

A Youth Justice System that Works for Children

A Joint Policy Position Paper by
Service, Strategic and Political Leaders in Local Government

The Association of Directors of Children's Services

The Association of Directors of Children's Services Ltd. (ADCS) is the national leadership organisation in England for directors of children's services (DCSs) under the provisions of the Children Act (2004). The DCS acts as a single point of leadership and accountability for services for children and young people in a local area, including children's social care and education.

The Association of YOT Managers

The AYM (Association of YOT Managers) is a professional association representing the majority of Youth Offending Teams (YOT's)/Youth Justice Services and their Managers in England. Our members work within the youth justice sector and run services providing community-based supervision for children and young people who offend and prevention services for those at risk of offending. We also work with children in custody and liaise closely with staff in the youth secure estate to ensure that children and young people receiving custody experience as smooth a transition as possible, both within custody and their subsequent resettlement back in to the community.

The Local Government Association

The Local Government Association (LGA) is the national voice of local government. We work with councils to support, promote and improve local government. We are a politically-led, cross party organisation which works on behalf of councils to ensure local government has a strong, credible voice with national government. We aim to influence and set the political agenda on the issues that matter to councils so they are able to deliver local solutions to national problems.

1. Executive summary

In many ways recent youth justice policy can be considered a success story, with the reductions in cautions, convictions and overall contact with the youth justice system over the last decade or so rightly being described as “startling” (MoJ, 2016). However, these impressive headlines mask some very significant challenges in both policy and practice terms that require urgent attention, and crucially, action. From growing racial disparities and the over-representation of children with special educational needs or who are in care to concerns about the sustainability of the highly successful preventative work undertaken by youth offending teams (YOTs).

In early 2016, a shocking BBC Panorama investigation exposed bullying, aggressive staff behaviours and the use of inappropriate restraint on children at Medway Secure Training Centre (STC). Since then, a series of reviews, inquiries and reports, many of which have been directly commissioned by government, have been undertaken. It is no exaggeration to say hundreds of recommendations for change have been put forward by independent reviewers, parliamentary select committees, the inspectorates, and others. The BBC documentary, and the strength of public reaction to it, should have been a watershed moment, sadly it was not.

Five years on many of the same issues remain or have worsened, with Covid-19 adding a new sense of urgency. Over the last two years the inspectorates have documented an alarming deterioration in conditions and performance of the youth secure estate, with Medway and Rainsbrook STCs closing in the last 18 months following poor inspections. In recent weeks, fresh concerns about the health, safety and wellbeing of the children in the remaining STC in England, Oakhill, have resulted in the issuing of an Urgent Notification and a pause on new placements.

As the cohort in conflict with the law has contracted, the children now involved with the system have more complex and overlapping education, health and social care needs. Their offending behaviours often mask underlying vulnerabilities: from early childhood trauma and neglect to school exclusion, poor mental health and growing up in poverty. The severity and types of offences committed by children have shifted; average custodial sentences are longer; and, levels of violence between children, with staff and self-harm in custody are all high and rising. The pandemic has heightened existing concerns about the way children in conflict with the law continue to be treated differently; including backlogs and delays in police investigations and in the courts; access to education in custodial settings; and, collective responses to criminal exploitation.

Action is urgently required, not further diagnosis. A redesign of the current youth justice arrangements is clearly required if we wish to pursue truly ‘*Child First*’ approaches whilst supporting the needs of victims and their families. There are several timely developments which could assist with this aim: from national reviews into special educational needs, children’s social care and the passage of the new *Police, Crime and Sentencing Bill* to ongoing pandemic recovery planning.

A series of changes to address gaps in existing guidance or practices are put forward here to bring about improvements to children’s experiences and outcomes. These include: better sharing of information between the police and local authority YOTs, closer working between YOTs and children’s social care and routinely applying rules on vulnerable witnesses to all children appearing in youth courts. In the longer term, a more sophisticated, multi-agency, multi-disciplinary response is needed. This is best achieved via a cross-Whitehall public health response to youth justice and wider childhood vulnerabilities.

2. Background – how we got here

In many ways recent youth justice policy can be considered a success story. For the first time, *The Crime and Disorder Act 1998* established a functionally separate youth criminal justice system for 10 – 18-year-olds. Since then, sustained, co-ordinated efforts have, in the words of Charlie Taylor, who was charged with undertaking a wide-ranging review of the youth justice system, resulted in: “... startling achievements” (MoJ, 2016).

The number of children cautioned with, or convicted of, committing a crime fell by three quarters between 2009 and 2019/20, while the number of 10 – 17-year-olds entering the youth justice system for the first time fell by 84% over the same period (YJB, 2021). Indeed, by autumn 2021, fewer than 500 under 18s were in custody, down from 2,800 in 2008/09.

However, these impressive headlines mask some very significant challenges in both policy and practice responses that require urgent attention and, crucially, action if we are to continue to divert more children away from the system, whilst also ensuring it is safe and meets the needs of those who are already in contact with it. The nature of these challenges, including the over-representation of children with special educational needs or in care to redressing the growing racial disparities in our criminal justice system, have been well diagnosed, but still decisive action remains far too slow.

A shocking BBC Panorama investigation aired in early 2016, exposing bullying, aggressive staff behaviours and the use of inappropriate restraint of children at Medway Secure Training Centre (STC). Since then, a series of reviews, inquiries and reports dealing wholly, or in part, with youth custody and children in conflict with the law have been undertaken. Many have been directly commissioned by government departments, or agencies, with strong common themes (see Appendix 1):

- **Children’s experiences:** Safety, including persistently high levels of violence and self-harm, in custody; the quality of education provision in custody; poor transitions to the community and to the adult estate
- **Systemic issues:** Poor governance and accountability; lengthening court delays; slow progress on implementing agreed reforms e.g. secure schools; regulation and inspection being out of step with wider children’s services; and, overrepresentation
- **Policy issues:** The absence of a strategic vision for youth justice; the low age of criminal responsibility; funding; responses to children who are criminally exploited.

