). A number of submissions said that the CPS were continuing to prosecute children inappropriately.[18] We were struck by such a case during our observation of a London youth court sitting:

> *A 15 year old boy with a history of mental health difficulties had been found self-harming in his family home by a relative. The police had been called to the scene to provide assistance. He was charged with 'putting people [the police in this case] in fear of violence'. At a previous hearing, the bench had asked the CPS to reconsider the case but they announced that they would be proceeding. They could not explain their reasons for this when requested to do so.*

Just for Kids Law said that it was their experience that 'all too frequently children are prosecuted, when they might otherwise be diverted'. Former District Judge David Simpson noted that 'prosecutors are still seemingly reluctant to caution for a minor infringement when

[16] See for example, *R (on the application of E) v DPP* [2011] EWHC 1465 (Admin); [2012] 1 Cr App R 6)l cited in evidence from Professor Kathryn Hollingsworth
[17] Department of Health-led Cross-Government Liaison and Diversion Programme
[18] AYM; David Simpson; Professor Kathryn Hollingsworth; Just for Kids Law

there has previously been a conviction'. He cited an example of a case only last month where although it appeared to meet all the necessary criteria which had been designed to allow children to occasionally step off the escalator the CPS insisted on a prosecution. Respondents variously suggested that such decisions stemmed from: a lack of consideration for the best interest of the child; inadequate awareness of youth justice prosecution guidance; and the perception that prosecution could act as a beneficial gateway to further support. There was a shared view as Nick Hunt of the CPS asserted that '*we need to be better at weeding out those kinds of cases so they don't get near the court'.*

Looked after Children

John Bache of the Magistrates' Association noted that magistrates were seeing fewer cases where children in care were inappropriately prosecuted, but they felt that there was still further progress needed. Figures published in December 2013 show that the proportion of children in care receiving pre-court disposals or convictions has fallen in previous years, from 7.9 per cent in 2010 to 6.2 per cent in 2013. However, compared to the general population of children, their overrepresentation in the justice system has increased: in 2010 they were two and half times more likely to be sanctioned for an offence, which rose to over three and half times in 2012 (DfE, 2013).

A key issue was reported to be those from residential children's homes being prosecuted for behaviour that would not had attracted such a response had it been committed in a family home. The CPS developed a guideline on this in 2007 to prevent unnecessary prosecution in such circumstances. District Judges said that it was their experience that prosecutors were 'alive to this issue'. Likewise, the British Association of Social Workers cited reports from its members that following a 'new directive' from the CPS, children's homes were required to provide written evidence explaining their reasons for calling the police when a child in their care appears in court following such action.

The Association of YOT Managers observed that prosecution of children in residential units was still ongoing despite the CPS directive:

> *Staff in local authority and privately owned residential units have often been quick to call for police intervention to help them manage challenging behaviour, without understanding that this is likely to trigger a criminal investigation and an appearance before the youth court. This still occurs despite the CPS now having clear guidance on the appropriate prosecution of these types of offence.*

The panel heard more on this issue from ACPO representative police officer, Kevin Wilkins. He noted that there was performance framework-related pressure on the police to respond to recorded crimes in a formal way, which creates a tension for officers attending children's home incidents.

At present there is guidance in draft form that would remove the pressure on the police to record and, accordingly, respond formally such crimes. We have learnt that the above-mentioned guidance has been discussed between the Department for Education, Home Office, Association of Chief Police Officers (ACPO) and Youth Justice Board since 2012, but that it has not been possible to progress it because of opposition from Home Office officials (personal communication).

Risks of diversion

System contact and criminal records

Professor Jo Phoenix and colleagues highlighted the fact that apparently diversionary measures comprise contact with criminal justice agencies and related recording practices, thus sharing many of the same negative effects of formal system involvement:

> *…On the ground, contemporary practices known as 'diversion' are often run within the youth justice system and in that regard they imply system contact, albeit contact that more closely resembles 'early interventions' of ten years ago with all intended and unintended consequences regarding welfare, labelling and conditional support. This was confirmed in both research sites. To be clear: case files are created; youth offending team workers work with the young person; the work that is done is often similar to (or the same as) work that is done with young people on orders (such as victim awareness work etc.); and young people are led to believe that there are formal consequences for 'breaching' a diversionary order.*

Some submissions were critical of such practices, emphasising that diversion must be 'light touch' and be delivered by welfare services if it is to be truly effective.[19] In particular, several respondents expressed concern that out-of-court diversionary approaches attract criminal records (now known as a disclosure and barring service [DBS] report) and that this may not be explained sufficiently clearly to children.[20]

> *I think for me from a police perspective through the CRB checks and particularly the enhanced CRB checks, things were disclosed because it's the duty of Chief Officers to disclose them, that maybe young people and their families weren't aware that could be disclosed...I think it's still an outstanding issue that needs to be dealt with.*
>
> ACPO representative, Kevin Wilkins

For children aged under 17, Youth Cautions and Youth Conditional Cautions must be explained and given in the presence of an Appropriate Adult (AA) to enable their informed consent (MoJ/YJB, 2013a: 22; MoJ/YJB, 2013b: 22).[21] However, the AA will normally be the child's parent or guardian and the guidance provided to them about their role as an AA has been found by a joint inspection to be 'not simple or easy to read' because it 'is not written in plain English and uses legal terminology'. The consequence of this, highlighted by the inspectorate, is that children and their parents may agree to disposals without understanding that they can be cited on certain DBS checks. The Inspectorate recommended that more suitable guidance be provided by the police to parents acting as AAs (HMI Constabulary et al 2011: 32). A number of submissions advocated the provision of legal representation to enable children's informed consent.[22] We note too that there is no legal requirement for AAs to be present for receipt of Community Resolutions (CRs), despite the fact that they can be disclosed in an enhanced DBS report (MoJ, 2014a). This is likely because it would be difficult to do so given that CRs are used on the street.

[19] Professor Neal Hazel; Professor Kathryn Hollingsworth

[20] Just for Kids Law; SCYJ; Kevin Wilkins, ACPO; Professor Neal Hazel; Professor Kathryn Hollingsworth

[21] An AA should also be present in the case of a 17-year-old 'where there is reason to doubt the capacity or ability of the young person to fully understand the nature and requirements of a youth conditional caution'.

[22] SCYJ, Professor Hollingsworth

Recommendations

- We see it as a matter of real concern that many witnesses, including magistrates, reported to us that there continue to be cases reaching court in which the decision to prosecute is not in the public interest. We would expect courts to be able to take robust action where they see such cases before them. This includes making use of their power to request that prosecution in such cases is reconsidered and calling the Regional Chief Crown Prosecutor to court to explain their decision. We recommend that the Director of Public Prosecutions takes charge of this issue herself. We also suggest that Her Majesty's Courts and Tribunal Service (HMCTS) issues guidance to youth courts on how to respond in such cases.

- The panel recommends that the Youth Justice Board works with local authorities to establish 'youth scrutiny panels' to ensure a focus on local use of diversionary and out-of-court measures with under-18s. Scrutiny panels should work on a continuing basis, which we would expect to comprise quarterly meetings as a minimum. Meeting any less than this is unlikely to allow panels to discharge effectively their scrutiny role.

- We request that the Home Office explain within three months of the publication of this report why the joint guidance regarding police recording of crimes committed by children in residential homes has not been approved and move towards sign-off and publication without further delay.

- We are concerned by the evidence submitted to the inquiry that it is not made sufficiently clear to children by the police that some out-of-court disposals (community resolutions, youth cautions and youth conditional cautions) can be cited on enhanced disclosure and barring service reports.
    - We recommend that the Home Office extend the Disclosure and Barring Service filtering rules[23] regarding cautions. More children who have received out-of-court disposals for minor offences should have their criminal record filtered (not disclosed) and, ideally, expunged when they turn 18. Further detail is provided on this recommendation in Chapter Seven.

    - In view of their long term implications, all out-of-court measures – including Community Resolution (CR) – should ideally be given in the presence of an Appropriate Adult (AA), who fully understands their possible consequences. This may not be the child's parent. We propose that the YJB encourage the use of trained AAs in addition to the presence of parents rather than advising that parents are the default AA. We also suggest that scrutiny panels as part of their work seek to ascertain whether children are giving informed consent to CRs, as it would be impractical to require that AAs are present for this street disposal.

[23] See Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013, came into force 29 May 2013

Chapter Three – Addressing underlying needs

> *Every time a young person from Leeds commits a particularly serious offence we do our own internal report. I make sure I always see it. As sure as eggs is eggs, when you read that [report], if you tried to make up a worse start in life for that young person, you would not be able to, which does absolutely demonstrate why we mustn't lose sight of the welfare needs of those young people.*
>
> Jim Hopkinson, Head of Targeted Services, Leeds

The profile of children who offend

Submissions to the inquiry highlighted the vast array of needs and vulnerabilities that are typically experienced by children in the youth justice system:

- Between 65% and 78% of children in custody have had a period of non-attendance at school (Gyateng et al, 2013: 39);
- One-third of young people in custody have identified special educational needs (ibid);
- 60% of children who offend have a communication disability (Bryan et al, cited in RCSLT, 2009);
- Around 30% of children who have 'persistent offending histories' in custody have IQs of less than 70, signifying a learning disability (Rayner et al, 2008, cited in Hughes et al, 2012: 26));
- Between 65% and 75% of children in custody have a Traumatic Brain Injury (various authors, cited in Hughes et al, 2012: 35-7);
- 39% of children in custody have been on the child protection register and/or have experienced abuse or neglect (Jacobson et al, 2010: 51);[24]
- 17% of incarcerated children have a diagnosed emotional or mental health condition, 20% have self-harmed and 11% have attempted suicide (ibid: 62).[25]

There is a wealth of evidence that such needs heighten a child's risk of offending (Farrington and Welsh, 2007). However, the presence of positive factors in children's lives, such as good family relationships, can protect children with these problems from committing offences (Youth Justice Board, 2005). Nevertheless, respondents emphasised that addressing such needs is fundamental to reducing children's offending.[26] This work cannot be undertaken by the youth justice system alone, but requires the involvement of welfare agencies, such as children's and family services, and child and adolescent mental health teams. Measures put in place to tackle the above-mentioned difficulties might include whole-family support programmes, and speech and language therapy. The Youth Justice Board argued that engagement of welfare agencies in the lives of children who offend is 'critical' given that the

[24] This statistic refers to analysis of the needs of 200 randomly selected children in custody during the latter half of 2002

[25] ibid

[26] See, for example: Prison Reform Trust (PRT); Standing Committee for Youth Justice (SCYJ; Michael Sieff Foundation; Dr Ray Arthur; Jonas Roy Bloom; Steve Waters (YOT Manager); Childhood First

involvement of youth offending teams (YOTs) is time limited to the duration of the court order and young people may need continued support to address their behaviour.

Lack of children's services support

Many respondents asserted that an inability on the part of welfare services to identify and address such needs is often why such children are in the youth justice system and struggle to escape from it.[27] The Law Society described the youth justice system as the 'final repository for other problems in society...where local authorities have failed to act in accordance with their statutory responsibility to safeguard the welfare of the children'.

Submissions were mostly very positive about the work of YOTs in working with the court to assess and address children's needs.[28] But there was overwhelming consensus that their effectiveness – and, in turn, that of the court – was often restricted by difficulties accessing needed support from other services, particularly children's services:[29]

> *The YOT play a pivotal role in assessing the defendant's needs, accessing assistance, and advising the court at every stage...Almost without exception, District Judges have nothing but praise for the work of the local YOTs, both in and out of court. However it is a common experience of those YOTs that they frequently do not have the close working relationships with the social services in their (or other) local authorities that might be expected or necessary.*
>
> District Judges [Magistrates' Courts]

The prevailing view was that children's services are not sufficiently involved with children at risk of and engaged in offending. YOTs and children's services serve a 'similar and overlapping population' (Crossley, 2012: 39; Nacro, 2003: 2). Surveys have found that 27% of boys and 45% of girls in youth offender institutions have been in care at some stage in their lives (HMI Prisons, 2011). This, as the Prison Reform Trust argued, 'highlights that many children who are the subject of criminal proceedings will, or ought to be, the subject of corporate parenting from their local authorities'. In this context, the North London Youth Panel (magistrates) reported that 'we often see unaccompanied young people [in court], who should be in the care of social services, but are not'.

Even where child defendants were in social services care (looked after children), very many submissions said that social workers did not attend; had to be ordered to do so due to a failure to attend voluntarily; asked YOT workers to attend on their behalf; or did attend but had minimal, if any, knowledge of the child.[30] This is despite the fact that care planning guidance specifies that it is 'best practice' for social workers to attend court with children in care (DfE, 2010;121). We have heard that the operation of the youth court, whereby children often wait many hours for their case to be heard rather than having a specific appointment, discourages social workers and other practitioners from attending court who feel that they

[27] See, for example: Steve Waters (YOT Manager); Children's Rights Alliance for England (CRAE); SCYJ; Action for Prisoners' Families; Buckinghamshire Child and Young People Services; Avon and Somerset Constabulary and Crown Prosecution Service South West

[28] David Simpson; Professor Brian Littlechild; Youth Justice Board; Sharon Ereira JP

[29] See, for example: Justices' Clerks' Society; The Law Society; PRT; David Simpson; Tom Whitworth; SCYJ; Steve Waters; Just for Kids Law; Association of YOT Managers (AYM); Youth Justice Board (YJB)

[30] Sharon Ereira JP; Buckinghamshire Children and Young Peoples Services; YJB; Magistrates' Association; District Judges (Magistrates' Courts); Law Society

cannot afford to spend such a significant period of time away from the rest of their typically high caseload.

Such problems stem from resource constraints on children's services, brought about by growing numbers of child protection referrals, cases, children in care and reducing budgets (Crossley, 2012: 39). This has translated into very high thresholds for accessing children's services support. In particular, submissions reported that constraints are such that only the most acute cases – usually babies and young children – tend to receive children's services help. Older children in the criminal justice system are consequently often neglected, despite frequently having significant welfare needs.[31]

However, a number of organisations said that they had seen improved engagement from children's services following the recent introduction of new remand arrangements (detention between the point of arrest and sentence).[32] The reforms transferred the costs of remand from the Youth Justice Board to local authorities and made every remanded child a looked after child (LASPO Act, 2012). Just for Kids Law commented that 'while some local authorities take this responsibility seriously, others are looking at cost savings methods to do the minimum legal requirement'. The Southwark Judgement[33] was also highlighted by YOTs as having had a positive impact on children's services engagement.[34]

Although submissions focused on the engagement of children's services, in line with the terms of reference, we also heard about problems gaining access to mental health services for children who offend.[35]

The YOT silo

Submissions to the inquiry reported that children's services often relinquish responsibility for children when they become involved with the YOT or refuse referrals because the YOT is involved;[36] what was described by one YOT as an 'over to you mentality':

> *In some areas, there is a concern that other children's services practitioners have tended to disengage from working with this group of young people, on the basis that they are solely the YOT's business.*
>
> Association of YOT Managers

Thus, as has been noted by Chard, YOTs can have the effect of further raising the threshold for children's services intervention, (2010: 8).

We have been told that this is due to a common perception that YOTs should be the sole body addressing the welfare needs of children in trouble, partly because children's services

[31] Professor Kathryn Hollingsworth; Buckingham Children and Young People's Services; Just for Kids Law; Prison Reform Trust; Steve Waters
[32] Leeds YOS; Buckinghamshire Children's Services; AYM; Ofsted
[33] R (G) v Southwark [2009] UKHL 26 ('the Southwark judgement') The House of Lords made it clear that if a lone young person of 16 or 17 years of age presents themselves to children's services as homeless – i.e. they meet the criteria under Section 20 (s.20) – they must be accommodated and 'looked after' by children's services unless the young person does not want to be.
[34] YOT Managers Cymru; Association of YOT Managers
[35] Jim Hopkinson; Paul Mitchell; Royal College of Psychiatrists; Keith Towler, Children's Commissioner for Wales
[36] See, for example: PRT; AYM; Tom Whitworth, YOT manager; Buckinghamshire Children and Young Peoples Services; Professor Barry Goldson

contribute to the budget of YOTs.[37] Yet YOTs were neither structured nor resourced to do such work alone; instead they were intended to be a conduit comprising specialist secondees from multiple agencies who could assess children's needs and access additional support from mainstream welfare services where necessary. The expectation was that secondees would be rotated every few years to refresh skills in the YOT and increase awareness of justice issues in seconding agencies (Crossley, 2012: 181).

