

# **Time for a fresh start**

The report of the Independent Commission  
on Youth Crime and Antisocial Behaviour





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# Terms of reference and membership of the Commission

*The Independent Commission on Youth Crime and Antisocial Behaviour was established in the autumn of 2008 with a remit to:*

1. Identify a set of principles for:
  - responding fairly, effectively and proportionately to antisocial behaviour and offending by children and young people;
  - minimising the harm that the antisocial and criminal behaviour of young people causes to themselves and to society.
2. Assess the strengths and weaknesses of existing responses to youth crime and antisocial behaviour in England and Wales against these principles by:
  - gathering evidence from research, statistics and other literature
  - consulting with relevant organisations, individual experts and stakeholders, including young people themselves
  - supplementing the evidence obtained with a series of visits to relevant locations in the United Kingdom.
3. Investigate and identify alternative approaches, drawing on promising practice in the United Kingdom and other countries (with special reference to Canada, France, Germany and Sweden).
4. Devise a blueprint for an effective, just, humane and coherent response to children and young people's antisocial and criminal behaviour in England and Wales that reflects the fundamental principles that have been identified.
5. Produce proposals for the sustainable reform of relevant services for children and young people, including youth justice procedures, that are based on sound evidence.
6. Seek to influence policy by publishing a plain-English report and communicating its findings through media and other appropriate methods to policy makers, practitioners, stakeholders and the wider public.
7. Publish an account of the research and other evidence considered by the Commission as a book, written by academic and other expert authors and made available through a commercial publisher.

*The members of the Commission are:*

**Anthony Salz (Chair)**, Executive Vice Chairman of Rothschild, formerly senior partner of Freshfields, the international law firm.

**Ruth Ibegbuna** is the Director of RECLAIM, an award-winning preventative youth crime project that targets young people across Greater Manchester from areas of social instability.

**Derrick Anderson, CBE**, Chief Executive of the London Borough of Lambeth.

**Prof. Paul Johnson**, Senior Associate at Frontier Economics and a Research Fellow at the Institute for Fiscal Studies.

**Lord Macdonald QC**, Director of Public Prosecutions from 2003 to 2008, now in private practice at Matrix Chambers and Visiting Professor of Law at the London School of Economics.

**Ian McPherson QPM**, Assistant Commissioner of the Metropolitan Police Service, formerly Chief Constable of Norfolk Constabulary and National Lead of the Association of Chief Police Officers' Business Area for Children and Young People

**Sara Nathan OBE**, broadcaster and former Editor of Channel 4 News; a member of the Judicial Appointments Commission and chair of the Home Office's advisory Animal Procedures Committee.

**Angela Neustatter**, journalist and author of *Locked in – locked out*, a study of children and young people in prison.

**Prof. David J. Smith**, Honorary Professor of Criminology at the University of Edinburgh and Visiting Professor at the London School of Economics.

**Mike D. Thomas**, Head of West Sussex Youth Offending Service, and formerly Chair of the Association of Youth Offending Team Managers.

**Sir David Varney**, formerly Chief Executive of BG Group and Executive Chairman of mm02, and Chairman of HM Revenue and Customs from 2004 to 2006.

**Andrew Webb**, Corporate Director, Children and Young People, Stockport Metropolitan Borough Council and policy lead on youth offending for the Association of Directors of Children's Services (ADCS).

More detailed biographical notes can be found on the Commission's website: [www.youthcrimecommission.org.uk](http://www.youthcrimecommission.org.uk).

# Chair's introduction

This report from the Independent Commission on Youth Crime and Antisocial Behaviour sets out a blueprint for reforming the way we respond to children and young people who get into trouble with the law. How we, as a society, respond is crucially important. It reflects the values we hold and the kind of country we want to live in. It will determine the sort of community our children will inherit. The way we have tinkered with the law and practice in England and Wales in the past quarter of a century has contributed to growing incoherence.

In considering how we can best make a fresh start, the Commission has gone back to the principles we believe should guide the response. We recommend an approach that will encourage young offenders to face up to the consequences of their actions and accept responsibility for them. And one that responds in a way that helps children and young people to grow out of crime rather than draw them deeper into it.

At the heart of our intended reforms are proposals for a major expansion of a problem-solving approach to crime and antisocial behaviour known as restorative justice. This gives the victims of crime a central right to be heard, as the offender and those affected by their offence come together to agree what amends should be made for the harm done. Restorative justice is already used in some schools and children's homes to tackle bullying and to resolve disputes. We would like to see more of this. It is increasingly deployed by police forces and local Youth Offending Teams to deal with low-level offending by children and young people. Our recommendation is that restorative justice should become the standard means of resolving the majority of cases: either pre-trial where prosecution is an alternative option, or when children and young people are convicted by a court.

We have been impressed by the restorative Youth Conferencing Service introduced in Northern Ireland five years ago and believe that its professionally co-ordinated approach provides a suitable model for England and Wales. Reconviction rates among young offenders involved in restorative justice processes are relatively low and youth conferencing in Northern Ireland has been accompanied by lower use of custody. Approval ratings among victims and all those involved are high. No one there suggests it is in any sense a 'soft' or easy option. Young offenders themselves acknowledge just how tough it has been to have to face up to the harm and misery they have caused their victims, their families and the community. Restorative justice is an approach whose time has come, and the results, when professionally managed, speak for themselves.

In our view, the lack of coherence in the current approach to youth offending is the result of an inflated political 'arms race' over many years. In an attempt to sound more punitive, politicians have made piecemeal changes to the youth

justice system or related practice. We have lost sight of the fundamental point that children and young people are still developing and of the principles that should be distinguishing our response to offending by them as opposed to adults. As a result, opportunities have been missed to take action that would have done more to protect the public by reducing levels of offending. Too much money has been wasted on what is known to be both expensive and ineffective and probably harmful. In particular, we are keen to see the savings that can be achieved through reduced use of the courts and custody being reinvested in earlier, effective interventions. These, in turn, will reduce the costs to society of later offending. Those who doubt the potential for this should turn to 'James's Story', attached to our conclusions; a distressing account compiled by the Audit Commission of a 15-year old boy's preventable descent into a life of crime and imprisonment.

There is a growing body of evidence, from research in the UK and elsewhere, that early preventive interventions in the lives of children with behaviour problems can bring about immediate improvements and reduce the risks of later involvement in persistent and serious offending. It is important that this evidence is used in decisions about the adoption of prevention services.

We also want the youth justice system to become more specialised, with better training for those who work in it - including on child and adolescent development and effective intervention - and an end to the use of the adult Crown Court for hearings involving children.

*Restoration and prevention* are two of the three principal pillars on which our proposals are constructed. The third is *integration*. This envisages a focus on retaining young offenders in mainstream society through interventions and sanctions in the community that are effective in helping them to grow out of offending and to lead law-abiding and fulfilling lives. We accept there are some children and young people who are violent and need to be placed in a secure setting because they represent a danger to others or to themselves. We, nevertheless, view the reoffending levels associated with youth custody – three out of four reconvicted within a year of finishing their sentence – as intolerable. As the former Chief Inspector of Prisons, General Lord Ramsbotham told us, the three things most likely to prevent young people from re-offending are a proper home, a job and stable relationships. The way we currently use custodial sentences, including an unjustifiable number of remands in custody, puts all three at risk. We are determined that custody should only be used as a last resort.

Current economic circumstances require the new Government to make substantial reductions in public expenditure. We believe our plans for change are consistent with this reality.



It has been difficult to obtain relevant costing information, but it is clear to us that lower use of the courts and custody and a more coordinated approach to 'what works' will realise substantial savings, increased over time by an investment in early and effective prevention. We also argue that better value for money can be realised through improved collaboration, better governance, intelligent commissioning and clear lines of accountability.

Our blueprint must not be judged as a short-term remedy. Our objective is sustainable reform through a cultural change and we know it will take time to achieve. As our report willingly acknowledges, there have been examples of real progress in tackling youth crime and antisocial behaviour in recent years. Promising initiatives have been established by government and the voluntary sector. In particular, there has been an encouraging reduction over the past 18 months in the number of young people in custody. This is a useful beginning from which more – a great deal more – can, and must, be achieved.

## Acknowledgements

My fellow commissioners and I are deeply grateful to the Police Foundation, which organised our inquiry, and the Nuffield Foundation which funded it. This includes the production of an accompanying book, edited by Professor David Smith<sup>a</sup>, which assesses the existing response to youth crime in depth and describes the international research and other knowledge on which our recommendations are based. In addition, the Nuffield Foundation provided support for a review by the Police Foundation and JUSTICE of alternatives to existing youth court procedures. The report from this project, which developed ideas for an expansion of restorative justice, is by Simon Hickson, Kathy Evans and Sally Ireland and will be published separately<sup>b</sup>.

We would like to thank everyone who helped us with our deliberations, including those who made presentations at our meetings, assisted with our programme of visits and made submissions in response to our consultation paper. They are listed in Appendix II. We also thank the Paul Hamlyn Foundation for funding an innovative consultation and engagement project with children and young people with experience of the youth justice system. The organisation and fieldwork for this invaluable exercise, which culminated in a discussion between a group of these young people and members of the Commission, was carried out by Carol McNaughton Nicholls, Nicky Cleghorn and Rachel Kinsella of NatCen, the National Centre for Social Research. References to the views expressed and quotations from the children and young people who took part can be found throughout this report.

I would especially like to thank each of the Commissioners for their hard work and generosity in giving so much time to producing this report. I am grateful to John Graham, Director of the Police Foundation and his colleagues Sue Roberts and Catherine Saunders for hosting our efforts in many ways and to David Utting, as Commission Secretary, for his patience and hard work in guiding us through our workload and in drafting our consultation document and this report. Warm thanks also go to Professor David Smith and the other contributors to the book, including Larissa Pople, our senior researcher. In addition we have received much-valued practical help and advice in preparing for the launch of this report from Lord Chadlington, Chief Executive of Huntsworth plc and the Design and Brand Communication team at Lloyd Northover.

We have come across many extraordinary people and organisations who do so much to improve the opportunities of our children and young people, from judges and magistrates to social workers; from politicians to charity leaders. Many people are committed to helping children and young people to live fulfilling lives, and are often working in very challenging circumstances. We have also met many thoughtful young people. Some of them have been in trouble and are now acting as inspiring role models to help others to change and lead more rewarding lives. All deserve a system that supports their efforts and helps create a safer and fairer environment for everyone.

The current response to antisocial and criminal behaviour by children and young people is too often characterised by confused accountability, risk aversion and excessive bureaucracy, with limited room for individual discretion and professional judgement. This stifles creativity and innovation, and fails to protect the public as well as it should. We need to encourage and support the many excellent people who work with young offenders. We need to respond effectively to the real difficulties faced by a significant number of our children today, especially those from deprived and chaotic backgrounds. We also need communities to come together with a shared commitment to understanding the needs of troubled young people and how their self-belief, skills and achievement can be encouraged to give them better chances in life. By doing that we can set about the task of creating a response to youth crime and antisocial behaviour that is intelligent, humane, flexible and, above all, optimistic.

**Anthony Salz**

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<sup>a</sup> D.J. Smith (ed.) (2010) *A New Response to Youth Crime*. Cullompton, Devon: Willan.

<sup>b</sup> Hickson, S., Evans, K. & Ireland S. (in press) *Responding to youth crime and antisocial behaviour: community panels*. London: Police Foundation / JUSTICE.

# Executive summary<sup>c</sup>

## Background

The Commission's inquiry was prompted by concern about deep-rooted failings in the response to antisocial behaviour and crime involving children and young people. Large sums of public money are currently wasted across England and Wales because:

- Investment in proven preventive measures and constructive sanctions is too low
- Children and young people who could be turned away from a life of crime are not receiving timely help and support
- Those involved in persistent and serious offending are often treated in ways that do little to prevent reoffending – and may make their criminal behaviour worse.

## Key trends

A large minority of children and young people get into trouble with the law at least once in their lives, with criminal behaviour most likely to occur between the ages of 14 and 18. Crime statistics capture different aspects of the overall picture, but there is little doubt that crime increased between 1950 and the mid-1990s, and has been falling since then:

- Violence has declined less rapidly than property crime, but even serious violent crime appears to have fallen.
- Crime committed by people under 18 is likely to have declined in a similar way to overall crime levels.
- Against the evidence, most people believe crime has continued to rise and tend to over-estimate the amount of serious offending by young people.

Children and young people are as often the victims of offending and antisocial behaviour in high-crime neighbourhoods as adults. In addition, a significant percentage of young people who commit crime have also been victims, especially of assault and theft from the person.

Public attitudes to offenders in Britain are among the most punitive in Europe. However, people are more lenient when asked to study specific criminal cases. Immaturity and remorse are seen as mitigating factors.

## Costs

Costs of the publicly-funded response to youth crime are hard to determine from published official data. This is a serious weakness of the existing system that impedes external efforts to hold it to account.

Government expenditure in England and Wales on public order and safety in 2008/9 reached £24.6 billion. Our best estimate is that the relevant annual costs relating to youth crime and antisocial behaviour come to just over £4 billion.

The return for taxpayer's money is unimpressive:

- The youth justice system tends to recycle 'the usual suspects'; especially children and young people from disadvantaged neighbourhoods
- More girls and young women have been drawn into the system in the past decade and, until recently, into custody.
- Although lower than two years ago, the number of children and young people in custody is significantly greater than 20 years ago when crime levels were close to their peak.
- Just under 40 per cent of young offenders are reconvicted within a year; this increases to 75 per cent for those completing custodial sentences.

The Commission finds the reconviction rate for custody unacceptable. We are also dismayed that despite evidence that youth crime has been falling for 16 years, politicians have taken part in a punitive 'arms race' over sanctions. This has proved expensive for taxpayers, but done little to improve public confidence.

Some initiatives have had a positive impact and deserve to be extended. But the time has come for a fresh start. Pressures on public spending make it imperative to eliminate waste and invest in services that deliver value for money. The Commission urges the new Government at Westminster and the devolved Assembly Government in Cardiff to take youth crime issues out of the political firing line and instigate a process of reform.

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<sup>c</sup> This sets out the Commission's main conclusions and recommendations. Chapter 7, which is not summarised here, sets out options and suggestions for delivering the reform proposals.

## Guiding principles

Shifting policies have led to conflict and confusion in England and Wales about underlying principles. This contrasts with the relative stability in Scotland, which introduced its Children's Hearing system more than 40 years ago to handle care and criminal proceedings, following recommendations from an inquiry chaired by Lord Kilbrandon. Working from first principles, it concluded that involvement in offending reflected a failure of normal upbringing, and that welfare should be paramount in the response. While reaching different conclusions, the Commission believes the Kilbrandon principles contributed to the durability of the reforms.

We have also noted the 'Declaration of Principle' that accompanied successful legislation to reform youth justice in Canada eight years ago, and recommend a similar approach be taken when implementing our own proposals.

### Key principles

The Commission has concluded that the public can be offered better protection against youth crime and antisocial behaviour by:

- tackling antisocial behaviour, crime and reoffending through the underlying circumstances and needs in children and young people's lives (a principle of *prevention*)
- ensuring that children and young people responsible for antisocial behaviour and crime face meaningful consequences that hold them accountable for the harm caused to victims and the wider community (a principle of *restoration*)
- seeking to retain children and young people who offend within mainstream society or to reconnect them in ways that enable them to lead law-abiding lives (a principle of *integration*).

### Prevention

We see no major contradiction between a need to protect the public and a requirement that interventions must contribute to children and young people's long-term welfare. The response when children and young people offend or behave antisocially should be guided by an understanding of welfare needs, including health, education, and emotional development.

### Restoration

An emphasis on welfare does not mean involvement in antisocial and criminal acts should be free of consequences. Children and young people should be:

- held accountable for whatever harm their antisocial behaviour or offending causes to others
- encouraged to accept responsibility for their actions
- expected to offer redress or reparation to victims and to the community.

Victims should, at the same time, be given opportunities to be acknowledged and redressed for the harm and loss they have experienced.

### Integration

The consequences that children and young people face must be proportionate to their offence and any history of similar behaviour. Efforts to prevent reoffending and reintegrate young offenders into mainstream society will be more likely to succeed if imprisonment of children and young people – whether on remand or conviction – is only used as a last resort. These principles are supported by international conventions, guidelines and rules that the United Kingdom has ratified.

### Additional principles

Since responses to youth crime can be ineffective or even accelerate offending, we propose a further principle that prevention measures and sanctions should do no harm (for example, being likely to make their offending worse, or impede rehabilitation).

A commitment to use constructive measures requires evidence to show they 'work', so we propose a principle that services should be based, wherever possible, on sound knowledge concerning their effectiveness. We also consider that institutions and services responding to youth crime and antisocial behaviour should be separate from adult institutions, wherever possible, and that staff in the youth justice system should be purpose-trained specialists.



## Prevention

The Commission wants to see prevention and early intervention given a higher profile in tackling crime and antisocial behaviour. Research has shown how action to raise the quality of upbringing, education and support that children receive can significantly influence later outcomes, including less involvement in crime.

An understanding of 'risk' and 'protective' factors in children and young people's lives provides a valuable basis for understanding how preventive services produce positive results and for planning effective strategies. Risk factors that appear to be implicated in the causes of antisocial behaviour and offending relate to individual children, their families, friends and peers, their education, and the neighbourhoods in which they live. Protective factors reduce children's exposure to multiple risk factors when they are growing up in otherwise challenging circumstances.

Although there is more to be learned about causal pathways, there is more than enough knowledge of these factors to justify a 'public health' approach to preventing youth crime. An important distinction can, however, be made between children and young people who commit crime and a smaller group of prolific, serious and violent offenders whose behaviour is often seriously antisocial from an early age. Our proposals will help to reduce 'adolescence limited' offending, but we are especially keen to reduce the number of 'life-course persistent' offenders. The estimated cost to public services by the time a conduct-disordered ten-year old reaches the age of 27, if untreated, is around £85,900, compared with £9,100 for children who do not display these early problems.

Research has highlighted a range of preventive services capable of reducing persistent childhood behaviour problems, including:

- parenting support
- pre-school education
- school tutoring
- behaviour and 'life skills' strategies
- family therapy
- treatment foster care
- constructive leisure opportunities
- mentoring programmes.

In the United States, savings ratios of between 2 to 1 and 17 to 1 have been calculated for a range of preventive programmes that have also been introduced in England and Wales.

We want to see a structured programme of investment in the most promising preventive approaches including 'universal' services working with all the children or families in an area and 'targeted' prevention. To avoid stigma, the emphasis when offering targeted services should be on the immediate needs of children, not the risks of future offending. Children with severe behavioural problems must be properly assessed to identify potentially complex welfare problems.

Investment in prevention must be accompanied by systematic arrangements for sharing information about effective practice and delivery. A central resource is needed to disseminate authoritative guidance about the most promising preventive approaches, and to commission and co-ordinate new research.

## Restoration

Our guiding principles combined with research evidence have drawn us to the concept and practice of restorative justice. This is a problem-solving approach "...whereby parties with a stake in a specific offender resolve collectively how to deal with the aftermath of the offence and its implications for the future." Offenders agree to discuss the consequences of their behaviour, its effect on the victim(s), and consider how to make amends. Victims are able to make the offender aware of the harm they have experienced and to discuss what remedies would be acceptable.

Restorative justice has been applied:

- In schools, pupil referral units, care homes and secure settings to resolve bullying and other disciplinary incidents.
- By police forces and Youth Offending Teams in reprimand and warning procedures. A Youth Restorative Disposal (YRD) has been piloted as a quick, effective and inexpensive way of dealing with minor offences.
- By community-based Youth Offender Panels (YOPs) that take a restorative approach to dealing with young offenders given Referral Orders after pleading guilty when taken to court for the first time.

## Northern Ireland

The Commission has been impressed by the restorative youth conferencing system introduced in Northern Ireland five years ago. This highly professional service is delivering positive outcomes for the community, for victims and for children and young people who offend. It provides a strong basis for reforms in England and Wales.

Youth Conferences are organised by purpose-trained co-ordinators and include the child or young person who has offended, a parent (or other 'appropriate adult') and a police officer trained for youth conferencing. Victims are encouraged to take part.

Youth conferencing can be used for all types of offence except murder, manslaughter, offences under the Terrorism Act and others that carry a mandatory sentence. Conferences agree a restorative plan for the young person that may include a written apology, reparation to the victim, being placed under supervision, undertaking unpaid community work and participation in treatment programmes.

Youth Conferences constitute the main disposal for Youth Court cases in Northern Ireland. Victims are present at two thirds of all conferences and the vast majority express satisfaction with the process. Reconviction rates are lower than for conventional court sentences; and more so when victims attend the conference. Use of youth custody has declined since youth conferencing was introduced.

## England and Wales

The Commission proposes a major expansion of restorative justice in England and Wales. We recommend that youth conferencing becomes the centrepiece of responses to all but the most serious offences committed by children and young people.

Conferences led by a professional coordinator would be attended by the young offender, their parents or carers, police and a lead practitioner (see below) from the YOT. Victims, or their representatives, would take part when willing. Children and young people would speak for themselves, but have the right to be advised and accompanied by a lawyer.

Action plans, lasting up to year, could include:

- an apology
- a payment to the victim
- unpaid community work

- a range of community-based sanctions, including YOT supervision, intensive supervision and curfews using electronic tagging
- treatment for mental health problems or alcohol and drug dependency
- parenting support.

The conference could additionally refer young offenders to children's services to consider action on safeguarding or welfare issues.

As in Northern Ireland, restorative Youth Conferences would take place in two different contexts:

- 'Discretionary' youth conferencing, as an alternative to prosecution
- 'Court-ordered' youth conferencing, where a child or young person has been convicted of an offence.

## Discretionary youth conferencing

The Crown Prosecution Service (CPS) would refer a child or young person to a discretionary restorative justice conference provided:

- the accused child or young person admitted the offence and agreed to a conference
- the alleged offence was not classified as 'most serious' (for example, murder, manslaughter and other grave crimes) and did not carry a mandatory sentence.
- the child or young person was not a prolific offender for whom prosecution offered a more appropriate way to proceed.

Discretionary youth conference plans would not result in a criminal record that needed to be disclosed to an employer.

## Prosecutions and court-ordered youth conferencing

Prosecution would take place if:

- an accused child or young person denied committing an offence or declined to take part in a discretionary youth conference
- the offence was classed as 'most serious' or otherwise unsuitable for a restorative process

Children and young people who denied an alleged offence would have their case tried in court.

Children and young people who admitted an offence or were convicted after a trial would normally be sentenced by referral to a Youth Conference. The chief exceptions would be 'most serious' offences. The court would impose its own sentence on offenders who declined to be referred to youth conferencing. The court would be able to approve or amend a youth conferencing plan; or else reject it and substitute a sentence of its own.

A court conviction would continue to result in a criminal record irrespective of whether a youth conference was ordered.

## *The Youth Court*

The Commission's guiding principle that institutions and services responding to offending by children and young people should, so far as possible, be kept separate from adult justice processes carries important implications for the existing court system. We propose that lawyers, lay magistrates, District Judges and Crown Court Judges who work in the Youth Court should be trained to a high level of specialist expertise. Their training would include a wide range of relevant topics including child and adolescent development, and effective rehabilitation practices as well as the principles and practice of restorative justice.

The Crown Court is unsuitable as a venue for justice involving children and young people. We propose that prosecutions of children and young people under 18 should be heard in the Youth Court, including serious offences.

As young offenders are increasingly referred by the CPS to discretionary youth conferencing, the court's business will focus on more serious cases than at present. We recommend that a Crown Court judge with specialist youth justice training should preside when the Youth Court hears cases involving 'most serious' offences.

We believe that every effort should be made to make proceedings accessible and easy for children and young people to understand. We want to see greater continuity in the way that youth courts process cases so that they are heard from remand to sentence by the same judge or panel of magistrates. We also recommend that the Youth Court should be able to transfer cases to the Family Proceedings Court where they give rise to serious safeguarding and welfare issues.

## *Pre-court procedures*

The Commission has been encouraged by the use of 'street level' restorative justice by police forces in England and Wales. We know of no reason why the Youth Restorative Disposal should not be implemented across all police force areas. We recommend that it constitute a 'sanction detection' in official crime statistics.

We also welcome the increasing use of 'triage' procedures at police stations when children and young people facing charges are assessed by a YOT worker to help decide if prosecution is appropriate. We propose that where triage results in a youth justice intervention, the child or young person should be allocated a lead practitioner – normally from the YOT. She or he would help them to comply with any requirements placed on them and make connections with relevant health and welfare agencies.

## *Restorative approaches to antisocial behaviour*

Antisocial behaviour is not exclusively, or even mostly, caused by children and young people. The Commission has, nevertheless, visited neighbourhoods where children and young people have contributed to nuisance behaviour, including intimidating, drunken behaviour, vandalism and harassment.

There may be no alternative to the use of Anti-Social Behaviour Orders (ASBOs) in extreme cases of sustained intimidation, but we recommend they be used as a last resort for people under 18. Warning letters and voluntary Antisocial Behaviour Contracts (ABCs) are by far the most common interventions now used and lend themselves to a restorative process. Introduction of a youth conferencing system would justify greater use of conventional criminal proceedings to tackle antisocial behaviour. If ASBOs are still sought against young people, we recommend that the 'naming and shaming' presumption, which may contravene international rules for young people, should be removed.

## Integration

### *Community sentences*

Restorative youth conferencing would reduce the need for conventional court proceedings, but it would not remove it. Community-based sentencing options available to the Youth Court were reformed as recently as November 2009 when a Youth Rehabilitation Order (YRO) was introduced providing a menu of 18 requirements in one 'wraparound' order.

The Commission has concerns that the use of risk assessment in connection with the new order might lead to disproportionate intervention in the lives of some children and young people. YROs are, nevertheless, a step in the right direction and can be used in different combinations for repeat offenders, instead of moving 'up tariff' towards custody.

There is, however, more to be learned about the types of community-based sanction and intervention that are most likely to prevent reoffending. This is another practice area where an authoritative, central source of evidence concerning the most cost-effective approaches is needed.

### *Custody*

The average annual costs of custody range from around £69,600 in Young Offender Institutions to more than £193,600 in secure children's homes. Yet the outcomes in terms of a 75 per cent re-conviction rate within a year of sentence completion are dismal.

There are some children and young people whose violent behaviour poses such a danger to others or themselves that secure, residential accommodation is the only safe option. It may occasionally offer a viable way of engaging the most prolific young offenders in treatment and education. The Commission, nonetheless, welcomes a recent decline of almost a third in the number of under-18s being detained to below 2,200 at any one time, and proposes a target of at least halving it again. Experience in Canada suggests that use of youth custody can be substantially reduced without adding to crime levels. Young offenders' likelihood of being sent to custody in England and Wales remains a 'postcode lottery'; but there are areas where concerted local action has led to lower use of imprisonment.

Wider use of restorative justice will exert downward pressure on the use of custody. But we also recommend the introduction of a statutory threshold to define the circumstances in which custody can be used.

And we propose an end to the shortest custodial sentences, which serve little constructive purpose. We recommend that the minimum period in custody as part of a Detention and Training Order is raised to six months. This should happen in combination with a statutory threshold to reduce the use of custody overall.

### *Remands*

The Commission is dismayed by the extent to which custody is used for children and young people awaiting trial. Although the number of children and young people in custody has fallen, the proportion on remand has risen to around one in four. Around a quarter of those held in custody are subsequently acquitted. The current level of remands in custody is unacceptable, unjust and unnecessarily damaging to the children and young people concerned.

We propose steps to reduce the use of secure remands to a minimum by providing more bail supervision and 'accommodation plus' schemes – such as Foyers with 24-hour care and supervision – that can cater for children and young people who cannot be remanded to their own homes. Intensive fostering schemes are another option.

### *Custodial institutions*

Young Offender Institutions (YOIs) house 87 per cent of children and young people in custody. The remainder, including all 10 to 14-year olds, are held in Secure Training Centres (STCs) and Local Authority Secure Children's Homes (LASCHs). There are no indications that the reconviction rates for any of these institutions are other than disappointing.

A lack of solid evidence comparing the outcomes achieved by different regimes has complicated our attempts to understand how custody should be organised in future. Despite meeting committed staff and seeing examples of good practice, the Commission shares the concerns of Ofsted and H.M Prisons Inspectorate about the way education and training provision varies between institutions. Help given to children and young people to prepare for their release is inconsistent and often inadequate. Problems finding suitable accommodation routinely harm their chances of holding down places in education or training.

Lessons must be learned about the humanity and quality of different regimes and their potential to affect better outcomes for young offenders. New ideas and approaches will also be needed if custody is better to help troublesome, disturbed and deprived young people to turn round their lives.

One concept meriting further investigation is Young Offenders' Academies; education, training and health facilities that would provide secure and supported non-secure accommodation while also working with young offenders living in the community. Strategically placed in major cities, these arrangements could provide a more 'local' solution for many young offenders than the existing secure estate.

Unsuitable YOI accommodation should be phased out. We view lower staffing ratios and relatively poor regimes as evidence of a false economy that will become stark once the population in custody is reduced to children and young people whose problems are especially severe. Secure accommodation should be provided in small, purpose-designed units with regimes modelled on best practice.

The high proportion of vulnerable, emotionally and behaviourally disturbed children and young people in custody underlines the need for staff with specialised skills and knowledge. Those who work in secure settings should be trained to a high minimum standard, including an understanding of child development.

We also recommend that Section 34 of the Offender Management Act 2007 is used to place young offenders with mental health and drug and alcohol problems in alternative 'youth detention' facilities, that include residential psychiatric care facilities and dependency treatment centres.

## Resettlement

Our proposal for a lead YOT practitioner to work with young offenders will help bring greater co-ordination and continuity to the process of rehabilitation and resettlement. Planning for resettlement should start within days of a child or young person being placed in custody.

We want a reformed system to do more to connect young people with their families or mentoring support. We also endorse calls for a statutory education plan to be completed for every young offender. This would accompany them through the youth justice system to achieve greater continuity in their education and treatment.

YOTs and resettlement staff in custodial institutions encounter routine difficulties when seeking suitable accommodation for young offenders, especially those aged over 16. One feature of Young Offender Academies, is that they would enable children and young people to transfer from secure to supervised hostels on the same campus and then to suitable accommodation in the community.

We further recommend that young offenders leaving custody should receive continuing support from children's services, in a similar way to young people leaving care. A better range of supervised accommodation needs to be made available for young offenders on their release, including 'halfway houses', other supervised accommodation and through intensive fostering. Co-operation between local authorities is required to ensure that relocation is an option when young people need to be protected from gangs and other influences that would draw them back into a criminal lifestyle.

## Criminal records

The current system for making employers aware of criminal records makes it too difficult for young people to obtain stable work opportunities. Recommendations from a 2002 Home Office review of the Rehabilitation of Offenders Act 1974 should be implemented, giving young people who have committed minor offences a 'clean sheet' at, or just after, their 18<sup>th</sup> birthday. A longer 'buffer' period of up to two years would apply to those that have served custodial sentences. An exemption would apply to sensitive employment areas where 'enhanced' criminal record disclosure is required.

## Girl and young women offenders

Most young people caught up in the youth justice system are male, but the response to girls and young women who offend is in urgent need of reform. There has been an unwelcome rise in the numbers entering the system despite falling overall crime levels. No less worrying, the number of girls and young women in custody grew from fewer than 100 in 1990 to about 450 during 2008.

Young female offenders are especially vulnerable. They are more likely than young men to self-harm or attempt suicide, to suffer from eating disorders, to be harassed by adults, to be victims of crime themselves, to experience family crises, and to be living in poverty.

The Commission is concerned that almost every aspect of the response to youth crime and antisocial behaviour – including research – has been oriented towards boys and young men. We recommend that measures to deal with young female offenders are designed from the outset to meet their particular needs. It would be wrong simplistically to assume that needs are the same across all types of young women offenders.

By placing restorative justice at the heart of the system, we believe we can establish a framework where young female offenders are dealt with more appropriately. But every aspect of the implementation of the new arrangements needs to be planned with young females as well as male offenders in mind.

## Young people from racial and ethnic minorities

Some racial and ethnic communities are disproportionately affected by youth crime and antisocial behaviour. Children and young people from certain black and minority ethnic groups also number disproportionately among those who are stopped and searched by the police, arrested, prosecuted and sentenced to custody.

After taking relevant factors into account, there is some evidence that the youth justice system discriminates against particular ethnic groups. For example, young people from mixed race backgrounds are more likely to be prosecuted than white defendants and less likely to be reprimanded or given a final warning. Black and mixed heritage defendants are more likely to be remanded in custody. Factors that contribute to unfair differential treatment must be recognised and removed.

It is also apparent that the style of policing in high-crime neighbourhoods, including those with significant black and minority ethnic populations, can vary between locations. We acknowledge the part that the National Policing Pledge has played in extending neighbourhood policing and making it more responsive and accountable. Building on this, we support calls for training and management arrangements to ensure the vision of a highly professional force dealing fairly and respectfully with children and young people is consistently applied.

Police in some areas already invite young people with experience of 'Stop and Search' to participate in training sessions. We commend this approach. We also want more attention paid to understanding the routes that children and young people follow into persistent, serious and violent offending, which may differ between racial and ethnic groups.

## Age and maturity

Most people accept that children and young people are less developed than adults in their moral understanding, reasoning capacity and experiences of life. This implies that they should not be held responsible for crime or antisocial behaviour to the same extent.

There is, however, no clearly defined rite of passage from the status of supervised childhood to autonomous and morally responsible adulthood. The age thresholds that apply to youth crime provide no real guide to a particular child or young person's maturity or understanding. We can only conclude that flexibility and discretion need to be applied at every stage to recognise and take account of maturity.

