



## **THE PROVISION OF LOCAL AUTHORITY REPORTS TO THE YOUTH COURT**

### **Introduction**

Currently section 37 of the Children Act 1989 allows the Court, in family proceedings, to order an investigation into whether a child is at risk of suffering significant harm. It was proposed by David Burrowes MP in a debate in Parliament on 29 January 2013 that there be an extension of the powers available to the family court under section 37 of the Children Act 1989 to the youth court.

The proposed amendment was as follows:

'(1) The powers of direction of courts—

(a) under section 37 of the Children Act 1989 (including the power to direct the local authority children's service to investigate whether a child is at risk of suffering significant harm); and

(b) under section 47 of that Act to direct a local authority to intervene to safeguard and to promote a child's welfare; shall extend to youth courts.

(2) Such powers shall be available to youth courts throughout any criminal proceedings and in any family proceedings concerning the welfare of a child.

(3) In any investigation pursuant to the foregoing subsections, the local authority shall consider whether it should—

(a) apply for a care order or supervision order with respect to the child;

(b) provide services or care to the child or his family; or

(c) take any other action with respect to the child.

(4) It shall be in the discretion of the youth court to adjourn sentencing until such local authority investigation has concluded and the findings thereof have been notified to the court.

(5).....[This clause has been omitted as immaterial to our proposals.]

The amendment was supported by the Law Society, Baroness Butler Sloss and the Centre for Social Justice.

## **Argument for the status quo**

Damian Green, Minister for Police and Criminal Justice, opposed the amendment saying that there were already sufficient safeguards contained in section 9 of Children and Young Persons Act 1969, which were rarely used, indicating the criminal court's acceptance that the youth offending teams were best placed to ensure necessary referrals to children's services.

"Youth courts already have a power under section 9 of the Children and Young Persons Act 1969 to request a local authority to investigate the circumstances of children appearing before them, and local authorities have a duty to provide such information. Those provisions are little used, if ever. I believe that that reflects criminal courts' acceptance that the youth offending team is, in the vast majority of cases, delivered by local authority children's services and should be the primary conduit for securing information about the child and ensuring that wherever necessary, referrals are made to the local authority's safeguarding services."

Section 9 Children and Young Persons Act 1969 states  
Investigations by local authorities.

(1) Where a local authority or a local education authority bring . . . proceedings for an offence alleged to have been committed by a young person or are notified that any such proceedings are being brought, it shall be the duty of the authority, unless they are of opinion that it is unnecessary to do so, to make such investigations and provide the court before which the proceedings are heard with such information relating to the home surroundings, school record, health and character of the person in respect of whom the proceedings are brought as appear to the authority likely to assist the court.

(2) If the court mentioned in subsection (1) of this section requests the authority aforesaid to make investigations and provide information or to make further investigations and provide further information relating to the matters aforesaid, it shall be the duty of the authority to comply with the request.

The criminal courts are content that the youth offending teams make any necessary referrals to children's services. The youth offending teams conduct assessments at first appearance and at sentence. 'The current process for helping a young offender at risk

of harm is relatively straightforward. When a young offender comes in contact with a youth court, they are referred to a youth offending team for an assessment covering the welfare of the child, including whether they are or have been abused or neglected. If the assessments raise any concerns, the youth offending team is responsible for referring cases to local children's services so that any action necessary to safeguard the child and promote their welfare is taken.

When such a case is referred to children's services by a youth offending team, it is for the local authority to assess the child's needs and determine what steps are necessary to respond. Local authorities have wide-ranging powers. They can take robust action to obtain urgent orders for the immediate protection of children, as well as applying to the court for a care order to allow the authority to share parental responsibility and make long-term plans for the child's care if it considers it to be in the child's best interests. Decisions to intervene in families are not easy, and are not taken lightly. Local authorities have statutory responsibilities to safeguard children.

Damian Green asserted that criminal courts have the power to refer cases to children's services. He claims the reason this is rarely used is because the criminal courts accept that the YOT perform the referral function for the courts:

"Youth courts already have a power under section 9 of the Children and Young Persons Act 1969 to request a local authority to investigate the circumstances of children appearing before them, and local authorities have a duty to provide such information. Those provisions are little used, if ever. I believe that that reflects criminal courts' acceptance that the youth offending team is, in the vast majority of cases, delivered by local authority children's services and should be the primary conduit for securing information about the child and ensuring that wherever necessary, referrals are made to the local authority's safeguarding services."

