



**Proposed Model for the National Implementation of Court Reviews
of Youth Rehabilitation Orders.**

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Anne Burnett, High Sheriff of Northamptonshire 2014/2015

Jon O'Byrne, Head of Northamptonshire Youth Offending Service at that time

Dominic Goble JP., Chair of Northamptonshire Youth Panel

Sean Currie, Deputy Justices' Clerk, Northamptonshire Magistrates' Courts, Her Majesty's Courts and Tribunals Service

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Proposed model for the national implementation of Court Reviews of Youth Rehabilitation Orders.

Introduction

1. The proposal for implementing YRO Reviews follows from the recommendations made in the report of the *Independent Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court*, chaired by Lord Carlile of Berriew published in June 2014. The report recommends:

“...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”.**
2. This paper draws upon a collaborative approach to these recommendations in Northamptonshire, and seeks to establish a model for how YRO Reviews could offer both judicial monitoring and introduce a problem solving approach in practice. It is acknowledged that services are constituted differently across the country, and there are different cultures of engagement between criminal justice partners. This model is therefore presented in broad terms that can be adapted with details to meet local needs across England and Wales.
 3. The proposed model draws upon two bodies of evidence of effective practice. Firstly there is compelling evidence of the positive impact of judicial monitoring in terms of offender compliance and reductions in recidivism¹. Where judicial monitoring is used to enhance the rehabilitative impact of post sentence supervision, it is termed “therapeutic jurisprudence”. Where judicial monitoring is successful in securing offender compliance, it does so through emphasis on the offender’s perception of fairness, which is termed “procedural justice”. The effectiveness of these approaches in specialist Courts is particularly well documented. Secondly the structured practice delivered by Youth Offending Teams nationally, and in particular assessment for interventions and reports, is based upon rigorous effective practice principles as identified by the Youth Justice Board for England and Wales².
 4. Hitherto there has been no attempt to draw these two domains together. However there is a strong argument that a synthesis of these domains could give significant benefits in terms of reduced recidivism not just for specialist Courts, but in a more general population of offenders³. The model presented here is an attempt to achieve this synthesis.

¹ Ward, J. (2014) Are Problem Solving Courts the Way Forward for Justice? Howard League What is Justice? Working Papers 2/2014

² YJB (2008) Key Elements of Effective Practice

³ Kaiser, K., Holtfreter, K., (2016) Criminal Justice And Behavior, 2016, Vol. 43, No. 1, January 2016

5. Underpinning this approach is the key principle that where children and young people commit offences, it is necessary to draw together wider services for children and young people to frame a cohesive response to their difficulties that will stabilise their situation before direct offending behaviour work can take place. Lord Carlile's report noted:

“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”.

The model therefore specifically involves the commitment of a partnership of agencies which will be constituted to meet the needs of each child.

Legislative Framework

6. The Reviews will be held in accordance with Criminal Justice and Immigration Act 2008 Schedule 1 Paragraph 35 (1):

The Secretary of State may by order—

- (a) enable or require a court making a youth rehabilitation order to provide for the order to be reviewed periodically by that or another court,**
- (b) enable a court to amend a youth rehabilitation order so as to include or remove a provision for review by a court, and**
- (c) make provision as to the timing and conduct of reviews and as to the powers of the court on a review.**

Operation of YRO Reviews is therefore dependant on the Secretary of State making this order. This paper will make recommendations for the wording of the Secretary of State's order insofar as it would support the operation of the model proposed.

Agency Commitment

7. The administration of these Reviews will be driven by local YOTs. This is facilitated by the quasi-independent status of YOTs in those areas where agency structure still follows the principle of a discrete multi-disciplinary team hosted by the Local Authority, with a designated Head of Service. In those areas that do not follow this model it may be necessary to identify a Local Authority manager of sufficient seniority and independence to deliver the necessary commitment. A senior LA manager with a commitment to this process represented on the YOT management board could also fulfil this function. The management board would also provide a suitable forum to secure commitment to YRO Reviews from partner agencies and to establish a problem solving culture in those agencies.

