House of Commons
Justice Committee

Draft Sentencing Guideline: overarching principles—sentencing youths

Tenth Report of Session 2008–09

Report, together with formal minutes, oral and written evidence

Ordered by the House of Commons
to be printed 15 July 2009
The Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General’s Office, the Treasury Solicitor’s Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

Current membership

Rt Hon Sir Alan Beith MP (Liberal Democrat, Berwick-upon-Tweed) (Chairman)
David Heath MP (Liberal Democrat, Somerton and Frome)
Rt Hon Douglas Hogg MP (Conservative, Sleaford and North Hykeham)
Siân James MP (Labour, Swansea East)
Jessica Morden MP (Labour, Newport East)
Julie Morgan MP (Labour, Cardiff North)
Rt Hon Alun Michael MP (Labour and Co-operative, Cardiff South and Penarth)
Robert Neill MP (Conservative, Bromley and Chislehurst)
Dr Nick Palmer MP (Labour, Broxtowe)
Linda Riordan MP (Labour and Co-operative, Halifax)
Virendra Sharma MP (Labour, Ealing Southall)
Andrew Turner MP (Conservative, Isle of Wight)
Andrew Tyrie MP (Conservative, Chichester)
Dr Alan Whitehead MP (Labour, Southampton Test)

Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House.

All publications of the Committee (including press notices) are on the internet at www.parliament.uk/justicecom

Committee staff

The current staff of the Committee are Fergus Reid (Clerk), Dr Rebecca Davies (Second Clerk), Ruth Friskney (Adviser (Sentencing Guidelines)), Hannah Stewart (Committee Legal Specialist), Ian Thomson (Group Manager/Senior Committee Assistant), Sonia Draper (Committee Assistant), Henry Ayi-Hyde (Committee Support Assistant), Gemma Buckland (Public Policy Specialist, Scrutiny Unit) and Jessica Bridges-Palmer (Committee Media Officer).

Contacts

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

Report

Report 3

Appendix A: Justice Committee response 4
Letter to the Chairman of the Sentencing Guidelines Council 4

Witnesses 8

List of written evidence 8

Reports from the Justice Committee since Session 2007–08 9
1. The Justice Select Committee receives draft sentencing guidelines produced by the Sentencing Guidelines Council for consideration. The Committee usually provides comments on draft guidelines to the Sentencing Guidelines Council in the form of a letter, published on our website; where we consider that a draft guideline raises major issues we report to the House.

2. The draft sentencing guideline *Overarching principles–sentencing youths* is a crucial sentencing guideline. It fills a critical gap, setting out for youth courts the basis upon which they should sentence offenders under the age of 18. Youth courts have not previously had sentencing guidelines setting out such principles. We therefore wish to draw the House’s attention to this guideline, the evidence received and our comments to the Sentencing Guidelines Council.

3. We took oral evidence on this topic from the Standing Committee for Youth Justice, the Children’s Rights Alliance for England, the Youth Justice Board, the Magistrates’ Association, Barnardo’s and Nacro in addition to receiving a variety of written evidence (see list at page 8). We would like to thank all those who submitted written material or gave oral evidence.

4. Our evidence on this draft sentencing guideline highlighted key areas in relation to youth justice deserving of further scrutiny, such as the use of remand and provisions for offenders aged 18-24. We will consider how to pursue these areas further in our work.
Appendix A: Justice Committee response

Letter to the Chairman of the Sentencing Guidelines Council

The Justice Committee welcomes the opportunity to consider the draft sentencing guideline on the overarching principles for youth sentencing. We heard during our evidence how important the definitive guideline will be, filling in the crucial gap whereby youth courts have previously not had sentencing guidelines. Generally our witnesses were very positive about the draft guideline, drawing attention for example to how it is based on evidence.

A key outcome sought from the sentencing guideline is consistency in approach. According to Government policy, custody should be used exclusively as a sentence of last resort for young people but our evidence shows that this is not what happens in practice. Our witnesses suggested that there was not a common understanding of ‘last resort’, as demonstrated by, for example, regional variations in the use of custody, and they hoped that the guideline will go some way to developing a common understanding. Sentencing decisions are not necessarily the only factors that affect whether custody is a sentence of last resort. In particular we heard evidence about the impact of whether resources were available locally to deliver community based sentences, or to provide accommodation whilst a young person is on a community sentence. This is clearly an area which will need monitoring, not least to determine whether the sentencing guideline is effective in its part of ensuring that custody is a sentence of last resort for young people, and to identify issues which affect its implementation or need to be addressed through other mechanisms.

Whilst seeking consistency of approach, our witnesses also emphasised the need to deal with the individual youth to be sentenced. The Magistrates’ Association said: “One sentences individually … and one hopes to come up with an appropriate sentence that prevents further offending in the future”. Many of our witnesses discussed how young people develop differently, and pointed out that there would be differences in capacity, capability and culpability between children of the same age, or different ages. We welcome the emphasis in the draft guideline on the individualistic nature of sentencing young people.

We are not convinced that the draft guideline has the right approach to the definition of ‘persistence’. Barnardo’s and the Youth Justice Board drew attention to the different definitions of ‘persistence’ that are in general use and questioned the creation in the guideline of a further, new, definition. Witnesses also expressed concerns that the guideline defines persistence to include pre-court disposals (with reference to the use of custody for 12-14 year olds). With regard to persistent breach of Youth Rehabilitation Order, the Youth Justice Board were concerned that a lack of clarity in the guideline could mean that ‘three breaches’ was interpreted as including warnings from a Youth Offending Team rather than three appearances in court for breach.

The guideline states that Parliament expects custody to be imposed only rarely on those aged 14 or less. There is a danger that the guideline, as drafted, will result in an almost automatic designation of a young person as persistent (which opens up further custodial options) after three, possibly pre-court, disposals or three breaches of a Youth
Rehabilitation Order, regardless of the circumstances. One option, to balance consistency of approach with allowing discretion in sentencing the individual youth, would be to use a definition in the guideline as a lower threshold, below which persistence would be very unlikely to be demonstrated rather than a threshold above which the test for custodial sentencing is considered to be met.

The Youth Justice Board emphasised that the new Youth Rehabilitation Order is a real opportunity to look at how young people learn. They commented that young people make mistakes and must be allowed to learn from these rather than end up in custody, where they would learn a very different and undesirable type of lesson. They said that the potential for repeating the use of the new order, tailoring the menu of requirements to meet needs, should be fully used where appropriate. In places the guideline does not necessarily reflect this approach, for example stating that sentencing should seek to ensure that young people “never repeat the wrongdoing”. This is unrealistic and could encourage an inflexible approach to repeat offending or breach of a community sentence, even where there has been a reduction in the frequency or seriousness of the offending behaviour.

Many organisations had concerns about the Youth Justice Board’s ‘scaled approach’. The pre-sentence report drawn up by the Youth Offending Team using this tool could propose sentences that are disproportionate to the offence because the team is seeking to match interventions to the risk of re-offending. Nacro commented that if something is imposed by the court following offending behaviour, and failure to comply can result in a return to court and potentially a custodial sentence, it is likely to be perceived by the child as a punitive measure in contrast to something that is presented as a voluntary option for the child’s benefit. We note that the guideline states that the sentence must remain proportionate to the offence, and highlights the need for care in situations where there is a less serious offence but a high risk of re-offending. Nevertheless this is an area which requires greater clarity and careful monitoring.

The interaction between the ‘scaled approach’ and sentencing also highlights the importance of a flexible response to the breach of a Youth Rehabilitation Order. Witnesses drew to our attention the potential for the most deprived children to be almost “set up to fail” by this approach. For example a higher risk of re-offending could require them to attend more supervision sessions and therefore give them more occasions to miss an appointment and get a warning for breach. We believe that young people are much more likely to comply with the terms of the sentence if they are given the support to achieve its requirements. Barnardo’s described a young person with a chaotic lifestyle and drug abusing parents, who were not the sort of parents to post appointments on the fridge with a magnet, and the work a Youth Offending Team could do to help them turn up to appointments such as using texting or collecting them in person. Completing their sentence, rather than spending a period in custody for its breach, is more likely to reduce re-offending. The Magistrates’ Association highlighted the importance of magistrates and Youth Offending Teams (YOTs) having a constructive dialogue over issues such as the approach to breach of Youth Rehabilitation Orders to ensure a flexible response that was best suited to encouraging the individual young person to comply with his or her order.

You raised two particular issues in your letter accompanying the draft guideline. Firstly, how the guideline approaches the difference between the aims of sentencing for adults and for young people (the omission of the aim of reducing crime, including its reduction by
deterrence, in the aims for young people). Secondly, the definition of ‘homicide’ with regard to matters that must be committed to Crown Court for trial. We did not receive any evidence on this second point and do not therefore wish to comment on it.

We discussed with many of our witnesses the differences in the aims of sentencing for young people. The Magistrates’ Association stated that pre-mediation was rarely a factor in crime committed by young people, meaning that deterrent sentencing was not effective. Barnardo’s said that there was a growing body of evidence about the way young people’s brains develop supporting the contention that offending is opportunistic rather than pre-mediated. They stated that there is no evidence that deterrent sentencing works with young people. The Youth Justice Board noted that confidentiality requirements in relation to reporting sentences imposed on young people would further reduce any potential deterrent effect. They also reported on some of their research which showed that some sentencers believe that sentencing a young person to custody makes an example of them and deters others. It is important to provide further information in the guideline on why deterrence is not an aim of sentencing for young people by including evidence as to the ineffectiveness of deterrent sentencing on young people.

The crucial role of the Youth Offending Team, particularly in providing pre-sentence reports and in taking action with regard to potential breach of a Youth Rehabilitation Order, was emphasised to us throughout. We welcome the statements in the guideline that sentencers must ensure that they have sufficient information to understand why a Youth Rehabilitation Order has been breached and the steps that have been taken by the Youth Offending Team and other local authority services to give the young person appropriate support and encouragement to comply with the order. We find that a court must ensure that it has access to information about issues such as mental health, learning difficulties and communication difficulties to enable the most appropriate sentence to be imposed, and this point should be strengthened in the guideline and courts required to pursue such points urgently.

Another issue that was raised with us was the shortage of programmes designed for young women. Barnardo’s told us that intensive supervision and surveillance programmes, which should present an alternative to custody, are male-oriented. The Annex to the draft guideline does mention some issues with relation to young women (such as the higher proportion at risk of self-harm or suicide). If community programmes are male-orientated this may be a factor in breach of community sentence by young women.

A number of key issues beyond the scope of the guideline arose in our evidence. The most serious was the availability of resources at a local level to deliver community sentences. Other questions included how 18-24 year olds are dealt with in the justice system and whether a fresh focus on that specific age group is now needed. We intend to continue to pursue these issues in our scrutiny of justice issues beyond sentencing guidelines.

We will be publishing the oral and written evidence we received as part of this inquiry as a report to the House and will provide you with a copy.

16 July 2009
Formal Minutes

Wednesday 15 July 2009

Members present:

Sir Alan Beith, in the Chair

Siân James
Alun Michael
Jessica Morden
Julie Morgan
Dr Nick Palmer
Andrew Turner
Andrew Tyrie
Dr Alan Whitehead

Draft Report (Draft Sentencing Guideline: overarching principles—sentencing youths), proposed by the Chairman, brought up and read.

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

Paragraphs 1 to 4 read and agreed to.

A paper was appended to the Report as Appendix A.

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

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

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

Written evidence was ordered to be reported to the House for printing with the Report.

[Adjourned till Tuesday 21 July at 4.00 pm.]
Witnesses

Tuesday 5 May 2009

Sally Ireland, Chair, Standing Committee for Youth Justice, and Katy Swaine, Legal Director, Children's Rights Alliance for England

Tuesday 30 June 2009

John Drew, Chief Executive, and Brendan Finegan, Director of Strategy, Youth Justice Board

Tuesday 7 July 2009

Mary Duff, Chairman, and Chris Stanley, member, Youth Courts Committee, Magistrates Association

Tim Bateman, Senior Youth Crime Policy Development Officer, Nacro, and Martin Narey, Chief Executive, and Pam Hibbert, Assistant Director-Policy, Barnardo's

List of written evidence

1 Barnardo's
2 Children's Rights Alliance for England
3 Magistrates' Association
4 Mayor of London
5 Ministry of Justice
6 Nacro
7 Prison Reform Trust
8 Sainsbury Centre for Mental Health
9 Transition to Adulthood Alliance
10 YoungMinds
11 Youth Justice Board
Oral evidence

Taken before the Justice Committee
on Tuesday 5 May 2009

Members present:

David Heath
Mr Douglas Hogg
Alun Michael
Julie Morgan

Mrs Linda Riordan
Mr Andrew Tyrie
Dr Alan Whitehead

In the absence of the Chairman, Alun Michael was called to the Chair

Witnesses: Sally Ireland, Chair, Standing Committee for Youth Justice, and Katy Swaine, Legal Director, Children’s Rights Alliance for England, gave evidence.

Q1 Mr Michael: Welcome to both of you. Would you like to introduce yourselves for the record, please?

Sally Ireland: Good afternoon. I am Sally Ireland. I am a senior legal officer at JUSTICE, the law reform and human rights organisation. I am also the current chair of the Standing Committee for Youth Justice, which is an unincorporated membership body, essentially a coalition of organisations working in the youth justice arena and focused on promoting reform in that sector. There is a long list of members which is at the back of our written evidence.

Katy Swaine: Good afternoon. I am Katy Swaine. I am a legal director at the Children’s Rights Alliance for England and we are a coalition of voluntary and statutory organisations committed to the full implementation of the UN Convention on the Rights of the Child. The Children’s Rights Alliance for England or CRAE, which is our acronym, is a member of the Standing Committee for Youth Justice.

Q2 Mr Michael: Can we look at the Criminal Justice and Immigration Act 2008 which sets out four purposes for the sentencing of young people and links those to the principal aim of the youth justice system which is to reduce reoffending. I also enter a confession here in that I was responsible for the offender. You can see, particularly where courts are adopting a problem solving approach, which is becoming more and more popular and is a tenet of government policy which has been expanded, the idea of problem solving justice, interventions and requirements loaded upon children and young people, often out of proportion to the seriousness of their offending with the best of intentions but where of course, if they do not comply with all those interventions, they can end up breaching their orders and ending up ultimately with custodial sentences. I think there is a tension there through the result of attempting to deliver what are essentially services to children through the arena of the criminal justice system.

Katy Swaine: I am speaking on behalf of CRAE this afternoon. We have a particular difficulty with the tension that arises between the concept of punishment and many of the other aspects of purposes of sentencing, particularly of course the welfare aspects. We feel that punishment really has no place as a purpose of sentencing children and certainly not at the top of the list. We have a particular difficulty with the purpose of punishment being used to justify the use of custody. In particular, the concept of punishment on the list we feel conflicts with the requirement under the UN Convention on the Rights of the Child for best interests to be a primary consideration in all matters affecting children, which of course reflects to some extent the existence of welfare as a requirement that a court must have regard to. Any contact a child is going to have with the criminal justice system is going to be, one might argue, punishment enough. That experience will not be an easy experience. Where a child is convicted of an offence, the sentencing, if it is going to be effective, again will not be an easy experience for the child. Where sentencing is going to effectively ensure that a child recognises the seriousness of an offence and addresses that important purpose of preventing reoffending, we feel that is an appropriate purpose of sentencing.

Q3 Julie Morgan: Many of the organisations have expressed concern about punishment being the main consideration. You suggested a way that these
conflicting principles could be fitted together. Could you tell us any more about how the system can operate, when we have these competing principles there?

**Sally Ireland:** To clarify, punishment is not the main purpose as set out in the legislation. It is a purpose but there is no prioritisation and obviously according to the international obligations the best interests or welfare principles should be prioritised. What they are really referring to is our proposal for a specific custody threshold for children and young people which the Standing Committee did propose as a specific amendment to the Criminal Justice and Immigration Bill when it was going through Parliament. Essentially, that is a legislative principle which is designed to ensure that custody is not used unless it is your last resort, which is government policy but which as we know is not working in practice in the courts at the moment. You have been provided with a copy of the principle as set out. It is not the only way it could be drafted but essentially it provides both that the offence has caused or might reasonably be expected to have caused serious physical or psychological harm and that the child demonstrates an imminent and demonstrable risk of causing such harm to the public. It is our belief that the only justification for imposing custodial sentences on children can be where this is absolutely necessary to protect the public from the consequences of their behaviour and we think that this principle would give effect to that.

**Katy Swaine:** This issue of punishment gets to the nub sometimes of the discussion. The practical arguments about custody will often lead everybody to the same place: that it does not work. What one comes up against is more of a philosophical discussion which is really about: this offence is so serious that custody is required. What you are getting to is a point where people are finding it difficult to accept custody should not be used as a punishment. I have found time and again that you get to that point in the discussion. Removing punishment from the list of purposes of sentencing for children would help in a very real way to focus our minds on the requirement for children to have a distinct system that deals with them, as is required under international law, recognising their unique status at that time of their lives.

**Q4 Julie Morgan:** On that issue, how well do you think the youth justice system safeguards children’s rights in England and Wales?

**Katy Swaine:** The numbers of children in custody speak for themselves. I think it is universally agreed that there are far too many children in custody, very often inappropriately for relatively minor offences. Unfortunately, quite apart from the deprivation of liberty, we are not able to keep children safe in custody at present. 30 have died in custody since 1990 and the figures for self-harm and vulnerability of children in custody are incredibly high. The very short answer to your question is that we are not safeguarding those children and we urgently need to do something about that. We feel that the only way to radically reduce the numbers of children in custody is to introduce a statutory threshold, albeit some positive measures have been introduced which Sally might want to go into in terms of the community sentences that are available. Those are not going to have the effect quickly enough that we need to see in terms of reducing the numbers of children in custody.

**Sally Ireland:** Obviously it is a very broad question. There are three main ways in which the youth justice system is failing in relation to children’s rights. The first is the numbers going into custody. The second is the custodial regimes that many of them are encountering. It is worth looking at the statistics. I had a look at the latest YJB statistics on children and young people in custody for March of this year. There were 2,625 children and young people in custody but what we should remember is that 2,174 of those are in young offenders institutions, so in a prison style environment with limited access to education and other provision. There are also 251 children in secure training centres and many of you will have been familiar with the problems arising from the use of restraint in secure training centres and the controversy that that engendered. The third aspect relates to children who are in the system and perhaps do not even get sent to custody. The system is not always catering for children with serious vulnerabilities, who may not even be suitable to be able to participate in a criminal trial of any type, at least the standard form of criminal trial which we have in this country. Effectively, their fair trial rights are not being properly respected.

**Q5 Mr Hogg:** I do not disagree with your overarching view that custodial sentencing should only be used in the last resort but where I am very uneasy is in your proposition—I think it was Katy Swaine’s proposition—that the purpose of sentences should not be punishment. It seems to me that that demands an answer to another question which is what is the degree of culpability. Obviously culpability is often low when you are dealing with young persons but it is also important to recognise that sometimes you get a high degree of culpability. That is to say, a recognition that what is being done is profoundly wrong. When you get that, to deny that sentence should have an element of punishment is, I think, to fly in the face of common sense and justice. I would like you to deal with that proposition.

**Katy Swaine:** That really touches exactly on the complexities of the issues involved here. When we talk about degree of culpability of course we have a very low age of criminal responsibility in this country, ten years old. Children from that age can be dealt with through the criminal justice system. Yes, that raises very difficult questions. How do we assess currently the degree of culpability of children of that age and of the range of ages? What you are asking is, where there is a degree of culpability established, should not punishment play a part? I am really asking that a completely different approach is taken when we are dealing with children under the criminal justice system.
Q6 Mr Hogg: What age range are you focusing on, because I understand it is going up to 18.

Katy Swaine: Under 18 year olds are the age range that is covered under the UN Convention on the Rights of the Child. I do not think there is an easy answer to what you are asking. It is an interesting philosophical debate. I certainly believe that we should be focusing our minds instead on the effectiveness of sentencing as opposed to moral judgments which can lead to incredibly damaging effects for all concerned. We know that custody does not work; we know how damaging it can be for the children who end up there as well as for the rest of us who deal with the reoffending. It would be much more constructive and in line with international law to focus on rehabilitation, reparations, and of course proportionality in sentencing as well.

Q7 Mr Michael: As I understand it you are not saying that all custody is wrong. What you are saying is that custody should not be used on the grounds of proportionality of punishment. It should be used when it is either the only way in which to protect the public from a particular individual’s activity or for example it is the only way to intervene in a chaotic lifestyle in terms of education and training or providing a structure of some sort.

Sally Ireland: In relation to your second point, I am not sure that is correct. Neither I nor SCYJ would say that a court’s custodial sentence should be used as a form of welfare intervention in order to secure access to services or to remove a child from a dangerous environment because of course we have civil proceedings and social care interventions which do that job much better and more appropriately. To come back to Mr Hogg’s point, there are two key points here. First, to draw a distinction between criminalisation and responsibility. We do not seek to abrogate the responsibility of under 18s for criminal conduct. The higher you get towards the age of adulthood, provided that you are of average developmental ability, the greater degree of responsibility and culpability that can be ascribed to you. The other aspect is that to say that punishment should not be an express purpose of sentencing for under 18s does not mean that it will not be a byproduct of sentencing for under 18s, nor perhaps that it should not be in some cases. For example, where you have a very serious, violent offence committed by, say, a 16 year old offender, a custodial sentence may indeed be a possibility for good reasons such as public protection.

Q8 Mr Hogg: Punishment?

Sally Ireland: We would say that the punishment is a byproduct but should not be the intention behind the imposition of the sentence. Of course, if somebody is in custody, any restriction of liberty is by its nature punitive, but it is unhelpful to go out with that purpose in mind when a judge is sentencing under 18s, particularly since it can result in the slightly less serious cases than the ones you were thinking of, where you have the mid-range offences—say, 14 year olds who perhaps commit domestic burglary for the first time. Where you have those sorts of cases, punishment might point to a penalty which would increase the risk of reoffending.

Q9 Dr Whitehead: We have reflected on the fact that across the board there is a feeling that custody should be used as a last resort. Not only do we appear to be not quite carrying that out; we are, certainly by international comparisons, a very long way from that. The proportion of young people in custody under the age of 18 is 46.8 per 100,000 of the national population which is very, very high by European standards, exceeded not surprisingly by the USA and South Africa. We are clearly a very long way from last resort. When we visited Finland a while ago, they reported they had one young person.

Sally Ireland: They have a lot of young people in mental health detention.

Q10 Dr Whitehead: Indeed. There are a number of different circumstances but in terms of custody as such there is one young person. Why do you think we are so far away in practice in terms of the practice of sentencing from that ideal?

Sally Ireland: Obviously it is a complex question and there are going to be several reasons, some of them do to with law making and some of them to do with political and broader culture. On that latter point, I did see some survey evidence which I would have to dig out for you if you wanted a copy, which was talking about distinctions in public attitudes whereby, when asked who was primarily responsible for controlling young people’s anti-social behaviour after parents, people in this country are much more likely to say the “police”; whereas that is a less common answer elsewhere in Europe. They would think about other social agencies that might intervene in correcting behaviour. Particularly in relation to certain social groups—I think here perhaps of children in care or looked after children as one primary example of this—we have resorted to the criminal justice system as an almost default mechanism of disciplining children with serious behavioural problems. They could be dealt with more effectively perhaps by their family, by their school or by some kind of intervention with their family and/or their school. Secondly, there has been a change in political culture—I am sure you have all heard this lots and lots of times—about political rhetoric, reliance on criminal justice legislation for political and rhetorical means and the effect upon sentences that that has had. Many of you will have been Members of Parliament before I was engaged in this field when the legislation was quite different, looking back to 1994 for example. The Criminal Justice and Public Order Act in 1994 said that for children under 14 they had to have committed three imprisonable offences and either breached a

1 Note by witness: A 14 year old would have to be deemed a “persistent offender” to be given a detention training order.

2 Note by witness: It is in fact difficult to clarify whether such children are “detained” or merely in “residential treatment”.

community order or committed a further imprisonable offence whilst on a community order to be sent into custody. That is quite far from the position that we are in today. The other factor, I think, is the way that we have drafted our legislation. In my own view, it is not enough to use terms like “last resort” or “in the interests of justice” in legislation, there has to be something more hard-edged, because, as I think Rod Morgan, the former Chair of the YJB, famously said, “last resort” means something very different now to what it meant 15 years ago and it can be interpreted as sentencers want it to be. So I think what we want to see is something much more specific in legislation in order to stop that from happening

Katy Swaine: I support everything that Sally has said and I think the key is that we are an incredibly long way from it and there are many complex reasons why too many children are being sentenced to custody, and something else that I know has been mentioned in written submissions is the inconsistency around the country of how children are sentenced. This is why, albeit we welcome the various positive changes that are proposed, that repeated breaches of community sentences are assumed to be, therefore, punishable by custody apparently as an inevitable consequence of those breaches?

Sally Ireland: Under legislation as it now stands, of course, punishment as a purpose of sentencing applies not just to custody but to all sentences. It is open to sentencers to sentence to a community order or an action plan order—or what used to be called an action plan order—or whatever it is, on the basis of a punitive approach. I wanted to come on to the scaled approach. The scaled approach, which is the Youth Justice Board’s announced approach to community sentencing, will affect breach of community orders, which was the other point you mentioned. The CJIA (Criminal Justice and Immigration Act) tightened up the breach regime. It basically takes away the discretion from Youth Offending Team employees as to whether to go back to court to breach, because they have to do it if the child, say, fails to turn up for an appointment on time three times in 12 months whether or not they think the child or the person is substantially trying to comply with the order. We argued against that and said that discretion should be left more with the Youth Offending Team, who have that personal relationship with the young offender and will know whether they are actually really bothered about the order or whether they are making efforts to comply but have just dropped down on a few occasions. The specific problems with the scaled approach, which relates to what I was saying about problem-solving justice, are that it indicates that if you are what they would determine a high-risk individual, somebody with a high ASSET score (an ASSET being the assessment tool which is used to look at risk of reoffending for young offenders), you will get a more intensive intervention. The Sentencing Advisory Panel want to go along with that. We do not agree with that and we would stress that extreme caution is needed with this approach because what it means, essentially, is that for children and young people with the most chaotic lives, from the most deprived backgrounds, with the most vulnerabilities will be getting, effectively, stiffer sentences than those whose offending patterns are exactly the same but who perhaps present a less problematic face to the court, and those young people with the stiffer sentences will be the least well placed to comply with lots and lots of appointments where they have to turn up at nine o’clock in the morning and are, therefore, most likely to come back for breach and, therefore, most likely to go into custody. So we are setting them up to fail, essentially, with the best of intentions, and what we say is that really a lot of these interventions could be well delivered outside the criminal justice system and that would not have that unintended consequence.

Katy Swaine: I would come back to my initial point, which is that we believe that punishment should not be in the list at all. Just to underline again the point that Sally, I think, put more clearly than I did about the fact that punishment may be a by-product. If a child is appropriately challenged to see the seriousness of the offence that they have committed, that sentence is not going to be an easy experience for them, and in a sense that way of putting it, that punishment may be a by-product. I think comes in there. But I think, whether we are talking about custody or any other sentence, it is much more helpful to have a clear-headed aim in mind of preventing reoffending, of rehabilitating this person. The issue about the persistent breaching of community sentences, of course, is going to be a constant challenge, but we know that custody does not work. So, I think, if we are using custody to deal with that problem, we are again getting muddle-headed. If we are recognising that punishment is not an appropriate purpose, then we are getting muddle-headed, because actually that is not going to work either. I do not have all the answers, but that is my answer to that question.

Q11 Dr Whitehead: What distinction would you make, in terms of last resort and in terms of some of our discussions so far, between punishment and custody? Are there circumstances where punishment can be seen as not custody but still punishment, particularly in the context of the conundrum that I think occupies a number of people, which is, as you have raised, that repeated breaches of community sentences are assumed to be, therefore, punishable by custody apparently as an inevitable consequence of those breaches?

Q12 Mr Hogg: Could I ask a question which you have not addressed at all? In adult sentencing, deterreants are a proper purpose of the criminal courts and a sentence imposed by the criminal courts. In youth sentencing it does not feature in the principles unless it is subsumed in the phrase “the protection of the public”, which I see it could be. Do

Note by witness: this is incorrect as paragraph 4 of Schedule 2 to the Criminal Justice and Immigration Act 2008 provides for the responsible officer not to initiate breach proceedings in “exceptional circumstances”.
you think that the concept of deterrents has any part to play in the sentencing of children, and, if not, which I suspect is your position, why not? **Sally Ireland:** Obviously there are two kinds of deterrence, individual deterrence for the young offender themselves and general deterrence, which I think you have focused on. In relation to general deterrence, as I say, it has absolutely no place in the sentencing of children and young people whatsoever, because, obviously, if your sentence is supposed to be that which is both proportionate to the seriousness of the offence and the best suited and suitable to the young offender, then general deterrence cannot, in my view, be embraced within that analysis. It is also going to be entirely contrary to the best interests of the child and, therefore, inconsistent with our international obligations. Something else to recall, of course, is that youth court proceedings are private and, therefore, the sentences passed down in individual cases would not generally be published in the same way that they would be in adult cases.5

**Q13 Mr Hogg:** Though they would be known amongst the community in which they live? **Sally Ireland:** Perhaps, if accurately reported, yes, but my own experience, certainly, years ago, representing children and young people in the youth court, was that that played no part in their own thinking, and I am sure that the people who are working with them today would say similar things. In fact, the seeking of notoriety is quite common, particularly amongst teenagers.

**Q14 Mrs Riordan:** What do you think is causing the disproportionality in the experience of young people in the criminal justice system in relationship to both ethnicity and gender? **Sally Ireland:** These are issues which are dealt with specifically in our response to the Sentencing Advisory Panel. We have actually got some statistical evidence there. In relation to girls, the primary factor that I am aware of is, again, the ASSET tool, which predicts risk for young offenders and which tends to over predict risk for girls. What that means is that, obviously, if they are going to come out with a high risk of reoffending, more than likely that is going to affect the recommendation of their pre-sentence report and, indeed, their eventual sentence. Further, in relation to girls one of the interesting things is, of course, that there has been a lot of reporting around an increase in violence from girls in particular, but what we are seeing, through the statistics that we have cited here, is that much of the increase in girls coming before the youth justice system actually results from the police pursuing offending that they might not otherwise have done because of the effect of the “offences brought to justice” target, which I know are now going to be abandoned as national targets, but the emphasis on numbers of “sanction detentions” effectively led the police to focus on what many have called “low-hanging fruit”—young girls, younger children, and we have all seen headlines about silly cases where the police have arrested someone for throwing a piece of cucumber, or something like that—and I think girls have been disproportionately victimised by that. On BME (black and minority ethnic) young people, we have seen through the statistics over-representation, which becomes more serious the further you go into the youth justice system. In particular, by the time you get to long-term detention the disproportionality is huge and, in particular, relates to mixed race young people.6 What we referred to in our evidence was, in particular, the problem to do with denial of responsibility, and how black young people are more likely to deny responsibility for the offence in their pre-sentence report—I do not know what the reasons are for that, but that is the likelihood—and that this is likely to prejudice sentences against them because admitting responsibility is obviously seen as a sign of contrition and of addressing offending behaviour, and so that can be problematic.

**Katy Swaine:** All I would add to that would be to mention, of course, that the disproportionate effect on, particularly, black and minority ethnic groups happens long before you get to the stage of custody, and we hope that the new Equality Act will help to heighten the profile of equality legislation among public authorities, including police, and will help in terms of what the public can expect from public authorities; and that will help to address some of those issues. I would also highlight, in terms of disability equality, the very high proportion of children with mental health problems that end up in custody.

**Q15 Mr Hogg:** Did you say mental health problems? **Katy Swaine:** Mental health problems, yes. The inability, really, of the people working in those secure environments to keep those children safe.

**Q16 Mr Heath:** That is the perfect cue for what I was going to ask. The purpose of my saying that is that I am feeling a terrible sense of *déjà vu* about this afternoon’s session. I think we are covering exactly the same arguments we covered in the Criminal Justice and Immigration Bill Committee, and you are putting forward many of the proposals I did then. I am very concerned about how we treat young people with mental health problems. I do not think we do it all well at the moment. We know that there is a very high level of psychiatric morbidity within that group, both within those who are at the point of sentence and post sentence, if they are put into secure accommodation of one kind or another. How could the Sentencing Guidelines improve the way we treat young people with mental health problems? **Katy Swaine:** A simple answer to that would be for us to introduce—. How could the Sentencing Guidelines deal with it? I suppose I am answering a slightly different question, because I wanted to make

---

5 *Note by witness:* The press can attend and report on youth court proceedings but not normally name defendants. The general public are, however, excluded.

6 *Note by witness:* the disproportionality in long-term detention also relates in particular to Black/Black British young people. See table on p3 of the Standing Committee for Youth Justice written evidence to the Committee.
Justice Committee: Evidence

5 May 2009  Sally Ireland and Katy Swaine

the point again that a statutory threshold that keeps children out of custody is the best way of keeping them safe. That would be my very short answer to that.

Q17 Mr Heath: Although it does invite a requirement for alternative disposals that address the mental health problems effectively?
Katy Swaine: Absolutely; yes.
Sally Ireland: There are a couple of points I would like to raise in that regard. The first one is that we need to be looking far earlier down the line, both at the point of arrest and also at the point where the child first comes before the court and perhaps they are considering trial or a plea. If there is any indication of a mental health problem or developmental delay, there should be an assessment. This does not have to be a very costly and lengthy exercise with a consultant psychiatrist, but perhaps an attempt to get disclosure of the child’s medical records or an assessment by a community psychiatric nurse, which might be a cheaper alternative, because this does not just relate to sentence but also to trial. We have seen cases where children with a very low mental age, maybe, find themselves on trial for serious crimes, trials that they have no hope of participating in effectively. So that is the first point in relation to assessment. The second point is that there is very little secure psychiatric provision for under 18s. I have no idea what the reason for that is, it is completely beyond my remit, but I suspect it relates to funding, and we would encourage the Department of Health to think seriously about providing proper facilities for children and young people with mental health problems. The third point relates to what you were talking about, about community mental health treatment requirements. The Centre for Crime and Justice Studies, which is not a member of SCYJ but is a research group which many of you will have heard of based at King’s College, London, has done a number of reports on community sentences, and one of them looks at the adult community order three years on before its implementation, and one of the things it points out is that the more inventive requirements that can be attached to that order, which are essentially the same as the ones for a youth rehabilitation order and include things like mental health treatment, have not been taken up by sentencers in very large numbers at all, and one of the reasons for that is the availability of those programmes. Obviously, the legislation provides an extremely wide menu of requirements, but what we have seen with adults is that they are relying on the old-fashioned unpaid work and probation/supervision, because that is what is there.

Q18 Alun Michael: You said that they had not been used by sentencers. Is that lack availability, lack of knowledge of what is available, or other reasons?
Sally Ireland: I would have to direct you back to the report for more detailed information on that, but I understand there are regional disparities in terms of availability.

Q19 Mr Heath: It would be very helpful to have that information.
Sally Ireland: Yes, it is easily sent.

Q20 Mr Heath: This is also a form, is it not, of non-custodial sentence, in terms of community sentence orders of various kinds, that those with mental health problems are the least likely to actually comply with the requirements of and then, because of the automaticity of the arrangements at the moment, they are on a conveyor belt towards a custodial sentence, which is the least appropriate disposal?
Sally Ireland: Yes; absolutely.

Q21 Mr Heath: I am really inviting you just to agree with me.
Sally Ireland: Indeed. I would mention in that regard, very quickly, section 34 of the Offender Management Act 2007, which slipped through Parliament almost unnoticed but has not yet been brought into force, provides for alternative youth detention accommodation to form part of a custodial sentence. So that would allow, even where a custodial sentence had been imposed, perhaps wrongly, a young person to be sent to a residential facility, for example, for drug treatment or mental health treatment. It has not been brought into force, so that may be one option to consider.

Q22 Mr Heath: One more question, really to see the continuity of sentencing beyond 18. Have you any views about whether the guidelines which are appropriate for the younger age of about 17 are also appropriate, totally or in part, to say, 18-24 year olds. Have you taken a view on that?
Sally Ireland: We have not taken a view as a group because our remit is under-18 year olds. Obviously the developmental maturity of 18-24 year olds will vary. In Germany, for example, young adults in that age group can be sentenced, I believe, under the juvenile regime if they are assessed as being particularly immature. I do not think that is something which would be particularly politically viable here at the moment. Also, as I am sure Katy will tell you, the children’s rights regime, particularly internationally, requires children to be dealt with separately from young adults, for very good safeguarding reasons. There is certainly work to be done in that age group, but we would not want it to be done at the expense of younger children

Q23 Alun Michael: Thank you very much indeed. You referred a few moments ago to one question that you would provide us with additional information upon; you also earlier on referred to research on distinctions in public attitudes.
Sally Ireland: Yes, I will try and find that. If possible, there is something else which I would like to send you, which is details of a pilot which has happened in North Hampshire which has reduced custody by 42% by means of a custody panel, which was members of the Youth Offending Team examining cases where custody had been imposed and where it had just been missed and thinking carefully about
the factors—receiving training and so forth—on how to reduce custody in appropriate cases. So that is a very positive example of what can be done.

