



House of Commons Justice Committee

Youth Justice

Seventh Report of Session 2012–13

Volume I: Report, together with formal minutes, oral and written evidence

Additional written evidence is contained in Volume II, available on the Committee website at www.parliament.uk/justicecttee

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The Justice Committee

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The Reports of the Committee, the formal minutes relating to that report, oral evidence taken and some or all written evidence are available in a printed volume. Additional written evidence may be published on the internet only.

Committee staff

The current staff of the Committee are Nick Walker (Clerk), Sarah Petit (Second Clerk), Gemma Buckland (Senior Committee Specialist), Helen Kinghorn (Committee Legal Specialist), Ana Ferreira (Senior Committee Assistant), Miguel Boo Fraga (Committee Assistant), Holly Knowles (Committee Support Assistant), George Margereson (Sandwich student), and Nick Davies (Committee Media Officer).

Contacts

Correspondence should be addressed to the Clerk of the Justice Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 8196 and the email address is justicecom@parliament.uk

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Summary

The Youth Justice Board, youth offending teams and their partners have made great strides towards a more proportionate and effective response to youth offending which prioritises prevention. We strongly welcome the substantial decrease since 2006/07 in the number of young people entering the criminal justice system for the first time, and are particularly encouraged that agencies in many areas are using a restorative justice approach to resolve very minor offending. However, looked after children have not benefited from this shift to the same extent as other children and we make recommendations to ensure that local authorities, children's homes and prosecutors have appropriate strategies in place to prevent them from being criminalised for trivial incidents which would never come to police attention if they took place in family homes.

There is a limit to what criminal justice agencies can achieve in preventing offending; young people in the criminal justice system are disproportionately likely to have high levels of welfare need and other agencies have often failed to offer them support at an early stage. We are therefore disappointed that the Government does not plan a significant shift in resources towards early intervention and recommend more research into the contributory factors to the reductions in the number of young people entering the criminal justice system, to enable better decision-making about the distribution of funding.

Out-of-court disposals can provide a proportionate means of dealing with offending that deserves a criminal justice response but is not serious enough to warrant prosecution, but we suggest some safeguards in response to concern amongst sentencers and the wider public that their use is not always transparent or appropriate. Where young people come before the courts, we make recommendations to protect the right of young offenders with speech, language and communication needs and/or a learning disability to a fair trial and to provide a mechanism for young people with exceptional welfare needs to be referred to the family court.

In relation to sentencing, we commend the collaboration between the Youth Justice Board, youth offending teams and the judiciary to bring about a significant reduction in the numbers of young people in custody since 2008. In order to cement these gains, ensure we meet our international obligations for custody to be used only in cases of genuine last resort, and reduce the huge financial burden the secure estate places on the state, we recommend a statutory threshold to enshrine in legislation the principle that only the most serious and prolific young offenders should be placed in custody; devolving the custody budget to enable local authorities to invest in effective alternatives to custody; and more action to reduce the number of young people who breach the terms of their community sentences and the number of young black men in custody. We welcome the Government's commitment to restorative justice; however we believe more should be done to make it integral to the youth justice system.

We describe our vision for a complete reconfiguration of the secure estate to one comprising small, local units with a high staff ratio where young offenders who require detention can maintain links with their families and children's services. We highlight three very serious issues in the custodial estate that require action. First, it is imperative to draw

together and act upon lessons arising from the deaths of vulnerable young people in custody. Secondly, we are concerned that the use of restraint, which has been linked to at least one of these deaths, rose considerably last year and press for a fundamental cultural shift across the secure estate. Thirdly, we recommend more and better co-ordinated support for looked after children and care leavers in custody, who are all too often abandoned by children's and social services.

In contrast with their success in other areas, the Youth Justice Board and local agencies have failed to make any progress in reducing the binary re-offending rate. We endorse the Secretary of State's aim of improving the basic literacy of offenders but we are not convinced that it is most useful to focus resources on the secure estate, given that the average length of stay is currently 79 days. The greater focus should be on improving transition between custody and the community, and on improving provision in the community and incentivising schools and colleges to take back difficult students. There is a need for better data about which interventions work best to reduce re-offending; better assessment for impairments, vulnerabilities and health issues and follow-up interventions, including more access to speech and language therapists; and better resettlement support, particularly in relation to suitable accommodation. Finally, earlier planning, better information sharing and a smoother transition between youth and adult provision would ensure that progress is not lost when an offender turns 18.

In this Report recommendations are set out in bold text and conclusions are set out in bold italic text.

1 Introduction

Our inquiry

1. We announced our intention in January 2012 to carry out a wide-ranging inquiry into the youth justice system in England and Wales. We had begun a similar inquiry in 2011 but had curtailed it in order to report promptly and specifically on the proposed abolition of the Youth Justice Board.¹ None of our predecessor committees had reported on the youth justice system as a whole since its comprehensive redesign in 1998 and, given the level of public and political interest in this area, we considered it an appropriate juncture to take stock. Our terms of reference were to explore:

- The targeting of resources, including the ability of youth offending teams and their multi-agency partners to operate effectively in the current economic climate, and early findings from the Youth Justice Pathfinder Initiatives.
- The use and effectiveness of available disposals, including restorative justice and custody as a last resort.
- The role of the youth justice system in diverting at-risk young people away from first-time offending.
- The evidence base for preventing offending and reducing reoffending and the extent to which this informs interventions in custody and the community.
- The governance of the youth justice system, including the removal of joint responsibility from the former Department for Children, Schools and Families.
- The extent to which the system is able to meet the needs of all offenders regardless of age, gender, ethnicity and mental health.

2. We are grateful to the many individuals and organisations who contributed to our inquiry. 33 witnesses gave oral evidence, including a panel of former young offenders involved with User Voice; we also received 30 written submissions and drew on evidence to our previous inquiry. In order to gain a better understanding of successful approaches to youth justice in other jurisdictions, we took evidence in Northern Ireland on youth conferencing and visited treatment and detention facilities in Denmark and Norway. Visits to HMYOI Hindley and HMYOI Feltham in this country gave us an insight into the issues facing the most troubled young people in the system as well as giving us an opportunity to see the operation of the system at first hand.

3. We begin our Report with a brief description of the youth justice system before examining, in turn, efforts to prevent young people from entering the criminal justice system; responses to proven offending; issues pertaining to the secure estate; and interventions to reduce re-offending. We have inevitably been unable to examine every

¹ Publication of our Report coincided with the House of Lords consideration of Commons amendments to the Public Bodies Bill, which was the legislation which would have given Ministers the power to abolish the YJB by order. During this debate Lord McNally made a statement that the Government had decided not to pursue the abolition of the YJB.

facet of the system in detail, but seek to comment on those areas where our evidence has been especially striking. In doing so, we pay particular attention to the three performance criteria by which the system is judged: the number of young people entering the system for the first time; the number of young people sentenced to custody; and the rate of re-offending. At the end of our Report, we indicate those recommendations which we consider to be the most important.

The youth justice system

4. The criminal justice system did not distinguish between adult and juvenile offenders until 1908, when the Children Act established the principle of dealing with juvenile offenders separately from adult offenders and the Crime Prevention Act set up the first borstal. The Children and Young Persons Act 1933 introduced a statutory principle that the courts must have regard to the welfare of the child or young person tried before them, which continues to this day. The age of criminal responsibility was raised from eight to ten in 1963. Between 1989 and 1991, the systems for dealing with children in need of care and those charged with criminal offences were split and the youth court created, to try the majority of under-18s accused of criminal offences.

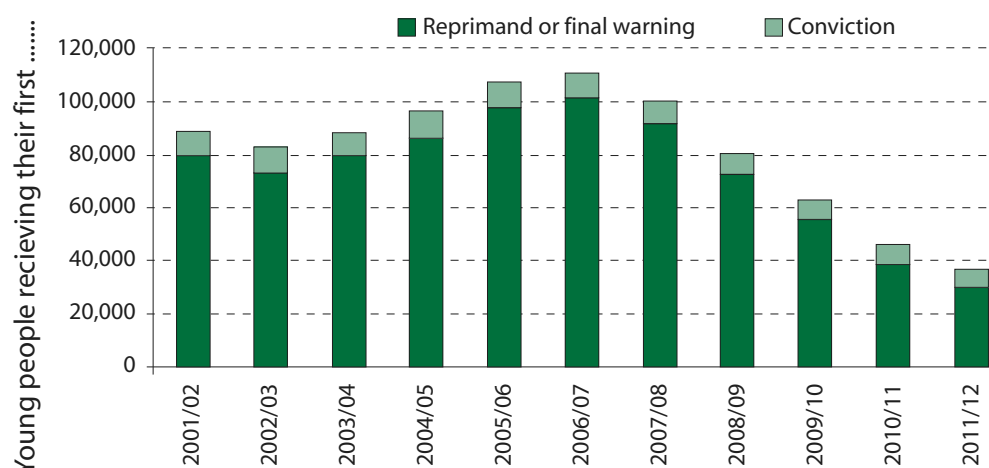
5. During the 1990s, the numbers of young people entering the criminal justice system, and particularly the number sentenced to custody, rose substantially. In 1996 the Audit Commission published *Misspent Youth: Young People and Crime*, which found that there was no integrated youth justice system and the system was inefficient and ineffective. This prompted fundamental change to the structures and framework for responding to offending by under-18s. The Crime and Disorder Act 1998 defined the principal aim of the youth justice system as ‘to prevent offending by children and young persons’. It placed a duty on every local authority to establish and fund a multi-agency youth offending team for their area (YOT), to coordinate youth justice provision. At national level, a Youth Justice Board (YJB) was established to monitor and advise the Secretary of State in relation to the youth justice system; monitor steps taken to prevent offending by young people; identify, spread, and make grants to develop good practice; and enter into agreements for the provision of secure accommodation for the detention of under-18s in custody. The Act, and subsequent legislation, also made significant changes to the sentences and out-of-court disposals available for young offenders. The last fifteen years have seen some minor changes to the system—the extent of Department for Education involvement has varied, for example—but it remains broadly as described.

2 Prevention

Reducing the number of first-time entrants

6. The primary aim of the youth justice system is to prevent youth offending, and the effectiveness of the system is therefore judged in part on its progress in reducing the number of young people entering the criminal justice system for the first time. Justice agencies have sought to drive down these numbers via voluntary interventions targeted at young people judged to be at risk of offending, and responding to minor offending in a more informal way. Figure 1 shows how, after a poor start, the agencies responsible for delivering youth justice have achieved substantial reductions in the number of first-time entrants. The 2011/12 figure of 36,677 is 59% that of 2000/01, the first year for which comparable data is available, and around a third of the number entering the system in 2006/07.

Figure 1: Trends in first time entrants, 2001/02–2011/12



Data Source: Youth Justice Board/Ministry of Justice Statistics Bulletin, Youth justice statistics 2011/12, England and Wales, 31 January 2013, Chart 2.1

Diversion

Successful diversionary approaches to minor offending

7. Although the volume of youth offending is itself believed to have declined,² as the National Audit Office noted in 2010, it is not known to what extent falls in first time entrants reflect genuine reductions in crime.³ Our witnesses agreed that the scale of the reduction in first time entrants from 2008 stemmed mainly from changes to the way in which offending is dealt with by the authorities, in particular the removal of the “offences brought to justice” target for the police service. This target created perverse incentives for

² Q 385 [John Drew]. It is not possible to tell the age of offenders from police-recorded crime data. Police in England and Wales arrested 210,660 under-18s in 2010/11 (data from 2011/12 is not yet available); this number has declined every year since 2006/07.

³ National Audit Office, *The youth justice system in England and Wales: reducing offending by young people*, HC 663, December 2010

officers to pursue very minor offending, and consequently conflicted with the first-time entrants target and drove a lot of young people into the system unnecessarily.⁴ A growing body of evidence suggests that diverting children from formal criminal justice processes is “a protective factor against serious and prolonged reoffending”⁵, therefore diversion should have a long-term impact on youth crime levels.

8. Areas which have achieved large reductions in the number of first-time entrants have adopted alternative means of resolving cases.⁶ The Youth Restorative Disposal, piloted in eight forces between 2008 and 2009, offered police officers more discretion in dealing with minor offending through the use of restorative justice, often on the street.⁷ Bradford YOT established restorative justice clinics as an arrest diversion: evaluation showed that only 10% of young people attending a clinic were re-arrested.⁸ Assistant Chief Constable Wilkins, representing the Association of Chief Police Officers, cited “clear evidence” that restorative justice has a positive impact on victim satisfaction and re-offending rates⁹ and Jeremy Wright MP, the Minister for Prisons and Rehabilitation, clarified that the Government is committed to expanding the use of restorative justice.¹⁰

The YJB has already spent something like £600,000 on delivering [...] increase in capacity [...] We need to make sure that we have enough trained facilitators in place, as well as raising awareness among victims of what they can take advantage of.¹¹

9. In addition to the use of restorative justice, the Ministry of Justice cited promising early findings from Triage initiatives, which bring YOT workers into police custody suites to assess young people and ensure information is shared between children’s or social services and the police, to help inform charging decisions and ensure that appropriate support is provided by agencies outside the criminal justice system.¹² County Durham’s fully integrated pre-court system was also praised for its successful use of diversion.¹³

10. We strongly welcome the substantial decrease since 2006/07 in the number of young people entering the criminal justice system for the first time, and commend local partnerships for their successful efforts to bring this figure down. Justice agencies play a crucial role in preventing youth crime by diverting young people away from formal criminal justice processes, which, when done well, means they are less likely to go on to serious and prolonged offending. We are particularly encouraged that many youth offending teams and police forces are using a restorative approach to resolving minor offending.

4 Q 3 [Enver Solomon]; Q 5 [Andrew Neilson; Alexandra Crossley]; Q 143 [Assistant Chief Constable Wilkins]

5 Ev 115 [Office of the Children’s Commissioner]. See also Ev 141 [MoJ/YJB].

6 Q 96–7 [Paul O’Hara, Wendy Poynton]

7 Andrew Rix, Katy Skidmore, Richard Self, Tom Holt, Steve Raybould, *Youth Restorative Disposal Process Evaluation* (London, 2011)

8 Q 96 [Paul O’Hara]

9 Q 144

10 Q 437

11 Q 435

12 Ev 140

13 Ev w19 [Local Government Association] [Note: references to ‘Ev wXX’ are references to written evidence in the volume of additional written evidence published on the Committee’s website]

11. However, other evidence suggested that use of such approaches is far from universal. In the first place, diversion is not used consistently across the country. The Magistrates' Association expressed concern about "the postcode lottery in the use of restorative justice", which "seems to depend very much" upon the opinions of the local YOT and police command.¹⁴ The Centre for Social Justice, who published an in-depth report on youth justice in 2012, argued that the culture shift towards diversion:

[...] has failed to filter down to frontline practitioners in many areas. At these levels there is both reluctance to divert cases (partly because formal responses count as sanction detections) and lack of awareness of diversion policy. There remains much scope to continue reductions in first-time entrants to the youth justice system by re-focusing prevention efforts and increasing awareness on the frontline of the importance of diversion.¹⁵

The Criminal Bar Association also highlighted the prevalent perception amongst its members that young people are still more likely to be charged and brought before the courts for minor offences, which historically would have been dealt with by schools.¹⁶

Looked after children

12. Secondly, there appears to be a particular problem in relation to looked after children. Children in care are more than twice as likely to be cautioned or convicted as other children and the Magistrates' Association said that its members are seeing looked after children in court for offences "which would certainly not reach court if the children lived in conventional families."¹⁷ Assistant Chief Constable Wilkins noted that:

If something is reported in a school where there is a safer schools partnership, it does not have to be recorded as a crime if it is dealt with by the school. However, if I then move across to looked after children at a children's home, that does have to be recorded as a crime. There is more of a tendency [...] to call the police in for disputes in children's homes when, in a normal family home, the police would not be involved.¹⁸

13. The Prison Reform Trust argued for YOTs to provide more support to children's services to deliver a restorative justice-based response to minor offending in children's homes, to prevent children in care being criminalised for behaviour that would be dealt with differently in a family context, such as breaking a cup.¹⁹ Agencies in Leicestershire have managed to reduce the level of offending in children's homes by around 50% through greater use of restorative justice, and Assistant Chief Constable Wilkins informed us that increasingly his officers in Norfolk are working with care managers towards restorative

14 Ev 106

15 Ev 92

16 Ev w9

17 Department for Education statistics cited in Prison Reform Trust, *Care – a stepping stone to custody? The views of children in care on the links between care, offending and custody*, 2011; Ev 106

18 Q 141

19 Ev 130

justice solutions.²⁰ It is worth noting that this also reduces the need for police call-outs and is therefore cost-effective in the short, as well as the longer term.²¹

14. The Looked After Children and Offending Project²² found that Crown Prosecution Service (CPS) staff were not always observing the relevant guidance regarding looked after children in residential care.²³ The current CPS Legal Guidance in relation to prosecuting young offenders states that:

A criminal justice disposal, whether a prosecution, reprimand or warning, should not be regarded as an automatic response to offending behaviour by a looked after child, irrespective of their criminal history. This applies equally to persistent offenders and youths of good character. A criminal justice disposal will only be appropriate where it is clearly required [...] Informal disposals such as restorative justice conferencing, reparation, acceptable behaviour contracts and disciplinary measures by the [care] home may be sufficient to satisfy the public interest and to reduce the risk of future offending.²⁴

The Prison Reform Trust argued for a national rollout of the assumption against charging a looked after child “unless the seriousness of the offence merits it”, as piloted in some areas.²⁵

15. The Looked After Children Project also found that not all local authorities had strategies preventing inappropriate criminalisation of looked after children in place and that practice varied between care homes.²⁶ Ofsted currently includes within its inspection evaluation schedule, in judging outcomes for young people, that a care home will be judged as outstanding if “risk taking behaviours of children and young people in short term crisis placements are controlled and reducing, and there is a positive and highly effective response to their specific needs” and good if “children and young people whose behaviour is unsafe, and puts them at risk of offending or re-offending, show a reduction in incidents of anti-social behaviour and offending”, but does not specifically discourage criminalisation.

16. Looked after children have not benefited from the shift towards a more informal approach to minor offending to the same extent as other children. While serious misdemeanours must be dealt with in a serious manner, it is completely disproportionate for police officers to be called to a children’s home to investigate trivial incidents such as the broken crockery example cited by the Prison Reform Trust—it puts already

20 Q 97 [Wendy Poynton]; Q 147

21 Q 97 [Wendy Poynton]

22 This research project was a partnership between The Adolescent and Children’s Trust and the University of East Anglia, funded by The Big Lottery, which included surveys, interviews and focus groups with looked after children and staff.

23 Gillian Schofield, Emma Ward, Laura Biggart, Vicky Scaife, Jane Dodsworth, Birgit Larsson, Alice Haynes and Nigel Stone, *Looked after children and offending: reducing risk and promoting resilience* (Norwich, 2012)

24 Crown Prosecution Service, Legal Guidance in relation to Youth Offenders, http://www.cps.gov.uk/legal/v_to_z/youth_offenders/#a21, accessed on 1 February 2013

25 Ev 130

26 Gillian Schofield, Emma Ward, Laura Biggart, Vicky Scaife, Jane Dodsworth, Birgit Larsson, Alice Haynes and Nigel Stone, *Looked after children and offending: reducing risk and promoting resilience* (Norwich, 2012)

vulnerable children at greater risk of being drawn into the criminal justice system and is, moreover, a waste of police resources. We recommend (a) that the Government ensure that all local authorities, in conjunction with partner agencies, have strategies in place to reduce criminalisation of looked after children and that action to achieve this is included more specifically in the evaluation criteria for Ofsted inspection of care homes; (b) that the Director of Public Prosecutions revisits the legal guidance in relation to the prosecution of youths to see if the relevant passages require better compliance, or strengthening, to reduce the risk of discrimination against looked after children; and (c) that the additional funding being provided by the Ministry of Justice to train restorative justice facilitators extends to care home staff.

Intervening with children and young people at risk of offending

17. YOTs also try to prevent youth offending by intervening with children judged to be on the cusp of offending. There is now a good understanding of the risk factors which increase the likelihood of a young person offending, based on over 30 years research in the UK, United States and other countries. Professor Brian Littlechild listed the key factors associated with youth offending: poor education and employment prospects; inconsistent parenting; poor housing or homelessness; poor physical and mental health; poor access to financial resources; peer pressure; anti-social behaviour; drug and alcohol abuse; and difficulties in forming and sustaining relationships.²⁷ We were struck during our visit to HMYOI Feltham by the fact that none of the young offenders whom we met had experience of the workplace. A joint inspection of youth crime prevention in 2010 found that the prevention agenda was firmly embedded within YOTs and was based primarily around the Youth Inclusion and Support Panel and Youth Inclusion Programme approaches, which aim to give at-risk young people, generally from the age of 8, somewhere safe to go where they can engage in pro-social activities, and have access to positive role models and support; they also include parenting support. Young people are generally referred to prevention schemes by schools and the police, and less frequently by health workers, using the Onset referral and assessment framework.²⁸

Impact of spending cuts on YOT prevention services

18. Like all public services, the youth justice system has been subject to significant funding cuts since 2010. Evidence to our 2011 inquiry suggested that YOT preventative services were under threat;²⁹ submissions to this inquiry in early 2012 expressed similar concerns.³⁰ The main tasks YOTs carry out are assessing the risks and needs of young offenders; making recommendations to sentencers; delivering community-based sentences and ensuring compliance; and undertaking preventative work to reduce the number of first time entrants. However, prevention activity is not included within their statutory duties

27 Ev w6 [Professor Littlechild]

28 Joint Criminal Justice Inspection, *A Joint Inspection of Youth Crime Prevention*, 2010

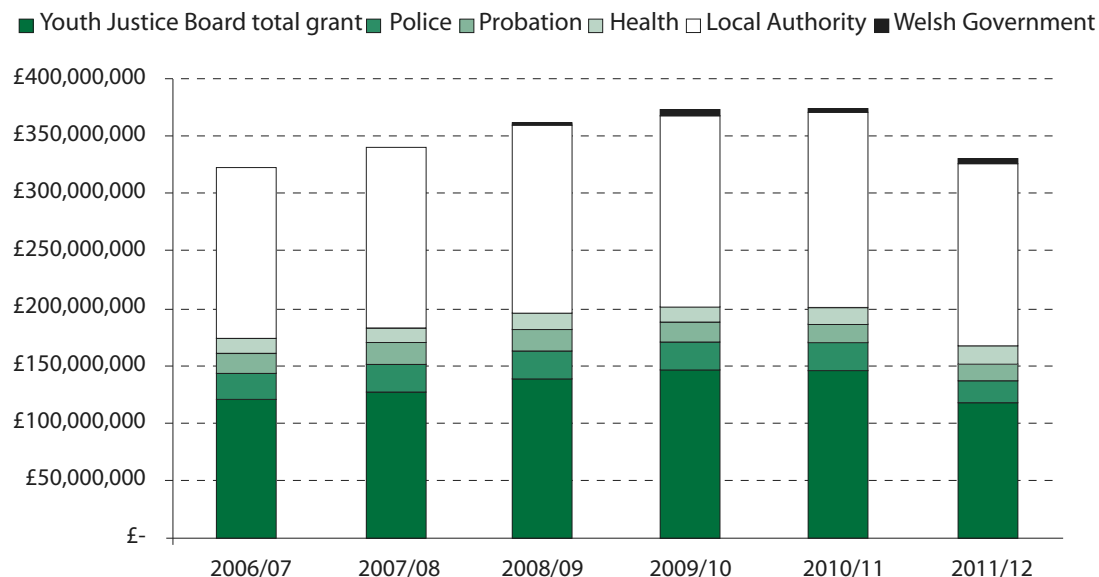
29 Justice Committee, Tenth Report of Session 2010–12, *The proposed abolition of the Youth Justice Board*, November 2011, HC 1547, Q 33 [Penelope Gibbs] 60 [Lorna Hadley, Association of YOT Managers]; Ev 32 [Prison Reform Trust].

30 Ev 91 [Centre for Social Justice]; Ev 101 [Leicestershire County Council and Youth Offending Services Management Board]; Ev 97 [Howard League for Penal Reform]; Ev w19 [Local Government Association]; Ev w24 [Reading Youth Offending Service].

and, as the Local Government Association pointed out, “services must prioritise statutory activity to satisfy court requirements”.³¹ In 2010/11, 21% of YJB funding was ring-fenced for prevention programmes—the ring-fence has since been removed.³² Prevention activities are therefore funded from whatever is left in the pot.

19. Around two-thirds of YOT funding is provided by local agencies, with the remainder provided by central government. Between 2010/11 and 2011/12, total funding available to YOTs fell back to 2006/07 levels from £373m to £330m, a nominal reduction of 12%.³³ Within this headline figure, the size of the YJB grant decreased by 20%, funding provided by the police fell by 15%, probation by 8%, health by 5%, local authorities by 5% and the Welsh Assembly Government by 8%. John Drew, then Chief Executive of the YJB, said the Board had been able to protect the size of the youth justice grant in 2012-13³⁴ but he believed there had been further reductions in local contributions.³⁵ The Local Government Association described the current overall picture as “one of significantly diminishing resources for YOTs”.³⁶

Figure 2: Total YOT funding over time, 2006/07–2011/12



Data Source: Youth Justice Board/Ministry of Justice Statistics Bulletin, *Youth justice statistics 2011/12, England and Wales*, 31 January 2013, Chart B.1

20. We asked three YOT managers in July 2012 to describe the impact of these reductions on their services. Leicestershire YOT had received “a small overall reduction” in funding,

31 Ev w19

32 Youth Justice Board/Ministry of Justice Statistics Bulletin, *Youth justice statistics 2010/11*, January 2012, p 80

33 Youth Justice Board/Ministry of Justice Statistics Bulletin, *Youth justice statistics 2011/12, England and Wales*, 31 January 2013, p 72. This is a real terms decrease of 13.4%, when adjusted for inflation.

34 The YJB corporate plan 2012/13 sets out the intention to provide £108 million in grant funding to YOTs (excluding the intensive fostering grant), which constitutes a nominal reduction of 8%, although YOTs may also be able to access the portion of Home Office funding redirected to police authorities in preparation for the introduction of Police and Crime Commissioners.

35 Qq 381–2

36 Ev w18

resulting in them losing a Connexions personal advisor; Bradford had not lost any staff.³⁷ However, Gareth Jones, representing the Association of YOT Manager, said that some YOTs had experienced “significant reductions”.³⁸ We note that YOT caseloads have been reducing with the decline in first time entrants to the system: there were 66,430 young people under the supervision of YOTs in 2011/12—a reduction of 22% from 2010/11 and 48% since 2008/09.³⁹ However, John Drew cautioned against making direct comparisons between the level of funding cuts and the reduced caseloads, as YOTs are left with the most challenging and prolific, and therefore resource-intensive, offenders.⁴⁰ This was supported by the Bradford YOT Manager, Paul O’Hara, who said the “young people we are working with have more complex issues and more challenges”.⁴¹

21. John Drew also suggested that the earlier improvements seen in the system had been achieved through significant injection of resources, following a period of serious under-funding of youth justice agencies. Between 2000 and 2008, spending on youth justice increased in real terms by 45%.⁴² Reading Youth Offending Service warned that a dilution of resources targeted at prevention and early-stage offending risked minor offenders becoming more entrenched.⁴³ Since direct funding from the Department for Education to the Youth Justice Board for crime prevention ceased in 2011/12, YOTs have been able to bid for funding from the DfE’s Early Intervention Grant, but Gareth Jones said that “most YOTs have been completely and utterly taken out of that loop”.⁴⁴ Although our witnesses from Leicestershire and Bradford had been able to access funding in that way, a YJB survey in the spring of 2011 found that 37% of YOTs had not been successful.⁴⁵

22. The 2010 joint inspection found that measuring the impact of YOT prevention schemes is problematic.⁴⁶ This was echoed by the Independent Commission on Youth Crime and Anti-Social Behaviour, which concluded that:

Adequate mechanisms do not yet exist for spreading best preventative practice and ‘scaling-up’ the most promising initiatives. Too much public money is spent on interventions whose ability to achieve cost-effective results is either poorly established or unknown.⁴⁷

This is a theme to which we will return in our discussion of re-offending in chapter 5.

37 Q 117

38 Q 112

39 Youth Justice Board/Ministry of Justice Statistics Bulletin, *Youth justice statistics 2011/12, England and Wales*, 31 January 2013, p 24

40 Qq 382, 284. See also Youth Justice Board/Ministry of Justice Statistics Bulletin, *Youth justice statistics 2011/12, England and Wales*, 31 January 2013, p 52.

41 Q 131

42 Centre for Crime and Justice Studies, *Ten years of Labour’s youth justice reforms*, May 2008, p 9

43 Ev w24

44 Q 95

45 HC (2010–12) 1547, Ev 38

46 Joint Criminal Justice Inspection, *A Joint Inspection of Youth Crime Prevention*, 2010

47 Independent Commission on Youth Crime and Anti-Social Behaviour, *Time for a Fresh Start*, 2010, p 39

The role of Police and Crime Commissioners

23. Funding from the Home Office for youth crime and substance misuse prevention that currently goes directly to YOTs is being transferred to Police and Crime Commissioners from 2013/14, and will not be ring-fenced. Gareth Jones was concerned that Commissioners:

[...] may choose not to spend it on those issues that we have described today, such as outreach work, early intervention and restorative justice.⁴⁸

According to the Association of YOT Managers, Police and Crime Commissioners will have control over 13% of current YOT budgets on average.⁴⁹ Leicestershire County Council expressed similar apprehension about the transfer of these funds.⁵⁰ In addition to the fact that there will be other competing priorities within local areas, the Centre for Social Justice cited fears that commissioners might be inclined to cut diversionary provision if the public perceived this as allowing children to “get away with” their behaviour.⁵¹

24. We asked the YJB how they intend to work with the new commissioners to persuade them to fund youth crime prevention. Frances Done, Chair of the Board, replied:

We have been working with YOTs now for over 12 months, once it became apparent that police and crime commissioners were definitely going to be in place [...] providing them with support materials to enable them to demonstrate to their local police and crime commissioner, as soon as they came into post, what they have been able to achieve, how they have done it and why it needs to keep going. The feedback from that has been very positive [...] I will be seeking meetings, in the next month or so, with some of the police and crime commissioners in the most populated areas, to engage with them. We have already had a response from at least three in the very largest areas, who are very keen to meet and talk about what we can contribute and support in the way of their work [...] It is early days, but, so far, we have reason to be optimistic that they will be listening to what youth offending teams are saying, because youth offending teams are generally very credible and they have a good track record.⁵²

The role of agencies outside the criminal justice system

25. Other witnesses, including Andrew Neilson, of the Howard League, considered that prevention should lie outside the youth justice system.⁵³ Enver Solomon, representing the Standing Committee on Youth Justice, argued that “there is a limitation to what the criminal youth justice system can deliver” in trying to resolve the complex and entrenched social problems experienced by many young offenders.⁵⁴ In addition, contact with justice

48 Q 99

49 Tweet from the Association of YOT Managers, @AssnYOTmanagers, www.twitter.com, 6 December 2012

50 Ev 101

51 Ev 96

52 Q 393

53 Q 2

54 Q 1

agencies can have a stigmatising effect, but Dr Tim Bateman has noted that there has been “little or no attempt to redirect the capacity to work with children in trouble towards mainstream services”.⁵⁵ Alexandra Crossley, from the Centre for Social Justice, suggested that the creation of YOTs encouraged other agencies to relinquish responsibility to them. Mark Johnson, the founder of User Voice, argued that:

It is commendable what the YJB have done [...] For me, the conversation needs to take place outside justice for things to change further. That is, there is a clear journey between problematic families, dysfunctional family environments, to school exclusion, to entering what I call “no man’s land”, where there is no help available, there is massive budget reduction in prevention work over this last 18 months, and people have to get into the justice system to come into contact with any kind of help.⁵⁶

26. Services outside the criminal justice system have also experienced significant cuts. Children’s services were cut by 13% in 2011/12,⁵⁷ and the National Council for Voluntary Youth Services and Clinks drew our attention to the impact of cuts on the voluntary and community sector, which is “in an increasingly fragile state as a result of funding cuts and a simultaneous increase in demand for its services.” A survey carried out by Clinks in 2011 found that over 80% of organisations had experienced a reduction in income.⁵⁸ Our colleagues on the Education Committee found ‘very significant, disproportionate cuts’ to local authority youth services, ranging from 20%–100%.⁵⁹ As a consequence, in Leicestershire, for example, children’s services have had to reduce funding to a range of activities, including reducing the number of education officers from two to one.⁶⁰ Targeted and non-targeted activities provided by local authority youth services and voluntary sector groups are also likely to be forced to close.

27. One of our terms of reference was to examine the impact of the removal of joint responsibility for the YJB from the Department for Education in 2010. Although few considered that this mattered significantly per se, some of our witnesses believed that the Department’s focus on children at risk of offending had diminished. In evidence to our previous inquiry, the YJB cited one example, that initial guidance for the new Department for Education combined Early Intervention Grant did not make clear that funding could be directed towards youth crime prevention.⁶¹ We also heard evidence of a developing trend for children’s services not to second social workers to YOTs.⁶² The Chair of the YJB added in evidence to this inquiry that:

⁵⁵ Tim Bateman, *Children in conflict with the law: an overview of trends and developments-2010/2011*, www.thenayj.org.uk, p 18

⁵⁶ Q 87

⁵⁷ Ev 97 [Howard League for Penal Reform]

⁵⁸ Ev w11

⁵⁹ Education Committee, Third Report of Session 2010–12, *Services for young people*, HC 744, para 69

⁶⁰ Q 117

⁶¹ HC (2010–12) 1547, Ev 35

⁶² HC (2010–12) 1547, Q 3 [Penelope Gibbs]

It is a cause of concern for us that, inevitably, because of the Government's priorities at the moment, there is a huge emphasis on what you might call more mainstream children and probably less emphasis on non-mainstream children. It is our job to keep banging at the DFE's door on the issues about the children that we are most concerned with, who are very often excluded from school very early and then don't end up in any formal educational setting—for example, safeguarding issues and looked after children.⁶³

Early intervention with younger children

28. We received strong evidence to suggest that many children in the criminal justice system should not be there, and that they are frequently known to other agencies who have missed opportunities to meet their often acute welfare needs:

We find that so many children who end up in the system are falling into that system unnecessarily because other services have not given them the support they need [...] We know that a lot of the problems in terms of preventing offending are associated with those services that lie outside the system that are not meeting their statutory duties in relation to young people in trouble with the law.⁶⁴

Gareth Jones believed that the situation, while still poor, had become a lot better in recent years.

29. Sue Berelowitz, the Deputy Children's Commissioner, said that she had:

[...] never met a child in prison who has not had multiple bereavements and extremely traumatic early childhood experiences, not always very well dealt with. One boy I met recently was telling me how many foster placements he had been in. He stopped counting at 25.⁶⁵

Children in the criminal justice system have higher than average mental health difficulties, for example, as well as significant learning difficulties and substance abuse problems.⁶⁶ The Bercow Review of speech, language and communication needs services for children and young people estimated that 210,000 children and young people pass through the criminal justice system each year who may benefit from approaches which ensure early identification and support,⁶⁷ and a 2009 study found very few of the young people identified by YOTs as having communication difficulties had been assessed prior to that process.⁶⁸

30. There is a strong body of evidence to show that early intervention with very young children, by schools, children's/social services and healthcare providers, can be successful in reducing persistent childhood behavioural problems, which may eventually lead to

63 Q 390

64 Qq 1–2

65 Q 203

66 Ev 112 [Office of the Children's Commissioner]

67 Ev w3 [The Communication Trust]

68 Ev 142 [Royal College of Speech and Language Therapists]

offending, and that investment in early intervention can be cost-effective in the long run.⁶⁹ We noted neurological evidence that the first years of a child's life are essential to the development of their brain and, especially, their social and emotional capabilities, and the growing body of evidence that people's life outcomes are heavily predicated on their experiences during this period.⁷⁰ Examples of successful initiatives include parenting support, pre-school education, school tutoring, behaviour and 'life skills' strategies, family therapy, treatment foster care, constructive leisure opportunities, and mentoring programmes.⁷¹ Wendy Poynton, Head of the Leicestershire Youth Offending Service, told us that:

The underlying factors that increase the risk of offending clearly need to be addressed as early as possible. There is significant national evidence that early intervention is effective, and is the best way to prevent offending and to improve other outcomes for children.⁷²

However, the National Audit Office, who estimated the annual cost of young offenders to be £8.5–£11 billion and that the marginal cost alone of the first-time young offenders in 2000 ran into billions of pounds over the subsequent ten years,⁷³ published an evaluation of early intervention in relation to health, education and youth crime in January 2013 which concluded that “the government recognises the principle that early action is important in providing public services, but does not plan a significant shift in resources.”⁷⁴

The Troubled Families agenda

31. Frances Done described the Troubled Families agenda as “another way of joining up that early intervention agenda.”⁷⁵ The Troubled Families Programme has been allocated £448 million over three years to target the 120,000 most troubled families. Leicestershire County Council described the emerging model as based on a family support worker but with “a team around the family”, with more effective integration of key services aimed at reducing duplication.⁷⁶ There is significant cross-over between the target groups for YOT prevention work and the Troubled Families agenda—Gareth Jones said that 80–90% of the families in his area who have been identified by local partners are already known to the YOT⁷⁷—and a number of YOT managers have moved into Troubled Families lead posts. As we detail in chapter 5, the evidence suggests that dealing with offenders within the

69 Office of the Children's Commissioner, *Nobody made the connection: The prevalence of neurodisability in young people who offend*, October 2012

70 See, for example, research cited in Graham Allen MP, *Early Intervention: the next steps, An Independent Report to Her Majesty's Government*, January 2011; Centre for Social Justice, *Rules of Engagement: changing the heart of youth justice*, January 2012

71 Independent Commission on Youth Crime and Anti-Social Behaviour, *Time for a Fresh Start*, 2010, p 42

72 Q 89

73 National Audit Office, *The cost of a cohort of young offenders to the criminal justice system*, June 2011 (2009 figures)

74 National Audit Office, *Early action: landscape review*, HC 683, 31 January 2013

75 Q 391

76 Ev 102

77 Q 91

family environment are likely to be effective. While it is far too early to assess its impact, the National Audit Office concluded in January 2013 that:

Early indications are that the ‘Troubled Families’ initiative and community budget pilots have catalysed local authorities and other local bodies to work more collaboratively across traditional service boundaries.

32. We find it difficult, on the evidence currently available, to draw firm conclusions about the impact of spending cuts on the prevention agenda, and the longer-term impact of spending cuts is something which we will keep under review. The continuing downward trend in first-time entrants to the justice system, and indeed in crime levels as a whole, indicates that they have not yet had a detrimental impact, although it may be that any impact has not yet been felt. The addition of Police and Crime Commissioners to the funding landscape presents opportunities and risks and we do not underestimate local apprehension about the potential for the commendable progress achieved over the last few years to be reversed. The best way to persuade Police and Crime Commissioners of the case to invest in youth crime prevention will be via clear analysis of the long-term cost benefits. We therefore recommend that the Youth Justice Board dedicates greater priority and resources to providing hard evidence of what works, and that the Chair of the Board continues to engage with Police and Crime Commissioners and their representative body so that the transition does not damage service continuity

33. There is a limit to what criminal justice agencies can achieve in preventing youth offending. Young people in the criminal justice system are disproportionately likely to have high levels of welfare need and other agencies, in particular children’s and social services, have often failed to offer them support at an early stage. We believe that the overall approach of the Troubled Families agenda has the potential for success. However, we are disappointed by the recent finding of the National Audit Office that the Government does not plan a significant shift in resources towards early intervention, despite the strong evidence that it is cost-effective in the long term, and we are concerned that the Department for Education and local children’s services departments are becoming increasingly disengaged from the youth justice agenda. It is possible that early intervention has contributed to the success of the Youth Justice Board in reducing the number of young people entering the criminal justice system. If this is the case, there is a real danger that progress will be reversed, but the effects will not be seen for several years. We recommend that the Youth Justice Board undertakes research into the contributory factors to these reductions, and the cost-benefits of this work, to enable better decision-making about the distribution of funding.

3 Responses to proven offending

Available disposals for proven offending

34. There were 137,335 proven offences by young people in 2011/12, down 47% since 2001/02 and 22% since 2010/11.⁷⁸ The police have the power to issue a reprimand or final warning, where it is judged that prosecution is not in the public interest. These will be replaced by a new Youth Caution, when the relevant provisions of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 come into force. Unlike reprimands and final warnings, the Youth Caution can be offered if a young person has previously been convicted or given a youth conditional caution. The Act also provides for the Youth Conditional Caution to be available nationwide.

35. Those under-18s whose offending is judged to merit prosecution are tried either by magistrates at the youth court, or for more serious offences, at the Crown Court.⁷⁹ In addition to the distinctive range of penalties available for youths, there is an expectation that, generally, a young person will be dealt with less severely than an adult offender, and the court must have regard to a) the principal aim of the youth justice system (to prevent offending); and b) the welfare of the offender.⁸⁰ When a young person is charged with a first offence and pleads guilty, the courts must pass (in most cases) a referral order. 20,453 young people were given a referral order in 2011/12.⁸¹ The young person is required to attend a Youth Offender Panel and may be required to make restitution or reparation to the victim. A contract is agreed by the panel and, in the event of non-compliance, the offender can be referred back to court. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 has increased sentencer discretion by allowing courts to conditionally discharge a young person who pleads guilty to their first offence and removing the restriction on repeated use of the order for young people who plead guilty.

36. In cases where a referral order is not considered to be appropriate, usually because the offence is too serious, the courts may pass a Youth Rehabilitation Order, to which they can attach positive and negative requirements from a menu of 18. In the most serious circumstances, young people may be sentenced to a period of imprisonment under a Detention and Training Order, or under sections 90 or 91 of the Powers of the Criminal Courts (Sentencing) Act 2000 for offences of murder or an offence for which an adult could receive at least 14 years in custody. A Detention and Training Order lasts between four months and two years, spent half in custody and half in the community. Murder carries a mandatory life sentence; offenders sentenced under Section 91 can receive up to the adult maximum for the same offence, which for certain offences may be life. A court

78 Youth Justice Board/Ministry of Justice Statistics Bulletin, *Youth justice statistics 2011/12, England and Wales*, 31 January 2013

79 32,940 young offenders were sentenced for indictable offences in a magistrates court in 2011/12 and 2,053 in the Crown Court: Youth Justice Board/Ministry of Justice Statistics Bulletin, *Youth justice statistics 2011/12, England and Wales*, 31 January 2013, Supplementary tables, Table 5.4

80 Sentencing Guidelines Council, *Overarching principles – sentencing youths*, Definitive Guideline, 2009

81 Youth Justice Board/Ministry of Justice Statistics Bulletin, *Youth justice statistics 2011/12, England and Wales*, 31 January 2013, Supplementary tables, Table 5.3

may also impose a fine for any offence, although the sentencing guideline notes that, in practice, many young offenders have limited financial resources.⁸²

Out-of-court disposals

37. 40,757 reprimands and final warnings were given to 10–17 year olds in 2011/12 (in contrast with 59,335 court disposals).⁸³ The Magistrates' Association, while not opposed to the appropriate use of out-of-court disposals,⁸⁴ was critical of what its members perceive as their over-use by the police service:

There is widespread belief within the magistracy that out-of-court disposals are being used over-zealously by the police, with an autocratic approach to their implementation and without independent scrutiny and monitoring [...] Magistrates need to be convinced that out-of-court disposals are effective [...] [rather than] a cash-cutting exercise and a “quick fix”.⁸⁵

The proper use of out-of-court disposals has also been the subject of recent publicity.⁸⁶ There are a number of circumstances where an out-of-court disposal may be inappropriate. In cases of serious offending, the victim may feel that they do not get justice. Unlike with adult cautions, there is no requirement to consent, therefore a young person may be burdened with a criminal record without due process; in cases of genuine guilt, they may be insufficient to nip offending behaviour in the bud. One of our witnesses, a former offender who said that she was “let off” once and then reprimanded before finally being taken to court, told us that “if they hadn’t let me go so easy [...] I would have not done it again”.⁸⁷

38. Assistant Chief Constable Wilkins, representing the Association of Chief Police Officers, emphasised the need for a range of both out-of-court and court disposals to meet the needs of individual young offenders.⁸⁸ However, while understandably wary of increasing bureaucracy, he accepted that there could be a role for the local criminal justice board in oversight and scrutiny via a random sampling of cases.⁸⁹ We understand that the Ministry of Justice is working with the Youth Justice Board and partners such as the Home Office, ACPO and the CPS to develop a new national framework in respect of out of court disposals, and we recognise that there is significant public and judicial concern about police practice in this area, which is not confined to young offenders.

39. *Out-of-court disposals can provide a proportionate means of dealing with less serious youth offending. While we welcome the fact that the greater discretion afforded by the new Youth Cautions will facilitate a more individualised response to young offenders, it*

82 Sentencing Guidelines Council, *Overarching principles – sentencing youths*, Definitive Guideline, 2009

83 Youth Justice Board/Ministry of Justice Statistics Bulletin, *Youth justice statistics 2011/12, England and Wales*, 31 January 2013

84 Qq 152–3

85 Ev 106

86 See, for example, “Serial offenders escaping tough penalties at record rate”, *Daily Telegraph*, 6 January 2013

87 Q 70

88 Q 145

89 Q 156

is important that safeguards are built in to ensure its proper use, and public confidence in it, particularly in cases of repeat offending. We recommend that local criminal justice boards are given a more robust oversight role, and that they should carry out random sampling of out-of-court disposals on, for example, a monthly basis.

Young people on trial

40. The Children and Young Persons Act 1933 states that:

Every court in dealing with a child or young person who is brought before it, either as an offender or otherwise, shall have regard to the welfare of the child and young person and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training.⁹⁰

According to the sentencing guideline, in having regard to the “welfare” of the young person, a court should ensure that it is alert to:

- the high incidence of mental health problems amongst young people in the criminal justice system;
- the high incidence of those with learning difficulties or learning disabilities;
- the effect that speech and language difficulties might have on the ability of the young person (or any adult with them) to communicate with the court, to understand the sanction imposed or to fulfil the obligations resulting from that sanction;
- the extent to which young people anticipate that they will be discriminated against by those in authority and the effect that it has on the way that they conduct themselves during court proceedings;
- the vulnerability of young people to self harm, particularly within a custodial environment;
- the extent to which changes taking place during adolescence can lead to experimentation; and
- the effect on young people of experiences of loss or of abuse.⁹¹

Taking account of maturity in court

41. We heard concerns that young defendants are processed by the criminal justice system without a full understanding of the process or the evidence against them, and that the system has not been adequately adapted to meet their needs. Children and young people are far more likely to make false confessions or fail to take advantage of the protections offered them by the law during police or court processes.⁹² The prosecution process can be

90 Children and Young Persons Act 1933, Section 44

91 Sentencing Guidelines Council, *Overarching principles – sentencing youths*, Definitive Guideline, para 2.7, 2.9

92 Ev 115 [Office of the Children’s Commissioner]

bewildering. Plotnikoff and Woolfson⁹³ have demonstrated the confusion experienced by some young defendants in court; to give an indicative example, one young person they interviewed believed that: “Because I was told to say ‘No comment’ at the police station, I thought I couldn’t say anything at court”. Those young offenders whose immaturity is exacerbated by communication difficulties—the majority⁹⁴—face even greater challenges: such young people may fail to understand crucial vocabulary including “victim”, “breach”, “guilty”, “liable”, “remorse” and “conditional”.⁹⁵

42. There has been a variety of initiatives aimed at supporting child defendants, including a Crown Court practice direction issued in 2000 (extended to the youth court in 2001), which emphasised that proceedings should be explained to defendants, trials conducted in a language that defendants can understand, and courtrooms arranged so that participants are on the same level. However, Sue Berelowitz, the Deputy Children’s Commissioner, argued that this has not gone far enough:

There is quite a lot more to be done [...] For [the 11-year old applicant in *SC v UK* 2004] it was compounded by his learning difficulties, but there are very serious questions to be asked as to whether any child of that age could fully comprehend what is going on in a court.⁹⁶

In the case to which she referred, the European Court of Human Rights ruled that:

[...] “effective participation” in this context presupposes that the accused has a broad understanding of the nature of the trial process and of what is at stake for him or her, including the significance of any penalty which may be imposed. It means that he or she, if necessary with the assistance of, for example, an interpreter, lawyer, social worker or friend, should be able to understand the general thrust of what is said in court. The defendant should be able to follow what is said by the prosecution witness and, if represented, to explain to his own lawyers his version of events, point out any statement with which he disagrees and make them aware of any facts which should be put forward in his defence.⁹⁷

43. Support for vulnerable child witnesses was enhanced by the Youth Justice and Criminal Evidence Act 1999 but defendants were explicitly excluded. Professor Karen Bryan, representing the Royal College of Speech and Language Therapists, advised that, even in the case of victims and witnesses, the use of intermediaries is neither routine nor undertaken in the way that was originally envisaged.⁹⁸ It is estimated that 60–65% of young offenders have speech, language and communication needs and 24–30% have a learning disability.⁹⁹ Section 104 of the Coroners and Justice Act 2009 does provide for child defendants to apply to the court to give evidence with the assistance of an intermediary;

93 J Plotnikoff and R Woolfson, *Young defendants’ pack: scoping study for the Youth Justice Board*, 2002

94 Estimated to affect around 65% of young offenders.

95 Ev 143 [Royal College of Speech and Language Therapists]

96 Q 193

97 *SC v UK*, (2005) 40 E.H.R.R. 10

98 Qq 195, 199

99 Q 182 [Professor Bryan]; Ev 112 [Office of the Children’s Commissioner]

however, this has not been brought into force. The Prison Reform Trust has consistently argued for the Government to do so,¹⁰⁰ and this was supported by Professor Bryan. When we asked him about this, the Minister for Prisons and Rehabilitation replied that he had “doubts” about whether the section would add significantly to current provision, but he did agree to review the situation.¹⁰¹

44. The Transition to Adulthood Alliance also argued for more account to be taken by the criminal justice system of emerging neurological findings about the different ages at which individuals mature.¹⁰² While our inquiry is focused on under-18s, a number of organisations drew to our attention the situation of young adult offenders, described by the former HM Chief Inspector of Prisons, Dame Anne Owers, as “the lost generation”.¹⁰³ Professor Bryan cited “very strong evidence” from adolescent brain studies to suggest that frontal lobe areas, which affect organisational and reasoning skills, and the ability to understand cause and effect and to avoid being put in difficult situations, develop through to the early 20s.¹⁰⁴ The process of maturation is often extended by trauma or disruptive change.¹⁰⁵ This has numerous implications for how the system responds to young adults, including in relation to sentencing which we focus on here.

45. Since 2011, the Sentencing Council has included “age and/or lack of maturity where it affects the responsibility of the offender” as a factor reducing seriousness or reflecting personal mitigation in guidelines for assault, drug and burglary offences. The Transition to Adulthood Alliance argued for this to be extended across all guidelines and for more references to maturity in the pre-sentence reports prepared to inform the sentencer.¹⁰⁶ Dr Sarah Pearce, a magistrate from Durham, told us that:

On the whole I believe magistrates do their best to take into account the youth and immaturity of offenders though very often information about their maturity is sketchy. It is known that the human brain does not really mature till age 25 or so particularly with respect to consequential thinking. I am concerned that there is an entirely false idea about the magical effect of the 18th birthday - many who pass that milestone still lack maturity yet encounter the full weight of the adult court.¹⁰⁷

The Prison Reform Trust has argued for the Sentencing Council to draw up a set of overarching principles for the sentencing of young adults, based on the success of their *Overarching Principles of Sentencing in Youth Justice* guideline.¹⁰⁸ Debbie Pippard said that

100 Prison Reform Trust, *Fair Access to Justice?*, June 2012

101 Q 430

102 Ev 119

103 Transition to Adulthood Alliance, *A New Start: Young adults in the criminal justice system*, 2009, p 12. Young adults aged 18–24 accounted for 23% of those sentenced in magistrates’ courts in 2010 and 35% of those sentenced in the Crown Courts.

104 Q 211. See, for example, Blakemore SJ & Choudhury S (2006). Development of the adolescent brain: implications for executive function and social cognition. *Journal of Child Psychology and Psychiatry* 47, 296–297.

105 Transition to Adulthood Alliance, *A New Start: Young adults in the criminal justice system*, 2009, p 25

106 Ev 112

107 Ev w27

108 Prison Reform Trust, *Old enough to know better? A briefing on young adults in the criminal justice system in England and Wales*, January 2012

the Transition to Adulthood Alliance, which she chairs, would “definitely advocate” getting rid of the arbitrary transition to adulthood at 18, advising that best practice in other countries, such as Germany, “shows that it can be done”.¹⁰⁹

46. *The high proportion of young offenders with speech, language and communication needs and/or a learning disability face enormous difficulties in understanding court proceedings, which may jeopardise their right to a fair trial.* We consider that section 104 of the Coroners and Justice Act 2009, which would allow young people prosecuted for an offence to apply to the court to give evidence through an intermediary, could provide an important safeguard for their rights. Parliament has decided that this provision is needed, and we therefore recommend that the Ministry of Justice brings this section into force.

47. *We also note strong neurological evidence that individuals mature at different rates and can continue to develop relevant attributes, such as consequential thinking, into their early 20s.* We therefore encourage the Sentencing Council to continue with its approach of including age and/or lack of maturity where it affects the responsibility of the offender as a factor in offence guidelines, and reviews at an appropriate juncture the extent to which sentencers are taking maturity into account. Probation officers should make more references to maturity in pre-sentence reports, to assist in this process. Until it is more fully reflected across offence guidelines, we recommend that the Ministry of Justice encourage the Sentencing Council to draw up an overarching set of principles for the sentencing of young adults, to allow for maturity to be taken into account in more circumstances.

Taking account of welfare needs

48. As discussed in the previous chapter, children in the justice system often have significant welfare needs. One of the issues to which we gave much consideration, prompted by our visit to Denmark and Norway, was the extent to which it would be more appropriate, and beneficial in the longer term, for young offenders to be dealt with in the welfare system rather than the criminal justice system.

49. The higher age of criminal responsibility in these countries means that young people aged 15 and under who are guilty of serious offending are institutionalised in a welfare facility.¹¹⁰ This reflects the higher age of criminal responsibility in most Western European countries. We had some concern about how such a system dealt with young people who may be innocent of the offence or action of which they are accused. However, we saw the advantage of addressing in a welfare context the factors which led the young person towards criminality. A number of organisations have argued that the age of criminal responsibility in England and Wales should be raised to 12 or 14, although the Government has recently ruled this out,¹¹¹ on the grounds that children are deemed less

¹⁰⁹ Qq 210–11. In Germany, young adult offenders aged 18–21 can be sentenced under juvenile law if a judge is of the opinion that they are not as mature and responsible for their actions as full adults, and about two thirds of young adults are sentenced as juveniles: Transition to Adulthood Alliance, *A New Start: Young adults in the criminal justice system*, 2009, p 25

¹¹⁰ Young offenders can be held in secure children homes – see paragraph 80.

¹¹¹ HC Deb, 18 December 2012, col 686 [Damian Green]

responsible for their behaviour and have limited competence to participate in criminal justice proceedings, and that welfare-based responses to the offending of less culpable children are therefore likely to be a more effective alternative to criminalisation.¹¹²

50. We have already expressed our opinion that we should avoid bringing children into the criminal justice system wherever possible and are pleased to note that the number of ten and eleven year olds on in YOT caseloads has “plummeted” and the majority age group of offenders they deal with has shifted from 13–15 to 15–17 year olds.¹¹³ However, we also note that reducing the age would not be a “magic bullet”.¹¹⁴ While we recognise the benefits of not drawing young people into the criminal justice system, we were struck by the concerns expressed to us about a lack of due process for young people accused of crime. John Drew shared our reservations:

I started practising in this field in the '70s when, using the provisions of the 1969 Children and Young Persons Act, a lot of children were placed in care as a consequence of the offence condition. I have to say it didn't work. A very large number of children were incarcerated on what became effectively indeterminate sentences and where they themselves were given at most, at times, very vague ideas about what their behaviour would need to be in order to come out of a custodial setting, and at the same time there was no relationship between the offence and the sentence.¹¹⁵

51. Nevertheless, there may be cases where a child's needs are so significant that they warrant welfare intervention as opposed to criminal prosecution. The Centre for Social Justice noted that children's offending often flows from family dysfunction and is therefore unlikely to be effectively addressed in isolation from such problems.¹¹⁶ The Children Act 1989 split the existing Juvenile Court into two separate jurisdictions of family and youth justice. At present, the youth court cannot refer a child to the family proceedings court, even when serious questions about the child's welfare are raised. There have been calls, including from the Royal College of Psychiatrists, for more integration between the courts.¹¹⁷ The Centre for Social Justice suggested that the youth court be granted the power under section 37 of the Children Act to order local authority children's services to assess whether a child is at risk of suffering significant harm and to provide any necessary support thereafter; the Crime and Courts Bill Committee discussed adding a new clause to the Bill along these lines in January 2013.¹¹⁸ The Deputy Children's Commissioner told us:

There should be the capacity for the youth justice court to refer a child to the family court [...] There are huge changes coming in the family justice system whereby there

112 Ev 92 [Centre for Social Justice]; Q 23 [Enver Solomon]

113 Qq 91–4. Fewer than 1,000, 10 and 11 year olds, were supervised by YOTs in 2011/12: *Youth Justice Statistics 2011/12*, Table 3.5

114 Q 23

115 Q 402

116 Ev 93

117 See, for example, Royal College of Psychiatrists, *Child defendants*, Occasional Paper OP54, March 2006

118 PBC Deb, Crime and Courts Bill Committee, 29 January 2013, cols 217–225

will be a single court [...] This is probably as good a time as there ever will be for looking at this.¹¹⁹

John Drew agreed that there are a small number of cases in which a young person's needs would be better met through family rather than criminal proceedings and he was therefore of the personal view, which he believed to be shared by most members of the judiciary, that "we need to have some route [...] whereby they can cross-refer into family proceedings."¹²⁰

52. We consider that, in exceptional circumstances of significant welfare need, it may be more appropriate for a young person prosecuted in the criminal courts to be referred to the family proceedings court. We therefore recommend that the Government introduce legislation to provide a mechanism for the judiciary in the criminal courts to refer under-18s brought before them to the new single family court.

Reducing the use of custody

53. The UK is committed, as a signatory to the UN Convention on the Rights of the Child, to the use of custody for under-18s as a last resort, and the youth justice system has a target to reduce the use of custody.¹²¹ There were 3,952 custodial disposals in 2011/12; this has fallen by 48% since 2001/02. The average population in custody in 2011/12 was 1,963¹²² and there were 1,372 under-18s in custody in December 2012.¹²³ This is over half the number detained at the peak in 2002/03 and the figure has fallen by over 40% since 2008/09. The fall was particularly marked in relation to under-15s: only 63 young offenders in custody in December were aged 14 and under,¹²⁴ representing a 70% decline since 2009.¹²⁵ This decline was largely a result of the aforementioned reduction in the number of first-time entrants to the justice system; sentencing changes introduced via the Criminal Justice and Immigration Act 2008 and the Sentencing Council; more effective alternatives to custody and greater judicial confidence in these alternatives; and greater engagement between the YJB, YOTs and sentencers, based on a shared view that custody should be a last resort.¹²⁶

119 Q 207

120 Q 402

121 The official performance measurement is the Transparency Indicator, which measures the number of custodial sentences per 1,000 young people in the population (0.85 in 2011/12). This has replaced the custody rate, which measures the number of young people sentenced to custody as a proportion of all sentenced young people, and fluctuated between 5 and 8% over the past decade.

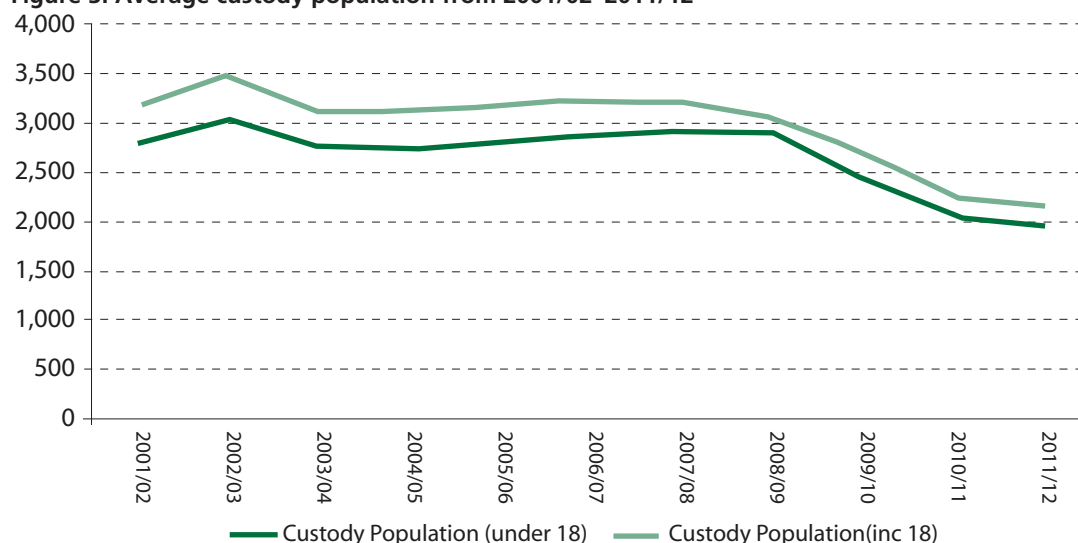
122 Youth Justice Board/Ministry of Justice Statistics Bulletin, *Youth justice statistics 2011/12, England and Wales*, 31 January 2013, pp 29, 36. This number excludes the small number of 18 year olds who remain in the youth estate if they only have a short period of their sentence left to serve.

123 Youth Justice Board, *Monthly Youth Custody Report, December 2012*, 8 February 2013

124 *Ibid*, figure 2.8

125 Q 395 [John Drew]

126 Rob Allen, *Last resort? Exploring the reduction in child imprisonment 2008–11*, Prison Reform Trust, 2011; Q 125 [Wendy Poynton, Gareth Jones]; NAO, *The youth justice system in England and Wales: reducing offending by young people*, HC 663, December 2010, para 2.15

Figure 3: Average custody population from 2001/02–2011/12

Data Source: Youth Justice Board/Ministry of Justice Statistics Bulletin, *Youth justice statistics 2011/12, England and Wales*, 31 January 2013, Chart 7.1

54. However, England and Wales still has one of the highest rates of child imprisonment in Western Europe and the numbers are high in historical terms: the number of children sentenced to custody more than tripled between 1991 and 2006.¹²⁷ Falls have been considerably greater in the white population than for ethnic minority young people— young black people accounted for 16% of the youth custody population but only 8% of overall YOT caseloads in 2011/12—and young black people are more likely to receive additional days in custody after breaching prison rules than their white counterparts.¹²⁸ There are also significant discrepancies in the youth custody rate across the country.

55. Youth custody is expensive: in 2011/12, the YJB spent £245.5 million on the secure estate, accounting for 65% of its total expenditure.¹²⁹ The National Audit Office calculated indicative cost estimates for typical disposals for young offenders and noted that “reductions in the use of custody can realise major savings”:¹³⁰

127 Ev 98 [Howard League for Penal Reform]; Standing Committee for Youth Justice, *Raising the Custody Threshold*, August 2010

128 Youth Justice Board/Ministry of Justice Statistics Bulletin, *Youth justice statistics 2011/12, England and Wales*, 31 January 2013; Ev w27 [Catch 22]; “Black minority groups more likely to receive extra days in custody”, *Children and Young People Now*, 3 May 2012

129 Youth Justice Board, *Annual Report and Accounts 2011/12*, 2012, p 63. This figure excludes YJB staff costs.

130 National Audit Office technical paper, *The cost of a cohort of young offenders to the criminal justice system*, June 2011, para 2.17

Figure 4: Indicative cost estimates for typical disposals for young offenders

Final Warning	£200–£1,200
Referral Order	£2,200–£4,000
Youth Rehabilitation Order	£1,900–£4,100
YRO with Intensive Supervision and Surveillance	£7,800–£9,300
Detention and Training Order (typically 3 months in custody, 3 in community)	£20,300–£50,500

Data source: National Audit Office

Custody is also ineffective in terms of rehabilitation, particularly for offenders serving short sentences, with the most recent cohort having a proven reoffending rate of 72.6%.¹³¹ Professor Brian Littlechild stated that:

There is no evidence that this high use of custody has led to less crime from young people than other European countries [...] Such custodial measures actually destroy the potential to build positive attitudes towards and within social relationships. It does not and cannot help engender respect for others or enhance empathy to others.¹³²

Although there will be always be a need for custody in cases of genuine last resort, it is, therefore, both desirable and possible to limit its use yet further, as we explore below.

Remands

56. The number of young people on remand has not fallen as significantly as the number of young people sentenced to custody.¹³³ Under changes made via the Legal Aid, Sentencing and Punishment of Offenders Act 2012, as of April 2013, 12 to 17 year olds must have a real prospect of receiving a custodial sentence on conviction before they may be remanded to youth detention accommodation; the Government is also devolving remand budgets, which constitute about 20% of overall spending on youth custody, to local authorities from the same date to incentivise local practitioners to pursue alternatives to remand. Remands constitute 24% of the youth custodial population (as opposed to less than 15% in the adult estate) and 61% of young people on remand do not go on to receive a custodial sentence. The Government estimates that the new framework will reduce the use of remand by 15%.¹³⁴ Juliet Lyon, of the Prison Reform Trust, noted that local agencies were used to seeing youth custody as a period of respite from their responsibilities towards difficult

¹³¹ Youth Justice Board/Ministry of Justice Statistics Bulletin, *Youth justice statistics 2011/12, England and Wales*, 31 January 2013. 78.3% of the 2010/11 cohort of young offenders serving six months or less re-offended; 76% of those serving 6–12 months; 63.5% of those serving 1–4 years; data not available for those serving longer than 4 years (Supplementary table 9.13).

¹³² Ev w6

¹³³ Q 5

¹³⁴ Ministry of Justice, *The new remand framework for children: allocation of new burdens funding to local authorities*, 2012

young people and believed that the new remand arrangements would “concentrate local authority minds”.¹³⁵

Youth Justice Reinvestment Pathfinders

57. The YJB is exploring means of further reducing the use of custody via the Youth Justice Reinvestment Pathfinders schemes, which commenced at the end of 2011 in Birmingham, North-East London, West London and West Yorkshire, to explore robust and credible alternatives to custody, thereby reducing its use. Under the scheme, the YJB invests a proportion of the central custody budget in local authority schemes, on the basis that those authorities reduce their use of custody by an agreed amount over a two-year period. Submissions to our inquiry were positive about the aims and designs of the schemes. For example, the Howard League praised the fact that they draw together agencies locally from both within and without the criminal justice tramlines.¹³⁶ By their nature, they focus on the most difficult children in the system, which mitigates the risk of cherry-picking inherent to some of the payment by results models in the adult system.

58. We heard evidence from the West Yorkshire pilot in July 2012. In the first nine months of operation, local agencies achieved a 23% reduction in the number of bed-nights, against their set target of 10%. They had assessed that the primary reason young people were being sentenced to custody was for breach of court orders¹³⁷ and therefore targeted their efforts accordingly: through increased staff motivation, better family engagement, compliance panels and a focus on accommodation.¹³⁸ John Drew believed the key initial learning to be that driving down custody levels is done by “extremely detailed planning on the level of individual children, examining in real details their circumstances in order to satisfy you that custody is being used as a last resort”.¹³⁹

59. However, Birmingham City Council withdrew from the scheme in October 2012, and the North-East London consortium followed suit in January 2013. Juliet Lyon noted that “there has to be preparedness on behalf of the local authority to carry quite a big financial risk [...] deferring of payment may be a very hard burden for some local authorities to carry”.¹⁴⁰ John Drew advised us that the August 2011 riots had adversely affected custody figures in many areas, causing schemes to struggle to reduce their figures.¹⁴¹ Authorities which miss their targets become liable for the upfront investment.

Breach

60. According to the *Overarching Sentencing Principle for Youths*, a young offender *may* be referred back to court after a second failure to co-operate with their responsible officer or to comply with a requirement of their order, and *should*, in most cases, be referred back to

135 Q 244

136 Ev 98

137 Ev 104. 25% of offenders were sentenced to custody in this way.

138 Qq 121–3

139 Q 388

140 Q 247

141 Q 387

court after a third failure. Before imposing a custodial sentence, a court should be satisfied that the YOT and other services have taken all steps necessary to ensure that the young person has been given appropriate opportunity and support necessary for compliance.¹⁴² However, despite these safeguards, breach of a statutory order was the fourth most prevalent reason for a custodial sentence in 2011/12.¹⁴³ The YJB has accordingly pushed this agenda “heavily” over the last few years but John Drew expressed disappointment that, in the two years leading up to March 2011, the number of breaches remained static at around 300, and actually rose as a proportion of the number of children in custody from around 13% to 16%,¹⁴⁴ although more recent figures showed a slight decline to 14% in 2011/12. The Government promised in 2011 to “establish compliance panels to ensure young people comply with their sentences”¹⁴⁵ and also made provisions in the Legal Aid, Sentencing and Punishment of Offenders Act for greater penalties for breach.¹⁴⁶

61. The Centre for Social Justice argued that these penalties for breach will be “counterproductive” and “unlikely to lead to better outcomes”:

This is because many children who breach their sentence conditions do not wilfully do so but struggle to comply because of their chaotic lives and lack of family support [...] If better outcomes are to be achieved, there must be support for young people—both practical and emotional—to achieve compliance.¹⁴⁷

The Howard League told us about a child who was remanded to custody after failing to turn up to court-ordered appointments promptly, despite the fact that he was unable to tell the time because of his learning difficulties.¹⁴⁸ We heard during our visit to HMYOI Hindley that the otherwise largely successful North-West Resettlement Consortium pilot did not manage to reduce the rate of breach for young offenders on Detention and Training Orders. Staff with whom we spoke, urged that young people should not be set up to fail through the imposition of too many additional requirements as part of their licence conditions. The sentencing guideline makes clear that when imposing a community sentence, a court must ensure that the requirements are not so onerous as to make the likelihood of breach almost inevitable.¹⁴⁹

Custody thresholds

62. The most common offence type resulting in a custodial sentence in 2011/12 was robbery (27%), followed by violence against the person (24%), then burglary (14%) and

¹⁴² Sentencing Guidelines Council, *Overarching principles – sentencing youths*, Definitive Guideline, paras 10.32–10.39

¹⁴³ Youth Justice Board/Ministry of Justice Statistics Bulletin, *Youth justice statistics 2011/12, England and Wales*, 31 January 2013

¹⁴⁴ Q 401

¹⁴⁵ Ministry of Justice, *Breaking the Cycle: Government Response*, Cm 8070, June 2011

¹⁴⁶ The LASPO Act increased the fine for breach of a Youth Rehabilitation Order from £250 or £1,000 (depending on the age of the young offender) to £2,500.

¹⁴⁷ Ev 94

¹⁴⁸ Ev 99

¹⁴⁹ Sentencing Guidelines Council, *Overarching principles – sentencing youths*, Definitive Guideline, para 10.27

breach (14%).¹⁵⁰ In determining whether an offence has crossed the custody threshold, courts must consider whether it has resulted in serious harm. Even where the threshold has been crossed, a court is not required to impose a custodial sentence and must be satisfied that the offender cannot properly be dealt with by a fine or youth rehabilitation order, a youth rehabilitation order with intensive supervision and surveillance or fostering cannot be justified, and custody is the last resort, and should take account of the circumstances, age and maturity of the offender. A custodial sentence is most likely to be unavoidable where it is necessary to protect the public from serious harm.¹⁵¹ Detention and Training Orders, which accounted for over three-quarters of the average sentenced custody population in 2011/12,¹⁵² require the court's opinion that the offender is "persistent", generally understood to mean they have been subject to three, possibly pre-court, disposals or three breaches of a Youth Rehabilitation Order.¹⁵³

63. Juliet Lyon cautioned that the recent advances in reducing the use of custody "could so easily be lost again" and argued that consideration should be given to "the ways in which the custody threshold could be altered to stop the most vulnerable children entering the system", in particular the response to breach.¹⁵⁴ Some organisations have called for a statutory threshold defining the circumstances in which custody can be used, on the grounds that the current 'measure of last resort' threshold is inadequate as it is insufficiently defined and, despite the guidance, open to varied interpretation.¹⁵⁵ One proposed threshold was that:

[...] the offence committed caused, or could reasonably have been expected to cause, serious physical or psychological harm and where a custodial sentence was necessary to protect the public from a demonstrable and imminent risk of serious physical or psychological harm.¹⁵⁶

An amendment to the Criminal Justice and Immigration Act 2008 to this effect was tabled at report stage, but was not accepted by the Minister of the time, on the grounds that it would "raise the custody threshold to an unacceptably high level that may put the public at significant risk."¹⁵⁷

64. The Canadians introduced what was described to us as a "very effective" statutory threshold in statute in 2002.¹⁵⁸ Since its introduction, the average child custody population has fallen by approximately 40%. Under the Canadian legislation, a youth justice court

150 Youth Justice Board/Ministry of Justice Statistics Bulletin, *Youth justice statistics 2011/12, England and Wales*, 31 January 2013, Chart 7.2

151 Sentencing Guidelines Council, *Overarching principles – sentencing youths*, Definitive Guideline, para 2.5

152 Youth Justice Board/Ministry of Justice Statistics Bulletin, *Youth justice statistics 2011/12, England and Wales*, 31 January 2013, p 37. 58% of the average custody population in 2011/12 were serving a DTO, 18% were serving longer sentences, and 24% were on remand.

153 Justice Committee, Tenth Report of Session 2008–09, *Draft Sentencing Guideline: overarching principles – sentencing youths*, July 2009, Appendix A: Letter to the Chairman of the Sentencing Guidelines Council

154 Q 243

155 Ev 93 [Centre for Social Justice]; Q 11 [Enver Solomon]

156 Proposed by the Standing Committee for Youth Justice, supported by the Independent Commission on Youth Crime and Anti-Social Behaviour in *Time for a Fresh Start*, 2010, p 75

157 HC Deb 9 January 2008, cols 418–423

158 Q 11 [Enver Solomon]

shall not commit a person to custody unless: the young person has committed a violent offence; has failed to comply with a previous non-custodial sentence; has committed an offence for which an adult would be liable to imprisonment for a term of more than two years and has a history that indicates a pattern of findings of guilt [a minimum of three prior judicial findings of guilt] or in certain other exceptional cases. The legislation explicitly states that “Canadian society should have a youth criminal justice system that [...] reduces the over-reliance on incarceration for non-violent young persons” and explicitly restricts the use of custody as a substitute for a child protection, mental health or other social measure.¹⁵⁹ This last point is of interest given that some of our witnesses believed that sentencers do on occasion act out of a belief that a child would be better off in custody.¹⁶⁰

65. More recently, the Standing Committee for Youth Justice proposed the following threshold:

1. A court shall not impose a custodial sentence on a person under the age of 18 (the child) unless:
 - a) The child is convicted of an offence punishable with life imprisonment; and
 - b) The court is satisfied that the offence, or the combination of the offence and any offences associated with it, is so serious that no sentence other than a custodial sentence is appropriate; and
 - c) The court is satisfied, on the basis of the factors set out in Section 2 below, that there is a significant risk to the public of serious physical or psychological harm occasioned by the commission by him or her of further offences punishable with life imprisonment.
2. In considering whether it is satisfied of the issue in section 1(c), the court must obtain a clinical assessment and take into account all information as is available about the circumstances and background of the child, including any mitigating factors.
3. For the purposes of section 2, mitigating factors may include, but are not limited to:
 - a) The age and maturity of the child;
 - b) The child’s culpability in relation to the offence or offences;
 - c) The particular role played by the child in the offence or offences;
 - d) The contribution of the child’s background to his or her offending behaviour;
 - e) The child’s best interests; and
 - f) The circumstances of any guilty plea entered.¹⁶¹

159 Standing Committee for Youth Justice, *Raising the Custody Threshold*, August 2010

160 Q 125 [Gareth Jones]; Q 277 [Deborah Coles]

161 Standing Committee for Youth Justice, *Raising the Custody Threshold*, August 2010, section 9

Alternatives to custody

Confidence in community sentences

66. The Magistrates' Association argued that magistrates are "very keen" to reduce the number of young people remanded or sentenced to custody but "this is an unrealistic aim unless they have confidence in non-custodial alternatives."¹⁶² John Bache, Chairman of their Youth Courts Committee, added in oral evidence that:

If we are faced with somebody who had committed a fairly serious offence, we do not want to send them into custody, but we have to have an alternative. We have to sentence them to something.¹⁶³

YOTs also play an important role as magistrates tend to follow the advice contained in their Pre-Sentence Reports: in 2008–09, sentencers followed these recommendations 74% of the time.¹⁶⁴ Concerns about community sentences include high levels of breach, which we have alluded to above, and availability of interventions that can be attached to them.

67. As a means of enhancing judicial confidence, Reading Youth Offending Service argued that there is "scope for local areas to develop greater relations with their local youth and Crown Courts."¹⁶⁵ Alexandra Crossley advocated that sentencers be required to attend a certain number of youth panel meetings per year and should visit secure custodial facilities and community sentences.¹⁶⁶ The Magistrates' Association said that it would welcome observation of non-custodial sentences in action, as well as information on the success rates of specific sentences and, most importantly, feedback on individual offenders.¹⁶⁷ John Bache highlighted the "paradox", whereby magistrates "get feedback only on the ones who breach." He noted that magistrates in the adult court maintain a relationship with an offender subject to the drug rehabilitation requirement over the period of their treatment;¹⁶⁸ we understand that magistrates in France monitor the progress of young people they sentence.¹⁶⁹ In addition to magistrates, the charity Developing Initiatives Supporting Communities highlighted the potential importance of such a relationship to young people "who have few concerned adults in their lives".¹⁷⁰

68. In determining the nature and extent of requirements to be included within a Youth Rehabilitation Order (YROs), courts must consider the availability of requirements in the local area.¹⁷¹ This is in contrast with a custodial sentence, for which facilities are assumed to

162 Ev 105

163 Q 159

164 National Audit Office, *The youth justice system in England and Wales: reducing offending by young people*, HC 663, December 2010, para 2.11

165 Ev w24

166 Q 5

167 Ev 105

168 Q 170

169 Q 268 [Nick Hardwick]

170 Ev w21

171 Sentencing Guidelines Council, *Overarching principles – sentencing youths*, Definitive Guideline, para 10.9

exist, and have to be provided. Of the 32,511 requirements attached to the 17,395 YROs issued in 2011/12, there were only 235 for education, 16 for Intensive Fostering, 18 for mental health treatment, 89 for drug treatment and 37 for intoxicating substance treatment.¹⁷² Enver Solomon suggested that sentencers are “definitely” right to be concerned about the lack of resources, and Alexandra Crossley noted concern among YOTs and sentencers that, as the impact of spending cuts continue to be felt, the position is only likely to deteriorate.¹⁷³ This may also be an issue in relation to the Government’s proposals for a new Criminal Behaviour Order as a replacement to Anti-Social Behaviour Orders, as outlined in the Draft Anti-Social Behaviour Bill, which would allow the prosecutor to ask the court to impose positive requirements (such as attendance at an approved course) as well as prohibitions.

Intensive alternatives to custody

69. The Youth Rehabilitation Order provides for two high intensity requirements, Intensive Supervision and Surveillance and Intensive Fostering, which the courts are required to consider as alternatives to custody for the most serious offenders. Intensive Fostering first became available for young offenders via the Anti-Social Behaviour Act 2003, which enabled courts to require young offenders to reside with foster parents in cases where their behaviour was due to a large extent to home circumstances and lifestyle.¹⁷⁴ In 2005, the YJB commissioned pilots in Staffordshire, Wessex and London; a further pilot has since been added in Trafford. These areas combined provide Intensive Fostering for 42 (out of 158) YOTs.¹⁷⁵ The YJB estimates there are around 150 young people per year for whom Intensive Fostering would be suitable as an alternative to custody.¹⁷⁶

70. According to Hugh Thornberry of Action for Children, who run two of the schemes, young people in Intensive Fostering are five times less likely to re-offend than those sentenced to custody; he believed the programme offers good value for money and that this would increase if it could be scaled up.¹⁷⁷ The YJB-commissioned evaluation by the University of York, published in 2010, concluded that “the evidence [...] suggests that intensive fostering may be a better alternative to custody and should continue to be implemented”.¹⁷⁸

71. Intensive Fostering, which is unavailable in many areas, is also subject to uncertainty about future funding.¹⁷⁹ This was drawn to our attention by Action for Children, whose contract has now moved onto a rolling twelve month basis, which continues to limit their

172 Youth Justice Board/Ministry of Justice Statistics Bulletin, *Youth justice statistics 2011/12, England and Wales*, 31 January 2013, Supplementary tables, Tables 5.3 and 5.6

173 Q 10

174 During the foster placement, a multi-disciplinary team works intensively with participants and their birth families, encouraging and reinforcing positive behaviours and diverting young people from delinquent peers. As well as providing therapy and social skills training, the IF team aims to find employment or training and encourage regular attendance.

175 Ev 139 [MoJ/YJB]

176 Ev 111 [Action for Children]

177 Q 322

178 Ev 109 [Action for Children]

179 Ev 111

ability to plan strategically. In its submission to our previous inquiry, the Prison Reform Trust cited anecdotal evidence that the number of Intensive Supervision and Surveillance places available at any one time in certain areas is also limited.¹⁸⁰ The YJB, which provided £1,398,000 for Intensive Fostering in 2011/12,¹⁸¹ believed it should be funded locally and made available to courts as a local alternative to custody: “our solution to that is to support the proposition of the devolution of custody budgets”.¹⁸² The Government has indicated that its aim is ultimately for local authorities to have full control of custody budgets within a national commissioning framework.¹⁸³ Alexandra Crossley believed that a move towards local funding would be likely to produce further reductions in custody as it would encourage local areas to invest in better alternatives.¹⁸⁴

72. There will always be a need to detain a small number of young people who pose a risk of serious harm to the public. However, youth custody is expensive and ineffective in reducing re-offending; it should only be used in cases of genuine last resort. We are greatly impressed by the collaboration between the Youth Justice Board, youth offending teams and the judiciary to bring about a significant reduction in the numbers of young people in custody since 2008. The new remand framework should provide a welcome means of further reducing the youth custodial population and are optimistic about the results of the Youth Justice Reinvestment Pathfinders, which we hope will encourage local areas to pursue innovative alternatives to custody. However, the juvenile secure estate continues to receive two-thirds of Youth Justice Board spending, yet is responsible for only a fraction (6.7% in 2011/12) of young offenders given a court disposal. The number of young black men in custody has not declined to the same extent as in the white population and too many young people end up in custody for breaching a statutory order. We consider there is scope for further progress in a number of respects.

73. In order to cement and further this recent progress, we therefore recommend that the Ministry of Justice:

- **Introduce a statutory threshold, based on the Canadian model, to enshrine in legislation the principle that only the most serious and prolific offenders should be placed in custody;**
- **Devolve the custody budget to local authorities to enable them to invest in alternatives to custody;**
- **Monitor and report back to us in February 2014 on the success or otherwise of compliance panels in reducing the need to bring young offenders back before the courts for breach of a statutory order;**
- **Outline its strategy to reduce the number of young black men in custody; and**
- **Encourage greater feedback to sentencers on the outcomes of community sentences.**

¹⁸⁰ HC (2010–12) 1547, Ev 33

¹⁸¹ Youth Justice Board, *Annual report and accounts 2011/12*, p 6

¹⁸² Q 404

¹⁸³ Q 405 [Frances Done]

¹⁸⁴ Q 15

Restorative justice

74. A number of submissions to the Committee's inquiry advocated greater use of restorative justice across the system, although others cautioned against regarding it as a panacea. We discussed in our previous chapter the use of restorative justice as a diversion for very minor offending. In addition, referral orders involve the offender making reparation to the victim and/or the wider community, but restorative elements cannot be mandated as part of, or as an alternative to, sentences for young offenders committing more serious or repeat offences.

75. Northern Ireland is the only part of the UK to adopt mainstreamed, statutory-based restorative justice for young offenders, in the form of youth conferencing. There are two types of conference: diversionary, where a young person is referred by the prosecution service as an alternative to prosecution; and court-ordered, where a young person is referred post-conviction. As part of the conference, a plan, enforceable by the courts, is developed and agreed by participants. We took evidence in Belfast about their experiences: witnesses agreed that the system was not perfect, but they had a victim satisfaction rate of 96% and a 96–98% rate of compliance with conference plans. Their most recent re-offending rates are 29.4% for diversionary conferences (for more minor offending) and 45.4% for court-ordered conferences, but it is quite difficult to make direct comparisons with re-offending data for England and Wales.¹⁸⁵ The cost of the conference is broadly comparable to that of a referral order in England and Wales, at £2,800, but interventions devised as part of the conference plan can raise the cost by between £200 and £8,000.¹⁸⁶

76. The Crime and Courts Bill currently going through Parliament would amend the Powers of Criminal Courts (Sentencing) Act 2000 to defer the passing of sentence to allow for restorative justice. However, the Minister was “very clear” that:

[...] this must be something that is happening in parallel with the sentencing process rather than as part of it [...] I have no objection, incidentally, to information about how a restorative process has gone also being available to the sentence [...] If someone engages and does it properly, and the information that comes to court, particularly from the victim, is that they got a lot out of that experience, then that may well count in the offender's favour. But, if someone says that they are prepared to engage and then sits with their arms folded and doesn't do it properly, that information might also find its way to the sentencer.¹⁸⁷

Paula Jack, Chief Executive of the Youth Justice Agency, Northern Ireland, advised that “it is well recognised that if it is not on a statutory footing, [restorative justice] can be underused.” She added that “by putting it on a statutory footing, we could embed it at the heart of the youth justice system”.¹⁸⁸ She believed that conferencing had increased public

¹⁸⁵ Qq 315–318

¹⁸⁶ Q 331

¹⁸⁷ Q 432

¹⁸⁸ Q 302

confidence in the youth justice system and that it is not “seen as a soft option, because of the menu of activities that can come with it, right up to the custody cycle”.¹⁸⁹

77. Reading Youth Offending Service said that it would welcome the provision of a specific Restorative Justice Requirement within the YRO, as did the Prison Reform Trust.¹⁹⁰ The Magistrates Association proposed an amendment to the Legal Aid, Sentencing and Punishment of Offenders Bill to this effect—“The court may include in a youth rehabilitation order a restorative justice requirement”¹⁹¹—but this did not become part of the Act.

78. Restorative justice may not be right for every child. Professor Bryan highlighted Australian research that children with speech and language needs find it very difficult,¹⁹² as it is a verbally mediated intervention which is reliant on the witness and the offender having a sufficient degree of communication and language ability to answer questions and supply information. We understand that the authorities in Northern Ireland are currently undertaking a piece of work on this issue.¹⁹³ The Royal College of Speech and Language Therapists recommend that registered intermediaries are made available to participants during restorative justice processes to provide support.¹⁹⁴

79. We welcome the Government’s commitment to restorative justice; however we believe more should be done to make restorative justice integral to the youth justice system. As the Northern Irish experience demonstrates, restorative justice is not a “soft option” and can in fact contribute to greater public confidence in the justice system. We were very impressed by the extremely high levels of victim satisfaction in relation to youth conferencing in Northern Ireland as well as the high level of compliance with conference plans. We advocate a presumption that the sentencing process will include a restorative element for the vast majority of offenders at all levels of the system, as an addition to, rather than a replacement for, the range of other requirements that may be considered necessary by the courts. The Government should also consider how young offenders with speech, language and communication needs who might benefit from restorative justice can be better assisted in participating in such a process.

189 Q 332

190 Ev w24; Ev 128

191 Magistrates Association, *Legal Aid, Sentencing and Punishment of Offenders: Proposed amendments, deletions and additions*, September 2011, <http://www.magistrates-association.org.uk>

192 Q 205 [Professor Bryan]

193 Q 326

194 Ev 143

4 The secure estate

The composition of the estate

80. Under-18s may currently be incarcerated in any of the 11 young offenders' institutions (YOIs) run by the prison service or private providers, the four privately-run secure training centres or the ten local authority secure children's homes. Generally speaking, younger children are detained in secure children's homes, slightly older children in secure training centres and the oldest in YOIs.¹⁹⁵ A place in a secure children's home costs around £212,000 a year, a place in a secure training centre £178,000 and a place in a YOI £65,000.¹⁹⁶ The figures for November 2012 show that 9.2% of under-18s in custody were held in a secure children's home, 14.8% in a secure training centre and 76% in a YOI.¹⁹⁷ Owing to the reductions in the use of custody outlined above, the secure estate is operating at an occupancy rate of 70%.¹⁹⁸ The YJB decommissioned 710 places between February 2008 and August 2010, with estimated savings of around £30 million per year,¹⁹⁹ and is currently undergoing another decommissioning exercise. The Secretary of State has already announced that Ashfield will cease to operate as a YOI later this year.

81. Some organisations, including the Howard League, Prison Reform Trust and INQUEST, have criticised the decommissioning of places in secure children's homes.²⁰⁰ In 2003, the YJB contracted with 22 homes to provide 297 places; as of 1 April 2012, only 166 places were provided in 10 homes. Deborah Coles, of INQUEST, was concerned that "too often very vulnerable children end up in secure training centres or in young offenders' institutions."²⁰¹ It is generally accepted that the needs of vulnerable children are most effectively catered for in secure children's homes, where managers are qualified social workers and staff in most cases hold higher level child care qualifications.²⁰² As we noted in chapter two, children in the youth justice system tend to have high levels of welfare needs; the statistics for children in the secure estate are even starker:

- 11% of children in custody have attempted suicide.
- 1 in 8 has experienced the death of a parent or sibling.
- 40% have previously been homeless.

195 Q 395 [John Drew]

196 Ministry of Justice, *Transforming Youth Custody: Putting education at the heart of detention*, Consultation Paper CP4/2013, 14 February 2014, p 10

197 Youth Justice Board, *Monthly Youth Custody Report – November 2012*, January 2013, Figure 2.4

198 Youth Justice Board, *Monthly Youth Custody Report – November 2012*, January 2013. The YJB commissions places on the basis that the estate should operate at a 93% occupancy rate.

199 National Audit Office, *The youth justice system in England and Wales: reducing offending by young people*, HC 663, December 2010, para 2.19

200 Howard League for Penal Reform, *Insecure Future*, 2012; INQUEST/Prison Reform Trust, *Fatally Flawed: Has the state learned lessons from the deaths of children and young people in custody?*, 2012

201 Q 276

202 Independent Commission on Youth Crime and Anti-Social Behaviour, *Time for a Fresh Start*, 2010, p 79. In contrast, staff in STCs complete a 9-week training course and some managers are qualified social workers; staff in YOIs receive generic training for prison officers, plus a seven-day Juvenile Awareness Staff Programme.

- Two out of five girls and one out of four girls have reported suffering violence at home and one in three girls and one in 20 boys report having been sexually abused.
- 39% have been on the child protection register or have experienced neglect or abuse.
- A third of children in YOIs had a problem with drugs when they first arrived.
- 18% of 13–18 year olds in custody had depression, 10% anxiety, 9% post-traumatic stress and 5% psychotic symptoms.²⁰³

82. The YJB countered that the decommissioning of secure children's homes places reflected the fall in the number of younger children in the system and that, proportionally, they have decommissioned many more places in YOIs.²⁰⁴ But Andrew Neilson, of the Howard League, questioned why the YJB was making decisions about future decommissioning at this stage, rather than awaiting the results of research they have commissioned into the relative effectiveness of secure institutions.²⁰⁵

83. The Government is committed to developing and commissioning additional enhanced units within under-18 YOIs for children who "display complex needs and risks",²⁰⁶ such as the Willow unit at HMYOI Hindley, which we visited during our inquiry, where prison officers are specially trained to deal with disruptive behaviour, staffing levels are three times higher and there is easier access to mental health provision and drug and alcohol services. Three staff work on the unit which houses a maximum of 13 offenders.

84. However, the Centre for Social Justice reported concerns that the units focus on criminogenic risk rather than welfare, psycho-social, and vulnerability issues and that they contain a 'mish-mash' of children— including those with learning disabilities or mental health needs, and those who are difficult to deal with. Criteria about who these units are for were too vague, they argued.²⁰⁷ Staff we met at HMYOI Hindley were clear that, while there is no exact science governing which offenders are placed in the unit, the aim of Willow is to enable young people to cope with custody and make the most of the opportunities available to them in prison; reducing re-offending is a "distant goal". An initial evaluation had shown improved outcomes post-release, but the scale of the challenges faced by the individuals in Willow means this translates into limited progress. John Drew argued that "most of the needs of more profoundly damaged children whom we encounter in custody are, in the long term, probably better met outside of custody than within custody."²⁰⁸

85. Small, local institutions tend to offer the best outcomes for young offenders.²⁰⁹ A recent inspection of the Young People's Unit at HMP and YOI Parc, which holds around 50 young people, found a direct link between the size of the establishment and the fact that

203 Prison Reform Trust, *Bromley Briefings Prison Factfile*, June 2012

204 Q 395 [John Drew]

205 Ev 99; Q 25

206 Ministry of Justice/Youth Justice Board, *Developing the Secure Estate for Children and Young People in England and Wales – Plans until 2015*, March 2012

207 Ev 94

208 Q 400

209 Q 164 [Steve Crocker]

few young people felt unsafe and that they had good relationships with staff.²¹⁰ The decommissioning of places in the custodial estate has had the “unfortunate consequence” that young people are being held further from home than before.²¹¹ In March 2011, 30% of children were held over 50 miles from home, including 10% who were over 100 miles away.²¹² Around half of the young people held in HMYOI Wetherby are more than 50 miles from home, with 14% more than 100 miles away.²¹³ Young people from London are particularly affected. The greater the distance, the less likely it is that young people will receive family support, and the harder it becomes for children’s services to provide support and plan for resettlement. Carol Pounder told us that a visit to her son Adam Rickwood, who later died in custody, constituted a 200 mile trip.²¹⁴

86. The Government intends to align supply and demand more closely in future commissioning, partly to reflect the need for a more appropriate geographical distribution of places.²¹⁵ However, while its eventual intention is to devolve the budget, the Government plans to retain national commissioning of custodial places. Steve Crocker, representing the Association of Directors of Children’s Services, noted in relation to the remand budget:

We will have children remanded into custody by Hampshire courts but we will have no say over where the children are to go, although the bill will be posted to us [...] We want to move to a much better position, where we are working with the Youth Justice Board to commission those places on a much more local basis than currently, because at the moment all children in Hampshire who get sent to custody are sent to Ashfield, which is north of Bristol. That makes any notion of rehabilitation, from 100 miles away, quite tricky.²¹⁶

Frances Done stated that central commissioning of the secure estate “is always going to be necessary in a country as small as England and Wales”,²¹⁷ but Enver Solomon suggested that commissioning at regional level was a more realistic prospect.²¹⁸

87. During our visit to Scandinavia, we visited MultifunC, a treatment programme for 14–18 year olds who exhibit “severe anti-social behavioural difficulties”,²¹⁹ which seemed to us to offer a potential model for future provision, although it is not always easy to transplant directly programmes from one jurisdiction to another. MultifunC has been running in

210 HM Inspectorate of Prisons, *Report on an unannounced inspection of HMP & YOI Parc Young People’s Unit 2–6 July 2012*, p 5

211 Ev 124 [HM Inspectorate of Prisons]

212 HM Inspectorate of Prisons/Youth Justice Board, *Children and young people in custody 2011/12: An analysis of the experiences of 15–18 year olds in prison*, 2012, p 17

213 HM Inspectorate of Prisons, *Report on an unannounced inspection of HMYOI Wetherby 30 January–3 February 2012*, p 5

214 Q 275

215 Ministry of Justice/Youth Justice Board, *Developing the Secure Estate for Children and Young People in England and Wales – Plans until 2015*, March 2012

216 Qq 161, 164

217 Q 404

218 Q 18

219 This can include young people who have committed robberies and violent offences, but fall below the age of criminal responsibility.