However, many submissions noted that the multi-agency nature of YOTs had been eroded in recent years, with 'few YOTs' now including secondees from children's services and wide variation in secondments from education and health. In many cases, those seconded to YOTs in their advent in 1998 still remain and have thus lost their specialism.[38] Ofsted told the inquiry that:

> *Few YOTs, for example, now include seconded social workers to act as welfare 'champions' and to ensure that there are direct links with local authority children's services departments.*

Jim Hopkinson, Head of Targeted Services in Leeds, told the panel that reinvigorating secondments to the YOT was an effective means of improving engagement with children's services.

> *Making sure that we also got seconded social workers, who are frontline, child protection social workers, seconded to us. Then they are going back again I think, was the key way that we got that ongoing interaction with our social work service. We got to the understanding that you do not shut the case; it's no longer your case just because the Youth Offending Service is involved.*

Ofsted, along with several other respondents, recommended that there be a renewed focus on secondments, particularly of children and families social workers, to YOTs.[39]

Court powers

A number of submissions argued that difficulties gaining access to support from other services, impede the court's ability to meet its aims of preventing offending.[40] For example, the Law Society noted that:

> *The Youth Court tries to act in accordance with their statutory duty [to prevent offending] and, if anything, they are often frustrated by the lack of involvement from wider children's services.*

Concern was expressed that courts 'lack the tools and powers' to ensure children's needs are addressed by services.[41] As the Prison Reform Trust argued:

> *…the youth court, envisaged purely as a criminal court, has no means of calling for a wider enquiry into the child's circumstances, or of transferring proceedings to the family court. The needs of some children are being overlooked by the responsible*

[37] Buckinghamshire Children and Young Peoples Services; Tom Whitworth; Dr Tim Bateman; Standing Committee for Youth Justice; Professor Barry Goldson; Prison Reform Trust
[38] Ofsted; Michael Sieff Foundation; Tom Whitworth, YOT manager]; Standing Committee for Youth Justice; Professor Barry Goldson; Dr Tim Bateman; Steve Crocker
[39] The Michael Sieff Foundation; Steve Crocker; Jim Hopkinson
[40] YJB, Law Society; Michael Sieff Foundation
[41] NAYJ, SCYJ, Michael Sieff Foundation, Steve Crocker; Steve Waters; Prison Reform Trust

> *authorities as pressure on public spending mounts and some authorities choose to focus, principally, on meeting the needs of younger children, and those to whom a safeguarding duty is owed.*

In response to such concerns, a significant number of respondents argued that youth proceedings should be afforded the power under section 37 of the Children Act 1989 to order children's services to conduct an investigation into the circumstances of child defendants; and direct them to provide support, including taking the child into care.[42] Section 9 Children and Young Persons Act 1969 places a duty on local authorities to carry out such investigations into child defendants and gives courts the power to request that they do so, but this provision 'is rarely used, if ever' (Rt Hon Damian Green MP, cited in Michael Sieff Foundation, 2013). It has been argued by the Rt Hon Damian Green MP that the limited use of s9 demonstrates the courts' acceptance that the YOT is the conduit for such information and for referrals to children's services, which negates the need for s37 (ibid). However, the evidence presented in this chapter would suggest otherwise. And unlike section 37, section 9 does not explicitly require the local authority to consider applying for a care or supervision order or explain their reasons for not doing so to the court. Professor Hollingsworth expressed concern that introducing such a power would have little effect on the engagement of children's services with children who offend, because the service is too over-stretched to provide the required support. On the contrary, there was apprehension that if the power led to the greater engagement of children's services, this could incentivise the prosecution of children as a means of addressing their welfare needs.[43] However, s.37 would likely only be used for a minority of cases who greatly need to be in care or in receipt of children's services support and would therefore be unlikely to result in large numbers of referrals, or inappropriate prosecution.

Family involvement

Research has shown that children regularly appear in court without a parent, despite this being a requirement for all children aged under 16 (HMI Probation et al, 2011: 32; Allen et al, 2000: 94). Given that difficulties at home are often a key factor in children's offending and working with families can be part of the solution, the lack of parental attendance at court is a significant problem. However, we recognise that children may find parental involvement at court unhelpful if they 'are part of the problem' or are very angry with them.[44] Nonetheless, consideration of the family context to offending and its role – or not – in any solutions, is likely to be key to assisting children to stop offending.

There was much support expressed in submissions for greater use of youth justice Family Group Conferences[45] - which bring together the child, their family, and the victim to express their views and find a way to address the offending and the harm that has been caused – due to the opportunity they offer to: improve the 'direct participation' of children and their families in proceedings as well as their role in solutions, and also, importantly, involve victims. FGCs are offered by 87 per cent of local authorities in England, typically for child

[42] Steve Crocker; Steve Waters; Prison Reform Trust; Michael Sieff Foundation; Just for Kids Law; SCYJ
[43] Jim Hopkinson; Professor Kathryn Hollingsworth.
[44] Shauneen Lambe, Just for Kids Law
[45]AYM; Eddie Isles, YOT Managers Cymru; Youth Justice Board; Alex Williams; Family Rights Group; Professor Neal Hazel

welfare cases; although they are also being used in the youth justice system.[46] Submissions noted that the effectiveness of FGCs is dependent on 'an awful lot of work' by facilitators to prepare those involved for the conference. In this light, New Zealand-based research has shown that children struggle to participate in FGCs and do not understand what has gone on, reportedly because the high caseloads of facilitators impedes effective preparation of children and their families (Maxwell et al, 2004, cited in Lynch, 2008: 221). However, respondents emphasised that when undertaken properly, FGCs were 'absolutely fantastic' and 'really quite revolutionary'.

Recommendations

- It is troubling that our evidence has shown that many children in care are appearing in court unaccompanied by an adult. The Department for Education and Ministry of Justice should alter guidance so that the allocated social worker is required to give a verbal report in court regarding the child's circumstances. We would expect this to be in place within one year.

- We recommend that Her Majesty's Courts and Tribunals Services direct youth courts to institute a system of timetabling, whereby children are given a time slot in which to attend. This would better enable social workers and other supporters to attend court with child defendants. This should be applied within the next year.

- The Secretary of State for Justice should introduce into the National Standards for Youth Justice Services a requirement that a specified proportion of local authority children's social workers be seconded to YOTs on a regular timetable. This would benefit both services. Seconded social workers would provide YOTs with a vital resource to address welfare needs and access to children's services. Social workers returning to children's services from YOT secondment would bring with them valuable expertise regarding children who offend (adapted from CSJ, 2012). Her Majesty's Inspectorate of Probation (HMIP) inspects adherence to the National Standards and would highlight any failure by children's services to fulfil their secondment responsibilities to the children's inspectorate, Ofsted. We would expect this recommendation to be implemented within the next year

- Youth proceedings should be afforded 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 are welfare concerns and the outcome of this investigation should be reported back to the youth court prior to sentencing. The Ministry of Justice should seek an early opportunity to introduce legislation to this effect, and in any event with the span of the next Parliament.

- Alongside s.37, we recommend the creation of a broader legislative provision that would enable youth proceedings to order other relevant services – including Child

[46] Family Rights Group

and Adolescent Mental Health Services, Schools and Further Education Colleges – to provide necessary support to child defendants. These services have a key duty to cooperate with local authorities to provide support and services to children in need under s.10 Children Act 2004. The court would be empowered to hold these services to account, in accordance with this statutory duty. The Ministry of Justice should seek an early opportunity to introduce legislation to this effect, and in any event with the span of the next Parliament.

- Youth justice Family Group Conferences – which bring together the child, their family, and the victim to express their views and find a way to address the offending and the harm that has been caused – should be made available at the pre-sentence stage to inform the Pre-Sentence Report and thus the sentence of the court. This would give victims a voice in youth proceedings and assist sentencers with better understanding the child's family context and solutions to their offending. This would require legislation, akin to the provision set out in the Crime and Courts Act 2013 (Part 2, Schedule 16), which allows courts to defer sentence to allow for restorative justice to take place.

Chapter Four - Engagement and understanding

> *"They talk a lot of Latin"*
>
> 16-year-old, convicted at the Crown Court, in evidence to the inquiry

The engagement of child defendants is recognised as central to the effectiveness of youth proceedings for a variety of reasons. It may help to improve the efficacy of sentences by assisting sentencers with understanding the reasons for the child's offending and the support that is required to address it (Judicial Studies Board, 2006: 12). Meaningful engagement may help children to recognise the consequences of the behaviour (ibid: 7). Children's understanding and participation in court is also necessary to fulfil their right to a fair trial under the European Convention on Human Rights and the United Nations Convention on the Rights of the Child (UNCRC), which was ratified by the UK government in 1991.

Engagement is a reciprocal activity. To enable children's understanding, the youth court is advised to 'avoid legal jargon' and ask questions 'in plain language and at a level the child or young person can understand' (Judicial Studies Board, 2010: 2). The YOT should identify any needs that may impede young people's understanding, such as communication difficulties (HMI Probation et al, 2011: 39; YJB/HMCS, 2010: 37). Equally, child defendants are 'expected' to participate in the process, by responding directly to questions and taking responsibility for their offending, rather than being 'passive observers' (Home Office, 2001: 7).

The majority of respondents expressed the view that child defendants are not engaged in youth proceedings, for a variety of reasons: lack of understanding of the court process; inadequate identification of needs that might hinder engagement, nervousness and anxiety; and the perception that the court process is not legitimate or relevant to their lives.

Lack of understanding

Many of those who gave evidence said that child defendants had limited understanding of the court process:[47]

> *A lot of the time young people appear to be lost with what is going on. Sometimes, depending on the bench, young people are spoken to but often they don't appear to understand the process or the proceedings…Both the language used in court and the process is often very confusing for young people. This varies from court to court. …It's very common for a young person to come to the YOS having no idea what happened in Court.*
>
> Buckinghamshire, Children and Young People Services

Greg Stewart, a youth specialist solicitor informed the inquiry that young people often said and appeared to understand much more than they actually did:

[47] Laura Janes, Howard League for Penal Reform; Professor Neal Hazel; Standing Committee for Youth Justice (SCYJ); Dr Armitage; Professor Hollingsworth; Dr Eileen Vizard; Greg Stewart

> *They're very apt to agree with propositions that you put to them, particularly in the context of representation in a court environment. So they'll repeat the leading questions, I often personally get my clients, for instance - we write things out, and then I can see that they can't read and write. They're very street savvy and they can speak and communicate very well. But actually, if you get them assessed, you find out they've got very low IQ, or their oral IQ - their verbal IQ is higher than their cognitive IQ. There are also ways they mask all the difficulties that they have, which unless you're dealing with them on a daily basis, and have the perseverance and persistence to try to get through that barrier, they really have a passing participation in the process in my experience.*

Equivalent observations were made by other witnesses.[48] Dr Eileen Vizard, a Consultant Child and Adolescent Psychiatrist, told the panel such 'compliant behaviour' was typical amongst child defendants; this means that children have a 'tendency to go along with the propositions or instructions of others without internal agreement' (Farmer, 2011: 88). She said that this was 'particularly worrying' with respect to children with learning disabilities (and related needs) 'because that doesn't mean they understand. It means they were really hoping you may shut up soon and they will stop being confused'.

They do understand?

However Kathryn Harrison, Chair of the Youth Courts Committee of the Magistrates' Association, argued that magistrates ensured that children understand the discussion and procedure in the youth court:

> *It is part of our training, part of our role and responsibility to engage with the young person in language which they understand. We often have to interpret what is said to them by a prosecutor, so that they are absolutely clear what is being said. We check their understanding in language that they will understand. I confidently would say to you that they do understand what's happening in the court. If they don't understand we take time to ask them and to check with them...*

Several respondents stated that youth courts endeavoured to engage children.[49] The Association of YOT Managers noted that: 'the selection and training of youth panel members has meant that courts work very hard to see each defendant as an individual and to engage with him or her, and their family members throughout the process'. In accordance with these views, the most recent inspection of the youth court reported that 'in the majority of courts we observed, magistrates tried to explain to the young person what was happening in court' (HMI Probation et al, 2011: 39). In a previous inspection, children reported that they had understood what was said in court (HMI Courts Administration, 2007).

However, research published in 2002 found that children often said that they understood the court process when they did not, in line with the above-mentioned evidence. The Magistrates' Association argued that the judiciary's engagement with child defendants had improved considerably since 2002 and that the research was not an accurate representation of current practice. Kathryn Harrison of the Magistrates' Association suggested that child defendants '*know it is to their advantage to appear to be slightly unaware of what's going on'.* Yet the majority of the evidence received by the inquiry demonstrates that child

[48] Dr Vici Armitage; Shauneen Lambe; Dr Eileen Vizard

[49] Margaret Wilson JP; District Judges [Magistrates' Courts]; AYM

defendants continue to struggle with understanding and engagement. We note that an Economic and Social Research Council-funded study on adult defendants' experiences of the Crown Court has found that their understanding is limited (Jacobson et al. forthcoming).If adults cannot understand the Crown Court, it is far too optimistic to expect children to understand the youth court, even with its more informal proceedings. We believe that further research into child defendants understanding of youth proceedings would be helpful.

Identification of needs

As outlined throughout this report, there is a high prevalence of neurodevelopmental disorders, such as communication difficulties and Traumatic Brain Injury, amongst children who offend. These have the potential to impede their understanding and engagement in the court process (Hughes et al, 2012: 48). Yet, submissions to the inquiry reported that courts do not have processes in place to systematically identify such problems.

The Standing Committee for Youth Justice (SCYJ) asserted that while children involved with youth offending teams are assessed using the Asset tool, this does not effectively identify health and welfare issues. They noted that the introduction of a new tool, AssetPlus, should help to address this problem, but argued that it is still overly focussed on risk rather than children's needs in the court environment:

> *The Asset assessment tool is used to assess children in contact with the youth justice system and thus determines the information that comes before the court. However, it does not adequately assess children's health and welfare needs or link to intervention plans. The situation should improve with the introduction of the AssetPlus assessment tool which will be used from next year. However, this tool is still one which primarily assesses risk (to others) and does not focus on the vulnerability and needs of the child before the court... this is particularly important to ensure reasonable adjustments are made in court.*

A version of the recently introduced Comprehensive Health Assessment Tool (CHAT) – an instrument for assessing children in custody for physical and mental health, substance misuse and neuro-disability needs – is expected to be shortly available for children in the community (Public Health England, 2014). The SCYJ asserted that it should 'begin to improve systematic health assessment of all young people entering the youth justice system'.

The Law Society commented that current assessments were often not carried out or were of limited help because they are rushed:

> *Whilst there is a plethora of prescribed assessments that should be carried out on the child or young person in custody* [awaiting the court hearing]*, the general experience is that they seldom are, and when done, limits of time and resources reduce their value.*

Research on assessments has shown that they are often incomplete and out-of-date (Ofsted, 2010: 11). Part of the reason for this may be that Asset assessments are carried out at fixed points in time (Baker, 2012: 7). The advent of AssetPlus should help to address this as the assessment process is more iterative and thus information will be continually updated (ibid).

Pre-sentence reports (PSRs) are another potential source of information about child defendants' needs. However these are only provided at the point of sentence and therefore do not enable any needs to be identified and responded to prior to the young person's appearance before the court. Even were such reports made available at earlier stage in the court process, the Law Society noted that 'the quality of pre-sentence reports are variable and often depend upon the author's rapport building ability and their perseverance in obtaining information from other sources'. HMI Probation et al. found that 75 per cent of PSRs were of insufficient quality, due to inadequacies such as not making home visits to children (2011: 46-54).

Child defendants themselves and their families or supporters can be asked about any needs or problems. However, as detailed in the following chapter, the youth specialist lawyers with whom we spoke said that children were often unsure of who to trust and reluctant to share such information. As noted above, solicitor Greg Stewart said that children disguised their needs. Lawyer Mark Ashford said that young people were 'poor historians'. Defence lawyers also have the power to instruct specialists, such as psychologists, to assess child defendants where they suspect unidentified needs. These were seen to be valuable.[50] However, as implied, lawyers need to be able to recognise such needs to order an assessment. The prevailing view of submissions was that most defence lawyers representing children – and indeed many youth court practitioners – do not have such skills, as is discussed in the subsequent chapter.