Q24 Alun Michael: That would be very helpful. Does it actually relate to reoffending patterns as well?

Sally Ireland: I am not sure about that.

Q25 Alun Michael: Perhaps you would let us know when you have that information. Thank you very much indeed, both of you, for a very helpful session.
Tuesday 30 June 2009

Members present:
Sir Alan Beith, in the Chair
Mrs Siân C James
Alun Michael
Julie Morgan
Dr Nick Palmer
Mr Andrew Turner

Witnesses: John Drew, Chief Executive, and Brendan Finegan, Director of Strategy, Youth Justice Board, gave evidence.

Chairman: Mr Drew, Mr Finegan, from the Youth Justice Board, welcome. We are all at the disadvantage that the draft Guideline itself only arrived today, which has made it impossible for members to study it before this session. We have been looking, before the session, at the general principles that ought to be involved. I think you have had an opportunity to see it, but perhaps not at that much length yourselves, and that is the disadvantage we are all suffering from today and is not a good illustration of how the procedure should operate. I am going to ask Mr Michael if he would open the questioning.

Q26 Alun Michael: From a quick first glance at the guidelines, the general approach that is set out at the beginning emphasises the fact that “the court, in deciding on sentences, must have regard to the principle aim of the youth justice system to prevent offending, including reoffending by those under 18.” It then, under (b) and (c) in paragraph 1.2, refers to the welfare of the offender and the purposes of sentencing, and it then sets out the purposes of sentencing for those aged under 18. Just looking very quickly through the draft, it hardly seems to unpack what it means to fulfil the principle aim of the youth justice system to prevent offending, including reoffending by those under 18. It seems to ignore that from the point at which it stated it. Is that a fair criticism of the document, do you think?

John Drew: As I say, it seems to me that there probably is some merit in there not being too much detail, but, like you, it will take us time to look at and unpick that. Generally we do welcome the codification that is represented in the Guidance and, in particular, the picking up of the references to thresholds and the purposes of sentencing in relation to young offenders.

Brendan Finegan: What we say is, for the first-time, sentencers have been drawn into the wider youth justice reforms in that sense. The 1998 Act made the statutory duty of those involved in youth justice, and there is a moot point as to whether that involved courts or not, because it is absent in sentencing. Actually, to make that statement takes us into a more collaborative world. It is not to say the world was not collaborative, but actually sentencers, youth offending teams, CPS, police officers, defence counsel now have a common goal in terms of preventing offending and reoffending. That is a very clear statement. We are very pleased with the threshold statement about how to manage young people who have committed offences that are so serious they reach the threshold of custody.

Q27 Alun Michael: It was not so much the fact that it is stated. It is stated in the introduction, which merely outlines the statutory provisions, but there does not appear to be anything then which indicates how the over-arching aim of the youth justice system should be in the minds of sentencers. It seems a bit pointless to have an over-arching aim which is not then incorporated, underlined and emphasised in the methodology that the sentencer is going to have to apply, does it?

John Drew: As I say, it seems to me that there probably is some merit in there not being too much detail, but, like you, it will take us time to look at and unpick that. Generally we do welcome the codification that is represented in the Guidance and, in particular, the picking up of the references to thresholds and the purposes of sentencing in relation to young offenders.

Q28 Alun Michael: Could you clarify for us what clarification you think this provides?

Brendan Finegan: What we say is, for the first-time, sentencers have been drawn into the wider youth justice reforms in that sense. The 1998 Act made the statutory duty of those involved in youth justice, and there is a moot point as to whether that involved courts or not, because it is absent in sentencing. Actually, to make that statement takes us into a more collaborative world. It is not to say the world was not collaborative, but actually sentencers, youth offending teams, CPS, police officers, defence counsel now have a common goal in terms of preventing offending and reoffending. That is a very clear statement. We are very pleased with the threshold statement about how to manage young people who have committed offences that are so serious they reach the threshold of custody.

Q29 Alun Michael: That strikes me as rather an odd proposition. Are you saying that up to now people who have viewed the youth court is as if it is not part of the youth justice system?

Brendan Finegan: I would say that it was not one of the principles of sentencing. So it was a moot point as to whether that was applied regularly. For that to be drawn within the court now, it is an absolutely clear statement that the prevention of both reoffending and offending is now a common goal for both the youth offending teams, sentencers and those who take part in the court process.

Q30 Alun Michael: I have to say, I can tell you with absolute certainty that it was the intention of the 1998 Act that it should apply in spades to the court as well as to the rest of the youth justice system?
Brendan Finegan: That message may not have always got through.

Q31 Alun Michael: No. That would suggest that my earlier question about reinforcing that purpose within the whole of this document is rather important then.

John Drew: Yes, and I do take that point. It is the case that neither of us have had the opportunity to read through the whole document line by line in the way that, undoubtedly, it is intended.

Q32 Alun Michael: I take your point. I have not read it line by line, I may have got the wrong impression from a skim over the surface, but the aims of sentencing for children differ from those of adults in the omission of deterrence. Do you think that is appropriate?

John Drew: I think that the six points that are set out in legislation are the six points that we would most wish to see stated. There is always a case for adding others, and deterrence clearly exists in relation to adult offenders. I think there is probably an argument here that if you want to make an impact with a point, you do not make a huge list, and the six seem those most appropriate and pick up points made elsewhere about what ought to be the principles of a youth justice system in relation to sentencing.

Q33 Chairman: Is not the issue really whether deterrence has any bearing on the likelihood of young people to commit offences, that is whether the sentences are in their minds at all when they commit offences? Presumably you must have a view about that.

John Drew: Yes, and I have heard that argument advanced. I think you have to unpick quite a lot of what is meant by deterrence both in the adult world and what might be meant by deterrence in the youth world in that regard. There are aspects of sentencing in respect of young people which are different. Some of the confidentiality requirements, et cetera, mean that the whole issue of deterrence in a youth court is quite different from the more public gaze which pertains to adults. Our view is that the legislation is right; those are the six most important points.

Q34 Chairman: Can we understand why you think the legislation is right: whether you think it is right because there are other things to be done by sentencing, or whether you think it is right because you take the view that young people, on the whole, are not deterred by various different kinds of sentence of which they might be largely unaware, for various reasons?

John Drew: I think young people, probably, in the sense they share this with adults, are deterred principally by the threat of detection.

Q35 Alun Michael: Another of the points that were made to us was by the Children’s Rights Alliance, who said that punishment has no place in the aims of sentencing for children. Do you agree with that?

Q36 Alun Michael: Turning to custodial sentencing, you say in your written submission, “The Youth Justice Board fully supports the principle of custody as a last resort. There are opportunities for the new sentencing framework to help ensure this is the case and again the new sentencing guidelines will be important.” How can the sentencing guidelines ensure that the principle of custody as a last resort is achieved and, by the way, what do you mean by “last resort”?

John Drew: The latter, as you well know, is a really difficult question. How can they do so? By making sure that the court realises the range of factors that they need to take into account; by making it clear to the court that they need to dismiss alternative forms of disposal before going to custody; so looking at the direct alternatives and emphasising their place and coming up with clear reasons why, if they are not to be adopted, therefore, the court is forced to fall back on the place of custody. That is the sort of further guidance that we would be looking for in such a document.

Q37 Alun Michael: Is the Youth Justice Board doing work itself to ensure that custody is only used for young people as a last resort?

John Drew: Yes, there is a range of programmes. I can probably only give you the headlines of that. Firstly, obviously one part of the Youth Justice Board’s remit is to study what is happening, to monitor the operation of the youth justice system. We are aware, for example, of the variation from area to area, and in our work with youth offending teams, but also in our broader work with the judiciary, we examine reasons for regional variation, and without, obviously, in anyway wishing to dictate to the judiciary how it goes about its business, we nevertheless do inquire into why there would be such significant variation, and both board members and officials at the YJB will work with local groups and magistrates, judges and the like to examine what can be done. Often it comes down to things that are actually within the youth offending team and local authority’s remit. Sometimes we are told by a youth bench, “We would like to take other sentencing options, but we have not got faith, confidence that they will actually deliver, or certain options are just not available locally to us”, and that would definitely fall within our province. We are also very concerned at the moment to try to point out, in particular to local authorities and their immediate partners in the criminal justice world, some of the costs of custody as a way of making the point that, if you do not have a full range of non-custodial disposals and, therefore, if the judiciary is left in a position where it feels it has no choice, you are not actually carrying
out your full responsibility, and some of the work that we are looking at is how we can reposition the historical divide that exists at the moment whereby the Youth Justice Board carries all the cost of custodial sentence but actually the ways in which you can unlock some of that are held locally. So we are interested, at least, in the proposition that perhaps there should be a level of new initiatives to incentivise local authorities to develop non-custodial alternatives. Those are just two examples at the moment. We ran in the spring four national seminars, for example, for the judiciary, particularly for chairs of youth courts, just talking about the current position of some of the new sentencing options that were becoming available, and the like.

Q38 Alun Michael: That is very helpful, and if you wanted to supplement that with further information, I am sure that would be welcome by the committee. You also state in your evidence that the Youth Justice Board is concerned that the changes to the sentencing framework should not mean that young people who reoffend escalate up the sentencing framework more quickly. How can we prevent that? In parenthesis, I would say, there is a danger in both directions, is there not, with the tariff system? One is that youngsters sometimes, by the time they get to a particular sentence, have become inured to the system so it does not have the intended effects, and sometimes slowing down can actually be bad for the individual, and on other occasions it means that they merely make a progression up in a way that is not particularly targeting their behaviour. How do you think all of that should be reflected in the Sentencing Guideline?

Brendan Finegan: I think what we would say is that the YRO is a real opportunity to make comments about how children learn and develop, and I think the key message that we made to the Sentencing Guidelines Council is that repetition is key. You learn through repetition quite often and, for many of our young people who have committed offences, actually repetition is a real necessity. So we would say we would want enforcement, or action, or consequences to allow for the young person to understand the consequences and allow them to repeat and to learn from their mistakes—that is the young person and their family being held to account—but I think with the Youth Rehabilitation Order the scaled approach that the Youth Justice Board is approaching offers a slightly different message to those who deliver services, particularly youth offending teams. It is to say, if you have not engaged a young person, yes, it is a problem for the young person, but it is a problem about how you have put your service together. Have you put a service together that meets their risks and needs in a way that engages them and is attractive? Yes, we want to hold them to account and punish them, but if they are not going to turn up, we cannot hold them to account and punish them. Are you offering the right types of services, the right range of requirements that does not overburden the child or young person and that actually meets their needs? So we see the guidelines to be complemented by our approach to how practitioners manage their case load and engage with young people.

Q39 Alun Michael: Just on the question of young people in custody, lots of children in custody are there on remand. Why is this? Is the Youth Justice Board ensuring that children are remanded into custody only when it is necessary to do so? What is the role of local authorities? Can you say something about that?

John Drew: Yes; indeed. It is our view that the current figures—which are, broadly speaking, one in five youngsters at any one time in custody are on remand—can be reduced, and it does require, as in some sense your question has suggested, concerted local action. I have already talked about one of the reasons why youngsters may end up getting remanded in custody, which is that magistrates may well have no confidence in the range of alternatives available. Chairs of youth courts have put to me, for example, that if they believed that the only action a local authority will do, were the youngster to be remanded to the local authority, is to return the child to their parent, that is not an option that they are really going to take seriously, and so there is a dialogue that we need to have there and are having through youth offending teams with local authorities, but the clear evidence there is that that option is being taken less. Equally well, and this should not happen but we know it can happen, where a youngster is in chaos, where their accommodation needs are effectively not being met, where they are surfing the sofa, or any of those situations, or whether they are out of school and they are not in employment, or training, or what have you, it can be tempting for a magistrate to think “well, a period in remand will allow us to really take stock and properly co-ordinate.” That should not be happening. Remand in custody should not be being used for that. So there are practice issues, not only for youth offending teams in this, but also for the wider family of local authority services, particularly children’s services, in respect of this, and that is another reason why we have been exploring with local authority organisations how we can try to place the needs of youngsters who offend further up the hierarchy of local issues, and it is also another reason why the Youth Justice Board has been trying to reposition youth offending teams more closely to children’s services. So there is a range of things of that sort which would, and do, in areas where there is very strong practice in this regard, mean that, in particular, magistrates have got more confidence in alternatives to remanding youngsters in custody.

Q40 Chairman: I did not hear the last few words. John Drew: It means they have more confidence in alternatives on bail rather than remanding a young person into custody, and that work continues across the piece. We have a performance framework with which we monitor the work of youth offending teams, and it is a major consideration for us to look at the use made of remands to custody in local areas and to have personal discussions with local
authorities where there appears to be a significant abnormally large use of such remands. They do not always follow from areas where there is a large use of custodial sentence, and that is a particular clue that something is not quite working in the local services as it ought to.

Brendan Finegan: We can probably provide the committee with further information. We have done some very interesting work around making differences around bail decisions to reduce remand, and very much that is about bail supervision and support to give sentencers confidence in respect of a young person who may not have a fixed address, which is not a reason to deny bail but it makes them less likely to turn up at court, possibly likely to commit further offences and, of course, the third test is interfering with witnesses, but we believe, and we have said to youth offending teams, the first two could be reduced by active participation by the youth offending teams.

John Drew: The last thing to say is that my Chairman wrote for the first time this April to all local authority chief executives pointing out both variations in custodial sentence but also the use of remand as a way of drawing to their attention and trying to raise the priority of this issue in terms of local authorities and their services.

Q41 Chairman: What account do you take of the widely held view amongst the public in respect of some young people coming up for sentence who have committed a series of offences and, perhaps prior to that, anti-social behaviour, “Oh the magistrate will let him go free and he will be committing more offences and we will suffer more damage and vandalism”, and that view is often rather supported by police officers, who predict that that is what is going to happen?

John Drew: If we look back ten years, there is clear evidence that is what is happening. I can remember from my own days as a youth justice practitioner that there would be offending sprees when a youngster knew that they were going to face a custodial sentence and virtually they thought they could not be touched, but actually the whole operation of the youth justice system has become much more efficient since that time. We have halved the length of time over the last ten years from detection through to sentencing, or what have you. I think a large section of the public still believes that the shock of being in custody, whether that be as a consequence of a sentence or of remand, may be enough to turn the young person around, but the evidence base is just not there for that. It makes sense to people, but it is very hard to engage that argument.

Q42 Chairman: So a case where the evidence does not support the instinctive or the intuitive feeling.

John Drew: Indeed; I think all of us probably begin there, not least because none of us would want to see either ourselves, our children or our grandchildren in such a situation, so we imagine that it would really work, but we cannot say too often as a Youth Justice Board that there is a whole wealth of evidence on this point.

Q43 Julie Morgan: I was going to move on to community sentences for young people. The Standing Committee for Youth Justice suggested that it is possible that in being given community sentences children from troubled backgrounds could end up with more demanding sentences than a child from a more supportive background but who presents less problems to the court. Have you got any comments on that?

John Drew: I will have the first go and then I will pass over to Brendan. I think this is a debate we have had with them, and I think it stems from a misunderstanding of what we are trying to achieve in the scaled approach. The scaled approach is risk-based—in other words it is based upon evidential material that we have got about the factors that can lead a youngster to offend—and, really, all that is trying to do is to say that we should prioritise our resources where they are most needed in terms of turning a youngster around. So those who are most at risk of offending should be the ones where we provide the greatest level of input in terms of trying to meet their needs, and there is no conspiracy that we are part of that is trying to do anything other than that.

I have to say, the scaled approach is something we piloted with four youth offending teams taken across the country, and were you to be talking to practitioners within those, I know that they would bear me out on this point, but it is the sort of guidance that they have been looking for from the Youth Justice Board, because otherwise you leave to practitioners and to managers, in some way invisible to the courts, those sorts of decisions of where they concentrate their resources, and I think it adds transparency and it is based on a risk-based analysis and I think it makes sense. Of course you have to be conscious of the more expectations you make in terms of sentences the further you get into, “so what do you do if the youngster complies with some but not all?”, and there are issues in respect of breach, which we may yet come to, that we would be happy to talk to you about, but the essence of the scaled approach is one that we believe in really strongly, based as it is on evidence of the risk factors that lead to youth offending.

Brendan Finegan: I am aware that colleagues in the field have suggested to me that ASSET, which is our tool for predicting reoffending, actually over predicts the impact for girls. When we did our first study (and I cannot remember what ASSET predicted for that process), it was slightly less good particularly for girls, but not significantly dramatic. It would not have worried us. It was not a statistical difference; it was a slight difference, but it was not significant in that sense. We then also had a second study, and we noted in that that practitioners, when they were using ASSET, did over assess the risk for young girls, and that is because they were using welfare and vulnerability concerns—they were mixing welfare into the mix—and actually in our training around ASSET we have used that example
as a means of helping practitioners to be clear about the things that target risk of reoffending separate from those needs that a young person may have but are not really going to impact on reoffending. So I would say that we have dealt with that issue by making sure that we have tested and, where we saw the effect, re-issued training and guidance so that practitioners do not fall into that error.

Q44 Julie Morgan: So you feel that you can effectively assess the level of risk?
Brendan Finegan: Yes.

Q45 Julie Morgan: You have worked that out.
Brendan Finegan: Yes.

Q46 Julie Morgan: Thank you. What about an individual who either will not or cannot comply with the community sentence? What do you do there?
John Drew: The provisions for breach are clearly set out. It is very important that we equip our youth offending team workers with the capacity to breach young offenders. There is actually no point in courts making complex sentences if there is no ultimate enforcement. We were talking earlier about deterrence. There is no doubt that young people become very quickly aware of that.

Q47 Chairman: Very quickly?
John Drew: Become very aware if there is no capacity to breach. Our take on the breach issue is that it is set out sensibly, that there is room for discretion, and we will wish (and this is certainly something that we may be seeking in our feedback to the guidance) to seek some further clarity around the operation of the breach system, but if a youngster is not complying with a significant component of their sentencing requirements, there is nothing wrong in taking them back to the court. There is no supposition that that should be anything other than supportive of the sentence of the court. Nor do we believe statistically that there is a power that we take the breach requirements and not to breach; what I am saying is that it is important that there is a power that we take the breach requirements very seriously.

Brendan Finegan: I would just say, being responsible for helping develop case management guidance, I am extremely conscious of the concern that practitioners have that, if a young person has high risk factors and that you require them to attend many times, their failure to engage may be disproportionate. If you have only failed once but you have already been six times to the office, that is a rather different breach to the second of two appointments, where you have almost failed by half. We want a balance, and I think the Sentencing Guidelines Council have got it right in their relevant considerations—the mental ability, the physical ability, the maturity of the young person, how well they have done—and I think the discretion of the YOT manager, in terms of deciding when to take action, we do not want to be automatic and robotic, we want them to reflect on their practice as well as the practice of young people and, I think, building that discretion in (and we can look at the Sentencing Guidelines Council to ensure that discretion is clearly there) depresses the likelihood of people being rushed through to becoming persistent and willful and, of course, will look at the Sentence Guideline as to what persistent willful failure is, because, as I began by saying, repetition is absolutely key. We know that young people have to make mistakes, and they will make mistakes, you can almost guarantee it, and many of these young people quite enjoy making mistakes, but we want to allow them to learn from it rather than end up in custody and maybe learn a different type of lesson.

Q49 Julie Morgan: Finally, what about resources at a local level to help deliver these community sentences? I wondered, in particular, about intensive fostering schemes?
John Drew: As you know, there are currently intensive fostering schemes, three sponsored by the Youth Justice Board—by government but through resources given to us to disburse—and one other that has enough read-across. So there are, in fact, four intensive fostering schemes. The distinctive feature of all of those is that they are, in effect, funded through central government. I think that the proper place for long-term funding is from local government, and that brings me back to the point that I have touched upon twice before. I think we do need to explore the potential to recast some of the significant resources currently held by the Youth Justice Board in terms of our custody budget, which is more than £320 million, because, trusted locally, I think local authorities could make a good job of using some of that money to reinvest in intensive fostering. If you were to ask me are there enough resources for young offenders in local authorities, there are certainly some local authorities that do fantastically well in terms of providing a full range of local services and that then being reflected in outcome in terms of reducing the frequency of reoffending, low custody rates, or what have you. There are others who are much less effective in that
regard, but, I think, before we ask for more, we need to make sure that the resources that we have available at the moment are used effectively. I am convinced that we can do more with the budgets that we have for custody. I am absolutely clear, and my board is absolutely clear, that the current number of young people in custody can be reduced and that, were that money to be available to reinvest in youth offending services locally, that would help in a very significant way to create the community sentences and the resources for those that are needed to be viable alternatives to custody.

**Q50 Mrs James:** Can I tease out a bit further the question of resources and effectiveness. You have already mentioned quite a significant budget figure, and quite a high proportion of that is in the provision of secure accommodation. The reoffending rate following youth custody is about 80%. Do you believe this is a good return on the investment and what are you doing to ensure effective targeting of youth justice resources?

**John Drew:** As I said just now, we do believe that we could reduce the number of young people in custody through a whole range of measures, and particularly pertinent to today’s considerations is making sure that the judiciary locally have available a full range of non-custodial disposals and also that the services are delivered in such a way locally that the judiciary is confident in their reliability, that they will do their absolute best to work. So we think there is some way to go in relation to reducing the number of youngsters in custody. Of course, in terms of reconviction rates, by the time a youngster ends up in custody, by and large, he will have passed through a significant number of earlier stages. So it is no surprise, whatever the sentence will be, that a youngster who has had the sort of level of appearances, who has committed the numbers of offences that the youngsters in custody have is not going to have the same sort of reconviction rates as some of the very early level disposals. I will not go on at great length about it because it is not perhaps central to your study today, but at the same time I would not like to sound complacent about that 80% reconviction rate figure that you mentioned, and I am not quite sure that I recognise the figure, but it is around about that. There is lots of work going on with the custodial estate to try to improve their efficiency and, indeed, the two headlines for the Youth Justice Board in terms of the work with the custodial estate is to improve its effectiveness, and that means reconviction rates and also to improve the safety of young people in custody. So there is a lot of work and there are a number of directors and governors who will be able to describe offending programmes on which they engage with the youngsters whilst they are in custody. We are also doing a lot of work in terms of preparing youngsters for discharge resettlement and the like, which, again, will have an impact on reconviction rates.

**Brendan Finegan:** I just want to echo that, to actually say that the reoffending rate is closer to 70% for young people, and as John has said, that is not surprising given their demographics and their history—they come with a high average number of previous convictions with high social needs, high risks of that process—but the other key message is the investment we have made within the custodial estate to be effective is actually, in the 2007 cohort of the national statistics, the reduction in the proportion and frequency of reoffending was greatest amongst the custodial population. Yes, it was from a high figure, but the greatest reduction was in that population. So there are efforts we are making and our colleagues in the secure estate are making with their colleagues in the community, because it is not just what happens in prisons, as John said. On release, if you are not in education, if you are not housed, if you are not going to your substance misuse or mental health service, you are highly likely to fall back into crime, and for us it is joining the efforts in the secure estate, while we have them, to keep them safe and effective but actually for that to be as effective on release, and there will be some nice figures in the future, maybe, if we can get community orders that fall as largely as custodial offences fell in 2007.

**Q51 Mrs James:** That is the next part of my question. We have seen that there is this fall, and that is to be applauded, but what can we learn about the fall—how it has happened and what works with young people—and how might this evidence impact on sentence guidelines?

**Brendan Finegan:** I think if I answer the last question, I am not sure, as those figures came out on 21 May, whether it has had that significant an impact—I would not imagine it would have—in that process because it is an annual production of that process. In terms of the lessons that are learnt, I think we have reflected on it so far to say the improvements around the fabric of the regime, the quality of the regime, the investment in education, training and employment, hours of activity, the hours of additional activity, have all begun to embed within the reformed custodial estate. We want to reshape it and reshape the regime so that children are safe and effective, and I think we would say that the investment since 2000 in changing the nature of secure estate regimes (which is the routine from breakfast to bedtime and how safe you are during that time) is a contribution of not just those reforms but the increased awareness, through the Youth Crime Action Plan and others, about resettlement, that if you do not continue it on the first day of release, if they are not met and supported—I say, we clothe them and dress them well, and if they are not looked after, they will come back in rags with dirty faces—they will come back in the front door, and I think it shows an improvement in that connection across community into custody, but there is still a long way to go, and we are pressing to ensure resettlement, not just on release from custody but at the end of a youth justice order the same thing applies. We would want those young people supported so that if they are in education they continue; if they are in employment they are supported.
Q52 Mrs James: Because they see themselves as being let down all the time, do they not?

Brendan Finegan: Yes, they go off a cliff at the end of youth custody.

John Drew: Two of the subsidiary indicators that we monitor relate to employment, training and education and relate to the accommodation provided to young offenders. They are gathered by local authorities and we look at the piece across the national picture, and in both of those there have been year-on-year improvements for the last couple of years. In relation to employment, training and education, and I suggest I send your Committee the figures. They show there is a narrowing gap between where a typical 16-year-old living in the community with no offending history might be and in relation to young offenders: there has been a narrowing of the gap between the two. It is a very difficult indicator now for us because of the economic situation, but I think that is testimony to some parts of the work being carried out by youth offending teams and, I think, by making improvements in some of those subsidiary indicators, you then impact upon the overall position in terms of frequency of reoffending, and I will forward that to your committee.

Chairman: We have one more quick point.

Q53 Julie Morgan: I think your research findings have shown some disproportionality in the youth justice system in relation to girls—you have already mentioned girls—and people from minority ethnic backgrounds. Could you comment about what you are going to do about that?

Brendan Finegan: As you have been aware from our evidence, we have already asked youth offending teams to think about their action plan, but there are elements of their contact with young people from black and minority ethnic groups. Their practice has an impact on the disproportionate use of more intensive orders for certain groups, the use of community service or unpaid work for certain groups, and we have asked YOTs to look at their activity and to plan to improve that process. The other aspect of work, as John has said, we have embedded within one of the national indicators for local authorities in England the disproportionality factors to look at that disproportionality, and we are collecting practice both around girls and black and minority ethnic people, the practice that draws them and engages them in a way that does not treat them differently, and we want to use that practice and publicise it through our directory of the emerging practice so that it become the forum by which youth offending teams, or other service providers who might be working with girls who have offended or black and minority ethnic groups who have offended, can use the lessons of our most promising and most go-ahead youth offending teams in that process. Often the impact of difference is social and economic rather than criminal justice. So our contact with local authorities is key to that process but also with our other justice colleagues, whether that is police, CPS and youth offending teams, to ensure that their actions are not skewing an already disproportionate population.

John Drew: This is clearly one of the great issues in our society and it extends far beyond the Youth Justice Board. We have sponsored work to look at and study in some detail programmes that might work particularly with young women or with black children. As yet the results of that work have not produced simple solutions we can simply roll out. Had they done that, we would have done that. We are constantly looking, particularly in America, at programmes that show some promise in order to provide more detailed guidance to youth offending teams, because we recognise it is a big challenge for us and one that we are in no sense complacent about.

Chairman: Thank you both very much indeed for helping us this afternoon.
Tuesday 7 July 2009

Members present:
Sir Alan Beith, the Chair
Mr David Heath  Julie Morgan
Mr Douglas Hogg  Dr Nick Palmer
Mrs Siân C James  Mr Andrew Turner
Alun Michael  Mr Andrew Tyrie

Witnesses: Mary Duff, Chairman, and Chris Stanley, member, Youth Courts Committee, Magistrates’ Association, gave evidence.

Chairman: Mary Duff and Chris Stanley, you are respectively the Chairman and a member of the Youth Courts Committee of the Magistrates’ Association. We warmly welcome you to our work on sentencing guidelines. I ask Alun Michael to begin.

Q54 Alun Michael: The draft Sentencing Guideline states that the various matters to which the court must have regard when sentencing young people, which obviously include the principal aim of the youth justice system to reduce offending by young people and the purposes of sentencing such as punishment or the protection of the public, may point in the same or different directions. Can you talk us through how you would get to a sentence that meets the different aims, in what sorts of situations this might be difficult and how the guideline will help?

Mary Duff: We welcome the guidelines and believe they are very good and will certainly help magistrates in the job they do. In answer to your question, we have to balance everything every day in the youth courts. Obviously, we start by looking at the seriousness of the offence and then think of punishment of the offender, any mitigation of the offence, any aggravating features of it and all the circumstances around that young person, including all welfare aspects. Every time we have a case before us in the youth court we have to balance all of those focuses. When we announce our sentence we will make very clear to the young person what the punishment is because that person owes something to the community, but we also do not want to see that individual in court again. That is how we would like to address it. Does that help to explain our approach?

Q55 Alun Michael: The fact that you balance all the considerations does, but can you say how clearly you believe magistrates generally have in mind the principal aim of the youth justice system to reduce offending by young people?

Mary Duff: That is very much in the front of their minds all the time. As I intimated, we say to the young person that he or she must be punished but this is what we shall do to cut down the offending.

Q56 Alun Michael: I know that magistrates go to some trouble to make clear what they are saying to young people. In meeting young offenders whom I have sentenced quite frequently I discover that they have not taken in a word of the very clear exposition given to them. There must be clarity in what the sentence does as distinct from just what they are told, must there not?

Mary Duff: Yes, indeed. One would go through what the sentence involved. One must remember that in the past 10 years we have done a lot in magistrates’ courts to improve our skills to communicate with young people. The situation today as opposed to when I began as a youth magistrate is that there is a dialogue with the young person and an engagement with everyone else in the court so that the individual is aware of what we are doing to change his or her behaviour.

Chris Stanley: We have considerable training these days on engagement with young people. Obviously, some are better than others, but there is a great deal more dialogue between the bench and the young person which helps considerably. We are pleased that the welfare principle has been put at the top alongside prevention of re-offending. The bench needs to address the welfare of the child and its needs if it is to reduce re-offending. Clearly, our sentence must encourage preventative aspects of future offending of which the welfare needs of the child are often a large part.

Q57 Alun Michael: You indicate that the welfare needs are serving the aim of reducing re-offending? Chris Stanley: As my colleague explained, it is a balancing act. One sentences individually with the help of a pre-sentence report from the YOT which enables one to get a sense of all the different factors and one hopes to come up with an appropriate sentence that prevents further offending in the future.

Q58 Alun Michael: Against the background of what you said in response to the first question what do you think “punishment” means as a purpose of sentencing young people?

Mary Duff: We explain that in the eyes of society the young person has done something and there must be a way to pay for that. That sounds very glib. We are very well aware that some of the young people who come before us have great difficulty in understanding that they have done wrong anyway. To go back to engagement, we try to make it as simple as possible. We are very experienced in assessing how a young
person will take in what we say. We say that this is the punishment part of the sentence. To balance all these things is not an easy job.

Q59 Alun Michael: For children, the purposes of sentencing do not include deterrence as in the case of adults. Why do you think that is? Do you think that is right?

Chris Stanley: The main reason would be that all the research of which I know shows that young people do not as a rule premeditate; they do not think about the consequences of what they are doing. Therefore, deterrent sentencing is not helpful to young people because they tend to go round in groups and on the spur of the moment do something. This is the nature of young people; they do not think about the consequences of what they are doing. That might be wrong but that is the way it seems to work.

Q60 Alun Michael: As to the service you get from youth offending teams, particularly pre-sentence reports, have you made an assessment of the extent to which that is helpful to benches and the quality in that respect?

Mary Duff: There is variation across the country and magistrates as well as the Youth Justice Board are very well aware of that. Together we are trying to see how we can improve the service. For a magistrate to say that about a professional’s report sounds very well aware of that. Together we are trying to see how we can improve the service. For a magistrate to say that about a professional’s report sounds very well aware of that. Together we are trying to see how we can improve the service.

Q61 Alun Michael: What is the best practice approach nowadays if a pre-sentence report either is not of the quality you expect or does not contain all the information you require?

Mary Duff: We just would not sentence. We would want to deal with the young person as soon as possible because the nearer the offence you deal with that individual the more sense it makes to the offender. We would hate to adjourn the case, but we rely so much on the service. If you have a good relationship with that service you will have a good report and you will be able to move to sentence. If some information is missing and that can be found we will adjourn the case and ask the youth offending team member to go away to do some more research. The young person will be brought back to court and we will deal with it. If we felt there was a major omission from the report despite the fact we would want to act quickly we would have no alternative but to adjourn. We come back to the very difficult balancing act that sentencers must perform. If we do not have the full information we must adjourn the case.

Q62 Alun Michael: What work do you do as an association to identify those cases where the quality of the report is weaker and where it is stronger?

Mary Duff: In relation to that and other things we have a very good relationship with the Youth Justice Board. We have just come hotfoot from a meeting with the board to discuss ways in which we can work together to improve many aspects of the service that all of us in different ways offer to young people.

Q63 Mr Tyrie: You talked about variations across the country. When it comes to custody as a last resort do you think magistrates all mean the same thing?

Chris Stanley: It is clear from the figures available that there is quite a large variation in custodial sentencing across the country. At the meeting with the YJB from which we have come we talked about just this issue. It involves a whole range of things, not necessarily just punitive sentencing in a particular area by a particular court. Alun Michael raised the question of whether PSRs or the resources given to the YOT to provide alternatives to custody are poor. In our written submission we have listed a whole range of things that are nothing to do with the punitive quality of the court but the system before it gets to that point. We have agreed with the YJB to work together to examine those issues both nationally and locally. You will see that in our submission we say YOTs and magistrates will work together to tackle these issues. What we want to avoid is a finger-pointing exercise to say that one particular area is punitive and another is not because that is unhelpful to everybody. There are far more ingredients that cause differential custodial sentencing. The new sentencing guidelines will be extremely useful. The youth courts, unlike adult courts, have never had sentencing guidelines. It is therefore not surprising that we have had certain inconsistencies. The guidelines which we very much welcome will tighten that up and we hope they will reduce some of the inconsistencies.

Q64 Mr Tyrie: Justice would appear to point to uniform treatment. Do you think there may also be benefits in the fact that some variation remains so one can see what effect that has on different long-term outcomes for individuals?

Chris Stanley: Yes. I hope the day never comes when we are all replaced by computers because that is the ultimate. You put in all the ingredients, press a button and out comes the result. When we talk to a young person we hear all the background and read the report. We sentence each young person as an individual. Whatever the sensational headline that a particular sentence may produce, it is based on what we have been told and understand about that young person. It is not an exact science, fortunately; it is something we do given all the known facts about the individual.

Q65 Mr Tyrie: Can I take you back to what you said a moment ago about resources? Can you illustrate how variations in resources across the country will lead to different outcomes and therefore different definitions of what “last resort custodial sentencing” means?

Chris Stanley: The current intensive supervision surveillance programme that will be replaced in November when legislation is enacted is the main resource as an alternative to custody. That is available in every court area in the country. There is
no doubt that there are variations in the amount of resources. One of the key factors is accommodation. If accommodation is not available and the young person has nowhere appropriate to live we will not sentence to a community alternative. This is also the case with remands to custody. Remands to custody often lead to custodial sentences. Again, suitable accommodation is a major factor in determining whether or not somebody goes into custody.

Q66 Mr Tyrie: Does that include intensive fostering or supervision?
Chris Stanley: We would like intensive fostering to be available everywhere in the country. Whilst it is not the solution to everything clearly it would go a long way to accommodate some young people who have very difficult backgrounds.

Q67 Mr Tyrie: How involved are you in working out whether there is a saving to UK Plc if we go down that road? In other words, how confident are you that you can make your case for the provision of those funds right across the country, because it is expensive?
Chris Stanley: Yes. You will know that the annual cost of a secure training centre is over £200,000; a young offender institution costs £54,000; and a secure children’s home costs £180,000. Those figures are on the tip of my tongue because I was given them two hours ago. Alternative to custody will be a lot cheaper than the economics of locking up 7,000 young people every year. It is cheaper and more effective for appropriate young people. There will always be a group of young people who commit violent and serious offences and who will go into custody.

Mary Duff: Certainly, some of the variations we are talking about arise because those community sentences are not available in a particular area.

Q68 Mr Heath: I remember being very concerned when Parliament was in the process of enacting the legislation that we should make sure that the different aspects of the rehabilitation order, and beyond that the intensive orders, were available to each district, but can you tell me to what extent it is available to every client, as it were? Representing as I do a rural area I am aware that what may be available in Bristol is of no value whatever to a young person in rural Somerset who may or may not have accommodation or resources. One of the key factors is accommodation. If accommodation is not available and the young person has nowhere appropriate to live we will not sentence to a community alternative. This is also the case with remands to custody. Remands to custody often lead to custodial sentences. Again, suitable accommodation is a major factor in determining whether or not somebody goes into custody.

Q69 Mr Heath: So, the test of availability and accessibility is one that you would apply before sentence?
Chris Stanley: Yes. We try to discuss with the youth offending team what is available. I believe there are 14 requirements. We are still at the early stages of whether or not they will be available. Clearly, we are not in control but we shall urge that there are as many of them available as is sensible.