## *Age of criminal responsibility*

The minimum age of criminal responsibility in England and Wales, set at 10, stands out as low by international standards. We have encountered a consensus among many children's charities, churches, youth justice organisations and academic experts that 10-year old children are developmentally too young to be held criminally responsible. Others have argued that the age of criminal responsibility offers an unreliable guide to the way children and young people are actually treated when they break the law. Scotland with a current minimum age of 8 and Belgium with a minimum age of 18 both apply welfare-oriented principles and can refer children to protective and educative measures, including secure care. New Zealand, which has made a major investment in restorative justice, is like England and Wales in setting the minimum age at 10.

The Commission's conclusion is that much-needed reforms to the youth justice system in England and Wales do not depend on raising the minimum age of criminal responsibility.

We do, however, recommend that greater recognition be given to maturity issues where young people are on the cusp of the youth justice and adult systems. Although it is beyond our remit, we hope consideration will be given to procedures for assessing the maturity of young adults so they can be subject to Youth Court procedures where appropriate, including restorative conferencing.

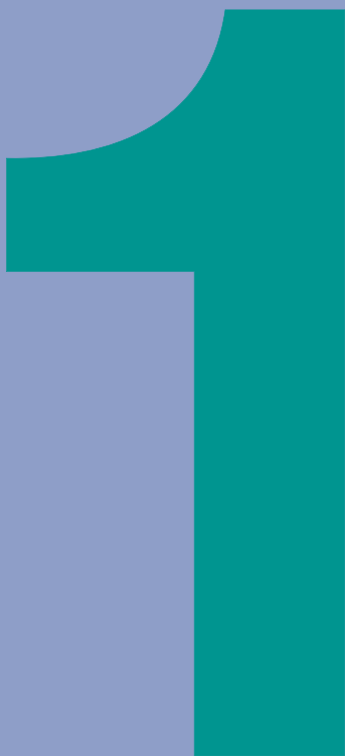
## Youth engagement and youth voice

We have seen for ourselves how initiatives that engage children and young people to obtain their perspectives can contribute to crime prevention while enhancing participants' own learning and personal development. A separately funded youth engagement project has enabled us to seek the views of children and young people with experience of the youth justice system – as victims, witnesses or offenders. This complemented our more conventional consultation with the 'adult' world of policy makers, practitioners, voluntary organisations and academic experts.

The young people directed our attention towards areas in need of reform that we might otherwise have underplayed or neglected. In other areas their perspectives sharpened our focus on particular issues and qualified our views. Meeting children and young people whose lives and aspirations have been repeatedly failed by our existing system has spurred our determination to seek reform.



# The case for a fresh start





**The case for a fresh start**

*“They need to just work with people and that will help stop it...you’re going into prison full of criminals and learning more stuff in there. So you’re going to come out without anything and be back to square one. You’ll just do the same thing; it gets you nowhere.”*

Mike<sup>a</sup>, age 17

## Why reform is needed

This report is prompted by concern about continuing, deep-rooted failings in the responses made to antisocial behaviour and crime committed by children and young people. Across England and Wales – the focus of the Commission’s inquiry – large sums of public money are currently wasted:

- Investment in proven preventive interventions and constructive sanctions has been too low.
- Not enough children and young people who could be turned away from a life of crime at an early age are receiving timely help and support.
- Those that become involved in more persistent and serious offending are too often treated in ways that do little to help them lead law-abiding lives – and may even serve to make their offending worse.

The Commission’s concern over poor results is matched by dismay over the quality of past political debates about youth crime:

- For many years politicians appear to have been caught in a war of words on the basis that public opinion would favour whichever party sounded ‘tougher’.
- The facts were a notable casualty, to the point where three out of four people still believe that crime is going up, despite sound evidence that it has been falling for the past 16 years<sup>1</sup>.
- The consequences of this punitive ‘arms race’ have been expensive for taxpayers; but have not improved public confidence<sup>2</sup>. One survey found only one in nine adults who thought the youth justice system was doing a good job<sup>3</sup>.

More fundamentally, we have seen how shifting priorities and policies under successive governments and Ministers have led to conflicts and confusion about the principles that should underpin society’s response to offending and antisocial behaviour by children and young people.

The time has come for a fresh start.

## The opportunity for reform

From a starting point of underlying principles, the Commission’s task has been to produce a blueprint for effective and sustainable reforms. This opening section of our report sets the scene for those proposals by spelling out our critique of existing responses to youth crime and antisocial behaviour.

Our assessment and analysis will be better understood in the context of two further points:

- Although convinced that the principles, policies and mechanisms for tackling youth crime and antisocial behaviour will benefit from a radical agenda for change, we fully accept that some initiatives introduced by government have had a positive impact that needs to be maintained and extended.
- Falling crime levels, combined with political and economic circumstances, create a pivotal opportunity to institute the change in culture we propose: a continuing decline in the number of children and young people appearing in criminal courts and in custody<sup>4</sup>. In addition, there are pressures on public spending that make it imperative for the new Government to eliminate waste and invest in services that will represent value for money.

<sup>a</sup> Names of young people who took part in our consultation and engagement project have been changed to ensure confidentiality

The fiscal crisis provides an opportunity for politicians to reach an overdue consensus on ending the counter-productive and financially wasteful arms race on youth crime. By embarking now on a reform process, they can achieve more than has been done for many years to protect the wider public from harm and to steer children and young people away from criminal careers towards more fulfilling lives.

## Existing responses

### *Public interest in youth crime*

At all historical periods, misbehaviour by young people has attracted special public attention. One reason is that wrong doing by young people tends to be conspicuous, unlike the offences more discreetly committed by adults. Another is that criminal offending (in contrast to childish misbehaviour) suddenly increases in the teenage years. Depending on the measurements used, criminal involvement is most likely to occur between the ages of 14 and 18, with a lower peak for girls than for boys<sup>5</sup>.

But there are other, more powerful reasons for public concern about crimes committed by children and young people. In some ways we continue to think of children as pure and innocent, and consider that teenagers should be controlled by responsible adults – in theory, if not in practice. These ideas about children and young people are rudely shaken on the very rare occasions when children commit acts of violence that would be extreme and exceptional even for an adult.

More important is the positive recognition that, because they are still developing, children and young people are much more likely than adults to change their behaviour for the better. The public justifiably focus on the response to antisocial behaviour and offending as an opportunity to help young people grow into law-abiding citizens.

Research and official statistics tend to endorse this view, and offer additional insights to those whose interest is in improving the quality of children and young people's lives and preventing crime. *A New Response to Youth Crime*, the book edited by Professor David Smith that accompanies the Commission's report, conducts a detailed examination of accumulated evidence<sup>6</sup>. From this, we identify a number of key findings below that provide an essential backdrop for our recommendations.

## Social trends

### *Extended youth*

- The transition between childhood and adulthood has been transformed since World War II. Puberty and sexual activity all occur earlier on average than in the past, but 'adult' activities such as leaving home, cohabitation, marriage and child-bearing all happen later than before.
- Young people have become a more conspicuous group, spending more time with others their own age and subscribing to distinctive youth cultures. By being identifiable and separate, groups can more easily become a focus of fear and stigmatisation among older generations.
- The 'extension of adolescence' has coincided with advances in scientific knowledge concerning young people's brain development. This has begun to challenge assumptions about the age and developmental boundaries between childhood and adulthood<sup>7</sup>.

### *Poverty, inequality and disadvantage*

- Poverty and social disadvantage are indirectly implicated in children and young people's offending through the stress they exert on families<sup>8</sup>. They are also strongly related to whether young people become entangled in the criminal justice system<sup>9</sup>.
- Family poverty increased dramatically in the 1980s and, despite stabilising in the past ten years, remains at a relatively high level<sup>10</sup>. Income inequality also increased and is more generally associated with higher levels of offending in society<sup>11</sup>.

### *Changing families*

- Higher levels of family breakdown, parental separation and single parenthood are often blamed for antisocial behaviour and offending by children and young people. More specifically, it has long been apparent that conflict between parents (whether inside a relationship or after it has broken down) is an active ingredient driving an increased risk of poor outcomes.
- Warm, affectionate and positive parenting – whether provided by one parent or two – helps to reduce the risk that children will behave antisocially or criminally<sup>12</sup>.

*"I think it's got to do with the parents a lot. And I know my parents care for me a lot and want the best of me but some parents just ain't there, kick them out and don't give a shit about them. So they just think well if my mum and dad don't give a shit about me then why should I give a shit about anyone else?"*

Paige, age 18

## Trends in youth crime and offending

Measuring crime is a difficult and complex task and the main statistics available capture different aspects of the overall picture. The most widely quoted figures show the number of offences recorded by police – only a minority of offences, given that most crimes are never reported – and the proportion of people who tell the British Crime Survey that they have been the victims of offences in the past year. Changes in recording practices, particularly those that have expanded the definition of 'violent crime' to include less serious assaults and harassment, have further complicated the picture<sup>13</sup>.

More difficulties arise when it comes to attributing a share of overall offending to children and young people. Victims, when they are surveyed, will not normally know the age of the offender. The age of those responsible for police-recorded crime only becomes known in cases where they are caught and convicted. Confidential surveys where children and young people 'self-report' their offending give a fuller picture of youth offending in some respects, but the available results are by no means a perfect guide to trends in youth offending.

- There is little doubt from the available evidence that there was a substantial increase in overall crime from 1950 that lasted until the mid 1990s. This trend went into reverse from 1994 and total crime levels have fallen since then.
- Violent crime as a whole has fallen at a slower rate than burglary and other crimes against property; but it is probable that even serious violent crimes have declined in the past decade.

- Trends differ according to the offence, and the levels of particular crimes vary according to location. For example, police data suggest a decline in the total number of knife crimes since the mid-1990s, but an increase in fatal stabbings (which represent a small proportion of all knife crimes) that peaked in 2007/8, but declined in 2008/9<sup>14</sup>.
- A large minority of the overall population have found themselves in trouble with the law at least once in their lives<sup>15</sup> and it is quite common for young people to commit minor offences like fare-dodging, low-value shoplifting, minor assaults, graffiti writing and other criminal damage.
- A Home Office survey in 2006 found that 22 per cent of 10 to 25-year olds reported breaking the law in the previous year. Ten per cent said they had committed a more serious offence such as robbery, burglary or assault causing injury and 6 per cent reported committing more than six offences<sup>16</sup>.
- Surveys of a younger age group – 11 to 16-year olds – suggest that boys (27 per cent) are more likely to have committed an offence in the previous year than girls (18 per cent)<sup>17</sup>.
- Available self-report surveys offer some help in identifying patterns of youth offending over time. They show little change over 20 years in the proportion of young people who commit offences. Given the strong evidence of an overall drop in crime it seems probable that today's young offenders tend to commit fewer and less serious offences.<sup>18</sup>

The Commission's conclusion from the information available is that crime committed by young people aged under 18 is likely to have declined in a similar way to the overall trend for England and Wales.

## Falling crime in Nottingham

It is not so many years since Nottingham was nicknamed 'Shottingham', thanks to rising crime and a reputation for violence involving firearms linked to the supply of illegal drugs. Today, the city is more celebrated for its record in bringing crime rates down.

Between 2004 and 2008 recorded crime dropped almost a quarter (or 16,500 offences). Recorded burglaries fell by 40 per cent, theft by 33 per cent and criminal damage by 18 per cent. Meanwhile, between 2003 and 2008 the number of youth offences dealt with by the courts fell by 40 per cent (or 1,620 offences). The number of first-time entrants to the youth justice system dropped by half between 2005/6 and 2008/9 – double the national rate of decline.

Nottingham YOT has seen a 47 per cent reduction in its caseload from 550 cases in 2006 to 291 in 2009. The city's Youth Courts, which formerly sat for five days a week are now only needed on three and a half days.

Research carried out by the Institute for Criminal Policy Research in 2008 confirmed that the reduction in youth crime in Nottingham was 'real' and running ahead of national trends. The city saw improvements at the same time in other outcomes for young people, including educational attainment and the number of young people not in education, employment or training (NEET). However, the researchers found that a proliferation of preventive initiatives and innovations in partnership working made it difficult to attribute the improvements to any one factor.

The view of local professionals is that improved partnership working between agencies, highly visible law enforcement on organised crime, drugs, guns and gangs and a focus on early intervention and preventive services have all played a part. 'Hot spot' action to tackle the problems in particular neighbourhoods has proved popular. Family Intervention Projects (FIPs) and Intensive Intervention Projects (IIPs) have been introduced to work with the most challenging young people and families.

## Related issues

*"You're in a gang, the gang becomes your family and there's a range of things you've got to do in a gang to move up, which could involve robbing; it could involve drugs, selling drugs for someone; it could involve as well: 'If you're going to be in our gang, you're going to prove it. You've got to go and stab her or stab him.'"*

Chryssa, age 25.

## Gangs

Gun and knife crime involving young people as victims and perpetrators are understandable public concerns, not least because of high-profile murder cases. Some of these have been linked to organised gang membership and rivalries in a number of major cities.

- Definitions of 'gang' vary. The Government's 2006 Offending Crime and Justice Study found that a tenth of 10 to 19 year olds defined themselves as gang members.
- Although self-reported 'gang' membership did not necessarily involve criminal activity, these young people were three times more likely (13 per cent) than non-members to report carrying a knife in the past year, or to say they had committed offences (34 per cent) such as illegal drug taking, 'threatening or frightening people' and 'using force or violence on people'.
- Involvement in drug dealing was reported by 12 per cent of gang members, compared with 2 per cent of non-members<sup>19</sup>.

The Commission has been unable to find reliable evidence on whether gang membership has increased in recent years or whether criminal activity involving gangs is becoming more serious or violent. Nevertheless, the violence associated with gang activity makes youth crime prevention especially challenging in the worst affected neighbourhoods.



## Antisocial behaviour

The Commission incorporated 'antisocial behaviour' into its title and terms of reference, knowing that it means different things to different people. In recent years it has been used to describe a broad range of persistent behaviour that causes nuisance, alarm, harassment or distress to neighbourhoods and communities as well as individuals. More conventionally, psychiatrists and psychologists have sought to measure childhood behaviour that is abnormally oppositional, defiant, dishonest or aggressive. Terms like 'conduct disorder' and 'adult antisocial personality disorder' describe their formal diagnoses of behaviour that is persistently and pervasively antisocial<sup>20</sup>.

The measurements used by mental health professionals offer a useful guide to whether chronic behaviour problems among children and young people have become more common.

- The Nuffield Foundation's programme on *Changing Adolescence* concluded that in the period between 1974 and 1999 there was a marked rise in conduct problems among young people of both sexes.
- Non-aggressive behaviour such as lying, stealing and disobedience appeared to be more strongly implicated in this increase than fighting and other violence.
- Increases observed in emotional as well as behavioural problems seem to have stabilised in the past ten years and show signs of starting to decline<sup>21</sup>.
- Trends in antisocial behaviour, when characterised as chronic, low-level aggravation, are almost impossible to quantify because of varying definitions that range from non-criminal nuisance to relatively serious offences like prostitution and drug dealing. The most consistent evidence available relies on people's perceptions of behaviour problems in their neighbourhoods.
- The British Crime Survey points to a growing number of reported problems between 1992 and 2000, with large increases in the proportion of adults acknowledging local problems with 'teenagers hanging around' and 'people using or dealing drugs'.
- Surveys since then have revealed little change. Since 2004 'teenagers hanging around' has elicited rather more concern than any other aspect listed in the survey, continuing to be cited as a problem by around 30 per cent of adults questioned<sup>22</sup>.

- Negative perceptions of antisocial behaviour are most often found among low-income families and in the most disadvantaged neighbourhoods. They are also highest among 16 to 24-year olds and those who have been victims or witnesses of crime in the past year<sup>23</sup>.
- We have found no overall indication that antisocial behaviour, whether it involves children, young people or adults, is any more common than a decade ago. We also note that teenagers 'hanging around' is not automatically offensive or criminal in itself, although it can make people fearful.

## Alcohol

Although not a simple matter of cause and effect, the connections between excessive consumption of alcohol and aggression, antisocial behaviour and violent crime are overwhelming; as are those between various illegal drugs and offending<sup>24</sup>. Clearly, the great majority of children and young people who drink alcohol do not become serious offenders. Yet alcohol is a potent drug and its widespread use under the legal age of 18 has serious implications for communities as well as young people's physical and mental health<sup>25</sup>.

- A study of imprisoned 16 to 20-year olds found that 70 per cent of young men sentenced to custody and 51 per cent of young women had been drinking hazardously in the preceding year – a substantially higher proportion than for their age group generally<sup>26</sup>.
- England and Wales has the highest proportion of teenage girls in Europe that drink alcohol at least once a week, and one of the highest proportions of teenage boys doing so.
- 'Binge' drinking is common: 55 per cent of British 15 and 16 year old girls told a Europe-wide survey that they had consumed five or more alcoholic drinks on one occasion in the previous month<sup>27</sup>.
- While there has been welcome evidence of decline during the past ten years in the number of 11 to 15-year olds that drink regularly, the quantities of alcohol being consumed by those that do drink appear to have increased<sup>28</sup>.

The Commission has no doubt that the extent of frequent and excessive drinking by young people under 18 poses a continuing challenge for communities and for services whose aim is prevent crime and antisocial behaviour and to promote child health and welfare.

## Illegal drugs

Although young people's use of illegal drugs has declined in recent years, use among young offenders remains common.

- A government survey discovered that more than half of all 16 to 20-year olds in custody, both male and female, had been drug dependent in the preceding year – mostly on cannabis. This was a much higher proportion than for the general population<sup>29</sup>.
- Urine tests at 16 sites in England and Wales found that 71 per cent of 17 to 24-year olds who had been arrested tested positively for at least one illegal drug, including 32 per cent that had used heroin or cocaine.
- Although one in five 15-year olds report using cannabis in the past year, illegal drug use among young people has been on a downward trend for some years. Cocaine is an exception where the very low levels of use among 11 to 15-year olds have not declined<sup>30</sup>.

Since young people tend to start using illegal drugs at a later age than they start offending, there is reason to expect that early intervention with children to prevent crime will make a positive contribution to preventing drug misuse too. However, most young people who use illegal drugs do not have serious criminal careers<sup>31</sup>.

## Children and young people as victims

The statistics we have reviewed provide an important reminder that in high-crime neighbourhoods children and young people are as often the victims of crime and antisocial behaviour as adults – if not more so. The evidence also indicates an important overlap, whereby children and young people who are victims in one situation are often perpetrators in another.

- Young men aged 16 to 24 are more likely to be the victims of crime than any older age group. One in eight taking part in the 2008/9 British Crime Survey said they had been the victim of a crime involving violence<sup>32</sup>.
- A survey in England and Wales found that 12 to 15-year olds who committed crime were much more likely than others to have been the victim of offences, especially assault, thefts from the person and harassment<sup>33</sup>.
- Research in Edinburgh found that offending was seven times higher among 15-year olds that had been victims of specified types of crime than among those who had never been victims of those crimes<sup>34</sup>.

One immediate conclusion to be drawn from this is that efforts to 'protect the public' from youth crime and antisocial behaviour should be as much about protecting children and young people themselves as protecting older age groups. Where neighbourhoods experience high levels of crime, violence and antisocial behaviour, one question that always needs to be asked is: 'What can we do to make local children and young people feel safer?'

An important point that young people themselves raised during the Commission's consultations is whether the youth justice system could acknowledge more explicitly those circumstances where 'perpetrators' feel they are also partly victims – especially in incidents involving personal violence where the 'victim' may have acted violently themselves<sup>35</sup>.

## Public opinion

As previously noted, the public's perception of crime trends has strikingly failed to match the evidence. In 2008/9, as many as 75 per cent of those interviewed for the large-scale British Crime Survey thought that crime had risen 'a little' or 'a lot' in the previous two years. Yet personal experiences of victimisation,

reported by the same interviewees, revealed a continuing downward trend<sup>36</sup>. It is interesting, therefore, that only half as many people believed that crime was rising in their own locality. We have also noted how levels of personal concern expressed about mugging, burglary and car crime peaked in the mid-1990s and have since declined steadily<sup>37</sup>.

Many people in England and Wales express a strong belief, against the evidence, that youth crime is rising. In doing so, they tend to over-estimate the amount of serious offending and re-offending committed by young people.

The degree of trust expressed in youth justice institutions and processes is also noticeably low. But so, too, is the extent of people's knowledge about the youth justice system<sup>38</sup>. For instance, one survey found that only one in four of those questioned in England and Wales had heard of the local Youth Offending Teams (YOTs) that hold frontline responsibility for working with young people accused or convicted of criminal offences<sup>39</sup>.

Surveys also suggest that public attitudes towards dealing with crime in Britain have hardened in the past 40 years and are among the most punitive to be found in any European country. 'Lenient sentencing' has been widely perceived as a cause of both youth and adult crime and appears to be a significant reason for the lack of confidence expressed in the youth justice system<sup>40</sup>.

Public views on youth crime are, however, more complex than they appear from headline survey findings. When participants in surveys have been given in-depth information about real cases and asked to select an appropriate sentence, their choice of sanction has turned out to be either similar or more lenient than the sentence that was actually imposed by a court<sup>41</sup>. Although abstract questions about offenders and offending may elicit an immediate, punitive response, people tend to be more thoughtful and fair-minded when exposed to the facts and background of particular cases<sup>42</sup>.

More generally there are indications that the public express less punitive views towards young offenders than adults. Attitude surveys show agreement that youth and immaturity can be mitigating factors, especially if the offence did not involve weapons or violence. 'Deliberative' surveys, where the participants take a view on specific cases after learning about the background circumstances reveal an approach to sentencing that is even more temperate. For example, knowing that a young person is remorseful and has taken reparative steps to make good some of the harm their behaviour has caused to a victim can have a powerful influence in reducing demands for custodial sentences<sup>43</sup>.

## The political 'arms race' and its costs

Given people's retributive 'top of the head' response to youth crime when polled, it would be surprising if politicians did not, to some extent, take advantage of the public mood. Even so, the policy 'arms race' that has developed in the past 20 years has been exceptionally fierce<sup>44</sup>. Commentators have drawn particular attention to the synergy between media-fuelled alarm over the most prolific and violent cases involving young offenders and the rhetoric from political leaders of both left and right.

A more detailed description of the recent history of youth crime policy and its consequences can be found in the companion book to this report<sup>45</sup>. It seems to us that one notable consequence of the political response – including a substantial increase in the use of imprisonment – was to shift the treatment of children and young people who offend closer to that of adults. Given all we know about falling crime levels and the trends that are delaying young people's transition to adulthood, this appears perverse, and even irresponsible.

Another result of the arms race has been to drive up the level of government spending. While crime trends in other 'western' democracies have been similar to those in the UK, the Prime Minister's Strategy Unit reported to an internal government review in 2006 that Britain was spending proportionately more on 'law and order' services than any other state within the Organisation for Economic Co-operation and Development (OECD)<sup>46</sup>. Spending on youth crime through the Youth Justice Board grew by 45 per cent in real terms between 2000 and 2006/7; much of it to pay for keeping an increasing number of children and young people in custody<sup>47</sup>.

The overall costs of the publicly-funded response to youth crime and antisocial behaviour are hard to determine from published data. This is a serious weakness of the existing system that consistently impedes external efforts to hold it to account. Government expenditure in England and Wales on public order and safety in 2008/9 reached £24.6 billion. But the Commission has reluctantly had to conclude that no wholly reliable method exists, given the limitations of existing data, for calculating the comparable amount that is spent responding to youth crime. Our best estimate (from a calculation explained below) is that the relevant annual costs of policing, legal aid, prosecution, courts, local Youth Offending Teams, custody and the central costs of running the Youth Justice Board come to just over £4 billion<sup>b</sup>.

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<sup>b</sup> Among these headings, we only have official cost data for the last three: YOTs, youth custody and costs of the YJB.

## The public costs of youth crime

Approximately £25 billion<sup>c</sup> a year is spent in England and Wales on public order and safety, comprising £14.2 billion on police services, £6.2 billion on courts, £4.0 billion on prisons and £0.2 billion on other public order and safety<sup>48</sup>. This amounts to 5.5 per cent of overall expenditure on public services and 2.4 per cent of GDP<sup>d</sup>.

Spending in this area has doubled in the last twenty years in real terms<sup>e</sup>, and is high compared with other countries. In France, for example, expenditure on public order and safety constitutes 1.4 per cent of GDP, while in Germany this figure is 1.6 per cent<sup>49</sup>.

Publicly available data does not separately identify activity that relates to young offenders. However, the Commission think a reasonable estimate could be just above £4 billion a year.

We arrived at this figure by combining the known costs of youth offending services (£414 million) and custody (£298 million), with rough estimates for how much 'dealing with young offenders' costs the police, the courts, legal aid and the Crown Prosecution Service. Given that 21 per cent of all people arrested for a notifiable offence and proceeded against are under 18, we think it reasonable to attribute a fifth of these agencies' total time and resources to youth crime. This leads us to the estimates shown in the table below:

	Estimate (millions)	How estimated
Police	£2,839	20% of total public spending on police in England and Wales (£14.197 billion <sup>50</sup> )
Legal aid	£227	20% of total public spending on the Criminal Defence Service (£1.136 billion <sup>51</sup> )
Crown Prosecution Service	£127	20% of total public spending on the Crown Prosecution Service (£632.7 million)
Courts	£127	20% of total public spending on the criminal courts (£634.2 million)
Youth offending services	£366	Funding for YOTs, Intensive Supervision and Surveillance Programme (ISSP), prevention and other programme expenditure <sup>52</sup>
Youth Justice Board central costs	£48	Education and training for practitioners, central administration and ICT costs <sup>53</sup>
Youth custody	£298	Comprising YOIs (£205 million) secure children's homes (£42 million) and secure training centres (£50 million) <sup>54</sup>
Total	£4,032	

Spending on youth justice channelled through the Youth Justice Board (YJB) and Youth Offending Teams (YOTs) has increased considerably in the last decade (by 45 per cent in real terms between 2000-1 and 2006-7<sup>55</sup>). A large proportion of this expenditure is on custody, where spending has increased each year since 2000-1 broadly in line with the size of the youth custodial population.

The balance of expenditure on the youth justice system appears heavily skewed towards custody. In 2008/9, more was spent on keeping up to 3,000 young offenders in custody at any one time (£298 million) than on the total budget for YOTs (£276 million), which dealt with 127,197 offenders and 244,583 offences<sup>53</sup>.

<sup>c</sup> This excludes fire protection services and police services relating to immigration and citizenship

<sup>d</sup> These two proportions relate to the UK as a whole not to England and Wales.

<sup>e</sup> From £16.2 billion in 1989-9 to £33.1 billion in 2008-9

## Existing outcomes

### *Some successes...*

One trend that has gained momentum during the 18 months of our inquiry has been a reduction in the number of children and young people being prosecuted for criminal offences and in the number being sent to custody.

- The number of children and young people aged 10 to 17 receiving their first reprimand, warning or court conviction fell from 94,400 in 2007-8 to 74,000 in 2009. The number of 'on the spot' fines issued to young people by police (Penalty Notices for Disorder) also declined<sup>57</sup>.
- The number of children and young people held in custody at any one time fell to just under 2,200 in April 2010 from figures above 3,000 reached in 2007 and 2008<sup>58</sup>.

These trends, if they can be maintained and lead to significant decommissioning of custodial institutions, will serve materially to cut youth justice costs. They come as a belated, but entirely worthwhile, adjustment to the earlier pattern where large numbers of young people continued to be processed through the youth justice system each year even though overall crime was falling.

Also, there has been some success since 1998 in halving the time that children and young people accused of criminal offences have to wait between being arrested and sentenced for an offence. The waiting time now stands at just over 70 days; although there is doubt whether even this reduced period has really succeeded in creating a stronger connection in young people's minds between offences and their consequences<sup>59</sup>. Young people with experience of the system who were consulted by the Commission expressed a strong view that the time spent waiting for a Youth Court hearing was still too long, and made it difficult for them to 'move on'<sup>60</sup>.

### *...but many missed opportunities*

As an overall judgement, the Commission considers that the returns in terms of crime prevention, reducing reoffending and helping children to deal with the issues that lead them into criminal behaviour remain unimpressive.

- The youth justice system tends to target and recycle 'the usual suspects' again and again, especially young people from deprived neighbourhoods and certain black and minority ethnic groups. Research in Scotland found that among young people with similar patterns of offending

the odds of being warned or charged were five times higher for those with previous adversarial contact with the police<sup>61</sup>. We have no reason to believe the circumstances in England and Wales are much different, where children and young people from black and mixed heritage backgrounds are disproportionately stopped and searched, arrested, prosecuted and sentenced to custody<sup>62</sup>.

- The system has become particularly harsh in its treatment of girls who commit crime. Between 2002/3 and 2007/8 the number of offences committed by young women that resulted in a reprimand, final warning or successful prosecution increased from 42,000 to almost 58,000<sup>63</sup> despite no evidence from self-report surveys to suggest that rates of offending by girls and young women had worsened. The average age at which girls are convicted has fallen and increasing numbers have been sentenced to custody<sup>63</sup>.
- Young defendants often say they do not understand legal proceedings or the language used by lawyers. They report feeling intimidated and isolated in court and may not receive a proper explanation of what has happened until after a hearing is over<sup>64</sup>. They also feel frustration that the courts seem rarely to understand the context in which their offences were committed, including the pressures facing them. These perspectives were supported by our own consultations with young people who had been through the system<sup>65</sup> and by some, though not all, of our observations in Youth Courts.
- Although lower than two years ago, the number of children and young people sentenced to custody is still significantly higher than it was 20 years ago when overall crime levels were close to their peak. In 1992, there were 4,000 sentences to custody for 10-17 year olds, compared with 5,498 in 2008. Custodial sentences given to young offenders also tend to be longer than they were in the early 1990s; for example, the average term of incarceration in 1993 was 6.9 months, compared with 11.4 months in 2008<sup>66</sup>.
- The rates of youth custody in England and Wales are higher than in other European countries. An assessment made two years ago found rates of incarceration that were almost three times those in France, twice those in Germany and four times those in Italy<sup>67</sup>. Yet we have seen no sign of an explosion in youth offending in those countries whose (downward) crime trends look similar<sup>68</sup>.
- The costs and quality of the three different types of custodial setting – Young Offender Institutions (YOIs), Secure Training Centres (STCs) and Local Authority Secure Care Homes

<sup>1</sup> In 2008/9 the figure declined to 51,000, according to Ministry of Justice figures

(LASCHs) – vary widely between institutions. Many YOIs especially are housed in unsuitable buildings and locations and provide inadequate opportunities for children and young people to learn, change and develop new skills. Staff ratios are less favourable in YOIs and arrangements for resettling young offenders after their release appear to be patchy.

- Reconviction rates for young offenders, especially those for children and young people that are imprisoned, are too high. The proportion of young offenders that are reconvicted within a year is just under 40 per cent (and has showed some improvement), but the equivalent reconviction rate for those leaving custody is as high as 75 per cent<sup>69</sup>.

Given that custody costs the taxpayer between £69,000 and approaching £200,000 a year for each budgeted place in an institution<sup>9</sup>, we find the reconviction rates especially shocking. Rather than commit their heaviest spending to effective prevention and early intervention programmes, policy makers delay making their major investment until children and young people are already well advanced down the road towards chronic, serious or violent offending. Worse still, when the money is finally spent, it is poured into a response – custody – where good outcomes are an exception to the rule. Society's investment needs to be made earlier in responses that have a greater chance of achieving positive, preventive results that represent better value for money.

## The search for a better way

Through studying this and other failings in the existing system, the Commission has become convinced that better ways exist to tackle youth crime and antisocial behaviour. For reasons we have already cited we consider that the time is right for the new Government at Westminster and the devolved government in Cardiff to instigate a process of reform.

Rather than continue with the destructive and ineffective arms race that has driven policy for much of the past 20 years we want to see youth crime issues taken out of the political firing line. The question that we set about answering in the following pages is whether scope exists for more effective responses that will:

- better protect the public by reducing offending and antisocial behaviour;
- make it more likely that those children and young people who do commit crime develop into socially responsible and law abiding adults.

The Commission is not interested in quick fixes and short-term solutions. We know that it will take time to reform the current response youth crime and antisocial behaviour to bring change to its surrounding politics and culture and to build public confidence. Our objective is to describe a blueprint that is sustainable as well as cogent and coherent. To that end, we first examine the guiding principles that we view as fundamental to our approach.

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<sup>9</sup> Calculated from the Youth Justice Board's Annual Report and Accounts and Corporate Business Plan for 2008/9



## The case for a fresh start

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# Principles

# 2



The Commission has been clear from the outset that, in order to be coherent and effective, reform of the current response to youth crime and antisocial behaviour must be grounded in a set of firm and coherent principles. In order to avoid unnecessary confusion, we also believe that the underpinning principles need to be prioritised. An example of the difficulties that can arise when this does not happen can be found in the purposes of sentencing specified for the youth justice system two years ago in an amendment to the Criminal Justice Act 2003<sup>1</sup>. This states that the courts must have regard to the principal aim of the youth justice system, which is 'to prevent offending by children and young people', and also to the welfare of the offender. At the same time, the purposes of sentencing for young offenders are specified as 'punishment', 'reform and rehabilitation', 'protection of the public' and 'reparation to persons affected by offences'. This is not only confusing, but also a potential source of conflict (for example, between the principles of 'welfare' and 'punishment').

