

August 2016



CLINKS  
RESPONSE

# Response to the Sentencing Council sentencing of youths consultation

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## About Clinks

We are a membership organisation with over 500 members including the voluntary sector's largest providers as well as its smallest, and our wider national network reaches 4,000 voluntary sector contacts. Overall, through our weekly e-bulletin Light Lunch and our social media activity, we have a network of over 15,000 contacts, which includes individuals and agencies with an interest in the Criminal Justice System (CJS) and the role of the voluntary sector in the resettlement and rehabilitation of offenders.

## Background to this submission

Since early 2016 Clinks has been working with a number of national and local voluntary sector partners concerned with children, young people and youth justice to formulate a submission to the Taylor Review of the youth justice system, not only in response to the interim report but also to address the broader themes encompassed by the review, including sentencing. The need for sentencing reform emerged from Clinks' consultation events as a key issue in diverting children from the CJS and preventing criminalisation. We have therefore used the information gathered for our submission to the Taylor review to provide a view from the voluntary sector on the guidelines for sentencing youths.

During February and March 2016 four events were held across England and Wales to consult with voluntary sector organisations concerned with young people and youth justice. Clinks facilitated these in partnership with the National Council for Voluntary Youth Services (NCVYS)<sup>1</sup>, London Voluntary Service Council (LVSC)<sup>2</sup>, 1625 Independent People<sup>3</sup>, Nepacs<sup>4</sup> and Voluntary Organisations' Network North East (VONNE)<sup>5</sup>. A roundtable was also convened by our partners the Black Training and Enterprise Group (BTEG)<sup>6</sup> and Partners of Prisoners (POPS)<sup>7</sup>, specifically to consult with Black, Asian and minority ethnic (BAME) voluntary sector organisations. In total, 89 individuals participated in the events, representing 65 organisations that reflected the diversity of the sector in terms of organisational size, location and remit.

In addition, Clinks worked in partnership with Nacro<sup>8</sup> and Peer Power<sup>9</sup> to convene two special consultation events in March 2016, involving 44 young people aged 15-25 who came from Leeds, Liverpool, Leicester, Salford, London, Bristol and Berkshire. Young people from York also fed into the consultation via an online questionnaire. All had some experience of the youth justice system, which included having contact with the police; being stopped and searched; receiving cautions and community orders; and being in custody in secure children's homes, secure training centres and young offender institutions. Other young people who had experience of the system led the workshops.

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Clinks would like to thank all our partner organisations, the event participants, and especially the young people, for contributing the views that have shaped this submission. Clinks is a member of the Transition to Adulthood (T2A) Alliance<sup>10</sup>, which advocates a distinct approach to young adults aged 18-25 in the CJS that takes account of their relative immaturity, and of the Standing Committee for Youth Justice (SCYJ)<sup>11</sup>, a membership body that campaigns for a better youth justice system. We are therefore aware of, and fully support, the separate submissions that both bodies have made to the Sentencing Council consultation.

### **Q1 / Do you agree with the general principles for sentencing youths? Are there any additional principles that should be included?**

Clinks' submission to the Government's review of the youth justice system (hereafter referred to as the 'Taylor Review') highlighted the importance of placing a model of desistance appropriate to children and young people at the heart of system reform<sup>12</sup>.

A recent HM Probation Inspectorate report explored what works in supporting young people's desistance, and set out the key features of Youth Offending Team (YOT) interventions that helped children and young people to move away from offending:

- a balanced, trusting and consistent working relationship with at least one worker
- meaningful personal relationships and a sense of belonging to family
- emotional support, practical help and where the worker clearly believed in the capacity of the child or young person to desist from offending
- the development of a strong relationship and/or becoming a parent
- changing peer and friendship groups
- interventions which provided problem solving solutions to use in day-to-day life situations
- well planned and relevant restorative justice interventions<sup>13</sup>.

Clinks believes an understanding of the interventions that best support children's desistance should be a key part of the sentencing guidelines for children and young people, and that supporting the desistance process should be the primary aim of sentencers in dealing with this age group. Sentencers should consider whether a given sentence is likely to foster or hinder the child's desistance when making sentencing decisions.

**Clinks recommends that a model of desistance appropriate to children and young people should form the basis of the sentencing guidelines for young people, thereby serving the two overarching principles of reducing reoffending and safeguarding the welfare of young offenders<sup>14</sup>.**

Clinks strongly welcomes the Sentencing Council's emphasis on an individualised, person-centred approach, focused on the offender rather than the offence. This is in line with our call for the youth justice system to adopt a child-centred and welfare-based approach, rooted in the UN Convention on the Rights of the Child.