Sweden and Norway for several years with a 70% success rate,²²⁰ as opposed to a 30–40% success rate with individuals of the same background undergoing other interventions, and a 20% success rate with individuals undergoing no interventions. It involves 6–9 months residential treatment followed by 3–6 months in the individual's "existing social environment". The key component is that staff work intensively with the individuals' families as well as with the individual; in this it shares many characteristics with Intensive Fostering and with Multi-Systemic Therapy, which we discuss in our next chapter. We were very struck by the small unit size, ethos and staffing of MultifunC, as well as its impressive outcomes.

88. In the short term, enhanced units, such as the Willow unit at HMYOI Hindley, can provide a means of supporting particularly vulnerable young people in custody. However, they are not a panacea and cannot cater for the level of need within the secure estate. It is safer and more humane to detain young offenders in small, local units with a high staff ratio and where they can maintain links with their families and children's services. Such links can also lead to better planned resettlement and therefore reduce the likelihood of reoffending, although we do not believe that effective rehabilitation can often take place in the secure estate itself, as currently constituted. In the long-term, when the youth custody population has reduced further still, we would like to see a complete reconfiguration of the secure estate along these lines facilitated through regional commissioning of custodial places. We were impressed with the effective MultifunC treatment model used in Scandinavian countries and ask the Youth Justice Board to give serious consideration to whether a pilot scheme could be introduced in England and Wales.

Deaths in custody

89. One of the most worrying issues brought to our attention related to the safety of young offenders in custody. In October 2012, INQUEST and the Prison Reform Trust published a report examining the deaths of under-18s and young adults in custody.²²¹ 33 under-18s have died since 1990, as well as over 400 18–24 year olds. The report identified common themes where deaths had occurred but noted the "apparent failure of state bodies and agencies to learn lessons."²²² Following a death in custody, and the initial police investigation, the Prisons and Probation Ombudsman (PPO) conducts an investigation and produces a report which is passed to the coroner. Inquest juries increasingly return narrative verdicts in which a jury can establish any disputed facts and give an explanation of what they think are the most important issues contributing to the death, including individual or systemic failings. Under Rule 43 of the Coroners Rules 1984, a coroner has the power to report the circumstances of death to those authorities who have the power to take action to prevent the recurrence of such fatalities. Since 2008, Local Safeguarding Children Boards are also obliged to carry out serious case reviews following any

²²⁰ Success is defined as no violent behaviour, no substance abuse, accepting adult rules and parental control over behaviour, pro-social behaviour, understanding of risks of deviant environments and positive feedback from families.

²²¹ INQUEST/Prison Reform Trust, *Fatally Flawed: has the state learned lessons from the deaths of children and young people in prison?*, October 2012

²²² *Ibid*, p 53

unexpected child death in their area. However, many PPO, serious case review reports and Rule 43 reports are not made publicly available, and narrative verdicts are neither collated nor analysed by central government.²²³

90. The authors called for an Independent Review “to examine the wider systemic and policy issues underlying the deaths of children and young people in prison.”²²⁴ In evidence, Deborah Coles elaborated that:

Our view of this was that, having seen death after death occurring and raising the same issues, we felt [...] that there needed to be an inquiry that could bring together the learning that has come out of those, bring together the narrative verdicts, the rule 43 reports, but also the information that we have about what does not work, in the hope that we can safeguard lives in the future.²²⁵

The Minister described the report as “a serious piece of work”, which in the first instance he wanted the Independent Advisory Board on Deaths in Custody to review before he made a final decision as to whether to commission such an inquiry.²²⁶

91. *It is unacceptable that vulnerable young people continue to die in the custody of the state. We agree with INQUEST and the Prison Reform Trust that it is imperative to draw together and act upon the learning from these deaths gathered through coroners’ Rule 43 recommendations and juries’ narrative verdicts, to ensure that such deaths do not happen again. This may require an independent inquiry into the deaths of young offenders and young adults in custody, as the Ministry of Justice is now considering. We will revisit this matter once the Minister has announced the outcome of this consideration.*

Use of force

92. Many serious issues were raised in *Fatally Flawed* but we explored in particular the impact of the use of restraint on vulnerable young offenders. The Office of the Children’s Commissioner found evidence in 2011 of a tendency in youth custody to focus on physical controls to manage risk and deal with challenging behaviour, rather than on relationships.²²⁷ Restraint is supposed to be used as a “last resort”, to prevent individuals from causing harm to themselves or others. However, there were 8,419 incidents of restrictive physical intervention used in the youth secure estate in 2011/12, up 6% from 2008/09 and 17% from 2010/11. 254 of these restraints involved injury to young people, 93% of which were minor.²²⁸ 44% of BAME young men in custody surveyed by HM Inspectorate of Prisons in 2011/12 said that they had been physically restrained by staff,

223 INQUEST/Prison Reform Trust, *Fatally Flawed: Has the state learned lessons from the deaths of children and young people in prison?*, October 2012

224 *Ibid*, p 58

225 Q 296

226 Q 438

227 Office of the Children’s Commissioner, *“I think I must have been born bad”: Emotional well-being and mental health of children and young people in the youth justice system*, June 2011

228 Youth Justice Board/Ministry of Justice Statistics Bulletin, *Youth justice statistics 2011/12, England and Wales*, 31 January 2013, p 42

(compared with 32% of young white men).²²⁹ HMYOI Ashfield in particular was criticised in February 2012 for its “extremely high” use of force, which had increased from an average of 17 cases each month to almost 150 a month between October 2010 and October 2011.²³⁰

93. Adam Rickwood, aged 14, was subjected to ‘nose distraction’ shortly before he hanged himself in Hassockfield Secure Training Centre in 2004. His mother Carol told us the second inquest into his death, held in 2011, concluded that “it would have had a big impact on Adam’s mental health; he would have felt frightened and vulnerable. They stated that the restraint on Adam played a big part in Adam taking his own life.”²³¹ Deborah Coles added that the inquest recognised that:

[...] thousands of vulnerable children had been systematically subjected to unlawful restraint and that none of the regulation or inspection bodies did anything about it. That is a most shocking indictment [...] Mr Justice Blake accepted that what had been done to Adam was an assault on him, and also that it was inhuman and degrading treatment.²³²

94. Gareth Myatt, aged 15, died in hospital in 2004, following a restraint incident at Rainsbrook secure training centre. He was held down by three officers using the double-seated embrace, which was banned two months later. An independent review of restraint in juvenile justice settings commissioned by the Government in 2007 found that restraint was “intrinsically unsafe” and could be “profoundly damaging psychologically”.²³³

95. As a result of these findings, in July 2012 the Government announced that a new system of Minimising and Managing Physical Restraint would be introduced in secure training centres and young offender institutions. It still allows for the use of pain-inducing techniques (although such techniques are not used in secure children’s homes and are no longer used in Hassockfield).²³⁴ Deborah Coles argued that:

One of the key things that came out of the inquest was the fact that there was no proper data collection, monitoring, analysis and transparency around the kind of restraint that was being used, and the fact that children were complaining about the physiological effects of being restrained. It is absolutely crucial that any new restraint that is going to be used is properly monitored and reported on—and, importantly, reported on to Parliament.²³⁵

Juliet Lyon told us that in her view:

229 HM Inspectorate of Prisons/Youth Justice Board, *Children and young people in custody 2011/12: an analysis of the experiences of 15–18 year olds in prison*, 2012

230 HM Inspectorate of Prisons, *Report on an unannounced short follow-up inspection of HMPYOI Ashfield, 11–13 October 2011*, February 2012, para 2.86

231 Q 284

232 Q 285

233 P Smallridge and A Williamson, *Independent Review of Restraint in Juvenile Secure Settings*, (London: 2008)

234 INQUEST/Prison Reform Trust, *Fatally Flawed: Has the state learned lessons from the deaths of children and young people in prison?*, October 2012, pp 25–26

235 Q 287. HM Chief Inspector of Prisons currently comments on the use of force in this Annual Report to Parliament.

It is difficult to see why staff cannot be trained in de-escalation to the point that they see that as a normal approach, rather than [...] children saying that it's normal for people to be placed in some kind of pain.²³⁶

96. Nick Hardwick, HM Chief Inspector of Prisons said:

At the moment, the new restraint policy is still a matter of theory. We have not seen it put into practice yet. Where I do have a concern is about the use of pain compliance techniques on children. That does not just have an adverse consequence for the individual child; my concern is about what that does, if it is allowed, to the culture and ethos of the institution [...] [But] we welcome in the new policy the emphasis on de-escalation [...] I am very clear that far more of these situations can be de-escalated than currently is the case.²³⁷

HM Inspectorate of Prisons has found increasing evidence that de-escalation is being used more frequently.²³⁸ During our visit to HMYOI Feltham, we met officers who told us about the institution's new policy to reduce the use of force, which involved four dedicated officers who focused on risk assessment, intelligence (as restraint tended to be used to prevent violence between offenders), mediation and debriefs. The Minister argued that the focus over the next two year would be on ensuring that all staff are trained, beginning in Rainsbrook STC in February 2013.²³⁹

97. It is matter of serious concern to us that, despite the fact that the use of force in restraining young offenders has now been definitively linked to the death of at least one young person in custody, the use of restraint rose considerably across the secure estate last year. We welcome the fact that the new policy limits the use of force against young offenders but consider a more fundamental cultural shift is required. We intend to keep a watching brief on this issue and recommend that Her Majesty's Chief Inspector of Prisons reports on the implementation and impact of the new policy in more detail in his Annual Report to Parliament.

Looked after children and care leavers

98. Children in care and care leavers are over-represented in the prison population. Despite accounting for less than 1% of the total population, the most recent survey of 15-18 year olds in custody²⁴⁰ found that 30% of young men, and 44% of young women had spent time in care. The majority of children in care and who are considered to be looked after under section 20 of the Children Act 1989 lose their looked after status on entering custody. The only children who retain their care status while in custody are children under a full care order under s31 of the Children Act 1989, children who are classified as in need under s17 of the act, children remanded to secure training centres and secure children's homes and 16 and 17 year olds who have spent enough time in care to be considered

236 Q 249

237 Qq 249, 251

238 Ev 124

239 Q 439

240 HM Inspectorate of Prisons/Youth Justice Board, *Children and Young People in Custody 2011/12: An analysis of the experiences of 15-18 year olds in prison*, 2012

‘relevant’. Under the Legal Aid, Sentencing and Punishment of Offenders Act 2012, all children remanded into custody, but not those sentenced to custody, now automatically receive looked after status.²⁴¹

99. A thematic review of the care received by looked after children aged 15 to 18 in YOIs carried out by HM Inspectorate of Prisons in 2011 found that those who had been in care reported more vulnerability and greater need than those who had not. Meeting these needs requires collaboration across services, including social workers from the local authority’s looked after children service. The Inspectorate was therefore concerned by its findings that:

- There was a lack of clarity in most establishments about where the responsibility for looked after children should lie;
- Three-quarters of safeguarding teams described barriers preventing effective communication between the YOI and the local authority. A third felt some social workers tried to end their involvement while the young person was in custody; and
- Only half of young people interviewed said they had received a visit from their social worker during their time in custody.²⁴²

On a related point, looked after children in HMYOI Feltham told us they were unhappy at being unable to receive visits from siblings under the age of 18, who might be the only family members with whom they still have contact, if an appropriate adult was not prepared to accompany them to the YOI.

100. A more recent inspection of HMP and YOI Parc also found that caseworkers “had to work hard to ensure that the relevant local authorities met their responsibilities.”²⁴³ This was further supported by evidence from Darren Coyne, representing the Care Leavers Association:

I work with young people who explain to me that on entering custody, even though they are entitled to a professional visit from a social worker, they do not receive one. It is not until they come close to release that they are re-engaged, but by that stage it is too late [...] In effect, they are abandoned in custody. I have met with young people who have told me that the first time their social worker or leaving care team worker knew they were in prison was when they came out and told them.²⁴⁴

101. This has serious implications for the plight of these young people when they are released back into the community, lacking support from family networks as they do. The Parc inspection noted the consequence in the form of the relatively high number of young people who were released to bed and breakfast accommodation or who did not know where they would be staying until just before their release. The Children (Leaving Care) Act 2000 was introduced to address variations in the support and financial assistance available to care leavers. However, the Care Leavers’ Association noted that practice is still

241 Legal Aid, Sentencing and Punishment of Offenders Act, section 104

242 HM Inspectorate of Prisons, *The care of looked after children in custody*, May 2011

243 HMI Inspectorate of Prisons, *Report on an unannounced inspection of HMP & YOI Parc Young People’s Unit 2–6 July 2012*, 2012, p 5

244 Q 256

“often somewhat questionable with young care leavers [...] slipping through the cracks” as local authorities “jump through hoop after hoop after hoop to try to come away from their financial responsibilities”.²⁴⁵ Darren Coyne added:

When a young person in care gets to the age of 15 and a half, there should be a pathway plan in place. That pathway plan should be where they move from social services to leaving care, and it should be about their transition. The Children (Leaving Care) Act exists for that to happen. I meet with lots of young people in custody who don’t even know what a pathway plan is, never mind have one written. How can that pathway plan, if not written in the first place, be linked to a sentence plan which can then be linked to a release plan, which can then be linked to resettlement and support in the community?²⁴⁶

102. For those on Detention and Training Orders, this can also have implications for their length of stay in custody. An Independent Member of the Parole Board expressed concerns about the way services support former looked after children:

It is my experience over 10 years that very often Local Authorities do not discharge their duties under the Children Act which requires them to provide and update Pathway Assessments and Pathway Plans [...] Sometimes the Local Authority is not involved at all in the young prisoner’s case and sometimes they decide not to carry out the assessment [...] Often Youth Justice Service staff are unaware of the obligations of Local Authorities and/or of the prisoner’s status as a former looked after child. Consequently, no-one chases up [...] This means that the Parole Board has to decide on parole when the follow-up arrangements are at best uncertain. I am sure that this leads to a number of individuals being retained in custody longer than would be necessary if there were proper planning.²⁴⁷

Nick Hardwick agreed that because looked after children are less likely to have somewhere settled to stay, they are less likely to qualify for early release than a child who has not been looked after. Young people without family support also find it difficult to be granted release on temporary licence towards the end of their sentence.²⁴⁸

103. The HMIP thematic review recommended that a designated social worker be stationed within each YOI with responsibility for looked after children; and three measures to ensure a stronger central lead and better coordination between Government Departments and agencies.²⁴⁹ The YJB has announced a commitment to fund social worker posts in YOIs until 2014.²⁵⁰ Nick Hardwick told us that:

One of the critical problems and difficulties was that the staff in the YOI often did not know what a young person was entitled to, and the social worker who was responsible for that young person out in the community too often had the attitude

²⁴⁵ Ev 123

²⁴⁶ Q 257

²⁴⁷ Ev w27 [Matthew Fiander]

²⁴⁸ Qq 264–5

²⁴⁹ HM Inspectorate of Prisons, *The care of looked after children in custody*, May 2011

²⁵⁰ Ev 127

‘out of sight, out of mind, and we’ll pick it up when the boy comes out again’. So having a specialist post in a YOI, a person who can make that link [...] is a good first step. We have seen, now that they are in place, the results of that in some inspections already, and they are positive.²⁵¹

Staff in HMYOI Feltham were enthusiastic about the impact of having had a social worker based there over the preceding six months. We asked the Minister for Prisons and Rehabilitation if he would commit to guaranteeing funding beyond 2014; he replied “we will have to consider whether that funding could or should continue as and when we get nearer to that point”.²⁵²

104. However, despite this welcome progress, Nick Hardwick cautioned that children who have been looked after continue to be “dumped” in bed and breakfast accommodation without the support they need, telling us: “It is as good as giving them a return ticket. It is nonsensical.”²⁵³ Darren Coyne agreed that finding suitable accommodation for former looked after children on release should be the number one priority.²⁵⁴ The Inspectorate’s other recommendations were that:

- The Youth Justice Board and the Department for Education should agree a strategy for the coordination of services for looked after children in custody that ensures that all agencies with statutory responsibilities for looked after children fulfil their obligations;
- NOMS, in conjunction with the Association for the Directors of Children’s Services and Chairs of Youth Offending Services Management Boards, should develop clear procedures relating to the care and management of looked after children in YOIs, accompanied by a comprehensive dissemination programme to assist staff in YOIs; and
- There should be a national lead within NOMS with a role for ongoing review and development of the national procedures on the care and management of looked after children in YOIs, to ensure that are kept up to date and are properly implemented.²⁵⁵

These remain outstanding.

105. *Some of the most disturbing evidence we heard concerned the effective abandonment of looked after children and care leavers in custody by children’s and social services, with devastating implications for their outcomes on release. We recommend that the Government should (a) continue to fund social workers in YOIs beyond its current commitment of 2014; and (b) in its response to our Report, set out how it is implementing the further three recommendations made by Her Majesty’s Inspectorate of Prisons in its 2011 thematic review of the care of looked after children in custody. We also recommend that the relevant authorities do more to ensure that looked after children and care leavers in custody are able to maintain contact with family members during their detention, where appropriate.*

251 Q 253

252 Q 249

253 Q 253

254 Q 265

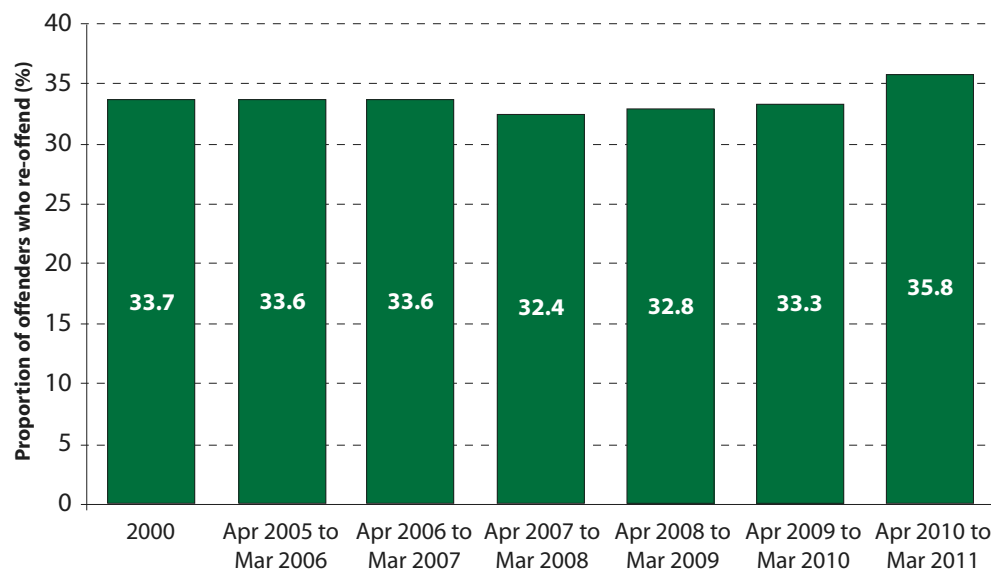
255 HM Inspectorate of Prisons, *The care of looked after children in custody*, May 2011

5 Reducing re-offending

Re-offending rates and factors affecting likelihood of re-offending

106. Despite successes in the other performance indicators, the overall proven re-offending rate²⁵⁶ for young offenders has remained stubbornly resistant to reduction over the past decade, as shown in figure 5.

Figure 5: Proportion of young people who re-offend; 2000, 2005/06–2010/11²⁵⁷



Data source: Youth Justice Board/Ministry of Justice Statistics Bulletin, *Youth justice statistics 2011/12, England and Wales*, 31 January 2013, Chart 9.1

The most recent data shows that 35.8% of the 2010/11 cohort of young offenders re-offended, an increase of 2.1 percentage points since 2000.²⁵⁸ A lack of progress could be linked with the decline in the number of young people entering the criminal justice system, which means that the young people who do end up in it are, on balance, more challenging to work with. It should also be noted that the average number of offences per re-offender has fallen from 3.32 in 2000 and to 2.87 in 2010/11. We recommended in 2011 that the re-offending measure should be refocused to capture seriousness and frequency, although this was rejected by the Government.²⁵⁹ Enver Solomon agreed with us that “the more accurate measures are frequency and seriousness.”²⁶⁰

²⁵⁶ A proven re-offence is defined as a new offence committed within one-year of being released from custody or given a caution or conviction, which is proved by another formal disposal.

²⁵⁷ Youth Justice Board/Ministry of Justice Statistics Bulletin, *Youth justice statistics 2011/12, England and Wales*, 31 January 2013, Chart 9.1

²⁵⁸ Ministry of Justice, *Proven Re-offending Quarterly January-December 2010*, October 2012, Table 18b

²⁵⁹ Ministry of Justice, *Government response to the Justice Committee’s Report: The proposed abolition of the Youth Justice Board*, Cm 8257, January 2012

²⁶⁰ Q 22

Evidence base

107. The reasons why young people re-offend, and therefore the kinds of support that might make a difference, are relatively well known. Studies have shown that the risk factors assessed by YOTs using the Asset tool are associated with one-year proven offending: of the 12 Asset dynamic factors, ‘lifestyle’, ‘substance use’ and ‘motivation to change’ were highly statistically significant predictors of proven one-year re-offending; ‘living arrangements’, ‘family and personal relationships’, and ‘education, training and employment’ were also statistically significant.²⁶¹ Enver Solomon cited offenders’ “relationships with family and their peers; their ability to engage in education or training; if they are moving into independent living, their ability to find stable accommodation; the resettlement package and support engagement in substance misuse programmes as well” as the key things that make a difference.²⁶²

108. However, there is paucity of evidence about precisely which interventions work in preventing offending and re-offending, as noted by the National Audit Office in 2010:

Very little is known about the relative effectiveness of interventions. Although the youth justice system has been operating in its current form for over a decade, and in spite of the variety of approaches, Government stakeholders and academics have published little research recently into which interventions work best and there is almost no information about relative cost [...] practitioners in the youth justice system do not know which interventions have the most impact on reducing reoffending²⁶³

Reading Youth Offending Service told us that a lot of the available evidence is drawn from work with adult offenders; there is a “dearth” of relevant research into what works for young people.²⁶⁴ Action for Children argued that the Youth Justice Board needs to do more to flesh out the real costs of interventions: “At the moment it is a bit like comparing apples and pears”.²⁶⁵

109. The National Audit Office found that the YJB had spent less than 0.5% of its overall budget on research in recent years.²⁶⁶ The YJB told us that it is implementing an improved new approach to the identification and dissemination of effective practice in 2012/13, which has been developed in collaboration with the sector, and is developing a partnership with the Social Research Unit to provide a means for estimating ‘what works’ in public policy.²⁶⁷ However, only £204,000 was spent on research in 2011/12,²⁶⁸ accounting for

261 Youth Justice Board/Ministry of Justice Statistics Bulletin, *Youth justice statistics 2010/11, England and Wales*, January 2012, p 50

262 Q 4

263 National Audit Office, *The youth justice system in England and Wales: Reducing offending by young people*, HC 663, para 3.10

264 Ev w24

265 Q 233

266 National Audit Office, *The youth justice system in England and Wales: Reducing offending by young people*, HC 663, December 2010

267 Ev 140–1

268 Youth Justice Board, *Annual Report and Accounts*, 2011/12, p 27

0.05% of total expenditure, and, while a direct comparison of the figures is difficult, it does not appear from the corporate plan that a substantially larger proportion has been allocated in 2012/13.

Factors influencing successful interventions

Relationships

110. It is worth noting, however, that many of those giving evidence to us expressed the view that it was the level and quality of contact with their support workers that made the difference to young offenders, rather than the kind of intervention offered.²⁶⁹ Alexandra Crossley, for example, said that the importance of relationships was “the overwhelming” finding of the Centre for Social Justice’s detailed youth justice review,²⁷⁰ and the Local Government Association attributed the success of the youth justice system over the past ten years to “primarily, the fact that most orders have a strong element of supervision, and very regular contact.”²⁷¹

111. Enver Solomon agreed that the overwhelming message from young offenders on what makes a difference is relationships but argued that:

YOTs have become very focused on process; they have become very focused on a kind of bureaucratised manualised approach to engaging with children and young people; and they have lost sight of the importance of the quality of relationships, engagement and investing in time, and the value of giving professionals a greater discretion and confidence to make decisions and judgements.²⁷²

Reading YOS described a “growing tension” between risk management, which focuses on accountable decision making, and an approach that recognises the importance of building and maintaining effective engaging relationships.²⁷³

Family involvement

112. The other strong theme that emerged from our evidence was the importance of working with the offender within the family environment, where this is applicable. The former young offenders who gave evidence to us said they would have liked there to have been more contact between the YOT and their families. A key component of the MultifunC programme in Scandinavia and other well-regarded interventions is the focus on intensive work with the family as well as with the offender. The Centre for Social Justice described the family environment as generally a “key factor” in children’s offending behaviour, therefore “their criminality is unlikely to be effectively addressed in isolation

²⁶⁹ See, for example, Ev w19 [Local Government Association]; Ev 93 [Centre for Social Justice]; Ev w21 [Developing Initiatives Supporting Communities]

²⁷⁰ Q 22

²⁷¹ Ev w19

²⁷² Q 22

²⁷³ Ev w24

from family considerations”.²⁷⁴ Otherwise, any progress made has a tendency to be lost once the intervention is over.

113. We heard evidence about multi-systemic therapy (MST), which the Royal College of Psychiatrists argued has the best evidence base internationally in terms of therapies that reduce reoffending.²⁷⁵ Developed in the United States, MST has three primary goals, which are to keep children out of custody, out of care and in school. MST primarily focuses on reducing the likelihood of children reoffending and becoming imprisoned, but it can also reduce the likelihood of children entering the criminal justice system in the first place. Its focus is on empowering parents to make changes in the environment of the young person to reduce the risks of re-offending, for example by setting clear and fair rules about bad behaviour while introducing positive rewards for successful attempts to change, breaking links with anti-social peers and introducing pro-social activities. MST therapists have small caseloads and families have 24 hour support through an on call system to problem solve difficulties as soon as they happen. The worker visits the family at least 3 times a week to support and address any problems that arise for a period of 3 to 5 months. It is not part of a sentence, although it may be referred to in a pre-sentence report, and parents must give their consent.²⁷⁶

114. As well as impressive international results, initial results in the UK have been very positive. Evaluation of the programme run by the Brandon Centre in London, which was the first organisation to pilot MST in the UK from 2002, in connection with Camden and Haringey YOTs, found that:

- A significant reduction in relative risk of re-offending occurred in both the MST population and YOT control group over 3 years, but for the total number of offences, there was a greater reduction in risk of re-offending in the MST group.
- The differences did not appear until 18 months, but were highly significant with 8% in the MST group and 34% in the YOT control group showing at least one non-violent offence.
- There were very few young people who received custodial sentences, but the number of custodial sentences was significant only for the YOT group and during the last six months of the study, fewer youths in the MST group had custodial sentences.²⁷⁷

115. MST costs between £8,000 and £10,000 per family.²⁷⁸ The Brandon Centre found that MST appears to reduce the need for other youth justice services, to reduce criminal activity and thus the costs associated with offending, and to be cost-saving in comparison to treatment as usual in the youth offending service:

²⁷⁴ Ev 96

²⁷⁵ Ev 117

²⁷⁶ Brigitte Squire, “Multi-systemic therapy: beyond offending behaviour”, *Criminal Justice Matters*, no. 61, Autumn 2005; Ev 145 [Peterborough Youth Offending Service]

²⁷⁷ Ev 147–8 [Peterborough Youth Offending Service]. The evaluation covered a period of 4–5 years. Up to 220 persistent young offenders and their parent/carers were randomly allocated either to a group receiving MST with youth offending team services as usual or to a group receiving services as usual without MST.

²⁷⁸ Ev 149 [Peterborough Youth Offending Service]

You will spend £2420 on MST but you will save £2237 on other services and £2406 on crime reduction: you will recoup what you spent and save an additional £2223 per participant over 3 years.²⁷⁹

It is estimated that in a typical YOT cohort, about 50% of cases would be eligible for MST.²⁸⁰ There are now MST teams serving 35 local authorities from 27 sites, with five more sites expected to open in 2013. However, Dr Morland drew attention to the financial pressures local areas face, now that MST needs to be purchased locally.

116. *In contrast with their success in other areas, the Youth Justice Board and local agencies have failed to make any progress in reducing the level of re-offending, which has remained stubbornly around 33–35% over the past decade, and has actually risen slightly in the last two years. This may be partly linked to the reduction of first-time entrants, which means that offenders in the system today are disproportionately more challenging and persistent. Nevertheless, we are disappointed that more progress has not been made. One of the main reasons, in our view, is a lack of hard data about which interventions work best to reduce re-offending.* We recommend that the Youth Justice Board dedicates more of its budget to researching and disseminating best practice about the comparative effectiveness, and cost, of interventions to reduce re-offending. Money is tight, but this makes it all the more important that we know how best to invest it. We are concerned that, without devolution of the full youth custody budgets local areas will find it hard to invest in alternatives to custody like multi-systemic therapy and Intensive Fostering. Until this happens, where rigorous evidence of success exists, more funding should be available.

Rehabilitation

Assessing young offenders for impairments and vulnerability

117. Youth offending teams use the Asset tool to carry out risk assessments for young people who come into contact with the criminal justice system; their scores should influence the level and type of supervision and interventions they receive.²⁸¹ The quality of offender assessment has been subject to criticism; in 2010 the National Audit Office cited evidence from HM Inspectorate of Probation inspections that judged a third of assessment work to be of insufficient quality.²⁸² More than 10% of youth justice staff who took part in research for the Prison Reform Trust in 2010²⁸³ said their YOT did not use screening or assessment tools to identify children with mental health problems; and less than half said that training was available to help them recognise when children might have

279 Ev 149 [Peterborough Youth Offending Service]

280 Q 217 [Dr Becky Morland]

281 Youth Justice Board/Ministry of Justice Statistics Bulletin, *Youth justice statistics 2010/11, England and Wales*, January 2012, p 51. The Asset 'Core Profile' includes 12 sections covering factors which may be related to offending: family and personal relationships; education, training and employment; neighbourhood; lifestyle; substance use; physical health; emotional and mental health; perception of self and others; thinking and behaviour; attitudes to offending; and motivation to change.

282 National Audit Office, *The youth justice system in England Wales: reducing offending by young people*, HC 663, December 2010

283 Prison Reform Trust, *Seen and Heard: supporting vulnerable children in the youth justice system*, 2010

impairments.²⁸⁴ The tools themselves are also imperfect: they do not assess for learning disability, language and communication needs, or conduct disorder, and often underestimate mental health problems and overlook physical health problems.²⁸⁵ Assessment is also an issue in custody; many young people arrive with no comprehensive accompanying medical history, and therefore institutions should screen them to assess their mental and physical health needs. Evidence in the past has pointed to varying quality and scope of these assessments.

118. The Youth Justice Board is currently seeking Government approval to implement a tool to replace Asset, which is designed to address these criticisms. If approved, it is expected to be used in YOTs and secure establishments from 2014/15. In addition, the Comprehensive Health Assessment Tool (CHAT), jointly funded by the Department for Health and the YJB, is being rolled out across the secure estate over the course of 2013, which the YJB said should result in improved identification of needs.²⁸⁶ It includes a Reception Health Screen, to be completed within the first two hours of arrival into custody, followed by more in depth assessment of physical and mental health and substance misuse and neurodevelopmental disorders, including learning disabilities, autism, communication needs and traumatic brain injury. YOTs will also be encouraged to use the CHAT.

119. However, although the Royal College of Speech and Language Therapists has been involved in work to develop the new assessment tool, Professor Karen Bryan expressed concern that it is “still verbally mediated, meaning that primarily a lot of questions are asked of the young person, and there is no pre-screen to identify children with communication difficulties.”²⁸⁷ During our visit to Northern Ireland, the success of their speech and language therapy e-learning assessment tool, aimed at allowing Youth Justice Agency workers to identify the communication needs of young people coming into contact with the Agency, was brought to our attention.

120. Debbie Pippard, of the Transition to Adulthood Alliance, referred us to a report on acquired brain injury, showing that, while less than 10% of the general population has experienced brain injury, it typically affects between 50–80% of offender populations. A study by Professor Huw Williams of 197 young male offenders incarcerated in this country found that 60% reported some kind of brain injury and that 46% reported loss of consciousness. The consequences may include memory loss, loss of concentration, poor judgement and difficulty in emphasising with others, all risk factors associated with offending behaviour. Professor Williams concluded that:

Despite their prevalence, it is rare for criminal justice professionals to consider whether an offender may have a brain injury, or for neuro-rehabilitation services to be offered. Consequently it is common for related health and mental health needs of children, young people and adults to go unmet.

284 Ev 129

285 It has also been argued that Asset increases the chances of young offenders from deprived backgrounds being given tougher sentences, because of its focus on criminogenic risks.

286 Ev 141 [MoJ/YJB]

287 Q 186

He recommended greater awareness-raising of the issue amongst criminal justice professionals and standard screening of young people with brain injury when they come into contact with criminal justice process.²⁸⁸

121. *As we indicated in chapter two, it would be highly preferable both for the young people concerned and for the taxpayer if support needs were identified far sooner, in order to trigger earlier intervention. Where this does not happen, it is important that the youth justice system has access to the tools and staff capable of identifying needs and intervening at that stage. All children should be properly assessed for impairments, vulnerabilities and health issues, including, where necessary, neuropsychological assessments for brain injury, both on initial contact with the youth justice system and on entry into custody. We therefore welcome the Youth Justice Board's recognition of the current limitations and its intention to roll-out a new assessment framework. The Board should address the particular concern expressed to us that the revised assessment process remains inappropriate for young people with communication needs, as it is still verbally mediated, and consider whether England and Wales can learn from the e-learning assessment tool piloted in Northern Ireland.*

Speech, language and communication needs

122. 10% of children and young people in the general population have speech, communication and language needs but, as we noted earlier, the proportion of young offenders with difficulties in this area is 60–65%.²⁸⁹ Professor Bryan explained this marked over-representation as a “compounding risk model”, beginning from an early age.²⁹⁰ Individuals with these needs are at a greater risk of re-offending. They can struggle to understand the conditions or requirements of a sentence, which can jeopardise their compliance with court orders and instructions. In addition, over 40% of offenders find it difficult or are unable to benefit from verbally mediated interventions such as anger management and drug rehabilitation courses.²⁹¹

123. Research in relation to adult offenders has found that offenders gaining oral communication skills qualifications were 50% less likely to re-offend in the year after release than the national average.²⁹² Speech and language therapy provision in the youth justice system has increased, but The Communication Trust argued that:

Needs are not being addressed through any systematic commissioning process. Instead, facilities adapt services or have a member of staff with experience of speech and language needs by chance.²⁹³

Only 15 youth offending community services in England and Wales and three YOIs have access to speech and language therapy, and many of those services are short-term

288 Q 211; Professor Huw Williams, *Repairing shattered lives: Brain injury and its implications for criminal justice*, 2012

289 Q 182 [Professor Bryan]

290 *Ibid.*

291 Ev 143 [Royal College of Speech and Language Therapists]

292 Ev w3 [The Communication Trust]

293 *Ibid.*

projects.²⁹⁴ Professor Bryan proposed a three-tier consultancy model of provision with increasing access to specialist support depending on the complexity of offender needs.²⁹⁵ The Chair of the YJB was “confident that over the last five years there has been an increasing understanding of how important [speech and language therapy] is” and noted that 800 YOT staff, police officers and magistrates have been trained via The Communication Trust.²⁹⁶

124. We recommend that all youth offending teams and secure institutions should have access to speech and language therapists through a more systematic commissioning process.

Education and training

125. Rt Hon Chris Grayling MP has said that one of his top five priorities as Secretary of State is “big changes to the way we deal with children who are offenders, with a much greater focus on education in a secure environment”²⁹⁷ and in February 2013 published a consultation paper which proposed to transform the youth estate into one comprising Secure Colleges.²⁹⁸ Nearly half of those under the age of 18 in custody in England have literacy and numeracy skills inferior to the norm of 11 year-olds.²⁹⁹ HM Inspectorate of Prisons found during its inspections in 2011 that most young people undertook some form of education or training in custody and were able to gain some form of meaningful accreditation. Accreditation at higher levels was, however, limited and vocational training opportunities in some establishments insufficient to meet demand. The quality of teaching and learning was at least satisfactory. However, some young people spent much of the time unoccupied. Young offenders on the Heron Unit at HMYOI Feltham also told us that in some cases the level of education provided was too basic for them and there was a need for more tailored provision to meet individual need. They were also worried about the break in their study and whether their school or college would take them back on release.

126. Improving the provision of education in the secure estate is clearly a worthy aim. However, the average time spent in custody is 79 days,³⁰⁰ and only around 18% of young people in custody, themselves a small minority of offenders, are serving a long term sentence,³⁰¹ and this cannot be extended simply to improve the educational and employment prospects of young offenders, however well-intentioned. The definitive guideline from the Sentencing Council is clear that:

294 Q 188 [Professor Bryan]

295 Q 189

296 Q 408

297 Speech made by the Secretary of State for Justice to the Centre of Social Justice on 20 November 2012, <http://www.justice.gov.uk/news/speeches/chris-grayling/speech-to-the-centre-of-social-justice>

298 Ministry of Justice, *Transforming Youth Custody: Putting education at the heart of detention*, Consultation Paper CP4/2013, 14 February 2014

299 Ev w7 [Professor Littlechild]

300 Q 400 [John Drew]

301 Ministry of Justice, *Transforming Youth Custody: Putting education at the heart of detention*, Consultation Paper CP4/2013, 14 February 2014, p 7

The sentence must remain proportionate to the seriousness of the present offence (except in the rare circumstances where the criteria for a sentence under the dangerous offender provisions are met) and should not impose greater restrictions on liberty than the seriousness of the offence justifies simply to deal with the risk of re-offending.³⁰²

We were therefore pleased that the Minister for Prisons and Rehabilitation recognised that:

I also think that the crucial question here, when you are dealing with relatively short periods of custody in particular, is what the linkages are between what goes on in custody and what goes on thereafter. That is where the real effort needs to be made, rather than to try and pretend that the criminal justice system can do everything, which clearly it can't.³⁰³

The consultation paper also notes that 'overall, there is insufficient join-up between education services and systems both within custody and between custody and community, with the result that time is wasted and opportunities to make progress are lost' and seeks views on how this situation can be improved.³⁰⁴

127. The Minister also told us that around 80% of those in youth custody were excluded from school and around half of young women and a quarter of young men had last been to school when there were around 14.³⁰⁵ We heard compelling evidence about the success of the Wessex Dance Academy in re-engaging young people in an alternative environment to facilitate their eventual reintegration into education, training and employment.³⁰⁶ Nevertheless, the Manager of the Academy, Clare Hobbs noted that:

It has been hard to work with pupil referral units, teachers, and even some colleges, to get them to believe that the young person who did not do anything at the beginning of this project is capable of doing a full day by the end of it. It is a matter of getting those professionals to believe in it.³⁰⁷

Staff at HMYOI Feltham told us that their education team often struggled to get feedback from young offenders' schools about their educational level and needs. The Transforming Youth Custody consultation paper notes that:

[...] establishments should already be conducting initial educational assessments of literacy, numeracy and any particular learning needs. This should happen as soon after arrival as possible and be informed by information from the schools,

302 Sentencing Guidelines Council, *Overarching principles – sentencing youths*, Definitive Guideline, 2009, para 2.3

303 Q 414

304 Ministry of Justice, *Transforming Youth Custody: Putting education at the heart of detention*, Consultation Paper CP4/2013, 14 February 2013, p14

305 Q 413

306 Qq 228–231

307 Q 236

community services and YOTs that have worked with the young person previously.³⁰⁸

128. *We have not had an opportunity to examine in detail the proposals outlined in the Government's Transforming Youth Custody consultation paper, as it was published after our inquiry had concluded, but our evidence leads us to the following conclusions. We endorse the Secretary of State's aim of improving the basic literacy of offenders but we are not convinced that it is most useful to focus resources on the secure estate, given the very low numbers of young people now in custody and the fact that their average length of stay is currently 79 days, which makes it almost impossible to achieve genuine progress. The greater focus should be on improving transition between custody and the community—and we therefore strongly support those parts of the consultation relating to this issue—and on improving provision in the community and ensuring as far as possible that young people leaving custody can resume their education, preferably at their original place of study. This may require incentivising schools and colleges to take back difficult students. We also draw the attention of schools and colleges to the need to provide information to secure institutions regarding the educational levels of young offenders, so that their educational progress is not impeded while they are in custody.*

Resettlement

129. Poor resettlement and aftercare for young offenders has long been identified as one of the major factors influencing re-offending. In evidence to this Committee in 2011, Enver Solomon stated that:

Resettlement [...] remains a cause for concern [...] What is required is an individual who is going to be the broker for that young person, making sure all the services are in place when they leave custody. That link has not always been there.³⁰⁹

Andretti, a former young offender, argued for better advice for people in custody as to what options are available for them when they leave.³¹⁰ Another former offender, Iris told us:

You can aspire; you can try; you can go to your courses; you can go to your classes, but there are days where you do feel as if you want to give up. If you haven't got that support or that person on the side that will tell you, "Yes, keep going", you are just going to fall back to your old ways if you're not strong enough.³¹¹

130. HM Inspectorate of Prisons published a thematic report on resettlement provision for young people in 2011, focusing on accommodation and education, training and employment. Of the approximately 40 young men included in the research, only 32% had suitable accommodation and education, training or employment on release, two were forced to report as homeless, one in five were placed in accommodation assessed as

308 Ministry of Justice, *Transforming Youth Custody: Putting education at the heart of detention*, Consultation Paper CP4/2013, 14 February 2013

309 HC (2010–12) 1547, Q 36

310 Q 77

311 Q 82

unsuitable. Of the one-third of young men who had an education, training or employment placement arranged on release, only half were still attending one month later. One month after release, six of the young men were in custody and one was on the run.³¹² The Chief Inspector added in evidence that:

The thing that unlocks everything else is accommodation. It does not mean that if you have settled accommodation everything else will turn out fine. It means that if you do not have that, nothing else will work.³¹³

131. The Government aims to improve arrangements for resettlement through development of resettlement consortia at every YOI. The Secure Estate Strategy noted their intention to “continue to support the development of a number of regional resettlement consortia until March 2013, when it is anticipated that the consortia will be fully locally funded and governed.” We met staff from the North West Resettlement Consortium who have piloted this approach at HMYOI Hindley since 2010. Independent evaluation has proved positive; the scheme has brought about a substantial increase in partnership working between agencies responsible for resettlement and some improved outcomes for young offenders. Lessons learnt included the need to set up community provision earlier and more step-down support at the end of licence.

132. However, the problem of finding appropriate and affordable housing was described as “still a nut we need to crack”. Staff were concerned that the problem was set to worsen from April 2012, when the new remand framework comes into force, and there will be greater competition for beds. The Independent Commission on Youth Crime and Anti-Social Behaviour recommended in 2010 that “a better range of suitable supervised accommodation be made available for young offenders on their release”, to include ‘halfway houses’ and supervised accommodation in Foyers and through Intensive Fostering schemes.³¹⁴ Breach of licence is also an issue. We were made aware of examples during our visits to HMYOI Feltham and HMYOI Hindley of offenders being returned to custody because they had broken their curfew by an hour while trying to find the place where they were being housed or being breached for returning to an area from where they were excluded because they were unable to find overnight accommodation elsewhere. When asked about progress since the thematic review, HM Chief Inspector of Prisons said:

We have had a plan full of good intentions for what they will do about it and we will do a thorough review to see what progress has actually been made. What we are seeing on our day-to-day inspections, our routine programme, is that there has not yet been sufficient progress.³¹⁵

133. *Despite being a recognised problem for many years, finding suitable accommodation for young offenders released from custody is still a major issue. Until this is resolved, it will be impossible to make good progress towards reducing the very high re-offending*

312 Ev 125 [HM Inspectorate of Prisons]

313 Q 267

314 Independent Commission on Youth Crime and Anti-Social Behaviour, *Time for a Fresh Start*, 2010, p 80. Foyers are integrated learning and accommodation centres providing safe and secure housing, support and training for young people aged 16–25. According to the Foyer Federation, there are over 140 foyers operating in the UK.

315 Q 267

rates for custodial sentences. Good resettlement planning and aftercare is essential for reducing levels of re-offending. The regional resettlement consortia model appears to offer a means of improving outcomes for young offenders and we expect the Government to update us in its response to our Report on progress towards meeting its target for regional resettlement consortia to be fully funded and operational in all areas.

Spent convictions

134. Young offenders giving evidence with User Voice raised the problems they had experienced getting a job because of the need to declare their convictions.³¹⁶ Reprimands and warnings are immediately spent, although they remain on the individual's criminal record, and a conditional caution becomes spent after three months. Referral Orders are also immediately spent, provided the young offender has successfully completed their contract. The Legal Aid, Sentencing and Punishment of Offenders Act has reduced the periods during which other offenders are required to declare their convictions as follows.

Figure 6: Implications of Section 139 of the Legal Aid, Sentencing and Punishment (not yet in force)

Sentence (custodial sentences include licence period)	Current youth rehabilitation period, from date of conviction	New youth rehabilitation period, from end of sentence. (maximum total period of sentence and rehabilitation)
Absolute discharge	6 Months	None
Fine	2.5 years	6 months from conviction
Community order	2.5 years	6 months (3.5 years)
0–6 Months in custody	3.5 years	18 months (2 years)
6–30 Months	5 years	2 years (4.5 years)
30 Months - 4 years	Never spent	3.5 years (7.5 years)
Over 4 years	Never spent	Never spent

Data source: Legal Aid, Sentencing and Punishment of Offenders Act 2012

Spent convictions may, however, may be made available to potential employers in certain circumstances as set out in the Exceptions Order to the 1974 Rehabilitation of Offenders Act, such as work with children and the administration of justice. A 2002 Home Office review of the 1974 Act recommended that young people who have committed minor offences are given a 'clean sheet' at, or just after, their 18th birthday, with a longer period of up to two years applying to those who have served custodial sentences; this was recently endorsed by the Independent Commission on Youth Crime and Anti-Social Behaviour.³¹⁷

316 Q 79

317 Independent Commission on Youth Crime and Anti-Social Behaviour, *Time for a Fresh Start*, 2010, p 13

135. The Minister emphasised that “in almost every case, what LASPO does is reduce the length of time that it takes for a conviction to become spent” but agreed that “there may be a case for looking at [the issue] again”.³¹⁸ However, he also made the point that:

When it comes to employment, we would expect—and there are codes of practice in place to achieve this—that employers take a fair-minded view about this so that, even though a conviction may still remain unspent, we do not expect employers simply to say, “That’s it. If you have a conviction on your record, we won’t even look at you.” We expect them to take a rather more broad-minded attitude than that.³¹⁹

136. *We support the reduction in rehabilitation periods introduced via the Legal Aid, Sentencing and Punishment of Offenders Act, which means that many young offenders’ convictions will become spent sooner. We also agree with the Minister that employers, as well as schools, colleges and universities, should consider taking young people on despite their previous offences, as many do.* Nevertheless, while we recognise that for very serious offending, disclosure of convictions will continue to be in the public interest, we consider there is potential to go further in relation to more minor convictions. We therefore recommend that, in addition to keeping the youth rehabilitation periods under review, the Government considers legislating to erase out-of-court disposals and convictions from the records of very early, minor and non-persistent offenders at the age of 18, so that they cannot be disclosed to employers under the Exceptions Order to the Rehabilitation of Offenders Act.

Transition to adult provision

137. Several reviews and investigations, including suicide inquests, have criticised the process by which young people transition from a YOT to a probation trust or from youth custody to the adult secure estate. Information sharing between institutions and planning is poor, and there is a risk that support falls away. Andretti, who transferred from a YOI to an adult prison, told us that:

There was no plan. It was just straight on the bus, straight to a new jail and then straight again, induction wing again and then just, ‘Get on with your time’.³²⁰

Some individuals are held within the youth system beyond their 18th birthday because of their particular circumstances, and the Transition to Adulthood Alliance said it would welcome more use of this kind of flexibility, including greater encouragement to professionals to use their discretion when transitioning young adults.³²¹ Child protection issues obviously make this more difficult in the secure estate, although a few 18 year olds do continue to be held in youth custody if they have only a short part of their sentence remaining.

318 Q 416

319 Q 417

320 Q 52

321 Q 213

138. The Royal College of Psychiatrists noted that the transition to adult services, which is “frequently abrupt and inadequately planned”, can pose particular risks for young offenders with mental health needs:

The facilities available to support a vulnerable prisoner in the adult prison system are significantly less well developed than for young people under 18. For a young person with mental health needs it is sometimes very difficult for clinicians to influence decisions regarding future placement, even though they may be aware of establishments that are better able to support young people with mental health needs. This is clearly not in the best interests of young people with mental health difficulties.³²²

139. The YJB told us it had taken forward some of the Transition to Adulthood Alliance’s proposals, including:

- The development of a new national framework for transferring cases from youth offending teams (YOTs) to probation trusts.
- Development of the Youth to Adult (Y2A) Portal, a web-based application that can be used to transfer information on young people securely from a YOT to a probation trust (an initial assessment shows that the pilot was a success).
- Establishing a cross-government youth-to-adult transitions forum with representatives from the Ministry of Justice, NOMS, probation service, the Department of Health, the Department for Education, HM Courts and Tribunals Service, Business Innovation and Skills, Department for Work and Pensions and the Welsh Government.³²³

However, the Prison Reform Trust expressed disappointment that Ministers have not taken a more strategic approach to the issue.³²⁴

140. ***The transition between youth and adult provision is a period of high risk for 18 year old offenders.*** We would like to see earlier planning, better information sharing and a smoother transition between youth offending teams and probation trusts, and between the youth and adult secure estate, through the national roll-out of initiatives such as the Youth to Adult Portal. We would particularly welcome better planning, and flexibility, in managing the transition of young people with mental health needs, who are at particular risk. Reforms to the youth justice system will never reap their full potential benefits unless the transition from youth to adult provision is managed more intelligently.

322 Ev 117

323 Ev 141

324 Ev 131

6 Conclusions

141. Our inquiry found that the Youth Justice Board and youth offending teams have made encouraging progress towards realising the principal aim of the youth justice system of preventing offending, and meeting the UK's international obligations towards our young people. Many of our recommendations are aimed at cementing these achievements. In some respects the effectiveness of the system is more questionable. We believe we can go much further to prevent offending and re-offending.

142. While we expect the Government and the Youth Justice Board to address all our recommendations in due course, the key recommendations which we would like to be prioritised for immediate action are those which concern:

- The need for better evidence, and dissemination of this evidence, about what interventions work best to prevent offending and re-offending, including cost-benefit analysis, as this is the only way of driving real improvements across the system (paragraphs 32, 33 and 116);
- Our desire to place restorative justice at the heart of the youth justice system, as this has the capacity to meet the needs of victims and offenders (paragraphs 10, 16 and 79);
- Measures to prevent the unnecessary criminalisation of looked after children and care leavers, and better support for such children in custody, as we believe they are currently being failed by the system (paragraphs 16 and 105); and
- A real drive to make suitable accommodation available for young offenders on release from custody, as this is perhaps the key factor in terms of reducing their likelihood of re-offending (paragraph 133).

143. Our long-term vision for the youth justice system is to see a fundamental shift of resources away from custody towards early intervention with young people at risk of offending and, where young people do offend, an approach centred around restorative justice and working with young people within a family context.

Conclusions and recommendations

Prevention

1. We strongly welcome the substantial decrease since 2006/07 in the number of young people entering the criminal justice system for the first time, and commend local partnerships for their successful efforts to bring this figure down. Justice agencies play a crucial role in preventing youth crime by diverting young people away from formal criminal justice processes, which, when done well, means they are less likely to go on to serious and prolonged offending. We are particularly encouraged that many youth offending teams and police forces are using a restorative approach to resolving minor offending. (Paragraph 10)

2. Looked after children have not benefited from the shift towards a more informal approach to minor offending to the same extent as other children. While serious misdemeanours must be dealt with in a serious manner, it is completely disproportionate for police officers to be called to a children's home to investigate trivial incidents such as the broken crockery example cited by the Prison Reform Trust—it puts already vulnerable children at greater risk of being drawn into the criminal justice system and is, moreover, a waste of police resources. We recommend (a) that the Government ensure that all local authorities, in conjunction with partner agencies, have strategies in place to reduce criminalisation of looked after children and that action to achieve this is included more specifically in the evaluation criteria for Ofsted inspection of care homes; (b) that the Director of Public Prosecutions revisits the legal guidance in relation to the prosecution of youths to see if the relevant passages require better compliance, or strengthening, to reduce the risk of discrimination against looked after children; and (c) that the additional funding being provided by the Ministry of Justice to train restorative justice facilitators extends to care home staff. (Paragraph 16)

3. We find it difficult, on the evidence currently available, to draw firm conclusions about the impact of spending cuts on the prevention agenda, and the longer-term impact of spending cuts is something which we will keep under review. The continuing downward trend in first-time entrants to the justice system, and indeed in crime levels as a whole, indicates that they have not yet had a detrimental impact, although it may be that any impact has not yet been felt. The addition of Police and Crime Commissioners to the funding landscape presents opportunities and risks and we do not underestimate local apprehension about the potential for the commendable progress achieved over the last few years to be reversed. The best way to persuade Police and Crime Commissioners of the case to invest in youth crime prevention will be via clear analysis of the long-term cost benefits. We therefore recommend that the Youth Justice Board dedicates greater priority and resources to providing hard evidence of what works. and that the Chair of the Board continues to engage with Police and Crime Commissioners and their representative body so that the transition does not damage service continuity (Paragraph 32)

4. There is a limit to what criminal justice agencies can achieve in preventing youth offending. Young people in the criminal justice system are disproportionately likely to have high levels of welfare need and other agencies, in particular children's and social services, have often failed to offer them support at an early stage. We believe that the overall approach of the Troubled Families agenda has the potential for success. However, we are disappointed by the recent finding of the National Audit Office that the Government does not plan a significant shift in resources towards early intervention, despite the strong evidence that it is cost-effective in the long term, and we are concerned that the Department for Education and local children's services departments are becoming increasingly disengaged from the youth justice agenda. It is possible that early intervention has contributed to the success of the Youth Justice Board in reducing the number of young people entering the criminal justice system. If this is the case, there is a real danger that progress will be reversed, but the effects will not be seen for several years. We recommend that the Youth Justice Board undertakes research into the contributory factors to these reductions, and the cost-benefits of this work, to enable better decision-making about the distribution of funding. (Paragraph 33)

Responses to proven offending

5. Out-of-court disposals can provide a proportionate means of dealing with less serious youth offending. While we welcome the fact that the greater discretion afforded by the new Youth Cautions will facilitate a more individualised response to young offenders, it is important that safeguards are built in to ensure its proper use, and public confidence in it, particularly in cases of repeat offending. We recommend that local criminal justice boards are given a more robust oversight role, and that they should carry out random sampling of out-of-court disposals on, for example, a monthly basis. (Paragraph 39)
6. The high proportion of young offenders with speech, language and communication needs and/or a learning disability face enormous difficulties in understanding court proceedings, which may jeopardise their right to a fair trial. We consider that section 104 of the Coroners and Justice Act 2009, which would allow young people prosecuted for an offence to apply to the court to give evidence through an intermediary, could provide an important safeguard for their rights. Parliament has decided that this provision is needed, and we therefore recommend that the Ministry of Justice brings this section into force. (Paragraph 46)
7. We also note strong neurological evidence that individuals mature at different rates and can continue to develop relevant attributes, such as consequential thinking, into their early 20s. We therefore encourage the Sentencing Council to continue with its approach of including age and/or lack of maturity where it affects the responsibility of the offender as a factor in offence guidelines, and reviews at an appropriate juncture the extent to which sentencers are taking maturity into account. Probation officers should make more references to maturity in pre-sentence reports, to assist in this process. Until it is more fully reflected across offence guidelines, we recommend that the Ministry of Justice encourage the Sentencing Council to draw up an

overarching set of principles for the sentencing of young adults, to allow for maturity to be taken into account in more circumstances. (Paragraph 47)

8. We consider that, in exceptional circumstances of significant welfare need, it may be more appropriate for a young person prosecuted in the criminal courts to be referred to the family proceedings court. We therefore recommend that the Government introduce legislation to provide a mechanism for the judiciary in the criminal courts to refer under-18s brought before them to the new single family court. (Paragraph 52)
9. There will always be a need to detain a small number of young people who pose a risk of serious harm to the public. However, youth custody is expensive and ineffective in reducing re-offending; it should only be used in cases of genuine last resort. We are greatly impressed by the collaboration between the Youth Justice Board, youth offending teams and the judiciary to bring about a significant reduction in the numbers of young people in custody since 2008. The new remand framework should provide a welcome means of further reducing the youth custodial population and are optimistic about the results of the Youth Justice Reinvestment Pathfinders, which we hope will encourage local areas to pursue innovative alternatives to custody. However, the juvenile secure estate continues to receive two-thirds of Youth Justice Board spending, yet is responsible for only a fraction (6.7% in 2011/12) of young offenders given a court disposal. The number of young black men in custody has not declined to the same extent as in the white population and too many young people end up in custody for breaching a statutory order. We consider there is scope for further progress in a number of respects. (Paragraph 72)
10. In order to cement and further this recent progress, we therefore recommend that the Ministry of Justice:
 - Introduce a statutory threshold, based on the Canadian model, to enshrine in legislation the principle that only the most serious and prolific offenders should be placed in custody;
 - Devolve the custody budget to local authorities to enable them to invest in alternatives to custody;
 - Monitor and report back to us in February 2014 on the success or otherwise of compliance panels in reducing the need to bring young offenders back before the courts for breach of a statutory order;
 - Outline its strategy to reduce the number of young black men in custody; and
 - Encourage greater feedback to sentencers on the outcomes of community sentences. (Paragraph 73)
11. We welcome the Government's commitment to restorative justice; however we believe more should be done to make restorative justice integral to the youth justice system. As the Northern Irish experience demonstrates, restorative justice is not a "soft option" and can in fact contribute to greater public confidence in the justice system. We were very impressed by the extremely high levels of victim satisfaction in

relation to youth conferencing in Northern Ireland as well as the high level of compliance with conference plans. We advocate a presumption that the sentencing process will include a restorative element for the vast majority of offenders at all levels of the system, as an addition to, rather than a replacement for, the range of other requirements that may be considered necessary by the courts. The Government should also consider how young offenders with speech, language and communication needs who might benefit from restorative justice can be better assisted in participating in such a process. (Paragraph 79)

The secure estate

12. In the short term, enhanced units, such as the Willow unit at HMYOI Hindley, can provide a means of supporting particularly vulnerable young people in custody. However, they are not a panacea and cannot cater for the level of need within the secure estate. It is safer and more humane to detain young offenders in small, local units with a high staff ratio and where they can maintain links with their families and children's services. Such links can also lead to better planned resettlement and therefore reduce the likelihood of reoffending, although we do not believe that effective rehabilitation can often take place in the secure estate itself, as currently constituted. In the long-term, when the youth custody population has reduced further still, we would like to see a complete reconfiguration of the secure estate along these lines facilitated through regional commissioning of custodial places. We were impressed with the effective MultifunC treatment model used in Scandinavian countries and ask the Youth Justice Board to give serious consideration to whether a pilot scheme could be introduced in England and Wales. (Paragraph 88)
13. It is unacceptable that vulnerable young people continue to die in the custody of the state. We agree with INQUEST and the Prison Reform Trust that it is imperative to draw together and act upon the learning from these deaths gathered through coroners' Rule 43 recommendations and juries' narrative verdicts, to ensure that such deaths do not happen again. This may require an independent inquiry into the deaths of young offenders and young adults in custody, as the Ministry of Justice is now considering. We will revisit this matter once the Minister has announced the outcome of this consideration. (Paragraph 91)
14. It is matter of serious concern to us that, despite the fact that the use of force in restraining young offenders has now been definitively linked to the death of at least one young person in custody, the use of restraint rose considerably across the secure estate last year. We welcome the fact that the new policy limits the use of force against young offenders but consider a more fundamental cultural shift is required. We intend to keep a watching brief on this issue and recommend that Her Majesty's Chief Inspector of Prisons reports on the implementation and impact of the new policy in more detail in his Annual Report to Parliament. (Paragraph 97)
15. Some of the most disturbing evidence we heard concerned the effective abandonment of looked after children and care leavers in custody by children's and social services, with devastating implications for their outcomes on release. We recommend that the Government should (a) continue to fund social workers in YOIs beyond its current commitment of 2014; and (b) in its response to our Report,

set out how it is implementing the further three recommendations made by Her Majesty's Inspectorate of Prisons in its 2011 thematic review of the care of looked after children in custody. We also recommend that the relevant authorities do more to ensure that looked after children and care leavers in custody are able to maintain contact with family members during their detention, where appropriate. (Paragraph 105)

Reducing re-offending

16. In contrast with their success in other areas, the Youth Justice Board and local agencies have failed to make any progress in reducing the level of re-offending, which has remained stubbornly around 33–35% over the past decade, and has actually risen slightly in the last two years. This may be partly linked to the reduction of first-time entrants, which means that offenders in the system today are disproportionately more challenging and persistent. Nevertheless, we are disappointed that more progress has not been made. One of the main reasons, in our view, is a lack of hard data about which interventions work best to reduce re-offending. We recommend that the Youth Justice Board dedicates more of its budget to researching and disseminating best practice about the comparative effectiveness, and cost, of interventions to reduce re-offending. Money is tight, but this makes it all the more important that we know how best to invest it. We are concerned that, without devolution of the full youth custody budgets local areas will find it hard to invest in alternatives to custody like multi-systemic therapy and Intensive Fostering. Until this happens, where rigorous evidence of success exists, more funding should be available. (Paragraph 116)
17. As we indicated in chapter two, it would be highly preferable both for the young people concerned and for the taxpayer if support needs were identified far sooner, in order to trigger earlier intervention. Where this does not happen, it is important that the youth justice system has access to the tools and staff capable of identifying needs and intervening at that stage. All children should be properly assessed for impairments, vulnerabilities and health issues, including, where necessary, neuropsychological assessments for brain injury, both on initial contact with the youth justice system and on entry into custody. We therefore welcome the Youth Justice Board's recognition of the current limitations and its intention to roll-out a new assessment framework. The Board should address the particular concern expressed to us that the revised assessment process remains inappropriate for young people with communication needs, as it is still verbally mediated, and consider whether England and Wales can learn from the e-learning assessment tool piloted in Northern Ireland. (Paragraph 121)
18. We recommend that all youth offending teams and secure institutions should have access to speech and language therapists through a more systematic commissioning process. (Paragraph 124)
19. We have not had an opportunity to examine in detail the proposals outlined in the Government's Transforming Youth Custody consultation paper, as it was published after our inquiry had concluded, but our evidence leads us to the following conclusions. We endorse the Secretary of State's aim of improving the basic literacy

of offenders but we are not convinced that it is most useful to focus resources on the secure estate, given the very low numbers of young people now in custody and the fact that their average length of stay is currently 79 days, which makes it almost impossible to achieve genuine progress. The greater focus should be on improving transition between custody and the community—and we therefore strongly support those parts of the consultation relating to this issue—and on improving provision in the community and ensuring as far as possible that young people leaving custody can resume their education, preferably at their original place of study. This may require incentivising schools and colleges to take back difficult students. We also draw the attention of schools and colleges to the need to provide information to secure institutions regarding the educational levels of young offenders, so that their educational progress is not impeded while they are in custody. (Paragraph 128)

20. Despite being a recognised problem for many years, finding suitable accommodation for young offenders released from custody is still a major issue. Until this is resolved, it will be impossible to make good progress towards reducing the very high re-offending rates for custodial sentences. Good resettlement planning and aftercare is essential for reducing levels of re-offending. The regional resettlement consortia model appears to offer a means of improving outcomes for young offenders and we expect the Government to update us in its response to our Report on progress towards meeting its target for regional resettlement consortia to be fully funded and operational in all areas. (Paragraph 133)
21. We support the reduction in rehabilitation periods introduced via the Legal Aid, Sentencing and Punishment of Offenders Act, which means that many young offenders' convictions will become spent sooner. We also agree with the Minister that employers, as well as schools, colleges and universities, should consider taking young people on despite their previous offences, as many do. Nevertheless, while we recognise that for very serious offending, disclosure of convictions will continue to be in the public interest, we consider there is potential to go further in relation to more minor convictions. We therefore recommend that, in addition to keeping the youth rehabilitation periods under review, the Government considers legislating to erase out-of-court disposals and convictions from the records of very early, minor and non-persistent offenders at the age of 18, so that they cannot be disclosed to employers under the Exceptions Order to the Rehabilitation of Offenders Act. (Paragraph 136)
22. The transition between youth and adult provision is a period of high risk for 18 year old offenders. We would like to see earlier planning, better information sharing and a smoother transition between youth offending teams and probation trusts, and between the youth and adult secure estate, through the national roll-out of initiatives such as the Youth to Adult Portal. We would particularly welcome better planning, and flexibility, in managing the transition of young people with mental health needs, who are at particular risk. Reforms to the youth justice system will never reap their full potential benefits unless the transition from youth to adult provision is managed more intelligently. (Paragraph 140)

Formal Minutes

Tuesday 26 February 2013

Members present:

Sir Alan Beith, in the Chair

Steve Brine	Seema Malhotra
Jeremy Corbyn	Andy McDonald
Gareth Johnson	Graham Stringer
Mr Elfyn Llwyd	Mike Weatherley

Draft Report (*Youth Justice*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 143 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Seventh Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 19 June 2012.

[Adjourned till tomorrow at 9.15 am]

Witnesses

Tuesday 19 June 2012

Page

Enver Solomon, Chair, Standing Committee for Youth Justice, **Alexandra Crossley**, Senior Researcher, Centre for Social Justice, and **Andrew Neilson**, Director of Campaigns, Howard League for Penal Reform

Ev 1

Mark Johnson, **Iris Armande**, and **Andretti**

Ev 9

Tuesday 10 July 2012

Gareth Jones, Vice-Chair, Association of Youth Offending Team Managers, **Paul O'Hara**, Manager, Bradford Youth Offending Team, and **Wendy Poynton**, Head, Leicestershire Youth Offending Service

Ev 17

Steve Crocker, Association of Directors of Children's Services, **John Bache**, Chairman, Youth Courts Committee, Magistrates Association, and **Assistant Chief Constable Kevin Wilkins**, Association of Chief Police Officers

Ev 24

Tuesday 16 October 2012

Debbie Pippard, Vice-Chair, Transition to Adulthood Alliance, **Sue Berelowitz**, Deputy Children's Commissioner, and **Professor Karen Bryan**, Royal College of Speech and Language Therapists

Ev 32

Hugh Thornbery, Director of Business Development, Action for Children, **Ian Langley**, Strategic Lead, Supporting Troubled Families Programme, Hampshire County Council, **Clare Hobbs**, Manager, Wessex Dance Academy, and **Dr Becky Morland**, Consultant Counselling Psychologist and Senior Manager of Health and Family Intervention Team, Peterborough Youth Offending Service

Ev 39

Tuesday 6 November 2012

Nick Hardwick, HM Chief Inspector of Prisons, **Juliet Lyon**, Director, Prison Reform Trust, and **Darren Coyne**, Projects and Development Worker, Care Leavers' Association

Ev 45

Deborah Coles, Co-Director, INQUEST, and **Carol Pounder**

Ev 53

Tuesday 4 December 2012

Paula Jack, Chief Executive, Youth Justice Agency Northern Ireland, and **Mary Brannigan**, Director of Youth Justice Services, Youth Justice Agency Northern Ireland

Ev 32

Professor Shadd Maruna, Director, Institute of Criminology and Criminal Justice, Queen's University Belfast, **Dave Weir**, Director of Services, Families and Children, NIACRO (member organisation of Children in Northern Ireland), and **Koulla Yiasouma**, Include Youth (member organisation of Children in Northern Ireland)

Ev 65

Tuesday 11 December 2012

Frances Done, Chair, Youth Justice Board, and **John Drew**, Chief Executive, Youth Justice Board Ev 73

Jeremy Wright MP, Parliamentary Under-Secretary of State, Minister for Prisons and Rehabilitation, Ministry of Justice Ev 81

List of printed written evidence

1	Centre for Social Justice	Ev 90
2	Howard League for Penal Reform	Ev 97
3	Leicestershire County Council and the Youth Offending Services Management	Ev 101
4	Bradford Youth Offending Team	Ev 104
5	Magistrates' Association	Ev 104
6	Association of Chief Police Officers	Ev 107
7	Action for Children	Ev 108
8	Office of the Children's Commissioner	Ev 111
9	Royal College of Psychiatrists	Ev 116
10	Transition to Adulthood Alliance	Ev 118
11	Care Leavers' Association	Ev 123
12	HM Inspectorate of Prisons	Ev 123
13	Prison Reform Trust	Ev 127
14	INQUEST	Ev 132
15	Ministry of Justice and Youth Justice Board	Ev 138, Ev 150
16	Royal College of Speech and Language Therapists	Ev 141
17	Peterborough Youth Offending Service	Ev 145

List of additional written evidence

(published in Volume II on the Committee's website www.parliament.uk/justicecttee)

1	Communication Trust	Ev w1
2	Alcohol Concern	Ev w4
3	Professor Brian Littlechild	Ev w5
4	Criminal Bar Association	Ev w10
5	National Council for Voluntary Youth Services and Clinks	Ev w14
6	Local Government Association	Ev w18
7	Developing Initiatives Supporting Communities	Ev w20
8	Big Lottery Fund	Ev w21
9	Youth Offending Service, Reading	Ev w23
10	Catch 22	Ev w25
11	Matthew Fiander	Ev w27
12	Dr Sarah Pearce	Ev w27

List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2010–12

First Report	Revised Sentencing Guideline: Assault	HC 637
Second Report	Appointment of the Chair of the Judicial Appointments Commission	HC 770
Third Report	Government's proposed reform of legal aid	HC 681-I (Cm 8111)
Fourth Report	Appointment of the Prisons and Probation Ombudsman for England and Wales	HC 1022
Fifth Report	Appointment of HM Chief Inspector of Probation	HC 1021
Sixth Report	Operation of the Family Courts	HC 518-I (Cm 8189)
Seventh Report	Draft sentencing guidelines: drugs and burglary	HC 1211
Eighth Report	The role of the Probation Service	HC 519-I (Cm 8176)
Ninth Report	Referral fees and the theft of personal data: evidence from the Information Commissioner	HC 1473(Cm 8240)
Tenth Report	The proposed abolition of the Youth Justice Board	HC 1547 (Cm 8257)
Eleventh Report	Joint Enterprise	HC 1597 (HC 1901)
Twelfth Report	Presumption of Death	HC 1663 (Cm 8377)
First Special Report	Joint Enterprise: Government Response to the Committee's Eleventh Report of Session 2010–12	HC 1901

Session 2012–13

First Report	Post-legislative scrutiny of the Freedom of Information Act 2000	HC 96-I (Cm 8505)
Second Report	The budget and structure of the Ministry of Justice	HC 97-I (Cm 8433)
Third Report	The Committee's opinion on the European Union Data Protection framework proposals	HC 572 (Cm 8530)
Fourth Report	Pre-legislative scrutiny of the Children and Families Bill	HC 739 (Cm 8540)
Fifth Report	Draft Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order 2013	HC 927
Sixth Report	Interpreting and translation services and the Applied Language Solutions contract	HC 645

Oral evidence

Taken before the Justice Committee on Thursday 21 June 2012

Members present:

Sir Alan Beith (Chair)

Steve Brine
Mr Robert Buckland
Jeremy Corbyn
Christopher Evans

Mr Elfyn Llwyd
Seema Malhotra
Yasmin Qureshi
Elizabeth Truss

Examination of Witnesses

Witnesses: **Enver Solomon**, Chair, Standing Committee for Youth Justice, **Alexandra Crossley**, Senior Researcher, Centre for Social Justice, and **Andrew Neilson**, Director of Campaigns, Howard League for Penal Reform, gave evidence.

Q1 Chair: Welcome, Alexandra Crossley from the Centre for Social Justice, Andrew Neilson from the Howard League, and Enver Solomon from the Standing Committee on Youth Justice. We are very glad to have you here helping us in what is the first of our evidence sessions in our work on the youth justice system. I will start by asking you about the 1998 Crime and Disorder Act and the objectives that it set out, preventing offending by children and young people. To what extent has that system worked and achieved its objectives?

Enver Solomon: The story has certainly been mixed. If you look at recent years and certainly the declining numbers of children going into custody—a 31% reduction in the custodial population in the last three years—then that tells a story about how there has been more effective use of resources to try and reduce the use of the most serious tariff. But, if we look at reoffending rates, the story is really quite mixed, and the impact that the creation of YOTs and the YJB has had on trying to bear down upon reducing offending has been proven to be quite challenging and difficult. That tells the story of the fact that we are dealing with children and young people who have very complex social problems and there is a limitation to what the criminal youth justice system can deliver in trying to resolve those complex social problems. You will all know the data on the number of children that have mental health problems and learning difficulties; many will have been on the cusp of the child protection system; a number have been in the looked-after system. These are entrenched social problems at the route of their offending, and trying to turn around the lives of children that have such entrenched social problems is extremely challenging.

Alexandra Crossley: If I could add to that, I was the lead researcher and author of the CSJ's Youth Justice Review. One of the main findings in our review is that there is a consistent failure by local services to prevent offending and reoffending. In preventing offending, we find that so many children who end up in the system are falling into that system unnecessarily because other services have not given them the support that they need. We find that children's services, which are particularly hard-pressed at the

moment, cannot meet the needs of young people who are in trouble with the law or who are at risk of being in trouble with the law. They do not meet the threshold for support, and children's services priority, understandably, is children—very young children and babies. Young people who are on the edge of the youth justice system do not fit into that category. We also know that school exclusion is still very prevalent and we feel that much more needs to be done to tackle that.

Then, on the other side of things, once children are in the system, they do not necessarily receive the support they need from other services to free themselves from the system. Again, we find that children, once they are in custody, are taken off school rolls prematurely. We find that schools are very reluctant to take them back after they have come out of custody. The difficulty is getting young people stable accommodation while they are in community orders or in custody. We know that a lot of the problems in terms of preventing offending are associated with those services that lie outside the system that are not meeting their statutory duties in relation to young people in trouble with the law.

Q2 Chair: We will return to some of those issues around preventing young people from getting into the system in the first place probably today and in our subsequent inquiry. Have there been any downsides that were unexpected, unintended consequences of introducing the changes in 1998?

Alexandra Crossley: Just to draw on what Enver was saying about youth offending teams, again, their creation was welcomed because, often, services for youth offenders ended up being the Cinderella service. The creation of youth offending teams made sure that young people in trouble with the law got some support, but the problem is that other services see that the YOT is involved and relinquish responsibility to the YOT. They receive less in the way of support from other services like children's services and schools. Some people may say that is fine because youth offending teams are multi-agency teams and they have all of the support to do that themselves, but the fact is they do not. They often have not become those

multi-agency teams that they were intended to be. Seconded from other services often remain in youth offending teams permanently or they are never seconded in the first place. In some cases youth offending teams are not multi-agency; they are just another criminal justice silo. So there is a real problem there.

We called for a review of the structure and responsibilities of youth offending teams and of other local partners to children involved in youth offending teams because, on the ground, there is some confusion there at the moment. Other services feel 'we give funding to youth offending teams, we give secondees to youth offending teams'—or not—, and therefore they assume that they can just relinquish that responsibility when that was not what they were intended to do.

Andrew Neilson: Also, going back to the first principles, the 1998 reforms were about a criminal justice response before a welfare response. The purpose of the youth offending teams is to reduce reoffending, not children's welfare, and yet, as we have heard, welfare is the root to the most effective interventions. Part of the problem with the reforms is that it created this expanding machinery. Yes, there has been a reduction in recent years in the number of children in custody, but there were a few hundred children in custody in the early 1990s, and we have now seen thousands of children—3,000 at one point as a high and 2,000 now—and yet reoffending rates remain the same. There is a degree to which the machinery has self-perpetuated the problem rather than doing anything about it. Part of the issue there is that the system has become a bit of a mush. It has just enveloped all sorts of different things and we are in danger of losing sight of the purpose of a youth justice system, if you have a youth justice system, and the limits of that system. For example, I would say that things like prevention and early intervention should lie outside the youth justice system.

We should also remember the very important role that the police have in terms of potentially diverting young people. Then you have a relatively small youth justice system, hopefully, where downward pressure is being exerted, and that system should not really be seen as the place where solutions lie. So, as I say, you are trying to avoid sucking young people into it, but you are clear that that system is there. If it is there, it is for 10 to 17-year-olds.

Then, at the other end, we also need to remember that there is the transition and what happens to those young people when they leave the system. I know there was mention in the Lords last week that there might be a White Paper on young adults and I just want to say something briefly about young adults because that transition is very important. There are organisations like the Howard League or the T2A Alliance, of which we are members, who are looking into that. We also need to think about that and it would be good if the Committee thought about it.

Chair: Certainly we realise that that is part of the inquiry area.

Andrew Neilson: It is important that we are clear that it is not about expanding the youth justice system to take that age range in. It is potentially about looking

at some of the good things about the youth justice system and replicating them in a distinctive approach for young adults. The danger we have seen since the 1998 reforms is that the youth justice system has massively expanded—I do not think necessarily to any great beneficial effect—and some more clarity is required.

Q3 Chair: Are the indicators that the Ministry of Justice uses to measure the youth justice system the right ones?

Enver Solomon: They have become better. The indicators had things like the offences brought to justice target that was driving a lot of young people into the system unnecessarily; the removal of that was positive. The introduction of the first-time entrants target was a very positive measure to have too, and there has been a substantial reduction in the number of first-time entrants going into the system. But I would express concern on behalf of the Standing Committee about the fixation upon reoffending. Reoffending is absolutely important, but if you look at the criminological evidence it suggests that there is a substantial cohort of young people who will grow out of offending, who will move away from offending—

Q4 Chair: If you do nothing at all.

Enver Solomon:—as they move into adulthood. But we need to understand that, for those persistent offenders who are deemed to be more chronic serious offenders, moving away from offending is a process. It does not happen overnight, and part of that process is often about taking two steps forward and one step back, and but this is what practitioners will say to you. There are certain things that will be achieved in the course of moving away from crime and some of those are absolutely pivotal to making a difference to that young person: for example, their relationships with family and their peers; their ability to engage in education or training; if they are moving into independent living, their ability to find stable accommodation; the resettlement package and support and engagement in substance misuse programmes as well. We must not lose sight of the importance of having a cluster of measures in place to recognise that there is a whole number of determinants that contribute to reducing reoffending.

Q5 Mr Llwyd: Can I first of all declare an interest? Last year I served on an advisory panel for the Howard League where they were looking at ex-service people in the criminal justice system. Recently I went to Italy to look at the youth justice system and that visit was partly sponsored by the Howard League. We have already touched upon the decrease in the number of youngsters in prison at the moment from 3,000 to around 2,000. We have touched partly on this, I know, but what are the main reasons for reduction in the number of young people in custody since 2008 and is it possible to speculate on how these reductions could be sustained?

Andrew Neilson: There are a number of factors, which I am sure my colleagues will mention. Enver has already mentioned two of them and I would like to pick up on one of those, which is the offences

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brought to justice target. This emphasises the importance of the police as the gatekeepers to the system. It is very interesting that we saw that target dropped in 2008 and you start to see a drop in the number of children in custody. The issue there is that the offences brought to justice target was effectively encouraging the police to pick up children and arrest them. If you are literally being judged on how many offences—there is no qualitative judgment on the offences but it is literally on the quantity—it is easier probably to get in your police car on a Saturday night and drive around until you find some young people hanging around on a street corner and pick them up and rack up the offences rather than necessarily, say, chase a hardened burglar across the roofs of the town, which is just one offence that you have managed to deal with. It was positively encouraging the police to arrest young people. Certainly, we have done some freedom of information requests of police forces and have seen that, since that target has been dropped, the arrests of children have dropped. Police have been able to use their discretion more and use more restorative disposals as appropriate. Some forces are better at it than others and the targets are still used by some forces, but that is really key and it filters all the way down then, in the end, to how many children you have in custody.

Alexandra Crossley: I would completely agree with that point about the OBTJ targets and their impact. In sustaining reductions, there is a lot more that can be done to iron out the discrepancies in the custodial sentencing rate. For instance, at the moment in Newcastle the custodial sentencing rate for under-18s is, I think, 1.6. In a matched area—Liverpool—it is 11.6. To me, that is completely unacceptable. There is a lot more that we can do in terms of training our sentencers and defence lawyers to better understand children's needs and appropriate sentences for them and providing accredited training of a national standard for writing pre-sentence reports, because they are a key determinant of the sentence that the young person receives. We know from inspection reports and from the evidence that we have gathered that they are often of a very poor standard.

In increasing training of sentencers, we feel that they should have to attend a certain number of youth panel meetings per year, because at the moment they do not have to. They do not necessarily have sufficient youth-specific expertise, especially as they also have to sit in the adult magistrates' court. They should visit secure custodial facilities and community sentences a couple of times a year so that they have a better understanding of what they are sentencing to. Obviously there is a cost attached to these changes, but, in terms of the impact on outcomes that these changes could make, they are well worth looking at.

Enver Solomon: I would concur with what my colleagues have said, but I think there is also another significant factor here. Credit where credit is due—the YJB in the last two or three years has made a concerted effort to improve the information flow to local authorities and incentivise them to engage with their local youth court benches. For example, the YJB wrote to every local area to inform them of the number of children from their local area that were

going into custody and encouraged YOTs and local authorities, who are sponsors of YOTs, to engage with local sentencers so that they were aware of the information and they were making decisions that were the most effective decisions for the young people that were coming to court. That has also been a contributory factor. Overall, I do not think there is one single factor that stands out, but there have been a number of developments that contribute to the reduction.

Interestingly, also, year on year, there has been a 28% reduction in the numbers remanded to custody. I would bring that to the attention of the Committee because that is, again, a significant shift. That is partly the system adjusting to the fact that there are going to be devolved budgets, but it is also about the centre—the YJB focusing down on the issue and encouraging local areas to look at the numbers being remanded into custody.

Q6 Mr Llwyd: I am aware of the Howard League position on this, but could you tell me if you had any thoughts on the efficacy of short-term custodial sentences for youths?

Enver Solomon: When you say “short-term”, what are you thinking?

Q7 Mr Llwyd: It was thought that the LASPO Bill was an opportunity to do away with them. I understand that the average time spent in custody on a short-term is about 78 days, and one wonders what can be done with the youngster in those 78 days. I know the Howard League have a settled view on it. I am just wondering whether Ms Crossley or Mr Solomon have anything to say about that.

Enver Solomon: The key thing in the justice system—and it is a key principle in the justice system and one that is set out in sentencing principles—is proportionality. The custodial sentence needs to be proportionate to the nature of the offence committed and the court needs to have the capacity to determine what an appropriate sentence is in response to that. If we moved away from this principle to determine lengths of sentences based on different criteria because there is some assumption that if we put children in custody for longer it gives a greater capacity to rehabilitate, those would not be the correct principles to guide sentencing decisions.

Q8 Mr Llwyd: But the contrary argument is should they not be rehabilitated or an attempt made during those 72 days or whatever it was?

Enver Solomon: I do not think custody can ever be an effective forum for rehabilitation. It is ultimately constrained and limited by the nature of the custodial regime. The most effective way to rehabilitate children and young people is to address the multiplicity of issues that they face in the community because, ultimately, whether they reoffend or not is going to be how they respond, how they live and how they engage in educational training or whatever in the community.

Alexandra Crossley: We think that custodial sentences below six months should be abolished; that would be periods in custody below six months. We

would say that the minimum DTO should be 12 months, because we feel that the average time in custody is too short to allow anything productive to be done in custody and it is just long enough to destabilise anything that is going well in the community, such as education or relationships with family. But, obviously, the risk is that, by having a minimum sentence of six months in custody as part of a 12-month DTO, then you risk having more children going into custody on a 12-month DTO. What we would say is that there needs to be a higher custodial threshold introduced alongside so that only the most serious and prolific offenders go into custody, which we do not feel is the case at the moment.

Q9 Mr Llwyd: The Legal Aid, Sentencing and Punishment of Offenders Act allows for repeated cautions for repeat offenders. Pre-1998 that was thought to be ineffective in terms of dealing with reoffending. Do you think that outcomes will be better this time around?

Alexandra Crossley: The Government are proposing to issue guidance. One of the concerns with cautions prior to 1998 is that they were not necessarily used in appropriate circumstances or proportionately. The key is that this guidance that the Government issue protects against this. In terms of the youth conditional cautions, because the police will have oversight of the YCC rather than the CPS—at least those are the proposals—we have a concern that there is a danger that police will have greater powers without similar or parallel increases in their accountability. We think there need to be other measures put in place to make sure that the YCC is used in appropriate circumstances and effectively, to make sure that the whole system of cautions is more effective than it was.

Q10 Mr Llwyd: Do you believe that sentencers are in fact right to be concerned about the lack of provision of positive requirements that could be attached to a youth rehabilitation order?

Enver Solomon: I would say definitely, yes. Particularly a problem for girls as well is the lack of provisions that recognise the different gender experiences. There is an issue here about resource and capacity. There has been a parallel issue in relation to adults as well, and it is about the fact that all the requirements need to be genuinely available if the court is going to have the option of creating a package that meets the needs of the young person.

Andrew Neilson: It is also a major concern because of the Youth Justice Board's conception of how the youth rehabilitation order would work. We would argue it was a mistaken conception. They talked about a scaled approach. You are effectively looking at risk of offending and you are looking to make more intensive interventions the higher up the risk of offending. That might at first glance seem to be sensible, but when you are talking about risk of offending you are talking about welfare needs. It is the people with the high welfare needs who then score high on the risk of offending, and the concern there, first, is that you are in danger of criminalising welfare, again using these orders to try and tackle problems that should be dealt with outside the youth justice

system. But, secondly, then you absolutely will need those positive requirements to be available because they are the ones that will have the most effect, and, if they are not, then these young people with real issues will be put through a lot of interventions that are on the more punitive side because the positive interventions are not there, and that will not be effective.

Alexandra Crossley: It is worth highlighting as well that, from these sentencers that I have been speaking to, it is not just the more innovative requirements that are not available, such as intensive fostering, but those requirements that you would assume to be essential, such as education. Magistrates have been speaking to me and saying that they are even struggling to have those in place, which I would say are essential for rehabilitation. There is concern among youth offending teams and sentencers that, as the cuts continue, this situation is going to worsen.

Q11 Mr Buckland: I will just explore the proposal to have a minimum DTO of 12 months. There is a minimum at the moment, is there not, which is four months, and we have this rather artificial ladder going from four, to eight, to 10, to 12? Don't you think it would be better to allow the courts more discretion by just getting rid of these rather artificial stages in a DTO, which, from my experience, do not seem to be borne out by any reality when it comes to particular programmes that are put in place for young offenders and that it would be far better to allow courts a proper discretion without abolishing sentences but in guidelines to encourage the sort of constructive alternatives that we are talking about?

Enver Solomon: Yes. If we are going to sustain the decline in custody numbers, there is a case for having a threshold set in law. In Canada, they introduced a very effective threshold in statute a number of years ago. Similarly, under the new legislation—the LASPO Bill—in effect there is going to be a limit on or a barrier to the use of remand and there are going to be certain requirements that would need to be met before remanding a child to custody. Certainly the Standing Committee view is that we should have in statute a custody threshold that meaningfully means that custody is generally used as a last resort.

Q12 Chair: Is that going to lead to more situations where you get a frustrated police officer saying to a victim of crime, "Well, we've got him, but they won't do anything with him. They won't lock him up"? That does lead to a rather—

Enver Solomon: That is premised on the assumption that the only effective solution is custody. There are many other effective solutions, and, indeed, I am aware that the Committee went to Scandinavia and looked at different options. The assumption that custody is the most effective solution I would challenge. There are far more effective solutions that can be delivered in the community. The challenge is getting those interventions right rather than seeking to use custody more readily.

Chair: Maybe there is a challenge to us all as well and to you to make sure of wider dissemination of that knowledge among the people involved in law

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enforcement—not everybody, obviously, because police officers and youth offending teams are very well aware of the range of possibilities.

Q13 Steve Brine: I would start by saying, yes, the Committee did go to Scandinavia, but we did not look a great deal at non-custodial alternatives for young people who committed offences. We visited the Multifunk in Oslo and in Copenhagen, and we looked at the preventative work that they do with people who have high risk factors who maybe go on to offend. It is highly expensive and very controversial, but we will no doubt include it in our report. Sticking with the word “preventative”, starting with Mr Solomon, I know in submissions to this current inquiry we have had concern expressed to us about the funding to YOTs as the Government are forced to reduce public spending. To what extent are you witnessing cuts to YOTs’ preventative services and can you give us any examples?

Enver Solomon: This is a very important question. The picture is very unclear because we do not have anyone systematically at the centre trying to capture in a meaningful way the changing make-up and structure of YOTs. There was a recent survey that was done by the Association of YOT Managers, in collaboration with the sector publication *Children and Young People Now*, which clearly suggested that YOTs, as conceptualised under the 1998 Act, were gradually, if I can use the phrase, fraying and changing quite dramatically. The notion of having a dedicated YOT manager responsible for a youth offending team no longer appears to exist in the vast majority of local authorities. We have YOT managers with other responsibilities, including responsibilities around troubled families and broader community safety.

Certainly, if you look at the amount of allocation that has come to YOTs from the centre, that has been reduced. It is difficult to determine the degree to which the local authorities are going to reduce their funding to YOTs, but there is no doubt that they have less money available than they did previously. The structure and functions of the YOTs is radically changing, and we need to understand that more clearly and have a better grasp of what is happening and what is the impact for those working in the youth offending teams.

Alexandra Crossley: One of the issues that has been coming up most frequently when we have been talking to youth offending teams and directors of children’s services about prevention is the fact that the ring fence that was around prevention moneys was removed last year. Prevention is not a statutory duty. This has meant that YOTs are pinching those moneys to plaster over the cracks that are appearing elsewhere as a result of the cuts, not just from the YJB grant but also from the cuts to other services. So they are also withdrawing money and secondees from youth offending teams. I guess that the flipside of the multi-agency and the partnership approach is that all of those services in some areas are reducing funds to the YOT. As Enver said, with regard to troubled families teams and multi-agency safeguarding hubs, I have been hearing that in some areas the police are

withdrawing moneys from the youth offending team and putting those into multi-agency safeguarding hubs. That may be the best thing to do, but there is so much change going on at a local level that is affecting YOTs that there needs to be a rethink over their structure and what they can reasonably be expected to do in the current landscape.

Q14 Steve Brine: Do they need more rethink, though, or do they need to get on with the resources they have? Do they need another rearranging of the deck chairs?

Alexandra Crossley: There is some element of “Where there is a will there is a way”, and they are having to do less with less and just get on with it. Prevention moneys were given to YOTs because other services were not pulling their weight in terms of prevention. The fact that money came to the youth offending teams let other services off the hook, but we are now left in a situation where the YOT does not necessarily have prevention moneys, other services do not have prevention moneys, and we are at risk of storing up huge problems for the future. When we are thinking about prevention, we all know how important it is that services can meet their responsibilities there.

Andrew Neilson: As I said earlier, I would question whether prevention should lie within the youth justice system, for the reasons Alexandra has said.

Q15 Steve Brine: Does the move to local commissioning of secure accommodation result in better outcomes for young offenders? Do you want to comment on that, Ms Crossley?

Alexandra Crossley: I would challenge, from the conversations that I have been having with local managers, whether there even is a move to local commissioning. I have spoken to children’s services, and their directors say they do not think there is. Yes, they are becoming more responsible for funding, but they do not feel they are getting a say in the commissioning. Yes, were we to move towards local commissioning and with local funding, we are likely to see further reductions in custody as they invest in prevention and community alternatives, but there are huge problems with how local commissioning and secure provision works because local authorities are not going to want to block purchase beds. They are going to want to spot purchase beds and providers are really going to struggle to keep going on spot purchase. There is always going to have to be an element of national commissioning with local decision makers having a say and a representation in the decisions that are being made at a national level.

I guess there is another question. If we go down the local commissioning route, do they go down the really innovative “Let’s invest in really good local provision”, or does it prompt a race to the bottom where they all go for cheap, big YOIs and we do not know whether they produce the best outcomes? It could go in these two antithetical directions and the jury is still out on that.

Q16 Steve Brine: It is quite a high risk experiment then, is it not?

Alexandra Crossley: Yes.

Q17 Steve Brine: We are going to find out in five years' time.

Andrew Neilson: The Howard League published a report some years ago now called "To Devolve or Not to Devolve", which is available on our website and I can make available to the Committee, which looked through the pros and the cons of this when the last Labour Government were starting to think about potentially doing it. Absolutely, there are some arguments for it, and you can see that it would perhaps remove some of the perverse incentives that we have talked about. But, particularly in the current environment with cash-strapped local authorities, who is to guarantee that they will divert children away from custody and pool their resources more cleverly, when, potentially, a provider might come along and say, "A YOI is £60,000 a year. We'll convert a warehouse and do it for £30,000 a year. Would you be interested?" There is a real danger of that, and the context remains that you can change funding arrangements and the financial engineering, but there are still problems of law, policy and attitudes that need to be addressed when it comes to young people.

