

Developments and Research Needs in Youth Justice Conference Proceedings

Background

This Report summarises the proceedings from a Youth Justice symposium held on 3 May 2016. The event was organised by the Sieff Foundation, and funded and hosted by the Nuffield Foundation. Its purpose was to bring together a select group of senior policymakers, judges and magistrates, practitioners, researchers and other experts in the field of youth justice to review and update the recommendations of the Parliamentarians' Inquiry into the effectiveness of the youth justice system - chaired by Lord Carlile and published in 2014 - in the light of current developments. The latter include the review undertaken by Lord Laming on the over-representation of looked after children in the Criminal Justice System (published shortly after this symposium as 'In Care, Out of Trouble'), the Youth Proceedings Advocacy Report commissioned by the Bar Standards Board and CILEX published in November 2015 and the ongoing review by Charlie Taylor on behalf of the Lord Chancellor (final report expected in July 2016).

At this stage the Report reflects the learning emerging from those reports and the conference. A further policy workshop is planned for the Autumn 2016 to develop updated recommendations in the light of the Laming and Taylor reviews.

Discussion groups focused on five key themes: diversion from courts; work in the courts; the role of problem solving courts; professional competence; and criminal records.

This Report is based on the Conference Programme (Attachment 1), the speakers' contributions and reports prepared from roundtable discussions and plenary discussions.

There are papers available for download via the conference programme on the website from

- Ben Byrne and Andy Peadar on diversion,
- Ben Estep on problem solving courts,
- Charlie Taylor: the Interim Report on his Review,

- Dominic Goble on the work of the Northamptonshire County Youth Panel
- Dominic Goble on the use of Section 9 of the Children and Young Persons Act 1969, and links to
 - the Bar Standards Board Press Release on improving advocacy standards in the Youth Court (see: <https://www.barstandardsboard.org.uk/media-centre/press-releases-and-news/bsb-seeks-to-improve-advocacy-standards-within-the-youth-court>),
 - the Standing Committee on Youth Justice Report 'Growing Up, Moving on' on criminal records of young people (see: <http://scyj.org.uk/wp-content/uploads/2016/04/Growing-up-moving-on-Executive-Summary.pdf>); and
 - the Prison Reform Trust Report 'In Care, Out of Trouble', the Laming Report (see: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/In%20care%20out%20of%20trouble%20summary.pdf>).

Principles

A number of core principles emerged from the conference.

Young people who may or do appear before the Youth Court are likely to be children in need. They should be treated as such. It is an apt phrase that they should be 'Children First, Offenders Second'.

The Youth Court has a statutory duty to prevent offending and to have regard to the welfare of the child. Proceedings should be conducted so as to prioritise those outcomes.

Diversion from the court system should be seen as the starting point for young offenders.

Both in and out of court there should be a relationship-based approach to working with the young person, which requires consistency of personnel.

Young people appearing before the courts have rights to properly trained representation. This necessitates improved availability and consistency (and possibly mandation) of training for those working with children.

Local youth justice systems should seek out and implement best practice models of working with young people.

Criminal records imposed during childhood should not extend into adulthood so as to be a lifelong prejudice to the wellbeing and employment prospects of the young person without good and sufficient cause.

A. Diversion from courts

1. All child defendants should have a comprehensive assessment of their needs – welfare, communication, and mental health – as early in the process as possible and certainly well in advance of 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) but this wider information is not routinely reaching the courts.

2. Youth Scrutiny Panels have been developed in some areas to examine cases prior to prosecution to ensure a focus on local use of diversionary and out-of-court measures with under-18s. This model needs to be developed, standardised and rolled out further in local areas. One issue to be clarified is who should ‘own’ these panels, given that they potentially tackle a range of issues including: the appropriateness of disposals (MoJ/Judiciary); the approach taken by the police (HO); and the extent to which proceedings put the child first (DfE).

3. Participants wanted to see greater use made of voluntary attendance at police stations by child defendants so that arrangements could be made to ensure access to a solicitor, and for a proper assessment of need.

4. There continue to be cases reaching court in which the decision to prosecute is not clearly and demonstrably in the public interest. There was a desire for Courts to be able to take robust action where they see such cases before them. This might include making use of their power to request that prosecution in such cases is reconsidered but concern was expressed that this might create an expectation on the part of the defendant that the prosecution would be withdrawn. There was a perceived need for the Judiciary to issue guidance to youth courts on how to respond to such cases.

5. There could be mechanisms to increase the transparency and accountability of decisions made by the Regional Chief Crown Prosecutor and CPS staff. CPS Youth Court prosecutors should be fully trained and have control of their cases at hearings. This is an area for the Director of Public Prosecutions to consider reform.

6. The age of criminal responsibility was raised in discussion. While it was recognised that there are pragmatic reasons not to revisit this at the current time, participants felt that a clearer policy statement that there should be a presumption of diversion for 10-14 year olds might mitigate the risks for large numbers of younger child defendants of having such a low threshold (in comparison with other countries). It was also felt clearer messaging about these risks might be helpful in public debate.

B. Work in the Courts

1. Children are still likely to appear in adult magistrates' courts following overnight police detention, owing to the reduction in youth court sittings. This is unacceptable. HMCTS should consider directing 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. The hearing should take place in a youth court room.

2. A looked after child should appear in court only with an adult who knows him or her. The Department for Education and Ministry of Justice should alter guidance so that the allocated social worker is required to give an oral report in court regarding the child's circumstances.