Across these reports and drawing in the findings from the inspection of individual custodial settings by HMI Prisons, HMI Probation, the Care Quality Commission and Ofsted as well as several relevant thematic inspection reports published since 2016, hundreds of recommendations for change have been put forward to improve the responses to, and experiences and outcomes of, children in conflict with the law. The BBC exposé, and the strength of the public reaction to it, should have been a watershed moment, sadly it was not. Five years on, many of the same issues remain, or have worsened, with Covid-19 adding a new sense urgency.

3. The case for change - what’s not working and why is now the time for change?

A redesign of the current youth justice arrangements is clearly required if we truly want to pursue more child-centred approaches and take seriously the evidence from child and adolescent development. To meet the needs of the current cohort of children in conflict with the law, shifts in policy, practice, regulation and funding are needed.

The cohort of children currently in conflict with the law have a series of complex and overlapping education, health and social care needs. The latest available Asset+ data on the presenting needs of sentenced children shows that 88% had safety and wellbeing

concerns, 75% had substance misuse concerns, 71% had speech, language and communication needs (SLCN) and 71% had mental health concerns (YJB, 2020). Offending behaviours can also mask significant and underlying vulnerabilities that may not be immediately obvious, see 'Growing up neglected' (Ofsted, 2018). Recent research, which draws on a sample of 80 YOT case files, underscores this complexity of need and its relation to the risk of offending. Nine in 10 were involved with children's social care, eight in 10 had a known or suspected health issue, were subject to school exclusion or had attended multiple secondary schools, seven in 10 were known or suspected to have lived with domestic violence, were a known or suspected victim of violence or lived in poverty. All 25 girls had received a referral for suspected sexual exploitation. Just one child had no recorded abuse or childhood adversity (West Midlands PCC, 2021).

The severity and types of offences committed by children have shifted, with violent crimes and drugs offences being proportionally more common and theft and motoring offences less so. In line with this trend, the average custodial sentence duration rose from 11.3 months in 2010 to 18.6 months 10 years later (YJB, 2021), proven reoffending rates also remain high. Knife crime offences have been rising since 2014/15 although it is worth noting that the *Criminal Justice and Courts Act 2015* introduced a mandatory custodial sentence for 16- and 17-year-olds caught carrying a knife for a second time.

Growing numbers of children are being exploited and used as runners to move drugs, weapons and money around the country and to sell drugs in new markets in so-called 'County Lines' activity. **Gaps in both policy, guidance and practice responses to criminal exploitation and modern slavery are increasingly evident.** The youth justice system works with children as 'offenders' yet an unknown number are being groomed and exploited by criminal gangs, with coercion, fear and violence featuring in this abuse. In children's social care there is growing awareness that offending behaviours are a symptom of wider and contextual safeguarding concerns. A new approach is required if all children are to be effectively safeguarded from serious physical, mental and emotional harm.

Whilst diverting children away from custody is undoubtedly the right thing to do, the savings realised from the reduced use of custody have been experienced in the criminal justice system. **There has been a failure to recognise the challenges, and significant costs, of supporting children who may previously have been in custody in the community via children's social care responses.** The child protection system was designed with young children who encounter harm inside the family home in mind rather than outside via criminal or sexual exploitation. The costs of intensive support packages for children on the edge of criminalisation or hospitalisation have been passed on to local authorities (LAs). YOTs are also managing greater levels of risk in the community with reduced funding.

The funding picture for public services is increasingly difficult at both a local and national level. In 2019/20, the Ministry of Justice's budget was around 25% lower than in 2010/11 (House of Commons Library, 2019). The YJB's annual grant to YOTs fell from £145 million in 2011 to less than £72 million in 2019, while wider local government funding has fallen over the same period. Disinvestment in youth justice, youth work and wider children's services is a false economy, particularly at a time of rising concern about knife crime and criminal exploitation. At a local level, this is impacting on YOT staffing levels which in turn is impacting on capacity to undertake work beyond court-ordered interventions. Central funding for preventative work in communities is aimed at reducing reoffending rather than stopping offences happening in the first place. New funding is usually allocated via a competitive bidding process and limited to pathfinders and small-scale projects in specific geographical locations. While Police and Crime Commissioners can offer some discretionary funding, this is far from guaranteed.

Beneath headline reductions in first time offences and the overall custodial population, **the proportion of Black and ethnic minority children offending for the first time, reoffending and numbers in custody continues to grow.** As at May 2020, over half of all children in custody (51.9%) were from Black or ethnic minority groups yet the general 10–17 population is 82% White, 4% Black, 4% Mixed and 10% Asian or Other ([Justice Committee, 2020](#)). Similarly, a recent analysis of crime data showed that young Black males are nine times more likely than White peers to be searched by the police, with this rising to 19 times more likely in London ([UCL, 2021](#)). In a review commissioned by the then Prime Minister, Lammy ([MoJ, 2017](#)) stated the disparities in the youth justice system were his “biggest concern.” Acting on this disproportionality has been a national priority for several years yet recent research shows that Black and ethnic minority children are less likely to receive an out of court disposal and are more likely to be remanded ([YJB, 2021](#)).

Delays in police investigations as well as backlogs in the courts are rising. The pandemic has worsened existing challenges arising from the loss of police and court personnel as well as physical court buildings in recent years; in the decade to 2020, 164 out of the 320 magistrates courts in England and Wales were closed ([House of Commons Library, 2020](#)). This is most pressing for 17-year-olds who are remanded to custody or are released under investigation (RUI) but age out of the youth justice system before their case reaches court, meaning they miss out on additional protections and support. This can result in more severe sentences and a criminal record which will follow them for years to come, potentially limiting their future education, training and employment options. Transitions from the youth to the adult estate also require more focus and attention.

