

CENTRE FOR CRIME
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From punishment to problem solving

A new approach to children in trouble

Rob Allen

Whose Justice? series

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Published by:
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London
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www.kcl.ac.uk/ccjs

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Registered Charity No 251588
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ISBN: 1-906003-00-9
ISBN: 978-1-906003-00-5



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Executive summary

Reforming youth justice was one of New Labour's top priorities but while some improvements have been made, a fundamental shift is needed in the way we respond to young people in conflict with the law. A new approach should comprise:

- greater prevention, with an emphasis on addressing the educational and mental health difficulties underlying much offending behaviour;
- limits on the way we criminalise young people and a more appropriate system of prosecution and courts;
- a wider range of community-based and residential provision for the most challenging young people and a phasing out of prison custody;
- new organisational arrangements, with the Children's Department in the Department for Education and Skills in the lead.

Prevention

With the UK at the bottom of the league table of child well-being in the EU, there is a need for much greater investment in mainstream services to support children and their families. There is a particular need to tackle exclusion and truancy, which are associated with offending, and to address the growing incidence of mental health problems. We need:

- a) to expand restorative justice programmes in schools and ensure a proper range of provision is available for young people with special educational needs;
- b) a much expanded mental health sector so that needs can be identified early and suitable help provided to young people and their families.

Criminalisation

The age of criminal responsibility in England and Wales is lower than most comparable countries and since 1997 there has been a steady increase in the proportion of young offenders prosecuted rather than diverted from prosecution.

- c) The age of criminal responsibility should be raised to 14 with civil child care proceedings used for children below that age who need compulsory measures of care.
- d) Diversion from prosecution should be encouraged, with much more widespread use of restorative conferencing.
- e) Specialist prosecutors should be introduced with the aim of actively diverting cases and identifying cases where local authorities should investigate the need for care proceedings. Youth courts should also consider the case for restorative conferencing and have the power to transfer appropriate cases to the family court.

Serious and persistent offenders

The use of custody in England and Wales has remained high in international terms, despite attempts to introduce alternatives at the remand and sentencing stage. Although the Youth Justice Board has aimed to bring coherence to the range of secure

establishments, there is still a jumble of responsibilities across government departments. Prison establishments, in particular, are ill-equipped to meet the complex needs of young offenders. There is a need therefore to:

- f) find urgent ways of reducing the numbers in custody, for example by making local authorities financially responsible;
- g) introduce a new sentencing framework which includes a new residential training order of up to two years or five years in the case of grave crimes;
- h) give the Youth Justice Board more of a leadership role in respect of the way secure establishments are provided and run, phasing out prison custody for 15 and 16-year-olds and transforming facilities for 17-year-olds. A fundamental review of closed and open residential options available for young offenders should be carried out, with consideration being given to a new youth residential service.

Governance

The key principle for responding to children in conflict with the law is to assist them in growing up into well-adjusted and law-abiding adults. The essential outcomes for children pursued by the Department for Education and Skills – being healthy, staying safe, enjoying and achieving, making a contribution and achieving economic well-being – provide a much more appropriate framework for organising services than does the overarching aim of the Home Office, which is public protection.

There is a case for retaining the Youth Justice Board as a specialist body overseeing youth justice arrangements. It needs to exercise a stronger leadership role in respect of residential institutions, while relinquishing its responsibility for youth crime prevention, which belongs within an integrated framework of children's services.

- i) Responsibility for youth justice within government should be moved to the Department for Education and Skills.
- j) The Youth Justice Board should be sponsored by the DfES. It should exercise a stronger leadership role in respect of residential institutions and relinquish responsibility for youth crime prevention.

Introduction

This report looks at one of the key priorities for the New Labour administration in 1997, dealing with young offenders. Reforming youth justice was not only an end in itself. The new government observed that most adult offenders in the prisons started their offending careers as children and young people. By creating responses to youth crime which were more effective in turning young people away from delinquency, it was hoped to provide substantial benefits for society as a whole.

The period since 1997 has seen much law-making, new organisational structures for tackling youth crime at the centre of government and locally, and a welter of initiatives focusing on street crime, anti-social behaviour, prolific offenders and violence. While not all of these have specifically focused on under 18-year-olds, youth crime has remained high on the political agenda.

Despite the radical overhaul of the system, which the Audit Commission concluded had resulted in 'a considerable improvement on the old one' (Audit Commission 2004), few would claim that the problem of youth crime has been solved.

The government itself remains dissatisfied with its performance on crime as a whole. Tony Blair was struck during the 2005 election campaign by public concern about it, vowing to 'make this a particular priority for this government, how we bring back a proper sense of respect in our schools, in our communities, in our towns and our villages'.

Early 2006 saw the production of a Respect Action Plan and the promise of much more in the way of swift, summary and straightforward justice. More recently, the Prime Minister signalled the need for 'a complete change of mindset, an avowed, articulated determination to make protection of the law-abiding public the priority and to measure that not by the theory of the textbook but by the reality of the street and community in which real people live real lives'. Part of this requires 'far earlier intervention with some of these families, who are often socially excluded and socially dysfunctional' (Blair 2006).

The Conservatives, meanwhile, have also emphasised the need to understand a little more and condemn a little less, promising to identify why so many children become anti-social and to do more to help them.

What will this mean for youth justice? There is undoubtedly an opportunity for a substantial rethink about the best ways to prevent and treat youth crime. The expected departure of Tony Blair offers the chance to develop a new set of policies. The Home Office review of non-departmental public bodies gives a chance to assess the contribution of the Youth Justice Board and consider which parts of government are best suited to dealing with the problem.

After eight years as a member of the Youth Justice Board, it is my view that such a rethink is urgently needed, if we are to develop an approach to youth justice which is fit for purpose.

There are aspects of Labour's reforms which have had a positive impact. There is much to admire in the development of projects working with children at risk of being drawn into crime, the creation of multi-disciplinary teams to address the personal, social and educational deficits which underlie so much offending, and the increasing involvement of both victims of crime and the wider public in youth justice arrangements.

There are other elements which are deeply disappointing: the increasing criminalisation of young people involved in minor delinquency and the stubbornly high use of custodial remands and sentences. Finally, there are some developments of which we really should be ashamed – in particular aspects of the way we lock up children, the demonisation of young people involved in anti-social behaviour, and the coarsening of the political and public debate about how to deal with young people in trouble. The state of the youth justice system can perhaps best be described as the good, the bad and the ugly.

In terms of future directions, the main lesson is that we need a fundamental shift in how we approach the issue of youth crime, away from the world of ‘cops, courts and corrections’ towards an emphasis on meeting the health, educational and family difficulties which lie behind so much offending.

Since 1998, the statutory principal aim of the youth justice system has been the prevention of offending. In practice, the last eight years have seen an increasing preoccupation with protecting the public from young people and a growing intolerance of teenage misbehaviour of all kinds. A genuine shift from punishment to problem solving as the guiding principle for tackling youth crime would help to produce a society that is both safer and fairer.


There are four key dimensions to such a shift. First, although we pay lip service to the notion of prevention, we need to make a reality of it for far more young people. The youth justice system cannot be seen in isolation from the wider infrastructure of services available for young people and their families. Recent international studies have placed the UK towards the foot of a league table of child well-being across the EU (Bradshaw et al. 2006). Much greater investment is needed, in particular to meet the growing incidence of educational and mental health problems, and in supporting struggling families if these problems are not to manifest themselves in delinquency.

Second, we currently define and treat too much misbehaviour by young people as a crime to be punished rather than a problem to be solved, with the result that children are criminalised at a far earlier age than in many other countries. We need to raise the age substantially at which young people can be prosecuted in the criminal courts. In its place we need more appropriate ways of responding to young people who make mistakes, where necessary triggering the services they need to help them stay out of further trouble.

Third, the current responses to the most damaged children who present the greatest needs and highest risks are inadequate and can make matters worse. We need a wider range of community-based and residential placements for young people who cannot stay with their families, with an end to prison service custody for those under 16 within two years, and a programme to transform it for all under 18s by 2010.

