

Clinks Briefing on Youth Justice

August 2011

Introduction

The youth justice system in England and Wales is a complex set of arrangements involving local authority children's services, probation trusts, NHS services, Ministry of Justice, a range of commissioned voluntary sector organisations, as well as the police, Crown Prosecution Service, youth courts, prisons, and private sector service providers. Set at age ten, the age of criminal responsibility in England and Wales is one of the lowest in Europe. Although there has been a recent substantial reduction in the number of young people (under 18 years) in secure settings, the current daily figure of approximately 2,000 is still among the highest in Europe per head of population.

Background

In 1996 the Audit Commission published 'Misspent Youth'¹, a report on the delivery of juvenile justice, which identified a range of issues which had led to an uncoordinated, expensive and ineffective youth justice system. Following on from the report's recommendations, the incoming Labour government established the Youth Justice Board (YJB) following the passage of the 1998 Crime and Disorder Act.

Youth justice system

The YJB has overall responsibility for the youth justice system, including the commissioning of custodial provision. Its over-arching objectives include the reduction of young people entering the Criminal Justice System and the prevention of offending by young people.

There are 157 Youth Offending Teams (YOT's) in England and Wales, each of which corresponds to local authority boundaries. They are multi-disciplinary organisations comprising social workers, probation officers, police, educational staff, health workers, substance misuse specialists, and in some cases specialist accommodation workers.

In 2004, the Audit Commission published 'Youth Justice 2004, A Review of the Reformed Youth Justice System'². This report identified a number of significant improvements in the youth justice system including:

¹ <http://www.audit-commission.gov.uk/nationalstudies/communitysafety/Pages/misspentyouth.aspx>

² http://www.audit-commission.gov.uk/SiteCollectionDocuments/AuditCommissionReports/NationalStudies/Youth%20Justice_report_web.pdf

- a substantial reduction in the number of days taken from arrest to court appearance;
- a major increase in the number of young people making amends and reparation for their offending;
- a reduction of the number of young people who offended while on bail;
- a high satisfaction rate among magistrates of the service delivered by YOT's.

However, the review also found that young Black, Asian and Minority Ethnic (BAME) offenders were disproportionately more likely to be remanded in custody and subsequently given custodial sentences than white young people.³ It also criticised the amount of resource expended on minor offenders who were brought to court when there were more cost effective alternatives that could have been implemented.

Recent developments

Since 2004 there have been further developments in youth justice including the introduction of the new Youth Rehabilitation Order which comprises a menu of interventions from which magistrates can choose to tailor community sentences to fit the individual before them.

There has also been a dramatic reduction in the numbers of young people in secure settings (from almost 3,000 in 2001 to the current level of just under 2,000). The explanations for this reduction include the greater use of Intensive Supervision and Surveillance Programmes - as a requirement of a Youth Rehabilitation Order - as an alternative to placing children in secure settings. Additionally, there is also a view that the reduction is due to the effect of diverting large numbers of young offenders from the Criminal Justice System where they have committed minor offences, thus reducing the potential 'up-tariffing' of young offenders to more punitive sentences.

Much of the strategic drive for this increase in diversion (and prevention) came from the 'Youth Crime Action Plan'⁴, published in 2008 jointly by the Department of Children, Schools and Families, the Ministry of Justice, and the Home Office. This was a three year strategy, with an allocated £100 million, to improve and develop integrated services for vulnerable children and their families. It focussed on provision of positive activities in the community, additional support for families of potential offenders, and enhancing co-operation between different government departments at national and local level.

³ Approximately 1 in 40 white offenders were sentenced to custody while the rate was 1 in 12 for young black offenders, and 1 in 10 for those of mixed race.

⁴ <https://www.education.gov.uk/publications/eOrderingDownload/YouthCrimeActionPlan.pdf>

What is the Youth Justice Process?