Q18 Chair: But is there not a distorting consequence, which is seen in spades in the adult system, that, if you have nationally commissioned places that are always available but a battle to gather together the funding to provide alternatives to custody, custody will tend to win?

Enver Solomon: That is certainly the case, and there is evidence from the States where different localities have devolved budgets in the way that you talk about, that it incentivises the system in a different way. The problem is that we are a small country. There is an argument for saying that Wales or regionally we should try to look at this, but an individual local authority—a small unitary authority for example—is not going to want to have that responsibility, understandably, but that should not prevent us from exploring how we can have more effective regional commissioning or using community budgets across local areas or pooling resources in different ways, because there must be a way of making sure that local areas are incentivised to see the consequences of different options and are financially responsible for those decisions.

Q19 Mr Buckland: To conclude, Mr Solomon, following on from your comment about people growing out of it, I am just trying to get clear in my head where you are going with that. What message does that send to local authorities commissioning to YOTs, as if to say that somehow offending is a right of passage? My four-year-old is into biting at the moment. I am sure she will grow out of it, but that doesn't mean it is something I just have to put up with. Where are you going on "Young people tend to grow out of it"?

Enver Solomon: Indeed, and it will be your parenting support and everything that will contribute to that child. It is about the range of interventions and support that is made available. My fundamental point about local authorities is that—particularly with police and crime commissioners coming in and the fact that

community safety budgets are moving to police and crime commissioners, and resource and decision-making in local areas about whether they invest more in diversion, early intervention or prevention is going to be led largely by the agenda set by police and crime commissioners—they have a great deal of authority and power to determine the infrastructure in their local area and the nature of decisions that are made about young people when they get into trouble with the law. It is important that local authorities, when making decisions and particularly using the most punitive sanction of custody, do not simply get that as a free good, because, if they do get that as a free good, as the Chair was suggesting, then ultimately it does not incentivise them to face up to the financial consequences that come with that.

Chair: We are running a little short of time, but Elizabeth Truss had a supplementary question.

Q20 Elizabeth Truss: You talk about whether or not local authorities are capable or have the capability to do it. How do you think that fits in with the troubled families programme, which surely has to be integrated into this work, because quite often the young people that we are talking about are part of a broader problem within the family?

Enver Solomon: Absolutely. This goes back to the point that Mr Neilson was making that prevention is not simply the preserve of youth offending teams. Prevention cuts across all children's and family services. It is an issue for children's social care; it is an issue for troubled families. Prevention is about working with families and not just leaving it to the YOTs but leaving it to local authority services to effectively support young people. It is also about education. It is about the response when a child is expelled from school or excluded from school. We know the relationship between exclusion and offending, and those agencies need to work jointly to address that.

Q21 Elizabeth Truss: Are you saying that more of the budget should be allocated to the troubled families and it should go through that?

Enver Solomon: Money should be used for effective prevention services. If the evidence demonstrates that the troubled families initiative is a more effective prevention mechanism—we don't know yet because we do not have the evidence to suggest whether the initiative is going to have the impact that the Government hope it will—then a conclusion to be drawn would be that it would be better to invest in that. But it is not about recognising that there is one simple magic bullet, whether it is troubled families or this particular intervention. It is about how services right across a local area support the young person when they are excluded from school, when they are on the cusp of the child protection system and so forth. It is about how those services engage to provide early help. The Munro report was absolutely right that there should be a statutory requirement on local authorities to provide early help for young people to avoid their problems escalating and them inevitably ending up in the youth justice system, which so often happens.

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Q22 Yasmin Qureshi: I just want to explore the issue regarding the reduction of reoffending, because one thing that troubles everyone who is working within the criminal justice system and the Justice Select Committee is that the overall reoffending rate for young offenders seems to have remained static for about the last decade or so at about 33%. You probably know that the Youth Justice Board had given some idea as to why they think this is the case, one reason being that, on average, numbers of reoffenders will commit about three offences soon after they come out. There is also a suggestion that perhaps some of the young people causing this are the ones who are at a higher risk. The people in the system who are causing this are the repeat offenders again; so it is the same people committing multiple offences. Then probably you have heard about the young offenders' institution in Hindley where they have opened up the Willow unit where they have taken some troubled youngsters out—the very troubled ones—and there is intensive working by prison officers who are specially trained to work with other people.

There has been some suggestion also that what works with reoffending is the quality and the extent and the nature of the relationship the young person has with an adult. That has been suggested as one of the things that helps.

I just wanted to ask you, in light of all this, why you think the reoffending rate is still static at about 33%, when in other countries—for example, in some Scandinavian countries—in some cases they have been able to reduce the reoffending rate by 70%.

Alexandra Crossley: Thinking about the binary offending rate, it is a very crude measure and it generally cannot be expected to show any marked improvement. Any changes that do take place are usually offset by, I guess, the policing of the usual suspects, so that would fall in line with what the YJB were saying. But, in terms of measuring the impact of interventions, we do know that the better measures are frequency and seriousness, and we do know that there have been reductions in both of those in relation to various interventions. In short, there is consensus definitely among the academics and the professionals that I have spoken to that we should not worry about the binary offending measure too much because the more accurate measures are frequency and seriousness. That would be my response to that.

Andrew Neilson: It comes back also, to some degree, to the reality of the age range that we are talking about. As Enver alluded to, he said people grow out of crime. This is the highest risk time to be offending because you are pushing boundaries; you are becoming an adult. It is a reality that it is going to be the hardest time to tackle it on a binary rate, but, if you are looking at frequency and seriousness, that is where you can really make a difference in those years.

Enver Solomon: Your point about relationships is absolutely right, and where there hasn't been the success in the way that there should have been is particularly in the quality of the relationship between those working in the YOT and the young offender. There is a lot of learning from Munro's analysis for children's social care and child protection and applying that to YOTs. YOTs have become very

focused on process; they have become very focused on a kind of bureaucratised manualised approach to engaging with children and young people; and they have lost sight of the importance of the quality of relationships, engagement and investing in time, and the value of giving professionals a greater discretion and confidence to make decisions and judgments. For example, they have been expected to breach on the basis of a very standardised procedural approach, and often these are not the most effective ways of engaging with a young person and getting them to change their behaviour.

If you talk to young people and children who have been in the youth justice system—I know the Committee will be doing that—the overwhelming message that comes through as the factor that makes a difference to them is the quality of the relationship that they have had at some stage with some individual during some intervention at some point. We must not lose sight of the value of those relationships in making sure that we have the right trained staff, equipped with the right skills, to build those relationships with children and young people, who have had tremendously difficult lives. I am not making excuses for their behaviour by any means, but, unless we recognise what is required to change their behaviour, you do not get the outcomes that we are all seeking to deliver.

Alexandra Crossley: I was just going to concur with Mr Solomon on the relationships point because that was the overwhelming finding of our review. We spoke with between 200 and 300 professionals and young people, and that came through very strongly. I remember one secure manager saying to me, "If no one cares about them, they don't care about themselves and they don't care about anyone else." That is why relationships make such a difference because they are so often at the source of their offending that they are also a fundamental part of the solution.

Within that, as Enver said, it is about ensuring that practitioners are not just following processes but that they have the discretion to tailor their responses to young people, that they do not spend the majority of time behind their desks and they realise the importance of face-to-face time. It is people and not programmes that make the real difference. It is about that one single stable relationship, not having 10 professionals involved with that young person, because that just reinforces their experience of the inconsistent relationships that they have had throughout their lives.

Chair: We are running out of time so I think I would like to turn to Mr Evans, if I could.

Q23 Chris Evans: The age of criminal responsibility is very low in this country, and it is only Sri Lanka at eight and Switzerland, Nigeria and South Africa that are lower. There has also been some neurological research by the Royal Society that says brains are still developing at the age of 10. Do you think there is any merit in the argument that the age of criminal responsibility should be raised?

Enver Solomon: Absolutely. It is the view of the Standing Committee for Youth Justice and we

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represent a number of organisations. We do not take a specific view on what the age should be, but it is our view that, in line with the United Nations Committee on the Rights of the Child, the recommendation is that it should be at least 14. We think that being in line with the UN's position would be far better—at least 14 and, arguably, even higher than that. We do not see that raising the age of criminal responsibility in that way would have adverse consequences on the level of self-reported crime in England and Wales. It is very positive that the British Crime Survey is now capturing under-16-year-olds, and that is the most accurate crime data available—self-reported crime data rather than just police-recorded data. I do not think that raising the age of criminal responsibility will have any adverse consequences.

Alexandra Crossley: We at the CSJ think that it should be raised to 12. There have been significant developments in the research evidence in relation to neuro development since it was raised to 10 in 1963. There is generally consensus that 10 was a fairly arbitrary age level. They were trying to raise it to 12 and 10 was the halfway house. But, for us, one of the most important things in raising it to 12 is that it forces those welfare services to take responsibility for these children, because the consequence of the low minimum age of criminal responsibility and the fact that children's services are hard-pressed means that they just get handed over to youth offending teams. We know that children who start offending at a young age, such as nine, 10 and 11, tend to have a higher level of welfare needs that would be better addressed by robust welfare responses rather than youth offending teams, because we know that criminalising children tends to increase their likelihood of reoffending. But it is worth pointing out that raising it is not a magic bullet. We know that children like the killers of Jamie Bulger would still go to custody under a higher minimum age of criminal responsibility of 12. So we still need to think about addressing the problems in secure facilities, and we also know that police would have to respond to offending whatever age they offend at.

Q24 Chris Evans: Can I just come in with a question there? The Children's Commissioner for England, when she was giving evidence in 2010, said that she found it amazing that the Bulger children were tried in an adult court. Do you think that was a problem? She also said that some of the most hardened young people do get scared sometimes. That is probably the

most famous case of young offending. Do you think that was handled wrongly then?

Andrew Neilson: It was handled wrongly, but in any country where they have a higher age of criminal responsibility, if they were faced with a crime as extreme as that, then the outcome would probably be very similar. The children would spend a lot of time, probably the entirety of their childhood, in secure accommodation, but it would not be under the criminal justice label. It would be under the welfare label. So it is perfectly doable but that case is always used as an argument for not raising the age. Could I just very quickly answer an aspect of the last question because we have not talked about the secure estate and it is worth just touching on that? I know we are running out of time.

Q25 Chair: We are running very short of time. It will have to be a very quick answer.

Andrew Neilson: The Willow unit was mentioned. It is worth just saying something about that. The Youth Justice Board is making decisions about the secure estate at the moment and we fear that the decisions they are making are without an evidence base. They have commissioned research into the effectiveness of young offender institutions compared to secure children's homes and secure training centres. That research will be published next year, but the decisions are being made now. In our evidence submission we highlighted the closure of secure children's homes, for example. The problem with these special units is that they are appended to young offender institutions and they are in a sense one of the reasons why we are seeing other forms of custody such as secure children's homes being closed in favour of, we think, a cheaper model of putting in these special units in with YOIs. The danger is that you then perpetuate the YOI that is beside the unit. The question the Committee should be asking is, if we are talking about very vulnerable young people, young people with mental health problems, why are the Prison Service running these units? These are not the people to be doing it.

Chair: If that point is not fully covered in the written material we have already had from your organisations, by all means give us a supplementary note on it. At that point I am going to have to bring this part of the session to a close and thank you for your assistance. By all means communicate with us on that point if you want to.

Examination of Witnesses

Witnesses: **Mark Johnson, Iris, Armande, and Andretti** gave evidence.

Chair: Welcome, everybody. You have kindly offered to tell us who you are, so I had better tell you who we are. We are the Justice Committee. I am the Chairman of it. I am a Liberal Democrat Member of Parliament. These are two of our staff on my right. I will just let the other people introduce themselves.

Mr Llwyd: My name is Elfyn Llwyd. I am from a small but very well formed party. I was a lawyer years ago—a solicitor dealing with young offenders—and, later, at the bar as well.

Yasmin Qureshi: I am Yasmin Qureshi. I am a Member of Parliament for the red party—the Labour Party. My constituency is Bolton South East; it is near Manchester in the north-west. A bit like Elfyn here, I am a barrister, and I used to practise in criminal law as well as representing parents with children who have been taken into care.

Seema Malhotra: I am Seema Malhotra. I am the Member of Parliament for Feltham and Heston, which is by Heathrow airport. I was elected in December and I had worked in business before coming here.

Chris Evans: My name is Chris Evans. I am a Member of Parliament for Islwyn. I am not ginger, I do not wear glasses and I do not present a radio programme on Radio 2. Also, I am not Captain America, but I represent the most beautiful constituency in all of Britain, and, as you can tell, before I came here I worked for four years as a parliamentary researcher. Before that I was a trade union official.

Jeremy Corbyn: I am Jeremy Corbyn. He only says that because he has never been to Finsbury Park. I am a Member of Parliament for Islington North, which is north London and the Finsbury Park area. I am really grateful to you for coming this morning and I am particularly interested in youth justice issues because of many issues that have faced us in our community. Thanks for coming to give evidence today.

Steve Brine: I am Steve Brine. I am a Member of Parliament for Winchester and Hampshire, for a large and generally well formed party called the Conservative Party. I am just interested in hearing from you; thanks for coming. I am interested in hearing what you want to do with your future and how your past has helped you in doing that.

Mr Buckland: I am Robert Buckland and I am the Conservative MP for South Swindon. Before I became an MP I was a criminal barrister prosecuting and defending in lots of cases involving young offenders, so I will have met many people in your position. What I still do as an MP, whilst Parliament does not sit, is sit as a judge part-time in the Crown court, so I am still dealing with cases involving young offenders quite regularly.

Chair: That is enough to put anybody off really, isn't it?

Elizabeth Truss: I am Elizabeth Truss, Member of Parliament for South West Norfolk.

Q26 Chair: Now tell us who you are.

Mark Johnson: My name is Mark Johnson. I am the founder of an organisation called User Voice, a

Guardian columnist and on the board of trustees for London Probation.

My experience is my qualification. I have literally trod the same path as a lot of these guys that are talking today, and I founded my organisation based on the principle that I believe the people that make decisions often do not understand the reality of the problem and there is an unwillingness there or often, in the provider industry as I call it, there is an agenda not to want to listen. The voice of reality is often too uncomfortable to listen to about your services. So I founded the organisation User Voice.

Looking at youth justice, we represent the person. We realise that the system comes at the young person in silos. If you are in a court, you are a young offender; if you use mental health services, you are a mental health service user. There is a detachment within that of how we look, but, often, one person is representative of all of those and it is what you call a commissioning nightmare, because when you take a new idea or an innovation forward about looking into the reality of crime, believing that the solution can come out of the problem, you cannot get funding for it and, as I said, it is a commissioning nightmare.

So I set up User Voice, used some of my own money, got some early investment, and will turn over £1.5 million after three years of registering as a charity. What is quite special about it is that it is user-led. It is run by ex-offenders for ex-offenders. We deliver services in high security places. We deliver in the secure estate, YOT, prison and the adult offending community, and it is 80% led by ex-offenders. I am sure that that is what will come through with these guys today.

I have brought a report that has not been released yet. It will be of interest to this Committee because this is literally led and delivered by ex-offenders for young offenders. Everybody has basically co-produced this report. It doesn't have an agenda attached to it other than that the voice of reality is absolutely firmly in it. It has not been released. The Minister Crispin Blunt has written a forward for it and has been fully behind it. We worked with 700 young people that were involved in criminal justice last year. So, from 740, it went down to 130, who took part in focus groups. Then the community self-selected its own representation of leaders out of the community, which is some of these guys.

Q27 Chair: They have been chosen as leaders.

Mark Johnson: By the community, democratically elected. The whole of User Voice's work is all democracy. In prison, the whole prison goes to vote on who goes to see the Governor and we work with skills, basically. It stops it being a griping shop for individual complaints. It is actually more issue-based work. We took 30 and drove them right in the middle of the Youth Justice Convention last year and we made a profound impact. The Youth Justice Convention has existed for 11 years. We got the highest feedback score in the whole of the existence of that convention. I find it personally pretty alarming that the Youth Justice Convention does not include

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young people; it is the first time that it has seen young people come into the centre of the room. As a result, the Minister is supporting it, and hopefully we will be doing it this year as well. We do a co-produced event where we plug people into each other, so commissioners, provider and end user all together. So that is me really, but it is in that report and I think you will find it very interesting.

Q28 Chair: We look forward to getting that. Can we find out who your colleagues are?

Armande: My name is Armande. I am 16. I am an ex-offender but I am currently in the process of bettering myself for my own benefit. Hopefully, Mark can lead the way for me.

Andretti: I am Andretti. I am 22 and I am from Wood Green. I am also an ex-offender who has changed my life for the better, and working with User Voice has given me hope to stay on track.

Iris: My name is Iris. I am 17. I am from Canning Town. I am an ex-offender but I am working on track to get myself better as well.

Chair: We are going to open one or two different topics and I am going to ask Yasmin to raise the first point.

Q29 Yasmin Qureshi: Good morning. I just wanted to discuss the issue about diversion—diverting young people away from the criminal justice system. The Committee normally receives evidence from different groups of people within the criminal justice system and we hear conflicting evidence sometimes coming through to us. For example, the Criminal Bar Association believes that there are too many young people who are being charged and brought before the courts for minor offences, and yet the Magistrates' Association seems to think that there is overuse of out-of-court disposal. So you have two organisations saying almost two completely conflicting things.

From your experiences—the three of you—how many times had you come into contact with the police before you were taken to court?

Andretti: My first time being arrested I had to go straight to court and then after court I went straight into youth offending. So it was literally arrested, court, youth offending. There was no chance or anything, and I do not think that is right.

Iris: My first time it was dealt with within the place that I got caught at and they just wrote it down in their book. The second time I was let off on reprimand and then I got arrested and taken to court.

Q30 Yasmin Qureshi: So you had two what we call diversionary—

Iris: Yes, two before I was actually taken to court.

Q31 Yasmin Qureshi: Then the third time was in court.

Iris: Yes.

Armande: The first time I was arrested it was dealt with in court, but the first time I was put on probation that was on my third arrest.

Q32 Yasmin Qureshi: I was going to come on to an additional question, which is, did the youth offending

team or any other agency do anything or help to stop you reoffending?

Armande: No.

Steve Brine: Mark is saying, "Elaborate." I am saying he doesn't have to elaborate. Yes or no are words we do not often hear in this place. It is quite refreshing.

Chair: It is quite refreshing.

Q33 Yasmin Qureshi: Did the youth offending team or any other agency help you, which stopped you from reoffending again? Are you saying, no, they didn't help?

Armande: Apart from giving me an insight as to, basically, just more information on my charges, the effects of the charges, consequences—apart from anything I could have generally thought of myself and known already—I was not helped to better myself until I came into contact with User Voice, because it was through them, which is probably why I am still here now as a free man because I was leading on a wrong path and then I met my friend Cordelle here, who works for User Voice. We first met in my YOT and he showed me a five-minute little video and asked me if I wanted to get involved. I said yes. I went in for my meeting, came back out to chat to him, and he just got me involved, and from there, step by step it has just progressed really well. I think I have come quite far.

Q34 Yasmin Qureshi: The other question I was going to ask you is what do you think could have been done to make the process more successful? You have just mentioned that an organisation like User Voice helped you.

Armande: Definitely.

Q35 Yasmin Qureshi: Can I ask the same question of you as well?

Andretti: My YOT did not help me at all. I used to go there. They used to ask me if I am all right, if I am keeping out of trouble. I could say no and they do not know if I am lying or not because the way I see it is I never used to like going to YOT because I could not relate to this person that I am working with. Basically, they're just qualified on paper. You do not know nothing about my life or where I am coming from. I don't know nothing about your life or where you're coming from, so we're not going to see eye to eye. I just wanted to go in and get out.

Q36 Yasmin Qureshi: What do you think could have been done? What would you have liked to have?

Andretti: I needed someone that was more like me, that has been on the path that I was taking, that has taken that path, that has been in trouble, that has changed their life and that could show me the way where I am now and how I am showing these kids that I work with where I have gone. There was no one like that for me, so I couldn't really see no future for me. I was just still on the roads; the YOT did not help me at all.

Iris: For me it was a bit different because me and my YOT worker got along quite well, and it was when I started going to YOT and he let me open up quite a lot as well so he would keep me on track. Even though

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I would only see him once a week it was enough for me, and then when they put me on my community service order as well that took up a lot of my time, so there wasn't any chance for me to go out and reoffend anyway. Then when I got involved with User Voice it helped me even more, so, yes.

Q37 Yasmin Qureshi: Do you think anything further could have been done or do you think the help and assistance you were given was good?

Iris: Yes. It was good enough, yes.

Q38 Jeremy Corbyn: What did you do on the community service order?

Iris: They took me to a bike repair shop, so I was just repairing bikes for 20 hours.

Q39 Jeremy Corbyn: Did you learn anything from that and could you have developed that into a job if you wanted to?

Iris: Not into a job. I am not the kind of person that would fix a bike, but it gave me a lot of skills and communication skills as well, so, yes.

Q40 Jeremy Corbyn: In your case, where your worker was uncommunicative with you, do you feel that you did not try hard enough or you just felt no empathy at all?

Andretti: I was young. I was about 16–17 and I tried to understand where she was coming from because I know it is her job and what she had to do, but at the end of the day I am coming there to rehabilitate myself, to go there for the better, and she wasn't helping me at all.

Q41 Jeremy Corbyn: How would you change the system?

Andretti: The system now?

Q42 Jeremy Corbyn: Yes. How would you change what happened to you to make it more productive?

Andretti: Like I said, it is not just necessarily qualified on paper and going to uni to have to do these sorts of jobs. You need to be able to relate to the young people; you need to be able to have that form of trust and bond to make them want to open up to you within the first two sessions. All you have to do is just talk about something that you have in common with them and then YOT can—

Armande: Young people work well with people that can relate to them like in their own circumstances, in their own environment, because a lot of YOT workers know a lot about the people that are coming to see them. For them, in their shoes, it is just a 9 to 5 job. They are getting paid to overlook our situation and just keep us out of trouble, but at the end of the day a lot of that doesn't help because there is still such a high reoffending rate. If you can find YOT workers who actually relate to the person—say, like, my YOT worker. I had a good relationship with her, but she hasn't been in my position and she knew a lot about me and I didn't know anything about her. *[Mobile phone rang]* I am so sorry; that is an alarm.

Chair: It must be your YOT worker.

Armande: They knew a lot about me; I didn't know much about them. There was just no trust barrier, so there was not much they could do for me because I just couldn't relate to them.

Q43 Mr Buckland: I have looked very carefully at the CVs you have given me and it is very helpful. Andretti, you are the only one that has had some experience of custody.

Andretti: Yes.

Q44 Mr Buckland: Was that as part of a sentence?

Andretti: Yes.

Q45 Mr Buckland: Was it one of these detention and training order sentences?

Andretti: Yes.

Q46 Mr Buckland: How did that work? There should be a plan, shouldn't there, in place that you should be part of? Did you feel that you were part of that? You knew what was going on and knew what the outcome was going to be.

Andretti: No. When they sentenced me at first I got a 12-month DTO, so I had to serve six months. When I went to the prison I went to the induction wing. They just gave me my clothes, which were too small for me; the shoes were too small. I didn't get no plan; they just put me in my cell, and then from there I just had to adapt by myself and just go with the flow.

Q47 Mr Buckland: How long was the induction? How long did they give you in that wing?

Andretti: Two weeks I was on that wing.

Q48 Mr Buckland: The way that these DTOs or detention and training orders are portrayed is that there is some structure to it and there is a plan, and when you are released you know what the plan is going to be.

Andretti: I don't know about that, but when I was in jail, which was November 2007, there was no plan. There was just simply, "You're in jail now. This is it. Get on with your time and go home."

Q49 Mr Buckland: What I had heard—and this is supporting what I heard when I visited young offenders institutions—is that there did not seem to be any difference between the DTO and another sentence of youth custody for older offenders who were over 18.

Andretti: I got a DTO. I finished my DTO and then I got rearrested at the gate for another crime. Then, when I got sentenced for that, I was 18. So then I went to a big man jail.

Q50 Mr Buckland: Did your sentence cross over the time between turning 18, or were you there as a young offender and then coming back after the age of 18?

Andretti: No, I did not come back. I went straight.

Q51 Mr Buckland: Because sometimes there is a problem, isn't there, between the move from being a young offender to being over 18? Did you have a

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direct route? Were you in the system when you turned 18?

Andretti: Yes.

Q52 Mr Buckland: How did that work? Was there any plan made for the change to you becoming an adult?

Andretti: No, there was no plan. It was just on the bus, straight to a new jail and then straight again, induction wing again, and then just, "Get on with your time."

Q53 Mr Buckland: On induction periods you have had two weeks. It may be that Mark can help here. Perhaps you guys can help as well; you may have friends who know about this. My understanding is that the length of time for an induction has been lessened. It is lower now, isn't it? It is a lot less. Two weeks is quite a long time now. Do we have any information as to how long inductions are now?

Mark Johnson: It is generally two weeks in a lot of places that we work in. For me that is not the biggest issue. The biggest issue is what the content is of that induction. It is like you have said about sentence planning. Because of all the secure estates and YOIs we work in, what is a plan? It is a booklet of tick boxes where you say you have attended this programme. It is not measured on how effective that has been. It is just that you have been on it. Everybody is running around getting these tick boxes. The other problem with it is that certain establishments will not do some of the programmes that you need on your sentence plan that is given to you, in which case you get relocated hundreds of miles away from home to attend a course and you are kept there longer because of the transportation system and then you get sent back. So there is a detachment in what that sentence plan means, but also it is the effectiveness of it.

Q54 Mr Buckland: I am going to involve the other witnesses as well because all of you have some family support, don't you? In each case were your parents or was your mum involved in the sentence at all in helping to work with probation or not?

Armande: With me, the only involvement my mum had was for the panel meeting, and from then on she had to get all relevant information from me. There is not much contact between the youth workers—people in the YOI and the user's parents. There is not much contact between the two.

Q55 Mr Buckland: Do you think it would have helped your mum if she had been more involved?

Armande: Yes. Every time I came home she wanted to know what I have done but she didn't know; but she is meant to.

Q56 Mr Buckland: Iris, what about you? Do you think having more family involvement and knowledge about what was going on would have helped?

Iris: Yes, it would have. All they did, as soon as my last time at court was done, was they just gave me a paper telling me what my order contained and that was it. My parents did not know much about my order

any more, so I would have to come back and tell her that I am finished. She wouldn't really know at all.

Q57 Mr Buckland: So you would have to explain.

Iris: Yes.

Q58 Mr Buckland: Give me some ideas about how it can be done better. What do you think?

Iris: In a way I wouldn't really know because I don't really have my parents involved with a lot of that. Once it was over, it was just up to me to get it over and done with. They didn't really need much involvement anyway.

Q59 Mr Buckland: It depends on the relationship you have with your parents, doesn't it, very often? Some people have a bad relationship and perhaps it would make things worse, but where you have a good relationship, and I think you guys have good relationships certainly with your mums—

Iris: I have a good relationship, yes.

Q60 Chair: Do you have any thoughts on that?

Andretti: Pardon?

Chair: Did you have any experience pertinent to that?

Andretti: Even when I was in prison my mum wouldn't know how I was doing unless I phoned her or unless I sent a VO. She was going through breast cancer at the time and I didn't really want to stress her and make her come and visit me all the time, but at the same time it would have been nice if I had an assigned probation worker or YOT worker on the outside that when they visit me they will go and visit my mum and sit down and just let her know how I am doing and just let her know that I am fine, just to ease her mind, but there was none of that. If I needed something from my YOT worker, my mum would have to chase them up and it was just all messy.

Jeremy Corbyn: When you came out of prison, what exactly was explained to you and what support were you given about doing other things and getting work, housing and so on? Were you given help on that?

Chair: We are going to come to that, Jeremy. We are going to come to that question a bit later because Chris was going to explore that area.

Jeremy Corbyn: Were you talking to Chris, not me?

Chair: At a slightly later stage Chris was going to ask everybody about that.

Jeremy Corbyn: I am going too quickly. Okay.

Chair: You are getting ahead of us. It was Seema who was going to come in next.

Q61 Seema Malhotra: Thank you. One of the wonderful things to hear you say is that you are ex-offenders and that you have made some decisions about changing your lives. My question is really a very simple one. What made you decide to stop or what stopped you offending?

Andretti: For me it was that two-year prison sentence, just being in there for two years, especially at the age of 17, going and sitting in there on my 18th birthday and then my 19th. I was still young and that is my freedom taken. I've come out and two months later I was expecting a son. So I couldn't go back down that road because I needed to change for the better of my

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son and for my mum, and for myself really, because with crime, obviously I was getting money but I wasn't feeling good. Now I feel great. I've got a job, I'm doing things right. I don't have to look over my shoulder. I don't have to worry about the police.

Q62 Chair: So family responsibility was the big thing for you, was it?

Andretti: Yes.

Q63 Chair: Suddenly you have to think about somebody else.

Andretti: Yes.

Q64 Seema Malhotra: If I am right, Andretti, did you have any gang involvement?

Andretti: Yes.

Q65 Seema Malhotra: Did that affect your ability to change course for yourself?

Andretti: When I came out, going back to the same area where I grew up, obviously it was going to be hard seeing the same faces, the people that I was doing stuff with come out and they are still doing the same stuff, and it is like when I see them it's a bit awkward. I realised I just did not want to be with them no more so I had to change. I just had to do it.

Q66 Seema Malhotra: What about you, Iris?

Iris: For me it was the stress that I was putting on my parents at the end of the day. For the times that I had offended before but had not been taken to court I think I did not realise how much it was starting to stress them out. Then, with the whole trial and the whole court case as well and me being excluded from school whilst I was doing my GCSEs and everything, it was just a lot of mess and there was no need for it. So then, afterwards, I just thought that at the end of the day, if I want to make something of my life, I have to stop doing what I am doing because there is no need for it.

Q67 Chair: Do you want to come in on that as well—about what was the big factor for you?

Armande: For me to stop offending?

Q68 Chair: Stopping offending, yes.

Armande: I was pretty much shown the way, just as I was in that transition period when I thought I had had enough. I just had had enough of being in and out of cells. It wasn't nice. I haven't been to prison and don't plan on going to prison. I have a lot of friends with experience. I know what it's like in there and that. I don't want to be in that situation. I have my mum to think about as well because she is constantly worried about me, always asking me where I am; I get texts. Then from when I got into contact with User Voice it was just from there I started to change my life around and they showed me other things I could do—positive things. I was volunteering for a few months, getting involved, just making positive movements. It is self-satisfaction as well because, since doing it, I feel much better about myself. It's nice.

Q69 Seema Malhotra: Is there anything else that might have happened earlier for you to make that change for yourselves—that it does not have to be this way and you can do something?

Armande: If opportunity is placed before people that need it most, then it is up to them whether or not they want to grasp opportunity and change their life around. If they don't, then, you know, but there are people out there that do need the help that User Voice are providing, and with that help reoffending rates will dramatically decrease over a number of years with integrated business, because this is a newborn organisation. It has expanded dramatically since it's been founded and there are only good things that can come out of it.

Q70 Seema Malhotra: There is something for each of you that was a turning point in your sense of responsibility for yourself, maybe for other members of your family, and there were different triggers for that. Is there anything else that you feel could have been done earlier in the cycle that you went through that maybe could have been that trigger, and, also, was there anyone else in the justice system at any point that also made that difference for you?

Iris: When I first offended, if they hadn't let me go so easy and at least had taken me through court, then, at that time, my first offence, I would have not done it again. I wouldn't have. It was the fact because they let me go more than once I was just starting to think then I'm never going to get caught, I'm never going to get in trouble, and that is what pushed me to the edge. But, if I'd been taken to court the first time or at least given a proper warning, then I wouldn't have done it again.

Armande: What I think she is getting at, right, is what triggers the change. That is what you want to know, right?

Seema Malhotra: Yes.

Armande: It is like a lot of people don't have the opportunity or resources to find out about organisations such as User Voice because it is not promoted as much as it should be, but I reckon, if people are more aware of opportunity around them, then they are more likely to get in contact or attend some sort of—what's that word?—User Voice conventions. I think they do help to get people drawn into what we are about. But a lot of people, when they are just coming out of jail and things like that, they don't know where to turn to because it is not placed in front of them. It is just like, boom, you come out of jail and then nothing; you just go home. There's no rehabilitation. They might call it that, but it doesn't help. That is why reoffending rates are so high. As a young person, you have to realise something, like for me to know that I have not been in jail yet.

Q71 Mr Llwyd: The three of you were very young when you offended first, and are still very young, but I would just be interested to see what you have to say about this. I was in Milan about a month ago, in a court where they dealt with youngsters. In that setting, each and every time the youngster was supposed to be in court his parents had to sit in with him or her so that they had to become part and parcel of everything

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that went on in the court. I am interested to have your response, because, Iris, you said that when you were dealt with, for example, you had your order, you went home and you tried your best to explain what it was to your parents. Yes?

Iris: Yes.

Q72 Mr Llwyd: That did not help very much, did it?

Iris: No.

Q73 Mr Llwyd: I am just wondering whether you think that would be a good path to follow in terms of helping you out of your trouble.

Armande: Sorry, could you just elaborate?

Q74 Mr Llwyd: The simple question is if, for example, your parents had to be there in court with you at every court hearing and they had to sit alongside you when the judge or the magistrates were considering the next step, do you think that would have been helpful?

Armande: In a sense where you would feel more comfortable, yes, but it depends on the relationship you have between your parents.

Q75 Mr Llwyd: Just briefly, I saw this thing in action and it seemed to work. The reoffending rate is very low. There was one case in particular where there was a young lad sitting in the middle, his mum and dad on each side who had actually divorced, but they had to come and support him and they did support him through that particular difficulty. I am just wondering, generally, whether you think there is any merit in that.

Andretti: In some cases it can work; in some cases it won't because at the end of the day you never know what that young child is going through at home. He might be acting the way he is because of the way his parents are acting. You don't know if they are always fighting and it is taking a toll on him, and he is going out and releasing his anger or what. But in some cases it could be all right because when I was going to court I never wanted my mum to come because I just used to think it'll be—

Q76 Chair: You wanted to protect her from it, did you?

Andretti: Yes, plus, I know what she is like as well. She will probably try and slap me or something like that and I didn't want that embarrassment. But, yes, it could work because, sometimes going to court, the kids will probably go to court in a tracksuit, whereas if you are going with your mum you might be in a little shirt and your trousers. It is just 50/50 at the end of the day.

Mark Johnson: Could I just take a point from the report? This question was asked. More than half—so 55% of the 740—of young people said they did not have any role model. Of those that did, the most frequently cited were immediate family members—78%. Topping that list came mothers at 26%. However, these are the same mothers that they do not want to ask for help for fear of worrying them. They also turn to siblings and fathers—17%.

Q77 Chris Evans: I just want to pick up on what Jeremy said earlier. What support was available to you at the end of your sentence? Was there any support at all? What I am concerned with, particularly in your case, Andretti—I have done some research in the past—is that people are not being met outside the prison gates. They are getting back into the way of life and there are no pathways into employment or training or—I know you are living with your parents—accommodation as well. What support was available to you?

Andretti: Six months before I was released I was assigned to some independent charity called Trailblazers. They work with you six months up to your release date and then six months after your release from prison. I liked the woman I worked with because, even though she was a woman, there were certain circumstances that she has been in that she could relate to me and she would tell me certain stories that were similar to where I went, and we got on well. But it still wasn't really enough because—I don't know—maybe I was thinking it was a woman and maybe I needed a man role to really phone up on me when I am out, check on me, because when I came out all I used to do was go to probation and they didn't do nothing for me except tell me to sign on at the job centre. So I think there should be more in place to help people whilst they are in jail, to let them know what options are available for them while they are leaving, and when they do leave there is more of a wide—how would I put it now? I don't even know; I am stuck. Basically, for me what I needed was someone to be out there to just give me support because I could not really rely on my mum. I needed someone that I could speak to, like, "I need help with this. Where do I go?" I went to Connexions; they didn't help me. There needs to be support for ex-offenders.

Q78 Chris Evans: What about Iris and Armande? Was there any support available to you when your sentence ended—I know you did not go to prison—because you are both now doing training? You are in college. How did you end your cycle of offending and end up in college then? Was there anybody helping you to get into college?

Iris: To get into college? No, I just did it myself. That was it.

Armande: There is no help to actually attend college, but when I was doing my community volunteering at User Voice they just helped me build on my knowledge of options for college that are available. There were specific things, like they took certain parts of my personality and parts of things, like skills I have already, and just said, "All right, you are quite good at maths", okay—

Mark Johnson: And enterprise.

Armande: Yes, maths and enterprise—IT software engineering. They said, "Boom, that's for you", and I love it. Maths is just something I like to do, so I actually switched my course from business to software and IT development.

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Q79 Chris Evans: Do you think having some goal in life or something to look forward to stops you from being dragged back into your old life?

Armande: It is not really a goal. It is more self-satisfaction, because the main thing we do is to help people and that feels good.

Andretti: You need a goal and the willingness to change for the better. You need to be able to want to change. You can't just say, "All right, I am going to change." You need to be able to want to. There should be more jobs available for ex-offenders. I have been out for over two years and I could not get a job because I always had to show my CRB. I don't know. They'd labelled me already. From when I have showed them that I have a criminal conviction and then they ask what you have done and you have to send your CRB, from when they see that, I personally think that they have labelled you already as some robber, knife-holding bad sort of person. They have not even seen you yet. They don't know me; they don't know how I have come, how I have transformed. It is just, no, I don't get the job. For two years that went on. It was really hard for me because I was really struggling. I've got a baby on the way, I can't get a job, and it was so easy for me to just go back to my old life just like that. But it's just how I am; other people would not maybe have been so strong. Most of my friends, my friends that I went to jail with, we all come out together and every single one of them is back in. I am the only one that is out and it is just looking at it like—

Q80 Chris Evans: It is willpower in your case then. What about you, Iris?

Iris: Can you repeat the question, please?

Q81 Chris Evans: Sure. Having something to look forward to, some sort of goal, do you think that has stopped you?

Iris: In life?

Q82 Chris Evans: Yes. Something that stops you being sucked back into your old life then.

Iris: It is all good when you aspire to be something at the end of the day. I am not saying if you are weak-minded, but if you haven't got enough support around you to actually get you towards where you want to be, it's not—I can't explain. You're not going to do it, especially if you have been through what you have been through, at the end of the day. You can aspire; you can try; you can go to your courses; you can go to your classes, but there are days where you do feel as if you want to give up. If you haven't got that support or that person on the side that will tell you, "Yes, keep going", you are just going to fall back to your old ways if you're not strong enough.

Q83 Chair: What you are saying has prompted a question in my mind, which is that Andretti said, and you have probably all said, you need to want to change; you have to be committed to changing. Are you exceptional people who have sensed that you need to change and therefore you have made a big effort and you have encountered all the difficulties you have talked about, or could most of the people you

have come across who have gone through the criminal justice system make the change if they got the help?

Armande: Definitely, 100%. They can if they want it.

Mark Johnson: I call it the teachable moment. I heard it from a facial injuries surgeon in Glasgow, who said that the teachable moment for a lot of violent crime is when they are in the casualty room, when the adrenalin goes and they are ready to talk and they are ready to respond. Through the system, that opportunity is missed often. Somebody might have the willingness to change but then they have to wait two weeks or three weeks to see a YOT worker, who does not provide the appropriate help. The opportunity is missed, and then you get to the point beyond help of saying, "Well, I might as well go back. All my friends are doing it. I can't go forward because I have a life sentence by instalments through the stigma that is attached to having a CRB." That is as young as 10 years old. That label, that black mark, can stop with you for life.

Q84 Chair: Andretti, do you think that most of the people you met in prison, if they got the right opportunity at the right stage, could make the change?

Andretti: Yes. It is just that there is not a lot of opportunity. When we were in jail we didn't know—there was no one coming to us and telling us about any sort of opportunities on the outside and no one coming to us and telling us that you can change. Mark and them go into jail and speak and talk about their life and how they have changed. We didn't get none of that. It was just simply that we are the convicts; they are the guvs. "If you cross us, you are getting nicked again." It wasn't a good experience.

Q85 Chair: Iris, do you want to add anything?

Iris: Can you repeat the question, please?

Q86 Chair: It was really asking about whether you met other people you think could have made the change if they had been given the opportunity or whether it is just a few people who can really do what you have done?

Iris: Really and truly it is half and half because there are a lot of people that are strong-minded and can make the change for themselves and they don't really need that much of an opportunity. Then there are other people that are on the edge, they can do it, but they just need that little push, and if they are given the opportunity then they can change. So it is different for everyone. It's not the same.

Q87 Mr Llwyd: I would like to ask Mark this, although having heard evidence from the three of you it could be any one of you in fact if you want to chip in. The youth justice system has changed a lot in the last 20 years and we are hoping it is going in the right direction, but what would you say are the main barriers to change? Perhaps I will start with Mark and, if anybody else wants to chip in, please do so.

Mark Johnson: From my view of work in the field, one is that it is commendable what the YJB have done. We work quite closely with them and the reduction in numbers of people getting in trouble. For me, the conversation needs to take place outside

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justice for things to change further. That is, there is a clear journey between problematic families, dysfunctional family environments, to school exclusion, to entering what I call “no man’s land”, where there is no help available, there is massive budget reduction in prevention work over this last 18 months, and people have to get into the justice system to come into contact with any kind of help. I think we need to join up the dots and start to address it, take it outside justice and stop that label of a criminal just to access help.

As a whole, with regard to a huge majority of the young people that we meet—this is just a snapshot of locally based people—with all the range of difficulties, I would say that such a large percentage of those problems can be addressed outside the justice system. That is where it needs to go. The justice needs

to be taken off and it should be put into more of well-being and in the health environment—emotional health.

Q88 Mr Llwyd: To sum it up, what we are saying is early intervention—get all the agencies talking to each other.

Mark Johnson: Yes, absolutely.

Chair: Thank you very much indeed. We are very grateful to you for coming in this morning, the time you have spent with us and for the frankness with which you have told us about how you coped with things. We wish you all the very best for the future and hope you can achieve the objectives you have set for yourselves and perhaps even more in the future. Thank you very much.

Tuesday 10 July 2012

Members present:

Sir Alan Beith (Chair)

Steve Brine
Mr Robert Buckland
Jeremy Corbyn
Chris Evans

Ben Gummer
Mr Elfyn Llwyd
Seema Malhotra
Elizabeth Truss

Examination of Witnesses

Witnesses: **Gareth Jones**, Vice-Chair, Association of Youth Offending Team Managers, **Paul O'Hara**, Manager, Bradford Youth Offending Team, and **Wendy Poynton**, Head, Leicestershire Youth Offending Service, gave evidence.

Q89 Chair: Welcome. We are delighted that you have come to help us with our work on youth justice, of which you all have significant experience—Ms Poynton as manager of the Leicestershire youth offending service, Mr Jones as vice-chair of the Association of Youth Offending Team Managers, and Mr O'Hara as manager of the Bradford youth offending team. We really appreciate your spending time to be with us this morning.

Just by way of starting, could I put this to you, which you must have thought about often? It is put to us that many children who end up in the youth justice system are falling into that system unnecessarily because other services have not given them the support that they need. Is that the case?

Wendy Poynton: I am Wendy Poynton, head of the Leicestershire youth offending service. It is well known, I think, that young people who arrive in the youth justice system require significant levels of support. Certainly, our local analysis is that they arrive with high levels of need in relation to a whole range of issues, which you will be aware of. The underlying factors that increase the risk of offending clearly need to be addressed as early as possible. There is significant national evidence that early intervention is effective, and is the best way to prevent offending and to improve other outcomes for children. That has certainly been our experience in Leicestershire.

Our experience in Leicestershire is that support for children at an early stage is improving. We have reduced first-time offending by children and young people by almost 70% over a five-year period. That is partly as a result of our close work with the police. It was one of the first forces in the country to use community disposals. Also, it is definitely a result of the early intervention services that are delivered by our children and young people's services and by the youth offending service, which keep people out of the system. We have undertaken a number of works in conjunction with children's services and other agencies to reduce offending. Although those who end up in the youth justice system have significant levels of need, many of them are already known and have received support from other services, but sometimes that support may not have been effective in all cases, and some young people are less easy to help. Certainly, more than 25% of cases that have been through the courts involve children in care, so they have already received high levels of support.

Q90 Chair: Does anyone want to add to that? You do not have to do so.

Gareth Jones: The simple answer is yes, particularly when you look at the more serious offences further down the line, and particularly if there has been a serious incident or a serious case review, or even a safeguarding issue. You can frequently find big gaps early on in dealings with the various authorities and young people and families, but it is a lot better than it was and I echo what Wendy says. For instance, the Cheshire police—the force that covers the area where I am head of service—takes the very clear view that children are children first, as well as offenders. That is an incredibly important response. With some very low-level offences, they are looking at what support can be given to children as well as what disposals can be given, and that should be using the services that are already out there.

Q91 Chair: Are youth offending teams able to relate to the Troubled Families programme? How is that going to fit in?

Gareth Jones: Absolutely. Talking to colleagues around the country—I know that Paul will come in on this in a second—it is clear that there is obviously a huge overlap. In the case of something like 80% or 90% of the families in my area that we have identified with local partners, the youth offending service either already knows them, or knows the older child or whatever. There are connections, and there is a massive overlap.

Paul O'Hara: In relation to the first question, it is worth bringing to the Committee's attention that there has been a huge shift in the age profile of offenders that we are now dealing with, and that the majority of offenders in Bradford—I am sure that that is reflected elsewhere and by my colleagues—are really 15, 16 or 17.

Q92 Chair: That is a shift from what?

Paul O'Hara: Previously, it would have been 13, 14 and 15.

Q93 Chair: So it is an upward shift?

Paul O'Hara: Yes, it is an upward shift. That reflects the fact that there is some very positive work going on. The challenge for us now is, in particular, how we address issues around leaving school, and the transition from leaving school to go to college or into

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training or employment. There have been some big shifts, so I believe that some of the preventative work has been successful, but that is not to say that we could not or should not do more.

In relation to your questions about Troubled Families, I have recently been appointed as the Troubled Families co-ordinator for Bradford, and I also have strategic responsibility for the YOT. I see this as being a very powerful initiative to tackle families in the whole, and to work out different ways of trying to break the intergenerational cycle, and also—which is probably very different from how we operate at the moment—looking at the whole family, and looking at the younger siblings, and trying to ensure that they are not the next generation that gets into trouble or has very poor outcomes. There are some big opportunities for YOTs to work alongside this new initiative.

Wendy Poynton: I echo what my colleague Paul has said. I feel very positive about the Troubled Families programme. It should reduce the need for duplication. We find that there is quite a lot of information. At the moment, families receive multiple service interventions that are often targeted at individuals within the family, or at short-term interventions, but they do not tackle the underlying needs. There is a good opportunity here, as Paul said, for the Troubled Families agenda to look at the needs of the whole family. From our point of view, we in Leicestershire are looking at having a team around the family with a dedicated family support worker; and the youth offending service will become part of that team around the family. It is a good opportunity for youth offending services to tackle those wider needs.

Q94 Chair: Is the relatively low age of criminal responsibility in England and Wales significant, or has the kind of intervention that we engage in developed to suit the age level without being particularly affected by the fact that we formally treat young offenders as criminals at an earlier age than other societies do?

Gareth Jones: The concept of prosecuting primary school children, which we can and occasionally do, is quite a harsh one. The good thing, though, is that we do that very little these days. The number of 10 and 11-year-olds on our books has plummeted. It was never a huge number, but it is much lower now, and that is because the various agencies take a slightly different view than they used to.

In 2005–06, the police were very diligent in terms of offences brought to justice and essential protections; if something happened, there had to be an outcome for their computers. The move away from that to looking at the individual circumstances of what has happened, and what is best for the child and what is best for the victim—that has had a huge benefit. However, I and the members of my association tend to feel that before prosecuting 10, 12 or even 14-year-olds, you should be looking at the individuals themselves and their levels of maturity, because one 10-year-old is very much different from another. We have the same discussions at the other age range, on the transfer to the probation services at the age of 18 or 19. We know of some 21-year olds who, in street terminology, are not with it, but there are also some very sharp 16-year-olds. There should be fewer

distinct delineations and much more about assessments, so that someone will have looked at the entirety before decisions are made on prosecution.

Q95 Mr Buckland: That leads neatly on to the next topic, which is diversion and the work that has gone on to divert young people away from the system. It is sometimes called early intervention. It means many things to many people, but I shall use that term so that we all know where we are.

There has been a change, has there not, in the way that early intervention has been funded? The position now is that you have to apply directly to the DFE for a grant. In your experience, how successful have YOTs been in obtaining that different source of funding?

Gareth Jones: Do you mean the early intervention grant?

Mr Buckland: Yes.

Gareth Jones: To my knowledge, most YOTs have been completely and utterly taken out of that loop. The money has gone directly to local authorities. Where local authorities have a strong view on prevention—I serve two local authorities, and fortunately both do—that money has been diverted into prevention projects that we would agree with, such as family support intervention, targeted youth work and those sorts of things. In terms of the discussions that we had with youth offending services on the early intervention grant, nationally it has been very little—it has been money that has just been diverted away. Again, my colleagues may have a different view, but that is what I am picking up from around the country.

Wendy Poynton: In Leicestershire, we are particularly lucky because we have attracted funding of about £100,000 from our early intervention grant, and it does fund prevention workers. We experienced a reduction two years ago of 21% in our youth justice grant, so that was very welcome.

The difficulty with YOTs is that they have to provide statutory services, and prevention services are inevitably more at risk from those funding cuts. Again, we have been lucky in Leicestershire, because the local authority has provided us with some transitional funding on the basis of the strength of our prevention arrangements; but that funding will end soon, and I am worried as to what will happen next. We do not know the future of the early intervention grant. We are likely to receive a further reduction in the youth justice grant, and I am worried that that will impact on prevention services.

The light at the end of the tunnel for me is that the Youth Justice Board is currently looking at revising the grant formula. At the moment, there are certain local authorities that can attract additional funding, but Leicestershire is not one of them; however, the Youth Justice Board is looking to applying a fairer formula across the country. The indications are that we might be able to gain from that redistribution formula and therefore be able to continue some of those services, but that remains to be announced.

Paul O'Hara: The Committee is quite right, in that there has been change in the funding, and the ring-fencing has now been removed. The challenge for

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YOTs has been how to gain local and political support from the Children's Trust and from elected members around this agenda.

I can talk only about our experience in Bradford. Early prevention is quite a key part of the Children's Trust agenda, and because of that I have secured a similar amount of funding from the early intervention grant. We have now established restorative justice clinics across the city as an arrest diversion—that is strongly supported by the West Yorkshire police—and parents are given an option of whether they wish their child to be formally cautioned, given a police reprimand or made to attend a restorative justice clinic. I have parents queuing outside these clinics who are desperate for an opportunity for their children to be given another chance. To date—it is still early days—we have had a 90% success rate, with a very high level of satisfaction and a high level of involvement from victims. The whole process for us is working well. I would hope that the local evidence of support is enough to sustain the funding in the longer term, but that is always a challenge.

Q96 Mr Buckland: I am very supportive of restorative justice methods. You give a success rate. Do you mean successful resolutions?

Paul O'Hara: We have a high level of victims attending, and to date—we have been going for six to nine months—90% of young people have not been re-arrested by the police.

Q97 Mr Buckland: That is a measure of success. Is that re-arrests within a particular period?

Paul O'Hara: Since it started. It is still early days, but it is very promising. That is what I am expecting the process to deliver. If it is not delivering a 90% success rate, I will be very disappointed. The parental feedback has been positive, and the police are supportive of it because it means that police officers' time on the streets has not been removed by the processing of offenders through the system.

Wendy Poynton: In Leicestershire, we have had a project that has delivered restorative justice training and approaches in our children's homes—I know that this has happened elsewhere in the country as well—and this has been independently validated by one of our local universities. It has reduced the level of offending in children's homes by about 50%; it has dramatically reduced police call-outs; it has dramatically reduced assaults on police and residential staff; and it has also improved the atmosphere in children's homes and reduced the cost of damage to children's homes. We have a lot of very positive outcomes. It is worth saying that restorative justice as a principle is applied throughout the youth justice system through the referral panels, and that is one of its great successes.

Q98 Mr Buckland: Sadly, a common source of youth crime is disputes between schoolchildren, which usually arise out of something that has happened in school. Are you working with schools in order to spread restorative justice techniques in the school environment?

Paul O'Hara: I am sure that West Yorkshire police, along with other forces, has taken on board the police officers in school agenda, and that has been hugely successful. We strongly support it, and the schools view it so positively that they also invest in it: these police officers are part funded. As my colleague rightly said, we have seen big reductions through addressing that, and also by addressing bullying, which is a related agenda. Young people are feeling safer in schools, and that is really important.

Q99 Mr Buckland: The voluntary sector obviously has a key role to play, and there are good examples of voluntary organisations. I have one in Swindon that does a lot of mentoring and self-help, and it often gets referrals from our youth offending team.

Among the evidence given to the Committee was a submission from the Centre for Social Justice. It talked of a better way of involving the voluntary sector, by removing the responsibility from YOTs for the delivering and commissioning of preventive services—in its view, YOTs should have a predominantly criminal justice focus—as a way of trying to avoid duplication and of bringing in the voluntary sector. What would be your view of the way in which you commission services? Would that be the right approach?

Gareth Jones: The way that services should be commissioned, in terms of the prevention of youth crime, should be an issue predominantly for local children's partnerships in local authority areas, including the third and voluntary sectors. We should include youth offending services, and of course the incoming police and crime commissioners. One of our concerns is that the police and crime commissioners will be receiving a sizeable portion of our current YOT money, and they may choose not to spend it on those issues that we have described today, such as outreach work, early intervention and restorative justice.

The voluntary sector has a huge part to play. In my local area, we have some very good relationships with various other groups. One of their concerns is this. Some of them will say, "All we want to do is to work with families and young people. We don't want to commission. We don't want to be part of this. We are a small charity. Actually, there is only so much we can do." That type of approach, with the voluntary sector being part of the commissioning, means that, if you are not careful, the larger national organisations will benefit and not necessarily those organisations that are actually delivering. It does not always follow, but if you are making big bids, there is an art and a science and a craft to it; people are employed to write bids, and if you are small charity you do not have access to that.

Chair: We ought to move on, otherwise we will not cover all the ground we want to cover.

Q100 Ben Gummer: Has the number of new entrants into the Leicestershire YOT over the last two years gone up or down?

Wendy Poynton: It has gone down.

Q101 Ben Gummer: By how much has it gone down?

Wendy Poynton: It has gone down by about 68% over a five-year period. In 2005–06 we had 1,285. I did not bring the latest year's figures with me, but in 2010–11 we had about 420 first-time entrants. The number has gone down again this year to 300 and something; if you want the figure, I can supply it. The number continues to go down; we thought that it would plateau at some point, but it has continued to go down.

Q102 Ben Gummer: That is very impressive. What has been the reduction in your funding over the same period?

Wendy Poynton: That is quite complicated. We had a reduction in the youth justice grant of about 21%, but at the same time, because of its confidence in the work that we were doing, our local authority provided us with £200,000 a year to enable us to mitigate the effects of the reduction; the reduction has been met by the local authority, but on a short-term basis. In effect, we have been delivering with the same amount of funding, because the local authority stepped in to meet the costs of the reduction in the youth justice grant.

Q103 Ben Gummer: In real terms over those five years, you have had no total reduction in your funding, if you add together the two grants that you receive—the local authority and the youth justice grants.

Wendy Poynton: There has been a small overall reduction.

Q104 Ben Gummer: Of what order?

Wendy Poynton: I do not have that figure with me. It is quite complicated to work out, because at the same time we had the reduction in the grant, we took over some additional responsibilities for intensive supervision and surveillance. That provided an increase in work, so I am not quite able to compare like with like.

Q105 Ben Gummer: I understand. You have had a massive reduction in new entrants of 68%. Given that your funding has not reduced enormously and that you have not reduced the head count enormously, I take it that you have fewer new entrants and less case work. Would that be roughly right?

Wendy Poynton: Yes.

Q106 Ben Gummer: Mr O'Hara, are there similar figures for your area in the past five years?

Paul O'Hara: Yes, we have had a budget reduction. You are quite right, the number of first-time entrants has gone down.

Q107 Ben Gummer: By how much?

Paul O'Hara: Last year, year on year there was a 25% reduction.

Q108 Ben Gummer: Since when?

Paul O'Hara: Since 2011, as compared with 2010.

Q109 Ben Gummer: That is very impressive. Do you have figures for the five-year period?

Paul O'Hara: As my colleague said, over five years it is 70%. That is a significant reduction. The knock-on effect—

Q110 Ben Gummer: Before we move on, what has been the reduction in budget over that five years—your total gross budget?

Paul O'Hara: I cannot answer that with any confidence. There have been budget reductions in grants from the police, from the council and from my Youth Justice Board, but at the same time we have had additional funding, in that we managed to keep the early intervention grant and we managed to get an investment from the YJB custody pathfinder.

Q111 Ben Gummer: Was the budget reduction of a minor amount?

Paul O'Hara: Yes.

Q112 Ben Gummer: Given that this is not about increasing funds during the period but about slightly reducing them, and that you have achieved these extraordinary reductions, to what do you attribute those reductions?

Gareth Jones: There are significant reductions for some YOTs—

Q113 Ben Gummer: I am sorry; I am asking the other two witnesses.

Paul O'Hara: The reduction is the result of changing the targets for the police around sanction and detection; it is also around positive work, prevention, broader engagement, the safer schools partnership and the prevention work that we funded. There is a clear recognition across children's services of how important it is to keep young people not offending. At the same time, the youth offending team in Bradford is very active in addressing antisocial behaviour because of concerns from the public that, although we might be reducing first-time entrants, the young people on the estates are not committing offences but instead are being a nuisance in their communities.

Ben Gummer: Absolutely.

Paul O'Hara: We are trying to address that issue as well, through our preventative work.

Q114 Ben Gummer: I am not cutting you off, Mr O'Hara, as I know that other Members will ask about that in greater detail.

Mr Jones, given that there self-evidently seems to be a better targeting of resources with really impressive reductions, what do you have to fear from the police and crime commissioner? This seems to be a story that sells itself.

Gareth Jones: That all depends on who the PCC is. At our local level, with my local YOT, we have got some good evidence to show what we are doing and how it works, and that is against a backdrop of a cut in funds of about 30% in the time period that you are talking about. We have also achieved a 66% reduction in first-time entrants since 2006.

We have some very good stories to tell, but the concern for me is that rather than the old adage of "if

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it's not broken, don't fix it", we now have to convince yet another virtually totally independent individual, and we don't know who it is going to be. They may be very sensible and they may not; we don't know.

Q115 Ben Gummer: It depends on the public.

Gareth Jones: I am afraid that it depends on the politician who gets elected.

Q116 Ben Gummer: It depends on the voters

Gareth Jones: That is the other way of looking at it. We are concerned locally that there may be a low turnout, which may favour some more fringe type of candidate. Who knows?

When you are trying to plan a service over the next two or three years, with such a significant variable as that, it is virtually impossible. For instance, if I have to lay off workers I have to give them at least three months' notice. The PCC arrives in November, and if I do not know whether they are going to withdraw my drug services and my prevention services—that is what could happen—not only will I not get the money and not have the services, but it will cost me more money to lay people off. We have the same problem on budgeting, in terms of the youth justice grant. If we find out before Christmas this year, we will do extremely well; last year, it was the middle of February.

Q117 Ben Gummer: That is completely understandable. May I ask one further question? Some people have said in written evidence to us that the multi-agency nature of the YOT is beginning to break down under financial pressure in some areas. Do have any experience of that happening in your areas, with agencies pulling workers from the teams?

Wendy Poynton: In Leicestershire, we have been quite lucky in that the partner agencies have, in the main, continued to maintain their contributions. There have been some small reductions, in the order of 1% or 2%. We have seen some reductions. We have had some staff withdrawn from our education, training and employment services, which is a concern, and we have lost one of our Connexions personal advisers; we had two.

The significant loss of funding being experienced by local authorities as a result of the academies agenda is also putting children's services under pressure, and they have had to reduce funding to a range of activities, including reducing the number of education officers from two to one. In other respects, we are having services maintained. The other partner agencies are continuing to contribute; we have a high level of strategic support for the youth offending service, and we are looking jointly at how to overcome some of those losses.

Paul O'Hara: Locally, we are viewed as a service that delivers. We have therefore managed over the years to maintain the support and the financial backing of our partners. Clearly, with the new police and crime commissioners, there is a job to be done selling the value of our work. We are a partnership and we are dependent on the support of the partnerships; although that varies from place to place, locally it is very strong.

Q118 Ben Gummer: So you have not lost any team members?

Paul O'Hara: No.

Q119 Jeremy Corbyn: My question is addressed to Mr O'Hara. What have been the main challenges in setting up the West Yorkshire custody investment programme?

Paul O'Hara: West Yorkshire is one of the four national pathfinders around reducing custody. Setting up was fairly easy in West Yorkshire. We have a long track record of working collaboratively, because we align with the police boundaries, and we have run various contracts arrangements before, so the ability for us to come together, agree processes and then negotiate them nationally was not a particularly difficult initiative. West Yorkshire's chief executives have supported West Yorkshire becoming one of the resettlement pathfinders, supported by the YJB, so this activity was viewed very positively, and has a lot of local support. In that sense, it was not a difficult thing for us to achieve. The difficult thing, I suppose, was bidding against other areas to be chosen, and then turning our ideas into practice and service delivery, and achieving the outcomes.

Q120 Jeremy Corbyn: Are you yet in a position to give any idea of the value or otherwise of it, or of the outcomes from it?

Paul O'Hara: I can certainly comment on the West Yorkshire experience. We are nine months in, and we have a target to reduce custody based on bed-nights—a bit like a hotel; if you stay in a hotel then you are charged for it.

Q121 Jeremy Corbyn: I would not go using words like "hotel" because the media might pick it up and fundamentally misunderstand you.

Paul O'Hara: I am sorry about that. Against a 10% reduction in target, West Yorkshire has in the first nine months achieved a 23% reduction. That is 13% over target.

Q122 Jeremy Corbyn: Where there has been a reduction in the number of nights taken in custody, so to speak, have you begun to measure any effect on re-offending or other problems as a result?

Paul O'Hara: We track our re-offending rate, but that is based on 12 months, so the impact would not necessarily flow through. We have identified through this process that the main reason young people were being sent to custody was not for robbery, burglary or violent crime, but for breach of community sentence. That then raises the question of why we are not doing better with young people who are sentenced by the courts to a community sentence, and why we cannot engage with them and be more effective in stopping them being sentenced to custody. The main focus of our activity has been to improve engagement with those young people and to prevent them from being sentenced to custody for failing to co-operate.

Q123 Jeremy Corbyn: How do you do that?

Paul O'Hara: We have done that across the board, by looking at our programmes and by looking at staff

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motivation. We discovered that some staff breached young people a lot; some went the extra mile and supported young people on their order. It is about getting staff to engage in more outreach work. We have introduced better family engagement, we have introduced compliance panels and we have a very big focus around accommodation. Those things are starting to deliver some key improvements.

We had a process whereby if young people turned up late for their appointments, they were sent home because they had not turned up on time. We have now changed our service so that if people turn up late for a session, they are immediately taken out to do litter picking. I can tell you that, after two doses of litter picking, they turn up on time. So, by a fairly small tweaking of the way that we do our business, we have improved engagement.

Q124 Jeremy Corbyn: My final question is this. Do you have a system whereby you talk to young people towards the end of their relationship with you about their experiences and their hopes, and ask for their advice on how the system might work better? Some young people come out of this infinitely better and do okay, and surely we can all learn something from them. Do you have a system for doing that?

Paul O'Hara: Yes, we do. We gain feedback both from the young people and their parents. We regularly get feedback on the views of young people through a computer questionnaire, which is specifically designed to do that. We get that in both ways.

Fairly key to what we are doing is to try to signpost young people into young people's services. Obviously, once we have finished working with them, not all their issues will have been resolved. We want to support them in those activities and give them a bridge so that they can receive support if they require it. That is where the voluntary sector can play a big part in how we make a difference.

Q125 Mr Llwyd: You will be well aware of the UN Convention on the Rights of the Child, in which custody is explicitly stated as a last resort. None the less, the number of youngsters under lock and key in the UK is unfortunately extremely high compared, for instance, with Scandinavian countries and Italy. However, there has been a substantial downturn of late, which is welcome. What do you think are the main reasons for the reduction in the number of young people in custody? My understanding is that there are about a third fewer since 2008. How can these reductions be sustained?

Wendy Poynton: There are a number of reasons for the reduction in the number of young people in custody. The first is that youth offending teams have been successful in reducing re-offending and in reducing first-time entrants, so the number of young people going through the system and into court has been reduced. Secondly, YOTs have been very successful in providing programmes of intervention that are effective, and that also provide robust alternatives to custody in which the courts have confidence. Over the years, experience in providing those programmes has increased. In Leicestershire, as in many other parts of the country, we have some

really positive relationships with our magistrates. The magistrates trust the proposals that we make in court reports; they trust the alternatives that we propose; and they, too, use custody as a last resort. All those factors help to contribute.

Gareth Jones: That is true in some parts of the country, but the picture is not quite as rosy in other parts. We have certainly seen hugely different rates in custodial sentences across the country. Lack of confidence in sentencing might be one of the reasons. The introduction of the youth rehabilitation order, with its various conditions and its much more customised approach to the type of sentence that magistrates, in particular, can impose, has been very useful.

Dialogue between youth offending services and local sentencing is also extremely important. We have had magistrates coming to see some of the decision-making processes that our workers do on a daily basis, and they have been absolutely astounded at the types of issue that we have to deal with—particularly on decisions about whether or not to breach, taking Paul's earlier point. We regard it as a major failure if a young person ends up in custody for the breach of an order, and we have had one this year. Each one of these cases comes to my attention, and this was the third breach, but it was almost as if the magistrates were bending over backwards as well. However, there comes a time when you do not do the young person any favours by saying, "This is your last chance." There sometimes has to be a last occasion.

We have a major concern that young people around the country might be treated, certainly for more serious offences, as offenders first rather than young people. I have an example in my area of a young person who was sentenced to six months in custody for being a gardener in a cannabis farm. This was a 15-year-old Vietnamese boy. I cannot understand for the life of me how anyone could have regarded him as anything other than a victim. If he had been found in a brothel, for instance, very clearly, he would have been regarded as a victim of child sexual exploitation, and the people who put him in the cannabis farm are the same type of people. I am convinced that that was because there was no advice, for instance, from a specialist youth prosecutor. The police officers regarded it as a serious offence rather than saying, "We have a child who needs some protection."

Although I have no evidence whatsoever for this—this is purely speculation—I think that the courts thought that the boy would be better off in custody than out on the streets, even though he had been taken into public care—he was a looked-after child. When you have those sorts of scenarios, you can still end up with the youth custody estate being used for called non-judicial reasons—I think that is the best way of putting it.

Q126 Mr Llwyd: You mentioned earlier that there are wide discrepancies in the rates of imposition of custody throughout the UK. That applies also in adult courts, does it not?

Gareth Jones: Yes, it does.

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Q127 Mr Llwyd: Is there an inevitability about it, with local justice meaning justice delivered locally, or is it that we have not yet been able to ensure a sufficiently good service, YOT cover, for the whole of the UK?

Gareth Jones: It is more the former than the latter. Over the years, YOTs and their partners have been one of the major successes of a revamped public system. It is not only YOTs that are delivering these results, it is the wider partnerships. The focus has changed completely from the pre-Audit Commission report *Misspent Youth* of 1996. It is a completely different world and very successful, but within it we still have local anomalies. I worked in courts many years ago as a probation officer, and lawyers would come to see who was sitting on the bench, and they would do their damndest to get the case moved to a different bench, because one bench would impose custody and the other would not. I am sure that that still goes on, and that is probably more of an issue than inconsistencies, or lack of confidence, in youth justice service.

Q128 Mr Llwyd: That links to my next question. We have heard some criticism of the quality of pre-sentence reports. Do you think, by and large, that we are well served—as an ex-probation officer, you may have a definite view on the matter—in terms of pre-sentence reports?

Gareth Jones: In some ways you might be better asking the subsequent witness from the Magistrates Association. One of the things that we do locally, as part of our quality assurance, is to ask magistrates to comment on every single report, and if a report is not helpful or is felt to be poor or badly written or whatever, we can do something about it. Those notices come to my attention. I have had one in three years that said a report was not very good, but when I looked at it I thought that the magistrate just did not like what it said rather than it not being very good, which is a different matter. People are entitled to their opinions because, after all, opinions do matter. My understanding is that, across the country, with the various quality controls that YOTs have as a matter of course—controls that did not necessarily exist in the old youth justice service—pre-sentence reports have improved immeasurably. That is my view, and it is an opinion.

Wendy Poynton: We get very positive feedback from our magistrates in Leicestershire on the quality of pre-sentence reports. We take feedback, but there may be variations across the country.

Q129 Mr Llwyd: My question was not slanted, as it were, and I did not mean any personal criticism. I am a great respecter of the Probation Service and what it does, but we have heard some rumblings about discontent.

Gareth Jones: On average, just to help, a pre-sentence report prepared by a youth justice professional will have taken at least three times as long to prepare as one prepared on an adult because of the various things that have to be covered. By definition, they are much more thorough.

Q130 Steve Brine: Finally, in the time that we have left, I have a question for Wendy and Paul, but I am interested also in Gareth's comments. A few weeks ago, we had some young people come to give evidence; they were from an organisation called User Voice. I shall read from one of those young people, although they all said it and others had said it to me before. "I never used to like going to YOT because I could not relate to this person that I am working with. Basically, they're just qualified on paper. You do not know anything about my life or where I am coming from. I don't know anything about your life or where you're coming from, so we're not going to see eye to eye...I needed someone that was more like me, that has been on the path that I was taking." That is a really interesting point.

Wendy, would care to comment first on the staff, and why young people coming to YOTs may feel respect for your colleagues—there is no doubt about that; it was prevalent—but do not feel any connection with them. Is that a problem?

Wendy Poynton: It is not a problem in Leicestershire. We recently had a core case inspection completed by HMIP, and as part of that there was a questionnaire for children and young people. Sixty-nine children and young people responded to that, and all but two of those who needed help said that, after they had asked, the staff took action to deal with the things that they needed help with. More than half said that they had received help in making better decisions; more than half said that they had received help in understanding their offending; and more than half said that that the YOTs had helped them with their schooling or getting a job.

We also completed a local survey, and 97% of the 202 young people who responded said that they were not likely to offend or re-offend as a result of the intervention; 91% said that they had seen an improvement in their lives. That suggests to me that they are getting good service. Clearly, some of them go on to offend, but that survey shows their feelings at the end of an order. The staff that we appoint are recruited specifically for their skills in working with young people, and we provide a good training package. They are very skilled at working alongside young people and motivating them. What I have said provides some evidence that our staff are being helpful.

In Leicestershire we also have peer mentors. We recruit young people who have been through the system and train them so that they can provide mentoring to other young people. That is proving to be very positive and helpful, and our young people like that. There is a point to it, in that young people need somebody to work alongside them. Sometimes that is appropriate, but sometimes they need professional help, and our experience is that they provide very positive feedback about their YOT officers. We like to think that we train them well and that they have good experience and skills in getting alongside young people. We also use over 200 community volunteers, who provide voluntary interventions, and they come from all walks of life, and from all kinds of situations. We try to match the volunteer with the young person so that the young

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person gets the type of volunteer who can most ably assist them. We have many ways of overcoming that issue.

Q131 Steve Brine: Mr O'Hara, a brief question, because I know that the Chair wants to move on. Do you have peer mentors in Bradford?

Paul O'Hara: We do have peer mentors, and we work with the voluntary sector around that provision. At the end of the day, however, we have no magic wands. We rely on the skills of our staff.

I have read the report from the young people, and for those who did not feel that they were being listened to, it is a problem. Unless our staff can communicate with these young people, they are no good working in this area of work, because that is crucial. The real challenge is how to find the right moment, the right time, when a young person is ready to change, and getting the staff to be skilled in that. Some of these young people do not want to do what we ask them to do; they do not want to comply, they just want to lead

their own lives. Very occasionally, however, it is about recognising that at a certain point they are ready to change. That is the skill that we have to get. We have to try to become very motivated and to get our staff motivated to recognise that. That is the challenge. That is not to say that we do not need to do more work.

One of the advantages of us reducing first-time entrants is that staff have more time to spend with the young people. That is the key, because the young people we are working with have more complex issues and more challenges. What they need, which they often have not had before, is to be given time with a positive adult to show attention to them and to help guide them. That is what most of our staff do.

Chair: Thank you very much indeed. We have some more witnesses to hear this morning and although we could spend more time learning from your experiences, we must also learn from theirs. We are very grateful to you all.

Examination of Witnesses

Witnesses: **Steve Crocker**, Association of Directors of Children's Services, **John Bache**, Chairman, Youth Courts Committee, Magistrates Association, and **Assistant Chief Constable Kevin Wilkins**, Association of Chief Police Officers, gave evidence.

Chair: Welcome to Assistant Chief Constable Kevin Wilkins, to Mr Bache, chairman of the Youth Courts Committee of the Magistrates Association, and to Mr Crocker of the Association of Directors of Children's Services. Mr Wilkins, of course, is the ACPO lead on these issues. I ask Mr Gummer to open our questions.

Q132 Ben Gummer: Mr Crocker, it is commonplace that children who enter the care system end up in the criminal justice system. The Centre for Social Justice made this specific point in its recent report. What is your response to that?

Steve Crocker: The first thing is that I have to make a declaration of interest. I was on the Centre for Social Justice working party that wrote that report.

I am not sure why we should be surprised at that, because the children that come into care have high risk factors. That is why we take them into care; they are abused, neglected, suffer from poor parenting and have had traumatic experiences. I have some recent research to hand. The university of East Anglia, along with TACT, the Fostering and Adoption charity, published a report in January 2012 entitled "Looked After Children and Offending: Reducing Risk and Promoting Resilience". I have the reference, should you need it. It identified that going into care can be a positive experience for many young people and children. Let us not forget that we take young people into care generally from a younger age. That can be beneficial in reducing those risk factors and promoting resilience. That early entrance to care, along with good foster care, for example, and subsequently adoption, can reduce the risk of offending. That is what that research showed.

We can be less effective when we have teenagers that enter the care system who have already embarked

upon a road of antisocial behaviour or difficult behaviour at school. It is difficult to turn that behaviour around in the period during which we have those young people in the care system, and that is a far more problematic cohort of young people.

Q133 Ben Gummer: Is that especially the case in residential care?

Steve Crocker: Yes, but residential care is a relatively small amount. I should say that I am deputy director of children's services in Hampshire; from Hampshire's perspective it is less than 10%. We have 1,100 children looked after in Hampshire, and we have 75, I think, in residential care. That gives you some perspective on the numbers. It is a relatively small cohort, and the vast majority of children in care are looked after in foster care. Of course, children that go on to be adopted are no longer counted as children in care. It is a relatively small number, but often children in residential care can display some of the most challenging behaviour. That challenging behaviour is often evident before they come into care, and we try to manage that as we manage the brief of children in particular residential settings.

Q134 Ben Gummer: You are part of a well-regarded and respected children's services department, but I wonder whether you would make a general comment across the country. Do you think that the interests of all social services departments, as they see them, are perfectly aligned with the interests of keeping children out of the criminal justice system?

Steve Crocker: There is a keen knowledge in local authority children's services departments that having children in the criminal justice system is not beneficial for those children. We know that for them to be in the

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system is criminogenic in itself, so we would prefer to work with children outside it, and to ensure that they remain outside the criminal justice system.

It would be remiss of me not to say that some of the pressures on the children's services departments which, over the last few years have primarily been around the safeguarding of children of a younger age, have led to prioritisation. That means that there may be a perception that we are not focused on those older kids, but I do not think that that is the reality of the case. We would like to ensure, wherever possible, that those children are dealt with in the most appropriate way.

Q135 Ben Gummer: May I ask the same question that I put to the YOT representatives earlier? Does anyone on the panel have any direct or anecdotal experience of people being pulled from YOT teams, from any discipline, because of funding cuts?

Steve Crocker: Undoubtedly, there will be examples of that across the country, because local authorities and their partners have had to bear budget reductions. There are limits to what one can do in terms of facing those budget challenges without reducing the number of staff. Although I cannot say that there have been particular reductions in Hampshire, I am sure that there will have been some in other authorities or other areas across the country.

Q136 Ben Gummer: But you do not know of any.

Steve Crocker: The picture is still emerging. Many YOT boards will be making decisions for the next few years. I do not have data on reductions, but I would be very surprised if there were not any, given that there has been a reduction in the YJB grant, and we know that local authorities, the police and probation services have all had to find savings.

Assistant Chief Constable Wilkins: May I follow that up from the police perspective? Two or three years ago some questions were asked about the role of the police officer in the YOT. Some forces were asking whether the officer was necessary and, in terms of the budget cuts, whether the officer could be removed. ACPO works quite closely with the Youth Justice Board, and some guidance has been set out and agreed.

There is a role for police officers in each YOT—it is actually required under statute—but the role should be more clear and specific, because officers were tending to work in more administrative roles. We tried to focus on the role of the police officer being to do with police powers and police skills. That guidance went out in November 2010, but I am not aware of a reduction of police officers in YOTs. However, I am aware of questions being asked about YOT staffing generally, Manchester being one example, where Greater Manchester police are asking questions. They have 10 YOTs in GMP, and they are asking how they can service YOTs and whether there are more efficient ways of working. Those are perfectly appropriate questions to ask, because if there is a better and more efficient way of doing things and delivering a better service, it has to be good for everybody.

Q137 Ben Gummer: You do not have any experience of police officers just being pulled out?

Assistant Chief Constable Wilkins: No. The guidance helped to stop that.

Q138 Ben Gummer: I have a final question for you all. What are the arguments in favour of giving looked-after status to all children in custody? Why has it not happened thus far?

Steve Crocker: It is an interesting situation at the moment, where the forthcoming Act—its name has escaped me—will confer looked-after status on remanded children. However, I cannot see any logic whereby it can stay just with remanded children. The logic that says that those children are vulnerable in the care of the state will apply also to sentenced children. We are slightly puzzled as to why we have only half of the children.

Q139 Ben Gummer: Have you been given any explanation?

Steve Crocker: We were not sure that that was necessarily the solution to the vulnerabilities of those children, because it imposes quite a significant additional burden, and there are also some interesting dilemmas that will occur. I shall give you one, which is that the independent reviewing officer has a duty to listen to the young person about the suitability of their placement. Many young people will say, "I don't think I'm suited to be placed in prison." The officer will then have a duty then to take that up with Cafcass. We shall have some interesting dilemmas as a result of that piece of legislation. We are not sure whether that is the right solution, but we are certainly happy that there need to be further safeguards for vulnerable children in custody. Whether this is the right solution is up for grabs.

Q140 Elizabeth Truss: Mr Wilkins, how do you respond to concerns from the Magistrates Association that out-of-court disposals are being used too much, and that not enough decision making is taking place in court?

Assistant Chief Constable Wilkins: I have been involved in a working group with the Magistrates Association looking at a new framework for out-of-court disposals, both for adults and young people. The young people's framework is being worked on, and should be delivered at the end of this year or early next year.

The Magistrates Association has been involved in those discussions, but decision making around magistrate court disposals is rightly one where the police would be the primary decision maker; the whole principle of out-of-court disposals, particularly on community resolutions and restorative justice, is that it is less bureaucratic and more effective. Where there is a role, perhaps, for the local criminal justice board, with or without the involvement of the Magistrates Association, is in oversight and scrutiny. That is where I would see it. Certainly in Norfolk we would report to the LCJB on the number of out-of-court disposals, so that those things are more transparent.

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Q141 Elizabeth Truss: Do you feel that the police are sometimes being dragged in where they are not necessarily needed? I represent a Norfolk constituency, and I have heard of police being drawn into disputes among schoolchildren when one would have thought that things could have been dealt with by the teaching staff. Do you feel that that goes on?

Assistant Chief Constable Wilkins: Partly, but there are two elements. One is that where there are safer schools officers, particularly in high schools, a lot of that will be dealt with by the officers, effectively in conjunction with the schools. The safer schools partnerships that I have been involved in have been very effective. There is a slight quirk, in that if something is reported in a school where there is a safer schools partnership, it does not have to be recorded as a crime if it is dealt with by the school. However, if I then move across to looked-after children at a children's home, that does have to be recorded as a crime. We are getting into all sort of bureaucracy around that, however, when the police are involved, and we are called more in children's homes. There is more work that can be done, and is being done, around restorative justice in children's homes, as much as it is in schools.

Q142 Elizabeth Truss: You say essentially that the safer schools partnerships are effective. Do you think that more police resource is being used than in the past to deal with situations in schools, which should arguably be the responsibility of other adult authority figures?

Assistant Chief Constable Wilkins: My view would be that police officers in schools, working alongside the teaching staff, is the right approach. Although there is a resource in schools, it is more about dealing with issues in the schools with the teaching staff. It is not just about the school community itself: it goes beyond that in terms of the trips home and the broader community. It is good preventative work, and if it can deal with things and nip them in the bud it saves on broader issues. There is a resource involvement, but it saves work further on.

Q143 Elizabeth Truss: The brought-to-justice target was dropped in 2008. Has the fact that there is no longer a target changed behaviour?

Assistant Chief Constable Wilkins: Yes. I have heard evidence previously about that. It has made a difference to police forces. As you say, the measurements pre-2008 very much focused on the sanction detections and the offences brought to justice. There were particular examples of young people being given penalty notices, because it was an easy thing to do and counted as a detection.

Of course, under the new Act, the penalty notice has gone, and ACPO certainly supported that position. Since then, we have seen an increase across most forces, if not all, in the use of restorative justice. Using Norfolk as an example, we still measure sanction detections, and our rate is about 33% or 34%, but we also count positive outcomes. Where there has been a positive outcome in a case, when it has been classed as solved, the total rate is about 41%. Just to give you an indication, there is about an 8 percentage

point difference, but we are happy to stand up and be counted for that because that difference is about dealing with cases through community resolution and restorative justice with a positive outcome, particularly for young people.

Q144 Elizabeth Truss: What in your experience is most effective? We have a quotation here from a young offender saying that he felt that if he had been taken to court on the first offence he would have been deterred from crime. In your experience, does a penalty notice without anything else going on have an impact on somebody? Given the various levels of intervention, what will stop the young person going into more criminal activity?

Assistant Chief Constable Wilkins: The penalty notice was not effective, and for young people, we supported them being withdrawn. There is clear evidence that use of restorative justice, usually through community resolutions, has had a positive impact on many young people. If you look at the victim satisfaction rate and also the re-offending rates, which are lower, it has an impact. It might not work for everybody, but it does for most young people.

Q145 Elizabeth Truss: Have you seen cases where a court appearance has helped by stopping somebody in their tracks, or do you think that it just nullifies the effect?

Assistant Chief Constable Wilkins: There certainly are cases where going to court has had the ultimate effect, whatever the sentence might be, and the work that goes on around that sentence, absolutely—but it depends, case by case. Having that range of options available will make the sentence what is right for that young person.

Q146 Elizabeth Truss: What you are saying is that the police are receiving evidence about how effective they are in particular cases, and using that evidence for future decision making.

Assistant Chief Constable Wilkins: Yes.

Chair: Mr Bache, you have been very patient. I shall turn to you in a moment to get the magistrates' perspective on this. You are not being excluded from the discussion, but I pause for a moment because a couple of people have supplementary points.

Q147 Jeremy Corbyn: Mr Wilkins, on the point that you made earlier about police intervention in disputes in schools, if I understand it correctly you are saying that the normal process is that they would be treated entirely as school incidents and not necessarily be recorded by the police and, therefore, that those involved would not get into the criminal justice system at that stage. However, the opposite appears to be the case with children's homes. Is this something that needs to change? Do occupants of children's homes, the children who have had some dispute, ever end up in the criminal justice system or get a police record, which is something that will follow them for the rest of their lives?

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Assistant Chief Constable Wilkins: Yes. Comparing the two scenarios, with incidents in children's homes, the police involvement there will result in a record—or certainly a recorded crime. More and more in my part of the world we are working with care managers towards restorative justice solutions for dealing with those things. There is more of a tendency, and probably there might be some rules about this from local authorities, to call the police in for disputes in children's homes when, in a normal family home, the police would not be involved. Following that logic through, the fact that the police are called means that we have to deal with it, and because we have been called we have to record it as a crime, through the crime recording standards. We therefore have to work that through to some form of outcome.

Q148 Jeremy Corbyn: Very briefly, on the issue of the incidents in schools, what policy do you adopt in your constabulary when there is an incident outside the school gates of a secondary school, with young people getting into a dispute? In my experience, in some cases the school is prepared to deal with it as a school matter, bringing the young people back inside to try to resolve it. In other cases, they draw an absolute line at the school gates, saying that what happens after that is nothing to do with them but is a matter for the police.

Assistant Chief Constable Wilkins: In my experience, if there is a link with the school, and often that is children going home, the teachers are very happy to deal with that, with our support. In my experience, it is not always the case: if you are beyond the gate it is a police role, and if it inside it is the school's role. I have experienced a more grown-up approach to that of late.

Q149 Jeremy Corbyn: Is that general in your area?
Assistant Chief Constable Wilkins: Yes.

Q150 Ben Gummer: Mr Wilkins, I have a particular constituency issue. A very young girl a few years ago—I suspect that now she would have been dealt with by restorative justice means—got a caution for slapping someone in a playground. That came up on a deep CRB check subsequently, which precluded her from working with children. I understand that the chief constable is able, at his discretion, to strike that down, but he contends that there is still confusion from the Home Office about his ability to do so. Can you clarify that for us?

Assistant Chief Constable Wilkins: I understand that a caution is likely to be disclosed. If it was dealt with in today's world, through a restorative justice type of intervention, and if it was a standard CRB check, I would not expect it to be disclosed. If it was an enhanced CRB check, for working with vulnerable people, it might be disclosed; the most recent guidance that I have seen is that we have a duty to disclose, but we need to look at each case and decide. It is not an absolute yes or no; it has to be decided. The duty to disclose is more to disclose than not.

Q151 Ben Gummer: On the issue of whether the chief constable can rescind the caution, I understand that we are still waiting for Home Office guidance on whether it can be done. In correspondence with me, the chief constable took a safety-first approach, assuming that disclosure was the default option.

Assistant Chief Constable Wilkins: There is more work to be done on disclosure, through the work that I was talking about on the out-of-court framework. Disclosure is a key part of the work to resolve that issue.

Q152 Chair: If, on reflection, you think that you can clarify the position, it would be helpful. Always feel free to write to us afterwards.

I now turn to Mr Bache. The Magistrates Association passed a motion saying that Parliament should change the law so that all children under 16 would appear in the youth court, whatever the offence. There is obviously quite a strong view among magistrates about this.

John Bache: There is. Before I come to that, I do not want to have any misconception that magistrates are against the idea of out-of-court disposals, because they certainly are not. The last thing that we want is for children to be criminalised if it is avoidable, as it obviously has an impact on their future employment. We are worried about the lack of transparency, and the lack of judicial oversight. We feel that the police are acting differently in some areas, within different police forces and even within one police force area. We are worried that children are sometimes being dealt with by out-of-court disposals inappropriately, particularly for crimes of violence.

Q153 Chair: Are you saying that, whenever there is an offence, the person should appear in the youth court?

John Bache: No, we are most definitely not saying that. We are saying that we are aware of some cases, particularly cases of assault, that have been dealt with as out-of-court disposals, that we feel should probably have come to court. We do not know the precise details of every case, so we feel that there should be some sort of input from the magistracy to ensure that the police are charging where necessary, and not charging if it is not necessary.

The other side of the coin, of course, is when a playground fight is brought to court. That is inappropriate and we do not want to see it happen; it is not right. At the moment, there seems to be a lack of uniformity; it is a bit of postcode lottery on how individuals are dealt with.

Q154 Chair: Could it be that some police forces are being more creative and achieving more by going down that particular road? The assumption that variation is always bad is something that I would question.

John Bache: I do not think that variation is always bad, but there needs to be transparency. There is an awful lot of concern among magistrates that there is no transparency. We do not quite know what is going on with these out-of-court disposals. We hear rumours that cases have been dealt with inappropriately. If we

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had some sort of access to the actual facts, hopefully we could be reassured that they were appropriate.

Q155 Chair: By listing all cases, or simply making clear what the policy was?

John Bache: It would be individual cases. Certainly, the police that I have had contact with have been very open about the policy, but it is when we come down to individual cases that we need to have the facts on why a particular decision was made. In a way, we are representing the public, and the public are unsure exactly what is going on with out-of-court disposals. They are concerned, and the magistrates could represent the public by having some sort of input and direct contact with the police, who could explain why they are making particular decisions.

Q156 Chair: Would ACPO have any difficulty with the idea of what might, I suppose, be a kind of review of cases?

Assistant Chief Constable Wilkins: I support the principle of what Mr Bache says, in terms of some form of oversight—I mentioned earlier the criminal justice boards—but doing it on a case-by-case basis is unnecessary and is a particularly bureaucratic way to achieve it. Looking locally at figures on the range of disposals and possibly doing some dip sampling—certainly, in some of the work that we have done locally about hate crime, we dip-sample cases, asking whether the cases were dealt with appropriately and whether there are any learning points—is the sort of approach that I would suggest, rather than case by case.

John Bache: I did not mean every single case, but a random sampling.

Q157 Jeremy Corbyn: There is a geographical variation in the use of youth custody. Do you think that that is inevitable in a devolved system, or should there be better national guidelines?

Steve Crocker: There are some very interesting variations, but not the obvious ones that one would expect. However, justice is local and devolved, and there will be some variations. There could be some more effective guidance on courts, and there could be better examples of good practice, where courts have worked with YOTs and the police and other partners to reduce youth custody levels. There is potentially a role for the Youth Justice Board in disseminating that good practice more effectively.

Q158 Jeremy Corbyn: We have had evidence from previous witnesses that sentences of under six months have no effect whatever, because it is not enough time to work with the young person on education or anything else. Do you feel that that is a good position? Is it one that any of you would support?

Steve Crocker: I would support that position, yes.

John Bache: I support it as well. The fact is that we cannot give less than a full month's custody sentence, and rarely would we give less than six months. We would find a way to avoid it, as custody really is the

last resort. If we were seriously thinking of four months, I am sure that we could find a way of avoiding a custodial sentence altogether by giving an ISS or something like that, which is a direct alternative to custody. We are not just paying lip service; we genuinely try to avoid sending young people into custody if we can, and we are getting better at it.

Q159 Chair: To what extent do you think magistrates have enough information about the quality and nature of the non-custodial sentences—or, indeed, of custodial sentences? Do they have enough feedback on what happens to people who have gone into one or the other sentence, and enough training around all this?

John Bache: It can always be improved. The main factor in deciding whether to send someone into custody is the report from the YOT—the PSR report. That is tremendously powerful. If we are faced with somebody who has committed a fairly serious offence, we do not want to send them into custody, but we have to have an alternative. We have to sentence them to something. That comes out in the PSR. If you have a good relationship with your YOT, which most of us have, and if you have a good PSR that recommends a real, sensible alternative, with the logic behind it, you are going to avoid sending someone to custody.

Q160 Jeremy Corbyn: Mr Bache, after the riots last year, substantial custodial sentences were handed out to a lot of young people. We were told by the Attorney-General and the Secretary of State for Justice that there were no national guidelines on sentencing. It seems to me that a disproportionate number of young people were sent down for a long time, for relatively minor offences. That is not the norm. Was there any pressure on you about that? Does the Magistrates Association have a view on any of this?

John Bache: The riots were obviously a unique situation, and hopefully they will not happen again. One of the concerns that we had immediately following the riots was that district judges were involved a lot more than usual, rather than magistrates, which did not always please the magistrates. When you are sentencing, there has to be a deterrent to some extent. That came out to a far greater extent following the riots than it does in normal situations. To a certain extent, there was a deterrent part in the sentences that were passed.

Q161 Jeremy Corbyn: Mr Crocker, do you think that local authorities will largely take over youth custody in future?

Steve Crocker: I am not sure what you mean by taking over, but we will certainly have responsibility for the funding of children remanded into custody. I choose my words carefully, because we have responsibility for funding, but it appears that we are not going to have responsibility for deciding where those children will go. Interestingly, from the Hampshire perspective, which it is what I am best talking about, we will have children remanded into custody by Hampshire courts but we will have no say over where the children are

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to go, although the bill will be posted to us. I am not really sure, to be honest, that that is us being in control.

We want to move to a much better position, where we are working with the Youth Justice Board to commission those places on a much more local basis than currently, because at the moment all children in Hampshire who get sent to custody are sent to Ashfield, which is north of Bristol. That makes any notion of rehabilitation, from 100 miles away, quite tricky.

Q162 Jeremy Corbyn: We took evidence on youth custody issues and youth offending issues in Denmark and Norway, where their narrative is much more family involvement and intensive levels of support. To me, that seems a good thing. If what you are saying turns out to be the case, that young people can be sent to relatively distant places, then the possibility of family visits and family support rapidly disappears.

Steve Crocker: That is right.

Q163 Jeremy Corbyn: Also, the intensive support that you as a local authority in the area can give through children's services and anything else will disappear.

Steve Crocker: Correct.

Q164 Jeremy Corbyn: Are you in negotiation about this with the Government?

Steve Crocker: I understand from last week's Directors of Children's Services conference that the Youth Justice Board is about to announce a commissioning group that will have representatives from local authorities on it. I do not know what the reality of that will be, but the reality at the moment is that there are insufficient custodial places around the country. One of the problems is that the system is characterised by large custodial units; I think that Ashfield holds 400. There is nowhere, apart from Swanwick Lodge, a secure children's home for 16 that we run in Hampshire. We are not allowed to send our children there; we have to send them to Ashfield, because those places are commissioned by the Youth Justice Board. That tension seems to me to need unpicking. You are right, because if you add to that the extra dimension of those children remanded being children in care, it means that we are going to have to send them from Havant in Hampshire to Ashfield, which is about 120 miles or 130 miles away. We also have to send a YOT worker, a social worker and an independent reviewing officer on a regular basis to review the case. That does not seem to be a good use of public resources.

Q165 Jeremy Corbyn: You can multiply that all over the country, with a large number of experts spending a great deal of time making wholly unnecessary journeys.

Steve Crocker: Driving up and down the motorway, yes.