Clinks also welcomes the principle of avoiding the criminalisation of children where possible. Voluntary sector youth practitioners and young people with experience of the justice system, participating in recent Clinks consultation events for the Taylor Review, highlighted the

negative impact of stigma and labelling on young people. They argued that the isolating effects of this significantly increased the likelihood of reoffending. Young people said:

***“People judge you different. They don’t put no belief in you.”***

***“They label you back to what you did. Once you’re rejected it feels like ‘boom, in your face’. Everyone deserves a second chance.”***

This is particularly pertinent for looked after children and BAME children. As discussed in Clinks’ submission to the Taylor Review, looked after children and BAME children often experience marginalisation due to poverty, feelings of exclusion and alienation, racism and lack of family ties<sup>15</sup>.

In Clinks consultation events focused on the Taylor Review, BAME young people discussed feeling labelled and criminalised by the police at an early age and described negative experiences with police and criminal justice agencies, including racist abuse. BAME voluntary organisations furthermore asserted that BAME children are often excluded from diversionary opportunities such as referral orders and restorative approaches because they are misperceived as already being ‘unmanageable’ and beyond the reach of such initiatives, resulting in their rapid escalation through the youth justice system. Due to their heightened experience of disadvantage, punitive sentences are likely to have a greater negative impact on BAME children, furthering their marginalisation and damaging their prospects for integration in the community.

As the SCYJ’s submission to the Government’s review of youth justice states, *“The evidence that involvement with the Criminal Justice System itself increases the risk of offending is overwhelming.”* The response also highlights the negative impact of incurring a criminal record on the desistance process and suggests that ‘truly diversionary’ solutions would avoid this.

**Clinks recommends that, to adhere to the principal aim of the youth justice system to reduce reoffending, sentencers should seek diversionary solutions wherever possible that avoid creating a lasting criminal record for the child.**

While the overarching principle of avoiding criminalisation where possible goes some way to preventing potentially counter-productive effects of sentencing,

**Clinks supports the recommendation put forward in the SCYJ’s response to this consultation that, “The guidelines be amended so that courts are required to take account of the negative effects of the sentence (rather than just ‘effects’ of the sentence) to avoid the possibility of a court imposing a more severe sentence/ less proportionate sentence if it thinks it will be ‘good’ for the child.”**

As the overarching principles state, the maturity of the child should be taken into account when assessing their culpability for an offence.

**Clinks would underline the importance of considering the emotional as well as the chronological age of the child, together with additional factors such as brain injury, substance misuse problems and previous experiences of trauma that may have affected the child’s neurological development and reasoning abilities and hence reduce their culpability.**

Clinks is pleased to see the acknowledgement that children are likely to benefit from an opportunity to address their behaviour and should be enabled to do so where possible. Participants in Clinks’ consultation events for the government review of the youth justice system saw restorative interventions as important and effective

methods for diversion from the CJS. Restorative methods encourage mediation and inclusion, counteracting the social exclusion experienced by many children in contact with the CJS, particularly looked after children and BAME children.

**Clinks recommends that the overarching principles of the guidelines encourage sentencers to make full use of restorative sentences where possible, particularly when sentencing looked after children and BAME children<sup>16,17</sup>.**

Due to the lack of evidence supporting the idea that sentencing can act as a deterrent to crime<sup>18</sup>, the continuing provision for sentencers to consider deterrence as a factor in their sentencing is concerning. The use of sentencing to prevent potential crime is in conflict with both the aim to reduce reoffending and the need to have regard to the welfare of the offender; sentencing should be focused solely upon providing the best possible route to desistance for the child while ensuring that their welfare is safeguarded.

**Although section 142A of the Criminal Justice Act 2003 is not in effect, Clinks recommends that the sentencing guidelines remove the provision to consider possible deterrence in sentencing decisions.**

As the SCYJ response to the Taylor Review notes, *“Evidence indicates that child custody is ineffective with post-custody rates persistently around 70%, which is considerably higher than reoffending rates on community sentences.”* Custody can have significantly damaging effects on the aspects of a child’s life that support desistance from crime including family relationships, education, and ties with the local community.

**In line with the aim to reduce reoffending and the need to safeguard the welfare of children in the CJS, Clinks recommends that point 1.8, referring to ‘restriction on liberty’, should be expanded to explicitly state that custodial sentences should be used only when necessary for public protection, in response to a violent offence.**

One aspect of sentencing that is not covered in the general principles is the extent to which children and young people have the opportunity to participate actively in the sentencing process and have their voices heard.