The Minister recognised that section 9 and section 37 have slightly different functions but believed that both cover the courts' powers to request information from local authorities and local authorities' duties to provide such information and take other action. Unlike section 37 of the 1989 Act, section 9 of the 1969 Act does not explicitly require the local authority to consider applying for a care or supervision order. However, if as a result of investigations under section 9 there is reasonable cause to

suspect that the young person is likely to suffer significant harm, the local authority has a duty under section 47 of the 1989 Act to consider whether it should take any action to safeguard or promote the child's welfare. That could include applying for a care or supervision order. Section 47 of the 1989 Act does not enable a court to direct the local authority to intervene as new clause 7 suggests. However, it does impose a requirement for local authorities to investigate whether there is reasonable cause to suspect that a child is suffering or likely to suffer significant harm, and to take action on the basis of what they find. When there is a need for the child's immediate protection, that could involve seeking an emergency protection order to remove the child to a place of safety and then making an application for a care order.

The Government's position was that it was the role of the Local Authorities to decide whether children should enter care, not the criminal courts. 'The Government believe that, as local authorities will have responsibilities for the continuing care of looked-after children, it should be for those same authorities to determine whether it will be necessary for children to enter care.'

### **Argument in support of extending the application of section 37**

Article 3.1 of the UN Convention on the Rights of the Child states the bests interest of the child must be a primary consideration of all courts. 'This is a binding obligation in international law, and the spirit, if not the precise language, has also been translated into our national law' Baroness Hale in *ZH v Tanzania*.

The principle aim of the Youth Justice System is to prevent offending (Section 37 Crime and Disorder Act 1998).

It cannot be disputed that there is a causal link between crime and deprivation or crime.

The criminal courts are best placed to judge what is in the best interests of the child, having heard all the evidence in the case (both prosecution and defence).

None of the other parties will have a view on the entirety of the evidence, nor are any of the parties official 'decision makers', unlike the judiciary.

There may be competing interests where YOTs and children's services are the only decision makers. They may not always act in the best interest of the child but in the best interest of the budget or other managerial decisions. It is very useful to separate the decision maker from the person who holds the purse strings.

Under the current system the criminal court has no power of review of a decision made by two potentially partisan entities. With an amendment to section 37 the criminal court can adjourn proceedings until an investigation has been completed by children's services.

The links the Minister believes exist between children's services and YOTs are not always in existence; for example section 39(1) of the Crime and Disorder Act 1998 requires each local authority to set up a youth offending team which must include a probation officer, a social worker from the authority's social services department, a police officer, a person nominated by a health authority and a person nominated by the authority's chief education officer. The youth offending team must coordinate the provision of youth justice services in the area and carry out the functions assigned to them in the authority's youth justice plan. We are aware that in practice the social worker within the YOT is not usually employed by the 'authority's social service department', they are usually independent social workers with no connection to the authority's social service department. This is just one barrier that may prevent appropriate referrals.

Furthermore section 9 of the Children and Young Persons Act 1969 puts the onus on the local authority with regards to the investigation. The Foundation believes that the power should lie with the court to make such an order. It is the court that invested with the authority by the government to decide the outcome and appropriate sentence for children in the criminal justice system. They have been given this authority by government and are also required to act in the best interest and to prevent offending.

The current situation under section 9 leaves the decision making at the discretion of the local authority taking the decision making capacity out of the hands of the court, where it should lie. We believe that this explains why there are so few applications (and we know of none) under section 9.

Section 9 does not take into account areas where children's services may not have best practice. It may be sufficient within best practice children's services but unfortunately we know that not all children's services perform their function effectively, just look at baby P.

Local justices will be familiar with local children's services and are best placed to request an investigation from the local authority when they think it is necessary. It would be risky of government to assume that all children's services operate under the best practice requirements.

It would better to do it this way than wait for another inquiry which shows that children were not being properly referred or looked after.

In summary the Minister has focused on the fact that the power to apply for a care or supervision order is vested in the local authority. We entirely accept that position and are not within this proposal suggesting a change to that position. We do however believe that to suggest that section 9 is an adequate substitute for our proposed amendments to section 37 is a flawed analysis of the situation and one, which leaves many children in a deeply prejudiced position, which we are convinced neither the Minister or the Government can possibly intend. We are suggesting that the court should have the power to ensure that it has all information necessary for reaching an informed decision about the sentencing outcome and whether this might be affected if the authority were to provide services to the young person or his family or take any other action with respect to the young person.

The Michael Sieff Foundation

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