Q166 Jeremy Corbyn: That is very expensive.

Steve Crocker: Yes.

Q167 Mr Buckland: I want to come in on a point made by Mr Bache about the trial of all under-16s in the youth courts. That is a bit of an odd motion to pass, wasn't it, bearing in mind that, for serious offences, young people, like adults, have a right to have a trial by jury?

John Bache: Yes, that is one of the obvious criticisms; but it is a real paradox that, 100 years after youth courts were set up, the most serious offences should still be dealt with in the adult court. After all, they are children, and the Crown court must be the wrong place for children.

Q168 Mr Buckland: Why?

John Bache: Because of the grandeur of it. Youth courts are used to dealing with youths, and a youth trial, as you know, is very different from an adult trial. The youth is far more involved and engaged in the process; the magistrates are talking directly to the youth, which does not happen in the Crown court.

Mr Buckland: That is not right.

Chair: Mr Buckland, I think that you might have to declare an interest.

Mr Buckland: I should declare an interest, as I am a Crown court recorder.

Chair: At which point, we should move on.

Q169 Seema Malhotra: Mr Bache, I want to follow up on an earlier point. It is about the feedback that you get on the effectiveness of disposals. Pre-sentence reports will be made before you make a decision on disposal.

John Bache: Yes.

Q170 Seema Malhotra: As part of the feedback process, and any concerns that magistrates might have about effectiveness, is there anything more that can be done after the young person has gone through the system to see whether or not that process has been effective?

John Bache: Magistrates would be very interested indeed in knowing how effective a sentence was. I am not quite sure of the logistics of how it would be done, but there is no question but that we would be very happy to know the feedback. At the moment, it is a real paradox. We get feedback only on the ones who breach. If we were silly enough, we would think that there is 100% failure rate—that is obviously not the case. We only see the ones that do not work, and it would be nice to see the ones that do work.

A slight comparison in the adult court is the drug rehabilitation requirement. You see the person, and keep seeing them, for six or 12 months, which is very satisfying, because you establish a real relationship with that person. Occasionally—I certainly have one locally—they actually come off drugs, and that is very satisfying. Feedback would be very welcome. It would be difficult to organise, but that is no reason for not doing it. You can get feedback statistically, of course, but it is the individuals that we would be interested in.

Q171 Seema Malhotra: My next question is initially to Mr Bache. It is about confidence in youth rehabilitation orders, and the number of positive requirements that can be attached. Statistics show that positive requirement attachments have been very low; of about 18,000 YROs in 2010–11, we saw about 196 education requirements, half of them for drugs. Is there an issue of confidence, or is it the availability of provision or other factors? Why is there such a low usage of positive requirements?

John Bache: When magistrates sentence in the youth court, they depend very much on the PSR from the YOT. I am fudging the answer here, but if we are given a PSR from the YOT, we consider it very carefully and, under normal circumstances, we follow it. We do not always follow it, by any manner of means, as that would be wrong, but the YOT does not often recommend education requirements, probably because the young person has been out of education for some time. That, of course, might be a reason for getting them back in. We do get positive ones, however; we get programme requirements, and we get activity requirements and attendance centre requirements. There are plenty of positive requirements, but I do not remember ever giving an education requirement.

Q172 Seema Malhotra: Is the positive requirement the recommendation of the YOT, or is it that you as magistrates will be leading that discussion?

John Bache: The YOT would include in the PRS what recommendations it suggests to us for the YRO. We would normally—not normally, but often—follow those suggestions. As we have said before, the YOT puts an awful lot of work into it, and on the background and what is most appropriate for the young person. That is one of the good things about sentencing young people as opposed to adults: you have much more flexibility. Although in the adult court we obviously direct the sentence to the individual offender, in the youth court that is a lot more true; we take all the factors into account and hopefully we come up, with the support of the YOT, with a sentence that will protect the public but also help that young person get his life back on target. Of course, if you can get them at that age, you are much more likely to have permanent success than if you get them at an older age.

Q173 Seema Malhotra: To clarify your response, is it an assumption that you are making on why education is not put forward more often as a positive requirement?

John Bache: It is an assumption.

Q174 Seema Malhotra: Rather than it being because you have had conversations with youth offending teams about what has come forward and why. For example, is lack of availability of provision an issue?

John Bache: It is not a lack of availability. There is a lack of availability in a particular area, which is intensive fostering; that often is not available. For the education requirement, it is not a lack of availability.

Q175 Chair: One thing that frustrates the Committee is that when you are sentencing, all the things that Ms Malhotra has just mentioned—education, intensive fostering and so forth—are questions that the YOT will have looked at, but are they available?

John Bache: That is right.

Q176 Chair: Whereas if you sentence them to custody, somebody has got to find a custodial place?

John Bache: That is right.

Q177 Chair: It may be a badly located one, but you know that it will be dealt with?

John Bache: That is right. There was a review of YOT reports a few months ago, and the Magistrates Association had only one criticism of the reports they were receiving: there was not a great deal of emphasis put on educational background.

Chair: Does Mr Crocker have anything to say about this?

Q178 Mr Llwyd: May I make one point first—a serious point about availability? To my knowledge, drug treatment in north Wales and Cheshire is not that good, is it? I mean drug referrals.

John Bache: I personally have never had a problem with that. I have found it very satisfactory, but it is a terribly difficult problem to deal with.

Q179 Mr Llwyd: Yes, I know.

John Bache: I cannot say that I found difficulty. I am from Cheshire.

Mr Llwyd: Yes, I know.

Q180 Chair: From what Mr Bache says, we have the impression that the YOTs report may be the crucial thing in steering magistrates on what kind of positive requirements need to be placed. Is there any reason why some things are used so little?

Steve Crocker: I do not have any evidence on the education issue in particular, but I have some speculative thoughts on why that might be the case.

A couple of factors are involved, I should have thought. One is that schools are increasingly self-governing bodies, which means that the local authority does not have the power, as it were, to direct the school to do X, Y or Z. That is No. 1, but that does not preclude it because there is the opportunity to work with youth offending teams, and we know that some schools work extremely well with them; they can work very closely with us in putting packages of education together for young people.

This is very speculative, so I cannot give you firm evidence, but I think that there is some reluctance from YOTs. You might have a package of education around a young person, but young people are by nature very volatile. It is where it takes you: if the young person does not do well with that particular educational package, does it mean that you then have to breach them and take them back to court, or can you construct a different package or be more flexible? There is some reluctance around having to breach children—for instance, for school non-attendance—leading to them coming back to the court and facing

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a custodial sentence. That is only speculation; I cannot give hard and fast evidence.

Q181 Chair: Is intensive fostering an availability issue?

Steve Crocker: I think that it is. I know that some areas received pump-priming funding from the Youth Justice Board to start it up. Hampshire was one of those areas, so we have intensive fostering, but I know

that other areas of the country did not receive that pump-priming money. It requires quite extensive training and validation from an external organisation to be considered for it—"intensive fostering" with a proper label as it were.

Chair: That is an interesting thing to explore.

Mr Bache, Mr Crocker and Mr Wilkins, thank you very much indeed for your help this morning. It has been of great assistance to us.

Tuesday 16 October 2012

Members present:

Sir Alan Beith (in the Chair)

Steve Brine
Mr Robert Buckland
Jeremy Corbyn
Nick de Bois

Mr Elfyn Llwyd
Seema Malhotra
Yasmin Qureshi

Examination of Witnesses

Witnesses: **Debbie Pippard**, Vice-Chair, Transition to Adulthood Alliance, **Sue Berelowitz**, Deputy Children's Commissioner, and **Professor Karen Bryan**, Royal College of Speech and Language Therapists, gave evidence.

Chair: Good morning and welcome. We know that Ms Berelowitz is delayed but coming, so we are going to reorder slightly the questions we intended to ask. We will put the questions we intended to ask her slightly further down the order of things. We are very glad to have with us Professor Karen Bryan from the Royal College of Speech and Language Therapists and Debbie Pippard from the Transition to Adulthood Alliance. Indeed, I see that Ms Berelowitz is here now, but we will give you a moment to get your breath back and go first to a question from Mr Buckland.

Q182 Mr Buckland: I should declare that I am a vice-chair of the All-Party Parliamentary Group on Speech and Language Difficulties. I want to ask some questions of Professor Karen Bryan. We know that, whereas only 10% of children and young people in the general population have speech, language and communication needs, when it comes to the criminal justice system, over 65% of young offenders have those needs. Why do you think there is such a marked over-representation of young people with SLCN in the criminal justice system?

Professor Bryan: The best way to explain it is to think of a compounding risk model. If a young child has speech and language difficulties and those are not resolved through intervention, that child starts school with a disadvantage. There is very strong research evidence for that. Then difficulty at school puts the child at risk of developing behavioural problems. Again, a very strong link is established between the development of behavioural problems and having difficulty with communication at school, particularly for children who have difficulty with comprehension. It is much more difficult for non-specialists to recognise comprehension difficulties than expressive difficulties, which are much more obvious. The child will possibly be developing behavioural problems, struggling and not making progress at school. They are then hugely at risk in the transition to secondary school, which we know is stressful even for children who are doing well. There are far fewer support services at that stage. Once children are failing and dropping out—and perhaps not always at school—they become at risk of involvement in activities they should not be involved in. If you look at children not making the transition to secondary school, many more of those have communication difficulties; if you look at children who are not in education, training or work,

about 50% have communication difficulties; and, if you look in the criminal justice system, it is 60% to 65%. It is a compounding risk model.

Q183 Mr Buckland: So the answer to the compounding risk problem is the well-worn phrase “early intervention on a health basis”.

Professor Bryan: Yes.

Q184 Mr Buckland: At a very early stage in the child's life.

Professor Bryan: Absolutely. That is clearly the best stage, because you prevent those risks from compounding. There is probably another opportunity around age nine when children are preparing for transition to secondary school. Teachers will often say in retrospect that they could identify the children who would find that transition hard, but somehow we do not seem to offer intervention at that stage.

Q185 Mr Buckland: Dealing with the criminal justice system and the way in which young offenders are assessed at the moment, the ASSET tool, to use the acronym, is currently being reviewed by the Youth Justice Board. Looking at that briefly, do you think it is working as an effective way of identifying speech, communication and language needs?

Professor Bryan: No, it is not, and the Youth Justice Board have acknowledged that. Essentially, it does not explore whether the young person has a communication difficulty. In addition, the ASSET is very long and detailed and requires the young person to answer a lot of quite complex questions. If they have even a mild communication difficulty, possibly they are not understanding questions, or they are not able to give the information they need to give. Therefore, it is not a very effective tool on both counts.

Q186 Mr Buckland: Is the Royal College being consulted by the YJB as part of their revision and consultation on ASSET?

Professor Bryan: There is a very extensive piece of work to develop a new tool, which has been called the CHAT. The Royal College and myself are involved. As ever with these things, our advice is not always taken, but there is a balance. What concerns me most about the new tool is that it is still verbally mediated, meaning that primarily a lot of questions are asked of

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the young person, and there is no pre-screen to identify children with communication difficulty. My argument is that for some of them, if you sorted that out first, slowing down and making the questions simpler, you probably could facilitate, and maybe for some it is not realistic for a youth justice worker to carry out that assessment.

Q187 Mr Buckland: You are telling us, are you not, that it is as fundamental as a young person not understanding what “guilty” means, for example?

Professor Bryan: Absolutely, yes. People either do not give information about their difficulties and problems or just agree that everything is fine, to get through a process that they do not really understand. It will then be much later in the sentence when their problems become more evident, for example when they are failing in an intervention, which is very negative for them but also a waste of resources.

Q188 Mr Buckland: Dealing generally with youth offending teams and the secure network—young offenders institutions—can you tell us what proportion of those organisations employ or have access to speech and language therapists?

Professor Bryan: There are 157 youth offending community services in England and Wales, of which 15 have access to speech and language therapy. There are 11 young offenders institutions, of which three have access to a service. In addition, it is important to register that many of those services are short-term projects, so they are not formally part of the staffing of the establishment.

Q189 Mr Buckland: In an ideal world we would have SLTs everywhere, but we do not live in an ideal world. How do you see the role of SLTs in spreading that awareness and understanding among other members of staff—for example in a YOT? Do you think that is an important aspect of the work?

Professor Bryan: I think it is. You can almost look at a three-tier model. For children with milder difficulties, it is possible to train up the staff who are called to that service, work in it and can adjust their interaction, and probably those young people can manage. There is a middle tier where staff will need more training. You may be looking at training up some of the core staff. Perhaps people involved in special education would be a good example. There are some very positive projects around that. Those people would have more knowledge, would know when to call in the speech and language therapist and would be able to support their colleagues. If you like, the top third of the triangle would be children perhaps with very complex problems and underlying neurological conditions—Asperger’s syndrome, autistic spectrum and so on—where much more specialist input would be needed, ending up, hopefully, with a programme that the middle tier of staff could continue with and a speech and language therapist could monitor. Essentially, it is a consultancy model.

What the research has shown is that the consultancy model’s training and support work very well, but they are not acceptable to the staff in young offender institutions or youth offending services unless there is

some back-up for them. If you make them aware of the problems and how to deal with them and work with the speech and language therapists, and then withdraw it, you undermine the efforts of those staff to manage these young people.

Q190 Steve Brine: I am advised to say that I am married to a member of the Royal College. You say in your evidence that up to 55% of children in deprived areas experience difficulties at age five. You said earlier that that is where it starts and it compounds from there. In Parliament Mr Buckland and I have entertained Gareth Gates, who has given us some very powerful evidence about his stammer and how that affected him from very early on. I want to take you way back before the criminal justice system to age five, and even before. Can you give us more solid examples as to what are the exact communication difficulties that start to go wrong? What are the most common traits that you start to see, and why is it that the most deprived areas send children to primary school with those problems?

Professor Bryan: If you look at the research on the very early stages of speech development, a child in a middle-class home, for want of a better expression, will hear 2,000 words a day. A child in a home where there is not so much happening and people do not talk, argue, discuss and negotiate will hear far less vocabulary. Any child that is not having a rich childhood experience is at risk. It is perfectly possible that a child in a home where there is a lot going on with a lot of resources, such as books and the right type of toys, could still develop a language delay. That affects approximately 10% of all children, but it rises to 50% to 55% in more deprived areas.

Access to intervention may be more difficult for families who do not have resources—taking a child to clinic, accessing nursery provision and that sort of thing—so the hard-to-reach families will be more at risk.

Q191 Steve Brine: But they have access to Sure Start, or they certainly did in recent years.

Professor Bryan: They should do, yes.

Q192 Steve Brine: What can we do about access to rich language at the early stage of development?

Professor Bryan: For example, I am currently researching an evaluation of a baby talk scheme in Portsmouth where speech and language therapists are very active in identifying families who could be at risk, making one-to-one visits, discussing with those parents how to support their children and ensuring that all of the suggestions are very low cost. Families can register for book schemes with the local library, making sure that they are not giving people advice that requires extra resources.

Another thing to remember about small children with speech and language difficulty is that they do not have one problem. Some of them will have a delay, which a good nursery and some speech and language therapy intervention could remediate. Some will have a more complex delay. We talk about their phonology, which is the learning of the sound structure being deviant, so it is not just delayed; something is going wrong.

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Then there are children with conditions loosely called specific language impairment. The child has an underlying neurological problem that causes great difficulty processing language. Those are the children in particular who have problems with understanding. There could be children with hearing loss which will affect the development of language, and also specific conditions: autistic spectrum, learning difficulties and so on.

Chair: I am afraid we need to move on; otherwise, we will not cover the other topics.

Professor Bryan: It is a very complex picture at that stage.

Q193 Mr Llwyd: May I move to child defendants in court? In the case of SC v. UK in 2005 the European Court of Human Rights held that an 11-year-old was unable to participate in his own trial in the Crown court because, perhaps obviously, a child of that age would generally have impairments in adjudicative competence—in other words, the ability to help in his own defence and also to comprehend legal terms. What are the implications of that case for the way children and young people are tried in court? How do you think the courts have responded to that judgment?

Sue Berelowitz: I would just like to add that that child also had learning difficulties, so that compounded things. That is linked very much to what Professor Bryan has just been saying, in a sense, in terms of children's competency and capacity. The issue there was whether that child had the capacity to participate in that trial. As for the implications, clearly special measures are available: the use of intermediaries and so on.

I was at a conference about children and the law on Saturday at which very senior judges, including a High Court judge, said that being able to take off your wig was simply not enough in making a court understandable and available to the child. I do not think we have gone far enough on that in terms of both child witnesses and child defendants, so there is quite a lot more to be done. What we would like to see is greater use of other types of disposals, because clearly this child is not on his own. For him it was compounded by his learning difficulties, but there are very serious questions to be asked as to whether any child of that age could fully comprehend what is going on in a court. It is not just what happens in the court arena; it is everything that happens from the point of arrest—interrogation, for example, and being held on remand—as well as having the capacity to instruct solicitors. Intermediaries simply translate the language, in a sense; it is not really their task to help the child understand the process of what is going on. If the child has learning difficulties, they may not even understand what the intermediary is saying to them, and the intermediary may not be interpreting correctly for the child, so there are lots of complex issues around this.

We would like better use of restorative justice, and potentially specialist tribunals being available for very young children—and for older children who lack capacity, because this is not just about age but about capacity—and more use of community alternatives, so that a more welfare-based approach is taken. It goes

back to the question asked about the assessment of children. The ASSET was referred to. We need to have a much better system of determining whether children who are alleged to have committed crimes really understand the process they are entering into, and all the consequences. It is not simply about whether a child understands the difference between right and wrong. In my experience, very little children—even two-year-olds—understand it is wrong to hit another child, but do they understand the consequences, both of what they have done and of what might arise from that?

In relation to SC, one of the most poignant aspects was that at the end of the trial he expected to go home to his foster parents. He simply did not understand that the consequence would be that he would be in custody. Consequences are important all the way down the line in terms of children's understanding. They are really not fit to plead if they do not understand that the consequence of pleading guilty is loss of liberty.

Q194 Mr Llwyd: Of course, if an adult is not fit to plead there is a court procedure which is followed very strictly.

Sue Berelowitz: Yes.

Q195 Mr Llwyd: Can I press you on the intermediary aspect? You said you had been to a conference. My understanding is that the procedure is very much ad hoc, because section 104 of the Coroners and Justice Act 2009, which would have introduced the routine use of intermediaries in this sort of scenario, has yet to be implemented.

Sue Berelowitz: My understanding is that it has been implemented. I apologise if I am wrong about that. I am not speaking as a lawyer.

Professor Bryan: I do have some involvement with the intermediary scheme.

Sue Berelowitz: It is mainly speech and language therapists who occupy that role.

Professor Bryan: Registered intermediaries are available to witnesses and victims. Children under 17 and those with a whole range of difficulties would qualify, but the use of intermediaries is not routine. You have to make a case to the court that the judge has to accept. Currently, across England and Wales there are only about 120 cases a month that involve a registered intermediary. Registered intermediaries are not available to defendants. That has been agreed in law, but the law has not been implemented. There is some work going on around that now.

Q196 Mr Llwyd: That is the provision I refer to.

Professor Bryan: It is not implemented.

Sue Berelowitz: I understand there is an open question as to whether a child could itself instruct an intermediary.

Professor Bryan: No.

Sue Berelowitz: My question was then going to be whether a child could get legal aid for that, but Professor Bryan says no.

Professor Bryan: It has to be agreed with the court, and the judge in particular has to agree. There have been a small number of cases where, although the

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police have seen the need for an intermediary, the judge has not allowed an intermediary to take part.

Q197 Mr Llwyd: I suppose what I am saying is that it is high time that section was brought into force.

Professor Bryan: Yes.

Sue Berelowitz: But I would reinforce that intermediaries only enhance fairness to a certain extent, because the child may not understand. Clearly, speech and language therapists are in a very good position to do this, but the issue is: does the child really understand what the intermediary is saying? Is the child fit to plead and instruct lawyers? My understanding is that it is not the intermediary's responsibility to assist the child with instructing the lawyers. We still have serious issues around fairness.

Q198 Mr Llwyd: Presumably, if the intermediaries are registered, they will be experienced in doing that work and, hopefully, will be able at least to assist a child to understand as far as possible what is going on.

Sue Berelowitz: As far as possible.

Professor Bryan: Yes, and in some cases the intermediary should be involved at the stage where evidence is being gathered, so some intermediaries will be confirming that the child does not have capacity or the necessary language skills, even with the support of an intermediary, to manage a court process.

Q199 Mr Llwyd: This is a question for you, Professor, but others may join in if they wish. How are children with speech and language needs currently supported in court? Where would you like to see improvements made?

Professor Bryan: Their support is ad hoc. They may be supported with an advocate around the process generally. If there has been agreement to use a registered intermediary, their ability to give evidence, understand questions and relay information may be supported by an intermediary, but there are only about 120 cases a month and not all of them will reach court. They are being used for only a very small minority of children with the most obvious problems; they are not being used in the way originally envisaged.

Sue Berelowitz: We are publishing a report this Friday on levels of neuro-disability among children in the criminal justice system. In terms of additional needs, other than speech and language difficulties—though of course there may be co-morbidity—we are talking about 23% to 32% of all children in custody having learning difficulties, as opposed to 2.4% in the general population. In terms of specific reading difficulties, such as dyslexia, it is 43% to 57% as opposed to 10% in the general population. I could go on to foetal alcohol syndrome and so on. We are talking about children many of whom have speech and language difficulties compounded by other very significant neuro-developmental difficulties. Growing up in dysfunctional households means that is further compounded. There are children with poor boundaries, and so on.

Chair: We look forward to seeing that report.

Q200 Nick de Bois: Moving on to our response to youth offending, I have a question to you, Ms Berelowitz. Some commentators appear to argue for the raising of the age of criminal responsibility. Equally, it is fair to suggest that age may be less important than the overall approach to young offenders. My question is: is the overall approach to young offenders really the crucial factor in your opinion?

Sue Berelowitz: The short answer to that is yes. Of course, we can all discuss the issue of raising the age of criminal responsibility. There are very clear standards set out by the UN Committee on the Rights of the Child where they expect it to be at least 12, but the really critical issue is capacity and competence. It is not just about age: older children—14, 15 and 16-year-olds—lack capacity as well. We would very much like to see the whole system reformed to take account of capacity, because that is a critical issue.

Q201 Nick de Bois: If the alternative is a more welfare-based approach, is there any threat to due process for the defendant—for the child?

Sue Berelowitz: I do not think so. We are certainly in favour of children being helped to face up to the consequences of what they have done and to take responsibility for that. Whatever the method for dealing with children who commit sometimes very grave crimes, it is important that they are helped to do that and that, in terms of society, there is something that brings home to them—I cannot think of a better word than “punishment” at the moment—the gravity of what they have done, but how they are dealt with at the moment raises very serious questions about fairness in terms of the judicial process.

Q202 Chair: Perhaps I may explain where we come from on that point. We were recently in Denmark and Norway. There are many impressive features of their welfare-based systems, but one thing that struck us quite forcibly was the problem of a child or young person who says, “I didn't do it. These people keep telling me that I did this, and I did not do it.” The welfare-based system says, “Never mind that; you need this, or you need that.” That seemed to us to be a challenge.

Sue Berelowitz: That is very interesting. I visit children's prisons on a very regular basis and speak to a lot of children in prison of all kinds of ages. A child may think that they have not done it—and of course, there may not have been a fair trial. If we can leave that aside, and hope—

Q203 Chair: I do not think you can leave that aside entirely.

Sue Berelowitz: Yes, but by and large, as we have heard already and as I see every time I go to a prison, all those children have lived very difficult and troubled lives, so most of them need a great deal of help. It is a huge tragedy that sometimes they have to enter some of our prisons, where they get that. I was talking to a boy the other day who had had a very good experience in his STC, including now finally getting engaged in education, getting GCSEs and so on. I said to him, “If you had had this before, would

you have ended up here?" He said, "No, I don't think I would." There are children who sometimes need high levels of containment in order to deal with the terrible things that have happened to them in their early childhood. Unless you have that containment, they will not be in a position to use the therapy that is on offer. Most of our children's prisons do not offer therapy but you can get that in a secure children's home. It is a difficult area. If a child is saying that they have not done something, they may still need to have that level of containment, but I think we should be taking a much more welfare-based approach. I have never met a child in prison who has not had multiple bereavements and extremely traumatic early childhood experiences, not always very well dealt with. One boy I met recently was telling me how many foster placements he had been in. He stopped counting at 25. He smiled at me ruefully and said, "I'll stop there." If we deal with these children better in the community, we will be in a better position in terms of them not necessarily committing offences in the first place.

Q204 Nick de Bois: To go off at a slight tangent, if we effectively have what you have described as a very disturbed child, how can we rely on the quite daunting process of, for example, restorative justice, or call-ins where people are confronted with the victim? How can we be comfortable that that message is going to get through as well?

Sue Berelowitz: It is not right for every child, and it is certainly not necessarily right at the beginning. A lot of work has to happen both for the victim and the offender before restorative justice can be put in place. If you just put the two parties together without that happening, that would be a recipe for potential disaster for both sides. Restorative justice needs to be part of the menu. When it is the right thing to do, people need to assess at what point it is right to do that, and both parties need to be certain that they are prepared and able to engage in the process. Then we come back to the issue of speech and language, understanding, cognitive capacity and so on. It is not right for every child, but it is part of the armoury.

Q205 Nick de Bois: I know that some countries—for example, New Zealand, I think—put a lot of emphasis on it. I would be concerned if it became a de facto default position, and you have articulated those points.

Professor Bryan: There is some research in Australia that children with speech and language difficulties find restorative justice processes very difficult. There are examples of a child who is embarrassed, not understanding and not able to say what they want, smiling inappropriately, and that being even more stressful for the victim or the victim's family.

Q206 Nick de Bois: Do you echo the call for more practical and better integration between the family proceedings court and the youth court?

Sue Berelowitz: That is a very interesting question.

Q207 Nick de Bois: If you do, I would be interested in how you think it can be achieved.

Sue Berelowitz: I have been checking this out. We are very interested. The Office of the Children's Commissioner is very interested in looking at this. I sit on the Family Justice Council and yesterday took the opportunity to check this out. The Family-Criminal Interface Committee, which is sponsored by the Ministry of Justice, is looking at this at the moment and it is due to report either at the end of 2012 or early in 2013. Alison Russell QC is drawing up new draft guidance for judges. My understanding is that this will be led by Mr Justice Ryder in terms of getting the guidance out to judges. What we are interested in—obviously, I need to see what this Committee will come up with—is that there should be the capacity for the youth justice court to refer a child to the family court. That is where I think the interface needs to take place. There are huge changes coming in the family justice system whereby there will be a single court. Magistrates who sit in both the youth justice and the family courts will all be coming together with district judges who sit in the family court. This is probably as good a time as there ever will be for looking at this and bringing some coherence to it, because these children need the support that will arise from the family court system.

Q208 Nick de Bois: But you would support that.

Sue Berelowitz: I want to look at the detail, but in principle I think that makes very good sense.

Q209 Jeremy Corbyn: What specific features of the transition to adulthood pilots have been successful and what have not been?

Debbie Pippard: If I may refresh your memories about the pilots, there are three working in different parts of the country with three slightly different groups of young people at different stages of the criminal justice process. I would highlight two aspects of them. One is a concentration on the developing maturity of the young person. Lots of things that the other witnesses were talking about have real echoes for this, because there is not a sudden cut-off between the under-18s and the over-18s; it is a transition. Those pilots looked at the maturity of the young person, working with the individual and identifying that person's own particular needs and developing a package of care or support that will address those needs. The other aspect was ensuring a smooth transition from youth to adult services. The recent joint report by the probation and prison inspectorates is very interesting and insightful on some of the things that go on in transitions.

In a bit more detail, the approach was tailored to individual needs, looking at the factors that support desistance from crime: employment, training, good health, wellbeing, accommodation and so on. They had very good results in all those areas. They were a complement to statutory services, so they ran alongside them. One of the useful things that came out of that was a separation between the sanctions and formal parts of an order and these other parts. Clearly, a very good member of staff can distinguish those two areas and work both on sanctions and in a more supportive way as well, but it was easier in the pilots to separate them out.

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The quality of the relationship was extremely important. So often these workers were acting as mentors or role models for the young people. It was clear from all the work we did and all the anecdotes we had from the young people involved that they looked up and respected their T2A workers very highly and looked to them for support.

The final thing was expertise in working with this age group. When you get to the adult services, people are working with a very large age range. The evidence seems to be that many probation officers are not given much training and support in understanding maturity or even child development, so some of them lack this area of expertise.

Q210 Jeremy Corbyn: Almost a quarter of all offences dealt with by magistrates courts are committed by those aged between 18 and 24. Clearly, that is wholly disproportionate to the age make-up of the population. Do you think that the arbitrary transition to adulthood at 18 should be looked at again? There is an assumption that miraculously on their 18th birthday the young person becomes an adult, whereas in reality social development, brain development, maturity and so on happen over a much longer and slower period. Should we have a different approach, certainly to the 18-plus and those in their early 20s?

Debbie Pippard: We would definitely advocate that. Best practice in other countries shows that it can be done, and it could be done here.

Q211 Jeremy Corbyn: Could you give me an example of best practice?

Debbie Pippard: Germany is the go-to model for this. Interestingly, they are looking at putting more people aged up to 21 through the juvenile justice process. Logic and experience show us that growing up is a process. 18 is a day for celebration, but it does not mean that people fully understand what it means to be an adult. I absolutely support what Sue says about people taking responsibility for their actions, but many young people who are entering the adult service need more support in understanding why what they have done is wrong and how they can be helped to go straight. Many of them need support with accommodation. They are people who will find it extremely difficult to go into education. They may not have had a good experience of training and education. Often they do not have stable housing. Putting some supportive services in place alongside the sanctions gives those young people opportunity to change their lives around, whereas just putting them into an adult service, expecting them suddenly to understand that they have got to be at probation at 9 o'clock in the morning for their appointment, will almost set them up to fail. One of the big success stories of the pilots was a reduction in breach rates. That is probably where some of the cost savings come from. If breach rates can be reduced, it saves an enormous amount of the time of probation statutory staff, which can then be put into some more productive things.

Professor Bryan: There is also very strong evidence emerging from brain studies of adolescence to suggest that particularly frontal lobe areas develop through to

early 20s. We know that at the stage from 16 through to early 20s—it is a little slower in boys than girls—the frontal lobe skills around organisation, reasoning, understanding cause and effect and the ability to prepare in advance to prevent yourself being put in a difficult situation are still developing in the adolescent brain. Again, there is not a sudden cut-off whereby the brain is fully functioning at 18. We know that that goes on until probably the early 20s. For some young people that process may be a little slower for various reasons.

Debbie Pippard: I want to pick up one point Sue made about a report being published on Friday. On Friday we also have a report being published by the same author about acquired brain injury. The proportion of young people in the custodial estate with acquired brain injury is astonishing. Up to 60% have got some level of brain injury. Mild injury can affect those very brain functions Karen was talking about which help you to think about the consequences of your actions, to plan ahead and to empathise with others. So all the things that increase people's propensity to commit crime, or prevent them from refraining from crime, are affected by brain injury. I have brought you a copy of the summary and will leave it for you today.

Q212 Jeremy Corbyn: Because we have the age of 18 for adult responsibility, obviously it has implications, in that anyone aged 18 or over who is sentenced to custody goes into an adult prison. Have you given any thought or consideration to extending the age of juvenile responsibility beyond 18, which would then impact on how the prison and justice systems operate? Have you done any studies to compare it with what happens in other countries?

Debbie Pippard: We are about to publish a report on best practice around young people in custody very shortly, so we can let you have a copy of that.

Q213 Jeremy Corbyn: When you say “young people”, what ages are you looking at?

Debbie Pippard: We are looking at 18 to 24-ish, but we do not want to replace one arbitrary cut-off with another. We see this as a stage of life. In the joint report by the probation and prison inspectorates on transitions there were some very helpful examples of porous boundaries. Some people were held within the juvenile system after their 18th birthday because their particular circumstances, plus their vulnerability, made it more suitable for them to be held in that service. Some porosity would be extremely helpful.

Sue Berelowitz: In terms of police custody suites, of course children are considered to have reached their majority at the age of 17, so that is another dimension to this.

Q214 Yasmin Qureshi: I want to explore the mental health needs of children, in particular the report published by the Office of the Children's Commissioner last year that looked into the mental health and emotional wellbeing of children in the youth justice system. It identified a number of different problems, the main one being the variation in the level of support and services provided throughout the country. It came up with some

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recommendations as well, one being that provision in custody should mirror provision in the community. Against that background, I want to ask Ms Berelowitz: is the variation in services for young people with mental health needs the result of under-identification or a lack of provision? Are you able to tell us what proportion of YOTs and secure institutions employ qualified staff?

Sue Berelowitz: First, it is a combination of both. There is both lack of identification and issues around culture and practice. That links to issues of quality of leadership, which were flagged up in that report very substantially. For example, on the rare occasions when you find speech and language therapists in children's prisons that is often to do with leadership where the governor or director of the prison has established a very good relationship with local commissioners. It means that they have been able to lever in additional support, whether on a short or long-term basis. It is a combination. Commissioners need to have the understanding that it is very important to provide children in custody with the services they need.

On your question about the number of qualified mental health staff across the secure estate, and in community provision—YOTs—it has been a difficult one to get an answer to. The YJB have delved into it, but it transpires that they do not actually collect the data, and it is not held centrally anywhere. I will tell you what we have got. On 30 June 2011 there were 278 YOT staff seconded from health. Not all of them were qualified; some were administrative staff. There is not a health secondee in every YOT: 21 YOTs had no health secondees at all. One—the Wessex YOT—had 17 health secondees, so there is disproportionality. I shall now go back to the issue about leadership, relationships and so on, particularly with commissioners. 151 YOTs had a child and adolescent mental health worker, and of those, 89 also had facilities to deal with physical as well as mental health, but nobody was sure whether it was the same worker who was picking up physical and mental health. Therefore, again there are questions about qualifications. Six YOTs appear to have no health workers at all, and a further 62 have only a CAMHS worker, so they have nobody dealing with issues around physical health, which for these children are very substantial.

In relation to the secure estate, data is not collected. There was a question about what is meant by “qualified”. It transpires that the YJB specifies that mental health workers should be what they call first-level trained, which means that they simply have a degree but not necessarily a mental health qualification. In the investigation that culminated in the report you have seen, in one prison I found a large mental health team. There were five in a YOI. They were all adult qualified mental health practitioners, but not one of them was qualified as a children's mental health practitioner, and they were applying adult assessment tools to the children. So the issue of qualification is quite an interesting one. I am happy to say that that has been acted on; they have all gone, and now there are qualified children's mental health practitioners in that prison. But there was a mixture across the secure estate of CAMHS nurses, general

nurses, CPNs and so on, not necessarily all in the right place at the right time. There may not be anybody with a mental health qualification present at the screening process, which is terribly important. In terms of secure training centres and secure children's homes, nobody really knows the situation.

Q215 Yasmin Qureshi: Is it the case that maybe the reasons for the way vulnerable young offenders are treated in the criminal justice system stem not so much from under-resourcing, or even culture, but from not identifying the right people for the process to help the youngsters?

Sue Berelowitz: It is a combination of factors. We are in a slightly uncertain world now with the changes to the NHS. Children's health provision will come through the national Commissioning Board rather than local clinical commissioning groups, which I hope will ensure some consistency across the secure estate, but let us hope it is consistency at a high level. Minimum standards should be set for what children in the secure estate need in terms of both their physical and their mental health. Both are very important and there is an interrelationship between the two. One of the paediatricians who accompanied me on my visits when I was doing the work on that investigation felt that all children in the secure estate should have a paediatric assessment because of concerns about other types of disorders that had not been picked up—hence our investigation into neuro-disability among children in the criminal justice system.

Q216 Yasmin Qureshi: Do you think there are services in place to help the transition process for young offenders as they move into adulthood—or what further do you think could be done?

Sue Berelowitz: I will be very brief, and then pass the question on to Ms Pippard. I do not visit 18 to 24-year-olds; I stop at the 18-year-olds—but from the anxieties that children share with me about their transition, when they are moving on to an adult prison, it is quite clear that much more needs to be done to support them. There are acute anxieties. With boys sometimes you get a lot of bravado, but underneath that is a lot of anxiety. The girls articulate that anxiety to a much greater degree. It is certainly there, and I would have thought much more needs to be done.

Debbie Pippard: Three things need to be done, and one is preparation. As Sue says, it is bound to be a fantastically anxious time, whether people are in the community or in custody. Then there is paperwork and transfer arrangements that need to happen; and then follow-up once people are in the adult estate. You used the word “services”, and there is no reason to think that we need to set up a whole new different thing. Our Birmingham pilot showed that within available resources you could set up a much better service, and that was taken up and very much used as a model by the YJB's recent transition framework, which we welcome and look forward to being rolled out. You need to prepare the young person and have some sort of handover. They have set up a very good protocol. Then there is the kind of transition services and additional support as people become adults in adult services, which can be tapered off as they grow

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up and learn to develop independent lives. The model created within our Birmingham pilot is sufficiently compelling for the whole of Staffordshire and West Midlands probation services to be reorganised around this transition age. They are rolling that out in the biggest probation service in the country.

Chair: Thank you very much all three of you. You have given us concentrated but very valuable evidence, and we much appreciate it.

Examination of Witnesses

Witnesses: **Hugh Thornbery**, Director of Business Development, Action for Children, **Ian Langley**, Strategic Lead, Supporting Troubled Families Programme, Hampshire County Council, **Clare Hobbs**, Manager, Wessex Dance Academy, and **Dr Becky Morland**, Consultant Counselling Psychologist and Senior Manager of Health and Family Intervention Team, Peterborough Youth Offending Service, gave evidence.

Chair: We welcome our four witnesses, who the Chair cannot see very well because of the otherwise welcome sunshine. I trust that I have in front of me Clare Hobbs from Wessex Dance Academy; Ian Langley from the Troubled Families Programme at Hampshire County Council; Dr Becky Morland, consultant counselling psychologist at Peterborough Youth Offending Team; and Hugh Thornbery, director of business development at Action for Children. We are very grateful to you for coming to help us this morning. I ask Nick de Bois to open the questioning.

Q217 Nick de Bois: Dr Morland, perhaps I may turn to you. I would like to talk briefly about multi-systemic therapy. I will get straight to the point because I know time is pressing. Can you give me your assessment of what proportion of a typical youth offender team cohort would be eligible for and benefit from MST? I would also be interested in how many parents buy into that.

Dr Morland: There has to be parental buy-in to MST; otherwise it cannot go ahead. That would be for all cases. In a typical youth offending team anything up to about 50% of cases would be eligible to go forward for MST. Looking at the Peterborough figures, about 57% of the cases that have gone to MST have had an offending history.

Q218 Nick de Bois: In terms of early outcomes in Peterborough, what do they indicate about the effectiveness of MST? Are you in a position to be able to compare them with elsewhere? For the record, could you also tell me how long you have been practising this in Peterborough?

Dr Morland: MST started in Peterborough in August 2008 and I joined in March 2009. I have been the back-up supervisor for the MST team for that period of time. MST has over 30 years' history of evidence to show that it is effective for young people with antisocial behaviour and their offending.

Q219 Nick de Bois: That is 30 years' evidence based on what has been going on in America.

Dr Morland: Yes, and that has been transported. There are now studies to support implementation in England. It is a newer intervention in the UK. There is a lot of data from America on short and long-term outcomes. There is a Brandon Centre paper about implementation in London and the benefits in London. Taking Peterborough specifically, at the moment we

can say that overall there is a 60% reduction in reoffending rates following MST. At 12-month follow-ups, 78% of young people had not reoffended, and at 18 months 73% of young people had not reoffended following intervention, whereas before 57% were offending, and a lot of those who were not offending were at risk of offending as well.

Q220 Nick de Bois: I am sorry to interrupt, but we—or at least I—can get bamboozled by statistics very easily.

Dr Morland: We've got lots of statistics.

Q221 Nick de Bois: If I were to compare this with elsewhere outside Peterborough, am I right that reoffending rates in this particular age group are around 60%? Is that within a year? You are looking at between a year and 18 months.

Dr Morland: Yes; I think that is within a year.

Q222 Nick de Bois: How do those results compare with the results in the US that you are pointing to? These are results you have had in Peterborough, are they not?

Dr Morland: Yes. In the United States long-term outcomes show that arrest rates reduce between 25% and 70%.

Q223 Nick de Bois: What would you say is the reason behind the implicit success of your early results? Why is this more successful than other interventions?

Dr Morland: MST follows an analytical process that looks at all the factors that contribute to offending and reoffending. It looks at all the factors proven in research: the family; what happens in the home; what is happening with the schools and in the neighbourhood; it looks at peers and the individual factors of the child. In every single case all of those factors are analysed and intervened upon. There is also an intensive intervention. It is three to four sessions a week and 24 hours on call. The sessions are arranged around the family so they are flexible. It happens within the natural environment of the family and the young person, so all of the work is done in the home, school and community rather than bringing families into sessions in a clinic.

Q224 Nick de Bois: I know that groups like St Giles Trust work with other offenders. Who are the people

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you employ in this programme to work with offenders? What is their background and training?

Dr Morland: They are psychologists. A team can have three to four therapists, so they would usually be psychiatric nurses, ex-probation and social workers.

Q225 Nick de Bois: That is the make-up of the team, is it?

Dr Morland: Yes.

Q226 Mr Llwyd: Mr Thornbery, the results of the first cohort that went through the Youth Justice Board intensive fostering pilots were very positive, but then it appeared that reoffending rates rose to almost mirror those of comparable young offenders. Has this trend continued, and what would be your explanation or comment on it?

Hugh Thornbery: One of the things we did following the research that came out in 2010 was ramp up the post-programme support. There is now in place an after-care programme both for the young people when they finish the formal programme and for parents or carers. We are not party to any more detailed information about success and reconviction rates because that information is with the Youth Justice Board. Unfortunately, we do not have access to the longitudinal research there. What I can say is that our response to the disappointing long-term results has been to provide longer-term support for up to 12 weeks after the programme finishes. That is formally available. After the initial three months, we can then respond to requests from the youth offending team worker, the child's social worker or the parent or child themselves. That would normally be telephone support for that longer period of time, and that would be ongoing as long as it was required.

Q227 Mr Llwyd: For what proportion of young offenders do you think this scheme would be suitable?

Hugh Thornbery: The Youth Justice Board has said it would be for up to 150 young offenders a year. It is difficult to determine exactly. What we are clear about is that young people entering the programme have to agree. It will not work unless they fully agree, so they sign a contract to become involved. We would not take young people on to the programme who were convicted of sexual offences or had chronic long-term substance misuse—drug/alcohol problems—but otherwise, as an alternative to custody and subject to that agreement, we think most young people within the age range would be suitable for this.

Mr Llwyd: I think we saw a similar model in Denmark, did we not? It was quite an interesting model run on the same lines, which seems to be delivering there as well.

Q228 Steve Brine: Clare, members will have been able to see the notes about the Wessex Dance Academy and a little bit of what you are about. I have the benefit of having visited and seen you in situ. Clare, could you briefly give the Committee a sense of the dance involved here? Obviously, dance is a term that covers a wide variety of sins. Why is this not a jolly, but quite intensive dance?

Clare Hobbs: The dance we use at Wessex Dance Academy is contemporary. We use professional contemporary dance training over 12 weeks with young people. It is important they understand what type of dance it is. Often, when we go and speak to them they have no idea what contemporary dance is, but we reassure them that it is not street dance; it is not salsa; it is not what you see on "Strictly"; it is proper falling-over-slowly dancing that you see at Sadler's Wells.

We use contemporary dance based on a model Dance United created about eight years ago with its dance academy in Yorkshire. Contemporary dance requires extreme focus and stillness, and it is not what they are used to. They all arrive never having done it before, so it is not that one young person might have done a bit of street dancing. They all come from the same place; they have never done it before, and it is not something that we expect them to do. For the first three weeks we do only dance; that is all we do with them. They come and do class in the morning to learn some technique and then go on to create a 20-minute piece of choreography that is performed in front of an audience at the end of those three weeks.

What is very special about the academy—and what is very special for the people who come to see those young people, those people who have referred them—is that what they see on stage are young people standing very still in focus, performing gracefully, looking as they have never seen them before. They display a sense of commitment to the choreography that leaves their referrers, their teachers, their parents and their carers speechless. That is the magic of using contemporary dance with them.

Q229 Steve Brine: Why do you think the academy has achieved greater reductions in reoffending by young offenders—the figures are before the Committee—than other interventions? What is special?

Clare Hobbs: What is very special is that it is a very intensive programme over 12 weeks. Young people come for their breakfast at 9.30. They have lunch with us and leave at 4 o'clock. A lot of these young people have not been in school and are not engaging in anything, so this is a massive deal for them. This is what happens to them over those 12 weeks. On the whole, the young people we have—I hope I do not speak out of turn—are not getting up in the morning. Perhaps they are going to an appointment in the afternoon, and they are socialising late at night and into the early hours. Their whole routine is completely at odds with ours and with the demand for them to go to school. We nourish them with good food and wear them out. They have to wake up in the morning, so they get up. Then they go home and they are really exhausted. Rather than go out with their mates, they go to bed because either they ache or they know they have got to do a different class in the morning. We nourish all of them over time; we nourish their physicality, because their bodies are changing. We nourish them inside because we are feeding them proper food. We do not allow any food in, and we have wonderful lunches; we get them to eat lots of

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fruit, and we work with them on their bodies. We are physically changing them.

A simple point is that they are surrounded by lovely people for 12 weeks. We have lots of volunteers who come in and work with the young people on housing issues, serve up lunches and also do a qualification with them. They are surrounded and saturated for 12 weeks with positive things, and they are achieving. At the end of the 12 weeks they perform a 20-minute piece of performance—a piece that they have made themselves, and that we have brought somebody else in for. There are little steps along the way. It is a whole load of things, Steve, but it is just the whole nourishment of them.

Q230 Steve Brine: We will come on briefly to how they are chosen but, before we do that, can you expand on why the public performance is important? You say in the notes that they go to a public theatre and the families come and watch them do that.

Clare Hobbs: Often, these young people have not achieved very much in their lives. When they come they do not believe us when we say, “In three weeks you’re going to be performing in front of 400 people at the Theatre Royal in Winchester.” It is crucial that that takes place because it is not until they have that performance that they realise they can achieve, that they can do something. They do it in front of so many people who then see them completely differently. After that performance there is a shift in their belief in themselves and in us. They then believe us a little more; there is a little more trust. It is important that people see these young people. It is not just a sloppy piece of dance that they are putting on. This is programmed in our local theatre’s brochure three times a year; it is recognised as a wonderful piece of dance. It is important for the academy’s existence that people see the performance and the good these young people are doing, because it takes 45 minutes for them to see that.

Q231 Steve Brine: Mr Langley, with regard to choosing the participants, they are people who have offended, they are young people who are subject to court orders, and they are also looked-after children deemed to be at risk of offending. I am very interested. When we were on our travels in Europe we looked at taking people deemed to be at risk of offending, or maybe on the conveyor belt to offending. How on earth do you select people for this programme who are deemed to be at risk?

Ian Langley: May I just start by saying that I am seconded into my current role, but I am here as head of Hampshire’s youth offending team, so it is from that perspective that I am giving evidence rather than the troubled families aspect, although there are many overlaps. We have taken young people on licence straight out of custody. We have a local authority secure children’s home: Swanwick Lodge in Hampshire. We have taken young people who are still in the secure estate on day release. The youth offending team has quite an established youth crime prevention team, so a lot of the youngsters at the lower end that you are referring to are identified. There may be younger siblings of young adult

offenders that we can target as well. We also get lots of interest from pupil referral units. They are another key target audience.

It took some time to convince some of the professionals of the value of it, but, as Clare says, a lot of them have seen it for themselves. We are generally not short of referrals of young people to this programme. Essentially, they come in and Clare and her team will see each young person individually. It is a voluntary thing. It requires some commitment, but it also needs a lot of support, usually from professionals. We take from all over Hampshire, not just Winchester. We take young people from Gosport, which is a fair way away, so issues around travel and so on need to be sorted out and there is professional support regarding that.

It is not made a condition of anybody’s order or licence or whatever, but we find that if you have the professionals on board, believing in the value of it, they will identify the young people they think will be most suitable for this programme. There is no bar in terms of what they have done—offences and so on. We take everyone on their merits.

Q232 Yasmin Qureshi: Can I explore the vexed question of the cost of these things? Your organisations work with different types of programmes, and you probably have an idea of how much they cost. Perhaps I can just give you some facts and figures regarding most of the well-known forms of disposals for youngsters. A final warning costs between £200 and £1,200; a referral order is £2,000 to £4,000; a youth rehabilitation order is anything between £1,000 and £4,000; intensive supervision is between £7,000 and £8,000; a detention and training order is about £20,000 to £50,000; multi-systemic therapy costs about £7,000 to £9,000 per average intervention; intensive fostering over the course of a year is about £68,000; and for the Dance Academy it is about £2,000 for a young person.

Bearing in mind those official figures for the most common routine disposal of cases and interventions, how do some of the things you are involved with compare with these figures, and with like-for-like groups of offenders—groups of offenders in those areas similar to the ones that you deal with? How cost-effective are the new provisions that you work with compared with the official figures for these well-known disposals?

Dr Morland: The Brandon Centre’s research looked at the cost of MST. They found that the money spent on MST was saved in terms of the other professionals who were not involved at that time—and that money was saved again, based on the fact that reoffending was reduced over the next couple of years. So you spend no more in delivering it but you also save in the long term as well.

Hugh Thornbery: As you have rightly said, intensive fostering costs about £68,000 per nine-month programme. Research by the university of York in 2010 compared that with the cost of about £54,000 for an average custodial sentence of four months.

There is also an issue around how one compares the costs of different interventions. Intensive fostering captures the whole intervention: the foster placement

for the young person; the therapeutic interventions; the skills interventions; and work with family that hopefully enables things to be more stable if the young person returns home. The custody costs are just the incarceration costs; there are not all those other costs. There is a general difficulty here in comparing because in terms of the cost base you are not comparing like with like. Probably more work needs to be done on that.

If we think about reconviction rates and the fact that young people in intensive fostering are five times less likely to reoffend over time than those who went into custodial institutions, and also that the seriousness of reoffending is lower, we can begin to take account of the broader social costs. I think it is good value for money. I also think that, if some of these interventions were scaled up, you would see greater value for money, because there is a high cost in running a small-scale pilot intervention, as we have had with intensive fostering for a number of years. If it was scaled up and included others who could possibly go into it rather than into custody, we would see a rebalancing of the bald figures that are presented at the moment.

Ian Langley: The costs of the Dance Academy programme are now £4,500, not £2,500, because it is now a 12-week programme, whereas in previous years it was a three to four-week programme. Not all of that cost falls on the public purse. I have been in public service for quite a few years, and this is a unique partnership between the state sector—Hampshire County Council—and the private sector, for example, the Theatre Royal at Winchester. We make a small charge to come and see the performance, so that provides some revenue. There is also the involvement of Winchester university's dance school, which provides support, and Dance United has already been mentioned. It is a partnership. From the youth offending point of view I am used to working in partnerships, but in my experience that partnership is unique, and not all the cost falls on the public purse.

Clare Hobbs: I cannot add any more to that.

Dr Morland: The thing I did not say earlier is that MST also saves money in terms of placements in foster care, adoption and residential schools, which are all expensive placements. For a cost of £8,000 or £10,000 you could literally save hundreds of thousands of pounds in just one case, because the numbers who remain at home, out of custody and in mainstream schools are highly significant.

Q233 Yasmin Qureshi: Is it easy to work out and demonstrate the cost-effectiveness of interventions? Do you think the Youth Justice Board could do more to facilitate this process?

Hugh Thornbery: This is related to my last answer. It is difficult because we are comparing a range of different things. Going back to my example citing the cost of custody, there would be a capital cost if we had to build more custodial institutions because we needed a larger estate. The "capital costs" of intensive fostering are included in our unit costs, because there is a cost to recruiting a foster carer. A basic foster carer costs £12,000 and an intensive carer will cost even more.

The Youth Justice Board and their research partners need to do more to bottom out exactly what the real costs of each intervention are, and then one can do a like-for-like comparison. At the moment it is a bit like comparing apples with pears. From work Action for Children has done in other areas, looking at the social return on investment and so on, it is quite possible to do that. It is not a huge challenge, but it requires going beyond the basic comparisons that we have at the moment, which at times are misleading.

Dr Morland: I can't comment much on the Youth Justice Board, but MST is doing a lot of research in its own right anyway. The START research it is doing at the moment has amalgamated the data, and it will be presented quite soon. It has recruited over 680 families across nine MST sites. All that outcome data will be presented, so MST will do its own calculations and research.

Q234 Seema Malhotra: Thank you all for your contributions. It has been incredibly informative and has left me with a lot more questions about the possibilities. Clearly, this is a story that is still being written around intensive fostering and the benefits in reducing reoffending. In a sense, the focus can be on the positives—what is working well—but there will always be challenges in implementation. Some of those issues have been touched on: effective recruitment; perhaps engaging families and parents as well; and engaging those within the justice system and winning over their confidence in the possibilities. I am particularly interested to understand what challenges you faced in setting up the programme. Some of those will be ongoing. That may include funding challenges—certainly, funding was not available across the board—but there could be other issues in terms of finding the right young people, winning confidence and all that potentially helping, or not helping, the argument for roll-out.

Clare Hobbs: The recruitment that you mentioned is crucial for us. We are working with a very small number of young people in our cohorts. I mentioned earlier that it is a 12-week programme, but the most important time is day one of week 13, when they have left us. The recruitment process is crucial. The challenge we face is that people say, "Why dance? What is it about dance?" The only way we can demonstrate that is actually to do it with these young people.

Q235 Seema Malhotra: Can I clarify what you mean by "people"? Who are those people?

Clare Hobbs: In terms of recruitment, as Ian said earlier, it is about working with professionals, and about those professionals making the right referrals. It is important that they do not just say to the young person, "Oh, there's this dance project. You don't want to do that, do you?" but that they engage positively themselves and sell it to them. We can't speak to everybody. It is a matter of getting professionals who have worked within youth offending and social care teams to see that it is a plausible alternative, not just a poncy "dance" thing but something that carries some weight. People are sometimes very scared of things they do not know

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about. If it is an “arty” thing, they might think, “Oh, I’m not into the arts; I don’t really engage with this, so how can I engage this young person?”, but, as it is beginning to roll out, people see what it is and what it is doing.

Q236 Seema Malhotra: If I can just push the question back again, because anyone could be encompassed within the system, are you saying that there is a major issue about winning over the professionals in the justice system and that the resistance is at that point, rather than on the part of young people?

Clare Hobbs: Yes, definitely. Youth justice has in the past done a lot of work using the arts, but it has not been deep enough. This is an intensive programme that can demonstrate the benefits that it brings. The referring partners and the people who surround these young people are important, and there are often a lot of them. We keep in touch with them all the way through the 12-week programme and hand back to them. It is important that we provide a wrap-around service for the young people, so as they come towards the last six weeks of the project we are working very closely with them on an exit strategy. Because they have been involved in a very homely and supportive environment for 12 weeks, it is important that we hand them back to something that is equally supportive.

It is not just about getting the referrers to understand the positives in the young people doing the project; it is getting them to understand what they have achieved when they come out. A lot of our young people have gone back to a full timetable, when they have not been on a timetable before. It has been hard to work with pupil referral units, teachers and even some colleges, to get them to believe that the young person who did not do anything at the beginning of this project is capable of doing a full day by the end of it. It is a matter of getting those professionals to believe in it. It is not just getting the young people to do the project; it is catching them at the other end and scooping them on.

Ian Langley: Another journey we have been on is to get permanent premises. Clare has always been clear that these young people need to walk into a dance academy with good facilities, so they realise they are in a special place. It is not just anywhere; it is a place for dance and the arts, and it is different from going to school. It has taken us three years to secure a permanent home. Prior to that, rehearsals had to take place in village halls and community bases, which was not ideal, but since January we are now on our third cohort of young people who have gone through the full 12-week programme in a permanent venue in Winchester. We think that adds greatly to the programme.

As for the reoffending rates, at the moment it is too early to tell, but we think that in a year’s time they will drop even further, because we have gone from a three to four-week programme in temporary accommodation to a 12-week programme. We think that is of tremendous value—and we have achieved it despite the economic climate.

Q237 Seema Malhotra: Thinking about other parts of the wider system, are there any issues about relationships with local authorities?

Ian Langley: Obviously, I am a representative of the local authority, but I have to say that Hampshire County Council have been four-square behind this. One senior officer did say initially, “Well, I’m not too sure about this,” but has now completely turned round and is fully behind it—for exactly the reasons that Clare has given. Sometimes people think, “Well, why dance?”

Q238 Seema Malhotra: How important a factor is the support of the local authority in the success of the project?

Clare Hobbs: It is crucial. These young people are the corporate children of the local authority. Dance United, whose model we work with, also have an academy in London and in Bradford—I may have said that earlier. They go in as an arts organisation. In Wessex we are fortunate in that we are coming at it as a local authority, so those children are there. It has taken a very bold and courageous county council to listen to me tugging at their trousers for three years saying, “This is amazing.” They have been very bold and brave, and this is a tool that should be owned by every single person who has a case load of young people, for them to refer their young people to. It is theirs; it should belong to every professional within Hampshire who has young people who could benefit from it.

Ian Langley: We second a member of staff from the YOT to support each programme, as do children’s services. That has real benefits in terms of staff development. They work closely with these youngsters for 12 weeks. That has been another very important factor.

Q239 Chair: It is obvious that you are an enthusiast for dance and the role it can play, but could this not be applied through other things, like choral singing or anything else, that tries to concentrate collective effort?

Clare Hobbs: That is a really good question. I am passionate about young people, and I asked the same question when we started this. Why dance? What is very special about it is the stillness and the touching. We have seen Gareth Malone do various things. I am sure that if you set him up he could do something similar, but what is very special is not only the performance element but people’s confidence in their bodies and being able physically to relate to other people not in an abusive or aggressive way. That is crucial. Their bodies change throughout the 12 weeks, so physically they feel and look different. I am not saying that cannot be done in any other way; I am sure it can. I do not know how sustainable it would be over those 12 weeks. Maybe there could be another intervention that did not take so long; I don’t know. You can have tricks with dance and choreography; you can make young people look quite nice. I am not a singer, and I don’t know how many tricks there may be to make them sound like an amazing choir after three weeks.

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Q240 Chair: Television programmes are currently demonstrating that.

Clare Hobbs: Yes—with a lot of editing, I would imagine. My answer is that I do not know, but using dance and its physicality has had a great effect on the young people.

Q241 Chair: Do you have any disciplinary issues and problems to deal with?

Clare Hobbs: All the time. Please do not think this is an easy project to work on. We are expecting a huge amount from these young people. They have to take off their shoes and socks, their make-up and their jewellery. They are not used to behaving in a learning environment. We create with them an environment

where they learn. We have behavioural steps. They will get a verbal warning, a written warning, and then we will work up a behaviour contract. We do not keep them there because we need to get 20 people on the stage; they earn their place to stay there, and they have to behave. As Ian said, we have a professional space and we treat them like professionals. When they come in, whoever they are, they are not “a young offender”, “a child in care”, or “somebody from a secure unit”; they are—often, for example—“Kayleigh”. We see them as dancers and try to strip them of the other labels, so they begin to strip those from themselves when they leave. That is crucial.

Chair: Thank you very much indeed. We are grateful to all of you for the evidence you have given us this morning.

Tuesday 6 November 2012

Members present:

Sir Alan Beith (Chair)

Mr Robert Buckland
Jeremy Corbyn
Mr Elfyn Llwyd

Seema Malhotra
Yasmin Qureshi

Examination of Witnesses

Witnesses: **Nick Hardwick**, HM Chief Inspector of Prisons, **Juliet Lyon**, Director, Prison Reform Trust, and **Darren Coyne**, Projects and Development Worker, Care Leavers' Association, gave evidence.

Q242 Chair: Welcome. We are delighted to have your help this afternoon. Darren Coyne is a Projects and Development Worker from the Care Leavers' Association. Juliet Lyon, who is familiar to us, as we have met her in previous evidence, is Director of the Prison Reform Trust. Nick Hardwick is Her Majesty's Chief Inspector of Prisons and, in a very timely way, has issued quite a positive report on the prison in my constituency today.

Nick Hardwick: Timing is everything, Chairman.

Q243 Chair: It is very neat timing indeed. We are seeking your help in our youth justice inquiry. Perhaps I could start with Juliet Lyon. First of all, given that use of custody has fallen by 40% since 2008, do we need a statutory custody threshold?

Juliet Lyon: It is such a huge success to build on and one that could be so easily lost again. A unique set of factors came together in a very positive and a powerful way. The Home Office, for example, changed the police targets to allow police more discretion. There is the consistent work of the Youth Justice Board and the work of our Out of Trouble programme, which was uniquely funded by the Diana, Princess of Wales Memorial Fund for a five-year focus only on this aim—a programme that has just drawn to a close this year. Seeing fewer children in custody and fewer children entering the youth justice net in the first place is such a prize, because they are your adult population of the future. Having got that prize, every effort needs to be made to ensure that we maintain that drop, and thought must be given by Government as to how that can be achieved.

What are the levers that have to be put in place? An example would be maintaining the strength of the YJB and the work that is currently being conducted by the YOTs, bringing that up to the standard of the best, but also giving consideration to the ways in which the custody threshold could be altered to stop the most vulnerable children entering the system—in other words, the principle of prison reform, which is to reserve institutions for those who have committed the most serious and the most violent offences. In particular, the Committee might want to examine breach, for example, which accounts for a very high number of receptions for this age group. We believe that in some cases it is not justified. So there could be a restriction—a raising of the bar, if you like—in terms of access to custody, so that it would be for only those very few for whom that punishment is merited.

Q244 Chair: What about remand? There is to be a new remand framework. How is that going to work out in the youth justice area?

Juliet Lyon: We feel very positive about the new remand arrangements, with one or two caveats. One of the things we feel—and have felt all along—is that too often youth custody, or juvenile custody, has been used as a bit of a respite for beleaguered local authorities. It is an opportunity, for free, to abnegate responsibilities, at least for a while, for a challenging young person.

Q245 Chair: And get them off the estate, perhaps.

Juliet Lyon: Indeed. The remand changes will concentrate local authority minds because the devolution of the budget will require local authorities to meet costs.

There are one or two possible unintended consequences. An obvious one would be the differential costs for a local authority secure children's home, which would be well staffed with qualified people, and would probably be best placed—other than maybe specialist fostering, or supporting a family to maintain someone at home—to look after someone while they were waiting for a court hearing. A secure children's home is the most expensive, and I have the costs here.

Chair: We have some cost figures.

Juliet Lyon: You have the figures.

Q246 Chair: If you have any new or different ones, let us have them.

Juliet Lyon: I was just drawing the Committee's attention to the differential between £607 a night for a local authority children's home, compared with £173 for a young offenders institution. So there may be an unintended consequence that there will be a greater use of YOIs, which would be disappointing, because the staffing ratios would not allow for the kind of work that would be necessary.

The other thing that we are not clear about is quite how this new budgetary requirement will have an impact on some local authorities, because they are facing their own cuts. It is new and experimental at this stage, and I do not think anybody knows quite how they will respond to it.

Q247 Chair: Of course we have the example of Birmingham, which is apparently going to withdraw from the Youth Justice Reinvestment Pathfinder scheme. I presume you will be concerned about that.

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Juliet Lyon: Indeed we are. Birmingham has had its own difficulties, of course, following the riots, and because it is experiencing a high level of cuts. What we have tried to look at in relation to Birmingham is quite why it is withdrawing. As far as we can see, Birmingham has to make cuts overall of about £600 million over the next five years. The requirement that the pathfinder seems to place on Birmingham is not dissimilar to payment by results, in that there has to be preparedness on behalf of the local authority to carry quite a big financial risk and wait to see whether the results then merit the payment. That method of payment, that deferring of payment, may be a very hard burden for some local authorities to carry. We do not know whether that is why Birmingham withdrew, but it is likely to be one of the reasons.

Q248 Chair: One final question from me. Some of us went to Hindley young offenders institution and it was obvious to us what limitations there are in short custodial sentences in an institution like that. The things the institution is best capable of doing cannot readily be done over the short sentence time scale. Does it remain your view that short custodial sentences simply should not be used?

Juliet Lyon: It does, particularly when you look at the work in the community that is outperforming a short prison sentence by quite a margin, in terms of cutting reoffending. When we were engaged in the Out of Trouble programme, for example, we looked quite hard at the work that was being done in Northern Ireland on restorative justice, and the way in which restorative justice is an integrated part of the youth justice system there. The outcomes from the community measures that followed a restorative conference were encouraging, in terms of both the drop in youth crime and youth custody, and the very high level of victim satisfaction.

Chair: We hope to look at that shortly in Northern Ireland.

Q249 Jeremy Corbyn: Can I take you on now to the issue of deaths in custody and the use of restraint? You are obviously familiar with the report that has been produced but, just for the record, it examined deaths in custody. Since 1990, 33 under-18s have died: 29 deaths were self-inflicted, one was restraint related, one a homicide and two are awaiting inquests. My question to all of you is twofold. In 2007, the Government found that restraint was “intrinsically unsafe” and “profoundly damaging”. Are you satisfied with the guidelines on restraint at the present time, and do you think there ever should be a restraint policy? What do you feel about the conduct of inquiries into deaths in custody and the lessons that have or have not been learnt from it?

Chair: Do you want to start, Mr Hardwick?

Nick Hardwick: At the moment, the new restraint policy is still a matter of theory. We have not seen it put into practice yet. Where I do have a concern is about the use of pain compliance techniques on children. That does not just have an adverse consequence for the individual child; my concern is about what that does, if it is allowed, to the culture and ethos of the institution. Even if you can make a

case for it in an individual example, the damage to the establishment and the staff culture as a whole outweighs that. I am very concerned about that, and I am going to go and see some of the training and the techniques for myself.

The second thing that we welcome in the new policy is the emphasis on de-escalation. That too depends on the overall environment in the establishment. It is not simply a question of procedures when an incident happens, but also of how you get the staff concerned to behave in the right way when a young person perhaps is being very difficult, violent and abusive themselves. That is about more than what is written in a manual. It is about the leadership and culture of the particular establishment, and we still see too many places where it is not right, whatever the policies and procedures might say.

Juliet Lyon: I would like to endorse what the chief inspector has said. On a visit to a secure training centre—an STC—I found the children’s currency fascinating. They were using an acronym, “He’s been PCTed,” or, “I’ve been PCTed.” To begin with I did not know what they were talking about, but this was the acronym for “pain compliance techniques”. It was an ordinary part of the conversation over lunch. That cultural norm—that it is normal to use pain to control children—is something that few of us would tolerate in a family. Why we would tolerate it in the places where we have our most vulnerable children, I do not know. I find it vexing, given that an enormous amount of attention has been given to this issue over a long time—with some high-level and excellent involvement from, for example, the president of the Royal College of Psychiatrists—that we have not resolved the matter satisfactorily. It is difficult to see why we cannot focus more on creating a more therapeutic environment for our most vulnerable children who have to be detained, and why staff cannot be trained in de-escalation to the point that they see that as a normal approach, rather than what I have described, which is children saying that it’s normal for people to be placed in some kind of pain here—just normal. I find that unacceptable.

In relation to the other question about the “Fatally Flawed” report, overall there was a finding that in just 10 years, 200 young people have died. The smaller number was for the under-18s and the larger number was for those in the under 24-year-old range. The recommendations there are very clear. We do think that there is learning from those inquests. The terribly frustrating thing is that it is retrospective learning. A child dies and there is then an inquest—often very late in the day, something that we are hoping the Chief Coroner will be able to change. We want to see that learning applied. Often that learning indicates failures within the system, failures to respond to need and the increasing isolation of a child. Coupling that with the prospect of pain if the child does not comply, it presents a terribly depressing picture, and one we should be thoroughly ashamed of.

Darren Coyne: A young person in a secure children’s home, for example, may well have—in fact, they probably have—experienced abuse throughout their childhood and some quite traumatic experiences. If they then find themselves in an institution where they

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are threatened by similar kinds of abuse—that is the way they would perceive it as a young person, even if it was not intended that way—they will perceive it as pretty much a mirror image of what they have been taken from, and placed in that institution to be protected from. It seems absurd to use pain compliance and suggest that that is the way to go about controlling the behaviour of a child who is quite traumatised and going through many difficulties in their young life. If de-escalation can be a way to manage that, there are many questions to ask. There should be ways and means of controlling and working with troubled young people without having to use pain to bring about compliance.

Q250 Jeremy Corbyn: Would any of you go so far as to say that there should never be physical restraint?

Nick Hardwick: No. You may sometimes need to hold a child to prevent them from harming themselves or somebody else. Restraining a child may be necessary in some cases. Of course it is better to do de-escalation, but I would not rule out restraint in all circumstances. I would make a distinction. Pain compliance is where, rather than preventing a child from causing harm by holding them, you prevent a child from causing harm by bending their thumb back until the pain is such that they stop doing what they are doing. I do not think that is acceptable, but I do think it may sometimes be necessary to hold a child to prevent them from harming themselves or somebody else.

Q251 Jeremy Corbyn: Is that the equivalent of what would happen in a school, for example, where a child is behaving in an unacceptable or inappropriate way and the teacher would be allowed, in extremis, to restrain them but not pain them? Is that the kind of border you would draw?

Nick Hardwick: I am very clear that far more of these situations can be de-escalated than currently is the case. Quite often children are restrained because that is the quickest and simplest way, and they are restrained for the convenience of staff rather than in the interests of the child. So first of all, de-escalation must absolutely be the priority and any form of restraint should be absolutely the last resort. There may be some circumstances, in the last resort, in which it is necessary to physically prevent a child from harming themselves or others, but I do not believe it is ever acceptable to hurt them deliberately to do that.

Q252 Chair: We may be talking about a very strong young person who is six feet and four inches but legally a child, and a couple of staff members who also have to protect each other.

Nick Hardwick: Yes. In a sense, that is part of the risk. It may be necessary sometimes to hold the child to prevent them from doing harm. That is a difficult and dangerous thing in itself, which is why it should only ever be the last resort. But my concern about the way that we look at this is, in a sense, that there are very large thick manuals about how this is supposed to work in theory. From what I have seen in this and other roles, when faced with the kind of situation you

describe, where the staff member may be frightened or angry about what has been said or done, or may have been hurt in some way, people will use the techniques they are allowed to use, and if you allow them to use a pain compliance technique that is what they will slip into too quickly, I think. The simplest and clearest thing is to say “You can never do that”.

Juliet Lyon: I think there is a link, Sir Alan, with your earlier question about short prison sentences. A young person who is not known to the staff may arrive having had, often, a very difficult journey in a van—maybe they have been carried on that van for longer than even the adult men will have been, because both women’s prisons and YOIs tend not to lock out people—and without the information that is necessary for the staff to know that, for example, they are at risk of self-harm or suicide, or that they are very volatile. De-escalation, in part, is not just about training; it is about developing a professional relationship with a young person in a supportive staff team, so that you can count on your colleagues to support you. If you can develop that, you will have the confidence to work and head off trouble before it starts. It is a bit of a toxic mix if you have someone arriving in a state, not known to anyone, and—as you will see from the “Fatally Flawed” report—often without the information necessary to alert the staff to a high level of vulnerability. It is not surprising that that may end up with people taking a panic measure. That is no way to treat a child.

Q253 Yasmin Qureshi: Good afternoon. I want to explore the issues about looked after children. I think everybody knows that children in care and care leavers are over-represented in the prison population, despite the fact that they are less than 1% of the total population. A recent survey of 15 to 18-year-olds in custody showed that one in four of the boys and half of all the girls had been looked after or in the care system at one time or another. I know the Prison Reform Trust has argued for more support in children’s homes, especially in relation to criminalisation of behaviour within the care home, such as breaking a cup, which in a family context would never lead to a criminal prosecution. There has been a suggestion that there should be a national roll-out of the assumption against charging a looked-after child unless the seriousness of the offence merits it. With that background—of course, Her Majesty’s inspectorate of prisons has also looked at this, and you made some recommendations as to what should happen—can I ask, starting with Mr Hardwick: are you aware, or can you tell us, whether the Ministry of Justice and the Youth Justice Board have taken your findings on board about looked-after children?

Nick Hardwick: They have done one thing that we thought was very important. They have reinstated social work posts in YOIs. One of the critical problems and difficulties was that the staff in the YOI often did not know what a young person was entitled to, and the social worker who was responsible for that young person out in the community too often had the attitude “out of sight, out of mind, and we’ll pick it up when the boy comes out again”. So having a specialist post in a YOI, a person who can make that

link between what is happening in the establishment and the support that the young person is entitled to out in the community, is a good first step. We have seen, now that they are in place, the results of that in some inspections already, and they are positive.

The broader issue—we touched on this in our report—is that the Youth Justice Board has produced a kind of action plan of things that it is going to do about that. It is too early to say yet whether that has been put into practice. We still see significant problems in establishments and we will want to do a follow-up. We will give them a bit more time and then do a follow-up to look at the progress in detail. But it is still the case that children who have been looked after, who have been taken into care because of abuse or neglect, who have got into trouble and been taken into custody, are at the time they finish, when they have done their sentence, being dumped in bed and breakfast accommodation without the support they need to survive. If you take children who have been looked after, turf them out at 17 and put them in bed and breakfast accommodation, it is as good as giving them a return ticket. It is nonsensical that we should do that. Where the state—I feel strongly about this—has taken over the responsibility of a parent to look after a child, to neglect them in the way that sometimes happens is simply not acceptable. Despite our report, although some things have been done, too often we still see that happening. I saw that happening in inspections I went to this summer, and it is not acceptable.

Q254 Yasmin Qureshi: From what you are saying, you are disappointed, possibly, at the lack of progress, certainly by the Ministry of Justice and even the Youth Justice Board. You are saying that they may be talking about it but nothing is being done.

Nick Hardwick: Putting the social workers in is not a small thing. That is practical stuff on the ground that will make a difference. I do not dismiss that. That was the most important recommendation, so that is a practical step. But there is still more to be done. There are not that many of these children. It is 25% or 30% of that population, but that is not a huge number and it should not be beyond us to make sure that these children, who are our responsibility, when they leave custody, get the care and attention that a good parent would give them. But they are abandoned. That is what happens to them. They are abandoned.

Q255 Yasmin Qureshi: Can I ask about the prosecuting of young people in care and the concept of “unless the seriousness of the offence merits it”? I have two questions. Is the approach to deciding whether to charge them different from the one that is normally taken for under-18s? Secondly, where this has been tried out as a pilot, what has been the outcome in those areas?

Juliet Lyon: I can answer you in part, in so far as we have had recent conversations with the Magistrates’ Association, whose members, I know, are concerned about cases brought to court which they do not feel should have been brought to court because the offence did not warrant it. In a family home, the approach to kicking a door, dropping a plate or breaking a small

pane of glass might well be that the important thing was making sure something got mended and it did not happen again, whereas in a care home, either because of insurance claims or because of the way in which the home is run—I think there are concerns that the Children’s Minister is taking up in relation to the way children’s homes are run, the distance from home that children are held, and the kind of farming out of children in particular counties, which I am sure has been drawn to the Committee’s attention—such events seem to lead to cases that the Magistrates’ Association feel strongly should not be brought before their members.

We commissioned some work by the National Children’s Bureau, trying to explore the question “Is care a stepping stone to custody?”, given the disproportionality that you have referred to, and found that half the children interviewed by the NCB did not know who would be collecting them from custody. They had no idea whether anybody would, and if so, who that person would be.

Chair: We are going to move on to the discharge aspects in a moment, I think.

Q256 Yasmin Qureshi: I have one question to Mr Coyne. What do the people that you deal with who were in custody and are leaving it tell you about the level of support that they have received, if any?

Darren Coyne: I will reiterate what Nick said in terms of young people being abandoned in custody. I work with young people who explain to me that on entering custody, even though they are entitled to a professional visit from a social worker, they do not receive one. It is not until they come close to release that they are re-engaged, but by that stage it is too late. That person has spent time in custody worrying about how they are going to resettlement into the community. They are being told on the one hand, “You must do x, y and z when you get released,” in terms of toeing the line, but on the other hand they are living with the fact that they do not know how to toe the line because they’ve got nowhere to go. They do not know where they are going to go. Or even if they know where they are going to go, the best thing they are going to get is a bed and breakfast, a hostel or a completely unsuitable place which feeds them back into more deviant communities. They are quite easily led, because when they come back into the community they do not have support networks in place where they can look to role models, people they can turn to if they want support. In effect, they are abandoned in custody. I have met with young people who have told me that the first time their social worker or leaving care team worker knew they were in prison was when they came out and told them. That is wrong. I have met with leaving care team workers who have told me, “My young person’s gone to prison; I need to go and find them,” because they do not know whereabouts in the secure estate they are. If you do not know whereabouts your young person is within the secure estate, it begs the question, “How much of a relationship did you have with that young person before they were taken into custody?” and therefore, “How hard did you work in terms of preventing them from going into custody in the first instance?”

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We are talking a lot here about young people in custody. We have not talked a great deal about preventative work, although we touched a little bit on it in terms of the criminalisation of young people. I know that Greater Manchester police have done a pilot in Longsight on triage. A young person who comes from a children's home and goes to the police station would meet somebody—as you would in any hospital—who could determine whether they should be escalated into the criminal justice system, receive a conditional caution or be given a speaking to—something that diverts them away from the criminal justice system. If you have a young person who is traumatised, difficult to engage or has an affront to authority and you put them in a young offenders institution, how can you expect them, upon release, to say, “You know what? I’m going to toe the line, move on and put my life right”? They have no support in doing so. The relationship they have with authority—the police, the local authority and the secure estate—is one of “us and them”.

Q257 Yasmin Qureshi: Is this down to the fact that there is a breakdown, in the sense that the people who should be doing this work are not doing their job properly, or is it the fact there are not enough people out there to do so, and are there internal things that can be done to ensure that continuity is maintained?

Darren Coyne: For example, when a young person in care gets to the age of 15 and a half, there should be a pathway plan in place. That pathway plan should be where they move from social services to leaving care, and it should be about their transition. The Children (Leaving Care) Act exists for that to happen. I meet with lots of young people in custody who don't even know what a pathway plan is, never mind have one written. How can that pathway plan, if not written in the first place, be linked to a sentence plan which can then be linked to a release plan, which can then be linked to resettlement and support in the community? That is not happening. People are not doing their jobs properly in the first instance, in that the pathway plan—the initial assessment of that person's needs—is not even put in place at the very beginning. If that is not done to start with, how can we even think about resettlement?

Often—although I know we have social workers in young offenders institutions now—it is still the case that the secure estate is not aware of the legal status of care leavers when they come into custody in the first place. If a care leaver cannot be identified as they come into the secure estate, how can their needs be catered for? If the secure estate is not knowledgeable enough in terms of knowing what the rights and entitlements of young people are from the care system, how can they then go and advocate, with the local authority, to ensure that that connection is there? There is a complete disconnect. It is disjointed. The entire system is disjointed and young people are slipping through its nets.

Q258 Mr Llwyd: We have started on the area that I wanted to discuss, but I hope I will not ask similar questions. I will try and vary what I was going to say. We are aware, of course, of the Children (Leaving

Care) Act 2000, which should have facilitated an improvement of the current situation, but it does appear from evidence that we have—I am referring to the Care Leavers' Association evidence—that it is “often somewhat questionable with young care leavers” whether it is working, and that they are “slipping through the cracks”. The report to which my friend Jeremy referred earlier, “Fatally Flawed”, said that “if the needs of looked after children who end up in prison are often not met, the position for care leavers...is often worse”. I understand, Mr Coyne, that you have already begun to address the point, but we have received considerable evidence suggesting that local authorities perhaps are not discharging their duties towards care leavers under the Children Act. How widespread would you say this problem is and what impact do you think it has? I would also ask you what, if any, is the simple solution?

Darren Coyne: I can give you details from our experience. Research and understanding of this is not widespread, but from our experience, principally based in the north-west, for young people who have not received the support that they are entitled to, and are effectively abandoned, the effects to begin with are that they will be released into the community and become not just under-18s who have a social worker and fall into the relevant and eligible categories, but former relevant young people aged 18 to 21, who will equally be abandoned but who have even less support, and they will then end up back in custody and become adults. So there will be a ripple effect.

I do work in the adult secure estate as well, across the north-west, in HMP Manchester, Liverpool and Risley, and I meet with care leavers in their 40s and 50s who are still as close to their leaving care experience as a 17 or 18-year-old is, because that transition has not been taken care of.

Q259 Mr Llwyd: This is not new, of course, is it? I recall being on a Standing Committee dealing with the Legal Aid, Sentencing and Punishment of Offenders Bill where the Minister specifically admitted that there was a problem with the 18 to 21 age group, and that certain things should be done. Is it simply a resource issue, or what do you think it is?

Darren Coyne: It is a resource issue. If there is a budget which caters for children in care as well as care leavers and then that budget is reduced, the money has to be found from somewhere to be able to cater for younger people in the care system, so that gets taken from the people who would be catered for as care leavers. So there is less and less resource to provide for care leavers. Local authorities jump through hoop after hoop to try to come away from their financial responsibilities. I meet young people who did not qualify as care leavers because they came out of care just before they were 16 years old, and did not do the 13 weeks across their 16th birthday.

You talk about the Children (Leaving Care) Act. That legislation is supposed to be an enabler in terms of making sure that transition is catered for, but often legislation can act as a barrier to young people getting services that they are entitled to, because local authorities understand it enough to jump through the hoops, avoid it and work their way around it, but they

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do not seem to want to acknowledge it in terms of the provisions that young people are entitled to. Young people often are abandoned even before they get to the point of being a care leaver, let alone when they get into custody. Once they do get into custody and are sentenced they lose that LAC status as a section 20 young person, then they—

Q260 Chair: I am not entirely familiar with how this legislation works. Are you saying that because a young person has technically left care a short time before their 16th birthday—

Darren Coyne: They are not a care leaver, so they do not qualify for leaving care services. To qualify for leaving care services they must do 13 weeks, not necessarily consecutive, across their 16th birthday between the ages of 14 and 16. If they cannot qualify for that, they do not qualify for leaving care services. A 16 or 17-year-old would be put into the category of a relevant young person, and that entitles them to financial support as well as a PA—a personal adviser—and other types of support. When they turn 18 they become a former relevant young person. The financial support is no longer there from children's services, and they will go on to benefits instead. However, the support should still be there in terms of a PA, quite separate from their leaving care team worker, so that accommodation, education, training, planning and all the other things are taken care of. If those things are not taken care of to begin with and the person goes into custody, it is a case of "That person is okay, because they are in custody."

I meet with young people who have gone into custody at 18 and a half or 19 years old who are former relevant young people due to be released post-21, who are abandoned. And why? Because when they are 21, their case is closed, because the local authority no longer has an obligation. But the local authority has a statutory obligation to provide for them while they are former relevant young people in custody serving that two and a half years, never mind abandoning them and thinking, "They'll be 21 when they come out, so we don't have to worry about them." It is another box ticked, another case off the case load. That has to be about resources. It cannot be about a culture within local authorities of not wanting to work with them or support them, of not wanting to be that corporate parent. If the system is not providing the framework, the structure or the resources for them to be responsible corporate parents, how can we go about asking them to be?

Q261 Mr Llwyd: Yes. In your evidence you also say that care leavers are identified as a group and they can be "difficult to engage, failing to trust and commit to programmes leaving them further isolated" within the prison estate. Can you elaborate on that, in particular on "difficult to engage"?

Darren Coyne: Sure. I and my organisation come from a user-led perspective. That particular perspective has shown massive results in the work we have done over the last 18 months in the secure estate. However, when we speak to staff, prison officers and resettlement teams, they are the ones who are coming to us and saying, "We don't need to identify care

leavers from official documentation. We can simply identify them as the ones who will square up to the officers. They won't trust, they won't commit to programmes, and they're the ones who have more chance, a higher risk, of coming out of custody, reoffending and ending up back where we are." That is not us making that assessment of young people from the care system being more difficult to engage. That is the secure estate telling us that themselves.

Coming from a user-led perspective, we are able to work with them much further down the line than the secure estate is. The work that we are doing at the moment is to engage on that level, to then start to understand and unpack the issues as to how care might be related to offending, how support needs to be in place, and what advocacy services should be there to ensure that by the time the young person comes out we have the support of the secure estate in being able to engage them much further down that line. In the secure estate, if you are in a uniform and you walk into a room, there is that control. I know that should be there because it is the secure estate. However, there isn't an understanding, there is no knowledge, in the secure estate of the emotional needs of care leavers. There is loneliness and isolation. There are no visits, no family and no letters. There is a complete sense of abandonment. But the secure estate is not equipped with the knowledge and ability to be able to deal with that. That is why they come back with the assessment that "care leavers are the most difficult to engage, the ones that won't commit to our programmes, the ones we find most difficult in terms of resettlement, and the ones who face a higher risk of re-offending".

Q262 Mr Llwyd: Thank you very much. Ms Lyon, do you want to come in on that?

Juliet Lyon: It was putting me in mind of work I did a long time ago. When I was at the Trust for the Study of Adolescence we were training staff to work specifically with young people. This was a two-year applied research programme where we were asking both young prisoners and staff what made for a good staff member and what made for a less good staff member, and trying to develop a training programme that would equip staff to work not just generically with anyone in custody but specifically with young people.

One of the things that emerged—this was way back in the early 1990s—was that with a high number of young people in care, when staff were working in a way that seemed good, and making a good professional relationship, they were experiencing a rejection by those young people in care. It became completely obvious that for the young people in care, who felt very powerless, the only power they could exercise in a situation was to reject that relationship before—as they anticipated would happen, based on their prior experience—it fell apart on them. Those young people—I am sure this is still true today, sadly—had been moved from one place to another, had had so many broken relationships with adults who were charged with their care that by the time they came into custody where the better staff were doing their best to work with them professionally, those staff were quite often rejected out of hand because the

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young person did not want to have another relationship breakdown on their hands. That was a hard thing to get across to staff who were really trying to develop a set of professional skills that would equip them to work with the 15 to 20-year-olds.

Q263 Mr Llwyd: That does underline what the CLA had said—again, as relayed to you by the authorities—that failing to trust and commit is understandable, isn't it?

Juliet Lyon: Yes.

Q264 Mr Llwyd: Can I ask Mr Coyne one final question? Is it, in your experience, the case that care leavers are sometimes held for longer than they should be in custody by dint of the fact that there is no proper planning by local authorities for their release?

Darren Coyne: In terms of ROTL—release on temporary licence—I do some work in a YOI which is category D. People go to that category D YOI because they are coming towards the end of their sentence and are entitled to apply for ROTL. ROTL will include going out on town visits, work placements and home visits. If you are a young person in that establishment and you do not have family, you have nobody there to support you, how are you going to go on that town visit when you have no one to escort you? If you cannot get past that point, how are you then going to go on to a work placement? How are you going to have a family visit? You can't. So in terms of being able to go through ROTL, to get that early release and be able to benefit from all of that, you are pretty much excluded from it unless you can find someone somewhere to support you in that process.

We have already gone through the issues in terms of local authorities abandoning young people in custody. I have not met a leading care team worker yet who was quite happy to go out to a prison and escort a young person on a town visit. Even if they were, I am not sure the young person would want to go out on a town visit with a local authority worker in any event. So, yes, people are finding themselves stuck in custody longer because of their experience of the care system. That is compounded by the fact that there is the assessment of people from care as being the most trouble. Those two things working together are going to conspire to make sure that that person stays in custody even longer. On top of that, in terms of resettlement when they do get out into the community, the chances of coming back in are much greater than they are for other groups.

Nick Hardwick: Can I briefly add to that? A young person on a DTO might be eligible for early release, and that would depend both on their behaviour in the YOI and on whether they had somewhere settled to stay if they were released early. Because looked-after children are less likely to have somewhere settled to say, they are less likely to qualify for early release than a child who has not been looked after.

Q265 Mr Buckland: I want to develop some of the points, Mr Coyne, and come back to you on the resettlement issue. What is the one thing you think should be changed in terms of provision available to

care leavers on release? What is the one thing that you think is absolutely key to this?

Darren Coyne: Suitable accommodation. If you are going to put a young person in a bed and breakfast they are going to feel abandoned, because it doesn't feel homely; it is not a place that is theirs. If you are going to put them in a hostel, what are you putting them in a hostel for? A hostel is not going to teach them how to be free from institutions. If they have grown up through the care system, maybe they have a sense of institutionalisation. To then go into the secure estate does nothing to bring them out of that frame of mind, and to then move from the secure estate into a place which they cannot call their own is not going to do anything for their self-esteem and stability as an individual, or help them to find their place within society. That is what we are asking young people to do, is it not? We are asking them to find their place within society. How can we ask them to do that if we are going to put them in institutions where we can continue to control them beyond the gate, and not offer them the support in that housing to enable them to support a tenancy? It is okay saying, "Let's make sure that that support is there, housing is there and suitable accommodation is there," but managing a tenancy is not an easy thing, particularly for a young person who has been looked after by the state throughout their entire life and who is not entirely au fait with procedures and being able to control themselves, to get along with neighbours and fit into the community, and so on.

I think suitable accommodation has to be the No. 1 priority. On top of that, putting somebody in custody and spending as much money as we do giving them level 1 and level 2 in functional skills such as bricklaying and joinery, or whatever else, is nonsense if, when they come through the gate, you are not going to pick them up and make those skills functional in the community. Those certificates are no good in a black bag down the back of the sofa. You have to find a way of making the skills they get in prison functional in the community. Accommodation, employment, skills and training are massively important; they are the foundation of somebody being able to lead a successful independent life, and we owe it to them. The state owes it to them as their corporate parent, and should take responsibility for it.

Q266 Mr Buckland: Thank you, Mr Coyne. That leads on quite neatly into the question I want to ask Mr Hardwick about the report that was issued last year by Her Majesty's inspectorate of prisons, looking in particular at resettlement, accommodation, education and training. There were some very disturbing findings—depressing, frankly.

Nick Hardwick: Very disturbing and depressing.

Q267 Mr Buckland: What response have you had from Government to these findings thus far?

Nick Hardwick: We have had back a plan full of good intentions for what they will do about it and we will, as I say, do a thorough review to see what progress has actually been made. What we are seeing on our day-to-day inspections, our routine programme, is that there has not yet been sufficient progress.

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To add to what Darren said, what young people tell us when we inspect is that the key for them to stay out of trouble is to have a job or some kind of education to keep them occupied in the day. I think they are right to say that. What we know from the inspections is that the key to getting and holding down a job is having a place to live. When we did our own follow-up, in terms of the report you referred to, of what happened to young people when they left, none of the young people who did not have a secure and suitable place in which to stay held down a job or an education placement. So accommodation is key—but the critical word is “suitable”. When we dug into what was described as the “suitable accommodation” that young people were being put into, in one case it was a boy being put with his 16-year-old sister and her two children. In another case it was a boy being put back with his family, who did not want him, and there was serious offending going on in the family. In another case it was bed and breakfast. The boxes were being ticked so that they could say, “Look, we are getting our young people into suitable accommodation.” But when you turned over the stones and asked, “What does ‘suitable’ actually mean?” it was nowhere that you or I would put a child we were responsible for. So I would agree with Darren that the thing that unlocks everything else is accommodation. It does not mean that if you have settled accommodation everything else will turn out fine. It means that if you do not have that, nothing else will work.

It would help if YOIs or other establishments knew what the outcomes or results were for young people when they had left their establishment. Some of the debate around payment by results has confused payment and the results. Payment may or may not be a good thing, but as for knowing the results of someone’s stay in an establishment, surely an institution would want to know what happened to people for some time after they had left. You would expect a school to know what happened to most of its students after they left, so why shouldn’t a YOI? Given the costs of the individual place, surely they would want to know, “We did this with this young person. Did it work? How did they end up a month, or two months, after they had left?”

Q268 Chair: It is a view we have taken about the judiciary as well, about the magistrates.

Nick Hardwick: May I add to that point? Accommodation is key, and knowing what happens to people is key. It is very distinctive, I think, in the French system. I joined the French inspectors on an inspection and I thought it impressive the way the magistrates who had originally sentenced the child who ended up in a closed educational centre had a continuing interest in what the outcomes were for that child. So it was not just sentencing them. The boy would have to go back to the same magistrate who sentenced him to report on progress. The magistrate would be the person driving: “Are the plans that are in place for this boy real? Are they making progress?” It certainly galvanised the staff, and the young people seemed to me, as far as my French could cope with it, to feel that here was the system taking a proper interest in them. It seemed to work. That long-term

authoritative interest in what the outcomes were for this particular boy certainly worked in the French system. But even without that, you would think that a YOI resettlement team would want to know what had happened to the boys who left it a month down the line. That does not seem to me an unrealistic thing to expect them to do.

Q269 Mr Buckland: Recently, our Committee visited Hindley young offenders institution. There, an issue about changes to legislation on accommodation was raised as a potential problem for obtaining accommodation for young people. It was said that the legislation was going to encourage local authorities to look for alternatives to remand into youth detention. That is laudable and the right approach, but people were worried that there was a practical problem with all of this. Has any information reached your desk as to concerns about the reality of the situation?

Nick Hardwick: That is not something that we have inspected, because it hasn’t happened yet, so we haven’t seen it, but what has been said to us is that generally people think it is a good thing if local authorities are not remanding people but providing them with other accommodation. As I think has been said before, some people have anxieties about the unintended consequences of that: would that then be at the expense of arranging accommodation for a sentenced young person, for instance? We haven’t seen evidence that that is the case, but it is very important that those concerns are taken seriously and safeguards put in place to make sure that does not happen. But it is absurd—given the costs of keeping a young person in any type of custody, which Juliet was referring to—to then have a cliff edge when they leave because suitable accommodation is not in place for them. It seems to be folly in terms of the sensible use of resources, let alone the interests of the individual boy.

Q270 Mr Buckland: While I have you all here, I have a particular bugbear about detention and training orders and the artificial steps in terms of levels of sentencing—4, 6, 8, 10, 12 and 18—whereas the reality, from my experience of having visited YOIs and spoken to professionals, is that there is no distinction in practical reality between that and a sentence of detention in a young offenders institution. Would you agree with my view that the time has come to look again at the way in which we impose these levels of sentence? Should we reform the system of detention and training and be honest about what it is we are doing, and really look at a root-and-branch change to this artificial stepped approach that exists in sentencing at the moment?