Q70 Mr Heath: It would be very useful, would it not, if on that basis a failed order, as it were, could be fed into the system and recorded, that is, what the magistrate would have liked to use but was not available so people were aware of that fact?
Chris Stanley: We have to give reasons for a custodial sentence, and certainly we can include that as a reason amongst others.

Q71 Chairman: JUSTICE has told us that the only residential drug and alcohol rehabilitation facility for children and young people is a place called Middlegate in Lincolnshire which is threatened with closure because of non-referrals. Is a residential referral something that magistrates are not aware is possible or feel under some cost pressure not to take up?
Chris Stanley: I hope that we are never under any cost pressures. We do what is the most appropriate thing to do, but we rely on the youth offending team in a case like that to make a recommendation to us in the pre-sentence report that the young person should be placed in a particular environment. We do not know necessarily what is available.

Mary Duff: We would also start by not wanting to send a child away from the home because very often the difficulties are connected with the home circumstances. We would always begin by looking at what is immediately available before separating the child from the environment to which he or she has to return. I do not know the reasons in that particular case.

Q72 Chairman: As an association you have expressed concern that the Youth Justice Board’s “scaled approach” may contribute to sentences that are disproportionate to the seriousness of the offence. You always have that problem when looking at a welfare-based approach rather than simply measuring the length of the intervention, whether it is custodial or non-custodial, as an indication of how seriously the offence is viewed.
Mary Duff: My colleague will add to this. We always start with the seriousness of the offence and then look at all the other welfare issues.

Chris Stanley: The law says that we take into account the seriousness of the offence and that is the bible we use when sitting on the bench. We find some aspects of the scaled approach to be difficult to equate to that level of seriousness, for example where there is a high risk of re-offending and the seriousness of offence is low, and vice versa. The scaled approach is likely to throw up more requirements and intervention for the less serious offence and high risk of re-offending.

Q73 Chairman: But is that not sensible?

Chris Stanley: If it is theft from a shop that is low in seriousness. Looking at the record and things like that we will sentence on the basis of that. If the risk of re-offending is very high and there are all sorts of problems in the background, which YOT has discovered through its assessment, and if that is done separately and voluntarily, fair enough. But that will not be part of the sentence of the court because we have to sentence on the basis of the original seriousness of the offence. The issue is one of proportionality and that is what the law says we should do when sentencing.

Q74 Chairman: But is it not rather a mistake to assume as you might with an adult that through the length of sentence you have to make a statement about seriousness which does not have regard to whether that person will ever be likely to commit another offence? Is it not a mistake to disregard that?

Chris Stanley: I think “disregard” would be too strong a word, but we must reflect what the law tells us about seriousness. There may be things mentioned in the pre-sentence report which would be a step towards preventing further re-offending, but massive intervention is inappropriate for an offence of low seriousness.

Q75 Chairman: Are the Sentencing Guidelines helpful to you in this regard or not?

Mary Duff: It does help because it says that one starts again with the seriousness of the offence. In practice probably there will not be a problem. If you have a good youth offending service and a magistracy that trusts it there will be ongoing dialogue with trust and confidence in the sentence proposed. Having voiced our concerns, heard what others have said about it and read the Sentencing Guidelines I believe that in practice we will find that we need not have been so concerned as we are at the moment.

Q76 Mrs James: Turning to breach and re-offending, there are many examples of young people who do not and cannot comply with the terms of a community sentence. What do you believe is the most effective way of dealing with those young persons? How do we ensure that if they are subject to rehabilitation orders they are not set up to fail and we help them achieve as much as we can?

Mary Duff: You are probably looking at how we deal with breaches of orders. We would certainly want the youth offending team to look at the individual circumstances of each case and perhaps not bring an individual back to court immediately if there were good reasons for the breach. Usually, we deal with the most chaotic children in society. It might be the first time we have said to that person that he or she must be at such and such an office at 10 o’clock. Just to get up in the morning and get somewhere by 10 o’clock is quite an achievement. We would not want that to be a breach. We would want the officer to be really sure that coming to court will achieve an improvement. Having said that, we know that sometimes young people will breach order after order and at the very end of the day we must re-sentence and take into account that there has been total defiance of all community orders. The very end of that may very well be custody, but that is right at the end and we certainly would not advocate sentencing a breach with custody. We expect the youth offending team to have that discretion and flexibility.

Q77 Mrs James: As a magistrate how do you deal with a young person standing before you who has re-offended on a regular basis?

Mary Duff: We can always add or change a requirement, re-sentence or give a different sentence, so that is what we would do. There would be reparation in a different way. Perhaps there is a good reason why the individual has not done unpaid work or whatever; maybe he or she has obtained a job. You have to be flexible in your treatment of that individual. We certainly would not let individuals walk away thinking they had got away with it. Word spreads quickly and we must be firm in the way we deal with all young people.

Q78 Mrs James: There must be a problem with consistency because each person is an individual. How do you ensure consistency of sentencing?

Mary Duff: It comes back to training of magistrates. At a local bench level one would hope there was consistency.

Chris Stanley: One thing we would expect to do at local level is discuss breaches with YOTs. They would make a brief report and proposal at the end. Some would require a slap across the wrist and that would be sufficient, so we would have a dialogue about that. In other cases it goes on and on and there may be a re-sentence and custody. I was made aware recently of a bench that adjourned a breach case for 28 days and asked the person to abide by its instructions. If the person does so and in 28 days comes back, fine; if not, the person will be re-sentenced. That was apparently a very effective way. It had been negotiated between the YOT and the bench. There are local discussions as to the most appropriate way to encourage the young person to stay in the community with his or her sentence, which is what we want to do because that is the basis on which the individual was sentenced in the first place. We do not want to send someone to custody.
for a breach but sometimes that is inevitable if the individual puts up fingers continuously to what is asked of him or her.

Q79 Mr Heath: In that context are you sentencing the breach or the original offence?
Chris Stanley: The original offence if you agree to do that. There is the option of going back to the original offence and sentencing for that.

Q80 Mr Heath: Again, one of our concerns was that there might be an offence that did not merit a custodial sentence but resulted in such a sentence by breach rather than by reason of the circumstances of the offence.
Chris Stanley: It would depend particularly on whether the community order was made on the cusp of a custody case. If the individual did not comply with that the revocation would mean custody. We would not jump into custody if the original seriousness of the offence was not sufficient to justify such a custodial sentence.

Q81 Mr Heath: Are you confident that there is no bench in the country that would do that?
Chris Stanley: No, I am not. Mary Duff: There are variations.

Q82 Chairman: Does custody cure the tendency not to fulfil conditions because of a disorganised life? The answer is probably "no".
Chris Stanley: No.

Q83 Julie Morgan: I do not know whether there is any research evidence about the public’s confidence in the sentencing of young people. A lot of people in my constituency often say that young people have got away with it and things like that. How can you use the Sentencing Guidelines to promote public confidence in the sentencing of young people?
Chris Stanley: The latest Sentencing Guidelines that we are talking about today are very good because they are based on lots of research. Every paragraph is based on very good evidence, but it is quite difficult to get over to the public that this is a better way of doing it. Magistrates do a lot of work through their Magistrates in the Community set-up to talk to the public about alternatives to custody and the benefits thereof, but it is not an easy task. It is a great pity that the tabloid press tends to sensationalise individual cases which distort exactly what is going on and is not for the best. Custody is there as a last resort, but good, robust community sentences that occupy the young person and start to turn him or her are more effective in reducing re-offending. Re-offending rates from custody are between 70% and 80% over two years and it is also very expensive, so there must be a better way, but to get that over to the public is not easy. It is up to youth offending teams and magistrates to work together to convince the public that there is a better way and custody is not the only answer.

Q84 Julie Morgan: On the whole, the public with whom I am in contact are not convinced. I do not know whether that is the general situation. I believe that it is also up to politicians not to pander to the public in this way.
Chris Stanley: You asked about research. Some research was done by King’s College which looked at focus groups that were informed about the outcomes of community sentences. Members of the public who took a punitive view started to change their attitude when they were well informed. The trouble is that the public are not well informed on these issues and that has been quite difficult. There is a job to be done and politicians play an important part in that, but it is not an easy task and many people have tried. The evidence is that you can change the public’s mind with appropriate evidence.

Q85 Julie Morgan: We do not have that evidence so far.
Mary Duff: We must not forget that magistrates are members of the public and can do a lot to help themselves. If they are convinced of the effectiveness of community sentences they can pass on that message. They need to gain confidence from seeing what happens. There are various ways that youth offending teams can do that through newsletters or open days, bringing parents and young children together to explain how well things have worked for them. We are all in this together. If the public can see the successes we have had that is all to the good. Perhaps magistrates could do a little more. However, with Magistrates in the Community we already go out to all sorts of local groups and tell them about our job. Perhaps when we do that we need to say more about youth work.

Q86 Mr Turner: How many members of the public do you actually meet in your capacity as a magistrate? How do you try to convert the public in the way I suspect you mean to understand what is going on?
Mary Duff: That leads on from an earlier answer. In the course of your job as a magistrate the youth courts involve all people who are to do with the cases before you, so certainly the parents and whatever workers are working with the child are there. That is the extent of what you see in the youth courts. Beyond that, my answer to your question is that it is a matter of trying perhaps through press involvement to get people to attend meetings with magistrates.

Q87 Mr Turner: What worries me is that you will attract a certain group.
Chris Stanley: We are part of the community and magistrates are supposed to reflect a cross-section of society. It is perhaps not as good as it could be. Therefore, on a Friday night I will be down at the pub and I will meet some people who know I am a magistrate. It is not something you broadcast. It can become a bit awkward. If a conversation starts you
Justice Committee: Evidence

Witnesses: Tim Bateman, Martin Narey, Pam Hibbert, Mary Duff and Chris Stanley.

Chairman: We welcome Martin Narey and Pam Hibbert of Barnardo’s and Tim Bateman of Nacro. In some cases we welcome you back.

Q89 Mr Turner: Courts must have regard to the principal aim of the youth justice system which is the welfare of the offender and the four purposes of sentencing. The draft sentencing guideline states that these may point a sentencer in the same or a different direction. Do you have any concerns about the way these different aims interact?

Tim Bateman: Potentially they can. Nacro believes it would be helpful if the guidelines suggested that in interpreting prevention courts took the longer-term view. If you lock up a child that prevents offending in one sense but only in the short term. If you take a longer-term view of preventing offending you get a much closer alignment between what it means to prevent offending and what it means to address welfare concerns. The two become much closer if you take a longer-term view of prevention.

Martin Narey: There can be a conflict but in more circumstances than not the two things sit together well. If you want to prevent offending one thing you have to do is improve the welfare of the child. You have to do very practical things like ensuring they go to school and get some education to obtain qualifications to make them employable. For most young people there is little conflict between the two.

Q90 Mr Turner: We seem to have two conflicting views between Mr Bateman and Mr Narey. Am I right or have I misheard you?

Tim Bateman: I do not think there is necessarily a conflict. What I suggest is that there are different ways to interpret the prevention of offending, one of which would be a short-term solution by removing a child from the community to prevent offending for the period that the child was incarcerated. But if you took a longer-term view of prevention of offending you would need to address welfare concerns as Martin Narey suggested through educational support, substance misuse support and addressing family circumstances. Understood in that way I think the two purposes sit much more closely together.

Q91 Mr Turner: So, what do you think “punishment” means as a purpose of sentencing young people?

Tim Bateman: Nacro’s view is that it is a bit unfortunate that the legislation says punishment is a purpose of sentencing. Our view is that punishment is a by-product of sentencing; in other words, it is inevitable that if you intervene forcibly in a child’s life as a consequence of offending that will be experienced as punishment. There will be a restriction on their time and liberty in some manner or another. However, it seems to us that the purpose of that intervention should be about rehabilitation and prevention of offending, not punishment per se.

Pam Hibbert: I heard Mary Duff talk about the dialogue between magistrates and young people in the courts. I agree that things have improved tremendously since my day as a practitioner. I think that from a child’s point of view they will clearly always perceive what the court does as a punishment. The problem is getting across to children that some of the things that the court will do will be to try to address some of the welfare issues. That is quite a difficult task.

Q92 Mr Turner: You appear to be saying that punishment should not be an aim of sentencing although it is.

Martin Narey: There are certainly different views here about that, and there are different views within Barnardo’s. Pam Hibbert has not been brought here to follow the party line; she and I discuss these things very frequently. I am reasonably comfortable with the concept of punishment for young people. If we could get over to the public that community penalties involve a greater amount of punishment—I do not mean that anyone should be mistreated—in terms of the inconvenience of the offender and certainly the much greater benefit to the community
in terms of potential reparation than being inside that would be a way of increasing confidence in community penalties. As to the word “punishment” danger arises if that is ever misinterpreted as a way to treat a young person, or indeed any defendant, badly. The evidence on punishment such as the short, sharp shock is very clear; it is very ineffective, but as a principle of sentencing, though not a primary one, I have no problem with punishment as being one of the elements to have in mind in sentencing a young person.

**Q93 Chairman:** Presumably, any good parent chooses a punishment on the assumption that it both indicates to the child that what it has done is seriously wrong and maximises the likelihood of the conduct not being repeated.

**Martin Narey:** I agree with that.

**Q94 Alun Michael:** It is a means to an end rather than an end in itself?

**Tim Bateman:** I would agree with that. One hopes that the purpose of a parent punishing a child is to prevent that behaviour recurring rather than to punish per se. I suppose that is what we say should be reflected in the youth justice system more broadly.

**Martin Narey:** It is a cliché, but it is true that people are not sent to custody for punishment. The punishment is a deprivation of liberty but it is a very real punishment and we should not deny that. It is very important that what happens to individuals in an institution is not punishment in itself. We do not try to make their experience unnecessarily painful or unpleasant.

**Q95 Chairman:** Although as far as young people in youth custody are concerned it is sometimes the case that the public exaggerates the extent to which it is perceived by them as a very serious punishment. Some people in youth custody have such disorganised lives that whereas to us a few months in youth custody might seem a very unpleasant experience to some of them it might not be that unpleasant.

**Martin Narey:** That may be true, but there is also the possibility that the public greatly underestimates the full extent of the discomfort, pain and deprivation of liberty for anyone of any age. For a child it is particularly traumatic.

**Pam Hibbert:** I agree. The public see pictures of secure training centres with very well equipped gyms and facilities. There is a perception in the public mind that custody is, in a phrase the tabloid press likes to use, a holiday camp. Last year we published some work on younger children in custody which included talking to a group who were in custody. It is very clear that deprivation of liberty however nice the surroundings and separation from family, friends and everything that is normal to the young person, often by hundreds of miles, is a real punishment.

**Q96 Dr Palmer:** The analogy to parents is not quite an exact one, is it? A parent is concerned only with the direct impact on the child whereas the public hopes that the impact of the sentence reported in the press will have some influence on other children, though perhaps not through the press itself because they may not be regular readers. When they hear about a punishment it may have an effect.

**Pam Hibbert:** I reiterate what the previous witnesses said. There is absolutely no evidence to suggest that deterrence works with children, partly because for the majority of them their offending is very opportunistic; it is not premeditated. There is a good deal of emerging work at the moment on children and young people right up to the age of 25 in terms of how their brains develop and their ability to think things through. There is no evidence that deterrence works for children.

**Martin Narey:** The only matter that really influences young people in terms of their offending is the belief of whether or not they will be caught. Chris Stanley is absolutely right that characteristically young offenders do not think through the consequences of their actions and never think they will be caught no matter how incompetent the crime. They do not put in the balance what may happen to them. I noted that in an earlier piece of evidence from the Youth Justice Board it was said that being sent down was a deterrent. There is no evidence to support that.

**Q97 Mrs James:** From experience of working with offenders including young offenders they are often hugely influenced by peer pressure and the situation in which they find themselves. One thing that really shocked me was that they all made out that going to prison and doing a stretch, or doing bird or porridge, was easy. Yet when you get them by themselves they admit how difficult it is and how lost and lonely they are. It is impossible to get that over to the public.

**Martin Narey:** They exacerbate the problem of the confidence of the public in community sentences because frequently young offenders will talk about not being sent to custody as getting off even though they may have a high community penalty. That is how it is caricatured.

**Q98 Mr Turner:** The purposes of sentencing young people are different from those for adults in that, as you say, deterrence is not part of the sentence, but when does this begin and end? Is it 16, 18 or 25? I assume it is not a standard, but what is it?

**Tim Bateman:** Clearly, the legislation applies up to the age of 18.

**Q99 Mr Turner:** Up to 18?

**Tim Bateman:** Up to 17 years, 11 months and however many days.

**Q100 Mr Turner:** But is there a cut-off?

**Tim Bateman:** There is a cut-off within the legislation and at that point the adult purposes of sentence kick in. Nacro and a number of other organisations would like to see some kind of transitional period between 18 and, say, 21 or 24, which applies in a number of other European countries, where there is some discretion for criminal justice agencies to determine on the basis of maturity whether young persons should be treated as if they
were below the age of 18 or as if they were adults. In our system the legislation provides a very stark and clear cut-off.

Pam Hibbert: Barnardo’s is concerned particularly about younger children aged 14 and under. At the moment there is no differentiation, in that someone aged 17 years and 11 months who is sentenced in a court is deemed to have the same capacity, capability and culpability. We are particularly concerned about younger children. The principle of *doli incapax* was abolished some years ago. There is concern that we do not have that sort of tapering either from younger to older children or from older children to young adults.

Q101 Mr Turner: But insofar as you have come across young people are you saying that nobody is capable of seeing what may happen as a consequence of their actions?

Martin Narey: The position on deterrence applies to all ages. Though it is counter-intuitive, there is little evidence to suggest that length of sentence has a significant influence on an individual’s offending behaviour. When he had responsibility for this in the Home Office, Alun Michael may recall giving presentations on when in the past exemplary sentences were imposed on muggers in the belief that it would have a significant effect on street robbery. The reality is that it has very little effect. For the same reason characteristically offenders do not think through or put in the balance the consequences of their actions with the single exception of thinking about whether or not they might be caught.

Q102 Mr Turner: You believe that catching them may have an effect?

Martin Narey: The perception of the offender that he or she will be caught might have an effect on behaviour, although frequently the individual will come to ludicrous conclusions about the likelihood of being caught. That is why overwhelmingly custodial institutions are full of people who commit hugely incompetent crimes.

Q103 Mr Turner: I can believe that. The single conclusion I draw so far is that there ought to be a greater chance of being caught.

Martin Narey: If detection rates were higher that is why.”

Q104 Julie Morgan: I declare an interest in that a long time ago I worked for Barnardo’s. Can the two organisations tell us what evidence they have about whether the courts are using custody as a measure of last resort? Is that happening?

Martin Narey: We are very concerned that that is not happening. As Pam Hibbert has already indicated, Barnardo’s is very concerned about the use of custody for young tearaways aged 12, 13 and 14. Whilst the population of children in custody has remained fairly static for the past decade there has been an explosion—I use that word carefully—in the incarceration of those aged 12, 13 and 14. At the moment we are engaged in some research. Although we have not quite finished it we are confident it will demonstrate that there are significant numbers of children of that age being sent to custody where that is not the last resort and where we argue it is being done against the will of Parliament because their offending is not thought to be serious and persistent.

Q105 Julie Morgan: You say “explosion”.

Martin Narey: Over the past decade there has been a 550% increase in the numbers of children aged 12, 13 and 14 being sent to custody despite a significant reduction in the number of children of that age being sent to custody for grave crimes. A very sure measure of whether or not young children are committing very serious offences is what happens with grave crimes. Pam Hibbert will correct me if I get the figures wrong, but I believe that in 1995, 100 children aged 12, 13 and 14 were sent to custody for grave crimes; last year the figure was 62, but about 700 other children were sent to custody for non-grave crimes in circumstances where before 1995 it would have been illegal to incarcerate them. Those children were never sent to custody.

Pam Hibbert: The other matter our research will show when we finalise it, which I am sure will come as no great surprise to the Committee, is that these are children who have significant issues in their lives—neglect, abuse, self-harm and suicide attempts even among very young children—and for whom welfare intervention to stop them reaching the point of custody has either not been available or has failed. We need to do something about it.

Julie Morgan: What can be done to ensure that that does not happen and it is really the last resort and all other things are tried?

Q106 Chairman: Are the guidelines relevant?

Martin Narey: I have not had the advantage of seeing the guidelines. We argue that much further work needs to be done to clarify what is meant by the term “persistent”—our research has concentrated on younger children—and so we are absolutely sure. We accept that if children commit grave crimes they must go into custody, but the legislation is very clear: if it is not a grave crime children of that age should be sent to custody only if their offending is both serious and persistent. “Persistence” is not helpfully defined anywhere. In the advice of the Sentencing Advisory Panel to the Sentencing Guidelines Council there is a reference to defining “persistent” but we saw that only yesterday and I do not think it gets us much further.

Pam Hibbert: As to persistency, the problem is that there is confusion. It is helpful that the guidelines have tried to bring some clarity for magistrates, but it is still a different definition from the procedural definition which is used by YOTs when preparing PSRs. There is an urgent need for real clarity across the board for YOTs and sentencers as to what is meant by “persistency”. Another issue which was touched on by the two magistrates who gave evidence is the inconsistency in the other services that are available either to prevent children getting to that stage in court proceedings anyway but also as...
alternatives to custody. For example, the requirement for supervision within intensive fostering which has proved to be very effective for children who have terribly chaotic lives is available only in three areas of the country. There has been a huge drop in the number of remands to local authority accommodation and a subsequent increase in secure remands which obviously accelerates children into custody. We run a remand fostering project and have trouble getting referrals because it costs money. We are pleased to see that the government and YJB are addressing the issue of who pays for custody because we believe that that can have an impact. At the moment the costs are met centrally so there is no incentive for local authorities to put in place those other provisions that might prevent children reaching that stage.

**Tim Bateman:** Part of the problem is that the legal threshold for custody is a very subjective one and is linked to the notion of offending being so serious. Obviously, the point at which different individuals find offending so serious will vary dramatically both over time and from one area to another. There is plenty of evidence to suggest that that is true. We believe it would be helpful—the new statutory threshold is a step forward—if the sentencing guidelines made explicit the link to “so serious”, meaning serious violent and sexual offences, so there is an element of objectivity standing behind the subjective notion of “so serious”.

**Q107 Chairman:** Drug dealing?

**Tim Bateman:** Yes. We could argue about what would constitute it, but there should be clearer guidelines as to what “so serious” means; that should be explicated.

**Q108 Alun Michael:** Pam Hibbert referred to research which she said was yet to be finalised and to situations where sentences were being passed and welfare interventions were not available or had failed.

**Pam Hibbert:** Or have not been tried.

**Q109 Alun Michael:** In that research will you be distinguishing between “not available” and “have failed” because they lead to two very different questions, the first being how you make sure there is consistency of provision to which you referred a few moments ago and the other being the need to move to something else if that fails.

**Pam Hibbert:** We will not do that in this piece of research because it has a different focus, but we are doing some work, which we hope will be available towards the end of the year, around that which is tied in with the funding of custody. Who pays for custody and what incentives are there for local authority to provide the right services at the right time?

**Q110 Chairman:** I want to check one point that you heard me raise with the previous witnesses. To what extent does the scaled approach and welfare approach lead to disproportionate sentences that do not relate to the seriousness of the offence? If they do is it a bad thing?

**Tim Bateman:** Nacro believes that there is potential for disproportionate sentencing and that potentially it is a bad thing for a number of specific reasons. First, there is a legal point. The sentencing framework sets maximum limits to the amount of intervention that is warranted through the youth justice system on the basis of the seriousness of the offence. It is explicit certainly in international conventions that welfare or other considerations should not raise the level of intervention above that maximum limit. The maximum should be set by the seriousness of the offending. It seems to us that any requirement or necessity for welfare or other forms of interventions which goes above that limit should be provided on a voluntary basis rather than as part of the punishment imposed by the court.

**Q111 Chairman:** But does that not assume that any welfare intervention is harsh and punitive though it may be benevolence?

**Tim Bateman:** To a degree it does make that assumption. As Pam Hibbert said previously, one of the difficulties is the way that interventions are perceived by the young person. If it is something imposed by the court for offending behaviour and it must be done because otherwise the offender will be returned to court and failure to do it can result in a custodial sentence inevitably the young person will regard that intervention in a manner different from if it was presented as something for that person’s benefit and was voluntary. It seems to me that that is one of the reasons for not doing it through the youth justice system. It is less likely to be effective if it is perceived by the child as a punishment; the child is less likely to engage and more likely to breach it. We know that completion of sentences is associated with reduced re-offending.

**Pam Hibbert:** Tim Bateman has touched on breach. We heard very reassuringly from the magistrates that they did not wish children to be returned routinely to court for breaches and they expected YOTs to do everything in their power to make sure that young people did not breach community-based sentences. One matter we have identified is that the performance of youth offending teams is measured by their compliance with national standards set by the Youth Justice Board. The national standard on breach is very rigid; basically, if you miss three appointments you are returned to court. There is only a very small element of professional discretion to which Mary Duff referred. We believe that that exacerbates it. Again, our research on younger children shows the numbers who are returned and sent to custody for breach. We would like to see an examination of those national standards. Further, in terms of sentencing and sentencing guidelines we would like to see magistrates demand and require the YOT to give evidence of what it has done to support young persons to comply with their orders rather than just say what they have not done to breach them.

**Q112 Mr Heath:** It is not in statute; it is actually in their decision?

**Tim Bateman:** It is now; it was not previously.
Mr Heath: So, it would require a change in primary legislation.

Q113 Alun Michael: You have given a very good indication of where you think there are failings, but can we look at the other side of it? When somebody cannot or will not comply with the terms of a community sentence despite being given appropriate support what do you see as the most effective way to manage that individual?

Martin Narey: I think it is a matter of how we determine “appropriate support”.

Q114 Alun Michael: I understand that, and I think Pam Hibbert has answered that question. Where there is support, however, and people fail to comply with the terms of community sentences what do you advocate as the means of dealing with that situation? We take the adequate support and the preventative approach as being the first thing that needs to be there, but when that does not work what happens?

Martin Narey: Ultimately, there must be a return to court. Eventually, when non-compliance is extremely persistent and a young offender does not respond to additional opportunities given by the court that might result in custody. But the issue of the extent to which you try to prevent that breach is absolutely vital. Those of us who have had teenage children will remember the time that they never went anywhere without our delivering them. My wife and I delivered our kids everywhere they went during their teenage years. Sometimes young offenders living chaotic lifestyles with no parental support are required to attend appointments on their own week after week. We should not be surprised if they give up. There are lots of troubled young people. If we gave up on all of those who let us down on three occasions we would not be doing any more work. Sometimes you have to hang in there.

Pam Hibbert: There are some interesting parallels to be drawn with the legislation dealing with non-school attendance and the raising of the school leaving age. There is a legal requirement on a local authority to prove that it has provided the most appropriate education and support and everything in order to support that young person before an attendance order can be issued. We would like to see something similar for breach. To give an example based on the experience of a youth offending team worker that may illustrate it, a young person with a dreadfully chaotic lifestyle and drug-abusing parents, not the sort of parents who would post appointments on the fridge with a magnet and make sure their child was up and dressed and on their way, turned up for her appointments on the right days but was persistently late. She was still held to be in breach because it counted as a non-show. They are the things about which we are far too rigid. I argue that that is the right sort of support. We need that flexibility. There is good, innovative work being done by some YOTs. They use technology such as texting, twitter and all of those things with which young people are familiar to make sure young people get up. They buy alarm clocks; they hammer on doors. We need more of that and less rigidity in the breach requirement.

Q115 Mrs James: What concerns do you have about the way girls are treated under the youth justice system? How can sentencing guidelines ensure that sentences deal with them effectively?

Pam Hibbert: I am quite concerned about how gender-neutral the system is. For example, there is nothing in the ASSET form to distinguish whether it is a young man or young woman who is being dealt with. There was discussion earlier about the variability of available alternative options. That is even more relevant for young women, particularly in the case of an intensive supervision and surveillance programme when the child has reached the custody threshold and it is really an alternative. Because the majority of children who reach that stage are young men the programmes are very male-oriented. You might be a single young woman on that programme which is completely inappropriate. Barnardo’s runs a lot of services particularly for young women who are sexually exploited. When a young person comes to the attention of a YOT there is absolutely nothing in the assessment process about the potential for that person to enter criminality because of sexual exploitation. Again, we know that they do so. We are concerned that the system as a whole does not address those issues.

Chairman: Unfortunately, we have to bring this evidence session to a close. Thank you very much.
Written evidence

Memorandum submitted by Barnardo’s

INTRODUCTION

1. Barnardo’s works directly with over 100,000 children, young people and their families every year. We run almost 400 vital projects across the UK, including counselling for children who have been abused, fostering and adoption services, vocational training and disability inclusion groups. Every Barnardo’s project is different but each believes that every child and young person deserves the best start in life, no matter who they are, what they have done or what they have been through.

2. We use the knowledge gained from our direct work with children to campaign for better children’s policy and to champion the rights of every child. With the right help, committed support and a little belief, even the most vulnerable children can turn their lives around.

3. Barnardo’s runs 42 projects specifically offering services to children and young people at risk of, or involved in, criminality and anti social behaviour. These services include:
   — Alternative education and post 16 training for those most disengaged;
   — Fast track responses to anti-social behaviour as an alternative to a formal order;
   — Intensive family support programmes; parenting programmes for parents on court orders;
   — Advocacy services for children in secure training centres and young offender institutions in England;
   — Specialist services for young people who sexually harm; and
   — In Scotland, intensive alternative to custody programmes for persistent and prolific offenders.

   Additionally, we have expertise in supporting young people who may be in the criminal justice system through our leaving care, youth support and young homelessness services.

4. This evidence is based on Barnardo’s experience gained through practice and research; therefore it does not address all the issues set out by the Committee in the call to evidence. Our evidence focuses on custodial sentences and the aims of sentencing.

5. In 2008 Barnardo’s published research into the use of custody for younger children. This research, Locking Up or Giving Up—Is custody for children always the right answer?,\(^1\) highlighted the ineffectiveness and the high cost of the overuse of custody for children aged 14 and under, many of whom had not committed serious or violent offences.

6. Barnardo’s are currently undertaking research into children aged 12–14 who were sentenced to a Detention and Training Order (DTO) in 2008; and have analysed the ASSET\(^2\) data on 214 of these children—46\% of the total number in this age group sentenced. This analysis will be published in May 2009.

EXECUTIVE SUMMARY

   — Barnardo’s believes that custody is not always used as a last resort and we are particularly concerned about the 550\% rise in the last decade in the use of custody for children aged 14 and under. Barnardo’s would like to see a change in the custody thresholds used by sentencers.

   — There are more children in custody for breach of a community order or an anti-social behaviour order than there are for burglary. We would like courts to satisfy themselves that all steps were taken to support the young person to comply with the order before breach proceedings were instituted.

   — Children in the criminal justice system will have experienced abuse, neglect and disadvantage, we would like courts to ensure that they seek further information when the pre-sentence report indicates such experiences but provides insufficient details as to the extent, circumstances and what interventions, support or treatment have already been offered to the child.

   — Courts face occasions when they feel that the welfare of the child warrants removal from undesirable circumstances. Barnardo’s would like to see guidance that urges courts to ensure they have explored all alternative options before imposing a custodial sentence.

---

\(^1\) Barnardo’s (2008) Locking Up or Giving Up—Is custody for children always the right answer? http://www.barnardos.org.uk/locking_up_or_giving_up_final1_sept_08.pdf

\(^2\) The ASSET is a structured assessment tool used by Youth Offending Teams in England and Wales with all young people who come into contact with the criminal justice system. It aims to look at the young person’s offence or offences and identify the factors—ranging from lack of educational attainment to mental health problems—which may have contributed to their offending behaviour.
1. The use of custodial sentences for young people and the realisation of a custodial sentence as a measure of last resort

1.1 Barnardo’s is concerned that the principle of custody as a last resort is not always adhered to. We are particularly concerned about the over 500% increase in custodial sentences in the last decade on children aged 14 and younger, and that these sentences do not appear to be linked to a rise in serious or violent offending for this age group. Recent Home Office research found that only 4% of 10 to 25 year olds are very frequent and serious offenders—a statistic that has not changed in the last five years. Sentencing patterns suggest that fewer children aged 14 and under are committing serious or violent offences. In 1990 there were 100 custodial disposals for children aged 10 to 14; all were made under Section 53 (now Section 90/91), the only custodial sentence then available to children aged under 15. Last year, of the 844 custodial sentences made on 10 to 14 year olds, only 62 were made under Section 90/91.

1.2 Our Locking Up or Giving Up research also noted an increase in the use of custodial sentences made for summary offences—those defined as, “the least serious offences”. In 2006–07 there were 102 custodial sentences made for summary offences on children aged 14 and under.

1.3 Barnardo’s is concerned about the lack of clarity in relation to the definition of “persistent” and while case law has provided some guidance, this has perhaps served to further confuse rather than clarify. We understand the need the take account of previous offending behaviour when determining whether or not an offence is serious, but would argue that there is evidence to suggest that custodial sentences are being imposed where neither the nature of the offence or the previous offending indicates that such a sentence is truly a “last resort”. We shall be presenting some of this evidence in our forthcoming research report, which will demonstrate that a significant number of children aged 14 and under were sentenced to custody when the offence was identified (by the YJB categorisation) as non serious and where the risk of re-offending was assessed as not being high.

1.4 Barnardo’s argues that custody is not justified as a last resort in these circumstances, particularly for younger children. However, there are clearly risks (which are highlighted in the draft guidelines) in having a rigid definition of persistency based on previous pre-court and/or summary justice interventions and convictions. Ideally, Barnardo’s would like to see a change in the custody thresholds for children aged 14 and younger, and a return to those put in place under the Secure Training Order—the precursor to the DTO—as in Section 1(5) of the 1994 Criminal Justice and Public Order Act which restricted the use of custody for this age group to those who had committed three imprisonable offences and either breached a community order or committed a further imprisonable offence whilst on a community order. Barnardo’s would like to see courts apply this principle when sentencing children aged 14 or under.

1.5 We believe that the rigid standards for breach of a community order have also contributed to the rise in custodial sentences. In 2006–07 more custodial sentences were made on children and young people for breach of an order than for burglary; almost a quarter of all custodial sentences were for breach and there has been a rise in the use of custody for breaching a community order.

1.6 Current Government data does not indicate what type of order was breached to result in a custodial sentence and Barnardo’s remains concerned about children who receive a custodial sentence solely for breaching the conditions of an ASBO where there has not been a repeat of the anti social behaviour.

1.7 Barnardo’s are currently undertaking research into children aged 12 to 14 who were sentenced to a Detention and Training Order (DTO) in 2008 and have analysed the ASSET data on 214 of these children—46% of the total number in this age group sentenced. 29% of the sample received their DTO for summary sentences and either breached a community order or committed a further imprisonable sentence. Barnardo’s would like to see courts respond to the young person to enable them to take advantage of that support.

---

7 We acknowledge that changes due to be implemented later this year under the Criminal Justice and Immigration Act 2008 may impact on these rates.
8 To be published by Barnardo’s in May 2009.
2. The balance between the different aims of sentencing for young people

2.1 There a significant body of evidence indicating that maltreatment is one of the key factors that can lead to anti-social and criminal behaviour.\(^9\) In addition, children in trouble with the law are much more likely to have grown up in an environment of poor parental supervision with a lack of discipline or harsh and erratic parenting. They have an increased likelihood of living in poor housing and experiencing family conflict and have parents with a history of anti social behaviour.\(^10\) Additionally, we know that that there is a high level of mental health problems among children in trouble—as high as 31% of those receiving custodial sentences.

2.2 Barnardo’s is concerned that these issues are not always fully explored in pre-sentence reports. We would like the guidelines to remind courts of the importance of seeking further information where there is an indication of such experiences but insufficient information as to the extent, circumstances and what interventions, support or treatment have already been offered to the child.

2.3 Paragraph 47 of the draft guidance suggests that courts may believe that the welfare of the child warrants removing them from undesirable circumstances—the presumption contained in that paragraph is that this concern may contribute towards the decision to impose a custodial sentence. Barnardo’s understands the court’s dilemma in such circumstances but feel that it is quite wrong for custody to be used in this way and would want the guidelines to urge courts to ensure they have explored all alternate options, including seeking advice and information from the local authority as to other possible solutions.

April 2009

Memorandum submitted by the Children’s Rights Alliance for England

CRAE believes that wholesale reform of the juvenile justice system is needed in order to bring the UK in line with international legal requirements. The numbers of children in custody must be reduced considerably. We believe this can only be achieved by the introduction of a statutory custody safeguard for children, limiting the use of custody to when it is genuinely a last resort, where the child is a present, serious danger to the public. Any custodial sentencing must be for the shortest possible time. We further believe that references to “punishment” should be removed from the statutory purposes of sentencing children.

The above position has been supported by the SCYJ, of which CRAE is a member. The SCYJ pursued amendments to those ends in the Criminal Justice and Immigration Bill in 2007–08. Unfortunately we were not successful. I attach for the Committee’s information a copy of one of our parliamentary briefings during the passage of the Bill, which sets out further information behind our proposal and the legislative amendment which we were seeking at the time.