### *Historic context*

The current lack of clarity concerning principles is a consequence of the fluctuating responses to youth crime in England and Wales in the past 50 years. At the end of the 1960s, there was a moment when the approach taken seemed poised to move decisively towards making children's welfare paramount in juvenile justice<sup>2</sup>. A change of government prevented this<sup>3</sup>. In the 1980s a principle of maximising 'diversion' – keeping children and young people out of court so far as possible – was widely applied<sup>4</sup>. Yet by the early 1990s concern over the extent of repeat cautioning and the levels of discretion being given to police officers was reflected in legislation seeking greater 'proportionality' in sentencing based on the seriousness of the offence and persistence of offending<sup>5</sup>. Public horror at the abduction on Merseyside of two-year old James Bulger and the conviction of two ten-year old boys for his murder then sent the policy pendulum swinging towards the principles of punishment and a belief in the deterrent effect of sentencing, including custody for persistent, serious or violent young offenders<sup>6</sup>.

The Labour Government that took power in 1997 famously characterised its approach as "tough on crime, tough on the causes of crime"<sup>7</sup>. In support of a more managerial style, the youth justice system was given its statutory 'principal aim' of preventing offending by children and young people<sup>8</sup>. But while the new approach was accompanied by a welcome interest in preventing children from becoming involved in crime in the first place, it did little to resolve the uncertainties created by shifting principles. Nor did it move away significantly from the 'populist punitivism'<sup>9</sup> described in the previous section.

### *Scotland and the Kilbrandon principles*

Shifting policies and approaches in England and Wales contrast with the relative stability and consistency with which Scotland has been able to pursue its own, distinctive approach to children and young people 'in trouble' for more than 40 years. Although subject to change at the margins, the Children's Hearing system – handling both care and criminal proceedings involving children and young people aged 8 to 16 – remains substantially the institution proposed in 1964 by a working party chaired by Lord Kilbrandon<sup>10</sup>. Working from first principles, the Kilbrandon Committee argued that decisions about the measures needed to help children develop into 'mature and useful' members of society should fall to the Children's Hearing: a tribunal made up of three lay people from the community<sup>a</sup>. Children and young people's involvement in offending was viewed as a failure of normal upbringing processes, with the result that welfare was declared to be the primary consideration when determining their treatment. A further principle identified a practical need for special education and training measures, closely working with parents<sup>11</sup>.

We have been impressed by the validity of the Kilbrandon Committee's approach and the durability of its proposals. Our own inquiry, concerned with the situation in England and Wales, does not reach the same conclusions. But it has reinforced our conviction that proposals for reform, in order to prove sustainable, must be similarly grounded in principle.

### *Youth justice legislation in Canada*

We have, in addition, noted how the Canadian Government eight years ago approached the task of reforming youth justice with legislation to reduce the use of courts and custody that began with a clearly-stated 'Declaration of Principle'<sup>12</sup>. We strongly recommend that the implementation of our own proposals for reform should be accompanied by a similar approach.

## **Objectives**

Before considering what principles should guide a 21<sup>st</sup> century response to youth crime and antisocial behaviour, the Commission sought to answer some basic questions about what that response is intended to achieve. Generally stated, we see these objectives (or 'outcomes') as:

- Improving the quality of life in communities by reducing current and future levels of youth crime and antisocial behaviour
- Reducing the harm that criminal and antisocial behaviour committed by children and young people causes to individual victims

<sup>a</sup> The Kilbrandon Committee (1964) concluded that the Children's Hearing should consider the appropriate treatment measures for all children for whom normal upbringing processes had 'failed or fallen short' including those in need of care and protection, beyond parental control or persistently truanting, as well those breaking the criminal law.

- Reducing the harm caused to children and young people's own welfare and development by involvement in crime and antisocial behaviour.

The response, in order to do this, should seek to:

- Reduce the extent, frequency and seriousness of offending and antisocial behaviour by children and young people
- Recognise and meet the emotional, educational and health needs of the child or young person that are contributing to their offending and antisocial behaviour
- Engage and gain the confidence of the local community, including those who are victims of crime.

## Primary principles

**The Commission has concluded that the public can be offered better protection against youth crime and antisocial behaviour by:**

- **tackling antisocial behaviour, crime and reoffending through the underlying circumstances and needs in children and young people's lives (a principle of 'prevention')**
- **ensuring that children and young people responsible for antisocial behaviour and crime face meaningful consequences that hold them accountable for the harm caused to victims and the wider community (a principle of 'restoration').**
- **seeking to retain children and young people who behave antisocially and offend within mainstream society or reconnecting them in ways that enable them to lead law-abiding lives (a principle of 'integration').**

### Prevention

Like many who responded to our consultation paper, we see no essential contradiction between an insistence that responses to youth crime and antisocial behaviour must protect the public and a requirement that interventions with children and young people must contribute to their long-term welfare. Helping those who offend to grow into competent, law-abiding adults will self-evidently contribute to wider public protection.

**We think the choice of interventions or sanctions when children and young people offend or behave antisocially should be guided by an understanding of welfare needs, including health, education, and**

**emotional development.** This principle has been aptly expressed by the Welsh Assembly Government as that of treating young people who commit crime as "children first and offenders second"<sup>13</sup>.

### Restoration

The emphasis we place on securing children and young people's welfare and positive participation in society does not mean involvement in antisocial and criminal acts should ever be a 'consequence-free' zone. On the contrary, we believe that deepening awareness and understanding of the ways that unacceptable behaviour affects other people is an important part of children and young people's education and learning. So, too, is an understanding of the different ways in which amends can be made for the distress and damage they have caused.

**We believe that the interests of public protection, prevention and of children's long-term welfare and integration can all be better served if children and young people are:**

- **held accountable for any harm that their antisocial behaviour or offending causes to others**
- **encouraged to accept responsibility for their actions**
- **expected to offer some redress or reparation to victims and to the community.**

A further principle, implicit in this approach, is that **the victims of crime and antisocial behaviour – whether individuals, businesses, institutions or the wider community – should be given opportunities for the harm and loss they have experienced to be acknowledged and redressed.**

We wish to see children and young people who break the law treated justly and fairly, but we believe that the objectives of raising public confidence in responses to youth crime and engaging the community in prevention are more likely to be realised when justice is seen to be done by the victims of antisocial behaviour and offending.



## Integration

Efforts to prevent reoffending and reintegrate young offenders into mainstream society so they can develop into law-abiding adults will be more likely to succeed if the youth justice system's response is guided by two further principles:

- **The consequences or sanctions that children and young people face in response to offending or antisocial behaviour must be proportionate to the offence or infringement and any history of previous, similar behaviour**
- **Imprisonment of children and young people – whether on remand or conviction – should only be used as a last resort.**

We view the principle of 'proportionality' as a matter of intuitive fairness. There can be no justification for responses or sanctions that are disproportionate to the offence that a child or young person has committed or their history of offending. This is especially the case where a heavy-handed response risks drawing young offenders deeper into the youth justice system and makes it less likely they can be prevented from reoffending and reintegrated into society.

The overwhelming evidence concerning the ineffectiveness of custody in preventing reoffending<sup>14</sup> has served to reinforce our view that it should only be used as a genuine last resort.

These principles are specifically referred to in the UN Convention on the Rights of the Child and supporting international guidelines and rules that the United Kingdom has endorsed (see below). They reflect the international evidence that, for a great many children and young people whose criminal acts are minor, sporadic and short-lived, even prosecution constitutes an unnecessary and disproportionate response<sup>15</sup>.

## International conventions and rules

In considering the principles that should underpin reform in England and Wales, the Commission paid close attention to existing international conventions and rules relating to children and young people's rights and their treatment under criminal law. In addition to the universal provisions enshrined in the Human Rights Act 1998, these include the United Nations Convention on the Rights of the Child<sup>16</sup>, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ('the Beijing Rules')<sup>17</sup>, the United Nations Guidelines for the Prevention of Juvenile Delinquency ('the Riyadh Guidelines')<sup>18</sup> and the European Rules for Juvenile Offenders Subject to Sanctions or Measures<sup>19</sup>.

The UN Convention on the Rights of the Child (UNCRC) applies to children under the age of 18 and has, like the other UN Rules, been ratified by the United Kingdom. It encompasses such fundamental rights as the presumption of innocence until proved guilty when children and young people are accused of offences and their entitlement to legal advice and a fair, impartial hearing<sup>20</sup>. It also promotes principles that accord with the broad objectives we have identified in our own discussions for responding to youth crime and antisocial behaviour. For example:

- The best interests of children should be a primary consideration in all actions concerning them in public or private social welfare institutions and in courts of law (Article 3)
- Children should have the right to express their views freely on matters that affect them and given due weight in accord with their age and maturity (Article 12)
- Children should have the opportunity to be heard in any judicial or administrative proceedings affecting them, either directly or through a representative (Article 12)
- The arrest, detention or imprisonment of children should be a measure of last resort and for the shortest possible time (Article 37)
- Children should have their privacy fully respected at all stages of criminal proceedings (Article 40)

- Whenever appropriate and desirable, measures should be taken to deal with children accused of breaking the criminal law without resorting to judicial proceedings, provided human rights and legal safeguards are fully respected (Article 40)
- Community alternatives to institutional care should be available so children can be dealt with in a manner appropriate to their wellbeing and proportionate to their circumstances and the offence (Article 40).

The UN Guidelines and Rules, like the more recent Council of Europe Rules, apply the UNCRC principles in specific areas. For example, governments should:

- Encourage efforts across society to ensure 'the harmonious development of adolescents' from early childhood (Riyadh Guidelines)
- Foster children and young people's development and education to be 'as free from crime as possible' in the period of life when they are most susceptible to deviant behaviour (Beijing Rules)
- Pay attention to measures that mobilise families, volunteers, community groups and schools to promote children and young people's well-being in order to reduce the need for legal intervention and to deal 'effectively, fairly and humanely' with those in conflict with the law (Beijing Rules)
- Facilitate discretionary alternatives to prosecution by making community programmes available, including temporary supervision and guidance, restitution and compensation of victims (Beijing Rules)
- Give priority, where sanctions or measures are imposed, to community-based responses that have an educational impact and adopt a restorative approach (European Rules)
- Make special efforts to avoid the pre-trial detention of children and young people in custody (European Rules).

We refer to these rules and guidelines elsewhere in this report – not least where we consider that a reformed response to youth crime and antisocial behaviour in England and Wales should accord more closely with international obligations and recommendations than is currently the case.

## Additional principles

Given the strength of evidence that responses to youth crime can be ineffective or – worse – serve to accelerate offending and propel children and young people towards long-term criminal careers<sup>21</sup>, we consider that an additional, reinforcing principle is needed. **We consider that measures taken to prevent antisocial behaviour or in response to children and young people's criminal behaviour should do no harm (for example, by being likely to make their offending worse or impede rehabilitation).**

In accord with this principle our report refers to 'consequences' and 'sanctions', including measures with which children and young people convicted of criminal offences can be compelled to comply. We consider that these terms provide a better way to describe the appropriate responses than 'punishment' – which can imply a sanction whose only purpose is to inflict deliberate hurt. We are clear that the infliction of punishment for its own sake on children and young people would contradict restorative principles as well as the principle of doing no harm.

A commitment to use constructive services and sanctions that 'work' requires convincing evidence to show they can achieve the desired outcomes. **We propose a further principle that services and interventions in response to youth crime and antisocial behaviour should be based, wherever possible, on sound evidence concerning their effectiveness.**

### *A separate youth justice system*

While some the principles we have described could apply equally to adults, we have argued in Chapter 1 that society has a special and justified interest in preventing crime among children and young people. As respondents to our consultation reminded us, children as they grow up gain in independent agency and personal responsibility, but during childhood and adolescence their intellectual and emotional competence is still very much in development. More generally, we agree wholeheartedly with the view expressed to us that:

*“The treatment of children – perhaps particularly those in conflict with the law – is an important signifier of a society’s civility, maturity and humanity”<sup>22</sup>.*

What follows, in our view, is a need for the distinction between youth justice and the adult criminal justice system in England and Wales to be strengthened. **We propose – as a matter of principle – that the institutions and services responding to children and young people should be kept separate from their adult institutions and services wherever possible and that those who work in the youth justice system should be purpose-trained specialists.**

As set out in this section, the Commission envisages a response to youth crime and antisocial behaviour that is built on three supporting pillars of principle:

- prevention
- restoration
- integration

The three chapters that follow explain our proposals for reform under each of these headings.

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- <sup>2</sup> Children and Young Persons Act 1969
- <sup>3</sup> Hendrick, H. (2006) 'Histories of Youth Crime and Justice'. In B. Goldson & J. Muncie (eds.) *Youth Crime and Justice*. London: Sage.
- <sup>4</sup> Graham, J. (2010) 'Responding to youth crime.' In D.J. Smith (ed.) *A New Response to Youth Crime*. Cullompton, Devon: Willan.
- <sup>5</sup> Criminal Justice Act, 1993
- <sup>6</sup> Graham, J. (2010) as above.
- <sup>7</sup> Labour Party Manifesto, 1997.
- <sup>8</sup> Home Office (1998) *Youth justice: The Statutory principal aim of preventing offending by children and young people. Framework document*. London: Home Office.  
[www.homeoffice.gov.uk/documents/youth-justice-aim-prevent-offend2835.pdf](http://www.homeoffice.gov.uk/documents/youth-justice-aim-prevent-offend2835.pdf). Accessed March 2010.
- <sup>9</sup> Bottoms, A. (1995) 'The Philosophy and Politics of Punishment and Sentencing', in C. Clarkson and R. Morgan (eds) *The Politics of Sentencing Reform*. Oxford: Oxford University Press.
- <sup>10</sup> Kilbrandon Committee (1964) *Report on Children and Young Persons, Scotland*. Edinburgh: HMSO.
- <sup>11</sup> Kilbrandon Committee (1964) as above.
- <sup>12</sup> Bala, N., Carrington, P.J. & Roberts, J.V. (2010) 'Youth Justice Reform in Canada: Reducing use of courts and custody without increasing youth crime.' In D.J. Smith (ed.) *A New Response to Youth Crime*. Cullompton, Devon: Willan.
- <sup>13</sup> Welsh Assembly Government / Youth Justice Board (2004) *All Wales Youth Offending Strategy*.  
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- <sup>14</sup> Smith, D.J. (2010) 'The need for a fresh start'. In D.J. Smith (ed.) *A New Response to Youth Crime*. Cullompton, Devon: Willan.
- <sup>15</sup> McAra, L. (2010) 'Models of Youth Justice' In D.J. Smith (ed.) *A New Response to Youth Crime*. Cullompton, Devon: Willan.
- <sup>16</sup> United Nations Convention on the Rights of the Child(1989).  
[www2.ohchr.org/english/law/crc.htm](http://www2.ohchr.org/english/law/crc.htm). Accessed March 2010.
- <sup>17</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice ('the Beijing Rules') (1989).  
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- <sup>18</sup> United Nations Guidelines for the Prevention of Juvenile Delinquency ('the Riyadh Guidelines') (1990).  
[www2.ohchr.org/english/law/juvenile.htm](http://www2.ohchr.org/english/law/juvenile.htm). Accessed March 2010.
- <sup>19</sup> Council of Europe (2008) *Recommendation CM/Rec (2008) 11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures*.  
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- <sup>20</sup> UNCRC (1989) Article 40.
- <sup>21</sup> Sherman, L. W., Gottfredson, D. C., MacKenzie, D., Eck, J., Reuter, P. & Bushway, S. (1997) *Preventing crime: What works, what doesn't, what's promising: A report to the U.S. Congress*. University of Maryland.  
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**Prevention**

**3**





*“...what I’ve noticed with kids is they’re so used to being acknowledged for negative behaviour that that’s what they thrive on.”*

Janna, age 24.

## Prevention and early intervention

One of the most encouraging developments in crime prevention during the past 30 years has been a growing fund of knowledge concerning support services and interventions that can help achieve reductions in children and young people’s criminal activities. There can never be a ‘magic bullet’ that simply stops them from becoming part of the small minority of chronically antisocial adults who commit a wholly disproportionate volume of total crime<sup>a</sup>. Yet it has become increasingly apparent that action to raise the quality of upbringing, education and support that children and their parents receive, from pregnancy onwards, can exert a positive influence over later outcomes, including less criminal behaviour<sup>1</sup>.

The Commission welcomes a number of significant initiatives that have been launched in England and Wales that make practical use of this knowledge. They range from the Sure Start early years programme and anti-bullying strategies in schools, to parenting and intensive family support interventions. We also welcome the expanding fund of evidence assembled in the United States and elsewhere that the most promising approaches can not only reduce children and young people’s offending, but also save public money.

While policy makers have taken notice of these messages about the power of prevention, we do not think they have applied them either consistently or with sufficient determination. Adequate mechanisms do not yet exist for spreading best preventive 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. The Commission wants to see prevention and early intervention given a higher profile in tackling crime and antisocial behaviour, including systematic strategies for identifying and implementing best practice.

## A public health approach

Increasing knowledge about preventive services has been accompanied by better understanding of the factors in children and young people’s lives that make it more or less likely that they will behave antisocially and commit crime. Although there is reason to be wary of over-simplistic interpretations or applications of the evidence<sup>2</sup>, we believe an understanding of

‘risk’ and ‘protective’ (or ‘promotive’) factors provides a valuable basis for planning and implementing prevention strategies.

### Risk and protective factors

- Risk factors distinguish statistically between children who become involved in crime and antisocial behaviour and those who do not, in ways that are more than a matter of chance. Among the hundreds of factors suggested by large-scale longitudinal surveys tracking children’s lives, it is necessary to distinguish between those that appear to make a direct or indirect contribution to the development of behaviour problems and those that are merely symptoms<sup>3</sup>.
- Risk factors that appear to be implicated in the causes of antisocial behaviour and offending relate to individual children, their families, friends and peers, their education, and the neighbourhoods in which they live<sup>4</sup>.
- Examples include: poor parental supervision, neglect and abuse; harsh, inconsistent discipline; parental conflict; individual and parental attitudes that condone law-breaking; low family income; educational under-achievement from an early age; bullying and aggressive behaviour in primary school; and living in a neighbourhood lacking an organised sense of community and with high population turnover<sup>5</sup>.
- Protective factors and processes have been observed to reduce children’s exposure to what are likely to be multiple risk factors when they are growing up in difficult and challenging circumstances<sup>6</sup>.
- Examples include: warm, affectionate relationships between children and their parents; children benefiting from the interest of family, teachers and friends who set positive expectations and clear standards for their behaviour; and, having the necessary opportunities to develop skills to feel involved and valued at home and in the community<sup>7</sup>.

<sup>a</sup> Estimates suggest that between 5 and 6 per cent of offenders account for 50 to 60 per cent of crimes (Coid, J.W. (2003) ‘Formulating strategies for the primary prevention of adult antisocial behaviour: ‘high risk’ or ‘population’ strategies?’ In D.P. Farrington & J.W. Coid (eds.) Early Prevention of Adult Antisocial Behavior. Cambridge: Cambridge University Press.)

## *Risks and causes*

Risk factors are correlations not necessarily causes. It would be wrong to imply that any of them, individually, represents the reason why children get into trouble with the law. As experts have reminded us, there are no succinct or easy conclusions to be reached on the causes of antisocial behaviour and offending<sup>8</sup>. Simple correlations between levels of antisocial behaviour and demographic trends concerning families are also apt to mislead. For example, assumptions that childhood behaviour problems reflect a decline in the quality of parenting in recent decades are not supported by the evidence<sup>9</sup>.

There is much still to learn about how risk and protective factors interact, and their relative importance in causation at different times in children's lives, and in different circumstances. Yet progress has been made in unravelling pathways, including indications of the part that serious family discord and children's experiences of abuse can play in causal chains. It has also become more evident that young people's involvement in delinquent gangs amplifies any individual propensity for violence and that poverty – although weak as an immediate cause of crime and antisocial behaviour – exerts an important indirect influence by making positive family functioning more difficult.

We have, additionally, noted that while there is almost certainly no 'gene for crime', there are inherited, genetic influences that operate indirectly, not least where offending is linked to childhood attention deficit / hyperactivity disorders (ADHD) or, more rarely, to psychopathy characterised by callous, unemotional and deceitful behaviour and a lack of remorse<sup>10</sup>.

These insights have helped to confirm our view that there is more than sufficient knowledge to apply a 'public health' approach to preventing youth crime and antisocial behaviour. This argues that, though our understanding of precise causes may be incomplete, it makes sense to apply what we know about the risk and protective factors that appear to be most closely implicated. To adopt a familiar analogy with the prevention of coronary disease, population-wide campaigns to reduce known risk factors like smoking, lack of exercise, obesity or a diet that is high in saturated fat will cut the number of heart attacks. A public health campaign against youth crime and antisocial behaviour can similarly succeed by targeting the major risk factors and enhancing protective factors.

## *Desistance versus persistence*

Longitudinal surveys that monitor children's background circumstances from an early age show that a large minority of young people break the law at least once before they are 20, but only a small minority commit serious offences or develop into persistent adult criminals (see Chapter 1). An important distinction can be made between children and young people who commit criminal offences for a relatively short period during adolescence and a much smaller group whose behaviour is often seriously antisocial from an early age and who are much more likely to develop into prolific, serious and violent offenders<sup>11</sup>.

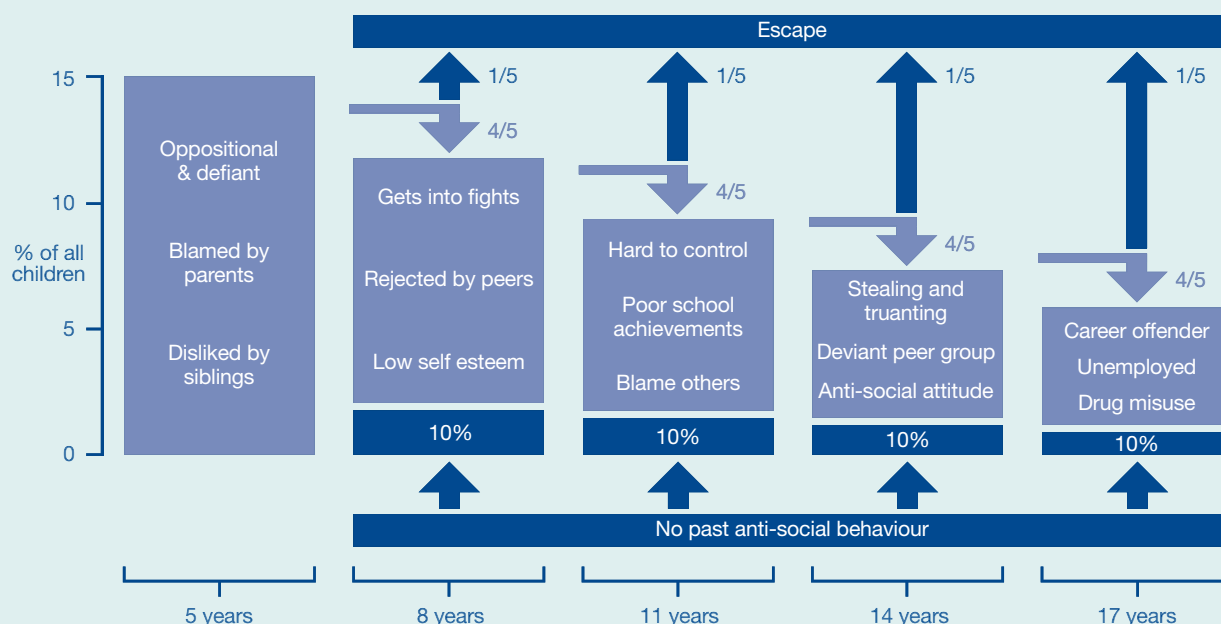
Boys heavily outnumber girls in this latter group of 'life-course persistent' offenders. Some experts have drawn attention to the role of hyperactivity, other temperamental differences and neurological abnormalities, all of which are likely to include a genetic component<sup>12</sup>. Others have highlighted the adverse consequences that are liable to arise when inexperienced and socially stressed parents are caring for temperamentally difficult infants. Children, in these circumstances, may not learn to regulate their own behaviour<sup>13</sup>. They may also learn from an early age that aggressive, antisocial behaviour is the most effective way of gaining their parents' attention<sup>14</sup>.

## *Opportunities for prevention*

As a Commission whose concern is to reduce offending and antisocial behaviour, we do not underestimate the extent of 'adolescence limited' offending, or the amount of nuisance, distress and financial loss that it causes to individuals and society. Our proposals are intended to reduce it. We are also keen to ensure that actions taken by the youth justice system with children and young people who offend are designed to hasten their desistance from crime – and do nothing to impede those prospects.

But we are also keenly interested in the part that early intervention and prevention could play in reducing the number of life-course persistent offenders.

**Figure 1: Continuity of antisocial behaviour from age 5 to 17**



Source: Scott, S. (2002) Unpublished research for the Home Office.

An estimated 15 per cent of five-year olds in Britain exhibit behaviour that is persistently more 'oppositional and defiant' than is usual for their age. By the time they are eight years old, the behaviour of around a fifth will have moved within a 'normal' range, while a smaller group of children who previously did not exhibit antisocial behaviour will do so for the first time. As shown in Figure 1 above, this process continues as children grow into adolescence. By the age of 17, the proportion whose chronically antisocial behaviour matches the criteria for diagnosable conduct disorders has dwindled to around 5 or 6 per cent. This group, nevertheless, consists largely of young people who displayed comparable behaviour problems at an earlier age. Put another way, up to 40 per cent of children with diagnosed conduct disorders will, unless they receive effective treatment, develop into psychosocially disturbed adults, whose behaviour includes persistent involvement in drug misuse, physical violence and crime<sup>15</sup>.

The conclusion we draw is that crucial and underexploited opportunities exist to prevent potentially prolific, serious and violent offending careers by making early help available for children with severe behaviour problems and their families. We are supported in this view by calculations which show the huge costs to public services of dealing with chronically antisocial adolescents and young adults<sup>16</sup>. Calculated at 2009 prices these are in the region of £85,900 by the time a conduct-disordered ten-year old who has not received help reaches the

age of 27, compared with £9,100 for others without childhood behaviour problems.

By way of reinforcement for these compelling economic arguments, the Commission has noted the view of researchers and practitioners that severe behaviour problems become more difficult and expensive to treat as children grow older. It may never be too late to intervene, but we are in no doubt that intervening early is a more cost-effective option<sup>17</sup>.

### Avoiding stigma

One important caveat we would raise concerns stigma. While the continuities between childhood behavioural problems and adolescent conduct disorder make a cogent case for early intervention, most children who are oppositional and defiant around the time they start primary school do not grow into chronically antisocial adults. There are very good reasons why parents struggling to cope with their child's chronic behaviour problems might welcome timely help and advice, but we see no ethical or practical justification for labelling those children as 'potential criminals'.

As with all the preventive approaches that we recommend, we consider that the emphasis should be on tackling problems as they emerge and meeting the immediate needs of children and their families.

There must, however, be proper assessment procedures. Requiring professionals who work with behaviourally disturbed children to use the Common Assessment Framework for children's services and the Framework for the Assessment of Children in Need would help ensure that potentially complex welfare problems are properly recognised by all relevant agencies. We think it important, too, that support services triggered in this way should result in the appointment of a lead practitioner to work with families and co-ordinate their support – a practical approach that we also favour with children and young people drawn into the youth justice system (see Chapter 4).

## Effective services and interventions

Rigorous research studies, notably, in Australia, Britain, Canada, Scandinavia and the United States, have highlighted an expanding range of preventive services capable of reducing persistent childhood behaviour problems and offending. These include:

- parenting support
- pre-school education,
- school tutoring,
- behaviour and 'life skills' strategies
- family therapy
- treatment foster care
- constructive leisure opportunities, and
- mentoring programmes<sup>18</sup>.

The box below gives some international examples of these positively evaluated services that are more fully described in the book that accompanies this report<sup>19</sup>. Although these approaches originated overseas (principally in the US) many have strongly influenced areas of national policy in England and Wales, including the Sure Start early years initiative and anti-bullying policies and tutoring initiatives in schools. The particularly positive results achieved in North and Mid Wales by *The Incredible Years* parenting programme are described opposite.

## Effective preventive services and programmes

### With individual children

- Enriched pre-school education, promoting cognitive skills, school readiness and social and emotional development, especially for children from economically disadvantaged homes. *Key example: The High/Scope Perry Pre-School Programme*<sup>\*20</sup>.
- Child and adolescent skills training, teaching practical skills (sport/arts) and/or cognitive and social skills including communication, assertiveness, problem-solving, anger-management. *Key examples: Participate and Learn Skills*<sup>\*21</sup>; *Life Skills Training*<sup>\*22</sup>.

### With parents and families

- Home visiting during pregnancy and infancy by purpose-trained nurses to support young and vulnerable parents. *Key example: the Family-Nurse Partnership programme*<sup>\*23</sup>.
- Parenting programmes focused on improving children's conduct by encouraging positive parent-child communication and showing parents effective strategies for managing negative, attention-seeking behaviour. *Key examples: The Incredible Years*<sup>\*24</sup> (see below); *Triple P*<sup>\*25</sup>.
- Treatment foster care, providing intensive support for children and young people with serious behaviour problems (including young offenders) placed in short-term foster homes. *Key example: Multi-dimensional Treatment Foster Care*<sup>\*26</sup> (see below).
- Multi-modal family therapies, designed to prevent antisocial behaviour and offending by working with young people and other family members to change perceptions and relationships. Support may also be provided to tackle contributing health, financial and social problems. *Key examples: Functional Family Therapy*<sup>\*27</sup>; *Multisystemic Therapy*<sup>\*28</sup>.

### In schools

- School and discipline management, including shared decision-making and measures to improve the competence of staff and student study skills combined

with improvements to the school environment and overall ethos. *Key examples: Positive Action Through Holistic Education (Project PATHE)*<sup>29</sup>; *The Bullying Prevention Program*<sup>\*30</sup>

- Classroom and instructional management, training teachers in the effective use of rules, routines, instructions and expectation to reward positive behaviour and manage classrooms with minimum disruption to learning. *Key example: The Seattle Social Development Project*<sup>31</sup>.
- Reorganisation of classes for students at high-risk of truancy, exclusion and involvement in crime, using a 'school-within-a-school' approach, an adapted curriculum and teaching methods emphasising student participation. *Key example: Student Training Through Urban Strategies (STATUS)*<sup>32</sup>.
- Cognitive-behavioural approaches, designed to promote self-control and social competence. *Key example: Promoting Alternative Thinking Strategies (PATHS)*<sup>\*33</sup>.

### In communities

- Mentoring programmes, using (screened) adult volunteers to befriend and offer positive guidance to young people 'at risk' or involved in offending. *Key example: Big Brothers and Sisters*<sup>\*34</sup>.
- Residential employment training to improve the employability of young people at risk through vocational training, basic education and health care. *Key example: Job Corps*<sup>35</sup>.
- Community mobilisation using evidence-based approaches, including systematic profiling of risk and protective factors at neighbourhood or local authority level and action planning to apply the most promising preventive approaches. *Key example: Communities that Care*<sup>\*36</sup>.

Source: Hawkins, J.D., Welsh, B.C. & Utting, D. (2010) 'Preventing Youth Crime: Evidence and Opportunities'. In D.J. Smith (ed.) *A New Response to Youth Crime*. Cullompton, Devon: Willan.

\*Programmes marked with an asterisk are, or have been, used in the UK.

## The Incredible Years parenting programme

*The Incredible Years* is one of the most extensively researched early intervention programmes. It demonstrates how helping parents to improve their skills can change their children's behaviour. It provides a suite of programmes for parents, children and teachers that are designed to:

- reduce and treat young children's persistent behaviour problems, including aggression
- improve children's ability to relate to other people
- increase parents' skills and competence
- strengthen family relationships.

Originally developed for groups of parents of 2 to 7-year olds, the programme uses video clips as a tool for discussion and role-play about different ways of handling everyday interactions with children. The emphasis is on promoting skills that will enable parents to reward good behaviour with their attention and praise, and manage negative behaviour by ignoring it or, if necessary, resorting to effective non-violent ways of dealing with it. Topics during a basic 12 to 14 week course of 2<sup>1/2</sup> hour sessions include:

- how to play with your child
- helping your child to learn
- effective praise and encouragement
- motivating your child
- setting limits and rules
- handling misbehaviour (including use of 'time out')
- problem solving.

In North and Mid Wales *The Incredible Years* was tested with children attending the Welsh Sure Start pre-school programme in 11 local areas. Parents were chosen to take part if their 3 or 4-year old child's behaviour was assessed as putting them at risk of developing a diagnosable conduct disorder. They were individually randomised within each area to take part in the programme or placed on a waiting list that created a control group.



Parents were seen three times after an initial visit, six, 12 and 18 months later. The 12-week parenting course was delivered between the first and second visit, and it was found that antisocial and hyperactive behaviour among children whose parents participated in the programme was significantly lower than among the control group children. Observation visits to the home also confirmed that parent-child relations had improved among participating families. After 18 months, the behaviour of more than six out of ten participating children was significantly improved. For just over half, the improvement was on a large-scale<sup>37</sup>.

*The Incredible Years* offers good value for money. The calculated cost for every child whose behaviour improved was £1,344<sup>38</sup>, suggesting the programme could be very effective when set against the long-term costs associated with conduct disorder (see above). However, researchers from Bangor University, Wales, stressed the importance of careful implementation in achieving good results, including training and the fidelity with which staff replicated the programme<sup>39</sup>.

## Effectiveness and costs

One advantage of the methods used to evaluate these services and programmes<sup>b</sup> is that they facilitate assessments of their cost effectiveness. A pioneering and widely-quoted example of this has been the High/Scope Perry Pre-school Programme in the United States. Lifetime outcomes for young children who received a high quality pre-school play and learning curriculum in the 1960s have been compared over 40 years with a matched control group of children from the same disadvantaged African-American community in Michigan. The results, which include better education and employment outcomes, as well as fewer arrests and less imprisonment, are estimated to have produced a remarkable \$17 of benefit, in real terms, for every \$1 originally invested in the programme, three-quarters of which benefited the taxpaying public and a quarter the individual<sup>40</sup>.