The Youth Justice Process is best understood as comprising five stages:

1. prevention including Youth Inclusion Programme (age 8-17 yrs); Youth Inclusion and Support Panel (age 8 - 13 yrs); Safer Schools Partnerships; Parenting Interventions; Mentoring. Pre-Court Measures including Reprimand (formal verbal warning from police); Final Warning which includes a programme of activities to prevent offending.
2. Anti-Social Behaviour Measures including Acceptable Behaviour Contracts; Anti-Social Behaviour Orders (removed by current government); Individual Support Orders.
3. Sentences in the community including Youth Rehabilitation Order (menu of 18 requirements); Referral Order (must attend a Young Offender Panel and agree contract); Reparation (requirement to undertake restorative activities); Fine; Conditional Discharge; Absolute Discharge
4. Custodial sentences including Detention and Training Order (4months - 2yrs); Section 90/91 (only for offences for which an adult would receive 14 years or more, e.g. murder, manslaughter, rape).

The Youth Rehabilitation Order (YRO) is a recent sentencing option which replaces nine previous sentences including Unpaid Work, Attendance Centre Orders, etc. It is only available for young offenders convicted after 30th November, 2009. There are 18 individual requirements that are available for inclusion in a YRO, including those which had been available in the aforementioned nine previous sentences. The additional requirements include the Intensive Supervision and Surveillance programme which was developed as a direct alternative to custody.

Custody

The Youth Justice Board commissions custodial provision for young people in England and Wales. Custodial sentences are served in one of three types of establishment.

- The majority of young offenders serve their sentences in Young Offender Institutions (YOI) which are managed by HM Prison Service (now part of the National Offender Management Service—NOMS). They include two privately run establishments, HM YOI Ashfield and HM YOI Parc.
- The four Secure Training Centres (STC) are also privately run youth prisons which cater primarily for 13-15 year olds.
- Local Authority Secure Children Homes (LASCH) generally accommodate children aged 12-14.

(NB: it is worth noting that 66% of the YJB budget is spent on secure/custodial provision which deals with 3% of the offenders in contact with the youth justice system.)

Children with needs or offenders requiring punishment

“There will always be limitations to a system that tries to impose youth justice solutions on child welfare problems but at present there is no political will to change this.”⁵

The creation of the YJB and the subsequent developments of Youth Offending Teams, with their emphasis on the prevention of offending and reduction of re-offending of young people, led to significant improvements in interventions with young people around their criminal and anti-social behaviour. The continuous efforts to encourage practitioners to deliver evidence-based practice (what works) and generally to ensure that young offenders were held accountable for their offending behaviour helped to introduce greater rigour into the youth justice system.

Notwithstanding the gains made by this more offence-focussed approach, there is some evidence that this led to failures to appreciate the degree to which young people coming into contact with the Criminal Justice System were children who were disproportionately disadvantaged with high levels of school failure, negative experiences of parenting, poor communication skills, and exposure to substance misuse and violence in their homes and their local communities. The Prison Reform Trust (PRT) report, *Punishing Disadvantage*⁶, published in 2010, is a recent and comprehensive review of these issues and their impact on the outcomes for young people in contact with the Criminal Justice System.

A more recent study commissioned by the PRT⁷ focussed on the effect of rigorous enforcement in driving young people back into custody. About 20% of children were sent to custody for either breaching their community orders, failing to comply with ASBO's, failing to surrender to bail, or breaching their post-release licenses. Thus, more children were sent to custody in 2009 for breaching requirements than for burglary. It noted that the children who tended to fail to comply with their orders were those who came from the most disadvantaged backgrounds and who had the most difficulties with language and communications skills. Furthermore, it was the case that the children who failed were the most persistent offenders rather than the most serious. Finally, there was a distinction to be made between notional compliance with the orders, and genuine engagement. There was evidence that children who failed to comply were in fact committed to succeed but a combination of the excessive demands of the particular order, and their own chaotic circumstances combined to make compliance problematic.

⁵ <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Into%20the%20Breach.pdf>

⁶ <http://www.prisonreformtrust.org.uk/uploads/documents/PunishingDisadvantage.pdf>

⁷ <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Into%20the%20Breach.pdf>

Linked to this issue is the concern, reflected in the HMIP Inspection Thematic report in May 2011, about the numbers of young people in custody who have been in care ('looked after' children) and their status.⁸ The HMIP report was preceded by a National Children's Bureau publication in 2006, 'Tell Them Not to Forget Us'⁹, which provided comprehensive guidance on practice and procedure for managing children in the secure estate who were/are in the care of the local authority.