I also attach a copy of CRAE’s 2008 State of Children’s Rights in England report, published in November 2008. I refer to pages 44 et seq, in which we set out further information concerning the significant over-use of child custody in this country and why a statutory safeguard is required. At the back of the report, you will find reproduced the concluding observations of the United Nations Committee on the Rights of the Child in its examination of the UK, published in October 2008. In particular, the Committee recommended (page 73, para. 78(b)) “that the State party…develop a broad range of alternative measures to detention for children in conflict with the law; and establish the principle that detention should be used as a measure of last resort and for the shortest period of time as a statutory principle”.

April 2009

---

\(^9\) See, for example:
- Boswell, G (1996). *The prevalence of abuse and loss in the lives of Section 53 offenders*. Young and Dangerous—the background and careers of Section 53 Offenders. Avebury;
- Health Commission review 2008; and

APPENDIX A

CRIMINAL JUSTICE AND IMMIGRATION BILL

HOUSE OF COMMONS—REPORT STAGE

January 9th 2008

Restrictions on custodial sentences for offenders aged under 18

THE AMENDMENT

New clause

To move the following Clause-

“(1) This section applies where a person under the age of 18 years is convicted of an offence punishable with a custodial sentence other than one:

(a) fixed by law or

(b) falling to be imposed under section 51a(2) of the Firearms Act 1968 or under sections 226–228”

(2) In the title of section 152 of the Criminal Justice Act 2003 (c. 44) (general restrictions on imposing discretionary custodial sentences), after “general restrictions on imposing discretionary custodial sentences”, insert “on offenders aged 18 or above”.

(3) In section 152(1) of the Criminal Justice Act 2003 after “where a person”, insert “aged 18 or above”.

(4) After section 152 of the Criminal Justice Act 2003, insert—

“152A Restrictions on Custodial Sentences for Offenders Aged under 18

(1) A court shall only pass a sentence of custody on a person under the age of 18 as a measure of last resort and where:

(a) The offence committed caused or could reasonably have been expected to cause serious physical or psychological harm to another or others, and

(b) A custodial sentence is necessary to protect the public from a demonstrable and imminent risk of serious physical or psychological harm.

(2) The court shall state in open session its reasons for passing any sentence of custody under this section.”

PURPOSE

The aim of this amendment is to create a statutory custody threshold that must be met before any child is sentenced to custody, in order to ensure that children are only locked up as a last resort, and for reasons of public protection, save where mandatory custodial sentences apply.

BRIEFING

Key Facts

— England and Wales has, for adults and children, the highest imprisonment rate in Western Europe. It stands at 149 per 100,000 of the population. The comparable figures for France and Germany are 85 and 93.

— For every 100,000 children in England and Wales, about 23 are in custody. The equivalent figure in France is 6, in Spain 2, and in Finland 0.2.

— The number of 15–17 year olds in prison increased by 98.6% in 10 years between 1995 and 2005, from 1,675 to 2,326. As at October 31 2007, 2,994 children were locked up in England and Wales. Of these, 2,518 (84%) were held in young offender institutions.

In Committee, when this amendment was tabled with no exemption for offences carrying mandatory custodial sentences, the Minister David Hanson said he shared “the objective of the Hon Gentleman to reduce the level of custody of under-18s in our estate, but we need to examine it in terms of preventive measures, interventions and the work of the Youth Justice Board rather than take a blanket approach that would include the removal and restriction of the court’s ability to use custody for some of the most serious offences, including—under the new clause—the removal of the mandatory life sentence equivalent for murder. It is a serious matter…the ability to be able to set the custody threshold at the level sought by the new clause would be difficult for both the public and the community at large to accept. It would place the public at significant risk and have the impact of examining sentences that would not be in agreement with the public’s expectations in the current circumstances.”

11 House of Commons Committee, November 29 2007, Hansard Column number:789
We have responded to the Minister’s comments by changing our amendment so that the threshold will not apply to offences carrying mandatory custodial sentences. We have done so on the basis that we will tackle one issue at a time, and we seek serious debate of the concept of the threshold. Our proposal still has the potential to considerably reduce the number of custodial sentences issued to children—whilst ensuring they receive a more effective intervention. Importantly, this amendment would prevent most children from being given a custodial sentence if they did not present a demonstrable and imminent risk to the public. We believe there would be broad public support for this progressive step, given the public’s growing awareness that prison does not work and is very expensive and increasing concern about the treatment of vulnerable children in custody.

**Public support for more effective interventions**

The public expect, and are entitled to expect, that they will be protected from dangerous people, including children, through the use of custody, when this is necessary. There is nothing in this amendment that threatens this legitimate expectation. But there is growing evidence that the public is questioning the value of custody and wants more effective measures. A Guardian/ICM poll of 1,016 adults this summer found that:

- More than half (51%) want the government to find alternatives to prison
- More people agree with the statement “prison doesn’t work—it turns people into professional criminals who then commit more crime” than think “prison punishes crime, keeps criminals off the streets, and deters others”.12

In 2006, SmartJustice commissioned ICM to undertake the first ever poll of adult victims of crime. From interviews with 982 victims of crime, it found:

- 62% believe prison does not prevent reoffending
- 83% agree that “more constructive activities by young people to prevent them getting into crime” would help prevent crime in the long-run
- 80% agree that “better supervision of young people by parents” would help prevent crime in the long-run
- Less than four in 10 (38%) support the building of more prisons.13

**Concern about custody is growing**

Children in penal custody are known to be among the most disadvantaged in our society: over a quarter have the literacy and numeracy ability of an average seven year-old or younger; 85% show signs of a personality disorder; 10% show signs of psychotic illness; over half have been in care or involved with social services; and 41% had been excluded from school before being locked up.14 A report commissioned by the YJB shows that up to nine out of 10 children in custody have been abused in the past, but they rarely get the help they need whilst locked up.15

Against this background, Lord Carlile found in his inquiry that some treatment of children in custody would “in any other circumstances trigger a child protection investigation and could even result in criminal charges”.16 Since the publication of Lord Carlile’s report in February 2006, the inquests of two children that died following restraint-related incidents have revealed high levels of restraint and poor oversight by the YJB; the serious case review into the death of Adam Rickwood reported that “the whole [criminal justice] system treated AR as a child in need of custody, rather than a child in need of care”;17 the Prisons Inspectorate has repeatedly expressed concerns about the use of force and inadequate safeguarding in young offender institutions; and Parliamentary Questions have shown very high levels of self-harm, frequent use of force when strip-searching and the common use of handcuffs in secure training centres (44 times in 2006). Six children have died in custody since the UK last reported to the UN Committee on the Rights of the Child in October 2002; there have been 30 child deaths since 1990. Some evidence of near-fatal restraints came out during the inquests into the deaths of Gareth Myatt and Adam Rickwood. Oxygen was administered to a child at Rainsbrook STC four times in 2005 and once in 2006 following restraint.18 A 16-year-old girl told the Carlile Inquiry that she had red marks on her cheeks and bloodshot eyes during restraint—these are early signs of asphyxia.

Custody does not rehabilitate the vast majority of children: three-quarters reoffend within a year of release.19 This amendment would enable interventions to be improved considerably for those who need to be locked up for genuine reasons of public protection, and enable the re-allocation of resources for more

---

12 “More prisons are not the answer to punishing criminals, says poll” Guardian newspaper, August 28 2007
13 SmartJustice press release, January 16 2006 “Victims say stopping re-offending is more important than prison”
14 Reducing re-offending by ex-prisoners. Report of the Social Exclusion Unit (Pages 156-158)
15 “YJB accused of burying child abuse report”, Community Care, August 7 2007
16 Howard League: “An independent enquiry into the use of physical restraint, solitary confinement and forcible use of strip searching in prisons, secure training centres and local authority secure children’s homes”. (page12)
17 Report of the Serious Case Review Panel upon the circumstances surrounding the death of AR at Hassockfield Secure Training Centre on 9th August 2004 (LSCB, 3 September 2007), page 12, first para.
18 Written answer to Parliamentary question, July 3 2007: Hansard column 999W.
suitable and effective community rehabilitation for those who do not pose such a risk. About 70% (£280 million) of the YJB’s programmes budget is spent each year on locking up children. In June 2006, the Parliamentary Public Accounts Committee published its report on prison overcrowding. The Chair of the Committee, Conservative Edward Leigh MP, urged: “Another way of relieving the pressure is to think long and hard about practical alternatives to imprisonment for some key categories of prisoner: such as those on remand, those with mental health problems and children.”20 That same month the Local Government Association (LGA) issued its report on children in trouble. It recommends a move towards more community sentences for children. The chair of the LGA children and young people board says, “It’s time we explored more effective and sustainable ways of dealing with children in trouble, rather than resorting to locking them up.”21

**YOUTH JUSTICE BOARD TARGET NOT ACHIEVABLE**

In agreement with the Home Office, the Youth Justice Board has set a target of 10% reduction of children in custody between March 2005 and March 2008. The YJB’s annual report for 2006–07 states: “Target highly unlikely to be met.”22

**GOVERNMENT AGREES THAT CUSTODY SHOULD BE ONLY FOR MOST SERIOUS AND DANGEROUS OFFENDERS**

In the Home Office strategy paper,23 which lay the groundwork for much of the content of this Bill, the Government says, “For too many people, prison acts as nothing more than a brief interlude in a life of crime” (para 1.8) and “we believe that prison should be reserved for serious, violent and dangerous offenders” (para 2.1). In relation to children it says, “We believe that it is important to keep children out of prison if it is at all possible” (para 3.31).

The Youth Justice Board (YJB) in its secure estate strategy24 explains, “custody (for children) should be used particularly sparingly, because of their dependent developing, and vulnerable status”. It notes, “The YJB expects legislative changes that are due soon to bring greater clarity for courts about the custody threshold.”25 There is no such proposal in this Bill; this amendment introduces a children’s custody threshold that has wide support across children’s and human rights organisations and we believe it reflects the hopes of the YJB in 2005.

The Children’s Plan, published on December 11 2007, promises that the Government is taking “a fundamental look at the way in which the criminal justice system overall is working for young people to ensure we learn from existing good practice and address current concerns. This includes examining what we know about [child offenders], what a more effective approach to prevention would look like [and] the options available for dealing with children who commit crimes…”

**HUMAN RIGHTS STANDARDS**

Article 37(b) of the UN Convention on the Rights of the Child (“CRC”) requires that the “detention or imprisonment of a child shall be a measure of last resort . . .” The requirement is buttressed by the Beijing rules26 (rule 19.1), which require that “the placement of a juvenile in an institution shall always be a disposition of last resort”.

Moreover, article 40.4 of the CRC requires that “a variety of dispositions, such as care, guidance, and supervision orders; counselling; probation; foster care; educational and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence”.

In its 2002 concluding observations,27 the UN Committee on the Rights of the Child criticised the UK Government for the continuing high use of custody for children. It said, “[T]he committee is deeply concerned at the high increasing number of children in custody, at earlier ages, for lesser offences” and that “deprivation of liberty is not being used only as a measure of last resort.”28 The report recommends that the State party should “ensure that detention of children is used as a measure of last resort.”29

This amendment would assist the Government in complying with these international obligations.

---

21 Ibid page 7.
28 Ibid page 15 para 57.
29 Ibid page 16 para 58, recommendation f.
INCONSISTENCY IN SENTENCING

Between April 2001 and March 2006, the custody rate (expressed as the number of cases resulting in custody as a proportion of all court disposals) varied widely between the English regions and Wales. For example, in the North East it was 6% and in London and West Midlands, it was 11%. In relatively rural Wales, it was 10%. A statutory custody threshold would address this inconsistency.

PARLIAMENT HAS SUPPORTED A CUSTODY THRESHOLD BEFORE

Section 1(4) of the Criminal Justice Act 1982, repealed by the Criminal Justice Act 1991 (S101(2), Sch 13), set a custody threshold for people under 21. Before it was repealed, this had a significant effect on the number of young people sent to custody—between 1982 and 1990 there was a 54% reduction in the use of immediate custody for indictable offences for under 21s.

Section 1(4) provided that the courts must not pass a sentence of custody on a person under 21, unless they were “of the opinion that no other method of dealing with him is appropriate, because it appears to the court that he is unable or unwilling to respond to non-custodial penalties, or because a custodial sentence is necessary for the protection of the public, or because the offence was so serious that a non-custodial sentence cannot be justified.”

The threshold was opposed by the then Conservative Government, and was achieved only by an amendment moved and won in the Lords by Conservative Peer Baroness Lucy Faithfull, a former social worker and children’s officer. The Government subsequently generously admitted that Baroness Faithfull had been proved right by subsequent events.

SUMMARY

This amendment would:

— Reduce the number of children for custody in England and Wales, bringing us more into line with other similar European countries;
— Bring greater consistency in custodial sentencing for children;
— Bring the UK Government more closely into line with international and domestic human rights standards;
— Ensure that only children who need to be in custody for genuine reasons of public protection are so sentenced (in line with government objectives);
— Satisfy the public’s demand for more effective interventions; and
— Save significant resources, which could be used both to improve locked settings for the minority of children that require it and increase the availability and quality of preventive services.

If accepted, this amendment may require further consequential changes.

The Standing Committee for Youth Justice (SCYJ) is a membership body which:

— Provides a forum for organisations, primarily in the non-statutory sector, working to promote the welfare of children who become engaged in the youth justice system; and
— Advocates a child-focussed youth justice system that promotes the integration of such children into society and thus serves the best interests of the children themselves and the community at large.


The contents of this briefing do not necessarily reflect the views of all member organisations.

APPENDIX B

Memorandum submitted by the Magistrates’ Association

1. The Use of Custodial Sentences for Young People and the Realisation of a Custodial Sentence as a Measure of Last Resort

The use of custody will vary, due to a number of factors explained below. The MA welcomes the introduction of the new Youth Court Sentencing Guidelines; for the first time Youth Court Magistrates will have guidelines to assist their sentencing. (Guidelines have been available in the Adult Magistrates Court for a number of years.) This should go a long way towards improving the consistency of sentencing, particularly custodial sentencing, when the Guidelines come into force in the autumn of this year.

Research for the YJB by Nacro (Bateman, T and Stanley, C (2002) Patterns of sentencing: differential sentencing across England and Wales) identifies a number of factors, other than seriousness, which produce differential custody rates. The factors listed below are present in areas with low levels of custody but with high levels of serious offending.

— High levels of diversion from court.
— Higher levels of low tariff sentences (fine, discharge and reparation order).
— Low remands to custody.
— Low breach rates.
— Robust high level community sentences.
— Good Pre-sentence reports.
— Good alternative to custody programmes.
— Good relations between Youth Offending Team (YOT) and Court.

Together Youth Offending Teams and magistrates can address these issues.

2. The Balance between the Different Aims of Sentencing for Young People

The principal aim of sentencing is to prevent offending by children and young people (Section 37, Crime and Disorder Act 1998). Alongside this, courts have an obligation to consider the welfare of the child (Section 44 Children and young Persons Act 1933). In addition, there are four other purposes of sentencing:

— punishment;
— reform and rehabilitation;
— protection of the public; and
— reparation to those affected by the offence.

Balancing these criteria is sometimes difficult. Having said that magistrates have accepted that recognising the welfare of the child is an important issue to be considered; addressing welfare can play a very important role in preventing future offending.

The four further purposes of sentencing require good, accurate assessment information from the Youth Offending Team (YOT). This will enable the court, with the help of the pre-sentence report (PSR) from the YOT, to balance these issues and to produce a sentence that will punish, reform, protect the public and achieve reparation for the victim.

The structured approach that Youth Court magistrates have used for some years will be greatly enhanced by the new sentencing guidelines.

The MA has some reservations on the YJB’s scaled approach (further comments below). Whilst the MA agrees with the general approach, the seriousness of the offence must remain the starting point for magistrates before they consider other factors.

The Association echoes the Sentencing Guidelines Council comment at paragraph 51, when referring to the scaled approach. It states, “the sentence must remain proportionate to the seriousness of the offence”.

3. The Approach to Sentencing for the New Youth Rehabilitation Order, including Breach

Despite discussions with the YJB, the MA still has concerns on the scaled approach. The general approach to sentencing should be the seriousness of the offence, followed by mitigation, aggravation and risk factors. The scaled approach is an assessment based on risk. This “tool” is useful but the MA thinks that it could lead to longer YRO’s and requirements that are not proportionate to the seriousness of the offence. Assessment by YOTs could mean that proposals in PSR’s for sentence are not proportionate to the seriousness of the crime.

The MA also supports the early revocation of the YRO as an incentive for early discharge if the response has been particularly positive or circumstances have changed.
Breaching for non or poor compliance with the YRO is important to maintain the credibility of the order. Having said that, the court will not require a YOT to breach for minor infringements of the order. Young people subject to these orders will often have a very chaotic lifestyle. The YOT will have to positively engage the young person, particularly in the early stages of the order. The range and type of flexibility will need to be discussed with youth court magistrates to ensure trust and confidence is maintained with the order.

4. THE CONSEQUENCES OF DIFFERENT SENTENCES FOR DIFFERENT YOUTHS WITH REGARD TO FACTORS SUCH AS GENDER, RACE AND MENTAL HEALTH

A wide variety of requirements under the YRO will need to be available to the courts. In the current economic climate it is vital that YOTs remain well resourced to provide a range of facilities appropriate for the variety of young people with their complex backgrounds and needs. This is particularly so with the issues of gender, race and mental health. YOTs must be resourced to provide the range of requirements needed to satisfy the needs of the young person and their parents such as alcohol and drug awareness courses and parenting skills. Staff need to be recruited from a range of backgrounds that reflect the local community, with training and experience that reflects the needs of their young people.

May 2009

Memorandum submitted by the Mayor of London

INTRODUCTION

1. The Mayor of London welcomes this opportunity to provide a written submission to the Justice Committee on the new sentencing guidelines for young people. As the directly elected head of London’s government, he is in a unique position to represent the views of Londoners.

2. The Mayor, together with Kit Malthouse, the Deputy Mayor for Policing, has made tackling serious youth violence the number one priority of his administration. In November 2008, the Mayor published “Time for Action”, a document outlining his proposals to tackle youth violence and provide greater opportunities for young Londoners. Time for Action proposes a range of preventative, educational and resettlement initiatives, which will have a long-term impact on violence and youth crime. These measures do not stand in isolation. The broader youth justice system and, more specifically, sentencing in the courts will all have a significant impact on how effective the programme will be.

TIME FOR ACTION

3. Time for Action aims to address the complex long-term root causes of teenage violence by improving opportunities for young people. It is a key part of the Mayor’s response to youth violence in London. The plan will work alongside Metropolitan Police measures to tackle the symptoms of crime, and anti-knife crime policing operations such as Blunt 2.

4. Time for Action outlines a range of key programmes that target youth violence by:
— working with young people in custody, supporting them to move into training and employment on release (Project Daedalus);
— keeping young people in education and reducing violence in schools (Project Brodie);
— the establishment of Mayor’s Scholars, London Academies and Apprentices;
— developing character and responsibility (Project Titan);
— expanding sport and music opportunities; and
— establishing and disseminating what really works to tackle serious youth violence (Project Oracle).

USE OF CUSTODIAL SENTENCES FOR YOUNG PEOPLE

5. The Mayor agrees that custody for young people should be seen as a last resort. For many, it embeds them deeper into a life of criminality and violence, which often has tragic consequences for them and those around them following their release. 78% re-offend within 12 months of being released. This also carries an unacceptably high burden on the state and the taxpayer. The estimated cost to the taxpayer of a young person going through the youth justice system by the age is 16 is over £200,000. Coupled with the number of young people from London in custody in 2007–08 being 1,133—already the figure comes to an astronomical £226,600,000.

6. There are, however, a minority of cases where custody is absolutely the right consequence for a young person’s actions. We have a duty to protect the public from serious violence, and often those most in need of protection are other young people. In 2008 there were 28 teenage murders in London. There were

34 Time for Action can be accessed from http://www.london.gov.uk/mayor/crime/timeforaction/
countless more who were stabbed and shot, but who managed to survive. We have an obligation to do everything in our powers to protect these young people, and sending out a message that carrying a knife or gun cannot be tolerated is right.

7. The Mayor believes that judges and magistrates need to do more to reflect the fear of knife crime by ensuring that those found carrying knives are dealt with more appropriately by the criminal justice system. The Mayor supports the recent increase in the maximum penalty for carrying a knife from two to four years, but is also concerned that too few individuals are prosecuted when found with a knife.

8. The Mayor is clear that when custodial sentences are handed out there needs to be parallel concerted efforts in rehabilitation through offering young people the opportunity to turn their lives around. The Mayor has identified a key period of intervention: the first 24-48 hours following a young person’s placement in custody, especially those for whom it is their first time inside. Project Daedalus aims to remove young people in custody from the “conveyor belt” of repeat offending post-release, by offering additional support inside as well as seamless and enhanced resettlement on release.

9. Joined-up resettlement is the key to success for young offenders coming out of custody. The Mayor recommends that, to accompany the new sentencing guidelines, there should be clear commitments from the Youth Justice Board and local authorities to ensure that every young offender receives the necessary support to ensure their transition from custody back into the community is as smooth and effective as possible.

BALANCE BETWEEN THE DIFFERENT AIMS OF SENTENCING FOR YOUNG PEOPLE

10. By the time a young person comes to the attention of the courts, there has often already been a number of missed opportunities to support them back onto the road to success. The Mayor agrees that reducing the number of first time entrants into the youth justice system is an appropriate overall target, however he also believes post-court disposals can constitute a useful turning point in many young people’s lives. It is not necessarily “the end of the road” when a young person is first sentenced, as is often assumed; for many young people, it can be the first step towards a more positive and meaningful life. As such, a motivated and trained-up workforce, consistent enforcement of orders/licences and evidence-based approaches to intervention are all crucial to successfully turning young offenders’ lives around.

11. Education is of paramount importance to all young people, especially those already involved in the youth justice system. Education raises aspirations and increases the choices available to all young people, while qualifications allow them to enter the job market—all of which contribute significantly to reducing reoffending rates. The Mayor, therefore, calls for closer working relationships between local authorities, the courts and education providers so the monitoring of attendance and educational attainment of young offenders is central to any sentence.

12. The Mayor recognises the key role that responsible adults can play in young people’s lives in providing positive role models and helping them to achieve well within society. Therefore, he supports a strong emphasis on parenting and mentoring within sentence plans.

13. The presence of parents, families and carers in court at the point of sentence (and throughout the court process) is a powerful means of reinforcing adults’ responsibilities towards their children and those in their charge. The Mayor calls for stronger requirements to ensure young people are accompanied as a matter of course by adults who know them well, not merely by statutory “appropriate adults”.

APPROACH TO SENTENCING FOR THE NEW YOUTH REHABILITATION ORDER, INCLUDING BREACH

14. The Mayor supports the new Youth Rehabilitation Order and the proposal of attaching requirements to fit with the seriousness of an offence and a young person’s risk of reoffending. He warns, however, that there is a danger — with the coinciding introduction of the Scaled Approach — that a lack of training and/or information for sentencers (and Youth Offending Team staff) could result in inconsistent and unacceptably varying sentences for young people across London—as well as nationally.

CONSEQUENCES OF DIFFERENT SENTENCES FOR DIFFERENT YOUTHS WITH REGARD TO FACTORS SUCH AS GENDER, RACE AND MENTAL HEALTH

Race

15. The Mayor is concerned at the levels of disproportionality in the youth justice system, especially with regard to the numbers of young black men from London who are sentenced to custody. In London, 44% of young people serving custodial sentences are black—a significant overrepresentation given that only 18% of 14 to 18-year-olds in the capital are young black people. Furthermore, over the past three years this trend has been steadily worsening.

16. The Mayor feels that introducing sentencing guidelines for young people will improve consistency across courts when imposing custodial disposals on all young people, regardless of background—ethnic or otherwise. The link between areas of disproportionality in the youth justice system and areas of deprivation is well documented. The Mayor intends to reduce the former by focusing on the latter, through increasing opportunities and raising the aspirations of young black people through his programme Time for Action.
17. The Mayor welcomes new performance measures introduced last year by the Youth Justice Board which calls local authorities to account for any disproportionality in their areas within the youth justice system. He also welcomes the introduction of a National Indicator relating specifically to disproportionality—NI 44, ethnic composition of offenders on youth justice system disposals. The Mayor is disappointed, however, that only one Local Authority nationally has chosen to adopt this indicator—albeit, a London authority (Lewisham). The Mayor calls for more local authorities (especially London councils) to adopt NI 44, particularly as such problems appear more acute in the capital than elsewhere.

Gender

18. The Mayor agrees that there needs to be a consistency in sentencing across genders. In recent years, the treatment of girls has become more punitive: between 2002 to 2006, the proportion of girls diverted from prosecution fell more rapidly than for boys. The same report shows that between 1993 and 2006, the numbers of young people sentenced to custodial care rose by 55%—while the equivalent rise for girls was 297%.

19. The Mayor recognises that, in determining sentences, there needs to be consideration of the particular vulnerability and circumstances of young women. For example, young women under 18 in custody are twice as likely to injure themselves as adult women and, in 2007, it was reported that 89% of girls in custody under 18 had self-harmed. It is therefore vital that both custody and community sentences for young women reflect their specific needs.

Mental Health

20. The Mayor is concerned about the high number of young people with mental health problems sentenced and remanded to custody. He believes there should be a concerted effort by all organisations within the youth justice system to divert more young people into appropriate healthcare. As a result, they will be more likely to receive the suitable intervention needed to turn their behaviour around.

21. A more consistent approach to Child and Adolescent Mental Health Services (CAMHS) provision in Youth Offending Teams (YOTs) is called for. While 40% of young offenders in the community have mental health problems, 30% of YOTs in England and Wales do not have mental health workers.

22. Behavioural and mental health problems are particularly prevalent amongst children in prison, rising from 40% in the community to 90% of those in custody. As part of Project Daedalus (see 8, above), young people will be screened during an initial triage process during their first 24–48 hours in custody; their mental health needs will be particularly assessed at this point, a period when young people are often at their most vulnerable. The Mayor believes that there should be a greater emphasis on young people’s mental health needs in custody, with appropriate available treatment options in secure settings.

April 2009

Memorandum submitted by the Ministry of Justice

Thank you for the opportunity to provide this memorandum as part of your call for evidence regarding sentencing of youths. Youth justice is the joint responsibility of the Ministry of Justice and the Department for Children, Schools and Families. Here we set out the broad policy context for the youth justice legislation provided for in the Criminal Justice and Immigration Act 2008 (“the 2008 Act”) including the new youth rehabilitation order (YRO) and associated legislation which we plan to implement on 30 November this year.

As has been previously explained, we will not be commenting on the independent Sentencing Advisory Panel’s proposals for sentencing for youths as the process is currently in progress, and like you, we are anticipating the publication of the draft consultation guideline by the Sentencing Guidelines Council.

The framework for the youth justice system was established in the Crime and Disorder Act 1998 (“the 1998 Act”). The 1998 Act set out the principle aim of the youth justice system which was to prevent offending by children and young people under 18. It provided for youth offending teams (YOTs), multi-agency teams with representatives from social care, probation, police, drug and substance misuse advisers, responsible to the local authority and with a statutory duty to supervise young offenders sentenced by the courts. The 1998 Act also saw the establishment of the Youth Justice Board which is responsible for monitoring the performance of YOTs and reporting on this to Ministers, and providing advice and guidance on operational practice and promulgating best practice to YOTs.

In September 2003 the Government published a consultation paper Youth Justice: The Next Steps which was issued as a companion document to Every Child Matters and sought views on developing the youth justice system further to the 1998 Act.

Legislation acting on the responses to this document was passed in the 2008 Act; this represented the most significant change to the youth justice system since the 1998 Act. The key elements in the Act are:

- A new generic community sentence, the YRO, that will replace nine existing sentences.
- A change which requires courts to consider making a YRO with one of two high intensity requirements as an alternative to custody, and, if they still decide to make a custodial sentence, to make a statement to court on why a YRO with a high intensity requirement is not appropriate. This is in addition to the existing requirement for the court to make a statement as to why custody is the only appropriate sentence.
- Revision of the referral order legislation that provides for greater flexibility and increased use of the referral order.
- A new youth conditional caution providing an additional out of court disposal for under 18s.

The policy background to these changes is set out below.

**Purposes of Sentencing**

Court practitioners find the present sentencing purposes for juveniles contradictory, or at least difficult to reconcile satisfactorily. This is an important area where for reasons of public confidence and effectiveness in tackling crime we need greater clarity.

We want to clarify the current law in order to remove any confusion and wish to bring the purpose of sentencing young offenders into line with the principal aim of the youth justice system. This gives the entire youth justice system a clear sense of direction and we believe that courts would benefit from this clarification that would bring them into line with the rest of the system.

*Youth Justice—The Next Steps* included this proposal. There was general agreement to the proposal among practitioners, youth justice professionals and courts.

In addition, setting out this separate list of requirements for under 18s for courts to consider when sentencing further emphasises the separation of the youth justice system from the adult justice system in accordance with international obligations.

The 2008 Act requires courts, when sentencing, to have regard to:

- the principle aim of the youth justice system (to prevent offending or re-offending by persons aged under 18, as amended by the 2008 Act);
- the welfare of the offender; and
- the purposes of sentencing.

**The Youth Rehabilitation Order (YRO)**

The Government response to the consultation paper, *Youth justice: The Next Steps* published in March 2004, outlined the belief that sentencing options needed to be made simpler and more flexible. Respondents were generally supportive of the idea of a simplification of juvenile sentencing. Following the example of the new adult generic community sentence provided for in the Criminal Justice Act 2003, and in light of responses to the consultation, Ministers decided that a generic juvenile community sentence would simplify juvenile sentencing while improving the flexibility of interventions. A commitment was made to legislate and the YRO was included in a draft Youth Justice Bill in 2004 and then a draft Offender Management Bill in spring/summer 2005 both of which did not proceed.

Currently there are a number of separate community sentences available to the courts for dealing with young offender. There is a lack of clarity and overlapping interventions for different age ranges. The YRO will simplify the sentencing structure, building on and learning from the most effective existing sentences and tailoring sentences to individual risk and needs. The YRO is designed to combine nine existing community sentences for under 18s into one generic sentence. It will be the standard community sentence used for the majority of young offenders and the courts would be expected to use the YRO on multiple occasions, adapting the menu of requirements as appropriate. The *Reparation Order* and the *Referral Order* will remain separate interventions below the YRO.

The YRO will be similar to the adult Community Order introduced by the Criminal Justice Act 2003. It will consist of a menu of requirements including programmes, activity requirements, treatment for mental health and drug or substance misuse, supervision and curfew, which the court can choose from to suit the individual offender, taking into account the seriousness of the offence and the risk posed by the individual in terms of their likelihood of reoffending and risk of causing serious harm to others.

The YJB is introducing, alongside the YRO, the *Scaled Approach*, which is a new way to match the intensity of YOTs’ work with children and young people who offend to their assessed likelihood of reoffending and their risk of serious harm to others. The model, which was developed in partnership with YOTs, informs planning interventions, YOTs’ reports to courts and youth offender panels and provides
greater information from which the judiciary can make decisions about a young person’s sentence. The *Scaled Approach* has been designed to support the new YRO sentencing structure as the menu of requirements will enable the Order to be better tailored to the individual.

The length of the YRO will depend upon what requirement/s is/are imposed but no YRO could be longer than three years, the current maximum length of a supervision order.

The YRO can include one of two high intensity requirements, Intensive Supervision and Surveillance requirement (ISS) and the fostering requirement (Intensive fostering or IF) which are only available as alternatives to custody (and if under 15 must also be a persistent offender). These requirements are based on the existing *Intensive Supervision and Surveillance Programme* and intensive fostering pilot used for the most serious young offenders which can be attached to a number of existing community sentences and provide robust community alternatives to custody.

If used effectively it is hoped that the YRO will help to reduce offending and the number of young offenders sent to custody. The list of flexible options will provide the opportunity for courts to make a repeat YRO using a different mix of requirements if an earlier YRO proved unsuccessful. It will allow the courts to work with YOTs and/or other interested agencies to work together to find ways to deal with serious and persistent offenders.

**Breach**

The 2008 Act makes provision for breach of a YRO. The action a responsible officer should take on breach of a community order for an under 18 has previously only been set out in National Standards for Youth Justice.

The breach procedure for an under 18 is significantly different to that applying to adults. The legislation provides that where there is a third unacceptable failure to comply with an order in a 12 month period, the responsible officer must lay an information before a justice of the peace, unless the YOT considers that exceptional circumstances allow for breach action not to be pursued. For adults, under Schedule 8 of the Criminal Justice Act 2003, a second breach in a 12 month period will require the responsible officer to lay an information.

The breach action also differs from the adult process in that there is no requirement for the punishment for a breach to be more onerous. The legislation allows the court to fine the young offender, amend the terms of the YRO or revoke the YRO and re-sentence for breach, but the court may also choose to just give a verbal warning and let the existing YRO continue. The decision on what action to take will be based on the nature of the breach but must also take account of the young offender’s compliance with the Order to date.

The breach procedure does give the courts greater powers than they would have for dealing with an offence at first instance. So, for instance, where the court is dealing with breach of YRO, which did not have a requirement for intensive supervision and surveillance (ISS), this requirement may be imposed for wilful and persistent breach of the original YRO, notwithstanding that the criteria which normally have to be met for a YRO with ISS, e.g. that the offence be imprisonable, were not met.

If the offender then goes on to wilfully and persistently breach the YRO with ISS imposed as a result of the original breaches, the legislation will allow the court to impose a Detention and Training Order for not longer than 4 months, notwithstanding that the original offence was non-imprisonable.

**Custody Threshold**

The 2008 Act amended the Criminal Justice Act 2003 to require courts, before passing a custodial sentence on an under 18 to consider as an alternative giving them a YRO with one of the two high intensity requirements. If the court still decides that custody is the only appropriate sentence then reasons for not making a YRO with ISS or IF must be given in open court. We believe this will place greater emphasis on the principle that custody should be considered the option of last resort for an under 18 by offering a viable and robust community alternative.

Of course, custodial sentences, i.e. the Detention and Training Order or section 90 or 91 custodial sentences will remain available for the most serious or persistent offenders where no alternative is appropriate.

**Referral Order changes**

The referral order is the primary court sentence available for under 18s and has been targeted at those appearing in court for the first time who plead guilty. The referral order is the most successful community sentence having a reconviction rate of 42% and is firmly based on restorative justice principles with the young offender being required to attend a youth offender panel made up of two volunteers from the community advised by a member from the YOT. The young offender must agree a contract of reparation/restoration to their victim or the wider community and a programme of activities and interventions designed to tackle their offending behaviour.
The changes in the 2008 Act are intended to build on this success by extending the use of the referral order and allow courts to make a referral order on second conviction where a referral order has not previously been made, and, in exceptional circumstances and on the recommendation of a YOT, to make a second referral order. In addition, flexibility has been added to allow the court to extend an order where the young offender has been unable to complete the contract in time, or to revoke it early where the young offender has made particularly good progress.

THE YOUTH CONDITIONAL CAUTION

The 2008 Act also provides for the new Youth Conditional Caution (“YCC”). This is very similar to the adult conditional caution provided for in the Criminal Justice Act 2003, with the decision on whether to issue a YCC rather than prosecute being made by a relevant prosecutor—usually the Crown Prosecution Service—and it being administered by the police or other authorised person. This will add a further out of court option for under 18s but provides for enforceable conditions, as failure to comply will result in referral back to the court.

In summary, the aim of the youth justice measures included in the 2008 Act is to add to the range of out of court disposals aimed at reducing the numbers of young people brought into the formal youth justice system where the offending is minor and to provide a more extensive and flexible sentencing framework if a young offender is brought before the courts. Community sentencing will be streamlined to provide a clearer and more adaptable framework, including robust alternatives to custody. A greater emphasis will be placed on the need to reserve custody for the most serious and persistent offenders from whom the public needs protection.

IMPLEMENTATION

The referral order changes were implemented on 27 April and the youth conditional caution is intended to be piloted for 16–17 year olds from August.

The YRO, purposes of sentencing and associated legislation is intended to be brought into effect from 30 November this year. In anticipation of this implementation the Sentencing Guidelines Council were asked to develop a sentencing guideline for young offenders. The Sentencing Advisory Panel issued a consultation paper on the principles that should guide courts when sentencing those under the age of 18 convicted of a criminal offence on Thursday 18 December. The panel has submitted its findings to the Council and we are currently awaiting a draft guideline from the Sentencing Guidelines Council.

April 2009

Memorandum submitted by Nacro

EXECUTIVE SUMMARY

This submission sets out the principles which should apply to the sentencing process. While recognising that legislative change may improve the current position the present use of custody is far too high. Clear guidance should be provided to ensure that there are not unintended consequences of the new provisions. The content of the YRO should be determined on the basis of the child’s needs and what would be likely to reduce offending. Neither welfare considerations nor the risk of offending should increase the level of punishment beyond that which is consistent with the seriousness of offending and this response expresses concerns about the use of the scaled approach in this regard.

A. Introduction and background

1. Nacro welcomes the opportunity to submit written evidence to the Committee on the principles that should inform sentencing of children and young people.