The results of cost-effectiveness assessments vary according to precisely which benefits are assessed<sup>41</sup>. However, we have been impressed by the way in which a series of calculations by the Washington State Institute for Public Policy show how effective preventive approaches can benefit taxpayers. For example:

- the *Family-Nurse Partnership* home visiting programme referred to above was estimated to save almost \$3 for every dollar invested
- the benefit per dollar from Multi-dimensional Treatment Foster Care was put at almost \$11 (see below)

- Functional Family Therapy was estimated to save \$8 for every dollar invested<sup>42</sup>
- A calculation by the Washington State Institute as part of the evaluation of the Communities That Care programme, estimated benefits of \$5.30 for every dollar invested, mainly attributed to reduced costs associated with crime<sup>43</sup>.

Cost-benefit analyses like these take us well beyond intuitive assumptions that 'prevention is better than cure'.

## Multidimensional Treatment Foster Care

Multidimensional Treatment Foster Care (MTFC) places children and young people whose behaviour and emotional problems are especially complex with highly trained foster parents. The programme provides intensive, tailored 24-hour support that includes the 'multidimensional' use of behaviour management skills, individual support and social skills training. The placements with foster families last between six months and a year after which children and young people are moved to a permanent placement. The new carers – who may be the child's own family or foster parents – are also given support so improvements in behaviour are maintained.

In the US State of Oregon, where MTFC originated, a programme with young offenders aged 12 to 18 proved more successful in preventing offending and keeping participants out of custody than treatment on other community programmes<sup>44</sup>. A trial involving 12 to 17-year old offenders referred through the juvenile justice system found that those in foster care had significantly fewer criminal referrals than a comparison group who were treated in group homes<sup>45</sup>. Rates for violent offending two years later were especially low<sup>46</sup>.

The MTFC programme in England has been running, with government start-up funding, since 2003 and is the largest outside the United States. It comprises:

- an 'adolescents' programme in eight different localities for 10 to 16-year olds in care with a history of behaviour problems and disrupted placements. One local programme takes placements for young offenders as an alternative to custody.
- a 'prevention' programme for 3 to 6-year olds in five localities.

<sup>b</sup> The evaluations were either: i) trials where the participants were allocated at random to an 'experimental' group taking part in the programme or a comparison 'control' group that received either no intervention or an existing service; or ii) 'quasi-experiments' where those taking part in the programme were compared with another group of similar, non-participants.



- a 'children' programme for 7 to 11-year olds in six localities.

Most of the MTFC participants have histories of neglect, or of physical, emotional or sexual abuse. Eight out of ten have histories of violence towards others and more than half have a history of offending. The incidence of psychiatric problems is 95 per cent – ten times the rate in the general population.

Results from an evaluation comparing outcomes for adolescents being fostered with those for a control group in other care placements are awaited. However, data collected on those who completed the MTFC programme showed that while 51 per cent had criminal convictions when they started, 16 per cent had received a further caution or conviction while being fostered<sup>47</sup>.

The annual costs of the MTFC adolescents programme have been estimated at £68,500 per placement. This is more than double the cost of mainstream foster care, but falls well short of the costs of residential care, which is often used for children with similarly complex needs. These are around £119,000 in an agency-run home and £161,500 in a local authority-run home<sup>48</sup>.

In addition, the Youth Justice Board funds an Intensive Fostering programme based on MTFC as an alternative to custody. The pilot schemes have been operating in Hampshire and Staffordshire since 2005.

## Future investment in prevention

**The Commission has concluded that the evidence in support of prevention and early intervention is very strong. Government, whether central, devolved or local, cannot afford to ignore these opportunities for reducing crime and antisocial behaviour, for achieving better outcomes for children and young people, and for saving money for the taxpayer.**

**We want to see a structured programme of investment in the most promising preventive approaches, and we want to see money currently wasted on interventions and sanctions that are ineffective, or applied too late, being reinvested in cost-effective services.**

It follows from the evidence that services requiring further investment will not necessarily include crime prevention among their immediate objectives. For example, we are powerfully aware of the links between children's experiences of abuse and neglect and increased risks of later offending, including

violent crime<sup>49</sup>. The earlier that children can be made safe and offered effective interventions, the greater the chances of achieving significant improvement in their lives and life-chances<sup>50</sup>. But while it is important to understand the crime prevention implications of child protection interventions, their primary justification is to make children safe and provide them with carefully judged support. It would be inappropriate to brand the wide-ranging support services delivered through Sure Start Children's Centres as a crime prevention programme. But it would be equally unwise to ignore their relevance to long-term crime prevention when reaching funding decisions.

### Targeting issues

Some programmes of proven preventive value have been made available to all children and families in a neighbourhood or population (for example, through children's centres, schools or youth services) while others have been targeted on those with particular problems or needs. On the evidence available, we consider that both 'universal' and 'targeted' prevention services need to be part of the response to youth crime and antisocial behaviour. For example, many schools – as a universal service – have successfully adopted a restorative approach to behaviour management, including anti-bullying measures (see Chapter 4). Similarly, local youth services can play an important part in tackling antisocial behaviour through the provision of a continuum of services; drawing young people at risk into purposeful activities and reaching out through detached youth work to those who are most alienated and excluded.

## Detached youth work: Joe Amos

Detached youth work provides a way of engaging vulnerable and excluded young people that mainstream education and other services do not reach. It takes place on the streets, in parks and in cafés on young people's own territory. The work is concerned with their personal and social development, and is delivered through activities like workshops, sports, drama, referrals and visits to relevant agencies and residential weekends.

Detached youth workers ensure that young people receive necessary information on the issues that are important to them so that they are able to make informed choices. Key topics often include drugs, alcohol, sexual health, bullying, race, education and unemployment.

The detached worker's ability to form a trusting relationship with individual young people is fundamental. Once

a relationship is established, the worker can gather information from the young person and create a tailored programme of support. The youth worker ensures that the young person's voice is heard, is able to challenge negative behaviour, and supports them until a point is reached where they can function independently and negotiate with service agencies on their own behalf.

Joe Amos, a detached youth worker in Manchester says his job is about being an agent of social change and action: *"I have been a detached youth worker for the last 11 years (since I was 14) working in the statutory and voluntary sector. During this time I have worked in some of the most deprived and problematic areas in Manchester, with some of the hardest and most disadvantaged young people."*

*"Having benefited from detached youth work myself and grown up in these areas, I understand the influence and positive changes it can have on the outcome of one's life. My negative views and behaviour were challenged and I engaged with the process voluntarily as I trusted my youth workers. Over time I became a positive role model within the community I lived in. On the project where I work today, three young people have become volunteer youth workers and are engaged in informal and formal training."*

**We also conclude that there are particular benefits to be gained from making parenting and other support services available to families of children whose behaviour is persistently and severely antisocial from an early age. This will require a stronger commitment from local health and children's services to screening and assessment, and to recognising that children who exhibit chronic behaviour problems outside a normal range are 'in need'. We re-emphasise that the immediate need for help and support among those families does not justify the labelling of children as 'potential offenders'.**

## Some neglected areas

Proposals for wider-ranging reforms to education, health or social services are beyond the Commission's remit. We, nevertheless, agree with the Sainsbury Centre for Mental Health and others who took part in our consultation that there is an urgent need for better and more widely accessible services for children and young people with poor mental health, learning difficulties and impeded speech and language development. All these are over-represented in the youth justice system.

### Mental health

A greater commitment to early intervention with children who exhibit serious behaviour problems means that they and their families must have earlier and better access to preventive interventions through Child and Adolescent Mental Health Services (CAMHS). The Sainsbury Centre has estimated that 80 per cent of criminal activity may be attributable to people who had conduct problems as children and that 30 per cent of offending may be specifically linked to conduct disorder<sup>51</sup>. The priority that should be given to directing effective services towards this group is, in our view, self-evident.

## Vulnerable children and young people: Kids Company

London-based Kids Company reaches up to 12,000 vulnerable children and young people with a drop-in 'crisis intervention' centre in Lambeth (Arches II), a post-16 Urban Academy and therapeutic outreach service provided through 33 schools.

Referrals mostly come from the young people themselves or their peers. An analysis of case histories shows common experiences of trauma, neglect and chronic deprivation, and little support from adults in the children's families. The great majority have a history of mental health problems (87 per cent), homelessness (84 per cent), childhood trauma (83 per cent), problems with substance misuse (82 per cent), involvement in crime (81 per cent) and contact with social services (71 per cent).

Half (49 per cent) have either left or been excluded from school before the age of 16, and four out of ten (39 per cent) are young carers. Without a functioning adult in their lives, these young people are not just 'alone' but also 'lost' in the system, with schools, social services and mental health services unable to meet their complex needs.

Kids Company seeks to provide non-stigmatising and flexible services that are centred on the child. The approach is one of 'loving care', grounded in attachment theory. Staff and volunteers attend to the young person's basic physiological needs, and seek to form trusting relationships.

The organisation also acts as an advocate for young people when dealing with statutory services, and works with parents to establish practical support in the child's own home. The aim is to bring enough stability to the young person's life to enable them to re-engage with education and gain basic skills.

A recent assessment of Kids Company found a high level of satisfaction among a sample of young people using their services. Self-reported success rates for goals that young people had set themselves ranged from 69 per cent (for example, gaining employment) to 100 per cent (for example, access to health services and improved nutrition). Of those with a history of not being in education or employment, 77 per cent said they had achieved their goal of returning to one or both.

Among those who previously reported criminal involvement, 79 per cent said that Kids Company had helped them to move away from crime. Arrest rates appeared to have improved<sup>52</sup>, but without a control group it is not possible to ascribe positive results to this project alone.

## *Speech, language and communication disorders*

Communication disorders are another area where better access to early intervention could have a significant impact on offending. At least two out of three young offenders exhibit speech, language and communication skills that are below average for their age – and likely to impede successful participation in rehabilitative education or training programmes<sup>53</sup>. We view the development of preventive speech, language and communication services by NHS Primary Care Trusts, along lines proposed by the Royal College of Speech and Language Therapists, as an important area for further investigation and investment. This includes the provision of community speech and language therapy services by Primary Care Trusts and appointment of therapists as members of Youth Offending Teams<sup>54</sup>.

## *Alcohol and drug misuse*

Given continuing concern about the part that binge drinking by young people plays in antisocial behaviour and offending, we see the need for a more consistent and concerted approach to prevent under-age use of alcohol and harmful as well as illegal drug use. Deterrent pricing for alcohol and confiscation strategies should, as some experts have suggested to us, play a useful part. We also see scope for strengthening Personal Social and Health Education in schools by incorporating elements of the life skills training programmes that have been shown to produce lower levels of involvement in violent crime among schoolchildren, as well as long-term reductions in the prevalence of problem drinking and substance use<sup>55</sup>.

## *Looked-after children*

The Commission is very concerned by the over-representation in the youth justice system of children and young people that are looked-after by local authorities. Notwithstanding their experiences of abuse, neglect, family disruption, interrupted learning, homelessness and social exclusion, most children in care do not get into trouble with the law. Yet looked-after children and young people are still twice as likely as others to be cautioned or convicted of an offence. Around a quarter of young men and almost half of young women in custody have been in public care at some time<sup>56</sup>.

A task force of experts established by the Youth Justice Board in 2006, whose report has never officially been published, found that early abuse and ill-treatment was especially likely to be linked to later offending, and that maltreated children were more likely than others to be involved in serious, violent and sexual offending. Viewed another way round, the more deeply children were involved in the youth justice system, the more likely they were to have been abused as children<sup>57</sup>.

Our impression that the state is not as good a 'corporate parent' as it should be is reinforced by indications that children in residential homes are prone to face criminal charges for challenging behaviour that families would be most unlikely to report to the police. We are pleased that achieving better outcomes for 'children looked-after' (CLA) has become a national and local priority in recent years, with evidence that educational attainment levels may be improving and that levels of truancy, school exclusion, cautions and convictions have declined<sup>58</sup>. Even so, we want children in care to be treated as a priority group for preventive services. This means greater consistency in applying best practice in areas such as placement, foster care, mentoring and support for care leavers<sup>59</sup>.

## Implementation issues

While examples of evaluated prevention programmes that ‘work’ have multiplied in recent decades, calls for their wider use raise important questions about their successful replication and implementation. This is especially so where the promise of particular approaches has been demonstrated overseas, most often the United States.

‘Transferability’ is not inherently problematic, as encouraging evaluations in England and Wales of *The Incredible Years*<sup>60</sup> parenting programme amply demonstrate. But implementation difficulties have thwarted some attempts to import good practice. These include both a failure to adapt programmes to local circumstances and ill-considered attempts to ‘improve’ on their tried and tested original ingredients. A lack of programme fidelity is one of the more common reasons why replications fail, but so are a whole cluster of more mundane administration and funding difficulties<sup>61</sup>.

Implementation problems are not confined to imported initiatives. They are uncomfortably familiar to any voluntary organisation or agency responsible for delivering innovative projects. Respondents to our consultation told us how the attention paid to simple practical issues, like the choice of venue for programmes, timing and whether food and crèche facilities are made available can often prove crucial when persuading children and their families to take part – and keep coming back.

Meanwhile, the plethora of unevaluated projects that have flourished briefly with short-term funding and then disappeared testifies to the way that scarce resources are continually wasted on ‘re-inventing the wheel’. The investment of more resources in prevention must be accompanied by systematic efforts to share existing evidence about effective practice and delivery and to ensure that the knowledge base continues to expand.

## Evidence and best practice

One of the Commission’s guiding principles – that interventions should not make offending worse – is very important in the context of preventive services. We have focused on the types of service that have achieved good, positive outcomes for children and young people, but we are also aware of interventions that research has shown to be ineffective or even positively harmful<sup>62</sup>. The former category includes army-inspired ‘boot camps’; the latter includes ‘scared straight’ prison tour programmes for young offenders that their originators believed would prove a deterrent, but turned out to have the opposite effect<sup>63</sup>.

We have also had to recognise that the outcomes achieved by the vast majority of preventive services in England and Wales are ‘unknown’ because they have never been assessed in ways that could convincingly demonstrate their promise. There is a pressing need to know more, not only about ‘what works’ but also ‘what works for whom’ and ‘what works in what circumstances’. If we are serious about avoiding harm and reducing waste, then investment in high quality research that can identify and specify the best approaches is a necessity, not a luxury.

We note that the Welsh Assembly Government has, in some areas, been more pro-active than Westminster in specifying the use of evidence-based prevention programmes; notably for parenting programmes under its *Flying Start (Dechrau’n Deg)* initiative for children under 3 in deprived communities<sup>64</sup>.

**We propose there should be a central resource for England and Wales responsible for collating and disseminating evidence concerning the most promising approaches for preventing antisocial behaviour, crime and reoffending. It would provide local partnerships, agencies and organisations with an authoritative source of information regarding best practice in planning, commissioning and implementing effective and cost-effective services. It would also commission and co-ordinate new evaluative research.**

We discuss where this resource might be located in Chapter 7.

## Local prevention strategies

In addition, we have observed how advancing knowledge concerning risk and protective factors has created a valuable tool for planning preventive strategies and for assessing their effectiveness across a neighbourhood or local authority. **We recommend that local authorities and their partners make better use of risk and protective factor profiling to understand how the priorities for preventive services can vary between neighbourhoods and to create a more empirical base for decisions about the allocation of resources.**

We now turn our attention from the scope for preventing youth crime and antisocial behaviour to the most appropriate and effective responses when children and young people do break the law.

## Prevention

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**Restoration**

**4**



*“...I think they should make people do, like, more community service, but not have a thing that stays on your criminal record...”*

Faisal, age 19

## Restorative justice

Guided by the principles identified at the start of this report, the Commission wishes to see children and young people held properly and fairly to account for criminal and antisocial acts, in ways that make it more likely they will not behave in the same way in future. We want a fair and proportionate response to youth crime that offers the public better protection than it receives under present arrangements, and we want a system that pays more attention to the harms suffered by victims. We also wish to end the costly use of ineffective and sometimes harmful sanctions, reducing the number of children and young people in custody to an unavoidable minimum.

Our principles, objectives and the evidence we have studied concerning effectiveness have drawn us increasingly towards the concept and practice of restorative justice.

Restorative justice has usefully been defined as “a process whereby parties with a stake in a specific offender resolve collectively how to deal with the aftermath of the offence and its implications for the future.”<sup>1</sup> Offenders who admit their guilt or have been found guilty agree to try to understand the consequences of their behaviour, including its effect on the victim(s), and discuss and decide how they can best make amends. Victims have the opportunity to make the offender aware of the harm they have experienced and to discuss what kind of remedies and reparation would be acceptable to them.

Restorative justice takes a number of different forms and is applied in different contexts that are relevant to the aims of this inquiry. For example:

- Some schools, pupil referral units, residential care homes, secure care homes, Secure Training Centres and Youth Offender Institutions have adopted restorative, problem-solving approaches, including mediation, as a way to resolve bullying and other disciplinary incidents (see panel on East Moor Secure Children's Centre below).
- Police forces and Youth Offending Teams (YOTs) in England and Wales have increasingly made restorative practices a feature of reprimand and warning procedures for young offenders. The Youth Restorative Disposal (YRD) piloted in eight areas has already been widely adopted as a quick, effective and inexpensive way of dealing with minor offences (Norfolk Police's use of restorative justice is described in a later section of this chapter).
- Most young offenders, if pleading guilty on the first occasion they are prosecuted in the Youth Court, are referred to Youth Offender Panels (YOPs) made up of a YOT member of staff and two lay members from the local community. These also take a restorative approach (see panel below).
- A number of restorative practices have been piloted and evaluated with both adult and young offenders in England and Wales with promising outcomes that include lower levels of reoffending and high levels of victim satisfaction<sup>2</sup> (see panel below).

## East Moor Secure Children's Home

East Moor Secure Children's Home near Leeds provides secure accommodation for 36 boys and young men. The home has introduced restorative principles to its overall approach to maintaining order while promoting rehabilitation and reintegration.

Care and education staff receive a one-day training course in 'Restorative Justice Awareness' in the expectation that they will use a restorative approach as the first option for dealing with incidents of poor behaviour. A number of staff have also been trained to facilitate restorative conferences.

Like other establishments in the secure estate, East Moor operates a behaviour management system in which children and young people are encouraged to earn privileges for good behaviour. These privileges can be withdrawn should behaviour deteriorate or a serious incident occur. At East Moor, the first resort is to a restorative intervention when a young person is facing relegation to a lower level of privileges.

A recent evaluation found evidence that the restorative approach had contributed to less need for physical restraints and disciplinary sanctions. A proposal for additional staff training was also made<sup>3</sup>.

## Youth Offender Panels

Young offenders who plead guilty on their first appearance in court are – unless sentenced to immediate custody – given a Referral Order for between three months and a year. This refers them to a Youth Offender Panel made up of two trained volunteers from the community and a member of the local Youth Offending Team (YOT).

The panel follows a restorative process involving the child or young person and their parents or carers in a discussion about the offence and its effect on the victim, their own family and the community. Victims can attend or arrange to have their views made known to the panel.

A contract is agreed that can include a formal apology to the victim, and unpaid community work as well as tailored requirements to attend school regularly or take part in treatment for alcohol or drug problems. If the order is successfully completed under YOT supervision, the

conviction becomes 'spent' and does not normally need to be disclosed to an employer. But failure to comply can lead to the case being referred back to court and a substitute sentence imposed.

An assessment of the use of Referral Orders following their implementation across England and Wales in 2002 found they were viewed as a positive opportunity to engage victims, young offenders and the community in a more restorative and inclusive form of sentence. It suggested that victims were satisfied when they were given prompt and clear information by the YOT and assured that their views would be represented at the Youth Offending Panel. However, victim participation levels were below 10 per cent<sup>4</sup>. This was a 'major difficulty' that had previously been identified during a pilot evaluation<sup>5</sup>.

## Evaluation of three restorative justice schemes

In 2008, the Ministry of Justice published results from an evaluation of three government-funded restorative justice schemes carried out by researchers at the University of Sheffield. The projects focused on adult offenders (some convicted of very serious offences), but young offenders were also involved.

- The Justice Research Consortium (JRC) – the largest scheme – carried out restorative conferencing in London, Northumbria and Thames Valley with young offenders and adults, and had the advantage of a randomised controlled trial (RCT) approach to evaluation.
- CONNECT, run by NACRO and the National Probation Service, provided different forms of mediation between victims and adult offenders in Inner London.
- REMEDI offered mediation services across South Yorkshire to both adult and youth offenders.

Compared with groups of similar offenders, those who participated in the three restorative justice schemes were reconvicted of fewer offences in the two years after the intervention – although there were no statistically significant differences in the likelihood of reconviction or the severity of offending.



The costs of known reoffending for participants in the JRC restorative conferencing programmes (alone in being evaluated using a randomised controlled trial) were significantly lower than for their controls. In Northumbria, where the project focused on property crime, there was a particularly large and statistically significant impact on the likelihood and severity of reoffending. Offenders and victims who took part in conferencing were highly satisfied with the restorative justice process<sup>6</sup>.

The Commission's view has been strongly influenced by encouraging results that have flowed since 2003 from the wholesale adoption of restorative conferencing by Northern Ireland's youth justice system. Introduced in the context of the 'Good Friday Agreement' and efforts to build community confidence in formal youth justice procedures, it has developed into an effective and highly professional service delivering positive outcomes for society, for victims and for children and young people who offend (see below).

We have had the opportunity to observe youth conferencing in Belfast and to meet many of those involved in its operation, including victims as well as conferencing co-ordinators, prosecutors, District Judges and administrators at the Youth Justice Agency. We believe the Northern Ireland experience of restorative conferencing provides a strong model from which a system can be designed that is appropriate to the youth justice context in England and Wales.

## Northern Ireland's Youth Conference Service

Use of restorative justice in Northern Ireland grew out of the Belfast Agreement reached on Good Friday 1998 after decades of sectarian conflict. The Youth Conference Service was piloted in 2003 following a review of the criminal justice system and has operated throughout Northern Ireland since the end of 2006. It is used with children and young people aged under 18.

The principles that underpin the Northern Irish system can be summarised as:

- Meeting the needs of victims, including reparation, restitution and an apology
- Rehabilitation and the prevention of reoffending
- Proportional rather than purely retributive justice

- Repairing relationships that have been damaged or broken by crime
- Devolving power to the youth conference participants to agree a plan of action
- Encouraging participation by children and young people who offend, victims, parents and others<sup>7</sup>.

Conferences are organised by professional, purpose-trained co-ordinators employed by the Youth Justice Agency, and include the child or young person who has offended, a parent (or other 'appropriate adult') and a police officer trained for youth conferencing. Victims, or someone representing them, are encouraged to take part. Both the victim and the young offender can ask to have a supporting friend or relative with them. Children and young people speak for themselves, but can have a legal representative to advise them (legal aid is available). A social worker, youth worker or community representative may also be invited to attend.

There is no fixed procedure for conferences, which allow a facilitated discussion among all those affected by an offence and its consequences. They last just over an hour on average. Victims have the opportunity to describe the mental, physical or financial harm they have suffered. They can ask the child or young person to explain to them why it happened and can say what they think should be done to make up for it. Young offenders have an opportunity to express their remorse and to offer to make amends.

Everyone present is involved in discussing a restorative plan that can include:

- a written apology to the victim
- the child or young person making reparation to the victim by making a payment or undertaking an agreed activity
- the child or young person: being placed under adult supervision; performing unpaid community work; taking part in activities to tackle their offending behaviour; agreeing to restrictions on their behaviour or whereabouts; agreeing to regular school attendance or to treatment for mental health problems or alcohol and drug dependency.

There are two types of youth conference:

- 'diversionary' conferences take place on referral by the Public Prosecution Service where a child or young person has admitted an offence and would otherwise face court proceedings. Restorative action plans have to be agreed by the prosecutor.
- 'court ordered' conferences happen after a child or young person has admitted their guilt or been found guilty in court. The intention is that most young people who commit crime can be referred to a conference, provided they agree. Youth conferencing can be used for all types of offences except murder, manslaughter, offences under the Terrorism Act and other offences that carry a mandatory sentence<sup>a</sup>. On very rare occasions, a court-ordered conference plan has included the young person spending time in custody. However, the court has discretion over referring serious offences, or in cases where there has been a history of failed conferences.

Youth conference plans can only proceed if they are agreed by the child or young person. Diversionary plans have also to be accepted by the Public Prosecution Service. Court-ordered plans can be accepted, varied or rejected by the court.

Conference co-ordinators adopt a flexible approach to offences where there is more than one perpetrator, taking account of the victim's wishes on whether separate conferences need to be held for each offender. A fundamental principle is that conferencing should never lead to victims feeling 're-victimised'.

Prolific young offenders (those facing a third or subsequent conference for new offences) and those who have committed serious offences, including assault and sexual offences, are overseen by a Priority Youth Offender Team. They are intensively supervised, with up to seven days a week contact, and helped to complete their restorative plans through an approach known as 'circles of support and accountability'. This creates a network of constant communication between the people in the community and professionals that are most involved in their lives.

Around 8,000 youth conferences have been held in Northern Ireland since restorative justice was introduced and they constitute the main disposal for Youth Court cases. More than 40,000 individuals have taken part in conferences.

The average cost per conference is put at £1,200. If 12 months supervision is added, plus the average cost of young people participating in preventive programmes, the average figure per conference case is £1,950.

Youth Justice Agency figures show that 1,620 cases were referred to the conferencing service in 2008/09. Of these, 1,234 led to an approved plan, which was the highest proportion (76 per cent) since the system was introduced. Victims were present at 66 per cent of conferences and 89 per cent of victims expressed satisfaction with the process<sup>8</sup>.

An analysis of Northern Ireland's youth justice caseload in 2006 found that the proven reoffending rate within a year was 28 per cent among children and young people who took part in diversionary youth conferencing and 47 per cent for those whose conference was ordered by the courts. This compared with 52 per cent for those sentenced by a court to community-based sanctions (the rate for those released from custody was 71 per cent)<sup>9</sup>. Reoffending rates following youth conferencing were on average 6 percentage points lower when the victim attended.

The proportion of young offenders convicted in court who were sentenced to custody fell from 10 per cent in 2004 to 7 per cent in 2006, at a time when the proportion referred by the court to youth conferencing grew from 1 per cent to 23 per cent<sup>10</sup>.

An evaluation of the Youth Conferencing Service in its early years found the victims overwhelmingly endorsed the procedure. Most said they had been keen to hear what the young offender had to say and wanted the young person to understand how the crime had affected them. The vast majority of young people also thought the process was fair and that they had been listened to; although they had often also found it uncomfortable and demanding<sup>11</sup>.

Public attitudes in Northern Ireland appear favourable to youth conferencing and restorative justice. According to one survey for the Youth Justice Agency, 69 per cent of adults thought it was an appropriate way of dealing with young offenders<sup>12</sup>.

<sup>a</sup> For example, driving while disqualified

International evidence also demonstrates that victims of crime who receive restorative justice are more satisfied than other victims with their treatment, and better able to come to terms with what happened to them. At the same time, responses based on restorative justice can often be more effective than conventional courtroom sentencing in preventing reoffending<sup>13</sup>.

International data<sup>14</sup> – as well as cost information from Northern Ireland – suggests that replacing much of the court caseload with restorative conferencing would be more effective and at worst no more expensive than formal prosecution<sup>b</sup>. **As we explain below, we want to see restorative conferencing used wherever possible to help victims and to enable young offenders to understand the consequences of their actions, as well as making reparation.**

## A victim's story 1: Victoria

Victoria, 14, was threatened, pushed, hit and chased by three girls in a crowded shopping precinct outside Belfast. She was treated in hospital for cuts and bruises. The Youth Court in Northern Ireland ordered a restorative conference and Victoria agreed she would attend separate conferences for each of her attackers. *"I thought that if I didn't show them the consequences then nothing was really going to get done. I also wanted to know why it was me they had picked on."*

She found the first two conferences entirely positive: *"One thing that was really beneficial was that we were all sitting in the room when the youngest girl arrived with her mum. I could see how uncomfortable she was with everyone looking at her and I started to feel more comfortable. I thought: 'You aren't going to make me feel scared any more.'"*

*"She said sorry to me, but I still wanted to know why it was me and why they went on threatening me. She was completely honest and said she'd wanted to see a fight. She was in tears."*

*"One of the things I asked for was that when she saw me in public she should just walk past me and not acknowledge me. And that's what's happened."*

At the third conference, the oldest attacker began by claiming the assault was unintentional, even though she had pleaded guilty in court. *"At one point I really thought it was a waste of time being there. She did apologise, but I said the only way I could accept her apology was if in two or three years time if she'd left me alone. Then I'd know whether she really meant it."*

It was agreed that the young woman should carry out community service and stay away from Victoria and her family: *"In the end I walked out of the conference feeling the bigger person. I'd rather have had this experience than have gone to court. In court it's just the facts, whereas I was able to tell them how I felt right up to the time of the conference."*

*"I don't think it's soft on offenders. I think it's a lot tougher to face up to what you've done. I had no real sympathy with girls who attacked me, but I got my closure. You get the control back."*

## Informal responses to antisocial behaviour and offending

One disappointing aspect of the way society has tackled antisocial behaviour in recent decades has been a growing dependence on the police and other criminal justice agencies to deal with relatively minor problems involving children and young people that might once have been resolved informally by parents, teachers and other responsible adults<sup>15</sup>. We do not doubt the need to invoke the law where children or staff are threatened with serious violence or harm, but we do not consider it is in anyone's interest for the police to be treated as the 'default' response to incidents that could be settled in other ways that would be more satisfactory for all concerned.

The Commission believes that a greater emphasis on prevention and early intervention, described in the previous chapter, will help communities as well as institutions like schools and care homes to feel more confident in their own, informal responses to unacceptable behaviour, including infringements, such as minor playground brawls, that may technically be defined as criminal.

### Restorative approaches in schools

We acknowledge the progress that many schools have made in recent years with anti-bullying strategies and use of the Social and Emotional Aspects of Learning (SEAL) curriculum to encourage respect for others, empathy and social skills, especially among primary-age pupils. Although we would like to see better evidence regarding the outcomes they achieve for children, we welcome the promotion of an ethos of sharing responsibility and resolving conflict without aggression.

We also welcome the explicit use of restorative, problem-solving approaches within schools, care homes and other institutions working with children and young people. These practices include student and staff 'circle time' for community building and problem solving, conflict resolution promoted and

<sup>b</sup> Figures from Northern Ireland show the average cost of a restorative conference to be £1,200. This compares with an average cost of court proceedings of £2,700 in 1997-8 prices, which equates to £3,514 in 2008 (Harries, R. (1999) *The Cost of Criminal Justice*, Research Findings No. 103, London: Home Office.) See also the randomised control trial (RCT) evaluation of the Justice Research Consortium described above

applied through every aspect of school life, peer mediation for pupils and teachers and the use of restorative meetings to settle particular problems. Although restorative justice is not a panacea for all problems, it can improve the school environment and enhance learning<sup>16</sup>, contributing to reductions in verbal and racist abuse, fewer violent incidents and exclusions and increased confidence among staff<sup>17</sup>. We recommend that restorative procedures be adopted as widely as possible by institutions, especially schools.

## Policing and restorative justice

Eight Welsh and English police forces have piloted the Youth Restorative Disposal (YRD) as a way of dealing with low-level crime without resorting to more formal and bureaucratic approaches. But many more have incorporated restorative approaches into community policing, such as Restorative Approaches in Neighbourhoods (RAIN), which uses community volunteers to help establish restorative conferences, act as co-facilitators and organise reparation activities<sup>18</sup>.

According to the Association of Chief Police Officers (ACPO) restorative justice has been embraced by frontline officers as a return to 'common sense policing'. Data collected by individual forces (see below) has pointed to lower rates of reoffending among young people compared with those that are cautioned, and high levels of victim satisfaction. Restorative intervention is also proving to be a more efficient – and less expensive – use of police time<sup>19</sup>.

### Restorative interventions in Norfolk

Norfolk Police has been among the forces piloting the Youth Restorative Disposal for dealing with less serious offences. Restorative approaches can also be used in Norfolk when administering reprimands and are used (by the Youth Offending Team) for final warnings. The police interventions range from 'street' work where police apply a problem-solving approach to deal quickly with minor incidents to small group meetings and formal restorative conferences.

More than 2,500 restorative justice interventions have been administered since 2007 involving more than 1,500 children and young people, whose average age was 14. Over a third of cases have involved theft, a quarter concerned criminal damage and another fifth related to antisocial behaviour. Violence has been an issue in just under a fifth of cases.

In a typical case, two young women aged 16 who had been caught shoplifting for the first time agreed with their parents

and the retailer to take part in a restorative conference. It lasted 45 minutes and resulted in both young women accepting responsibility for their actions. In the words of Kim Smith, Norfolk Police's Restorative Practices Development Manager: "The greater harm and the impact upon family, friends and the community was discussed and tears were shed by both girls."

The store received a letter of apology as part of the Youth Restorative Disposal and it was agreed that the young women would both undertake three months voluntary work in a charity shop. They subsequently also volunteered to take part in a sponsored charity event, raising £60.

Restorative justice has been rolled out in Norfolk through the force's 52 Safer Neighbourhood Teams, who are supported by Community Volunteer Panels. Only trained personnel can conduct restorative interventions, but this now includes a third of frontline community officers. Staff in partner agencies have also been trained. Additional training is provided for officers who facilitate restorative conferences. The force collaborates with the national Restorative Justice Consortium on accreditation and quality control.