Juliet Lyon: The early history in the introduction of the detention and training order was unfortunate, in that it was the first order that was introduced under the new youth justice system and it proved very attractive to magistrates because it appeared to offer a taste of custody followed by a supervised period of time in the community. Other orders were brought later into the suite of orders—reparation orders and so forth—which have proved effective. So it was overused, which in part accounted for a spike in

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custody when the plan for the youth justice system was for the very reverse. It has taken a long time to work it down again, to find a proper place for that particular order. I think this is probably something Nick could advise you on, in terms of the inspections that have taken place, but whether the supervision is adequate, and whether the second part of the sentence—which certainly in the early stages was not fully understood either by the families in court, who did not understand what the second part was about, and rather thought that the tariff was simply the time in custody—is now effectively used, I do not know. If I may, I will use this opportunity to underline the importance of provision for review. Many magistrates and judges would welcome the opportunity to know; as Nick believes, and I am sure he is right, young offenders institution staff should know what happens as a result of the period in custody. Many magistrates and judges would welcome the opportunity to know what happens as an outcome of the sentence they have passed. That would create a kind of virtuous loop, if you like—a virtuous circle, where that information could inform good sentencing practice and enable people who are worried about sentencing a vulnerable child to see what in their area works particularly well and where things have not worked so well. Despite the fact that we have talked about the reduction in youth custody, the level of reconvictions is so exceptionally high for that age group, and for the young adults, that not enough has yet been done. More needs to be done to address that very high reconviction rate.

Q271 Mr Buckland: It would not be unprecedented, because this is used by the courts with regard to drug treatment requirements—a monthly return to court or a less frequent return, for a progress check.

Juliet Lyon: Yes. When we worked with the Institute for Criminal Policy Research—ICPR—at Birkbeck and they did a survey called “The Decision to

Imprison”, it was one sentence, the DTTO, that judges and magistrates particularly commended. There was broad agreement about provision for a review and it does appear to work well, but only in regard to that one particular sentence.

Nick Hardwick: I would think so as well. I do think there is a problem with the very short sentences. We should not imagine that the short sentences do any good. In a well-run establishment, they may do less harm than others, but they certainly, as far as I can see, do not do good for a young person. May I say another word about my experience of the French system, which was not an in-depth study but was interesting to see? The fact that the boy and the worker—who was an “educateur”—had to go back to the magistrate to report on progress certainly galvanised them both. It was certainly the case that the worker was expecting to be asked what the plans were for this young person—“What do you have in place?”—and they were trying to make sure things were set up. And the young person too. That was a big motivator for his behaviour. There are other aspects of the system that did not work so well, but there was that ongoing connection.

There may be, in a sense, a slight risk in saying, “Let’s have a review of DTOs to see what else there might be.” Perhaps we should we should hang on to nurse for fear of finding something worse—but I do think that a more intelligent and sustained use by the original sentencer would certainly be worth looking at. We should not be naive about the consequences of very short sentences. As I say, in a well run establishment they may do less harm than others, but I have not seen examples of them actually doing a young person any good. They may be a punishment and keep them off the streets for a bit—serving as a short-term respite for the community, maybe.

Chair: We need to move on to further witnesses, so thank you very much. We are very grateful to you.

Examination of Witnesses

Witnesses: **Deborah Coles**, Co-Director, INQUEST, and **Carol Pounder**, mother of a 14-year-old boy who died in custody, gave evidence.

Q272 Chair: Deborah Coles and Carol Pounder, we welcome you to the Committee and very much appreciate your willingness to come and help us with our inquiry into the youth justice system. Deborah Coles, you are the Co-Director of INQUEST and, Ms Pounder, you are the mother of Adam Rickwood. Again, we do particularly appreciate your willingness to come and talk to us about your experience because, of course, you went through two inquests, the second of which you had to fight for, in order to get to the truth of what had happened. Going back to the beginning of it all, were you surprised that Adam was remanded to custody in the first place, given his background?

Carol Pounder: I was, yes. I was surprised that Adam was remanded to a secure training centre over a 200-mile round trip away from home.

Q273 Chair: Can you tell us a little more about the circumstances?

Carol Pounder: Adam had been accused of wounding. Prior to him being accused of wounding, I had had problems with Adam from when he was a small child. Adam suffered terribly from the loss of his grandparents, and other things. I had been to social services and to my own doctors on numerous occasions. I had been to the head of school and asked for help with Adam, and I just constantly got the door closed in my face. Every time I went to social services there was nobody available to speak to—“Come back next week.” It got to the stage where I demanded to speak to someone. They let me speak to someone. They didn’t know what to do with Adam—“All right, we’ll have a meeting next week.” That is all it ever was: “We’ll have a meeting next week.” I don’t know. Social services don’t help you as they should. When

Adam got into trouble—he had been accused of wounding—the court ordered secure remand. At the time of the court order for secure remand, there were no secure remand beds available. Adam was put into a privately run children's home only a few miles away from my house.

Q274 Chair: Where do you live?

Carol Pounder: Burnley, Lancashire.

Q275 Chair: Where was the centre he went to?

Carol Pounder: It was Haslingden, which is approximately 30 miles away from my house at the very most. That's a return journey. When Adam was in there, at first he was the only child there, and everything went well. The staff there understood Adam and spoke to him like a human being. They had great respect for Adam as he did for them. While Adam was there, a secure remand bed became available in County Durham, a 200 mile trip away from my home. A youth team worker phoned the staff up at the children's home where Adam was and told them that a bed had become available for Adam up at County Durham, and not to tell Adam where he was going. The staff wouldn't lie to Adam and told him where he had to go. At that time, Adam became scared and ran away. When he went back to court, then he got sent to County Durham.

Q276 Chair: We are going to come back to Adam's story a little further, but I want to ask Deborah Coles: how confident are you that the revision of ASSET will resolve issues about identifying vulnerability before sentencing?

Deborah Coles: Sadly, my experience of working on children's deaths in prison goes back to 1990 when a young boy, 15-year-old Philip Knight, died in Swansea prison. INQUEST has worked on most of the deaths since. I think that while ASSET can be an important tool in terms of identification, it is part of a much bigger picture. It is something that should be used in terms of recognising somebody's vulnerability, particularly their risk of self-harm and suicide. But it is one process in a much bigger one. It informs placement, but, from the experience of working on these cases, I think that too often very vulnerable children end up in secure training centres or in young offenders institutions. Since the death of Joseph Scholes, where there was particular concern about assessment of vulnerability and abilities of institutions to keep children safe, we have seen a dramatic reduction in the number of beds in local authority secure children's homes, which are, in our view, where children should end up.

There is a reliance on ASSET and indeed the ACCT system, which operates within young offenders institutions, and I think is manifestly not able to deal with the vulnerability of children. What we have to be asking is: should we be placing any vulnerable child in an institution that does not have the properly trained staff and resources to deal with the complex needs? In my view—I think it is very much backed up by the work that INQUEST did with the Prison Reform Trust on "Fatally Flawed", which builds on previous work that we did on child deaths—when you look at the

histories, the stories of those children who have died, you see a very worrying picture of vulnerability. All the children have had involvement with social services or with mental health services in some way or another. So we are talking about manifestly vulnerable children and, yes, we can have the best assessment tools that we like, but the reality is that if we put them in institutions that cannot keep them safe, that raises questions about what we are doing as a society to work with these children.

Q277 Chair: You mentioned keeping children safe. Is there any evidence that the judiciary sometimes put children into secure accommodation in the mistaken belief that it will be a safe thing for them?

Deborah Coles: I would say yes. I think the Joseph Scholes case is a particularly poignant example where a judge sentences somebody and says, "I want the authorities expressly put on notice that this individual is extremely vulnerable." But the reality of the situation that that boy—somebody with quite profound mental health problems—was going into was one of being kept in strict conditions in virtual isolation with no proper therapeutic support. As for the judiciary, it upsets me when I see that already this year, as you will be aware, a 15 and a 17-year-old have died—have taken their own lives—in young offenders institutions, and the big question that needs to be asked is: why on earth were they in prison in the first place? But, of course, that issue is outside the investigation and inquest process. So the question of fundamental concern to the families—and, I would argue, to society—would be: why are we imprisoning children in institutions in the mistaken belief that we can keep them safe, that we can work creatively to address the reasons why they have ended up in custody in the first place?

Q278 Mr Llwyd: Can I echo what the Chairman has said to you, Ms Pounder? It cannot be easy for you to come here to give evidence today, but suffice it to say that what you have got to say is extremely useful to us, hopefully to change things for the future.

Carol Pounder: Yes.

Q279 Mr Llwyd: I should also say that it is on the record that for many months you strove very hard to get appropriate support for Adam before his untimely death. How did the support that Adam received in custody compare with what you expected would be given to him at that time?

Carol Pounder: When your child goes into custody, you expect your child to be safe, be well looked after and receive the right mental health treatment he needs. Adam received none of it. He was put in what I call a prison. Adam was a little boy of 14. I had visited prisons, and when I saw Hassockfield secure training centre, where Adam was, it was the scariest place I have ever witnessed. There was nothing child-friendly whatsoever. In that place, none of the staff were fully qualified. None of them had proper training. Some of them came from working as builders and went to work with some of the world's most vulnerable children. Adam was vulnerable, but there were children more vulnerable than him. There are children there with

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serious mental health issues and they are locked up, imprisoned. If I had done to Adam what happened to him in that secure training centre, I would have been locked up. I would have been arrested by the police, charged and brought before the courts. They abused Adam. They caused him pain mentally and physically. If I'd done that, I would have been locked up. In a secure children's home that would not have happened. There is no reason to lock children up in prisons.

Q280 Mr Llwyd: Following that, as to Adam's behaviour, was he violent towards others, other people of his own age?

Carol Pounder: No. He had had issues, on the hate side, but he had never been done for violence towards other people of his own age, never ever.

Q281 Mr Llwyd: Thank you. Ms Coles, do you think that enhanced units within young offenders institutions can in fact deliver the kind of therapeutic environments and also interventions you recommend for young offenders in your report?

Deborah Coles: No, I do not. I feel very strongly that prison is not the right place for children. That is backed up by the work that I have done, that INQUEST has done, since 1990. I just see a pattern of the same issues repeating themselves time and again. One of the things I would urge the Committee to think about is the fact that it is astonishing, and very shocking, that despite the fact that 33 children have died in the custody of the state since 1990, there has never ever been any kind of public inquiry or independent review held. If we were just a little bit braver in exploring a new alternative way of dealing with children, for those who really are a serious risk to others, where people feel there is no alternative other than some kind of detention, then let us have a much more therapeutic response, rather than prison. So the answer to your question is no. There is also a danger in establishing such units because then the tendency is that the judiciary may be more inclined to use those rather than look at good alternatives in the community.

Q282 Mr Llwyd: Yes, but the fact still remains that young people are being placed in totally alien environments, and they should not be there without the necessary back-up to look after them. We found on a visit to Italy, for example, that the approach taken there is very different from what it seems to be over here.

Deborah Coles: Which is why I am still so set on us trying to have some kind of independent review or inquiry, so that we can talk to experts who know how to work with very troubled—and sometimes very troubling—children, get that expertise and think more creatively about how we do this. The point that Juliet raised about the high reconviction rates shows that the system is not working and children are still dying. That, for me, sets a real challenge to us as a society. Let's accept that it is not working and let's think about how we can do something differently which benefits everybody.

Q283 Mr Llwyd: Should that inquiry be jointly by the Department of Education and the MOD?

Deborah Coles: I think it should be any—

Mr Llwyd: The MoJ. I was talking about the MOD this morning. I have a one-track mind; sorry.

Deborah Coles: It has to be the broadest possible inquiry because, of course, this is not just a criminal justice issue. What the "Fatally Flawed" report highlights is the fact that this is a public health issue as well. So many of the children and young people we are talking about have vulnerabilities that stem from poor experiences of schools, school exclusions, mental health problems, and drug and alcohol problems. We need to have an inquiry that draws together all those agencies that have responsibility, but also all those people with expertise in working in those areas.

Mr Llwyd: Thank you.

Q284 Yasmin Qureshi: Can I first express my condolences to you, Ms Pounder, for the loss of your son and also commend you for the perseverance that you have shown in trying to get justice on your son's case? I want to ask you about two things: first the restraint issue, especially that which was used with your son, and then a question about your battle to get a second inquest for your son. What did the inquest conclude about the impact that the restraint techniques used against your son had on him?

Carol Pounder: The inquest concluded that it would have had a big impact on Adam's mental health; he would have felt frightened and vulnerable. They stated that the restraint on Adam played a big part in Adam taking his own life.

Q285 Yasmin Qureshi: Can I ask both of you whether, in your opinion, restraint can ever be safe, and whether it should ever be used? Are you satisfied with the revised restraint policy that the Government introduced this summer?

Deborah Coles: Can I say something about Carol, also recognising Pam, Gareth Myatt's mother? They both went through extremely protracted inquest processes. With Carol in particular, you will see it took six years before the truth finally came out. For me, that raised two things. First, there was recognition that thousands of vulnerable children had been systematically subjected to unlawful restraint and that none of the regulation or inspection bodies did anything about it. That is a most shocking indictment. As a result of the evidence that came out during the course of the inquests and also three judicial reviews and a Court of Appeal judgment, Mr Justice Blake accepted that what had been done to Adam was an assault on him, and also that it was inhuman and degrading treatment. It was a devastating reminder about the situation that Adam experienced. I am very disappointed that we are still in a situation where the Government have said it is okay to use pain against children. That is morally completely unacceptable. In answer to your question about restraint, of course if a child is at serious risk to themselves or to somebody else, I cannot, of course, say, "No, you should not restrain somebody." But what the inquests exposed was the fact that restraint was very much the

default position. It was absolutely part and parcel of the culture. As for this issue about children saying, “We were PCTed,” for the children who gave evidence at both Gareth’s and Adam’s inquests it was absolutely part of their vocabulary. It was quite clearly endemic within those institutions. Sadly, looking at the recent restraint figures, it is still a big issue—and that comes back to the question about what kind of staff training and resources these institutions have, in terms of using restraint only in the most exceptional circumstances. Carol, do you want to add to that?

Carol Pounder: You can never say, “No, you cannot restrain a person,” because at times you would have to—I wouldn’t say “restrain” a person, but there are times when you would have to hold a person to stop them from hurting themselves or somebody else. If a person is really upset and angry and you go to restrain them, if you punch them in the nose, dig your thumbs in their ribs or bend their fingers back, it is only going to make them angrier. Giving pain and causing injury to a person who is already angry just escalates the situation.

Q286 Yasmin Qureshi: As I understand it, in the case of your son what happened was that basically he had been asked to go into his room and he said, “Why?” As a result of that, a number of people came and started to push his arm and in the end hit him on the nose, which caused the nose to bleed. It seems, on the face of it, that this was not a case of somebody being restrained because they were committing a physical violent offence towards anyone, but just a case of not listening. I know that the first inquest looked into all these issues, but when you were trying to get your second inquest, can you tell us a bit about the legal battle that you had to go through to be able to get that second inquest, and proper justice for your son’s case? If there were a wish list of what you would like to be changed so that perhaps things would be easier for other people, what would that be?

Carol Pounder: When my son died in custody, all I got was a knock at the door from the police. I did not know who to go to or who to turn to. Luckily, Deborah from INQUEST contacted me. But for INQUEST contacting me, Adam’s case would just be another dirty blanket left unturned. It would be another dirty blanket left behind closed doors for the Government to keep quiet about. It was through INQUEST, and my solicitors and others, that we have got where we have today. At Adam’s first inquest, the coroner would not tell the jury what the law allowed and didn’t allow, so Adam’s first inquest was totally flawed. Then we had a big fight to get that inquest overturned and to get it stated that what happened to Adam was unlawful. It has been a really hard struggle, and without INQUEST, where would people be?

Q287 Yasmin Qureshi: Can I ask Ms Coles this? I know that “Fatally Flawed”, the report that was carried out, recommended at least three things. One of them was that families bereaved by death in custody should have a full right to legal aid so that they can have representation. It also said that delays in the inquest should be dealt with quickly so that there is not too much of a gap between the death and the

inquest taking place. I want to ask about the third recommendation, about coroners’ rule 43 recommendations. Do you think the lack of transparency around rule 43 reports makes it easier for the authorities to avoid taking action?

Deborah Coles: The short answer is yes. I have a point about openness and transparency in the context of restraint that I have not had a chance to make yet. One of the key things that came out of the inquest was the fact that there was no proper data collection, monitoring, analysis and transparency around the kind of restraint that was being used, and the fact that children were complaining about the physiological effects of being restrained. It is absolutely crucial that any new restraint that is going to be used is properly monitored and reported on—and, importantly, reported on to Parliament. I am very concerned that the Youth Justice Board have refused once again to make public the manual on restraint. That is a matter of serious concern, because it was only when we opened up what was going on within these institutions that we fully exposed what was being done to children. If you are going to use restraint, it has to be properly monitored and there has to be proper scrutiny of it.

Q288 Chair: Have you tried a freedom of information request for that?

Deborah Coles: Yes, and it has been refused in the interests of public security. There was a fear that children might get hold of it and then use some of the techniques that were being proposed against the staff. The first manual we got—I will be corrected by our research officer if I say this wrongly—was following a request by the Children’s Rights Alliance and I produced a witness statement talking about the importance of openness and transparency around this very important issue. The Youth Justice Board made that first manual available but they have refused this new manual. I can provide some more information on that.

In terms of your question about rule 43 reports, INQUEST recently produced a report called “Learning from Death in Custody Inquests” about the problems of there being no national collation of jury narrative verdicts and rule 43 reports and the importance of monitoring those, and monitoring compliance with any recommendations that come out. That is absolutely essential where we are talking about deaths in custody.

The other point that you importantly raise is about the vital need for families to have access to non-means-tested public funding. As you will be aware, any death in custody means that there are lawyers acting on behalf of the state, paid for out of taxpayers’ money, at every single inquest.

Q289 Chair: An inquest is automatic.

Deborah Coles: An inquest is automatic. The inquest is what the state has given the family as their means to find out what happened to their relative. Yet families are going through deeply intrusive funding applications, asking for information not just about immediate family members but about broader family members and partners. In the cases that we are hearing

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about, it is obscene. Families are telling us that at a time of grief, the whole process of trying to find out the truth exacerbates their difficulties in getting on with the bereavement. So that is a big issue, as are the delays because delays frustrate the learning process. They are difficult for everybody, for staff and anybody involved, but for a family, they cannot begin to move on in coming to terms with the bereavement until they know the truth about what has happened, and that is through the inquest process.

Q290 Jeremy Corbyn: Very briefly, do you think that, when somebody has died in the state's custody, people should have automatic access to legal aid irrespective of their circumstances?

Deborah Coles: Absolutely, without any doubt at all.

Q291 Jeremy Corbyn: Is that on the basis of fairness?

Deborah Coles: On the basis of fairness. The state has teams of lawyers representing it. All we are asking for is equality of arms. It should not be dependent on a family's personal means. It should be non-means-tested. The other problem that families experience is that this is not just about funding their legal representation. It is very important for families that they have specialist lawyers—I cannot tell you how many families contact us when they have maybe not known about us before, and have gone through a process where they have been unrepresented and did not realise there were going to be lawyers representing sometimes a whole body of different public agencies that have been involved—but some families also struggle with even attending the inquest, because, by the virtue of the prison system, they might well have to travel, as Carol did. The inquest took place in Durham.

Q292 Jeremy Corbyn: Could you give us a note on the numbers of your cases that have had legal aid, had legal aid refused, or had costs refused for travelling to hear the inquest?

Deborah Coles: They do not get travel costs to attend an inquest. Either families will have to try and find the money themselves or we might be able to apply for some money from a charitable trust, but money is not given. Coroners will usually pay the travel costs for the day that the family are giving evidence. Occasionally a coroner might be able to find some moneys from the local authority, but at a time when local authorities are struggling with costs, this is going to get even worse for families.

Q293 Chair: It will now be open to the Chief Coroner to bring about a move of the inquest from one jurisdiction to another, although that option may not be pursued if most of the witnesses are from the institution and therefore in the locality of the coroner where the death took place.

Deborah Coles: No, absolutely. One of the things that we are very much hoping for—the Chief Coroner has indicated that he is considering setting this up—is specialist corners with particular expertise in different areas. I would say that deaths in custody come within that, but obviously one has to be mindful of practical

issues like the ones that you mentioned, and also court accommodation, because some of these inquests with lots of different lawyers can last several weeks. It is difficult, because local authorities are under pressure.

Q294 Chair: Do you deal with Scotland, by the way?
Deborah Coles: No, England and Wales only.

Q295 Jeremy Corbyn: On the issue of learning from deaths in custody, first of all I want to thank both of you for the evidence you have given and the work that you have done. Carol, do you think anything has changed in Hassockfield or anywhere else as a result of your son's death?

Carol Pounder: No. They say, "We'll do this, we'll do that; we'll change this, we'll change that," but no, it still takes place today. Assaults on children in custody still take place today. Hassockfield is a secure training centre that is privately run and privately owned. It is a multi-million-pound profit-making business. They are not interested in the children. They are interested in making profits. Even to this day, they still restrain children unlawfully. They still use unlawful methods with children. No, it has not changed in my eyes. They say they're going to make changes, but, no, they don't.

Q296 Jeremy Corbyn: Deborah, there have been a lot of inquiries into aspects of the criminal justice system over the years. In your proposals in "Fatally Flawed" you are suggesting that there should be an independent inquiry into deaths of children and young people in custody. Do you think this would be any more effective than what has happened so far, or is there not enough information out there in the public domain, from the evidence both of you have given, for example, on whether we can effect changes without a further inquiry?

Deborah Coles: The problem is that when somebody dies, the inquests are held in isolation. It can be several years before an inquest is held. There are a couple of other issues. One is that they are held in isolation so there has never been a holistic joined-up look at the situation. There is no "joined-upness" between the examinations of the different deaths that have taken place in order to look at the commonalities and the themes that have been running through those cases. Inquests are held in isolation and are very much concentrated on a death at a particular time, rather than looking at the broader context in which these deaths take place and what they say about criminal justice policies and the role of outside agencies. Our view of this was that, having seen death after death occurring and raising the same issues, we felt—as we did when Joseph Scholes died—that there needed to be an inquiry that could bring together the learning that has come out of those, bring together the narrative verdicts, the rule 43 reports, but also the information that we have about what does not work, in the hope that we can safeguard lives in the future and can properly look at the themes that run through these cases.

We have some good examples. The Zahid Mubarek inquiry was a good example of an inquiry that involved a bereaved family, but it looked at things in

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a much broader way than an inquest allows. As I said earlier, inquests cannot look at sentencing allocation policy and the fundamental questions of concern about what actually was that child's journey into the criminal justice system. They can touch on that, but they cannot look at it in any detail. We felt that an inquiry and the value of an inquiry—obviously, we have recently had the Hillsborough panel, where you have a thematic look at all the little pockets of information, and we are not just talking about deaths—would be about joining up some of the work that has, as you say, been done.

Q297 Jeremy Corbyn: My concern is that it could become an excuse for a very long delay in changing procedures such as those around rule 43, access to legal aid, and information and advocacy for young people in custody.

Deborah Coles: That is why we have our short-term and then our longer-term recommendations, recognising that in the short term, while we are talking about children being locked up and about the problems with legal aid, training and rule 43 reports, that can be done. It could be done tomorrow. It is not complicated; it is not rocket science. But I also feel that there is a very strong argument for some kind of review inquiry. I know people get very nervous when you talk about public inquiries, in terms of the financial considerations, but the fact that 33 children have died, and then the 200 children and young people, does suggest that something is going very badly wrong and that we need to review this in much more detail than the current investigation and inquest process allows.

Q298 Jeremy Corbyn: If I may, Chair, I have one last question to Carol. First of all, thank you very much for the evidence you have given. Do you feel that your son ever had access while in custody to any independent legal or social advice, or that anyone was checking up on what was really happening to him, or was he completely isolated?

Carol Pounder: He didn't have access to anything. As to Adam's team, what they stated was that there was a fully qualified psychiatrist. It turned out that she was not fully qualified, so no. Adam didn't have access to a social worker, he didn't have access to mental health teams and he didn't have access to psychiatrists. He had no access at all.

Jeremy Corbyn: Thank you.

Q299 Seema Malhotra: Thank you, in the same way that my colleagues have expressed thanks to both of you for coming in and bringing the experience and suffering of Adam into the work of this Committee. Hopefully, that will be able to play a part in safeguarding children in future.

I want to probe, Deborah, one thing that you were saying about the broader context needing to be taken into account in inquiries. What has struck me as

potentially a broader context breaks down into two routes: one is the holistic life of the child and probing much further than the boundaries of the justice system in its immediate context; the second is bringing together lessons that there may be in the more common patterns across different inquests that perhaps are not being joined up. Could you expand a little more on the broader context that you feel there needs to be, and say whether it is within both of those routes that you think there needs to be some change?

Deborah Coles: Yes. A starting point would be to examine the deaths that have taken place in terms of what they have identified regarding individuals' vulnerability and their journey into the criminal justice system, and then what happened to them when they were in those institutions. Some of the cases that we have highlighted in "Fatally Flawed", and in a previous publication, "In the Care of the State?", do that. But we should also focus also on the commonalities between those deaths, child welfare as well as youth justice policies. What could have been done in the community to prevent those children and young people from getting into the criminal justice system or from being detained within those kinds of institutions, and what was the institutional response to those children and young people?

We have never had an opportunity to look at what was an alternative response to these children and young people. That requires evidence and expertise from people who have the experience of working with very troubled children, particularly in areas around mental health. Carol mentioned the impact that bereavement—the deaths of three grandparents—had on Adam. One of the things that we noticed from looking at some of the stories of the young people who have died is traumatic bereavement at a young age and the impact that that then has. That is not being addressed, or not being addressed effectively.

These are the most extreme outcomes of a system that is failing children. We could learn a lot if we looked at this in a much more joined-up way. It is interesting to compare the fact that there has never been a public inquiry into deaths of children in custody with some of the really disturbing cases where children who have been known to state welfare agencies have died and, quite rightly—the Victoria Climbié inquiry is probably a good example—a big inquiry is established. Why is it that children who have died in custody have not merited a similar response? What is it that we are afraid of in opening up that area? It is almost as if we turn away from some of the abuse that is going on in those institutions that is leading children to take their own lives.

Chair: Ms Coles and Ms Pounder, thank you very much to you both. We really do appreciate your evidence this afternoon. It will help us a great deal. You have had a long journey here today and I hope that the journey proves worthwhile for the future. Thank you very much indeed.

Tuesday 4 December 2012

Members present:

Sir Alan Beith (Chair)

Steve Brine
Mr Robert Buckland

Jeremy Corbyn
Mr Elfyn Llwyd

Examination of Witnesses

Witnesses: **Paula Jack**, Chief Executive, Youth Justice Agency Northern Ireland, and **Mary Brannigan**, Director of Youth Justice Services, Youth Justice Agency Northern Ireland, gave evidence.

Chair: Welcome, Paula Jack, Chief Executive of the Youth Justice Agency Northern Ireland, and Mary Brannigan, Director of Youth Justice Services for the Agency.

This is the first time that the House of Commons Justice Committee has met in the very distinguished surroundings of Stormont. It is the second occasion on which the Committee has met in another legislative assembly, the previous one being the Welsh Assembly, some time ago. We are very glad to have the benefits of the facilities here; we much appreciate them. We are glad to be in Northern Ireland, which we regard as particularly interesting because experimental things are happening from which we are inclined to think that the rest of the United Kingdom could learn some useful lessons. Restorative justice and the way in which that works with the youth justice system is one of those things. I am going to ask Mr Buckland to open the questions.

Q300 Mr Buckland: Looking, first of all, at the way in which youth conferencing was established, it is clear that your model drew on a number of other jurisdictions, most notably the New Zealand model of family group conferencing. What made you settle on the current model that you use in Northern Ireland?

Paula Jack: If we go back to the Good Friday agreement and the Criminal Justice Review in 2000, the authorities at that stage said, “We want to introduce restorative practice within youth justice, so how best can we make this happen?” A lot of work went into the research behind this as part of the Criminal Justice Review, and a delegation from the Northern Ireland Office went over to view family conferencing in New Zealand. They took some of the really good ideas that came from there in terms of working restoratively with victims and allowing that victim voice within the process. Once that had been established, it was the model that we decided upon.

Q301 Mr Buckland: Domestically, in Northern Ireland, there has been a heavy use of community-based restorative justice mechanisms, which we are starting to see on a pilot basis in England and Wales. To what extent did that domestic experience here allow for the introduction of more formal restorative processes in the youth justice system?

Paula Jack: There have always been problems with community-based restorative justice in Northern Ireland, and they were also influencing the Criminal

Justice Review recommendations. That community-based restorative justice is funded by statutory bodies now, too, including the Department of Justice.

If we look at our youth conference model and the fact that it is also restorative-based in practice, we can see that there are benefits of having that within the community already, and that acceptance of the restorative approach is always beneficial. By introducing youth conferencing, we already had community awareness of restorative justice and the benefits that come from that; and there is huge support for a restorative resolution that involves victims in that process. So we do have a close working relationship with those who deliver community restorative-based justice across Northern Ireland, and we provide funding from the agency to help in the delivery of our own services.

Q302 Mr Buckland: Looking at the basis of restorative justice—it has now been put on a statutory footing within the youth system—how would you regard and describe the impact of that?

Paula Jack: If we look at the concept of restorative justice, it is well recognised that if it is not on a statutory footing, it can be underused, so there were benefits in putting it into statute and formalising the process. That comes from the pressures of time and the work involved in engaging victims in the process as an added step within the justice system. By putting it on a statutory footing, we could embed it at the heart of the youth justice system. That also enabled appropriate resources to be dedicated to starting up youth conferencing as a process and also supporting it as an ongoing process within the system. It gives that important step that the victims then have a statutory right to be involved and to be heard during the youth justice process.

Q303 Mr Buckland: Just developing the point of the statutory right of victims, would you say that it is very much a victim-led process, or would it be wrong to characterise it as being led by either party? How would you describe it?

Paula Jack: In terms of it being statutory, the victim has a role within the youth conference and, where possible, the victim will be present. You will probably hear later a bit more about the direct victim involvement or the personal victim involvement in that process. It is not led by the victim, but the victim is part of that, and that is a really important message because you have to remember the concept of proportionality within this process. It is important that

we remember that the outcome for the young person is proportionate to the offence.

You will know yourselves, in terms of victim expectations for outcome, that that sometimes has to be managed very carefully. Our co-ordinators are trained to make sure that the meeting that they hold ensures that proportionality is maintained. We have done a lot of work in the last two years around that proportionality, too, because we had to rebalance that. Expectations sometimes are higher in terms of punishment, whereas if you look at your final warning system, or the equivalent matters at the final warning stage, with perhaps a small intervention from the youth offending team, it is important at that diversionary youth conference stage that proportionality, in particular, is maintained. I don't know, Mary, if you want to add anything.

Mary Brannigan: Yes, I would agree with that. From the very beginning, we have advocated a balanced approach right across the youth conference. As we work, you can imagine a triangle model for a balance between the community expectation, victim expectation and the needs of the young person. All those are taken into account. As Paula has rightly said, part of the skill of the co-ordinator is to manage the expectations of the victim when they come into the room, because obviously we don't want to overegg the pudding. When a young person is receiving their plan or their disposal at the end, it has to be proportionate to the offence. Often, equally, it applies the other way in that when a victim comes into the room, they maybe don't understand that the young person has various needs that need to be addressed. Sometimes victims can be quite sympathetic towards the young person, but it is about the professionalism of the co-ordinator, who ultimately puts the recommendation to the Public Prosecution Service or to the court.

Q304 Mr Buckland: Would you say that that triangular system evolved from the community-based processes here in Northern Ireland?

Mary Brannigan: Yes. The third part of the triangle is very important, which is community expectation as well as the individual expectation in the room. That has certainly evolved from the community restorative justice model that existed prior.

Q305 Steve Brine: Turning to the appropriateness of the conferencing system, can we look at your approach to the use of the system for persistent offenders? I know your own review of youth justice said that intensive supervision may be a more effective approach. It did not rule against it entirely, but it said that it may be a more effective approach to reducing the offending of persistent serious offenders than a conference plan. Do you think it is successful when it comes to persistent offenders?

Paula Jack: In the same way that a young person in the England and Wales system would receive multiple orders were they to reoffend, the youth conference is the order that they would receive as a multiple order here in Northern Ireland. So, yes, it can still work, and the importance varies to have the victim still involved in the process.

We started back in 2004. When we look at some of the statistics, between 2004 and March 2012, 78% of the young people have had two or fewer referrals, and 61% have had one referral only. In terms of persistence, it is not a high level of persistence, but we recognise that some young people have had multiple youth conference orders. This can be challenging. We have to recognise that, and we do recognise that a very persistent young person may be facing multiple orders because our legislation is restricted to a 12-month order, and then they run alongside each other. That can very much be a limit because you are resulting in multiple individual plans for the persistent young person, and that lack of accumulation does cause us some lack of flexibility and, potentially, some loss of effect.

We are looking at this now, and at flexible ways to interpret that, to make sure that we give the high-risk persistent young offender the right interventions at the right time. It is about being flexible and ensuring that we still have that victim participation where it is appropriate, but our statutory timetable means that that can be very early on in the process. Perhaps one of the lessons that we have learned is that, on occasions, with the more persistent offender, or for other reasons that we may talk about later, there may be a better time to have that restorative intervention. It is balancing that between what we talked about earlier about the statutory introduction of it to give it support versus the need of the victims and the young people.

Mary Brannigan: Could I just add something to that as well? If you are considering this system, one of the anomalies in the approach when it comes to persistent offenders is that each and every offence has to be taken on an individual basis and conferenced. That is to give each victim their particular individual say. When you are looking at persistent young people, yes, we do have some young people who have 12 or 16 plans running concurrently. However, in the traditional justice system, some of those offences would have been rolled into one, with one community order given so that it looks like one order, but, because of the way our system is set up on a statutory footing and the fact that the victims need to have their individual say, it can look as if there are quite a few conferences attributed to one young person.

Q306 Chair: And you can't bundle these up in some way and have a single conference with several victims taking part.

Mary Brannigan: Sometimes we have one conference with several victims, if it is to do with one offence, but not if there are different offences, because, obviously, you have your individual victim who needs to be in the room to have their say.

Q307 Chair: Is that a design fault or a necessity?

Paula Jack: I asked the youth justice review team to look at this particular aspect because we could see the benefit of perhaps a lengthier order not dissimilar to your own youth rehabilitation order, with a chance to do the different restorative meetings as and when appropriate with different victims, were it to be a roll-up, if I can call it that. So, yes, perhaps that is something that could have been done better and it is

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a lesson to take away if you are looking at legislation in relation to this.

Q308 Steve Brine: Finally, are serious offenders referred to courts and likely to get a less serious sanction than if they don't participate? Is it a soft option?

Mary Brannigan: No, I wouldn't say so. If a persistent young offender, or any young offender in fact, refuses to participate in a conference, sentencing is a matter for the court following that and not a matter for us. So, no, I do not think that is the case. Where a young person refuses to go into a conference, either because they don't want to meet the victim or they just feel unable to participate in the process, then, generally, the whole series of events goes down the route of a pre-sentence report and a recommendation is moved to the court in the same way as a youth conference, except that the victim is not involved. The answer to your question is no, I haven't seen that.

Q309 Mr Llwyd: The Justice (Northern Ireland) Act 2002, which you will be very well aware of, requires the offender to do one or more of the following: apologise to the victim; perform unpaid community work or service; make financial reparation to the victim; submit him or herself to the supervision of an adult; participate in activities addressing offending; be subject to physically restrictive sanctions such as curfews; and, if necessary, undertake treatment for a mental condition or for dependency on alcohol or drugs. How do you ensure that conference plans meet the needs of offenders?

Mary Brannigan: I have to say that this was a gap at the start of the process, and I have explained that each individual conference is conferenced on an individual basis. The plan emanating from that conference used to be purely what went on in that room and then out the other side. Certainly, about two years ago, when I became director of the Youth Conference Service, I recognised there was a gap in all of this. We have now introduced an assessment to sit alongside the conference process. Therefore, the plan that emanates from the conference is based not only on what goes on in the room, but on a full assessment of the young person's needs prior to the conference. What we have then is a mixed economy in the plan, which takes into account the factors that have caused the young person to offend in the first place, because if those are not addressed, the risk of reoffending increases. So we have a dual process, if you like. If you are thinking about introducing this system, I would advocate that you have a very robust assessment system sitting alongside what actually happens in the conference.

Q310 Mr Llwyd: Does it take a lot of time or are they running in parallel, virtually?

Mary Brannigan: They generally run in parallel. We, generally, have 20 working days from when we receive a referral to coming out the other side. In between those 20 days an assessment is undertaken parallel to preparation for the conference. The conference then takes place. Then it is all put into the round, if you like, and then recommendations come out of both processes. The assessment, generally,

takes account of family, education, employment needs, drugs, alcohol and mental health, so we have a mixed economy.

Q311 Mr Llwyd: I am interested to know—I don't know whether you can help me on this matter—what reasons the courts or, indeed, the prosecution service, typically give for rejecting a conference plan.

Mary Brannigan: We very rarely have plans completely rejected either by the PPS or the court. In fact, I can't think of any instance, certainly across the last number of years. What we do have sometimes is when the PPS or the court amend a plan. This may be, for example, when they increase the hours of unpaid work, if they feel that the hours of unpaid work are not enough to justify an outcome, but rarely would they ever change the treatment aspect of the plan, because that has been very carefully thought through by everybody in the room, when it comes, for example, to looking at mental health or drugs issues. What we find in terms of amendment is usually in relation to reparation, reparative hours or making good the harm that has been caused.

Q312 Mr Llwyd: You say they could intervene, as it were, to increase the number of hours.

Mary Brannigan: Yes.

Q313 Mr Llwyd: What should that be based on? What analysis would the courts have to make that decision?

Mary Brannigan: As I previously said, sentencing is a matter for the court. We make a recommendation to the court and then it is entirely up to the court as to what they do with that recommendation. It may well be that the district judge feels that the plan is not stringent enough, or it could be in some cases—very rarely—that they feel it is too stringent. Ultimately, a district judge and two lay magistrates make the decision at the end of the day as to what comes out of it.

Q314 Mr Llwyd: But they very rarely reject it.

Mary Brannigan: They very rarely reject it, yes.

Paula Jack: Just to add to that, the plan is not unlike a pre-sentence report, but based on the restorative approach, so that full detail is going in written form to the court in the same way that a pre-sentence report would, if that makes it clearer.

Q315 Mr Llwyd: Yes. So the courts would be fully informed of the reasons why and how the decision was reached and so on. How do levels of compliance with conference plans compare with compliance rates for young offenders who have not gone through conferencing?

Mary Brannigan: Because of the way our system has been set up, and because it has been set in statute since 2004, it would be extremely rare, if ever, that a young person is in the system who has not been through the conference process. All I can tell you is that, in terms of our quarterly reviews and reports, compliance is about 96% to 98% across the board.

Q316 Mr Llwyd: I am happy to be one who believes in restorative justice. As a matter of fact, I have had very good evidence that it can work very well—not always, but very often. Following on from that, are you able to assist us by telling us what effect it has had generally on reoffending?

Mary Brannigan: Yes. Unfortunately, we have only had the reoffending statistics since 2008. From the way our system works, this was a 2008 cohort that we worked from. Based on a one-year reoffending rate, the overall statistics were 37.4% when it comes to reoffending. In total, we have had 1,565 plans, and court-ordered youth conferences come out at 45.4% reoffending, but our diversionary youth conferences, which is our partnership with PPS, come out at 29.4%, which is very good in comparison with other statistics.

Q317 Mr Llwyd: Yes, it certainly is. I am no expert on this, so I am asking a question based on evidence and advice we have had, but why do you think that plans are getting longer, if indeed they are?

Paula Jack: This is something that we are doing a lot of work on. This is something that we raised with the Youth Justice Review. When I came in two years ago, we were very conscious of the fact that plans were getting longer. That was just a creep, if you like, and we just needed to take stock and step back from it, which we have. We have done a great deal of work around proportionality. In relation to some of these diversionary plans, some of those young people would have had a caution or an informal warning prior to the introduction of this statutory process. Is the “conference only” sufficient? In some cases, yes, it is. That is what the legislation actually said.

Both Mary and I have been in post for about two years now, but we found, looking through the cases, that there were very few “conference only”s, but there were plans coming out the other side with unpaid work or other things to do. That is a really important lesson in keeping that proportionality for diversion so that, in relation to that low-level offending that comes in through to the youth conference, the victim has their right in the conference room, but the outcome may just be the apology, minor reparation or whatever it might be. We have done a lot of work around that, and we are still doing that within the agency to promote that lower end of proportionality. It works both ways. There is a lot of work to do around high risk as well, for the very reasons we talked about earlier. At the lower level, too, it is important that you start on the basis of the right intervention and the proportionate intervention.

Q318 Chair: The statistics we have indicate that victims have a satisfaction level of 75% to 85% in the process. What do you think that is attributable to?

Mary Brannigan: Historically, and for a long time since our process started in 2004, our victim satisfaction rates were up at 100% for a lot of the time. However, in analysing that and trying to get an absolutely true picture, that was based on a sample of direct victims as opposed to all direct victims. We have now introduced a new system whereby all direct victims who consent are surveyed at the end of the conference process and also at the end of their time

with Youth Justice Services. Obviously, this is not just about the conference. It is about the plan that happens after the conference. We want to ensure that the victims are kept informed the whole way through until the young person finishes. A true reflection of our victim satisfaction is now 96%, which is still quite high, but it is not the 100% that we previously thought.

Q319 Chair: It is very good. Why do you think it is so good?

Mary Brannigan: To be honest, it is to do with the preparation pre-conference. You also have to remember that we have dedicated youth conference co-ordinators, who have been trained to a very high degree, who have in and around five conferences a month to deal with. That does give them quite a bit of time to prepare the victim for the conference so that the victim is going into the room fully prepared for what he or she may expect. That is another lesson if this system is to be replicated elsewhere. It is quite resource-intensive because, if you are going to have those levels of victim satisfaction, it has to be a very one-on-one approach with the victim pre-conference. Also the victim has to be kept informed, or should be kept informed, if they wish, the whole way through the young person’s time with us following the conference.

Q320 Chair: But you could have a very smoothly run jail that did not achieve the same levels of victim satisfaction. There must be something inherent in the process.

Paula Jack: It is the victim voice. It is one of the few times in that process when the victim—unless they are giving evidence, and even when they are giving evidence it is so controlled—has that opportunity to say how they feel. It is such a rare thing in the justice system to be able to say how you actually feel about the crime as opposed to the bare facts.

Q321 Chair: Can you explain the distinction you draw between personal victims and other victims? What are non-personal victims?

Mary Brannigan: Again, we have redefined our “victim” definitions because every definition that may have been relevant in 2004 we have revisited, and our direct victims are those individuals or communities that have been directly affected by the crime. So it is very clear that the person sitting in the room has, at first hand, knowledge, experience and feelings of the crime that has been committed. We also have victim representatives, but we do not define those as direct victims.

Q322 Chair: But they are not victims, are they? Are they people speaking up for the victim?

Mary Brannigan: They can be. They can be a relation or a family member. For example, if there is a vulnerable adult or young person who does not feel able to take part in the conference, a parent, aunt or community leader who knows the victim really well and can represent their story also attends conferences, but we do not define those as direct victims.

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Paula Jack: But we do include the community in our direct victim definition, because if you take, for example, the summer rioting in Northern Ireland, it may be that the community representative is the best person to be present as the direct victim to explain the harm caused. That works really well and it also builds community confidence.

Q323 Chair: Do you think that this system, including youth conferencing, has increased public confidence?

Paula Jack: I gave you an example of an occasion when it may. Victim satisfaction is obviously high for those directly involved from the public. I am sure you know yourselves in terms of the Northern Ireland crime survey that, unless you are directly involved in the youth justice system, you may not be directly aware of exactly what goes on. The most recent crime survey figures show that around 47.2% of people are confident that we can reduce reoffending. We are doing our own stakeholder surveys at the moment, which is something that is quite new to us. We are aware of the high satisfaction we get from victims. We are aware that we do a lot of work. We have eight teams across Northern Ireland, which have assistant directors. The important message is that we don't just do youth conferencing. We do all the other statutory orders as well. We do a lot of community engagement, working very closely with the local community on other confidence issues, too. It is a much wider picture, rather than saying that youth conferencing would solve community confidence. It is a much more holistic approach from the agency.

Q324 Jeremy Corbyn: Thank you for coming to give evidence to help us today. On the question of outcomes, what is the difference in reoffending between those who have been through youth conferencing and those who have been through custodial sentences?

Paula Jack: I can give you all of the figures for community-based orders, youth conference and custody. If we look at community-based orders, which excludes youth conferencing, our 2008 cohort, based on one-year reoffending, shows a reoffending rate of 53.5%. In relation to court orders—Mary gave you those figures—it was 45.4%, and in diversionary youth conference it was 29.4%. Custody is not dissimilar to England and Wales, coming out at 68.3%.

Q325 Jeremy Corbyn: Although, presumably, those who had custodial sentences initially had committed much more serious offences.

Paula Jack: Our custody population is very low in Northern Ireland. Our average population is 31, and that is for all the under-18s. It is about half the England and Wales rate. Some of those who are in custody, because of the delay we have here, may still be subject to youth conference orders. They may still have other cases pending.

Q326 Chair: Because they have different offences, such as custody for one and youth conferencing for another.

Paula Jack: We would make sure that that victim still gets the conference. That is a challenging aspect of it too, because maybe your persistent offenders are not at the point where they should be engaging with victims. That is something I would stress to you because I am sure you have those challenges in the system in England and Wales, too, where there may be a serious drugs problems or a serious mental health problem. Also, we have to look at the challenges of speech, language and communication, which is a big piece of work that we are doing at the moment. We have to make sure that the process is right for the young person too; otherwise you get led by the victim process.

Q327 Jeremy Corbyn: How long have you been doing conferencing for so that you are able to track individuals and see the outcomes six months, a year, 18 months, two years and so on down the line?

Paula Jack: Our reoffending is not as sophisticated as that of our cohorts. The reason for that is because we have significant delay problems. Even when we try to do a one-year reoffending problem, those young people could have a lot of pending offences and we are missing them within that. I can't give you confident figures around that. It is something that challenges us constantly as an agency. You will know the effects yourself of delay on young people in the system. We are facing the challenges that England perhaps had 10 or 15 years ago. We have a lot of work to do around that. So, no, I can't give you those figures.

Q328 Jeremy Corbyn: Are you, as an organisation, following individuals, and over what period?

Paula Jack: Our last cohort, as you have heard, was 2008. Those will be all the young people in the system in 2008. We are working on the 2009 one at the moment. We have, manually, to go through each of those records because of the way it is working at the moment, so you can imagine the challenge that we have. It is not ideal.

Q329 Jeremy Corbyn: Don't you need an IT department?

Paula Jack: We have one. We have the Northern Ireland Statistics and Research Agency, but they are the ones facing this challenge. If I can explain, it is not the tracking of it. It is the fact that the young person who is in custody today may still have four or five pending offences that haven't been dealt with yet.

Q330 Jeremy Corbyn: I have two quick points. Has conferencing reduced the number of custodial sentences in general?

Paula Jack: Yes.

Q331 Jeremy Corbyn: What is the relative cost, roughly, of conferencing compared with anything else?

Mary Brannigan: We have looked at this internally. In the round, a conference generally costs around £2,800. That takes into account our percentage of corporate services. For example, the electric bill in each office is divided down, and it also includes the

cost of other participants of the conference, because, under legislation, we must have a police officer present. Really, that is a cost in the round. Then, obviously, we have the plan emanating from the conference, which comes with its own cost. Depending on intensity, we can have a very short plan that costs £200, or we could have a really lengthy and intense 12-month plan, and we have costed that at around £8,000. So the plan afterwards can cost anything between nothing and, in the round, £8,000. They are internal figures.

Q332 Jeremy Corbyn: Is it the public's perception that conferencing is a good thing, or do they see it as a soft option?

Paula Jack: I don't think it is seen as a soft option because of the menu of activities that can come with it, right up to the custody cycle. In the beginning there was that challenge in terms of explaining what it was we were doing, but, in the early days, there was a lot of publicity and campaigning to explain what we were doing. When the message came out that the victims were very much involved in this—I am going back to the history of this being a jurisdiction that has big community-based restorative justice—I think that people appreciated the way that that works. To engage the judiciary and others in a new process like this was a big challenge when it is on a statutory footing.

Mary Brannigan: It has been a hearts-and-minds issue for us, certainly since 2004, and it continues to be so. It is about getting the point across to the public, which is a true one, that it is very difficult for a young person to sit in a room with somebody whom they have harmed and to listen to their story back. So, no, I don't think it should be viewed as a soft option. In fact, it is the more difficult option than the more traditional route.

Q333 Jeremy Corbyn: It is not my view. I put the question, in a sense, rhetorically, because there are some in the media who describe these things as that.

Paula Jack: Yes.

Mary Brannigan: As Paula has already mentioned, we have to be careful the other way that the plans emanating from a conference are proportional and proportionate to the offence, because it is very easy, when you have the young person in the room and you want to add stuff to help and to reduce offending, to over-egg the pudding, as I mentioned before. We now gatekeep every single plan that emanates from a conference to ensure that it is proportionate and that the young person is receiving justice, as well as the victim having their say.

Paula Jack: You end up with up to 240 hours' unpaid work which, as you know, is the direct alternative to custody anyway. When you talk about that as the potential outcome of the plan, one of the things we learned in the very early days was that it is important not to sell the restorative conference as the only issue. It is very easy to talk a lot about the restorative process and not a lot about the work that we still would do with young people in the plan, which is not dissimilar to a referral order or youth rehabilitation order work. That work is still there. It is about making sure that, when you are introducing this, you say that

we still do all these very challenging drugs programmes, we help with mental health and we do all of this work in the community. You say that this is extra, otherwise people do come out with the comment that the easy option is just to say, "Sorry."

Jeremy Corbyn: Sure.

Mary Brannigan: As Paula said, the conference is just the very start of the process. It is about an assessment, and it is also about giving the victim an opportunity to have their say and a multi-agency team making a recommendation to the court or the Public Prosecution Service as to what should happen. As Paula has said, what happens after the conference is extremely important. We have eight teams across Northern Ireland that deliver plans. It is important to remember that also.

Paula Jack: Certainly when I came into post, we were speaking in Westminster and one of the questions was about the savings that come from this. I did say, and I will make it clear again, that the conference is another layer of staff on top of, if you like, existing YOTs or workers. We have that benefit for the historical reasons that I outlined to you. When we were setting this scheme up we were well resourced to take this on, but it is challenging if you are taking it as an add-on to the work that you do with young people already because of the multi-faceted needs that those young people often have. You still need your core teams of community deliverers.

Q334 Chair: I am tempted to wonder whether you are benefiting from Northern Ireland public expenditure being higher than in any other region of the UK, and whether that will survive the ultimate normalisation of funding.

Paula Jack: It will be interesting.

Chair: Mr Buckland, do you have a point?

Q335 Mr Buckland: Yes. I was very interested in what you said about the delays in the system. Your measurement is our measurement, which is the one-year reoffending rate. On reoffending, the index is conviction, is it not?

Paula Jack: Yes.

Q336 Mr Buckland: Do you have a two-year measurement to take into account delays in the system?

Paula Jack: We don't, because that would not give us what the statistical people tell us would be a comparable figure, so we have to work to the one-year measurement. That is why it is difficult to have confidence. Around the diversionary youth conference figures, you can have confidence because, in the same way as with your final warning, those children are unlikely, perhaps, to reoffend in any event. It is when you get into the comparisons. Our custody is not dissimilar in terms of reoffending rates, although our numbers are a lot lower. In terms of community-based, it is fairly comparable with your reoffending rates. I would like to be able to trace backwards very much in the way that was suggested, but it makes it very hard because you have probably seen the figures of how long it takes for cases to get through the system here.

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Q337 Mr Buckland: So delay may not be a factor in skewing any figures as between England and Wales, and Northern Ireland.

Paula Jack: It should not be a big factor because we update them one year behind you. It is just that we can't be any more up to date because we have to allow 2009, 2010 and 2011 to go by to make sure that cases have been dealt with, whereas with your speedy system you can do it one year behind.

Q338 Mr Buckland: You, of course, have experience as a prosecutor in England and Wales.

Paula Jack: I do, yes.

Q339 Mr Llwyd: I have one final small point. You mentioned earlier on, in terms of victim satisfaction, quite reasonably, that victims' expectations should be managed. How big a factor is that in the ultimate satisfaction rate?

Mary Brannigan: Of the 4% of victims who are not satisfied, that is quite often a reason for dissatisfaction, but it happens rarely. What we have found is that when victims come into the room, they are very realistic as to outcomes. They are very

sympathetic and show great empathy towards the young person and really want to help. They want to see the young person making a better life for themselves. They want to see the best possible outcome for that young person. Sometimes, however, victims come in with a feeling that more should happen on the other side, if you like, which is why we have to be very careful about proportionality. In answer to your question, it happens very rarely, which reflects the 4% dissatisfaction.

Paula Jack: We should emphasise, too, the resources that we have for preparation because we have two meetings beforehand. The victim is well prepared before it, rather than just turning up on the day not knowing what to expect. We make sure that they are fully prepared before they come in and afterwards as well, so we do have that luxury, if you like, of being able to do that.

Q340 Mr Llwyd: It is quite labour-intensive then, is it not?

Paula Jack: Yes.

Chair: Thank you both very much, indeed. We are very grateful for your help.

Examination of Witnesses

Witnesses: **Professor Shadd Maruna**, Director, Institute of Criminology and Criminal Justice, Queen's University Belfast, **Dave Weir**, Director of Services, Families and Children, NIACRO (member organisation of Children in Northern Ireland), and **Koulla Yiasouma**, Include Youth (member organisation of Children in Northern Ireland), gave evidence.

Chair: Welcome, Ms Yiasouma, Mr Weir and Professor Maruna. You are, respectively, from Include Youth, from NIACRO as Director of Services, Families and Children, and from the Institute of Criminology of Queen's University Belfast. We are very glad to have your help in the work we are doing in looking at the example of Northern Ireland and the experience that Northern Ireland has had of things that we are interested to see developing in our own justice system. I will ask Mr Buckland to begin.

Q341 Mr Buckland: I want to start from the position where we started with the previous panel, which was the origins of the establishment of the youth conferencing model in the youth justice system here in Northern Ireland and, in particular, the experience of community-based restorative justice. From your perspectives, how do you think that that facilitated the development of the current model that is used?

Dave Weir: The existence of community-based restorative justice almost certainly accelerated the interest in the statutory sector in the concept of restorative justice. It had certainly been talked about before. We were aware of the experience in New Zealand and in Australia. We took a look at South Africa and various other places. Community-based restorative justice was an attempt to exercise a degree of control of some behaviours that the regular police service, in certain contexts, were not able to deliver satisfactorily, or to the satisfaction of the community, so community-based restorative justice was a model that grew as a response to that.

That, then, accelerated the statutory interest in the concept and provided a way of addressing community concerns about behaviours of individuals in a way that could be seen as making good, paying back to the community and satisfying the community that there was something meaningful happening. The two things probably fed each other, but one accelerated the other.

Koulla Yiasouma: I would fully endorse what Dave has just said. Our experience has been that one of the reasons for the acceleration was a way of bypassing the community-based restorative justice schemes which, at that time, had a legitimacy issue, shall we say, because of the way they were working with communities and in communities. The regret about that relationship, particularly in the early days of youth conferencing and the Youth Justice Agency, is that youth conferencing was used to bypass the community-based process. Instead of working in partnership, they were used to bypass the schemes. Only recently have we begun to see change in greater partnerships. That has been able to happen through the formal of accreditation of the community-based schemes by the Department of Justice and also the fact that they are doing some excellent work within communities.

Professor Maruna: I agree with all of that. Community legitimacy is essential to restorative justice. It was a grave mistake in the early days of youth conferencing that there were not better and more cohesive interactions between the community-based and the statutory sector. Everyone regrets now that that relationship was stilted for a number of years.

I don't think it is still at a perfect point, but, as Koulla says, there has been considerable progress now that there is much more interaction between the two. The Quakers run a forum for restorative justice that brings all the different restorative bodies together. There is also a masters programme at the university of Ulster that has facilitated a number of inner changes and exchanges between the different groups, which has helped a lot.

Q342 Mr Buckland: To characterise it, there was an initial tension and an early problem, and at the time of the review, which I think was last year, that was brought to the fore.

Professor Maruna: Yes.

Koulla Yiasouma: Yes. As you know, the Criminal Justice Review that came out of the Good Friday agreement in 1998, with the ensuing 2002 Act, brought about youth conferencing, and that was at a time when the community-based schemes were not legitimised by the state. It was not in their interest to be at that time in view of what they were doing. The development began about two or three years ago.

Q343 Mr Buckland: Right. There has been a positive move away—

Koulla Yiasouma: Slowly but surely, yes.

Mr Buckland: Good.

Q344 Chair: Who were the movers behind the original community justice schemes? Was it churches, the women's movement or a peace group?

Koulla Yiasouma: He will take the credit.

Dave Weir: I can't take the credit, sadly. My organisation, for which I did not work at the time, through Professor Kieran McEvoy and others, was involved in direct conversation with the informal and the community-based restorative justice programmes, advising, guiding, encouraging, thinking, developing dialogue and working out ways in which the community-based restorative schemes could operate in a way that, if not wholly transparent and not wholly endorsed by the state, afforded some protections to the quality of practice and to the people who were subjected to it, as it were.

Q345 Chair: This is in a context where the alternative justice system might have been knee-capping and whatever.

Dave Weir: I am afraid so, yes. That is exactly the situation.

Koulla Yiasouma: That is the history. The history of the community-based schemes was to remove the perceived need in communities for what is called "community punishments", or what, in any other terms, would be physical assaults on children.

Q346 Chair: As a result, you worked with people within communities who were trying to develop this programme.

Dave Weir: Yes. That was to create codes of practice—a sound theoretical basis and practice guidelines—for what they were doing. I have to say that some communities did not accept what we were doing. There were some who were afraid of them and

resisted them, and some who regarded them as another form of paramilitarisation, so all those perceptions were around. Having said that, they persevered, and they continue to persevere to provide a service that is now, as Koulla said, to an extent, legitimised and working in co-operation with statutory services.

Q347 Chair: There is, of course, no parallel to this in the rest of the United Kingdom.

Dave Weir: No.

Q348 Chair: The community saw the need for restorative justice before the state did.

Koulla Yiasouma: Yes.

Q349 Steve Brine: Professor Maruna, you heard our exchanges with the previous witnesses about the appropriateness of the conferencing system. Do you think it is appropriate to use youth conferencing with persistent offenders?

Professor Maruna: To a degree, the term "persistent offenders" is a red herring. It is difficult to define what a persistent offender is.

Q350 Steve Brine: How do you define it? We are always discussing it.

Professor Maruna: Yes, I am sure you are. It is not a term that I would use a great deal. It has more problems than it is worth as a term. To say "repeat conferences" is more concrete. To say, "What about the issue of multiple conferences?" is an important point—that is how I would approach it. From our research, and Koulla can speak to this from examples of young people she has worked with as well, there are certainly issues of dilution that come with multiple conferencing. We talked to young people who couldn't quite remember whether it was a conference for this or a conference for that. They would be in conferences where they were not quite sure—"Which of the many things that I have done is this about, anyway?", and, "Who are you again?" That can become problematic at some level.

That said, the same thing could be said for multiple periods of incarceration. We know that the more times you spend in custody, the easier that process becomes. The same could be said for multiple probation orders and other criminal justice sanctions. It is a matter of thinking more creatively with repeat punishments that we don't find we are doing the same thing over and over and expecting a different outcome, but rather adjusting and not ratcheting up the sanctions, either. As you are aware, the research would suggest the opposite. The higher the sanctions, the more punitive things become, and the more likely you are going to see recidivism in some of the numbers we talked about earlier. It is not simply a matter of getting tougher in consecutive sessions, but to say, "Well, we've been here before. That didn't work the last time. We are going to have to think differently to make sure that this does have a different outcome the next time."

Q351 Steve Brine: Include Youth were involved, were they, in criticising the prevalence of multiple conferences?

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Koulla Yiasouma: Yes. Very briefly, as Shadd said, we would do a lot of work around the voice and experiences of young people going through the system, particularly those who have been subject to multiple conferences. They would say that it becomes a bureaucratic, by-rote process after a certain while. However, as you heard, the Youth Justice Agency has got better at assessment pre-conference. I wouldn't want to remove the option of conference to a young person just because they have had five. With better assessment, as we develop and progress through our journey in life, what did not work for us a year ago may work for us now. The problem with the system before the Youth Justice Review was that it was one size fits all. The movement away from that can only be welcomed. Young people were saying that this engagement just became, "I had a script. I read it because I did what I had to do to get myself out of that." I am not sure, if I was a victim, sitting in that room—direct or otherwise—how I would feel about that and whether I would be very satisfied with that process. As the agency gets better at assessment, hopefully, they will work out the ones who it might work with. Persistence isn't the issue.

The other thing concerns young people who are charged with sexual and violent crimes. There needs to be a different way. Restorative justice could definitely be the way to go. It is whether the youth conference model can fit that where young people are conferenced at the beginning of a process, as opposed to when they have done a bit of work, when they have a bit more awareness and when the victim has done a bit of work around their own trauma. Often with sexual offending by young people, it is within the same family, so we've got parents involved. That process could be more effective through the treatment or the intervention. That is what we welcome. We look forward to seeing more of it in youth conferencing.

Q352 Steve Brine: I can see that Mr Weir is itching to speak. I saw you scribing.

Dave Weir: Yes, you're thinking, "He's up to something."

Koulla Yiasouma: He's writing down pearls of wisdom.

Dave Weir: I wouldn't argue with anything that Koulla has said.

Steve Brine: Quite right.

Dave Weir: I want to raise one minor point, which is that the conference tries to do two things: to address the behaviour and the needs of the young person; and to give the victim a voice. If we take the line that you can only have so many conferences, we are denying some victims an opportunity. I have no answers to that. That is a dilemma that needs to be resolved in each case, but it is one to bear in mind.

Q353 Steve Brine: Just jumping to the other end of the spectrum, the conferencing was not, as I understand it, intended to cover minor offences.

Dave Weir: Yes.

Q354 Steve Brine: Then they might see that as a disproportionate response, and think, "Come on, here.

Sledgehammer, nut, crack." What has happened in practice?

Koulla Yiasouma: Include Youth has written quite a lot about what I will call the "diversionary conference"—the prosecution-led conference—and the Youth Justice Review talks a lot about that. Like you said, hammer and nuts come to mind.

Steve Brine: I am not suggesting that you hammer anyone's nuts, but if it works for you.

Koulla Yiasouma: That would be a novel approach of using hammers to crack nuts.

As an organisation, and based on what we see the evidence saying and also using human rights instruments, we would suggest that the diversionary youth conference is disproportionate. We talked about community-based restorative justice programmes. Northern Ireland Alternatives is one of the schemes—to declare an interest, I am on its board—and would claim that 10% to 15% of the young people who go through their processes reoffend. You can make an argument as to whether their offending is as serious as the ones who get to diversionary conferences. We would argue it probably is, based on anecdotal evidence. You have seen the statistics that diversionary youth conferences have of 19.8%. When we had full-blown cautions here in Northern Ireland, statistics from 1998 show a 20% reoffending rate, so going into an inspector's office in a police station with your parent, getting a wee bit of a telling-off seems—seems—based on the statistics, which you can do with what you will and you can see what I am doing, to have the same impact as a diversionary youth conference. We would argue that that money is better spent within the community, supporting communities to solve their own issues with their own young people.

Q355 Steve Brine: Does anyone want to add to that?

Professor Maruna: If I could, yes. There is certainly a money issue in the different tools it takes to crack that nut in that some are more expensive than others. Some also can do more harm. I referred a minute ago to the ratcheting-up. The research out of Edinburgh on labelling in young people, in particular, has shown that, even in efforts like a youth conferencing service that are meant to be rehabilitative and reparative and not seen as over-punitive, it can have a stigmatising, labelling effect. If they can be avoided for a lesser intervention that has similar outcomes, they should be. I have a statistic on this. We call this process "net widening", whereby something that is meant to be an alternative for custody becomes an alternative for cases that would have been a slap on the wrist previously. This is from a chapter by Estelle Zinsstag and Tim Chapman in a book that is not yet published on restorative justice. It makes this argument that here in Northern Ireland the prosecution service may be over-enthusiastic in sending people to conferences who would not have found themselves in a youth court. They suggested that as many as 70% of young people who participated in diversionary youth conferences would not have been prosecuted in the youth courts. This may indicate the attraction of a restorative response, but it also indicates the risk that restorative justice can pull too many young people into this net of the formal justice system. So it is a

concern. Again, that has been around. This netwidening was not invented with restorative conferencing. We have seen that with every good-intentioned programme that is meant to be an alternative to more serious sanctions. It can often pull in this wider population, and it is just a risk to look out for.

Q356 Chair: Another kind of conference that you indicated did not work very well was where there was no actual victim involvement.

Professor Maruna: Yes. That is right.

Q357 Chair: I explored with the previous group the distinction between personal victims and other sorts of victims, some of who were, in every sense, victims, be they family members who were dealing with a person who was in no position to take part in the conference, for example. Could you clarify your view of these rather different categories of victim and the effect that their involvement has on the conference system?

Professor Maruna: It is a good line to go down. It is not an either/or. Is it a black or white, either direct or indirect? You do have these shades of grey, however unfortunate that phrase is. All the evidence, including our small study, but much more importantly the international evidence, does weigh toward the closer the victim is to the actual offence, the more impact it would have on the young person involved in a conference. Yes, I do think that there are others who can make a similar impact on the spectrum that you were talking about. We heard about family members representing the victim in cases of a vulnerable victim and those sorts of things. That, I would presume, can also make that same kind of difference.

Q358 Mr Llwyd: The decision to refer the young person to a diversionary conference is made by the Public Prosecution Service. I understand that this can only take place where the offender has admitted the offence and also has consented to that process. We are aware of various concerns raised by children in Northern Ireland and also Include Youth, and I will just detail one or two of them. They are the fact that a diversionary youth conference results in a record held for 2.5 years and disclosable in certain prescribed circumstance, as well as the presence of a police officer at conferences and the protection of the child or young person's rights, particularly the best-interest principle, within this process.

Can you explain any concern you might have about whether offenders, in those circumstances, properly consent to their participation in conferences and to conference plans?

Koulla Yiasouma: It is lovely when people read the stuff you write, so thank you for that. You write them and you don't know what happens to them, so thank you.

Mr Llwyd: You flatterer.

Chair: Cast your bread upon the waters, for you will find it after many days.

Koulla Yiasouma: That's great. These are really fundamental issues. The three of us met yesterday to talk about this. The whole issue of informed consent

and whether a child or young person going through the criminal justice system fully participates in the justice meted out to it is debatable. I will talk about the specifics of conferencing in a minute. Our evidence shows, when talking to young people, that they don't really know what is going on from the minute they are arrested, certainly up until disposal, when they get whatever sentence they are going to get, and sometimes into the actual community intervention.

Q359 Mr Llwyd: Can I very rudely interrupt you?

Koulla Yiasouma: Of course you can.

Mr Llwyd: This is not to argue but just to ask you. When you talk about young people, typically what age are we now talking about?

Koulla Yiasouma: The young people that my organisation has spoken directly to would range between 16 and 21, and they are young people who are quite experienced within the criminal justice system in Northern Ireland. I will use an example of the police caution. When you ask a young person to tell you what it means, many of them still talk about the right to silence, and the right to silence went. That's because we've got TV cop programmes. If you ask them to explain the caution, they don't know the detail of what that means. Then you will say, "Did you ask in the police station?", and they will say, "I did. I asked for the PACE codes"—because the police are obliged to give it to you if you ask—"but I can't read very well, so there is no way that I could read the PACE codes. But I did it to annoy the police, so the police thought I understood it and I didn't."

Then you look at things like diversionary conferences. You get a letter through the post from the Public Prosecution Service laying out the statute, using quite formal legal language because they are obliged to do that. You are asking families—without labelling them, they are families with poor literacy and numeracy skills; often, the young people may have a learning disability or an undiagnosed mental health condition—to be able to read this letter and know that what it says to them is, "If you have agreed that you committed this offence and you've had a chat with your solicitor, if you had one, and you are going to plead guilty, you might want to take up the offer of a diversionary youth conference." These letters are not accessible. It is only when young people know a solicitor and have a solicitor that they often avail themselves of the conference.

Some work has recently been done in Northern Ireland in trying to find a different way of getting young people diverted out of the court system. We are not convinced that young people, their families, carers or legal guardians—whether it is conferencing or any process through the criminal justice system—are active participants in this system. Any youth justice practitioner will tell you that they often follow children out of the court, and say, "Did you understand what just happened?" They say, "No, I didn't." They are standing in the lobby of the court explaining to them what they just signed up to. Or they get a letter for breach of proceedings, which says, "You breached this", and the young person then says, "But I didn't know I agreed to it", or, "I can't

remember that I agreed to it.” In fairness to the Youth Justice Agency—you heard what they said about breaches of conferencing—they are very proactive in explaining the conditions.

In summary, the youth conferencing process is better than other processes within our criminal justice system around informing consent once a child agrees to have a conference, but getting them there is incredibly hard work. The system misses and is not accessible to the young people it should be accessible to. Then all the rights come into effect. They are not getting justice and their best interests are not being met by any stretch of the imagination.

Q360 Mr Llwyd: I have come across, in practice, this idea of cautions and when they come back they have no idea what they have been through.

Koulla Yiasouma: Exactly.

Q361 Mr Llwyd: They are so excited and disturbed about being in a police station that they have no idea what they are signing up to. Could this problem that you have identified be addressed, for example, by ensuring that the youngster comes to meet with a police officer and a responsible adult on his or her behalf?

Koulla Yiasouma: It could be an advocate. Include Youth did work with the Criminal Justice Review in '98; that shows how old I am. As with a child going through care proceedings who has a guardian ad litem assigned to them, we think that there could be an independent advocate assigned to a young person from the minute they enter the criminal justice system to the time they leave it, who stands beside them. It does not have to be a legal person. It could be a very highly skilled and highly trained volunteer, taking into account current fiscal issues, who stands beside them and confirms at every stage of the process that they understand what they are doing and what they are participating in. If that happens, that is a key way of protecting that child and making sure that they understand the consequences of their behaviours.

Q362 Chair: What is the risk here? Is it the young person's failure to understand what is going on, which is a familiar problem, and quite an experienced adult could be confused with the court processes anyway? Are they ending up in a conference without having properly consented, in which case what harm is it doing them? They are getting into an appropriate way of dealing with their offence or not getting to a conference and, therefore, having perhaps a less satisfactory disposal from their point of view.

Koulla Yiasouma: Both.

Q363 Chair: It seems to me that there is a legitimate interest, is there not, in steering them towards something that is justified by their having committed an offence and is likely to lead to them not committing offences in the future?

Koulla Yiasouma: There is no argument. Of all the processes that we have in our criminal justice system, with all its challenges, youth conferencing and restorative processes per se, in our view, are the best way of going through this. Our argument is that, first,

young people are not availing themselves of the opportunities because they don't understand, but, secondly, they do not maximise the opportunity when they get there because, although you can't say all young people are like that, obviously, a lot of them are not fully able to make the most of it. That is what we are saying. This is the way to go, but we can do a little bit more work around supporting our young people to make the most of the opportunities.

Q364 Mr Llwyd: By definition, they are immature, aren't they?

Koulla Yiasouma: They are—very.

Q365 Mr Llwyd: I don't know whether Mr Weir or Professor Maruna have any views on that.

Dave Weir: It is an issue that I have struggled with for some time and it is the application of the restorative justice principles to our existing criminal justice system that there has to be a victim and an offender. The particular cases that spring to mind are those where there have been two young people having a fight in a playground, for example. One of them, instantly, becomes an offender and the other becomes a victim, but what we don't know is that the victim has been teasing this other chap for two years mercilessly. One of them has to apologise for it and the other one has to accept the apology.

The restorative process to me should be a vehicle by which that difference can be resolved without recourse to a criminal justice labelling system. In listening to your earlier question about low-level offending, it is one of the situations where I would very happily agree with John Graham and the Youth Justice Review that so much of this behaviour should be shoved down and dealt with by parents and schools at a very low level, and the criminal justice system shouldn't get involved at all. I strayed slightly from your point, but I did want to say that we have confused or conflated two systems and they don't necessarily sit perfectly together at all times.

Q366 Mr Llwyd: Professor, do you have any views on this issue?

Professor Maruna: Only to say—you heard it in the earlier testimony—that youth conferencing workers will tell you that it is the preparation before the conference that is the most important in lots of ways. There are other aspects as well, but it is crucial not to miss that build-up work that they do, and they are getting much better at preparing young people for what is going to go on and what to expect. It applies to the victims as well as the other parties that are going to go into the conference. Saving on that preparation work is a dangerous thing. Koulla's evidence is a good example of why that would be. The more information and understanding you can get before you get to the conference is crucial.

Q367 Mr Llwyd: Going back to the issue of police officers attending, what role do they play in a conference and who would typically attend to support the youngster?

Koulla Yiasouma: As you know, the legislation states that police officers should be one of the mandatory

attendees at the conference. We were not sure in '98, and we are not sure now, why the police are there. The young people generally tell us that it winds them up because these young people typically do not have a positive relationship with police officers. It is not all entirely down to the young person's behaviour why that relationship is not good. When they are going into a process where they are already stressed because they are going to meet a victim, they don't need to see a police officer there. We are not sure, if there is a victim in the room, what it is that a police officer brings to the conference. The young person has accepted the offence and the circumstances of the offence, and our understanding from young people is that that is, very helpfully, gone through by conference co-ordinators in the preparatory session, so there is no issue around what happened. What is it that a police officer brings? We have met a couple of young people out of the hundreds we have spoken to about this who have refused a conference on the basis that, if there is a policeman in the room, they weren't having it.

Q368 Mr Llwyd: I am playing the devil's advocate with you now. The police officer would be one of many individuals in that room. I don't know, but would he or she be uniformed normally, for example?

Dave Weir: Yes, they can be, although not necessarily.

Koulla Yiasouma: The conference is about that engagement between the victim and the person who has hurt them—in this case the young person. It is to maximise that opportunity. If you have somebody in the room or a uniform in the room—it is not about the individual necessarily—it makes that interaction more difficult because it winds up the young person. What is the purpose?

Q369 Mr Llwyd: As you say, there has been an admission anyway.

Koulla Yiasouma: Yes. The facts are accepted before they go into the room.

Dave Weir: The only reason I can think of is that in courts of summary jurisdiction—

Mr Llwyd: The old police courts.

Dave Weir:—the police officer goes into the box, gives a statement of the facts and then the magistrate makes his or her decision. It just seems like a hangover.

Koulla Yiasouma: We don't need it. You have researched this?

Professor Maruna: Yes. In our sample, two stories came out. One was simply that the symbolism of having the officer detracted from it, and it is just those kinds of relationships with the police that many young people have. It made a system that is already quite formal—for good reason, as it is a statutory system—all the more formal and all the less grass-roots restorative in the informalism that underpins a lot of the restorative approach.

On the other hand, there were examples of officers, who, maybe, were not as well coached in the restorative, reintegrative notion of these conferences and would use it as an opportunity to give a lecture to the young person. This was something that the young people defied against and found frustrating about the

conference experience. On the other hand, there were some examples, but a smaller number, of the situation humanising the police officer for the young person. I have never sat down with a police officer before in this kind of context. We spoke about this. Likewise, it could go the other way. Officers could presumably, in a conferencing situation, get to see the young person, hear their story and see them as a whole person in that kind of context better than any usual interaction that the police might have with young people. Those kinds of interactions are probably best at the end of a conference or at a later stage, as Koulla was talking about earlier.

One of the recommendations of the report was, as important as the conference is in the initial part of the sentence, to have another conference where the police officer sees the work that the young person has done, maybe any accomplishments and any reparative actions they have taken, and then have a more reintegrative ritual to end the process, rather than the shaming that has to go initially after the offence.

Q370 Jeremy Corbyn: Coming back to the question of outcomes, in your research, Professor Maruna, you have identified a small number who have become worse as a result of conferencing, and they have been emboldened in some way.

Professor Maruna: Yes.

Q371 Jeremy Corbyn: Can you tell us more about that?

Professor Maruna: The important thing, and our language is not always the most careful in the report, is that we identified a sample that became worse, so to speak—that started offending more—but the key part of your sentence “as a result of conferencing” is where I would hesitate. In general, the kind of epistemology that sees the conference or any criminal justice intervention as a sort of pharmaceutical and attributes life outcomes to that magical pill I would resist. The conference is a small part of any individual's life, even with the extensive add-ons that result from a conference for those who have them. It is still a very minor part of these young people's lives, and other factors no doubt had a part in these outcomes. That is only to say that we can't necessarily pinpoint outcomes, good or bad, on the conference. We hope that the conference can work in positive ways with other factors in young people's lives, in the communities and so forth. In the research, we identified what we hope were factors that seemed to work in a positive regard and others that seemed to work in a more negative regard, yes.

Q372 Jeremy Corbyn: How far down the line have you been tracking the young people who have been through conferences?

Professor Maruna: That initial research we conducted was the first long-term outcome study that Northern Ireland had commissioned. That was back in 2007. Those interviewees were tracked a minimum of 12 months, and on average around 18 months, after their involvement with the Youth Conferencing Service. Also, I just received funding, along with a coalition of partners, led by KU Leuven in Belgium,

to do another long-term study of restorative outcomes here in Northern Ireland. I hope to include certainly the Youth Conference Service, which is a partner on the grant, but also some of the community-based projects as well, and do another study, because things have changed a good bit since 2007 when we did that research.

As you heard earlier, it is awfully difficult to do follow-ups on a long term. Certainly, one of the things we found from our interviewees oftentimes was that the conferencing experience, as I mentioned, was a relatively minor part of their lives and did not have a huge impact on their life directions one way or another. I do look forward to doing this follow-up, largely because, as you say, the easiest evaluation we have is the immediate satisfaction after a conference. The next easiest is short-term follow-up windows. Really, what we need are these longer-view assessments of young people's lives to situate the conferencing process and youth justice processes more generally in the context of a longer period.

Q373 Jeremy Corbyn: Do you feel that any of the young people who go into conferencing see it as a totally cynical exercise in which they can work the system, go to a conference, "fess up" or whatever, and then walk away fundamentally unchanged in their attitudes at the end of it?

Professor Maruna: I am certain there is because that is the way in any walk of life. Remarkably, though we didn't get that attitude—that sort of machismo—as much as you would expect it in a study where we were talking to young people about custody, where there is a kind of, "I can do this. I can take this, and this was nothing to me. They didn't touch inside of me." Instead, there was a great deal of resistance among our young people, in particular the pressure—we talked about this earlier—to say, "It was completely my fault." The pressure to apologise was not nearly the issue as this pressure to accept full responsibility. Many of them felt, 18 months or two years down the line, still angry about the dynamics of the conferencing situation, of feeling like everything was being pinned on them and there were people crying, and suddenly, "I was this bad guy." There were these kind of dynamics. There was less of the, "Oh, it was an hour. I was in the pub straight after and it was nothing to me."

There were a lot of those conferencing dynamics and the ritual of face-to-face interaction. It was very meaningful to people and did stick with them. Other parts of the sentence, however, and we talk about this in the report—where they were supposed to do a certain amount of hours in the community, write a letter or these kind of things—were largely forgotten. Their attitude was, "Oh, yeah, I did do something. I don't remember what I did, but I had to do something. Then there was a paper signed and it was done." But they remembered the dynamics of the conference and most of them said it was not easy.

Q374 Jeremy Corbyn: I represent an area that is inner city with quite high levels of crime. There are, sadly, some young people who see custody, tagging and ASBOs as badges of honour.

Professor Maruna: Yes.

Q375 Jeremy Corbyn: They quite enjoy testing out whether or not they are breaching the tag or ASBO by going right to the edge of the area they are not supposed to be in, and all that sort of thing. They quite enjoy it all. They know full well that the system is not really capable, in staff numbers, of dealing with all of that. Do you get that experience here?

Koulla Yiasouma: Yes, and I am from the area that you represent.

Q376 Jeremy Corbyn: Where are you from?

Koulla Yiasouma: I was born and brought up in Highbury and Finsbury Park.

Q377 Jeremy Corbyn: Okay. So you are familiar with what I am saying.

Koulla Yiasouma: I am familiar.

Dave Weir: She has a record as well.

Koulla Yiasouma: That's why I am here.

Chair: You are the second person today who has come from one of our constituencies.

Koulla Yiasouma: Also, just for the record, the first election I voted in was in 1983.

Jeremy Corbyn: We won't go any further.

Koulla Yiasouma: I am very happy to be giving evidence before you, Mr Corbyn. Let's be clear. People like me—the children's rights, do-gooder liberal-type people—often blame society's inequalities, the lack of rights and this and that for why young people go into crime. I am very comfortable with espousing these reasons why young people go into crime. When young people stand up and talk about why they go into crime, they talk about what they did, what was wrong with them and decisions that they made. Young people, rarely, in our experience, seek to blame others for their behaviours.

Q378 Jeremy Corbyn: Let me interrupt you for a second. Last week, three of us—not of this particular panel—from our Committee spent about an hour with a group of young offenders in Feltham. After they had relaxed and begun to talk to us, all of them started talking about their own lives, and all of them felt that their own difficult upbringings and complications—and there were enormous complications—were the major factor. They became quite philosophical about it. Is that normal?

Koulla Yiasouma: That is right, but they see it as about them, as something that they did wrong. They also recognise their own powerlessness. Sometimes beating the system is their little bit of power. So young people will say, "I just did it to be in the good books," "I knew I did wrong but the conference wasn't good for me," or, "I did it to stay out of jail." It's their little way of doing what they have to do to get what they consider to be the least punitive outcome.

Q379 Chair: Do these personal factors emerge in the restorative process itself and in the conference process itself? Do young people within that actual context, when the victim is there, say, "I just went off the rails. I didn't know what I was doing because everything was such a mess at home"?

4 December 2012 Professor Shadd Maruna, Dave Weir and Koulla Yiasouma

Koulla Yiasouma: In the best conferences they do.

Q380 Chair: Does all that come out?

Professor Maruna: In theory, no. I don't know why I have been pointed to, but I have sat in conferences where that has happened, where you have got everyone in tears over the victim's story. The offender starts to tell his or her story and then, suddenly, the tears come out on all sides. You can get that even in a short one or two-hour conferencing situation. It is

not a guarantee. You could also have a context that stays focused very much on the offence, and, "Let's leave all those excuses out and let's talk about this." So you could have any spectrum in a restorative conference, for sure.

Chair: Thank you very much indeed. We are very grateful. It is much appreciated. We have much to take home with us.

Mr Llwyd: It has been very interesting.

Tuesday 11 December 2012

Members present:

Sir Alan Beith (Chair)

Mr Robert Buckland
Rehman Chishti
Jeremy Corbyn

Nick de Bois
Andy McDonald

Examination of Witnesses

Witnesses: **Frances Done**, Chair, Youth Justice Board, and **John Drew**, Chief Executive, Youth Justice Board, gave evidence.

Chair: Welcome, Ms Done and Mr Drew. I should call you the great survivors, as you are survivors of the Youth Justice Board. Welcome to this sitting of the Committee. We have acquired a new member today; Mr McDonald has joined us. I apologise for the acoustics of this room and we will do our best to counteract their limitations. We are working on youth justice and are very keen to hear from you. I am going to ask Mr de Bois to open the questioning.

Q381 Nick de Bois: Thank you, Chairman. Good morning. Mr Drew, in November 2012, in a speech to the annual Youth Justice Convention you said that the biggest challenge facing the youth justice system was one of resources. Are you able to give us an indication of what has been the specific impact of spending cuts on the youth offending teams, given that there is evidence of reduced caseloads? Supplementary to that, perhaps you could indicate when you will announce the grant for 2013–14.

John Drew: Thank you. Yes, I do believe that the resourcing issue is a very major challenge, so, first, I will give you a few facts in respect of that. We won't know until January 2013 precisely how much the local contribution to youth offending teams has gone down. We know that we were able to protect the size of the youth justice grant in 2012–13, but we believe there has been a reduction locally in the local contribution.

Q382 Nick de Bois: Are you able to make any assessment of that?

John Drew: No; I would prefer to wait until we have returns. The year before, there was a national average reduction of about 20%. That is balanced to a degree by the reduction in caseloads, although you need to treat that with some caution, because what has tended to happen is a greater reduction in the less demanding cases and more serious cases.

Q383 Nick de Bois: So it is not a straight 20%.

John Drew: It is not a straight 20% or 16% reduction or what have you. My point was, in particular, a concern that in the past—perhaps not in the last 10 years but before then—youth justice has been a bit of a Cinderella service, and it has been tempting to some of the funders not to recognise the importance of investing in youth justice, not least because of its impact on adult criminal justice.

Q384 Nick de Bois: As I understand it, and I could be wrong, between 2000 and 2008, spending on youth

justice increased in real terms by around 45%. So, is the “Cinderella” less about money and more about—

John Drew: I prefaced it by saying 10 years or more—not for the last 10 years, but before that. The reforms that were part of the 1998 Crime and Disorder Act gave a priority—a prominence—to youth justice that it had not had in the '90s. Much of the bipartisan support for those programmes was a reflection of the fact that youth justice had been neglected at times during the '90s, both perhaps locally and nationally. The concern is not to lose the advances that we have achieved over the last 10 years, and particularly in the last four years, where we have significantly reduced—59% over the 10 years—the number of first time entrants, where we have seen a significant reduction in the number of young people being sentenced to custody.

Q385 Nick de Bois: I am sorry to interrupt, but you are raising questions as you are speaking—and good ones. Do you think, though, that the amount of crime committed by young people has actually gone down, or are we dealing with it differently? It points to your point that first time entrants to the youth justice system have gone down. That is an interesting indicator, but it may cover up a number of issues.

John Drew: It most certainly does cover up a number of issues. You are absolutely right to suggest that there might be more than one thing at play. Such evidence as does exist suggests that, in absolute terms, the amount of youth crime has reduced, and not just within our society but across western Europe. That evidence is principally drawn from self-report studies, where young people, under the cloak of anonymity, are asked whether they have offended or whether they have been the victim of offending. There is pretty unambivalent evidence that the amount of crime has reduced.

Secondly, certain categories of crime have definitely reduced because they have become more difficult, and with that in mind I would highlight offences involving the theft of motor vehicles, where the reduction is because the technology is advanced. Police forces would say the same in relation to certain categories of burglary as well. In our society and across western Europe, there has generally been a reduction, but there has undoubtedly also been a change in the way that we process young people who have started a pattern of offending, and that isn't necessarily fiddling with the statistics.

There are very good reasons for responding in a measured and thought-through way to young people aged 10, 11 and 12 when they first get into trouble and are first reported to the police. Those are to do with the fact that we know from broader studies that 70% of boys at some stage or other will commit an offence that, if prosecuted, would be indictable. But, actually, most don't reoffend and, therefore, you need to have a measured way of responding and not overreacting, for fear that, if you overreact and drag a child into the system, you stamp pretty heavy labels on them which may lead them to think that they are someone with criminal tendencies and encourage them into that. A measured response in the first instance is a sensible thing. It is also sensible because many of the things that lead young people to commit crime are to do with deficiencies and weaknesses in the supports around them. If you can pass them back to those services, whether they are children's welfare, health, housing or what have you, you can probably meet the needs that are the undercurrent behind their offending.

Q386 Nick de Bois: Presumably, at some point, you should be able to measure the effectiveness of that when you first come into contact with people and they avoid going down the route that leads to custody. That would be a measure of success.

John Drew: There are two—and only two—longitudinal studies that look across a lifetime at the consequences and impact of offending behaviour. There is the Cambridge Study, which started in the '70s, and there is a more recent study in Edinburgh. Both of those bear out the message that a sensible measured response to young people at the beginning, when they are first reported to the police, has long-term benefits in terms of the likelihood that they will be offending into their 20s and beyond.

Q387 Nick de Bois: Moving on slightly, I have a question for either of you. How would you describe the early lessons from the Youth Justice Pathfinders?

John Drew: That is probably one for me. You know there were originally four Pathfinder schemes. The one in west Yorkshire is proceeding really well. There were two in London—in west London and east London. In the early days, the figures did not move in the direction that they had hoped they would. In other words, there wasn't a reduction in the number of children in custody in those areas. In part, that was influenced by the fact that both areas were blighted by the autumn events in London.

Q388 Chair: Was that the riots?

John Drew: Yes. Sorry, I said autumn and meant August. You are absolutely right; I do apologise. But in both instances they are very determined to stay in the scheme and we have granted them an extension to work out how they can do that. Birmingham have withdrawn, and there are complex reasons for that. But the principal answer to your question "What are the early lessons?" is that they are the way that you drive down the number of children in custody, to make sure that custody is still used but used as a genuine last resort. It is by extremely detailed planning on the

level of individual children, examining in real detail their circumstances in order to satisfy you that custody is being used as a last resort. That is the hallmark of the west Yorkshire scheme, and I am sure that is why they have made the very good progress they have made, and that is why the two London schemes have not simply walked away from the proposal, because they can see that there is something in that for them.

Q389 Nick de Bois: Is it too early to draw conclusions? Do you feel they need to run longer?

John Drew: They certainly need to run for the two years because that is the proposition, but it has shown that, where people really understand the territory they are working in, the nature of the children, the nature of the offences that lead children into custody and so on, they will get a benefit from having a greater degree of flexibility with funding so that they can invest upstream, as it were, in things that prevent the sort of offending that leads inevitably to custody. That would be useful for us as we begin to look at the proposition of devolving budgets, both, first, for remand and possibly later down the line for custody in general.

Q390 Jeremy Corbyn: Thank you both for coming to give us evidence today. Before 2010, youth justice issues were shared between the Department for Children, Schools and Families and the Ministry of Justice, and it was a specific act to bring them together. This was controversial at the time. What effect has it had for both of you, and does it mean that there is a greater emphasis on treatment of offences rather than the educational aspect of preventing offending in the first place?

Frances Done: If I can answer that, Chair, the Youth Justice Board was sponsored originally, following the Crime and Disorder Act, by the Home Office, and between 2007 and 2010 it was jointly sponsored between the Department for Children, Schools and Families and the Ministry of Justice. Then, on the change of Government, it became sponsored by the Ministry of Justice.

My response to whether that has made any difference in our approach is that it has definitely not, because we see the Youth Justice Board as a bridge between welfare aspects, the needs of children, and the justice element. That is one of the key roles that the YJB fulfils. Having said that, there were some pluses to having joint sponsorship in that we had an automatic in to the Department for Children, Schools and Families. Equally, there were some quite onerous requirements by having two different reporting systems and so on. That was a kind of negative.

I have to say that, as a Youth Justice Board, we need to relate to and influence strongly a whole range of Departments. Education, obviously, is a very key one, but Health is really key, as are Business, Innovation and Skills, DCLG, and Home Office, absolutely. So we have never seen joint sponsorship as being a necessity.

On the question, though, of engagement by DFE, that really is very important, because we have huge agendas around safeguarding, looked-after children, children excluded from school—a whole range of

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issues. It is a cause of concern for us that, inevitably, because of the Government's priorities at the moment, there is a huge emphasis on what you might call more mainstream children and probably less emphasis on non-mainstream children. It is our job to keep banging at the DFE's door on the issues about the children that we are most concerned with, who are very often excluded from school very early and then don't end up in any formal educational setting—for example, safeguarding issues and looked-after children. It is our job to keep butting away to make sure, with other agencies, that those features of the DFE's responsibility have enough attention. I don't think it is really about sponsorship; it is about trying to engage each Department in the things that will make most difference to the children who are about to come into or have come into the youth justice system.

Q391 Jeremy Corbyn: At a practical level, if you are discussing youth justice issues within the purview of the Ministry of Justice, inevitably you are dealing with courts, processes, detention, prison and so on. Does this mean that, because you are based in the Ministry of Justice, the issues of prevention, education and looked-after children—all the issues you have just mentioned—tend to get ignored, because you have now had this for some time? Do you feel you have to work very hard to look at preventing offending in the first place by early intervention, by children excluded from school and all the issues that we know can lead to exclusion and offending by young people?

Frances Done: We have to work really hard on that, not because we are in the Ministry of Justice but because it is hard work to do. The Ministry of Justice sponsorship does not prevent us from doing our job, which is to make those links. We are the body that always brings into the Ministry of Justice, in our relationship with the Ministers and our sponsored Department, the arguments about the needs of children, the way in which they need to be supported and those links. That is exactly what we are there for, so I don't find the Ministry of Justice link a problem at all in that sense. The issue, though, is a wide one, because the prevention of offending for quite a while was very much something that the YJB and youth offending teams were concentrating on, and they developed a whole range of programmes and a focus on that. That has now moved in a wider direction, which we don't have a problem with, because early intervention grants are about joint work across agencies, health, schools, children's services and focusing on children. Troubled families agendas is another way of joining up that early intervention agenda. Very many YOT managers have been moved into troubled families lead posts because of their very expert role.

We have prevention. Now is going to be a very strong theme for police and crime commissioners, so we are working, as the YJB, very actively with police and crime commissioners and youth offending teams to make sure that the funds that are being transferred from the Home Office to police and crime commissioners are spent on prevention and attention to young people at risk of offending.

The agenda carries on; we just do it in different ways, depending on the Government's particular way of wanting to do things at the time. I really can be absolutely clear that sponsorship by MOJ does not stop any of that, but that is what we contribute to the agenda. We are just making sure that that cross-criminal justice and welfare focus is absolutely maintained, all the time.

Q392 Jeremy Corbyn: Do you think youth offending teams are the best way to spend the money on this, or would it be better done through other agencies?

Frances Done: For now, from April next year, the focus of the money that previously was spent in youth justice on prevention will go to the police and crime commissioners, and that is why we are working very strongly with them. I think youth offending teams are always going to have a really important role. The challenge for them now is to make sure that the element that they can do most effectively they do in a very joined-up way with other agencies and that they are able to access funds to carry on doing it.

But the most damaging thing, relevant to Mr de Bois's question, would be to lose the focus on prevention, early intervention and keeping an eye on that group between eight and 13, which are most at risk of offending, if nobody has stopped them before, and to get them at that point. Youth offending teams have a real expertise in that area.

Picking up the evidence, there was a lot of focus for a while because of the reductions in direct grants to YOTs, but they have become very adept at going out looking for money in other areas, and, also, they are strategically well placed in many areas, because YOT managers, by the definition of multi-agency operation, have learned over the years to find allegiances and alliances that can help them deliver. I see YOTs as very much part of a much bigger picture now about a focus on prevention, and it is absolutely essential it carries on, because the improving results in youth justice have been very much based on that agenda.