Primary Purpose of YRO Reviews

8. Whilst there is a clear role for magistrates in holding young offenders to account, the primary purpose of the Reviews will be to ensure that the adults and agencies working with each child are focused on joint working that will stabilise the child's situation and meet his/her needs sufficiently to allow direct offending behaviour work and restorative processes to be effective. Therefore the Reviews will be primarily focused on the child's support, and the calling of a Review will not constitute an escalation of tariff.

Targeting

9. In order to ensure that Court and agency resources are appropriately allocated, it will be helpful for suitable cases to be targeted. Where a YRO is proposed, the YOT will provide an assessment in the pre-sentence report to advise the Court on the necessity for a YRO Review. Where there are no complex needs to address, or where there is comprehensive support around a child to meet their needs, this will be indicated. However, where there are complex needs that are not sufficiently addressed to support desistance, this will be highlighted, along with a suggested list of attendees for a Review.

Procedure at Pre-sentence Report Stage

10. The assessment of criminogenic needs and desistance factors will already have been completed when the pre-sentence report (PSR) author made the initial Asset assessment. The need for a YRO Review to support collaborative working will therefore be apparent at an early stage, and the PSR author will already have made contact with supporting agencies where possible.
11. In normal circumstances, the case manager (usually the PSR author) will complete an Intervention Plan (IP) after the YRO has been made, and within 10 working days of sentence. However where a YRO Review is indicated, the PSR author will need to complete the IP as fully as possible pre-sentence. An example blank IP is attached at Appendix I. The objectives in the plan relate back to the assessed criminogenic need from the Asset. These objectives will include direct offending behaviour work, and also the wider social supports that need to be put in place to support desistance. This will require liaison with all of the agencies and staff who need to contribute to the plan in order to secure commitment to its implementation. The IP will detail precisely what each member of staff and each agency will do in order to address the assessed criminogenic need and support the child. Where there is not agreement between agencies, or where no commitment can be secured, this will be highlighted on the IP. The IP is then appended to the PSR.
12. The PSR will include in its proposal the recommendation for a YRO Review. Where the author is satisfied that the commitment of the various agencies to the IP is in place, they will recommend a YRO Review to be listed for a month after sentence. Where there are significant gaps in the IP, it may be proposed that the Review is listed at a much earlier stage to allow for a problem solving process to secure a collaborative agreement.

Procedure at sentencing hearing

13. Where the bench agrees that a Review would be beneficial, this will be pronounced when the sentence is made, and the case listed for Review. The sentencing bench will determine the timing of the Review based on the extent to which the IP has been agreed, and therefore the Order is viable in its current form. In making the pronouncement, the Chair of the Bench will list the people and agencies that need to be represented at the Review. These invitations will be forwarded to the relevant people by the local YOT, making it clear that their attendance is requested by the Court.
14. It is recommended that in making an Order under Criminal Justice and Immigration Act 2008 Schedule 1 Paragraph 35 (1), the Secretary of state empowers sentencing Courts to summons representatives from all agencies carrying out statutory work with the child.
15. Where there are still areas of agreement to be reached between agencies regarding their respective commitments to the IP, the sentencing magistrates may express views when pronouncing sentence that would be helpful in informing collaborative approaches in the lead up to the first Review.

Allocation of presiding Magistrate

16. Evidence of success in judicial monitoring previously shows consistency of the reviewing judge to be a key factor in securing engagement with the offender. Accordingly, wherever possible consistency should be achieved in the allocation of the presiding magistrates, at least in terms of the bench chair. Whilst this may present logistical challenges, it should be possible if local Panels are able to identify a small number of specifically trained and committed magistrates to the task.
17. Training for magistrates should include enhanced engagement skills, communication needs, and some knowledge of local agencies and services. Given the multi-disciplinary nature of YOTs, the local YOT will be ideally placed to provide this training, and doing so will cement a shared commitment to the process.

Supporting the Child through Problem Solving

18. The YOT case worker will have already made an assessment of communication needs, and referring to this, will discuss with the young person whether they need a child advocate or an intermediary. Each YOT will have its own arrangements or contacts for arranging such supports as may be deemed necessary.
19. It is recommended that in making an Order under Criminal Justice and Immigration Act 2008 Schedule 1 Paragraph 35 (1) (b), the Secretary of State does NOT empower Courts to amend Youth Rehabilitation Orders. Instead, where a reviewing Court determines that an amendment to the Requirements of the YRO is necessary, an application should be made by the YOT case manager in accordance with Schedule 2 Part 4 of that Act to list the case at the next available Youth Court hearing for amendment.