Finally, the organisational arrangements at the centre and locally are inconsistent, fragmented and contain perverse incentives. Policy and practice are led by the wrong department of government, the Home Office, whereas it should properly fall within the ambit of the Department for Education and Skills (DfES). The recent review of criminal justice makes it clear that the protection of the public is the core activity of the Home Office. While it is clearly important that the risks posed by the small number of dangerous offenders under the age of 18 are properly managed, public protection is hardly the right priority for youth justice as a whole. Much more relevant are the essential outcomes for children pursued by the DfES – being healthy, staying safe, enjoying and achieving, making a contribution and achieving economic well-being.

Under the DfES, the Youth Justice Board should play a much stronger role in setting standards in secure establishments and promoting alternatives to detention, while giving



up its role in prevention. This should be left to local area agreements, preventive efforts integrated and led by mainstream services provided by schools, health care and social work with families.

The signs of a potential change of direction by the present government are not immediately encouraging. A leaked memo reveals a Home Secretary 'keen on looking at involving the army to provide structure to young people's lives' (Travis 2006). Whether intended as a gimmick or a genuine steer on policy, the notion that the Ministry of Defence has anything but a marginal role to play in dealing with delinquency, shows how divorced from reality the government has become.

Making a reality of prevention

In a rich, supposedly civilised society such as ours, [why are] there ... so many horribly neglected children in the midst of plenty, who are let down by their broken families, let down by their failing schools, let down by incompetent social services and health services and constantly moved on and on, from one hardship to another, like Jo the crossing sweeper in Dickens's Bleak House, until something terrible happens.
(Marrin 2005)

There are clear grounds for investing heavily in prevention; as a recent report on Young Offender Institutions (YOIs) put it: 'if you select at random any inmate of a YOI, you will almost certainly find a heartbreaking history of personal misery, professional neglect and lost opportunities' (RCP/CRAE 2002). The Audit Commission in 2004 calculated that if effective early intervention had been provided for just one in ten of these young offenders, annual savings in excess of £100 million could have been made (Audit Commission 2004).

Prevention is certainly central in the international norms and standards governing youth justice. The Council of Europe, in its 2003 recommendation on delinquency, says the aims of juvenile justice should be to prevent offending and re-offending, to re-socialise and reintegrate offenders and to address the needs of victims. A range of other international standards emphasise prevention – in particular the UN Convention on the Rights of the Child, the Riyadh Guidelines and the Beijing Rules.

Unlike some aspects of youth justice policy, prevention commands support across the political spectrum, with Conservative interest in getting children off the conveyor-belt to crime, recently revived by David Cameron, mirroring Labour's concern to be tough on the causes of crime. The £3 million Rethinking Crime and Punishment initiative found organisations as diverse as children's charities and Conservative think-tanks agreeing that more early intervention was needed. The Prime Minister has made his commitment clear, suggesting 'The "hardest to reach" families are often the ones we need to reach most' (Blair 2006).

Making a reality of prevention for more of the children who could benefit requires a step change in the way mainstream services are provided to young offenders and children at risk. In particular, education and mental health services are simply failing to meet the needs of many young people. It is left to the youth justice system to try to pick up the pieces.

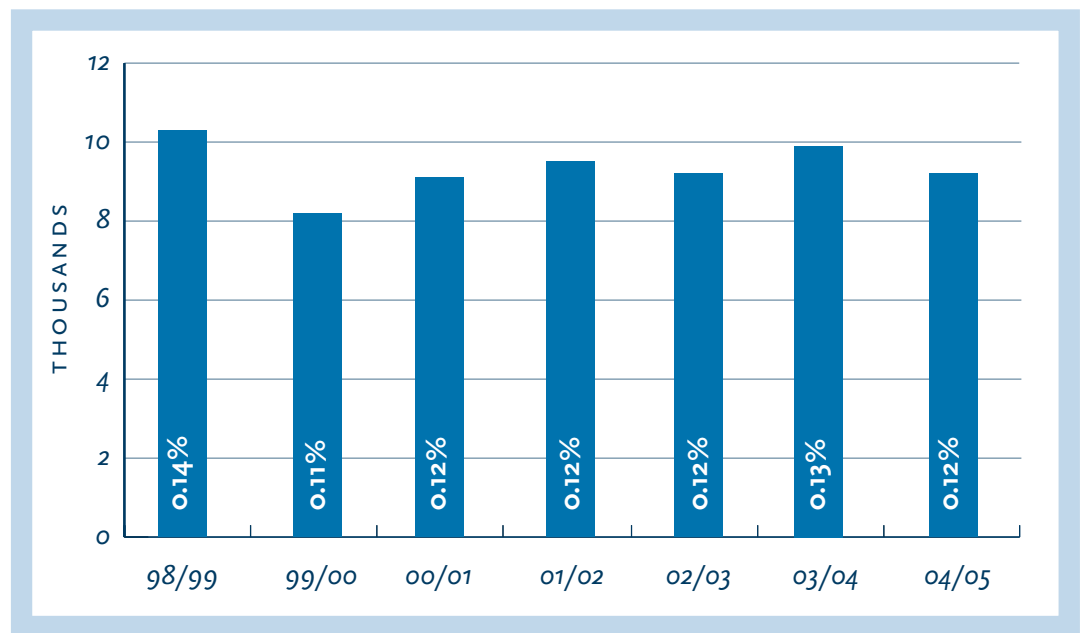
Education

It is well known that the educational experience of children who end up in custody is extremely poor. The findings from a review of the youngest children in secure institutions found that, of the 23 children who were looked at, only one was participating in mainstream education. The Prison Inspectorate's report on juveniles' perceptions of prison found that 83 per cent of boys in YOIs had been excluded from school at some time in the past, and that two in five reported that they had played truant every day (HMIP 2004).



Education departments are simply not meeting the needs of children and young people who offend. This is illustrated by the Audit Commission's finding in 2004; that for the most part, they simply do not know how many school-age young people are not in school. Little progress has been made in tackling truancy and recent levels of school exclusion have remained stubbornly high. Official figures show there were 9,500 permanent exclusions from primary, secondary and special schools in 2004/05. Although four per cent fewer than a year before, the number of 'fixed period' exclusions rose 13 per cent, to 390,000. A total of 221,000 individual pupils were suspended at least once, 19,000 more than in 2003/04. Sixty cases involved children aged four or less. Black children were nearly three times more likely to be dealt with by exclusion than young white people (DfES 2006).

Figure 1.1: School exclusions in England, Number of permanent exclusions (as a percentage of school population) *Source: Annual School Census*



Despite the fact that excluded young people are more than twice as likely to self report offending as other students, government policy in recent years has made it more rather than less likely that young people will be thrown out of school. Tackling poor behaviour has become the priority, and exclusions are now seen as part of the solution, not the problem. Responding to the figures in 2004, School Standards Minister Jacqui Smith confirmed 'we want a zero-tolerance approach to disruptive behaviour, on everything from backchat to bullying or violence. I fully back heads who decide to remove or prosecute anyone, parent or pupil, who is behaving in an aggressive way' (BBC 2005). Fearful perhaps that such a policy, if implemented literally, would leave few pupils in the classroom, her successor Jim Knight greeted the 2005 figures with a more measured but nonetheless clear message to the minority that 'schools can and will act robustly' (BBC 2006).

This rhetoric stands starkly at odds with the early days of the New Labour government when its flagship Social Exclusion Unit published its first report urging a one-third reduction in exclusions (SEU 1998). Since then, concern from head teachers and teaching unions about the behaviour of children and their parents has led to a focus on school discipline. As Steve Sinnott, general secretary of the National Union of Teachers, has said: 'Schools will not tolerate the deteriorating behaviour of a small number of young people. They will act to protect the right to an education of all other children' (BBC 2005).

There is obviously a need for effective policies to deal with the kind of misbehaviour that can lead to exclusion – fighting, persistent disobedience, bullying, etc. Apart from the negative impact of such behaviour within a school setting, a major longitudinal cohort study in Edinburgh has found that ‘controlling misbehaviour in school is important because, along with a range of other factors, such misbehaviour tends to lead to later criminal conduct’ (Smith 2006).