The secure estate needs to be made more localised, more responsive to children’s needs and above all more compassionate. Levels of violence between children, with staff and self-harm in custody are high, and rising, suggesting needs are routinely not being met; in the year ending March 2020 there were around 7,500 incidents of restraint in YOIs and STCs, up 19% on the previous year and 2,500 incidents of self-harm, up 35% on the previous year ([YJB, 2021](#)). A smaller estate is contributing to this violence and the growing use of ‘keep apart’ policies. The unplanned contraction of the custodial estate means children are frequently placed some distance from their home authority; more than a third of children (38%) are placed 25 – 49 miles from home, with one in 10 placed over 100 miles from home ([YJB, 2021](#)). Girls are more likely to be placed at a distance despite their heightened vulnerabilities. Positive family relationships, access to education and training and a sense of connection are all drivers for recidivism, so this physical distance adds additional barriers to resettlement efforts and planning.

Diffuse national governance and oversight arrangements and the impact this has on performance and contract management is a persistent concern. After the airing of the Panorama programme in 2016, G4S handed back its contract to run Medway STC, it was not removed. More recently concerns were raised about the extension of MTC’s contract at Rainsbrook STC in early 2020, despite a lack of progress in addressing previous failings ([Justice Committee, 2020](#)). Inaction by G4S in addressing concerns raised across six consecutive inspections of the last remaining STC in England, Oakhill, has resulted in an Urgent Notification and a pause on new placements ([Ofsted, 2021](#)). This level of drift and delay simply would not be tolerated in any other area of children’s services. Were a school to be rated as inadequate or requiring improvement for several years, the Department for Education (DfE) would have stepped in and removed or re-brokered these services.

As of June 2021, 48% of the youth custodial population was on remand, meaning hundreds of children are unnecessarily exposed to the risks and harms associated with custody. Remand experiences can also reinforce an offending identity and be particularly destructive if a community sentence is ultimately awarded by the courts; almost two thirds of

children on remand will not receive a custodial sentence (YJB, 2021). The difficulties LAs face in identifying and retaining alternative remand and post-custody accommodation packages are linked to wider sufficiency challenges in securing suitable placements for children in care. Following a thematic review of resettlement, HMIs Prisons and Probation called on the government to develop an accommodation strategy for young people being released from custody ([HMIP et al, 2019](#)). Such a strategy must involve LAs and prioritise children's needs above their offending status.

The YJB established *Child First* as its guiding principle and strategic objective for the youth justice system in 2019. Multiple areas of both policy and practice conflict with this aim, most obviously at 10 years old, we have the lowest age of criminal responsibility (ACR) in Europe. This is out of line with other domestic legal minimum ages and contravenes international standards, including the UN Convention on the Rights of the Child. Whilst a welcome intention, it is not clear this aim can truly be achieved whilst youth justice services sit outside of the Childrens Acts of 1989 and 2004. A recent evaluation of the implementation of *Child First* noted a failure to operationalise the intention or measure impact. An incongruence in assessments and regulatory frameworks, which continue to focus on the risks children pose or face rather than their outcomes, was similarly noted ([Loughborough University, 2021](#)).

Covid-19 reinforced the fact that children in conflict with the law continue to be defined by their offending status rather than their age or needs and all too often are swept up in adult responses. During the pandemic, vulnerable children, were prioritised for school attendance by the DfE during lockdowns but children in custody were not afforded the same entitlements by the MoJ. Daily custodial routines in YOIs and STCs continue to be disrupted, with visits, time out of rooms and access to education affected. National pandemic response and infection control plans did not distinguish between adults and children e.g. the isolation of children arriving in custody for 14 days, and youth courts were left out of initial MoJ/ HMCTS recovery planning ([AYJ, 2021](#)). And, between April - August 2020, while the government ran an early release scheme for prisoners to reduce the risk of infection in custodial settings, no under 18s were released (MoJ, 2020).

Children in conflict with the law are falling between the gaps in departmental responsibilities meaning a lack of tangible progress in bringing about change. During national lockdowns, children on YOT caseloads were not classed as vulnerable, despite YOT staff being recognised as critical workers which meant they were neither prioritised for school places nor were they eligible for the food parcels or the free laptops co-ordinated by the DfE ([AYJ, 2021](#)). This lack of tangible progress in implementing national change programmes, most notably the development of secure schools, which will be dual registered as a 16 - 19 academy school and a children's home, is of deep concern.

In summary, the disruptive nature of the pandemic allows us to consider old problems with fresh perspectives. To drive forward the *Child First* agenda, closer alignment of youth justice with broader children's services is needed alongside a wider lens on vulnerability, prevention and early intervention to address the root causes of harm and the societal conditions that allow abuse and exploitation to flourish. We need to work differently with children, families and communities, while agencies, including government departments, need to work differently, and together, to bring about change.

Central government holds the greatest levers for change. A convergence of timely developments offer opportunity to leverage meaningful reforms, from the ongoing *SEND review* and the *Independent review of children's social care*, the shift to integrated care systems to oversee local health and care needs and the opening of the first secure school in 2022. *The Police, Crime, Sentencing and Courts Bill*, which provides for the establishment of the first secure school, offers a vehicle for more significant change e.g. increasing the ACR.

4. Domains for change in achieving a more child centred response

4.1. Education

Pursuing a **more inclusive education and schools system** would contribute to both prevention and diversion agendas. School is a protective factor and permanent exclusion has been identified as a critical event that can lead to young people becoming vulnerable to criminal exploitation ([Child Safeguarding Practice Review Panel](#), 2020). The rate of fixed term and permanent exclusions are high, most commonly for persistent disruption ([DfE, 2021](#)), as is the prevalence of 'off-rolling' and elective home education, meaning children can fall out of sight. This cannot be right given we know the longer term social and financial costs of allowing children to get to the point of exclusion are huge; for many this is the first step on a journey that ultimately ends with social exclusion in adulthood too.

Recent inspection reports echo the concerns raised in the Taylor Report (2016), the Youth Custody Improvement Board report ([YCIB](#), 2017) and more recent reviews the about the quality of, and access to, education in the secure estate, particularly throughout the pandemic. Staff shortages are impacting on access and children are also opting out of education by spending more time in their rooms. Secure schools may, in time, offer a solution but more must be done to improve the current offering in custody in order to realise this opportunity to re-engage children in learning. **Consideration should be given to how remote learning, now widely available as a result of the pandemic, can be used to strengthen education offers for this cohort.** This may assist in re-engagement in formal learning and positively contribute to resettlement efforts e.g. via participation in virtual taster courses in advance of release from custody.