Youth specialist lawyer Mark Ashford told the inquiry that it was common for him to have no information on the children he represented, which made it necessary for him to search for details himself. He noted that the youth offending team was a helpful source of information:

> *In practical terms you often have no information at all. Sometimes I'll have a youth offending team worker who will come over and say, "We can give you some background information about this young person," or I go and speak to them because they are a very good resource in many cases. A youth offending team worker will say, "Well we have an old report that says he's got a learning disability." It is so much easier if those issues have been identified. Otherwise on every case it's a detective exercise.*

A number of solicitors said that such full exploration of new cases was sometimes prevented by high caseloads and the associated lack of time and capacity.[51]

The key point is that child defendants' needs are identified by chance and there is an over reliance on the commitment of individual court practitioners to identify these. There is no systematic or routine assessment of child defendants to ensure that such needs that may adversely affect children's presentation in court are identified.

A range of submissions called for 'more widely available' assessment of children's health needs at the point of arrest, in police custody, or at court to ensure that such needs be identified.[52] The Association of YOT Managers noted that 'the reduced numbers of appearances [of children in court] should allow for a more comprehensive assessment within the court setting'. The Youth Justice Board, Department for Health and Lorraine Khan

[50] The Law Society, Greg Stewart
[51] Mark Ashford, TV Edwards Solicitors; Shauneen Lambe, Just for Kids Law
[52] SCYJ, Association of YOT Managers; Eddie Isles, YOT Managers Cymru,

informed the inquiry that it is an ambition that Youth Justice Liaison and Diversion schemes will be universally available in police custody suites and also extended to court to ensure identification of needs. As is discussed in the following chapter, many respondents proposed that practitioners in youth proceedings be trained to identify such needs.

Fitness to plead

The capacity of criminal defendants to participate in court proceedings – known as fitness to plead - was not part of the inquiry's terms of reference. However, several submissions were critical of fitness to plead arrangements for child defendants, which we feel ought to be highlighted here. It is important to note that fitness to plead relates only to the Crown Court; considerations in the youth court are limited to understanding of the offence, possible defences and the ability to instruct lawyers.

In this context, Director of Just for Kids Law and youth specialist barrister, Shauneen Lambe, and the Royal College of Psychiatrists told the inquiry that there was no clear process for actively considering and assessing the competence – fitness to plead – of child defendants to participate in court proceedings:

> *There is no toolkit for people once they get into Court to be able to be assessed as to whether they're competent to go to all the proceedings.*
>
> Shauneen Lambe

> *Fitness to plead for young people is not always actively considered and is often poorly assessed and understood. There are differences of opinion about whether 'doli incapax' can be brought forward as a defence to lead to fitness to plead hearings or a stay of proceedings.*
>
> Royal College of Psychiatrists

A key issue is that fitness to plead is only considered in cases where the child defendant is psychiatrically disturbed or has severe learning disabilities. Less serious but still significant impairments are not taken into account. As the Royal College of Psychiatrists argues: 'The wider possibility that most child defendants may not be fit to plea to charges by dint of their extensive psychopathology, developmental immaturity and impaired judgement is seldom considered in the UK' (2006: 45).

Professor Kathryn Hollingsworth argued that even in cases where the child is seen to lack sufficient competence to participate in court, powers to halt proceedings or conduct a 'trial of facts' are rarely, if ever, used:

> *In extreme circumstances, where a child is unable to participate effectively in her trial in the youth court, the court can take account of the child's welfare (and her article 6 rights) by halting the trial as an abuse of process or make a finding of fact as to whether the child committed the offence but without a finding of guilt (see DPP v P [2007]. Section 44 C&YP supports the use of this power and should be taken into account in deciding whether to use it. However, it seems that the power to stay proceedings is exercised only rarely (in V v UK the European Court of Human Rights noted that the UK Government was unable to provide any examples of this ever occurring; however, this may have changed since 1999 especially with the abolition of doli incapax).*

The Royal College of Psychiatrists told the inquiry that the outcome of the above-mentioned alternative procedures, such as a trial of facts, were sentences similar to those found in the youth court proceedings, which may be unsuitable:

> *It is not clear how to manage young people who are too young to engage in the court process. The outcome of fitness to plead hearings, such as a trial of facts and then a mental health hospital order, or community YOS order, may not always be appropriate or helpful for them.*

The above submissions strongly suggest that it is an issue that requires further and comprehensive attention. We note that the Law Commission is currently conducting a review of the issue and is looking to reform provision. A variety of recommendations are currently being consulted upon, including a statutory procedure for considering capacity in the youth court and possibly mandatory screening of children under 14 for capacity issues; and the provision of training on fitness to plead for all youth court practitioners (Law Commission, 2014).

Intermediaries

A number of respondents suggested that the automatic provision of intermediaries for child defendants could aid their understanding and engagement in proceedings.[53] The purpose of intermediaries is to aid vulnerable persons (during examination) in court, by communicating and explaining the questions and responses the court puts to them. Intermediaries are (routinely) provided to victims and witnesses (of all ages in court). Section 104 of the Coroners and Justice Act 2009 provides for intermediaries for young defendants during cross examination; however the Ministry of Justice has not implemented this provision.

Shauneen Lambe, Director of Just for Kids Law, argued that, even were the legislation to be implemented, it would not be sufficiently extensive as child defendants would require intermediaries for the duration of their case, rather than only for cross-examination. She told the inquiry that the Ministry of Justice had not implemented the legislation because of the high expense of providing intermediaries to child defendants for the duration of their case. Solicitor Mark Ashford said that although intermediaries could improve the engagement and understanding of child defendants, they were not a 'panacea'.

In their recent youth justice report, the House of Commons Justice Select Committee recommended that section 104 be brought into force, given 'that Parliament has decided this provision is needed' (2013: 24). The Government response stated that they had no plans to bring the legislation into force 'until full consideration could be given to the practical and resource implications'. It also highlighted the fact that judges had the power to order the assistance of an intermediary where necessary and that 'much could be done to assist [with understanding] by the defendant's own legal representative' (Ministry of Justice, 2013: 8). However, this implies that the judiciary and legal practitioners are able to identify that such assistance is needed; the evidence received by the inquiry suggests that this is often not so.

We note that the lack of provision of registered intermediaries for vulnerable defendants (s.104) is the subject of a current court case on which judgement is imminent (R (on application of P) v Secretary of State for Justice); we hope that it will be favourable. However implementation of s.104 would only provide statutory intermediary support for defendants during the giving of evidence. Many vulnerable defendants require an intermediary to assist with communication and understanding throughout the case. The Law Commission review of

[53] Professor Kathryn Hollingsworth, SCYJ, Mark Ashford

unfitness to plead is currently consulting on a recommendation to government that defendants should have a statutory entitlement to a registered intermediary for as much of proceedings as is necessary to afford them a fair trial (2014: 28-9).

Recommendations

- The implementation of the new youth justice system assessment, AssetPlus, should be used an opportunity to introduce a new requirement in the National Standards for Youth Justice Services that all child defendants have a comprehensive assessment of their needs – welfare, communication, and mental health – prior to appearing in court, if one has not been completed in the previous six months. Children and their representative should be entitled to access, review and input into these (article 12 UNCRC). We would expect this recommendation to be implemented by the Secretary of State for Justice within the next year.

- Section 104 of the Coroners and Justice Act 2009 should be brought into force by the Ministry of Justice and be extended, by means of new legislation, to enable child defendants to have an intermediary to provide communication support throughout their case and not just for the giving of evidence. This should be achieved within two years.

- At any substantive hearings, we would expect all children to be accompanied by the most appropriate adult supporter in their lives – be it their YOT case worker, a teacher, or another. This would require legislative action to ensure it is a statutory requirement.[54]

[54] This would supplement the requirement that a parent or guardian must attend court with an under 16-year-old.

Chapter Five - Competence

Legal practitioners

Prosecutors

Nick Hunt, Director of Strategy and Policy at the Crown Prosecution Service (CPS), told the panel that two main types of prosecutor are involved in youth cases. These are youth specialist prosecutors who must have 'at least two years' experience as a senior prosecutor and passed the CPS youth offender specialist training, which is approximately three days in duration (YJB, 2009). They are expected to maintain this specialism. In addition, the CPS employ associate prosecutors who 'are not qualified lawyers', but 'are subject to qualification by the Institute of Legal Executives' and 'have to do a certain amount of training to deal with youth issues'. Notably, associate prosecutors conduct 'most' of the cases in the youth court, but they are required to 'refer back' decisions on the case to the specialists 'so it's properly informed by somebody with the right experience and background'.[55] Youth specialist prosecutors tend to be reserved for trials.[56]

Inquiry participants noted that referring cases back to specialist prosecutors caused delays to proceedings.[57] The Justices' Clerks' Society said that youth specialist prosecutors were most needed during the early stages of court cases, rather than trials:

> *It should be noted that a further point to be considered in relation to the proposal of a specialist youth court is that, although prosecutors receive special training in the youth court, the specialist prosecutors where they exist, are assigned to trials whereas the real need for such specialists is at the first hearing of a youth court case.*

Lord Ponsonby, a member of the panel and youth court magistrate himself, commenting in a personal capacity, explained that the initial stages of court cases require negotiation of complex procedures, such as remand and bail applications, for which the expertise of youth specialist prosecutors would be beneficial.

While there was felt to be a particular need for youth specialists prosecutors at the early stages of court cases, youth offending teams highlighted general examples where prosecutors had inadequate knowledge of youth court law and CPS policy. Paul Sutton, Head of Enfield Family and Support Services, said that 'Enfield Court Officers have noted that on some occasions prosecutors did not appear to know the criteria for a secure remand for a young person'. The Association of YOT Managers related a case where a child working on a cannabis farm and a victim of trafficking had been inappropriately prosecuted by the CPS, contrary to their policy on such situations:

> *The lack of CPS specialist lawyers, where they were previously provided, has also led to cases being dealt with differently. An example was a 15 year-old Vietnamese boy in the north west of England who was prosecuted after being found working on a cannabis farm in 2012. This was in opposition to a CPS policy which acknowledges that young people who are trafficked (as this child was) into this country should be regarded as victims not perpetrators when involved in such types of offences. The child received a Detention and Training Order due to the 'seriousness of the offence'.*

[55] Nick Hunt, CPS
[56] Justices' Clerks' Society; Lord Ponsonby JP
[57] Nick Hunt; JCS; Lord Ponsonby JP

> *Arguably this would not have occurred had a youth specialist CPS lawyer differentiated between the adult and child offenders in the case and dealt with them accordingly.*

The implication of these comments is that prosecutors with specialist knowledge of child defendants and youth court law would be beneficial for all types of youth court cases.

Although it does not pertain directly to the issue of specialisation, a number of submissions noted problems with the London-branch Crown Prosecution Service. Both the Association of YOT Managers and, YOT-based probation officer, Alex Williams reported that CPS resourcing issues, restructures, office moves and digitisation had caused 'delays and adjournments' in the Capital. We were told that 'trials are often adjourned on two or three occasions prior to being thrown out of Court or no evidence eventually being offered and the case being dismissed'.[58] Such problems were seen to frustrate the youth court aims of preventing offending and having regard to young people's welfare, as well as the principle of 'speedy justice'.

Defence lawyers

There is currently no requirement for defence lawyers practising in the youth court to complete youth specialist training. Young people from the Just for Kids Law Ambassadors Programme told the inquiry that having professionals in youth proceedings without such knowledge was 'like having a doctor who isn't trained properly'. The 'fall-out' from this deficiency was a common issue of concern in submissions, as is later explained.

Many submissions highlighted, in particular, that the youth court is often used as a place for junior legal practitioners to 'cut their teeth'.[59] It other words, it is as a training ground. This was said to be because youth court law is mistakenly perceived to be less complex than that in the adult courts. [60] Yet as Just for Kids Law told the panel: 'Youth law is a highly specialised area, with different, and more complex processes, and an entirely different sentencing regime '.

The youth court is neither limited to trivial cases nor does it have simple law. Peter Hungerford-Welch, Assistant Dean (Professional Programmes) at the City Law School, and former District Judge David Simpson pointed out, respectively, that the youth court can hear indictable-only offences[61] and impose custodial sentences of up to 2 years, which are akin to the offences and sentences that are seen in the Crown Court. David Simpson noted that, in contrast to the youth court, barristers must have substantial experience to practise in the Crown Court. It is incongruous therefore that such experience is required to practise in the Crown Court, yet there are no such expectations in the youth court despite the seriousness of some of the offences and sentences.

The Law Society suggested that inexperienced lawyers are allowed to practise in the youth court because it is viewed by some as a less intimidating environment. This is because, first, as a closed court their conduct cannot be observed and assessed by peers and, second, as children, their clients are perceived as unlikely to recognise (and report) poor practice:

[58] Alex Williams
[59] The Law Society; David Simpson; Justices' Clerks Society; Peter Hungerford-Welch; Just for Kids Law; Sally O'Neill QC
[60] See, for example, Justices' Clerks Society; Peter Hungerford-Welch
[61] usually reserved for the Crown Court

> *Cases involving children are held in private, so that other practitioners are unable to observe the practice of their peers. This can lead to poor practice not being corrected. It means there is greater need for training, as there is no opportunity to learn by a process of 'osmosis'. The Youth Court can be seen by some therefore as a safe place for inexperienced or inadequate advocacy - the consumer of this service (the child) is often regarded (wrongly) as a poor assessor of the service they receive and the inadequacies or inexperience of the advocate is not exposed.*

The implication of such views is that mistakes and inadequacies perpetrated in the youth court do not matter. However, as outlined above, the youth court hears serious and complex cases, which carry considerable sentences. More generally, all youth court cases – serious or not – have significant implications for the future of the children involved. The price for poor practice is therefore high.

Although we heard about – and saw for ourselves – examples of highly skilled youth specialist lawyers, these were the exception. Buckinghamshire Children and Young People Services noted the 'surprising lack of knowledge that Solicitors and Barristers have about youth legislation'. Similarly, the Justices' Clerks reported that 'it is often the case that those advocates have very little understanding of the youth justice system'. The majority of respondents made similar observations that advocates often lacked basic youth court knowledge, such as of essential youth court law or the role of YOTs. Probation YOT officer Alex Williams who worked in the youth court on a weekly basis, said that she was 'frequently asked by solicitors, barristers and occasionally clerks for legal advice concerning LASPO 2012 as it relates to bail provisions, sentencing and powers to deal with breaches of court orders'. Similar experiences were reported by other youth offending teams.[62]

These inadequacies were seen by respondents to have a range of adverse consequences. First, a number of submissions said that legal practitioners sought disposals that were unavailable in the youth court and lacked understanding of those that were:[63]

> *This sometimes results in such lawyers dwelling on disposals that are not lawful in the youth court or not available in relation to a particular offence.*
>
> **Justices' Clerks' Society**

Second and relatedly, the panel were informed that such lack of expertise led to children being inadequately represented. North London Youth Panel reported that: 'current experience indicates many young people are ill advised and poorly defended by defence lawyers who have little or no youth experience'. Similarly, Alex Williams, a YOT-based probation officer said that: 'This [lack of training and expertise] leaves the child being represented at a disadvantage, as they will then be provided with a weaker bail application or sentencing proposal'.

Third, the Justices' Clerks' Society argued that defence practitioners' often limited understanding of the youth court results in a narrow focus on sentencing, rather than in accordance with principal aim of the youth court - preventing offending:

> *It is often the case that those advocates have very little understanding of the youth justice system; they are running between the adult court and the youth court, often during a single court session, and their mitigation is geared purely to reduction in*

[62] Association of YOT Managers; Leeds YOS
[63] See also, Sharon Ereira, JP, Buckinghamshire Children and Young People Services

> *what is perceived to be the severity of the sentence, rather than working with the court and youth offending teams to achieving a sentence which is specifically designed to prevent the particular young person from further offending.*

Although such lack of a preventative focus among many legal practitioners may be a symptom of their limited understanding of youth justice, the evidence received by the inquiry suggests that is also a core feature of the adversarial nature of the youth court system. This will be explored later in the report (Chapter Seven).