3. Attention needs to be paid to the Modernising Courts and Tribunals Programme, which seeks to build the system around its users. Consistent with this HMCTS should direct youth courts to institute a system of timetabling, whereby children are given a time slot in which to attend, to avoid long waiting periods at court. NHS style text messaging informing parties, representatives and witnesses of the date and time of court appearance should be considered. Youth courts should be able to convene outside court buildings to promote localism, ease of attendance and more collaborative decision-making.

4. Bench continuity should be introduced so at least one member of the same bench (likely the bench chair) is present throughout each case.

5. Youth courts should consider using the existing power contained in section 9 of the Children and Young Persons Act 1969 to request a local authority to investigate and provide information relating to the home surroundings, school record, health and character of the young person before the court.

6. Youth courts should be afforded the power (as 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 within the span of the next Parliament.

7. The Ministry of Justice should consider introducing legislation to enable a youth court 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.

8. There should be a presumption of automatic anonymity, as in the youth court, for all children at every stage of the youth justice system. This would involve:

a. Bringing into force s.44 Youth Justice and Criminal Evidence Act 1999 to apply reporting restrictions to children prior to charge;

b. New legislation to provide children with lifelong anonymity, unless reviewed by a court at a later date; and

c. 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.

9. 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 a registered and trained intermediary to provide communication support throughout their case and not just for the giving of evidence.

C. Problem Solving Courts

1. Problem solving approaches have strong potential in the youth justice area but the current evidence base for effectiveness is weak and it is unlikely that models that have been adopted elsewhere (such as the US) can simply be lifted and transported to the UK. A more robust and

systematic approach to piloting of a problem solving approach in a small number of youth courts is needed, with a view to improving evidence of effectiveness to inform whether and how further roll-out would be desirable across England and Wales. The elements of such courts which might usefully be tested: judicial monitoring, addressing the link between underlying needs and offending, multi-disciplinary team working, and consensual decision-making.

2. Schedule 1 paragraph 35 of the Criminal Justice and Immigration Act 2008 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.

3. Building upon the existing referral order there should be a more holistic, non-adversarial approach to youth offending.

4. There has been discussion about introducing the concept of a Problem Solving Conference, resembling a restorative justice conference, with greater emphasis on the involvement of victims than is currently so in the referral order, 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 consider piloting the approach and engaging in further consideration of the concept.

D. Professional Competence

1. There is a significant level of concern about the current position with regard to legal representation of young people. It was noted that every lawyer or judge in the court room undertakes some specialist training in relation to working with children, save for their prosecutor and legal representative. For some it may even be regarded as a training ground. The problem extends to representation at the police station where young people could be advised by a solicitor, legal executive or staff authorised by them.

2. There is a consensus that standards of advocacy for young people are generally low and that that has potentially damaging effects for vulnerable young people. There are differences of opinion about how to proceed on this issue. There is a view that there should be mandatory training and panel accreditation to ensure good standards. The regulatory bodies are concerned that mandatory

training could impose an unreasonable burden on the legal professions and bring about a reduction in service provision.

3. For the time being it is agreed that the Bar Standards Board (BSB), the Solicitors' Regulation Authority (SRA) and the Chartered Institute of Legal Executives (CILEx) (and perhaps including the Crown Prosecution Service) should collaborate on training for all legal practitioners representing young people at the police station and in youth proceedings. This should include working with the Advocacy Training Council (now renamed the Inns of Court College of Advocacy (ICCA)) and Just for Kids Law.

4. The problem of the standard of legal representation needs urgent attention and the effect of any developments will need to be kept under close review. It will be the subject of ongoing consideration at future conferences organised by the Foundations sponsoring this conference.

5. The Ministry of Justice should consider providing an uplift in legal aid fees for youth work.

6. Training should include elements on:

a. Youth court law and related provision, and the nature and collection of relevant evidence including educational and psychological assessments;

b. The needs of child defendants (including mental health issues, speech, language and communication needs, welfare issues and child development);

c. Enabling defendants to participate fully and fairly in courtroom proceedings. This should include how to manage learning and communication difficulties, mental health problems and vulnerability, fitness to plead and the use of appropriate language to engage young people;

d. Jurisdiction and practice directions; and

e. 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).

7. 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.

8. Magistrates and District Judges already complete youth training before they are allowed to practise in youth proceedings. The Judicial College should 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'.
 - a. Comprehensive training on speech, language and communication needs, child development, mental health needs and welfare issues;
 - b. 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
 - c. Magistrates should observe referral order panels as part of their training.

9. 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.

10. 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.

E. Criminal records

1. The Rehabilitation of Offenders Act 1974 shall be amended to extend the Disclosure and Barring Service (DBS) filtering rules regarding cautions and convictions given to under-18s.

2. The time periods for the filtering of cautions and convictions for under 18s should be reduced.

3. It should be permissible for multiple convictions received by 18s to be filtered, providing a specified period of time has elapsed since the last conviction.

4. Convictions resulting in a custodial sentence should be filtered if the sentence was 6 months or less.

5. Robbery and burglary offences that do not result in a custodial sentence should be able to be filtered.
6. Where cautions are administered the police must ensure that the young person understands and give written information that this will exist as a criminal record and that there may be long term consequences.
7. Children who have offended should 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, genuinely serious sexual offences and other violent crimes.
8. It was noted that the Home Office had not yet published the joint guidance regarding police recording of crimes committed by children in residential homes. It was felt that concordats agreed locally between the police and directors of children's services might in any case offer a better way forward.
9. Consistent with these proposals the recommendations in the Standing Committee on Youth Justice Report on the criminal records of young offenders 'Growing Up, Moving on' received broad support. The SCYJ is encouraged to continue to seek their adoption.

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