Surveys of participating victims, young people and parents consistently show very high levels of support for the process. Known reoffending rates are low, at around 10 per cent, compared with conventional cautioning. The cost of the basic 'street' intervention is estimated at £18.75. This compares favourably with £62 for a simple caution and £467 for prosecution leading to a guilty plea in court.

Although awaiting publication of an evaluation of the YRD pilots commissioned by the Youth Justice Board, we are encouraged by these indications of success. **We can see no reason why the YRD and other restorative neighbourhood approaches should not be implemented across all police force areas.** We are, however, aware of two specific concerns raised by the police:

- Offences settled using YRDs cannot be counted as 'sanctioned detections' in force clear-up rates. Some forces making vigorous use of restorative methods as an alternative to reprimands have lost 3 per cent of their detection rate as a consequence<sup>20</sup>.
- Senior police are uncomfortable that frontline officers are currently the only arbiters of whether a restorative disposal is used, casting them in the role of 'adjudicator' as well as 'investigator'.

In response to the latter, we think police officers should continue to use their judgement and discretion in minor cases where children and young people are behaving antisocially or breaking the law, offering advice or taking no further action. However, where a case is considered suitable for an informal restorative disposal, the decision should be taken jointly with the local Youth Offending Team (YOT). As with the existing YRD, a young offender who admitted an offence would agree to participate in a restorative process mediated by a trained police officer, police community support officer or community volunteer. The disposal would not create a criminal record for the child or young person, but it would be recorded for administrative purposes as a 'sanction detection'.

## Reprimands and final warnings

For cases (other than minor incidents) that do not lend themselves to a restorative disposal – or where informal restorative disposals have been tried and not succeeded – we anticipate that the existing system of issuing reprimands and final warnings to children and young people would continue. However, as with restorative disposals, we suggest that the YOT should be involved in decisions to reprimand, as it is with final warnings. The conditions attached to a reprimand or warning could include provision for a restorative procedure as well as educational, welfare and preventive interventions.

## Triage procedures

*"You never know, the person who did it could have really bad family, like lifestyle or family life, and they could be in danger...something you should investigate before you assume things."*

Sian, age 14.

Another welcome development in responses to children and young people accused of criminal offences has been the introduction of 'triage' procedures at police stations. Piloted in 69 local authority areas, they enable YOT workers to make an early assessment of a child or young person facing prosecution, including whether he or she is already known to the YOT or children's services department. If the young person is assessed as 'low risk' and admits the offence, the YOT worker may advise the police and Crown Prosecution Service to deal with the case through restorative justice or a preventive intervention rather than take the case to court. The best examples of triage schemes are understood to be making a significant contribution to reducing the number of 'first-time' entrants to the Youth Court.

Early assessment will play an important part in our proposals for a youth conferencing service. We also see merit in extending triage procedures to children and young people who are being considered for a reprimand or final warning. The objective would be to ensure that children with pressing mental health problems, learning difficulties or other social care needs are identified early and referred to relevant support services.

Since children and young people held at police stations will often have welfare needs that extend beyond those relating to the immediate complaint against them, we also suggest they should be assessed (unless clearly inappropriate) using the Common Assessment Framework for children's services, alongside the standard ASSET questionnaire that is used by YOTs for assessing crime-related needs.

## Swansea Youth Bureau

Between 2001/2 and 2009/10 Swansea saw a dramatic fall in the number of young offenders being dealt with by the criminal justice system. The Youth Offending Service (YOS) attributes this in large part to the decriminalisation of first offences.

Decisions about how to deal with a young person's first arrestable offence are passed to a 'bureau' made up of a YOS coordinator, a police inspector or sergeant and a trained community volunteer. Drawing on detailed information about the young person's background and circumstances, the bureau decides between: a 'non-criminal' disposal, reprimand, a final warning or prosecution. The process also gives a central role to parents.

For all but the most serious offences, responses involve restitution, restorative conferencing, agreed compensation or community work. Non-criminal responses are not recorded on the Police National Computer. Out of the 278 cases that went through the bureau process in 2009/10, 107 resulted in non-criminal disposals, 89 in reprimands, 72 in final warnings, and only 10 in prosecution. The majority (184) included an intervention programme.

The Bureau carries the approval of the Local Criminal Justice Board and the full participation of the South Wales Police, Swansea YOS, the Crown Prosecution Service and the magistrates court. It also has high approval ratings from victims, young people themselves and their parents. According to Swansea YOS it has enabled more resources to be focused on repeat offenders who have the highest level of need.



### Lead practitioner

**We recommend that children and young people who are assessed through triage as needing a youth justice intervention should be allocated a lead practitioner – normally from the YOT – to take primary responsibility for their case.** The lead practitioner would help them to comply with any requirements placed on them and make connections with relevant health and welfare agencies. The role would include liaison with the police, the Crown Prosecution Service and primary health services, as well as the local authority's housing and children's services departments. Children and young people have told us how much they value having one professional to whom they can relate. The education inspectorate, Ofsted, has linked this approach to positive resettlement work with young offenders<sup>21</sup>.

## A restorative youth conferencing service

For the reasons we have already given, the Commission proposes a major expansion of restorative justice in England and Wales that would take it to the heart of official responses, both formal and informal, to children and young people who offend.

**We propose that a restorative youth conferencing service should be established as a new, mainstream response when cases against children and young people are being considered for prosecution.**

**Led by a professional, purpose-trained coordinator, the problem-solving aim of each restorative conference would be to:**

- **understand the offence and its background, including the victim's experiences and feelings, the child or young person's circumstances and the impact of the crime on the community;**
- **agree an action plan proportional to the offence that addresses the child's criminal and antisocial behaviour and welfare needs, while making reparation to the victim and to the wider community.**

Conferences would be attended by the young offender, their parents or carers, police and the proposed lead practitioner (see above) from the YOT. Provided they were willing to do so, victims would also take part. The co-ordinator would have discretion to allow victims to bring a representative or supporter and for young offenders to have an interpreter or supporter attend with them. Schools and children's services might also, by agreement with the co-ordinator, be represented. Children and young people would

have the right to be advised and accompanied by a lawyer, though the lawyer would not speak on their behalf in the conference.

Ingredients in an action plan, which would last for up to year, could include:

- an apology
- a payment to the victim
- unpaid community work
- a range of community-based sanctions, including YOT supervision, intensive supervision and curfews using electronic tagging.

Action plans would also, where appropriate, include provision for alcohol and drug dependency treatment, mental health care and parenting support services. In addition, the conference or its co-ordinator would be able to refer young offenders to children's services to consider action on safeguarding or welfare issues.

**We recommend that, as in Northern Ireland, restorative youth conferences should take place in two different contexts:**

- **'Discretionary'<sup>c</sup> youth conferencing, as an alternative to prosecution.**
- **'Court-ordered' youth conferencing, where a child or young person has been convicted of an offence.**

### Discretionary youth conferencing

Once the Crown Prosecution Service (CPS) decided it was in the public interest to proceed with a case, it would refer the child or young person to a discretionary restorative justice conference provided:

- the accused child or young person admitted the offence and agreed to a conference.
- the offence did not appear on a statutory list of 'most serious' offences, where a presumption would operate in favour of prosecution. (As the starting point for further discussion, we suggest the list should include murder, manslaughter acts of terrorism and other grave crimes).
- the child or young person was not a prolific offender (see below) for whom prosecution offered a more appropriate way to proceed.

<sup>c</sup> We prefer 'discretionary' to 'diversionary', the term used in Northern Ireland.

Discretionary youth conference plans, provided they were completed by the child or young person, would not result in a criminal record that needed to be disclosed to an employer, although an administrative record would be kept.

Where a young offender admitted an offence, but declined a discretionary restorative conference, the police and CPS could still agree to administer the Youth Conditional Caution that was introduced in 2009 and is currently being piloted with 16 and 17-year olds. Measures for reparation and prevention of reoffending could be attached.

## Prosecutions

Prosecution could take place if:

- an accused child or young person denied committing an offence, declined to take part in a discretionary restorative conference, or refused a Youth Conditional Caution
- the offence was classed as 'most serious' or was unsuitable for a restorative process because it carried a mandatory penalty.
- a discretionary youth conference had failed to agree a restorative plan, the CPS considered a plan to be unacceptable, or the plan was not completed adequately by the young offender, in the view of the YOT.

Children and young people who denied an alleged offence would have their case tried by the Youth Court (see below).

## Court-ordered youth conferencing

Where prosecution resulted in a young person admitting an offence or being convicted after a trial, we propose that the Youth Court should have a duty in passing sentence to refer suitable cases to the Youth Conferencing Service. The main exception to this would be for 'most serious' offences and cases where children and young people declined to take part in youth conferencing. In such cases, the court would impose its own sentence.

Convictions for 'most serious' offences might in some circumstances lead to cases being referred by the court for conferencing if there were particular, mitigating factors. It would also be possible for custodial sentences to be accompanied by a restorative conference – for example, as part of the rehabilitation process to prepare for a young person's release.

Once a restorative plan was agreed by a conference it would be returned to the court for approval. The court would have the power to amend a youth conferencing plan or, in exceptional circumstances, substitute a sentence of its own.

## Non-compliance

YOTs would oversee the completion of restorative youth conferencing plans, whether discretionary or ordered by the court. They would issue warnings where promised actions were not taking place.

- In the case of 'discretionary' plans, serious or persistent failures by a young offender to comply would be reported to the CPS, who could consider prosecution or substituting a Youth Conditional Caution.
- Serious breaches of court-ordered plans would be reported to the Youth Court, which could either make changes or substitute a non-restorative sentence.

## Persistent and serious offenders

As in Northern Ireland, we propose that conferencing for prolific young offenders that have been through the process three or more times for new offences should be overseen by a specialist team responsible for providing intensive supervision and constructing networks of support in the community to achieve compliance with the restorative plan. The same approach should apply to children and young people who have committed serious offences.

### A victim's story 2: Gwen

Gwen became involved with Northern Ireland's Youth Conferencing Service after a 15-year old stole £165 in fees from a hall where her daughter was teaching ballet. The young man, who was in care, was arrested after using the cash to get drunk. Gwen agreed to represent her daughter who did not want to take part in the court-ordered restorative conference, but agreed the boy should be told how she was traumatised by the theft and how important the money was to her.

*She says: "There were five or six of people in the conference and the young boy came in. I was expecting a moody type and instead there was this open-faced, young boy. I didn't think he could see where the harm was in all he'd done. I asked him why he went into the hall and he said: 'I was looking for something to steal'. He said it so openly like it was, 'What else would I be doing?'"*

*"It turned out he was the oldest of six children and the mother just sent him out to steal and that was his way of being brought up. I looked at him and there was this boy who'd never had a chance, who'd never had any kindness*



*from his parents or been told this was wrong. I felt sorry for him, though up till then I'd been very angry because my daughter had suffered.*

*"He apologised and it was agreed he would pay back some of the money to let him realise just how much £165 meant to her."*

Gwen learned not long after that the boy's mother had disowned him. He 'trashed' a car showroom, resulting in a custodial sentence: *"I thought to myself: 'This has got to stop or this boy is going to turn into a hardened criminal.' So I sent him a Christmas card saying I was sorry to hear he had offended again and that I thought he was intelligent and that there was no reason he couldn't have a better life. I think that card had a big effect on him."*

Gwen wrote to the boy after he was released and was pleased to learn that he was saving money to pay her daughter back. He wrote the apology agreed by the youth conference and presented the money with a wooden stool he had carved himself. Gwen, in turn, gave the boy a sports watch. *"I told him it represented the time left for him to become a better person and that I didn't want to do any more time in custody. I said: 'it's just to let you know that sometimes good things happen, not just bad.'"*

### Referral orders

The Commission has been impressed by the use of professional facilitators in Northern Ireland's youth conferencing service which seems integral to its success in achieving high levels of victim involvement and satisfaction with the process. The professionalism of the Northern Irish system also means it is well equipped to organise restorative conferencing in response to relatively serious offences.

One consequence of our proposals for youth conferencing in England and Wales is that the need for Referral Orders, where victim participation rates are much lower, will be reduced and may disappear altogether. However, we would expect lay members who currently sit with a YOT manager on Youth Offending Panels to be actively involved in our wider-ranging plans for restorative justice. This could be by training to become professional youth conferencing coordinators, by working with the police as mediators for Youth Restorative Disposals, or by becoming community mentors (see below). Another option would be for all youth conferences to include a representative of the local community – a role that lay members of Youth Offending Panels would be well placed to fill.

## Community mentoring scheme

The Commission suggests that the positive impact of restorative justice on children and young people who offend could be enhanced by recruiting members of the local community to participate in a community mentoring scheme. This would recruit and train carefully vetted volunteer adults to befriend and support young people in meeting the requirements of their restorative plan – whether discretionary or court-ordered.

We would expect the scheme to take account of existing evidence concerning best practice in mentoring young offenders and be subject to evaluation. If shown to be effective, the scheme could be extended to all young offenders being supervised by the YOT or subject to other community-based sanctions.

## The Youth Court

*"I went in there with my Dad, but it was scary, yes! You don't know what to do; you just feel lost...you feel that you can't do anything. You feel like it's a bunch of people that can control your future, but you don't really know how powerful they are...they could have done anything with my future, I could have gone to prison or anything could have happened to me."*

Josh, age 15

The guiding principles agreed by the Commission assert that the institutions and services responding to offending and antisocial behaviour by children and young people should, so far as possible, be separate and that those who work in the youth justice system should be purpose-trained specialists. This carries important implications for the criminal court system.

In examining the youth justice systems in a number of other European countries, we have been impressed by the level of specialisation and training required for judges, prosecutors and others working with children and young people<sup>22</sup>. **We propose that lawyers, lay magistrates, District Judges and Crown Court Judges who work in the Youth Court should be trained to a high level of specialist expertise.** In addition to the law and sentencing options, their training would include a wider range of relevant topics including child

and adolescent development, the underlying factors related to youth crime, effective interventions and rehabilitation and practices and skills for communicating with children and young people. It would also cover the principles and practice of restorative justice and other problem-solving approaches.

Like the review of criminal courts conducted by Lord Justice Auld in 2001, we consider the Crown Court is too intimidating and unsuitable a venue for justice involving children and young people<sup>23</sup>. **We propose that prosecutions of children and young people under 18 should normally be heard in the Youth Court – including prosecutions for the ‘most serious’ offences.** Cases where a child or young person is co-accused with a young adult up to the age of 21 would also be heard in the Youth Court.

These proposals, implemented alongside our recommendations for restorative youth conferencing, will alter the nature and balance of the Youth Court caseload. As more young offenders are referred by the CPS to discretionary youth conferencing, we anticipate that the court's business will tend to consist of more serious cases than at present. In particular it will:

- continue to deal with remand issues
- deal with the most serious cases in their entirety, and with others where restorative conferencing is not possible
- try cases where a child or young person denies an offence
- sentence children and young people who have been convicted by the court to youth conferencing when they meet the criteria for restorative justice
- consider and formally approve, the restorative plans agreed by youth conferences, varying or rejecting them where necessary
- pass sentence in other cases – or where youth conferencing has failed to produce an agreed plan.

### *‘Most serious’ offences*

**We recommend that special procedures should be adopted in the Youth Court when children and young people are charged with ‘most serious’ offences.**

**A Crown Court judge with specialist youth justice training would preside in these cases.** However, following the recent precedent for ‘hybrid’ judges set by the North Liverpool Community Court we suggest that the most senior judges working in the Youth Court should be trained to sit as either a District or Crown Court Judge depending on the case before them.

In the limited number of cases where a child or young person was accused of a ‘most serious’ offence and denied the charge, trial by jury would take place. We propose that this should be held in surroundings as similar as possible to the Youth Court, with a specialist judge and lawyers. Another possibility would be the use of a smaller jury to make the proceedings less intimidating<sup>24</sup>. In cases where the interests of justice required a child or young person to stand trial with a co-accused adult aged 21 or over, we recommend that a specialist youth justice judge should preside and that prosecuting counsel as well as counsel for the young defendant should be specialists, trained to work in the Youth Court.

### *Accessible procedures*

Children and young people with experience of the courts have told us about the difficulties they encountered in understanding the proceedings and how disengaged they felt. Research by Bradford's Youth Offending Team has also suggested that the language used in court and formal interviews is too complex for many young people to understand or fully participate in proceedings<sup>25</sup>. This was confirmed by our own observations in Youth Courts where we sometimes gained an impression of lawyers talking over the young defendants' heads. In the interests of justice and achieving a positive impact on young offenders, we believe that every effort should be made to make proceedings accessible and easy for them to understand, with a requirement to involve the child or young person and explain what is happening at every stage.

### *Continuity*

We also think it important that there should be greater continuity in the way that Youth Courts process cases. We are concerned that children and young people can easily find themselves before different District Judges or benches of magistrates when they are on remand, when they are tried or sentenced and if they are returned to court for breach of an order. Our proposals for lead YOT practitioners will contribute to greater continuity, but

we also anticipate that a more specialised Youth Court will be better placed to ensure that cases are heard in their entirety by the same judge or panel. We were encouraged by the example set, in this respect, by Judge David Fletcher in the pilot North Liverpool Community Court (including progress reviews of sentences and presiding if offenders were returned to court for subsequent offences committed locally).

### Family proceedings

During our consultation, the Magistrates' Association and others made a compelling case for helping the Youth Court to ensure that serious welfare and safeguarding concerns about children and young people who appear before them can be acted upon. This would require a mechanism that has not existed for 20 years for transferring cases to the Family Proceedings Court where assessments can be instigated and care proceedings taken, where necessary.

Our proposals for children and young people assessed through 'triage' to be allocated a lead practitioner and to be assessed as 'children in need' would ensure that better account is taken of complex welfare needs (see above). We, nevertheless, agree that a link between the Youth Court and Family Proceedings Court should be introduced.

## Restorative approaches to antisocial behaviour

The use made of youth conferencing in Northern Ireland, after years of sectarian conflict, provides an inspiring example of how restorative justice can achieve positive results in communities that have known extremes of lawless behaviour and intimidation. It has reinforced our view that that restorative approaches can be tailored to make a significant contribution to dealing with the chronic levels of antisocial behaviour that occur in some English and Welsh neighbourhoods.

As observed in our opening chapter, 'antisocial behaviour' can be defined in different ways – including formal psychiatric diagnoses of childhood conduct disorders. However, the term is most used nowadays as shorthand for pervasively abusive and offensive behaviour that can affect the quality of life for whole neighbourhoods. This kind of antisocial behaviour is particularly problematic in some disadvantaged urban neighbourhoods where the sense of community has been weakened<sup>26</sup>.

### Young people and 'ASB'

It is important to recognise that antisocial behaviour is not exclusively, or even mostly, caused by children and young people. A disappointing feature of political and media debate about the issue has been a tendency to make it synonymous with teenagers congregating in public places. In our view, this has contributed to indiscriminate stereotyping and a mistrust of young people 'hanging out' in the street that can be wholly misplaced<sup>27</sup>. As pointed out by the Children's Society in response to our consultation:

*"Sometimes children and young people just want to be left alone to hang around with their friends in places they feel safe."*

Some indiscriminate measures designed to deter children and young people from gathering in public, including the high-pitched 'mosquito' device that is inaudible to older age groups, amount to crude and unacceptable discrimination.

### The current response

*"I thought it was cool...like we all thought it was cool. 'Oh we're gonna get an ASBO' and that. I just thought it was cool."*

Trish, age 14.

The Commission has visited neighbourhoods where children and young people have contributed to nuisance behaviour, including intimidating, drunken behaviour, vandalism and harassment. Residents, including children and young people, have described the fear, hurt and distress they felt as a consequence. This left us in no doubt about the very real problems that exist in some areas.

We do, however, have concerns about imbalances in the current response to antisocial behaviour. These flow from the way the kind of behaviour that is defined as 'antisocial' straddles the boundary between offensive, rowdy behaviour and actual criminal offences. They relate particularly to the political and legislative response since the late 1990s that has seen the introduction of orders that are applied under civil law, but whose breach is a criminal offence<sup>28</sup>. The Anti-Social Behaviour Order (ASBO) is the best-known example of these 'hybrid' measures; not least because breach of an ASBO can lead to imprisonment. As observed by Prof. Andrew Ashworth, a member of the Judicial Studies Board's Sentencing Advisory Panel, ASBOs are an order that is seemingly preventive in its purpose, but carries 'a ferocious sting in the tail'<sup>29</sup>.

Concerns have been drawn to our attention regarding the admissibility in ASBO applications of 'hearsay' evidence gathered from anonymous complainants by professional witnesses such as police or housing officers. This exception to the normal rules of evidence denies a defendant's usual right to know and challenge their accuser. It has, however, been defended as necessary to overcome the intimidation that exists in some neighbourhoods and fear of reprisals among residents who complain.

A further source of anxiety is the reversal in ASBO hearings of the anonymity normally granted to children and young people in criminal proceedings. As the European Commissioner for Human Rights, children's charities and others have observed, the 'name and shame' presumption when an ASBO is made appears to contravene the right to privacy asserted by the UN Convention on the Rights of the Child (see Chapter 2)<sup>30</sup>.

While we agree with some objections to ASBOs raised by critics – not least regarding some of the unrealistic prohibitions that have been placed on children and young people – we think they have played a part in alleviating antisocial behaviour problems and reassuring communities that firm action is possible. Although it runs contrary to the normal rules of evidence in a criminal case, we also believe it is justified in exceptional cases for professional witnesses from local agencies to provide 'hearsay' evidence collected from residents who feel too scared to come forward themselves.

However, the 'naming and shaming' presumption when children and young people are made subject to an ASBO contravenes the principle that they should be treated differently to adults and may run contrary to international convention. **We propose it be removed. We also recommend that with children and young people ASBOs should only be pursued as a last resort.** A presumption should be introduced that children and young people who breach an ASBO cannot be sentenced to custody – especially where they have not committed any criminal offence or any offence that would justify a custodial sentence.

This not only moves closer to the intention when the order was introduced<sup>31</sup>, but also accords with our understanding of the 'tiered approach' that English and Welsh local authorities have increasingly taken to dealing with antisocial behaviour. Simple warning letters and voluntary Antisocial Behaviour Contracts (ABCs) are by far the most common intervention now used. ABCs run for a renewable six months at a time and, although not legally binding, can be supported by the intention to seek an ASBO if breached. The National Audit Office found (in 2006) that they cost less than a tenth of the £3,100 needed for each ASBO application.<sup>32</sup>

We welcome the adoption of a 'tiered approach' and recommend that the children and young people to whom Antisocial Behaviour Contracts relate should be actively engaged in setting the terms and conditions. These should maintain a positive emphasis on socially-acceptable behaviour and on giving children and young people who need them access to mental health and other support services<sup>33</sup>.

### *Embracing restorative principles*

Antisocial behaviour that involves individuals behaving in a thoughtless, reckless or deliberately offensive way towards their neighbours should lend itself well to the processes of mediation and reparation that characterise restorative justice. Ironically, the bespoke measures created for tackling antisocial behaviour allow less scope for restorative justice with children and young people than criminal law proceedings.

We think there is merit in making Antisocial Behaviour Contracts (ABCs) the outcome of a fully restorative procedure. We are also aware that behaviour currently being tackled using hybrid 'antisocial behaviour' measures mostly consists of criminal offences. If they were treated as crime, there would be scope for police to use the Youth Restorative Disposal and for prosecutors and the courts to refer more serious cases to youth conferencing.

**Restorative conferencing would provide a more demanding alternative to ASBO proceedings (seemingly treated as a 'badge of honour' by some young people<sup>34</sup>) by obliging them to face up to the harm their behaviour has caused to victims, families and communities and take action to make good the damage.**

## Restoration

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**Integration**

**5**





*"I think they need to look at different strategies and different preventions because there is so many people that go into prison and they go crazy."*

Megan, age 25

In this chapter, the Commission pays further attention to ways in which the youth justice system can make it less likely that children and young people who commit crime will continue breaking the law. Given the appallingly high rates of reconviction among young offenders released from imprisonment, it will come as no surprise that our proposals focus strongly on reforming the use of custody.

Our guiding principles (Chapter 2) have informed our discussions on how the use and costs of custody can be minimised and rehabilitation services made more effective. These are:

- enabling children and young people who behave antisocially and offend to lead law-abiding lives
- ensuring that any consequences or sanctions are proportional to the offence and the child or young person's offending history
- using imprisonment only as a last resort
- striving to ensure that responses to children and young people's offending do no harm, in the sense of making their offending worse, or impeding their rehabilitation.

## Community-based sanctions

Restorative youth conferencing, as recommended by the Commission, would reduce the need for conventional prosecutions, court proceedings and sentencing, but it would not remove it entirely. We have, accordingly, given some consideration to the compatibility between our proposals for extending restorative justice and current sentencing options available to the Youth Court.

### *The Scaled Approach*

These were subject to reform as recently as November 2009 when a generic Youth Rehabilitation Order (YRO) was introduced in England and Wales for non-custodial sentences. This drew together existing community-based sentences and requirements into one 'wraparound' order. Sentencers currently select components from a menu of 18 different requirements:

- Participation in constructive activities
- A curfew
- Exclusion from specified places
- Local authority residence
- School attendance and other education requirements
- Mental health treatment
- Unpaid work (16 & 17 year olds)
- Drug testing
- Intoxicating substance treatment

- Supervision
- Monitoring by electronic 'tag'
- Prohibited activities
- Drug treatment
- Residence
- Participation in specified programmes
- Going to an attendance centre at specified times
- Intensive supervision and surveillance<sup>a</sup>
- Intensive Fostering\*

These options have been incorporated (together with the Referral Order discussed in the previous chapter) into a model known as the Scaled Approach whose declared intention is to:

*"...offer sentencers greater flexibility, giving them a range of requirements that address a child or young person's offending and aim to respond to victims' needs as well."*<sup>1</sup>

Although they do not deliver the major commitment to restorative justice that we wish to see at the centre of the youth justice system, the Commission views YROs as a positive development. We especially welcome the lack of restriction on the number of times they can be used, enabling sentencers to tackle reoffending with a different combination of requirements, rather than simply moving young offenders 'up tariff' towards a custodial sentence.

The Commission, nevertheless, has some concerns about the way that individual risk assessments are used to decide the most appropriate types of sanction and intervention to include in an order. This requires the use by Youth Offending Teams (YOTs) of an assessment instrument known as ASSET "to determine the likelihood of reoffending and risk of serious harm to others"<sup>2</sup>. Combined with the YOT workers judgement, the results are used to recommend a 'standard', 'enhanced' or 'intensive' level of intervention. A number of contributors to our consultation argued that ASSET places too much emphasis on background factors relating to family and neighbourhood deprivation. They suggested that this could lead to children and young people from disadvantaged backgrounds being treated unfairly and made subject to orders that are disproportionate to their offence. The Magistrates' Association, similarly, argued that the Scaled Approach could lead to a level of intervention that was disproportionate to the offence or previous history of offending.

As we made clear in the context of prevention, the Commission favours the use of assessment as a means of getting the right services to children and young people with behaviour problems. However, when it comes to Youth Court sentencing, we would like to see a clearer distinction made between requirements imposed as a proportionate response to a child or young person's offending and interventions whose primary purpose is to improve their long-term welfare. This distinction will be easier to achieve under a system of restorative justice than in conventional sentencing. But we also recommend that the use of ASSET in the Scaled Approach is monitored to ensure that it does not lead to disproportionate treatment of children and young people from poorer neighbourhoods.

### *Effective interventions and practice*

More generally, we are conscious that there is much more to be learned about the types of community-based sanction and intervention that are most likely to prevent reoffending and to promote the long-term integration of children and young people into society.

Reviews of effective practice have drawn attention to evaluations of specific approaches that have led to lower levels of arrest or reconviction when compared with supervision orders or custody<sup>3</sup>. These include programmes for use with parents of adolescents, such as Functional Family Therapy, Multisystemic Therapy and Multi-dimensional Treatment Foster Care<sup>4</sup>. These last three programmes, which we referred to in the context of prevention, originated and were positively evaluated in the United States. They are currently being piloted in England and Wales. A description of Multi-dimensional Treatment Foster Care can be found in Chapter 3.

Our attempts to draw wider lessons about the elements of best practice have been inhibited by the variable quality of the evidence available. Typically, one research review found that the evidence base for substance misuse programmes with young people was "not well-established" in Britain and that the most promising approaches were more often found in the United States<sup>5</sup>. Programmes in England and Wales seeking to improve children and young people's reasoning, problem-solving and social skills ('cognitive-behavioural' approaches) have shown some promise with young offenders; however it is not known whether lower reconviction rates are directly attributable to the interventions<sup>6</sup>. The value of evaluations that include comparison groups was underlined by a national evaluation of Intensive Supervision and Surveillance Programmes. This found that reductions were sustained over two years in the frequency and seriousness of reoffending among the persistent young offenders who took part. This might have seemed like better news than it really was without knowing that similar improvements were found

<sup>a</sup> Intensive supervision and surveillance and intensive fostering can only be used as an alternative to custody

among a comparison group of young offenders who were eligible for the ISSP, but had been given a different sentence<sup>7</sup>.

The Commission has concluded that policy makers and practitioners, including the Youth Courts, must have better access to authoritative information and guidance regarding the best and most cost-effective practices. We say this knowing that this task is far more complex than simply listing 'what works'. Gaps in current knowledge about outcomes need to be filled and more needs to be known about the content, duration and intensity of different approaches and combinations.

As in Chapter 3, we propose that the task of reviewing and disseminating best practice and extending the knowledge base should be given to an authoritative, central organisation. We are content that the YRO should provide the sentencing framework in cases where restorative youth conferencing is not possible. But this, too, will need to be carefully monitored and assessed.

## Custody

The average annual costs of custody range from around £69,600 in Young Offender Institutions to more than £193,600 in secure children's homes. As we note below, these published costs do not appear to compare 'like with like'. But even if the costs of Young Offender Institutions are understated, the cheapest of them far exceeds the fees charged by the most successful or exclusive private schools. Yet the outcomes in terms of a 75 per cent re-conviction rate within two years are dismal. Considered against a lack of earlier investment in preventing crime, the public money currently wasted on youth custody is, in our view, unacceptable.

The use of custody to deal with young offenders is often portrayed in public debate as a way of protecting the public. Yet there is no convincing evidence that holding more young people in custody is an effective way of controlling youth offending. Detailed research suggests that custody has only a small impact on crime at best through keeping some offenders off the streets and deterring others while it probably increases the chances of reoffending. All the evidence we have examined suggests that a reformed system, with lower levels of custody, can be at least as successful as the existing one in controlling youth crime.<sup>8</sup>

We do, however, acknowledge that there are some children and young people whose violent behaviour poses such a danger to other people or to themselves that secure, residential accommodation offers the only safe option. Custody may also, in some circumstances, provide a viable way of engaging the most persistent and prolific young offenders in preventive treatment and remedial education that would otherwise prove impossible.

There has been a substantial decline by around 900 in the number of young people under 18 in custody in England and Wales since mid-2007 to under 2,200 at any one time (see Chapter 1)<sup>9</sup>. We have nonetheless concluded that there is considerable scope for reducing further the number of children and young people being detained, and for reinvesting the money saved in measures that will do more to improve the protection of the public.

## Reducing the use of custody

Both public safety and the reintegration of young offenders into society can be improved by treating custody as a genuine last resort. **We consider that a target of reducing the number of children and young people under 18 held in custody at any one time to below a thousand would be reasonable once our overall proposals are in place.**

One important way to cut the numbers being incarcerated is to stem the overall flow of children and young people through the youth justice system. A targeted reduction in the number of first-time entrants into the youth justice system has, among other factors, led to fewer children and young people being prosecuted in court, and fewer custodial sentences.

We have also noted how a substantial reduction in levels of youth custody took place in Canada following youth justice legislation in 2003. The rate of custodial sentences handed down by the youth courts in 2006/7 was less than half that in 2002/3. Yet there was no adverse effect on youth crime rates recorded by police, which were lower in 2007 than when the law was changed.<sup>9</sup>

### Local action

Positive action taken in some areas, for example Leeds, Newcastle on Tyne (see below) and Swansea has seen the local use of custody reduced through concerted action by local District Judges and magistrates, liaising with YOTs, and with external encouragement from the Youth Justice Board. Local variations in the proportion of prosecutions resulting in custody, nevertheless, demonstrate how young offenders across England and Wales face a 'postcode lottery' when it comes to sentencing. While we generally favour local control over responses to youth crime and antisocial behaviour, we also recognise that inconsistencies in the use of custody require a coordinated national response.

<sup>9</sup> According to the Youth Justice Board the overall number of under 18s in custody in April 2010 was 106 girls and 2,077 boys.

## Reducing the use of custody: Newcastle upon Tyne

Newcastle has one of lowest rates of custody in the country. In 2007/08, imprisonment accounted for just 1.3 per cent of all disposals (reprimands, warnings and court sentences)<sup>c</sup> given to young people aged 10 to 17. This compared to a national average of 3.3 per cent.

The custody rates for a 'family group' of nine similar YOT areas (in terms of deprivation, unemployment, population and crime levels) ranged from twice that of Newcastle to more than five times as high. Newcastle also used secure remands more sparingly than the others: just 3.4 per cent of all remands were to custody in 2007/8.