Q393 Jeremy Corbyn: Are you working to bring all the new police and crime commissioners in for some kind of discussions or conference, because they are all now working out their programme of what they are going to do and how they are going to operate? I suspect, if we don't get in early on the agenda of preventing youth offending and youth offending rehabilitation, then the more easily your headline-grabbing decisions about the time you lock people up and the robustness of policing will tend to take over the agenda.

Frances Done: Yes. Obviously, we were well aware of that possibility. We have been working with YOTs now for over 12 months, once it became apparent that police and crime commissioners were definitely going to be in place. We have been working with youth offending teams across 158 areas, and we have been providing them with support materials to enable them to demonstrate to their local police and crime commissioner, as soon as they came into post, what they have been able to achieve, how they have done it and why it needs to keep going.

The feedback from that has been very positive. In fact, in many areas, they have engaged with preparations for the police and crime commissioners. As soon as they have been elected, the YOTs have been in there, starting to make their cases. We are supporting that. I have written to all the police and crime commissioners in England, and we will be dealing with Wales separately through our Wales Office. I will be seeking meetings, in the next month or so, with some of the police and crime commissioners in the most populated areas, to engage with them. We have already had a response from at least three in the very largest areas, who are very keen to meet and talk about what we can contribute and support in the way of their work. They will be joining up prevention, preventing youth crime, victim support and community safety aspects of a budget that they are now being allocated. It is early days, but, so far, we have reason to be optimistic that they will be listening to what youth offending teams are saying, because youth offending teams are generally very credible and they have a good track record. That will be very helpful. In areas where maybe other directions of travel are becoming apparent, then certainly we will be engaging with those police and crime commissioners as fast as possible.

Q394 Chair: Are you rather overstating it to say that you are working closely with police and crime commissioners? They have only been in post for a matter of days. Most of them seem to be busy appointing deputies or other staff and locating desks and so forth. There hasn't been time for relationships to build up. Obviously, it was a wise decision to get the local YOT teams prepared to engage with their police and crime commissioners, but, as far as you as a board are concerned, it must have been impossible, in the short time, even to establish which police and crime commissioners are heading in the right direction from your point of view and which ones you are going to need to engage with quite extensively.

Frances Done: It is early days, but we have a very good intelligence system on the ground. The point I was making is that, if this appears to be an area where the police and crime commissioner might not be, for whatever reason, very sympathetic to the kind of work that YOTs are doing, then we would get to know that quite quickly and we would seek to engage. We already have a positive feedback from police and crime commissioners in some areas—some of whom I know personally anyway—where we know that they are really keen to talk about what can be done and how they can help. Although the role of the police and crime commissioner has no direct control over justice agencies, quite rightly, there is a duty on justice agencies to co-operate with them. That is absolutely right, and youth offending teams are part of that. I see some real positives could come out of this, and it is our job to make sure they do.

Q395 Rehman Chishti: I am going to ask a few questions in relation to youth custody, and there are multiple questions here. First, why has the Youth Justice Board decommissioned so many beds in secure

children's homes, and on what evidence is the decision based?

John Drew: The evidence for any decommissioning is based on demand, so we are in a long-term reduction in demand since January 2009 now, in which the number of children in custody and the demand for custody has reduced, broadly speaking, by 50%. We had fewer than 1,500 children in custody last night and the night before, whereas the high point earlier in the last decade was 3,200. So there is this long-term demand. Within that, the fastest rate of decline has been with the 14-and-under age group, where there has been a 70% reduction in demand. Although it is not a simple equation to say the young children go into secure children's homes, the middle age range go into secure training centres and the older boys go into YOIs, there, nevertheless, is a pretty healthy correlation. That has been the evidence for the particular reduction in secure children's homes. I have to say it is not the fastest rate of decommissioning. In other words, proportionately, we decommissioned many more places in YOIs, which principally deal with the 15 to 17-year-old boys. But, again, that has been driven by demand, because there has been a significant reduction in the number of boys of that age being sentenced to custody. We are really sensitive about the question of secure children's homes.

Q396 Rehman Chishti: You have given the breakdown in terms of age and reduction, but, as regards regionalisation across the country, are there certain areas where you get greater need than others, and, if so, what are they and what are you doing to tackle those issues?

John Drew: London is the major demand area, probably not in a way that would surprise you. 25% of children in custody or 25% of our caseloads and so on are generated within London, and then beyond that, in the major urban conurbations, you will see much higher numbers of children in custody or much higher numbers of serious offences.

Q397 Rehman Chishti: You mentioned London, but what would the top four be?

John Drew: Of areas in the country?

Rehman Chishti: Yes.

John Drew: London, Birmingham, Greater Manchester and Greater London. Perhaps west Yorkshire will feel I shouldn't have left them out of this.

Q398 Rehman Chishti: The second question is how do you respond to concerns that have arisen about the use of enhanced units in young offender institutions?

John Drew: We feel that the special units—there are four of them—are a real, positive contribution.

Chair: Did you say positive?

John Drew: Yes. They deal with very particular and different types of child. We have units dealing with long-termers—children who are on sentences that will see them go into adult prisons. Their needs are very different and it is sensible to keep them together. We also have two units that deal, in different ways, with children who have particularly challenging behaviour, which either means that they are very disruptive to the

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ordinary discharge of custody or they cannot safely be catered for within a normal YOI. We would like, over time, to see that specialisation developed further. I know the argument is sometimes put that, by having such units, you reduce the need to place children elsewhere and it is a sort of sleight of hand, but that is not how we see it. We reckon that there are many more children in YOIs who would benefit from being in specialist units than there are at the moment, and so we take every opportunity, when resources become available, to develop them.

Q399 Rehman Chishti: What would you say to the concern that has been raised that we don't know how effective the new enhanced units are, and, therefore, we are rolling them out around the country when we don't know how effective they are?

John Drew: Effectiveness in its most simple terms is measured by reoffending rates. The numbers passing through specialist units are so small that no analyst would allow you to attach too much credibility to them, so we wouldn't publish reoffending rates in relation to the specialist units. It is also worth bearing in mind that many children will pass through a specialist unit but won't spend their whole time in custody in one, so would you be measuring the efficacy of the unit or not?

I would say that in terms of other outcomes—such as the ability to focus on a young person's needs, to develop a proper re-settlement package, and to work out some of the needs that hadn't been met prior to custody and make sure they are met post-custody—they have been effective. The evaluation that we, for example, commissioned to look at the Keppel Unit at Wetherby would bear out that conclusion. I don't recognise the description that they are not effective. They all exist within the overarching conundrum on custody, which is that, if you lump every child who passes through custody together, you get a reoffending rate of 71%. That does concern us, it concerns the Government, and I am sure the Minister will be talking some more about that.

Q400 Rehman Chishti: Can I just follow up on this? In terms of the effectiveness of the enhanced units—for example, the Willow enhanced unit in Hindley—the point that has been raised is that these children are not there long enough for their problems to have been dealt with. How do you overcome that?

John Drew: I don't think it is for the judicial system to provide a total response to the very profound needs that some of our children whom we encounter in custody have. In other words, I don't think sentences should be determined on the basis of need. Sentence must be a response to the offence and must be balanced and measured in consequence of that. If you have a child who is in custody for an average period, which is 79 days at the moment, and in most instances you won't have been able to meet all their needs in that time—these are not care homes anyway—what you need to do is to make sure there is a seamless transition from custody into the community, with the sorts of support services that are needed in order to continue to treat and respond to that young person's needs. Most of the needs of more profoundly damaged

children whom we encounter in custody are, in the long term, probably better met outside of custody than within custody.

Q401 Rehman Chishti: I have one final question, if I may, in relation to breaches. What progress has been made to tackle the high number of children ending up in custody because of breach through the use of compliance panels?

John Drew: The compliance panel, as your question implies, is our preferred approach to this. Effectively, it brings a group of people's minds to bear on the issue of compliance and breach. Within the statutory framework for looking at non-compliance, YOT managers have discretion, but our view is that it is best exercised by a group of people who really examine the circumstances of young people. We have created a model, we have encouraged the exchange of information between youth offending teams about models that appear to work, and in other ways we have a toolkit that tells people how to go about setting up a breach panel and the like. In other words, we have pushed this heavily. At the moment, we only have figures up to and including March 2011. The disappointing thing about those figures is that, for the two years leading up to March 2011, there has been no significant change in the number of breaches, so they have actually risen as a proportion of the number of children in custody. Those who are there as a consequence of breach in March 2011 were 16%, whereas previously it was 13%—about 300 children. We think that just highlights that this is a really difficult dilemma.

I am a former youth justice worker myself. It is very difficult when you work with a young person who flatly refuses to comply with what have been sensible conditions of their sentence and conditions that were made as an alternative to sending that young person to custody. In other words, if the court had a *laissez-faire* attitude towards compliance, we would be in a very different place. What do you do ultimately with someone who persistently breaches, not just in a minor way but persistently fails to attend appointments and persistently fails to follow a particular programme that is part of the sentence of the court? It is important that there is always provision for breach.

We come back to our central proposition, which is the central proposition we have about custody generally. Custody should be used as a last resort. We are not in any sense opposed to custody. So, also, in relation to compliance, we could not see a situation in which some young people would not be breached and would be placed in custody as a consequence of non-compliance. We want to make sure that people have gone that extra mile to exhaust all the potential within the community.

Q402 Chair: One of the dilemmas that was illustrated by something you said in your previous answer is one that we faced when comparing our system with that in Scandinavian countries. In our system, for good civil liberties reasons, we don't like to blur the distinction between the judicial system and the welfare system, yet some of the most successful

interventions practised in other countries rather ignore that distinction and give to offenders, and even potential offenders, whatever kind of support and sometimes discipline and restraint that is required—or they believe is required—to stop them from committing crimes and getting into a life of crime, without anything like so much regard as to how guilty they are and of what, as our system does. Have you considered that as a general issue in the Youth Justice Board?

John Drew: We consider that all the time. It is the fundamental debate in youth justice and has been so for the last four decades. I started practising in this field in the '70s when, using the provisions of the 1969 Children and Young Persons Act, a lot of children were placed in care as a consequence of the offence condition. I have to say it didn't work. A very large number of children were incarcerated on what became effectively indeterminate sentences and where they themselves were given at most, at times, very vague ideas about what their behaviour would need to be in order to come out of a custodial setting, and at the same time there was no relationship between the offence and the sentence.

For my part, I believe in England and Wales that we have got it about right in terms of the balance of considerations of justice and welfare and that there are a small number of children who are encountered in the youth court or, on occasion, the Crown court, and the judiciary are immediately aware that their needs really ought to be met through family proceedings rather than criminal proceedings. I do believe, just as a personal opinion, that we need to have some route—it is shared by most members of the judiciary—whereby they can cross-refer into family proceedings.

Q403 Chair: From the criminal proceedings to the family court.

John Drew: Absolutely. But I am not talking about a large proportion, and it would be incredible to the public if we were suggesting that. On balance, within all the traditions of English common law and English jurisprudence, I think we have got the balance around welfare and justice about right in our system.

Q404 Mr Buckland: Everything is linked here, but I want to look in particular at alternatives to custody and youth rehabilitation orders. In the last year for which figures are available—2010–2011—just over 18,000 orders were made. We know that there are 18 different requirements that are available, including intensive fostering. Of those over 18,000 orders, only 20 included intensive fostering requirements. We know the history of intensive fostering; there have been some interesting pilots, although the comparisons that have been done, although encouraging, are perhaps from a very small controlled sample and are not necessarily indicative. There are some after-settlement issues as well with IFs. But we have had evidence from Action for Children that advocates that, if there was a longer-term financial commitment made to IF and some leadership from the YJB, then this is a system that would be worth pursuing—and certainly worth pursuing for judges, who very often aren't presented with such alternatives

by pre-sentence report authors because of the lack of availability.

John Drew: If I say a few things, I am sure Frances will want to say something as well. We don't believe that IF should be funded nationally, in exception to almost every other disposal before the courts. We have the pilot scheme and we have kept it going because there remain important lessons to be had from that, and we are continuing to monitor the young people going through. As you said, the issue in the past has been volume, so obviously the volume is growing and, therefore, we think it is warranted to continue to keep the schemes, two of which Action for Children run for us and run well. But we do think, in the end, that IF needs to be funded locally and needs to be made available to courts as a local alternative to custody. Our solution to that is to support the proposition of the devolution of custody budgets, which gives the resources to local authorities and their partners—perhaps working together in a consortium in terms of critical mass. They can then think through, "Are we investing these resources best where we should, and, in particular on something like intensive fostering, do we want to grow a home-grown intensive fostering scheme covering Manchester or covering wherever the area is, as one of the options we will give to courts?" We do believe that that must be a decision, in the end, made locally rather than nationally. That is our particular take on that.

Frances Done: Could I just comment very briefly to say that, generally speaking, while we have a really important role at YJB to innovate, lead and provide good practice information and so on, we think that long term the solutions lie locally and they must be sustainable locally, as John said?

A really good example of the way this might go—in fact I am fairly confident it will in time—is that we have been developing with metropolitan areas regional resettlement consortia, around the north-west, south-west, south-east and so on. They are beginning to really start to take off. For example, the one in the north-west has focused on young people on a DTO at Hindley and has concentrated on giving them an enhanced offer, following them right through from the minute they get into custody, outside accommodation, training and so on.

The reason I am making that point is that I was at an event in Manchester town hall last week, at which they were celebrating success so far, which was four authorities working together. They had 10 authorities there; they are now going to extend to the 10 authorities of Greater Manchester, working across the 18-year-old age transfer as well. The point about that is that that consortium has the capacity, in the longer term, not just to concentrate on resettlement but also to concentrate on these intensive alternatives to custody, which have to be done at a much higher level than one authority. If you take the potential for devolving the custody budget in that sort of area, then you really have a model that could work long term. You get central commissioning of the secure estate, which is always going to be necessary in a country as small as England and Wales, but local ownership and buy-in of what happens to each individual child. The

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solutions for many of the things that we want to improve all lie in that local collaboration.

Q405 Mr Buckland: Are you going to genuinely achieve that localism without including the secure estate? I take your point about the fact that it is a national resource, but, unless you have a proper like-for-like comparison on the unit costs, isn't it going to be difficult for local groups to manage their budgets and work out what is the best approach?

Frances Done: I think at Greater Manchester level or west midlands level there isn't any doubt that you can operate these sorts of intensive, alternative costs at that level. Almost any individual YOT—possibly Birmingham could—could not sustain that because there is a limited number of young people who can benefit from that particular intervention. It is a very specialist intervention, which, as you probably know, has to follow exactly the methods that are laid down, otherwise it does not have the efficacy. That is where you have to have collaboration. You have to have a shared understanding of the fact that it is important—a shared commitment to the scheme so that it can carry on. It is good to innovate and you have to start from the centre to do the innovation, but, if we keep having this three-year funding and then there are questions over the funding and then there are another three, that isn't a way to run the youth justice system. In the long term, we have to demonstrate that things work; then local areas need to have a range of structures around them and certainty of the nature of devolved funding to be able to carry on themselves.

Q406 Mr Buckland: Are you confident that the devolved funding system will in fact deliver the right resources for the sort of approaches that you want to see?

Frances Done: It is still early days on devolving funding. Government obviously have not decided that the Ministry of Justice will do that. What we regard as our role, and have done since 2009, is to put the idea out there. It could be called justice reinvestment or devolution of funding or whatever, incentivising certain behaviours, because it is payment by results really. Our job is to give the really senior people in the system—the chief executives, the directors of finance and the lead members for children, those people in the local government system—confidence that this has some merit. In the end, it will be a decision for Government as to whether it happens.

John Drew: We will, from 1 April, have 20% of custody funding that is linked to remand devolved. That is a big first test, if you will. So far as this is a matter of mechanisms and systems, then I am completely confident that we have in place the mechanisms and systems to work, and I am completely confident as well that we have the engagement of the right people in local authorities to make it work. But, as Frances says, then, ultimately, I am sure the Government will look at what happens on remand devolution before they reach a final decision on what remains.

Q407 Mr Buckland: Finally, dealing with the issue of housing resettlement, the Committee visited YOI

Hindley some weeks ago, and an issue that was raised with the Committee was that there was concern about the change in legislation, encouraging local authorities to find alternatives for a remand into youth detention, which comes into force in April 2013, which was thought, potentially, to make things more difficult in terms of obtaining suitable housing. What will you as a Youth Justice Board be doing to try to ensure that the sort of problems that have been alerted to us don't occur and don't cause a problem?

John Drew: Where we have encountered problems, and we have encountered other similar problems in relation to access to benefit and what have you, we have taken that to the relevant central Government Department and there has always been a commitment, across Whitehall, for this cohort of young people to find solutions to more general rules that may immediately appear to place them at a disadvantage. The underlying sell for the whole youth justice system is what its knock-on effects are with adults. In a situation where we have a good message in terms of numbers of young people coming into the system, numbers in custody and what have you, and where we can show the consequences of them finding their way into the adult criminal justice system so that in the last five years there has been a reduction in the number of 18 to 20-year-olds in prison, a reduction in the number of indictable offences committed by 18 to 20-year-olds and the growth in adult criminal justice is fuelled by a different age band, it has not been difficult to talk across Whitehall about the need to think through the unintended consequences of changes. That is what we are doing with that particular issue.

Q408 Chair: 65% or over of young offenders have speech, communication and language needs, which has often been part of their failure to get into mainstream society and also it affects their interchange with the criminal justice system itself, where they don't understand what they are being told or don't give coherent answers to questions. Are you satisfied with a situation in which relatively few youth offending teams have speech therapy facilities available, and what is your view of the issue?

Frances Done: You had evidence from Professor Bryan earlier in a session, so you don't need convincing that this is a big issue. We are confident that over the last five years there has been an increasing understanding of how important this is, which is helpful because it wasn't that widely understood before. There are a very limited number of YOTs that have specialist speech therapists. There is an even smaller number of YOIs, although there are some really good examples where that has happened and it has made a big difference. We have not been in a position to fund a specialist post in each YOT or in the YOIs, which we would love to do if somebody came up with the money. What we have done, though, and it has been very helpful—it has been very well received by those involved in this area of work—is to work with the Communication Trust over the last few years, funding them to put on joint training seminars all the way around the country, which have been incredibly popular. We have had to do more of them because they have been so popular. First of all, there

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has been training of about 800 YOT staff in awareness. They are not speech therapists, obviously, because that is a very specialist function, but they have become very aware of the potential problems young people have and some ways of dealing with them and addressing them, so they are starting to deal with young people in a different way.

Also, and very importantly, we have extended all that awareness training to groups such as the police and magistrates, right across the country. That has been incredibly helpful, because, as you know, youth court magistrates are very often not aware that the language they are using is probably completely incomprehensible to some children and gauging children's reaction wrongly as a result of that lack of comprehension. We could say we have achieved a great deal in that, but there is a long way to go. YOTs have a real appetite, and so do YOIs, for doing a lot more on this and helping children more directly. They are doing as best they can, but certainly more resources for this would be hugely valuable because it is a really key element of the children whom we are dealing with.

Q409 Jeremy Corbyn: That is a very interesting answer on that one. Are you confident that every young offender institution seriously examines every young person who comes in for problems of speech and communication, dyslexia, Asperger's or any other syndromes that have previously simply not been identified either by health or education services, and are you confident that they are all doing something to help these young people to improve their communication skills before they leave?

Frances Done: I don't think we can, but, John, do you want to explain what we are doing about the new assessment system because that is our tool to make it move on?

John Drew: It is not a perfect answer to your question, but it is a part answer.

Jeremy Corbyn: That is why I am asking it.

John Drew: I will come on to a better bit after that. The bit that we didn't talk about perhaps in relation to speech and language therapy generally is that we have designed a new assessment tool for youth justice. At the moment, everyone going through the youth justice system undergoes an assessment called ASSET—sometimes quite often, quite regularly. There are various problems with the system, but principally it is 10 years old and therefore is not up to date with the sort of emerging understanding of the

children with whom we work. We have now had, for the last year and a half, a new assessment system that has speech and language deficits, and some of the other issues that you raised with children's mental health, much more at the heart than it did previously. We are in the final stage of seeking approval from Government to roll this out, hoping for a decision in January. It is immensely important, both in relation to speech and language deficits, but also in other areas.

Q410 Jeremy Corbyn: Would it be helpful if there was a specific requirement on YOIs to do a full assessment, including dyslexia, Asperger's and everything else, because I have no figurative evidence, but, anecdotally, for young people who go into YOIs, quite often it is the first time anybody has assessed their communication difficulties, and communication is key to rehabilitation, isn't it?

John Drew: It is, and I was coming to your main question. We would be fools—we are many things, but hopefully we are not that—to sit here and say, "Yes, we're completely satisfied with the response." Frances and I, and everyone at the YJB, know of cases clearly where children have had needs that are not recognised and problems have arisen as a consequence of that. We believe the assessment issue will help, and that is in advance of going into custody. There is more that can be done in custody. The Minister will talk more about his own ambitions for custody for the future, and there is no doubt that we can do better in almost any of the things that we do in custody at the moment in producing a system that looks more at the child in the round, and particularly addresses issues such as education deficits, mental health needs and so on.

We have lots of wishes in respect of that, but the first step that we are taking is the assessment step, because we think that will be the engine for driving an improved response when young people are in custody. We are also in the process of revising the training that we give to custody officers. We will at some stage in the future, undoubtedly, be commissioning the estate, and in the new commissioning plans for the estate we will place some of these issues in a greater primacy than they have been in the past.

Chair: Ms Done, Mr Drew, thank you very much indeed. Mr Drew, it will probably be the last time we have you before us in this capacity because your term is coming to an end and your successor has been named. So we thank you for your work in this area and wish you well. Thank you both very much.

Examination of Witness

Witness: Jeremy Wright MP, Parliamentary Under-Secretary of State, Minister for Prisons and Rehabilitation, Ministry of Justice, gave evidence.

Q411 Chair: Mr Wright, welcome back to the Committee. We have a hat-trick of Ministers in the justice and home affairs field who have served as members of this Committee. We have Helen Grant, James Brokenshire and yourself.

Jeremy Wright: Trained well.

Q412 Chair: That is what we like to think. Your predecessor took a very close interest in the youth justice part of his brief and was very keen to achieve reforms. When you were given the job and you took it over, do you think you were given a different brief and told to make significant changes in the way youth justice is handled?

Jeremy Wright: There certainly will be changes made, but I don't think there will be a change in the emphasis we put on youth justice and the importance of getting it right. The most important responsibility that I have, as my predecessor had, was to ensure that we would maintain a safe, decent, secure estate across adults and young people, but we recognise we have a particular responsibility to young people. You have heard a little bit about those responsibilities already and I take them very seriously. We have to ensure that we meet our welfare responsibilities as well as the responsibilities we have to impose appropriate punishment. In the case of the youth estate, that balance is particularly difficult very often, so I don't take that responsibility any less seriously than my predecessor or, I suspect, any of my predecessors in this role.

Q413 Chair: Have you formed a view yet as to what requires your most urgent attention—which bits of the system are creaking and require you to give them attention and which bits you are content to leave for the time being?

Jeremy Wright: If you look at the major measurements of success in this field, which are how many people are coming into the system for the first time, that clearly is going in the right direction. How many people are being sentenced to custody? Again, that figure is coming down. But the third of those measurements is the reoffending rate, and that remains stubbornly high. When you are dealing with a reoffending rate of 70% or thereabouts, that clearly isn't acceptable. So, in answer to your question, it is the reoffending rate that requires our attention in terms of our standard measurements of outcomes.

But, also, the Secretary of State and I are very keen to ensure that, when you are dealing with a group of school age young people, as very often we are, we don't overlook the educational needs of those young people, and, although we do have those young people very often for very short periods of time—a figure has been mentioned of the average period in custody of something like 78 days—there is still work that can be done, in particular in addressing significant educational deficits. There are very significant educational deficits; the Committee will be aware of those.

If you look at the figures as they stand, something like 80% of those who are in youth custody of one form or another were excluded from school; something like half of young women and about a quarter of young men have last been to school when they were about 14. There are very significant educational deficits. If we don't resolve those educational deficits, it is much more likely that those young people will not go on to secure employment and then, by virtue of the effect that employment has on reoffending rates, their likelihood of reoffending goes up. So that is a very significant area of attention that we need to focus on.

Q414 Chair: You will have heard the exchange I had with the Youth Justice Board Chairman and Chief Executive about the difference between the approach in this country and that in Scandinavian countries, for example, because they feel a greater sense of freedom to blur the distinction between the criminal justice approach and the welfare approach. I am not pretending this is an easy line to cross, because, when we were looking at Scandinavian countries, we sensed a difficulty particularly for young people who protested their innocence of an offence; but it does lead to the situation you have just described, where you have people given a certain amount of relatively intensive attention for a short time on a custodial sentence and not much else once they are out of the system. Have you given much thought to whether the line should be blurred or whether you should find another way of addressing this weakness?

Jeremy Wright: I don't disagree in general terms with the answer that you received from the Chairman and Chief Executive of the YJB. It is crucial that we recognise our welfare responsibilities alongside our punitive responsibilities, but I also think that the crucial question here, when you are dealing with relatively short periods of custody in particular, is what the linkages are between what goes on in custody and what goes on thereafter. That is where the real effort needs to be made, rather than to try and pretend that the criminal justice system can do everything, which clearly it can't. Rather than do that, what we have to do is make sure that, when young people leave custody, they go on to a process of resettlement that is effective, not just in finding them housing but also in making sure that they continue in education, wherever that is possible. We need to make sure that what is going on is that young people are being spoken to while they are still in custody for whatever period that is, about plans for them to go on into education thereafter, bearing in mind, as I say, that these are very challenging situations very often, where young people have not been in full-time or mainstream education for a very long period of time. It isn't simply a question of finding them a school place or a college place, because they won't turn up for those school or college places in all likelihood. There has to be slightly more intensive attention paid to them, but that attention is predominantly going to be what happens when they leave custody, because, while they are in custody, we have a good deal more

control. All that I am saying is that there are opportunities while they are in custody to start that process and to try and work quite intensively, in very many cases, on literacy and numeracy needs, which can be very acute.

Q415 Chair: Would it not have been better still—I entirely agree with what you have just said about those who end up in custody—if some of these young people had received that kind of attention before they committed the crime that got them into custody and that they had somehow been picked up by a system that gave them what was seen to be valuable once they are in custody, but gives it to them without them ever committing a crime that gets them there?

Jeremy Wright: Yes, that is undoubtedly true, and, without wishing to pass the buck, I am often told that the MOJ is a downstream Department, by which it is often meant that it is too late by the time it gets to us. I don't think that is entirely true, and you heard from the Chief Executive of the YJB the fair point that we are dealing quite often through youth offending teams with quite a young age group, where early intervention does have an effect and is worth while. But there is no doubt that Government have to work together to achieve the sorts of outcomes that you have just outlined and that I entirely agree are desirable.

When you look at cross-Government activity there is quite a bit of it about, whether it is the troubled families programme, which has been referred to, which is quite an intelligent way of making sure that different Government Departments, all of whom have an interest in particular families within our society, work together to deliver the outcomes we all want to see, or whether it is programmes for ending gangs of youth violence, which again is a matter of making sure that we identify a group of people who present issues for a range of Government Departments and making sure that all of those Government Departments pool their knowledge, expertise and in many cases cash too, to ensure they get the outcome. There is a good deal of work being done, but, as ever, there is always room for improvement.

Q416 Jeremy Corbyn: Can I move on to rehabilitation issues? On the present system, if a young person has been convicted and sentenced to up to 30 months' imprisonment, after five years they can have their conviction spent or written off. During the disturbances in 2011, young people were routinely given three-year and more sentences for relatively minor aspects of theft in the circumstances of the riots. Do you think it is time to look again at this and look at the life chances of former young offenders, who often many years later are denied opportunities to work in education or to develop any kind of career because of some misdemeanour as a young person? Indeed, in the police and crime commissioner elections, a number of candidates were prevented from standing because of convictions they had had as young people that they had even forgotten about.

Jeremy Wright: Yes. We do have to have another look at this, and the examples in particular of police and crime commissioner candidates who were excluded

for very minor offending a very long time ago do point out the problem. It is worth saying two things. First of all, in relation to the Legal Aid, Sentencing and Punishment of Offenders Act, changes have been made to the Rehabilitation of Offenders Act regime, and that applies, of course, in particular to young offenders, where the periods of rehabilitation before convictions become spent is shorter. In almost every case, what LASPO does is reduce the length of time that it takes for a conviction to become spent. For example, for those sentences between 30 months and four years, which is the bracket that you have just been talking about, under the previous rules that conviction would never be spent. Now it will be spent after four years. That is still a significant period, I accept, but none the less a significant reduction. Of course, when you are dealing with more serious offences, resulting in longer sentences, there is a public interest in ensuring that agencies, employers and others still know about that before decisions are taken.

It is also worth noting that, in relation to particular types of offending and particular types of conviction, the opportunity for an employer, for example, to know about them will be for a longer period, some of them never spent, because, for example, there are child protection implications; and I think that is sensible. But, in terms of the general point that you make, it is right that we look again at bringing down the period during which a conviction still has an effect on someone's future employability and the opportunity to do certain things. It is already coming down through LASPO; there may be a case for looking at it again.

Q417 Jeremy Corbyn: Thanks for that. At the moment, as I understand it, there is no consideration of having spent convictions where it is over four years' detention. As I pointed out, in view of the situation of the riots, there were some very tough sentences handed out, which means that some of those young people will have very complicated, if not impossible, career opportunities in the future. Are you prepared to consider having spent convictions for longer sentences but maybe over a longer period, say, after five years or 10 years for a long sentence, that sort of thing, so that we do end up with a situation where misdemeanours committed by young people can be completely written off?

Jeremy Wright: As I say, it is certainly reasonable to look again at the situation of people who have committed an offence as a young person and how long that particular conviction would remain on their record thereafter. Certainly, we will look at that again. But it is also worth saying that, when it comes to employment, we would expect—and there are codes of practice in place to achieve this—that employers take a fair-minded view about this so that, even though a conviction may still remain unspent, we do not expect employers simply to say, "That's it. If you have a conviction on your record, we won't even look at you." We expect them to take a rather more broad-minded attitude than that. But it is true that, inevitably, someone who has an offence of that nature on their record will be at a significant disadvantage in the labour market. There would be little point in

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denying that. I do think that there is a public interest in ensuring that for particularly serious offending—we are talking about a bracket of offenders who have committed a particularly serious offence or they wouldn't have received the sort of sentence that we are talking about—that information remains available, particularly of course for those purposes where there are, for example, child protection issues. So I can't promise, I am afraid, to dial back in its entirety the Rehabilitation of Offenders Act regime; as I have said, we did look at it again under LASPO and made some significant changes. We will look again, as I say, in particular at the impact of very early and in many cases very minor convictions—when someone is young—on the rest of their lives. That is an area that merits particular attention.

Q418 Jeremy Corbyn: Thanks for that. This is the last point from me. I am pleased with what you said about employers and your encouragement to them on this, and that is a good point. Would you put the same pressure on universities and colleges, because there seems to be—again, I don't have figures—anecdotal evidence that young people with convictions have great difficulty getting into university or college because they are deemed to be a risk, and obviously that reduces any career opportunities for the future, even though they might be totally rehabilitated?

Jeremy Wright: Principles apply equally. What we would expect is that people take a fair-minded view. Whatever information they are presented with as a university admissions department, one would expect them to look carefully at all of that information and balance it up. What I am saying is that, whereas it may not be possible to exclude that information from a university's admission department, just as it may not be possible to exclude it from an employer, I would expect—and the Government would expect—people to take a holistic view of an applicant both for a university place and for a job, to make a sensible decision and not simply to exclude someone on that basis.

Q419 Nick de Bois: Minister, you will have heard our previous witnesses where we just touched on the Youth Justice Pathfinder roles. In a speech that you made recently, you noted that there had been successes and lessons. My obvious question to you is what lessons have you learned from Birmingham's withdrawal from the Pathfinder programme?

Jeremy Wright: It is important to recognise that, if you run pilot programmes of any kind, it is partly to learn what works and partly to learn what doesn't work. The fact that someone has withdrawn from a pilot programme is regrettable, and obviously it would be better if we had two years' worth of information about what happened in Birmingham than one year's worth; none the less, there are things that we can learn, and we can learn, as I say, as much about what didn't work there as what did. The great thing about these particular pilot programmes is that we gave a good deal of scope to each of the areas taking up the opportunity to decide what they wanted to do and the way in which they wanted to do it. They all took a different approach. The way in which west Yorkshire

have gone about this is different from the way in which Birmingham went about it, and so that gives us the opportunity to look at the results that both achieved, look at the progress they both made and say, "This seemed to work but this didn't work quite so well." That is an opportunity we are still going to have from the results we have from Birmingham.

The other thing to say is that we have asked these areas, of course, to reduce the use of custody beds, and that is a crucial objective to these pilots. I think I am right that Birmingham have made progress in the right direction, just not enough to meet the targets that have been set. Certainly, the work that they will have done in exploring ways in which this can be best achieved will, I am sure, be of value to them in the future. Even if they have not met these particular objectives under the rubric of this pilot programme, I am quite sure that there will have been lessons learned for Birmingham that they will want to employ in the future. There will be lessons that we can learn from that, and I suspect there will be lessons they can learn too.

Q420 Nick de Bois: Do you think, on that point, that you will become prescriptive—once you have run the pilots—about what to do in the future, or will it be a question of sharing best practice, because there may be regional differences?

Jeremy Wright: There may well be, and I hope it will be more the latter than the former. Instinctively, I am not in favour of being prescriptive, but I am very much in favour of supplying information as to what works well and what doesn't. These sorts of opportunities will give us the chance to do that, but, as I say, we can draw almost as much—perhaps that is not quite fair. We can draw something at least from what didn't work as well as from what did in identifying those areas of best practice. We need to be better than we are, and the YJB are working well on this in making sure that we disseminate good practice across the youth justice estate, whether that is in terms of custody or community work. We can always do better in disseminating good practice, but I would always incline towards making that information available for people to draw on and come to their own conclusions than I would to be prescriptive. One of the reasons, as you say, is because of those local variations.

Q421 Nick de Bois: Turning to the idea of transferring budgets to local authorities, for my own clarity, can you confirm that you intend to transfer the full custody budget to local authorities over the coming years? I am not pinning you to a date, but—

Jeremy Wright: We will see, is the answer. We are certainly committed to transferring remand budgets, and, as you have heard, that is about 20% of the overall spending. We will do that. We are currently reviewing the consultation responses on exactly how the money should be divided up, but I am conscious of two things. First of all, I want to see how well the devolution of remand budgets works before we take decisions on what to do across the wider piece, but, secondly, the costs of youth custody are extremely high. They vary depending on the type of custody that

you are talking about, but, at the top end, secure children's homes cost us something like £212,000 per place per year. That is a very high figure. What we need to do is look at ways in which we can bring that cost down before we decide how to fix devolved custody budgets, because, otherwise, you build in the very high cost, which, if we can reduce, we wouldn't wish to do.

I need to do, as I say, two things: first of all, look at the unit cost of youth custody and attempt to bring that down; and, secondly, look at the lessons we can learn from the devolution of remand budgets before we take decisions on the wider custody budget agenda.

Q422 Nick de Bois: Again, on my understanding then, assuming you get that cost down—which I wish you well with—will you effectively then be planning to give, shall we say, local authorities more say in the commissioning of custodial places?

Jeremy Wright: Instinctively, I am in favour of that. The logic, of course, for devolving the remand budgets is to say that, rather than have a situation where, for a local authority to decide that someone has to spend time in custody or to find themselves in that position, they have very little to lose because the YJB and the MOJ picks up the bill, instead they will be responsible for the money that is used to pay for those custody periods, and that creates the right kind of incentive to look around for alternatives. We are helping them, of course, in this regard, because, if you look again at the Legal Aid, Sentencing and Punishment of Offenders Act, what that Act does is to say that, if someone who is being considered by a court for bail or remand has very little prospect of ending up with a custodial sentence, then they should not be remanded into custody. We are assisting in that way, but it is a good principle that local authorities should have more responsibility for the money as well as for the decision making that results in the spending of that money. That is the logic, but, as I say, we need to do those two things first before we can roll this out.

Q423 Nick de Bois: That is clear. I would just like to touch on education, if I may. I have one question on that in respect of rehab and resettlement. With regard to the statement that, "We'll have a much greater focus on education in a secure environment", could you summarise for me what that means in practice? Of course, we did touch on it with the Chairman's question earlier, but have you thoughts on how you will ensure that the provision on the inside is better joined up with that on the outside? I am talking about the academic and the vocational. You can train a bricklayer in prison, but, if he can't get a job when he leaves outside the gate, that is the challenge, isn't it?

Jeremy Wright: Yes, very much so. It is worth saying again that it is not my impression, and in terms of continuity we have a great percentage of the young people that we are talking about here who have been in full-time school and education right up to the point at which they find themselves in custody. Continuity has been broken already. So, when someone comes into custody, very often what we are talking about is

trying to re-engage them in a process of educational training and we need to make sure that certain, very obvious needs are met in an intensive way.

If you look at literacy and numeracy, which are at proportionately much lower levels for this group of young people than across the age group, the first thing you have to do is try to address those. Without literacy and numeracy, there is not much else that you can do, so that is a priority. What is also a priority, as you suggest, is to make sure that, after what may be a fairly short period of custody, there is continuity at that point into further education, training or potentially into employment. That involves not just the criminal justice system or Youth Justice Board, but it also involves a variety of other agencies and Government Departments. Resettlement has to mean more than finding someone a place to live; it also has to mean finding them a place in education, training and, potentially, in employment.

All of these things have to be done together. That is why the consortium approach is the right way to go, and you have heard a little about the success that that is delivering. But, for that period when someone is in custody, it is about taking what is quite literally a captive audience and making sure that we do what we can to address the very real needs that they very often have, and that will be focused around literacy, numeracy and other related skills.

Q424 Nick de Bois: One of your measures must be, as we have witnessed as a Committee, that if there is still too much empty time—time not being used by people in custody—that implies that we have the opportunity to do more for education. Is that the sort of information you are aware of?

Jeremy Wright: Yes. The current expectation is that someone in youth custody would be doing something like 25 hours of education and training, and other related activities, in the course of a week, so there already is an expectation there. Whether we will be able to increase that, or whether we will simply want to refocus that time on making sure that those key skills are learned, I don't know yet, but we are very clear that this is an area that needs attention, to make sure, as I say, both that we get right what is done in custody and the links after custody to ensure that whatever progress is made is not simply lost as soon as someone walks out of the prison gate.

Q425 Nick de Bois: If I could just make an observation, which doesn't necessarily need a response, on a private visit when I went to Feltham, I met with a wide range of offenders afterwards. I was genuinely pleased that there was criticism about lack of education and there was a thirst for education set against, unfortunately, a sense that, "Well, we'll be back here soon." I just make that observation as one that is a bit of a mixture of encouragement and less encouraging.

Jeremy Wright: I agree. Those who have a degree of self-awareness will understand that lack of education means likely lack of employment and higher likely reoffending. So it is in all of our interests, including theirs, that we deal with those problems of lack of

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education so that we can deal with likelihood of employment and likelihood of re-offending.

Q426 Chair: There are a number of very specific points relating to vulnerable children. The Legal Aid, Sentencing and Punishment of Offenders Act gave looked-after child status to young people remanded. Why have you left it limited to remanded children? Is the logic not that they should all be in that category?

Jeremy Wright: Yes. This requires some further thought, certainly, but what I would say is that, first of all, it is important to recognise that LASPO makes significant progress, because we were in a situation where some young people were given looked-after child status and some were not. That is no longer going to be the case. That is progress.

In relation to those who are serving custodial sentences, it is important that we have clarity as to who takes responsibility for them so that, if you are dealing with someone on remand that is by its nature a temporary period, which could conceivably not result in a custodial sentence, it could result in return to the community. What we were wishing to avoid in all cases was anyone losing looked-after child status, having come into a short period of remand, and then finding a gap when they leave that remand period again.

So far as a custodial sentence is concerned, there needs to be clarity as to who takes responsibility, as I have said. For the duration of a custodial sentence, it is helpful that everybody understands that the secure institution in which that young person is takes responsibility for their welfare. Were we to have looked-after status for the duration of that sentence, there would at least be the potential for confusion as to whether it is the local authority that takes responsibility for their welfare or whether it is the institution. I don't want to see that confusion.

Where the work needs to be done is on what happens on release from custody, because on release from custody it may very well be that someone should be moving into looked-after status, and we want to make sure that any assessment necessary to make that possible takes place while someone is in custody. That is already starting to happen for those who start off being looked after and go into custody for a period of sentence—not remand—and then come out again. But it may be that that is the area that needs the most attention. While I understand the apparent illogicality, there are issues we have to work through over making sure there is no conflict in who takes responsibility during a period of custody, but, thereafter, that is the crucial moment to ensure that someone who needs looked-after status gets it.

Q427 Chair: My layman's reaction to that is that, surely, there is a way in which some degree of oversight can be retained during the sentence period but in which the disciplinary responsibilities of the institution are not removed by that, but you have the continuity; the child is still a looked-after child, before, during and after. There might be a way that could reconcile the two objectives.

Jeremy Wright: As I say, in relation to continuity, I am more reassured about the position that we have,

because, as I understand it, what happens is that someone who is looked after before entering custody then goes into custody, and during the period of custody the obligation on the local authority is to ensure that they are properly assessed to determine whether that looked-after status should continue thereafter.

Q428 Chair: It has to take place while they are in custody.

Jeremy Wright: It has to take place while they are in custody. We talked about blurred distinctions earlier on. It would be concerning if we attempted to blur the distinction between what a local authority was responsible for doing and what the institution was responsible for doing while someone was serving a sentence of custody. I want there to be no doubt at all that the institution in which someone is serving a period of custody has full responsibility for the welfare of that child. They can't outsource it to anybody else; they have that responsibility, and I expect them to discharge it. I am keen to make sure there is no conflict during that period, but, having said that, it requires some further thought and we will give it that further thought.

Q429 Chair: Will social workers continue to be funded in YOIs beyond 2014?

Jeremy Wright: The commitment is certainly there to ensure that until March 2014 they do get that funding, and we fund, off the top of my head, 22 individual social workers. Their role is important in making sure that we have the necessary linkages made between local authorities and the custodial setting, but we will have to consider whether that funding could or should continue as and when we get nearer to that point; but certainly there is a commitment to continue doing so until March 2014.

Q430 Chair: Can I turn to section 104 of the Coroners and Justice Act, which would allow vulnerable defendants access to intermediaries? One example I have read is of a defendant who said, "Because I was told to say 'No comment' at the police station, I thought I couldn't say anything at court". People with that degree of disconnection from the system would be helped by intermediaries. That needs bringing into force. Are you going to bring it into force?

Jeremy Wright: What I would say in response to that example, as perhaps you would expect me to say as a former lawyer, is that it is most unlikely that that young person was not represented by a lawyer. Any lawyer who allowed their client to believe that saying "No comment" in interview meant that you couldn't say anything in court frankly needs to be taken a closer look at. There is not a situation here where young people are presented with no opportunities for good advice. There is also, of course, provision for judges to say, in particularly deserving cases, that defendants should have more assistance than they are

currently offered. I have my doubts about this particular section and whether in fact it adds a great deal to the situation we have at the moment, but we will continue to review it and make a judgment as to whether or not we think there is an ongoing need.

Q431 Mr Buckland: Just developing that, you make a good point there, Minister, about legal advice, but, where a young defendant is giving evidence, he or she is, of course, not able to talk to their lawyers unless it is in exceptional circumstances, and, particularly in cross-examination, issues have arisen about whether or not young defendants understand what they are being asked. On that basis would it be worth while just looking at the prospect of perhaps having an intermediary for a limited part of a trial, to assist a defendant in understanding the giving of evidence?

Jeremy Wright: Certainly, as I have said, we will keep this under review. That is the sensible thing for us to do. I would say though—and, particularly, Mr Buckland, since you asked the question, you will understand this better than most—that the judiciary have a role here too in ensuring that those who are vulnerable giving evidence, whether as witnesses or as defendants, understand the process and that the questioning is fair. I am sure that you, sitting as a recorder, were you to think that a young defendant being cross-examined by the prosecution was being cross-examined in a way that that young person was put at a disadvantage and could not be expected properly to understand what he was being asked, would intervene, and we would expect the judiciary to do that. There are other protections within the system that we also have to factor in when considering this particular change.

Q432 Mr Buckland: Can I move on then, Minister, to the question of restorative justice? You know that I have a long-standing interest in this issue. I welcome the commitment that you made, clearly, to put it on a statutory footing or more of a statutory footing, because, to be fair, there is reference to it in the 2003 Act. You made a speech only a few weeks ago to talk about it running parallel with the formal processes rather than to replace them. I understand that an amendment to the Crime and Courts Bill in the House of Lords would amend the 2000 Sentencing Act to allow deferral of sentence or to amend the deferral provisions to allow for restorative justice.

Just on a quick point there, playing devil's advocate for a moment, are you concerned at all that there is a danger, in effect, dangling a carrot of restorative justice to a young offender and, in effect, creating an artificial scenario where this young offender is thinking more about the sentence and mitigation rather than the genuine process of restorative justice?

Jeremy Wright: Yes, that is a concern, and that is why I have made it very clear that this must be something that is happening in parallel with the sentencing process rather than as part of it. It seems to me that sentencing should continue on the basis of the information available to the sentencer. I have no objection, incidentally, to how information about how a restorative process has gone also being available to the sentencer, but in relation to the offender—whether

that is a young offender or an adult offender—that is potentially a double-edged sword. If someone engages and does it properly, and the information that comes to court, particularly from the victim, is that they got a lot out of that experience, then that may well count in the offender's favour. But, if someone says that they are prepared to engage and then sits with their arms folded and doesn't do it properly, that information might also find its way to the sentencer.

To that extent I have no objection about the transfer of information, but it is very important that everybody understands at least what restorative justice is. We are thinking here particularly about conferencing, where a victim and an offender have the opportunity to speak in a moderated setting. In terms of that type of restorative process, it is very important that we are clear that this is something running alongside the sentencing process and is not part of it. You do not get a discount for participating in restorative justice; it is something that you may choose to do, but it is something that, in my judgment, is predominantly of benefit to victims.

It is very clear to me. I have to say I started as something of an agnostic about restorative justice. I didn't know a great deal about it. The more I have seen, the more impressed I have become that this is a genuine advantage to victims in giving them the opportunity to confront an offender—to say what they want to say. This is predominantly where we have figures in relation to adults rather than to young offenders, but none the less the benefits will transfer, but if you have victims who are bound to have significant reservations—a great deal of trepidation about this experience—leaving with 85% satisfaction rates is a really remarkable statistic. Add to that—

Q433 Chair: It has a benefit to the offender as well.

Jeremy Wright: I was going to go on to say that we do have a 14% benefit in terms of reoffending in so far as we can measure it. So there is clearly a benefit both ways. Whenever I consider this, I think back to the time that I spent as a criminal barrister, which, Mr Buckland, you will immediately recognise, where you spent a great deal of time at my junior level representing young burglars, very often young offenders who would have convinced themselves that burglary was a victimless crime, that the insurance company replaces the television and the laptop, and nobody is really any the worse off. The opportunity for a 16 or 17-year-old burglar to sit in front of the person whose house they have burgled and have explained to them what the psychological impact of that burglary really was brings this home much more successfully than very many other things we could do and is likely to have, therefore, a reoffending benefit greater, I suspect, for young offenders than for adults, because it is probable that the young offender simply hasn't thought about that. There are real advantages here for young offenders, in particular, and we want to make sure that that is feasible.

As you rightly say, what the Crime and Courts Bill will do, if it passes, is to ensure that this can happen pre-sentence as well as at other stages. There was always going to be a danger that, if you extend provision to the pre-sentence stage, it would be

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perceived just, as you say, as a carrot for the offender: say sorry, be nice to the victim and get a couple of months knocked off. That is why we have to be clear and robust in the language that we use. But it would have been wrong, in fear of that consequence, to exclude that period of the process, because at the end of the day it seems to me that what is most important is that, when the victim is ready for this process, they can take advantage of it. If a victim were to turn round and say, "Now I would like to sit down with the person who burgled my house", and that happens to be at the point in the process between conviction and sentence, I don't want to be in a situation where we have to say no. That is what has driven the decision, but it is important, in parallel with that decision, to be clear about what the restorative justice is there to do and what it is not there to do.

Q434 Mr Buckland: That is a very helpful response, Minister. What I wanted to elaborate is that, very often, victims will not be in a position, prior to sentence, and will want to come back to it later. As long as there is that flexibility and that it is victim-led—

Jeremy Wright: Very much so. Of course, the law permits that post-sentence now, so no legislative change was needed to do that. What is needed is to ensure that we have the capacity to meet any increased demand, which was your next question.

Q435 Mr Buckland: That is the big question here. It is how we are going to pay for this—how we are going to fund this.

Jeremy Wright: It is worth noting, certainly so far as young offenders are concerned, that the YJB has already spent something like £600,000 on delivering that sort of increase in capacity. That is about training to make sure that we have restorative justice facilitators. What is very clear is that, if you are going to do restorative justice at all, you need to do it well. If you don't do it well, it can be worse than useless. What is crucial is that those who are acting as facilitators have the necessary training and that they know what they are doing. We need to make sure that we have enough trained facilitators in place, as well as raising awareness among victims of what they can take advantage of.

The Restorative Justice Council is looking at this at the moment. We have already produced a framework document designed to show how we can raise awareness and also how we can build that capacity. We are learning from what is happening elsewhere. I know the Committee has been to Belfast to look at what is happening there. That is a very good comparator for us. Alice Chapman, who was integral in setting up the restorative justice processes in Northern Ireland, is reviewing what the RJC is doing here. There are clear linkages and lessons we can learn, but I am keen to make sure that we don't find a situation where we succeed beyond our wildest dreams in raising awareness of RJ but then don't

succeed in providing the capacity to meet that increased demand.

Q436 Mr Buckland: There is a danger. We have some excellent pilots, in Thames Valley, for example, and we have existing youth offending teams, such as the one in Swindon, that use conferencing regularly. On that point, there was a report published by the Criminal Justice Joint Inspection Team in September that expressed disappointment that, in the Revised National Standards for Youth Justice, the clear expectation about the use of restorative processes was taken out of the national standards. That could be interpreted as perhaps the wrong signal to be sending to youth offending teams at this time, and I was wondering what comment you had about the decision to remove that particular standard.

Jeremy Wright: I would say that the other clear signals that we are sending are entirely in the other direction; that we are producing quite a lot more of those who are trained to do restorative justice. The YJB is doing all that it sensibly can to encourage, particularly through the method of the referral order, opportunities for restorative practices to be used with young offenders. The clearest signals that I can send and that they can send are being sent. We think restorative justice is a good thing; it can have significant benefits not just for victims but also for offenders. That is particularly likely to be true for young offenders.

The opportunity, in the slightly broader context of restorative justice, to use the youth referral order to bring in the wider community and make sure that everybody who can be sensibly involved in decisions about what should happen to a young offender is engaged with that process, is what the referral order and referral panels are there to do, and inculcating more restorative justice practice into what they do is very sensible. We will always look at ways in which we can encourage more of that, and part of that is making sure we have the capacity there to ensure people can do it if they want to.

Q437 Mr Buckland: Your clear message to YOTs and other agencies is that the Government are committed to expanding and increasing the use of RJ.

Jeremy Wright: Yes.

Q438 Jeremy Corbyn: Taking young people into custody is a huge responsibility for the state: to care for them, to rehabilitate them, hopefully, so that they don't reoffend at the end of it. We took evidence from INQUEST, which has published a very interesting report jointly with the Prison Reform Trust, which indicates that, since 1990, 33 young people under the age of 18 have died in custody, and in 2010–11 there were 7,191 incidents of restraint involving children. It seems to me that the use of restraint and the refusal to publish the terms of the restraint that are used, even after a freedom of information request by INQUEST, suggests that all is not well, and the numbers that have died is clearly absolutely unacceptable. Any death is unacceptable in custody. Are you prepared to hold an independent inquiry into this?

Jeremy Wright: The first thing to say is that all deaths in custody are not related to restraint. It is important to make that point, but I take the burden of what you say very seriously. Any deaths in custody are not only tragic but raise some very serious questions as to the responsibility that the state should and does take for the welfare of young people. In relation to deaths in custody, it is right and important that a number of investigations take place in relation to each death: police investigations, coroners' inquests, investigations by the Prisons and Probation Ombudsman and, where it is appropriate to do so, we will look more broadly at any lessons that there are to be learned.

That is why we have an independent advisory panel on deaths in custody. I chair the inter-ministerial board on deaths in custody and this is something that we discussed. It is important that the advisory panel has a look at this report. It is a serious piece of work and it deserves proper scrutiny. They should have a look at it to decide whether or not there is further work that can sensibly be done and whether there are lessons that we can draw from the work that they have done. I wouldn't say no at this stage, but I want to make sure that we have looked into this work properly and that the independent advisory panel, which we have to do exactly this job, has an opportunity to do it first before we make a final decision.

Q439 Jeremy Corbyn: Quite specifically, you presumably have read the "Fatally Flawed" report by INQUEST and the Prison Reform Trust, which was very carefully put together. Are you prepared to make the manual public that is used on restraint?

Jeremy Wright: On restraint, I would say that it is certainly the case that we need to be clear on what is permissible and what is not, and the reasons for what we do in terms of restraint. There is a new system of restraint currently being put in place. This is something called, if I remember rightly, the Management and Minimisation of Physical Restraint—MMPR. That is a system that is different from the system that has persisted up to this point in two important respects: first, the nature of the physical intervention that is permitted, and, secondly, different in that it talks about more than just the exercise of physical restraint, and this is quite important. We have to talk more and make sure we train more people who work within young offender institutions and other secure environments on how to avoid a situation where physical restraint is needed in the first place, and, almost as importantly, what happens after the incident of physical restraint, because both of those periods of time are very important. The training that we will deliver through this new system will be much enhanced to the training that has been in place before for those reasons.

Coming back to the specific issue of physical restraint and what is allowed and what is not, the new system will still permit the use of pain-inducing techniques but only when there is an imminent danger of serious physical harm to the individual young person or to another young person. It will not be permitted as part

of punishment, and so we are limiting quite significantly where physical restraint is appropriate. But, just as importantly, what we are doing is we are saying that the period leading up to that incident of physical restraint and the period that follows it also need to be the subject of training. It is going to take time for all those who work within these environments to be trained in those things, so we start in Rainsbrook in February of next year. It will take about two years for all of the staff in all of the institutions to be trained properly in this, but, after that period, they will all be operating on a new system, which will be much more positive.

Q440 Chair: Ought we not to know what the rules are to which they are working?

Jeremy Wright: I will have to look at what level of disclosure there is. There will obviously be operational reasons why we don't disclose in detail exactly how people are trained and what they are trained to do, but I will have a look at what further information can properly be disclosed within those operational constraints.

Q441 Jeremy Corbyn: Do you think there ought to be a wholly independent examination of each death in custody? I will give you an example of why I raise that. Adam Rickwood took his own life, and, at a second inquest, the jury said that the use of restraint was a contributory factor towards his distress that caused him to take his own life. That was found by a jury in an open court at a coroner's inquest. Do you think it would be better and it would be a good pressure on the entire system if there was a wholly independent examination immediately after any death in custody so that the whole service felt under examination from outside rather than an internalised examination, which is not necessarily as robust?

Jeremy Wright: There certainly is a very extensive internal investigation into every death in custody, but it is not the only investigation. There will also, in all likelihood, be a police investigation; that is external. There will be an inquest, as you say; that is external. If we are talking about someone who is under 18, there is also going to be, in all likelihood, an investigation by the local safeguarding panel, and that is external. There are three external agencies, in all likelihood, who will conduct their own investigations into a death in custody.

So, yes, I agree there needs to be more than just the internal investigation, important and robust though that must itself be, but it would be wrong to think that there aren't already significant external investigations that take place into each and every case, and that is right. We want to make sure that every case is properly investigated, that we get to understand what has happened and that we learn whatever lessons we possibly can for future reference. In terms of those broader lessons, as I have said, the Independent Advisory Panel will look not just at the instance that we have discussed but also at the report that the PRT and INQUEST have done, and look at whether or not something more wide-ranging would be appropriate.

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Q442 Jeremy Corbyn: In response to Sir Alan's question, will you come back to us on the question of publication of this information on use of restraint?

Jeremy Wright: Yes. I need to look at it. As I have said, I can see immediately that there will be issues

operationally over how much information it is sensible to disclose, but I am perfectly happy to go away and write to the Chairman and to the Committee about what I find and what we have concluded.

Chair: Thank you for that and thank you, Mr Wright, for your help this morning.

Written evidence

Written evidence from the Centre for Social Justice

ABOUT THE CENTRE FOR SOCIAL JUSTICE (CSJ)

The Centre for Social Justice (CSJ) is an independent, not-for-profit think tank established to put social justice at the heart of British politics. We aim to achieve this through a variety of channels: evidence-led *policy work*; collaboration with our Alliance, a network of *grassroots poverty fighting charities*, to inform our policy making from around the UK; an annual *Awards* ceremony that showcases these exemplary organisations in Westminster; and our *Inner City Challenge*, where we bring politicians face to face with the realities of social breakdown in Britain.

In January 2012, the CSJ published the findings and recommendations of our review of the youth justice system in England and Wales—*Rules of Engagement: changing the heart of youth justice*. This was the culmination of two years of in-depth research and analysis, which included consultation with more than 200 youth justice practitioners, young people and families. The review examined eight major aspects of youth justice:

- Prevention;
- Out-of-court activity;
- Court procedure;
- Community sentencing;
- Custodial sentences and the juvenile secure estate;
- Resettlement;
- Delivery; and
- The minimum age of criminal responsibility.

This work has greatly informed the CSJ's below submission.

SUMMARY

- A multi-agency and whole-family approach should be firmly embedded in youth crime prevention to stop young people falling into or becoming more deeply involved in the youth justice system.
- There remains much scope to continue reductions in the number of first-time entrants to the youth justice system by re-focussing prevention efforts and increasing awareness on the frontline of the importance of diversion.
- A review of the structure, remit and funding of youth offending teams (YOTs) is urgently needed to clarify their role, as well as the responsibilities of local partners to children at risk of and involved in offending.
- Greater efforts can and should be made to tackle weaknesses in local practice with the aim of addressing inequitable charging, custodial remand and sentencing rates, to ensure that only the critical few are imprisoned.
- Relationships between practitioners, families and young people need to be put at the heart of responses to youth offending.

1. There is some evidence of a shift away from the typical YOT model. This is not necessarily a negative development—indeed the CSJ welcomes the focus on troubled families—but consideration needs to be given to how these changes are impacting on YOTs' capacity to prevent and address youth offending. Sight must not be lost of their central role in this important task and the need to retain a distinct focus on young people. The CSJ has received the below early reports from professionals. We urge that there is further investigation into these.

- 1.1 In many areas, financial pressures have forced local partners to significantly reduce their contributions to YOTs. This has decreased the overall capacity and autonomy of YOTs to function as they were originally intended;
- 1.2 YOT Manager posts are being abolished in some areas;
- 1.3 There are particular questions about the impact of Troubled Families Teams and Multi-Agency Safeguarding Hubs on the structure and remit of YOTs, especially as YOT staff are reportedly being siphoned off into such teams;
- 1.4 There is some concern as to how YOTs' capacity will be affected by the redirection of Home Office monies from YOTs to Police and Crime Commissioners, from 2013–14 (and in London, from 2012–13); and
- 1.5 In some areas, YOTs are being moved out of children's services departments into enforcement-focussed teams. There is subsequent concern that YOTs' focus on young people is being lost.

2. There is concern that the greater degree of influence by the Ministry of Justice (by virtue of the fact that the YJB no longer reports to the Department for Education) risks a divergence between the national governance of youth justice and the local governance, which is led and funded by local authority Children's Services Departments.

3. The CSJ is particularly concerned about the impact of decreasing partnership budgets on YOTs. The reductions, combined with increasing caseloads in children's social care, mean that the thresholds for children's social care support are extremely high in some areas. As a result, help can often only be provided to those with the most urgent needs: child protection cases, children in care, and the youngest (and accordingly, most vulnerable) children in need. Children at risk of (re)offending who have significant welfare needs, but fall below the high thresholds, often do not receive adequate support from all of the agencies involved. We are concerned that these pressures are likely to increase, further diminishing access to support for such children. At the same time, YOTs often do not possess the necessary social work expertise to provide low-level support in-house. This is because the secondment of children and families social workers from children's social care services to YOTs has all but ceased in many areas (and often has long been so). As a result of this combined absence of support, young people are both falling into the youth justice system unnecessarily and being prevented from freeing themselves from it.

4. A related and significant problem is the lack of clarity between YOTs and local partners (particularly children's social care services) on their roles and responsibilities in relation to children at risk of (re)offending. The effect of such uncertainty is that some services are relinquishing responsibility for children at risk of (re)offending to the local YOT. Yet YOTs are neither structured nor resourced to be the sole service working with this group, and nor were they intended to be (neither, it should be noted, are children's social care departments). This ambiguity has been encouraged by funding arrangements: children's social care services contribute the major portion of funding to YOTs, and consequently often assume (not unreasonably) that the latter can exclusively address the problems of children at risk of (re)offending. There is also evidence that the provision of youth crime prevention monies to YOTs has, in many cases, served to make it less likely that children at risk of offending will receive the support they are entitled to from other services.¹ We believe that the structure and remit of YOTs should be reviewed and clarified to better ensure that young offenders and children at risk receive the support to which they are entitled.

5. We have received evidence that the removal of the ring fence around YOT prevention funds has led some YOTs to cut back prevention services. The ring fence operated to protect YOT prevention provision, much of which is non-statutory; its abolition, coupled with the overall reduction in YOT budgets, has forced some YOTs to "pinch" resources from prevention monies so as to fulfill statutory duties. Whilst we think that other local services, such as schools and children's social care, are better placed than YOTs to deliver prevention services, there is concern that these agencies are also withdrawing funds from prevention so as to meet their statutory responsibilities (the Early Intervention Grant also constituted an 11% reduction in local prevention funds²). This risks bringing about a significant reduction in capacity for prevention, storing up enormous problems for the future.

6. In recent years, important progress has been made in reducing the number of first time entrants. It is accepted that much of the progress is due to the abolition of the offences brought to justice targets, which incentivised police to respond formally (ie through arrest and formal pre or post court sanctions) to juvenile misdemeanours that would not have previously elicited this. We, therefore, believe that there continues to be considerable scope for maintaining and deepening the decline through other means:

6.1 The first relates to prevention. The evidence shows that effective youth crime prevention interventions share a number of key characteristics: they work with both the child and their family; target multiple risk factors in the different domains of an individual's life, over a sustained period of time; and are presented as addressing the child's existing needs, rather than their future risk of criminality (which can be stigmatising as well as increasing the likelihood of offending).³ Yet the CSJ has found that a whole family approach is often absent in prevention. And, in many cases, prevention is not being delivered through multi-agency means. Instead, prevention work is often predominantly delivered by criminal justice agencies, such as YOTs. The CSJ would like to see the following changes made to address these shortcomings:

6.1.1 The removal of responsibility from YOTs for the *delivery* and *commissioning* of preventative services. Instead, the local authority (including the YOT), in consultation with the forthcoming Police and Crime Commissioner and local voluntary sector organisations, should commission youth crime prevention services on the basis of the best available evidence of what works. Special attention should be paid to commissioning services that provide help to both young people and their families. This would better ensure that: prevention is understood as a multi-agency responsibility; and that services are configured to address children in the context of their families and communities.

¹ Centre for Social Justice, *Rules of Engagement: changing the heart of youth justice*, London: Centre for Social Justice, 2012, pp48–9

² BBC, *Early Intervention Grant is cut by 11%* [accessed via: <http://www.bbc.co.uk/news/education-11990256> (13/03/11)]

³ For further information see, Centre for Social Justice, *Rules of Engagement: changing the heart of youth justice*, London: Centre for Social Justice, 2012, pp31–3

6.1.2 A local independent entity should be appointed to scrutinise the services commissioned and provided by local agencies to prevent young people from offending and reoffending. We consider Local Safeguarding Children's Boards (LSCB) to be best placed to assume this responsibility.

6.2 At a policy level there has been a marked culture shift towards diversion for children who commit minor offences. However, we have seen how this has failed to filter down to frontline practitioners in many areas. At these levels there is both reluctance to divert cases (partly because formal responses count as sanction detections⁴) and lack of awareness of diversion policy. Young people, particularly children in residential care homes, continue to be arrested and prosecuted for minor offences. The value of diversion urgently needs to be made clear. We believe that this could be achieved by counting informal youth restorative disposals⁵ as a sanction-detection (thus creating a level playing field between formal and informal responses). We would also like to see the reiteration of the CPS legal guidance concerning prosecution of looked after children.

7. It is the CSJ's judgement that at ten years the minimum age of criminal responsibility (MACR) is too low and does not deliver the best outcomes for either children who offend or society. We firmly believe that it should be raised to 12.⁶ A significant body of research has emerged indicating that early adolescence is a period of marked neurodevelopmental immaturity.⁷ During this time, children are deemed less responsible for their behaviour and have limited competence to participate in criminal justice proceedings. There is also compelling evidence that involving young children in the criminal justice system can increase the likelihood of offending.⁸ Robust welfare-based responses to the offending of less culpable children are therefore likely to be a more effective alternative to criminalisation, particularly as this cohort tends to have high welfare needs. The MACR is also peculiarly inconsistent with other aspects of the law in England and Wales, as well as being out of step with that of many western countries and the judgement of international human rights bodies. We call on politicians to deliver the bold leadership that is required on this issue. Raising the MACR to 12 and dealing with child offenders aged 10 and 11 outside of the youth justice system would serve justice more effectively, be more cost-effective and better prevent future crime. These arguments are made in further detail in Chapter Eight of our youth justice report, *Rules of Engagement*.

8. With respect to custodial sentences, the Committee will be aware that there are significant discrepancies in the youth custody rate across the country. This is not due to differences in offence patterns, but to variation in local practices. For example, in 2008/09 the custody rate in Newcastle was 1.6% compared with 11.6% in Liverpool, a matched area with a similar demographic.⁹ Important drivers of high-custody rates include: poor pre-sentence reports (PSRs), inadequate community provision, and lack of confidence in, or understanding amongst sentencers of, the content of community sentences. Much more can and should be done to address these weaknesses. In particular, we emphasise the importance of improving the quality of PSRs, as they are the key mechanism by which YOTs can exert influence over the sentencing process. We believe that the below low-cost reforms would bring about significant improvements:

- 8.1.1 Distribution of a comprehensive national good practice document on PSR writing all YOTs, such as an updated version of that completed by Nacro.
- 8.1.2 Making it compulsory for all practitioners writing PSRs to complete accredited training of a national standard on PSR writing.
- 8.1.3 Introducing guidance that all PSRs should be quality assessed by a managerial gate-keeper within the YOT before going to court.
- 8.1.4 Stipulating that sentencers should visit youth custodial institutions and community services at least twice a year so as to ensure that their understanding of the content of sentences is kept up to date.
- 8.1.5 Making it obligatory for sentencers (magistrates and district judges) to attend a certain proportion of youth panel meetings per year to remain sitting in the youth court. Such meetings are an important channel of communication between the court and the YOT (and thus a key source of understanding and confidence).
- 8.1.6 Removing the stipulation that youth court magistrates must remain sitting in the adult magistrates' court. This would ensure that sentencers who sit in the youth court do so regularly, helping them to maintain a good level of youth-specific experience.

⁴ A sanction detection is an offence cleared up through charge, summons, caution, reprimand, final warning, PND or offences taken into consideration. It is a performance-related measure.

⁵ Ministry of Justice, *Breaking the Cycle: Government Response* [accessed via: <http://webarchive.nationalarchives.gov.uk/20111121205348/http://www.justice.gov.uk/downloads/consultations/breaking-the-cycle-government-response.pdf> (13/03/12)]

⁶ For all but the most grave offences (murder, attempted murder, rape, manslaughter and aggravated sexual assault) in the immediate term and for all offences in the long term

⁷ See for example, Farmer E, "The age of criminal responsibility: developmental science and human rights perspectives", *Journal of Children's Services*, Vol 6:2, 2011

⁸ McCara L and McVie S, "Youth Justice? The Impact of System Contact on Patterns of Desistance from Offending", *European Journal of Criminology*, Vol. 4:3, 2007, pp315–345

⁹ Ministry of Justice, *Making it count in court Toolkit: Sentencing data toolkit 2010* [accessed via: <http://www.justice.gov.uk/guidance/youthjustice/courts-and-orders/making-it-count-in-court/toolkit.htm> (07/11/11)]

9. The CSJ would like to see the introduction of a higher custody threshold so that only the very serious and most prolific young offenders are sentenced to custody. We do not feel that the current “measure of last resort” threshold is adequate; not least because it is insufficiently defined and, despite recent guidance,¹⁰ is open to varied interpretation. Therefore, custody can very quickly and legitimately become the only remaining option—the last resort—where there are inadequate alternatives to manage risk and provide rehabilitative support in the community. Alongside a higher threshold, we recommend that the minimum period in custody be raised to six months, as part of a 12 month DTO. This would prevent the imposition of very short, highly destabilising and unproductive custodial sentences.

10. The CSJ recommends that a link is developed between the youth and the family court to enable a whole family approach to offending. At present, no such connection exists. Yet we know that children’s offending often flows from family dysfunction and is therefore unlikely to be effectively addressed in isolation from such problems. We suggest the youth court be granted the power (under s.37 Children Act 1989) to order local authority children’s services to assess (where there are welfare concerns) whether a child is at risk of suffering significant harm and to provide any necessary support thereafter.

11. The CSJ urges that greater efforts are made to place relationships at the heart of responses to youth offending. During our review, we received overwhelming evidence that positive, stable relationships—both between young people and their families, and young people and practitioners—are critical to achieving rehabilitation. Moreover, the centrality of such relationships is identified consistently in the research literature.¹¹ Yet both policy and practice fail to reflect their important role in rehabilitation. We call for the following changes to be made to address this:

- 11.1 Bolstering the Youth Rehabilitation Order to comprise a comprehensive programme focussing on supporting and building relationships with the young person and their family, as well as monitoring and compliance. It is our judgement that the voluntary sector is best placed to deliver this by providing one-to-one support, alongside statutory provision, to youth-justice-involved young people.
- 11.2 Introducing payment by results (PbR) dedicated “family link worker” posts in juvenile secure facilities. Workers would help maintain links, aid reconciliation and liaise with the home local authority to ensure that families receive the required support in the community.
- 11.3 Providing PbR one-to-one support workers to young people in custody. Workers would provide practical and relational support to prepare young people for release and further assistance thereafter. There should be a particular focus on facilitating engagement in education, training and employment.

March 2012

Supplementary written evidence from the Centre for Social Justice

Changes under the Legal Aid, Sentencing and Punishment of Offenders Act to increase available penalties for breach

- The CSJ believes that it is appropriate that the loophole regarding non-compliance with the supervision element of DTOs (whereby sanctions could not be imposed if the DTO had expired by the time of the breach hearing) should be closed by the Act. It is also sensible that the LASPO Act gives the court power to impose an additional period of supervision, as opposed to either a fine or period of detention.
- There is a risk that increasing the maximum fine for breach [of a Youth Rehabilitation Order (YRO) from £250 (under 14 years) or £1,000 (in any other case) to £2,500] without accompanying improvements in support to enable compliance will be counterproductive. Professionals with whom we consulted expressed concern that many young people and their families may be unable to pay the higher fines, leading to further penalisation and poorer outcomes.

¹⁰ Sentencing Guidelines Council, *Overarching Principles—Sentencing Youths*, Sentencing Guidelines Council, 2009 [accessed via: http://sentencingcouncil.judiciary.gov.uk/docs/web_overarching_principles_sentencing_youths.pdf (20/03/12)]

¹¹ See for example, Knight B, *Back from the Brink: How Fairbridge transforms the lives of disadvantaged young people*, Newcastle: The Centre for Research and Innovation in Social Policy and Practice, 2010, p23; Ofsted, *Transition through detention and custody: Arrangements for learning and skills for young people in custodial or secure settings*, Manchester: Ofsted, 2010, p6; and Youth Justice Board, *A Report on the Intensive Fostering Pilot Programme*, London: Youth Justice Board, 2010, p11 [accessed via: <http://www.yjb.gov.uk/Publications/Resources/Downloads/A%20Report%20on%20the%20Intensive%20Fostering%20Pilot%20Programme.pdf> (10/06/11)]

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- Evidence received by the CSJ’s youth justice review indicates that greater penalties for breach are unlikely to lead to better outcomes for young offenders. This is because many children who breach their sentence conditions do not wilfully do so but struggle to comply because of their chaotic lives and lack of family support—often they feel they have no reason to comply because they have neither a stake in society and nor any hopes for the future; custody is a norm in their lives. If better outcomes are to be achieved, there must be support for young people—both practical and emotional—to achieve compliance. In our report, we propose that the below measures be introduced to address breach:¹²
 - At breach hearings YOTs should be required to explain in court what they have done to facilitate compliance with the order;
 - At the point of sentencing YOTs should be required to specify what support they will give the young person to comply with the sentence;
 - Obligatory joint youth specialist training should be introduced for defence practitioners and sentencers and should include a module on appropriate responses to breach cases; and
 - Every community order should comprise a comprehensive programme focussing on monitoring and compliance, as well as supporting and building relationships with the young person and their family. We think the voluntary sector is best placed to assist with the support task.
 - Better outcomes for young people are likely to pave the way for greater levels of judicial and public confidence in non-custodial sentences. Judicial confidence in non-custodial sentences can also be improved by better communication between courts and YOTs, and informed understanding of the sentences to which they are sentencing. This can be brought about by way of attendance at youth panel meetings, visits to youth custodial institutions and community services, and higher quality pre-sentence reports—as outlined on page 6 of the CSJ’s written evidence submission to the Committee.

Impact of moving YOTs out of children’s services departments

- We have received minimal evidence regarding why YOTs are being moved out of children’s services. As to the question of impact, reports from professionals to the CSJ indicate that the impact of such moves is varied. On the one hand there is a risk that in moving out of children’s services, YOTs lose their child focus and welfare orientation. On the other hand, YOTs that have moved out of children’s services (and into community safety or the chief executive’s office) have been often better defended from the asset-stripping that has been experienced by some YOTs based in children’s services. There is more of a concern about how YOTs are being amalgamated, particularly at a management level, as there is a risk that this will dilute the youth justice expertise of YOT managers.

Enhanced units within YOIs

- The main issue with regards to the new enhanced units is that we don’t know how effective they are, yet they are being introduced across juvenile YOIs. Should we be investing in an unknown quantity?
- Professionals reported to us that the units are “repeating the problems with asset”: that is, focussing on criminogenic risk rather than welfare, psycho-social, and vulnerability issues. Witnesses to our review said that there is currently a “mish-mash” of children in such units—including those with learning disabilities, mental health needs, and those who are difficult to deal with on the wings. There was consensus amongst the professionals with whom we spoke that there needs to be clearer criteria about who these units are for: that is, are they for troubled children who are difficult to deal with on the unit or are they for those with mental health needs?

¹² Centre for Social Justice, *Rules of Engagement changing the heart of youth justice*, London: Centre for Social Justice, 2012, pp116–8

Proposal to remove responsibility from YOTs for the delivery and commissioning of preventative services?

Our proposal to remove responsibility from YOTs for the delivery and commissioning of preventative services stems from the following:

- It is neither appropriate nor effective for the youth justice system to deliver preventative interventions in virtual isolation to children who have not offended or who are at very low risk of reoffending following low level criminal conduct. Criminal justice interventions can be stigmatising (leading to difficulties with engagement) and increase the likelihood of offending, by labelling children as “would be” offenders at a critical time in the formation of their identities.¹³ Such labelling can create a self-fulfilling prophecy: the criminal label shapes the child’s identity and behaviour, as well as how others perceive and then tend to treat them.¹⁴ Prevention work via the justice system itself is therefore likely to be net-widening and counter-productive.
- There is no such thing as specific youth crime prevention. The risk factors for offending are common to a wide range of adverse outcomes, such as mental ill-health, child maltreatment and drug use.¹⁵ Effective prevention is therefore dependent on comprehensive intervention from a range of services: it must be understood as a multi-agency responsibility; not as the domain of criminal justice agencies.
- Yet YOT involvement in prevention has worked as a disincentive to multi-agency responsibility: while it has ensured that young people at risk receive at least some help, it is evident that young people are less, as opposed to more, likely to get the support they require from other services, such as schools and children’s social care. This is because such services often assume that they have less need to be involved if the YOT is already working with the child. This has also been reported in the literature.¹⁶ Yet, as we stated in our written evidence submission to the Committee, YOTs are neither structured nor resourced to be the sole service work with children.
- The CSJ firmly believes that removing responsibility from YOTs for the delivery and commissioning of preventative services would better ensure that: prevention is understood as a multi-agency responsibility and children do not receive potentially counterproductive interventions via the justice system itself.

Impact of Police and Crime Commissioners on the youth justice system

While the impact of Police and Crime Commissioners (PCC) is unclear, the CSJ has received the below evidence from professionals and academics:

- It is unlikely that the first PCC round will have any great impact on most aspects of policing and criminal justice, including youth justice. Aside from a sprinkling of independent candidates, the overwhelmingly majority of PCCs will be Labour or Conservative-party nominated, will take advice from their central party and are unlikely to adopt the sort of populist manifesto stances, of which some people are fearful. Most PCC candidates will be relatively ill-informed about the details of service delivery and their manifestos will be couched in general terms rather than specific, quantified, priority policy undertakings. That is, they may undertake to give high priority to youth-related ASB and crime prevention, but what that will mean in practice is unlikely to be clear. We do not anticipate, therefore, in most areas there being significant changes in youth justice directly attributable to the election of PCCs.
- Changes are much more likely to emerge from the second round of PCC elections onwards, when more experienced and confident candidates are elected. At that stage the proposition that policing and crime prevention involves more interventions than those undertaken by the police may mean that PCCs focus as much on partnerships with schools, voluntary sector organisations, etc, and that pressing and enabling non-police agencies to shoulder their responsibilities or be given a role, will likely play a greater role in PCC thinking and commitments. This will likely be pressed on PCCs by the Police and Crime Panels when considering their Police and Crime Plan, particularly because there will be reduced resources to fund voluntary sector services or fund greater levels of criminalisation.
- The CSJ recommended the introduction of a similar model to PCCs to increase local accountability and control of the police.¹⁷ A number of YOTs and voluntary sector organisations with whom we have consulted see working with PCCs as a real opportunity to shape youth crime decisions according to local needs, rather than solely responding to national priorities.

¹³ See for example McAra L and McVie S, “Youth justice? The impact of system contact on patterns of desistance from offending”, *European Journal of Criminology*, 4:3, 2007, pp315–45; Farrington D, “The effects of public labelling”, *British Journal of Criminology*, 17:2, 1977

¹⁴ Erikson, 1968 cited in Farmer E, “The age of criminal responsibility: developmental science and human rights perspectives”, *Journal of Children’s Services*, Vol 6, No 2, 2011, p90; and McAra L and McVie S, 2007, *ibid*

¹⁵ Youth Justice Board, *Risk and Protective Factors—summary*, London: Youth Justice Board, 2005, p3

¹⁶ Allen R, *From Punishment to Problem Solving*, 2006, p 15

¹⁷ Centre for Social Justice, *Breakthrough Britain: A Force to be Reckoned With*, London: Centre for Social Justice, 2009, p123

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- However, in our youth justice review we highlighted the risk that their introduction could trigger increased criminalisation of children—the fear is that they will achieve penal populist mandates regarding youth misbehaviour and pressure chief constables accordingly.¹⁸ In some areas, it may be that the criminalisation of children may be more likely in the first round of PCC elections. This will depend on the way policing is conducted in that area. One academic with whom we spoke gave the example that areas which are committed to high levels of triage may be at risk: if the public think that triage is allowing children to “get away with” their behaviour, PCCs may be inclined to cut this type of diversionary provision.

Operation of the YJB?

- A number of structural changes present a risk to the YJB’s focus on the welfare of children and young people. These include the shift to reporting only to the Ministry of Justice (MoJ) (instead of the former joint reporting arrangement to the MoJ and Department for Children, Schools and Families [now Department for Education]); and the move away from I Drummond Gate to Ministry of Justice (MoJ) premises at 102 Petty France. We also understand that the MoJ Youth Justice Unit is now also responsible for young adult and women policy, meaning that there is no longer a distinct focus on under-18s in the justice system. The CSJ emphasises the importance of retaining an informal link with the DfE by means of regular meetings and ensuring similar relationships with other relevant departments, such as the Department of Health and Home Office.

Effective approaches for reducing offending:

- The CSJ has seen that the most effective approaches for reducing offending are those that:

- (a) *Provide a stable, positive one-to-one relationship*

As we stated in our report and written submission, the overwhelming finding of our youth justice review was that stable, positive one-to-one relationships between young offenders and practitioners are critical to achieving rehabilitation. Such relationships not only facilitate engagement but also help young people to learn to value themselves, develop motivation to change and, ultimately, reduce offending. This is strongly supported by the literature.¹⁹

- (b) *Instil a sense of responsibility*

The CSJ is a strong advocate of restorative justice (RJ); when undertaken systematically (facilitated by trained coordinators with good preparation of both victims and offenders) RJ can produce high levels of victim satisfaction and reduce the frequency of reoffending.²⁰ We firmly believe that RJ is likely to offer a more demanding and effective alternative to conventional sentences.

- (c) *Work with both the young person and their family*

The family environment is generally a key factor in children’s offending behaviour. Therefore their criminality is unlikely to be effectively addressed in isolation from family considerations. Professionals giving evidence to the CSJ’s youth justice review reported that without a whole-family approach, interventions are likely to have only a limited impact and any progress made with the young person is often undone as soon as they return home. The importance of

¹⁸ Centre for Social Justice, *Rules of Engagement: changing the heart of youth justice*, London: Centre for Social Justice, 2012, p60

¹⁹ See for example, Batchelor S and McNeill F, in Bateman T and Pitts J (eds). *The RHP Companion to Youth Justice*, Dorset: Russell House Publishing, 2005, p166; Cooper K *et al*, *Keeping Young People Engaged: Improving education, training and employment opportunities for serious and persistent young offenders*, London: Youth Justice Board, 2007 p179; Youth Justice Board, *An Evaluation of Resettlement and Aftercare Provision*, London: Youth Justice Board, 2010, p26; Knight B, *Back from the Brink- How Fairbridge transforms the lives of disadvantaged young people*, Newcastle: The Centre for Research and Innovation in Social Policy and Practice, 2010, p23

²⁰ Shapland J *et al*, *Restorative Justice: the views of victims: The third report from the evaluation of three schemes*, London: Ministry of Justice, 2007, p5; and *Restorative Justice: Does Restorative Justice affect reconviction: The fourth report from the evaluation of three schemes*, London: Ministry of Justice, 2008

²¹ Utting D, *Interventions for children at risk of developing antisocial personality disorder: Report to the Department of Health and Prime Minister’s Strategy Unit*, London: Policy Research Bureau, 2007, p83

equipping both the young person and their family to address their offending is well recognised in the research literature.²²

Written evidence from the Howard League for Penal Reform

INTRODUCTION

1. The Howard League for Penal Reform is the oldest penal reform charity in the world. We campaign, lobby, publish research and through our legal team, represent children and young adults in custody. Our aim is to achieve less crime, safer communities and fewer people in prison.

2. We welcome the opportunity to provide a submission to the Justice Committee's inquiry into the youth justice system and would appreciate an opportunity to supplement this submission by giving oral evidence when the inquiry moves to its next stage.

3. Our response is made within the following principles and key recommendations regarding the youth justice system:

- The current youth justice system is failing. With reoffending rates as high as 72% for children released from custody (Ministry of Justice, 2011), it is clear that a system focused upon criminalisation and punishment fails children, victims and communities at extraordinary cost to society and the public purse.
- The most important change that needs to occur is one of values: children are children first and foremost. It is important to separate who they are from what they have done. Addressing the underlying reasons why children commit crime should be the priority rather than how to punish them when these needs have not been addressed.
- The most simple and just solution to divert children from the criminal justice system is to raise the age of criminal responsibility. England and Wales has one of the lowest ages of criminal responsibility in the world and have been subject to repeated criticism from the United Nations Committee on the Rights of the Child (UNCRC) for not complying with international obligations.
- Of all the interventions for children, imprisonment is the most damaging and least effective. The use of custody should be reserved for the very few children who commit the most serious and violent offences.

THE TARGETING OF RESOURCES

4. It has been estimated that the total costs to the UK economy of offending by young people could be up to £11 billion a year (House of Commons Committee of Public Accounts, 2011). This does not take into account the human costs to our communities and the wasted potential of children and young people.

5. The punitive turn in government policy over the last twenty years has led to an excessive number of children being pulled into the youth justice system unnecessarily. The churn of children places increasing pressure on systems that are becoming further under-resourced as a result of budget cuts.

6. The Howard League is particularly concerned to reduce first time entrants to the penal system and has been working with police forces around the country to encourage resolution of anti-social behaviour by front line officers. We have commissioned research on the overnight detention of children (Howard League, 2011a).

7. All agencies working with vulnerable children should be adequately resourced to do so. In the current financial context it is children and young people who are disproportionately impacted. Central funding for youth offending teams has been reduced by an average of over 19% and this is in the context of cuts already announced to other funders such as local authorities, police and probation services. These cuts are not happening in isolation; children's services have been cut by 13% in this financial year alone and there are plans to reduce the budget given by central government by 28% in the next four years (Higgs, 2011). The voluntary sector, which the government expects to pick up the pieces of these cuts, is also suffering: already more than 2,000 charities and community groups are facing budget cuts as local authorities have reduced or completely withdrawn their funding (False Economy, 2011).

8. The youth justice system is often being targeted inappropriately. The majority of European countries see a child committing a crime as a welfare matter. By comparison, our system is engineered to respond primarily through punishment, with the justice system picking up and criminalising what the welfare system has failed. It would seem sensible to predict that as welfare provision is eroded through financial constraints, more children will fall through the cracks to be picked up by the youth justice system which in turn becomes even more inappropriate as it faces increasing demand alongside dwindling resources.

9. The Howard League would like to draw the committee's attention to the report *Life Outside: collective identity, collective exclusion* (Howard League, 2011). This report was developed in conjunction with children

²² Utting D, *Interventions for children at risk of developing antisocial personality disorder: Report to the Department of Health and Prime Minister's Strategy Unit*, London: Policy Research Bureau, 2007, p83

who had recently been released from custody and gave them the opportunity to share their experiences of returning to their communities, being on licence, routes back into custody and recommendations for change. The overriding finding was that an under-resourced system is criminalising children who come from backgrounds of social and economic disadvantage with a one-size-fits-all approach. Their experiences within the system reinforce their perceptions as a “collective other”, furthering their feelings of being disenfranchised and detached from society and eroding their hopes of positive futures.

10. It has been argued that each society gets the youth justice system it deserves, as how a society defines and reacts to the behaviour of children “ultimately tells us more about social order, the state and political decision-making than it does about the nature of young offending and the most effective ways to respond to it” (Munice, 2004). Until children and young people are invested in, included in society and decriminalised, the youth justice system will continue to fail us all.

THE USE AND EFFECTIVENESS OF AVAILABLE DISPOSALS

11. The Howard League supports innovation and new approaches in the youth justice system founded on the best interests of children. There are a number of current pilots and initiatives that we would like to draw the committee’s attention to:

- *The youth justice reinvestment pathfinder initiative*—the Howard League is aware of a number of models being used to test out “payments by result”. The positive aspect of this particular initiative is that the starting point, and method of measuring success, is to bring child custody numbers down and allow local partnerships to invest in what works to meet the needs of the children in their area. This contrasts with some of the payment by results models mooted in the adult system, which are using a crude “Yes/No” reoffending rate as a binary measure of success and based on incentivising institutions within the system rather than drawing together agencies locally from both within and without the criminal justice tramlines.
- *Multi-systemic therapy (MST)*—MST is an intensive family and community based intervention that targets the multiple causes of criminal behaviour in children. MST works with the child, the family and all systems in a child’s ecology, such as peers, school and community during the assessment and treatment process and is aimed at preventing out of home placements (care and prison) and offending behaviour. MST therapists can work intensively with families due to low caseloads and the length of treatment is between three to five months. The successes can be seen in the Leeds MST project, which started as a four year pilot and has since received additional funding from the Department of Education for 2011–15 to expand it to three area based teams. Some of the positive outcomes and feedback of the Leeds MST project include: 96% of families engaging fully with the service and completed treatment; 95% of children living at home at the end of the intervention; 81% of children have not been arrested since they began the treatment; and 75% of children are attending school. In 2011 Leeds MST was recognised as the best team at the International MST Conference out of 500 teams worldwide.
- *Intensive fostering*—intensive fostering is a community based intervention in which a multi-disciplinary team works intensively with children and their families/carers during a placement with specially trained foster carers. The programme includes individual behaviour management plans, which are developed and regularly reviewed for each child. Behaviour is closely monitored and positive behaviours are reinforced using a system of points and levels. At the start of the programme their activities are severely restricted but as the programme progresses, they move through a series of levels, each of which brings privileges and enhanced freedoms. In 2005 the YJB commissioned agencies in three parts of England to pilot intensive fostering. The evaluation found that children were less likely to be convicted of a further offence, were more likely to be engaged in education or training and more likely to have returned to the family home.

12. We would like to draw the committee’s attention to evidence given by the manager of the Leeds MST and representatives from Action for Children who run the intensive fostering programme in Wessex, including the experiences of a young person who had completed the programme, to the oral hearing of the APPG inquiry on keeping girls out of the penal system, which are available on our website http://d19ylpo4aovc7m.cloudfront.net/fileadmin/howard_league/user/pdf/APPG/fourth_hearing_minutes_on_headed_01.pdf

13. Despite a drop in the number of first time entrants and children in prison, England and Wales still has one of the highest rates of child imprisonment in Western Europe and reoffending rates are unacceptably high. Custody is not being used as a last resort, in contravention of international law.

14. Of all the interventions for children who offend, custody is the most damaging and least effective. The experiences of children in prison are documented in our participation led policy report *Life Inside* (Howard League, 2010). As one young person working with us said, “prison doesn’t do anything for you, they just hold you, feed you and give you somewhere to sleep”.

15. We welcome the proposals in the Legal Aid Sentencing and Punishment of Offenders (LASPO) Bill to reduce the unnecessary use of remands to custody. We also welcome the proposals to introduce a single remand

order, which addresses the current anomaly of treating 17 year olds as adults and to amend the Bail Act to remove the option of remand for children who would be unlikely to receive a custodial sentence.

16. However, such proposals need to be supported by practical changes to overcome current barriers, including the availability of suitable accommodation in the community, improving information sharing between relevant agencies and the courts, and ensuring that children are given bail conditions that they are able to comply with—the Howard League worked with a child who was remanded to custody after failing to turn up to court ordered appointments promptly, despite the court ignoring the fact he could not tell the time because of his learning difficulties.

17. Although we concur with the proposal for local authorities to become responsible for the full cost of remands, whilst keeping placement and commissioning functions centrally, guidance and monitoring needs to be put in place. There is a real risk that local authorities, due to resource constraints, will put pressure on youth offending team workers to make recommendations to place children in cheaper and inappropriate young offender institutions. Placement decisions for the few children who do require a period in secure accommodation must be made to meet the best needs of each child.

18. It is particularly disappointing that there are no proposals in the LASPO Bill to scrap ineffective short term custodial sentences for children. Sending children to custody for non-violent offences, for a few weeks at a time, brings into serious question that custody is being used as a last resort.

THE EVIDENCE BASE FOR PREVENTING OFFENDING AND REDUCING REOFFENDING

19. The Howard League is concerned by the lack of research or evidence base being used to inform decision making in the youth justice system.

20. We would like to draw the committee's attention in particular to the YJB's decommissioning of secure children's homes, which provide the highest standards of care and rehabilitation for the few children in trouble with the law who have to be detained in custody. In 2003 the YJB contracted with 22 secure children's homes to provide 297 places in England and Wales. As of 1 April 2012, there will be just 166 places left in 10 secure children's homes.

21. The closure of these homes has been made in the context of a lack of research into the effectiveness of different types of secure provision for children to inform commissioning decisions.

22. The YJB has commissioned a large scale research project that is looking at interventions and regimes across the children's secure estate, but this is not due for publication until 2013. The commissioning of this research in itself shows the YJB acknowledges the need to know more, but are making decisions in the meantime regardless. It is unclear on what evidence the decision to decommission places in secure children's homes has been based. The decision appears to have been made on the basis of short term cost savings, with little consideration given to the needs of children or the long term costs to the public purse of the unacceptably high reconviction rate of children leaving custody.

23. The research that does exist weighs heavily in support of the secure children's home sector. In 1992 Ditchfield and Catan compared the regimes of secure children's homes and YOIs. They found that children in secure children's homes had lower reconviction rates and attributed this directly to the focus on care and treatment compared to the security and control ethos in YOIs.

24. The decommissioning of secure children's homes by the YJB also contradicts research that it has itself commissioned. A review of safeguarding in the secure estate (NCB, 2008) found that children feel safest in secure children's homes and least safe in YOIs. Key findings in this research included:

- A major reason that children felt safer was the size of the establishments and the relative staffing ratios.
- The factors that contributed to a sense of safety were based primarily on the presence and attitude of staff. The best relationships were in the secure children's homes, where the culture and ethos of the staff was child-centred.
- The physical environment also contributes to a sense of safety and YOIs are made up of inadequate buildings.

25. Although secure children's homes are the most extensive type of accommodation of the three sectors that comprise the secure estate, they are an investment in rehabilitating children and preventing them from becoming the adult criminals of the future. In contrast, prisons are a cost, not an investment as they are not equipped to address the underlying causes of children's behaviour.

26. It is the government's contention that places in secure children's homes can be reduced because there are fewer younger and more vulnerable children in the system. In so far as this is the case, then that is to be welcomed. The Howard League's defence of secure children's homes is more fundamental, however. If we were to envisage what the youth justice system should ideally look like in the future, then the use of custody would be dramatically reduced through a rebalancing of the divide between welfare and justice approaches, with early intervention key. What secure provision there was available within the youth justice system would be small, local, staff-intensive and child-centred. Yet the current trend has seen the very provision that

represents these principles reduced while the wholly inadequate battery prison approach of the YOI remains unreformed. It is difficult not to conclude that cost has been the over-riding factor in this decision-making and it even more difficult to see how an ambitious strategy for transforming our approach to children in conflict with the law can take place if short term considerations and a reluctance to tackle historical policy failures such as the introduction of YOIs continues to hold sway.