Research has also shown that getting young people to stay on at school has an impact on crime rates: total crime, robbery and violent crime fell in areas where the Education Maintenance Allowance was introduced in 1999 relative to those areas that did not participate in the education subsidy programme (ESRC 2006).

There is a need to take account of underlying issues about the way the national curriculum engages young people and how schools often collude with absenteeism. There are, however, two key areas particularly ripe for development.

The first is to ensure that teachers and other school staff are trained in a wide range of restorative and problem-solving techniques which can resolve conflicts between pupils and between pupils and teachers. For example, in some of the high schools in Sefton, Merseyside, a restorative conference is always used where there is a chance of exclusion. In three pilot schools this has brought about reductions in permanent exclusions of 55 per cent, in fixed-term exclusions of 38 per cent and in the total number of excluded days of 57 per cent over a one-year period. A Youth Justice Board evaluation of restorative justice (RJ) in schools, identified that of 625 full conference processes recorded in 26 schools, some 92 per cent were successfully concluded and in 96 per cent of those cases, the agreed contract was still being sustained three months later. For all conference participants, 93 per cent said that they felt the process was fair (Youth Justice Board 2004). Schools report significant impact of informal restorative approaches in other issues of behaviour even when exclusion is not a possibility.

Despite encouraging experience, RJ rates hardly a mention in the report of Alan Steer into school discipline commissioned by the Prime Minister (DfES 2005).

While a major DfES-led initiative on RJ in schools would reduce conflict and exclusions substantially, problems sometimes arise because mainstream schools are being asked to cope with children who require much more attention than can be provided. The second area for development is, therefore, the need to ensure that the right kind of provision is available. In particular, it is crucial that the system of special education functions properly. The Education Select Committee published a damning report in June 2006 highlighting ‘significant cracks’ in an under-funded system that leaves desperate parents without sufficient support (House of Commons Education and Skills Committee 2006). The number of residential places has declined by seven per cent since 1997, from 1,239 to 1,148, with a decline of four per cent of the number in special schools. While residential schools will not be appropriate for many young people, much more specialist support is needed, whether in specialist or mainstream schools. Ofsted has found that each can provide good results (Ofsted 2006).

The Select Committee was greatly concerned about the impact on children with special educational needs who end up being excluded and drift into crime. They found it ‘unacceptable that such a well-known problem continues to occur’ and recommended that ‘the government should enhance existing, and improve alternative forms of provision, training and resources rather than using an increasingly punitive approach for these children and families involved’ (Education Select Committee 2006).

Mental health

If education services are 'failing to cope with the rising number of children with autism and social, emotional or behavioural difficulties', it is becoming clear also that mental health services are also unable to provide the kind of services which are needed. There are important overlaps of course. Many of the children who play truant or are excluded from school suffer from conduct disorders – a pattern of repetitive behaviour where the rights of others or the social norms are violated. Others exhibit problems with social understanding, and have disorders on the autistic spectrum – i.e. they have a disability that affects the way they communicate and relate to people around them. However, these problems often remain undetected or untreated.

The scale of child and adolescent mental health problems is large and increasing. The service response is simply inadequate. The 2004 Office for National Statistics survey found that 11 per cent of boys and eight per cent of girls aged five to 16 had at least one disorder, with conduct and hyperkinetic disorders – the ones most likely to manifest themselves in delinquent behaviour – much more likely in boys than girls (ONS 2004). Children from poorer backgrounds, children in care, asylum-seeker children and those who have witnessed domestic violence, are all at particular risk of developing mental health problems.

The British Medical Association has estimated that around 1.1 million children under the age of 18 would benefit from support from specialist mental health services. A recent study suggests that disorders on the autistic spectrum may be much more common than previously thought, with up to one in a hundred children suffering from them.

A leaked memo from the Department of Health in July 2006 (Revill 2006) illustrated the gaps in provision, suggesting that only half of Primary Care Trusts can provide access to mental health specialists for teenagers with learning disabilities and autism.

There is a particular problem for young people aged 16 and 17, who often fall into a gap between child and adult services, and therefore do not receive adequate help and support. Many children's services do not deal with children over 16 although they are required to. Sixteen and 17-year-olds who experience treatment through adult services find it daunting. It is estimated that a third of all young people admitted for mental illness are not admitted to a specialist unit but stay in a general adult ward.

Conclusions

A comparative analysis of the treatment of young people in trouble in England and Wales and Finland found that Finland has tiny numbers of young offenders locked up but accommodates 'very large numbers of children and young people in non-custodial residential institutions of one type or another' (RCP 2004). These include reformatories, children's homes, youth homes and family group homes. By far the largest number – almost 4,000 – are held in special psychiatric units. If England and Wales had the same number of psychiatric beds per head of population as Finland, there would be some 40,000. In fact there are fewer than 1,200 (O'Herlihy et al. forthcoming).

It appears that the concern about child and adolescent mental health in Finland has eclipsed concerns about youth crime and it would follow from this that behaviour that might be viewed as criminal in England and Wales, could well be dealt with in Finland, first and foremost, as psychiatric disorders. The researchers suggest that the use of psychiatric units reflects a philosophy of highly individualised treatment which is out of favour in the UK. However, 'when we consider recent research undertaken in Greater Manchester by

the Youth Justice Trust, which reveals that in 147 randomly selected Youth Offending Team cases, serious and untreated problems of loss or bereavement were present in 92 per cent of cases, the fact that in the Finnish system, places in special psychiatric units for children and adolescents outnumber places in reformatories in a ratio of 160 to one, appears rather less outlandish' (Pitts and Kuula 2005).

Whether residential or not, it is clear that unless basic mainstream services like education and health are able to respond to the needs of young offenders and children at risk, youth justice ends up picking up the pieces, providing a parallel but second-rate service.

To improve services will, of course, have a cost. But it will have a range of benefits in terms of reduced criminality, improved learning outcomes and reduced adult mental health problems.

How government should best organise services is discussed in Chapter four. But it is clear that any substantial investment in the assessment and care of children needs to be integrated and coordinated centrally and locally.

At central government level there seems to be a strong case for the DfES exercising an overarching responsibility for every child, including those who offend or are deemed at risk of offending

Locally, while Youth Offending Teams (YOTs) include representatives from health and education, they have not succeeded in improving access to mainstream provision. To some extent they may have made it more difficult. Education and health departments can slough off their responsibilities to the YOT. The budgets of YOTs do not allow them to pay for specialist input that might be required.

It makes sense for the full range of prevention and treatment to be coordinated locally through Children's Trusts and in the children strand of local area agreements.

Too many prosecutions

In April 2006, a ten year-old boy found himself before a district court judge in Salford facing a racially aggravated public order offence. He had allegedly called an 11-year-old 'Paki', 'Bin Laden' and 'nigger'. The judge asked the Crown Prosecution Service to reconsider whether criminal proceedings were in the public interest, leaving them in no doubt as to his view. 'Nobody is more against racist abuse than me but these are boys in a playground. This is nonsense ... there must be other ways of dealing with this apart from criminal prosecution.'

A year earlier in a House of Commons debate, Conservative MP and part-time judge Humphrey Malins described a judicial sentencing seminar in which participants had to pass sentence on three boys, two of whom were aged 12 and one aged 11, who had gone up to up to another boy in the playground and said, 'Give me £1 or we'll thump you'. Later in the day, they had gone up to another boy and said, 'Give me your drink or we'll hit you'.

The MP thought it astonishing that such behaviour was being discussed as part of a judicial sentencing exercise on robbery. 'I thought it strange' he remarked 'that we were dealing with 12-year-olds behaving as 12-year-olds always have. They were going through the court system and I had to think of a sentence. What is going on in the school and at home when someone cannot get a grip of 12-year-olds and say, 'Come on, let's do better'?'.

The youth justice system in England and Wales leaves plenty of scope for bad behaviour by children as young as ten to be brought before the courts and that is what has been happening since 1997. Before the Crime and Disorder Act 1998, the law contained a presumption that those under 14 did not know the difference between right and wrong and a conviction could only result if the prosecution proved that they did so. New Labour considered the so-called doctrine of *doli incapax* an affront to common sense and repealed it, leaving England and Wales with one of the lowest ages of criminal responsibility in Europe.