One of the key findings in both reports was the difference between the contact children in custody had from Youth Offending Teams which tended to be fairly positive, and from their social worker based in their local authority area, which was more variable. This is despite the fact that local authorities retain certain statutory responsibilities for 'looked after' children during their time in custody and afterwards, and these responsibilities include both those children who have been removed from their families through the courts and those who have gone into care voluntarily.

Both reports highlighted the lack of communication between local authorities and key staff in the secure estate, as well as the poor standard of monitoring and information kept about 'looked after' children in YOI's in particular (most establishments did not keep an accurate record of the 'looked after' children currently held by them). This of course had serious implications for the effectiveness of maintaining family links and for subsequent resettlement planning. In response to the recommendations in these reports there are now social workers based in the YOI's.

Mental Health

The Office of the Children's Commissioner examined the current provision for meeting the emotional and psychological needs of children in contact with the Criminal Justice System and published 'I Think I Must Have Been Born Bad'¹⁰, in June, 2011. This work resulted from a recommendation from Lord Keith Bradley, following his review of the mental health needs of offenders in the adult system which did not extend to young offenders. This report, as well as the Centre for Mental Health's 'Reaching out, Reaching in: Promoting Mental Health and

⁸ <http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/looked-after-children-2011.pdf>

⁹ http://www.ncb.org.uk/dotpdf/tell_them_not_to_forget_web.pdf

¹⁰

http://www.childrenscommissioner.gov.uk/force_download.php?fp=%2Fclient_assets%2Fcp%2Fpublication%2F503%2FI_think_i_must_have_been_born_bad_-_full_report.pdf

Emotional Well-being in Secure Settings¹¹ identified the high levels of mental and emotional ill-health in the young offender population and the lack of consistent provision to meet their needs. There were a number of key findings, including:

- use of inappropriate tools for assessing mental health needs;
- lack of awareness of the importance of relationships in promoting the mental health and well-being of children;
- poor communication and information sharing;
- inconsistent quality in care planning particularly around the transition from custody to the community;
- a focus on managing risk rather than implementing measures to reduce risk;
- evidence of inappropriate staff deployment in YOI's which meant that there were officers who were clearly not interested or motivated in working with young people.

Resettlement

Education, Training, Employment

Education, Training, and Employment (ETE) provision in secure settings, especially YOI's, is crucial for successful resettlement. The HMIP Report (2011)¹² which addressed resettlement issues found that while provision was generally reasonable in secure settings, the planning and transitional arrangements were often haphazard, or indeed non-existent. There was a lack of accurate aggregated information about the resettlement needs of young offenders in custody, and hence no effective strategic direction or commissioning of services. Individual training plans were often 'tick box' exercises, and although the majority of young offenders interviewed confirmed that they had seen their plans, most could not recall what specific targets they had for ETE. A key finding (and linked recommendation) was that there was no monitoring by establishments of the outcomes for young offenders returning to the community, hence little basis for improving their service.

¹¹

http://www.centreformentalhealth.org.uk/pdfs/Centre_for_MH_Promoting_mh_in_secure_settings.pdf

¹² <http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/Resettlement-thematic-june2011.pdf>

Accommodation

In February 2011, Barnardo's published 'No Fixed Abode: The Housing Struggle for Young People Leaving Custody'¹³ which examined the arrangements for assisting young offenders in accessing suitable accommodation following release. The report identified a range of issues that needed to be addressed, including the poor support for 16 and 17 year olds who are often placed in unsuitable B&B accommodation without any support, due to a lack of suitable alternatives or ineffective planning.

There was also evidence of children as young as 13 being resettled with families who were vulnerable and unable to meet the needs of their children. 'Looked after' children felt that they were forgotten once they were sent to custody, and the lack of contact and support meant that their return to their community was poorly planned and chaotic. The report also noted that the Ministry of Justice was increasingly isolated in its efforts to address these issues and it was recommended that a cross departmental action plan be drafted with input from the Department of Education, and the Department of Communities and Local Government, as well as the Ministry of Justice.