27. For further information on this issue, please see our briefing paper “Future Insecure: secure children’s homes in England and Wales” (Howard League, 2012).

THE GOVERNANCE OF THE YOUTH JUSTICE SYSTEM

28. The Howard League was disappointed by the decision that cross-departmental responsibility for the YJB, under the then Department for Children Schools and Families and the Ministry of Justice, came to an end in 2010 and became the sole responsibility of the Ministry of Justice.

29. Children who come into the youth justice system have a multiplicity of needs, which require a holistic approach to address effectively. Although we are less concerned with how the youth justice system is administered, there should be effective arrangements in place that ensure that the Departments of Education and Department of Health meet their responsibilities to these children effectively rather than leaving these children languishing under the narrow public protection focus of the Ministry of Justice.

30. Prevention, which is the primary aim of the youth justice system, should be seen in the wider context of creating a safer society and the well-being of children, and therefore is not a primary function of the Ministry of Justice. The evidence shows that children who end up in the youth justice system come in the main from the most disadvantaged families and communities, whose lives are frequently characterised by social deprivation, neglect and abuse:

- 71% of children have been involved with, or in the care of social services (YJB, 2007) compared to 3% of the general population (National Census, 2001).
- One in four boys report suffering violence at home, and one in 20 report having been sexually abused (YJB, 2007)
- 31% have a recognised mental health disorder (YJB, 2005) compared to 10% of the general population (ONS, 2005).
- 19% suffer from depression, 11% anxiety, 11% post-traumatic stress disorder and 5% psychotic symptoms (Chitasbean *et al*, 2006).
- 15% have a statement of special educational needs (YJB, 2003).
- 86% of boys and 82% of girls have been excluded from school (Summerfield, 2011).

31. Children exposed to the most acute combination of risk factors are up to 20 times more likely to offend than those who are not (Home Affairs Committee, 2010). Such information should provide the evidence base for targeting a renewed cross-governmental commitment to “foundation and early years”. A holistic approach should be embedded at both national and local government level, with the lead taken by the Department of Education and Department of Health. Identification, planning and directing resources where there is the greatest need is the only way enduring solutions can be found and for the aim of “prevention” to be truly fulfilled.

March 2012

REFERENCES

Chitasbean *et al* (2006). “Mental health of young offenders in custody and in the community”, *British Journal of Psychiatry*, vol 188, 534–540

Ditchfield J and Catan L (1992). *Juveniles sentenced for serious offences: a comparison of regimes in young offender institutions and local authority community homes*, Home Office, London

False Economy (2011), “More than 2,000 charities and community groups face cuts”, available at <http://falseeconomy.org.uk/blog/exclusive-more-than-2000-charities-and-community-groups-face-cuts>

Higgs L (2011). “Exclusive survey: youth services and children’s centres worst hit as cuts average 13% in one year”, *Children and young people now*, available at <http://www.cypnow.co.uk/news/1050883/Exclusive-survey-youth-services-childrens-centres-worst-hit-cuts-average-13-per-cent-one-year>

House of Commons Committee of Public Accounts (2011). *The youth justice system in England and Wales: reducing offending by young people. Twenty-first report of session 2010–11*, House of Commons, London

The Howard League for Penal Reform (2012). *Future insecure: secure children’s homes in England and Wales*, available http://www.urboss.org.uk/downloads/publications/Future_Insecure.pdf

The Howard League for Penal Reform (2010). *Life Inside*, The Howard League for Penal Reform, London

The Howard League for Penal Reform (2011a). *The overnight detention of children in police cells*, The Howard League for Penal Reform, London

The Howard League for Penal Reform (2011b). *Life Outside: collective identity, collective exclusion*, The Howard League for Penal Reform, London

Ministry of Justice (2011). *Statistics bulletin: reoffending of juveniles: results from the 2009 cohort, England and Wales*, Ministry of Justice, London

Munice J (2004). *Youth and crime*, Sage Publications, London

National Census (2001)

NCB (2008). *A review of safeguarding in the secure estate*, Youth Justice Board, London

Office for National Statistics (2005). *Mental health of children and young people in Great Britain*, Department of Health, London

Summerfield A (2011). *HM Inspectorate of prisons, Youth Justice Board: children and young people in custody 2010–11: an analysis of the experiences of 15–18 year olds in prison*, HM Inspectorate of Prisons, London

Youth Justice Board (2007). *Accommodation needs and experiences*, Youth Justice Board, London

Youth Justice Board (2003). *Asset: the evaluation of validity and reliability of the Youth Justice Board's assessment for young offenders*, Youth Justice Board, London

Youth Justice Board (2005). *Mental health needs and effectiveness of provision for young offenders in custody and in the community*, Youth Justice Board, London

Written evidence from Leicestershire County Council and the Youth Offending Services Management Board

SUMMARY OF MAIN POINTS

1. This document sets out evidence of effective practice across Leicestershire Youth Offending Service, which has achieved some excellent outcomes in reducing offending, reducing re-offending and reducing the use of custody, but identifies significant risks to delivering these services in the future, given the current funding climate.

BRIEF INTRODUCTION

2. This document constitutes a response to the Justice Committee's short inquiry into the youth justice system in England and Wales and is provided by the Chief Executive of Leicestershire County Council on behalf of the Leicestershire Youth Offending Services Management Board which oversees youth justice services across Leicestershire and Rutland.

The targeting of resources, including the ability of youth offending teams and their multi-agency partners to operate effectively in the current economic climate, and early findings from the Youth Justice Pathfinder Initiatives

3. The significant reduction in resources experienced across the public sector is undoubtedly jeopardizing the ability of youth offending teams and their multi-agency partners to operate effectively in the current economic climate.

4. In Leicestershire the YOS has experienced a 21% reduction in youth justice grant to date with further reductions in grant to come. The 2012–13 grant has not yet been announced but the YJB has made it clear that it will include reductions of a minimum of 1.9%, possibly significantly more. Changes to the national funding formula could also result in a further significant reduction of up to £179k in 2013–14, although depending on the option chosen it could also result in an increase in funding of up to £244k for Leicestershire. The introduction of payment by results, possibly also in 2013–14, will lead to a further risk to funding levels.

5. An additional risk is the likelihood that a proportion of the Youth Justice Grant will be transferred to the Police and Crime Commissioner in 2013–14. This is the funding that the Home Office provides for prevention work and substance misuse and amounts to circa £100k representing another 14% cut to the Youth Justice Grant.

6. The known reduction in the Youth Justice Grant for 2012–13, the changes to the funding formula and the potential loss of the Home Office portion of the Youth Justice Grant could result in a loss of up to 36%, or £280k, against the 2011–12 funding for Leicestershire. This is without the additional reductions in the grant that are as yet unknown for 2012–13 and without the potential impact of payment by results. This is a substantial reduction in funding that would require a reduction in services provided to young people and would place our high quality outcomes at risk.

7. Partner contributions to core YOS funding have fortunately been largely maintained to date, albeit on a standstill basis or with small reductions in the order of 2% or 3%. However, the County Council which has provided further funding over and above the core contributions it makes to the YOS has had to reduce its level

of additional funding, for example our award-winning Basic Skills team (independently researched by De Montfort University and shown to contribute to reductions in re-offending), and our public health nurse who contributes to improved health outcomes for young people, have had to be cut in order to maintain the core funding. Funding to the Next Level Café run by Charnwood Arts, a voluntary sector organisation that contributes to reducing offending, will also cease during 2012–13.

8. Reductions in local authority funding as a result of the Academies programme is likely to mean a reduction in the contribution provided by the Children and Young People's Service, including the loss of one of our two Education Officers which along with the loss of a Connexions Personal Adviser and the Basic Skills provision highlighted above means that our educational provision for young people who offend, which is known to be one of the most significant risk factors in relation to re-offending, will be significantly diminished.

9. A whole service review is currently being undertaken on a phased basis and in phase one we have reduced the number of managers and the number of administrative staff employed. The YOS has also moved into County Hall as part of the County Council's accommodation strategy to reduce office costs. The phased approach to making service reductions has entailed a detailed analysis of those services that add least value to outcomes for young people. There is very limited scope for manoeuvre as all the services provided add some value, but the exercise has enabled us to prioritise and maintain our core services.

10. Contingency plans are being made for the anticipated further reductions in funding and loss of grant, although the County Council has provided one off transitional funding of £500k to enable a more managed reduction in funding over two years.

The use and effectiveness of available disposals, including restorative justice and custody as a last resort

11. Leicestershire has historically had a relatively low use of custody but we have been very effective in reducing its use as a last resort still further between 2005–06 and 2010–11—from 35 to 15 young people, a reduction of 35%. We also provide good quality bail support which gives the courts the confidence to make use of properly supported bail and increases the likelihood of a non-custodial sentence. However, the provision of robust and effective supervisory interventions which enable young people to be supervised effectively and safely in the community and which have the confidence of sentencers is crucial in reducing the overall use of custody.

12. These interventions also include the use of restorative justice, which is embedded throughout our processes and which we use to good effect particularly in our children's homes resulting in reduced levels of offending by looked after children and police call outs. We have also developed work with young people at the highest risk of re-offending through the delivery of bespoke packages of support and supervision as part of our Integrated Supervision and Support programme. We will continue to give priority to this area of work.

The role of the youth justice system in diverting at-risk young people away from first-time offending

13. This is a crucial role for the youth justice system in conjunction with partner agencies. Leicestershire Constabulary was one of the first police areas to implement restorative disposals in neighbourhoods in response to low level offending in local areas and with the specific aim of reducing the number of young people who were being inappropriately criminalized as a result of very minor and petty offences. An analysis of young people who have received such a disposal across Leicester and Leicestershire indicates that, of those receiving a restorative disposal between 1 April and 30 June 2010, 73.3% have not gone on to commit an offence.

14. However the Police restorative disposal approach is only one element in a multi-agency approach to diverting young people from first time offending. Through a successful multi-agency youth crime prevention strategy with strong YOS prevention services (Youth Inclusion and Support Project, Anti-Social Behaviour Team and street-based youth work in anti-social behaviour hotspots known as IMPACT) as well as the work of the police as highlighted above and the preventative family work undertaken by Children's Social Care services we have been able to reduce the number of first time entrants to the youth justice system in Leicestershire by 67.7% in 2010–11 compared with 2005–06, a reduction of 870 young people. However there are significant risks to these arrangements as a result of the potential transfer of the Home Office element of the Youth Justice Grant to the control of the Police and Crime Commissioner as highlighted in paragraph 3 above.

15. Leicestershire is also one of the Department of Health Point of Arrest Liaison and Diversion Pathfinder sites that has the aim of diverting young people away from the formal youth justice system into health and social care provision where there is a need to deal with a wide range of health and well-being issues that may contribute to the risk of offending. Delivery on this programme is just commencing.

16. Leicestershire is also a Community Budget area and the YOS is involved in developing the work with troubled families that will contribute to reductions in offending. The emerging model is based on a family support worker but with "a team around the family" with more effective integration of key services aimed at reducing duplication and reducing the need for the most costly service responses.

The evidence base for preventing offending and reducing re-offending and the extent to which this informs interventions in custody and the community

17. Leicestershire's re-offending performance for the 2010–11 cohort was 0.77 (ie the average number of offences committed by all young people in the youth justice system) compared with 1.13 in 2005–06 and which represents a 31.8% reduction in re-offending performance over that five year period.

18. In order to achieve this, we provide, in conjunction with our partners, a range of high quality interventions in the community, in line with the YJB's principles of effective practice. We currently have access to a range of specialist workers who also provide interventions. These interventions continue into custody and into the post-custodial phase. We have recently enhanced our post-custodial interventions, as part of our work to target resources at those offenders most likely to re-offend or cause harm to communities. The last YJB assessment of Leicestershire YOS, albeit two years ago, which included an assessment of how well we comply with the YJB's principles of effective practice, indicated that we were "performing excellently with excellent capacity to sustain and improve performance".

19. A Leicester, Leicestershire and Rutland Reducing Re-offending Board has also produced a strategy and action plan for reducing re-offending by adults and young people, through addressing the pathways out of offending.

20. The YOS, along with the Probation Service and Police, is currently examining how the reducing re-offending element of tackling troubled families is best integrated into the troubled families model.

The governance of the youth justice system, including the removal of joint responsibility from the former Department for Children, Schools and Families

21. We are pleased that the YJB has been retained by the Government, as we believe that this will enable a continued focus on the needs of young people who offend as children and will also maintain the leadership and expertise across the youth justice system that the YJB has provided since its inception.

22. However, the removal of joint responsibility between the MoJ and the former Department for Children, Schools and Families for the youth justice system has been in our view a retrograde step. Young people who offend are first and foremost children with the same needs as other young people and the previous arrangement recognized this fact. It was right that there should be a joint responsibility between the two departments which have responsibilities for offenders and children and young people. Given that poor educational attainment is such a key risk factor in relation to re-offending it is surely right that the Department for Education should have a much more proactive role in the management of the youth justice system.

The extent to which the system is able to meet the needs of all offenders regardless of age, gender, ethnicity and mental health

23. There remain anomalies, for example in the remand and PACE legislation, where 17 year olds are not treated as children, although the Legal Aid, Sentencing and Punishment of Offenders Bill will remove the anomaly in relation to remand. There are also inequalities throughout the youth justice system in the numbers of minority ethnic young people who enter the system including the disproportionate number of BME young people subject to stop and search.

Recommendations for the committee to consider including in its report

24. We would like the Committee to ask the Home Office to reconsider the proposal to transfer to Police and Crime Commissioners that element of Youth Justice Grant which is currently used by YOTs to support their prevention work and substance misuse work in view of the negative impact this is likely to have through the destabilization of overall prevention arrangements as well as reducing the capacity of YOTs to directly provide substance misuse interventions.

25. Should this proposal not be reconsidered, given that the Police and Crime Commissioner will have a very short time in which to determine their budget, it is suggested that transitional arrangements are put in place to ensure that existing successful schemes are not jeopardised.

26. We would also like the Committee to ask the Government to consider reinstating joint responsibility for young people who offend between the Ministry of Justice and the Department for Education.

March 2012

Supplementary written evidence from the Bradford Youth Offending Team following the evidence session on 10 July 2012

Short custodial sentences

The focus in West Yorkshire is to reduce bed nights usage in custody including remands to custody, by providing robust community sentences as alternatives to custody and ensuring young people comply when on the community element of the detention and training order. The use of short orders is not a focus for us. But sentencers may take account of time spent on remand so some short custody sentences may be due to time on remand. The main way to reduce short sentences is to ensure young offenders comply with their community sentence and do not reoffend.

Balancing the aim of reducing the number of bed nights, with the need to protect the community from the most serious offenders

The West Yorkshire consortia is clear that it has a responsibility to protect the public.

The focus on improving engagement on community sentences resulting in fewer breaches of order does result in reductions in custody.

The main reason for young offenders sentenced to custody in baseline year was breaches of community sentences 25%.

We have reduced this in the pilot to 18%.

At the same time young offenders sentenced to custody in base line was 18% this has increased in the pilot to 31%.

This demonstrates you can reduce young offenders in custody by delivering a improved service while at the same time protecting the public.

The second point is that reducing custody pathfinder gives a spotlight on young offenders at risk of custody and therefore the most challenging offenders.

The binary re-offending rate

I do not think there is an excessive focus on reducing reoffending I think its core to demonstrating that we can make a difference in young offenders lives and make communities safer.

Regarding the binary and frequency and seriousness of reoffending -we need all of these in order to account for our work and to be able to tell the whole story.

July 2012

Written evidence from the Magistrates' Association

1. EXECUTIVE SUMMARY

1.1 Magistrates sentencing an offender aged under eighteen will consider (a) the principal aim of the youth justice system (to prevent offending by children and young persons); and (b) the welfare of the offender. We always use custody as the last resort and are proud to contribute to the continuing fall in custody rates for young people.

1.2 Magistrates are enormously concerned with the proliferation of out-of-court disposals, and particularly by the fact that the police are frequently acting as investigator, prosecutor, judge, jury and sentencer. Cases of violence are especially worrying. We consulted our membership during the preparation of this document and were astonished by the strength of feeling on this point—almost every respondent expressed their deep concerns over out-of-court disposals.

1.3 Although we support the use of out-of-court disposals for low-level, isolated, non-violent offences—and particularly in the case of young people if they will help to prevent unnecessary criminal records, with their accompanying adverse effects on future employment prospects—we feel that judicial oversight and monitoring of out-of-court disposals and restorative justice (RJ) is essential.

1.4 Magistrates are respected and trusted members of their local communities. If magistrates were to have an active monitoring and scrutinizing role in out-of-court disposals and in RJ, it follows that the community in general would have a greater confidence in these methods of disposal. We see this as an obvious solution to a very real problem.

1.5 We are disturbed by the treatment of looked-after children in the youth justice system and feel that the problems experienced by these most vulnerable children need to be actively addressed as a matter of urgency.

2. INTRODUCTION

2.1 The Youth Courts Committee of the Magistrates' Association has agreed the following policies and priorities for the present triennium (2010–13):

- Reducing the number of young people remanded or sentenced to custody.
- Increasing confidence in non-custodial alternatives to custody.
- Exploring the rehabilitation of young offenders.
- Promoting the role of the judiciary in restorative justice for young offenders.
- Reviewing the relationship of looked-after children to the youth justice system.

2.2 These are not in any specific order but it will be appreciated that they are all inter-connected with each other.

2.3 Magistrates are very keen to reduce the number of young people remanded or sentenced to custody but this is an unrealistic aim unless they have confidence in non-custodial alternatives.

2.4 We are also very keen to avoid unnecessary criminalization of our young people and there are clear relationships between avoiding unnecessary criminalization, the rehabilitation of young offenders, and the use of non-custodial alternatives to custody, including the use of RJ.

3. SPECIFIC TERMS OF REFERENCE

3.1 *The targeting of resources, including the ability of youth offending teams and their multi-agency partners to operate effectively in the current economic climate, and early findings from the Youth Justice Pathfinder Initiatives*

3.1.1 Avoidance of custody

3.1.1.1 There is an enormous variation in youth custody rates throughout England and Wales. There is even a significant discrepancy between demographically similar cities. Magistrates universally agree that custody must be used as a last resort. Magistrates avoid custody whenever possible because they believe other methods of disposal would be more beneficial for the offender and for society.

3.1.1.2 If magistrates are to avoid custody for serious offences, they must have confidence in alternative methods of disposal. This can be achieved by (a) training and observation of non-custodial sentences in action and (b) information on the success rates of specific sentences and, most importantly, individual offenders. At present, the only follow-up we usually receive is for those young offenders who are returned to court because they have breached their orders. We see failures but it is rare for successes to be brought to our attention.

3.1.1.3 We are sometimes told that observation of sentences in action would prejudice our judicial independence. We totally reject this statement.

3.1.2 Greater use of the youth court

3.1.2.1 At the annual general meeting of the Magistrates' Association in November 2011, the following motion was agreed and has now become the official policy of the Association.

3.1.2.2 "This annual general meeting calls upon parliament to recognize that it is no longer acceptable for children to be tried or sentenced in the crown court, and to pass legislation to ensure that all defendants under the age of sixteen appear in the youth court, where they will be tried and sentenced either by three youth court magistrates or, for very serious offences, by a crown court judge trained in youth justice and sitting with two or four youth court magistrates."

3.1.2.3 If the motion agreed at the annual general meeting came to fruition, all defendants under the age of sixteen would be dealt with in the youth court.

3.1.2.4 We do not support district judges (magistrates' courts) sitting alone in the youth court, and particularly for trials.

3.2 *The use and effectiveness of available disposals, including restorative justice and custody as a last resort*

3.2.1 There are significant discrepancies in custody rates throughout England and Wales. One proven factor of relevance is the relationship between the local Youth Offending Team (YOT) and the local magistrates in the youth court. A good robust relationship—which certainly does not imply a cosy relationship—will give the magistrates confidence in the Pre-Sentence Reports (PSRs), which are prepared by the YOT and will almost certainly recommend a non-custodial disposal if this is a realistic proposition. Contrariwise, a poor relationship will result in lack of confidence in the PSRs and an increased rate of custody.

3.2.2 Magistrates very much support the concept of RJ for young offenders, as stated above in our policies and priorities. RJ can be a form of out-of-court disposal or an element of a sentence. We recognize the different models available and the potential benefits to both victim and offender. However, we do not see it as a panacea and do not subscribe to the currently widespread view that any potential criticism of RJ is unacceptable. It is

“another tool in the box” but must not be regarded as the only tool available. It should be used in cases in which it will benefit both the victim and the offender.

3.2.3 We are very concerned with the postcode lottery in the use of RJ. This seems to depend very much upon the opinions of the local YOT and the local chief constable and/or Basic Command Unit (BCU) superintendent. This is manifestly unfair. While accepting the independence of the various police forces, we do not consider it fair that a young person can obtain a criminal record in one city but avoid it in another for an equivalent offence. We feel very strongly that RJ and all other forms of out-of-court disposal must have judicial oversight and monitoring to ensure fairness, transparency and consistence. We suggest that local magistrates are ideally placed to deliver this.

3.3 The role of the youth justice system in diverting at-risk young people away from first-time offending

3.3.1 One of our policies and priorities is exploring the rehabilitation of young offenders. A criminal record inevitably adversely affects the employment prospects of a young person, thus increasing the likelihood of further offending. We have debated the need for a radical change in the Rehabilitation of Offenders Act and are pleased to learn that this is under consideration. It follows that magistrates support the diversion of at-risk young people. Again judicial oversight is essential. We must not encourage the police to oversee the entire process of investigation, arrest, prosecution, and sentencing in unsupervised isolation. Again local magistrates are ideally placed to deliver judicial oversight in their local communities, for example by sitting on pre-court panels and playing an active part in deciding whether an out-of-court disposal is appropriate. Involvement of magistrates at this early stage would demonstrate a logical continuity in the process and would undoubtedly increase public confidence.

3.3.2 There is widespread belief within the magistracy that out-of-court disposals are being used over-zealously by the police, with an autocratic approach to their implementation and without independent scrutiny and monitoring. While we welcome a genuine reduction in youth crime, one created artificially by keeping cases out of court must not be encouraged.

3.3.3 Magistrates need to be convinced that out-of-court disposals are effective. The police rarely explain to the judiciary why they are moving towards out-of-court disposals and this inevitably leads to the assumption that it is purely a cash-cutting exercise and a “quick fix”. Magistrates need to be reassured that out-of-court disposals lead to a reduction in reoffending and that, if necessary, youths are properly charged and brought before the court rather than becoming lost in the system.

3.3.4 Magistrates must be made aware of the full record of previous out-of-court disposals.

3.3.5 Magistrates are also concerned that the recording of out-of-court disposals appears to be haphazard. Benches are frequently unaware of the full history of previous offending and a robust, uniform and universal system of recording is required.

3.3.6 Looked-after children

3.3.6.1. Youth court magistrates are extremely concerned about looked-after children, specifically about the following points.

- Magistrates are seeing looked-after children in court for offences which would certainly not reach court if the children lived in conventional families.
- Magistrates are seeing looked-after children in court who are either unaccompanied or accompanied by a carer with minimal knowledge of the young person.
- Magistrates are concerned that looked-after children are being moved around far too much—often for very considerable distances—so that it becomes impossible for them to develop any type of meaningful relationship with a responsible adult.

3.4 The evidence base for preventing offending and reducing re-offending and the extent to which this informs interventions in custody and the community

3.4.1 Magistrates are certainly interested in hearing the results of well-conducted research into the effectiveness of the various sentencing options which are available but we are really concerned with individual cases. What is the best intervention for this young person appearing in front of us at this particular stage in his life? We are very reliant upon the PSR prepared for us by the YOT.

3.4.2 It follows that magistrates, particularly those sitting in the youth court, must consider every case on an individual basis. A production-line mentality would be entirely inappropriate. Sentencing in the youth court is focused on preventing reoffending to a far greater degree than in the adult court, and rightly so. When sentencing an offender aged under eighteen, the court must consider (a) the principal aim of the youth justice system (to prevent offending by children and young persons); and (b) the welfare of the offender.

3.4.3 Although we very much welcome the guidelines currently being produced by the Sentencing Council, we are pleased that youths are treated much more individualistically and would strongly oppose any attempt

to hamper our discretion. We are delighted to learn that the Sentencing Council has now included a review of youth court sentencing in its work plan for this year (2012–13). Each case must be taken on its own merits.

3.5 The governance of the youth justice system, including the removal of joint responsibility from the former Department for Children, Schools and Families

3.5.1 We have only one observation here. Given that the vast majority of sentencing of young offenders is undertaken by magistrates in the youth court, we feel that magistrates should be actively represented on all relevant bodies, including the Youth Justice Board. We find it perverse that comments and decisions are frequently made about sentencing with no magistrates present to either listen or explain.

3.6 The extent to which the system is able to meet the needs of all offenders regardless of age, gender, ethnicity and mental health

3.6.1 Magistrates need to be aware of the potential problems and we believe that they are. That said, further training is always useful. Again magistrates always need to be aware that they are dealing with individual young people in specific circumstances.

March 2012

Supplementary written evidence from the Association of Chief Police Officers following the evidence session on 10 July 2012

Whilst giving evidence to the Justice Committee on 10 July 2012, I was asked to clarify the powers of a Chief Constable to “strike down” a disclosure. It may, however, be helpful in answering this if I give a more general overview of the legal requirement relating to disclosure. To enable me to do so, I will address, separately, information held on the Police National Computer and that held on local police records.

The Police Act 1997 Section 113A requires the Secretary of State to issue a Criminal Record Certificate (CRC) containing “*details of every relevant matter relating to the applicant which is recorded in central records*”. Central records are defined within the Act as “*such records of convictions and cautions held for the use of police forces generally as may be prescribed*”. Relevant matter is also defined within the Act as:

- (a) a conviction within the meaning of the Rehabilitation of Offenders Act 1974, including a spent conviction, and
- (b) a caution.

In complying with legislation the Criminal Records Bureau (CRB), on behalf of the Secretary of State, is required to issue a CRC containing all conviction and cautions (including juvenile reprimands and final warnings) to eligible applicants. Central records, as defined above, are held on the PNC. In addition, information relating to Penalty Notices and offences for which no further action was taken, are held on the PNC, but as these do not constitute “relevant matter” are not automatically disclosed.

Information on the PNC is held in accordance with the Data Protection Act 1998. Under this Act a Chief Constable is the Data Controller for information, including convictions and cautions, originating from his/her force. As Data Controller the Chief Constable must ensure that the information conforms to the principles of that Act which cover fair processing and concentrate on areas such as proportionality, excessiveness, timeliness, accuracy and applying the data for the reasons it was retained.

In order to influence the requirement on the Secretary of State to disclose all convictions and cautions contained on the PNC, a Chief Constable would have to review the information owned by his/her force and, as Data Controller, authorise its removal prior to such disclosure being made.

In the case of the Chief Constable of Humberside v Information Commissioner & Another [2009] EWCA Civ 1079; five Chief Constables successfully appealed a decision by the Information Commissioner that the minor convictions of five individuals should be deleted from the PNC. As a result convictions and cautions are currently held on the PNC until an offender would have reached the age of 100, unless there are exceptional circumstances.

Whilst taking account of the above appeal and the wish to retain information for policing purposes, each Chief Constable, acting as Data Controller, may review information held on the PNC by his/her force and decide whether there are exceptional circumstances warranting its removal. The Chief Constable will take into account the age of the offence, the seriousness of the offence, other offences which the individual may have been convicted, the age and the vulnerability of the offender.

Although this can apply to conviction data, it normally refers to circumstances where an individual has been arrested for a recordable offence and their personal data, plus DNA, photographs and fingerprints have been taken. It is then discovered, for example, that no crime has taken place or for other reasons the arrest is not sustainable. It is possible in such circumstances for Chief Constables to apply the exceptional case process and remove all of the history from the PNC. Advice on the exceptional circumstances process can be provided by the ACPO Criminal Records Office (ACRO), but the final decision is always one for the Chief Constable. In

that context, each Chief Constable is able to influence the outcome of a disclosure, prior to the CRB exercising their duty to disclose on behalf of the Secretary of State.

The retention of Police records on the PNC, as described above, will be influenced by retention periods for biometric data contained in the Protection of Freedoms Act 2012. However, this will not negate a Chief Constable's discretion, as Data Controller, to consider exceptional circumstances for the removal of conviction or caution data.

In relation to locally held information, the Police Act 1997, Section 113B requires that, for Enhanced Criminal Record Certificates (ECRC) the Secretary of State request that a Chief Officer provides any information, which in their opinion, "might be relevant" and "ought to be included in the certificate".

Such information considered for disclosure under Section 113B would include for example community resolutions, restorative justice, penalty notices, cannabis warnings and all local intelligence. Unlike conviction and caution (including reprimands and final warnings) information held on the PNC, which is disclosed automatically, chief constables are able to exercise absolute discretion over what is disclosed from their local records. Indeed, the legislation and subsequent case law places a personal responsibility on Chief Officers to consider the relevancy of the local information and whether, taking account of the impact of disclosure on the applicant's human rights, that information ought to be released for inclusion on the ECRC.

One anomaly, in relation to juveniles, within the current system involves Penalty Notices for Disorder (PND). With the exception of the seven trial forces, PND's cannot be issued to a juvenile under 17*. In these cases, where local resolution is not considered appropriate, and the juvenile is issued with a reprimand or final warning, these fall within Section 113A of the Police Act 1997 and are subject to automatic disclosure on a standard and enhanced CRC. An older offender, possibly even involved with the same offence, may be issued with a PND, which is subjected to Section 113B of the Act and individually reviewed for relevancy, but only in relation to an enhanced CRC request.

(*The option to issue PND to juveniles will be repealed later this year under the provisions of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.)

In summary, conviction and caution information held on the Police National Computer is disclosed automatically for, both, standard and enhanced CRCs. Chief Constables, as Data Controllers, are able to review this information, if requested, prior to disclosure to see if there are exceptional circumstances warranting deletion of that record. Information held on local systems, not amounting to a conviction or caution, is subject to individual review and its release must be personally authorised by the Chief Constable or an officer delegated by him/her.

July 2012

Written evidence from Action for Children

EXECUTIVE SUMMARY

1. Action for Children runs two of the three original pilot sites for Intensive Fostering (IF), funded by the Youth Justice Board (YJB). Based on our experience we believe that:

- The IF programme can improve outcomes for young people and can offer a better alternative to custody.
- Since the 2010 evaluation by the University of York improvements have been made to the implementation of the programme, particularly in relation to the aftercare offered.
- The YJB should collate and publish national data on IF to produce robust information on outcomes, identify trends and variations, and, generate recommendations for the further development of the programme.
- IF should be expanded and rolled-out as an alternative to custody for young people, for this to happen a sustainable funding model is required.

ACTION FOR CHILDREN

2. Action for Children is committed to helping the most vulnerable children and young people in the UK break through injustice, deprivation and inequality, so they can achieve their full potential. We help children, young people and their families through nearly 500 services across the UK, including fostering and adoption. Action for Children runs two of the three original pilot sites for Intensive Fostering (IF), funded by the YJB.

3. This written submission supports the oral evidence given by Hugh Thornbery, Director of Business Development, on Action for Children's Intensive Fostering services (16 October 2012).

INTENSIVE FOSTERING

4. Intensive Fostering (IF) is an evidence-based programme, which helps to turn around the lives of young people and used where young people have reached the point of entering custody. Two community sentences

are currently offered as alternatives to custody: the Youth Rehabilitation Order (YRO) with Intensive Supervision and Support, available across England and Wales; and the Youth Rehabilitation Order with Intensive Fostering, which is only available in the pilot areas. IF provides intensive supervision and support for up to 12 months, in the form of a structured regime within the home of a foster carer. The scheme works with young people aged 10 to 17 whose home circumstances may have contributed significantly to their offending behaviour.

5. In 2004, the Government asked the Youth Justice Board (YJB) to pilot an IF model based on practice originating in Oregon, USA. Action for Children runs two of the three original pilots—in Wessex and London—that have been funded by the YJB. One further pilot has been added in Trafford.

OUTCOMES: KEY FINDINGS FROM THE 2010 EVALUATION OF THE PROGRAMME

6. The YJB commissioned the University of York (2010²³) to evaluate the IF pilots. The York evaluation concluded that: *“the evidence...suggests that IF may be a better alternative to custody and should continue to be implemented”* (2010:28).

7. The evaluation paid particular attention to re-offending rates comparing data for young people on the IF programme with a comparison group. Key findings were:

- In the initial year after the young people in the IF group were sentenced, 11 (48%) were reconvicted for any offence (including breach) compared to 19 (79%) of the young people in the comparison group.
- Nine (39%) of the IF group were convicted for a substantive offence during the first year post sentence, whereas 18 (75%) of the comparison group were reconvicted for substantive offences.
- Only four (17%) of the young people committed substantial offence during their time in IF placement.
- On average, during the year after the IF placement began, the comparison group were convicted for five times as many offences as the IF group.
- During this year the most serious offences for which the comparison group were convicted had a higher average gravity score (3.65) than the inmost serious offences committed by the IF group (1.87).

8. However, in the year after the young people completed their IF placements with their foster carers, the reconviction rate for substantive offences rose to 74%, virtually equal to the comparison group (75%). It is this finding that has led to a review of aftercare arrangements in the IF pilots. In addition, the researchers recognised limitations of the evaluation largely because of the small sample (23 young people).

ON-GOING EVALUATION

9. We are pleased that the YJB is continuing to gather data from IF services. The YJB has access to data that services do not, such as monitoring reoffending rates once a young person has graduated from the programme. Each pilot is small and geographically distinct so that national monitoring is vital to produce robust data on outcomes, identify trends and ascertain regional variations. Currently, our services need feedback from the YJB on the data that has been collected to facilitate on-going service development.

10. In addition to the national data collected, Action for Children has used our Outcomes Framework to monitor outcomes for young people and improve our IF services. For example, outcomes recorded for young people who completed a placement at Action for Children’s Wessex service in 2011–12 include:

- 100% reduced offending or anti-social behaviour.
- 92% achieved in a learning environment to the best of their ability or achieved readiness for school.
- 92% experienced improvement in their emotional or mental wellbeing.
- 83% showed a reduction in the use of harmful substances by parents or carers and concerns about neglect or abuse of a child were reduced.

IMPROVEMENTS IN AFTERCARE

11. Both our IF services in Wessex and in London have tailored aftercare programmes to meet the individual need of young people and work with families during the aftercare work. To support young people effectively, there needs to be an understanding that their needs will change over time. At Action for Children we look beyond the needs that were identified when the young people enrolled onto the programme. For example, some young people will move into independent living following IF, therefore we gear our work to support them in the initial stages of living independently. Part of our role is to ensure that the other professionals involved with the young person become part of an integrated plan; as they will need to offer consistency and continued support when the IF programme has been completed.

²³ <http://www.yjb.gov.uk/publications/Resources/Downloads/A%20Report%20on%20the%20Intensive%20Fostering%20Pilot%20Programme.pdf>

12. Young people on the programme are supported during the first six weeks after graduation by both a Skills Coach and Individual Therapist and in the subsequent six weeks by one of the above workers. This can also be extended as needed or requested by the YOT worker, young person or parents. Equally the young person's worker may identify gaps that still need working on and will offer to continue working with the young person.

13. As well as working directly with the young person, our services work with the whole family following an IF placement. This is essential to ensure the consistent and continuous support is given to the young person during their transition home or into semi-independent living. Activity includes:

- Family support in case semi-independent living does not work out and the young person returns home.
- Parents are visited weekly for three months by the family support worker to help manage transition home.
- Parents are supported to attend meetings regarding their child during the aftercare period.

14. Our IF teams work closely with social workers and YOT workers. For example, if young people or their families are difficult to engage during the aftercare period, workers from the IF team will inform both the child's social worker and also their YOT worker of the challenges. Both young person and family are encouraged and welcomed to stay in touch with the team, to call in if they have a problem and also to share success.

COST OF THE PROGRAMME

15. It is difficult to compare the cost of IF directly to forms of custody as IF placements include the cost of all the therapeutic services and whole-family support, where as custody does not. The MTFC national implementation team (2010²⁴) highlights that costs of MTFC-A (IF model of MTFC) are highly dependent on numbers of placements and specific staff and foster carer remuneration. Costs per placement are lower if teams have the recommended minimum of seven placements and one respite foster carer. However the nature of the service means that the total costs of recruiting, training and supporting foster carers (including 24 hour support), therapeutic support for the children and young people in the placement, at school and in social activities as well as work with their families of origin and moving on placements are all included within the costs of the programme. These factors have meant that it has been difficult to make true comparisons between MTFC and alternative provision for children with complex needs.

16. The University of York evaluation concluded that on average the IF placement cost £68,736 and the index custodial placement cost £53,980. However, this is due to the length of placement: for the IF group placements were nine months, compared to an average of around four months for the custody group. The analysis therefore tentatively shows that unit cost per placement day with IF tends to be lower than custodial facilities.

17. The Howard League sets out comparative unit costs of custodial places for children.²⁵ This shows the potential of IF to be a cost-effective option:

- Based on full occupancy for 10 beds, IF costs £1,632 per week. This is £84,864 per annum.
- Secure Children's home costs £4,135 per week. This is £215,000 per annum.
- Secure Training Centre costs £3,075 per week. This is £160,000 per annum.
- Youth Offender's Institute costs £1,153 per week. This is £60,000 per annum (not suitable for many of the children placed on IF) and does not include costs of education, mental health/therapeutic input and cost of buildings.

REPLICATION OF IF AND PROGRAMME FIDELITY

18. The University of York evaluation recognised that as IF was running as a pilot study at the time, many of the processes were under developed. It also highlighted how the programme has changed to ensure greater model fidelity and improved delivery, especially the aftercare phase which supports the young people and families post placement.

19. At Action for Children we have worked to ensure that staff are supported and trained to run the MTFC model and that the right carers were recruited. Both these factors are essential to ensuring model fidelity. Challenges were addressed by project management creating a positive environment and role-modelling the positive attitude that is needed to work on the model. We also gained experience in learning about what attributes are needed from carers/staff which as resulted in a strong, committed team.

20. Action for Children has also worked with stakeholders to realise and demonstrate the benefits of such a different way of working. For example, we have developed close relationships with courts and YOTs to ensure a clear understanding and effective use of IF.

²⁴ <http://www.mtfce.org.uk/about-mtfce/national-team.html>

²⁵ <http://www.howardleague.org/custodial-places-children/>

21. Our IF team in London has faced particular challenges in implementation of the programme, not least the challenges in building relationships with 32 different Youth Offending Teams (YOTs) and the difficulties in recruiting foster carers in London with a lack of foster carers willing to sign-up with the right skills set.

22. When developing IF is it useful to think about Remand Fostering as it provides a continuum of care from early intervention through to custody level and can provide a larger pool of carers who have experience in working with children in the youth justice system. The use of Remand Fostering also provides more opportunities to identify young people via the placements who may be suitable for IF. This option gives an opportunity for young people to demonstrate they can manage a community option in a foster placement. That said, IF does not need to be run in tandem with Remand Fostering as they are two very different services. Remand Fostering is much more time limited and faces its own challenges in engaging young people.

CONCLUSIONS

23. Action for Children believes that youth custody should only be considered as a last resort. Exploring alternatives to custody is essential to offering young offenders the best chance in life. Therefore, given the ability of IF to improve outcomes for children, we want to see IF rolled-out as an alternative to custody. The University of York evaluation broadly supports this view, concluding that IF may be a better alternative to custody and should continue to be implemented.

24. The MTFC annual report (2010) states that the YJB estimates that there would be around 150 young people per annum (in England) who would be appropriate for MTFC as an alternative to custody.

25. A major consideration for the on-going implementation of IF is the future funding system. We are currently unsure of funding for our services beyond March 2013, and this uncertainty has meant job insecurity for staff as well as impacting on the young people themselves. For example, we are still being encouraged to take young people onto the programme, which lasts nine months—longer than the time we have the funding guaranteed.

26. Currently the IF services receive a grant from the YJB to offer a number of placements at any one time, and, over a period of time. It is unclear whether this will remain the funding format. It could continue to be grant funded with specific targets, or possibly funding could be disseminated to the local authorities who would then purchase placements on a case by case basis.

27. We believe the simplest way would be to continue with present arrangements, with the YJB delivering grant funding, as the stability of this arrangement enables the service to have a guaranteed staff group. This in turn means that placements can be guaranteed as the need arises. This is important given the unpredictability of the need. If the service was fee-based then this unpredictable demand could make the model financially unsustainable.

28. Alternatively, scaling up could happen after the custody budget has been devolved to local authorities. Due to the high fixed costs of operating the programme, risks to the provider could be reduced if funding were via a contract whereby a consortium of local authorities commit to contract beds as a joint venture.

29. We believe IF could be scaled up if:

- There is clear leadership from the YJB to change the culture within the youth justice system so that IF is more broadly accepted as a viable alternative to custody that achieves effective outcomes.
- A long-term financial commitment is made to IF.
- Expansion is based on sufficient input from experienced practitioners in the IF model.
- Investment is made in recruiting foster carers with the right skills and commitment to provide IF placements.

October 2012

Written evidence from the Office of the Children's Commissioner

1. INTRODUCTION

All aspects of the youth justice system including disposals up to custody must be fully compliant with the United Nations Convention on the Rights of the Child (UNCRC).

The following articles are of specific, though not exclusive, relevance:

- Article 3: Best interests.
- Article 19: Protection from all forms of violence.
- Article 24: Right to health and health services.
- Article 25: Review of treatment in care including custody.
- Article 28: Right to education.

- Article 37: Detention: a child shall only ever be arrested or put in prison as a last resort and for the shortest possible time.
- Article 40: Juvenile justice: a child accused of or guilty of breaking the law must be treated with dignity and respect.

This submission focuses on two issues: the age of criminal responsibility in England and the mental health of young people in custody drawing, in relation to the latter, on the key findings from our report, *“I think I must have been born bad”: Emotional wellbeing and mental health of children and young people in the youth justice system. Berelowitz and Hibbert 2011*—http://www.childrenscommissioner.gov.uk/content/publications/content_503

In the course of our work which produced the report *“I think I must have been born bad”* (2011) we noted that a number of young people in the secure estate had ADHD, learning disabilities and speech and language problems. The Office of the Children’s Commissioner (OCC) therefore commissioned a review of the literature concerning the incidence and prevalence of neuro-disability in young people in the secure estate. The impact of this piece of work will be to ground the evidence and inform potential future work relating to the assessment, treatment and care of young people with neuro-disabilities by health and care staff and improve the quality of the information that is available on reception into secure settings and on disposal into the community. The knowledge and evidence review is being undertaken by Professor Huw Williams (Exeter University) and Dr Nathan Hughes (Birmingham University) and their teams, and takes into account the views and experiences of young people currently in one young offender institution (YO1). The neuro-disability project will be delivered by September and the OCC will be pleased to provide the Committee with a copy. This will provide valuable and important evidence that should influence the debate about the appropriate age for criminal responsibility in England.

Evidence for this submission has also been drawn from our visits to the children’s secure estate done under the auspices of the Children’s Commissioner’s powers as well as of the National Preventive Mechanism, of which we are a member.

The OCC recognises and accepts that there are some children for whom a custodial sentence is necessary and appropriate in view of the gravity of their offence.

The OCC believes that *doli incapax* should be reinstated and would like to see a mature and informed debate on the age of criminal responsibility and the contribution below is made in that context.

2. THE CHARACTERISTICS OF CHILDREN IN THE CRIMINAL JUSTICE SYSTEM

Children in the criminal justice system are drawn predominantly from the poorest and most disadvantaged families and communities and most will have already experienced significant problems.

Figures show that children in the criminal justice will have a range of problems and experiences:

- 60% have significant speech, language or communication difficulties.²⁶
- The Department of Health suggests that 24% to 30% of children in the criminal justice system have a learning disability, and this rises to 50% for those who end up in custody.²⁷
- Children with special educational needs are over nine times more likely to be permanently excluded from school and there is a well evidenced correlation between school exclusion and offending behaviour.²⁸
- Children in the criminal justice system have higher than average mental health difficulties—depression (18%), anxiety disorders (10%) and psychotic-like symptoms (5%). One in 10 boys and one in five girls in Young Offender Institutions have attention-deficit/hyperactivity disorder (ADHD).²⁹
- In a major study of 16 to 20 year olds, around 85% in custodial settings showed signs of a personality disorder.³⁰

These problems are even more significant for those children who progress into custodial institutions:

- Two out of five girls and one out of four boys in custody have experienced violence at home.³¹
- Three quarters of children in custody have lived with someone other than a parent.³²
- One in three girls and one in 20 boys in custody disclosed sexual abuse.³³

²⁶ Bryan K, F J (2007). Language and communication difficulties in juvenile offenders. *IJDLC*, *IJDLC*, 42, 505–520

²⁷ “Healthy Children, Safer Communities”. Department of Health 2009

²⁸ Graham, J B (1995). *Young People and Crime*. London: Home Office.

²⁹ Fazell, D A (2008). Mental disorders among adolescents in juvenile detention and correctional facilities: a systematic review and meta regression analysis of 25 surveys. *Journal of the American Academy of Child and Adolescent Psychiatry*, 47 (9), September 2008, pp.1010–1019

³⁰ Lader D, S N (2000). *Psychiatric Morbidity among Young Offenders in England and Wales*. London: ONS

³¹ Prison Reform Trust (November 2009). *Bromley Briefing*. London: Prison Reform Trust.

³² Youth Justice Board (2007). *Accommodation needs and experiences*. London: Youth Justice Board

³³ Prison Reform Trust (November 2009). *Bromley Briefing*. London: Prison Reform Trust

Research published in 2009 into children aged 14 or younger serving Detention and Training Orders showed that:

- 44% had experienced abuse within the family, compared with 16% in the general population.
- 16% had a Statement of Special Educational Needs, compared to 3% of the general population. It should be noted that the rights set out in a child's SEN Statement are lost on reception into custody.
- 22% had been living in care, compared to 3% of the general population.
- A shocking 8% had attempted suicide at some point in their short lives.³⁴

3. AGE OF CRIMINAL RESPONSIBILITY: BACKGROUND AND HISTORY

Until the 19th century there was little formal differentiation between the treatment of children and adults in the criminal justice system. In the mid 1850's the first reformatories were opened and legislation allowed children who were "*vagrant; mendicant and homeless*" to be sent to them. At the start of the 20th century the 1908 Children Act set the age of criminal responsibility at seven and established a separate juvenile court which originally dealt with both civil (welfare) and criminal (justice) cases. This system remained more or less in this form until the Children Act 1989 which established separate family proceedings courts to deal with welfare cases and juvenile courts to deal with children who offend. Legislation does not allow for the youth court to refer cases to the family proceedings court.

In 1933 the Children and Young Person's Act raised the age of criminal responsibility to eight and established the "welfare" principle and Section 44 should still underpin all court proceedings involving children today, including in the criminal court.

In 1960, a review by the Ingleby Committee recommended that younger children in trouble with the law should be dealt with by way of civil proceedings and not in the criminal court.

The age of criminal responsibility in England and Wales was raised to 10 by the Children and Young Persons Act 1963. Attempts to further raise this age to 12 or 14 were made in the Children and Young Persons' Act, 1969 but the measures put in primary legislation were never implemented.

Until 1994, children under 15 could only be sentenced to custody under Section 53 of the Children Act 1933 for serious offences known as "*grave crimes*". These provisions applied to serious and violent offences—murder, rape, serious assaults and dwelling house burglaries—and such a sentence could only be made in the Crown Court. In 1994 the Criminal Justice and Public Order Act changed this by the introduction of the Secure Training Order (STO) which enabled youth court magistrates to lock up 12 to 14 year olds for a much wider range of offences. However, the criteria for the STO were relatively stringent—before such a sentence could be passed, the child had to have committed at least three imprisonable offences and breached the conditions of a Supervision Order or committed another offence while on supervision. Under the powers of the Criminal Courts (Sentencing) Act in April 2000, STO's were replaced by the Detention and Training Order (DTO) which made it much easier for 12 to 14 year olds to receive a custodial sentence. The previous prescriptive STO criteria were replaced with a single criterion—that, in the court's opinion the child is a "persistent" offender. This is based on the court's perception of "*patterns of behaviour*"; a child can therefore be sentenced to custody without necessarily having any previous criminal convictions and without having committed a serious offence. The Sentencing Guidelines Council attempted to provide some guidance in relation to persistency in "*Overarching principles—sentencing youths*", published in November 2009, nevertheless the legislative framework remains unchanged.

The Crime and Disorder Act 1998 abolished the principle of *doli incapax*. Prior to this abolition, the prosecution had to prove that a child aged under 14, appearing in the criminal court knew and fully understood what he or she was doing was seriously wrong.

4. KNOWING RIGHT FROM WRONG—CHILDREN'S CAPACITY TO REASON AND UNDERSTAND

It is of relevance to explore the rationale as to why children as young as ten who engage in troublesome behaviour are dealt with in an adversarial court system in England (and Wales). The most frequent argument put forward is that of a child's capacity to understand right from wrong. When arguing for the abolition of *doli incapax* Jack Straw said: "*The Government believes that in presuming that children of this age generally do not know the difference between naughtiness and serious wrongdoing, the notion of doli incapax is contrary to common sense*".³⁵

However, this is to take a very simplistic approach to the complexities of how children develop, and particularly in relation to their understanding of "morality".

Developmental psychology—It is clear that even very young children do know the difference between right and wrong but developing morality is—like writing—not a once and for all achievement; it improves with conceptual maturity, and in the process takes on a qualitatively different nature. Just as a child who has learned

³⁴ Glover J and Hibbert P. Locking up or Giving up? Why custody thresholds for younger children should be raised. Barnardo's 2009

³⁵ "No more excuses" Home Office 1997

the rudiments of constructing a sentence is not doing the same thing as William Shakespeare, so too a primary school pupil who appreciates that stealing is “wrong” is not manifesting an ethical stance that would, for instance, allow them to make sophisticated philosophical judgments as to competing claims of right or engage in meaningful discussion of a moral dilemma. It is for such reasons that jury service is not open to all those able “to distinguish right from wrong”.

It is important to note that there is an obvious distinction between the physical and social maturity of children. Children are now reaching puberty at an earlier age probably as a consequence of changes and improvements to diet in particular. However, it does not follow that there is a corresponding earlier change in emotional and intellectual maturity and capacity. Indeed there is evidence of the opposite—what some people call a shift towards extended adolescence—which anecdotally you can see characterised by the fact that children leave home later—and at the level of state intervention, by increasing safeguards for teenagers who previously would not have been thought in need of such protection. For example in changes to legislation in regard to giving consent to sexual activity; in the Sexual Offences Act 2003 a child is deemed not to be competent to make choices about sexual activity and cannot be held to have consented to any such activity below the age of 13.

The capacity for abstract thought develops throughout childhood and particularly in adolescence. Developmental psychology suggests that the development of the capacity lies somewhere between the ages of 15 and 17 years, although recent research also suggests that the brain continues to develop into the early twenties. It is important to understand this development for at least two reasons:

- Developed notions of morality depend upon a capacity for hypothetical reasoning—is it right that we should hold children morally responsible for their actions until they have developed that capacity?
- Children’s ability to understand is constrained by their intellectual development and reasoning capacity. Research shows that younger teenagers tend not to understand fully their rights in a police station and court, even when these are explained to them. Ten to 12 year olds were significantly more likely to misconstrue their right to silence than 13 to 15 year olds, who were in turn significantly less likely to understand it than 17 to 23 year olds.
- Even where children have an equivalent intellectual capacity to adults, it does not follow that they can reason at the same level. Not only is the capacity to make “moral judgments” affected by environment and upbringing; they also lack the fund of experience and information which adults use to exercise their power of reason.

The capacity to make what we would call sensible judgements is also different among teenagers—even if we assume their intellectual abilities are fully developed. This is true in a number of respects:

- Young people are notoriously more likely to engage in risky behaviours than their adult counterparts. This is partly explained because they have less experience on which to base their assessments but also because typically they approach risk taking with a different set of preferences. They focus less on preventing things going wrong and more on exploiting opportunities for gain (where that gain includes having a good time and getting an adrenalin rush).
- Young people also have a markedly different perspective on time—which prioritises short term outcomes over longer term consequences. One year in the life of an adolescent seems a much longer period to him than it does to someone who is well into adulthood.
- Adolescence is characterised by an impatience that gives relatively low value to deferred gratification. There is some emerging evidence that this inability to focus on the longer term is more pronounced in those whose educational attainment is limited—a characteristic of most children in the criminal justice system.

Peer relationships—children and young people tend to be pack animals, it is part of their socialisation and relationship skills development. Young people’s decision making is strongly influenced by how it will play out with their peer group, rather than other cost/benefit considerations. This susceptibility to peer influence only develops in the early teens and is not dispensed with until the late teens/early 20s. The tendency to latch onto the peer group at the expense of adult authority is a symptom of a more general adolescent trait—which involves a higher level of anti social behaviour than at any other age. It has been argued that such behaviour is the natural product of the gap between biological maturity and social independence. Delinquency, on this account is in part an attempt to attenuate the ties of childhood, and represents a statement of personal autonomy by young people not yet able to adopt fully adult roles. As legitimate adult roles become available there is a natural process of desistance—what used to be called “growing out of crime”. In this respect, the aetiology of teenage offending is very different from that of adults—raising the prospect that treating the two alike is problematic.

5. THE COMPETENCE AND CAPACITY TO PARTICIPATE IN A TRIAL

The evidence on development and capacity lead inexorably to the question of children’s capacity and competence to effectively participate in a trial. In 2005 the European Court of Human Rights found that an 11

year old was unable to participate in his own trial in the Crown Court (SC v. UK (2005) 40 EHRR10) even though he was fit to plead in the adult legal sense. The court took the view that a child of this age would generally have impairments in adjudicative competence, ie the ability to help in his own defence and an inability to comprehend legal terms.

Children and young people are far more likely to make false confessions or fail to take advantage of the protections offered them by the law during police or court processes. They are vulnerable because of their greater suggestibility, heightened obedience to authority and the immature decision making abilities referred to above.

6. KEEPING CHILDREN OUT OF THE FORMAL SYSTEM—A PROTECTIVE FACTOR

There is a growing body of evidence to demonstrate that diverting children from formal criminal justice processes is a protective factor against serious and prolonged reoffending. A large minority of children and young people will “offend” at some stage; most of these offences will not be detected and most children will “grow out of crime” without any formal intervention. Coming into the formal system and acquiring a criminal record can have a significant impact on a child’s life and is ineffective in terms of reoffending.

Dr Tim Bateman from the University of Bedford says: “*Outcomes, in terms of recidivism, for those processed by the system are not especially auspicious: the one year detected reoffending rate during 2008 was 38% for all children; 45% for those in receipt of a first tier penalty; 68% for those subject to a community order; and 74% for those sentenced to custody*”.³⁶

Detailed longitudinal research involving 4,100 children and young people concluded that the further enmeshed into the formal criminal justice system that children become, the more harm is done and the less likely they are to desist from offending.³⁷

7. MENTAL HEALTH

Since publication of the OCC report into the mental health and emotional wellbeing of children in the youth justice system (2011), some progress has been made in improvements to provision. This has included replacing a non-child and adolescent qualified mental health team in one institution with a team of qualified child and adolescent mental health practitioners.

The OCC is continuing to work with the Ministry of Justice, Youth Justice Board, Department of Health and National Offender Management Service on the implementation of all recommendations in the report. An action plan has been agreed and is regularly monitored.

Nonetheless, OCC remains concerned at the conditions in which young people in custody who have mental health needs are held and the general support levels provided. The restrictive garments are still in use (in some instances without the knowledge of the governor) and children who are unwell enough to be placed on health wings are sometimes held in situations of considerable isolation contributing to their emotional distress.

We are unhappy about the use of Control & Restraint (C&R) for children who attempt to self harm. We are concerned for emotionally vulnerable non-English speaking nationals who are frequently required to use Language Line when communicating with professionals rather than having direct face-to-face access to an interpreter. We have found that this considerably inhibits their capacity to make themselves understood and adds to their isolation and distress.

In recognition of the characteristics of the population of children in the youth justice system in general and in custody in particular, we would like to see a much more welfare-based approach to support and custody that focuses on rehabilitation including the emotional and psychological needs of these children.

We are very pleased with developments regarding diversion and would like to see these extended across the country. We would also like to see the enhanced resettlement programme adopted as the minimum service for all children leaving custody.

8. INTERNATIONAL STANDARDS AND TREATIES

The UK Government is a signatory to the following international standards and treaties in relation to juvenile justice:

- The United Nations Convention on the Rights of the Child (UNCRC)
<http://www2.ohchr.org/english/law/crc.htm>
- Concluding Observations for the UK from the UN Committee on the Rights of the Child (2008)
<http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.00.4.pdf>
- Concluding Observations for Ireland from the UN Committee on the Rights of the Child (2006)
<http://www.unhcr.org/refworld/country,,CRC,,IRL,,45c30bd80,0.html>

³⁶ In evidence given to the Centre for Social Justice working group on youth justice. May 2010

³⁷ Maara L and McVie S, Youth Justice? The impact of system contact on patterns of desistance from offending. European Journal of Criminology, 4 (3) 315—45.2007

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- United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) (1990)
http://www2.ohchr.org/english/law/pdgres45_113.pdf
 - United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) (1990)
<http://www2.ohchr.org/english/law/juvenile.htm>
 - United Nations Standard Minimum Rules for the Administration of Juvenile Justice Beijing Rules (1985)
<http://www2.ohchr.org/english/law/pdf/beijingrules.pdf>
 - UN Committee on the Rights of the Child General Comment No 10 Children's rights juvenile justice (2007)
<http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>
 - Council of Europe European Rules for juvenile offenders subject to sanctions or measures (2008)
<https://wcd.coe.int/t/NieuwDoc.asp?id=1367113&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLowed=FFAC75>
 - Draft Guidelines Of The Committee Of Ministers Of The Council Of Europe On Child-Friendly Justice
http://www.coe.int/t/dghl/standardsetting/childiustice/CJ-S-CH%20_2010_%2012%20E%20-%20Final%20draft%20_rec%20containing_%20guidelines%20of%20the%20CM%20of%20the%20CoE%20on%20Child-friendly%20iustice.pdf

May 2012

Written evidence submitted by the Royal College of Psychiatrists

1. INTRODUCTION

1.1 The Royal College of Psychiatrists (RCPsych) is the leading medical authority on mental health in the United Kingdom and is the professional and educational organisation for doctors specialising in psychiatry.

1.2 This submission has been prepared by Dr Nick Hindley, Chair of the Adolescent Forensic Special Interest Group of the Royal College of Psychiatrists and Dr Abdullah Kraam, an executive member of the group and the designated link between the Forensic CAMHS Special Interest Group and the Child and Adolescent Psychiatry Faculty Executive, with contributions from Dr Clare Lamb, Chair of the Child & Adolescent Faculty of the Royal College of Psychiatrists in Wales, and Dr Julie Withecombe, Consultant Child and Adolescent Psychiatrist, All Wales Forensic Adolescent Consultancy and Treatment Service.

1.3 Dr Hindley and Dr Kraam are forensic consultant child and adolescent psychiatrists with experience in setting up and leading community forensic child and adolescent mental health services (FCAMHS) and associated mental health in-reach to secure custodial settings. They work with young people who are in the criminal justice system or those who present elsewhere with risk of harm to others and also have good links with all the agencies that work with young people in custody and in the community. They have a good overview of the types of mental health services available for young offenders in the UK and have recently presented the various UK models at national and international conferences.

2. SUMMARY

2.1 Any strategy for Children and Young People in contact with the criminal justice system needs to be embedded in a higher level national commissioning strategy for improving mental health of children and young people in contact within the youth justice system. There should be an emphasis on a consistent care pathway approach which links both community and secure custodial settings.

2.2 The provision of specialist mental health services for young people in contact with the youth justice system is inconsistent across England. Forensic community child and adolescent mental health teams which exist in Wales and a few areas in England are well positioned to ensure good linkage across agencies, including courts, with local generic mental health services and to undertake specialist assessments as required.

2.3 Mental health in-reach functions to all secure custodial settings -Young Offender Institutions (YOIs), Secure Training Centres (STCs) and local authority secure children's homes (LASCHs)—should be provided by mental health services already providing for children and young people in the area local to the institution in question. Such provision should as a minimum be in line with existing community provision, although there is an argument for enhanced provision in custody, given the range of needs of the young people in these settings, and their special circumstances. Such provision should also be supported by forensic CAMHS teams so that good linkage with national forensic in-patient forensic mental health provision and specialist assessments can be undertaken as necessary.

2.4 Funding for evidence-based therapies that reduce reoffending, such as multi-systemic therapy, should be made available consistently in community settings across England and Wales. This would provide further meaningful alternatives to custody for meeting young people's needs.

3. THE EMOTIONAL WELLBEING AND MENTAL HEALTH NEEDS OF CHILDREN AND YOUNG PEOPLE

3.1 *The extent to which the system is able to meet the needs of all offenders, regardless of age, gender, ethnicity and mental health*

3.1.1 In England, mental health service provision for young people in contact with the youth justice system is patchy. In community settings some Youth Offending Teams (YOTs) have direct access to multi-disciplinary Forensic Child and Adolescent Mental Health Teams which can provide consultation, specialist assessments and intervention, supervision and training; examples include Sheffield YOT, Wakefield YOT and YOTs within the Thames Valley. Such teams provide specialist oversight of high-risk cases, as well as ensuring access to local core mental health services for young people.

However, Many YOTs in the UK have no access to such a specialist provision, nor do they have coherent links with local core mental health provision.

In Wales there is a nationally commissioned specialist Forensic Adolescent Consultation and Treatment Service (All Wales FACTS) which is able to assess and, in some cases, provide ongoing consultation on high-risk cases from YOTs. This team also works closely with a network of centrally funded, regionally commissioned specialist CAMHS senior clinicians from each community CAMHS locality. Members of this network have designated sessions to perform the role of specialist Mental Health Advisor to YOTs and a link with local core mental health provision.

3.1.2 The situation in the secure estate (YOIs, STCs and LASCHs) has recently been the subject of consultation (Strategy for the Secure Estate for Children & Young People in England and Wales Plans for 2011–12—2014–15, YJB). Our main concerns centre on the lack of a specific mental health in-reach agenda for the secure estate. We recommend that the principles of specialist units, such as the Keppel and Willow Units (at HMYOI Wetherby and Hindley respectively), should be applied across the estate.

There is a lack of secure settings in Wales, with the majority of young people being placed in England, which creates additional pressures, both on services and on detained young people. In some areas of England secure children's home beds have been purchased in order to extend the juvenile estate. This has resulted in fewer available secure "welfare beds", with a consequent lack of provision and increased risk of serious offending and custodial sentences for certain high-risk young people.

3.1.3 There is a lack of research on the specific needs of girls and young women in contact with the criminal justice system. It is currently the case that that, because there are very few YOIs for girls under the age of 18 in England, and none in Wales, they are usually placed far away from their communities. This has implications for contact with relatives and their reintegration at the end of a custodial sentence. These young women are thus placed at a considerable disadvantage simply because of their gender.

3.1.4 Transition is another key area for young people in England and Wales, and there is more than one form of transition affecting young people. The transition into secure custodial settings, and subsequently back to the community, represents a period of increased vulnerability for the young person. Lack of co-ordination between different agencies frequently leads to an increased risk of harm to others and/or increased vulnerability of the young person. In our experience the existence of a dedicated forensic child and adolescent mental health team to facilitate good communication in such situations reduces these risks considerably.

Another key transition is that from a unit for young offenders (YOI, STC, LASCH) to an adult prison at the age of 18. This transition is frequently abrupt and inadequately planned. The facilities available to support a vulnerable prisoner in the adult prison system are significantly less well developed than for young people under 18. For a young person with mental health needs it is sometimes very difficult for clinicians to influence decisions regarding future placement, even though they may be aware of establishments that are better able to support young people with mental health needs. This is clearly not in the best interests of young people with mental health difficulties.

3.2 *The evidence base for preventing offending and reducing reoffending and the extent to which this informs interventions in custody and the community*

3.2.1 There is now good evidence about therapies that reduce reoffending. The best known are multi-systemic therapy (MST)—pilot projects in England are part of a randomised controlled trial, although some non-trial pilot projects are also funded by DfE—functional family therapy (FFT) and multidimensional treatment foster care (MTFC).

3.2.2 Although these therapies reduce the costs associated with reoffending they are not readily available in most communities in UK. Multi-systemic therapy, for example, which has the best evidence base internationally, is currently only available in a dozen community sites in the UK, mostly as part of a DfE pilot or trial. The majority of local authorities in England and Wales do not see themselves as currently being in a position to support such projects.

4. RECOMMENDATIONS

4.1 Any strategy for Children and Young People in contact with the criminal justice system needs to be embedded in a higher level national commissioning strategy for improving mental health of children and young people in contact within the youth justice system whether in custody or in the community. There should be greater emphasis on an accepted mental health care pathway for young people in such situations. Specialist community forensic child and adolescent mental health teams should be regarded as an integral part of a comprehensive mental health service and commissioned accordingly (locally or regionally).

4.2 Mental health in-reach to secure institutions should be commissioned from services local to the institution in question. Such a service should be involved with mental health provision in the community and should be supported by specialist forensic CAMHS teams (in Wales this would be FACTS).

4.3 Needs assessment and research on gender-specific issues and needs within the youth offending population should be encouraged, as should research on race, culture and ethnicity.

4.4 Transition, such as into or from a YOI, STC or LASCH from/to the community and also from a YOI, STC or LASCH to an adult prison, should be recognised as a time of increased vulnerability, especially for young people with significant mental health needs. Planning and clarity regarding care-planning in such situations requires greater scrutiny with consideration of multi-agency planning.

4.5 There should be more funding for evidence-based therapies that reduce reoffending in community settings and also prevent young people from entering the criminal justice system.

March 2012

Written evidence from the Transition to Adulthood Alliance

The Transition to Adulthood Alliance (T2A) is pleased that the Justice Select Committee is revisiting this topic and welcomes the opportunity to respond to this short inquiry. T2A is happy to discuss this submission in more detail and give oral evidence.

EXECUTIVE SUMMARY

- Youth as a life stage is inadequately determined by the arbitrary notion of age but is more effectively determined by an individual's needs and maturity.
- T2A strongly believes that the arbitrary cut-off age of 18 between the youth and the adult systems is not based on current evidence.
- T2A strongly supports agencies across the criminal justice system developing tailored approaches to working with young adults that are flexible, respond to their risks and are sensitive to their developmental maturity.
- The current criminal justice response to young adults not only leaves needs unmet, but also reinforces their engagement in offending. By reforming approaches across the criminal justice system to reflect the distinct needs of this group, a significant impact would be felt in reducing current levels of reoffending, overall spend and, importantly, reducing the numbers of crime victims.
- An evaluation of the T2A approach found a 9% reconviction rate of young adults signed up to the T2A pilots. This compares to a national re-conviction rate for 18 to 20 year olds of 46%,³⁸ which rises to 58%³⁹ for young adults leaving custody.
- T2A would welcome recommendations from the Committee:
 - To take approaches demonstrated to work with young people and adapt them for the 18–24 year old group.
 - For development of clear systems of “wrap around” support for this age group.
 - For a centrally driven focus on reducing reoffending and rehabilitating young adults within the criminal justice system.
 - For more effective transitions between Youth Offending Services (YOS) and Probation Services.
 - For greater innovation in community sentences; tailoring sentences to the distinct needs, risk and maturity of young adults.

1. About the Transition to Adulthood Alliance⁴⁰

1.1 The Alliance was convened by Barrow Cadbury Trust (BCT) following the publication of *Lost in Transition*, in 2005 which illustrated the vulnerability of young adulthood, and the need for interventions to recognise this as a distinct stage in life. It is a broad coalition of organisations which identifies and promotes more effective ways of working with young adults, aged 18–24, in the criminal justice system.

³⁸ MOJ reoffending bulletin 2011

³⁹ 248 *Hansard* HC, 17 January 2011, c653W

⁴⁰ For more information on the T2A Alliance, see <http://www.t2a.org.uk/alliance>

1.2 T2A's membership encompasses leading criminal justice, youth and health organisations Addaction, Catch22, the Centre for Crime and Justice Studies, Clinks, the Criminal Justice Alliance, the Howard League for Penal Reform, Nacro, the Prince's Trust, the Prison Reform Trust, the Revolving Doors Agency, the Young Foundation, and YoungMinds.⁴¹

1.3 Further to T2A's research work, the Barrow Cadbury Trust has established three pilot projects, running since 2009, which are testing different approaches to improving services for young adults in the criminal justice system. The T2A pilots enable community interventions to be tailored to the needs and maturity of the individual, with the aim of reducing both the risk of reoffending and social exclusion.

1.4 The three pilots are in Birmingham, Worcester and London, and are delivered by Staffordshire and West Midlands Probation Trust, YSS and the St Giles Trust respectively.⁴² The pilots are subject to a formative evaluation by the Oxford Centre for Criminology, an outcome-based evaluation by Catch22, and a cost-benefit analysis by Matrix Evidence. The results of the Catch22 summative evaluation are detailed later in this submission.

2. Why "youth" should take account of young adults

2.1 There are significant parallels between the experiences of young people (under 18s) and young adults. Neurological research identifies that brain development continues into early adulthood, and is not "mature" until the mid-20s, a fact that few statutory organisations or professionals take into consideration.⁴³ Many young adults experience levels of emotional maturity similar to that of younger teenagers and potentially face the same kinds of difficulties in controlling their behaviour are prone to risky behaviour and less able to plan for the future. Young adults are also heavily influenced by their environment and by peers.

2.2 Yet while young adults are at a point where they are most likely to come into contact with the criminal justice system they are also at a point where they are the most likely to desist or "grow out of crime". The right interventions at this stage can support this process of desistance, while the wrong interventions have the potential to prolong or entrench their criminal behaviour.

2.3 Thus, between the ages of 18 and 24 years, T2A advocates that the focus of the different agencies that make up the criminal justice system should be on encouraging desistance from crime and supporting the factors which reduce criminal behaviour, for example employment, housing and good health and well-being, an approach which is embedded in the youth system but, significantly, to a much lesser extent in the adult system.

3. The targeting of resources, including the ability of youth offending teams and their multi-agency partners to operate effectively in the current economic climate, and early findings from the Youth Justice Pathfinder Initiatives

The effectiveness of adapting and extending youth approaches to the young adult group

3.1 Resources within the criminal justice system could be better targeted and used more effectively if a number of approaches taken to risk manage and rehabilitate young people under the age of 18 were adapted and extended to include young adults up to the age of 24 years old.

3.2 Young adults aged 18–24 represent less than 10% of population but make up almost third of all offenders found guilty or cautioned for indictable offence; more than a third of those starting a community order or suspended sentence order and almost third of those sentenced to prison each year. Young adults cost the criminal justice system an estimated £20 billion per year.⁴⁴

3.3 T2A has long argued that sentence planning processes and interventions are most effective when they recognise the maturity and developmental needs of young adults. Currently interventions targeted at this age group are predominantly not based on what works with this age group, however there are pockets of good practice across the country.

3.4 The T2A approach recognises that young people in the transition to adulthood require specific, tailored support through this process of change, and not an arbitrary cut-off from services at the time of greatest need. Throughout the criminal justice process, through policing, arrest, sentencing, and custody the Alliance suggests a young adult specific approach to achieve more effective results.

3.5 T2A pilots employ staff to work intensively with the young adults, with support from volunteers. While reducing reoffending by service users is a core concern and prime objective, it is woven into the broader purpose of enabling them to "get on" in their lives and to navigate the transitions they have to make (from post-adolescence to maturity; from the youth justice system to the adult justice system; and from custody to resettlement). It is therefore, in effect, welfare-based (in the interests of the service user) and, as such,

⁴¹ Although the work of the T2A Alliance reflects the views of its membership, this submission should not be seen to represent the policy positions of each individual member organisation.

⁴² For more information on the pilot projects, see <http://www.t2a.org.uk/pilots>

⁴³ University of Birmingham (2010), *Maturity, young adults and criminal justice: A literature review*, Birmingham

⁴⁴ Bowles and Praditpyo (2005), *Commission on Young Adults and the Criminal Justice System: Summary of costs and benefits*, Centre for Criminal Justice Economics and Psychology; London,

considerably removed from standard risk-based, offender management practice in the adult criminal justice system.⁴⁵ The pilots act as an add-on to probation, providing the extra support that young adults need.

3.6 The pilots are demonstrating promising results in supporting people away from crime into productive lives. An outcome-based evaluation by Catch22 for which 34 young people from the T2A projects were interviewed and interviewed again six months later found that:

- *There were only three further reconvictions* (all for non-violent offences);
- *The number employed had trebled*; and
- *The number classified as NEET had halved.*

This compares to a national re-conviction rate for 18 to 20 year olds of 46%, which rises to 58%⁴⁶ for young adults leaving custody

(To note: on average the young adults interviewed had committed their first offence at the age of 13. The modal number of convictions people had was two to three. In addition, 16 of 36 interviewees had spent some time in the secure estate in the past.)

3.7 Cost-benefit analyses have found that the T2A pilots, while providing different interventions to different cohorts, all represent good value for money. Using the most conservative estimate, the pilots would have to reduce offending by only 28% over two years to break even (ie 72% of young people could reoffend and the pilots would still break even in terms of the amount saved to the public purse by having prevented reoffending be the remainder). The very low reoffending rate of the sample interviewed in the outcomes evaluation indicated that this target has been far exceeded, and therefore the pilots are not only breaking even, but providing a significant cost-benefit.

3.8 Promising results have also been seen in another young adult approach that has been adopted the Greater Manchester Probation Trust (GMPT). The GMPT runs an Intensive Community Sentence that is specifically targeted at young adult offenders aged between 18 and 25 (the ICS was set up in 2009 as a Ministry of Justice Intensive Alternative to Custody pilot). The ICS Order involves an intensive curriculum of activities, offering rehabilitation, punishment and reparation through partnerships between GMPT, statutory, voluntary and private sector organisations. IAC Orders last for 12 months and most will involve up to five requirements out of the twelve available under the Criminal Justice Act 2003. A mentor works alongside offender managers to encourage motivation and support compliance and a strong emphasis is given to working towards employment.

3.9 Since the programme started, reoffending rates have dropped with 80% completing the order and over a quarter of unemployed offenders on IACs finding full-time work. GMPT has reallocated resources and obtained commitment from local partners and the National Offender Management Service to continue the programme beyond the pilot phase.

3.10 *T2A would welcome a recommendation from the Justice Select Committee, echoing the recent interim report of the Independent Riots Communities and Victims Panel, for criminal justice services and local authorities to develop wrap around support to be available to young adults.*

3.11 *T2A Alliance would welcome a recommendation from the Panel that would see the National Offender Management Service develop a strategy and standard for the management of young adult offenders in custody and the community.* This would pick up on work that was developed by government but went unpublished since 2005. Centrally driven focus on young adults within the criminal justice system.

Improving transitions

3.12 The cost of resource intensive management of young adults in the system is due in part to the problems created by the interface between the youth and adult justice system and the difficulty of transitions between the two.

3.13 At present, as young people move from the youth to the adult criminal justice system and from youth to adult services in the community, the level of support typically drops dramatically, while the suitability of services may be reduced. The T2A Alliance's work has shown that a poor transition can have a catastrophic impact on a young adult's life, especially for disadvantaged young adults who often have no family or community support available to them and live chaotic lives. The wrong interventions can hamper a young adult's ability to begin the process of rehabilitation. Being able to access support services, take on opportunities for learning and improving the skills, and maintain relationships and family contact all plays a central role in supporting desistance from crime.

3.14 The effects of this process are exacerbated by poor communications between youth and adult services. It is therefore essential that youth offending services and probation services improve their transition arrangements in a way that recognises the significant culture shift between the youth and adult criminal justice systems. In order to facilitate this transition, both agencies need to be supported by other key agencies within local authorities, police, children's services, local health services, adult and community services and the wider voluntary sector.

⁴⁵ Ibid

⁴⁶ 248 Hansard HC, 17 January 2011, c653W

3.15 T2A would like to see all areas apply a transfer protocol that takes account of a young adult's needs and that gives specific consideration to their level of maturity. Best practice would enable a specialist transitions key worker to act as the continuity between services, managing the handover of information, ensuring the young person understands what is required during and following the transfer, and liaising with other support agencies. The work of the T2A pilots demonstrates a best practice model for transitional arrangements within the criminal justice (See case study below). We look forward to the Youth Justice Board issuing new guidance on case transfer in 2012, which will set out good practice but leave the detail to local areas.

3.16 Currently no assessment tool is used in the criminal justice process to assess the developmental maturity of adults. The lack of a formal tool has been identified in discussions with colleagues in the probation service and magistrates as a particular challenge when making decisions about a young adults, for example when writing a probation report or deciding on the most appropriate sentence for a young adult. Working with the University of Birmingham, who Barrow Cadbury Trust commissioned to undertake a literature review of maturity, T2A have commissioned researchers to develop elements of OASys to be used by practitioners in the criminal justice sector to assess maturity. T2A would welcome the opportunity to discuss this work in greater detail with members of the Committee.

3.17 *Greater encouragement of professionals to use discretion when transitioning young adults.* There already exists some discretion and flexibility in the transfer arrangement that is often underused. Current guidance states that youth offending teams do not have to transfer an 18 year old to probation in cases where it is better to keep hold of them. The "Case Transfer Protocol" states that "in cases where the YOT is supervising/case managing a young person who is close to completing their court order, the YOT should consider retaining responsibility for the case even if the young person reaches/passes the age of 18. This decision should be made at a local level and should take into account the remaining length of the order, and the needs, maturity and vulnerability of the young person".⁴⁷

CASE STUDY: BIRMINGHAM T2A TRANSFER PROTOCOL

3.18 In Birmingham, the probation-led T2A project identified that the transfer of cases from youth offending teams to probation trusts was complicated and time consuming for both services. A new protocol was agreed and introduced to Youth Offending Teams and Probation Staff throughout Birmingham via management and team meetings.

The new protocol means:

- Transfer documents are forwarded to the T2A unit and processed;
- A T2A keyworker is allocated to the case and will arrange an initial meeting to discuss the transfer and explain the process to the young person and any concerns or anxieties that they might have;
- Once all the administrative process is completed, the T2A keyworker organises a hand-over meeting;
- The new probation worker, previous YOT Officer and other agencies involved with the transition ie CAMHS, Drug Agency, Accommodation key workers will also be invited to attend a professionals meeting;
- The new probation worker, previous YOT Officer and the young person attend a final transition meeting, with the T2A keyworker overseeing the completion of the transfer.

This transfer process has improved relations between YOS and probation, smoothed the transfer process, and increased cooperation. It has benefited the young adults by providing continuity and a good understanding of the expectations of probation services, which has reduced breach rates and increased compliance with orders.

4. The use and effectiveness of available disposals, including restorative justice and custody as a last resort. The role of the youth justice interventions in diverting at-risk young people away from first-time offending

4.1 T2A would like to see greater use of community sentences tailored to the specific needs of young adults being made available to sentencers. As much as possible where young adults have committed non-violent crimes they should be given community sentences, rather than short prison sentences. Evidence indicates that community sentences are more effective than short prison sentences at reducing reoffending.

4.2 However, despite the significant over-representation of young adults in the criminal justice system there is very limited distinct provision for this group. At present in terms of community sentences the attendance centre requirement, which can be imposed as part of a Community Order or a Suspended Sentence Order, is the only legislative option specifically available for adult offenders up to the age of 25, but rarely is it used. There are examples of regional provision of services that are designed specifically for young adults, which can be used within the generic requirements of the Community Order and the Suspended Sentence Order. For example, the Intensive Alternative to Custody pilot in Manchester (as previously detailed).⁴⁸

⁴⁷ Ministry of Justice, NOMS and YJB "Case Transfer Protocol" (2009) <http://www.justice.gov.uk/downloads/guidance/youth-justice/assessment/courtorders/CasetransferprotocolbetweentheYJBandNOMS.pdf>

⁴⁸ Criminal Justice Alliance (2011) "Sentencing young adults: Getting it right" <http://www.t2a.org.uk/wp-content/uploads/2011/09/CJAggettingitright1.pdf>

4.3 There is clearly scope to introduce further intensive community orders focused on young adults. The sentences could include a range of compulsory commitments that make a difference in their community (projects which they can see from start to finish) for example shadowing a police officer, working with victims of crime, attending an addiction support group, getting help with mental health or attending a community youth panel. The sentences could also take the form of the intensive alternatives to custody successfully piloted in Manchester and West Yorkshire Probation Service (detailed previously).

4.4 T2A would like to see greater use of restorative justice approaches amongst young adults. The evidence is strong, and support among victims is high, for restorative justice to play an important role in ensuring an effective approach for young adults alongside other criminal justice interventions. Restorative Justice can be introduced at multiple points in the T2A pathway to inform criminal justice decision-making following an offence, or act as a final response without the need to proceed with a more “criminalising” sanction. While this is much more mainstream across youth justice it could have huge impact on the young adult cohort.

4.5 T2A would like to see further reform of the legal and sentencing process to take into account and respond proportionately to a young person’s maturity. T2A welcomes new sentencing guidelines published since July 2011 that enable sentencers to take an individual’s lack of maturity into account when considering the offence of assault, drugs and burglary offences. We would like to see this extended across all sentencing guidelines. *The consideration of maturity when sentencing a young adult should trigger a rigorous and more effective response from within the criminal justice system and local authorities that support desistance from crime and tackle the underlying causes of their offending behaviour. To enable this (as mentioned previously), T2A would like to see more references to maturity in pre-sentence reports by the probation service, and more reports recommend an effective “young adult” response when a lack of maturity is identified.*

Greater use of diversion

4.6 Wherever possible, police should be engaged in prevention and diversion service design, and be included in local partnerships, at as early a stage as possible. This will increase the opportunities for the police to divert young adults involved in minor crime away from the criminal justice process altogether and into paths that will address the root causes of their behaviour. Police should have the flexibility and discretion to deal with young adults appropriately, dependant on their maturity and their developmental stage.

5. APPENDIX

ABOUT THE T2A PILOTS

5.1 The pilots are in London, Birmingham, and Worcestershire. Two are led by voluntary sector services: the St Giles Trust runs the one in South London as part of its SOS project, and YSS runs the one in Worcestershire. The third one, in Birmingham, is delivered by the Staffordshire and West Midlands Probation Trust.

5.2 The London T2A Pilot, run by St Giles Trust works with young adults in and leaving prison. It provides intensive support to divert young adults—principally young men—away from offending and enables them to build a new life for themselves. Support offered includes help with housing, accessing training and employment, as well as emotional support with issues such as relationships, behaviour, self esteem and self perception. The service is delivered by staff who are all ex-offenders, which helps to provide a level of trust and credibility with the young adults. The T2A teams have built up good relationships with the local police, probation services, and youth offending teams, who refer young adults to the services.

5.3 The West Mercia T2A pilot is run by YSS and is based in Worcestershire. It has been receiving referrals since February 2009 and works with young adult offenders with high needs in the community. The pilot offers a flexible, community based, one-to-one support and mentoring service, using a mixture of paid staff and local volunteers. Each young adult on the T2A pilot determines what level of support they require, including support for family members. The key worker steers them through the available provision, overcoming any barriers (real or perceived) and provides feedback to agencies to influence service practice and policy development. Each young person develops their own action plan with smart objectives. Staff are responsive to need and flexible in their approach due to the potential changing and chaotic lifestyles of the young adults involved. YSS has established a multi-agency T2A steering group with senior management representation from across the criminal justice system, and the T2A pilot encourages regular discourse between the West Mercia Probation Trust and the Youth Offending Team, and key workers are regular visitors at team meetings and will often meet up to discuss T2A referrals.

5.4 The Birmingham T2A pilot is delivered by the Staffordshire and West Midlands Probation Trust and is aimed at young adults aged 17–24 years of age identified as posing a medium risk of reoffending. The pilot enables intervention to be tailored to the maturity and needs of the individual young adult and offers mentoring, and offers specific help with issues such as accommodation and employment. It also aims to instil change in the young adults’ lives, to enhance their life opportunities, to influence their choices and to move them away from crime, reduce worklessness and improve emotional well-being.

Written evidence from the Care Leavers' Association

The Care Leavers Association is a charity that supports the rights of adults who have spent time in care as children. We are uniquely placed as a care leaver user led organisation and a significant part of our work has its focus on youth justice and leaving care.

Research shows there to be disproportionate numbers of care leavers in the prison system, juvenile and adult, male and female, cutting across all indices of deprivation and disadvantage.

Twenty-three per cent of the adult prison population has previously been in care, even though children in care and care leavers account for less than 1% of the total population. Over a quarter of young men (27%) and over half of young women (55%) in the 15–18 age group have spent some time in local authority care. These figures can only ever be estimates and underestimates at best. Indeed, the true picture would put anywhere between 25–50% of all those in custody having spent some or all of their life in care.

Coupled with a poor start in life, a fragmented education and diminished life chances some will have been abused or seriously neglected. For reasons outside of their own control their future prospects have been diminished, with the adults charged with the responsibility for their love and care leaving much to be desired.

Further research is essential if we are to better grasp the relationship between care and the criminal justice system. It is too simplistic to suggest a cause and effect, whilst it makes no sense to deny there is a clear correlation.

Our own work within the criminal justice system aimed at discussing the care experience, how it relates to offending behaviour, how it may impact on release in terms of support and advocacy demonstrates this is transferred and poses unique difficulties within the regime of the prison.

In our experience, care leavers are being identified as a group who can be difficult to engage, failing to trust and commit to programmes leaving them further isolated within the prison walls.

The needs of care leavers are not understood and this lack of understanding is made no better when the local authority loses touch with young people who find themselves in custody.

Legislation exists to ensure leaving care and transitions to adulthood are fully supported, however practice is often somewhat questionable with young care leavers finding themselves slipping through the cracks and disproportionately represented in the criminal justice system.

Often, the care leaver has no time to re-offend before they are re-called to do the rest of their sentence—this could be due to anything from lack of punctuality to severe deprivation and a lack of support networks. Coupled with poor practice, legislative barriers and poor multi-agency working care leavers represent a significant minority of those who re-offend.

Significantly more work needs to be done with this group if we are to develop new learning—approaches, methods and resources which can be evaluated and then used at a wider level within the CJS to enable staff working on future programmes to develop skills that provide opportunities for work with care leavers in tackling the issues relating to offending behaviour.

We need to be addressing issues that arise out of care leavers being disengaged from the wider society through misguided perceptions that can lead to their social exclusion.

We can only ever expect to impact on the levels of re-offending amongst care leavers through participative and empowering engagement, a successfully tried and tested methodology would be that which is user led.

Policing, controlling and managing this group will not work and failing to *care* for them will serve only to alienate them. Support and guidance is what is needed if we are to see a reduction in offending and re-offending amongst this vulnerable and often forgotten group.

March 2012

Written evidence from HM Inspectorate of Prisons

SUMMARY

- This submission is based on HM Inspectorate of Prisons' experience of inspecting young offender institutions holding children and young people under the age of 18.
- Our submission focuses on two of the Committee's areas of interest—the use and effectiveness of custody and the extent to which the needs of all offenders are met.
- In relation to the effectiveness of custody, we highlight recent findings under the four tests of a healthy prison—safety, respect, purposeful activity and resettlement.
- In relation to meeting the needs of all young offenders, we note the differential experience of certain groups of young people in custody including black and minority ethnic young people and Muslim young people. We also note our concerns about the care of looked after children in custody and specialist units for particularly vulnerable young people.

1. Her Majesty's Inspectorate of Prisons (HMI Prisons) is an independent inspectorate whose duties are primarily set out in section 5A of the Prison Act 1952. HMI Prisons has a statutory duty to report on conditions for and treatment of those in prisons, young offender institutions and immigration detention facilities. HMI Prisons also inspects police custody jointly with HM Inspectorate of Constabulary (HMIC) and will in 2012 take on responsibility for inspecting court custody, customs custody facilities (jointly with HMIC) and secure training centres (with Ofsted).

2. We welcome the opportunity to submit information to the Justice Committee in the context of its inquiry into youth justice. We would like to address two of the Committee's areas of interest:

- The use and effectiveness of available disposals, including restorative justice and custody as a last resort.
- The extent to which the system is able to meet the needs of all offenders regardless of age, gender, ethnicity and mental health.

THE EFFECTIVENESS OF CUSTODY

3. HMI Prisons inspects young offender institutions (YOIs) holding under 18s on a three yearly cycle. Each cycle includes a full inspection as well as a follow-up inspection that is proportionate to risk. Our comments below are confined to these inspections as our joint inspections with Ofsted of secure training centres will not commence until later in 2012.

4. All HMI Prisons inspections are carried out against published criteria known as "Expectations". There is a dedicated set of Expectations for assessing establishments holding children and young people under the age of 18. These are currently under review and an updated set of Expectations will be published shortly. All Expectations are based on and referenced against international human rights standards. Inspection findings are brigaded under the four tests of a healthy prison which are:

- Safety—prisoners, particularly the most vulnerable, are held safely.
- Respect—prisoners are treated with respect for their human dignity.
- Purposeful activity—prisoners are able, and expected, to engage in activity that is likely to benefit them.
- Resettlement—prisoners are prepared for their release into the community and helped to reduce the likelihood of reoffending.

5. Each year, HMI Prisons carries out several inspections of establishments holding children and young people. Generally those holding young women are assessed as performing better than those holding young men. This is likely due to the fact that those establishments are smaller and more specialist in nature. In addition to our inspections, each year we survey young people in all YOIs to find out about their experience in custody. These survey responses are compiled in an annual report.⁴⁹ The figures given below are drawn from the annual report for 2010–11 or from recent inspections.

6. We have welcomed the substantial reduction in the number of young people in custody. Hundreds of places in the young people's estate have been decommissioned as a result of the reduction in population and this has had an unfortunate consequence: young people are being held further from home than before. This affects their ability to maintain strong family ties, a known factor in reducing reoffending. It also affects contact with their youth offending team and makes resettlement planning more difficult.

Safety

7. Recent inspections have found that young men continued to be routinely strip searched. At Werrington, however, a risk assessed approach was taken to young people identified as particularly vulnerable on reception. For young women, strip searching was intelligence led. While there was no evidence that bullying was a problem in establishments holding young women, bullying was a concern for many young men. Just over a quarter of young men said they had felt unsafe at some point during their time in custody while slightly less than a quarter said they had been victimised by other young people. The most common form of bullying was insulting remarks and 40% of young men said that shouting out of windows was a problem in their establishment.

8. Gang related violence was most prevalent at Feltham, where significantly more young people said they felt unsafe at some point than the national average. To address this, some excellent work was being carried out by a dedicated behaviour management group, the members of which were forming constructive relationships with some of the most troublesome young people. However, the sudden influx of young people after the August disturbances resulted in this group having to shift their focus away from disruptive gang members. This was unfortunate as this behaviour management approach represented a potentially effective model which, if proven successful, could be replicated elsewhere.

9. In most male establishments, the use of force continued to be high but there was increasing evidence that de-escalation was being used more frequently. Debriefing young people after restraint was becoming

⁴⁹ See paragraph 17 for more information about our annual survey report.

commonplace, but the quality of debriefs required significant improvement. Across the estate, 21% of young men told us they had spent a night in a care and separation unit and only half said they were treated well or very well by staff. The physical environment in these units was often poor and young people spent long periods in their cells without constructive activity.

Respect

10. Over the years, our annual survey of both young men and young women in custody has shown a steady deterioration in the proportion of young people who feel that the majority of staff treat them with respect. Nonetheless, during inspections, we observed good staff engagement with young people and many young people said they could go to someone if they had a problem. The effectiveness of personal officer/key worker schemes continued to be mixed with the majority in the male estate proving inadequate. A smaller percentage of young people than last year said they were being seen by staff on a regular basis (for young women, this had fallen from 67% to 45%). We continued to find that personal officers were not attending meetings relating to the care of their young person.

11. Health care services were good and, in many establishments, we commented on the excellent mental health services. Young people reported that the quality of the food had deteriorated from last year and although we found the portions to be adequate, many young men complained that they often felt hungry.

Purposeful activity

12. We found that few establishments holding young men met our expectation to provide 10 hours each day out of cell. Young women fared better, spending a good deal of their time unlocked. Access to the open air had improved but was still too limited. While in custody, the majority of young people undertook some form of education or training and most felt this would help them on release. Most young people were able to gain some form of meaningful accreditation while in custody and for many this was their first experience of educational achievement. Accreditation at higher levels was, however, limited. Vocational training opportunities in some establishments were insufficient to meet demand.

13. The quality of teaching and learning was assessed as at least satisfactory and most establishments had effective learning and support arrangements in place. The impact of the changed funding arrangements, which had reduced taught hours from 25 to 15, was variable. Generally, it meant that young people spent either a morning or afternoon in education or vocational training. There was variation in the way establishments made up the balance of 10 hours a week with activity delivered by prison staff, but some young people spent much of the time unoccupied or carrying out domestic tasks on their wing.

Resettlement

14. In addition to our regular inspections, HMI Prisons published a thematic report on resettlement provision for young people in 2011, focusing on accommodation and education, training and employment (ETE).⁵⁰ We carried out fieldwork at six male YOIs including interviews with 61 sentenced young men approaching release.

15. We found that it was unclear how establishments' resettlement work was monitored; the necessary data were not collected. Less than two-thirds of young men in our sample knew what the targets in their training plans were and only half said they had had a say in the targets set for them. This had a real impact on whether they tried to achieve them. Training plans targets were often broad and placed the onus only on the young person and did not specify how they would be helped to achieve them. At the time of interview, only 14 of the 48 young men who said they wanted to continue education had a place arranged. Of the 42 who wanted to work, only nine said they had a job arranged on release. For seven of them, it had been arranged through family and without help from the YOI or youth offending team.

16. We received follow-up information on the young men in our sample on release and one month later, with information received for 41 and 37 of the young men respectively. Only 32% had suitable accommodation and ETE on release. Two were forced to report as homeless. One in five were placed in accommodation assessed as unsuitable. Of the one third of young men who had an ETE placement arranged on release, only half were still attending one month later. One month after release, six of the young men were in custody and one was on the run. No information was available on the two young men released homeless. Overall, the outcomes in our sample were very disappointing. It should be noted that the type of follow-up information obtained during our review was not routinely collected by establishments. One of our recommendations was therefore that the YJB should develop procedures to effectively monitor resettlement outcomes for young people following their release. YOIs should receive guidance on how to collect the necessary data and how to use the data to develop and improve resettlement strategies.