Notwithstanding its specialised legal framework, the overriding and obvious defining feature of the youth court is that is deals exclusively with children. This is unlike any other criminal court in England and Wales. Given the particular needs of child defendants, as outlined in Chapter One, and their young age, there was consensus amongst respondents that legal practitioners require specialist skills to engage and represent young people effectively.[64]

One of these skills was perceived to be knowledge of special needs, such as speech, language and communication difficulties, developmental needs, neurodisabilities and mental ill-health. Many respondents spoke of the importance for lawyers – and indeed all youth proceedings practitioners – to possess the ability to recognise such issues so as to better enable them to engage young people appropriately; provide any necessary support; and ensure the sentence is tailored to such needs.[65] However, legal practitioners often do not possess such knowledge.[66] As John Bache, Deputy Chair of Magistrates' Association Youth Courts Committee stated:

> *A lot of them just haven't any experience with dealing with young people at all. It becomes very obvious. They're not doing their clients any favours by taking on these cases. Not recognising things like speech and language difficulties, or learning disabilities or ADHD. They're not trained to. They're used to dealing with adults and young people are very different from adults. It applies to the CPS but it also applies even more to the defence community.*

In addition, practitioners reported that children lacked understanding of the youth court process, felt anxious about its consequences and were wary of adults. A range of youth specialist legal practitioners told the panel that it was therefore particularly important to have the skills to 'get a rapport' with their clients and demonstrate that they are 'on their side' so as to encourage them to 'open up'.[67] It was clear to the panel that youth specialist lawyers are better able to engage with and gain the trust of their clients, which is key to effective representation.

Magistrates and judges

Magistrates and District Judges are required to have youth specialist training before they may practise in the youth court. Magistrates must also complete three hours of refresher training every three years[68] and district judges are expected to complete a half- to a full day

[64] The Law Society; Avon and Somerset Constabulary and CPS South West; Just for Kids Law; Youth Justice Board; National Policing lead for Youth Justice Chief Constable Jacqui Cheer; David Simpson; Magistrates' Association; SCYJ; NAYJ; PRT

[65] Family Rights Group; Royal College of Psychiatrists; Tom Whitworth; Institute of Recovery from Childhood Trauma (IRCT); Just for Kids Law; Children's Rights Alliance for England (CRAE); Prison Reform Trust

[66] SCYJ; David Simpson; Professor Barry Goldson

[67] Shauneen Lambe, Laura Janes, Howard League for Penal Reform, Greg Stewart; Mark Ashford

[68] Kathryn Harrison, Magistrates' Association

of youth court refresher training annually (personal communication). Several respondents praised the youth court judiciary for being 'well informed' and their skilled engagement with children.[69]

Fewer sittings, less specialism?

However, many expressed concern that magistrates were losing their specialism due to the decreasing youth court cases and, thus, their number of sittings:[70]

> *…so we've got far less young people coming into the system. That's obviously to be welcomed, but it creates its own challenges, so particularly in terms of courts that means there are less sittings, less magistrates getting experience of sitting on youth cases and, therefore, a dilution of that expertise, if you like.*
>
> Lin Hinnigan, Chief Executive, YJB

This not only risks diminishing magistrates' youth court expertise, but can lead to increased sittings in the adult court and the adoption of a more adult-orientated approach. As was noted by the Justices' Clerks' Society:

> *We have seen members of the judiciary who are sitting much more often in the adult court come to the youth court with an approach that is more similar to that in the adult court and there is a danger that the ethos of the youth court is lost and that youths are simply treated in the same manner as adults.*

Training content

In addition to concern about declining youth specialisation, many submissions asserted that youth specialist judiciary training requires additional content on key issues, including child welfare, communication needs, and child development.[71] John Bache argued that such training was necessary to enable the judiciary to identify and respond to children's needs in court:

> *If you realise there is a problem, whether it's a learning difficulty or a welfare issue or a speech and language difficulty whatever. Once you realise there's a problem, then you're on to it and you can deal with it. I think a lot of people right across the board, including magistrates would benefit from more training in recognition of a problem. Once you've realised there's a problem then you can deal with it. The big problem is not realising there's a problem in the first place.*

District judge training includes content on communication and use of intermediaries. Chief Executive of the YJB, Lin Hinnigan informed the panel that training on speech, language and communication needs had been provided to some magistrates, which was very well received, demonstrating the appetite for such training. However, her comments indicated that such training is not being provided to magistrates systematically. The Standing Committee for Youth Justice argued that without such training 'the court will compromise its compliance with the Equality Act 2010 and the child's right to a fair trial'. Increased training of sentencers on communication and engagement with young defendants has been found to

[69] Alex Williams; AYM; Kathryn Harrison, Chair, Youth Courts Committee, Magistrates' Association

[70] Keither Towler, Children's Commissioner for Wales; Lin Hinnigan, Chief Executive, YJB; Association of YOT Managers; Margaret Wilson JP; Justices' Clerks' Society; YOT Managers Cymru

[71] NAYJ; SCYJ; Just for Kids Law; Royal College of Psychiatrists; IRCT; Prison Reform Trust; John Bache, Magistrates' Association; Eileen Vizard; Justices' Clerks Society

contribute to a fall in the use of custody and an increase in conditional and absolute discharge (Allen et al, 2000: 64).

Contemporary research in this area, such as that of the Independent Commission on Youth Crime and Antisocial Behaviour and the Centre for Social Justice, has remarked on the inadequate content of youth proceedings judiciary training and have recommended it be strengthened with core content on child and adolescent development, the factors underlying offending and effective interventions (Police Foundation and JUSTICE, 2010: 65; Crossley, 2012: 92-3). More generally, Professor Barry Goldson argued that it was 'clearly inadequate' that magistrates and district judges 'only attended a two-day training course prior to taking up their youth court roles'.

Crown Court judges

Many respondents highlighted as problematic, the lack of youth specialist training and expertise among judges and legal professionals in Crown Court youth proceedings.[72] There is no requirement for judges in the Crown Court to undergo training on youth sentencing, children's needs, effective communication with child defendants (Crossley, 2012: 84). This contrasts sharply with the youth court where District Judges and Magistrates must complete such training before they are allowed to practice in the jurisdiction. It is also out of kilter with other aspects of the Crown Court; judges, for example, must complete specialist sex offences case training before they can preside over such cases. The absence of training is compounded by the Crown Court's lack of regular experience in dealing with youth cases. However, two of our respondents took a more positive view of Crown Court judges: Leeds YOS contended that they have a more 'considered' approach than in the youth court and ACPO lead for children and young people, Jacqui Cheer, asserted that cases are 'better managed' in this jurisdiction; the implication is that the seniority and long-standing legal experience of Crown Court judges is beneficial to youth proceedings. Nevertheless, the Home Office recommended in 2003 that Crown Court judges be 'ticketed' to preside over youth proceedings (Home Office, 2003: 6). Although this recommendation was never put into effect, its existence indicates that there is a strong argument to do so.

Declining specialism

Declining specialism was not perceived to be a problem confined to magistrates. This trend was observed more widely. Four respondents reported that opportunities for additional judiciary training were 'now limited' or 'greatly reduced'.[73] This was said to be a result of budget cuts:[74]

> *As members of the Inner London Youth Panel, a considerable amount of time and effort was put into our training. Sadly cuts in funding now mean that what training is available is mostly about changes in legislation. Training about issues affecting young people, offending behaviour and interventions that work, has all but disappeared. High quality training is an important driver for effective sentencing.*
>
> David Chesterton JP

[72] YOT Managers Cymru; The Law Society; Royal College of Psychiatrists; Professor Barry Goldson; Just for Kids Law; CRAE

[73] Buckinghamshire Children and Young People Services; AYM, YOT Managers Cymru; David Chesterton JP

[74] YOT Managers Cymru; Association of YOT Managers

David Simpson, former District Judge in West London Youth Court, argued in written evidence to the inquiry that while there is an 'undeniable case' for youth specialist court practitioners 'we are moving away from this rather than closer'. As evidence of this, he highlighted the fact that London, until recently, had two youth specialist judges who sat 'almost exclusively' in the youth court and family proceedings court, rather than the adult court too. Now the Capital is without a single youth specialist district judge. He noted too that the Inner London Youth Court is no longer comprised of magistrates who are appointed to sit only in the youth court, as now membership is only open to those who have sat in the adult court. The London CPS also 'used to have a youth branch staffed by specially trained lawyers but this disappeared in one of the many re-organisations'.

Inconsistency

Many respondents were critical of the inconsistency in training requirements for court practitioners within the youth court and in comparison to related jurisdictions. First, as has been outlined above, magistrates and District Judges are required to be specially trained but legal practitioners are not.

Just for Kids Law argued that this contrasts sharply with the Family Court, in which all legal practitioners are trained in family law and procedure, and there is additional training for solicitors representing children, who must be accredited to operate in the court. Given that the children appearing in the youth court and Family Court share many of the same needs, it is incongruous that the training requirements differ so severely. Practice in England and Wales is also behind that of the US, where criminal lawyers specialise in representing children and have best practice standards.[75]

With regards to the Crown Court, it is anomalous that judges are required to undertake specialist training to preside over sex offence cases, but there is no such requirement in relation to their involvement in youth cases, involving child defendants who often have complex needs.

Solutions

Mandatory training for all?

The majority of respondents recommended that youth specialist training should be made obligatory for all those practising in youth proceedings:[76]

> *Specialism in all Courts should be achieved through mandatory specialist youth training to be completed by all Magistrates, Judges, Defence Solicitors, Prosecutors and Legal Advisors, before they can work on youth cases.*
>
> Youth Justice Board

A number of submissions focussed specifically on the need for obligatory training for legal practitioners, suggesting that they believed current training obligations for the judiciary to be sufficient.[77] The Law Society suggested that legal practitioners could be accredited to practise in the youth court, for which one could qualify by experience or completion of qualifications:

[75] Just for Kids Law

[76] See, for example: Avon and Somerset Constabulary and CPS South West; Just for Kids Law; Youth Justice Board; National Policing lead for Youth Justice Chief Constable Jacqui Cheer; North London Youth Panel; Just for Kids Law;; David Simpson; Magistrates' Association; SCYJ; NAYJ; PRT; Family Rights Group; Tom Whitworth; CRAE; Sharon Ereira JP

[77] District Judges (Magistrates' Courts); Peter Hungerford-Welch;

> *In our view, there does need to be some form of accreditation by way of either experience and or qualifications in welfare based legal environments which can be objectively measured and must be maintained by CPD or experience.*

However, Sally O'Neill QC, drawing on her role in a Working Party on this issue, advocated for the incorporation of content on working with vulnerable court participants, including child defendants, into the basic training of legal practitioners. Her argument was that: 'you can come up against children in all sorts of fields, or vulnerable witnesses, and you need to know how to do it, so we think that it actually ought to be part of the basic training'.

Court user groups

In addition to initial training, some respondents advocated greater use of court user groups, whereby court practitioners meet to discuss key issues and solutions, and ongoing joint training, seeing these as central to a distinct and effective youth court.[78]

The Prison Reform Trust noted that such meetings do 'not happen universally' and recommended that HM Courts and Tribunal Service (HMCTS) and the Youth Justice Board (YJB) issue joint guidance to address this. As previously noted, the AYM expressed concern that court user groups were taking place less frequently due to resource constraints. In addition to court user group discussions, joint training for court users was recommended.[79]

Given the inquiry's interest in bringing the youth court and Family Court closer together, the panel is particularly interested in this respect, in shared training with the Family Court. Such overlap may help to provide youth court practitioners with a greater understanding of welfare issues.

Specialising in the youth court only

Currently, youth court magistrates must sit in the adult magistrates' court for two years to gain experience before they may sit in the youth court. After this point, they remain sitting in both courts. John Graham, Director of the Police Foundation, advocated for magistrates instead to specialise directly into the youth court, to prevent them absorbing the adult-orientated approach of the adult magistrates' court:

> *If they want to specialise with young people, they should do that first and they learn the job, because it's a different job from day one, rather than take the culture of the Adult Magistrates' Court with them and all the lessons that they've learned in the Adult Magistrates' Court into the Youth Court. For me, that's the wrong way round.*

In contrast, Maggie Blythe, of the Association of Independent Local Safeguarding Board Chairs argued that 'if magistrates only specialised in youth, there is a danger that there's some separation from understanding the family and wider adult issues' which would come from sitting in adult magistrates or Family Courts.

A number of respondents, including the PRT and Michael Sieff Foundation, recommended that magistrates should have the option of specialising in only the youth court after their initial two years in the adult magistrates' court. However the Magistrates' Association argued to the contrary for the reason that: 'young offenders often unfortunately progress to the adult court and we feel it is useful for the magistrates to be familiar with dealing with both youths and adults'.

[78] See, for example: Tom Whitworth; Buckinghamshire Children and Young People Service; Alex Williams; Paul Sutton, Head of Enfield Youth and Family Support Services; PRT; AYM

[79] AYM; Alex Williams; YOT Managers Cymru

Recommendations

- The Bar Standards Board (BSB) , Solicitors' Regulation Authority (SRA) and the Chartered Institute of Legal Executives (CILEx) should introduce, without delay, a requirement for all legal practitioners representing children at the police station and practising in youth proceedings to be accredited to do so. For new entrants into youth proceedings, this would comprise an initial spell of a minimum of ten hours continuing professional development (CPD) accredited youth training as well as annual refresher training in the field of, it is suggested, two hours' CPD. Criminal justice system-experienced young people should be extensively involved in the delivery of training; this might involve youth-led elements whereby they describe their court experiences and explain effective engagement strategies. Training should include elements on:

    - Youth court law and related provision;
    - The needs of child defendants (including mental health issues, speech, language and communication needs, welfare issues and child development);
    - Effective participation to enable defendants to participate fully and fairly in courtroom proceedings. This should include how to manage learning and communication difficulties, mental health problems and vulnerability, and fitness to plead;
    - Jurisdiction and practice directions; and
    - The impact of interventions, which should comprise visits to youth custodial institutions and community services at least twice a year (adapted from CSJ, 2012: 93).

- In the medium term, criminal pupillage, criminal trainee seats and other advocates with any rights to appear in youth proceedings should include content on working with young defendants, witnesses and victims in their initial advocacy training. This should be introduced and subject to supervision by BSB, SRA and CILEx.

- Magistrates and District Judges already complete youth training before they are allowed to practise in youth proceedings. However we are calling on the Judicial College to augment this with the training listed below. Priority should be afforded to this to enable implementation within one year. Attendance should be made an express condition of the judicial 'ticket':

    - Comprehensive training on speech, language and communication needs, child development, mental health needs and welfare issues;
    - Twice-yearly visits to youth custodial institutions and community services, as set out above so as to ensure that understanding of the content of sentences is kept up to date. Such visits should be appropriately reimbursed; and
    - Magistrates should observe referral order panels as part of their training.

- Magistrates should be able to specialise in the youth court, with the option of also sitting in the Family Court (rather than or in addition to the Adult Magistrates' Court). Joint youth court and Family Court training should also be introduced.

- A designated senior judge should be appointed to be the youth court representative at a national level. This should be a statutory post and legislated for by the Ministry of Justice within the next two years.

Chapter Six - The Crown Court

> *The judiciary is clear that the Crown Court is not a place for children to be tried although individual reasons may vary. The main issues over children in the Crown Court, either as defendants or witnesses include: the size and lay out of the courtroom which must, of course, accommodate a 12 person jury; dislike of de-wigging and disrobing by some judges and lawyers; formality; inability to adjust style and speech for children without an intermediary and judges allowing inappropriate cross-examination; and the theatrical nature of the proceedings.*
>
> David Simpson, former District Judge

An overwhelming majority of the respondents to this inquiry said that the Crown Court was an inappropriate venue for child defendants to be tried and sentenced. This was because the nature of the setting and proceedings were felt to be such that child defendants cannot understand and participate in the process, impeding their right to a fair trial. The reasons for this view were multifarious, but there was a strong consensus. Evidence that brain development is ongoing during adolescence justifies the conclusion that those under 18 find it difficult to take part in core criminal proceedings tasks, including: understanding interview questions and the significance of their answers; understanding charges and court processes, deciding how to plead and instructing lawyers (Farmer, 2011).