### Custody rates (2007/8)

YOT 'family group'	Custody rate as a % of all disposals	Custody rate as a % of court disposals	Secure remands as a % of all remand decisions
<b>Newcastle</b>	<b>1.3%</b>	<b>2.1%</b>	<b>3.4%</b>
Plymouth	2.9%	4.2%	8.1%
Stoke on Trent	3.0%	4.0%	3.1%
Sheffield	3.4%	6.6%	8.2%
Leicester	3.7%	5.9%	5.5%
Bristol	4.1%	7.2%	7.6%
Derby	4.6%	7.6%	5.6%
Cardiff	5.0%	8.0%	7.5%
Salford	5.2%	7.2%	8.6%
Nottingham	6.9%	9.7%	7.6%
<b>National average</b>	<b>3.3%</b>	<b>5.7%</b>	<b>6.6%</b>

Newcastle's YOT attribute their low use of custody to cultural changes achieved over a number of years. The quality of the relationship between the Youth Court and the YOT has been central to this. The YOT has a dedicated court team and there is constant interaction and feedback in respect of individual cases. As a result, Newcastle has one of the highest rates of 'pre-sentence report compliance' of all YOTs in England<sup>d</sup> with 95 per cent of sentences matching the recommendation made by the YOT (the national average is 73 per cent).

This high degree of confidence extends to bail supervision and support and intensive supervision and surveillance (ISS), of which Newcastle has made liberal use, as well as flexible arrangements to deal with children and young people when their court orders are breached.

<sup>c</sup> We consider the custody rate as a proportion of all disposals (pre-court and court) as well as the custody rate.

<sup>d</sup> Thurrock had the highest rate at 95%

We anticipate that the proposals we have made for better preventive services and the widespread use of restorative justice will create a new source of downward pressure on the use of youth custody. We are encouraged by the way that in Northern Ireland, following the introduction of restorative youth conferences, the proportion of convicted 10 to 17-year old offenders sentenced to custody fell (Chapter 4). The number of young offenders in custody in Northern Ireland was already declining, but the introduction of restorative conferencing appears to have accelerated the trend<sup>10</sup>. We are confident that our proposals for restorative conferencing in England and Wales will have a comparable effect on custody rates.

### *A statutory threshold*

We, nevertheless, accept the need for another mechanism to ensure that imprisonment is used genuinely as a last resort. This is the creation of a statutory threshold defining the circumstances in which custody can be used. We commend the threshold proposed by the Standing Committee for Youth Justice, that custody for children and young people should be limited to circumstances where:

*"...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."*<sup>11</sup>

We have also noted how the legislation introduced in Canada seven years ago played an instrumental role in cutting the number of young people in custody by restricting its use to violent offending, failure to comply with non-custodial sentences and the most serious and aggravated offences. Even then, Canadian youth courts may not impose custodial sentences unless they are sure there is no alternative or combination of alternatives<sup>12</sup>.

### *Abolishing short sentences*

We recommend an end to use of the shortest custodial sentences. The use of four-month Detention and Training Orders, half of which is served in custody and half under YOT supervision, appears to reflect a misplaced belief that young offenders would benefit from a custodial 'short, sharp, shock'<sup>13</sup>. Yet we encountered an almost universal view among YOT workers, staff in custodial institutions and young offenders themselves that these sentences serve little constructive purpose. Teachers and staff responsible for offending behaviour courses, addiction treatment and vocational training have also voiced their frustration to us over the lack of time to achieve anything positive. **We, therefore, propose that the minimum period in custody should be raised to**

**six months, as part of a 12-month DTO.** However, it will be important to ensure that this leads to more community sentences (such as intensive supervision and surveillance) being used, rather than a rise in the number of young people serving six month sentences in custody. We recommend that the change should not take place until a statutory threshold for custody has been introduced and new sentencing guidelines are in place.

### *Remands*

The Commission is especially dismayed by the extent to which custody is used for children and young people awaiting trial. Although the number of children and young people in custody has fallen, the number of under-18s who are imprisoned to await trial has not declined at the same rate. It stands at around 500, or one in four of those imprisoned at any one time. The complex reasons for continued high use of remands in custody are likely to include:

- young people's lack of access to suitable bail accommodation
- parents and guardians failing to attend court when their children are being remanded
- the variable quality of pre-sentence reports prepared by YOTs, and
- a lack of bail support packages<sup>14</sup>.

None of these, in our view, amounts to a reasonable justification for imprisoning children and young people while they wait to attend court.

The unacceptable nature of what occurs is demonstrated by the fact that around a quarter of those held in custody are subsequently acquitted and as many as half receive a non-custodial sentence<sup>15</sup>. Many of these non-custodial sentences will take account of 'time served' while awaiting trial, but this does not diminish our impression that many remands in custody are unjust and unnecessarily damaging to the children and young people concerned. We agree with the Prison Reform Trust that something is very wrong when so many children are locked up on remand, who are found to be safe for release into the community when sentenced. Our concern is compounded by knowing that the quantity and quality of education and other out-of-cell activities provided for young people on remand varies between institutions.

Efforts to reduce the number of children and young people remanded in custody have been thwarted, in part, by the

complexities of the system. For example, when bail was refused in the past, local authorities often sought to place children and young people with their own families rather than residential care homes. This reflected a shortage of places and a view among local authorities that care homes were unsuitable locations as well as too expensive. However, the courts' lack of confidence in home placements led to increased use of secure remands<sup>16</sup>.

In Chapter 7 we discuss why a different approach is needed to local accountability to remove perverse incentives towards allowing children and young people to end up in custody. **We, meanwhile, recommend that urgent steps are taken to reduce the use of secure remands to a minimum.**

The key to this lies in providing more bail supervision and 'accommodation plus' schemes – such as Foyers with 24-hour care and supervision – that will command the confidence of the courts and can cater successfully for children and young people who pose no threat to public safety, but cannot be remanded to their own homes.

## Reducing remands in custody: Northamptonshire bail supervision and support

The charity Catch22 (formerly Rainer) has worked for many years with young offenders in Northamptonshire. It hosted one of the first bail hostels for young adults in the county and developed bail support packages providing support, education and training for children and young people on remand in the community. The project is now run within Northamptonshire YOT and provides a range of support services, including intensive supervision and surveillance when ordered.

The project works with young people who have been charged with serious or prolific offences from arrest through to their final court appearance. It aims to halt or reduce their offending while on bail. Emergency accommodation is a key element, reflecting a guiding principle that young people should never be remanded in custody just because they have nowhere to stay.

The service tries to ensure that young people have the support of a parent or 'appropriate adult' as well as proper legal representation and transport to and from court. The Northamptonshire project is open 24 hours a day, 7 days a week, and the personal support provided is intensive and tailored to the needs of the young person. It might, for example, include housing, education, health services and anger management therapy.

The project is regarded as successful: in the year ending March 2010, 91 per cent of young people supported by the programme did not commit further offences while on bail. This has helped the project to earn the confidence of the courts.

According to service manager John Andrews, breach rates are kept low by high levels of support and clear expectations of how the young people and their families must comply: *"Not many other organisations work like this, but the fact that so many of the young people we work with do not offend while on bail shows we are getting it right."*

We agree with respondents to our consultation that YOTs must do more to fulfil their statutory duty to provide bail supervision and support, including pro-active reviews of remand cases. Once financial disincentives have been removed, the use of remands to non-secure children's homes (which has declined dramatically in the past decade) might be reinstated.

Intensive fostering schemes (for example, Multi-dimensional Treatment Foster Care described in Chapter 3) can also provide an important alternative to custody and custodial remands. This has been demonstrated by their encouraging, though somewhat sporadic, use in England and Wales during the past 20 years<sup>17</sup>. We have also been impressed by intensive bail supervision and support services that work with children and young people charged with serious or prolific offences. Their aim, as with the Northamptonshire project described above, is to provide personalised support with housing, education, health and offending-related issues such as anger management for young people who would otherwise be remanded.

## Custodial institutions

Another peculiarity of the youth justice system in England and Wales is the use made of different types of custody. Young Offender Institutions (YOIs) house the vast majority (87 per cent) of children and young people in custody; all aged 15 to 17. The remainder, including all 10 to 14-year olds, are held in Secure Training Centres (STCs) and Local Authority Secure Children's Homes (LASCHs).

The average annual costs per person for these institutions vary from around £69,600 a year in 17 YOIs and £167,300 in four privately operated STCs to £193,600 in 14 secure children's homes<sup>18</sup>. It has been suggested to us that figures provided by the Youth Justice Board do not compare costs on a comparable basis and that the correct figure for YOIs run by the Prison Service is closer to £100,000 per place<sup>18</sup>. Even so, it is apparent that YOIs, with staffing ratios of around one to ten, are cheaper

<sup>18</sup> These figures are calculated from the Youth Justice Board's Annual Report and Accounts for 2008/9 and the number of budgeted places in each type of establishment shown in its 2008/9 Corporate Business Plan.



to run than STCs or LASCHs, where the ratios are nearer to one staff member for every three young offenders<sup>f</sup>.

Despite the disparities in staffing and costs, there are no indications that the reconviction rates for any of these institutions are other than very disappointing – especially once young offenders have completed the period of community supervision that follows their release under a Detention and Training Order. So even though we have observed marked differences in the quality of regimes between institutions, we have seen nothing that remotely challenges the case for imprisoning fewer children and young people and reinvesting the money saved in preventive services.

## Regimes

Aside from unimpressive re-conviction rates, there is a lack of solid evidence comparing the outcomes achieved by different regimes in different custodial institutions. This has complicated our attempts to understand how custody should be organised in future to accommodate the much lower number of children and young people for whom detention is unavoidable. We have observed examples of encouraging practice and commitment from staff to providing good education, health and rehabilitation services in all three of the existing types of institution, in both the private and public sectors. But robust comparative data, beyond anecdote, has been in limited supply.

The judgments reached by H.M. Prisons Inspectorate and Ofsted support our impression that the regimes in many YOLs compare unfavourably with those in Secure Training Centres and secure children's homes. In her annual report for 2008-09, the Chief Inspector of Prisons referred to fundamental problems with the size and design of most YOLs holding young men. She also noted that the time spent out of cells was adequate in only half the male establishments that were inspected that year<sup>19</sup>. Figures issued by the Ministry of Justice for a single month (September 2009) confirmed that the average time young people in YOLs spent outside their cells was unacceptable at 10 hours a day – and lower than 8 hours a day in one institution<sup>20</sup>.

Even more disappointingly, while the Inspectorate's surveys of young men in custody found 70 per cent who said they wanted to stop offending, barely half of them thought they had done anything inside custody that would make reoffending less likely on the outside. A comparable, though smaller gap between hope and expectation was found among young women<sup>21</sup>.

In this context, we share concerns raised by the Inspectorate about changes in the funding for education in YOLs which requires only 15 hours of formal teaching a week; relying

on establishments to arrange 'purposeful activities' for the remainder of the day. Education provided on this restricted scale compares unfavourably with the opportunities provided for children and young people in secure children's homes and secure training centres – including Rainsbrook STC which had been graded 'outstanding' by Ofsted at the time of our visit<sup>22</sup>.

## Rehabilitation and reintegration

*"...they need help with accommodation and I reckon they need additional help with employment. Because it's alright me getting out and trying to get a job, but I think I'd be more confident getting a job if I had someone there supporting me..."*

Joe, age 18.

During its programme of visits, the Commission observed examples of unevaluated, but apparently good, practice helping young offenders prepare for their return to the community. We saw how the persistence of staff, who were not prepared to take 'no' for an answer, could prove crucial to whether children and young people were integrated into mainstream education, found training places or jobs, or received continuing mental health treatment. Their skills in dealing with outside bureaucracies were especially important when trying to relocate young people away from gang and other negative influences that would otherwise draw them back into crime.

We also encountered a number of small-scale support projects involving the voluntary sector that work with young people in custody and in the community after they leave. These included a 'Community Links' youth worker provided at Downview YOL's Josephine Butler Unit by the YMCA, and NACRO's 'Milestones' project at Portland YOI, where young adult prisoners (age 18-24) are matched with volunteer mentors from the community. Mentors assisted the young people with job and college applications as well as giving them guidance, advice and encouragement<sup>23</sup>.

Portland YOI and Ashfield YOI (for offenders under 18) also hosted an 'SOS Gangs' project run by the St Giles Trust with funding from the London Borough of Southwark that helps young men who have been (or might become) involved in gang-related crime to detach themselves and pursue alternative goals.<sup>24</sup> However, we know that examples of this type of promising practice involving the voluntary sector are not easy to sustain or expand because of difficulties in securing the necessary funding.

<sup>f</sup> There are different ways of calculating staffing ratios. These are based on the number of staff responsible for young offenders at any one time.



On a rather larger scale, we have been encouraged by what we have seen of the recently introduced resettlement services provided for young offenders from London by the Heron Unit at Feltham YOI (see below). The results from monitoring seem encouraging, but decisions on whether it should be replicated require more evidence and assessment.

## Enhanced resettlement: the Heron Unit

Under the auspices of the Mayor of London's 'Project Daedalus', the Heron Unit at Feltham YOI was opened in 2009 for young men in custody for the first time and others who have shown a willingness to change their behaviour. Participants are primarily drawn from the London boroughs of Croydon, Hackney, Lambeth, Lewisham, Newham and Southwark, where rates of youth offending are high. Due to a fall in the number of young people in custody the unit has found it difficult to fill all 30 places without relaxing the entry criteria.

An unusual feature of the Heron Unit is that it brings together young men from boroughs where territorial rivalries are an issue. Staff believe this helps rather than hinders the process of overcoming 'gang' issues.

Extra resources allocated to the Heron Unit pay for additional prison officers, support staff and 'resettlement brokers' who work with the young men inside the unit and for up to six months after their release to find employment, training and accommodation placements. There are dedicated resettlement brokers for each of the six boroughs, which helps them to negotiate with local services.

The Heron Unit has also made considerable use of release on temporary licence (ROTL) enabling young men to take part in interviews or activities such as conservation and Duke of Edinburgh projects. (For example, the unit recently arranged ROTL for one young man to meet up with tutors to prepare him for an interview with the University of Westminster.)

Part of the rationale for the project is that if reconviction rates could be reduced by 10 per cent, the programme would pay for itself. It is still early days, but after the first nine months, fewer than one in ten young men leaving the unit had been reconvicted.

Despite seeing pockets of promising practice, the Commission shares the strongly-voiced concerns of Ofsted and Prisons Inspectorate over the way that education and training provision in custody varies between institutions; and that the help given to children and young people to prepare for their release is

inconsistent and often inadequate. Problems finding suitable accommodation for young offenders leaving custody routinely harm their chances of holding down places in education or training<sup>25</sup>.

## Reforming custody

Although the reconviction statistics from different types of custodial settings appear uniformly poor, we think there are lessons to be learned about the humanity and quality of different regimes and their potential to bring about better outcomes for young offenders. We also consider that new ideas and approaches will be needed if custody is to make a more positive contribution towards helping exceptionally troublesome and disturbed young people to change their lives.

One example that we were able to observe of an innovative approach was the Keppel Unit at Wetherby YOI (see below), which caters for young offenders who are especially vulnerable. The multi-disciplinary approach being taken to the way that the unit is staffed is appealing and, in some ways, comparable to the deployment of staff from different professional backgrounds in Youth Offending Teams in the community. We see it as a model for staffing and managing other parts of the secure estate.

## Vulnerable young men in custody: the Keppel Unit

The Keppel Unit at Wetherby YOI in North Yorkshire caters for young men ill-suited to the mainstream secure estate because they are exceptionally vulnerable in some way. Their vulnerability may be related to bereavement, mental or physical health, or because they do not have the skills to cope with a first spell in custody. Some have disabilities or behaviours that would mark them out as targets for bullying. Self-harm and attempted suicide are common reasons for referral.

The physical appearance of the Keppel Unit is more welcoming than most other secure establishments; it overlooks gardens and a fishing lake, and the windows are mostly free of bars. Each bedroom has its own shower and toilet.

The original intention was to take a therapeutic approach with young men referred to the unit; treating them for a period of time until they could safely be returned to the mainstream secure estate. It soon became apparent that most of the young men referred were too vulnerable for this to be a feasible goal.

The unit was allowed to recruit its own staff among existing prison officers who showed an interest and aptitude for working with young people, and through a specialist

recruitment campaign. Staff were brought together for a 10-week training period before opening in 2008, which helped establish the multidisciplinary approach and a good rapport. Prison officers help out in education, which gives them a good basis to work with the young men outside of the classroom.

All services are provided on the unit, including education and mental health support. Staff sit down for their meals together with the young people. There are 72 staff for a maximum of 48 young men. The annual costs of the Keppel Unit are estimated by the Youth Justice Board as £74,000 per place – higher than most YOIs for young men run by the Prison Service, but lower than other secure institutions.

### *Young Offenders' Academies*

We have also benefited from studying detailed proposals for establishing a Young Offenders' Academy. This is designed to pilot a new kind of education, training and health and wellbeing facility providing secure and supported non-secure accommodation on the same campus but also serving young offenders from the surrounding community<sup>26</sup>. This vision of the rehabilitative services provided in secure accommodation being integrated with those for children and young people subject to community sanctions is, in many ways, an attractive one.

Young Offenders' Academies would include 'open' conditions for young people who do not need high levels of security and can benefit from education, training and work placements, access to local agencies and other activities in the community. These are strikingly absent from the secure youth estate, although an integral part of the adult prison system.

We also endorse the desire to achieve a more 'local' solution that would limit the need for young offenders to be incarcerated far from home, making it easier for family to visit. Such problems are an issue in many parts of England and, especially, Wales (see Chapter 7) and a hindrance, in the view of resettlement workers, to successful rehabilitation.

It has been suggested to us that provided Young Offenders' Academies were built in major cities, they would be within an hour's travel by public transport of the homes of all but 10 per cent of the young offenders they accommodate. Even so, as the demand for custodial places shrinks under our proposals, there could be difficulties in achieving a local dimension. We also have some concerns that a campus mixing young offenders from the community with those held in secure accommodation could have unintended, negative consequences for both populations, as could the mixing of

young male and female offenders. We do, nevertheless, think the proposal for a pilot Young Offender Academy should be given, serious consideration and publicly debated.

### *Decommissioning*

**The Commission considers that as the youth custody population declines, so outdated and unsuitable YOI accommodation should be phased out<sup>9</sup>.** Although superficially more 'cost-effective' we take lower staffing ratios and relatively poor regimes in these establishments as evidence of false economies, which will tend to become more stark once the population in custody reduces to an increasing concentration of children and young people whose problems are severe. Despite the efforts of staff to create a less forbidding environment, both YOIs and STCs have the feel of 'junior prisons' with an emphasis on visible security that is not conducive, in our view, to the task of rehabilitating and integrating children and young people back into society. **We think that secure accommodation should increasingly be provided in small, purpose-designed units with regimes that are modelled on evaluated practice.**

What constitutes 'best practice' is, however, far less clear than it should be. This is another area in which our plans to create an authoritative central source of operational guidance and support would prove beneficial; ensuring a stronger commitment to measuring what custody actually achieves, promoting best practice in resettlement and eliminating practices that are positively harmful.

### *Staff specialisation and training*

The high proportion of vulnerable, emotionally and behaviourally disturbed children and young people in custody underlines the need for staff with specialised skills and knowledge. Yet we have seen how the basic levels of qualification and training in different parts of the secure estate vary considerably. In Secure Children's homes, managers are qualified social workers and staff in most cases hold higher level (NVQ3+) child care qualifications. Staff in STCs complete a 9-week training course and some managers are qualified social workers. In the Prison Service, staff in YOIs receive generic training for prison officers, plus a seven-day Juvenile Awareness Staff Programme (JASP). Meanwhile, YOI governors can only reach the top rungs of their career structure by transferring to adult prisons. **We propose that those who work in secure settings for children and young people should be trained and qualified to a high minimum standard, including an understanding of child development. Their specialist skills should be properly recognised in career structures.**

<sup>9</sup> Some units might be re-commissioned to ease overcrowding in the adult prison system.

## Resettlement

Respondents to our consultation repeatedly told us how the chances that young offenders will continue to offend are influenced by where they live, who they live with, and whether they are successfully integrated into education, training or work. This is especially true of children and young people leaving custody who are not only at high risk of continued serious offending, but also least likely to come from stable families. The fact that around 24 per cent of young men and 49 per cent of young women have previously been in the care of their local authority speaks for itself<sup>27</sup>.

Our proposal for a lead practitioner, normally from the YOT, to work with young offenders at every stage of their involvement with the youth justice system (Chapter 4) is one of the steps we believe are needed to bring co-ordination and continuity to the process of rehabilitation and resettlement. **We recommend that planning for resettlement starts within days of a child or young person being placed in custody, with their external lead practitioner actively involved throughout.**

## Family links

Children and young people in custody also need better opportunities to maintain – or re-establish – relationships with parents, members of their extended family or carers who can support them after their release. In some cases young offenders are already parents themselves and can benefit from continued contact with their child and the mother or father. Placements in establishments far away from home do nothing to help with this potentially vital ingredient of resettlement. For those young offenders who do receive visits, one hour a week is plainly inadequate to foster supportive relationships. Staff at Ashfield YOI suggested to us that building and enhancing family relationships helps to reduce re-offending. **We would expect a reformed youth custody system to do more to connect young people with their families or, if that cannot be achieved, mentoring support from a dependable adult.**

## Education

Ofsted, in a review of learning and skills arrangements for young offenders, has highlighted pressing problems that range from poorly diagnosed educational needs before they arrive in custody, to inadequate preparation for release and a lack of support on returning to the community<sup>28</sup>. **We endorse Ofsted's recommendation for a statutory education plan to be completed for every young offender. This would accompany them as they moved through the youth justice system to achieve greater continuity in their education and treatment by agencies and institutions.**

## Drug, alcohol and mental health treatment

We also want young offenders with severe mental health problems or whose offending is linked to serious alcohol or drug misuse to receive appropriate treatment. Conventional custody is clearly not the right place for young people who are highly vulnerable, as indicated by continuing incidents of self-harm and suicide in custodial institutions. **Our attention has been drawn to the fact that Section 34 of the Offender Management Act 2007 already provides for the placement of young offenders in alternative 'youth detention' facilities, that include residential psychiatric care facilities and drug and alcohol treatment centres. We recommend that this provision, which does not appear to have been implemented anywhere, is put to good, immediate use.**

## Accommodation

The Howard League for Penal Reform has highlighted the routine difficulties that YOTs and the resettlement staff in custodial institutions encounter when seeking suitable housing for young offenders, especially those aged over 16<sup>29</sup>. We have seen for ourselves how the question of where a young person is going to live can remain unresolved right up to the day of their release.

One attractive feature of Young Offenders' Academies (see above) is the way they might enable children and young people to be transferred to supervised accommodation on the same campus and then to foster homes and other suitable accommodation in the community. We also want children and young people who enter the youth justice system to be treated as 'children in need' under the Children Act 1989, with an entitlement to assessment by the local authority, including their own or their family's accommodation needs. **Young offenders leaving custody should receive continuing support from children's services, equivalent to the support that children and young people leaving local authority care are supposed to receive.** Under our proposals, children and young people in custody will be limited to those with the most serious offending histories and problems. Their resettlement needs will be complex and pressing.

**We also recommend that a better range of suitable supervised accommodation be made available for young offenders on their release.** This would include 'halfway houses' for young people adapting to independent living and supervised accommodation in Foyers and through intensive fostering schemes. All these would help children and young people take advantage of further education, training and work opportunities while avoiding peer pressure to resume a criminal career. We would also like to see extended co-

operation between local authorities to enable more young people and their families to be relocated to neighbourhoods where they can escape intimidation and pressure to take part in criminal activities.

## Criminal records and employment

Finding and keeping a job is often crucial to whether young offenders are able to turn their backs on crime and stay out of further trouble with the law<sup>30</sup>. Young offenders held in custody most often say that finding employment would be the change they need to stop committing more crime<sup>31</sup>. Yet the current system for keeping and making employers aware of criminal records acts as a drag in the wrong direction, making it less likely that young people can obtain stable work opportunities<sup>32</sup>. Even when suitably trained and qualified, young ex-offenders face barriers – not least if their qualification certificate shows it was obtained in custody.

Young people taking part in the Commission's consultation who had criminal records were pessimistic about their prospects, anticipating that employers would be reluctant to hire them. They thought it unreasonable for their long-term future to be jeopardised by their childhood problems and mistakes made while they were still growing up. They recognised that records relating to serious violence could not simply be washed away, but felt there should be a mechanism to help them embark on adult life and employment with a 'clean slate'<sup>33</sup>.

Organisations and individuals we consulted took a similar view, agreeing that young people did not deserve to be haunted by misbehaviour while they were still growing up. For example, the Barrow Cadbury Trust and Transition to Adulthood Alliance called for a 'CRB Smart' system where criminal convictions would only need to be declared to an employer if relevant to the specific job being sought. Others proposed that young people's records involving minor, non-persistent offending should be wiped clean either at 18 or 21. The Magistrate's Association, preferring the latter threshold, suggested a clean slate for all records apart from sexual and indictable offences<sup>h</sup>.

The Commission agrees that young people convicted of more serious offences should be able to 'buy back' their criminal record through a period of law-abiding behaviour or their compliance with an order or treatment programme. This would accord with the recommendations eight years ago of a Home Office review of the Rehabilitation of Offenders Act 1974 that non-persistent offenders should be given a clean sheet at, or not long after, their 18<sup>th</sup> birthday. The rule would apply provided their offences were not the most serious and a specified period

of time had elapsed without further convictions. For children and young people convicted of more serious offences who had been in custody, the review proposed 'buffer periods' without further convictions of up to two years, after which they would not have to disclose their conviction to an employer<sup>34</sup>. An exception would apply to particularly sensitive work areas with children or vulnerable adults where 'enhanced' criminal record disclosure is currently required.

The only controversial aspect of the review proposals is, in our view, that they were never implemented. **We accordingly recommend that the Rehabilitation of Offenders Act should be amended in relation to young offenders along the lines suggested by the review.**

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<sup>h</sup> Indictable offences could be removed five years later provided no similar convictions had been incurred

- <sup>1</sup> Youth Justice Board (2009) *The Scaled Approach and the Youth Rehabilitation Order*. London: Youth Justice Board.
- <sup>2</sup> Youth Justice Board (2009) as above.
- <sup>3</sup> See, for example, Stephenson, M., Giller, H. & Brown, S. (2007) *Effective Practice in Youth Justice*. Cullompton, Devon: Willan.  
Utting, D. & Vennard, J. (2000) *What Works with Young Offenders in the Community?* Barking: Barnardos.
- <sup>4</sup> Hawkins, J.D., Welsh, B.C. & Utting, D. (2010) 'Preventing Youth Crime: Evidence and Opportunities'. In D.J. Smith (ed.) *A New Response to Youth Crime*. Cullompton, Devon: Willan.
- <sup>5</sup> Stephenson, M and others (2007) as above.
- <sup>6</sup> Feilzer, M., Appleton, C., Roberts, C. & Hoyle, C. (2004) *Cognitive Behaviour Projects: The National Evaluation of the Youth Justice Board's Cognitive Behaviour Projects*. London: Youth Justice Board.
- <sup>7</sup> Moore, R., Gray, R., Roberts, E., Merrington, S., Waters, S., Fernandez, I, Hayward, R.G. & Rogers, R. (2004) *ISSP: The Initial Report*. London: Youth Justice Board.  
Gray, E., Taylor, E., Roberts, C., Merrington, S., Fernandez, R. & Moore, R. (2005) *Intensive Supervision and Surveillance Programme. The Final Report*. London: Youth Justice Board.
- <sup>8</sup> Smith, D.J. (2010) 'The Need for a Fresh Start' in D. J. Smith (ed.) *A New Response to Youth Crime*, Cullompton, Devon: Willan.
- <sup>9</sup> Bala, N., Carrington, P.J. & Roberts, J.V. (2010) 'Youth Justice Reform in Canada: Reducing Use of Courts and Custody without Increasing Youth Crime'. In D.J. Smith (ed.) *A New Response to Youth Crime*. Cullompton, Devon: Willan.
- <sup>10</sup> Jacobson, J. & Gibbs, P. (2009) *Making Amends: restorative youth justice in Northern Ireland*. London: Prison Reform Trust.
- <sup>11</sup> Standing Committee for Youth Justice (2009) *Response to Sentencing Advisory Panel Consultation Paper on Principles of Sentencing for Youths*. [www.scyj.org.uk/files/SCYJ\\_Submission\\_on\\_Principles\\_of\\_Sentencing\\_for\\_Youths\\_-\\_r.pdf](http://www.scyj.org.uk/files/SCYJ_Submission_on_Principles_of_Sentencing_for_Youths_-_r.pdf). Accessed April 2010.
- <sup>12</sup> Bala, N. and others (2010) as above.
- <sup>13</sup> Graham, J. (2010) as above.
- <sup>14</sup> Dept. for Children, Schools and Families (2010) *Safeguarding the Future. A Review of the Youth Justice Board's Governance and Operating Arrangements*. [publications.dcsf.gov.uk/eOrderingDownload/Safeguarding-the-Future.pdf](http://publications.dcsf.gov.uk/eOrderingDownload/Safeguarding-the-Future.pdf). Accessed March 2010.
- <sup>15</sup> Prison Reform Trust (2009) *Children: Innocent until proven guilty*. London: Prison Reform Trust.
- <sup>16</sup> NACRO (2005) *A better alternative. Reducing child imprisonment*. London: NACRO.
- <sup>17</sup> Utting, D. (1996) *Reducing criminality among young people: a summary of relevant programmes in the United Kingdom*. Home Office Research Study 161. London: Home Office.
- <sup>18</sup> East Potential / Foyer Federation (2009) *Young Offenders: A Secure Foundation*. London The Foyer Federation.
- <sup>19</sup> HM Inspector of Prisons for England and Wales (2010) *Annual Report 2008-09*. London: TSO.
- <sup>20</sup> Commons Hansard 11<sup>th</sup> January 2010: Column 800W.
- <sup>21</sup> Tye, D. (2010) *Children and Young People in Custody 2008-09. an analysis of the experiences of 15–18-year olds in prison*. London: HM Inspectorate of Prisons / Youth Justice Board.
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- <sup>23</sup> [www.nacro.org.uk/services/dorset/nacro-milestones/](http://www.nacro.org.uk/services/dorset/nacro-milestones/). Accessed May 2010.
- <sup>24</sup> [http://www.stgilestrust.org.uk/what/208746/sos\\_gangs\\_project.html](http://www.stgilestrust.org.uk/what/208746/sos_gangs_project.html). Accessed May 2010
- <sup>25</sup> Ofsted (2010) *Transition through detention and custody. Arrangements for learning and skills for young people in custodial or secure settings*. London: Ofsted.
- <sup>26</sup> East Potential / Foyer Federation (2009) As above.
- <sup>27</sup> Tye, D. (2010) as above.
- <sup>28</sup> Ofsted (2010) as above.
- <sup>29</sup> Howard League for Penal Reform (2006a) *Chaos, neglect and abuse. The duties of local authorities to provide children with suitable accommodation and support services*. London: Howard League.
- <sup>30</sup> Howard League for Penal Reform (2006b) *Out for Good. The resettlement needs of young men in prison*. London: Howard League.
- <sup>31</sup> H.M. Inspector of Prisons for England and Wales (2010) as above.
- <sup>32</sup> Neustatter, A. (2002) *Locked in – Locked Out. The experience of young offenders out of society and in prison*. London: Calouste Gulbenkian Foundation.
- <sup>33</sup> Cleghorn, N., Kinsella, R. & McNaughton Nicholls, C. (2010) *Responding to youth crime and antisocial behaviour: engaging with the views of young people with experience of the youth justice system*. London: Police Foundation / National Centre for Social Research.
- <sup>34</sup> Home Office (2002) *Breaking the circle. A Report of the Review of Rehabilitation of Offenders Act*. London: Home Office.







## Gender, ethnicity and age

6



This chapter highlights three cross-cutting issues that are relevant to every aspect of the response to youth crime and antisocial behaviour – but especially the youth justice system.

- *Gender*: although fewer girls and young women get into trouble with the law than boys and young men, there has been concern in recent years about the numbers being convicted of violent offences and the numbers being sent to custody
- *Ethnicity*: children and young people from some racial and ethnic groups number disproportionately among those that have contact with the police, are charged with criminal offences and are remanded or sentenced to custody.
- *Age*: the Commission's inquiry reflects the focus of the youth justice system on children and young people aged 10 to 17. However, there are important issues relating to maturity at the upper as well as the lower end of the age range.

We also take the opportunity to reflect on our own consultation and engagement project with children and young people who have had contact with the youth justice system – and the value of ensuring that their voices are heard as an integral part of the reform process.

## Girls and young women

Most young people caught up in the youth justice system are young men, but the failings of the existing system are marked when it is dealing with the relatively small number of young women offenders. The response to girls and young women who offend is in urgent need of reform.

The great majority of teenage girls who break the law or behave antisocially are likely to settle down by their early twenties, unless a heavy-handed response to their behaviour throws them deeper into a criminal lifestyle. Very few girls are counted among the 'life-course-persistent' offenders, described in Chapter 3, whose chronic antisocial behaviour starts early and continues into adulthood. Most misbehaviour and offending among girls is confined to the teenage years<sup>1</sup>.

Young women are at greater risk of offending when they mix in antisocial peer groups or associate with young men who take risks and are criminally involved<sup>2</sup>. Yet, despite excitable media stories about girl gangs and a female crime wave, offending by teenage girls tends to be minor and non-violent. The proportion of girls who participate in delinquent gangs is low, and there is no reliable evidence that it is rising<sup>3</sup>.

Although the number of convictions of girls for violent offences has grown (from a very low base) this may partly reflect a 'net widening' tendency to call the police to fights and other incidents that schools, care homes and other institutions would previously have dealt with informally<sup>4</sup>. This would help to explain an increase during much of the past decade in the number of girls and young women being reprimanded by police. Other research suggests that violence has become increasingly 'normalised' in girls and young women's lives and that there has been a strong link between their disorderly behaviour and drinking alcohol<sup>5</sup>.