2. Nacro’s starting point is that the treatment of those processed by the youth justice system should be informed by a commitment to children’s rights and compliant with the United Nations Convention on the Rights of the Child (UNCRC) and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules).

3. The following principles should as a basic minimum apply to the sentencing process:
   — Decision-making should be free from discrimination;
   — The best interests of the child shall be a primary consideration;
   — Decision making should take into account the child’s age and the desirability of promoting the child’s reintegration into society;
   — Interventions should be proportionate to the child’s circumstances and his or her offending and appropriate to his or her wellbeing. Responses aiming to ensure the welfare of the child should not exceed what is proportionate;
   — Restrictions on personal liberty should be limited to the minimum necessary;
The use of custody should be a last resort and for the shortest appropriate period. Young people should not be deprived of their liberty unless they have committed a serious act of interpersonal violence, or have persistently committed other serious offences. In either case, custody should not be imposed unless there is no other appropriate response; and

Strictly punitive sentencing is not appropriate.

B. The use of custodial sentences for young people and the realisation of a custodial sentence as a last resort

4. Nacro believes that the present use of youth custody is far too high.

5. A custodial sentence is currently precluded unless the court considers that the offending is so serious that non-custodial penalties cannot be justified. The difficulty with such a threshold is that it is largely subjective: that what is regarded by one individual as “so serious” may not be so regarded by another. This has given rise to considerable geographical variation in the use of custody that cannot be wholly explained by the nature of the offending. In addition, the court is required to treat each previous conviction as an aggravating factor unless it is unreasonable so to do. As a consequence, a child who has a history of persistent offending might cross the custody threshold even where none of the individual offences are of themselves at the highest level of seriousness.

6. Legislative provisions, scheduled to be implemented later this year, represent an improvement on the current position in that they introduce intensive supervision and surveillance and fostering requirements that are statutory alternatives to custody. Courts, where they impose custody, will be required to give reasons for considering that neither of those alternatives can be justified. These measures will go some way towards ensuring that the use of custody is restricted.

7. However, previous convictions will continue to aggravate the seriousness of the current offence. Moreover, the introduction of the youth rehabilitation order (YRO) might lead to “uptariiffing”, with courts regarding the custody threshold as being satisfied at an earlier point where the young person has previously had the benefit of what will become the only community sentence.

8. Under these circumstances, Nacro considers that guidance issued to the courts should clarify that:

- The severity of offences likely to cross the custody threshold in the case of a young person below the age of 18 years are restricted to serious interpersonal violence and serious sexual offences. Other serious offences are likely to qualify only where there is demonstrated persistence. Minor offending even if persistent should not attract detention;
- The YRO, because of its flexibility, is able to accommodate a broad range of offences and offenders including cases where custody would previously have been appropriate; and
- The fact that a young person has reoffended following, or while subject to, a YRO is not a ground for imposing custody. The presumption against custody continues to apply in these circumstances, unless the court is satisfied that intensive supervision and surveillance or fostering cannot be justified.

9. Nacro is, in addition, concerned that despite a recent fall in the use of custodial sentences, the population of the secure estate for children and young people has not declined at the same rate. In large part, this is explicable in terms of an increase in the use of breach which during 2007/08 accounted for more custodial sentences than any other offence type.

Further comments in relation to the appropriate approach to breach are made in section D below.

C. The balance between different aims of sentencing for young people

10. The sentencing framework is based on the seriousness of the offence so that various dispositions only become available where particular thresholds are crossed. The court is also required to have regard for the welfare of the child and to the prevention of offending and reoffending. While it is true that addressing a young person’s welfare is likely to reduce offending, and conversely that avoiding a long term career of delinquency is in a young person’s best interest, these principles will nevertheless be in tension on occasion. The level of intervention required to reduce the risk of recidivism or to address welfare concerns might in addition be greater than that warranted by the gravity of the offence.

11. Nacro considers that the best way to reconcile these legislative tensions is to regard proportionality as setting an upper limit to the level of intervention. The content of the order should accordingly be determined on the basis of the child’s needs and what would be likely to reduce offending. Neither welfare considerations, nor the risk of offending, should increase the level of punishment beyond that which is consistent with the seriousness of the offending. Such an interpretation is consistent with domestic legislation which requires both that the “restrictions on liberty imposed by the order or orders must be such as in the opinion of the court are commensurate with the seriousness of the offence...” and that the order must be “the most suitable for the offender” (section 148 (3)(a) of CJA 03). It also complies with Rule 5 of the

Beijing Rules, which precludes welfare responses that are disproportional. Where additional welfare or rehabilitative interventions are required over and above that which is warranted by the offence seriousness, these should in Nacro’s view be offered on a voluntary basis.

12. Nacro also believes that courts should be encouraged to take a long term view of what constitutes prevention of offending. For instance, sentences which remove the young person from the community for a period, or require him or her to remain indoors for part of the day, may have a short term preventive effect, but will not do so in the longer term unless root causes are addressed. The community and young people themselves will derive greater benefit from an approach which looks to the longer term.

13. Such an approach is in tension with the Youth Justice Board’s (YJB) “scaled approach”. Further comments in this regard are offered in due course.

14. The Criminal Justice and Immigration Act 2008 will introduce other purposes of sentencing: punishment; reform and rehabilitation; public protection; and making of reparation to persons affected by offences committed by the defendant. In Nacro’s view each of these should contribute to an assessment of the nature of intervention that is suitable rather than add to the level of punishment. Moreover, different weightings should be attached to each.

---

15. Nacro has two primary concerns in relation to the introduction of the youth rehabilitation order (YRO).

16. First, unless the guidance issued to courts makes explicit that the order can be used to accommodate a broad range of offences and a wide spread of antecedent history, there is a risk that the order might tend to upturn young people (see paragraph 8 above). This is particularly important in relation to sentencing where there may be a tendency for courts to regard the failure to comply as being indicative of the only available community order having “not worked”. Guidance to pre-sentence report (PSR) authors should also emphasise the importance of making proposals that involve tailoring the YRO to the offending behaviour and the young person’s circumstances to maximise the potential for the order to be used to facilitate different interventions to suit different sentencing occasions.

17. Nacro’s second reservation concerns the proposal to link the introduction of the YRO to the scaled approach. In brief, Nacro considers that the model of risk led intervention involved is incompatible with the approach to integrating the various legislative principles outlined in paragraph 11 and is not compliant with the UK’s international obligations in respect of children’s rights (in particular Rule 5 of the Beijing Rules) since it links the level of intervention or punishment to an assessment of what the young person is likely to do rather than ensuring a restriction of liberty commensurate with the offending.

18. Such implications are particularly unfortunate since children who attract high ASSET scores will usually exhibit greater levels of welfare need. Young people suffering the most disadvantage, with the least parental support, who experience reduced educational and other opportunities, will be subject to more intrusive levels of criminal justice intervention. The approach risks discrimination against the most deprived

---

children. These shortcomings of using risk of reoffending to determine the extent of punishment are compounded by evidence that ASSET tends to overpredict risk for girls, leading to the possibility of discriminatory outcomes on the basis of gender.

19. ASSET is a useful indicator of whether or not a young person is likely to reoffend: in an evaluation conducted on behalf of the YJB, the tool was shown to have a predictive validity of over 79%. Nonetheless, in almost one in three cases (30.6%), the assessment failed to make the correct prediction over a two year follow up period. These false predictions were equally split between false negatives and false positives—so that nearly one in six young people who, on the basis of their ASSET score, would be predicted to reoffend did not do so. The scaled approach would require higher levels of intervention in such cases, which could not be justified on the basis of a need to prevent offending or as a proportionate response to their behaviour. Nacro considers that such an outcome would represent a significant violation of those young people’s rights.

20. Despite the YJB’s claims for the model, it is not clear that the scaled approach is consistent with evidence in relation to effective practice. There is a growing body of research that effective practice is contingent on the establishment of a positive relationship between supervisors and young people with whom they work. Relationship is a two way process, and the perceptions of young people of the treatment that they receive are accordingly crucial. Where higher levels of intervention are imposed, on the basis of the supervising officer’s assessment, than would be warranted by the seriousness of the young person’s offending behaviour, it is a reasonable expectation that he or she will feel unfairly treated. At best such a sentiment will tend to undermine the relationship that is a prerequisite of effective working.

21. Moreover, since the scaled approach entails that young people whose offending is at a low level but who generate relatively high ASSET scores, will be subject to more intrusive intervention on the basis that they represent a risk of reoffending, there is a real concern that the process of identifying risk—and reinforcing that identification through criminal justice intervention—might generate a “labelling effect”, undermining the potential of supervision to reduce offending. For those who do reoffend there will be a danger of uptariifying since, from the court’s perspective, such young people will already have had the benefit of a more intensive community-based programme than their peers with a similar offending profile. As the Government’s Children’s Plan acknowledges “the likelihood of reoffending increases the further a young person gets into the criminal justice system”.

22. One of the most disturbing aspects of the scaled approach is an inevitable rise in levels of non-compliance by young people subject to it. During 2007–08 breach of a statutory order accounted for 2,179 custodial disposals, almost one in four of the total custodial penalties. By substantially increasing what is expected in terms of attendance for a significant number of young people, the scaled approach will inevitably reinforce that trend. Young people assessed as representing a high risk of reoffending, will be subject to more intrusive intervention on the basis that they are at risk of reoffending. This is a real concern that the process of identifying risk—and reinforcing that identification through criminal justice intervention—might generate a “labelling effect”, undermining the potential of supervision to reduce offending. For those who do reoffend there will be a danger of uptariifying since, from the court’s perspective, such young people will already have had the benefit of a more intensive community-based programme than their peers with a similar offending profile. As the Government’s Children’s Plan acknowledges “the likelihood of reoffending increases the further a young person gets into the criminal justice system”.

23. Young people with the highest scores will inevitably be those whose social circumstances are such that they will find compliance more challenging. The model accordingly imposes markedly more onerous expectations on children least equipped to respond in a manner required by relatively inflexible breach requirements. Nacro would therefore contend that implicit in the scaled approach is a tendency to increase the risk of custody for those children who in greatest need.

E. The consequences of different sentences for different youths with regard to factors such as race, gender and mental health

Race and ethnicity

24. Nacro is deeply concerned at the over-representation of black and minority ethnic (BME) young people in youth justice system. It should be noted however that the pattern of representation is markedly different for different ethnic groups. Asian and Chinese/other young people are underrepresented within the youth justice system relative to the composition of the general 10–17 population. Conversely, black/black

British young people and those of mixed heritage show higher levels of overrepresentation than overall data.

49 Youth Justice Board (2009) Youth justice annual workload data 2006–09. YJB.
suggest. Moreover, the overrepresentation for these latter two groups becomes progressively more marked through the system. So, while black young people constitute just 7% of the court population, they account for almost one in four of those receiving sentences of long term detention.50

25. This pattern of disposals is explained in part by different patterns of detected offending which also tend to vary by ethnic group. However, research suggests that evidence of overrepresentation remains even where seriousness of the offending is taken into account.51 One particular finding of that study worth highlighting is that PSRs were more likely to propose custody and restrictive community penalties in cases involving BME young people. This is of particular concern given research within the youth justice context suggesting that the quality of pre-sentence reports is itself predictive of the local level of custody.52 Nacro considers that there is accordingly a demonstrable training need for youth justice practitioners in this regard.

26. Breach is a further concern. During 2006–07, breach of a statutory order accounted for a higher proportion of offences leading to disposal for children of mixed parentage than for any other group.53 Given that such young people are in any event more likely to receive higher tariff disposals, breach of an order is, on average, more likely to be associated with a custodial outcome.

27. Nacro considers that more detailed research is required into the particular needs of BME young people and the extent to which interventions delivered through the youth justice system meet those needs. Given the different patterns of representation, such research should distinguish between different populations rather than assuming an identity of need.

Gender

28. Despite a widespread assumption that girls’ criminality has increased in recent years, the figures for detected offending do not support such a trend until very recently. Between 1992 and 2002, the number of girls receiving a substantive disposal for an indictable offence fell by 31%.54 Over the same period, however, the number of girls convicted rose as a consequence of an increase in the proportion of females coming to police attention who were prosecuted (from 12% to 28%).55

29. There has been a marked rise in girls detected offending since 2003, but Nacro is persuaded that the trend from that year reflects changes in police practice in response to a target to increase the number of sanction detections.56 The target led to a considerable rise in the number of offences brought to justice, but rather than indicative of a high level of detection, this was:

“a function of sanction detections being imposed for behaviour that would previously not have attracted such an outcome”.57

The target was, in other words, met at the expense of those populations, primarily girls and younger children, who might otherwise have received an informal response for minor transgression against the law.58

30. One of the consequences of recent trends—both the rise in the rate of prosecution and the impact of sanction detections—has been a harsher response to girls than hitherto, including more than a fourfold rise in the use of custody for girls since 1992. In Nacro’s view, this expansion reflects a greater intolerance to girls within the youth justice system and a failure to develop gender specific and gender sensitive interventions that would support an equitable and effective sentencing framework.59

31. As noted above, Nacro is also concerned at the emerging evidence that YOT assessments of girls tend to inflate risk.60 Such evidence is indicative of the substantial problems involved in achieving a non-discriminatory implementation of the scaled approach.

Mental Health

32. The concerns already expressed about the scaled approach and the risk of breaches of orders are likely to have a disproportionate impact on young people with mental health issues. Diversion from courts and custody should be the primary priority for this group.

April 2009

50 Sentences of long term detention include orders made under: sections 90 and 91 of the Powers of Criminal Courts (Sentencing) Act 2000 and sections 226 and 228 of the Criminal Justice Act 2003.
55 Ibid.
57 Ibid.
EXECUTIVE SUMMARY

— Britain’s age of criminal responsibility, set at 10 years, is lower than most other European countries.
— Between 2,500–3,000 children are in custody in England and Wales during any one month.
— The vast majority of children in custody are there on remand or as part of a Detention and Training Order (DTO). The majority sentenced to DTOs are sentenced for non-violent offences.
— Child imprisonment has the worst record for recidivism of all criminal sentences:
  — 77% are reconvicted within a year.
— The UN Convention on the Rights of the Child mandates child imprisonment should be used as a measure of last resort.
— YJB statistics reveal huge differences in the proportion of children sentenced to custody across YOT areas and research has shown that the varying use of custody is related to differences in attitudes to its use.
— The Criminal Justice & Immigration Act 2008 made little change to the sentencing criteria for child custody.
— The Prison Reform Trust believes the present custody threshold acts as a barrier to reducing the numbers of children imprisoned in England and Wales. Children who commit non-violent offences or who have breached community orders should not receive custodial sentences.
— “Last Resort” as interpreted by sentencers in England and Wales results in thousands of children being imprisoned for relatively trivial crimes and is, we believe, incompatible with Britain’s membership of the UN Convention on the Rights of the Child.

THE CONTEXT

Britain has a very low age of criminal responsibility (10 years) compared to other European countries and all children 10 and above who commit crimes are dealt with in the criminal justice system. In contrast, Scotland (which has a lower age of responsibility) deals with the vast majority of under-16 year olds who commit crimes not as criminals but as children with welfare needs.

Children aged 10 and over can be, and are, sentenced to imprisonment in England and Wales. They are imprisoned in Secure Children’s Homes (SCHs), Secure Training Centres (STCs) and Young Offender Institutions (YOIs). In any one month, there are usually 2,500–3,000 children in custody in England and Wales.

A small minority of children in custody are convicted of violent and serious crimes and are sentenced under Section’s 90 or 91 of the Powers of Criminal Courts Act 2000, or 226 or 228 of the Criminal Justice Act 2003. However, the vast majority of all children in custody are there either on remand or because they have been sentenced to a detention and training order (DTO). This sentence has two parts—half the sentence period is spent detained in a secure institution, while the other half is spent under supervision in the community. The minimum DTO is four months, of which two are spent in custody, while the maximum is 24 months.

The majority of those sentenced to DTOs are sentenced for a non-violent offence. The most common offence attracting a DTO is breach of community order. Others include driving offences, drug offences and theft.61

Children aged 12–14 can only be sentenced to a DTO for a non-violent offence if they have been deemed to be a persistent offender. Children under 12 cannot be subject to a DTO.

Of all criminal sentences imposed on children, imprisonment has the worst record for recidivism. Of children who undergo a sentence of imprisonment, 77% are reconvicted within a year of release. Children who have undergone community sentences are less likely to be reconvicted—reconviction rates range from 42% for the referral order, to 74% for the supervision order.62

THE UN CONVENTION ON THE RIGHTS OF THE CHILD MANDATES THAT CHILDREN SHOULD ONLY BE IMPRISONED IN PARTICULAR CIRCUMSTANCES

“The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time”.

Since the convention came into force in 1990, the Committee has been very critical of the over-use of imprisonment for children in England and Wales. In their 2008 report they re-iterated that concern:

“The number of children deprived of liberty is high, which indicates that detention is not always applied as a measure of last resort”.63

61 YJB Workload data 2007–08 p 28 Sentence outcomes, all ethnicities.
63 Committee on the Rights of the Child. 3 October 2008.
It is clear from a number of information sources that the definition of last resort is quite flexible in England and Wales and differs in its interpretation from court to court and from judge to judge.

Overall “last resort” encompasses the imprisonment of children over 14 years old for non-violent and not very violent crimes, as the statistics for the index offences for imprisonment reveal. It also encompasses the imprisonment of children aged 12–14 who have committed non-violent crimes but are deemed by the court to be persistent offenders.

The flexibility of “last resort” is also revealed by analysis of differential custody rates across the country. Figures published by the YJB every year (most recent attached) reveal huge differences in the proportion of children sentenced to custody from Youth Offending Team (YOT) area to area. Some of these differences can be accounted for by differences in the rate of youth crime, but other differences can only be accounted for by differences in sentencing behaviour. Looking across a group of comparable cities at the proportion of children convicted in court and sentenced to custody, it is apparent that even in similar areas, the use of custody varies considerably.

<table>
<thead>
<tr>
<th>Location</th>
<th>Custodial dispositions</th>
<th>Total Court dispositions</th>
<th>Custodial dispositions as a % of total court disposals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Newcastle</td>
<td>32</td>
<td>1,494</td>
<td>2.1</td>
</tr>
<tr>
<td>Sunderland</td>
<td>45</td>
<td>1,259</td>
<td>3.6</td>
</tr>
<tr>
<td>Sheffield</td>
<td>76</td>
<td>1,152</td>
<td>6.6</td>
</tr>
<tr>
<td>Bristol</td>
<td>69</td>
<td>954</td>
<td>7.2</td>
</tr>
<tr>
<td>Cardiff</td>
<td>66</td>
<td>829</td>
<td>8.0</td>
</tr>
<tr>
<td>Birmingham</td>
<td>250</td>
<td>3,122</td>
<td>8.0</td>
</tr>
<tr>
<td>Manchester</td>
<td>223</td>
<td>2,304</td>
<td>9.7</td>
</tr>
<tr>
<td>Nottingham</td>
<td>121</td>
<td>1,252</td>
<td>9.7</td>
</tr>
<tr>
<td>Leeds</td>
<td>229</td>
<td>2,162</td>
<td>10.6</td>
</tr>
<tr>
<td>Liverpool</td>
<td>156</td>
<td>1,321</td>
<td>11.8</td>
</tr>
</tbody>
</table>

Source: YJB Workload data

Two research reports suggest that the varying use of custody is related to differences in attitudes to its use.

— YJB’s Patterns of Sentencing—Differential sentencing across England and Wales

This study examined the use of custodial and non-custodial sentences in high and low custody areas and found that “the average case gravity associated with community penalties is significantly higher in low custody areas. Moreover, in marginal cases, which might result in either a custodial or non-custodial outcome, a non-custodial disposal is more likely in low custody areas”.

— YJB’s Fine art or science? Sentencers deciding between community penalties and custody for young people

This was a qualitative research project probing sentencers’ attitudes to custody. Though the majority of sentencers interviewed were “generally sceptical about the effectiveness of custody as a means of preventing re-offending by juvenile offenders” some “argued that a short sharp shock in custody could usefully deter some susceptible young people”.

Data on differential sentencing and the research cited suggest that the definition of last resort differs according to area and sentencer. Given the implications for the future of the children concerned and the risk of their losing their liberty, this is an highly unsatisfactory situation.

THE CRIMINAL JUSTICE AND IMMIGRATION ACT 2008

The Criminal Justice and Immigration Act 2008 brought in a new community sentence for children—the Youth Rehabilitation Order—which replaces a number of community sentences previously used. The Youth Rehabilitation Order or YRO has a number of requirements which can be attached. The two most intensive are:

— YRO with intensive supervision and surveillance. This replaces the Intensive Supervision and Surveillance Order, and involves 25 hours of supervision.

— **YRO with intensive fostering.** This involves a child being taken into foster care, looked after by specially trained foster parents and undergoing a strictly monitored behavioural programme. Intensive fostering is only available in the few areas in England in which the programme has been piloted. There are no current plans to make it available nationally.

The Criminal Justice and Immigration Act makes little change to the criteria for sentencing to child custody. The only significant change made to legislation concerning custody is a measure compelling sentencers using a DTO to explain why they did not consider as suitable a YRO with intensive supervision and surveillance or with intensive fostering. Intensive fostering is not available in most areas, so in reality sentencers will merely have to articulate why a YRO with ISS was not considered appropriate.

Given that the Act makes no change to the criteria for custody, there was little scope for the Sentencing Guidelines Council to produce new guidance on the criteria for custody.

**HOW CUSTODY SHOULD BE USED**

The Prison Reform Trust has been campaigning for a reduction in the number of children imprisoned in England and Wales and we view the present custody threshold as a barrier to reducing those numbers. The current custody threshold allows sentencers to use custody for children who have committed non-violent crimes, including those who have not turned up for appointments with the YOT team and have thus breached their community orders. Children who have committed these crimes get the shortest DTOs—either four or six months. Research has shown that custody is not effective in reducing re-offending. Short sentences are seen by prison staff as particularly ineffective, given that few rehabilitative programmes work in this time-frame.

Many sentencers rarely use the opportunity afforded by current legislation to send children who have committed non-violent crimes to custody. If all sentencers used legislation as those in Newcastle and Sunderland do, the number of children in custody would be reduced by two-thirds. But there is nothing to prevent other areas, like Merthyr Tydfil and Manchester, taking a different and often more punitive approach.

During the passage of the Criminal Justice and Immigration Bill, the Standing Committee for Youth Justice (of which the Prison Reform Trust is a member) lobbied for a change in the custody threshold, to prevent so many non-violent young offenders being imprisoned. The SCYJ stated that children should only be sentenced to custody if:

- (1) The offence committed caused or could reasonably have been expected to cause physical or psychological harm to others and;
- (2) A custodial sentence is necessary to protect the public from a demonstrable and imminent risk of serious or psychological harm.

The amendment was defeated and the criteria for custody were left almost untouched. The Prison Reform Trust believes that raising the custody threshold is the most effective potential means of reducing the number of children imprisoned in England and Wales and would urge the Committee to look again at this issue.

*April 2009*

**APPENDIX A**

**STANDING COMMITTEE ON YOUTH JUSTICE’S (SCYJ) SUBMISSION TO THE SENTENCING ADVISORY PANEL’S PRINCIPLES OF SENTENCING YOUTHS CONSULTATION**

**RESPONSE TO SENTENCING ADVISORY PANEL CONSULTATION PAPER ON PRINCIPLES OF SENTENCING FOR YOUTHS**

*March 2009*

**QUESTION 1**

*Do you consider that the use of the terms best interests or well-being signifies any difference in meaning from the use of the term welfare?*

Paragraph 37 states that:

“The classic welfare in domestic law is in section 44 of the Children and Young Persons Act 1933; this states that ‘Every court in dealing with a child or young person who is brought before it, either as an offender or otherwise, shall have regard to the welfare of the child or young person, and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training’. It is probably that no significant differences arise in practice from the use of different terminology—best interests, well-being or welfare. Since ‘welfare’ is the term used in the legislation applicable to England and Wales, that is the term used in this consultation paper’.”
The UK’s domestic law in relation to the welfare of the child is set out in the Children Act 1989, which states that in all matters relating to the upbringing of a child the court must have the child’s welfare as its paramount consideration. The Children Act 1989 is generally regarded as setting the marker and standard for the treatment of children and young people in England and Wales today. However, the “welfare principle” contained in the Children Act 1989 does not clearly apply to proceedings other than family proceedings.

We would accept that the terms welfare and well-being are closely related. The latter has become more popular over recent years, yet its meaning in policy and practice terms is likely to be very similar, if not the same as, welfare. While the term welfare does predominate in legislation, the more recent Children Act 2004 refers to the well-being of children through its five outcomes framework. It is difficult to say to what extent an assessment of children’s welfare under the Children Act 1989 would result in a significantly different conclusion to that of a child’s well-being based on the five outcomes.

We believe that the term “best interests” does imply a different set of principles. The duty to ensure that in all actions undertaken by institutions including courts of law, the best interests of the child shall be a primary consideration is enshrined in Article 3 of the UNCRC. The Children Act 1989 also establishes that decisions taken by the court must be taken in the child’s best interests through the establishment of the welfare checklist and the need for the court to take matters into account.

“Best interests” implies a more subjective judgement, and introduces the idea that a child has interests and that some options will be serve a child better than others. The term explicitly indicates that there is a responsibility for the person making such judgements to choose the best option for a child. We would argue that the term presents a stronger vision for children and a need to always place children first. It is the language most associated with the children’s rights agenda and, as noted above, used by international human rights instruments including, amongst others, the United Nations Convention on the Rights of the Child.

QUESTION 2

In relation to balancing the purposes of sentencing, do you agree that the approach described in paragraphs 47-52 should be the general approach? If not why not?

SCYJ welcomes the Panel’s attempt to find a way to develop clear guidance for courts as to the purposes of sentencing young people. The statutory framework often pulls and pushes sentences in differing directions. Guidance from the Panel as to the way in which they should approach sentencing and a clear framework in which to operate will be of significant assistance to those who represent children and those who sentence them.

In particular SCYJ welcomes the Panel’s comments that the sentence must be proportionate to the seriousness of the offending behaviour, even where the risk of re-offending is high. Too many young people are treated as if they are on a conveyor belt of sentencing options, getting a more serious sentence for each offence, even where the offence with which the court is dealing is significantly less serious than others on their record. SCYJ would welcome strong guidance on this point and emphasis that the offence and the sentence should be proportionate. The phrase used in paragraph 52 is especially helpful, that the proper approach is for a, “sentence that is no more restrictive on liberty than is proportionate to the seriousness of the offence.”

The four objectives listed in paragraph 52 are a useful way to cut through the statutory framework. SCYJ particularly welcomes that the Panel have not included “punishment” as one of the 4 objectives that are relevant to sentencing. SCYJ considers that a punitive approach to children and young people who commit criminal offences and find themselves before the courts is unhelpful and ultimately fruitless. It is well known that custodial sentences are not a deterrent to offending behaviour and recidivism rates after a sentence of imprisonment are high. Therefore we particularly welcome the lack of an overtly punitive approach in the four objectives as recommended by the Panel.

QUESTION 3

Are you aware of any further information relevant to consideration of ethnicity and gender issues and sentencing patterns?

Race and ethnicity

SCYJ shares the Sentencing Advisory Panel’s concern at the over-representation of black and minority ethnic (BME) young people at every stage of the youth justice system. It should be noted however that the pattern of representation is markedly different for different ethnic groups, as shown in the following table.
Representative of BME Young People in the General Population and in the Youth Justice System 2006–07

<table>
<thead>
<tr>
<th>All BME groups</th>
<th>Asian/Asian British</th>
<th>Black/Black British</th>
<th>Chinese/Other ethnic group</th>
<th>Mixed heritage</th>
</tr>
</thead>
<tbody>
<tr>
<td>10—17 general population</td>
<td>15.6%</td>
<td>6.4%</td>
<td>3%</td>
<td>1%</td>
</tr>
<tr>
<td>Youth justice population</td>
<td>12.3%</td>
<td>3.1%</td>
<td>5.8%</td>
<td>0.4%</td>
</tr>
<tr>
<td>Court population</td>
<td>14.3%</td>
<td>3%</td>
<td>7%</td>
<td>0.4%</td>
</tr>
<tr>
<td>Community sentences</td>
<td>15.2%</td>
<td>2.6%</td>
<td>7.5%</td>
<td>0.3%</td>
</tr>
<tr>
<td>All custodial sentences</td>
<td>21.6%</td>
<td>3.7%</td>
<td>11.8%</td>
<td>0.5%</td>
</tr>
<tr>
<td>Long term custody</td>
<td>36.4%</td>
<td>4.5%</td>
<td>23.4%</td>
<td>0%</td>
</tr>
</tbody>
</table>

Figures for the overall over-representation of BME young people thus disguise significant variation between ethnic groups. Asian and Chinese/other young people are under-represented within the youth justice system relative to the composition of the general 10–17 population. Conversely, black/black British young people and those of mixed heritage show higher levels of over-representation than the overall data suggest. Moreover, the over-representation for these latter two groups becomes progressively more marked as interventions involve higher levels of punishment. So, for instance, while black young people constitute 7% of the court population, they account for almost one in four of those receiving sentences of long term detention.67

The Panel rightly notes that this pattern of disposals is explained in part by different patterns of detected offending which also tends to vary by ethnic group. However, the research conducted by Feilzer and Hood, cited in the consultation document, suggests that evidence of over-representation remains, even where seriousness of the offending is taken into account.68

In the current context, one particular aspect of that report is worth highlighting: the authors note that pre-sentence reports prepared by YOT staff were more likely to propose custody and more restrictive community penalties in cases involving BME young people. These differences were not statistically significant for black/black British males, but were so for males of mixed heritage. Such findings mirror those of a previous review conducted by Her Majesty’s Inspectorate of Probation.69 That earlier study found that reports written on black adults were more likely to propose custody, were frequently of a lower quality than those prepared on white defendants, and were, on occasion, expressed in a manner that tended to reinforce racial stereotyping. This is of particular concern given research within the youth justice context suggesting that the quality of pre-sentence reports is itself predictive of the local level of custody.70

It is clear too that, even where there are no discernible differences in the quality of reports on BME and white young people, there is nonetheless a potential for indirect discrimination. Research conducted in one youth offending team area, for instance, found that it was common practice for PSR authors to argue that continued denial of an offence is indicative of a lack of remorse.71 Such practice is problematic since a young person cannot consistently deny involvement in a particular episode and simultaneously appear penitent. At the same time, there is evidence that the issue of remorse carries significant weight with sentencers, and can impact on ultimate disposal, particularly in borderline cases where custody is a consideration.72 The potential for indirect discrimination arises because BME young people are more likely to deny the offence; in such circumstances, equivalent treatment of all young people can generate differential outcomes.

A further contribution to differential outcomes for young people from ethnic minority groups is made through the breach process. During 2006–07, breach of a statutory order accounted for a higher proportion of offences leading to disposal for children of mixed parentage than for any other group.73 Given that such young people are in any event more likely to receive higher tariff disposals, breach of an order is, on average, more likely to be associated with a custodial outcome.

SCYJ is aware that since April 2005 youth offending teams have had a target to ensure that any difference between the ethnic composition of offenders in all pre-court and post-court disposals and the ethnic composition of the local population is reduced year on year. To date that performance indicator appears to have had a limited impact on BME over-representation. SCYJ considers that a continued focus on ending which also tends to vary by ethnic group. However, the research conducted by Feilzer and Hood, cited in the consultation document, suggests that evidence of over-representation remains, even where seriousness of the offending is taken into account.68
To that end, SCYJ believes that more detailed research is required into the particular needs of BME young people and the extent to which interventions delivered through the youth justice system are adequate to meet those needs. Given the different patterns of representation, it may be important that such research distinguishes between different populations rather than assuming an identity of need. SCYJ is aware that the Youth Justice Board has commissioned research on this issue, but the results have, at the time of writing, yet to be published.

Gender

The Sentencing Advisory Panel notes that “whilst more young offenders are male, there has been a trend of increasing criminality among females” (paragraph 71). SCYJ would make two points in this regard. First, the figures for detected offending do not support such a trend until very recently: for instance, the number of girls receiving a substantive disposal for an indictable offence fell from 33,700 in 1992 to 23,300 in 2002, a decline of almost 31%. Over the same period, the proportion of the youth offending population that was female remained stable relative to boys.74 It is however true that over the same period, the number of girls convicted rose (despite the decline in detected offending) as a consequence of an increase in the proportion of females coming to police attention who were prosecuted (from 12% to 28%) as opposed to given some form of pre-court disposal.75

Second, while there has been a marked rise in girls’ detected offending since 2003, it is not at all clear that this is a consequence of changing levels of female criminality rather than reflecting a changing response by the youth justice system to girls’ behaviour.76 In fact, it has been convincingly argued that the trend since 2003 reflects changes in police practice in response to government performance indicators.77 In 2002, the government established a target to narrow the “justice gap” between offences recorded and those “brought to justice” by increasing the number that resulted in a “sanction detection”. The target required a growth in annual sanction detections from 1.025 million offences in the year ending March 2002 to 1.25 million by 2007–08.78 The target was met early: in the year ending March 2007, 1.434 million offences were disposed of by way of sanction detection.79 However, the rise in sanction detections was not accompanied by any increase in the proportion of crime reported to the police that was cleared up. Rather, the expansion in offences brought to justice, was: a function of sanction detections being imposed for behaviour that would previously not have attracted such an outcome”.80

The target was, in other words, met at the expense of those populations of offenders who might otherwise have received an informal response for minor transgression against the law, in particular girls and children below 15 years of age. Significantly both of those groups have shown substantial rises in the figures for detected crime since the sanction detection indicator was established. These rises are significantly more pronounced than equivalent rises for boys and young people aged 15–17 years.81

Recent trends, in other words suggest a shift in the treatment of girls who break the law from being perceived as “at risk” to a “straightforward criminalisation”.82 One consequence of that shift has been a dramatic rise in the use of custody for girls from 100 in 1992 to 469 in 2007. In the view of SCYJ, such a rapid expansion cannot be explained in changes to the volume or nature of girls’ offending over that period. Rather it reflects a less tolerant approach by criminal justice agencies to problematic female behaviour and a failure to develop gender specific and gender sensitive interventions that would support an equitable and effective sentencing framework.83

SCYJ is also concerned at the emerging evidence that assessments of girls in trouble tend to inflate risk.84 That tendency already has the potential to lead to court report proposals for higher levels of intervention than would be anticipated where the same offending behaviour was exhibited by boys. In the view of SCYJ, it poses substantial problems for a non-discriminatory implementation of the Youth Justice Board’s scaled approach, an issue considered further in SCYJ’s response to consultation questions 6 and 8, below.

SCYJ concurs with the Panel that the sentencing of young people should be “individualistic” by comparison with the arrangements for adults (paragraph 99). It also commends an approach that recognises difference in relation to maturity and physical age (paragraph 100). However, SCYJ takes the view that an appropriately individualised response ought in addition to be sensitive to the particular circumstances and needs of girls and young people from a minority ethnic background.

75 Ibid.
76 See for instance, Bateman, T (2008) Review of provision for girls in custody to reduce offending. Reading: CBOT.
QUESTION 4

The panel would welcome your views on whether guidance would be helpful in relation to referral orders. If so, do you agree with the approach set out in paragraph 116?

SCYJ believes that guidance would be helpful in relation to referral orders. While we fully support enabling a 12 month order to be used for a young person who is close to the imposition of custody, and for purposes of extending the order where a further offence is committed, we do not agree with the approach set out in paragraph 116.

Our concerns about the approach set out in paragraph 116 mirror our concerns about the “scaled approach” which, as noted in para. 16, is based on low, medium and high ratings derived from the assessment of the risk of reoffending and harm. SCYJ has a number of serious reservations about the implications of the scaled approach for youth justice practice, which are detailed below.

Our first set of concerns relate to children’s rights. Currently the statutory framework is based on the principle of proportionality: the intensity and duration of any court ordered intervention is accordingly constrained by the seriousness of the offending. By contrast the scaled approach proposes that the level of compulsory intervention should be determined by the risk of what the young person might do in future.

The scaled approach—to the extent that it might allow more intensive responses than would otherwise be warranted by the seriousness of the offending—appears to be in tension with international obligations. The United Nations Convention on the Rights of the Child requires that responses to offending behaviour should be proportionate to young people’s circumstances and to their offending.85 As the Beijing Rules make clear, interventions aimed at safeguarding the welfare of the child should not infringe upon the fundamental right of the young person to receive a proportionate response.86

The scaled approach presents potential for inequitable outcomes with significant disparity in disposal for the same offence. A young person with a high ASSET score would be required to attend significantly more frequently than a lower risk co-accused.

Such implications are unfortunate since, for the most part, children attracting a high ASSET score will be those exhibiting greater levels of welfare need. This would mean that young people from the most disadvantaged circumstances, with the least adult support, who experience reduced educational and other opportunities, will, as a result of the scaled approach, be subject to higher and more intrusive levels of criminal justice intervention. Thus there is a risk of discriminating against the most deprived children.