In addition, as evidenced by the statistical profile of child defendants' needs, a large proportion of them have neurodevelopmental disorders, with symptoms including communication and learning difficulties, which further restricts their ability to participate effectively in these activities and the court process overall. As Lorraine Khan, from the Centre for Mental Health, noted:

> *Six out of ten of them [young people in the justice system] have speech, language and communication deficits, which make fairly basic terminology that we'd be using in those settings very challenging. They don't know often what breach means. They won't know the terminology that we take as second nature to us. Crown Court is a very intimidating place, even for professionals and adults if you don't work in there. For a child or young person…it is not a setting where we can guarantee that they can effectively participate.*

In short, as argued by Jacobson and Talbot, the evidence suggests that child defendants are 'doubly vulnerable' because of their young age and developmental immaturity in addition to their experience of other needs, including learning disabilities, mental health problems and communication difficulties (2009: 37).

Many witnesses to the inquiry contended that child defendants' difficulties in understanding are aggravated in the Crown Court, which is formal and intimidating and can include complex legal language. Taking the last issue first, the evidence we received suggests that the use of such language hinders the understanding and participation of child defendants' and their families. One of our interviewees, a 16-year-old boy who had recently been found guilty at the Crown Court, commented that everyone 'talked a lot of Latin' during the court process, demonstrating that the terminology used appeared to him like an ancient, foreign language. In a similar vein, John Graham, Director of the Police Foundation, noted that the complex terminology used in the trial of 10- and 11-year-olds Venables and Thompson, the

conduct of which was found by the Equality and Human Rights Commission to have breached their right to a fair trial, had seemingly not been understood by either defendants or their families.

The intimidating environment of the Crown Court was also seen by respondents to impede the participation of child defendants.[80] As the Children's Rights Alliance for England argued: 'children's lack of understanding and the intimidating environment can mean that children do not feel sufficiently at ease to give evidence – either at all or to the best of their ability - and to respond to cross-examination'. This was illustrated by a comment from a 17-year-old boy with whom we spoke to in custody, who described his nervousness at speaking in front of the jury at the Crown Court, for fear of 'saying the wrong thing' and being given a custodial sentence:

> *When you are up there you are already nervous, no matter who you are, you are going to be nervous if you are talking, trying to give your points. Potentially you are going to see prison if you don't say what you say right, so obviously you are going to be nervous. Except when you are nervous the jury is not going to believe you because they think you are lying straight away if you are nervous, but of course you are going to be nervous.*

While acknowledging the above-mentioned flaws in the Crown Court, a number of respondents felt that the Crown Court had some important advantages that should result in it being retained as a jurisdiction in which to hear cases involving serious offences by children. Leeds YOS felt that the Crown Court had a more 'considered', balanced approach than the youth court, including the advantage of reserving cases, with the consequence that a community sentence was more likely in appropriate circumstances.

A number of submissions asserted that the formal setting was appropriate for children because it reinforces the seriousness of their crime.[81] The implication here is that marking the gravity of the crime with the formality of the setting can reduce offending. None of the respondents articulate how such an effect is produced, but possible rationales are that the 'intimidating' process is believed to have a deterrent effect or that highlighting the seriousness of the behaviour encourages children to take responsibility for it and, in turn, change for the better.

But, as argued by Professor Littlechild: 'the idea that the more formal the setting, the more the 'fear' in the child, therefore leads to less offending. I don't think that view holds up from the evidence'. While we are not aware of any research evidence regarding the deterrent – or not – effect of intimidating court settings, research on a number of analogous examples suggest that they are more likely to have a negative effect on offending. Analysis of the outcomes of nine randomised controlled trials of 'Scared Straight', a prison visit programme for children, which aims to deter them from offending by exposing them to prison life and lectures from serious offenders, found that it increased the likelihood of offending (Petrosino et al, 2006: 98, cited in Hawkins et al, 2010: 230-1). Likewise, research on the deterrent effect of sentencing 'found that there is some evidence of a link between certainty of punishment and crime rates, but considerably weaker evidence of a link between the

[80] Just for Kids Law Youth Ambassadors; CRAE; Buckinghamshire Children and Young People Services; Just for Kids Law; Royal College of Psychiatrists; YOT Managers Cymru

[81] Paul Sutton, Head of Enfield Youth and Support Services; Tom Whitworth (YOT Manager); Avon & Somerset Constabulary and South West CPS

severity of sentences and crime rates' (von Hirsch et al., 1999, Doob and Webster, 2003, Bottoms and von Hirsch, 2011, cited in Ashworth and Roberts, 2012: 868).

Furthermore, as Penelope Gibbs asserted, intimidating child defendants is unlikely to address the underlying causes of their offending:

> *I think the Crown Court might make them frightened certainly, but I'm not sure that that would address the underlying reasons why they're moving from lesser offences to more serious ones. I think the reasons why reoffending escalates are very complex and they're often to do with welfare issues, and unless those welfare and health behavioural issues are dealt with outside the court environment, the offending will get worse, whatever court that child is appearing in.*

Similarly, it is improbable that reinforcement of the seriousness of a child defendant's behaviour through means of the Crown Court will be effective unless it is combined with support to address the factors that are behind their offending. More importantly, the evidence outlined above indicates that the Crown Court environment inhibits children's full understanding, which is likely to preclude acceptance of responsibility.

A further argument for why the Crown Court is appropriate, put forward by Kevin Wilkins, representing ACPO lead for children and young people Jacqui Cheer, was that it is necessary for 'public confidence in the justice system' because it is 'seen to be the right place to deal with those most serious offences'. However, it does not follow that the Crown Court is an effective setting in which to deal with child defendants.

Adapting the Crown Court for children

A number of respondents took the view that modifications could improve the Crown Court's suitability for children. At present, no judge or practitioner in Crown Court youth proceedings is required to be trained in youth justice law or issues. All but one of the respondents who argued that the Crown Court was appropriate, suggested that all Crown Court practitioners in youth proceedings should be 'suitably trained'.[82] Robert Buckland MP and Crown Court Recorder commented, during panel discussions, that the introduction of assessments of child defendant's needs would enable more informed decision-making about the best court for their trial:

> *What I do believe is that there must be at the earliest possible stage a proper assessment of the particular needs of that young person on an individual base. We don't have that. What happens is that at sentence we may get a report that reveals that the young offender has got autism or ADHD or other diagnoses that have not been identified prior to their appearance in the Criminal Justice System. That is a disgrace. I do believe that with that proper basis of diagnoses of an earlier stage in the criminal justice process, the Court is then best judge as to what forum the young person should be tried in.*

The 2013 Criminal Practice Direction (previously 2007), issued by the Lord Chief Justice expects that modifications are made in the Crown Court to assist the understanding of child defendants. These include: sitting the child with her parents or guardian; clearly explaining proceedings; allowing for regular and frequent breaks; use of simple, clear language; and

[82] Tom Whitworth, Avon & Somerset Constabulary and South West CPS, ACPO

the removal of wigs and gowns. We note that the modifications set out in the new iteration of the Practice Direction have been somewhat watered down; for example, it is now advised that judges should consider whether or not to wear robes and wigs, whereas previously it was stated that they 'should not be worn unless the court for good reason orders that they should'. A number of respondents said that modifications 'appear to help' mitigate against some of the problems of Crown Court youth proceedings**.**[83] However, many said that in their experience the practice direction was 'overlooked' or 'ignored' and adherence to it 'rarely occurred'[84]. As the Law Society remarked:

> *The reality is that most Crown Courts have the opposite tendency: the layout of the court and the appearance of participants is intended to reinforce the solemnity of the proceedings, and emphasise the alien nature of the environment to the child or young person's everyday experience.*

The inquiry was told that there were several reasons for this.[85] First, it is seen to be time consuming, contrary to the system's approach of 'speedy justice':[86]

> *There is huge pressure to ignore it, because inevitably it means slowing everything down, you've got witnesses waiting, you're juggling a list, you've got list officers pleading for you to get through the case...You get the judge who has agreed to breaks, but then because it's getting later, there are witnesses waiting, it's taking longer than expected, saying 'you can go on for another half an hour can't you?' and of course, when this is said in open court in front of the jury, in front of all the lawyers, the youngster is going to say yes. And then they move on and that break has gone and then the next break disappears. It is so difficult to actually make this work, day in day out at Crown Court trials.*
>
> Mark Ashford*,* specialist youth crime solicitor, TV Edwards Solicitors

As the below extract outlines, the direction was also felt to be very difficult to follow in practice, particularly when there are multiple offenders involved:

> *..even when you try conscientiously to follow the guidelines, the practice direction... Something very simple – I was involved in a multi-handed case of defendants who were all about 14/15...Once you start having breaks it's amazing how long it takes to actually get through the trial, which is an injustice in itself. Things like the children sitting in the well of the court, the youngsters sitting in the well of the court next to a parent or something...from a practical point of view you've got eight or nine defendants, you can't do it; it doesn't happen.*
>
> Sally O'Neill QC, Furnival Law Chambers

We were also told that there was reluctance to apply the direction because it conflicts with the Crown Court culture.

It is clear to us that there is limited application of the practice direction by virtue of both pressure to ignore it, and in some cases a practical inability to follow it. However a number of witnesses felt that the practice direction was insufficient even where applied. For example, the Magistrates' Association described the direction as 'simply paying lip service to

[83] Alex Williams, Peter Hungerford Welch, Buckinghamshire Children and Young People Services
[84] The Law Society, AYM, Greg Stewart, Mark Ashford, Sally O'Neill
[85] Sally O'Neill; Greg Stewart; Mark Ashford,
[86] See also: Greg Stewart

addressing the problem' and Children's Rights Alliance for England (CRAE) argued that it 'doesn't prevent it [the Crown Court] from being an intimidating place'.

Juries – beneficial or not?

A key difference between the Crown Court and the youth court is the involvement of juries in trials in the former jurisdiction, whereas the latter are presided over by a single district judge or a bench of three magistrates. The matter of whether juries are appropriate for trials of young defendants or not was a major focus of discussion about the suitability of the Crown Court and possible alternative settings for serious youth cases.

A number of respondents argued that trial by jury provides an essential protection against judicial decisions, which are particularly important where long-term custodial sentences are available, as in the Crown Court.[87] Just for Kids Law noted too that court statistics show that an acquittal is far more likely in jury trials compared to the magistrates or youth courts. These witnesses argued that the Crown Court was an inappropriate venue for children but advocated that juries, possibly smaller than the traditional number of 12, be incorporated in the youth court for serious offences.

Others commented that juries may be disadvantageous for under 18s because children 'often do not present well' in court owing to their behavioural, communication and learning difficulties, which are not sufficiently understood by juries.[88] One focus group of young people told us that they favoured juries but felt often misjudged by them. The second youth focus group said that they did not like juries 'because whatever happens if it's the wrong decision then the Judge is not accountable for it'. The Association of YOT Managers noted that one 'could argue that children are in fact never tried by their peers in a Crown Court as by definition a jury consists only of adults'.

Cases with adult co-defendants

Where children are jointly charged with adults, such cases can be tried and sentenced together in the adult magistrates' court or Crown Court (depending on the seriousness of the offence). There is provision for such cases to be separated so that there are two trials, with the child defendant's case heard in the youth court, however 'a single trial of all issues is likely to be most in the interests of justice' (Sentencing Guidelines Council 2009: 29).

One of the reported difficulties in separating trials is that convening two trials would result in witnesses having to be cross-examined twice, which can be doubly traumatising. Notably, a six-month pilot enabling witnesses to have their cross-examination pre-recorded has recently commenced in three Crown Courts – Liverpool, Leeds and Kingston-Upon-Thames (MoJ, 2014b) – which might help to address this problem. However, youth specialist solicitor Mark Ashford questioned the practicability of the idea, given that defence lawyers would likely not be supplied with the necessary material by the CPS sufficiently in advance of the pre-recording as 'usually you'll get it during the trial'. He said that even if such issues were addressed 'there's still going to be the problem of, what about other witnesses that unexpectedly give new information and then you want to re-examine this child witness'.

[87] Dr Tim Bateman; Just for Kids Law
[88] Professor Hollingsworth; Greg Stewart

Even where it is appropriate to separate trials, some witnesses reported that the possibility of 'severing' the youth cases was ignored.[89] As Greg Stewart reported:

> *My experience is that's often ignored, that power [to sever youth cases]. Or it's felt that the interests of justice always determine that they should be one trial, without any close examination of whether or not, really, two trials might be appropriate. For instance, if witnesses don't really need to be called, cross-examined, then maybe you could have two trials; one in the youth court for the young people, and one in the adult court. Obviously, it involves issues, but whether the adults would plead guilty or contest the matter. Well, I think people see it as an irritation.*

Solutions

Keeping most cases in the youth court

In the last year Schedule 3 (Criminal Justice Act 2003) has been implemented, which provides an increased opportunity for youth courts to hear more serious cases. It is too early to tell whether the legislation is having the desired impact. However some witnesses reported that there are problems with the implementation of the direction.

Former District Judge David Simpson said that there were conflicting messages about which cases should be retained in the youth court:

> *District Judges have been criticised by the High Court for both declining jurisdiction and for retaining jurisdiction in serious cases so there is still a degree of uncertainty about the appropriate venue for such cases. The recent statutory changes in allocation may make a difference but I still note a tendency for prosecutors to wish to take serious sexual cases to the Crown Court.*

The Association of YOT Managers commented that some magistrates appeared to be nervous about retaining more serious cases in the youth court. Nevertheless, they said that properly trained magistrates and district judges were fully capable of dealing with serious cases:

> *In our view, properly trained magistrates, guided by legal advisors who specialise in youth cases, would be more than capable of dealing with an increased proportion of all those defendants under the age of eighteen who are currently dealt with in the Crown Court…but at present, our experience is that magistrates can be nervous about exercising their full powers, and there are many examples of cases being committed from the youth courts to the Crown Court, only for the judge to send them back for sentencing on the grounds that the youth court's powers are sufficient.*

Several submissions advocated that magistrates be trained to deal with serious sex cases, as District Judges had been a number of years previously.

Notably, the Criminal Justice and Courts Bill, which is currently making its way through Parliament, includes an amendment to commit youth cases to the Crown Court for sentencing only. This could result in child defendants who are, at present, both tried and sentenced in the Crown Court, being tried in the more appropriate youth court setting and only sent to the Crown for sentencing. This would attenuate many of the concerns regarding the inappropriateness of the Crown Court. However, the amendment would also run the risk

[89] See also: Just for Kids Law

of a greater number of children being sentenced in the Crown Court than is current. A better solution might be to change and enhance the arrangements for sentencing in the Youth Court.

Removing the youngest children from the Crown Court

Some submissions took the view that young children who offend, however serious the case, should only have their cases heard in the youth court.[90] As Sally O'Neill argued:

> *I personally can't see reason, apart from in the most exceptional case, for a child under 14 to be tried in the Crown Court; I think they should always be dealt with in the Youth Court and I think the Youth Court can be adapted to facilitate those sorts of cases, however serious they are…That includes murder, which is the obvious one that people come up with. I think children older than that, it just has to be on a case-by-case basis.*

The Magistrates' Association at their Annual General Meeting in November 2011, passed the following motion:

> *"This Annual General Meeting calls upon Parliament to recognise that it is no longer acceptable for children to be tried or sentenced in the crown court, and to pass legislation to ensure that all defendants under the age of sixteen appear in the youth court, where they will be tried and sentenced either by three youth court magistrates or, for very serious offences, by a crown court judge trained in youth justice and sitting with two or four youth court magistrates."*

This was supported by the Justices' Clerks' Society, the Prison Reform Trust, and the Association of YOT Managers, amongst others.

Removing all cases from the Crown Court

Many advocated that no youth case be heard in the Crown Court. Supporters of this approach included the Standing Committee for Youth Justice, National Association of Youth Justice and Just for Kids Law.[91] Notably, the removal of all youth cases from the Crown Court has been advocated by a number of reviews, including those by Lord Justice Auld (2001), the Audit Commission (2004), the Independent Commission on Youth Crime and Antisocial Behaviour (2010), and the Centre for Social Justice (Crossley, 2012: 96). Sally O'Neill and Maggie Blythe noted that practical considerations may prevent the youth court from accommodating certain cases, such as those comprising large numbers of defendants.