Wherever the balance lies between possible explanations, there has been an unwelcome rise in the number of girls and young women entering the youth justice system and ending up in custody. The number of girls and young women in custody grew from fewer than 100 in 1990 to about 450 during 2008, despite no evidence of an increase in offending<sup>6</sup>.

Young female offenders are especially vulnerable. A study in Scotland found that teenage girls who offend are more likely than young men to self-harm or attempt suicide, to suffer from eating disorders, to be harassed by adults, to be victims of crime themselves, to experience family crises, and to be living in poverty<sup>7</sup>. Because of their smaller numbers, girls are imprisoned in fewer institutions and tend to be even further from home than boys.

In 2007 the Home Office published the report of a review by Baroness Corston of the treatment of women with particular vulnerabilities in the criminal justice system<sup>8</sup>. This concluded that "women have been marginalised within a system largely designed by men for men" and argued for radical change towards a women-centred approach. In a similar way, we have concluded that measures to deal with young female offenders must be designed from the outset to meet their particular needs. However, it would be wrong, as emphasised by a recent research review, simplistically to assume that needs are the same for all groups of young women offenders<sup>9</sup>.

By placing restorative justice at the heart of the system, we believe a framework can be established within which young female offenders are dealt with more appropriately. However, that is only a start. The implementation of the new arrangements needs to be planned with young females as well as male offenders in mind. This applies not only to restorative conferencing, but also to the solutions agreed by conferences, including arrangements for making good the damage and harm that are caused by offending, and educational or personal change programmes.

In implementing our recommendations for the reform of custody, it will be important to recognise the distinct needs of young women offenders in staff training and other provision. One

recommendation of the Corston Report was that women's community centres should be developed as an alternative to prison. We recommend that this approach should be piloted and assessed for young women under 18 as well as adult offenders.

## Young people from racial and ethnic minorities

### *Differential treatment*

Some racial and ethnic communities are disproportionately affected by youth crime and antisocial behaviour. Children and young people from certain black and minority ethnic groups also number disproportionately among those who are stopped and searched by the police, arrested, prosecuted and sentenced to custody:

- In 2008/9, 6.1 per cent of 10 to 17-year olds who were cautioned or convicted of an offence came from black (African-Caribbean) groups that make up 2.2 per cent of the general population; another 3.7 per cent came from mixed heritage backgrounds that account for 1.3 per cent of the population<sup>10</sup>.
- In early 2010, 18 per cent of children and young people serving custodial sentences were from black communities and 7 per cent were of mixed ethnicity<sup>11</sup>.
- Children and young people from white and South Asian communities (Bangladeshi, Indian and Pakistani) are, by contrast, under-represented in the youth justice system.
- Asian people as well as black people are, however, more likely to be stopped and searched in the street by police than white people<sup>12</sup>.

Age structures, economic circumstances and neighbourhood factors all help to explain differences in the experiences – both as victims and offenders – of children and young people from different racial and ethnic groups. For example, more than one in three males of mixed heritage are aged 16 to 24, compared with one in seven white males<sup>13</sup>. Also, a higher proportion of black than white children are growing up in disadvantaged, high-crime neighbourhoods.

Even so, there is evidence to suggest that the youth justice system discriminates against certain ethnic groups. Research for the Equality and Human Rights Commission (EHRC) found that, after taking factors like previous criminal records and the nature of offences into account, mixed race offenders and suspects were still more likely to be prosecuted than white defendants and less likely to be reprimanded or given a final warning. Black

and mixed heritage defendants were also more likely than white children and young people to be remanded in custody<sup>14</sup>.

The latter finding is important to explaining the over-representation of these groups in custody overall<sup>15</sup>. It adds a further dimension to our concern about the over-use of custodial remands and reinforces our proposals in Chapter 5 for making greater use of intensive bail support schemes, foster care and other community-based alternatives.

The Commission wants to see fewer children and young people placed in custody overall. But as the overall numbers who are imprisoned continues to fall it is vital that the opportunity is taken, to understand and address the factors that are still contributing to differential treatment.

### *Policing the streets*

*"There are some policemen that... will go round and be friendly with the young people. You get friendly with the young people...then there's more chance that young people are gonna respect the police back and...will not wanna get in trouble."*

Emile, age 17.

Recent research on the treatment of racial and ethnic groups by the youth justice system shows that two out of three arrests for theft, robbery and other 'acquisitive' crimes are the result of police acting on reports received from members of the public. This means that differential reporting by victims may be one reason why black and mixed heritage children and young people are over-represented among those who come to the attention of the police. But it may also reflect an over-representation of black and mixed heritage young people among those responsible in some neighbourhoods for particular types of offence<sup>16</sup>.

The style of policing in high-crime neighbourhoods, including those with significant black and minority ethnic populations, can vary between locations, and even between police units operating in the same area. This is not only true of the way reports to the police are handled, but also of crimes that police officers discover themselves through 'stop and search' and other pro-active procedures.

*“Just because they’re young and they may wear what the typical antisocial people wear, they stop them straightaway. And it’s like what are you stopping them for?”*

Paige, age 18.

Encounters between police and young people can take place in very difficult circumstances where law enforcement is an immediate priority, and officers face antagonism that stems from a history of poor community relations<sup>17</sup>. Researchers accompanying police on the streets have observed a restrained ‘rule of law’ approach to policing that emphasises fair and respectful dealings with children and young people. This contrasts with a more adversarial style that has been adopted by other officers, especially when targeting groups<sup>18</sup>. We consider that the ‘rule of law’ approach to neighbourhood policing – placing a premium on professionalism and due process – provides the practice model that is most conducive to repairing damaged relations and restoring community confidence.

We welcome the National Policing Improvement Agency’s ‘Next Steps’ initiative as an approach to achieve consistency in the use of stop and search powers and prevent them being used unfairly<sup>19</sup>. We also acknowledge the part that the National Policing Pledge has played in extending neighbourhood policing and making police more responsive and accountable to the communities they serve. Building on this, we endorse calls for training and management arrangements to realise the vision of a highly professional force that deals fairly, respectfully and consistently with children and young people. The key to this lies with initial and in-service training.

Our consultations with young people who have experienced the youth justice system at first hand reinforced our view that there is much to be learned about improving the response to youth crime through engagement and listening to their perspectives (see below). **We know that police in some areas already invite young people with experience of ‘Stop and Search’, arrest and other procedures to take part in professional development sessions. We commend this approach and recommend that it is adopted as a standard feature of training.**

We would propose that more care be taken to understand the routes that children and young people follow into persistent, serious and violent offending, including gang-related drug cultures. The way these pathways may differ between racial and ethnic groups merits

closer examination as part of the overall improvements we propose to research and analysis (See Chapter 7).

## Age and maturity

The Commission’s discussions on youth issues have inevitably considered how far children should be subject to the criminal law and the part that their age and maturity should play when deciding their culpability.

Few would disagree that mature adults are responsible for their moral choices and should face the consequences when they break the law. Most (though perhaps not all) would also accept that children and young people are less developed in their moral understanding, reasoning capacity or experiences of life and should not, therefore, be held responsible for crime or antisocial behaviour to the same extent as a mature adult. The existence for more than a century of a youth justice system in England and Wales, with special arrangements for responding to criminal behaviour committed by children and young people, is recognition of a broad social consensus that this is the case.

There is, however, no widely accepted or clearly defined rite of passage from the status of supervised childhood to autonomous and morally responsible adulthood. Between them, instead, lies the ambiguous and disputed status of youth or adolescence when involvement in antisocial and criminal acts tends to peak.

## Transitions to adulthood

As observed in the book that accompanies this report<sup>20</sup>, the transition from childhood to adulthood has altered markedly in the past 50 years. Children mature physically and sexually at a younger average age; yet the expansion of education and training means the majority are now approaching or already in their 20s before they enter the ‘adult’ world of work.

Even so, the different age requirements used in law and public policy to mark the transition to independence and adulthood reveal uncertainty and inconsistency about boundaries<sup>21</sup>. Young people are not entitled to the full National Minimum Wage or ‘adult’ rates of certain social security benefits until their early to mid-20s. They vote in elections and buy alcoholic drinks when they are 18 and can be treated (and sentenced) as an adult when charged with a criminal offence. Driving a car on the public highway, when licensed and insured, is legal at 17. Consensual sexual intercourse and marriage become legal at 16, which is also the minimum school-leaving age. The minimum age at which children can be held criminally responsible and face prosecution is, however, 10 in England and Wales (and 8 in Scotland, pending legislation for an increase to 12).

The age thresholds relating to the youth justice system cannot constitute an accurate guide to an individual child or young person's level of maturity and understanding. Recent evidence concerning brain development during adolescent and early adult life provides scientific support for the view that young people deserve to be treated differently by the criminal law<sup>22</sup>. These developments have been linked to a reduced capacity among adolescents to control impulse<sup>23</sup>.

Reviews of the scientific evidence coincide with our instinctive view that while some children may understand from quite an early age that certain types of behaviour are socially unacceptable and harmful, others reach adolescence with much less sense of where the boundaries lie. In addition, we have heard from experts, including professionals working with young adult offenders, about the marked differences they encounter in maturity among older teenagers to which physical age offers no guide.

**In our view, flexibility and discretion need to be applied at every stage when dealing with individual children and young people who break the law to recognise and take account of their maturity.** This is implicit in the priority we have given to the principle of securing their positive long-term welfare and law-abiding participation in society. In practice, it means that every professional working in and around the youth justice system needs to be properly trained to take account of maturity issues.

**We also think it important that the way society responds to youth crime should make its own contribution to children and young people's maturation and learning by making them aware of the impact of their behaviour.** Our proposals for restorative justice are designed to play a salutary part in increasing young people's understanding that criminal behaviour harms other people and the community. As we saw for ourselves in Northern Ireland, a restorative conference may be the first time that this basic realisation occurs.

Our proposals to place restorative justice at the heart of the youth justice system offer the prospect (provided staffing and training recommendations are also followed) of ensuring a process that is 'just'. Children and young people must be able properly to understand the proceedings and make their own views known. An individual's level of maturity will be one of the important considerations when conducting a conference and in deciding its consequences.

## Age of criminal responsibility

In examining the vexed issue of the minimum age of criminal responsibility, the Commission has considered contrasting viewpoints.

- A broad range of children's charities, churches, youth justice organisations and academic experts argued during our consultation that irrespective of any considerations of maturity, children aged 10 are developmentally too young to be held criminally responsible.
- Associated with this view was a belief that asking whether children at a given age can distinguish 'right' from 'wrong' – or have a 'guilty mind' – was too simplistic a test to apply when determining a minimum age. It was argued that a more sophisticated view of mental development and 'capacity to infringe the penal law'<sup>24</sup> was required<sup>25</sup>.
- Respondents also noted that the United Nations Standard Minimum Rules on Juvenile Justice Administration (the Beijing Rules) state that the age of criminal responsibility shall not be "fixed at too low a level bearing in mind the facts of emotional, mental and intellectual maturity."<sup>26</sup> England and Wales (and Scotland) stand out in Europe – and worldwide – for setting an exceptionally low minimum age compared with 12 in Ireland and the Netherlands, 14 in Germany, 15 in the Nordic countries, 16 in Spain and 18 in Belgium and Luxembourg<sup>27</sup>. The United Nations Committee on the Rights of the Child has three times in the past 15 years called for the age of criminal responsibility in the UK to be raised<sup>28</sup>.
- An alternative argument put to us was that the age of criminal responsibility in different countries offers an unreliable guide to the way children and young people are actually treated when they break the law. Scotland, with currently the lowest age of criminal responsibility in Europe, refers children and young people aged between 8 and 15 to a Children's Hearing system in which their welfare needs are the paramount consideration. Belgium, whose minimum age of 18 is the highest in Europe, applies similar principles through a non-criminal youth court that can refer children and young people to protective and educative measures, including secure care facilities. Very serious cases involving 16 and 17-year olds in Belgium are referred to an 'Extended Youth Court' where adult criminal law applies and one of the three judges is from the adult, correctional court<sup>29</sup>. New Zealand has, meanwhile, pioneered the use of restorative justice for children and young people since 1989 through 'Family Group Conferencing' procedures at either a pre-trial or pre-sentence stage. The minimum age of criminal responsibility there is 10, the same as in England and Wales<sup>30</sup>.



**The Commission's conclusion from its examination of international evidence is that a more effective and humane response to youth crime in England and Wales can be achieved without raising the minimum age of criminal responsibility.**

We do, however, recommend that greater recognition be given to maturity issues where young people are on the cusp of the youth justice and adult systems. Although it relates to an age group outside our formal remit, we have been impressed by the case put to us by the Barrow Cadbury Trust and the Transition to Adulthood Alliance (T2A) for taking account of immaturity when intervening to change the behaviour of young offenders aged 18 to 24<sup>31</sup>.

There would be particular benefits in extending the recommended use of restorative conferencing for young people aged 10 to 17 to the older age group wherever possible. We, therefore, hope that serious consideration will be given to procedures for assessing the maturity of young adults so they can be subject to Youth Court procedures where appropriate, including restorative conferencing. This would be comparable to the existing situation in Germany where "a global examination of the offender's personality" can lead to criminal cases against young adults under 21 being handled under juvenile law<sup>32</sup>.

## Youth engagement and youth voice

Beyond this, the Commission considers that the insights of children and young people who have experienced antisocial behaviour and crime should carry weight in designing a better response that will benefit everyone. We partly reflect this view through our emphasis on restorative principles – not least the need to ensure that young victims and witnesses are heard and that young perpetrators have the opportunity to explain themselves and make amends. These principles accord with Article 12 of the UN Convention on Human Rights (see Chapter 2). But this has been reinforced by first-hand experiences throughout our inquiry. Children and young people that have been involved in decisions about policies, rules and the way they are enforced are more likely to respect and abide by them.

We have seen for ourselves how initiatives that engage children and young people and respect their perspectives and views can enhance their learning and personal development, while contributing to the key objectives of prevention and integration. These have extended across a wide canvas from strategic service planning to individual reparation plans. For example:

- Children and young people, through youth parliaments, councils and other mechanism, are increasingly consulted and involved in planning preventive and other services in their area.
- The Children's Commissioners for England, Northern Ireland, Scotland and Wales and organisations like the National Children's Bureau and National Youth Agency are active in ensuring that children and young people's views and voices are heard<sup>33</sup>.
- Inspectorates, whether assessing schools, Youth Offending Teams or Young Offenders' Institutions routinely seek (and publish) the views of children and young people who use them as an integral part of their work.
- The *RECLAIM* project in Manchester (see below) is an example of a youth engagement programme that uses mentoring and other techniques to give young people exposed to gang and other criminal cultures a sense of power to change their own lives and help others to make positive choices.
- Some custodial institutions have established consultative councils and other arrangements to involve children and young people in improving conditions. For example, the school uniform at East Moor Secure Children's Home was designed by the students themselves.
- Restorative justice plans can include a requirement for young offenders to use a particular skill, such as art or information technology, to produce materials to discourage others from committing crime and antisocial behaviour.

### The *RECLAIM* project

*RECLAIM* is a 'leadership' project in Manchester that enables young people at risk of negative outcomes to engage directly with the decision-makers influencing their lives and their communities. By promoting direct dialogue with the police, local authority and community leaders, it helps those who are often marginalised to realise their voice. Directed by the agenda of its young members, *RECLAIM* creates youth engagement, as well as diversion away from youth crime and anti-social behaviour. It gives young men and young women who have made mistakes a second chance of success.

*RECLAIM* does not differentiate between young people who offend and those who do not. All the young people engaged with the project are regarded as equal, with differing needs that require targeted support. This non-labelling approach removes any stigma of being associated with the project.

The project's most recent work with young women began in April 2010. Thirty 12 and 13-year old girls (Year 8) were selected for the project, nominated mainly by schools but also by families, peers, community groups, neighbourhood policing teams and members of the community. The girls did not fall into simple categories of 'hard to reach' or 'at risk'. Each was facing unique challenges, although there were also shared difficulties that left them vulnerable to criminal activity. These include issues of self confidence, body image and inappropriate relationships as well as problems related to their physical environment.

Monthly group events were held over six months, addressing the challenges that these young women face. A crucial aspect of the project was that each young person was allocated a local adult female mentor. This provided the young women with a positive role model and a point of contact with whom they could build a trusting relationship. The mentors maintained weekly contact and supported the young women in their schools, homes and in situations that require adult intervention and guidance.

*RECLAIM* also works with young men, although these are recruited from Year 9 (aged 13-14) reflecting general differences in maturity and development. The engagement tools that have proved successful with young women are also different. These have focused on building up their self-esteem and self-awareness so that they can challenge the behaviour patterns that are producing repeated negative outcomes.

*RECLAIM*'s engagement rate throughout the six-month process is over 90 per cent. Feedback from the young people, parents, staff and other agencies has been very positive, including support for the 'whole-community' approach in which local people provide solutions for their young people, and statutory agencies support the process from a distance.

The Commission has also met a number of young ex-offenders who have become committed youth workers, using their special understanding and experience to help children and young people find ways around the pressures and problems threatening to draw them into a criminal lifestyle. The national Kickz programme run through professional football clubs, in partnership with local authorities and the police, is one example we have considered, as is the Dance United project in Bradford<sup>34</sup>. More generally, we welcome the Youth United and Young Dragons (*Dreigiau Ifanc*) initiatives to increase the numbers of young people and adult volunteers participating in youth organisations, including uniformed cadets.

We have also benefited from discussions with Mark Johnson, an author<sup>35</sup> and former prolific offender and drug abuser whose charity User Voice promotes the involvement of former offenders in prevention and rehabilitation services. His argument that ex-offenders are especially well placed to gain the trust of the most marginalised and alienated children and young people is persuasive. Part of our frustration with existing rules on disclosure of previous convictions to employers is the way they exceed sensible safeguards to place unnecessary barriers in the way of this valuable work.

### *Youth engagement project*

Funding from the Paul Hamlyn Foundation made it possible for the Commission to enter into its own detailed consultations with children and young people with experience of the youth justice system. Through a partnership with NatGen, the National Centre for Social Research, we have studied the results of:

- confidential in-depth interviews conducted with children and young people aged 12 to 25 in England and Wales about their experiences and views of crime and antisocial behaviour
- a series of four group discussion sessions with a new sample of 12 to 25-year olds to consider options for improving the response to youth crime and antisocial behaviour
- a facilitated meeting between young people and members of the Commission to discuss key areas for reform of the existing system<sup>a</sup>.

<sup>a</sup> An older 18 to 25 age group was recruited for this meeting to ensure a wide range of experiences of the youth justice system on which the young people were able to reflect.

The project complemented our more conventional consultation with the 'adult' world of policy makers, practitioners, voluntary organisations and academic experts. The detailed results, which are published separately<sup>36</sup>, helped direct our attention towards areas in need of reform. These included the benefits of involving young people in the training of the police and other youth justice professionals (see above) and the unacceptable difficulties children and young people face in understanding court proceedings. Young people also urged us – and the courts – to listen to the context of offending, such as fights where the 'offender' could as easily have been the 'victim' (Chapter 4).

There were other areas where the young people's perspectives served to sharpen our focus on particular issues and to qualify our views. For example, there was a general view that restorative justice was more likely to prevent reoffending and that young offenders would learn from meeting victims. However, one participant, with experience of an unsatisfactory restorative process, underlined the need for conferencing to be facilitated by a purpose-trained professional (Chapter 5).

Children and young people in our consultation and engagement project were also clear on the need to:

- Abolish short custodial sentences that do not act as deterrent, and can stand in the way of constructive efforts to achieve re-integration (Chapter 5)
- Reduce remands in custody and lengthy periods spent on bail that prevent young people from finding training and employment, and 'moving on' with their lives (Chapter 5)
- Provide constructive activities for children and young people who lack opportunities, aimed at broadening their horizons and interests (making it less likely they will behave antisocially or criminally) (Chapter 3).
- Ensure that families and other adults responsible for looking after young people at risk of offending get timely help and support from public services (Chapter 3).

From this, we hope our conclusions carry a degree of added weight. Although we will, in some cases, be preaching to the converted, we commend this way of working to all those in a position to influence services for children and young people and enable them to make a positive contribution as young citizens.

We would only add that there was another, less quantifiable, part that the project played in our inquiry. This was to remind us of the real lives that lie behind each piece of evidence we have taken the opportunity to examine. We have met and talked to children and young people whose lives and aspirations have repeatedly been failed by our existing system. They have engaged us with intelligence and interest. They have also helped to ensure that our report is grounded in their real experiences. As a consequence, we are determined that the response to youth crime and antisocial behaviour must do better by them in future.

**Gender, ethnicity and age**

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- <sup>3</sup> See Young T. (2009), Girls and Gangs: “Shemale” Gangsters in the UK? *Youth Justice* 9 (3), pp. 224-238.
- <sup>4</sup> See Sharpe G. & Gelsthorpe L. (2009) Engendering the Agenda: Girls, Young Women and Youth Justice. *Youth Justice* 9 (3), pp.195-208.
- <sup>5</sup> Arnall, E. & Eagle, S. (2009) as above.
- <sup>6</sup> See Graham, J. (2010) ‘Responding to Youth Crime.’ In D. J. Smith (ed.), *A New Response to Youth Crime*. Cullompton, Devon: Willan.
- <sup>7</sup> Graham, J. (2010) as above.
- <sup>8</sup> Home Office (2007) *The Corston Report: A Report by Baroness Jean Corston of a Review of Women with Particular Vulnerabilities in the Criminal Justice System: The Need for a Distinct, Radically Different, Visibly-Led, Strategic, Proportionate, Holistic, Woman-Centred, Integrated Approach* London: Home Office.
- <sup>9</sup> Arnall, E. & Eagle, S. (2009) as above.
- <sup>10</sup> Riley, J., Cassidy, D. & Becker, J. (2009) *Statistics on Race and the Criminal Justice System 2007/8*. London: Ministry of Justice.
- <sup>11</sup> Youth Justice Board (2010) *Under 18 Secure Population Statistics* (March 2010)
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- <sup>15</sup> May and others (2010) as above.
- <sup>16</sup> May and others (2010) as above.
- <sup>17</sup> May and others (2010) as above.
- <sup>18</sup> May and others (2010) as above.
- <sup>19</sup> Referred to in: Equality and Human Rights Commission (2010) *Stop and think. A critical review of the use of stop and search powers in England and Wales*. London: EHRC
- <sup>20</sup> Smith, D.J (2010) ‘Changing Patterns of Youth.’ In D. J. Smith (ed.) *A New Response to Youth Crime*. Cullompton, Devon: Willan.
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- <sup>22</sup> Rutter, M. (2010) ‘Causes of Offending and Antisocial Behaviour’. In D.J. Smith (ed.) *A New Response to Youth Crime*. Cullompton, Devon: Willan.
- <sup>23</sup> Blakemore, S-J. & Choudhury, S. (2006) *Brain development during puberty: State of the science*. *Developmental Science*, Vol. 9, pp 11-14.
- <sup>24</sup> UN Convention on the Rights of the Child (1989)
- <sup>25</sup> Goldson, B. (2009) Difficult to Understand or Defend – A Reasoned Case for Raising the Age of Criminal Responsibility. *Howard Journal of Criminal Justice*. Vol. 48 (5), pp. 514-521.
- <sup>26</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice (‘the Beijing Rules’) (1989)  
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**Delivery**







*“[I’d tell them] not to be so harsh.  
I know if they done a crime you’re  
gonna have to be strict and stuff, but  
they were a kid once before as well;  
they have probably committed a crime,  
haven’t they?”*

Vikki, age 17

This chapter considers changes in administration, governance, accountability and – not least – culture that will be needed to deliver the Commission’s proposals for preventing youth crime and antisocial behaviour, for expanding the use of restorative justice and for reducing custody in favour of effective alternatives that provide better value for money.

We are conscious, however, that any detailed discussion of these issues risks taking us beyond our proper remit – to identify underlying principles and then use them to shape a strategic blueprint for sustainable reform. Detailed administrative prescriptions tend to have a short shelf life in any circumstances; but all the more so when a newly-elected administration is still actively adjusting the machinery of government. Consequently, the tone of this chapter is different and more conditional than its predecessors. The proposals are presented as options or suggestions for further discussion, rather than firm recommendations.

It is, nevertheless, clear to us that our intended reforms will demand even higher levels of collaboration than currently exist across the agencies that respond to youth crime. They will also require a commitment to greater transparency about the effectiveness and efficiency of the youth justice system, so the public can fairly judge what outcomes are being achieved. Approaches and practices that deliver the best results need to be identified and applied everywhere. Organisations whose results are poor will need to learn from those that are more successful.

We want to end the counter-productive political ‘arms race’ in youth justice policy. To achieve this, it must be made easier for policy makers and service planners to make decisions about youth crime prevention that are based on the best available evidence. We must also make it more straightforward for residents to hold their local institutions and agencies to account for achieving better, crime-free futures for children in their neighbourhoods.

As we explain below, enhancements will be needed to existing local partnership, budgeting and commissioning arrangements, as well as the role and remit of particular agencies and services. But we do not think that changes to governance should in any way ‘lead’ the reforms we propose. As progress is made towards implementing our proposals, it may become apparent that larger-scale, structural changes are desirable, but we do not envisage this as a starting point.

## Key arrangements

Delivery of our recommendations will require a number of key arrangements or functions to be put in place. These can be summarised as:

### *Prevention and early intervention*

- ensuring that local services are provided cost-effectively, without needless duplication, and that children and young people whose serious behaviour problems place them in need are properly assessed and given access to a range of relevant preventive services
- collating data locally and sharing high-quality information about children and young people at risk to guide the way services are planned and to specify the outcomes being achieved
- assembling and reviewing evidence nationally concerning the best, most effective practices and providing policy makers, service commissioners and practitioners with authoritative guidance.

### *Restorative justice and Youth Court reform*

- introducing a system of lead practitioners (usually from the Youth Offending Team) to work with young offenders when they face formal proceedings and ensure their welfare needs are met
- administering the proposed youth conferencing service and employing co-ordinators and other specialist staff
- planning, overseeing and maintaining quality control over the specialist training needed for youth conferencing co-ordinators
- arranging and overseeing enhanced training programmes for judges, district judges, magistrates, court administrators, prosecutors and police to work as youth justice specialists.

### *Minimising custody and improving integration*

- managing a reduction in the secure estate by de-commissioning unsuitable institutions and commissioning more appropriate accommodation
- co-ordinating the day-to-day allocation of places in secure institutions and related transport arrangements
- collecting, reviewing and disseminating evidence about the best, most cost-effective ways of preventing repeat offending by children and young people
- arranging and overseeing an enhanced training programme for Youth Offending Teams, prison officers and other professionals that specialise in working with young offenders.

For convenience, our discussion of how the key arrangements might be administered is re-grouped under five main headings:

- Delivering preventive services
- Extending best practice
- Introducing youth conferencing
- Training
- Commissioning and co-ordinating custody

### *Delivering preventive services*

The local partnerships that have developed in crime prevention and in children's services since the 1990s recognise the impossibility of delivering co-ordinated services if each of the relevant agencies operate in their own, enclosed 'silos'. This is especially true of support services for children and young people involved in persistent antisocial behaviour and offending. The concentration of overlapping risk factors in their lives means they are often 'known' to several different agencies, including children's services, health, housing, special educational needs and the police. Without co-operation and information sharing between those agencies, crucial opportunities for preventive action are easily lost.

Children and families who need support can, likewise, face the draining difficulties of dealing with a plethora of different caseworkers, each with their own paperwork and eligibility criteria. Partnership working, shared assessment arrangements, lead practitioners and multi-disciplinary 'team around the child' approaches are an attempt to overcome this. It is important to ensure that children with severe and persistent behaviour problems are properly assessed (See Chapter 3) so they and their families receive timely, preventive help.

Currently there is overlap between the work of statutory partnerships that can give rise to tensions. In particular:

- Crime and Disorder Reduction Partnerships in England and Community Safety Partnerships in Wales are specifically concerned with crime prevention and local action against antisocial behaviour.
- Children's Trusts in England and Children and Young People's Partnerships in Wales have strategic planning responsibilities for children and young people's services, including social care, education and mental health.

Some Children's Trusts and Children and Young People's Partnerships have advanced further and faster than others with joint commissioning, budget pooling and multi-agency team work. But the existing structures mean that every area in England and Wales has at least the potential to deliver properly integrated services operating across traditional agency and professional boundaries as a 'team around the child'.

While there has been criticism of the bureaucracy and time commitments demanded of senior managers to maintain Children's Trust arrangements<sup>1</sup>, their capacity for facilitating joint-commissioning, shared budgets, information sharing and integrated prevention services offers a valuable mechanism for delivering the prevention services described in Chapter 3. We think, however, that

existing arrangements could be improved – given the importance of accommodation and relocation services in work with young offenders – if housing services were included in the partnerships that already include children's services, schools, Youth Offending Teams, primary health care and the police.

Some form of multi-agency partnership between local agencies will, in any event, be essential to deliver prevention and early intervention services that are cost-effective and avoid duplication. In addition to their other benefits, partnerships are a way to prevent individual children with complex needs from 'falling into the cracks' between the service criteria of different agencies.

We would add that, in our view, the introduction of Youth Offending Teams has been one of the most successful innovations achieved by the 1998 Crime and Disorder Act. The multi-disciplinary staffing of YOTs has played an important part in understanding the needs of children and young people who offend or who are at risk of becoming offenders.

The Commission is, nevertheless, keen to ensure greater consistency between the 157 YOTs in England and Wales in the quality and standards of their work. We agree with the recent review of the Youth Justice Board's operating arrangements, led by Dame Sue Street, that there needs to be a better grip on YOT performance. This requires more careful monitoring and the publication of comparative data on key outcomes, such as reoffending rates<sup>2</sup>.

We want to see YOTs concentrating on their 'core business' of working with young offenders. It is potentially stigmatising for a service whose declared focus is on offending to be engaged in preventive work with children and young people who are not in trouble with the law. Early intervention and other preventive work should, therefore, be led by local children's services. However, to prevent YOTs from evolving into self-sufficient 'silos' we suggest that all, rather than some, teams should be located within local authority children's services departments. YOTs are already partners in Children's Trusts and Welsh children and young people partnerships, and it is important that they should work collaboratively with other preventive services. This is reflected in our proposal that YOTs should be the service responsible for assigning a lead practitioner and organising welfare support for children and young people who are subject to youth justice intervention (Chapter 4).

At a more strategic level, we have been attracted by the potential for co-operation between local government, the NHS and other public sector agencies to increase the co-ordination and effectiveness with which public money is spent. We think the approach known as *Total Place* that has been piloted in 13 English localities might play a constructive part in:

- mapping overall spending on the response to youth crime and antisocial behaviour
- specifying the scope for efficiency savings
- highlighting areas where 'justice reinvestment' would contribute to even more effective prevention of youth crime.

We have noted with interest how consultants Pricewaterhouse Coopers, applied *Total Place* methods to antisocial behaviour and youth crime in London. They concluded that the public sector response was patchy due to a lack of local co-ordination and to the differing priorities pursued by overlapping providers and service commissioners. Their analysis concluded that a focus on earlier intervention, simpler administration and enhanced leadership from local authorities could save as much as £65 million from the annual costs of antisocial behaviour in the capital, which it estimated at £650 million<sup>3</sup>. A description of the *Total Place* pilot in Bradford is given below.

### Bradford *Total Place*

Bradford is one of thirteen areas in England that has piloted the *Total Place* initiative. This seeks to give local areas greater control over priorities and resources and – so doing – to provide better services at a lower cost. By adopting the perspective of service users it aims to reduce wasteful duplication and inefficiency. Designing services around the 'customer' also demands a greater emphasis on measuring and achieving better results or *outcomes*, as opposed to procedural or administrative *outputs*.

In the words of the final report on the Bradford pilot: *"By looking at service provision through the eyes of the service user rather than our own individual organisations we have recognised the tremendous potential to simplify, streamline, make a more relevant impact and hugely influence direct and indirect costs over the long term."*

The pilot found that strong local leadership was critical to the venture's success, as was collaboration with public, private and voluntary organisations. A robust challenge also had to be mounted to existing organisational cultures. This required a re-alignment of budgets, the simplification of governance structures, sharing of information, and the development of outcome-based accountability and costing.

As a result of the pilot, Bradford focused on three key areas for service transformation: young people leaving care, adult offenders leaving prison, and older people with mental health problems leaving hospital. By taking

an 'invest to save' approach, it identified a number of potential savings. For example, by providing a single point of contact for young people leaving care and support to find stable living and working conditions, the city anticipated savings of £3 million on the costs of burglary and £220,000 in reduced hospital admissions.

We suggest that a more rigorous approach be taken to mapping local needs and services, targeting priorities, monitoring results and assessing long-term outcomes and trends. In this context, we believe that the greater use of a formal 'operating system' for planning, commissioning and evaluating outcomes will prove valuable. Examples that are already being applied in England and Wales include *Common Language*<sup>4</sup> (an approach devised by the Social Research Unit, Dartington), *Communities that Care*<sup>5</sup> (licensed in the UK to the Catch22 charity) and *Outcome-based Accountability*<sup>6</sup> (also known as *Turning the Curve*). These approaches are designed to promote greater efficiency, helping agencies to avoid service duplication and providing the information they need for jointly commissioned and targeted services. One particularly welcome aspect of all three is the opportunities they create for residents – including children and young people – to be involved with organisations, agencies and local government in understanding local circumstances and planning the response. They ensure that the resulting plan of action is generated through 'bottom up' activity by local people and agencies, as well as 'top down' policy from government.