MEETING THE NEEDS OF ALL OFFENDERS

17. Each year, HMI Prisons publishes an analysis of the experiences of 15 to 18-year-olds in young offender institutions. In 2011, we published the 7th such report, summarising findings from 1,052 young men from nine

⁵⁰ HMI Prisons, *Resettlement provision for children and young people: accommodation and education, training and employment* (June 2011).

male establishments and 40 young women from four female establishments.⁵¹ This represented 65% of young men and 95% of young women of the total population at the time the surveys took place.

18. Our survey results can be broken down by age, ethnicity, religious belief and gender, allowing us to analyse and highlight the differential experience of young people in custody. Our 2010–11 report notes, for example, that there were clear differences in the reported experiences of young men from white backgrounds and those from black and minority ethnic backgrounds. Many areas were more negative for black and minority ethnic young men:

- Only 75% of black and minority ethnic young men reported feeling safe on their first night, compared with 81% of white young men.
- Fewer black and minority ethnic young men said that most staff treated them with respect (58% compared with 66%). Fewer said they had a member of staff to turn to with a problem.
- Fewer black and minority ethnic young men said they had been treated fairly in their experience of the reward scheme (40% compared with 51%) and fewer felt that it encouraged them to change their behaviour.
- 58% of black and minority ethnic young men reported that they had received an adjudication, compared with 50% of white young men.
- Fewer black and minority ethnic young men reported that they were involved in a job, vocational or skills training or offending behaviour programmes. They were less positive than white young men about how these activities would help them on release.
- Fewer black and minority ethnic young men said they usually had one or more visits per week and they were more negative about the timeliness of visits and their visitors' treatment by staff.

19. There were, however, some areas in which black and minority ethnic young men reported a more positive experience than white young men. They reported fewer problems on arrival, they found it easier to access religious services and more black and minority ethnic young men felt their religious beliefs were respected. Fewer said they had been victimised by another young person.

20. Our 2010–11 survey also highlighted differences between the reported experiences of Muslim and non-Muslim young men:

- Fewer Muslim young men felt safe on arrival and on their first night. They were also less positive about the searching and treatment by staff in reception than non-Muslim young men.
- Just 49% of Muslim young men told us that most staff treated them with respect, compared with 66% of non-Muslim young men.
- 36% of Muslim young men, compared with 26% of non-Muslim young men, said they had felt unsafe in their establishment at some point. More Muslim young men also reported victimisation by staff.
- More Muslim young men reported that they had been physically restrained.

21. However, Muslim young men found it easier to access religious services and they were more likely to feel their religious beliefs were respected.

Looked after children

22. We have been concerned that the needs of looked after children in custody are not always being met. While there is no centrally held data on the number of looked after children, it is recognised that they are over-represented in the custodial population. We estimate that, at any one time, there are around 400 children in custody who have spent time in care. In 2011, we published a thematic review of the care received by looked after children aged 15 to 18 in YOIs.⁵² We reviewed how well YOIs work with local authorities and youth offending services to ensure the needs of looked after children are met during their time in custody and in preparation for release. Our review was based on interviews with 12 looked after children and a survey of 623 children, as well as interviews with case supervisors, advocates and representatives of safeguarding teams at each of the 12 YOIs.

23. Of the young people we surveyed, those who said they had been in care reported more vulnerability and greater need than those who had not. Young people who said they had been in care were more likely to report problems on arrival. They were also more likely to report problems with drugs and alcohol and were more likely to report having mental health issues.

24. To meet their complex needs, there must be collaboration between everyone involved in supporting them, which must include the involvement of social workers from the looked after children service of the local authorities responsible for their care. The looked after child's social worker should support them during their time in custody and be involved in preparation for their release. We were therefore concerned that:

⁵¹ A Summerfield, *Children and young people in custody 2010–11: an analysis of the experiences of 15–18-year-olds in prison* (October 2011)

⁵² HMI Prisons, *The care of looked after children in custody: a short thematic review* (May 2011).

- There was a lack of clarity in most establishments about where the responsibility for looked after children should lie. Eight of the 12 safeguarding teams said they did not have an internal lead with specific responsibility for looked after children. This resulted in a lack of understanding of the entitlements for looked after children and hindered the establishment's ability to communicate with local authorities.
- Three-quarters of safeguarding teams said there were barriers which prevented effective communication between the YOI and the local authority. They said the involvement of local authorities was often dependent on the commitment of individual social workers. A third felt some social workers tried to end their involvement while the young person was in custody.
- Less than half the safeguarding teams said they would routinely keep a looked after child's social worker informed of their wellbeing and progress in custody.
- A third of safeguarding teams said looked after children reviews only took place as required because of the tenacity of establishment staff. Only two safeguarding teams said a member of YOI staff would be involved in preparing the young person for the review and advocating for him or her.
- Only half of young people interviewed said they had received a visit from their social worker during their time in custody. The frequency of these visits ranged from weekly to once in three months.

25. In relation to resettlement, young people who said they had been in care were more likely to think they would have a problem finding accommodation and getting a job on release. Adequate and early planning for release was therefore a key concern of establishment staff and young people. Several establishments viewed it as the local authority's responsibility to make arrangements for looked after children and were not clear about their own role. Accommodation was often not confirmed until close to the young person's release or, occasionally, on the day of release. This affected young people's opportunity for early release and meant that some ended up in unsuitable accommodation. Only two young people of the 12 we interviewed had employment and/or education plans confirmed for release.

26. Follow-up information about the looked after children we interviewed was concerning: one of the 12 was released without an address and one to unsuitable bed and breakfast accommodation. Two had an education or employment placement to start on release. A month later, only one child was attending education and three were back in custody.

27. HMI Prisons made four recommendations as a result of our review of the care of looked after children in custody. One of these concerned the need for a designated social worker within each YOI with responsibility for looked after children. We were therefore pleased that the YJB announced a commitment to fund social worker posts in YOIs until 2014 and hope that their remit will specifically include addressing the needs of looked after children. Our other recommendations remain outstanding.

Mental health

28. Keppel Unit at Wetherby is designed to offer a safe and supportive environment for young men who cannot cope in the mainstream prison system and who have a range of complex problems. It is the only unit of its kind and with an operational capacity of 48 cannot be expected to meet the demand for additional support nationally. More specialist units should be developed to properly meet the needs of all young people in custody.

29. All our reports, including inspection and thematic reports and our annual survey of the experiences of young people in custody can be found on our website at <http://www.justice.gov.uk/publications/inspectorate-reports/hmi-prisons>.

March 2012

Written evidence from the Prison Reform Trust

INQUIRY—YOUTH JUSTICE

The Prison Reform Trust is an independent UK charity working to create a just, humane and effective prison system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform. We welcome the opportunity to make a submission to the Committee.

SUMMARY

This submission addresses two aspects of the terms of reference: the use and effectiveness of available disposals, focusing on restorative justice, use of custody as a last resort and the increasing "adulthoodification" of interventions and disposals used with children who offend; and the extent to which the system is able to meet the needs of all offenders, here focusing on children with complex support needs, looked after children and care leavers, black and minority ethnic children, and young adults. We would refer the Committee to our earlier

submission for more detail of the Prison Reform Trust's perspective on the broader themes this Inquiry will be exploring.

The use and effectiveness of available disposals, including restorative justice and custody as a last resort

1. In 2009, the Prison Reform Trust published *Making Amends: restorative youth justice in Northern Ireland*, exploring the introduction and impact of youth conferencing in 2003. Based on the evidence of its use there and elsewhere, we believe restorative justice has the potential to reduce the number of children who are imprisoned, reduce reoffending rates, and improve victim satisfaction. To date, its use in the youth justice system has been limited. Whilst there are examples of good and innovative practice (Wigan YOS, for example, has taken a whole-systems approach and integrated restorative justice into all aspects of its work), too often there is little restorative about day-to-day interventions—concerns have been raised that the Referral Order, currently the only order with a restorative-element built into it, involves victims or their representatives only in a minority of cases. The Prison Reform Trust would support the adaptation of the existing activity requirement in the Youth Rehabilitation Order menu of options into a restorative programme requirement, as a means of facilitating moves towards a fully restorative youth justice system. As the Youth Justice Board (YJB) is currently investing in restorative training which will provide every YOT with two restorative justice conference facilitator trainers, YOTs should have capacity to deliver a restorative programme requirement in-house.

2. It has been widely noted that the principle of custody as a “last resort”, as set out in the UN Convention on the Rights of the Child (UNCRC), has no clear definition and is interpreted differently across the country. Figures released in a Parliamentary Question corroborate this, showing the disparity in sentencing across England and Wales in 2010–11—12.4% of children appearing in court in Rochdale, for example, were given a custodial sentence, compared to 6.2% in Oldham and 1.7% in St. Helens. In some YOTs, no children were sentenced to custody, whilst nationally the average was 5.5%.⁵³ Across London YOTs, there was a 2% increase in the number of children sentenced to custody, whilst every other region recorded a reduction, ranging from 7% fewer in Yorkshire & Humber, to 50% fewer in the North East. Such disparity is of concern and merits further exploration. Sentencing patterns following the August 2011 public disorder also bear this out, with two-thirds of children appearing in court in London sentenced to custody, compared to 37% in Manchester.⁵⁴ That the average sentence given to children involved in the disorder was longer, at 7.9 months, than that given to adults (4.3 months) is of particular concern.

3. Finally, we would draw the Committee's attention to the increasing application of adult-oriented disposals and interventions to children. This not only contravenes the spirit of the UNCRC, (which states that children in trouble with the law should be dealt with by a justice system which is “distinct and separate” from that for adults) but is also, we believe, incompatible with any stated desire to improve the effectiveness of interventions. Given their age, emotional and physical immaturity and vulnerability, “what works” with children who offend is likely to be very different to that for adults. Such moves also contradict the principles underpinning the Crime and Disorder Act, which placed recognition of children's different developmental maturity and age appropriate interventions at the heart of youth justice reforms.

4. In 2010, the Government made a “clear commitment” to “give due consideration to the UNCRC Articles when making new policy and legislation.”⁵⁵ Proposals outlined in the Legal Aid, Sentencing and Punishment of Offenders Bill, such as those seeking to bring the maximum number of hours and months which a child can be subject to a curfew, and the maximum fine available for breach of the YRO, into line with those for adults (from 12 to 16 hours per day, 6 to 12 months and £250/£1,000 to £2,500 respectively), and to include 16 and 17 year olds within the remit of the newly created offences of threatening with a blade, point or offensive weapon, do not, we believe, take account of children's best interests, nor their differing capacity to comply with punitive orders. The latter proposal, particularly the plan to introduce mandatory minimum four month prisons sentences for children found guilty of the new offence, is particularly concerning, not least because the number of knife possession offences committed by children has consistently fallen in recent years, from 1,610 in the last quarter of 2007 to 839 in the same quarter of 2011 (a 48% reduction).⁵⁶ The Prison Reform Trust does not believe mandatory sentences are UNCRC compliant.

⁵³ <http://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120209/text/120209w0005.htm#12020967002052>

⁵⁴ <http://www.justice.gov.uk/statistics/criminal-justice/public-disorder-august-11>

⁵⁵ <https://www.education.gov.uk/publications/eOrderingDownload/CM-7981-WMS.doc>

⁵⁶ <http://yjbdep.cjs.gov.uk/downloads/knife-possession-bulletin-q4-2011-tables.xls>

The extent to which the system is able to meet the needs of all offenders regardless of age, gender, ethnicity and mental health

5. It is readily acknowledged that high numbers of children who offend experience impairments. For example:

- Rates of mental health problems are at least three times higher among children in the youth justice system than within the general population, and are highest amongst children in custody;⁵⁷ 43% of children on community orders have emotional and mental health needs.⁵⁸
- At least 60% of children in the youth justice system have a communication disability, around half of whom have poor or very poor communication skills.⁵⁹
- Almost a quarter (23%) of children who offend have very low IQs of less than 70 and 36% an IQ of 70–79.⁶⁰
- A quarter of children who offend have special educational needs identified, of whom around one fifth have a statement of special educational needs, and almost half (46%) are underachieving at school.⁶¹

6. Despite this, youth justice assessment tools “do not assess for learning disability [low IQ], for speech, language and communication needs, or for conduct disorder”, while “...physical health problems are often overlooked and the rate of mental health problems underestimated.”⁶²

7. In 2010, the Prison Reform Trust published *Seen and Heard: supporting vulnerable children in the youth justice system*, which found that, whilst youth justice services used a wide range of different screening or assessment tools or procedures to identify when children might have impairments (some of which had been developed locally and had not been validated), most did not such tools or procedures to identify children with learning disabilities or low IQ, specific learning difficulties, communication difficulties, attention deficit hyperactive disorder or autistic spectrum disorder. Fewer than one in 10 youth justice staff said there was an individual at their YOT who held a brief for children with disabilities.

8. Despite the YJB placing a high priority on meeting the mental health needs of children at risk of offending and reoffending, more than one in 10 youth justice staff said their YOT did not use screening or assessment tools or procedures to identify children with mental health problems and more than one-fifth said their YOT did not have a mental health worker.

9. Youth justice staff reported that access to specialist staff and service provision was, on the whole, problematic, with gaps in specialist support and service provision. This was especially acute for older children—16 and 17 year olds—who were frequently “too old” to access children’s services and “too young” for adult services.

10. Youth justice staff wanted greater input from specialist workers to help identify the impairments and particular support needs of children, especially for those who did not reach the “threshold” to access specialist provision; guidance on how best to provide support, such that the child could successfully complete his/her community order; and a more flexible approach by specialist service providers to accommodate the needs of children, including, for example, “outreach services”.

11. Fewer than half of youth justice staff said that training was available to help them recognise when children might have impairments, including when to refer children to specialist staff or provision and how to support their particular needs.

12. Pre-sentence reports, which are prepared by youth justice staff, are an important tool in informing sentencing decisions by members of the judiciary. Failure to include relevant information concerning a child’s impairments and support needs can have serious consequences both during court proceedings and in determining sentence requirements. For example, certain impairments, such as autism spectrum disorder, communication difficulties and learning disabilities/low IQ, will directly affect how a child presents in court. If impairments are not recognised, and appropriate support provided, behaviour associated with a particular condition might be construed as non-compliant, insolent, or generally obstreperous. In a survey of magistrates, 80% “...said that the attitude and demeanour of a young person influences their sentencing decision to a greater or lesser extent.”⁶³

⁵⁷ Hagell, A (2002). *The mental health needs of young offenders—a report commissioned by the Mental Health Foundation* MHF: London

⁵⁸ Healthcare Commission (2009) *Actions speak louder: a second review of healthcare in the community for young people who offend*

⁵⁹ Bryan, K, Freer, K & Furlong, C (2007). *Language and communication difficulties in juvenile offenders* International Journal of Language and Communication Disorders, 42, 505–520

⁶⁰ Harrington, R & Bailey, S (2005). *Mental Health needs and effectiveness of provision for young offenders in custody and in the community* YJB: London

⁶¹ Youth Justice Board (2006). *Barriers to engaging in education, training and employment* YJB: London

⁶² HM Government (2009). *Healthy Children, Safer Communities* DH: London

⁶³ Audit Commission (2004). *Youth justice 2004: a review of the reformed youth justice system* Audit Commission: London

13. Most youth justice staff who took part in our research believed that children with impairments who offend were more likely to receive a custodial sentence than were children without impairments who offend.⁶⁴

14. Children in care and care leavers are over-represented in the prison population. The most recent survey of 15–18 year olds in custody found that more than one in four of the boys, and half of all girls were, or had been, looked after.⁶⁵ At a recent conference on improving outcomes for looked after children, the YJB's director of strategy indicated that a survey of children in one secure training centre had found that 58% were or had been looked after. Earlier research from the Social Exclusion Unit suggested that 27% of the adult prison population had been in care at some point as a child. Whilst the Prison Reform Trust report *Care—a stepping stone to custody? The view of children in care on the links between care, offending and custody* found that many of the solutions to offending by looked after children lie in the care system,⁶⁶ there is much that the justice system can do.

15. YOTs can support children's services in delivering a restorative justice-based response to minor offending occurring in children's homes, to prevent children in care being criminalised for behaviour, such as breaking a cup,⁶⁷ that would be dealt with differently in a family context. Given that children in care are more than twice as likely to be cautioned or convicted as other children, and that this disproportion is most marked for those placed in children's homes and other residential settings,⁶⁸ there is significant scope for reducing the number of looked after children who end up in the youth justice system. We understand that some YOTs are providing restorative justice-oriented training to residential care staff, or delivering informal restorative approaches directly in individual children's homes. Other areas have gone a step further, and have introduced an assumption against charging a looked after child unless the seriousness of the offence merits it, mirroring CPS guidance on prosecuting offences in residential homes.⁶⁹ We would like to see this approach rolled out nationally.

16. Improved identification of children in care at pre-sentence report stage would ensure sentencers have all relevant information in front of them when a looked after child appears before them. This would enable them to ensure such children are appropriately accompanied in court and that any questions about the child's placement or care plan can be answered. More broadly, YOTs and the secure estate have a role to play in ensuring local authorities fulfil their duties towards looked after children in custody, by visiting them and planning for their release. Children in care should never be released from custody not knowing who will be meeting them at the gate or where they will be staying that night, as sometimes happens at present.⁷⁰

17. Whilst this inquiry is focused on the youth justice system, we would like to take this opportunity to highlight the needs of care leavers (those under the age of 18, and those aged 18–21) in prison. Despite accounting for a significant proportion of the adult prison population, care leavers have, to date, been a vulnerable yet neglected group. More needs to be done to ensure they are supported, both whilst in custody and on release. The duty on local authorities to continue to provide support to care leavers up to the age of 21 (and up to the age of 25 for those wishing to undertake a programme of education or training), for instance by visiting those who end up in custody,⁷¹ could go some way to ensuring this. There is little evidence to suggest these duties are currently being fulfilled. The Prison Reform Trust would welcome renewed focus on this group in the justice system, and would appreciate the Committee's consideration of ways in which this might be achieved.

18. The Prison Reform Trust is also concerned that sustained efforts to reduce the number of children who are imprisoned, which have seen the average child custodial population fall by more than a third in recent years (from 3,085 in September 2007 to 1,969 in January 2012), do not appear to have had an equal impact on children of all ethnicities. We would like to draw the Committee's attention to the fact that, whilst the average number of white children in custody fell by 46% over this period (from 2,181 to 1,176), the respective figures for black and minority ethnic children were 713 and 572—a 20% reduction. At January 2012, BAME children accounted for 29% of the child custodial population.⁷²

19. The recent, tragic deaths of two children in young offender institutions, 17 year old Jake Hardy and 15 year old Alex Kelly, have once again brought the vulnerability of children in custody back into sharp focus. In 2010, the Prison Reform Trust published *Punishing Disadvantage*, a census of approximately 6,000 children imprisoned over a 6 month period. Detailed analysis of the ASSET files of 200 of these children found that:

⁶⁴ 59% said that children with learning disabilities who offend were more likely to receive a custodial sentence than children who offend without such impairment; 53% said so for children with communication difficulties; 68% said so for children with mental health problems or ADHD; and 52% said so for children with low literacy levels.

⁶⁵ HM Inspectorate of Prisons/Youth Justice Board (2011). *Children and Young People in Custody 2010–11 An Analysis of the experiences of 15–18 year olds in prison* HMIP: London

⁶⁶ Children cited loss of contact with family and friends; poor relationships with carers and social workers; frequent placement change; and peer pressure as risk factors in offending.

⁶⁷ http://www.thelancasterandmorecambecitizen.co.uk/news/9451477.Lancashire_runaway_children_costing_police_and_taxpayers_5m/

⁶⁸ Department for Education statistics—Offending of children who have been looked after continuously for at least 12 months by characteristics of care, England year to 31 March 2010

⁶⁹ http://www.cps.gov.uk/legal/v_to_z/youth_offenders/#a21

⁷⁰ HMIP (2011). *The care of looked after children custody—A short thematic review* HMIP: London

⁷¹ Department for Education (2010). *The Children Act 1989 Guidance and Regulations Volume 3: Planning transition to adulthood for care leavers* DfE: London

⁷² <http://www.justice.gov.uk/statistics/youth-justice/custody-data>

- 76% had an absent father;
- 47% had run away or absconded;
- 39% had been on the child protection register or had experienced abuse or neglect;
- 33% had an absent mother;
- 28% had witnessed domestic violence;
- 27% had been looked after at some point;
- 14% had a parent with physical or mental health problems or learning disability; and
- 12% had experienced the death of a parent, sibling or both.

20. Whilst we believe every child who ends up in custody is made vulnerable by virtue of their exclusion from friends, family and communities, the findings from *Punishing Disadvantage* show that many children in custody have life experiences which make them doubly vulnerable. The complex intersection of these different indicators of disadvantage raises questions about the appropriateness of custody for this age group, particularly given high rates of reoffending post-release.

21. The Prison Reform Trust and Inquest will shortly be publishing a briefing which seeks to draw out the learning from the deaths of the six children and 163 young people aged 18–24 who died in custody over the period 2003–11. Initial findings suggest there are a number of areas of significant concern, including: the placement of children in prison service accommodation which is unable to meet their needs; information-sharing across agencies both outside, within, and between the secure estate and accurate and timely identification of children and young people who have mental health, learning disability, speech, language and/or communication needs or who may be at risk of harm; the training of staff who are tasked with keeping children and young people in custody safe; and the appropriateness of prison custody for children and young people with acute mental health needs and the mechanisms in place to transfer such children and young people into appropriate specialist treatment and accommodation in the community.

22. Whilst it is too early to draw any conclusions from the deaths of two children in January this year, it is clear from our analysis that many of the children and young people who died during the period covered by our briefing should not have been in custody. With recently published plans for the children's secure estate proposing a greater use of specialist units within young offender institutions for children who "*display complex needs and risks*",⁷³ rather than secure children's homes or secure training centres, and broader questions about commissioning in the children's estate ongoing,⁷⁴ the Prison Reform Trust believes the time is right for a fundamental rethink of the use of custody for children.

23. We would be happy to forward copies of our briefing to Committee Members as soon as it is finalised for consideration as part of this inquiry.

24. In our original memorandum, we drew attention to the comparative success of the youth justice system in reducing offending compared to the experiences of young adults. Most observers recognise that many young men are no more mature at 18 years old than they were at 17, and yet the adult justice system offers them just a fraction of the support provided to children who offend. For example, Her Majesty's Chief Inspector of Prisons has raised concerns about the experiences of young adults sentenced to detention in a young offender institution (YOI), describing his impression of "*young men sleeping through their sentences*" in HMYOI Rochester,⁷⁵ and a lack of engagement in work, education and training opportunities across the YOI estate.⁷⁶

25. In the six months since that submission, both the House of Commons and the House of Lords have held debates on amendments to the Legal Aid, Sentencing and Punishment of Offenders Bill designed to extend the successful approach with children to young adult offenders. In response, the Prisons Minister, Crispin Blunt MP, acknowledged that "*we need to ensure that, given the colossal cost of failing to turn this particular age group around, we find ways to get interventions and investment into it, which will then deliver savings to the Ministry of Justice, because of the huge advantage of getting these people better and making them pro-social members of society.*"⁷⁷

26. Disappointingly, Ministers have not taken any specific action since that debate to address the difficult challenges posed by this age group. It has been left to the YJB and individual probation trusts to try to develop better procedures for managing the transition of juvenile offenders into the adult system. While welcome, this is far from the strategic approach needed. As a result, much of the good work undertaken with children who offend goes to waste once they reach the age of 18.

⁷³ Youth Justice Board (2012). *Developing the secure estate for children and young people in England and Wales—Plans until 2015* YJB: London

⁷⁴ <http://www.cypnow.co.uk/news/1115129/Further-cuts-secure-childrens-home-places-announced/?DCMP=ILC-SEARCH>

⁷⁵ Report of an announced inspection of HMYOI Rochester, HMCIP (June 2011)

⁷⁶ HMIP (2011). *HM Chief Inspector of Prisons for England and Wales Annual Report 2010–11* HMIP: London

⁷⁷ Legal Aid, Sentencing & Punishment of Offenders Bill—Public Bill Committee, 13 October 2011: column 800–801

27. We hope the Select Committee will share the concern of members of the Transition to Adulthood alliance at this “cliff edge” for services and encourage the Ministry of Justice to put a greater emphasis on addressing reoffending amongst young adults.

March 2012

Written evidence from INQUEST

EXECUTIVE SUMMARY

INQUEST’s submission focuses on the deaths of children and young people in penal custody. Our evidence about their experiences and treatment is of broad relevance to the Committee’s inquiry into Youth Justice but primarily addresses the call for evidence about “the extent to which the system is able to meet the needs of all offenders regardless of age, gender, ethnicity and mental health” and comments on the importance of using custody as a last resort. The recent deaths of two children in custody are sadly not isolated cases and shows how death, harm and damage is a permanent feature of penal custody. INQUEST’s casework and research discussed in this evidence highlights the commonalities between the characteristics and experiences of the children and young people who have died in prison custody since 1990.

The vulnerabilities and needs of child and young prisoners are well established but we continue to send them into unsafe institutions that do not have the resources, trained staff and are ill-equipped to deal with their complex needs. INQUEST’s submission also draws attention to the continuing inability of the prison and youth secure estate to “learn lessons” from previous investigations and inquests and suggests a number of ways forward to try to prevent further deaths of children and young people in custody.

INQUEST’S EXPERTISE

1. INQUEST is the only independent organisation in England and Wales that provides a specialist, comprehensive advice service on contentious deaths, their investigation and the inquest process to bereaved people, lawyers, other advice and support agencies, the media, parliamentarians and the wider public. It has a proven track record in delivering an award-winning, free, in-depth complex casework service on deaths in state detention or involving state agents. It works on other cases that also engage article 2, the right to life, of the European Convention on Human Rights and/or raise wider issues of state and corporate accountability. It monitors public interest inquests and inquiries into contentious deaths to ensure the issues arising inform our strategic policy and legal work. As a result, INQUEST possesses a unique body of knowledge, experience and expertise on issues surrounding contentious deaths and their investigation.

2. Reflecting this, INQUEST was the sole non governmental member of the Forum for Preventing Deaths in Custody and was represented on the Ministerial Roundtable on Prison Suicides and the Independent Police Complaints Commission Advisory Board. It is now on the Ministerial Board on Deaths in Custody which has replaced both the Forum and Roundtable. Its co-director Deborah Coles is also a founding member of the cross government sponsored Independent Advisory Panel on Deaths in Custody.

3. INQUEST has been working to identify trends and concerns emerging from the deaths of children and young people in custody since 1990. Through our specialist casework service we have worked with and supported the families of the children and young people who have died in custody (and those advising them) through the investigation and inquest process.⁷⁸ Drawing on this experience and evidence, INQUEST has previously raised concerns about the effectiveness of the state’s investigative processes for identifying and rectifying dangerous practices and procedures in order to ensure that lessons are learned and further fatalities prevented. In 2005 we published a detailed analysis of the problem in the book *In the care of the state? Child deaths in Penal custody in England and Wales* by Barry Goldson and Deborah Coles (INQUEST’s Co-Director). It concluded that children should not be imprisoned save for in child centred Local Authority Secure Children’s Homes. In 2008 INQUEST published *Dying on the Inside: Examining Women’s Deaths in Prison* by Deborah Coles and Marissa Sandler which provided a comprehensive examination of our casework with the families and legal representatives of the 115 women who had died in prison between 1990–2007, over a fifth of whom (21%) were between 18 and 21.

4. INQUEST has also published Briefings on the deaths of individual children and young people in custody⁷⁹ and made both written and oral submissions about the deaths of children and young people in custody to other parliamentary inquiries relevant to this area including the inquiry into deaths in custody conducted by the Parliamentary Joint Committee on Human Rights (which reported in December 2004), and the JCHR inquiry into restraint in secure training centres in 2007 and the Ministry of Justice & Department for Children, Schools and Families “Review of Restraint” (which reported in December 2008).

5. We have recently analysed the statistics and information drawn from INQUEST’s casework with the families of children and young people (24 years old and younger) who died in custody between 2003–11 for a forthcoming Briefing to be published in conjunction with the Prison Reform Trust. INQUEST’s submission to

⁷⁸ Between 2003–date INQUEST has worked with 87% of the families of the children and young people who have died in prison custody.

⁷⁹ Available from the INQUEST website: www.inquest.org.uk

the Justice Committee highlights some of the initial findings from that research. A final copy of the joint INQUEST/Prison Reform Trust publication will be provided to the Justice Committee as soon as possible.

6. Our evidence to the Justice Committee inquiry draws on this knowledge, experience and expertise on issues surrounding the deaths of children and young people in custody. It focuses on the deaths of children (ie those aged 10–17 years old) but also includes evidence relating to the deaths of young people (aged 18–21 years old) who, though they fall outside the youth justice system because of their chronological age, share many characteristics and vulnerabilities with children in custody. It has been at properly conducted inquests into custodial deaths, where the families of those who have died have been legally represented, that have exposed the regimes and conditions operating within the closed world of penal custody and how children and young people are treated.

DEATHS OF CHILDREN AND YOUNG PEOPLE IN CUSTODY—THE FIGURES⁸⁰

7. From 1990 to date there have been 272 deaths of children and young people aged 21 years old or younger in prison custody. 90% of these deaths have so far been classified as self-inflicted deaths. Table 1 sets out a breakdown of these statistics for the deaths of all children and young people (aged 21 and under) in prisons, Young Offender Institutions (YOIs) and Secure Training Centres by year since 1990.

Table 1

DEATHS OF YOUNG PEOPLE AGED 21 AND UNDER IN PRISONS, YOLS AND STCS (ENGLAND & WALES) 1990-DATE

<i>Year</i>	<i>Self-Inflicted</i>	<i>Non-Self-Inflicted</i>	<i>Other Non-natural causes</i>	<i>Homicide</i>	<i>Total</i>
2012	3	0	0	0	3
2011	11	0	0	0	11
2010	5	0	0	0	5
2009	9	2	0	0	11
2008	8	0	0	0	8
2007	9	2	0	0	11
2006	3	0	0	0	3
2005	13	0	1	0	14
2004	7	0	2	0	9
2003	13	2	0	0	15
2002	16	2	0	0	18
2001	15	0	0	0	15
2000	18	0	0	2	20
1999	19	1	0	0	20
1998	15	3	0	1	19
1997	16	1	0	2	19
1996	14	3	0	0	17
1995	11	0	0	1	12
1994	12	2	0	0	14
1993	3	0	0	0	3
1992	10	0	0	0	10
1991	5	0	0	0	5
1990	10	0	0	0	10
Total:	245	18	3	6	272

Source: INQUEST casework and monitoring.

8. Included in the figures in Table 1 are deaths of 33 children aged 17 and under in prisons, YOIs or STCs.⁸¹ Between 2003 and 2011 there were six deaths and a three year period between November 2007 and April 2011 when there were no deaths. All but two of these deaths of children in this period have so far been classified as self-inflicted. Already in 2012 there has been a sharp increase in these figures with the deaths of 15 year old Alex Kelly in HMP & YOI Cookham Wood and 17 year old Jake Hardy in HMYOI Hindley,⁸² both self-inflicted. Figure 2 below illustrates the number of child deaths in prison custody since 1990.

⁸⁰ Derived from INQUEST's Statistics, Monitoring and Casework databases. The quantitative data in these databases is derived from research conducted by INQUEST during 1990–2011 and sources include: INQUEST's casework, media monitoring, official statistics, and questions asked in Parliament, as well as (from 1996) individual notifications of each death in prison and detailed statistical tables provided to INQUEST by the Prison Service/National Offender Monitoring Service/Ministry of Justice.

⁸¹ For a full list of names, ages, institutions and cause of death for all children who have died in penal custody since 1990 please see the INQUEST website: http://inquest.gn.apc.org/pdf/Deaths_of_children_in_Penal_Custody_1990-date.pdf

⁸² See INQUEST Press Release via: <http://inquest.gn.apc.org/website/press-releases/press-releases-2012/two-child-deaths-in-one-week>

Fig. 2

CHILD DEATHS (17 AND UNDER) IN PENAL CUSTODY (PRISONS, YOLS AND STCS) 1990–2012

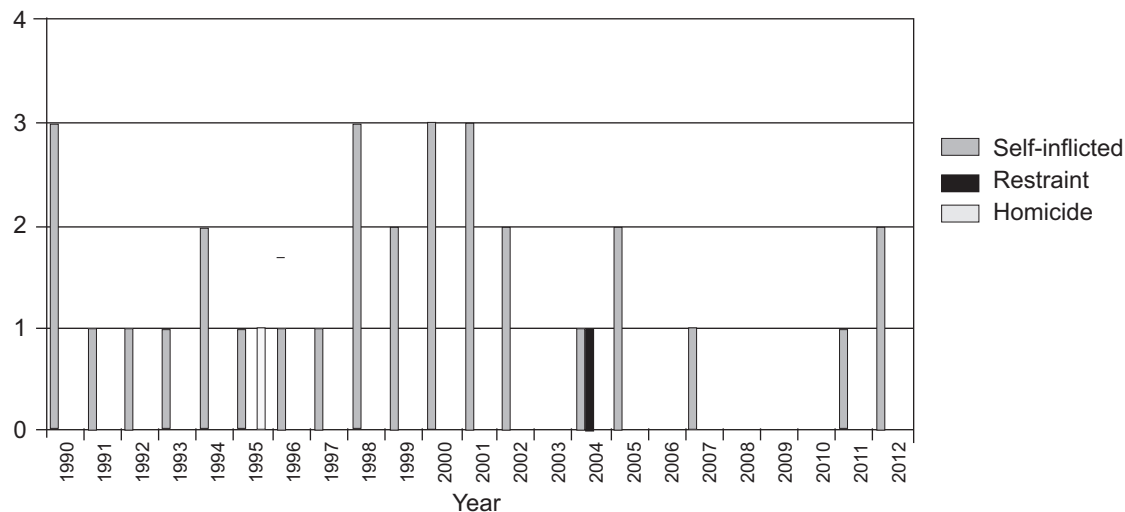
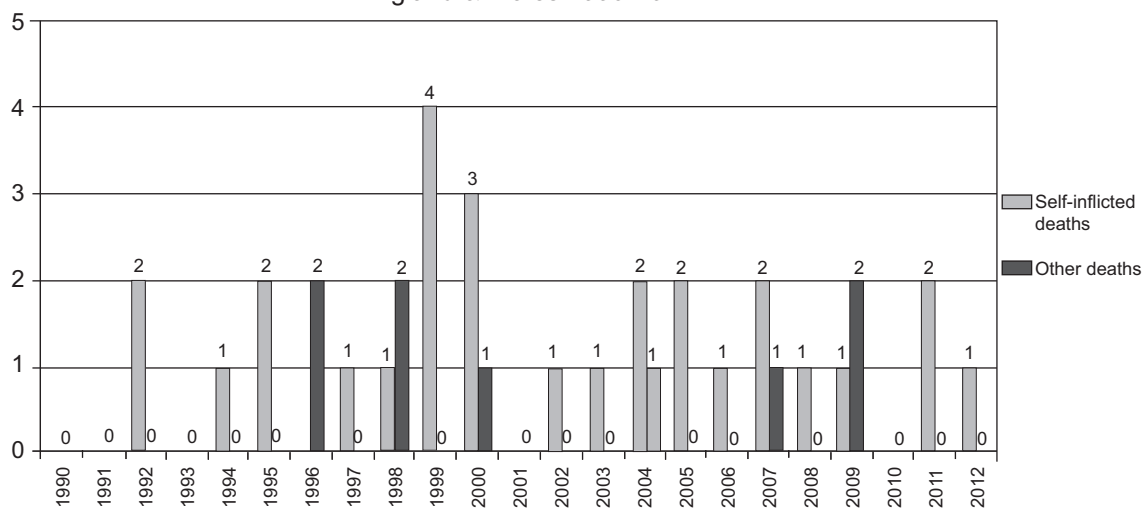
Fig. 2: Child Deaths (17 and under) in penal custody (prisons, YOLs and STCs) 1990-1992

Figure 3 below illustrates the number of deaths of children and young people from Black and Minority Ethnic communities. One of these deaths was that of 15 year old Gareth Myatt who died as a direct result of the restraint used against him.

Fig. 3

BAME YOUTH DEATHS (21 AND UNDER) IN PRISONS & SFCE ENGLAND & WALES 1990–2012

Fig. 3: BAME youth deaths (21 and under) in prisons & STCs England & Wales 1990-2012

Source: INQUEST Casework and Monitoring

DEATHS OF CHILDREN AND YOUNG PEOPLE IN CUSTODY—THE ISSUES

9. INQUEST's casework, monitoring and research into the investigation and inquest process following the deaths of children and young people has revealed consistent and repeated features, illustrating that systemic failings are not being addressed but continue to be reproduced by the practices and processes of child imprisonment.

10. This evidence does not, because of the Committee's desire for brief submissions, contain the individual stories that came to light as a result of the investigation and inquests into the deaths of children and young people. However, to develop a more in-depth understanding of the statistics, INQUEST believes it is essential to appreciate the experiences of children and young people behind the figures. We would urge Committee members to read the biographies of, for example, children such as Philip Knight, Kevin Jacobs, Joseph Scholes, (all contained in *In the Care of the State*, Goldson and Coles, INQUEST, 2005) Gareth Myatt and Adam

Rickwood (in *INQUEST's submission to the MoJ and DCSF review of restraint*) and young people such as Petra Blanksby, Daniel Nelson and Chay Pryor (contained in the forthcoming INQUEST/PRT Briefing).

11. INQUEST's analysis of the themes emerging from the investigations and inquests into the deaths of children and young people⁸³ has revealed a number of commonalities between those who died including that they:

- (a) *were some of the most vulnerable members of society* having been “*routinely disfigured by multiple and intersecting forms of social disadvantage*” (Goldson and Coles, INQUEST, 2005). It is well documented that children and young people in custody are drawn from the most disadvantaged and socially excluded families and communities. This has been confirmed by our forthcoming analysis (to be published with PRT) of the health and social backgrounds of the 148 children and young people aged 24 years or younger who died in prison custody between 2003–10. That analysis demonstrates that significant numbers of those who died had multiple histories of serious self-harm, drug or alcohol misuse, and mental health problems. Young people (18–20) accounted for 20% of individuals who self harm although they represent 12% of the custody population.⁸⁴ Other issues concerned experience of close family bereavement, and learning difficulties and disabilities.
- (b) *had experienced varying degrees of interaction with community agencies, including social services, Youth Offending Services and Child and Adolescent Mental Health Services.* In many cases there were significant failures in intra- and inter-agency communication and information exchange between those responsible for looking after these children and young people once they entered custody. This is an issue that HM Chief Inspector of Prisons expressed concern about in his May 2011 thematic review into the care of looked-after children in custody where he found that half of looked-after children in prison received no visits from their social worker.⁸⁵
- (c) *despite their vulnerability, had been remanded or sentenced to custody in prison accommodation.* For example, one of the central concerns of the jury at Joseph Scholes' inquest was the lack of availability of a Local Authority Secure Childrens Home placement for him as a vulnerable 16 year old boy. The judge sentencing Joseph had the benefit of reports from social workers, the Youth Offending Service and a Consultant Child and Adolescent Psychiatrist, all of whom identified Joseph's vulnerability, and he stated that he wanted Joseph's history “*most expressly drawn to the attention of the authorities*”. However, on the day of his sentence no SCH was available and Joseph was instead placed in Stoke Heath Y01. Alone in his cell, in strip clothing he hung himself from the cell bars, nine days after arriving.
- (d) *were placed in accommodation which was unable to meet their needs.* The evidence from the inquests and investigations into the deaths of children and young people demonstrates that penal custody is a damaging and inappropriate environment to deal with the complex needs of this damaged and vulnerable group. Conditions and treatment experienced by children in custody documented in HMIP reports following inspections, in investigation reports and inquest evidence, include physical and mental health care neglect, endemic bullying, ill treatment (staff on child and child on child), racism and other forms of discrimination, long periods of cell based confinement, deprivation of fresh air and exercise, inadequate education and rehabilitative provision, poor diet, ill fitting and shabby clothing, insufficient opportunities to maintain contact with family, poor complaints process.⁸⁶ One of the key conclusions from *in the Care of the State* was that: “*‘Caring’ for children in penal custody, especially Young Offender Institutions, is an almost impossible task. Many child prisoners live with a spectre of fear and an enduring feeling of being ‘unsafe’. This, in turn, is thought to heighten the risk of damage and/or death*”.⁸⁷ Placements in penal custody were often not only unsuitable in nature but were also inappropriate by location. In other words, manifestly vulnerable children and young people were detained in penal custody and often placed at great distances from their home area thus rendering regular family visits near impossible.
- (e) *were placed in accommodation where they experienced poor medical care and limited access to therapeutic services.* In a number of cases, given their history of mental health/drug/alcohol problems, children and young people should have been diverted out of the criminal justice system and into more appropriate services. For example, following a traumatic and abusive childhood, by 18 years old Petra Blanksby had an alarming history of self-harm. After she doused herself in petrol and set her mattress alight, Petra was charged with arson with intent to endanger life and remanded to HMP New Hall where she died 130 days later. At the conclusion

⁸³ See in particular *In the Care of the State? Child Deaths in Penal Custody* (INQUEST, 2005) and (INQUEST and the Prison Reform Trust, forthcoming 2012) *Fatally Flawed* a joint briefing examining the deaths of children and young people aged 24 years and younger between 2003–11.

⁸⁴ Bromley Briefings Prison Factfile December 2011 PRT.

⁸⁵ Paragraph 1.15, HM Inspectorate of Prisons (2011). *The care of looked after children in custody, A short thematic review.* London: HMIP. Available from: www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/looked-after-children-2011.pdf

⁸⁶ *In the Care of the State* pg 26

⁸⁷ *In the Care of the State* pg xxii

of the inquest into her death the coroner noted he had been struck by the evidence given by a leading consultant psychiatrist that “*in a civilised society someone as severely mentally disordered as Petra should not be in prison*”.

- (f) *were accommodated in unsafe environments and cells.* There are persistent problems with the physical infrastructure of penal custody including cell design and access to ligature points. For example, while on remand at HMP High Down Chay Pryor, a vulnerable 18 year old with Attention Deficit Hyperactive Disorder and a history of self harm, requested to speak with the Samaritans and was left unsupervised to make the call in a Listeners Suite where concerns had previously been raised about ligature points. Chay was found to have hung himself 53 minutes later.
- (g) *had been subjected to bullying and degrading treatment such as strip-searching, segregation and restraint.*⁸⁸ The dangerous and ultimately lethal use of restraint on children in custody first came to public attention as a result of the inquests held into the restraint-related deaths of 15 year old Gareth Myatt and 14 year old Adam Rickwood. Adam Rickwood was subjected to a *Physical Control in Care* technique known as “nose distraction” shortly before he hung himself in Hassockfield STC. At the second inquest into his death in January 2011 the jury found that the use of this contributed to Adam’s death and agreed that there was not only an unlawful regime in the use of PCC operating at the STC run by Serco at the time of Adam’s death but also that there was a failure by the YJB to prevent this regime. This verdict was a vindication of the battle by Adam’s family for the truth against a background of denial and secrecy by the Youth Justice Board and Serco. That thousands of vulnerable children were systematically subjected to unlawful restraint in privatised child prisons—and that none of the regulatory or inspection bodies of the state did anything about it—is shameful.⁸⁹ Ongoing concerns about the use of restraint have been expressed by HMIP in individual inspection reports most recently into Ashfield YOI.

ADDRESSING THE PROBLEM OF THE DEATHS OF CHILDREN AND YOUNG PEOPLES IN CUSTODY

12. In the context of the Committee’s current inquiry, INQUEST would draw a number of suggestions to Members’ attention:

Rethinking the approach to children and young peoples in conflict with the law

13. Following Adam Rickwood’s death, Lancashire Safeguarding Children Board conducted a serious case review into his death as he had been living in Burnley, Lancashire immediately before he was sent to Hassockfield STC. The LSCB report remarked that Adam had been viewed by the “*whole youth justice system*” as solely a “*child in need of custody rather than a vulnerable child also in need of care and safeguarding*”.⁹⁰

14. This mirrors INQUEST’s experience in other cases. Children and demonstrably vulnerable young people in custody are not being treated as in need of care but of being in need of punishment. The starting point is that the judiciary sentence children on the theoretical basis that they will be detained in institutions that can cater for their needs. In practice however this leads to extremely “vulnerable” children being placed in institutions which do not have the resources, facilities or trained staff to do so.

15. Children and young people are being detained in manifestly unsafe environments where they are often subjected to bullying, degrading treatment such as strip-searching, segregation and restraint. This amounts to a failure by the state to fulfil its duty of care towards children and young peoples in its custody and additionally is a significant and substantial breach of the UK’s international Treaty obligations including the UN Convention on the Rights of the Child.

16. In INQUEST’s view that there needs to be a complete rethink of the way in which children in conflict with the law are treated in order that the “best interests” of the child are given proper emphasis and children are, in practice, given custody as a matter of last resort. Where custody is necessary in order that “best interests” are respected children should be placed in suitable accommodation which, in the current secure estate configuration, is Local Authority Secure Children’s Homes. We would like to see the abolition of all Prison Service and private sector custody for child “offenders” and the use of Local Authority Secure Children’s Home provision for only children whose behaviour places themselves and or others at proven serious risk. In cases where children are deprived of their liberty “*as a measure of last resort and for the shortest period of time*” (United Nations General Assembly, 1989, Article 37b), the full weight of all relevant international human/children’s rights standards, treaties, rules and conventions should, of necessity, apply as minimum and nonnegotiable standards and these principles should underpin the manner in which children and young people are treated by those charged with their care.⁹¹

⁸⁸ See also the forthcoming book chapter Coles, D, & Shaw, H (2012). *Physical control, strip searching and segregation: observations on the deaths of children in custody.* In A. Briggs (Ed.), *Waiting to be Found: Papers on Children in Care* (forthcoming) Karnac: London, 2012.

⁸⁹ INQUEST press release 27 January 2011 SERCO AND YOUTH JUSTICE AGENCIES CONDEMNED FOR UNLAWFUL TREATMENT OF VULNERABLE BOY IN CUSTODY

⁹⁰ Available via: www.lancashire.gov.uk/corporate/web/viewdoc.aspx?id=34434

⁹¹ *In The Care Of The State* op cit pg 101

17. In this context, it is deeply concerning that the *Strategy for the Secure Estate* has moved away from one where the assumptions underpinning the YJB's work explicitly included the use of custody as a last resort and the principles that all institutions within the secure estate should *inter alia* have a culture centred on the child and young person; minimise the likelihood of harm to young peoples; provide high-quality physical and mental health and substance misuse services⁹² to one where the key aims of the YJB are to: “prevent offending; prevent reoffending; protect the public and support victims and; promote the safety and welfare of young people in the criminal justice system”.⁹³

Analysis and follow up to Coroners' Rule 43 recommendations

18. The inquest and investigations into deaths of children and young peoples should be a forum through which lessons can be learned. However, the commonalities set out at paragraph 11 continue to feature in deaths and arise time and again in PPO recommendations, inquest juries' narrative verdicts and coroners' Rule 43 recommendations.

19. One reason for this is that inquests into deaths in custody are often subject to serious delay which frustrates the learning process as well as placing an intolerable strain on the families.⁹⁴ A further reason is that, at present, there is no central collation, monitoring, auditing, analysis or full publication of narrative verdicts and Coroners' Rule 43 reports. The Ministry of Justice *Summary of Rule 43 reports and responses* contains only brief summaries of cases selected for inclusion and does not analyse the issues arising. There needs to be public scrutiny and analysis of the follow-up to coronial reports, jury findings, and recommendations arising from investigation and inspectorate reports. Without full publication and scrutiny the current system of poor, fragmented learning will persist and the vital contribution that the coroners' service can make to the prevention of similar fatalities will continue to be hindered. Ultimately, potentially life saving recommendations will continue to disappear into the ether and the penal system's capacity to safeguard children and young peoples will be diluted.⁹⁵

20. INQUEST has previously suggested that a national, accessible database of all jury verdicts and coroners' recommendations on deaths in custody be established. We would suggest that, in relation to this inquiry, this should include a specific section relating to deaths of children and young peoples in penal custody.

An Independent Review of the Deaths of Children and Young peoples in penal custody

21. What the investigations and inquests held into child deaths in custody have uncovered is that the youth justice system urgently needs profound public scrutiny, investigation and review significantly wider in scope than the inquest process.

22. Inquests and investigations focus on the question of “how” and “in what circumstances” the child or young person died in penal custody and are held in isolation from each other. This normally confines these processes to an examination of an individual person's experiences in a specific penal establishment at a given moment in time. It is abstracted from an analysis of youth justice policy and consideration of the wider social, structural and institutional arrangements that featured in a child or young person's life before their death. It also does not allow for combined and/or collective lessons to be drawn from an aggregated understanding of multiple cases. This led Goldson and Coles (INQUEST, 2005) to argue that:

The limited independence and effectiveness of investigation and inquest processes, their circumscribed scope, the ongoing impediments to disclosure and transparency and protracted bureaucratic proceedings all combine to seriously impede family participation...

Investigations and inquests following child deaths in penal custody simply do not allow for a thorough, full and fearless inquiry, for discussion of the wider policy issues, or for accountability of those responsible at an individual or institutional level. Neither do they necessarily facilitate an honest and open approach that might help ensure that changes are made to prevent future child deaths in similar circumstances.

23. A holistic, properly resourced, transparent and critical analysis of the experiences and treatment of children and young people who have died in penal custody is now long overdue. We would welcome the establishment of an Independent Review, with the proper involvement of families, to examine the wider systemic and policy issues underlying the deaths of children and young people in penal custody. Such a Review could build on previous models⁹⁶ to look at the commonalities within, across and between the deaths as well

⁹² *Strategy for the Secure Estate for Children and Young People: Plans for 2005–06 to 2007–08*

⁹³ *Strategy for the Secure Estate for Children and Young People in England and Wales: Plans for 2011–12 to 2014–15 Consultation Document Introduction*

⁹⁴ An analysis conducted in July 2011 of 500 of INQUEST's death in custody cases where the death and inquest occurred between 2000–June 2011 showed that 48% of cases took two years or more to conclude, 24% took three years or more and 9% of cases took four years or more before the inquest was heard.

⁹⁵ “Learning from Inquests: A new framework for Action and Accountability.” INQUEST forthcoming 2012.

⁹⁶ For example the Corston Review. As the Committee will be aware, following the tragic death of six women at HMP Styal prison, the Home Secretary asked Baroness Jean Corston to conduct a review of vulnerable women in the criminal justice system. Throughout 2006 Baroness Corston and her team visited overcrowded women's jails, local women's centres and alternatives to custody for women across the UK. The Corston Report was published in March 2007. Another example is the Zahid Mubarek inquiry.

as focusing on child welfare and youth justice policy and the law and policies that govern the question of child imprisonment. Such a review could also hear from those with experience and expertise in working with children and young people. Most importantly, a Review could make recommendations for action to improve the approaches, services and interventions taken with children and young people in conflict with the law so as to prevent further unnecessary deaths.

24. It is difficult to comprehend how despite the high death toll there has never been a public inquiry held. Each and every one of these children and young people died while in the “care” of the state and the state was responsible for their health and safety. This contrasts to public inquiries that have rightly been held where children known to state welfare agencies have died or following the ill treatment and abuse of children in residential settings. INQUEST believes that the deaths of 272 children and young people—aged 21 years or younger since 1990 demands such a response—particularly given the adverse personal histories and experiences which are shared by many of these most vulnerable members of our society. We hope Committee Members will share our view.

April 2012

Written evidence from the Ministry of Justice and Youth Justice Board

1. The Ministry of Justice (MoJ) and the Youth Justice Board (YJB) welcome the opportunity to submit a joint memorandum to the Committee for this inquiry. This document supports the written evidence previously provided to the Committee by both the MoJ and YJB in September 2011 and in the MoJ’s response to the Committee’s report on the proposed abolition of the YJB which was published in January 2012.

EXECUTIVE SUMMARY

2. The three indicators which the MoJ uses to assess the youth justice system are all showing positive trends:

- *First Time Entrants (FTEs) to the YJS are down:* The number of first time entrants has fallen by 59% since the peak of 110,815 in 2006–07 and by 50% over the last decade. In the last year the number of first time entrants has fallen by 27% from 62,504 in 2009–10 to 45,519 in 2010–11.
- *Proven reoffending has fallen:* The average number of re-offences per re-offender has fallen by 17% since 2000, with an average of 2.79 re-offences per re-offender in 2009–10. The rate of reoffending has however remained broadly stable with a slight reduction from 33.7% in 2000 to 33.3% in 2009–10. The reoffending rate for young people leaving custody reduced from 76.8% in 2000 to 69.7% in 2009–10.
- *Custody numbers have decreased:* The average population in custody (under 18) in 2010–11 was 2040, down 16% from an average of 2,418 in 2009–10. The number of juveniles sentenced to immediate custody fell by 44% between 2000–01 and 2010–11 and by 10% between 2009–10 and 2010–11.

3. The YJB continue to monitor the ability of Youth Offending Teams (YOTs) to deliver youth justice services within the current economic climate. In 2012–13 funding from the MoJ and Department for Education (DfE) to the YJB for distribution to YOTs will remain broadly static. Home Office funding for youth crime and substance misuse prevention will be split between funding to YOTs, as in previous years, but with a proportion going to Police Authorities and, in London, the Mayor’s Office for Policing and Crime (MOPC). This change is to foreshadow the introduction of Police and Crime Commissioners, to help prepare the police, working with other partners including YOTs, for the different commissioning arrangements for community safety services that will exist from 2013–14 onwards.

4. The Government believes that custody for young people should be a last resort. We also believe that YOTs and local partners can play a key role in diverting young people away from the youth justice system. Where possible we have used the best available evidence on “what works” to inform the design of disposals that prevent offending and re-offending—although we recognise that more needs to be done in this area. Finally we are clear in our commitment to the provision of a youth justice system that is able to meet the needs of all children and young people it works with, regardless of age, gender, ethnicity or any other factors.

The targeting of resources, including the ability of youth offending teams and their multi-agency partners to operate effectively in the current economic climate

5. The arrangements by which Youth Offending Teams (YOTs) are funded and the changes to the funding arrangements, including reduced central funding in 2011–12, were set out by the YJB in its written evidence of September 2011.

6. The current economic climate presents a number of risks to the work of YOTs. Both the MoJ and the YJB are working together to ensure that they continue to carry out their statutory and non-statutory work to contribute to the key youth justice outcomes and do so as effectively as possible. The YJB are also monitoring the impact of local re-organisations in the structures of services and the impact this is having on the delivery of youth justice. The YJB have identified a number of areas where the functions of the YOT are being merged

or integrated with other local authority services and believes that in some instances this brings with it a risk of diminution of the YOT manager role. Concern has also been raised about the impact this has on maintaining a clear focus on the youth justice system at the local level.

7. To help mitigate the impact, the YJB has provided advice on the minimum requirements needed to meet the statutory requirements of YOTs and is introducing a self assessment tool for effective YOT partnerships to be used at the local level. The YJB also believes that it is vital that all the key services at the local level for youth justice have effective management board arrangements in place for overseeing the work of the YOT and the youth justice system and the effectiveness of these arrangements is critical to the success of local youth justice services.

CENTRAL FUNDING

8. Funding from MoJ and DfE to the YJB for YOTs will remain broadly static at £101 million (with a 0.1% reduction). The Home Office will provide £14 million funding for youth crime prevention and substance misuse activities in 2012–13 (a reduction of £0.5 million from this year): £6.8 million of this funding will go direct to YOTs, and £7.2 million will go to Police Authorities in England and Wales and to MOPC (although YOTs may be able to access the funding provided to Police Authorities/MOPC).

The use and effectiveness of available disposals, including restorative justice and custody as a last resort

9. The Government believes that young people should only be sent to custody as a last resort and custody should be reserved only for those offenders from whom the public needs protection. However, young people must face the consequences of their behaviour and be stopped from re-offending through effective intervention. The Youth Rehabilitation Order (YRO) introduced in November 2009 replaced nine existing community sentences with one enhanced generic sentence and is the standard community sentence used for the majority of young offenders. The requirements that can be attached to the order include a variety of interventions such as, reparation, treatment for mental health and drug or substance misuse, supervision and curfew, which the courts can impose depending on the seriousness of the offence and the circumstances of the offender.

10. The YRO also provides for two high intensity requirements, Intensive Supervision and Surveillance (ISS) and Intensive Fostering (IF), which the courts are required to consider as alternatives to custody for the most serious offenders. ISS is the most rigorous non custodial intervention available to young offenders, and usually lasts for six months combining a night time curfew with high intensity supervision. Intensive Fostering schemes, an alternative to custody, are aimed at serious offenders whose home life may have contributed significantly to their offending behaviour. Intensive Fostering is available in four areas, Staffordshire, Wessex, London and Trafford. These areas provide intensive fostering for 42 Youth Offending Teams.

11. The Detention and Training Order (DTO) is the main custodial sentence for 12–17 year olds and is a demanding two part sentence, which combines a period of custody with a period of supervision in the community. Regimes for young people in custody have been, and continue to be, developed to address offending behaviour and thereby minimise the risk of young people re-offending.

12. The YJB also undertakes a range of work to ensure that custody is used genuinely as a last resort. This includes the provision of information to courts and YOTs to compare local rates, work to encourage improved partnership between local YOTs and continuing to work to support and promote alternatives to custody.

13. The Government's Green Paper, *Breaking the Cycle*, signalled a step change in the provision of restorative justice and we are seeking to further embed this work within the youth justice system. In 2011–12 we provided grants to YOTs for staff training as restorative justice conference facilitator trainers. Training materials that support YOT workers and Referral Order panel members are also being updated. In addition, the YJB has been working in partnership with Victim Support and the Restorative Justice Council and has hosted regional events to promote restorative justice and victim engagement. The events were multi-agency, and included staff from YOTs, the police, schools, children's homes and the secure estate.

14. The evidence around restorative justice is positive. An evaluation of a number of restorative justice pilots, based mainly on adults, found that 85% of victims who participated in the schemes were satisfied with the experience with an estimated 14%⁹⁷ reduction in the frequency of re-offending. The Government is committed to delivering greater use of restorative practices across the criminal justice system and a comprehensive strategy is being developed to help local practitioners build capacity and capability to deliver effective approaches.

15. We are also removing the current restrictions on repeated use of referral orders, allowing the court to use the order whenever they consider it an appropriate response to any further offending. This is aimed at promoting greater use of restorative justice delivered through the youth offender panel to which an offender is referred who will be receiving additional restorative justice training.

⁹⁷ Shapland, J *et al* (2008). *Restorative Justice: Does Restorative Justice affect reconviction*. The fourth report from the evaluation of three schemes. Ministry of Justice Research Series 10/08. London: Ministry of Justice

The role of the youth justice system in diverting at-risk young people away from first-time offending

16. The Government is committed to intervening early and diverting young people away from the criminal justice system where appropriate. The number of young people entering the youth justice system is one of the MoJ's key Departmental indicators and the MoJ is held to account for its performance against this measure.

17. Local Authority YOTs have become well established on a multi-agency footing combining children's services, health, police and criminal justice agencies to provide a holistic response to youth offending, although the changes outlined in Paragraph 6 do represent a challenge to this in some parts of the country. YOTs and their local partners have put in place alternative methods of offence resolution which have contributed to the fall in first time entrants. Many of these schemes use a restorative justice or a "triage" approach. However, there is more work to do to continue to prevent vulnerable young people from unnecessarily entering the youth justice system. Underpinning this must be a proper understanding of the risk factors that suggest a child or young person is more likely to commit offending behaviour.

18. The MoJ and the YJB are, therefore, working with the DfE, Home Office and the Department of Health (DH) to ensure that more is done to prevent at-risk young people from entering the youth justice system by taking forward a number of initiatives. The public health outcomes framework (DH January 2012) contains an indicator relating to the number of first time entrants to the youth justice system. The youth justice liaison and diversion (YJLD) pilot aims to identify and support young people (and their families) with mental health problems, speech and communication difficulties, learning disabilities and other similar vulnerabilities into appropriate services at the point at which they enter the youth justice system and in a more systematic way. This scheme has now been merged with the adult liaison and diversion programme to form a programme for all ages, taking a lifecourse approach. This will ensure better alignment between the programmes whilst recognising that different pathways are required for different age groups. The report of the YJLD pilot has been published and is available on the DH website; http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAnd_Guidance/DH_133005

19. The MoJ are also working with DfE to both address the high level of criminalisation among looked after children and to promote practical approaches which prevent young people who have been excluded or who have Special Educational Needs from coming into the youth justice system. We are taking forward the commitment in the *Ending Gangs and Youth Violence* report to explore ways to improve education provision for young people in the secure estate and for those released from custody.

20. The MoJ and YJB are also supporting cross government work on troubled families led by Louise Casey. The programme has secured £448 million funding over three years to target the 120,000 most troubled families and includes in its aims, the identification and engagement of families and children at risk of involvement with the criminal justice system. This will ensure that problems are identified and tackled early to prevent more children and young people from entering the system.

The evidence base for preventing offending and reducing re-offending and the extent to which this informs interventions in custody and the community

21. Currently, robust evidence on what works in youth justice is limited. However, where either UK or international evidence on key elements of effective programmes exists we have sought to use these in the design of youth justice interventions. There is international evidence and indicative support in the UK for ISS (Intensive Supervision and Surveillance) and support tailored to individual needs during and after custody. There is evidence to support programmes that use a multi-modal design where a broad range of interventions are used to address a range of different risk factors. These interventions, however, only appear to work when there is a dedicated case worker to oversee and coordinate programme activity.

22. There is strong international and good UK evidence for diverting young people away from the Criminal Justice System: evidence suggests that processing young people through the CJS can have a negative impact on desistance. There is evidence that diverting young people away from the CJS may have a positive impact on future offending behaviour. In the UK, "Triage initiatives", which are conducted in police custody suites, use early assessment and support with the aim of preventing young people from reoffending and slipping deep into the CJS. Early findings are promising but more robust evaluation is required.⁹⁸

23. There is strong international evidence to support investing in early years prevention work and studies have shown that family based interventions are cost-effective at addressing risk factors associated with offending and can also reduce ASB and offending. We have sought to use this evidence to encourage the use of Multi-systemic therapy (MST) and the YJB has funded long term pilot programmes of intensive fostering (using Multi Dimensional Treatment Foster Care) as a community alternative to custody. Early findings here are promising.

24. The YJB plans to implement an improved new approach to the identification and dissemination of effective practice in 2012/13 which has been developed in collaboration with the youth justice sector. The MoJ and YJB also work together as part of a discrete youth justice research programme which aims to more effectively co-ordinate the use of youth justice research resources.

⁹⁸ Criminal Justice Board (2008) A&E style triage for young offenders brings benefits. Briefing Note. <http://www.londoncjp.gov.uk/News/Briefing%20notes.php#2008>

25. The YJB are currently in the final stages of developing a partnership with the Social Research Unit (SRU). This partnership will seek to provide a means for estimating “what works” in public policy. The SRU will also provide involvement and expertise in developing the YJB’s new systems and processes for advising the sector on the range, effectiveness, costs and benefits of practice and programmes in use in the youth justice system.

26. These developments will build on work that YJB has previously undertaken to identify and promote effective practice, including the Key Elements of Effective Practice guidance notes that were published for youth justice services on a range of key issues and the work undertaken to evaluate key programmes that the YJB introduced or piloted.

The extent to which the system is able to meet the needs of all offenders regardless of age, gender, ethnicity and mental health

27. The Government is committed to ensuring that the youth justice system meets the needs of all children and young people it works with, regardless of age, gender, ethnicity or any other factors. Young offenders should have their health needs addressed via equivalent access to mainstream community health provision.

28. As part of monitoring the performance of the youth justice system, the YJB collates and publishes a range of information including trends by age, gender and ethnicity, and has commissioned research on girls in the system and disproportionate representation of Black and Minority Ethnic (BME) and the needs of young BME offenders. A toolkit on disproportionality has been published to assist YOTs to identify and address local issues.

29. The YJB has developed a new programme of work to improve current arrangements in relation to transition from the youth to adult systems at age 18. The work involves close collaboration with the MoJ and National Offender Management Service, third-sector organisations and youth justice practitioners in three key areas:

- *The development of a new national framework for transferring cases from youth offending teams (YOTs) to probation trusts.* This will replace the current national case transfer protocol to reflect practice changes and policy developments.
- *Development of the Youth to Adult (Y2A) Portal.* The portal is a web-based application that can be used to transfer information on young people securely from a YOT to a probation trust. The Y2A Portal was piloted from September to December 2011, and initial feedback has been positive. A full evaluation is taking place which will inform a business case for a national roll-out.
- *Establishing a youth to adult transitions forum.* The YJB has initiated a cross-government youth-to-adult transitions forum with representatives from the Ministry of Justice, NOMS, probation service, the Department of Health, the Department for Education, HM Courts and Tribunals Service, Business Innovation and Skills, Department for Work and Pensions and the Welsh Government. The forum’s aim is to increase partnership-working on transitions issues, and ensure that departments and public bodies are aware of each other’s work in this area.

30. The introduction of a new evidence based, children and young people specific, Comprehensive Health Assessment Tool (CHAT) starting with a “custody”, version from April 2012 and “community”, version from January 2013 should result in improved identification of need including mental health.

31. A Health and Wellbeing Needs Assessment tool will support commissioners feeding into the Joint Strategic Needs Assessment and planning and commissioning more effectively for this group; improving resultant access to service provision. Combined with CHAT, this should mean better availability of robust data on morbidity in children within the youth justice system.

March 2012

Written evidence from the Royal College of Speech and Language Therapists

1. EXECUTIVE SUMMARY

1.1 The Royal College of Speech and Language Therapists (RCSLT) is the professional body for speech and language therapists, students and support workers working in the UK. The RCSLT has over 15,000 members. We promote excellence in practice and influence health, education, social care and justice policies.

1.2 Speech and language therapists work with approximately 2.5 million young people and adults who have speech, language and communication needs and swallowing needs across the UK. They work directly with children, young people and adults, as well as supporting and training other professionals in working with speech, language and communication needs. Speech and language therapists work in YOTs, YOIs, high secure hospitals and prisons.

1.3 The RCSLT is delighted to provide a submission to the Justice Committee inquiry into youth justice.

1.4 Over 65% of young offenders have speech, language and communication needs (Gregory, Bryan, 2010) and most of these are unidentified and unmet needs. Undetected or untreated speech language and communication problems can lead to low levels of literacy, poor educational attainment and difficulties finding employment.

1.5 For the past two years the RCSLT has run a campaign to highlight the communication needs of young offenders. As part of this we established the Children's Communication Coalition (for England) and produced a report in July 2010 to raise awareness of speech, language and communication, mental health and learning needs of young offenders (CCC report, July 2010).

2. DELAYED SPEECH AND LANGUAGE

2.1 Approximately 8% of five year olds entering school in England have significant difficulties with speech and/or language. Speech, language and communication needs are strongly linked to deprivation and poverty in the early years. Up to 55% of children in deprived areas experienced difficulties at age five and do not have the basic skills required to read and write.

2.2 Speech, language and communication needs have a profound impact on many areas of a child's developments and affect a child's future life chances if left unsupported and untreated. Areas of impact include:

- Educational attainment and employability.
- Behavioural issues, social skills and esteem.
- Poor mental health and access to healthcare services.
- Offending.

2.3 Communication disability has been quoted as the number one public health concern for the 21st century (Reuben). Communication disability is the most common disability experienced by children or adults. However, because it is little understood and "invisible" its significance has been overlooked. A delay in developing speech and language skills is a key factor in predicting future disadvantage and the single greatest barrier to social mobility.

2.4 Our economy has become increasingly dependent on communication-based employment, the fitness of the person of the 21st century will be defined increasingly in terms of his or her ability to communicate effectively. A recent study of unemployed young men found that over 88% were described as language impaired, having some degree of difficulty with language. The prevalence of communication needs in this group was considerably above the 1% prevalence found in the UK general population. The economic impact on society of people whose communication disability renders them unemployable is significant and growing year on year.

3. OFFENDING BEHAVIOUR

3.1 Young people with speech, language and communication needs are over-represented within the justice pathway. Research on juvenile offenders in the UK shows that over 60% of offenders have a speech, language or communication need (Bryan *et al* 2004 and 2007). A recent study showed that 65% of offenders have a language difficulty of which 20% scored at the "severely delayed" level in assessment (Gregory and Bryan, 2010).

4. CURRENT IDENTIFICATION OF SPEECH LANGUAGE AND COMMUNICATION NEEDS

4.1 The Prison Reform Trust's project found that less than two thirds of prisons conduct some sort of screening or assessment of prisoners and for the most part these focussed on general literacy and numeracy skills (Talbot and Jacobsen, 2009). This shows that speech and language difficulties will remain an unidentified problem.

4.2 Levels of awareness of speech, language and communication need have been found to be very low in both the historical and present environments of these young people. One study showed that very few of the young people assessed (even those presenting with severe communication difficulties) had been identified as having communication difficulties prior to the assessment process with the youth offending team (Lanz, 2009).

4.3 As communication problems are often hidden and often unidentified, it is essential that screening, specialist assessment and intervention are put in place to support young people before and when they enter the justice system.

5. TARGETING RESOURCES TO TACKLE RE-OFFENDING

5.1 The following example clearly shows the importance of early intervention.

5.2 An Audit Commission report highlighted the costs of keeping young people within the criminal justice pathway. The report looked at the case of "James" and the unsuccessful attempts by different agencies from the age of five onwards to intervene in James' life. The total costs for intervention were more than £153,000, of which almost £103,000 is accounted for by the costs of his two custodial sentences. By contrast, an

alternative scenario in which the family was supported through Sure Start could have prevented James from offending and kept him in mainstream education, this would save £111,000.

6. IN COURT

6.1 Many young people “parrot” or repeat commonly used legal terminology, without understand the words. Evidence from Milton Keynes YOT, and backed up by Leeds YOT, showed that young people do not understand much of the vocabulary used in court. Research from Milton Keynes YOT identified a list of words that many young people with communication problems have difficulty understanding, these words are commonly used in the justice system and include “victim” “breach” “guilty” “liable” or “remorse” or “conditional”.

6.2 The poor communication ability of young people made it difficult for them to engage with court processes. Young people with speech, language and communication needs lack the language skills to understand what is happening to them or the implications of what is being asked.

6.3 People with speech, language and communication needs struggle to understand the conditions or requirements of a sentence. If an individual fails to understand spoken or written instructions, this can jeopardise their compliance with court orders and instructions.

6.4 Time must be taken to explain the terms of sentence. The judge or magistrate should be obliged to explain the sentence clearly to the offender and ensure that this has been understood in a meaningful way. For young people with communication difficulties registered intermediaries should be offered to help this process.

6.5 One of the main reasons for breach of sentence conditions is caused by a lack of understanding of the conditions associated with the order or sentence (Lanz, 2009). On the first breach the reasons for the breach should be discovered before any action is taken. If the reason is due to a lack of understanding about the conditions of the order then this should trigger a screen of the individual’s communication ability and a referral to the speech and language therapy service.

6.6 The Witness Intermediary scheme was introduced to provide communication support to witnesses in court to facilitate them giving their best evidence. The most common reasons for a registered intermediary referral is when the witness has a learning disability, mental health problem or speech, language or communication need. This RCSLT is delighted that this scheme has now been extended to defendants/offenders through the Coroners and Justice Act 2009.

6.7 The RCSLT is concerned that restorative justice is a verbally mediated intervention which is reliant on the witness and the offender having a sufficient degree of communication and language ability to answer questions and supply information. Empathy must be established. This is problematic if either the victim or the offender has communication difficulties. The RCSLT recommends that registered intermediaries are made available to participants during restorative justice processes to support parties with speech, language or communication needs.

7. PREVENTING OFFENDING AND REDUCING RE-OFFENDING

7.1 Offender treatment programmes are largely verbally and language based. As communication skills underpin ability to access language based interventions, difficulty in this area will prevent access to rehabilitation aimed at preventing re-offending and education programmes. This represents a huge waste of resources and public money.

7.2 Over 40% of offenders find it difficult or are unable to benefit from verbally mediated interventions such as anger management and drug rehabilitation courses (Bryan 2004).

7.3 There is a real mismatch between the literacy demands of programmes and skills level of offenders, which is particularly significant with respect to speaking and listening skills (Home Office Findings 233, 2009). To access education and treatment programmes an offender requires GCSE level English A-C (Davis, Lewis, Byatt, Purvis and Cole, 2004). However, around one third of offenders have speaking and listening skills below level 1 (equivalent to age eleven) of the National Framework (Davies *at el*, 2004) and are unable to access these programmes due to their poor language and literacy skills. Studies show nearly two-thirds of offenders are unable to access these programmes because of their poor language skills (Ryan, 2002).

7.4 If communication skills are assessed and managed more effectively, individuals are more likely to benefit from the other forms of treatment offered, thereby aiding rehabilitation and reducing the risk of re-offending.

7.5 All interventions must be aimed at appropriate levels for the offender and screening and assessment of speech, language and communication needs can aid this. A number of studies have shown how speech and language services can help offenders access rehabilitation programmes such as prison education schemes, thereby making the most efficient and effective use of resources.

7.6 All offenders must have their speech, language and communication needs screened when they first enter custody and detention. This will allow interventions and education programmes to be modified to the needs of the individual so they may access the schemes.

8. THE TRANSFORMATIVE EFFECT OF SPEECH AND LANGUAGE THERAPY

8.1 Improving communication is the key. Tackling communication problems reduces avoidable costs and waste in the NHS, local authorities, the criminal justice system and the wider economy (Matrix, 2011).

8.2 Low education and speech and language difficulties are risk factors for offending (Tomblin *et al.* 2000). Due to the link between communication problems and subsequent behavioural problems, speech and language therapy intervention with young people reduces the risk of developing behavioural problems and subsequent offending behaviour.

8.3 People with speech, language and communication problems have a higher rate of reoffending. Speech and language therapy intervention, to improve communication skills, makes a positive impact to this population. Speech and language therapy intervention can help prevent and reduce the re-offending rate by increasing oral communication skills. This allows the individual to access education and a wider range of rehabilitation programmes and subsequently they are empowered to change their offending behaviour. Investment in education and skills will allow the offender to (re)integrate into society and the world of work.

8.4 Speech and language therapists are employed to work in the justice sector to help young offenders with their speech, language and communication needs. The RCSLT is pleased that the number of commissioned speech and language therapy services in the justice system has increased over the past two years as the impact of communication needs amongst offenders is realised.

9. TRAINING THE WORKFORCE

9.1 The RCSLT has found that the justice workforce lack understanding of speech, language and communication needs and how to handle this.

9.2 The RCSLT believes that all staff working with offenders should receive training in speech and language issues. The RCSLT has developed “THE BOX” a blended training programme consisting of e-learning and face to face training. The RCSLT recommends that this is made available for all staff (contact the RCSLT for more information).

9.3 The Centre for Social Justice supported this recommendation in a recent report, “Rules of Engagement”, which recommended that training for staff should include speech and language disability awareness.

9.4 Examples of where speech and language therapists have trained the workforce.

9.5 In Red Bank secure children’s home five out of seven young people had been assessed as having challenging behaviour. On two to three occasions everyday staff were having to restrain young people due to these difficulties. With the help of a speech and language therapist, who provided communication training to the staff, incidents of restraint were reduced to two occasions per week. Andy Copp, Manager of Red Bank SCH said that “speech and language therapy had a positive impact on whole regime at Red Bank. When a speech and language therapist was first employed I was very unclear about the role that they would play. But I cannot over-estimate their valuable role in working with the young people and training staff”.

9.6 In Leeds the speech and language therapist worked with the Leeds YOT Intensive Supervision and Surveillance Program (ISSP) and provided training to the staff. The results showed that the staff made significant gains in their knowledge and confidence working with young people with communication difficulties.

10. RECOMMENDATIONS

1. The ASSET under identifies speech, language and communication. The ASSET should be amended to include a section to identify those with speech language and communication needs.

2. All professionals working with young offenders should receive communication skills awareness training (the Box) which has been developed by speech and language therapists.

3. Every YOT must have a speech and language therapist. Early speech and language therapy intervention helps improve communication skills and reduce the risk of re-offending behaviour.

4. Every YOI should have access to a speech and language therapist.

REFERENCES

Bryan K, Freer J, Furlong J. *Speech and language therapy provision for young people in prison*. Third project report. 2004.

Bryan K, Freer J, Furlong C. Language and communication difficulties in juvenile offenders. *International Journal of language and Communication Difficulties* 2007; 42, 505–520.

Bryan, K. Prevalence of speech and language difficulties in young offenders. *International Journal of Language and Communication Disorders* 2004; 39, 391–400.

Centre for Social Justice, Rules of Engagement: Changing the heart of youth justice, January 2012.

Centre for Social Justice. *Breakthrough Britain: Locked Up Potential*. March 2009.

Clegg J, Hois C, Rutter M. Life Sentence. *RCSLT Bulletin* 1999; 571, 16–18.

Elliott N. Interim results from a PhD in preparation. *An Investigation into the Communication Skills of Long-Term Unemployed Young Men*. 2009.

Engaging for their futures and our society: Improving the life chances of children with speech, language and communication needs, Report from the Children's Communication Coalition, July 2010.

Gregory J and Bryan K (2009). Evaluation of the Leeds Speech and Language Therapy Service Provision within the Intensive Supervision and Surveillance Programme provided by the Leeds Youth Offending Team. Unpublished report.

Lanz R. *Speech and language therapy within the Milton Keynes Youth Offending Team*. A four-month pilot project. 2009.

Ryan C. *Porridge with attitude* in the *Guardian*, 7 May 2002.

Tomblin J B, *et al*. The association of reading disability, behavioural disorders and language impairment among second-grade children. *Journal of child psychology and psychiatry* 2000; 41:4, 473–482.

March 2012

Written evidence from Peterborough Youth Offending Service

JUSTICE COMMITTEE INQUIRY—YOUTH JUSTICE

MULTISYSTEMIC THERAPY

1. Summary

- Multisystemic Therapy (MST) reduces the likelihood of reoffending and of a child going to prison, and can also reduce the likelihood of first time offending.
- MST works with all the factors that contribute to offending, and works across the all systems that impact on the child's behaviour in the child's own ecology.
- MST has been proven through 3 decades of systematic research to keep children at home, in education and out of custody more than usual interventions.
- The gains made by MST sustain in the longer term as families/carers become skilled to manage their child's behaviour.
- MST is cost effective and reduces the need for further contact with the criminal justice system and expensive residential facilities.

2. Introduction

The evidence presented is relevant to 2 areas being explored by the inquiry:-

- The targeting of resources, including the ability of youth offending teams and their multi-agency partners to operate effectively in the current economic climate, and early findings from the Youth Justice Pathfinder Initiatives.
- The evidence base for preventing offending and reducing re-offending and the extent to which this informs interventions in custody and the community.

Multisystemic Therapy is an intensive family and community-based treatment programme that focuses on addressing all environmental systems that impact on offending (parents/carers, school, peers, community) as well as individual factors. MST recognises that each system plays a critical role in a child's world and each system requires attention to reduce offending and maintain positive changes. MST therapists have small caseloads and families have 24 hour support through an on call system to problem solve difficulties as soon as they happen. The worker visits the family at least 3 times a week to support and address any problems that arise for a period of 3 to 5 months

3. How does MST work?

MST has three primary goals, which are to keep children out of custody, out of care and in school. MST primarily focuses on reducing the likelihood of children reoffending and becoming imprisoned, however MST also reduces the likelihood of children entering the criminal justice system in the first place.

MST is effective as it works with all the systems that put a young person at risk of criminal activity and in their own ecology ie:-

1. Close and Wider Families/Support systems/Homes.
2. Teachers/Schools.
3. Peers.

4. Neighbourhoods.
5. Individual.

Research into youth offending indicates that multiple factors cluster together in a child's life and protective factors are often absent. MST acts on the range of factors that contribute to offending and focuses on strengths in the different systems to bring about change. For example risks increase if:-

- Children are out of home at 16/17 in individual housing as poorly monitored.
- There is poor parental supervision and discipline (children whose parents are harsh, cruel, highly inconsistent, passive or neglecting are at increased risk of criminality as adolescents). Poor supervision is also linked with earlier onset of criminality and thus with persistent criminal activity into adulthood.
- A child between 15—18 is out of education training and employment.
- A child has experience of failing in school rather than of success.
- A child is truanting school (nearly 50% will be offending).
- A child has anti social peers, as children often offend in small groups and those with risk factors tend to gravitate towards each other.
- A child is brought up in a disadvantaged neighbourhood.

MST works by:-

1. Increasing the caregivers' parenting skills eg boundary setting, rewards/consequences, supervision and monitoring.
2. Improving family relations and communication skills.
3. Helping the child to have increased attendance, get better grades or start to develop a vocation often by improving the home-school link.
4. Involving the child with friends who do not participate in criminal behaviour.
5. Help the child to participate in positive activities, such as sports or school clubs.

In order to achieve sustainability, a support network is created of extended family, neighbours and friends to help the caregivers maintain the positive changes.

Each family and child has an individually tailored intervention that is guided by 9 principles:-

1. **Finding the fit** between the presenting problems and the systems around the child.
2. **Focusing on Positives and Strengths**, and use these as levers for change.
3. **Increasing Responsibility** of the family to change the behavioural problems of the child.
4. **Present focused, action orientated and well defined** to target the specific problems directly.
5. **Targeting sequences** of the behaviour within the various systems.
6. **Developmentally appropriate** and fit with the developmental age of the child.
7. **Continuous effort** is needed by the family daily and weekly.
8. **Evaluation and accountability** as effectiveness is continuously measured from multiple perspectives with the team taking accountability for overcoming barrier and ensuring success.
9. **Generalisation** as families are empowered to learn new skills and are thus able to maintain long term changes.

4. *What proportion of families eligible?*

Children who are living with a caregiver, who are offending or at risk of care or school exclusion are eligible for MST. The only exclusionary criteria are for those in residential facilities such as a children's home or prison, and those who are acutely psychotic, suicidal or homicidal or have a diagnosis of autistic spectrum disorder. Similarly if the primary offending is sexual in the absence of other anti social behaviour the referral cannot be accepted but an adaptation of MST for sexual offending is now available across Peterborough, Cambridgeshire, Bedfordshire and in London (outcomes currently being researched).

In a typical Youth Offending Service, approximately 50 % of children are eligible at anyone time. Further referrals may also be identified if there is Youth Justice Diversion and Liaison Service, which assesses children who are beginning to offend and have vulnerabilities. From current research in the UK, it is known 50% of children had committed an offence prior to MST.

5. *Proportion of families accepted interventions?*

The proportion of families that accept MST is very high and typically only about 6% decline at the referral or suitability assessment stage and once in treatment again only approximately 6% of families do not complete treatment.

The success of engaging families is due to MST having a “whatever it takes” approach. MST team takes accountability (Principle 8) for the engagement and families are never labelled as difficult to engage resistant or unmotivated. Responsibility is always on the MST team to find a way to work with the family and will be creative and persistent in doing so. As a consequence there is no waiting around until the family is “ready” or something external changes.

6. *How those accepted decided upon?*

In many areas a panel reviews referrals made to MST and will recommend MST for cases presented. In a Youth Offending Service all cases will be routinely reviewed and MST considered as an option for those children and young people living at home who are between 11 and 17 (allowing for exclusionary criteria).

Particular risk factors (based on research) are considered as high priority:-

- Under 14s as they are higher risk of custody/criminal career into adulthood.
- Siblings/caregivers criminal history eg 60% boys whose father convicted will offend.
- Those with higher scores on ASSET and thus higher risk of reoffending. Evidence of family dysfunction, and/or substance misuse.

7. *What is the effectiveness of MST?*

Whilst MST has only more recently gathering momentum in England, it has been widely researched since the 70s in the US and is well established as an evidence-based treatment for anti social behaviour and offending. There is over 30 years of data that evidences sustained improvements in the 3 main targets of MST:-

1. Stayed at home—not in care.
2. No further offending and particularly not in custody.
3. Stayed in school.

Three decades of MST research shows:-

- long-term re-arrest rates are reduced by 25–70 %;
- out-of-home placements reduced by 47–64 %;
- families functioning becomes much better;
- decreased substance use; and
- fewer mental-health problems

Recent international find that:-

Of the 12,353 families (predominately from USA but includes wider international data) who completed MST between January 1st 2010 and December 31st 2010:

- 88% children remain at home;
- 85% children are in education or employment; and
- 84% have no further arrests.

Long term follow up results in US shows:-

Compared to usual interventions, after 14 years, youths who received MST had:

- up to 54 percent fewer re-arrests;
- up to 57 percent fewer days of imprisonment;
- up to 68 percent fewer drug-related arrests; and
- up to 43 percent fewer days on adult probation

At 22-year follow-up youths who received MST had:

- up to 36 percent fewer felony arrests;
- up to 75 percent fewer violent felony arrests;
- up to 33 percent fewer days in adult confinement; and
- up to 38 percent fewer issues with family instability (divorce, paternity, child support suits).

Brandon Centre, London data (published 2011)

The research trial was run in partnership with Haringey and Camden YOS, which started in 2002 and covers a period of 4–5 years. Up to 220 persistent young offenders and their parent/carers were randomly allocated either to a group receiving MST with YOS services as usual or to a group receiving services as usual without MST (N.B. Usual services had more input than MST). Overall results showed:-

- A significant reduction in relative risk of re-offending occurred in both MST & YOT conditions over 3 yrs.

- For the total number of offences, there was a greater reduction in risk of re-offending in MST group.
- The differences did not appear until 18 months, but were highly significant with 8% in the MST group and 34% in YOT showing at least one non-violent offence.
- There were very few young people who received custodial sentences, however the number of custodial sentences was significant only for the YOT group and during the last 6-month of the study, fewer youths in the MST group had custodial sentences.

Further data showed:-

- Consistent with objective data, youth-reported delinquency and parental reports of aggressive and delinquent behaviors show significantly greater reductions from pre-treatment to post-treatment levels in the MST group.
- MST seemed particularly helpful to boys, as they re-offend less as the follow-up period increases.
- Females improve more quickly with MST, but with time show little re-offending in either condition.
- Children with “psychopathic traits” tend to do better with MST than those treated with usual YOS services.

START multi-site research across England

The START research is a randomised controlled trial led by Professor Peter Fonagy based within University College London in partnership with Cambridge and Leeds Universities. Recruitment has taken place over 680 families across 9 MST sites and baseline data has been gathered. The study will look at the outcomes for children and families for up to two years following intervention, and will be reported in 2014.

8. *Why is MST more successful at reducing reoffending than traditional models?*

1. Thorough assessment looks at all the factors contributing to the young person’s offending are identified and tackled. All the systems that we know from research contribute to offending are treated ie Close and Wider, Families/Homes, Teachers/Schools, Neighbourhoods, Peers, Individual. Specific goals are formulated and reviewed on a weekly basis in group supervision and consultation and there is a strong quality assurance framework that collects feedback from families on a monthly basis.
2. MST is a positive alternative to custody as with custody the child is returned to the same dysfunctional environment as they came from. Two protective factors for reducing offending are keeping children at home and reducing their association with anti-social peers. Custody takes the child away from home and they then mix all day every day with other children who have offended. This is a hostile environment where fighting and disruptive behaviour are common place. While in custody the causes of offending in the ecology of the child are not tackled and we see a very high re-offending rate after coming out of custody. There are currently 2000 young people in custody, and significant number of these would have benefited from MST.
3. MST interventions are caregiver driven and happen within the family’s natural environment. The principles of MST include “increasing responsibility” which improve the sustainability of the success. A detailed plan for family and others eg school/professionals is given at the end of treatment. Generalisability also means that caregivers have the skills to solve future problems should they occur and improve the outcomes for their younger children too.
4. There is ongoing evaluation to ensure fidelity to the MST model. The intensive supervision and consultation structure ensures interventions remain focused (without drift) with there is continuous effort.
5. The quality of the assessments, interventions and outcomes are closely monitored and any barriers to the expected high level outcomes are quickly problem solved. There is a robust quality assurance processes that continuously measured the performance of the MST therapists, supervisors and consultants and develops plans to any skills than need improving.
6. Supervisors and therapist receive regular training throughout the year to improve skills.

9. *What are the barriers to implementation?*

There are some challenges with implementing MST, such as:-

1. *Challenges of recruitment*

In East of country, there have been difficulties recruiting high quality staff particularly supervisors possibly as there were no Midlands teams previously. Supervisors are usually experienced psychologist, but with clinical psychology being the only funded training routes, other equally skilled forensic and counselling psychologists are low in numbers particularly outside of major cities.

2. *Challenges of role*

A robust recruitment process is in place as:-

- Staff need to be willing/able to work non-traditional schedule and on-call system

- Be open to peer supervision and regular feedback. It is the strength model but there is ongoing scrutiny where feedback is strength focused and constructive.
- Therapists must be resilient as community working alone in families homes. There is strong support from the team but it is less office based than many traditional roles.

3. *Transporting model:-*

- Transporting a licensed evidenced based American programme to the UK can pose challenges, however there is a UK network partnership that supports making it more relevant to cultural setting
- A high level of skill and knowledge needed to set up an MST team. There is central support from the Department of Health, which is essential to help to with the set up. MST also has a number of procedures and documents to assist such as site readiness, goals and guidelines.

4. *Sustainability of funding*

MST is not cheap but it has such a huge evidence that it works. There is a situation where a team has had tapered funding over 4 years. MST now needs to be purchased locally but commissioners have the pressures of reduced budgets. Senior managers may also fail to appreciate that it is better to have an evidence based intervention than to support other intervention that are familiar or superficially attractive with no evidence base. Some areas such as Essex have overcome such difficulties and are currently developing two MST teams through a Social Impact Bond.

10. *What are the costs?*

MST costs between £8,000-£10,000 per family.

This is compared to annual approximate costs of:-

- Youth offending institution—over £60,000
- Secure children's home—over £215,000
- Secure training centre—over £160,000
- Residential care—£65,000—£120,000

The cost of specialist residential schools for children with behavioural problems/offending behaviour is also in need of consideration

The Brandon Centre, London research showed the following cost saving:

- MST appears to reduce the need for other youth justice services.
- MST appears to reduce criminal activity and thus the costs associated with offending.
- MST appears to be cost saving in comparison to treatment as usual in YOS ie you will spend £2420 on MST but you will save £2237 on other services and £2406 on crime reduction: you will recoup what you spent and save an additional £2223 per participant over 3 years.

These results are consistent over time, so they show the same pattern if you analyse the year 1 data or if you analyse the year 1+2 data

11. *Other relevant information*

- MST is an evidenced based intervention for conduct disorder and emerging anti social disorder. It is recommended in NICE Guidance for emerging anti social personality disorder for 12–17 years olds and for children with severe conduct problems.
- MST is an evidenced based intervention that fits with the Government's agenda to tackle "Troubled Families".
- MST draws from research-based treatment techniques such as behaviour therapy, parent management training, cognitive behavior therapy, pragmatic family therapies (structural family therapy/strategic family therapy) and pharmacological interventions (eg for ADHD)

12. *Reach of MST*

There are now 27 MST standard teams, serving 35 local authorities plus 2 MST-Problematic Sexual Behaviour teams and one more in development. 16 sites have been running for over 3 years and there are 11 newer sites with 5 more sites expected to open in 2013.

January 2013

REFERENCES AND FURTHER INFORMATION

<http://mstservers.com/>—for information on USA and international research

Butler, S; Baruch, G; Hickey, N & Fonagy, P (2011) *A Randomized Controlled Trial of Multisystemic Therapy and a Statutory Therapeutic Intervention for Young Offenders* Journal of the American Academy of Child & Adolescent Psychiatry (volume 50, number 12, 1200–1235)—Brandon Centre, London research

Henggeler, S; Shoenwald, S; Borden, C; Rowland, M; Cunningham, P (2009). *Multisystemic Therapy for Antisocial Behaviour in Children and Adolescents*. Guilford Press, New York, United States—overall review of theory, research and implementation of MST

Supplementary evidence from Jeremy Wright MP, Parliamentary Under-Secretary of State for Justice, Ministry of Justice to Rt Hon Sir Alan Beith MP, Chair, Justice Committee, 14 December 2012

NEW SYSTEM OF RESTRAINT—MINIMISING AND MANAGING PHYSICAL RESTRAINT

At the recent Justice Select Committee hearing on youth justice, I promised to write to you about disclosing information relating to the new system of restraint for use in under-18 Young Offender Institutions (YOIs) and Secure Training Centres (STCs)—Minimising and Managing Physical Restraint (MMPR).

We recognise the importance of being transparent in such a sensitive and complex policy area and we have recently taken positive steps to be more open about restraint policy and practice. In July 2012 we published the Restraint Advisory Board's report and recommendations on MMPR. We also disclosed the MMPR training manual which is the syllabus that will be used to teach staff the new system. The manual has six volumes and covers training in recognising and managing challenging behaviour at the point of, during and after an incident of restraint.

Volume 5 of the MMPR manual, which guides instructors in reaching the actual application of the techniques, has some redactions. I can assure you that we have kept the redactions to an absolute minimum. The redactions have been made due to our concerns that its publication in full could compromise the safe and secure running of establishments.

Secure establishments have a duty of care to ensure the safety of all young people, staff, and visitors. If all of the details of the techniques set out in Volume 5 of the MMPR training manual were to be disclosed, it is possible that some young people would develop countermeasures to their application. With specific knowledge of the techniques, some young people could also make the application of the approved techniques so difficult that either staff would be forced to improvise methods of bringing a violent young person under control, which could increase risks to both young people and staff, or more staff would be needed to manage the situation.

Volume 5 of the MMPR training manual contains some identical techniques to those that are present in the Use of Force manual and some techniques that are similar. The Use of Force manual is the training manual used to teach restraint methods in adult prisons in England and Wales. Details of the techniques contained within the Use of Force manual are not publicly available, because it is also considered possible that adult prisoners would develop countermeasures to their application or make the application of the approved techniques more difficult.

Committee members are most welcome to attend the training to observe how staff are trained in the restraint techniques within MMPR. I am pleased that several interested stakeholders including the Office of the Children's Commissioner, the Howard League and Prison Reform Trust have already taken up this opportunity. Observing training provides for a fuller understanding of the context in which the physical restraint techniques are taught. Furthermore, it would also help demonstrate to the Committee the considerable emphasis placed on de-escalating and decelerating incidents without recourse to restraint. I have had the techniques demonstrated to me by the national training team which I found an extremely useful exercise both to meet the trainers and be talked through the context in which techniques are used.

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