Recommendations

- The panel agreed that there should be a clear presumption – in law – that all child defendants are dealt with in the youth court. Any residue of cases to be heard in the Crown Court should be exceptional only, determined on a case-by-case basis where the circumstances are of exceptional gravity and it is clearly necessary and in the interests of justice for a trial to occur in the Crown Court. Any such decisions should

[90] PRT, Tom Whitworth, Royal College of Psychiatrists; Magistrates' Association

[91] See, for example: Professor Neal Hazel, Dr Tim Bateman, David Simpson; Hertfordshire Constabulary; Margaret Wilson JP; North London Youth Panel; SCYJ; CRAE; YOT Managers Cymru; John Graham, Police Foundation; NAYJ

be capable of review prior to trial. Legislation to this effect should be made and put into force within two years.

- A sufficient proportion of magistrates should be trained within the next two years to deal with serious sex cases.

- Crown Court judges should be ticketed to deal with youth cases (whether in the Crown Court or youth court) as they are already for serious sexual offences and in family proceedings. The quality of the training should be akin to the 'serious sexual offences course' that is currently in place for the senior judiciary. This recommendation should be implemented within one year.

- Youth cases that continue to be heard in the Crown Court should follow the 2013 Practice Direction. Presiding Judges of the Circuit should ensure that this is achieved. We would also recommend that adherence to the practice direction is the focus of a future joint thematic inspection by HMI Probation and partners.

Chapter Seven - Re-thinking the purpose of youth proceedings

The principal aim of sentencing in youth proceedings is to have regard to preventing offending by the child under the Crime and Disorder Act 1998; the court also has a duty to have regard to the welfare of the child under s.44 of the Children and Young Persons Act. Other key considerations include the seriousness of the offence - the 'starting point for sentencing' – as well as the likelihood of further offences and the potential harm of these (Sentencing Guidelines Council, 2009: 6-8).

Submissions to the inquiry espoused conflicting rationales as to the aims and role of youth court. Kathryn Harrison of the Magistrates' Association suggested that while 'welfare' was considered, the key focus of the court was providing justice:

> *I think that a criminal court is a criminal court... If they have behaved in a way that has harmed somebody else, then that is an issue for us to deal with. So I think it's a distinct issue, but we do try to take welfare into it.*

Similarly, several respondents expressed the view, that the focus of the youth court was 'public safety' and 'the seriousness of the act'. Conversely many others argued that the priority was preventing offending. However, our analysis is that even those who highlighted the centrality of justice and seriousness principles to youth court practice, conceptualised such approaches as a means of preventing offending, at least in part. Thus, at the heart of submissions was a conviction that the purpose of youth proceedings is to assist children to stop offending, so as to create a safer society for all. We consider this to be the wholly the right aim. But, as indicated, there were differing views with respect to how best to meet such an aim, due in part to a lack of shared understanding of 'what works'.

A desistance-based approach

The challenge is that the current configuration of the youth proceedings system impedes the realisation of this aim. Competing sentencing aims, inadequate tools to address offending and the very practice of youth proceedings all serve to frustrate the objective. As Professor Neal Hazel argued:

> *If you think the aim of the criminal justice system is to be shown primarily to be providing justice to the community or to be in a traditional sense, then the courts are the symbol of justice and so on and so forth. If you feel, however, that the aim is to be in the best interests of the child, or if you think the aim is about stopping offending, about desistance, if you think the aim is about meeting the needs of the child, then that would suggest that at the moment we don't have the right system.*

Taking this prompt, the inquiry considered the research evidence regarding desistance and believes it is particularly helpful here. Desistance research is concerned with understanding the process of how and why people cease offending. The key features of desistance thinking are that: it is a *process*, characterised by 'ambivalence and vacillation' (Burnett, 2000, cited in McNeill, 2006: 48); agency is critically important to stopping offending as it is the offender who decides to stop committing crime; providers of treatment, such as YOTs, can only support the desistance process (they cannot force it) (Maruna and LeBel, 2010: 68); one-

size-fits-all interventions will not work since desistance is an individualised process (Weaver and McNeill, 2010); interventions are likely to be more effective if they focus on the person who has offended *as well as* on their personal and social circumstances (Farrall; 2002: 219); and a single and continuing relationship of trust is centrally important to assisting desistance (McNeill et al, 2005).

Desistance research has predominantly focussed on the adult offender setting and it therefore should not be assumed that its findings apply equally to children who offend. In particular, it should be noted that much desistance happens to people during their 20s and 30s (various authors, cited in Pople and Smith, 2010) so it could be argued that it is an adult process. However, since most children grow out of offending, desistance is clearly a relevant concept to this age group too. Furthermore, studies of children who offend have identified many common factors in the process of desistance with the adult domain. Such factors are often discussed with regard to the potential role of criminal justice agencies, such as probation services, in supporting desistance. However, the theory is equally relevant to the operation of youth proceedings – even if the desistance process more often occurs a little later in people's lives. Below we explore the desistance factors relevant to youth proceedings and how these relate to the evidence we have received.

Addressing underlying needs

Supporting offenders in tackling the difficulties connected to and underlying their behaviour has been found as key to assisting desistance from crime (Farrall, 2002). The application of this principle to youth proceedings would conceivably involve the court possessing an awareness of any potential needs experienced by children who offend as well as the tools to address these.

Many submissions held that there was tacit consideration of welfare needs in youth proceedings.[92] For example, District Judges asserted that 'the welfare principle has remained an essential part of the work of the youth court, setting it apart from the adult courts'.[93] Paul Sutton, Head of Enfield Youth and Family Support, argued that it was 'a fallacy to think that the Youth Court System does not consider welfare' because information on such issues is provided to the court in the pre-sentence report. This suggests that youth proceedings do consider the needs of child defendants, particularly in comparison to adult courts. Nevertheless, the Justices' Clerks Society and former District Judge David Simpson commented that welfare considerations took a 'secondary role' in youth proceedings and this was implicit in many other submissions.

However, as set out in Chapters Three to Five, there was a strong contention in submissions that youth proceedings currently lack the means to identify and address child defendants' needs. This is because there is no systematic identification of children's needs prior to their appearance in court; many practitioners in youth proceedings are insufficiently trained to recognise such needs; and the powers available to the court have limited ability to address the underlying causes of offending.

[92] Magistrates' Association; District Judges (Magistrates' Courts); Greg Stewart; The Law Society; Paul Sutton, Head of Enfield Youth and Family Support Services; Nick Hunt, CPS.
[93] See also: Greg Stewart

A number of respondents also argued that the sentences available to the court had limited ability to address the underlying causes of offending.[94] On the other hand, Peter Hungerford-Welch argued that the youth rehabilitation order 'enables a fairly holistic approach to be taken to achieving the aim of rehabilitation'. However, a recent review of the youth justice system also found evidence that some youth rehabilitation order menu options[95], such as Intensive Fostering[96], were 'more often than not absent' because of local resource constraints. Overall, there have been few research studies regarding the effectiveness of youth justice sentences and those that have been carried have reported disappointing reconviction results relative to comparison groups (Gray et al, 2005) and in the long-term (Biehal et al., 2010). However, we are aware of recent reoffending data, as yet unpublished, which shows that children who successfully completed an Intensive Fostering programme committed significantly fewer proven offences in the 12 months after the intervention than in the 12 months preceding it, although there was no comparison group to control for other factors in the decline (personal communication).

For the majority of respondents, however, the court's main obstacle to tackling offenders' underlying needs was its focus on determining guilt or innocence and sentencing rather than seeking to understand the drivers of the offending behaviour and finding a solution to these. As youth magistrate David Chesterton argued:

> *I am of the view that the greatest failure of our youth justice system is the adversarial approach we have adopted. It seems to me this approach is about 'establish who did it and punish them'. In contrast, the inquisitorial system adopted by our European neighbours seems to me to be about 'find out what went wrong and fix it'…Our focus on punishment rather than problem solving contributes to our high levels of reoffending.*

In this context, one young person with whom we spoke advocated that courts should 'really get to understand what has happened. I mean really get to understand, not just put them on trial...they don't really try to find out, "Why did you do it?" What really happened?'. The Standing Committee for Youth Justice argued that the adversarial approach may not be effective because 'for instance, a lawyer securing a not guilty judgement on a technical legal argument will not lead to the root causes of the child's offending being addressed'.

Relationships, building hope and recognising progress

The importance of practitioner relationships to achieving engagement and reducing the reoffending of their clients is widely evidenced in the international research and practice literature, across a range of fields (Wood et al, 2013; Healy, 2012; Liebrich, 1994). For example, the evidence from psychotherapy is that although there are intervention models that are more effective with particular groups, the most important factor (within the practitioner's control) to success is the quality of the relationship between the client and practitioner (McNeill et al., 2005). With respect to criminal justice, Rex's study (1999) of probationers' experiences of supervision is one of the most widely cited: she found that their decisions to desist appeared to be inspired by the personal and professional commitment shown by probation officers, which seemed to generate a sense of obligation to stay out of

[94] Michael Sieff Foundation; NAYJ; SCYJ; Steve Waters

[95] The YRO comprises a menu of requirements and interventions that can be chosen to tailor the sentence to the needs of the young person subject to it.

[96] Intensive Fostering is a community-based intensive intervention delivered over 6-9 months, providing specialist fostering supported by a highly professional multi-disciplinary team

trouble (Rex, 1999: 371). Research suggests that such relationships can aid desistance by supporting the offender to believe in their ability to change (McNeill et al., 2005: 16). This may be particularly influential during adolescence because it is 'a period of malleability during which there may be the opportunity to enable the development of positive identities before negative messages are internalised' (McNeill, 2006: 133, cited in Prior and Mason, 2008: 19).

The importance of professional relationships in supporting behaviour change was consistently highlighted in evidence sessions[97] Within this context, many respondents advocated the introduction of judicial continuity in cases - the child appearing before the same judge in all case hearings - and sentencer reviews – whereby the child would returning to the court to discuss their progress for the duration of their sentence.[98] John Graham, Director of the Police Foundation, set out the case for such an approach:

> *The notion of continuity is absolutely crucial. If you take a family, if a young person is being disciplined by a different parent each week, what kind of continuity is there? What kind of authority is there? How is that going to work if you want to try to teach that young person to behave? That's essentially what happens in a Magistrates' Court. I think they should go back to the same magistrate [after] when they first turn up in a court.... At least one person should provide that continuity...*
>
> *...Secondly, I think that if you have that continuity, you can build a relationship with that young person, and a through that relationship you can begin to affect their behaviour. As part of that, I would introduce the notion that you have in drug courts of reviewing sentences, so that the young person comes back post-sentence. The judge or magistrate can say, "You've done well," or, "You're not doing well...therefore, we're going to change some of the conditions attached to your sentence," or, "Your circumstances have changed; we therefore need to provide additional services." There needs to be that continuity, that relationship, if you're going to do something with that young person.*

Continuity and sentencer reviews have the potential to incorporate a number of desistance factors besides the relationship. Research has shown that 'recognising and celebrating' offenders' progress can support desistance (McNeill and Maruna, 2007, cited in McNeill et al, 2012). Reviews may also support legitimacy – in the eyes of the child and wider society – by sending the message that compliance will be rewarded and vice versa, as well as that there is flexibility to the child's circumstances. The Association of YOT Managers asserted here that reviews were 'a positive opportunity in terms of accountability both for the public, victims and the main protagonists in the youth court'. We note that there is provision in the Criminal Justice and Immigration Act 2008 (Schedule 1, paragraph 35) which enables courts to review youth rehabilitation orders.

A strengths-based approach

In his research with 199 probationers, Farrall (2002: 220) concluded that practice should focus not on 'offence-related factors' but 'desistance-related factors': that is, what can help you desist rather than focussing on the factors that led to the offending. This translates into an approach that is focussed on 'building on young people's assets and aspirations as well

[97] Just for Kids Law Youth Ambassadors; Just for Kids Law; Steve Crocker; Professor Phoenix; John Graham

[98] AYM, Just for Kids Law Youth Ambassadors; Just for Kids Law; Steve Crocker; John Graham, Margaret Wilson; Prison Reform Trust; Leeds YOS; Paul Sutton; Justices' Clerks Society; David Simpson; John Plummer

as formally recognising their progress towards desistance.' Research has shown that offenders notice when there is an emphasis on risks and deficits rather than strengths and can be less inclined to engage if this occurs (Atrill, and Lielll, 2007, cited in MoJ, 2013b: 11).

This importance of reinforcing positive narratives was espoused in several submissions. For example, Just for Kids Law Youth Ambassadors were critical of the youth offending team's focus on the offence, implying that more attention should be paid to aiding positive change: 'they don't provide any assistance, they just want to talk about the previous offence over and over again and in fact it is a way of making more people involved in crime'. Professor Neal Hazel asserted that the system should aim to:

> *Shift their understanding of themselves to something more positive, so that you stop people thinking of themselves as street kids, as criminals and so on, and start to think of themselves as progressive members of the community, as engaged and so on. You can't, it's very difficult to do that within the type of criminal justice system that we have at the moment, with the processes and with disposals that we have.*

In this respect, a large number of submissions argued that criminal records were a 'destructive' aspect of youth proceedings because they hinder children's ability to attain a positive, non-criminal identity.[99] In particular, a criminal record may impede education and employment prospects and, ultimately, rehabilitation. As one young person told us, a criminal record is an 'anchor' to your past offences. To address the problem, many submissions advocated 'wiping the slate clean' when children reach 18, save for serious offences.[100]

Similarly, many witnesses expressed concern that reporting the identity of child defendants can hinder efforts to desist from criminal behaviour, particularly given that the advent of social media can mean that such details are indelible once revealed.[101] The presumption in the Crown Court is that all children will be named; the reverse is true in the youth court, although it has the power to lift anonymity (s49 (4A) Children and Young Persons Act 1933). In addition, s.44 of the Youth Justice and Criminal Evidence Act 1999, which provides anonymity, pre-court, for children accused of offences, has not been brought into force. Media organisations too are arguing that anonymity orders can expire once a child reaches the age of 18; a recent legal judgement accepted this on the basis that law is not currently clear on the issue (SCYJ, 2014: 10). Recent research on the issue argued that rationales for 'naming and shaming' children, such as protection of the public, deterrence, and acceptance of responsibility, are not evidence-based (ibid: 5). There was accordingly strong support for a presumption of 'automatic and lifelong anonymity' for all children at every stage of the youth justice system.

A collaborative and relevant process

McNeill et al. emphasise that it is critical for criminal justice interventions to comprise collaboration with the offender as 'its implementation in practice will fall flat unless the

[99] Sharon Ereira JP; Eddie Isles, Kevin Wilkins, ACPO, Just for Kids Law, John Graham; David Chesterton; District Judges; Margaret Wilson; David Simpson; YJB; Just for Kids Law Youth Ambassadors; CRAE

[100] Sharon Ereira JP; Eddie Isles, Kevin Wilkins, ACPO, Just for Kids Law, John Graham; David Chesterton; District Judges; Margaret Wilson;

[101] SCYJ; Peter Hungerford Welch; Just for Kids Law; CRAE; Alex Williams; Office of the Children's Commissioner

offender recognises its relevance, appropriateness and visibility' (2005: 37). As the authors argue: 'the underlying premise is that clients themselves know what needs to be done to address their problem, and that therapists should draw out these insights'.

Such research would suggest that the court process needs to be collaborative and relevant to children's lives if it is to effectively engage them and prevent further offending. Childhood First advocated the importance of such principles:

> *The approach should take into account the views of the child or young person – often poignantly realistic – and seek to engage their agreement to participate. Our experience is that this plays a key role in the rehabilitation of the most troubled and troubling of children.*

The evidence is that youth proceedings often struggle to take this approach. A number of the children with whom we spoke expressed frustration that comments were made about them by the prosecution and in pre-sentence reports that they perceived to be unfair and were unable to rectify. Just for Kids Law and the Standing Committee for Youth Justice argued that the adversarial nature of the process, whereby the prosecution and defence 'battle' to prove guilt or innocence, was not conducive to children's meaningful participation. Such activity can be intimidating and difficult to understand, but can also alienate children who 'perceive that the prosecution is out to get them' and reduce the likelihood that they will be honest and open about 'what has gone wrong and what needs to happen to make things change'. In accordance with this finding, Hazel's research on child defendants' experiences found that they felt 'frustration about others making uninformed decisions about their future and about not being able to challenge perceived lies' (Hazel, 2002).