Safeguarding and Restraint

One of the findings in the Office of Children's Commissioner's report was that there was a "tendency to focus on physical controls to manage risk"(page 12). It also noted that "custodial and care staff lack understanding of impact of previous abuse, etc." Together, these two factors make the use of restraint in the juvenile secure estate very problematic.¹⁴

The 2011 Howard League for Penal Reform report, 'Twisted: The Use of Force on Children in Custody'¹⁵ reviewed recent reports and statistical information on the use of restraint in the juvenile estate. It cited nearly 7,000 incidents of reported use of restraint in 2009/10, of which 257 resulted in physical injury.

The use of 'strip searching' is routine in both the male and female juvenile estate. This can be particularly disturbing for young people who have experienced abuse in the past and needs to be conducted sensitively. Practice is inconsistent across the secure estate in relation to the use of 'dressing gowns' to preserve dignity and minimise embarrassment. Furthermore, there were concerns expressed about the routine application of strip searching, rather than an 'intelligence-

¹³ http://www.barnardos.org.uk/no_fixed_abode_february_2011.pdf

¹⁴ Two boys have died in Secure Training Centres, one during restraint and another subsequent to restraint being administered.

¹⁵ http://www.howardleague.org/fileadmin/howard_league/user/pdf/Publications/Restraint.pdf

led' approach. There were also concerns expressed about the use of separation (or segregation) as a form of punishment, which is in fact proscribed in YJB guidance.

Current Youth Justice Policy

There were a number of clear commitments to reduce the size of the young offender custodial population contained in the government Green Paper published in December 2010¹⁶. These included:

- reserving custodial sentences only for more serious offenders;
- restricting custodial remand to those offences which would be likely to receive a custodial sentence following conviction and bringing 17 year olds into the remand arrangements ;
- signalling the intention to make local authorities accountable for the costs of custodial sentencing;
- encouraging greater flexibility by both the courts and supervising YOT staff when responding to failures to comply with supervision.

These policy commitments, along with the recent consultation relating to proposals for the youth custody estate¹⁷ seek to build on the rapid, and indeed surprising, reduction in the youth custody population over the past 3 years. In 2008, the youth custody population stood at just over 3,000, but had fallen to just under 2,000 by April, 2011. This reduction has led to the 'de-commissioning' of over 1,000 beds since 2009.

There are a number of possible reasons for this dramatic reduction and these are explored in the recent Prison Reform Trust report 'Last Resort'¹⁸. For instance, there is strong evidence that the numbers of young people entering the youth justice system has dropped significantly over this period, and therefore there are fewer young people appearing in court and convicted of offences. This reduction in entrants to the youth justice system has probably resulted from the removal of the previous target to increase the numbers of offenders brought to justice.

There is also evidence that YOT staff and managers have worked much more closely with local magistrates to heighten awareness of the issues related to youth offending, and the rationale

¹⁶ <http://www.justice.gov.uk/consultations/docs/breaking-the-cycle.pdf>

¹⁷ http://www.justice.gov.uk/downloads/consultations/consultation_secure_estate_strategy.pdf

¹⁸ <http://www.prisonreformtrust.org.uk/Portals/0/Documents/lastresort.pdf>

behind report recommendations in court, and this has led to more nuanced and progressive sentencing practice.

The reduction in young people entering the youth justice system is probably also a result of an increase since 2008 of alternative community based provision for young people at risk of offending or whose offences are so minor they do not require formal court sanctions.

Future Issues

The Independent Commission on Youth Crime and Anti-Social Behaviour was established in 2008 and published a wide-ranging report 'Time for a Fresh Start'¹⁹ in 2010. The report was based on an extensive review of the youth justice system and identified a number of proposals to increase the effectiveness of responses to youth crime. These were grouped under three organising principles: prevention; restoration; integration. The themes that informed the proposals under each of these principles focussed on meeting the needs of young people, building the capacity of their families and the local community to support and develop young people, and using evidence-based approaches to intervention aimed at changing their offending behaviour (including much wider use of restorative approaches to responding to youth crime and anti-social behaviour). Many of these proposals and approaches have been reflected in both the Green Paper and the recent Strategy for the Secure Estate for Children and Young People.