In all societies, children below a certain age are too young to be held responsible for breaking the law. That concept is spelled out in the Convention on the Rights of the Child, which calls for nations to establish a minimum age 'below which children shall be presumed not to have the capacity to infringe the penal law'. But the Convention does not set a specific age; the Beijing Rules for Juvenile Justice recommend that the age of criminal responsibility be based on emotional, mental and intellectual maturity and that it not be fixed too low. It varies greatly from six years old in some US states to 18 in parts of South America. The UK countries have a lower age than do all of the G8 countries, apart from the United States.

Table 2.1: Age of criminal responsibility in different countries

Canada	12
France	13
Germany	14
Japan	14
Russia	14
Italy	15

Children as young as ten are not, of course, subject to the same sentences as adults. The youth court which deals with most under 18s has limited sentencing powers, with detention of up to a maximum of two years available for those aged 12 years and above. Nonetheless, the most serious cases can be dealt with in the Crown Court before a jury, with adult maxima available for grave crimes.

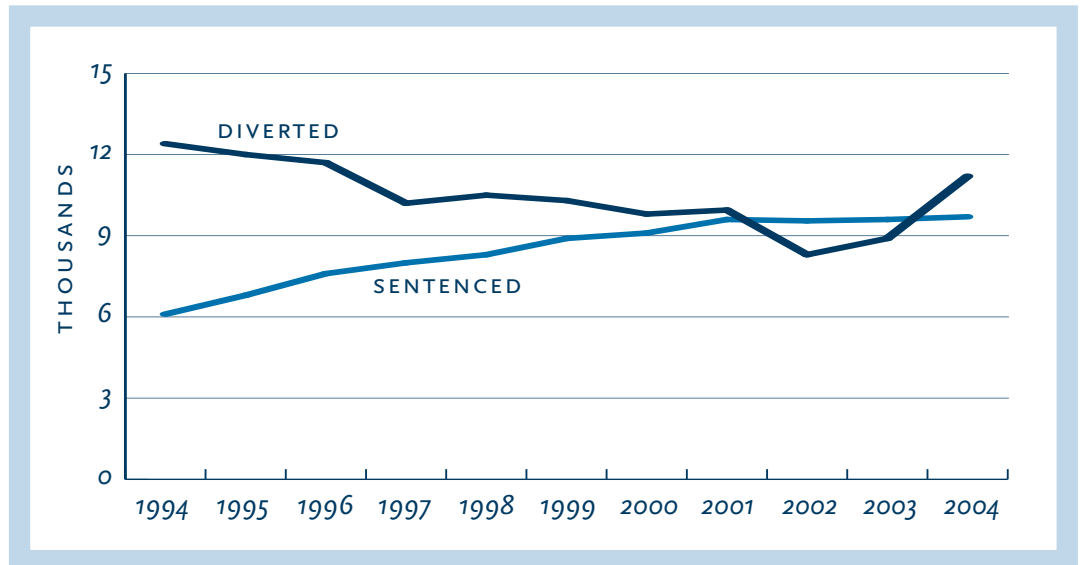
A good deal of youth crime is dealt with outside the youth court by way of reprimands and final warnings, a system of diversion with which the Crime and Disorder Act replaced the earlier cautioning arrangements.

Almost all youth justice systems have some form of diversion so that resources can be concentrated on the most serious and chronic cases. This is necessary on practical grounds because of the sheer range of adolescent misbehaviour which would otherwise overwhelm the courts. But it is also desirable because of the negative effect of criminal labelling which can result from the processes of conviction and sentencing. A court appearance can, in certain cases, confirm an adolescent's deviant identity both in their own eyes and those of others, thereby extending rather than curbing a delinquent career. Research in one English county concluded that 'as far as young offenders are concerned, prosecution at any stage has no beneficial effect in preventing re-offending. On the contrary, prosecution only seems to increase the likelihood of re-offending' (Kemp et al. 2002).

New Labour's reforms, as shown by the title of the White Paper *No More Excuses*, were based on scepticism about diversion. Cautioning had fallen into disrepute partly as a result of well-publicised cases of young people being cautioned over and over again – so-called repeat cautioning – alongside research which showed that diversion became counter-productive if applied too liberally. It is now accepted that a blind acceptance of labelling effects in the 1980s had led the Home Office, police and youth justice practitioners to embrace diversion more enthusiastically than the evidence warranted. But the resulting limits on diversionary options – effectively one reprimand and one final warning however serious or trivial the offence – has caused leading commentators to suggest that 'in rightly repudiating (as a universal nostrum) the "grow out of crime/leave the kids alone" philosophy, the new English system might have gone too far in the opposite direction' (Bottoms and Dignan 2004). This is supported by evidence from the Scottish longitudinal study which found that being caught by the police had a particularly strong influence on whether young people gave up delinquency entirely: the more times they had been caught by the police, the less likely it was that their level of delinquency would be zero at later stages. The researchers note that this fits with the ideas of labelling theory which holds that people officially labelled as criminals tend to adopt a criminal identity, and find it very hard to escape from it subsequently (Smith 2006). Certainly the data shows that an increasing proportion of known young offenders are being brought before the courts in England and Wales rather than diverted (see Figure 2.1).

Figure 2.1: Cautions and sentences of ten to 17-year-olds, 1994–2004
 Young offenders diverted and sentenced, 1994–2004

Source: Adapted from Morgan, R and Newburn, T “Youth Justice” in the Oxford Handbook of Criminology (forthcoming), Oxford University Press



A variety of international observers have taken the view that too many children are criminalised at too early an age in England and Wales. The UN Committee on the Rights of the Child recommended in 2002 that England and Wales raise the minimum age for criminal responsibility. The European Committee of Social Rights described it as manifestly too low and not in conformity with Article 17 of the social charter, which assures the right of mothers and children to social and economic protection. The Council of Europe’s Commissioner for Human Rights recommended that the UK bring the age of criminal responsibility in all its jurisdictions into line with European norms and that the age at which children who breach Anti-Social Behaviour Orders may be sentenced to custody should be raised to 16.

There have been a growing number of calls for change domestically. The Commission on Children and the Well-being of the Family drew attention to the growing contradiction between the effective lowering of the age of criminal responsibility to ten through the abolition of *doli incapax*, which implies that children over the age of nine have the same knowledge of what constitutes crime as a mature adult, and the simultaneous raising of the presumption of parents’ responsibility for their children’s offences. In particular, the abolition of *doli incapax* and the coercive nature of parenting orders have created a new reality of dual responsibility for juvenile crime.

The Royal College of Psychiatrists has called for a government-led process of consultation on the needs and human rights of child defendants, to include the age of criminal responsibility. On her retirement as president of the High Court's family division, Dame Elizabeth Butler Schloss revealed her view that too many child offenders are prosecuted and put on the path to a life of crime, telling the Guardian she believes that some young people who commit crimes should be treated as children at risk and dealt with through the care system, rather than prosecuted (Dyer 2005).

In the wake of the Salford racism case, a leading Muslim observed that:

We need to be sensible in relation to 10-year-old children. It does not seem eminently sensible, therefore, for this to go to court.... The issue of racism is of course very serious but we should educate them, not take them to court (Marrin 2006).

How to put it right

The three most important changes needed are; the raising of the age of criminal responsibility, giving greater encouragement to diversion, and the development of more relevant ways of holding young people to account for their behaviour.

Raising the age of criminal responsibility

There is a strong argument in logic for the age of criminal responsibility to reflect the age at which we no longer require children to receive full time education. A more modest change would be to raise it to 14 to bring it into line with international norms. Children below the age of 14 who commit serious crimes would instead be eligible for proceedings in the Family Court. Where there is a need for compulsory measures of care or supervision, these could be provided by civil court orders rather than as a result of a criminal conviction. YOTs operating within children's services would offer programmes of supervision and support for those involved in less serious offences, the aim of which should be to strengthen the ability of families to exercise care of and control over their children.

There will be those who would argue that making changes of this sort would leave the public unprotected by the criminal courts. But the scale of the problem bears examination. Published statistics do not enable easy analysis of offenders under the age of 14 but it is possible to look at ten and 11-year-olds and 12 to 15-year-olds.