Several submissions commented that the courts often lacked meaning and relevance for children. As one young person noted: 'I've been in and out of court a lot, so court doesn't really mean anything to me anymore'. Solicitor Laura Janes said that for a child facing severe family and social difficulties, a court appearance was likely to appear insignificant:

> *...of course often the criminal offence is a tiny part of the chaos in that particular child's life. They're probably thinking in a non-serious case "What's all the fuss about? Actually I'm much more worried about my parents assaulting each other," or whatever else is going on.*

Many other submissions asserted that youth proceedings, and the Crown Court in particular, were 'mini-adult courts'. The adult nature of proceedings was seen to hinder child defendants' engagement as well as the effectiveness of the process.[102] However, it was stressed that the youth court provided an informal approach than adult court. [103] Nevertheless it was suggested that youth proceedings would better promote engagement and collaboration if they were held in a more informal environment. Some witnesses, including the Children's Commissioner for Wales and the Youth Justice Board, proposed that youth proceedings be convened outside of formal court buildings to improve young people's engagement and encourage local community justice.[104]

[102] Professor Neal Hazel, Professor Brian Littlechild
[103] Magistrates' Association; Nick Hunt, CPS; District Judges (Magistrates' Courts)
[104] See also: Penelope Gibbs.

Legitimacy

The literature suggests that the perception of the legitimacy of institutions is an important factor in determining engagement and, accordingly, effectiveness (Bottoms, 2001); McNeill et al, 2005; Gray, 2013). Rex's (1999) research on probationers found that attempts to improve the reasoning and decision making of probationers had to 'carry conviction in their eyes if they were to be effective' (as cited in McNeill et al, 2005: 29). Conviction flowed from the commitment shown by the supervisor towards the probationers (ibid).

In the court context, such research would suggest that children need to feel that they are treated with fairness and respect by the judiciary, and the wider court, if it is to engage them and support desistance. This account was reflected in submissions, but many noted that such principles were often perceived to be lacking in youth proceedings. It was a common feeling amongst the children with whom we spoke that they were not viewed by judges as individuals, but rather as another person on the conveyor belt of sentencing:

> *For a Judge, they're another person, they are just seeing somebody about – say it's about 11 o'clock, they've already seen three people this morning. They've done whatever they've done to three people. It's just another person. It could be a very similar crime; they are most likely going to pass down the sentence they passed on the last character or a similar one. They don't know this person's life is completely different. It's just different every time.*
>
> *They are just sitting there pointing their finger saying this and that and then going on with their life.*
>
> *It just seems like they don't care, it's just their job.*

Such evidence accords with research findings that professionals who show commitment and care hold greater legitimacy. In a similar vein, one young person spoke of the unfairness of having to arrive at the youth court at 9.30am and then waiting until the afternoon for his case to be heard; this 'makes you feel really pissed off and resentful by the time you get into court'. A number of practitioners commented that the criminal justice system, and its adversarial nature in particular, was viewed by children as a punishing force with which they are in conflict.[105] In this context, Just for Kids Law Youth Ambassadors asserted that 'the prosecution do not care about helping the individual as their role is to exasperate the entire proceedings, exaggerating and feeding the court with lies'. The implication is that such negative perceptions can impede children's engagement with the court and sentence. It is clearly also important that proceedings are perceived as legitimate by victims and society.

Taking responsibility and making amends (restoration)

Although this is not understood to be a principle of desistance, we have decided to add restoration to our list of factors in effective court practice. Submissions to the inquiry emphasised that assisting children to take responsibility for their behaviour and make

[105] Just for Kids Law; Tom Whitworth (YOT Manager)

amends could act as a positive influence on their behaviour.[106] In this light, YOT-based probation officer Alex Williams said that:

> *In my view the present adversarial system does not encourage children to take responsibility for their actions, a skill which is vital for their development if they are to grow into functional adults. At present the focus on whether the case against them can be proved, rather than what they can do to repair the harm they have caused and to make amends for their behaviour.*

As Farrall et al (2011: 2) assert, 'taking responsibility for past actions…appears at a glance to be at odds' with desistance principles, such as promotion of a positive identity, and strengths-based, forward-looking approaches. However, they argue that the answer is to focus on responsibility as activity to "'make good' in the present" as a means of 'making things right in the future' (Maruna, 2001, cited in ibid). This clearly accords with the desistance principles outlined above.

Conclusions – to promote desistance

If, as this inquiry believes, the core focus of youth proceedings should be promote desistance, the system as it is currently configured is clearly failing to do so. Instead it should be organised along the following principles to encourage – rather than mitigate against – positive behaviour change:

- Problem-solving - seeks to understand and address why a child has offended;
- Focuses on the child and their context, not just on the offence;
- The centrality of relationships to supporting change;
- Strengths-based;
- Recognises progress;
- Promotes engagement in proceedings through a collaborative and relevant approach;
- Legitimacy – in the eyes of child defendants but also the public; and
- Restoration.

Alternative models

The inquiry asked for submissions on alternative models to our current system. The overwhelming contention of respondents was that England and Wales should look to move to a more or fully non-adversarial approach, whereby problem-solving is prioritised.

A variety of alternative such approaches were appraised in submissions, including the Scottish Children's Hearing System, the Northern Ireland Restorative Youth Conferencing model, Family Group Conferences and the integration of youth crime and family proceedings (for an overview and analysis of such approaches see, Hazel, 2008; and Police Foundation and Justice, 2010). Our conclusion was that all offer both advantages and disadvantages. Without comprehensive analysis and first-hand experience of the workings of alternative

[106] Leeds YOS, Professor Littlechild; Alex Williams; Magistrates' Association; Children's Rights Alliance for England; Restorative Justice Council; Tom Whitworth; Paul Sutton, Head of Enfield Youth and Support Services

models and their wider context, the ability to conduct a robust appraisal of different approaches is problematic.

We are not therefore proposing one single model to be adopted, but rather outline reforms that are spread across a continuum of non-adversarial approaches. We recommend the piloting of these, which are promising but not yet proven. Ultimately, although we are disinclined to recommend a further inquiry, we agree with the argument made in several submissions, including the Youth Justice Board, that an independent commission be established to conduct a review of the current response to children who offend and a detailed and wide-ranging analysis of international models.

Recommendations

Towards a desistance-based approach

- We recommend that there be a presumption of automatic anonymity, as in the youth court[107], for all children at every stage of the youth justice system. This would involve:
    - Bringing into force s.44 Youth Justice and Criminal Evidence Act 1999 to apply reporting restrictions to children prior to charge;
    - New legislation to provide children with lifelong anonymity, unless reviewed by a court at a later date; and
    - The application of Section 49 of the Children and Young Persons Act 1933 to youth proceedings in the Crown Court, which would establish the same presumption of anonymity for children as there is the youth court.

- We recommend a further amendment to the Rehabilitation of Offenders Act 1974 to extend the Disclosure and Barring Service (DBS) filtering rules[108] regarding cautions and convictions given to under-18s.[109] We propose the following revisions for under 18s, which should be made by the Home Office within the forthcoming two years:
    - The above-mentioned time periods for the filtering of cautions and convictions for under 18s should be reduced;
    - Multiple convictions received by 18s should be permissible for filtering, providing a specified period of time has elapsed since the last conviction;
    - Convictions resulting in a custodial sentence should be filtered if the sentence was 6 months or less; and
    - Robbery and burglary offences that do not result in a custodial sentence should be able to be filtered.

[107] That is, with discretion to lift reporting restrictions in certain circumstances

[108] See Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013, came into force 29 May 2013

[109] Filtering is the term used to describe the process whereby certain offences are identified and not disclosed on a criminal record check. Under the current filtering rules, a conviction of an under 18 will only be expunged from their DBS certificate: if it is their sole conviction; if it did not result in a custodial sentence; and if it does not appear on the DBS list of offences that will never be filtered, which include violent and sexual offences, as well as robbery and burglary (DBS, 2013a). Multiple cautions can be filtered, but those appearing on the above-mentioned DBS list will not be. A conviction or caution of someone under the age of 18 will only be filtered from their record after 5.5 years and 2 years, respectively (DBS, 2013b).

- The panel recommends that, in the longer term, children who have offended be given a 'clean sheet' at 18, meaning that previous offences would be expunged from their record rather than only filtered. This would only be available if a specified period time had elapsed in which there had been no further convictions. This would not be available for homicide, serial sexual offences and other violent crimes. A similar recommendation to this was notably made by the Home Office in its 2002 report 'Breaking the Circle'.

- We recommend the piloting of a problem-solving approach in a small number of youth courts, with a view to rolling this out across England and Wales. The elements of such courts are: judicial monitoring, addressing the link between underlying needs and offending, multi-disciplinary team working, and consensual decision-making. Piloting should begin by the Ministry of Justice within the next year. The following action would be required:
    - Criminal Justice and Immigration Act 2008 (Schedule 1, paragraph 35) should be brought into force to enable courts to review youth rehabilitation orders to check on children's progress, amend sentences where necessary and ensure partner agencies are providing the required support to aid desistance.
    - Bench continuity should be introduced so at least one member of the same bench (likely the bench chair) is present throughout each case. This would not require legislation.
    - The power to convene youth courts outside court buildings to promote localism, ease of attendance and more collaborative decision-making.
    - The implementation of s.37 Children Act 1989 and provision of broader powers to the youth court to enable it to order children's services and partner bodies to provide support to children in need.

- As a further step, we advocate building upon the existing referral order[110] to bring about a more holistic, non-adversarial approach to youth offending. The model – which we are calling the Problem Solving Conference – would closely resemble a restorative justice conference, placing a greater emphasis on the involvement of victims than is currently so in the referral order[111], but would also focus on the participation of families and wider support services to enable the process to address the harm of the offence as well as its underlying causes. The conference would be the default option at court for under 16s. The Ministry of Justice should pilot the approach prior to full scale implementation. We set out the core features of the model below:
    - It would operate similarly to the referral order, whereby a case first comes to court and is automatically referred to the conference if guilt is admitted, unless the case is relatively minor and is subsequently discharged. There should be a discretionary power to retain certain specified grave offences in the youth court, such as homicide or prolific offending. Conference referrals would be available on multiple occasions.

[110] A referral order is currently automatically given to a child who pleads guilty and is in court for the first time, although there are exceptions to this rule. The LASPO Act 2012 introduced provision to enable the referral order to be used repeatedly.

[111] The most recent data (from 2001) shows that victims are involved with or attend panels in only 26% and 13% of cases, respectively.

  - Contested cases could be tried in the youth court and then referred to the Problem Solving Conference if found guilty.
  - Typical of restorative conferences, the process would require comprehensive preparatory work by one or two facilitators with the child, her family and the victim (separately) to build trusting relationships and gain a detailed understanding of the problems to be addressed.
  - Facilitators would conduct the preparatory work and the conference itself.
  - As with the referral order, the aim of the process would be to make an agreement about how the offence will be addressed. This would operate as an order of the court.
  - The agreement could include evidence-based interventions, delivered by mainstream children's agencies, to enable the child and her family to address the offending behaviour, as well as practical activities to make personal amends to the victim.
  - The agreement made in the conference could be returned to the court for approval, amendment or rejection, as is so in the Northern Ireland Youth Conferencing Model.
  - As with the referral order, the conference facilitators would be required to oversee the order, through reviewing the child's progress and the input of support services.
  - Existing referral order panellists would require additional training on the facilitation of conferences.

- Given that children who offend and are in the child protection system as a similar and overlapping population, our long term aspiration is that their problems are responded to within the same jurisdiction. In the medium-term, District Judges and Magistrates should be trained to sit in both the youth court and Family Court, which would bring the court systems closer together. We hesitate to recommend a further inquiry, but our opinion is that there is a need for the Ministry of Justice to commission an analysis of the effectiveness of viable international models that provide a holistic response to children's offending, without criminalisation wherever possible.

Full list of recommendations

Responding to system challenges

- We are concerned about evidence we have received that children are increasingly likely to appear in adult magistrates' courts following overnight police detention, owing to the reduction in youth court sittings. Such practice contravenes the principle, explicit in s.31 of the Children and Young Persons Act 1933, that children should be treated differently from adults, in recognition of their young age. It makes no sense to have a resource of specialist youth court magistrates and District Judges that are insufficiently used. **We recommend that Her Majesty's Courts and Tribunal Service direct all magistrates' courts to introduce a rota system, to ensure that a senior youth magistrate or youth ticketed District Judge is always sitting in the adult magistrates' court when the youth court is not in session.** As this would not result in any additional cost to the system or require legislation, we recommend that this is implemented within the next year.

- We propose that a requirement is introduced that all children are represented by a youth specialist lawyer at the police station. This should be introduced and monitored by Chartered Institute of Legal Executives (CiLEX) and the Solicitors Regulation Authority (SRA).

Diversion

- We see it as a matter of real concern that many witnesses, including magistrates, reported to us that there continue to be cases reaching court in which the decision to prosecute is not in the public interest. We would expect courts to be able to take robust action where they see such cases before them. This includes making use of their power to request that prosecution in such cases is reconsidered and calling the Regional Chief Crown Prosecutor to court to explain their decision. We recommend that the Director of Public Prosecutions takes charge of this issue herself. We also suggest that Her Majesty's Courts and Tribunals Service (HMCTS) issues guidance to youth courts on how to respond to such cases.

- The panel recommends that the Youth Justice Board works with local authorities to establish 'youth scrutiny panels' to ensure a focus on local use of diversionary and out-of-court measures with under-18s. Scrutiny panels should work on a continuing basis, which we would expect to comprise quarterly meetings as a minimum. Meeting any less than this is unlikely to allow panels to discharge effectively their scrutiny role.

- We request that the Home Office explain within three months of the publication of this report why the joint guidance regarding police recording of crimes committed by children in residential homes has not been approved and move towards sign-off and publication without further delay.

- We are concerned by the evidence submitted to inquiry that it is not made sufficiently clear to children by the police that some out-of-court disposals (community resolutions, youth cautions and youth conditional cautions) can be cited on enhanced disclosure and barring service reports.

- We recommend that the Home Office extend the Disclosure and Barring Service filtering rules[112] regarding cautions. More children who have received out-of-court disposals for minor offences should have their criminal record filtered (not disclosed) and, ideally, expunged when they turn 18. Further detail is provided on this recommendation in Chapter Seven.

- In view of their long term implications, all out-of-court measures – including Community Resolution (CR) – should ideally be given in the presence of an Appropriate Adult (AA), who fully understands their possible consequences. This may not be the child's parent. We propose that the YJB encourage the use of trained AAs in addition to the presence of parents rather than advising that parents are the default AA. We also suggest that scrutiny panels as part of their work seek to ascertain whether children are giving informed consent to CRs, as it would be impractical to require that AAs are present for this street disposal.

Addressing underlying needs

- It is troubling that our evidence has shown that many children in care are appearing in court unaccompanied by an adult. The Department for Education and Ministry of Justice should alter guidance so that the allocated social worker is required to give a verbal report in court regarding the child's circumstances. We would expect this to be in place within one year.

- We recommend that Her Majesty's Courts and Tribunals Services direct youth courts to institute a system of timetabling, whereby children are given a time slot in which to attend. This would better enable social workers and other supporters to attend court with child defendants. This should be applied within the next year.

- The Secretary of State for Justice should introduce into the National Standards for Youth Justice Services a requirement that a specified proportion of local authority children's social workers be seconded to YOTs on a regular timetable. This would benefit both services. Seconded social workers would provide YOTs with a vital resource to address welfare needs and access to children's services. Social workers returning to children's services from YOT secondment would bring with them valuable expertise regarding children who offend (adapted from CSJ, 2012). Her Majesty's Inspectorate of Probation (HMIP) inspects adherence to the National Standards and would highlight any failure by children's services to fulfil their secondment responsibilities to the children's inspectorate, Ofsted. We would expect this recommendation to be implemented within the next year.

- Youth proceedings should be afforded 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 are welfare concerns and the outcome of this investigation should be reported back to the youth court prior to sentencing. The Ministry of Justice should seek an early

[112] See Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013, came into force 29 May 2013

opportunity to introduce legislation to this effect, and in any event within the span of the next Parliament.

- Alongside s.37, we recommend the creation of a broader legislative provision that would enable youth proceedings to order other relevant services – including Child and Adolescent Mental Health Services, Schools and Further Education Colleges – to provide necessary support to child defendants. These services have a key duty to cooperate with local authorities to provide support and services to children in need under s.10 Children Act 2004. The court would be empowered to hold these services to account, in accordance with this statutory duty. The Ministry of Justice should seek an early opportunity to introduce legislation to this effect, and in any event within the span of the next Parliament.