One in four children in YOIs and STCs have a special educational need and/or disability (SEND), with only half that number saying they are receiving support ([HMI Prisons](#), 2021). **There are gaps in the current SEND code of practice meaning children in custody with an education, health and care plan (EHCP) may not be receiving the support they would otherwise get in the community.** A custodial stay presents new challenges but also the chance to understand and meet children's needs in a way that may not have been possible before e.g. due to permanent exclusion from mainstream school. Almost two thirds of young people involved in the criminal justice system have SLCNs, which are linked to lower attainment and a higher likelihood of not being in education, employment or training. **The role that undiagnosed SLCN plays in our understanding of, and responses to, children in conflict with the law has long been recognised but must be brought into sharper focus.** This could usefully be considered under the auspices of the DfE's ongoing *SEND review*, alongside access to entitlements.

4.2. Health

The commissioning, oversight and delivery of health provisions in the secure estate must be strengthened. High numbers of children have ADHD and autism, for example, overlaid with significant trauma and loss e.g. bereavement. The West Midlands PCC research showed almost half of the 80 children included in the sample had mental health concerns (36) and one in four had self-harmed, attempted suicide or displayed suicide ideation (21). The difficulties in accessing community and specialist mental health services are well known. Our members are also concerned about the distinction health services continue to draw between children's emotional and behavioural needs and diagnosable mental health conditions; there is a clear link between trauma, emotional distress and behavioural presentation, which this distinction overlooks. Unmet health needs can then cause an escalation of behaviours, resulting in the child coming into contact with the youth justice system, or children's social care, at the point of crisis.

Health partners must take more responsibility for co-commissioning appropriate services for children who have emotional and behavioural needs which affect their mental health both in custody and in the community. Similarly, there is a **paucity of in-patient drug services across the country** to help children break the cycle of addiction, which can draw them deeper into criminal exploitation or so-called ‘County Lines’ activity.

4.3. Children’s social care and wider children’s services

Children in conflict with the law are frequently involved with a wider set of professionals. Closer working between youth justice and social care staff is desirable in supporting children who are both in care and conflict with the law and in identifying remand and post-custody packages and placements for the wider cohort. **Local areas should explore development opportunities across youth justice and children’s social care staff to share learning and skills, in line with local priorities.** Social worker training opportunities might see placements in YOTs become a viable route for training, for example. Similarly, the significant overlap now seen between the youth justice cohort and that of children’s social care means that assessment, planning and recording on separate systems does not represent child-centred practice and is inefficient. **It is well worth exploring an integrated assessment and planning framework, which can be applied to all children.** This echoes Taylor’s call for a ‘one child, one plan’ approach. There will be important learning here to draw from the development, introduction and use of EHCPs.

Growing numbers of older children are involved with children’s social care due to risks outside the family home, including sexual and criminal exploitation. The age profile of children becoming subjects of a child protection plan or entering care is rising, with significant increases in gang involvement (70%) and trafficking (45%) being recorded as presenting factors in assessments since 2018 ([ADCS, 2021](#)). The first report from the government’s *Independent review of children’s social care* was clear that this cohort is being failed, with different parts of the children’s social care, justice and health systems responding differently to the same children, resulting in gaps, confusion and poorer outcomes ([DfE, 2021](#)).

Responses to criminal exploitation should be reviewed urgently.

The growing awareness of contextual safeguarding offers renewed opportunities for YOTs, children’s social care, and other agencies, to work more closely together, with the aims of learning from each other, better meeting children’s needs and preventing future misery and serious harm. Greater join up between youth justice and wider children’s services on prevention, diversion and resettlement efforts could usefully be explored. Youth work and education have important roles to play in developing children’s skills and building resilience, as does family support. Taylor (2016) called for greater flexibility and devolution of responsibilities to LAs, noting almost all of the causes of childhood offending lie beyond the reach of the youth justice system with health, education and social care holding the greatest opportunities to intervene early and offer support before challenges manifest in offending. **Greater flexibility would allow local partnerships to pursue more integrated and evidence-informed responses in this space.**

Other shared endeavours might include efforts to improve whole family working, preventing children in care from being criminalised due to interactions with their parents, carers or wider family members and addressing shared social justice challenges; there is now widespread recognition of the contributory causal relationship between income and involvement with children’s social care ([CWIP, 2020](#)). While a recent thematic inspection on the experiences of Black and mixed heritage boys involved with the youth justice system found that the majority were highly likely to have grown up in the most deprived areas ([HMIP, 2021](#)).

The YCS’s safeguarding review ([YCS, 2019](#)) found that the role of the safeguarding lead in custodial settings is often part of wider duties and there is no requirement for the postholder

to be a qualified social worker. **We support the recommendation that the safeguarding lead in YOIs, STCs and once open, secure schools, is a qualified social worker, they should also be practicing** (the review notes the higher staffing ratios in secure children's homes (SCHs) makes this less critical in these settings). Links with the local children's social care team should be developed to allow the lead to access a network of peer support and keep up to date with changes in practice e.g. contextual and transitional safeguarding.

4.4. Workforce

We welcome greater focus on, and investment in, training and qualifications for custodial staff via the development and launch of the youth justice specialist role, however, it is clear from recent inspection reports that there are enduring difficulties in recruiting, retaining and training custodial staff. Turnover is high and those in post are all too often inexperienced and struggle to meet the needs of the children in their care, turning to force, including pain-inducing restraint, to manage behaviours ([MoJ, 2020](#)). **The DfE has developed new routes of entry into the teaching and social work professions to broaden the recruitment pool and offer individuals the flexibility to train in a way that suits them e.g. apprenticeships.** ADCS has previously supported the development of a suite of apprenticeships for residential care and family support workers to attract new recruits and offer a route of progression for those already working in the sector. Similar innovations would be welcome here.