Criminal statistics for 2004 show that fewer than 900 ten and 11-year-olds were sentenced – an average of six per YOTs. Only four received custodial sentences for offences of robbery. Three-quarters received community sentences, the most common offences being theft and handling stolen goods. The remainder were fined, discharged or otherwise dealt with (see Tables 2.2 and 2.3).

Almost the same proportion of 12 to 15-year-olds was dealt with by community penalties. Of the 600 who went to custody in 2004, most had committed burglary, robbery or theft, with fewer than one in ten convicted of indictable sexual and violent crimes.

Table 2.2: Sentences for under 18s, by age, in 2004

	age 10–12	age 12–15	age 10–18
Discharge/fine	153	2,767	28,349
Community penalty	665	13,050	56,715
Custody	4	596	6,325
Otherwise dealt with	57	979	4,799
Total	879	17,392	96,188

(Source: Criminal Statistics England and Wales)

Table 2.3: Offences leading to custodial sentences, 2004

	10–12	12–15
Burglary	–	132
Robbery	4	106
Theft	–	106
Violence	–	56
Sex	–	10
Other indictable	–	70
Summary	–	116 (of which 51 common assault)

(Source: Criminal Statistics England and Wales)

In practical terms, many of the successful features of interventions could be applied. The necessary range of family support and restorative justice services, including family group conferencing, should be organised by children's services departments and YOTs in every area. These should build on the success of the youth offender panels which have recruited more than 6,000 volunteers to decide how first-time offenders should best make amends and be helped to stay out of trouble.

Encouraging diversion

For those over 14 years old, although prosecution would be an option, most of the young people admit their offending should as now be dealt with outside the courts. Diversionary programmes should aim to require the young person to accept responsibility for their conduct, make an apology to the victim and undertake appropriate forms of reparation.

Stronger efforts need to be made to raise the level of victim involvement in restorative activities, which appears relatively low in England and Wales compared to other countries. The Northern Ireland Conferencing service reports 69 per cent victim involvement compared to fewer than 20 per cent in Youth Offender Panels. It may be that the emphasis on reducing delay militates against successful restorative justice. What this suggests is that more flexibility is needed. The government's target of reducing to an average of 71 days, the period from arrest to sentence for persistent offenders, was met in 2001 and has been set for all offenders since then. There are strong arguments for reducing unnecessary delays in responding to young people who offend and the way in which police prosecutors and courts work together to manage cases is much better than it was. A speedy resolution of cases is not of course an end in itself. Time must be allowed to undertake necessary assessments of cases, put together plans of intervention and, in the case of restorative measures, undertake informed discussions with victims.


More flexibility, too, is needed in the process of diversion. The existing system of one reprimand and one final warning should be relaxed, with greater flexibility introduced to allow other forms of resolution of cases to count towards police targets.

Prosecution and courts

Finally, some limited reforms should be introduced to the prosecutorial and court system. Initial decisions about young people aged 14 to 18 charged with criminal offences should normally be brought before a Young People's Prosecutor (YPP). As well as having regard to the evidence and the public interest, the YPP would be required to consider the interests of the young person and actively look at ways of diverting cases, for example through conditional diversion programmes. The YPP would have the power to make an order requiring a young person to appear before a Youth Offender Panel and undertake any resulting contract for up to a year. The prosecutor would also have the power to require the local authority to investigate the need for civil care proceedings where the young person does not appear to be receiving proper care and supervision.

Where the YPP considers there is no alternative to prosecution for 14 to 18-year-olds, their case should be brought before a specially constituted youth court. Where there is a plea of guilty, the court should consider whether to order a family group conference in every case prior to sentencing. Based on the Northern Ireland model of conferencing, the aim of this would be to encourage the young offender to assume responsibility for their wrongdoing, make an apology to the victim and do what they can to put things right.

Where such a conference is held, the youth court should be required to take into account any agreements made when considering sentence. The court should also have the power to transfer the case to a civil family court for consideration.



All cases involving young defendants who are presently committed to the Crown Court for trial or for sentence should, in future, be put before the youth court consisting, as appropriate, of a High Court Judge, Circuit Judge or Recorder sitting with at least two experienced magistrates. The only possible exception should be those cases in which the young defendant is charged jointly with an adult and it is considered necessary, in the interests of justice, for them to be tried together. The youth court so constituted should be entitled, save where it considers that public interest demands otherwise, to hear such cases in private, as in the youth court exercising its present jurisdiction.

Serious and persistent offenders

Children who commit serious crimes, or continue to offend despite efforts to contain them, understandably cause the most public concern. So, too, does the way the youth justice system responds to them, criticised at once for being too harsh and too soft. The record over the last nine years is not a happy one.

International law requires children to be detained as a last resort and for the shortest possible time. The United Nations, and more recently the Council of Europe, have criticised the high numbers of children we lock up in England and Wales. Although comparisons can be treacherous, we certainly seem to make more use of prison custody for 15 to 17-year-olds than other countries, and we are highly unusual in giving criminal courts powers to sentence children as young as ten to detention.

But what is so bad about having a high number of young people locked up? The underlying reason for the international community's emphasis on a sparing use of custody lies in the fact that, despite the best efforts of staff, locking up children and adolescents is fraught with ethical, social and financial problems as well as proving singularly ineffective in reducing re-offending. At worst, detaining damaged and difficult young people 24 hours a day, seven days a week for weeks, months or even years can interrupt the normal process of growing up, reinforce delinquent attitudes, and create the ingredients for bullying, intimidation and racism. The deaths of 28 young people in custody since 1990, and the fact that 36 per cent of teenagers in prison say that they have felt unsafe while inside, make it hard to argue that custody is safeguarding, let alone promoting, the well-being of children.

It is also deeply troubling that while about one in 40 white young offenders is sentenced to custody, the figure is one in 12 for black young people and one in ten for those with mixed race.

Lord Carlile's report into control and restraint, segregation and strip searching in custody paints a disturbing picture of practices within secure settings, and finds that 'some of the treatment children in custody experience would, in another setting, be considered abusive and could trigger a child protection investigation' (Carlile 2006).

In a recent series of visits to closed establishments of all kinds undertaken by the present author, two common themes have emerged. The first is the lack of meaningful vocational education and training. All too often establishments are required to teach young people in a classroom when they have not set foot in a school for months or even years.

The second is the lack of suitable accommodation for young people on release. Almost all the establishments had tales of young people who did not want to be released, preferring to stay locked up than face a future with nowhere to go or a placement in a bed and breakfast.

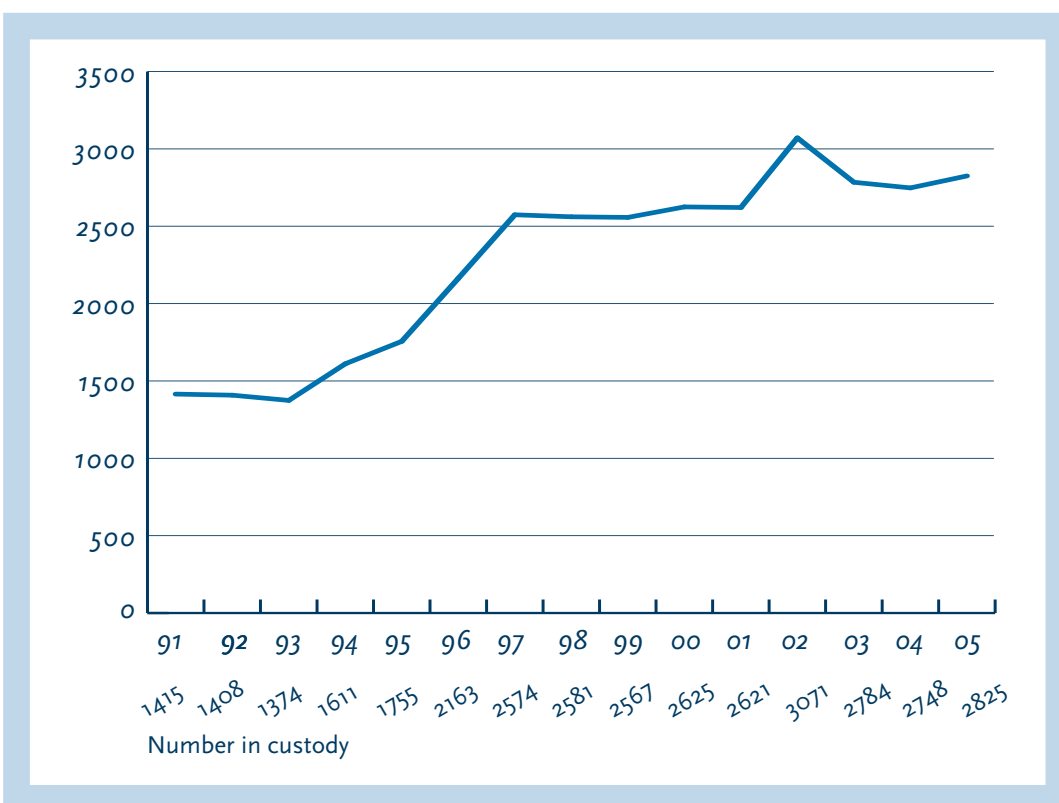
Who is in custody?