Young people who participated in consultation events, to inform Clinks’ submission to the Taylor Review, said this lack of voice and feeling of extreme disempowerment affected them all the way through the youth justice system: in their dealings with the police; in court; with social workers and YOT workers; and in custody. They felt that courts should be doing more to enable their direct participation in the sentencing process:

***“You can take ownership of your punishment, by being involved in the sentence yourself.”***

***“I don’t think we get asked enough because when I was in court it was to listen and not talk.”***

**Clinks recommends that the sentencing guidelines should require sentencers to talk directly with children and young people, in easily understandable terms, about their behaviour and the sentences the court is considering, and provide them with an opportunity to express their own views before sentence is passed.**

## **Q2 / Do you agree with the factors that should be taken into account when considering the welfare of a young person? Are there any additional factors that should be included?**

Clinks is pleased to see a number of important factors identified as potentially impacting a child's welfare. However, additional issues such as those outlined below should be taken into account.

When considering how a child conducts themselves in court, it is important to recognise the negative experiences of the CJS of many BAME children, particularly those from a Black, Muslim, Traveller, Gypsy or Roma background. This may affect their ability to engage in the court process in a positive way. Similarly, cultural differences must be taken into account. Some Afro-Caribbean children, for example, will avoid eye contact with older people as a sign of respect – differences such as this must not be misinterpreted as difficult or unrepentant behaviour in court.

It is also important to have regard to the high incidence of poverty among children in the CJS when taking account of the circumstances of the offence. Children growing up in poverty, as well as BAME children, are more likely to experience almost all of the factors mentioned in point 1.12, meaning their welfare needs are often significantly more severe.

As discussed in the Clinks submission to the Taylor Review, the high levels of physical and sexual abuse experienced by girls in contact with the CJS should also be recognised. This may impact on behaviour in the court room, the vulnerability of a young girl to self-harm in a custodial institution, or her ability to engage positively with particular sentences or interventions. This should also be considered in relation to the circumstances of the offences, particularly when the child is a co-defendant.

Similarly, sentencers should consider the high levels of loss, trauma and instability experienced by looked after children, and how this may relate to the circumstances of their offence. The SCYJ's response to the Taylor Review notes that some offences, "even when serious, are a product of wider family, emotional or mental health problems" and should be responded to with primary concern for the child's welfare.

## **Q4 / Does the allocation section include all the necessary considerations? Do you have any general observations on this section?**

Clinks has some concern that point 2.5 has the potential to conflict with point 1.14 (which counsels that a court should not impose greater restrictions upon a child because of their life circumstances) by focusing on risk factors over welfare when assessing the dangerousness of a child. It is important that the life circumstances of a child such as lack of good quality accommodation, poor family relationships or mental health problems, do not unfairly result in them being labelled as 'dangerous'. Where life circumstances suggest a higher likelihood of reoffending, sentencers should use sentences or provisions that provide appropriate support to the child to address these risk factors.

## **Q9 / Should there be any other considerations taken into account when assessing whether a young offender should be categorised as a 'persistent offender'?**

When assessing whether a child should be categorised as a 'persistent offender', sentencers should take into account disproportionalities in the number of BAME children and looked after children arrested and prosecuted. Figures show that Black people



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are, on average, 25 times more likely than white people to be stopped and searched<sup>19</sup> and, as Lord Laming highlighted in his review of the over-representation of looked after children in the CJS, looked after children are regularly subject to police intervention for minor offences which would normally be dealt with within the family<sup>20</sup>.

**Clinks recommends that sentencers should take care when assessing whether a child should be categorised as a 'persistent offender' to ensure that the potential impact on an individual's involvement with the CJS of factors such as ethnicity or being looked after are recognised and do not lead to an unfair assessment of risk.**

Clinks is concerned by the suggestion in the guidelines that offences for which a child has been found not guilty could be taken into account in the decision to categorise them as a 'persistent offender'. This is likely to have a disproportionate effect on BAME (particularly Black and mixed) and looked after children, as they are disproportionately likely to be prosecuted<sup>21,22</sup>.

**Clinks recommends that any previous offences for which a child has been found not guilty should be disregarded when assessing whether they should be categorised as a 'persistent offender'.**

### **Q11 / Do you agree that the varying long-term effects of different sentences should be taken into consideration when determining the sentence?**

Voluntary sector practitioners and young people with experience of the justice system who participated in Clinks' consultation events for the Taylor Review felt strongly that the long-term effects of sentences should be thoroughly considered when determining the sentence. Many thought that sentencers were not sufficiently aware of the impact particularly of custodial sentences, but also of certain aspects of community sentences such as wearing a curfew tag, or being identified as an offender in the local community.

**Clinks recommends that sentencers consider, in detail, the long-term effects of different sentences when determining the sentence. These may include: damage to family ties, risk of psychological trauma and/or self-harm in custody, increased stigma and isolation for the child, disruption to education, and damage to positive relationships with youth professionals such as Youth Offending Team workers, voluntary sector practitioners or teachers.**

Issues were also raised surrounding which organisations and institutions are properly equipped to effectively deliver sentences. Practitioners were particularly concerned that children sentenced to Detention and Training Orders before their 18th birthday were then being moved to adult prisons where staff were not adequately equipped to deliver the sentence.