The absence of a comprehensive analysis of the level and type of need in the custodial population was highlighted in a review commissioned post-Panorama ([YCIB, 2017](#)) and more recently by the [Justice Committee](#) (2020). This is urgently needed to inform community and custodial workforce plans, particularly as the first secure school is realised. LAs have a wealth of experience to offer from our own workforce, from YOT staff and residential care workers in SCHs to alternative provision and residential special schools which has not yet been well utilised in national planning and development plans. **We are keen to see new investment in the community workforce, namely YOTs, with a particular focus on developing a clear route of progression for experienced staff.** As staffing is the single largest area of expenditure for YOTs, opportunities for career progression have diminished as skilled staff have gradually been lost as a result of year-on-year funding reductions.

A range of professionals, agencies and organisations are involved in encouraging behaviour change before serious and life changing interventions, such as a custodial sentence, are required. **A set of common principles and values to be utilised in training and development offers across the wider workforce, from YOTs, the police and courts to custodial staff,** would contribute to the cultural shift required to realise a *Child First* justice system. Children's rights and needs should be at the heart of this work and children who have personal experience of the system should be meaningfully involved in both design and delivery. This might usefully include unconscious bias training, cultural competency, restorative practices and be trauma informed.

5. Operational services

5.1. YOTs

YOTs are managing greater levels of risk in the communities yet overall funding continues to fall. A review of funding arrangements has been recommended by the [Justice Committee](#) (2020) to address both shortcomings and omissions e.g. informal diversionary work in the pre-court space has not historically been either recognised or funded. Perhaps the most significant funding concern, beyond disinvestment in community-based prevention efforts, is the cost of remands. The grant from the YJB falls far short of actual costs meaning

shortfalls, running to hundreds of thousands or even millions of pounds, are met by LAs out of the wider children's services budgets.

The responsibility to meet these costs shifted to LAs under the *Legal Aid Sentencing and Punishment of Offenders Act 2012*, with the goal of reducing the use of custodial remands. This has not been achieved as there was no parallel investment in developing alternatives to custody e.g. training and retaining specialist foster carers. LAs have few levers over the speed of police investigations or the timing of court listings and non-custodial remand placements are increasingly hard to find. **This policy should be urgently considered as part of the *Independent Review of Children's Social Care***, alongside the duty to provide PACE beds, the availability and sufficiency of welfare beds in SCHs is similarly limited. Building new provision will take time, in the interim greater use of intensive surveillance options in the community should be utilised.

Guidance and frameworks continue to focus on risk and offences rather than children's needs and outcomes. The current regulatory framework for YOTs continues to focus on risk in its assessment of local approaches to out of court disposals and diversionary work, this was noted in a recent report on the implementation of the *Child First* principle ([Loughborough University, 2021](#)), similarly there continues to be a focus on the risk of significant harm children in conflict with the law pose to adults rather than the child's experiences. **As the primary regulator of education, safeguarding and social care services, we believe Ofsted should have the lead in assuring all aspects of youth justice services.** A shift towards accepted practices in wider children's services, which prioritise children's welfare and rights is needed. This should be accompanied by a shift towards evidence-based community interventions, such as restorative justice, which will lead to better outcomes for children and victims. Enabling children, and those most directly affected by their actions, to play a more active role in resolutions has multiple benefits. Restorative justice approaches have been used for many years in Northern Ireland with impressive results, from reduced use of custodial sentencing and reductions in reoffending to significantly improved victim satisfaction levels.

We know maturation to adulthood is a neurological process that extends into the mid-20s. In recent years, the DfE has extended enhanced entitlements of support to other vulnerable groups, including children and young people with SEND and care leavers, up to 25 years to support transitions to adulthood. The enforcement-based approach of adult probation services differs greatly from the ethos and practical support offered by YOTs. **A less binary approach to youth justice services would contribute to better outcomes for individual children, for communities and the public purse.** YOTs working with over 18s should not be the exception and this additional work must be fully funded.

5.2. Custodial estate

The majority of children in custody are placed in youth offenders institutes (YOIs) and STCs, which are typically operated by private contractors utilising practice and routines that are barely adapted from the male adult system and in buildings that frequently adjoin adult prisons. A small number of beds are commissioned in SCHs, which are run by LAs using frameworks and regulation rooted in *the Children Act 1989*. In 2019, the *Independent Inquiry into Child Sexual Abuse* concluded YOIs and STCs had a habitually violent atmosphere, **recommending the needs of children in custody would be better served by the MoJ and DfE sharing policy responsibility for managing and safeguarding children in custodial settings.**

Over the last two years the inspectorates have documented an alarming deterioration in conditions and the performance of sections of the secure estate. In summer 2019 the first ever Urgent Notification for a youth custodial setting was triggered for Feltham A YOI,

following what was described by the then HM Chief Inspector of Prisons as a “dramatic decline” in performance and conditions, leading to the immediate suspension of new placements ([HMIP, 2019](#)). Medway STC closed entirely in spring 2020 following a poor inspection and Rainsbrook STC closed in summer 2021 following the issuing of a second Urgent Notification in the space of six months. HM Chief Inspector of Ofsted described the regime there as “bleak,” and children told inspectors that they feared another child or staff member would be seriously harmed or die ([Ofsted, 2020](#), [Ofsted, 2021](#)).

HMI Prisons annual reports show that the majority of the inspectorate’s recommendations are consistently not being met, including almost two thirds of safety recommendations ([HMIP, 2020](#)). **It is clear there are systematic failings in aspects of youth custody, a national improvement plan for the whole estate is required rather than reacting to failures in individual institutions.** This should address short term changes and improvements as well as the realisation of national reforms in this space e.g. secure schools. We do not underestimate the difficulty in designing a wholly new response but this has detracted focus and attention away from improving present day experiences. A twin track approach is required and a clear plan of action. Reforms in this space should include police custody and PACE provision as well. **We do not believe services for children, particularly the most vulnerable, should run on a for-profit basis and on that basis LAs should not be precluded from the running of secure schools, based on an established track record in this space e.g. running SCHs.**

Children in conflict with the law are some of the most socially excluded members of society, aiding a phased and supported return to the community could help improve resettlement and recidivism efforts. Taylor (2016) advocated for greater use of release on temporary license to support phased returns to the community, however, the geographical imbalance across the estate presents a significant practical barrier if a 100 or even 200-mile round trip was required, for example.