More generally, SCYJ considers that the limitations of any process of risk prediction are likely to be irreconcilable with a children’s rights agenda. ASSET is a useful indicator of whether or not a young person is likely to reoffend, but it should also be noted that in almost one in three cases (30.6%), the assessment failed to make the correct prediction over a two year follow up period.87 These false predictions, equally split between false negatives and positives, mean that nearly one in six young people, who would be predicted to reoffend did not do so. The scaled approach would require higher levels of intervention in such cases, which could not be justified on the basis of a need to prevent offending or as a proportionate response to their behaviour.

SCYJ is extremely concerned about the consequences of the scaled approach for the treatment of children who offend in terms of proportionality, fairness, social justice and children’s rights. We therefore do not support the approach set out in para 116.

There are also widespread concerns about the impact on effective practice. Firstly, there are concerns among YOIs about the potential of such an approach to result in increased workloads. A significant number of young people will generate a score that places them in the high risk bracket. Secondy, there is a growing body of evidence that effective practice is contingent on the establishment of a positive relationship between youth justice staff and the young people with whom they work. The perceptions of young people of the treatment that they receive are crucial. Where higher levels of intervention are imposed, on the basis of the supervising officer’s assessment, it would not be unreasonable to expect that he or she will feel unfairly treated.

We are further concerned about the inflationary impact on the use of custody as a consequence of an inevitable rise in levels of non-compliance by young people subject to a risk led model. Re-sentencing following breach already makes a substantial and increasing contribution to custody. By substantially increasing what is expected in terms of length of order, the scaled approach will inevitably reinforce that trend.

Young people assessed as representing a high risk of reoffending will be subject to the referral order for longer than their low risk peers, even if their offending behaviour is similar. We presume however that breach arrangements will be uniform, in which case there will be greater opportunity to breach. Additionally, young people who score highest on an ASSET assessment will be those whose social circumstances are such that they will find compliance more challenging than those assessed as representing a lower risk. The model

85 Article 40 (4) UNCRC.
accordingly imposes markedly more onerous expectations on children least equipped to respond. Given the potential for a considerable proportion of young people for whom intervention at the highest level would be prescribed, to regard their punishment as unfair, motivation to comply will almost certainly be reduced among this group.

In light of these reservations SCYJ takes the view that the SAP should not promote the approach to referral orders that is set out in para. 116.

QUESTION 6
What criteria should be used when setting the overall length of a youth rehabilitation order?

SCYJ considers that the Panel’s summary of the appropriate balance to be achieved when determining the overall length of a youth rehabilitation order (YRO) sets out the relevant issues in a concise and sensible manner (paragraph 140). However, for reasons explored below, SCYJ has serious reservations about the Youth Justice Board’s “scaled approach” and we do not consider that it is appropriate for ASSET score to be a significant factor in determining either levels of contact or the length of the order.

As a consequence, SCYJ is disappointed that paragraph 150 of the consultation paper, which outlines the Panel’s preferred decision-making process in relation to the imposition of a YRO, suggests that such decision-making should start from a consideration of the nature of intervention indicated by the scaled approach. It is not furthermore obvious that such a starting point is consistent with the earlier account in paragraphs 47–52 of the consultation paper that outlines an approach to achieving an appropriate balance in regard to the various purposes of sentencing. In particular, SCYJ notes a tension between paragraph 51 of the paper—which cautions that cases involving relatively less serious offending but an assessed high risk of reoffending should not lead to the imposition of greater restrictions on liberty than warranted by the gravity of the offence—and the endorsement of the scaled approach in paragraph 150.

The “scaled approach” and principles of sentencing

The consultation paper suggests that the scaled approach aims to ensure that:

- the response to an offence is based on an appropriate balance between the seriousness of that offence, the risk of harm in the future from any further offences the young person might commit and the needs of the young person (paragraph 130).

SCYJ does not accept that this is an accurate characterisation of the risk led model. The latest version of the scaled approach, released after the consultation paper was published, does acknowledge in the introduction that, in addition to risk of reoffending, the youth offending team should also “take as its starting point, the court’s view as to the seriousness of the offence, as well as the purposes of sentencing” (p3). Later (at page 10), the document indicates further that the “seriousness of the offence is and will remain a critical principle governing the court’s sentencing decision”. To this end, pre-sentence report authors are enjoined to consider offence seriousness (p11). The problem is that, despite these concessions, at no point does the document indicate how youth offending team staff are to take into account the principle of proportionality, since the level of contact, and thereby the restriction of liberty within any given time period, is given directly by the ASSET score. That equation, it is proposed, will be written into national standards.

Indeed, in writing the court report, the author will be required to indicate to the court that the level of supervision:

- will be in accordance of their assessment of the appropriate level of intervention. They should make it clear that the frequency of supervision will be delivered in accordance with the minimum [national] standards (p13).

The accompanying table relates levels of intervention directly to ASSET score, with no reference either to proportionality, the child’s welfare, or to the other purposes of sentencing.

It is true that the later versions of the scaled approach (unlike the original model published in November 2007) do allow the court to make some adjustment to the length of the order on the basis of proportionality. Specifically, it is proposed that if the ASSET score would dictate higher levels of contact than would be commensurate with seriousness of the offence, the court might wish to consider imposing a shorter order. Conversely, where the offence is serious but the ASSET score low, the latter will again take priority in terms of determining levels of contact, but the court may wish to reintroduce the notion of proportionality by imposing a longer order than it would otherwise have done.

SCYJ would make two points in relation to this proposed mechanism. First, contrary to what the consultation paper suggests, it gives a clear priority to the risk of reoffending over proportionality, not to mention considerations of welfare. Second, this rather artificial device for allowing the seriousness of the offence to influence the length of disposal inevitably undermines two of the potential rationales for the scaled approach. If for instance, it is suggested that the scaled approach results in an evidence based approach that directly links the amount of intervention that a young person receives to their assessed risk of reoffending, it would inevitably be counterproductive to then suggest to the court that it manipulates the length of the order to achieve higher or lower levels of overall intervention. Furthermore, if it is argued that the scaled

approach represents a rational use of resource allocation by ensuring increased levels of supervision to higher risk cases and vice versa, this supposed advantage is again countermanded by an approach that invites the court to increase or reduce sentence length where level of intervention directed by the ASSET score departs from a proportionate response.

More recent versions of the model do incorporate elements relating to the young person’s offending into the scoring system. In the view of SCYJ, however, this change does not address the failure of the approach to deal with the issue of proportionality. The scoring system for the current offence for instance provides for an addition of a score of 4 for motoring matters and of 3 for domestic and non-domestic burglary. All other offence types, however serious, attract a score of zero. The rationale for the scoring mechanism is an actuarial one since statistical analysis suggests that reoffending is higher following a motoring offence than for any other type of criminality. But an approach that allocates a higher score to such offences than it does to robbery, violent or sexual assaults, can hardly be considered one that attempts to balance risk of reoffending with proportionality.

Similar objections can be levelled at the proposed scoring mechanism for antecedent history. Where a young person receives a first reprimand at age 10–12, he or she will receive an additional “risk score” of 4, irrespective of current age or pattern of offending in the intervening period. The rationale is again actuarial, based on statistical patterns of reoffending, rather than an acknowledgement of the obligations of the court to consider previous offending history. For instance, a child who received a reprimand for a very minor matter at age 10 would attract an additional score of four if he or she reoffended for the first time at age 17, irrespective of the fact that he or she had stayed out of trouble for seven years. It is not obvious that a previous history of that sort would be relevant to the court’s consideration of the seriousness of the current offence. Nor, arguably, could it influence sentencing in any other legitimate manner.

The “scaled approach” and children’s human rights

SCYJ welcomes the fact that the consultation paper devotes considerable space to international obligations in relation to children’s human rights. The paper also properly acknowledges the depth of concern expressed by the United Nations Committee on the Rights of the Child that current arrangements for youth justice in England and Wales are not compliant with those obligations in a number of respects. SCYJ considers that the scaled approach is not obviously consistent with the United Nations Convention on the Rights of the Child (UNCRC), associated guidance and regulations. As a consequence, implementation of the approach may exacerbate existing concerns rather than alleviating them.

The scaled approach proposes that the level of compulsory intervention should be determined by the risk of what the young person might do in future. The UNCRC requires that responses to offending behaviour should be proportionate to young people’s circumstances and to their offending. Moreover, as the Beijing Rules make clear, interventions aimed at safeguarding the welfare of the child should not infringe upon the fundamental right of the young individual to receive a proportionate response. The scaled approach—to the extent that it might allow more intensive responses than would otherwise be warranted by the seriousness of the offending—appears to be in tension with such principles.

The potential for inequitable outcomes is most obvious in relation to co-defendants: for two young people with identical previous convictions, the scaled approach might involve significant disparity in disposal for the same offence. On the basis of the Board’s current proposals, a young person with a high ASSET score would be required to attend six times as frequently as a lower risk co-accused who was subject to “standard” intervention for the first three months of the order.

Such implications are particularly unfortunate since, for the most part, children who attract a high ASSET score will be those exhibiting greater levels of welfare need. In other words, young people suffering the most disadvantage, with the least parental or adult support, who experience reduced educational and other opportunities, will—as a direct consequence of the scaled approach—be subject to higher, and more intrusive, levels of criminal justice intervention. There is, implicit in the approach, a risk of discrimination against the most deprived children. These shortcomings of using risk of reoffending to determine the extent of punishment are compounded by evidence, referred to earlier in this response, that ASSET tends to over-predict risk for girls, leading to the possibility of discriminatory outcomes on the basis of gender.

More generally, SCYJ considers that the limitations of any process of risk prediction are likely to imply irreconcilable tensions with a children’s rights agenda. As previously mentioned in para 4, ASSET is a useful tool in assessing the risk posed by children but is by no means reliable. Thus, in SCYJ’s view, ASSET scores should not be used to dictate levels of intervention and use of them for this purpose would be a violation of children’s rights.

It might be noted in this regard that there is no research base of which the SCYJ is aware that informs the risk bandings proposed by the YJB or supports the proposed levels of intervention. Indeed, the relatively arbitrary nature of the scoring system is demonstrated in the substantial change to the bandings between

---

the first and second post consultation versions of the model. The primary effect of the amendment is to contract the low risk band and to expand the highest risk band, as indicated in the table below. The likely consequence will be to increase further the numbers of young people subject to higher levels of intervention, exacerbating concerns in relation to operational implications. The Board has not published any explanation of the revisions or given any rationale for an expansion of the highest risk category.

**CHANGES IN RISK BANDING BETWEEN FIRST AND SECOND POST CONSULTATION VERSIONS OF THE SCALED APPROACH**

<table>
<thead>
<tr>
<th>Intervention level</th>
<th>Low/Standard</th>
<th>Medium/Enhanced</th>
<th>High/Intensive</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criteria—post consultation version 1</td>
<td>Asset score 0–24 and no/low risk of serious harm</td>
<td>Asset score 25–41 or medium risk of serious harm</td>
<td>Asset score 42–64 or high/very risk of serious harm</td>
</tr>
<tr>
<td>Criteria—post consultation version 2</td>
<td>Asset score 0–14 and no/low risk of serious harm</td>
<td>Asset score 15–32 or medium risk of serious harm</td>
<td>Asset score 33–64 or high/very risk of serious harm</td>
</tr>
<tr>
<td>Minimum contacts per month for first 3 months</td>
<td>2</td>
<td>4</td>
<td>12</td>
</tr>
</tbody>
</table>

The scaled approach and effective practice

SCYJ considers that there are at least three tensions between the YJB’s risk led model and evidence based practice.

First, there is a growing body of research that effective practice is contingent on the establishment of a positive relationship between youth justice staff and the young people with whom they work.92 Relationship is itself a two way process, and the perceptions of young people of the treatment that they receive are accordingly crucial: how a young person experiences the intervention is critical to whether it will have a positive impact on his or her future behaviour. Where higher levels of intervention are imposed, on the basis of the supervising officer’s assessment, than would be warranted by the seriousness of the young person’s offending behaviour, it is a reasonable expectation that he or she will feel unfairly treated. At best such a sentiment will tend to undermine the relationship that is a necessary element of effective working.

Second, since the scaled approach entails that young people whose offending is at a low level but who generate relatively high ASSET scores, will be subject to more intrusive intervention on the basis that they represent a risk of reoffending, there is a real concern that the process of identifying risk—and reinforcing that identification through criminal justice intervention—might generate a “labelling effect”, undermining the potential of the supervision process to reduce offending.93 For those who do reoffend there will be a danger of upstaging since, from the court’s perspective, such young people will already have had the benefit of a more intensive community-based programme than their peers with a similar offending profile. As the Government’s Children’s Plan acknowledges, “the likelihood of reoffending increases the further a young person gets into the criminal justice system”.94

The impact of the scaled approach on non-compliance, and the use of custody

SCYJ has consistently argued that the numbers of children incarcerated in England and Wales is too high.95 One of the most disturbing aspects of the scaled approach is its potential to have a further inflationary impact on the use of custody, increasing pressure on the secure estate for children and young people, as a consequence of an inevitable rise in levels of non-compliance by young people subject to a risk led model.

Resentencing following breach action already makes a substantial contribution to custody. Between 2000 and 2004, the proportion of supervision orders that were returned to court for non-compliance rose threefold, from 7% to 21%. At the same time, the percentage of breaches that resulted in a custodial sentence also increased, from 18% to 25%.96 During 2007–08 breach of a statutory order accounted for 2,179 custodial disposals, considerably more than any other single offence type and almost one in four of all custodial penalties.97 By substantially increasing what is expected in terms of attendance for a significant number of young people, the scaled approach will inevitably reinforce that trend.

Young people assessed as representing a high risk of offending will—on the YJB’s current proposals—be obliged to attend the YOT six times as frequently as their low risk peers, even if their offending behaviour is similar. Breach arrangements prescribed in the Criminal Justice and Immigration Act 2008 are, however, uniform, irrespective of the assessed level of risk and the required level of intervention. As a consequence,
a young person subject to standard intervention might, over a three month period, miss one third of his or her appointments without qualifying for breach action. By contrast, a young person whose ASSET score determines that he or she should be subject to intensive contact might attend more than 90% of his or her appointments over the same period, but the legislative provisions would still require that he or she be returned to court for failure to comply.

At the same time, young people who score highest in an ASSET assessment will be those whose social circumstances are such that they will find compliance more challenging than those assessed as representing a lower risk. The model accordingly imposes markedly more onerous expectations on children least equipped to respond in a manner required by relatively inflexible breach requirements.

These tendencies will be exacerbated by the potential, described in an earlier section of this response, for a considerable proportion of young people for whom intensive supervision at the highest level would be prescribed to regard their punishment as unfair. Motivation to comply will almost certainly be reduced among the group at greatest risk of breach action. The anticipated increase in non-compliance, and the associated risk of higher levels of custody as a consequence, will in the view of SCYJ strengthen the case for arguing that youth justice policy and practice are not consistent with international obligations.

Determining the overall length of a youth rehabilitation order

Given the above reservations in relation to the scaled approach, SCYJ does not consider that the assessed risk of reoffending should determine the length of a YRO in any direct fashion.

SCYJ would propose that the starting point for the court is to ensure that the restriction of liberty involved in the order in its entirety is no greater than that warranted by the seriousness of the offending, taking into account the nature of the requirements to be imposed, the individual circumstances of the young person and giving due regard to considerations of welfare. The principle of proportionality should in other words set an upper limit to the level of intervention, part of which is given by the length of the order.

It is acknowledged that the characteristics of some young people are such that relatively short, or lower level, intervention, may make more severe demands upon them than upon their peers who have a more settled lifestyle or a greater capacity in certain respects. By the same token, some requirements, where there is an expectation that the young person will make considerable life changes, for instance in desisting from serious substance misuse, will be experienced as more demanding than would otherwise be the case. SCYJ believes that such individual differences should influence the decision of the court as to the nature of sentence that is commensurate with the offending in any particular case.

SCYJ agrees with the Panel’s proposal that the length of the order should be influenced by the period necessary to satisfactorily complete the requirements of the order. Where the intensity of those requirements is not determined by a risk score, such an approach is compatible with a proportionate and individualised approach to sentencing. SCYJ also endorses the Panel’s suggestion that an important consideration in determining the duration of the disposal is the extent to which the young person is put at unnecessary risk of further sanction as a consequence of breach or reoffending.

SCYJ is of the view that current sentencing of young people frequently leads to the imposition of unnecessarily long periods of supervision that substantially increase the risk of breach, even where the young person is intent on complying. Research suggests the most effective interventions are those which are regarded by the subject of the orders as being achievable. Young people inevitably have a different perspective in relation to passage of time by comparison with their adult counterparts, and interventions of a similar duration will accordingly be experienced as more burdensome by the former group. SCYJ considers that the implementation of the YRO provides a welcome opportunity to develop a sentencing practice that prioritises shorter, more focused, programmes of intervention than hitherto.

**Question 5**

*Is there scope for increasing the use of financial penalties? If so, what wider circumstances might merit such a sentence? Should the Education Maintenance Allowance be taken into account?*

SCYJ is keen that courts should use first tier penalties for appropriate low level offences and is concerned by the relatively low use of first tier penalties in some courts. Fines play an essential role in the menu of first tier penalties available to courts. SCYJ does not support the use of the YRO in cases where a fine would have been imposed on an adult as this would discriminate against the child and push them up the sentencing tariff. However, SCYJ has a number of concerns about the increased use of financial penalties for young people, and considers that any financial penalty should be limited to rehabilitative or reparative ends, not punishment. Our position includes the current system of court imposed financial penalties as well as the expansion of these to include the greater pre-court use of fines as part of a conditional caution.

---

An aim of the courts in imposing fines must be generally to achieve a reduction in re-offending; however, it is the belief of SCYJ, supported by research, that their use in the context of punishment would be counter-productive to these ends. Research suggests that punishment generally is ineffective as a mechanism for reducing re-offending in general, and for preventing youth crime in particular. The imposition of financial penalties as a punishment is considered inappropriate for a number of legal and practical reasons:

— Article 40 of the United Nations Convention on the Rights of the Child (UNCRC) requires that the system for dealing with offending by children should be distinct from that for adults, with the presumption that youth justice interventions need not mirror provisions for adults.

— Financial penalties as a common punitive sanction across all areas of the criminal justice system are not consistent with the UK government’s position outlined in the 2007 report to the UN Committee on the Rights of the Child that youth justice “interventions are intended to be rehabilitative rather than punitive.”

Increasing the scope of financial penalties to include the EMA and other allowances

The Educational Maintenance Allowance (EMA) is designed to support young people from low income households into further education as part of the government’s overall policy to increase the numbers of young people remaining in some form of employment, education, or training. The EMA is offered on a means tested basis and ranges from £30 per week for young people living in households with an annual income of below £20,817, to £10 per week for those with an annual income of £25,522–£30,810.

There is a strong case for not allowing the financial support offered to young people from low income households to be taken into account when calculating financial penalties as a means of punishment. Given the EMA and related programmes such as cash incentives to enter into Activity Agreements (offered through Connexions as a way of incentivising young people in the NEET category to actively look for work or training) are designed partially with the reduction of youth crime in mind, taking these payments into account in setting the level of fines would place many young people at a greater risk of offending in the future.

That educational attainment is a key indicator of the risk of offending is supported by research carried out by HM Inspector of Prisons who found that of 171 young people [should this be offenders/young people in custody?] 84% had been excluded from school, 52% had left school at 14 and 73% described their educational achievement as nil. The role of the financial support to marginalised households is therefore a crucial element of support in diverting young people into positive activities. This is further demonstrated by the findings of the Institute for Fiscal Studies and Loughborough University in 2004 who found staying-on rates improved by 6% among those who were eligible for the EMA, and that Activity Agreements are a vital tool for re-engaging the long-term NEET population. In the latter case the weekly cash payment to young people who were NEET for 20 weeks and subsequently engaged in education or training was eleven % higher than it would have been had no agreement been in place.

Financial penalties may hit the most at-risk young people the hardest

It is the view of SCYJ that increasing the scope of financial penalties for young people will have a disproportionately negative affect on the poorest households who already find it difficult to manage on a limited budget. Many households in receipt of the EMA, for instance, continue to struggle to support young people in education and further eroding their ability to do so will place young people at a greater risk of negative outcomes associated with offending.

Given that the average fine imposed on persons for all offences by magistrates’ courts increased by five % to £150 between 2005 and 2006 SCYJ feels that any additional increase in the level of the fine, or of the additional payments that can be considered in setting the level of any penalty would make it more likely that young people will be unable to remain in full-time education. This is supported by a 2006 BBC report which suggested that even with the EMA, parents earning less than £30,000 a year still struggle to support teenagers enough to enable them to stay in education past 16.

Fines for under 16 year olds are imposed on parents, while the court has discretion to impose fines on either the parent or child in the case of 16 and 17 year olds. While many families will be able to bear the cost, it is those from lower income households who will be forced to make difficult choices about the priorities

102 http://news.bbc.co.uk/1/hi/education/3638739.stm
105 http://news.bbc.co.uk/1/hi/education/4756088.stm
for limited funds. The concern that SCYJ has, is that it is precisely these families who need the most support in order to provide stability in education for young people who are statistically most at risk of offending if they are not in full-time education—borne out by the findings from the HMIP report included above.

In conclusion SCYJ supports the use of fines in particular circumstances: where appropriate as a form of reparation and where the family/child clearly has an ability to pay and an understanding of the implications of non-payment. SCYJ does not support the use of fines in the case of families on very low incomes. EMA should not be taken into account in assessing the appropriate level of a fine.

**QUESTION 7**

*In addition to the statutory criteria, in what circumstances is it likely to be appropriate to include a fostering requirement in a youth rehabilitation order?*

Recent figures from the Youth Justice Board show that the juvenile prison population increased by 10% in the last year. Given the continued increase in custody rate SCYJ would urge magistrates to actively consider the use of the YRO with intensive fostering as a real alternative to custody. However, the YRO with intensive fostering should only be imposed with the consent of the child, and if the child has been assessed by the approved local provider as suitable for the programme. It is an intensive option and as such, should be used only where the child concerned would otherwise be facing a custodial sentence.

One of the members of SCYJ, Action for Children, has been involved in the ongoing piloting of Intensive Fostering through a partnership with the Youth Justice Board. This work, through the Wessex Community Projects, currently helps four young people though the fostering programme whilst continuing to support three others who have returned home to live with their families.

Intensive fostering works with young people aged 10 to 17 whose home circumstances may have contributed significantly to their offending behaviour. The programme places troubled young people in a structured programme in the home of a foster carer where they are given intensive supervision and support for up to 12 months.

A common characteristic of many young people entering custody is a lack of stability in their lives—caused through emotional disorder, family breakdown, and school exclusion—and periods in custody, especially short spells, are rarely in their, or their communities’, long-term interests. As intensive fostering is developed precisely to work with this group in order to provide stability to begin the process of rehabilitation, it is a suitable intervention for many young people who are emotionally unable to respond to a period in custody, or vulnerable simply because of their age. For example, of the 6,944 young people sentenced to a period in custody between 2003 and 2004 12% were 14 years old or under. It is further recognised by the Youth Justice Board that in many cases the youth justice system fails to recognise many young offenders as vulnerable—and Youth Justice Board figures show that 3,337 children and young people who were assessed as being at risk from suicide, self-harm or victimisation were placed into custody in the last year. Given the continued increase in custody rate SCYJ would urge magistrates to actively consider the use of the YRO with intensive fostering as a real alternative to custody. However, the YRO with intensive fostering should only be imposed with the consent of the child, and if the child has been assessed by the approved local provider as suitable for the programme. It is an intensive option and as such, should be used only where the child concerned would otherwise be facing a custodial sentence.

One of the members of SCYJ, Action for Children, has been involved in the ongoing piloting of Intensive Fostering through a partnership with the Youth Justice Board. This work, through the Wessex Community Projects, currently helps four young people though the fostering programme whilst continuing to support three others who have returned home to live with their families.

Intensive fostering works with young people aged 10 to 17 whose home circumstances may have contributed significantly to their offending behaviour. The programme places troubled young people in a structured programme in the home of a foster carer where they are given intensive supervision and support for up to 12 months.

A common characteristic of many young people entering custody is a lack of stability in their lives—caused through emotional disorder, family breakdown, and school exclusion—and periods in custody, especially short spells, are rarely in their, or their communities’, long-term interests. As intensive fostering is developed precisely to work with this group in order to provide stability to begin the process of rehabilitation, it is a suitable intervention for many young people who are emotionally unable to respond to a period in custody, or vulnerable simply because of their age. For example, of the 6,944 young people sentenced to a period in custody between 2003 and 2004 12% were 14 years old or under. It is further recognised by the Youth Justice Board that in many cases the youth justice system fails to recognise many young offenders as vulnerable—and Youth Justice Board figures show that 3,337 children and young people who were assessed as being at risk from suicide, self-harm or victimisation were placed into custody in 2004. Since emotional and domestic instability is a feature in lives of many young people sent to custod[y, SCYJ would also point to the benefits of intensive fostering in helping to maintain constructive contact with families whilst the sentence is carried out. Often the long distances between home and the YOI, or secure training centre, can exacerbate problems by making it difficult for a young person to be supported by their family. This is a significant problem for many young people in the secure estate, and between 2000 and 2005 8,080 young people including 4,378 children under 16 were placed over 50 miles away from home where it is difficult for their parents to visit.

Initial findings from Intensive Fostering pilots show that the service can work in favour of the most vulnerable young offenders by changing their environment, giving them clear and consistent boundaries for behaviour and praising them when they get it right.

Fostering, in comparison with YOIs and STCs, is also a far more cost effective means of achieving a net reduction in rates of re-offending, and forthcoming evaluation from the Youth Justice Board will help to show how this model contributes to the reduction of offending rates.

SCYJ would therefore encourage the courts to consider Intensive Fostering as an alternative to a custodial sentence, with this option available across the country and the resources available to facilitate the practice.

The general concerns we have raised in response to this question are echoed by the Magistrates’ Association as their briefing on the Criminal Justice and Immigration Bill shows—and not only have they welcomed the option of an intensive fostering requirement, (with appropriate safeguards), but stated that resources must be made available for more robust community sentences as they offer real alternatives to custody.

---

QUESTION 8

In relation to the imposition of a youth rehabilitation order, do you agree with the approach summarised in paragraphs 149 and 150? If not, why not?

The consultation paper maintains in paragraph 149 that:

"the [emphasis added] differences from the approach in relation to the adult offender derive from the principal aim of the youth justice system "to prevent offending by children and young people".

While it is clearly true that the statutory aim is a significant difference between the adult sentencing framework and that for young people, it is not the only one. The duty on sentencers to have regard to the prevention of offending aim is subject to the other purposes of sentencing, in particular the welfare of the child. Given the helpful treatment of the latter principle earlier in the consultation paper (paragraphs 36—41), SCYJ is disappointed that there is no specific reference to the child's welfare in relation to the determining of the length and content of a YRO. Specifically, SCYJ does not accept that considerations of welfare are necessarily satisfied by interventions tailored to meet "criminogenic" need as determined by ASSET (as the consultation document appears to imply in paragraph 52).

To take just one example, where an assessment of vulnerability is triggered by an ASSET assessment, that does not contribute to the overall ASSET score. Moreover, as the Youth Justice Board’s scaled approach documentation makes clear, identified vulnerabilities would not affect the intervention level determined by a risk led approach. In such circumstances, SCYJ considers that the importance of the welfare to the sentencing process should be made explicit in relation to the framing of intervention under the YRO. Moreover, courts should be encouraged to consider the welfare of the child in coming to a decision as an element that is additional to proportionality and the risk of reoffending.109

For reasons adduced in our response to question 6, above, SCYJ has serious reservations about the proposal to link the implementation of the YRO to the scaled approach. Accordingly, SCYJ cannot agree with the approach summarised in paragraph 150 of the consultation paper.

The assessment by the youth offending team of the factors that increase, and protect against, risk can properly inform consideration of what forms of requirements are most suitable for the young person. At the current time, there is an expectation in the Youth Justice Board guidance that any domain in ASSET that generates a score of two or above should be reflected in the intervention plan.110 Such an approach is unproblematic provided that interventions are also informed by issues of welfare and proportionality.

However, SCYJ considers that the discussion in paragraphs 136 and 137 (and the table reproduced from the scaled approach documentation in Annex D) is overly mechanistic and deterministic. The specific requirements to be included in a YRO should reflect the particular elements of identified risk and need rather than an assumption that an overall risk of reoffending score will in some unspecified manner give an indication of nature of the intervention that is required. To suggest that the overall risk banding is likely to be associated with a particular form of intervention is to simplify unnecessarily both the assessment and sentencing process.

More worryingly, the reference to the scaled approach in paragraph 150 implies that the level of intervention, and consequently the restriction of liberty, should be determined by the assessed risk of reoffending. As previously argued, such an approach is unhelpful, and in tension with both earlier discussion in the consultation paper and an approach to youth sentencing that is consistent with a children’s rights agenda.

Accordingly, SCYJ would propose that decision-making in relation to the length and content of the YRO should conform to the following principles:

When a court is considering sentence on a young person who has committed an offence that crosses the community sentence threshold (or one that has crossed the custody threshold but for which a youth rehabilitation order is nonetheless considered to be appropriate), the court should consider:

— What restriction on liberty is commensurate with the seriousness of the offending, taking into account any mitigation arising from considerations of welfare?

— What requirements are most suitable for the young person given the assessment of risk and need, and taking into account the full range of circumstances, including age, maturity, gender, ethnicity and the child’s best interests?

— Given the nature of those requirements, what length of order, consistent with a proportionate restriction of liberty, would be required to allow satisfactory completion?

Finally, in this regard, SCYJ endorses the proposal in the consultation document (in the second half of paragraph 50) that previous offending should not necessarily lead to a young person progressing from one range of intervention to another. Rather each sentencing exercise should be determined on its own merits on the principles outlined above.

109 This is not of course to deny any overlap between the principles: considerations of welfare might for instance serve to mitigate seriousness and addressing welfare concerns might reduce the risk of reoffending.

QUESTION 9

Are you aware of any reliable data on the extent to which orders are breached?

There are two good sources of data on the extent to which community orders for juveniles are breached—YJB workload data, and MoJ offender management caseload statistics, which apply only to 15–17 year olds. In the latter it states that in 8.8% of prison receptions, the primary offence is breach of a statutory order. The latest YJB workload data (for 2007–08) reveals that between 2000 and 2004, the proportion of supervision orders that were returned to court for non-compliance rose threefold, from 7% to 21%. At the same time, the percentage of breaches that resulted in a custodial sentence also increased, from 18% to 25%. During 2007–08 breach of a statutory order accounted for 2,179 custodial disposals, considerably more than any other single offence type and almost one in four of all custodial penalties.

QUESTION 10

Do you agree with the approach to dealing with a breach of a youth rehabilitation order described in paragraph 158? If not, why not?

The Panel proposes that the primary objective to be adopted when dealing with a breach of a YRO is to ensure that the young person completes the requirements imposed by the court. The Panel also proposes that where the failure arises from non-compliance with reporting or another similar obligation that there should be an increase in the punitive element of the order e.g. curfew, prohibited activity requirement.

SCYJ has concerns that the approach that the Panel is advocating is excessively prescriptive. When young people appear before a court for breach of a YRO, the court should have regard to the original principles under which the young person was made subject to such an order. Those young people who are involved in the criminal justice system are often those who have the most chaotic lives and for a wide variety of reasons have difficulty with keeping appointments and often with forming relationships with older people. They may well have been excluded from school and find dealing with people in authority, such as those who work for YOT, very difficult. It may be that the young person has made significant improvements in their life and stopped offending behaviour, but is still struggling to comply. The court should have regard to a key purpose of the youth justice system—to prevent re-offending.

In circumstances of breach, the court should look to:

(a) Reasons for non-compliance, particularly the young person’s home life, and mental health problems and/or learning difficulties.

(b) Whether the spirit of the YRO is being complied with, i.e. is the young person broadly engaging?

(c) Whether or not the young person has committed any further offences?

Non-compliance with court orders can arise for a variety of reasons. It has to be remembered that by and large the youth justice system is dealing with the country’s most vulnerable children. Many will have been excluded from school, have mental health problems or learning difficulties, engaged in substance misuse and have chaotic home lives. It is therefore vital that when dealing with these young people for breach of YRO, the court is able to see that young person in the round, rather than focusing on non-compliance with particular requirements. SCYJ therefore does not support the principle objective as set out by the Panel, and advocates an approach whereby the original purpose of sentence and the reasons for breach are properly analysed.

QUESTION 11

What is the most appropriate approach to determining whether a young person is a persistent young offender?

The definition of a persistent young offender is important, yet not defined in statute. SCYJ notes that it is almost universal practice to define a young person as a “persistent offender” if they have been convicted for three or more offences, no matter what those offences are.

Defining a young person as a “PYO” effectively allows a court to give a young person under the age of 15 a detention and training order. As such, the decision to find that a young person is a persistent offender is an exceptionally important one. SCYJ recognises that the Panel can only work within the law as set out in JD (2001) 165 J.P 1 that the character of previous convictions should be considered before the court makes a finding of persistence. For example, it would not be appropriate to find a 14 year old to be a persistent young offender if he was before the court for a robbery offence and his previous convictions were for possession of cannabis and criminal damage. Furthermore, SCYJ does not believe that reprimands and final warnings should be used in this exercise. The system of reprimands and final warnings was put in place to divert young people away from the criminal justice system, rather than be used for them to be sent to prison. Furthermore, the fact that an allegation resulted in a reprimand or a final warning demonstrates the level of seriousness that the police attached to it. They are not required to use such a disposal, and the fact that they did demonstrates that the offence was not such as to require court attendance.

QUESTION 12

Do you agree:

(a) that trial should generally take place in a youth court, and

(b) that the decision whether a young person should be sentenced in the Crown Court on the basis of the dangerous offender provisions only is best made after conviction?

QUESTION 13

In relation to the determination of whether a young person should be sentenced in the Crown Court, do you agree with the approach summarised in paragraphs 187–189?

It is SCYJ’s view that it is always preferable for young people to be dealt with in the youth court which is far more appropriate to their needs. The Panel has rightly outlined the case law in relation to the determination of where a young person should be tried. It would certainly be useful if the principles outlined in the case of Southampton could be enunciated clearly within the text of the sentencing guidelines. There is still a sense that if an offence is seen as serious, or if the young person is a persistent offender then it should not be dealt with in the youth court. This is clearly not as statute intended and clear guidance from the Panel would be welcomed in this area.

It should perhaps also be noted that with the advent of “Simple, Speedy, Summary Justice” operating in many magistrates’ and youth courts, there is considerable pressure on the court and therefore advocates for both the Crown and defence to make progress at the first hearing. Courts should be able to give advocates time to properly prepare for “mode of trial” arguments, especially in circumstances where the young person appears before the court in custody. Proper preparation for such hearings is vital to ensure that the court has all appropriate case law before deciding if the young person is likely to get two or more years’ detention.

Though SCYJ agrees that, as a matter of principle, trials should generally take place in the youth court, this is subject to our general concerns that measures should be put in place to ensure that children are afforded specialist and good quality legal representation in the youth court and that ongoing specialist training of youth court magistrates in conducting cases concerning child defendants is recognised as an essential priority by the Judicial Studies Board and other relevant bodies. Although outside the scope of the consultation, the fact that children do not have a right to elect trial by jury on the basis of informed advice is a matter of concern.

There is no question that as a matter of law children prosecuted for certain offences that attract mandatory sentences must be tried and sentenced in the Crown Court. We agree that the restrictive interpretation of “homicide” is compliant with the principle that custody should be a measure of last resort.

However, in all other cases, case law suggests that there is always at least some element of discretion. We agree that very young children charged with offences other than homicide offences should only ever be committed to the Crown Court for sentence in exceptional circumstances, whether or not they are “grave crimes” or specified offences.

Even where children are sentenced in the Crown Court, sentencers should be reminded that in most cases, and especially now that the sentences for public protection are no longer mandatory, the option of lesser sentences, including Detention and Training Orders and community sentences, remains available and should be carefully considered, on the basis of full reports which explore these options.

We therefore agree that the venue for sentence for those convicted of offences that may give rise to sentences of public protection should be considered after conviction in the youth court and following the completion of relevant reports that allow for detailed consideration as to whether the dangerousness criteria are met.

Any true analysis of whether the provisions under s229 of the Criminal Justice Act 2003 are met will need to consider the personal and social background of the young person, drawing on the professional expertise of the Youth Offending Team, and relevant social care experts and psychologists and psychiatrists. An analysis of dangerousness will need to be made in light of the principles of Lang,113 namely that a child may change and develop in a shorter time than adults. If the child is considered to be dangerous due to circumstances beyond his or her control such as her living conditions or lack of suitable support, serious consideration needs to be made to seeking advice from relevant agencies as to what steps can be put in place to mitigate those concerns before the assessment of dangerousness is finalised. Only once considered reports have been finalised should a decision be made as to whether the young person is likely to meet the dangerousness criteria and therefore require sentencing in the Crown Court.