## Extending best practice

Throughout this report, the Commission has laid emphasis on the need to understand the best and most cost-effective ways of responding to youth crime and antisocial behaviour. Policy makers, service planners and practitioners not only want to know 'what works', but also 'what works for whom' and 'what works in what circumstances'. Whether working in early intervention and prevention or the youth justice system itself, managers need authoritative and scientific advice on approaches and practices that produce the most promising outcomes and how they can be successfully implemented.

This implies a strong commitment to evaluative research that is capable of assessing the effectiveness of services in which public money is being invested. It also highlights the importance of understanding what it takes to replicate success by specifying key elements like funding, staffing, training, delivery mechanisms and time-scale. It is absolutely crucial that the lessons of implementation – and of what has caused seemingly promising initiatives to fail in the past – are learned and applied.

In previous chapters, we have proposed that a central organisation be given the task of collating and reviewing the evidence concerning effective approaches and disseminating authoritative guidance. The variable quality and quantity of evidence available in the field of youth crime mean that calls we have received for an equivalent to the National Institute for Health and Clinical Excellence (NICE) – though understandable – would be hard to realise in practice. One role for the resource we propose would be to commission the research that is needed to fill some of the many existing gaps – or at least co-ordinate discussion between other research funders on the priority areas for investigation.

When it comes to identifying a suitable host for the proposed resource, there are a number of options:

- The Youth Justice Board for England and Wales has existing responsibilities for research and practice development and could be asked to accommodate the new organisation. We do, however, note that the YJB has been very slow to publish the findings of its existing research and that the recent review of its remit concluded that a strategic approach to youth justice research across government would allow the YJB's modest budget for research to be halved<sup>7</sup>.
- Other existing bodies could assume the responsibility – notably the Centre for Excellence and Outcomes in Children's Services (C4EO) operated by a consortium of relevant organisations, including the National Children's Bureau, the National Foundation for Educational Research, Research in Practice and the Social Care Institute for Excellence.
- The role could be added to the remit of an existing inspection or regulation body such as the Audit Commission, the Welsh Audit Office, or Ofsted and Estyn the education inspectorates.
- An independent, publicly-funded institute could be housed at an existing university or other respected centre of research.

## Introducing youth conferencing

The Commission's proposal for a restorative youth conferencing service in England and Wales has considerable implications for administration, recruitment and training. While the existing arrangements in Northern Ireland provide a model of what can be achieved, they serve a total population of only 1.75 million, compared with 51.5 million in England and nearly 3 million in Wales. Even after necessary legislation was in place, the introduction of youth conferencing across both countries might take a number of years to complete.

We suggest three main options for the ways in which the new service might be administered:

- Following Northern Ireland's example, where the service is housed within the Youth Justice Agency, youth conferencing could become a function of the Youth Justice Board.
- The new service could become an adjunct of the Youth Court, operating at arms-length within H.M. Courts Service.
- A localised solution would be to establish youth conferencing through Youth Offending Teams or consortia of YOTs. Youth conferencing staff could be employed by local authorities; although, to avoid any conflict of interest, they would need to work at arms length from other YOT staff.

Whichever model is preferred, there should be scope for youth conferencing services to be contracted-out to suitably qualified voluntary or private sector organisations, such as those that already specialise in delivering restorative justice.

## Training

The Commission's recommendations for restorative justice and for a specialist youth justice system separated, so far as possible, from the adult system carry wide-ranging implications for training and professional development.

We want to see a youth justice system that is staffed by people committed to working with troubled children and young people and motivated by a desire to help them grow into socially competent and law-abiding adults. This already describes many dedicated staff we have encountered working in every part of the system. But we believe there is scope, through training and professional development, for creating a specialist workforce and professional culture that is thoroughly attuned to the principles we propose as well as the practices that should underpin reform.

Our blueprint implies a need for additional training provision in:

- aspects of child development and welfare so that all those employed in the youth justice system have a shared grasp of issues applicable to their work, including age, maturity, mental health and effective practice
- building trusting relationships and communicating effectively with children and young people
- youth conferencing and the spread of other restorative justice methods. These must include the necessary

mediation skills and an understanding of the needs and feelings of victims, as well as children and young people who offend or behave antisocially.

Although we envisage a culture in youth justice where staff share a core understanding of child development and other relevant issues, the precise requirements will vary between professions. Those for a specialist prosecutor or District Judge will, for instance, be different to those for a YOT worker or for a custody officer. The match between the training they already receive and the new requirements will also vary. A wide range of existing bodies and professional societies that currently set their training requirements and certify their qualifications will need to be involved.

We doubt it is practical to think of introducing a single organising or commissioning body to oversee training throughout the youth justice system. We, nevertheless, see the need for a lead organisation to liaise with the various training institutions, providers and certifying bodies to promote consistency.

With regard to training for the proposed Youth Conferencing Service, we have considered the arrangements reached between Northern Ireland's Youth Justice Agency and the University of Ulster to provide initial training (up to postgraduate degree level) and also long-term support for conference co-ordinators and others working with restorative justice, including police officers and District Judges. The university has produced a practice manual. Comparable arrangements would be needed in England and Wales, where existing providers of restorative justice training could be encouraged to develop their practice in partnership with academic institutions.

## Commissioning and co-ordinating custody

The Commission proposes a substantial reduction in the resources committed to custody so they can be reinvested in restorative justice and evidence-based prevention. This implies a continuing need for a national body to monitor, commission and de-commission the secure estate. The de-commissioning role is especially important so that public money can be withdrawn from custody and re-directed towards preventive services.

As previously explained (Chapter 5) we are attracted by the potential for meeting a reduced requirement for secure accommodation through Young Offender Academies in a number of major cities. If this, on further investigation, proved viable, it could create opportunities for devolving the commissioning role as well as the budgets for custody to a more local level.



As fewer children and young people are imprisoned, it will be essential that mechanisms exist for transferring budgets and reinvesting the money saved. This will require a reallocation of resources to local partnerships as well as between government departments.

We think there is a need to create positive incentives for local authorities and agencies to invest in evidence-based preventive services in the knowledge that they will save money further down the line. Like the House of Commons Justice Committee, we suspect that merely making local authorities pay for places in custody would be unconstructive, since it is the independent courts, not councils, that set the level of demand<sup>9</sup>. But we also believe it should be possible for a funding review to devise a system where local authorities are incentivised to improve their preventive services as the demand for youth custody places falls.

Social Impact Bonds<sup>9</sup> are a new idea for commissioning services under which the public sector pays for services provided the interventions achieve improved outcomes. This is being piloted by the Ministry of Justice, with third sector funding, in trying to reduce re-offending rates among short-sentence adult prisoners leaving Peterborough Prison. Such an approach would, if successful, hold attractions for government by making payment contingent on results. It also places a commendable emphasis on measuring the outcomes to be achieved when commissioning services, rather than the process to be followed.

## Regulation and inspection

As with the existing response to youth crime and antisocial behaviour, the reformed system we propose would need to be inspected and regulated to ensure its humanity as well as its quality, effectiveness and financial probity. Given that the delivery of crime prevention and youth justice services crosses professional, service and agency boundaries it is not entirely surprising that the response is subject to a number of different regulators and inspectors. The Inspectorates of Constabulary, Crown Prosecution Services, Prisons and Probation all have responsibilities in this area, as do the Audit Commission, Ofsted, the Care Quality Commission, the Welsh Audit Office, Estyn and the Healthcare Inspectorate Wales.

Joint inspection arrangements already apply in Young Offenders' Institutions and we think they could usefully be extended to other areas. Beyond that, there appears to be scope to rationalise the number of regulatory bodies and clarify their roles. This would assist the reform process, making it easier to drive forward the use of evidence-based services and to hold agencies accountable for their impact on offending and other key outcomes.

## Central and devolved government

As previously stated, the Commission does not regard large-scale structural change in governance as a pre-requisite for implementing its reforms. We do, however, have some observations to make about the way the policy response to youth crime and antisocial behaviour is organised both by central government in London and devolved government in Cardiff.

### Central government

Since the 2010 General Election, responsibility for youth justice has been placed with the Ministry of Justice. This has the advantage of placing the responsibility for preventing youth offending with a lead Cabinet Minister. Cross-departmental work is, however, indispensable in this area and would be even more so under the reforms we propose. We sincerely hope, therefore, that links between officials responsible for youth justice and those in Departments most relevant to preventive services, notably Education and Health will in future be strengthened.

An effective response to youth crime and antisocial behaviour requires collaboration across central government just as much as local government – and all the more so if the necessary efficiency savings are to be realised and reinvested. We want to see the relevant department and agencies at every level of government working collaboratively to improve outcomes for children and young people in the youth justice system and being held accountable for the results.

### The Welsh Assembly Government

As should be evident from this report, the Commission has paid close attention to the devolved context in Wales. We have been impressed by the way that the Welsh Assembly Government has used its responsibilities for education, health, housing and youth policy to maintain a strategic policy interest in preventing youth crime and antisocial behaviour. In doing this, it has explicitly embraced the UN Convention on the Rights of the Child and articulated principles that accord with our own thinking, most notably that those in trouble with the law are 'children first, offenders second'<sup>10</sup>.

We have been helped in our deliberations by the progress of an inquiry by the National Assembly for Wales Communities and Culture Committee into youth justice and use of custody<sup>11</sup>. From this and responses to our consultation we are aware of the particular concern in Wales that secure accommodation is confined to the south of the country and insufficient to meet



current demands. As a result, young offenders may be placed in custody a hundred or more miles from home, including YOLs in England. For reasons set out in Chapter 5 – plus added issues for Welsh-language speakers – this is liable to work against the grain of rehabilitation efforts.

We have also benefited from discussions with officials who prepared the Welsh Assembly Government's response to our consultation paper and from studying practice that reflects the Welsh approach, such as the Safer Swansea Partnership (See Chapter 5). Among other recommendations, our proposals on antisocial behaviour, including the use of ASBOs as a last resort, will be seen to coincide with those of the Welsh Assembly Government and Welsh Members of Parliament<sup>12</sup>.

The Commission's recommendations for reducing the overall number of children and young people held in custody will be of general benefit in Wales – not least because some Welsh Youth Courts have been sentencing more than 10 per cent of convicted offenders to custody against rates of between 3 and 5 per cent for courts serving similar areas<sup>13</sup>. Geography suggests to us, however, that a case will continue to exist for a small, secure children's facility to be sited in North Wales, notwithstanding the proposed reduction in overall numbers.

The Communities and Culture Committee has urged the Welsh Assembly Government to consider seeking devolved responsibility for the juvenile secure estate and examine whether responsibility for youth justice as a whole should be devolved<sup>14</sup>. This issue, which has been the subject of a review for the Welsh Assembly Government by Prof Rod Morgan, is beyond our remit.

However, irrespective of whether youth justice is eventually devolved, we welcome the distinctive principles being articulated and applied in Wales. They suggest to us that Wales could be well placed to take a lead in implementing the Commission's proposals, not least those for restorative justice.

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- <sup>1</sup> *Children and Young People Now* (2010) 'Tories to abolish children's trust obligations if they win election'. 6/10/10
  - <sup>2</sup> Department for Children, Schools and Families (2010) *Safeguarding the Future. A Review of the Youth Justice Board's Governance and Operating Arrangements*. London: DCSF.
  - <sup>3</sup> Pricewaterhouse Coopers (2010) *London Councils. Total Place – towards a new service model for Londoners*. London: Pricewaterhouse Coopers LLP.
  - <sup>4</sup> Every Child Matters: Change for Children (2007) *Developing an 'Outcome-based' Commissioning Approach* in Birmingham. [www.everychildmatters.gov.uk/resources-and-practice/EP00325/](http://www.everychildmatters.gov.uk/resources-and-practice/EP00325/) Accessed March 2010
  - <sup>5</sup> Hawkins and others (2010) as above.
  - <sup>6</sup> Friedman, M. (2005) *Trying Hard is Not Good Enough. How to produce measurable improvements for customers and communities*. Victoria, British Columbia: Trafford Publishing.  
Utting, D., Painter, A., Renshaw, J. and Hutchinson, R. (2008) *Better Outcomes for Children and Young People – From Talk to Action*. London: Dept. for Children Schools and Families. [www.changeforchildren.co.uk/uploads/From\\_Talk\\_To\\_Action.pdf](http://www.changeforchildren.co.uk/uploads/From_Talk_To_Action.pdf). Accessed 28/3/2010
  - <sup>7</sup> Dept. for Children, Schools and Families (2010) As above
  - <sup>8</sup> House of Commons Justice Committee (2010) *Cutting crime: the case for reinvestment*. First report of session 2009-10. London: House of Commons.
  - <sup>9</sup> Social Finance (2009) *Social Impact Bonds. Rethinking finance for social outcomes*. London: Social Finance Ltd.
  - <sup>10</sup> Welsh Assembly Government / Youth Justice Board (2004) *All Wales Youth Offending Strategy*. [wales.gov.uk/dsjlg/publications/communitysafety/youthoffendingstrategy/strategy?lang=en](http://wales.gov.uk/dsjlg/publications/communitysafety/youthoffendingstrategy/strategy?lang=en) Accessed March 2010
  - <sup>11</sup> National Assembly for Wales Communities and Culture Committee (2010) *Youth Justice: The experience of Welsh children in the Secure Estate*. Cardiff: National Assembly for Wales.
  - <sup>12</sup> House of Commons Welsh Affairs Committee (2005) *The Police Service, Crime and Antisocial Behaviour in Wales. Fourth Report of Session 2004-05, Vol. 1*. (March 2005).
  - <sup>13</sup> NACRO Cymru and YOT Managers Cymru (2010) *Youth Justice in Wales*. Joint memorandum submitted to the Independent Commission on Youth Crime and Antisocial Behaviour.
  - <sup>14</sup> National Assembly for Wales Communities and Culture Committee (2010) as above.
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**Conclusion: time for a fresh start**





**Conclusion: time for a fresh start**

*“Well for the system to change, we need to change, because we are the system, we are the people, we are the community.”*

Mel, age 21.

## Time for a fresh start

The Commission, in this report, has argued the case for a fresh start in the response to antisocial behaviour and crime committed by children and young people.

From our assessment of the current response in England and Wales, we have concluded that the opportunities created by falling crime levels to re-invest resources in preventive measures should have been seized, but were not. Political leaders, instead, vied to ‘out-tough’ each other on the issues, engaging in an expensive and punitive arms race on youth crime and antisocial behaviour that has done nothing to improve public confidence:

- Children and young people that could have been turned away from a life of criminal and antisocial behaviour have been denied early help when it was needed.
- Individuals and communities that could have been better protected and reassured have fallen victim to crime and the fear of crime.

### Guiding principles

We have also highlighted shifts in the policies and priorities for responding to youth crime that have contributed to uncertainty and conflict about underlying principles. In our view, agreement on clear and coherent principles is an essential step in planning durable reforms. Our conclusion has been that the public can be better protected by:

- tackling antisocial behaviour, crime and reoffending through the underlying circumstances and needs in children and young people's lives (a principle of prevention)

- ensuring that children and young people responsible for antisocial behaviour and crime face meaningful consequences that hold them accountable for the harm caused to victims and the wider community (a principle of restoration)

- seeking to retain children and young people who behave antisocially and offend within mainstream society or reconnect them in ways that enable them to lead law-abiding lives (a principle of integration).

We want to see the choice of interventions or sanctions when children and young people offend or behave antisocially being guided by an understanding of their welfare needs. But we also think it important that the victims of crime and antisocial behaviour should be given better opportunities to make offenders aware of the harm they have caused and to receive some form of redress. The consequences or sanctions that children and young people face in response to offending or antisocial behaviour should not impede their rehabilitation or make their offending worse and should be proportionate to their offence.

We maintain, on that basis, that imprisonment of children and young people – whether on remand or conviction – should only be used as a last resort. And we conclude that the institutions and services responding to youth crime should, wherever possible be kept separate from those working with adult offenders.

## Three pillars of reform

The Commission has built its central recommendations for reform on the three pillars of 'prevention', 'restoration' and 'integration'.

### *Prevention*

- Our study of background factors in the lives of children who grow into chronically antisocial adolescents and adults led us to conclude that there is ample scope for early intervention and prevention. This is confirmed by an expanding fund of evidence concerning programmes and services that have proved effective in reducing children's behaviour problems and subsequent involvement in crime.
- We call for a structured programme of investment in the most promising preventive approaches, combining universal services through schools and youth work with targeted support for the families of children who are severely and persistently antisocial from an early age.

### *Restoration*

- Restorative justice describes problem-solving approaches that bring together offenders, victims and others with a stake in an offence to decide the most appropriate way of dealing with it. Based on our guiding principles and the evidence concerning its success, we propose placing restorative practices at the heart of the criminal justice system.
- We want to see restorative justice applied at every level of the response to antisocial behaviour and youth offending, including the resolution of disputes and incidents in schools and on the streets. At the most formal level, we recommend the introduction of restorative youth conferencing as a preferred alternative to prosecution and as the standard procedure after young offenders either plead guilty, or are convicted in court.
- Pursuing the principle of a specialist youth justice system, we propose that prosecutions of those under 18 should only take place in the Youth Court and that prosecutors, magistrates and judges be trained to a higher level of expertise in working with children and young people.

### *Integration*

- Whether young offenders are subject to restorative youth conferencing plans, community-based sentences or custody, it is vital that their treatment helps prevent reoffending and maximises their chances of successful integration with mainstream society. We recommend that use of youth custody, which has a poor track record in achieving these goals, should be substantially reduced.
- We propose an emphasis, which has long been missing, on measuring and evaluating the rehabilitation outcomes for young offenders. We want to see best practice being applied by purpose-trained professionals and the abandonment of interventions that are ineffective or even positively harmful.

## Special groups

In preceding chapters we have referred to groups of children and young people whose needs require special attention – whether in terms of their lack of preventive support, their treatment by the youth justice agencies or their particular rehabilitation and resettlement needs.

- Girls and young women, as a minority of young offenders, do not receive support and treatment that is adequately tailored to their needs.
- For complex reasons, children and young people from African, Caribbean and mixed heritage backgrounds are over-represented in the youth justice system and in custody.
- More must be done in the community and within the youth justice system to ensure that children and young people's mental health needs are properly assessed and treated.
- Stronger preventive support is needed to reduce the disproportionate number of troubled and vulnerable children and young people from local authority care who find themselves in serious trouble with the law and are imprisoned.
- Gun and knife crime problems in some major cities are associated with territorial rivalries between young people and gang culture, requiring a combination of enforcement and sustained preventive intervention.



## ‘Winners not losers’

Although our report has focused attention on the problems created by a small minority of prolific, serious and violent young offenders, we wish to be clear that the vast majority of children and young people are law-abiding for most of the time. Survey evidence suggests that a large minority of the ‘law-abiding’ adult population will have committed a crime at least once while growing up, and we know that most offences are minor. So while it is vital to ensure treatment for those with chronic behaviour problems, it is also important to avoid stigmatising children and drawing them deeper into crime through ineffective and heavy-handed sanctions.

We believe that our proposals for reform come far closer than the existing system to the kind of sensitive and discriminating response that is required. Our plans for restorative justice, in particular, will ensure that the consequences faced by children and young people are not only proportionate to their offence, but also enable them to understand the impact of their behaviour on victims and to develop their own sense of why crime is antisocial and unacceptable. Better still, restorative processes will do more than the present system to recognise the feelings of victims and ensure their perspective is heeded.

Too often with the existing system in England and Wales, it appears there are only losers:

- Victims of crime lose out because their voices are not heard and their experiences are neglected
- Children and young people lose out because preventive services are not available to help when they need them most while public money is wastefully invested in custody
- The public loses out because it not only pays the price for antisocial behaviour and crime that could have been prevented, but also bears the costs of custody and other expensive and ineffective responses.

## Cutting the costs of crime

Throughout our report we have underlined the costs of dealing with crime and the opportunities that exist to make significant savings by investing in the most promising and effective services. We have cited the enormous £24.6 billion that the Treasury estimate is the total annual spend on public order and safety<sup>1</sup> and the £4 billion that the Commission itself has estimated as the amount that youth crime costs criminal justice services, including the police, prosecution, courts and custody (Chapter 1).

There are also the heavy and variable costs of youth custody, between £69,600 and £193,600 a year per place (much higher than those of an elite private boarding school; see Chapter 1). And there are the various cost-benefit analyses that demonstrate how preventive interventions and support services at different stages in children and young people’s lives can re-coup their costs several times over by improving behaviour and reducing offending (See Chapter 3).

## Counting the cost of missed opportunities

These assessments, based on rigorous evaluative research, make a sound business case for investment in prevention. But they also make arid reading unless brought to life by reference to real lives and real children. Six years ago, the Audit Commission used its access to Youth Offending Team (YOT) and other local agency files to count up the lifetime costs to the public services incurred by James, a young man who, at the age of 15, was serving his second sentence in custody.

James, before his sentence, had been living with a mother who was seldom at home and an older step-sister who was a drug user with criminal convictions. His father’s visits were far and few between, but violent and disruptive when they occurred. James, who received his first police caution at the age of ten, had been excluded from special school since he was 13. Apart from his two periods in custody – for breach of intensive supervision – he had not received any alternative education provision.

We have talked to young people during the past 18 months, including those inside Young Offender Institutions, whose life histories were marked by a similar lack of early intervention at the points where it could have turned round their lives. For that reason, we decided to re-cost James’s story using current prices. The full results are shown in Appendix B.

<sup>1</sup> H.M Treasury (2009) *Public Expenditure Statistical Analyses (PESA)*. The figure given for public order and safety excludes spending on fire and immigration services.

## James's story

The total estimated cost to public services of dealing with James's increasingly problematic behaviour – was more than £173,000 by the time he was 15. By contrast, the costs of preventive action that could have protected James and kept him in mainstream education until school leaving age add up to £47,500 – less than just one of his two spells in custody priced at nearly £58,000 each:

- James's mother first reported behavioural issues at home when he started school at age 5. The family could have been offered support services and guidance from an educational psychologist (cost £2,900). Yet no action was taken.
- Later concerns at school about his slow learning, communication difficulties, poor attendance and behaviour resulted in assessment and monitoring by an educational psychologist. Speech and language therapy, family support and educational psychology sessions could have been offered (cost £1,988) but were not.
- Further challenging behaviour and low attainment resulted in a formal Statement of Special Educational Needs and placement in a special school (cost, £8,761). There were also concerns that he was being left at home alone by his mother in the evenings. A multi-agency school inclusion plan, family support to tackle the neglect issue and anger management sessions, might have provided a more effective, mainstream alternative (cost £3,907).
- Although involved in an arson attack at age 10 and cautioned for handling stolen goods and shoplifting (policing costs £1,635), James attended school and appeared to be making progress. It was suggested he would benefit from a personal learning mentor (cost over 36 weeks, £14,190), but this was never acted upon.
- By the age of 13 he rarely attended school and his behaviour when he did led to fixed-term and informal exclusions. At an annual review meeting, James said he wanted to return to a mainstream school. Neither this, nor renewed proposals for a learning mentor were implemented.
- A few months later, he became involved with the Youth Offending Team (cost £1,608) after being prosecuted for criminal damage (cost £9,811). An alternative education package required his attendance part-time at school

and two different off-site units (cost £4,509). Alternative family support and continuing support from a learning mentor at this stage might have cost £8,120.

- After a few more months, the education arrangements broke down. James was involved in an assault on a girl and arrested for stealing a bicycle. He was then involved in a theft from his own home. Only at this stage was a family assessment carried out over concerns about neglect raised by the YOT. A proposed referral to a local adolescent resource centre (cost £2,270) was made and subsequently repeated, but James never received that help. Other support services that might have helped keep him in school (cost £4,596) were not even proposed.
- James was shortly afterwards placed under intensive supervision and surveillance for taking a car. Referrals were made to family support and child protection services amid claims that he was out of control and that his mother was not living at home.
- By the time he was 14, James had breached his court order, resulting in his first custodial sentence (cost, £57,896). He made educational progress at his secure unit, but refused the home tuition that was offered when he returned home. He made an allegation of abuse that led to a child protection strategy meeting. The outcome was overtaken by his second custodial sentence when he, again, breached his intensive supervision requirements and was sentenced to immediate custody.

Sadly and disgracefully, we know from our inquiry that the youth justice system is still populated by young men like James and young women, too, with comparable experiences of ill-treatment, abuse and neglect by adults, and of disregard and inefficiency on the part of overstretched public services that could have done much more to help them. There is a terrible irony that when large sums of public money are finally invested in responding to their problems it comes in the ineffective and potentially harmful shape of custody.

The Commission does not pretend that these tragic cases of wasted potential will no longer exist under a reformed response to youth justice and antisocial behaviour. But a start must be made. The damaged lives of those who become our most serious and prolific young offenders, and the high price that falls to society when we fail them, offer the last and most compelling reason why the time has come for a fresh start.

# Appendix I

## James's story (Audit Commission costs, updated with 2009 prices)

Age	Key event	Actual agency action	Estimated cost (£ in 2009 prices)*	Alternative agency action	Estimated cost (£ in 2009 prices)*
0-3				Family support/Sure Start (1hr x 10 weeks)	1,408
5	Behaviour difficult to manage at home.		-	Family support/Sure Start (1hr x 10 weeks)	1,408
				Educational psychologist support and liaison (1hr x 12 months).	1,104
				Social services family assessment.	394
6	Concerns regarding speech and language development.	Initial assessment and monitoring by an educational psychologist.	230	Speech and language therapy sessions (1hr x 12 weeks).	441
	Poor progress with learning.			Educational psychologist support and liaison/ direct work (1hr per fortnight x 6 weeks).	139
	Low-self confidence.			Family support (1hr x 10 weeks).	1,408
8	Behaviour challenging in school.	Statement of SEN compiled by the LEA.	7,883	Anger management group (6 sessions).	1,829
	Avoiding schoolwork.	Special school place approved at a panel meeting.	878	Family support to tackle neglect (10 weeks).	1,059
	Concerns about parental neglect.			Multi-agency school inclusion group develop a plan.	1,019
10	First recorded involvement in criminal activity.	Police involvement.	1,635	Learning support assistant/learning mentor (10 hrs per week x 36 weeks).	14,190
				Educational psychologist support and liaison/ direct work (1hr per fortnight x 3 months).	276
				James involved in decision-making from now on.	-
				Multi-agency inclusion group review and plan secondary school transfer.	1,019
12	School's 'Individual Education Plan' notes concerns about self-esteem and motivation. Suggested need for a mentor.		-	Mentor in mainstream school and in the community (12 months).	6,757
				Educational psychologist support and liaison/ direct work (1hr per month x 1 term).	139
13	Concerns raised about school attendance and behaviour.	Court appearances regarding criminal damage and assault, including police time.	9,811		
	Concerns about James' negative view of special school.	YOT becomes involved and follows up for three months.	1,608	Family support to tackle absentee parents (10 weeks).	1,363
	Annual review of SEN statement.	Education welfare officer makes one contact with family.	32		
		Annual review meeting.	631	Continue mentor support (12 months).	6,757
		Education 'package' organised, including an alternative education timetable.	4,509		
		Social services undertake a family assessment.	394		
		Learning support assessment.	118		
14	Strong concerns about his behaviour in the community and about his home life.	James and his mother interviewed by social services. Court appearances, including police time, relating to theft, taking a car and burglary. YOT involved with court orders. YOT/ ISSP follow-up for three months.	54 14,717 6,757	Adolescent support (7hrs per week x 12 weeks).	2,270
		Education welfare officer makes one contact with family.	32	Support in school from the learning support unit on a 'drop-in' basis (10hrs per year).	394
		Professionals' meeting.	631	School lunch break 'haven' – available all year.	4,202
		Individual tuition offered, but not accepted by family.			
		First custodial sentence for six months.	57,896		
		Social services undertake a family assessment.	394		
15	James not receiving education. Refusing offer.	Social services attempts, unsuccessfully, a duty contact with mother.	28	With support to his family, James stays in mainstream education until school leaving age.	
	Child protection conference.	Referral made to the local adolescent support centre.	53		
	Concerns about his home life.				
	Continued offending behaviour.	YOT/ISSP team follows up for three months.	6,757		
	James in a secure unit for second time.	Child protection strategy meeting – implementation overtaken by custody.	135		
		Second custodial sentence for six months.	57,896		
		<b>Total estimated cost in 2009 prices</b>	<b>173,079</b>	<b>Total estimated cost in 2009 prices</b>	<b>47,574</b>

Original sources:  
Local education authority figures  
Youth Justice Board figures  
Personal Social Services Research Unit: Unit Costs of Social Care  
Brand and Price (2000) The Economic and Social Costs of Crime, Home Office Research Study

\* Updated from original 2003 estimates using GDP deflators from HM Treasury

Based on the original 2003 figures the Audit Commission estimated that if a saving of £140,000 were made in respect of one in ten of the young people sentenced to custody each year (7,500), there would be an annual saving to the public purse of £100 million (=140,000 x 750). However, this calculation contains an error because the potential saving was actually estimated to be £110,000 not £140,000, meaning that the annual saving would be £82.5 million (=110,000 x 750).

Using 2009 prices, we could say that if a saving of £125,000 (£173,000 – £48,000) were made in respect of one in ten of the young people sentenced to custody each year (7,500), there would be an annual saving to the public purse of £94 million (=125,000 x 750).

## Appendix II

The Commission would like to thank the following individuals and organisations who made presentations at our meetings, met commission members or responded to our consultation paper:

Marcus Agius, Barclays Bank	Hamera Asfa Davey, Metropolitan Police Authority
Rushanara Ali MP	Bill Davies, JP, Thames Magistrates
Joe Amos	Fay Deadman, H.M. Prisons Inspectorate
Mark Andrews, Nottingham City Council	Najee Deenah
Assistant Director, staff and young people, Ashfield YOI	Samantha Dimmock, Children's Rights Alliance for England
Bob Ashford, Youth Justice Board	Pamela Dodoo, NACRO
Association of Chief Police Officers (ACPO)	Kelvin Doherty, Youth Conferencing Service, Northern Ireland
Audit Commission	Frances Done, Youth Justice Board
Tam Baillie, Children's Commissioner for Scotland	Head of Unit, staff and young people, Josephine Butler Unit, Downview YOI
Mark and Sue Baker	John Drew, Youth Justice Board
Barrow Cadbury Trust	Pat Dunmore, Communities that Care Cymru
Linsey Bass, Reading YOS	Centre Manager, staff and young people, East Moor Secure Children's Centre
Tim Bateman, University of Bedfordshire	Caroline Evans, The Teaching Awards
District Judge Mervyn Bates, Belfast	Kathy Evans
Camila Batmanghelidjh, Kids Company	Jonathan Fayle
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Ken Beaumont, Nottingham City Council	Mikey Fennel
Sandra Beeton, Association of Panel Members	Brendan Finegan, Youth Justice Board
Andy Bell, Sainsbury Centre for Mental Health	Judge David Fletcher, North Liverpool
Rob Bell, Paul Hamlyn Foundation	Graham Fletcher, National Youth Agency Kelci Gatley
Jennifer Bracher, Thames Magistrates Court	Heather Geddes
Sid Brighton, Justices' Clerks' Society	Kirstie Gee, Nottingham City Council
George Bridges	Penelope Gibbs, Prison Reform Trust
James Brokenshire MP	Prof. Barry Goldson, University of Liverpool
Elizabeth Burney, Institute of Criminology, Cambridge	Prof Philip Graham, Institute of Child Health
Amanda Burns	Greater London Authority
Stephen Burnside, Public Prosecution Agency, Northern Ireland	District Judge Sue Green, Camberwell Green
David Burrowes MP	Kevin Haines, Swansea University
Tracey Bywater, Bangor University	Ethne Hall JP, Thames Magistrates Court
Lord Carlile of Berriew QC	The Helen Hamlyn Trust
Stephen Case, Swansea University	Rt. Hon. David Hanson MP
The Catholic Bishops' Conference of England and Wales	Jen Harrison, North Tyneside YOS
Center for Court Innovation, New York	Prof. David Hawker, Director-General, Department for Children, Education, Lifelong Learning and Skills, Welsh Assembly Government
Max Chambers, Policy Exchange	Simon Hickson
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Prof. Adam Crawford, University of Leeds	
Frances Crook, Howard League for Penal Reform	
Alexandra Crossley, Centre for Social Justice	

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 Chris Huhne MP  
 Judy Hutchings, Bangor University  
 Melanie Hunt, Ofsted  
 District Judge Tan Ikram, Camberwell Green  
 Sally Ireland, JUSTICE  
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 Howard Jones, The Eden Project  
 Peter Jones, Welsh Assembly Government  
 Helen Judge, Ministry of Justice  
 Michael Kenny JP, Thames Magistrates  
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 Joyce Moseley, Catch-22  
 Prof. John Muncie, The Open University  
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 Dame Anne Owers, H.M. Chief Inspector of Prisons  
 Pamela Park, Parenting UK  
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 Tom Philliben, Scottish Children's Reporter Administration  
 Trevor Philpott, Life Change UK  
 Ilona Pinter, The Children's Society  
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 The Prince's Trust  
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 Lord Ramsbotham  
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 Alastair Reid, Metropolitan Police Service Youth Strategy Team  
 Bob Reitermeier, The Children's Society  
 Ian Rennie, The Police Federation  
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 Emma Scowcroft, Action for Children  
 Leah Selinger, Fairbridge  
 Kim Smith, Norfolk Constabulary  
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 Enver Solomon, Barnardo's  
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 Youth Justice Agency, Northern Ireland  
 Youth Justice Trust

*The Commission's consultation document and a summary of the responses to it can be found at [www.youthcrimecommission.org.uk](http://www.youthcrimecommission.org.uk).*



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