5.3. CPS and the courts

In 2011, youth cases took on average 101 days from offence to completion, by 2019 this had risen to 154 days. Covid-19 has worsened this situation; a recent thematic inspection found that the backlog of cases in the youth courts more than doubled during the pandemic due to closures and operating restrictions ([HMIP, 2020](#)). Acting on delays and addressing historic anomalies in custom, practice and guidance would make the courts more child-centred.

Taylor (2016) and the [Justice Committee](#) (2020) both highlighted the need for children to be prioritised in the courts, with the latter calling for the MoJ to legislate to ensure that anyone turning 18 whilst awaiting trial is dealt with in the youth justice system. Rules on vulnerable witnesses are not routinely applied to the accused in youth courts despite what we know about the needs and vulnerabilities of this cohort. Bail hearings for under 18s are heard in adult courts if there is no youth court sitting, raising questions about access to justice. And, where the child has adult co-defendants, their case is heard in the crown court, without the adaptations and protections of youth court. In treating children as an equal member of organised criminal gangs they come face to face with the very abusers who have groomed and exploited them. In 2019/20, 5% of all sentencing occasions of children were at crown court ([YJB, 2021](#)). **Given the lengthening delays in the courts, high usage of remand and a commitment to *Child First* ways of working, the need to revisit all of these practices is more urgent than ever.**

Multiple reviews and reports have also called for the reform of the national referral mechanism (NRM). Last year the *Child Safeguarding Practice Review Panel* questioned whether the NRM, which allows under 18s to defend charges on the basis they have been trafficked or exploited, was the most effective means of working with children who are being

criminally exploited ([Child Safeguarding Practice Review Panel, 2020](#)). There are often long delays in this process and in the year ending December 2020, 94% of criminal exploitation referrals for children were accepted ([Home Office, 2021](#)), raising the question why children's vulnerabilities cannot automatically be recognised in law.

Researchers have found that children do not always understand what happened in court, often feel the court process sets them up to fail and do not feel respectfully treated ([Centre for Justice Innovation, 2020](#)). The close work between YOTs and the courts is an obvious strength of the youth justice system and there are positive examples of shared training in local areas. More fundamental changes may be required in the future to ensure justice is delivered in a child-centred way. A range of alternative models have variously been proposed. These include the use of a Scottish-style children's panel, hearing youth cases in the family courts, which are more child-centred, or developing a problem-solving approach along the lines of the family drug and alcohol courts (FDAC). **Consideration could be given to each of these options as part of pandemic recovery planning.**

5.4. The police

The police play an important gatekeeping role in the youth justice system. Changes to policing targets and priorities have significantly contributed to the diversion of children away from the justice system. However, our members have raised concerns about the inconsistencies in the remand criteria used by the police and the courts, about the bearing bail decisions made by the police can have on the use of remand by the courts, the impact of the joint enterprise laws and racial disparities. Taylor (2016) recommended the **introduction of mandatory child-specific training for all custody sergeants as well as the use of health screening assessments and seeking other relevant information from the LA to routinely inform charging decisions.** This would support more child-centred decision making.

Both trust and confidence are central to our model of consensual policing in this country. A youth-led police monitoring group in London found that young Black men with low trust in the police could pinpoint difficult personal interactions in their childhood and said they would prefer to take matters into their own hands, even during a serious incident involving conflict or violence, rather than turn to the police for help ([Hackney Account, 2021](#)). The HMIP thematic inspection on the experiences of Black and mixed heritage boys found concerns regarding pro-active policing practices were a consistent theme across the feedback from the boys themselves, and among practitioners, managers and strategic leaders involved in this process ([HMIP, 2021](#)). Limited options for external scrutiny of the use of stop and search tactics and the traumatic impact of these interactions on children were also raised. Several of the forces involved in the inspection are trialling stop and search notifications with families and closer links with children's social care or early help services, which is helpful. **Learning from these pilots should be widely shared and ways of boosting transparency considered.**

The police do not routinely share information about informal diversionary work they undertake with the local YOT yet having these insights would allow YOTs to build a clearer picture of individual vulnerabilities and improve community safety planning. A review of the use of RUI remains in progress, **moves to improve information sharing between the police and YOTs when under 18s are RUI should be considered** in the interim. The absence of clear timescales and bail conditions leaves a gap in support for children and families which can increase both risks and vulnerabilities plus the open-ended nature of RUIs mean that children can time out of the youth justice system through no fault of their own.

5.5. Partnership and governance

Locally, multi-agency working is central to the work of YOTs, child safeguarding and community safety partnerships. *The Children Act 2004* and the statutory Working Together guidance (DfE, 2020) are clear that organisations and services that support children and families should co-operate as widely as possible to improve their wellbeing. The multi-agency nature of YOTs is a significant strength, however, differences in guidance, regulatory frameworks and departmental priorities can act as barriers along with budget pressures and ongoing reorganisations and reform programmes in individual agencies e.g. in health and education. The attendance of representatives from YOIs or STCs at meetings of the local multi-agency safeguarding partnership is common but a more meaningful relationship and engagement is needed at both a practice and strategic level in the future.

The same duty to co-operate applies to national partners and to central government yet responsibility for education, social work, youth work, health, family support, policing, the courts, aspects of contextual safeguarding, such as criminal and sexual exploitation, crime and youth justice are spread across several government departments, even though they are absolutely interconnected in responding to children in conflict with the law. **A cross-Whitehall ambition for children which articulates the role of each department is needed.** This is particularly relevant to this cohort given the plethora of programmes or projects aimed at addressing serious violence, including gang involvement and knife crime.