Diversity

There remain some key issues relating to girls and young women, and BAME young people. Females are at much greater risk within the youth justice system, especially in custodial provision. Their offending is less violent and is as likely to be the result of abuse and victimisation as about thrill seeking or prolific damage. Young black offenders have not benefited as a group to the fall in prosecutions or sentencing as young white offenders.

Dissolution of YJB

It is not clear yet what impact the proposed dissolution of the Youth Justice Board will have on future policy and practice in relation to youth justice. The previous government's partial integration of the YJB with the Department of Children, Families and Schools had some clear advantages in terms of closer linking with local authorities' agendas as well as promoting a less criminal justice approach to young people in conflict with the law. With the YJB's future

¹⁹ http://www.youthcrimecommission.org.uk/attachments/076_FreshStart.pdf

functions taken over by the Ministry of Justice, there may be greater integration with the adult system but whether the focus on children's needs will be maintained is a moot point.

Public expenditure reduction

There is also great uncertainty about the effect of the cuts in public expenditure in local areas and how these will affect the services available for young people delivered by both the public and voluntary sectors. Many of the diversionary activities that cater for young people at risk of offending are delivered by the voluntary sector and these, along with public sector youth services, are at great risk of reduced capacity or closure. Even more unpredictable is the impact of the removal of the Education Maintenance Allowance (EMA) which supported 16 and 17 year olds to attend further education colleges. Whether the replacement scheme will effectively keep low income young people in education is yet to be seen.

Local autonomy

The previous administration's performance measures for local areas included several that related to youth crime, including numbers that were sent to custody. The removal of these and the greater freedom for local areas to determine their priorities for spending may have a negative effect on local provision for young people.

There are many young people who are significantly disadvantaged who may continue to avoid (or delay) formal entry into the justice system, but who may continue to commit offences, albeit of a minor nature, and they require help to address their problems. Otherwise, there is a danger that failure to intervene with them at an early stage will simply result in greater volumes of offenders entering the adult system.

Early intervention

There have been some recent encouraging policy initiatives which have addressed the importance of supporting parents, especially during the first five years of children's lives; the most prominent being MP Graham Allen's report on early intervention²⁰. This was commissioned by the current government and makes a powerful case for the cost benefits of early intervention in children's lives to improve their emotional and intellectual capacity, with the cost of early intervention resulting in savings in remedial interventions (drug treatment, criminal justice costs, etc.). The successful implementation of this kind of approach may well require re-allocation of resources from 'late interventions' as well as developing a continuum of support beyond early years through to adulthood.

²⁰ <http://www.dwp.gov.uk/docs/early-intervention-next-steps.pdf>

Alternative funding models

There are a range of funding models which will undoubtedly impact on the development of youth justice in the next few years. In some areas, commissioning for youth justice provision will be on a Payment by Results (PbR) model, with payment to providers contingent on evidence of successful outcomes.

There are plans to pilot a 'justice reinvestment' approach, which involves local authority areas being given additional funding to be invested in services to prevent offending by young people. If, however, target reductions in the use of custody are not achieved this funding will be 'clawed back' by central government.

Service User Involvement

A range of organisations have emphasised the importance of the voices of young people being heard in the youth justice system.²¹ There is considerable scope for development of structures and mechanisms for ensuring that young people's views are incorporated in policies and services that affect them. This includes the potential of young offenders and ex-offenders to deliver services, especially as mentors and peer advisors.

Conclusion

The gains that have been made in the youth justice system over the past four years have been encouraging but remain fragile. The recent riots in London and other cities across England have 'raised the temperature' in relation to responding to youth offending, and influential parties in government and elsewhere are promoting a return to a more punitive approach to dealing with young people in conflict with the law. In this climate it is particularly important to promote the evidence supporting the effectiveness of a balanced approach to youth justice, acknowledging the requirement to address anti-social behaviour while working to remedy its causes and supporting young people to realise their potential to grow into productive citizens.

²¹ <http://www.clinks.org/publications/reports/unlocking-potential>
http://uservice.headboxed-sandbox.appspot.com/_/files/User-Voice---A-User-Perspective-on-Service-Provision-for-Young-Offenders-in-Manchester.pdf



supporting voluntary organisations that
work with offenders and their families



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