- Youth justice Family Group Conferences – which bring together the child, their family, and the victim to express their views and find a way to address the offending and the harm that has been caused – should be made available at the pre-sentence stage to inform the Pre-Sentence Report and thus the sentence of the court. This would give victims a voice in youth proceedings and assist sentencers with better understanding the child's family context and solutions to their offending. This would require legislation, akin to the provision set out in the Crime and Courts Act 2013 (Part 2, Schedule 16), which allows courts to defer sentence to allow for restorative justice to take place.

Engagement

- The implementation of the new youth justice system assessment, AssetPlus, should be used as an opportunity to introduce a new requirement in the National Standards for Youth Justice Services that all child defendants have a comprehensive assessment of their needs – welfare, communication, and mental health – prior to appearing in court, if one has not been completed in the previous six months. Children and their representative should be entitled to access, review and input into these (article 12 UNCRC). We would expect this recommendation to be implemented by the Secretary of State for Justice within the next year.

- Section 104 of the Coroners and Justice Act 2009 should be brought into force by the Ministry of Justice and be extended, by means of new legislation, to enable child defendants to have an intermediary to provide communication support throughout their case and not just for the giving of evidence. This should be achieved within two years.

- At any substantive hearings, we would expect all children to be accompanied by the most appropriate adult supporter in their lives – be it their YOT case worker, a teacher, or another. This would require legislative action to ensure it is a statutory requirement.[113]

[113] This would supplement the requirement that a parent or guardian must attend court with an under 16-year-old.

Competence

- The Bar Standards Board (BSB) , Solicitors' Regulation Authority (SRA) and the Chartered Institute of Legal Executives (CILEx) should introduce, without delay, a requirement for all legal practitioners representing children at the police station and practising in youth proceedings to be accredited to do so. For new entrants into youth proceedings, this would comprise an initial spell of a minimum of ten hours continuing professional development (CPD) accredited youth training as well as annual refresher training in the field of, it is suggested, two hours' CPD. Criminal justice system-experienced young people should be extensively involved in the delivery of training; this might involve youth-led elements whereby they describe their court experiences and explain effective engagement strategies. Training should include elements on:

    - Youth court law and related provision;
    - The needs of child defendants (including mental health issues, speech, language and communication needs, welfare issues and child development);
    - Effective participation to enable defendants to participate fully and fairly in courtroom proceedings. This should include how to manage learning and communication difficulties, mental health problems and vulnerability, and fitness to plead;
    - Jurisdiction and practice directions; and
    - The impact of interventions, which should comprise visits to youth custodial institutions and community services at least twice a year (adapted from CSJ, 2012: 93).

- In the medium term, criminal pupillage, criminal trainee seats and other advocates with any rights to appear in youth proceedings should include content on working with young defendants, witnesses and victims in their initial advocacy training. This should be introduced and subject to supervision by BSB, SRA and CILEx.

- Magistrates and District Judges already complete youth training before they are allowed to practise in youth proceedings. However we are calling on the Judicial College to augment this with the training listed below. Priority should be afforded to this to enable implementation within one year. Attendance should be made an express condition of the judicial 'ticket':

    - Comprehensive training on speech, language and communication needs, child development, mental health needs and welfare issues;
    - Twice-yearly visits to youth custodial institutions and community services, as set out above so as to ensure that understanding of the content of sentences is kept up to date. Such visits should be appropriately reimbursed; and
    - Magistrates should observe referral order panels as part of their training.

- Magistrates should be able to specialise in the youth court, with the option of also sitting in the Family Court (rather than or in addition to the Adult Magistrates' Court). Joint youth court and Family Court training should also be introduced.

- A designated senior judge should be appointed to be the youth court representative at a national level. This should be a statutory post and legislated for by the Ministry of Justice within the next two years.

The Crown Court

- The panel agreed that there should be a clear presumption – in law – that all child defendants are dealt with in the youth court. Any residue of cases to be heard in the Crown Court should be exceptional only, determined on a case-by-case basis where the circumstances are of exceptional gravity and it is clearly necessary and in the interests of justice for a trial to occur in the Crown Court. Any such decisions should be capable of review prior to trial. Legislation to this effect should be made and put into force within two years.

- A sufficient proportion of magistrates should be trained within the next two years to deal with serious sex cases.

- Crown Court judges should be ticketed to deal with youth cases (whether in the Crown Court or youth court) as they are already for serious sexual offences and in family proceedings. The quality of the training should be akin to the 'serious sexual offences course' that is currently in place for the senior judiciary. This recommendation should be implemented within one year.

- Youth cases that continue to be heard in the Crown Court should follow the 2013 Practice Direction. Presiding Judges of the Circuit should ensure that this is achieved. We would also recommend that adherence to the practice direction is the focus of a future joint thematic inspection by HMI Probation and partners.

Towards a desistance-based approach

- We recommend that there be a presumption of automatic anonymity, as in the youth court[114], for all children at every stage of the youth justice system. This would involve:
    - Bringing into force s.44 Youth Justice and Criminal Evidence Act 1999 to apply reporting restrictions to children prior to charge;
    - New legislation to provide children with lifelong anonymity, unless reviewed by a court at a later date; and
    - The application of Section 49 of the Children and Young Persons Act 1933 to youth proceedings in the Crown Court, which would establish the same presumption of anonymity for children as there is the youth court.

- We recommend a further amendment to the Rehabilitation of Offenders Act 1974 to extend the Disclosure and Barring Service (DBS) filtering rules[115] regarding cautions and convictions given to under-18s.[116] We propose the following revisions for under 18s, which should be made by the Home Office within the forthcoming two years:

[114] That is, with discretion to lift reporting restrictions in certain circumstances.

[115] See Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013, came into force 29 May 2013

[116] Filtering is the term used to describe the process whereby certain offences are identified and not disclosed on a criminal record check. Under the current filtering rules, a conviction of an under 18 will only be expunged from their DBS certificate: if it is their sole conviction; if it did not result in a

- The above-mentioned time periods for the filtering of cautions and convictions for under 18s should be reduced;
- Multiple convictions received by 18s should be permissible for filtering, providing a specified period of time has elapsed since the last conviction;
- Convictions resulting in a custodial sentence should be filtered if the sentence was 6 months or less; and
- Robbery and burglary offences that do not result in a custodial sentence should be able to be filtered.

- The panel recommends that, in the longer term, children who have offended be given a 'clean sheet' at 18, meaning that previous offences would be expunged from their record rather than only filtered. This would only be available if a specified period time had elapsed in which there had been no further convictions. This would not be available for homicide, serial sexual offences and other violent crimes. A similar recommendation to this was notably made by the Home Office in its 2002 report 'Breaking the Circle'.

- We recommend the piloting of a problem-solving approach in a small number of youth courts, with a view to rolling this out across England and Wales. The elements of such courts are: judicial monitoring, addressing the link between underlying needs and offending, multi-disciplinary team working, and consensual decision-making. Piloting should begin by the Ministry of Justice within the next year. The following action would be required:
    - Criminal Justice and Immigration Act 2008 (Schedule 1, paragraph 35) should be brought into force to enable courts to review youth rehabilitation orders to check on children's progress, amend sentences where necessary and ensure partner agencies are providing the required support to aid desistance.
    - Bench continuity should be introduced so at least one member of the same bench (likely the bench chair) is present throughout each case. This would not require legislation.
    - The power to convene youth courts outside court buildings to promote localism, ease of attendance and more collaborative decision-making.
    - The implementation of s.37 Children Act 1989 and provision of broader powers to the youth court to enable it to order children's services and partner bodies to provide support to children in need.

- As a further step, we advocate building upon the existing referral order[117] to bring about a more holistic, non-adversarial approach to youth offending. The model – which we are calling the Problem Solving Conference – would closely resemble a restorative justice conference, placing a greater emphasis on the involvement of

custodial sentence; and if it does not appear on the DBS list of offences that will never be filtered, which include violent and sexual offences, as well as robbery and burglary (DBS, 2013a). Multiple cautions can be filtered, but those appearing on the above-mentioned DBS list will not be. A conviction or caution of someone under the age of 18 will only be filtered from their record after 5.5 years and 2 years, respectively (DBS, 2013b).

[117] A referral order is currently automatically given to a child who pleads guilty and is in court for the first time, although there are exceptions to this rule. The LASPO Act 2012 introduced provision to enable the referral order to be used repeatedly.

victims than is currently so in the referral order[118], but would also focus on the participation of families and wider support services to enable the process to address the harm of the offence as well as its underlying causes. The conference would be the default option at court for under 16s. The Ministry of Justice should pilot the approach prior to full scale implementation. We set out the core features of the model below:

- It would operate similarly to the referral order, whereby a case first comes to court and is automatically referred to the conference if guilt is admitted, unless the case is relatively minor and is subsequently discharged. There should be a discretionary power to retain certain specified grave offences in the youth court, such as homicide or prolific offending. Conference referrals would be available on multiple occasions.
- Contested cases could be tried in the youth court and then referred to the Problem Solving Conference if found guilty.
- Typical of restorative conferences, the process would require comprehensive preparatory work by one or two facilitators with the child, her family and the victim (separately) to build trusting relationships and gain a detailed understanding of the problems to be addressed.
- Facilitators would conduct the preparatory work and the conference itself.
- As with the referral order, the aim of the process would be to make an agreement about how the offence will be addressed. This would operate as an order of the court.
- The agreement could include evidence-based interventions, delivered by mainstream children's agencies, to enable the child and her family to address the offending behaviour, as well as practical activities to make personal amends to the victim.
- The agreement made in the conference could be returned to the court for approval, amendment or rejection, as is so in the Northern Ireland Youth Conferencing Model.
- As with the referral order, the conference facilitators would be required to oversee the order, through reviewing the child's progress and the input of support services.
- Existing referral order panellists would require additional training on the facilitation of conferences.

- Given that children who offend and are in the child protection system as a similar and overlapping population, our long term aspiration is that their problems are responded to within the same jurisdiction. In the medium-term, District Judges and Magistrates should be trained to sit in both the youth court and Family Court, which would bring the court systems closer together. We hesitate to recommend a further inquiry, but our opinion is that there is a need for the Ministry of Justice to commission an analysis of the effectiveness of viable international models that provide a holistic response to children's offending, without criminalisation wherever possible.

[118] The most recent data (from 2001) shows that victims are involved with or attend panels in only 26% and 13% of cases, respectively; Newburn T et al, 2001: 42

Annex A: List of witnesses

	Name			**Role and organisation**
1.	Dr	Vici	Armitage	Research Associate, University of Leicester, Department of Criminology

2.		Mark	Ashford	TV Edwards Solicitors LLP
3.		Jonathan	Bache	Deputy Chair of the Magistrates' Association, formerly Chair of its Youth Courts Committee
4.	Dr	Tim	Bateman	Reader in Youth Justice, University of Bedfordshire
5.		Sue	Berelowitz	Deputy Children's Commissioner, England
6.		Maggie	Blythe	Independent Chair of Local Safeguarding Children Boards (LSCB) in Hampshire, the Isle of Wight and Oxfordshire; Regional Director for the South East, Association of Independent LSCB Chairs
7.		Chrisann		Just for Kids Law Youth Ambassadors
8.		Steve	Crocker	Deputy Director, Children's Services, Hampshire and the Isle of Wight
9.		Penelope	Gibbs	Chair, Standing Committee for Youth Justice
10.		John	Graham	Director, Police Foundation
11.		Gulag		Just for Kids Law Youth Ambassadors
12.		Kathryn	Harrison	Chair, Youth Courts Committee, Magistrates' Association
13.	Professor	Neal	Hazel	Director, Salford Institute for Public Policy (SIPP), University of Salford
14.		Lin	Hinnigan	Chief Executive, Youth Justice Board
15.	Professor	Kathryn	Hollingsworth	Newcastle Law School
16.		Jim	Hopkinson	Head of Targeted Youth Services, Leeds
17.		Nick	Hunt	Director, Strategy and Policy, Crown Prosecution Service
18.		Eddie	Isles	YOT Managers Cymru & Manager, Swansea Youth Offending Service
19.		Laura	Janes	Consultant solicitor advocate and co-Legal Director, Howard League for Penal Reform and Scott-Moncrieff and Associates Ltd
20.		Gareth	Jones	Chair, Association of YOT Managers and Head, Cheshire West, Halton and Warrington Youth Offending Service
21.		Loraine	Khan	Associate Director, Children and Young People Programme, Centre for Mental Health,
22.		Shauneen	Lambe	Director, Just for Kids Law
23.	Professor	Brian	Littlechild	University of Hertfordshire and British Association of Social Workers
24.		Sally	O'Neill, QC	Furnival Law Chambers
25.	Professor	Jo	Phoenix	Professor in Criminology, University of

				Leicester, Department of Criminology
26.		Greg	Stewart	GT Stewart Solicitors
27.		Keith	Towler	Children's Commissioner for Wales
28.		Kim	Turner	Lead Speech and Language Therapist, HM YOI Feltham, and member, Royal Society of Speech and Language Therapists
29.		Eileen	Vizard	Consultant Child and Adolescent Psychiatrist
30.		Kevin	Wilkins	Joint Head of Criminal Justice for Norfolk and Suffolk Constabularies
31.	A focus group with five 15 to 17-year-old boys at Cookham Wood YOI			
36.	A focus group with seven young people at Just for Kids Law			

Annex B: List of written submissions

	Individual/ organisation	**Role/ expertise**
1.	Professor Barry Goldson	Charles Booth, Chair of Social Science, The

		University of Liverpool
2.	YOT managers Cymru	
3.	Peter Hungerford-Welch	Assistant Dean (Professional Programmes), The City Law School, City University
4.	David Simpson	Former District Judge (Family and Youth Justice) and Youth Justice Board Member
5.	John Plummer	Audax Ventures Limited
6.	Professor Roger Smith	School of Applied Social Sciences, Durham University
7.	Avon and Somerset Constabulary and Crown Prosecution Service South West	
8.	David Chesterton JP	Magistrate
9.	Paul Mitchell	Secure Forensic Mental Health Service, Greater Manchester West NHS Trust
10.	National Association for Youth Justice	
11.	Youth Justice Board for England and Wales	
12.	Royal College of Psychiatry Special Interest Group in Adolescent Forensic Psychiatry	
13.	Just for Kids Law Ambassadors	
14.	Lorrine Marer	Behavioural specialist
15.	Jonas Roy Bloom	
16.	Association of YOT Managers	
17.	Professor Neal Hazel	Director, Salford Institute for Public Policy (SIPP), University of Salford
18.	Chief Constable Jacqui Cheer	National Policing Lead for Children and Young People
19.	Childhood First	
20.	Children's Rights Alliance for England (CRAE)	
21.	Professor Phoenix, Dr Kelly and Dr Armitage	
22.	Family Rights Group	

23.	Alex Williams	YOT-based Probation Officer
24.	Sharon Ereira JP	Magistrate
25.	Just for Kids Law	
26.	Kirklees Integrated Youth Support	
27.	Association of Panel Members	
28.	Dr Ray Arthur	Reader in Law, Northumbria University School of Law
29.	Dr Patricia Gray	Associate Professor in Criminal Justice Plymouth University
30.	Children and Young People Services, Buckinghamshire County Council	
31.	Prison Reform Trust	
32.	Professor Kathryn Hollingsworth	
33.	Ofsted	
34.	Department of Health-led cross-government Liaison and Diversion programme	
35.	The Standing Committee for Youth Justice	
36.	Charlotte Newton	Student social worker (YOS-based)
37.	Tom Whitworth	YOT Manager
38.	District Judges [Magistrates' Courts]	
39.	The Michael Sieff Foundation	
40.	Action for Prisoner's Families	
41.	North London Youth Panel	
42.	Leeds Youth Offending Service	
43.	Margaret Wilson OBE JP	Magistrate
44.	Steve Waters	YOT Manager
45.	Justices' Clerks' Society.	
46.	Anonymous YOT	
47.	Restorative Justice Council	
48.	Magistrates' Association	
49.	Paul Sutton	Head, Enfield Youth and Family Support Service
50.	Hertfordshire Constabulary	
51.	Institute of Recovery from Childhood Trauma	
52.	The Law Society	
53.	Office of the Children's Commissioner	
54.	Kids Company	
55.	British Association of Social Workers (BASW)	

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