There is more the centre could do, in partnership with local areas, to provide a clear line of sight into nationally commissioned custodial placements. We believe there should be a strengthened role here for 'host' authorities with a secure custodial facility beyond the interface with the local authority designated officer (LADO), in dealing with allegations of harm or abuse committed by professionals who work with children. Safeguarding is clearly a concern but we have wider statutory duties in relation to the health, safety and wellbeing of all children and young people in their area yet lack the levers to fulfil this duty here.

5.6. National legislation and policy context

The MoJ faces multiple and significant challenges in adult prisons, probation services and record levels of delay in the courts. It is not clear that there is either the capacity or experience to lead and deliver a truly *Child First* youth justice system. On this basis, our members believe **youth justice should, at the very least, be a shared portfolio between MoJ and the DfE, with the latter taking the lead. The YJB should be entirely relocated to the DfE given its monitoring and advisory role.** A clear delineation in responsibilities would be required to overcome the current ambiguity in national arrangements.

In the five years since Charlie Taylor's system-wide review concluded, the principal reforms taken forward have been changes in the remits for, and oversight of, youth justice. The MoJ has taken on an enhanced policy role, the YCS has been created to commission placements and quality assure delivery while the YJB has a slimmed down monitoring, research and advice role. It is far from clear these developments are translating into improved experiences or outcomes for children, particularly those in custody. **Taylor (2016) recommended the establishment of an expert committee to offer independent advice and challenge about both policy and operations, we support this move.** Additional scrutiny is needed, along with a diversity of voices, to drive improvements and deliver change.

In broader policy terms there continues to be focus and investment in responding to crime and serious violence e.g. the establishment of violence reduction units. We are concerned the ongoing drive to recruit 20,000 new police officers will inevitably see many more children come into contact with the youth justice system unless there is co-ordinated and sustained investment in YOTs, youth and mental health services plus schools. The recent spending

review saw welcome, multi-year investment in children and children's services. This new funding needs to be joined up to allow LAs to respond to local challenges and support the scaling up of successful prevention and diversion projects.

A suite of reforms in the *Police, Crime, Sentencing and Courts Bill*, will have both direct and indirect implications for children's services and YOTs. The Bill contains welcome measures to reduce the use of remand and makes positive changes to the disclosure of criminal records. However, it also contains plans to bring sentences for under 18s who commit murder in line with adult provisions as well as increased stop and search powers for the police, which is concerning on multiple fronts.

There are myriad examples of government policies and reforms that work against the *Child First* intention and our collective aims to improve children's outcomes. The *Offensive Weapons Act 2019* created a new civil order - the knife crime prevention order (KCPO) - which is now being trialled despite the government's own impact analysis suggesting KCPOs will most likely penalise Black and ethnic minority communities. **A review of the pilot outcomes must be undertaken before wider rollout is considered to avoid further entrenching existing disparities and criminalising more children.** KCPOs can be applied to children aged 12 and upwards who are suspected rather than convicted of carrying a knife, with breaches ultimately punishable by imprisonment ([Home Office](#), 2021). **The LGA has previously called for an impact assessment for departments to complete in order to understand the impact of new reforms or change programmes on children, particularly the most vulnerable.** We believe this would contribute to *Child First* aims.

6. Conclusion and recommendations

As already detailed, the cohort of children currently in conflict with the law have suffered significant adversity and have complex and overlapping needs, which necessitates more sophisticated, multi-agency and multi-disciplinary responses. We have identified a series of urgent changes and recommendations in the main body of this paper to achieve a more child-centred youth justice system within current ways of working (see Appendix 2). Many of these proposals have been made before. However, the size of the current cohort in conflict with the law opens up the possibility of working in new and different ways. In the longer term, we believe a public health approach is needed to understand and systematically respond to the challenges and harms children face whilst promoting their welfare and rights. Taking a public health approach would allow us to coordinate efforts and resources at both a national and local level and provide a framework for addressing the underlying issues escalating children into the youth justice system, including economic inequality, low aspiration and lack of access to opportunity.

Such an approach would draw on universal services for all children, such as schools and the police, build on the targeted work YOTs already do with children known to be at risk of being in conflict with the law and consider specialist interventions and intensive support for children who are already in contact with the system. The most significant gap is in our response to children who are being criminally exploited and it is very likely new services are required, including therapeutic interventions and drug treatment options.

Broader measures to stop children being drawn into the youth justice system would feature too e.g. co-ordinated action on reducing the demand for illegal drugs would have a knock-on effect on the youth justice system. A review of existing policies, practices and laws to ensure they align with *Child First* principles should form part of this, starting with consideration of increasing the ACR to 14 years old. It is important a delivery plan with clear targets on reducing contact with the system and acting on the longstanding challenges of over representation and discrimination, boosting transparency and accountability sits alongside this to support implementation and meaningful change.

7. Appendix 1

- Final report of the [Medway Improvement Board](#) (2016) initiated following the BBC Panorama programme about Medway STC by the then Secretary of State for Justice
- Charlie Taylor's [Review of the Youth Justice System](#) (2016) initiated by the then Secretary of State for the Ministry of Justice
- Findings and Recommendations of the [Youth Custody Improvement Board](#) (2017) initiated by the then Secretary of State for the Ministry of Justice
- An [Independent Review into the Treatment of and Outcomes for Black, Asian and Minority Ethnic Individuals in the Criminal Justice System](#) (2017) by David Lammy MP which was initiated by the then Prime Minister
- [Sexual Abuse of Children in Custodial Settings](#) (2018) published by the Independent Inquiry into Child Sexual Abuse
- [Protecting children from criminal exploitation, human trafficking and modern slavery: an addendum](#), Ofsted et al (2018)
- [Youth Custody Service Safeguarding Review](#) (2019) initiated in response to the IICSA inquiry into abuse in custodial settings
- [Youth Detention: Solitary Confinement](#) (2019) report outlining the findings of an inquiry by the Joint Committee on Human Rights
- [Serious youth violence](#) (2019), Home Affairs Select Committee inquiry
- [A Review of the Use of Pain Inducing Techniques in the Youth Secure Estate](#) (2020) initiated by the then Justice Minister
- [Final Report of the Separation Taskforce](#) (2020) initiated following the publication of a HMIP thematic report on the same topic the previous year
- [Children and Young People in Custody \(Part One\): Entry to the Youth Justice System](#) (2020) outlining the findings of the first stage of a Justice Committee inquiry
- [Youth Violence Commission Final Report](#) led by a cross-party group of MPs (2020)
- [Safeguarding children at risk of criminal exploitation](#), Child Safeguarding Practice Review Panel (2020)
- [Children and Young People in Custody \(Part Two\): Youth secure Estate and Resettlement](#) (2021) outlining the findings of the second stage of a Justice Committee inquiry
- [Rainsbrook Secure Training Centre](#) (2021) outlining the findings of a rapid Justice Committee inquiry into failing at the Centre
- [The Case for Change](#) by the Independent children's social care review (2021), initiated by the then Secretary of State for Education
- [Wood Review of Multi-Agency Safeguarding Arrangements](#) (2021), initiated by the then Secretary of State for Education.