20. This approach potentially fulfils three functions. Firstly, if amendment of the Order is not possible in the Review hearing, it obviates the necessity for potentially costly Legal Aid, or for the Crown Prosecutor to have the file to hand. Secondly, with prosecutor and defence advocates absent, the adversarial culture of the hearing is removed, facilitating the development of a problem solving culture. With no anxiety about potentially distressing outcomes, the child at the centre of the hearing may feel more able to engage. Thirdly, removal of the need for legal representation would open up the possibility for holding YRO Review hearings in alternative venues that may be more conducive to a problem solving culture.
21. In order to facilitate the problem solving culture, it is recommended that that in making an Order under Criminal Justice and Immigration Act 2008 Schedule 1 Paragraph 35 (1) (c), the Secretary of State limits the powers of the reviewing Court to:

Receive the Intervention Plan from the Youth Offending Team

Review the YOT Intervention Plan with the engagement of all interested parties

Oversee the delivery of the YOT Intervention Plan

22. In the event of non-attendance or failure to engage by the young person, the Review may continue in their absence. The collaboration of the young person is crucial to desistance, but it is recognised that participation in the Review may be stressful or not suited to the child's communication needs. Furthermore the attachment of a Paragraph 35 Review to an Order is not a reflection of seriousness of offending, and therefore enforcement of attendance is a last resort. Means should be sought to identify a format for subsequent Reviews that are more accessible to the child.

Procedure at first Review

23. Prior to the first Review, the YOT case manager will ensure that all relevant parties have a copy of the Intervention Plan, and confirm their attendance at the Review. YOT staff who are experienced in working in the criminal Courts will have a role in supporting staff who are unfamiliar with the environment.

The aims of the first Problem Solving Review will be to:

Review the completed IP and any early progress towards it's implementation

Address any remaining areas where agreement has not yet been reached as to how the plan will be implemented

Secure commitment from the child and from all agencies to engage fully with the plan

Support the child and their family in engagement with the plan through praise, encouragement, or clear direction as appropriate

A detailed agenda for the Review hearing is attached at Appendix II

Subsequent Reviews

24. The aims of subsequent Problem Solving Reviews will be to:

Ensure that all parties are updated on any new developments and respond to these

Review progress against objectives (Overcome barriers to progress where objectives have not been met; Revise or set new objectives where needed)

Provide ongoing Judicial oversight of the implementation of the plan, and continue to motivate the child to engage

Evaluation

25. As with any process in criminal justice, evaluation is necessary in order to ensure that it represents the most effective method to reduce recidivism and protect the public. In work with children who offend it will also be necessary to evaluate the extent to which the process safeguards the children and supports their development towards positive citizenship. Evaluation should seek to measure the impact of the process on:

Re-offending rates, including any changes in frequency or seriousness of offending

Levels of compliance and engagement of young people

Any positive changes in attitudes, values, thinking styles and behaviour of young people

Pilot

26. Lord Carlile's report recommends 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". A pilot would enable the processes described in this paper to be refined, although any resulting practice guidance would need to take into account the diverse agency structures and cultures in different locations. As Lord Carlile's report highlights, the cohort of young people subject to YROs is reducing, but at the same time is coming to represent those young people with the most complex needs. The learning from a small scale pilot will inform the rolling out of the procedure in a way that targets those cases which will benefit the most, whilst balancing this against the commitment of resources from agencies concerned.

27. Northamptonshire would be ideally placed to pilot these processes. There is already a shared commitment between Northamptonshire Youth Offending Service (NYOS), The Northamptonshire Youth Panel, and Her Majesty's Courts and Tribunals Service locally to develop Youth Court practice. In Northamptonshire, the Director of Children's Services, Alex Hopkins, is chair of the NYOS management board, on which all of the statutory agencies that work with YOT clients are represented at senior level. Alex Hopkins has already written to the Secretary of State expressing his support for developing a pilot in Northamptonshire. Furthermore, Youth Justice in Northamptonshire has a sound track record for development and innovation, having previously piloted Diversion schemes, and currently leading the way in Restorative Justice developments.