On 30 April 2006, there were 2,819 young people in juvenile secure establishments, 2,617 boys and 202 girls. Of these, 645 were on remand, awaiting trial or sentence and the remainder serving sentences. During 2004, 8,110 young people were received into custody.

These young people are not randomly drawn from society. Most have experienced a range of problems; low educational attainment, disrupted family backgrounds, behavioural and mental health problems and problems of alcohol and drug misuse.

Figure 3.1: Young people under 18 in custody in the month of June, 1991–2005

Source: Youth Justice Board



Since 1997, the numbers in custody have remained stubbornly high. Figure 3.1 shows trends in the use of custody over the last 15 years. While the sharpest rise came in the period 1993–7, the reforms have not succeeded in bringing the numbers down.

The continuing high levels of custody may be occurring because the increasing use of prosecution, described in the previous chapter, has made more young people eligible for custody. Table 3.1 shows that since 1997, there have been increasing numbers of offenders being processed and therefore arguably more candidates for custody, and that the proportionate use of custody has fallen from nine to seven per cent. But most of the additional cases are at a low level of seriousness. It may, of course, be that the criminalisation of young people at a lower age means that more of them are having longer careers in the system and thereby building up the prior convictions which place them at greater risk of custody. But more numbers being sentenced is not the whole answer.

There may be a greater number of serious offences dealt with by the courts, although this does not seem to be the case to any great extent. Court decision-making may have toughened up – but why, when the non-custodial options available are so much better than before?

It is true that the climate of political and media debate has led to sharp rises in imprisonment for adults and to an extent, youth justice has bucked the trend. But given the increased range of community penalties, it is disappointing that numbers have stayed so high.

There are three main reasons why they have. First, legislative changes have strengthened courts' powers (for example, in relation to remands to custody and the sentencing of 'dangerous offenders'). Second, Court of Appeal guidelines have led to harsher sentencing for the kind of offences in which young people are heavily involved, as in the so-called 'mobile phones' judgement during the government's street crime initiative (R v Lobban and Sawyers, R v Q). Lastly, the encouragement being given to the use of Anti-Social Behaviour Orders and more rigid enforcement of orders across the board has accelerated the progress of young people through the system and into custody.

Table 3.1: Proportionate use of different sentences for under 18s (%), 1994–2004

	1997	1998	1999	2000	2001	2002	2003	2004
Discharge	32	31	30	25	18	15	15	13
Fine	23	24	23	23	23	16	15	16
Referral order	0	0	0	1	2	20	27	27
Community penalty (excl. referral orders)	34	34	34	39	43	37	32	32
Custody	9	8	8	8	8	8	7	7
Other	2	3	4	4	6	4	4	5
Total sentenced	79,092	86,294	90,160	91,480	95,485	94,458	92,531	96,188

(Source: Youth Justice Board)

Key priorities

There are three key priorities for policy in relation to serious and persistent offenders. The first is to reduce the numbers locked up. The second is to introduce a more appropriate sentencing framework for those who do need to be held in secure conditions. The third is to overhaul radically, the type of placements available in secure institutions.

Reducing the numbers

In June 2006, the Conservative chairman of the Public Accounts Committee urged the government to 'think long and hard about practical alternatives to imprisonment for ... children' (Committee of Public Accounts 2006).

There has, in fact, been substantial investment in alternatives to custody. Intensive Supervision and Surveillance Programmes (ISSPs) were introduced from 2001 and became available nationally from 2003. There are, at any one time, about 1,400 young people on ISSPs, about half the number of those in custody. An evaluation of these demanding, six-month programmes by Oxford University concluded that the impact of ISSPs on custody had been mixed (Grey et al. 2005). As with all alternatives to custody, there are risks of net-widening. The programmes might be used, not as an alternative to detention, but to beef up intervention for young people on straight supervision. Where such young people fail to comply with the demands of the 25-hours-a-week contact, breach proceedings can lead to a custodial sentence.

Unless programmes are very clearly targeted on the most persistent and serious offenders, and serious work is undertaken to help young people comply, alternatives can inadvertently accelerate young people into custody rather than divert them from it.

There is, therefore, a need to ensure ISSPs are targeting those at genuine risk of custody and not widening the net by providing alternatives to other interventions. YOTs need to be encouraged to work harder to reduce numbers by improving their pre-sentence reports and their communication with sentencers, by local reviewing of cases where custodial sentences are made, and the development of an appeals strategy so that the rationale for custodial sentences is routinely tested in the higher courts. Best-practice guidelines on compliance with and enforcement of sentences will be needed, otherwise more and more breach cases will end up in custody at the hands of the proposed National Enforcement Agency.

A more radical approach is to use financial incentives to encourage the reduction in the use of custody. If local authorities were required to meet some or all of the cost of custody, they might work harder to develop preventive programmes or community-based alternatives. There is currently an incentive for ‘cost shunting’ in which local authorities fail to make interventions for which they have to pay, in the knowledge that, should the child offend, custodial costs will be met centrally. A pilot should be urgently established in which a YOT is given a sum of money based on the costs of average use of custody over the last three years. It then is charged for using custody in the following year but can keep any savings. This form of ‘justice reinvestment’ has proved successful in reducing juvenile incarceration in Oregon and urgently needs exploration here.

Sentencing framework

There are a number of ways in which the sentencing framework could be amended better to meet the particular needs of cases involving young offenders. For example, a juvenile equivalent of the custody minus or other form of suspended sentence should be available in the youth court. A definition of custody as a last resort needs to be worked out by the Sentencing Guidelines Council. It should be based on limiting custodial sentences to offenders convicted of serious violent offences where there is a significant risk of further harm, and to those convicted of serious non-violent offences, who are highly persistent offenders and who have repeatedly shown themselves unable or unwilling to respond to community-based sentences.

More fundamentally still, a new form of residential sentence could be introduced to run alongside and potentially replace the Detention and Training Order. Courts would be able to make a residential training order, a new indeterminate order of up to two years or in the case of grave crimes, five years. A residential training order should only be made in cases where the offence is so serious that the young person should be removed from home and the young person has failed to comply with community-based orders.

The residential training order should generally be served in open conditions in an appropriate placement designated by the local authority and accredited by the DfES. Such establishments might include residential schools, adolescent mental health units, children’s homes or foster care placements.

In addition, the youth court should be able to rule that a residential training order or part of it should be served in a closed establishment.

Secure reform

Whether or not a new order is introduced, there is a strong case for making placements in a wider range of health and education facilities available for use by young people remanded or sentenced to custody. There is also a need for radical reform of the existing secure facilities to ensure that they provide a safe and positive experience and child-centred regimes.

At best, secure establishments can provide a safe, structured and caring environment which can help address the years of neglect, abuse and educational failure which characterise the upbringing of many of the most serious and persistent young offenders. This requires an approach which genuinely meets the needs of individual children in small-scale living units with intensive preparation for release and continuing care once back in the community.