113 Lang and others [2006] 2 All ER 410.
QUESTION 14

*In relation to the determination of the length of a custodial sentence, do you consider that an approach such as that described in paragraphs 195–197 would be helpful?*

*What elements do you consider should be included within it? Are there any dangers that would flow from such an approach?*

We appreciate the desire of the Panel to provide guidance to assist the court in identifying appropriate sentence length for juveniles. We agree that age and maturity should be taken into account when the length of a sentence is decided. However we are concerned that the approach suggested in paragraph 197 may be too formulaic. The UN Convention on the Rights of the Child states that all those under the age of 18 should be considered children, and should be treated as children. Given this, we feel that the difference in treatment outlined in point 197 between 10 year olds and 17 year olds is too great and too simplistic. There are 11 year olds who are relatively mature and 16 year olds who have the maturity of an average 11 year old. Given the need to vary sentence length according to the maturity of the child, we feel sentencers need to make a judgement in the case of each individual child guided by YOT workers and specialist advice. Judgement of appropriate sentence length should be guided by that assessment of maturity, which may or may not be aligned with age.

QUESTION 15

*Where an offender crosses a significant age threshold between committing an offence and being sentenced for it, do you agree with the approach in paragraph 213?*

SCYJ fully supports the approach set out in paragraph 213.

QUESTION 16

*Do you have any views on the issues in relation to equality and human rights raised in paragraphs 214—218?*

SCYJ welcomes the Panel’s careful consideration of whether any proposals may impact unfairly on any groups of offender and supports the issues it has raised in relation to equality and human rights.

SCYJ would like to take this opportunity to remind the Panel of the report “Past Abuse suffered by Children in Custody: A way forward” (Nov 2006) which was commissioned by the Youth Justice Board but has never been published by them. The report is however now in the public domain. SCYJ is concerned that insufficient account is being taken of this report and its recommendations. We ask the SAP and SGC in particular to implement its recommendations in so far as their role allows, in particular recommendations 6, 7, 9, 15 and 16 of the report (pages 28–29).

In reference to the consultation, SCYJ supports the Panel’s recommendation, in paragraph 216, that careful consideration to the strength of familial relationships should be given when imposing a parenting order or a youth rehabilitation order. SCYJ welcomes the acknowledgement of risk of abuse or rejection on the grounds of sexual orientation and that care that must be taken not to disclose this information without a young person’s informed consent.

In paragraph 217 consideration also needs to be given to the fact that many young perpetrators of sexual and violent crimes have also been victims of crime (see response to question 17, below). Sexually harmful behaviour is sexual behaviour which is perpetrated against the other person’s will in an aggressive, manipulative, exploitative or threatening way. Children and young people who display sexually harmful behaviour pose a risk to other children but are also children themselves. We are also aware that there is a growing body of research evidence that work with children who are sexually harming is effective in reducing sexual risk to others, and there is some evidence that anti-social and offending behaviours can also be reduced.114,115,116,117

Given the generally successful treatment outcomes with this group, and the proven effectiveness of intervening early, we consider that a far greater focus is needed on treatment and rehabilitation than the current sentencing framework allows. It is wrong that many children are routinely sent down a criminal justice route for sex offending with little attention to their wider safeguarding needs (given that they have often been abused themselves) or those of other children, and their families. The sentencing guidelines should reflect the complexities involved and direct for a more flexible and responsive approach to the needs of this group.

With reference to para 18 SCYJ attaches to this submission an additional section on capacity, which covers mental health issues and learning difficulties/disabilities.

QUESTION 17

Do you agree that the proposals in this paper adopt the right approach to issues of gender, age, disability, race or ethnic group or would further guidance be helpful?

SCYJ has covered issues of gender and race or ethnicity in our response to consultation question 3, above. The additional section on capacity covers mental disability. Our comments on age are contained in responses to consultation questions 6 and 14, above.

SCYJ considers that there needs to be greater recognition and understanding of the impact of abuse on children and young people. Research has found that being abused as a child increases the risk of later criminality, though it by no means makes it certain. Young et al suggest that young people who perpetrate violence will often have been the victims of abuse or neglect.118 (Young et al, 2007). Also, young people who regularly witness violence in the home or wider community as they grow up may be more likely to perpetrate violent crimes.119 Sentencing guidelines should explicitly state that any issues of past maltreatment of young people are considered and specify that therapeutic interventions are provided to address the maltreatment of young people in custodial settings.

Sentencing guidelines need to acknowledge that there are many forms of criminal activity in which children should also be considered victims, for instance involvement in drug use, dealing and couriers, and children involved in commercial sexual exploitation and the publication of child abuse images. Sentencing guidelines need to reflect this and to state that these children will need ongoing support and a pathway out of these behaviours that mirrors their lengthy pathways into it.

SCYJ considers that it is inappropriate and counter-productive for children and young people who are sexually exploited to be dealt with by the criminal justice system. We must realise that these children and young people are victims and not offenders. In order to seek help children and young people need reassurance not punishment. The criminal status of victims of child sexual exploitation also forces them to move around more frequently, increasing their isolation and vulnerability, as well as exposing them to unfamiliar and possibly unsafe circumstances. A criminalising approach also helps to drive young people into sectors of the sex industry that take place away from the public gaze, for example, in child pornography pee\n
SCYJ is concerned about the situation facing children who are held in the secure estate for immigration offences. SCYJ does not consider that children should be prosecuted for offences under section 2 of the Asylum and Immigration Act 2004. Unaccompanied Asylum Seeking Children and children who have been trafficked are particularly vulnerable and detaining them for immigration offences is not an acceptable response. Sentencing guidelines should state that where children have been convicted of immigration offences there needs to be better co-ordination between the criminal justice system and agencies with specialist experience of supporting separated and trafficked children.

Specific guidance should also be given on sentencing trafficked children who are convicted of offences. SCYJ is concerned about the numbers of young people detained for offences when they have potentially been trafficked and forced to undertake activities against their will. Examples of this include young people who have been trafficked and forced to work in cannabis cultivation.

ADDITIONAL POINTS OF PARTICULAR IMPORTANCE TO SCYJ MEMBERS

Custody as a last resort

SCYJ has long been concerned at the overuse of custody for children in England and Wales. We note custody is not being used as a last resort and that the large variations in custody rates across the country suggest differing attitudes to the use of youth custody. Overall two thirds of custodial sentences imposed on children are for non-violent. We feel that if custody is truly to be a last resort, it should be reserved for children who have committed serious violent offences and who pose a real danger to the public. Recent figures show that in 2007 34 children were imprisoned for possession of drugs, 52 for handling stolen goods, 70 for criminal damage and 105 for threat/disorderly behaviour.120 Even if these offences were committed by “persistent” offenders, we do not feel imprisonment to be an effective or just response. The Criminal Justice and Immigration Act 2008 states that custody should be a last resort and that all sentencers must give reasons why they have not used the YRO with ISSP or the YRO with intensive fostering, when they sentence to custody. We welcome this change in the law, but are still concerned that the criteria for using custody are insufficiently clear. We would like the criteria for using/not using custody to be clarified and sentencers guided in what might be relevant reasons to give to a court for not using YRO with ISSP or intensive fostering.

SCYJ recommends that in case of a child or young person under 18, an offence should only be regarded as “so serious” that only custody is appropriate when:

— the offence committed caused or could reasonably be expected to cause serious physical or psychological harm; and

119 Day, C, Hibbert, P and Cadman, S (Unpublished) A literature review into children abused and/or neglected prior to entering custody Commissioned by the Youth Justice Board
120 MoJ Offender Management Caseload Statistics (15-17 year olds) table 16.
— a custodial sentence is necessary to protect the public from a demonstrable and imminent risk of serious physical or psychological harm.

**Capacity**

The consultation document identifies a need to treat young people differently in the youth justice system because of legislative differences and because of young people’s relative immaturity (age and emotional). The document rightly identifies immaturity as inhibiting assessment of culpability and capacity in some cases. There is, however, no real explanation of what is meant by emotional maturity. While isolated mention is made of mental health difficulties and learning disabilities, these issues are not given sufficient prominence as a thread throughout the document and are considerably underplayed in terms of their impact on capacity to understand the consequences of offending and the justice process itself.

High levels of speech and communication difficulties,\(^{122}\) higher than average levels of ADHD and conduct disorder, low IQ levels of less than 70, and emerging personality disorder make the chances of poor consequential thinking and impulsivity amongst young people in the criminal justice system much higher. For example, the National Autistic Society point out in advice to police officers that people with autistic difficulties have problems imagining the consequences of their actions and tend to overreact to perceived infringements of the rules that they see governing their life. All of these impairments could be said to affect assessments of culpability.

Guidance in this document fails to ensure that capacity issues are properly assessed at the sentencing stage. Existing screening procedures are inadequate for identifying even the *probability* that a young person may have mental health difficulties, learning disabilities, learning difficulties, autism or communication difficulties. Research shows that, in the absence of awareness training and support, many YOT workers are ill-equipped to identify such young people and underestimate prevalence. In consequence, accurate information is unlikely to reach the court. While *Asset* has the potential to identify problems with literacy, it remains too “blunt” a tool to provide insight into the underlying causes and consequently what disposal options, including interventions and treatment, would be most appropriate. An individual’s capacity and maturity are fundamental to ensuring youth justice and as such should be integral to every stage of the youth justice pathway. However they appear only to be considered as an issue as part of the *sentencing* process itself, not as part of the *whole pathway*. Although this document focuses purely on sentencing guidelines, sentencers should be aware that by the time a young person arrives in court, any lack of capacity or emotional immaturity are likely to have already affected decisions made at earlier points in the pathway. For example suspects with learning disabilities in particular are likely to struggle with police questioning and cautions,\(^{122,123}\) with the result that they may incriminate themselves even if they are innocent.\(^{124}\)

This raises issues of particular concern with regard to disability and human rights legislation (Question 16). If young people with disabilities are not being identified it follows that “reasonable adjustments” as required by the Disability Discrimination Act (2005) are not being put into place. Further, in the absence of “reasonable adjustments”, the concern is raised as to the individual’s ability to effectively participate in their own trial, for example due to communication difficulties or learning disabilities, which in turn raises serious concerns about a persons right to a fair hearing, Article 6 ECHR.

To ensure compliance with disability and human rights legislation the courts should have access to professional screening and assessment services for the range of impairments described above. This will help to ensure that the young person has the best chance of completing any disposal, so reducing the likelihood of re-offending. The need to secure professional screening and assessment to inform court decision-making and to ensure this happens at the earliest possible opportunity in the youth justice pathway, for example at the initial point of arrest, should be made explicit in this document. Information should then be made available, as appropriate, whenever the young person comes into contact with the youth justice/criminal justice system.

**APPENDIX B**

The Prison Reform Trust’s *Criminal Damage* programme has produced a briefing paper and 12 point action plan on reducing levels of child and youth custody in England and Wales without jeopardising public safety. A copy of the paper is enclosed [not printed] and is also available to download from the Prison Reform Trust website [http://www.prisonreformtrust.org.uk/temp/CriminalspDamage.pdf](http://www.prisonreformtrust.org.uk/temp/CriminalspDamage.pdf)

---

121 Communication disorder is the most common disability seen in childhood and will affect many children with learning disabilities or difficulties (Bryan and MacKenzie, 2008); an estimated 60% of the 7,000 children and young people aged under 18 who pass through young offender institutions have difficulties with speech, language and communication (RCSLT response to the Bercow review, July 2008).


## APPENDIX C

### YOUTH JUSTICE BOARD WORKLOAD DATA 2007–08

<table>
<thead>
<tr>
<th>Authority</th>
<th>First Tier Community Disposals</th>
<th>Custodial Disposals</th>
<th>Total Court Disposals</th>
<th>Custodial Disposals as a % of all Court Disposals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Barking and Dagenham</td>
<td>486</td>
<td>55</td>
<td>541</td>
<td>10.2%</td>
</tr>
<tr>
<td>Barnet</td>
<td>381</td>
<td>34</td>
<td>415</td>
<td>8.2%</td>
</tr>
<tr>
<td>Barnsley</td>
<td>489</td>
<td>38</td>
<td>527</td>
<td>7.2%</td>
</tr>
<tr>
<td>Bath and North East Somerset</td>
<td>310</td>
<td>19</td>
<td>329</td>
<td>5.8%</td>
</tr>
<tr>
<td>Bedfordshire</td>
<td>525</td>
<td>29</td>
<td>554</td>
<td>5.2%</td>
</tr>
<tr>
<td>Bexley</td>
<td>399</td>
<td>17</td>
<td>416</td>
<td>4.1%</td>
</tr>
<tr>
<td>Birmingham</td>
<td>2,872</td>
<td>250</td>
<td>3,122</td>
<td>8.0%</td>
</tr>
<tr>
<td>Blackburn with Darwen</td>
<td>464</td>
<td>21</td>
<td>485</td>
<td>4.3%</td>
</tr>
<tr>
<td>Blackpool</td>
<td>629</td>
<td>31</td>
<td>660</td>
<td>4.7%</td>
</tr>
<tr>
<td>Blaenau, Gwent and Caerphilly</td>
<td>609</td>
<td>32</td>
<td>641</td>
<td>5.0%</td>
</tr>
<tr>
<td>Bolton</td>
<td>1,020</td>
<td>71</td>
<td>1,091</td>
<td>6.5%</td>
</tr>
<tr>
<td>Bournemouth and Poole</td>
<td>614</td>
<td>16</td>
<td>630</td>
<td>2.5%</td>
</tr>
<tr>
<td>Bracknell Forest</td>
<td>110</td>
<td>12</td>
<td>122</td>
<td>9.8%</td>
</tr>
<tr>
<td>Bradford</td>
<td>1,345</td>
<td>80</td>
<td>1,425</td>
<td>5.6%</td>
</tr>
<tr>
<td>Brent</td>
<td>587</td>
<td>61</td>
<td>648</td>
<td>9.4%</td>
</tr>
<tr>
<td>Bridgend</td>
<td>179</td>
<td>20</td>
<td>199</td>
<td>10.1%</td>
</tr>
<tr>
<td>Brighton and Hove</td>
<td>583</td>
<td>30</td>
<td>613</td>
<td>4.9%</td>
</tr>
<tr>
<td>Bristol</td>
<td>885</td>
<td>69</td>
<td>954</td>
<td>7.3%</td>
</tr>
<tr>
<td>Bromley</td>
<td>495</td>
<td>19</td>
<td>514</td>
<td>3.7%</td>
</tr>
<tr>
<td>Buckinghamshire</td>
<td>460</td>
<td>9</td>
<td>469</td>
<td>1.9%</td>
</tr>
<tr>
<td>Bury</td>
<td>443</td>
<td>29</td>
<td>472</td>
<td>6.1%</td>
</tr>
<tr>
<td>Calderdale</td>
<td>465</td>
<td>32</td>
<td>497</td>
<td>6.4%</td>
</tr>
<tr>
<td>Cambridgeshire</td>
<td>880</td>
<td>35</td>
<td>915</td>
<td>3.8%</td>
</tr>
<tr>
<td>Camden</td>
<td>285</td>
<td>23</td>
<td>308</td>
<td>7.5%</td>
</tr>
<tr>
<td>Cardiff</td>
<td>763</td>
<td>66</td>
<td>829</td>
<td>8.0%</td>
</tr>
<tr>
<td>Carmarthenshire</td>
<td>323</td>
<td>21</td>
<td>344</td>
<td>6.1%</td>
</tr>
<tr>
<td>Ceredigion</td>
<td>110</td>
<td>3</td>
<td>113</td>
<td>2.7%</td>
</tr>
<tr>
<td>Cheshire</td>
<td>1,367</td>
<td>74</td>
<td>1,441</td>
<td>5.1%</td>
</tr>
<tr>
<td>Conwy and Denbighshire</td>
<td>474</td>
<td>24</td>
<td>498</td>
<td>4.8%</td>
</tr>
<tr>
<td>Cornwall</td>
<td>700</td>
<td>29</td>
<td>729</td>
<td>4.0%</td>
</tr>
<tr>
<td>Coventry</td>
<td>922</td>
<td>48</td>
<td>970</td>
<td>4.9%</td>
</tr>
<tr>
<td>Croydon</td>
<td>642</td>
<td>61</td>
<td>703</td>
<td>8.7%</td>
</tr>
<tr>
<td>Cumbria</td>
<td>1,810</td>
<td>79</td>
<td>1,889</td>
<td>4.2%</td>
</tr>
<tr>
<td>Darlington</td>
<td>485</td>
<td>26</td>
<td>511</td>
<td>5.1%</td>
</tr>
<tr>
<td>Derby</td>
<td>549</td>
<td>45</td>
<td>594</td>
<td>7.6%</td>
</tr>
<tr>
<td>Derbyshire</td>
<td>1,659</td>
<td>89</td>
<td>1,748</td>
<td>5.1%</td>
</tr>
<tr>
<td>Devon</td>
<td>986</td>
<td>25</td>
<td>1,011</td>
<td>2.5%</td>
</tr>
<tr>
<td>Doncaster</td>
<td>709</td>
<td>35</td>
<td>744</td>
<td>4.7%</td>
</tr>
<tr>
<td>Dorset</td>
<td>530</td>
<td>10</td>
<td>540</td>
<td>1.9%</td>
</tr>
<tr>
<td>Dudley</td>
<td>423</td>
<td>38</td>
<td>461</td>
<td>8.2%</td>
</tr>
<tr>
<td>Durham</td>
<td>1,652</td>
<td>47</td>
<td>1,699</td>
<td>2.8%</td>
</tr>
<tr>
<td>Ealing</td>
<td>440</td>
<td>55</td>
<td>495</td>
<td>11.1%</td>
</tr>
<tr>
<td>East Riding of Yorkshire</td>
<td>496</td>
<td>20</td>
<td>516</td>
<td>3.9%</td>
</tr>
<tr>
<td>East Sussex</td>
<td>819</td>
<td>21</td>
<td>840</td>
<td>2.5%</td>
</tr>
<tr>
<td>Enfield</td>
<td>554</td>
<td>34</td>
<td>588</td>
<td>5.8%</td>
</tr>
<tr>
<td>Essex</td>
<td>1,918</td>
<td>123</td>
<td>2,041</td>
<td>6.0%</td>
</tr>
<tr>
<td>Flintshire</td>
<td>261</td>
<td>13</td>
<td>274</td>
<td>4.7%</td>
</tr>
<tr>
<td>Gateshead</td>
<td>639</td>
<td>24</td>
<td>663</td>
<td>3.6%</td>
</tr>
<tr>
<td>Gloucestershire</td>
<td>721</td>
<td>33</td>
<td>754</td>
<td>4.4%</td>
</tr>
<tr>
<td>Greenwich</td>
<td>524</td>
<td>34</td>
<td>558</td>
<td>6.1%</td>
</tr>
<tr>
<td>Gwynedd Mon</td>
<td>419</td>
<td>17</td>
<td>436</td>
<td>3.9%</td>
</tr>
<tr>
<td>Hackney</td>
<td>547</td>
<td>62</td>
<td>609</td>
<td>10.2%</td>
</tr>
<tr>
<td>Halton and Warrington</td>
<td>746</td>
<td>41</td>
<td>787</td>
<td>5.2%</td>
</tr>
<tr>
<td>Hammersmith and Fulham</td>
<td>292</td>
<td>34</td>
<td>326</td>
<td>10.4%</td>
</tr>
<tr>
<td>Haringey</td>
<td>668</td>
<td>56</td>
<td>724</td>
<td>7.7%</td>
</tr>
<tr>
<td>Harrow</td>
<td>229</td>
<td>9</td>
<td>238</td>
<td>3.8%</td>
</tr>
<tr>
<td>Hartlepool</td>
<td>285</td>
<td>15</td>
<td>300</td>
<td>5.0%</td>
</tr>
<tr>
<td>Havering</td>
<td>313</td>
<td>11</td>
<td>324</td>
<td>3.4%</td>
</tr>
<tr>
<td>Hertfordshire</td>
<td>1,560</td>
<td>50</td>
<td>1,610</td>
<td>3.1%</td>
</tr>
<tr>
<td>Hillingdon</td>
<td>583</td>
<td>34</td>
<td>617</td>
<td>5.5%</td>
</tr>
<tr>
<td>YOT</td>
<td>First Tier and Community Disposals</td>
<td>Custodial Disposals</td>
<td>Total Court Disposals</td>
<td>Custodial Disposals as a % of all Court Disposals</td>
</tr>
<tr>
<td>---------------------------</td>
<td>------------------------------------</td>
<td>---------------------</td>
<td>-----------------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>Hounslow</td>
<td>504</td>
<td>23</td>
<td>527</td>
<td>4.4%</td>
</tr>
<tr>
<td>Islington</td>
<td>397</td>
<td>41</td>
<td>438</td>
<td>9.4%</td>
</tr>
<tr>
<td>Kensington and Chelsea</td>
<td>283</td>
<td>16</td>
<td>299</td>
<td>5.4%</td>
</tr>
<tr>
<td>Kent</td>
<td>2,477</td>
<td>106</td>
<td>2,583</td>
<td>4.1%</td>
</tr>
<tr>
<td>Kingston-upon-Hull</td>
<td>727</td>
<td>76</td>
<td>803</td>
<td>9.5%</td>
</tr>
<tr>
<td>Kingston-upon-Thames</td>
<td>313</td>
<td>10</td>
<td>323</td>
<td>3.1%</td>
</tr>
<tr>
<td>Kirklees</td>
<td>1,126</td>
<td>87</td>
<td>1,213</td>
<td>7.2%</td>
</tr>
<tr>
<td>Knowsley</td>
<td>382</td>
<td>23</td>
<td>405</td>
<td>5.7%</td>
</tr>
<tr>
<td>Lambeth</td>
<td>651</td>
<td>72</td>
<td>723</td>
<td>10.0%</td>
</tr>
<tr>
<td>Lancashire</td>
<td>3,188</td>
<td>134</td>
<td>3,322</td>
<td>4.0%</td>
</tr>
<tr>
<td>Leeds</td>
<td>1,933</td>
<td>229</td>
<td>2,162</td>
<td>10.6%</td>
</tr>
<tr>
<td>Leicester City</td>
<td>906</td>
<td>57</td>
<td>963</td>
<td>5.9%</td>
</tr>
<tr>
<td>Leicestershire</td>
<td>979</td>
<td>44</td>
<td>1,023</td>
<td>4.3%</td>
</tr>
<tr>
<td>Lewisham</td>
<td>683</td>
<td>57</td>
<td>740</td>
<td>7.7%</td>
</tr>
<tr>
<td>Lincolnshire</td>
<td>927</td>
<td>42</td>
<td>969</td>
<td>4.3%</td>
</tr>
<tr>
<td>Liverpool</td>
<td>1,165</td>
<td>156</td>
<td>1,321</td>
<td>11.8%</td>
</tr>
<tr>
<td>Luton</td>
<td>354</td>
<td>30</td>
<td>384</td>
<td>7.8%</td>
</tr>
<tr>
<td>Manchester</td>
<td>2,081</td>
<td>225</td>
<td>2,304</td>
<td>9.7%</td>
</tr>
<tr>
<td>Medway</td>
<td>476</td>
<td>28</td>
<td>504</td>
<td>5.6%</td>
</tr>
<tr>
<td>Merthyr Tydfil</td>
<td>97</td>
<td>14</td>
<td>111</td>
<td>12.6%</td>
</tr>
<tr>
<td>Merton</td>
<td>285</td>
<td>18</td>
<td>303</td>
<td>5.9%</td>
</tr>
<tr>
<td>Milton Keynes</td>
<td>484</td>
<td>34</td>
<td>518</td>
<td>6.6%</td>
</tr>
<tr>
<td>Monmouthshire and Torfaen</td>
<td>397</td>
<td>16</td>
<td>413</td>
<td>3.9%</td>
</tr>
<tr>
<td>Neath Port Talbot</td>
<td>188</td>
<td>17</td>
<td>205</td>
<td>8.3%</td>
</tr>
<tr>
<td>Newcastle-upon-Tyne</td>
<td>1,462</td>
<td>32</td>
<td>1,494</td>
<td>2.1%</td>
</tr>
<tr>
<td>Newham</td>
<td>456</td>
<td>34</td>
<td>490</td>
<td>6.9%</td>
</tr>
<tr>
<td>Newport</td>
<td>371</td>
<td>22</td>
<td>393</td>
<td>5.6%</td>
</tr>
<tr>
<td>Norfolk</td>
<td>1,210</td>
<td>46</td>
<td>1,256</td>
<td>3.7%</td>
</tr>
<tr>
<td>North East Lincolnshire</td>
<td>533</td>
<td>50</td>
<td>583</td>
<td>8.6%</td>
</tr>
<tr>
<td>North Lincolnshire</td>
<td>413</td>
<td>40</td>
<td>453</td>
<td>8.8%</td>
</tr>
<tr>
<td>North Somerset</td>
<td>239</td>
<td>11</td>
<td>250</td>
<td>4.4%</td>
</tr>
<tr>
<td>North Tyneside</td>
<td>984</td>
<td>41</td>
<td>1,025</td>
<td>4.0%</td>
</tr>
<tr>
<td>North Yorkshire</td>
<td>1,434</td>
<td>52</td>
<td>1,486</td>
<td>3.5%</td>
</tr>
<tr>
<td>Northamptonshire</td>
<td>975</td>
<td>99</td>
<td>1,074</td>
<td>9.2%</td>
</tr>
<tr>
<td>Northumberland</td>
<td>714</td>
<td>23</td>
<td>737</td>
<td>3.1%</td>
</tr>
<tr>
<td>Nottingham</td>
<td>1,131</td>
<td>121</td>
<td>1,252</td>
<td>9.7%</td>
</tr>
<tr>
<td>Nottinghamshire</td>
<td>1,184</td>
<td>73</td>
<td>1,257</td>
<td>5.8%</td>
</tr>
<tr>
<td>Oldham</td>
<td>695</td>
<td>57</td>
<td>752</td>
<td>7.6%</td>
</tr>
<tr>
<td>Oxfordshire</td>
<td>788</td>
<td>50</td>
<td>838</td>
<td>6.0%</td>
</tr>
<tr>
<td>Pembrokeshire</td>
<td>229</td>
<td>4</td>
<td>233</td>
<td>1.7%</td>
</tr>
<tr>
<td>Peterborough</td>
<td>509</td>
<td>51</td>
<td>560</td>
<td>9.1%</td>
</tr>
<tr>
<td>Plymouth</td>
<td>633</td>
<td>28</td>
<td>661</td>
<td>4.2%</td>
</tr>
<tr>
<td>Powys</td>
<td>198</td>
<td>5</td>
<td>203</td>
<td>2.5%</td>
</tr>
<tr>
<td>Reading</td>
<td>238</td>
<td>15</td>
<td>253</td>
<td>5.9%</td>
</tr>
<tr>
<td>Redbridge</td>
<td>488</td>
<td>34</td>
<td>522</td>
<td>6.5%</td>
</tr>
<tr>
<td>Rhondda Cynon Taff</td>
<td>396</td>
<td>22</td>
<td>418</td>
<td>5.3%</td>
</tr>
<tr>
<td>Richmond-upon-Thames</td>
<td>192</td>
<td>4</td>
<td>196</td>
<td>2.0%</td>
</tr>
<tr>
<td>Rochdale</td>
<td>589</td>
<td>46</td>
<td>635</td>
<td>7.2%</td>
</tr>
<tr>
<td>Rotherham</td>
<td>421</td>
<td>34</td>
<td>455</td>
<td>7.5%</td>
</tr>
<tr>
<td>Salford</td>
<td>772</td>
<td>60</td>
<td>832</td>
<td>7.2%</td>
</tr>
<tr>
<td>Sandwell</td>
<td>578</td>
<td>53</td>
<td>631</td>
<td>8.4%</td>
</tr>
<tr>
<td>Sefton</td>
<td>684</td>
<td>44</td>
<td>728</td>
<td>6.0%</td>
</tr>
<tr>
<td>Sheffield</td>
<td>1,076</td>
<td>76</td>
<td>1,152</td>
<td>6.6%</td>
</tr>
<tr>
<td>Shropshire, Telford and Wreklin</td>
<td>767</td>
<td>30</td>
<td>797</td>
<td>3.8%</td>
</tr>
<tr>
<td>Slough</td>
<td>256</td>
<td>16</td>
<td>272</td>
<td>5.9%</td>
</tr>
<tr>
<td>Solihull</td>
<td>362</td>
<td>15</td>
<td>377</td>
<td>4.0%</td>
</tr>
<tr>
<td>Somerset</td>
<td>814</td>
<td>21</td>
<td>835</td>
<td>2.5%</td>
</tr>
<tr>
<td>South Gloucestershire</td>
<td>274</td>
<td>9</td>
<td>283</td>
<td>3.2%</td>
</tr>
<tr>
<td>South Tyneside</td>
<td>1,130</td>
<td>39</td>
<td>1,169</td>
<td>3.3%</td>
</tr>
<tr>
<td>South Tyneside</td>
<td>746</td>
<td>18</td>
<td>764</td>
<td>2.4%</td>
</tr>
<tr>
<td>Southend-on-Sea</td>
<td>377</td>
<td>29</td>
<td>406</td>
<td>7.1%</td>
</tr>
<tr>
<td>Southwark</td>
<td>642</td>
<td>58</td>
<td>700</td>
<td>8.3%</td>
</tr>
<tr>
<td>St. Helens</td>
<td>456</td>
<td>16</td>
<td>472</td>
<td>3.4%</td>
</tr>
<tr>
<td>Staffordshire</td>
<td>1,240</td>
<td>49</td>
<td>1,289</td>
<td>3.8%</td>
</tr>
</tbody>
</table>
## YOT Disposals

<table>
<thead>
<tr>
<th>YOT</th>
<th>First Tier Disposals</th>
<th>Custodial Disposals</th>
<th>Total Court Disposals</th>
<th>Custodial Disposals as a % of all Court Disposals</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Stockport</td>
<td>697</td>
<td>36</td>
<td>733</td>
</tr>
<tr>
<td></td>
<td>Stockton-on-Tees</td>
<td>553</td>
<td>13</td>
<td>566</td>
</tr>
<tr>
<td></td>
<td>Stoke-on-Trent</td>
<td>846</td>
<td>35</td>
<td>881</td>
</tr>
<tr>
<td></td>
<td>Suffolk</td>
<td>1,539</td>
<td>67</td>
<td>1,606</td>
</tr>
<tr>
<td></td>
<td>Sunderland</td>
<td>1,214</td>
<td>45</td>
<td>1,259</td>
</tr>
<tr>
<td></td>
<td>Surrey</td>
<td>1,432</td>
<td>31</td>
<td>1,463</td>
</tr>
<tr>
<td></td>
<td>Sutton</td>
<td>377</td>
<td>11</td>
<td>388</td>
</tr>
<tr>
<td></td>
<td>Swansea</td>
<td>272</td>
<td>26</td>
<td>298</td>
</tr>
<tr>
<td></td>
<td>Swindon</td>
<td>356</td>
<td>13</td>
<td>369</td>
</tr>
<tr>
<td></td>
<td>Tameside</td>
<td>593</td>
<td>28</td>
<td>621</td>
</tr>
<tr>
<td></td>
<td>Thurrock</td>
<td>254</td>
<td>30</td>
<td>284</td>
</tr>
<tr>
<td></td>
<td>Torbay</td>
<td>347</td>
<td>12</td>
<td>359</td>
</tr>
<tr>
<td></td>
<td>Tower Hamlets and City of London</td>
<td>502</td>
<td>40</td>
<td>542</td>
</tr>
<tr>
<td></td>
<td>Trafford</td>
<td>548</td>
<td>63</td>
<td>611</td>
</tr>
<tr>
<td></td>
<td>Vale of Glamorgan</td>
<td>235</td>
<td>17</td>
<td>252</td>
</tr>
<tr>
<td></td>
<td>Wakefield</td>
<td>750</td>
<td>33</td>
<td>783</td>
</tr>
<tr>
<td></td>
<td>Walsall</td>
<td>775</td>
<td>40</td>
<td>815</td>
</tr>
<tr>
<td></td>
<td>Waltham Forest</td>
<td>371</td>
<td>41</td>
<td>412</td>
</tr>
<tr>
<td></td>
<td>Wandsworth</td>
<td>512</td>
<td>58</td>
<td>570</td>
</tr>
<tr>
<td></td>
<td>Warwickshire</td>
<td>796</td>
<td>36</td>
<td>832</td>
</tr>
<tr>
<td></td>
<td>Wessex</td>
<td>4,645</td>
<td>280</td>
<td>4,925</td>
</tr>
<tr>
<td></td>
<td>West Berkshire</td>
<td>306</td>
<td>18</td>
<td>324</td>
</tr>
<tr>
<td></td>
<td>West Sussex</td>
<td>1,402</td>
<td>54</td>
<td>1,456</td>
</tr>
<tr>
<td></td>
<td>Westminster</td>
<td>212</td>
<td>17</td>
<td>229</td>
</tr>
<tr>
<td></td>
<td>Wigan</td>
<td>858</td>
<td>57</td>
<td>915</td>
</tr>
<tr>
<td></td>
<td>Wiltshire</td>
<td>516</td>
<td>17</td>
<td>533</td>
</tr>
<tr>
<td></td>
<td>Windsor and Maidenhead</td>
<td>99</td>
<td>2</td>
<td>101</td>
</tr>
<tr>
<td></td>
<td>Wirral</td>
<td>934</td>
<td>49</td>
<td>983</td>
</tr>
<tr>
<td></td>
<td>Wokingham</td>
<td>94</td>
<td>11</td>
<td>105</td>
</tr>
<tr>
<td></td>
<td>Wolverhampton</td>
<td>533</td>
<td>44</td>
<td>577</td>
</tr>
<tr>
<td></td>
<td>Worcestershire and Herefordshire</td>
<td>1,512</td>
<td>53</td>
<td>1,565</td>
</tr>
<tr>
<td></td>
<td>Wrexham</td>
<td>380</td>
<td>39</td>
<td>419</td>
</tr>
<tr>
<td></td>
<td>York</td>
<td>511</td>
<td>19</td>
<td>530</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>114,263</td>
<td>6,853</td>
<td>121,116</td>
</tr>
</tbody>
</table>

---

Memorandum submitted by Sainsbury Centre for Mental Health

1. **Introduction**

1.1 Sainsbury Centre for Mental Health works to improve the quality of life for people with mental health problems by influencing policy and practice. We focus on criminal justice and employment. Our work includes a national research and development project to improve the quality of support for young people with mental health difficulties in the youth justice system (YJS).

1.2 The evidence we have provided focuses on our experience of the youth justice system. It is centred on the capacity of children and young people with mental health problems and learning disabilities to understand and comply with sentencing decisions and the need for capacity issues to take a much more prominent role in the sentencing guidelines.

2. **The Balance between the Different Aims of Sentencing for Youths**

2.1 Young people with mental health difficulties and broader vulnerabilities are considerably over represented in the YJS. Hagell notes that “the rates of mental health problems are at least three times as high...” as in young people not involved in the YJS. There is also a high correlation between substance misuse, mental health problems, conduct disorders and ADHD. The guidelines could do more to raise awareness among sentencers and court stakeholders of this over representation and of the need to identify and address these needs as early as possible in the sentencing process. The draft sentencing guidelines have a few isolated mentions of the prevalence but its prominence needs to be increased and should thread through the entire document.

---


126 There are several studies showing the prevalence of these conditions among sentenced young offenders: YJB (2005) Mental health needs and effectiveness of provision for young offenders in custody and the community Lader D, Singleton N, Meltzer H (2000): Psychiatric Morbidity among Young Offenders in England and Wales. ONS.
2.2 The guidelines should emphasise the inability of vulnerable young people to respond positively to sentencing without specialist support to address their difficulties. The principle aim of the youth justice system (para 34), “the prevention of offending”, can only be achieved if young people of limited understanding are supported by having their health and welfare needs assessed and addressed as early as possible, to enable them to understand the concepts of consequences and reparation.

3. The Use of Custodial Sentences and their Use as a Measure of Last Resort

3.1 It has been noted that people with learning difficulties and disabilities can lack sufficient understanding of community penalties or anti-social behaviour orders. In some instances this lack of understanding was shown to markedly affect their ability to comply increasing the chances of breaches of community orders occurring. In a separate submission to the Sentencing Guidance committee, the Standing Committee for Youth Justice noted that breach of community sentences results in a custodial sentence in a substantial number of cases, regardless of the seriousness of the original charged offence. We would expect that vulnerable young people of limited mental capacity and maturity are more likely to return to court in breach proceedings because they simply are unable to adhere to the terms of their order, and do not have parents who can support them in compliance.

3.2 Some of the most vulnerable young people in custody have died there in recent years, a severity of sentence which was never envisaged. It should thus be a sentencing requirement that no breach should result in a custodial sentence unless the original offence was so serious that it merited custody in the first place. Even then, a thorough assessment of the young person (for example for mental health, speech and language difficulties and conduct or emotional problems) should be carried out to ensure that sentencing decisions are compliant with the requirements of the Disability Discrimination Act (2005).