Other notable reviews and reports published during this period include: [In Care Out of Trouble](#) by the Prison Reform Trust (2016), a [Serious Case Review into failings at Medway STC](#) published by Medway Safeguarding Children's Partnership (2019). The [Children's Commissioner for England](#) has published multiple reports in this space too (2021, 2020, 2020, 2019, 2018).

8. Appendix 2: Full list of recommendations

The Department for Education

- DfE to take the lead on youth justice policy, with the YJB moving to the DfE entirely to fulfil its independent scrutiny and challenge function.
- Serious consideration should be given to how remote learning, now widely available, can be used to strengthen education offers in custody drawing on experience in wider children's services.
- As the primary regulator of education, safeguarding and care services, Ofsted should be the lead in assuring all areas of youth justice services.
- The *SEND review* should consider: gaps in the current SEND code of practice meaning children in custody with an education, health and care plan (EHCP) may not be receiving the support they would otherwise get in the community and the role that undiagnosed SLCN plays in our understanding of, and responses to, children in conflict with the law.
- The *Independent review of children's social care* should consider practical solutions to remand and resettlement placements for children in conflict with the law in conjunction with wider sufficiency challenges in placements for children in care.
- Greater cooperation and coordination across government, including the development of an overarching vision and strategy for children is needed. This should be led by the DfE and should include responses to children in conflict with the law.
- DfE to pursue a more inclusive education and schools system to contribute to both prevention and diversion agendas; exclusion from school heightens vulnerabilities.
- The government should develop a children and young people impact assessment for departments and agencies to use in the development of new policies. This should be led by the DfE.

Local health services

- Health partners must take more responsibility for co-commissioning appropriate services for children who have emotional and behavioural needs which affect their mental health either in custody and the community.
- Health partners should examine sufficiency of, and access to, in-patient drug services for under 18s across the country.

Local authorities

- Local authorities should explore development opportunities across youth justice and children's social care staff to share learning and skills, in line with local priorities.
- Local authorities should explore opportunities for closer working across the totality of children's services to improve local responses to, and outcomes for, children in conflict with the law.
- Local and national government should explore the development of an integrated assessment and planning framework, which can be applied to all children requiring help and support.

The Youth Custody Service

- The YCS should ensure that the safeguarding lead in YOIs, STCs and once open, secure schools, is a qualified, practicing social worker and can access local networking and development offers.
- The YCS should expand routes of entry for custodial staff in the youth justice estate e.g. via the development of apprenticeships drawing on experiences and developments in wider children's services.

- The YCS should coordinate a national improvement plan for the totality of custodial settings, drawing on learning from related sectors and the best performing SCHs, who care for the most vulnerable children in conflict with the law.
- The YCS should support greater connectivity and information exchange between nationally commissioned custodial settings and 'host' authorities.

The Youth Justice Board

- The YJB should bring forward new investment in the community workforce, namely YOTs, with a particular focus on developing a clear route of progression for experienced staff.
- To support the cultural shift to a *Child First* system, the YJB should develop a set of common principles and values to be utilised in training and development offers across the wider workforce. Children's voices and experiences should be central to this.
- A review of YJB funding for YOTs and the prioritisation of existing funding e.g. greater focus on prevention and diversion as well as bringing funding for remand placements in line with actual costs.
- The YJB should explore the provision of additional entitlements to support for children in conflict with the law up to 25 years to support transitions to adulthood.

Ministry of Justice

- The MoJ should review the age of criminal responsibility, which is out of step with other domestic minimum ages and international standards.
- Consideration of alternative models or approaches to youth courts should be given as part of pandemic recovery plans by the MoJ.
- The establishment of a national committee to offer independent advice and challenge about youth justice policy and operations.

CPS and the courts

- The CPS and the courts should prioritise children, particularly 17-year-olds, who risk aging out of the system through no fault of their own, access to hearings.
- Rules on vulnerable witnesses should automatically apply to the accused in youth courts given the complex needs and multiple vulnerabilities in this cohort.
- Children's cases should not routinely be heard in adult courts, particularly where there is evidence of criminal exploitation and they will be tried alongside their abusers.

The Police

- The police should adopt child-specific training for custody sergeants and seek other relevant information to inform charging decisions.
- Greater transparency and scrutiny of stop and search tactics by the police are needed at both a local and national level as part of action on disproportionality in the youth justice system.
- Improved information sharing between the police and local YOTs on informal diversion work and on use of RUI to allow the provision of additional support for children and their families.

Home Office

- The Home Office should review the application of the NRM process to children, particularly where criminal exploitation is suspected, this process adds in further delay and risks causing further harm to children.

- The Home Office should review the outcome of the KCPO pilot before full roll out to understand any implications, and potential mitigations, on disproportionality.

All government departments

- Take forward a cross-Whitehall vision for children, which articulates the role of each department.
- Come together with relevant agencies and local partners to build a public health approach to youth justice and childhood vulnerability, coordinating funding and efforts via a strategy and delivery plan.

A Youth Justice System that Works for Children

A Joint Policy Position Paper by
Service, Strategic and Political Leaders in Local Government

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