28. The commitment of Youth Magistrates to innovative engagement has been demonstrated in Northamptonshire for the past year with the operation of informal reviews outside of Court. These have seen magistrates engaging with young offenders informally on NYOS premises to good effect. An early evaluation by the University of Middlesex found the project promising⁴. Northamptonshire's links with the University of Middlesex would provide one possible avenue for evaluation of formal YRO Reviews under Paragraph 35.

⁴ Dr. Jenni Ward and Ms. Kathryn Warkel (2015) Northampton Youth Offending Service Review Panel Evaluation, Middlesex University, London

Appendix I: Example of a blank YOT Intervention plan

MY INTERVENTION PLAN

DATE OF THIS PLAN		NAME		AGE	
ORDER		RoSH LEVEL		Learning Style	
How often are my Appointments?		Vulnerability Level		Earliest Discharge Date	
		Scaled Approach Level		Review Date	

ORDER REQUIREMENTS	1	
	2	
	3	
	4	
	5	

GOALS FOR MY THREE MONTH PLAN

AREA OF CONCERN High scoring ASSET section, Risk/Vulnerability or Restorative	What do we want to be different?	What needs to be done?	Who is going to do it and by when?	Progress at Review (include review date and say what has been achieved and how that has been demonstrated)

What individual needs and circumstances should be taken into account to support this plan? (learning style, family, cultural commitments, access to office, health and disability factors, barriers to engagement etc)

Diversity Issue	What does this mean for the young person? (statement of the impact/barrier for the young person)	What will we do to meet the diversity need or address barriers to engagement?

What are the positive things we need to strengthen that will help me make changes?

I HAVE BEEN INVOLVED IN AGREEING THESE GOALS		COMMENTS
YOUNG PERSON	Careworks Test-Test	
PARENT / CARER		
YOT WORKER		
Completed Date		

Appendix II

Agenda for First Review Hearing

Court Legal advisor:

Confirmation of young person's name and address

Introductions

Explanation of the purpose of the hearing

Bench Chair:

Initial engagement with young person

Summary of the case so far and what the Court would like to achieve

At the invitation of the Bench Chair:

Verbal update report from YOT worker

Views of Young Person

Views of parents/carers

Views of representative from supporting agencies

Open discussion of issues relating to the Intervention Plan, what is needed to make it work well, and what can be done to overcome any barriers

Conclusion by the Bench Chair:

Summarise progress made, barriers encountered and points agreed

Give praise in relation to progress made

Reiterate any directions made to the young person

Thank everyone for their contributions

Direct Legal Advisor regarding requirements if next Review

Appendix III

Summary of Key Recommendations

Should the Secretary of State wish to make an order under the Criminal Justice and Immigration Act 2008 Schedule 1 Paragraph 35 (1), it is recommended:

- 1) The Secretary of state empowers sentencing Courts to summons representatives from all agencies carrying out statutory work with the child.
- 2) The Secretary of State does NOT empower Courts to amend Youth Rehabilitation Orders. Instead, existing legislation can be used for amendment of YROs on application by the Youth Offending Team.
- 3) the Secretary of State limits the powers of the reviewing Court to:
 - Receive the Intervention Plan from the Youth Offending Team
 - Review the YOT Intervention Plan with the engagement of all interested parties
 - Oversee the delivery of the YOT Intervention Plan

Practice recommendations for the operation of YRO Reviews:

- 1) Local Authorities designate a YOT manager with suitable authority and independence to ensure multi-disciplinary engagement with the Reviews.
- 2) YRO Reviews do not constitute part of the tariff for sentencing purposes, but rather are used as a tool to enhance the effectiveness of supervision at any level of seriousness of offending.
- 3) YOTs are tasked with targeting YRO Reviews according to complexity of need.
- 4) YRO Reviews are presided over by appropriately trained Youth Court magistrates, and wherever possible, the same magistrates are allocated to successive Reviews for the same child.
- 5) The focus of YRO Reviews is to foster collaborative working centred around YOT Intervention Plans.
- 6) Consideration is given locally to ways to ensure that YRO Reviews foster a problem solving culture and positive engagement from the children/young people. This may include the absence of legal representation and consideration of alternative venues for hearings.
- 7) YRO Reviews are subject to rigorous evaluation.