**Clinks therefore recommends that sentencers consider which institution or agency will deliver the sentence, and whether they are fully equipped to do so effectively, when determining the sentence.**



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### Next steps

Clinks has welcomed the opportunity to contribute to this consultation. We hope these insights will be of use to the Sentencing Council and that the finished guidelines for the sentencing of youths will take account of the issues highlighted for consideration. We now await the final guidelines and stand ready to disseminate these to voluntary sector organisations working with children and young people in contact with the CJS.

In the meantime we would welcome any further contributions of views from the voluntary sector and other stakeholders. We would also be very happy to contribute further to the review of sentencing guidelines in any way we can, including facilitating contact with our members or with children and young people who have experience of services.

For further contact about this submission, please email [oonagh.ryder@clinks.org](mailto:oonagh.ryder@clinks.org)



**Clinks supports, represents and campaigns for the voluntary sector working with offenders. Clinks aims to ensure the sector and all those with whom they work, are informed and engaged in order to transform the lives of offenders.**

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### Notes

1. Please note that NCVYS closed on 1st April 2016, after this work was completed. Its membership services, policy work, awards network, and sector engagement in the young people's health agenda, have now been merged into Ambition: <http://www.ambitionuk.org> [last accessed 18/07/16]
2. See: <http://www.lvsc.org.uk/> [last accessed 18/07/16]
3. See: <http://www.1625ip.co.uk/> [last accessed 18/07/16]
4. See: <http://www.nepacs.co.uk/> [last accessed 18/07/16]
5. See: <https://www.vonne.org.uk/> [last accessed 18/07/16]
6. See: <http://www.bteg.co.uk/> [last accessed 18/07/16]
7. See: <http://www.partnersofprisoners.co.uk/> [last accessed 18/07/16]
8. See: <https://www.nacro.org.uk/> [last accessed 18/07/16]
9. See: <http://www.peerpower.org.uk/> [last accessed 18/07/16]
10. See: <http://www.t2a.org.uk/> [last accessed 18/07/16]
11. See: <http://scyj.org.uk/> [last accessed 18/07/16]
12. Clinks' submission to the review of the youth justice system (2016). Online: [http://www.clinks.org/sites/default/files/basic/files-downloads/clinks\\_taylorreview\\_final.pdf](http://www.clinks.org/sites/default/files/basic/files-downloads/clinks_taylorreview_final.pdf) [last accessed 18/07/16]
13. Desistance and young people (2016). Online: [https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2016/05/Desistance\\_and\\_young\\_people.pdf](https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2016/05/Desistance_and_young_people.pdf) [last accessed 18/07/16]
14. The Clinks guide 'Introducing Desistance' provides more information on desistance. See: <http://www.clinks.org/resources-dij-desistance> [last accessed 18/07/16]
15. Clinks submission to the review of black, Asian and minority ethnic representation in the Criminal Justice System (2016). Online: [http://www.clinks.org/sites/default/files/basic/files-downloads/clinks\\_lammy\\_review\\_response\\_final\\_july\\_2016.pdf](http://www.clinks.org/sites/default/files/basic/files-downloads/clinks_lammy_review_response_final_july_2016.pdf) [last accessed 18/07/16]
16. The Association of Panel Members believes that diversion is particularly effective for the management of looked after children as it avoids their engagement in the CJS, while securing enhanced access to support services. Restorative justice panels of members of local communities can therefore play an important role in caring for vulnerable looked after children, in addition to articulating to young people the locality effects of 'victimless' crimes. Online: <http://aopm.co.uk/> [last accessed 18/07/16]
17. The Restorative Justice Council provides extensive information and resources on restorative practice.
18. Deterrence in Criminal Justice: Evaluating Severity vs Certainty of Punishment (2010). Online: <http://www.sentencingproject.org/wp-content/uploads/2016/01/Deterrence-in-Criminal-Justice.pdf> [last accessed 18/07/16]
19. See: [http://www.stop-watch.org/uploads/factsheets/\\_fullsize/stopwatch\\_section60\\_factsheet\\_140916.png](http://www.stop-watch.org/uploads/factsheets/_fullsize/stopwatch_section60_factsheet_140916.png) [last accessed 18/07/16]
20. In Care, Out of Trouble: How the life chances of children in care can be transformed by protecting them from unnecessary involvement in the criminal justice system (2016). Online: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/In%20care%20out%20of%20trouble%20summary.pdf> [last accessed 18/07/16]
21. Ibid
22. Statistics on Race and the Criminal Justice System 2014 (2015). Online: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/480250/bulletin.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/480250/bulletin.pdf) [last accessed 18/07/16]