At worst, secure establishments can be a frightening interlude in young lives already characterised by neglect and punishment. Even smaller closed institutions in the local authority or secure training sector struggle to overcome the hostility and alienation felt by many of the children detained against their will. Equipping their residents to lead more positive lives is also an uphill task without intensive follow-up support and a willingness on the part of schools, social workers and employers to give them a chance on release. It is perhaps not surprising that the results in terms of re-offending for all forms of custody have always been stubbornly high, with four out of every five young people back before the courts within two years.

The current range of secure institutions comprises three kinds of establishments: prisons, Secure Training Centres and Secure Children's Homes, each with different rules, standards and systems of governance. In the early days of New Labour, it was hoped to create a rational and coherent set of arrangements. This has not occurred and the system of 2006 has significant weaknesses, many of which were detailed in Lord Carlile's report for the Howard League for Penal Reform.

a) Prison

The Prison Service, which accommodates 83 per cent of the juvenile custodial population, is particularly poorly suited to locking up young people. In 1996, Chief Inspector of Prisons, Sir David, now Lord, Ramsbotham recommended that they should relinquish responsibility for all children under the age of 18. Children represent less than five per cent of the prison population. An organisation whose key priority is to prevent the escape of dangerous adult criminals cannot be expected to provide the level of care, supervision and support required by teenagers.

Instead of implementing Ramsbotham's recommendation, the Labour government gave the Youth Justice Board responsibility for purchasing secure places. It was hoped that the Youth Justice Board's role would lead to a transformation of the service. Thanks to substantial investment, particularly into education within Young Offender Institutions, there have been improvements. The Children's Rights Alliance for England, normally a stern critic of conditions for detained juveniles, concluded in 2002 that 'results have been great, in some cases near miraculous' (RCP/CRAE 2002).

The regular survey of young people's views conducted for the inspectorate makes for a more sober assessment. The 2004 report found that a third of young people felt unsafe at some time, eight per cent said they had been assaulted by staff and 24 per cent assaulted by other trainees.

There are three basic problems with the way the Prison Service locks up young people.

First, the physical buildings are inappropriate and conditions are unsuitable. In several establishments young people are housed in wings of 60 people, making it hard to meet individual needs. Meal times and association are noisy and difficult to manage. In other establishments, there have been improvements and a 'softening' agenda designed to make them more child friendly. Four new girls' units in adult prisons provide smaller-scale living arrangements, but at New Hall, the priority attached to security by the Prison Service means the building is surrounded by high razor-wire fences.

Almost all young people are allocated to one of 16 specific juvenile establishments, although those classified as in need of maximum security, can be held in adult prisons. Of the 11 establishments where boys are held, four are for boys only. The remaining seven are so-called 'split sites', where young offenders aged between 18 and 21 are also accommodated. From the end of the year, it is possible that there will be adult offenders too, when the Home Office implements its policy to scrap specialist provision for young adults. This will make it even harder to develop child-centred regimes.

Second, the rules and procedures in juvenile YOIs are not geared to children. All, bar two of the many Prison Service Orders which dictate what happens in prisons, are primarily designed for adults. PSO 4950, the order that does specify regimes for children, cross-refers throughout its text to adult PSOs, which have to be complied with in juvenile establishments. PSO 1600, on the use of force, is not amended for use with children and despite its unsuitability as a punishment, segregation can be ordered in disciplinary proceedings for children as well as adults.

Third, the number and type of staff working in YOIs is often not up to the challenge of dealing with disturbed adolescents. They are recruited to work in any prison and basic training contains nothing about the needs of young people, although a mandatory training course has been introduced for those who work with juveniles. The Youth Justice Board vision for the juvenile estate involves 'staff committed to working with children and young people, who are adequately trained in this area of work, and who have completed nationally approved training in effective practice work with young offenders'.

The Inspectorate's finding in 2004, that a quarter of young people reported that they had received insulting remarks from staff in prison, shows the scale of the problem.

There is also considerable hostility among parts of the Prison Officers Association (POA) to a child-centred agenda. The POA objected for several years to replacing traditional prison officer uniforms and as recently as 2000, inspectors were concerned that staff addressed young people by their surnames. After a disturbance at Hindley last year, the POA asserted that their members within the juvenile estate have had their dignity systematically stripped from them by managers terrified of rocking the liberal boat and an employer pandering to and nurturing radical dangerous ideologies. At their 2006 conference a debate took place on 'the unacceptable current Juvenile and Young Offenders Policies in force in England and Wales'.

At one level, it is easy to see why prison staff find it hard to cope. On average, juvenile YOIs have one member of staff for every ten young people, compared to two members of staff for every three young people in Secure Children's Homes and three staff for every eight young people in Secure Training Centres. There are no entry requirements for prison officers and a basic nine-week training course.

What this indicates is that fundamentally prisons are the wrong places for under 18s. There are some excellent staff and good models of practice but these could be very much more effective within an organisational ethos and structure dedicated to the secure care of young people. There needs to be a timetable for phasing out prison custody for 15 and 16-year-olds.

b) Secure Training Centres

The four Secure Training Centres (STCs), which have places for 274 young people, are a recent invention. After the 1992 election, Kenneth Clarke asked his Home Office officials to develop proposals for dealing with persistent juvenile offenders who, according to the police, were able to commit large amounts of crime with impunity. The murder of James

Bulger in February 1993 by two ten-year-old boys gave a sudden and tragic impetus to this agenda. Although the existing law allowed, indeed required, the two boys responsible for the murder to be detained indefinitely, there were limits to courts' powers to detain juveniles under the age of 15 unless they had been charged with or convicted of the gravest crimes. Under the Criminal Justice and Public Order Act 1994, a new Secure Training Order was introduced for persistent offenders aged 12 to 15. The order was to be served in new, specially designed Secure Training Centres, which were to be set up by the private, voluntary or public sector.

The Labour Party supported the powers but opposed the new centres. The then home affairs spokesman for Labour, Tony Blair, believed them to be 'so fundamentally wrong' because 'the last thing you want to do with those persistent young offenders is to put them alongside 40 or 50 other persistent young offenders and lock them up for a considerable period of time'. He described it as 'insane to set up these new centres at the same time as the local authorities are having to close some of their facilities for disturbed young people in communities throughout the country' (Blair 1993).

This 'insanity' is in fact what has happened under the government he leads. The number of places in local authority Secure Children's Homes on 31 March 2005 was 400, some 55 lower than in 2000. STCs have been expanded at the expense of the local authority units.

Table 3.2: Commissioning of beds: comparison since 2002

	2002/03	2003/04	2004/05	2006/07
SCHs	254	297	235	235
STCs	118	194	274	274
YOIs	3,066	2,965	2,800	2,825
Total	3,438	3,456	3,309	3,334

(Source: Youth Justice Board)

The STCs have had a chequered history. The first took a considerable time to establish. The contract for the first to be run by Rebound, a subsidiary of security firm Group4, was not signed until March 1996 by Michael Howard. On coming to power, Labour controversially decided to continue with the STC programme. When the Youth Justice Board assumed responsibility for commissioning and purchasing secure places, STCs were seen as a way of diversifying the market of providers and driving up standards through competition with the prison and local authority sectors.

This approach has not proved a success. Plans for 400 new STC places announced in 2001 had to be scaled down when resources were not forthcoming. The four STCs have proved a mixed bag in terms of performance. The deaths of Gareth Myatt at Rainsbrook and Adam Rickwood at Hassockfield have focused parliamentary and public attention on the STC sector and raised questions about the length of contracts, the difficulties and costs of amending those contracts, and the quality and number of staff.

c) Secure Children's Homes

The 15 Secure Children's Homes (SCHs) the Youth Justice Board contracts with, provide, by some distance, the best level of care among secure establishments. Apart from one unit, which has recently been taken over by the private sector, SCHs are run by local authorities and are subject to licensing and inspection by the DfES. Recent inspection reports by the Commission for Social Care Inspectorate have been very positive, but the units are expensive and there is no coherent strategy for funding them.

SCHs play an important role in providing secure care for children who are not necessarily

offenders but who need to be locked up for their own protection – often children who run away from other placements. There is disagreement as to whether mixed units which accommodate welfare and justice cases are sensible. One of the arguments deployed in favour of establishing the STCs was that they could have an undiluted focus on tackling persistent offending. In fact the underlying needs of almost all of these children are the same – for stability, for boundaries within the context of warm caring relationships, for compensatory education and for skilled help in making sense of traumatic early experiences of abuse and neglect.