3.3 Ideally all entrants to the youth justice system should be screened for health vulnerabilities at the point of entry since capacity should be accurately assessed before interview and before pre-court disposals or bail conditions are imposed. However, until such early screening is systematically available, it would be advisable at the very least for a screening mechanism to be made available to the court prior to sentencing in order to assess capacity accurately and to inform the sentence plan. We believe that this would enhance the safety of the public and also reduce the chance of future breaches from occurring.

April 2009

Memorandum submitted by Transition to Adulthood Alliance

Executive Summary

— The Transition to Adulthood Alliance believes that the Justice Committee should examine the sentencing of young adults aged 18–24.

— Young adults constitute a very significant proportion of those sentenced by the courts.

— Young adults share many characteristics with young people under the age of 18.

— Many of the reasons why young people are sentenced differently from adults apply as much to offenders aged 18–24 as they do to offenders under the age of 18.

— The Sentencing Advisory Panel and Sentencing Guidelines Council should therefore consider the sentencing of young adults as part of their examination of the sentencing of young people.

About the Transition to Adulthood Alliance

1. The Transition to Adulthood (T2A) Alliance aims to raise awareness of the distinct needs of young adults, aged 18–24, in the criminal justice system and to secure policy change to improve their lives. Convened by the Barrow Cadbury Trust, its membership encompasses academics, campaigning organisations and practitioners, including Catch22, the Centre for Crime and Justice Studies, Clinks, the Criminal Justice Alliance, Nacro, the Prince’s Trust, the Prison Reform Trust, Revolving Doors Agency, the Trust for the Study of Adolescence and the Young Foundation. The T2A Alliance will be producing a series of documents, culminating in a Young Adult Manifesto which will call for pragmatic policy changes for this age group. The Alliance will also work with practitioners and statutory bodies to raise awareness of the distinct needs of young adults and to provide support and guidance.

127 See Royal College of Speech and Language Therapists, Evidence to support speech and language therapy interventions with young offenders.
129 PRT (2007) found young people in custody are 18 more times likely to commit suicide than those in the community.
130 Although the T2A Alliance works closely with its members, this evidence should not be seen to represent the views or policy positions of each individual member organisation.
INTRODUCTION

2. The T2A Alliance welcomes the opportunity to submit evidence to this inquiry. The T2A Alliance believes that the Sentencing Advisory Panel is missing an important opportunity to address the sentencing of young adults aged 18–24 as part of their examination of the sentencing of young people. In this evidence we will examine the reasons for incorporating the sentencing of young adults into this work.

BACKGROUND STATISTICS

— During 2007, 140,276 young adults (aged 18–20) were sentenced.
— 14,291 young adults (aged 18–20) were sentenced to immediate custody (down from a peak of 18,441 in 2000), 5,107 to a Suspended Sentence Order and 25,314 to a Community Order. 911 received an absolute discharge, 14,153 a conditional discharge, 75,536 a fine and 4,964 were otherwise dealt with.
— 73 young adults (aged 18–20) were given life sentences in 2007, compared to 31 in 1997.
— During 2007, 30% of offenders sentenced for indictable offences were aged 18–24.
— During 2007, 43,885 young adults (aged 18–24) started a community order, 37% of the total, and 15,652 young adults (aged 18–24) started a suspended sentence order, 35% of the total.
— As of 31 December 2007, 36,613 young adults (aged 18–24) were serving a community order, 36% of the total, and 14,536 were serving a suspended sentence order, 34% of the total.
— During 2007, 29,527 young adults (aged 18–24) entered prison establishments under an immediate custodial sentence, 33% of the total.
— As of 30 June 2007, the population of young adults (aged 18–24) in prison under sentence was 16,977, making up 26% of the total sentenced prison population.
— Of the 16,977 young adults (aged 18–24) in prison under sentence, 4,911 were sentenced for an offence of violence against the person (29%), 767 for a sexual offence (5%), 3,519 for robbery (21%), 2,190 for burglary (13%), 1,997 for drug offences (12%), 989 for theft and handling (6%), and 2,476 for other offences (15%).
— During 2007, 4,857 young adults (aged 18–24) were sentenced to custody as a result of breaching a court order, 16% of the total.
— The majority of young people (aged 18–20) in prison are serving a custodial sentence between one and four years (3,795 out of 7,375). 934 were serving a sentence of less than six months and 401 a sentence longer than six months but less than 12 months.

WHY YOUNG ADULTS?

3. This section discusses why young adults should be considered as part of this examination of the sentencing of youths. For the purposes of this response we have defined “young adult” as aged between 18 and 24.

4. Young adults constitute a very significant proportion of those sentenced by the courts. A third of adults sentenced to prison and a third of adults beginning community sentences are aged 18–24. Overall, during the last 15 years the use of custody and community sentences for young adults has increased, and the use of fines and conditional discharges has fallen.

5. Young adults have distinct needs and characteristics, which are different from those of the general adult population. These needs and characteristics are set out in detail in “Universities of Crime: Young Adults, the Criminal Justice System and Social Policy”, a report from the T2A Alliance. The report is enclosed as supplementary material to this evidence, and the key points are included below.

6. There is widespread acceptance that “youth” should be a mitigating factor in sentencing. This view is shared by government, sentencers and the general public. The Sentencing Advisory Panel, in Paragraph 61 of their recent consultation on youth sentencing, describes the “factors that are most commonly regarded as having the potential to influence the penalty imposed”. They are:
— offending by a young person is frequently a phase which passes fairly rapidly and therefore reaction needs to be kept well balanced in order to avoid alienating the young person from society;
— a criminal conviction at this stage of a person’s life may have a disproportionate impact on the ability of the young person to gain meaningful employment and play a worthwhile role in society;
— the impact of punishment is felt more heavily by young people in the sense that any sentence will seem to be far longer in comparison with their relative age compared with adult offenders;
— young people may be more receptive to changing the way they conduct themselves and be able to respond more quickly to interventions;
— young people should be given greater opportunity to learn from their mistakes; and

131 National sentencing statistics are not broken down for the 18–24 year old age group.
— young people will be no less vulnerable than adults to the contaminating influences that can be expected within a custodial context and probably more so.

7. All of these factors could equally apply to young adults aged 18–24, and consequently support an approach to sentencing this group which recognises their youth, rather than simply treating them generically as adults. We therefore make the case that these criteria should be applied as intended—according to the youth and emotional maturity of offenders—and not simply to refer to young people under the age of 18.

8. Many young adults have levels of emotional maturity similar to that of younger teenagers, while those who have had the most disadvantaged childhoods take longer to mature than those who have had an easier time growing up. Research into brain development has identified a range of developmental changes that continue through the young adult age range. Consequently, young adults potentially face greater difficulties in controlling their behaviour, are more prone to risky behaviour and less able to plan for the future. As the young adult brain is still developing, it is also heavily influenced by its environment, which has particular relevance to the use of custody, and by peers.

9. There is clear evidence around a natural age of desistance from crime. The peak ending age is 19 and the most common "age of desistance" is 24. As stated in the Sentencing Advisory Panel consultation paper, offending by young people is often a stage they pass through reasonably quickly and sentencing should reflect this fact. The T2A Alliance is therefore making the case for effective sentencing that works alongside natural desistance, rather than against it, for young adult offenders as well as for offenders under the age of 18.

10. While opinions vary about when adulthood starts, it is clear that adolescence is becoming more protracted, extending well into the mid-20s. The rigid demarcation line of 18 between the youth and adult courts is therefore unhelpful and unfit for purpose.

11. For these reasons the T2A Alliance believes that the sentencing of young adults should be examined by the Sentencing Advisory Panel and Sentencing Guidelines Council alongside the sentencing of young people under the age of 18, to provide an opportunity to consider how the two could be better aligned and to ensure that the sentencing of young adults reflects the role that their immaturity and their needs and characteristics play in their offending.

CONCLUSIONS

12. The T2A Alliance believes that the sentencing of young adults needs detailed scrutiny and that it should be considered alongside the sentencing of young people under the age of 18. The T2A Alliance therefore hopes that the Justice Committee will recommend that the Sentencing Advisory Panel and Sentencing Guidelines Council should examine the sentencing of young adults as part of its work on the sentencing of young people.

April 2009

Memorandum submitted by YoungMinds

1. YoungMinds is the UK’s leading charity committed to improving the emotional well being and mental health of children and young people by ensuring these issues are placed firmly on the public and political agenda. We achieve this though the provision of research, lobbying, influencing policy and campaigning. Driven by the experiences of children, young people, parents and carers we also raise awareness and provide expert knowledge through training, outreach work, and publications.

2. We are submitting evidence on the issue of “the consequences of different sentences for different youths with regards to factors such as gender, race and mental health” and will focus on the mental health element in this submission.

3. EXECUTIVE SUMMARY

3.1. Children and young people who are at risk of offending are often also at risk of mental health problems. There are high levels of unmet mental health need in young offenders, with many of these young people experiencing high levels of trauma and serious mental illness. Effective early intervention can prevent at risk children and young people from engaging in antisocial behavior and coming to the attention of the justice system.

3.2. Young people with mental health problems should be diverted out of the youth justice system at an early stage and any vulnerable young person who has to be in the youth justice system should be placed in an environment suitable to their needs. These young people should have access to high quality mental health services, including mental health promotion services.

All staff working with children and young people should receive training in children and young people’s development, and mental health.

3.3. And lastly, there should be continuity of care after young people with mental health problems leave the secure estate.
4. The sentencing guidelines consultation points out that many young people in contact with the youth justice system have a range of mental health problems. We would like to add to this data by bringing to your attention a report from the Office for National Statistics (ONS) on psychiatric morbidity in young offenders that was published in 2000 (Lader, et al 2000). This estimates that the prevalence of mental disorders in this population is 95%, with about 80% having more than one disorder. Many of these young people are experiencing severe mental illnesses such as psychosis, and the prevalence rate is much higher than the general population. For instance, in the general population 0.2% of the young adult population (16–24) has a probable psychosis. In the young offender population this figure increases to 10% for males who have been sentenced and 8% for males who are on remand.

5. It is well known that young offenders have very difficult lives. The ONS report found that the vast majority, over 96% had experienced at least one stressful life event and about two fifths had experienced five or more. The most commonly reported stressful event for all groups were: being expelled from school and running away from home. A recent qualitative study found that many young offenders had experienced high levels of trauma in their childhood, and had mental health needs that were unmet, and they would not seek help (Paton et al, 2009). We know that these are not isolated cases.

6. There are well established links between various risk factors and mental health problems. The more risk factors an individual experiences, the more likely they are going to have a mental health problem. This doesn’t have to be an inevitable conclusion, as protective factors or building resilience in young people can help counteract the difficulties young people face in their lives.

7. Many of the children and young people in the secure estate are not having their needs met. Young offenders are included within Standard 9 of the National Service Framework for Children, Young People and Maternity services (Department of Health, 2004). So they should have access to the same range of services as outlined in the Comprehensive Child and Adolescent Mental Health Services (CAMHS) (Department of Health, 2004) (Department of Health (2007).

8. We would suggest that the following could help young offenders with mental health problems.

8.1. Children who are at risk of antisocial behavior are quite often also at risk of mental health problems. So there is a need for joint working across different agencies to try and tackle these interlinking factors.

Investing in services and support for these young people not only reduces the inevitability of them ending up involved in the cycle of crime but saves millions in future costs to the criminal justice system, NHS, education and social care costs.

9. Many young people who are at risk of offending can be identified at an early stage (Bowen, E et al, 2008). Therefore vulnerable children and their families should be given help and support to minimize these risks.

9.1. There are interventions that are currently being piloted, which are proving to help. For instance, Family Nurse Partnerships, and the Family Intervention projects, intervene at an early stage and reduce the risk of future antisocial behaviour. More intensive interventions such as multi-systemic therapy and intensive fostering have also produced positive results in reducing mental health problems and offending behavior.

10. A prison is not a suitable place for those young people who have serious mental illnesses. Many young offenders who have serious mental health problems are not being diverted to more suitable provision. We believe they should be diverted out of the criminal justice system at an early stage. We welcome the Youth Rehabilitation Order, and in particular the fact that mental health treatment requirement can be included. However, we would like to see this treatment include interventions that promote mental health and psychological wellbeing, as well as treatments for specific mental disorders. For instance, problem solving skills, anger management etc. These treatments should be based on the needs of the individual and thus person centered.

11. We know from our consultancy and training work that not all staff in the secure juvenile estate received training in children and young people’s mental health. There are so many important issues that all staff working with children and young people should have some understanding of. For instance, issues around brain development, and how that affects behavior and emotions. In line with the Children’s Workforce Strategy, and the CAMHS Review, we would like to see all staff working with children and young people to have training in children’s mental health, and children and young people’s development.

12. There needs to be continuity of care and support for young offenders leaving the secure estate. At the moment many young people in the secure estate begin to feel better as a result of the support they receive when in prison, but the lack of any discharge planning and care can result in them having problems again once they leave the secure estate. So we would like to see a care pathway that includes the full range of mental health services, with transitional arrangements for young people leaving the secure estate, and needing help to access services in the community.

April 2009
REFERENCES


http://www.dh.gov.uk/En/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_073414

http://www.statistics.gov.uk/downloads/theme_Health/PscMorbYoungOffenders97.pdf

http://www.statistics.gov.uk/downloads/theme_Health/PscMorbYoungOffenders97.pdf

For further information please contact Lucie Russell, Director of Campaigns, Policy and Participation at 48-50 St John’s Street, London EC1M 4DG. Telephone 0207 336 8445 or visit www.youngminds.org.uk

Memorandum submitted by the Youth Justice Board

1. The Youth Justice Board for England and Wales (YJB) welcomes this inquiry and the opportunity to submit written evidence. We would be pleased to provide any further information that may be of assistance including any statistical data on sentences held by the YJB.

2. The inquiry is a critical area of interest for the YJB. The YJB responded to the Sentencing Advisory Panel’s (SAP) consultation on young people and awaits the new sentencing guidelines from the Sentencing Guidelines Council which will be particularly important in light of the changes to the sentencing framework due to be implemented later this year.

3. The YJB is leading a project, the Scaled Approach, linked to the introduction of the Youth Rehabilitation Order (YRO), which is aimed at more closely aligning Youth Offending Team (YOT) interventions for young people in the youth justice system to their assessed risks of reoffending and serious harm. The new sentencing guidelines will be a crucial part of the overall framework in which the Scaled Approach operates.

4. There are a number of positive developments in the sentencing structure and real opportunities to use the framework to help address offending behaviour and reduce the likelihood of reoffending.

5. The YJB fully supports the principle of custody as a last resort. There are opportunities for the new sentencing framework to help ensure this is the case and again the new sentencing guidelines will be important. As noted in the YJB’s evidence for the Committee’s Justice Reinvestment Inquiry, while over the last eight to nine years the youth custody population has not mirrored the sharper rises in the adult population and has been relatively stable, the YJB believes there is scope to reduce the use of custody. Alongside the sentencing structure and guidelines there are a range of practice and performance measures that can affect overall use of custody and the YJB is involved in a range of work.

6. The YJB welcomes that the purposes of sentencing for under-18s has been defined in statute under the Criminal Justice and Immigration Act 2008. We believe it is positive that the purpose of sentencing is now aligned with both the principal aim of the youth justice system to prevent offending by children and young people and the importance for courts to have regard to the welfare of the young person when sentencing.

7. The YJB welcomes the requirement on courts to take the welfare of children who offend into account as a primary consideration when sentencing and believes this removes the possibility that child welfare and preventing offending could be seen as contradictory aims. We recognise that courts have to take into account a wide range of factors when sentencing and believe the current approach, as defined in law, provides clarification to sentencers and a clearer sense of direction for the youth justice system.

8. The YJB worked closely with Government officials and other partners during the passage of the legislation through Parliament and is content with the approach taken in the SAP consultation with regards to the balance between the different aims of sentencing for under-18s.

9. The YJB recognises that there are a small number of children and young people who commit serious and violent offences or who persistently reoffend despite receiving a number of community sentences, where custody is the necessary response for this group and is needed to protect the public. However the Board is committed to the principle that custodial remains and custodial sentences should only be used as a “last resort” with every effort being made to manage the maximum number of young people who offend in the...
community using robust and demanding community sentences. We welcome that the Criminal Justice and Immigration Act 2008 clearly positions Intensive Supervision and Surveillance and Intensive Fostering as robust statutory alternative sentences.

10. The YJB has broadly welcomed the approach set out in the SAP consultation in relation to the use of custody and the reinforcement of the principle of custody as a last resort. The YJB supports the premise that age and relative maturity should be considered by the court, as well as the seriousness of the offence, in calculating sentences.

11. As noted in the SAP document, a range of factors can influence the use of custody and there is clear evidence of variations in cultures and practices in different areas influencing custody rates. As noted in previous evidence to the Committee, in addition to the sentencing structure and guidelines, there are a range of practice and performance measures that can influence the use of custody.

12. The YJB has in place a number of work programme which will contribute to minimising the use of custody including taking forward proposals set out in the Youth Crime Action Plan (YCAP) published last year. A major part of this work is seeking to improve resettlement support given to young people leaving custody in order to reduce their risk of reoffending and chances of returning to custody. The YJB has also supported other proposals outlined in YCAP such as the proposal for reviews for young people who enter custody for the first time so that lessons can be learned.

13. The YJB’s Youth Justice Planning Framework was introduced in 2008–09 and includes a requirement for YOTs to assess the extent to which they have contributed to reducing the use of custodial remands and sentences. The YJB will validate and analyse the self-assessments and identify any improvements YOTs need to make. Where performance is inadequate the YJB will provide appropriate improvement support. The YJB’s report on YOT performance will contribute to the Comprehensive Area Assessment in England.

14. The YJB and HMCS will jointly review the YJB’s 2003 publication Making It Count In Court and during 2009–10 will publish a revised version to provide a good practice framework for YOTs and other court-based professionals. The guidance will focus on promoting effective working relationships between YOTs and sentencers in order to build confidence in community sentences, especially alternatives to custody such as intensive supervision and surveillance, intensive fostering and referral order intensive contracts.

15. In line with the YCAP proposal to make the costs of custody more “visible” at the local level, the Chair of the YJB has written this month to all Chief Executives of first tier local authorities to draw their attention to their local custody rates, the number of young people they have in custody, and average costs of places.

**Youth Rehabilitation Order**

16. The YJB supports the Youth Rehabilitation Order (YRO) as a generic community order which will rationalise and simplify the current range of youth justice court orders. The YJB supports the more flexible approach to sentencing that the YRO will introduce by allowing sentencers to choose from a menu of requirements based on an assessment of the individual’s risks, needs and offending behaviour. If used effectively, the YRO should therefore help to reduce offending and reoffending as well as the number of young people sent to custody.

17. While in favour of some rationalisation of court orders, the YJB welcomes the fact that the Referral Order and Referral Order have been kept as separate, low level orders below the YRO, not least to ensure a hierarchy of community orders remains. The YJB is concerned to ensure that forthcoming changes do not result in young people being escalated up the sentencing framework quicker. A hierarchy of orders will help to avoid this and the YJB is working with the Ministry of Justice, Sentencing Guidelines Council and other partners to provide advice on how YRO requirements can be effective combined. The potential for repeating the use of YROs, tailoring the menu of requirements to meet needs, should be fully used where appropriate.

18. The YJB welcomes the additional provisions given to the Referral Order, the community sentence with the lowest reoffending rate, under the Criminal Justice and Immigration Act 2008. However there has been some concern expressed by sentencers over confidence in the Referral Order as an alternative to custody for young people on the custody threshold. The revised Referral Order guidance, due to be published shortly, addresses these concerns by introducing the concept of an Intensive Referral Order which can provide an intensive level of supervision and interventions with the individual.

19. As noted, we welcome that the Intensive Supervision and Surveillance Programme (ISSP) has been placed on statutory footing and positioned as a clear alternative to custody as a requirement under the YRO. It is also welcome that the YRO includes a fostering requirement as another alternative to custody, allowing for the use of the Intensive Fostering programme currently being piloted by the YJB.132 Through providing robust, statutory community alternatives to custody, it is hoped the supervision and fostering requirements will contribute to the existing work in place to reduce the use of custody for children and young people. As the intensive supervision and surveillance and fostering requirements are explicitly positioned as direct

132 The YJB’s Intensive Fostering programme provides highly intensive and specialised support for up to 12 months for each individual, as well as a programme of support for their family. The pilot is currently being evaluated and initial reports show positive results, albeit noting the small number of people who have completed the programme so far.
alternatives to custody, the YJB is clear that they should only be ordered when a court is satisfied that the custody threshold has been met. It should be noted that while ISSP is widely available across England and Wales, at present the Intensive Fostering programme is only available currently in a small number of pilot areas.

**Breach**

20. The YJB remains concerned about the number of young people sentenced to custody for breach of community sentences. Our view is that the primary objective in response to breach of a community sentence is to ensure that the young person completes the requirements of the order, and that the use of a custodial sentence should only be used in strictly limited circumstances. Forthcoming guidance for the introduction of the YRO will assist YOTs to make optimum use of the community provisions to ensure custody is only imposed as a last resort. For example, non-compliance without good reason can be dealt with using up to three warnings within a 12-month “warned period” before court proceedings are required (and these can be stayed in “exceptional circumstances”).

21. The YJB supports the approach to breach in the Criminal Justice and Immigration Act—that is, custody should generally not be available for breach of a YRO unless the intensive supervision and surveillance or fostering requirements are attached; and that breach of other requirements cannot lead to a YRO with intensive supervision and surveillance or fostering except where the young person has demonstrated “wilful and persistent” breach. In particular, the YJB supports the requirements that courts, in passing a sentence of custody and finding the offence “so serious” that a community sentence cannot be justified, must state why a YRO with intensive supervision and surveillance or fostering would not be appropriate.

22. The YJB believes young people should be given the support they need to comply with a court order and that all reasonable steps should be taken to avoid the need for further court proceedings when non-compliance occurs. An example of good practice can be seen at Newcastle YOT which convenes breach panels with young people and their families to see what can be done to re-engage the individual. The YJB believes overall compliance with an order should be taken into account when assessing incidents of breach and that successful engagement by practitioners is key. Effective warning meetings and quick responses to incident of breach can often help to resolve the problem without the need for formal proceedings. Of course there will be occasions when breach action will and must occur. Where this is the case, the YJB believes that courts reinforcing the message about the importance of compliance can help to focus a young person’s mind and improve their engagement without the need for further action.

**The Scaled Approach**

23. Underpinning the YRO is the concept that good quality assessments upon which court orders are based are essential for an effective youth justice system. The YJB has undertaken a major programme of work to improve assessments and introduce a tiered approach to interventions so that their intensity better matches a young person’s assessed likelihood of reoffending and their risk of serious harm to others. The Scaled Approach programme has been specifically designed to allow practitioners to tailor proposals for the content of court orders to the individual in question. By introducing an extended menu of requirements that can be adapted as needed, the YRO therefore complements the principles of the YJB’s Scaled Approach programme, which will be rolled out in conjunction with the YRO in November.

24. The Scaled Approach model informs the planning of interventions, YOT reports to courts and youth offender panels, and provides greater information from which the judiciary can make decisions about a young person’s sentence. It will be used when a young person is on a Referral Order contract, a YRO or during the community element of a custodial sentence. Following the conclusion of the persistent young offender (PYO) pledge in 2008, the YJB has worked with the Office for Criminal Justice Reform on the development of a single priority group of young people within the youth justice system. This work will align the Scaled Approach intensive intervention group with a new Prolific and Priority Offender Deter Group when the strategy goes live in November.

25. Determining appropriate sentences requires careful balancing of competing issues. The Scaled Approach model is clear that courts should take an initial view of the seriousness of the offence as a starting point and that YOTs, in assisting the courts to determine sentences, should undertake a structured assessment of a range of considerations. The YOT’s pre-sentence report (PSR) should propose interventions designed to reduce the likelihood of reoffending and/or risk of serious harm to others in line with National Standards. While it remains a matter for the court to decide on sentences, the Scaled Approach presents an opportunity for YOTs to provide tailored interventions in order to meet a range of complex risks and needs.

26. The model was developed in partnership with YOTs and has included a national consultation exercise involving key stakeholders as well as pilots with several YOTs. The pilot areas were Neath (Port Talbot), Shropshire (Telford and Wrekin), Wessex and Suffolk (Ipswich office). The YJB has made significant refinements to the model as a result of this collaborative way of working and is confident the Scaled Approach will provide a flexible, individualised approach which better meets the risks and needs of young people and provides improved protection for local communities. This approach has considerable support amongst YOT staff, as evidenced by our consultation exercise.
27. While the feedback during the YJB’s consultation on the Scaled Approach was overwhelmingly positive there has been some concern expressed in some quarters that it will underline the principle of proportionality. As sentencers will continue to be responsible for determining the most appropriate sentence, the YJB does not believe the model undermines the principle of proportionality at all. In addition to taking an initial view of the seriousness of the offence, any aggravating or mitigating factors and personal mitigation, both sentencers and YOTs must have regard to the principles of sentencing as defined in legislation. The YJB has worked closely with legal advisors and colleagues in our sponsor Joint Youth Justice Unit to ensure the Scaled Approach fully complies with the sentencing framework and does not conflict with proportionality. At the heart of the model is the concept of “professional judgement” which supports principles in relation to children’s rights by recognising that young people cannot be easily categorised and that interventions should be flexible and responsive to changing needs and risks.

28. A minority of respondents have also questioned whether the Scaled Approach may increase the risk of non-compliance with court requirements and subsequently increase the use of custody, particularly for young people in the intensive intervention group. However the pilot evaluation found no significant difference between the compliance rates of YOTs using the Scaled Approach compared with YOTs using existing requirements. The anecdotal reasoning behind this is that young people within the intensive intervention group receive a range of different support options and practitioners are very active at closely engaging the group due to their high risk nature. Indeed the Scaled Approach encourages compliance by providing maximum flexibility for YOTs and young people to schedule contacts at suitable times to enable compliance. It is also worth noting that, based on YJB modelling of data from a sample of YOTs, only 10% of young people overall are expected to fall within the intensive intervention group. The YJB has renewed its emphasis on supporting YOTs to engage children and young people subject to court orders through, for examples, the forthcoming revised National Standards and updated Key Elements of Effective Practice—Engaging Young People. In short, the express purpose of highly skilled youth justice practitioners should be to help the young person succeed on supervision.

29. The YJB recognises the significance of the changes being introduced and has put together a project team to support frontline practitioners prepare for and implement the changes. The YJB is undertaking a series of activities designed to achieve this, including providing training to YOT managers and staff through the Open University to equip them with the knowledge and skills needed for successful implementation; developing a range of guidance to support YOT’s understanding of the legislative changes and practice implications; holding briefings across the English regions and Wales to formally introduce the changes and new guidance to YOTs; and monitoring for YOT’s readiness for implementation and offering bespoke consultancy support services where needed.

Race

30. The relationship between offending and ethnicity is complex, not least because the impact of risk factors associated with offending on different communities needs to be taken into account. Whilst the prevalence of these risk factors could explain disproportional representation of different ethnic groups of young people in the youth justice system, disproportionate outcomes from criminal justice decisions cannot be adequately explained on the same basis.

31. To establish a better understanding of how groups of young people are treated at key stages of the youth justice system, the YJB commissioned an independent research study to investigate the reasons for differences in outcomes and how they related to ethnicity and gender. Published in 2004, Differences or Discrimination: minority ethnic young people in the youth justice system indicated that, in the eight YOT areas studied, different outcomes in the treatment of ethnic groups at key stages of the system could be identified. While many of the differences appeared to be accounted for by relevant variations in the characteristics of the cases, this was not always established and some of the differences were consistent with discriminatory treatment. The study highlighted the following specific areas of concern:

- The higher rate of prosecution and conviction of mixed-race young males;
- The higher proportion of prosecutions involving black young males;
- The greater prosecution of black and Asian males that had been remanded in custody before sentence, especially the greater proportion of black males remanded whose proceedings had not resulted in a conviction;
- The slightly greater use of custody for Asian males;
- The greater use of the more restrictive community penalties for Asian and mixed-race males—especially those aged between 12 and 15;
- The much higher probability that a black male would, if convicted by a Crown Court, receive a sentence of 12 months or more;
- A greater likelihood that black and Asian males aged between 12 and 15 would be under supervision for longer than 12 months if they received one or more restrictive type of community sentences;
- A slightly greater tendency for individuals from minority ethnic groups to have been committed to the Crown Court;
Interventions showed that the number of girls remanded to custody doubled between 2000 and 2005 and reports that recent data indicates that girls appear to be being “policed” more heavily than previously. The YJB welcomes the addition of the mental health requirement in the YRO and is currently may have previously gone unchecked.

Chitsabesan et al, 2006

While we are aware that current case law, reflected in the youth court bench book, allows for pre-court disposals to be taken into account in defining persistence, we believe this is different from the more rigid definition in the draft guideline that means three relevant pre-court or court disposals are likely to automatically satisfy the test. Currently the expectation is that there would need to be “numerous” pre-court disposals and the court is encouraged to decide in individual cases whether a young person is a persistent offender. If pre-court disposals continue to be included in the test we would want to see a less rigid definition.
easily categorised as persistent offenders and there is the danger that it will impact on the operation of pre-court disposals if young people believe that admitting guilt in order to be eligible for the pre-court disposal may mean there are more likely to become categorised as a persistent offender. Young people subject to Youth Restorative Disposals, Reprimands and Final Warnings are encouraged to take responsibility for their actions without the weight of evidence, so that they can have their offending addressed but be diverted from a conviction. Youth Conditional Cautions require evidence sufficient to proceed to convict but are also spent as a pre-court disposal once completed. The YJB considers that it is important for the success of pre-court disposals that the persistence bar is not lowered in this way. We would advocate using the definition that was used to measure the Persistent Young Offender pledge. While the national pledge was ended in December 2008 the definition of persistence used for it is well established and accepted. Our primary concern is that the definition should cover three convictions in court not simply any three disposals.

**Breach of YRO**

4. The draft guideline defines breach as action taken following two warnings being given and on the third failure the young person should be returned to court (or sooner if it is a serious breach). We are concerned that the guideline does not make it clear that the young person’s overall compliance with the court order in question, as opposed to an individual requirement within an order, should be considered and that the relevant YOT manager has discretion in “exceptional circumstances” to decide to not take a young person to court even though there is a presumption. We believe these qualifications that are set out in the statute should be clearly stated in the guideline.

5. We would also welcome the section on persistent and wilful breach being clarified. The draft guideline states that persistent breach is likely to be defined in practice as when a young person has been subject to three breaches. While this makes sense it would be helpful to clarify that this is about three appearances in court for breach, as opposed to three warnings or failures to comply.

**Other comments**

6. As noted during the evidence session, aside from the points above, we broadly welcome the draft guideline. The inclusion of key elements of the Scaled Approach model, the role of the Youth Offending Team in advising the court, the greater clarity of the issues the court needs to consider before making a custodial sentence, and the attempt to balance the purposes of sentencing as set out in the Criminal Justice and Immigration Act 2008 are all welcome. We strongly welcome the message within the draft guideline that while the starting point is ensuring that a sentence is proportionate to the seriousness of the offence, the court then needs as much as possible to take an individualistic approach to sentencing young people that seeks to meet the overall purposes of sentencing, the welfare of the young person and principal aim of the youth justice system to prevent offending.

7. It is clearly important that the approach taken to sentencing is what is effective in meeting the purposes of sentencing rather than a more narrow focus on punishment. While we believe that the “individualistic” approach to sentencing young people and the case for it is clearly stated in the draft guideline this is a critical point. In all cases sentencers need to include consideration of what impact a sentence will have on reducing offending by that young person.

**Use of Custody (Q37–38)**

8. At the evidence session the YJB was asked about the actions it is taking to help ensure that custody is used as a last resort.

9. In addition to the points made at the evidence session, our written evidence to the Committee noted our range of work on this including seeking to improve resettlement arrangements for young people leaving custody; changes to our youth offending team (YOT) planning framework to help assess the extent to which YOTs are working to reduce the demand for custody; our planned work with HMCS to update guidance to YOTs on court practice; and work to make the costs of custody more “visible” at the local level and investigate the potential to devolve more of the costs of custody to the local level.

10. In addition to the work above the YJB has recently published a research study, Fine Art of Science. The YJB commissioned a study of sentencing decisions made by courts, including identifying why some young people are sentenced to custody and others to community sentences. The research focused on:

   — determining the reasons why custodial or community sentences has been made in borderline “cusp” cases;
   — understanding the differences between sentences made by magistrates, district judges and Crown Court judges; and
   — establishing the views of sentencers on making custodial or community sentences.

11. Two subsidiary aims of the research were to identify factors that can encourage or discourage a sentencing decision towards or away from the use of custody and to explore the impact of the social and political climate on sentencing decisions.

13. The full version of the report can be found at: http://www.yjb.gov.uk/publications/Scripts/ prodView.asp?idproduct=446&eP=

**KEY FINDINGS IN RELATION TO FACTORS WHICH AFFECT SENTENCING OUTCOMES**

14. Most sentencers identified three main considerations that increased the likelihood of custody for young offenders:

- the nature and seriousness of the offence, including any aggravating factors;
- previous criminal history; and
- an offender’s personal circumstances, including situations where a young offender’s lack of permanent accommodation was deemed to make them unsuitable for an ISSP. Personal factors were regarded as less influential but included age (approaching 18), lack of engagement in education, training or other purposeful activities and a “chaotic” lifestyle.

15. A range of factors were reported to mitigate against the need for a custodial sentence including age, whether they were a first-time offender, a guilty plea (with personal mitigation), medical problems and learning difficulties.

16. Sentencers tended to look favourably on young people shown to be “of previous good character,” who “came from a good home” with evidence of stable personal relationships and appeared genuinely remorseful. Having a parent present in court was also identified as a mitigating factor in cusp cases, potentially placing excluded and vulnerable young people at greater risk of custody.

17. The report identifies that there are different levels of confidence in the youth justice system by the judiciary and that this can impact on sentencing decisions and the level of risk they are prepared to take with young serious or persistent offenders. There was a difference in views over the effectiveness of custodial sentences to impact on offending behaviour and reduce offending, especially short sentences, with others who thought custody provided structure and access to services for young people that they are not getting in the community. Custody was also considered a place where young people can be made an example of to deter others from similar behaviour.

18. A key message is that the research adds to existing evidence that there are interlinked factors influencing sentencing outcomes that go beyond merely considering the seriousness of a particular offence. YJB is using the findings of the research to inform its wider work on this issue including the updating of guidance on court practice for YOTs.

**PROGRESS ON ACCESS TO SERVICE PERFORMANCE INDICATORS (Q52)**

19. At the evidence session it was noted that there had been recent progress on subsidiary indicators that we monitor relating engagement in employment, training and access to appropriate accommodation for young offenders.

20. The data for the two key indicators in question, that now form part of the national indicator set for local government in England are as follows:

<table>
<thead>
<tr>
<th>Indicator</th>
<th>2006–07</th>
<th>2007–08</th>
<th>2008–09</th>
</tr>
</thead>
<tbody>
<tr>
<td>Access to Education, Training and Employment</td>
<td>67.3%</td>
<td>69.8%</td>
<td>72.2%</td>
</tr>
<tr>
<td>Access to suitable accommodation</td>
<td>93.6%</td>
<td>94.8%</td>
<td>95.4%</td>
</tr>
</tbody>
</table>

21. The 2008–09 data is provisional and not yet published but expected to be confirmed shortly. For the access to education, training and employment indicator there was a higher figure in 2005–06 but as noted in our annual statistical publication the reduction was mainly due to changes in reporting requirements aimed at collecting more accurate data in sub-categories rather than changes in actual performance.

**REMAND AND BAIL (Q40)**

22. At the evidence session it was noted that the YJB has done some work previously on what action YOTs can take to make differences around bail decisions to help ensure the appropriate use of remand. As part of a wider project on “managing the demand for custody” YJB identified good practice by YOTs and provided advice on what the key elements of an effective YOT remand management strategy should be. Some details are set out on our website at the following link: http://www.yjb.gov.uk/en-gb/practitioners/ CourtsAndOrders/ManagingDemandForCustody/AppropriateRemand/ RemandManagementStrategy.htm

23. The key components that identified that need to be addressed in any YOT remand management strategy included:

- a remand panel (where resources allow) to review cases that have been remanded in custody or are at risk of custody and to take responsibility for the remand strategy;
— sufficient bail and court staff cover at magistrates’, crown and other courts, e.g. Saturday courts or street crime courts;
— descriptions of the remand packages available from the YOT and who they are targeted at;
— a clear strategy on accommodation and accessing statutory services from partners;
— clear roles/responsibilities for YOT staff at each stage of the process;
— clear protocols/agreements and communication channels with CPS, police, EDT, voluntary and statutory services, court and appropriate adult;
— a clear procedure for referring cases to bail ISSP or other package providers;
— monitoring remands, e.g. allocating a responsible person(s) to carry out this task; and
— an effective link with remand management workers in YOIs.

24. It was as part of this work that YJB first issued guidance on establishing YOT custody panels to help review and manage cases that would potentially lead to custodial disposals. The guidance can be found at: http://www.yjb.gov.uk/NR/rdonlyres/8AF43987-473A-46A6-A234-E52BDC2C4216/0/Settingupacustodypanel.doc

July 2009