Local authority demand for welfare places has fallen in recent years, contributing to the closure of several units. It is the case that there are often some vacancies in SCHs but the Youth Justice Board does not have the resources to buy them for the vulnerable offenders who would benefit from them. During 2006, the number of such vacancies at the end of each month ranged from 48 in February to 25 in May.

What to do?

The task in relation to secure care is fourfold. First, there is a need for much more powerful leadership over the range of secure establishments. The Youth Justice Board was set up to oversee and set standards, yet its response to the Carlile inquiry exposed its powerlessness to direct the way institutions are organised and run. The current jumble of responsibilities is hard to justify. The government's recognition in 1998, that the arrangements for the provision and management of secure accommodation 'are inefficient and incoherent and are in need of reform' (Straw 1998), could describe the position now, eight years on. A relocated Youth Justice Board reporting to DfES should be given the power to develop a common set of rules and standards, building on the best of what is being done in each of the three sectors. The same arrangements for licensing and inspecting secure establishments should be adopted. Consistency should be introduced in matters such as the numbers of visits and the use of control and restraint, with an urgent review of rules.

Second, prison department custody, as it is currently provided, should be phased out for 15-year-olds within one year and for 16-year-olds within two years. On current numbers, this would involve making, on average, about 300 alternative placements available in year one and a further 700 in year two. A vigorous approach to the reduction in the use of custody could bring that number down. An interdepartmental task force would need to identify the kind of alternative provision to be used. The task force would feed its findings into the more fundamental review suggested below.

Third, for those 17-year-olds who need to be held in custody, units within the prison service should be developed along the lines of the girls units or the Oswald Unit at Castington, where smaller living areas enable individual needs to be assessed and met more fully. The units for this age group should aim to be able to comply with the new standards set by the Youth Justice Board within three years.

Finally, the introduction of a proposed residential training order provides an opportunity for a fundamental review of the range of open and secure facilities which might be available to young offenders and the ways in which they are managed and paid for. The review should look at the case for a distinct youth residential service to assume responsibility for all of the facilities where young people can be detained, at whether the current arrangements for managing and providing secure children's homes are the most effective, and consider the extent to which residential provision within the education and health settings could be made more available to children in conflict with the law.

Putting it into practice

The agenda sketched out above, represents a substantial shift in how to respond to delinquency. The principal elements are:

- greater investment in the infrastructure to prevent and treat potential and actual young offenders through the education and health services;
- replacing a criminal justice response to the youngest offenders with measures which better reflect their age and maturity;
- making serious inroads into our high custodial population by improving alternatives and creating a new residential training order;
- and transforming the way children are locked up, by diversifying provision and phasing out prison.

Putting such policies into practice requires substantial changes in the machinery of government both centrally and locally.

Centrally, a properly joined up set of measures for young people in England can only really be developed under the aegis of the Children's Department in the Department for Education and Skills. A study of children who present challenging behaviour suggested that, historically, whether the problem child has been cared for, punished, educated or treated has often been a matter of chance, depending upon which individuals in which agency happened to pick up his or her case (Visser 2003). A more sensible approach is for responses to children to be made on the basis of what best will meet their needs. The outcomes for children, which drive the work of the DfES – being healthy, staying safe, enjoying and achieving, making a contribution and achieving economic well-being – are as appropriate for young offenders as they are other young people. Many of the highly successful preventive programmes developed by the Home Office and Youth Justice Board – including Youth Inclusion Programmes, and Youth Inclusion and Support Programmes – would much more appropriately sit within the remit of a department committed to these positive outcomes for children, rather than one whose core purpose is protecting the public.

The positive outcomes for children also offer a sensible set of values which should underpin the range of community-based and residential services which are needed for young people in conflict with the law – including the facilities in which the proposed residential training order might be served. The DfES should be responsible for inspecting all facilities where children are placed and for licensing annually, all establishments which restrict the liberty of children.

While most of these services should be provided to children on the basis of need rather than their status as offenders, there is a case for a body within the department that recognises the particular challenges posed by children in conflict with the law, ensures that there are opportunities for them to make amends, and that risks are properly managed and appropriate standards set and monitored.

Thus the Youth Justice Board should be retained as a non-departmental public body sponsored by the Secretary of State for Education and given a revised statutory remit. The Home Office should have observer status at the Board's meetings.

Policy questions relating to young offenders over the age of criminal responsibility and reforms to the courts structure should be a matter for the Department for Constitutional Affairs; the Attorney General should be responsible for taking forward the development of the Young People's Prosecutor.

The central responsibilities should be mirrored at local level, where the local authority, working at the centre of local area agreements, should exercise an expanded leadership role. In doing so, it should be encouraged to adopt both a neighbourhood and an integrated focus to work on youth crime.

A recent study of responses to anti-social behaviour in Neighbourhood Renewal pathfinder areas has found that police are more active partners in neighbourhood management initiatives than agencies that deliver the 'support side of the anti-social behaviour equation, including social services and YOTs' (Bacon and James 2006). Work in progress for the Justice Reinvestment project has shown that young offenders tend to be concentrated in particular neighbourhoods, alongside young people who suffer from all sorts of other difficulties. An approach based on places as well as cases could improve the impact they make.

The second challenge is to integrate both prevention and rehabilitation with the mainstream work of children's services, particularly child protection, education and work with families. There is considerable overlap between the work of social workers and the work of YOTs. The YOT inspection report for 2004 found a high level of need among children supervised by YOTs, including 13 per cent who were looked after by the local authority and 22 per cent who were likely to self harm (HM Inspectorate of Probation 2005). In a survey of children in need in February 2005, 14,000 were so assessed because of 'socially unacceptable behaviour' (Office of National Statistics 2006).

A recent major academic review of developments found that 'the paradox of an imaginative multi agency YOT structure that has, in general, weak links with child protection colleagues and a weak commitment to child welfare issues is one of the strangest features of the new English system' (Bottoms and Dignan 2004). In the joint inspectorate report on safeguarding children in 2002, Youth Offending Teams were found to be detached from other services and not giving sufficient attention to the wider safeguarding and protection needs of children and young people who commit offences (Department of Health 2002). The 2005 follow-up concluded that YOTs are now giving much greater recognition to safeguarding issues, but the separate service provided by YOTs, outside the mainstream provision of children services, still causes problems.

In particular, there are incentives for local authorities to slough off their duties to look after children, even children on full care orders, once these children are involved in the youth justice system. The Leaving Care Act 2000 provides a duty upon the local authority to advise, assist and befriend eligible children and to promote their welfare. There must be an assessment of the child's needs and a pathway plan prepared and kept under regular review. The child must also have a personal adviser. It is widely accepted that, on resource grounds, some local authorities have sought to restrict the eligibility of children for these services. In a landmark ruling in 2005, Mr Justice Munby found serious shortcomings on the part of Caerphilly County Borough Council in the care of one of its children who had been sentenced to a Detention and Training Order.

There is thus a strong case for locating YOTs within Children's Trusts which will deliver services locally from 2008 and for giving greater statutory and financial responsibility to local authorities. The proposal for a new residential training order would require local authorities to identify placements where such orders could be served and to meet the costs of doing so. Local charging for detention should also be explored so that there are no incentives to shunt the costs of responding to delinquent children onto central government.

Conclusion

There are many dedicated and skilled professionals and volunteers who work with young offenders across the country. Among police officers and social workers, staff in secure establishments and referral order volunteers alike, are thousands of people who are deeply committed to helping the children they work with achieve a better future. All too often, their efforts are let down by the framework and system in which they are working, whether it is unwillingness by a school to offer another chance, long waiting lists for psychiatric help, rigid requirements to prosecute minor cases, lack of appropriate residential placements close to home, or an inability to find suitable accommodation at the end of such a placement. While some progress has been made in improving performance, and the Youth Justice Board has played an important role in achieving that, this report has argued that something more fundamental is now needed – a new and better framework for youth justice, which genuinely moves from punishment to problem solving.

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