



Standing Committee for Youth Justice

STANDING COMMITTEE FOR YOUTH JUSTICE (SCYJ) RESPONSE TO YOUTH CRIME ACTION PLAN (YCAP)

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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.

Its members are: Action for Children, Association of YOT Managers, Barnardo's, Children Law UK/TACT, The Children's Society, Children's Rights Alliance for England, Council for Disabled Children, The Howard League for Penal Reform, Just for Kids Law, JUSTICE, Nacro, National Association for Youth Justice (NAYJ), National Association for Youth Justice (NYA), NCB, NSPCC, The Prince's Trust, Prison Reform Trust, Rainer Crime Concern, Sainsbury Centre for Mental Health, Secure Accommodation Network and VOICE.

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

Introduction

- I.1 Although SCYJ supports an emphasis on prevention in policy relating to children in trouble, we are in general disappointed by YCAP, which we believe represents a missed opportunity for a comprehensive review of the government's approach to children in trouble.
- I.2 We support the aims in para. 26 of the Introduction to YCAP of preventing offending and reducing re-offending by [children and] young people, building public confidence, supporting victims and making children and young people safer and ensuring that [children and] young people in the youth justice system achieve the five *Every Child Matters* outcomes. However, we disagree strongly with the suggestion in that paragraph that '[t]hese can only be achieved through a 'triple track' approach of tough enforcement, non-negotiable support and challenge and prevention to tackle problems before they escalate'.
- I.3 Indeed, we believe that this approach, with its emphasis on targeting large numbers of [primarily disadvantaged] children and young people as potential offenders, and coercion of them and their families, is highly counterproductive and will serve to perpetuate social exclusion and will not achieve the laudable aims listed in para 26 of the Introduction. We emphasise the importance of mainstream services other than the criminal justice system to the achievement of those aims and stress that children and young people should not be artificially divided into offenders/potential offenders and victims/others.
- I.4 We therefore recommend an alternative approach which would focus on mainstream service provision, targeted support for those children and families in need, and where necessary, statutory intervention (for example, where a child is at risk of 'significant harm' under the Children Act 1989).
- I.5 We are disappointed that YCAP is largely reliant upon promises of pilots and the restatement of existing practice. The government's current approach is failing to achieve the aims in para 26 of the Introduction to YCAP and is highly damaging to children and young people in trouble, their families, and society as a whole. In this context we stress that an immediate and wholesale review of the government's

approach, alongside the mainstreaming of examples of good practice (such as the use of restorative justice in schools) is necessary as a matter of urgency.

- I.6 We are also concerned that YCAP shows an absence of focus on and integration with emerging health issues and policy. The tone of YCAP is therefore highly likely to be at odds with the tone of emerging policy documents such as the CAMHS review (due out in December) and the children and young people health and social care strategy expected in the spring. Such a lack of integration at a cross departmental level is unhelpful, muddles commissioning and provider practice, and does not model the greater integration being advocated on the ground.

- I.7 The response which follows sets out our detailed recommendations in the context of YCAP, divided up according to the YCAP Chapters. We have not confined ourselves to the consultation questions but have sought to engage with the issues raised by the paper as a whole. Our response is followed by two appendices, one summarising relevant parts of the recent concluding observations of the UN Committee on the Rights of the Child re the United Kingdom, and one setting out relevant quotes from children and young people.

Chapter 1 YCAP: Dealing with unacceptable behaviour

- 1.1 The plans contained in Chapter 1 YCAP build on work that is already underway as part of the Government's anti-social behaviour and 'respect' programme. While this chapter is not officially for consultation, we believe it is important to comment on the approach presented here. This chapter is particularly disappointing because of its focus on enforcement and the language of 'non-negotiable' intervention. SCYJ would prefer to see help delivered to children and families in a more supportive way based on focusing on children's welfare needs, rather than using draconian measures such as Parenting Orders and Anti-Social Behaviour Orders (ASBOs).
- 1.2 This chapter highlights the contradiction between different strands of government policy. For example, there is a potential clash with the recent Government Play Strategy consultation, which emphasises the need for children and young people to be able to play outside in public spaces and in their communities; in other areas of public policy, especially youth justice, there is a real drive to get children and young people *off* the streets, back indoors and away from their communities where they are perceived and portrayed as being a problem and nuisance.
- 1.3 Measures to tackle anti-social behaviour and youth crime such as curfews and dispersal orders impact on the lives of all children and young people and have resulted in stereotyping, stigmatising and fear of them all. YCAP does little to balance this view of young people. There is a real need for public awareness-raising about what is normal behaviour for children and young people at different developmental stages and ages, and to promote tolerance of this.

Peer groups, gangs and anti-social behaviour (paras 1.5 – 1.7 YCAP)

- 1.4 YCAP is right to assert that peer groups should not be mistaken for gangs, and that not all groups of young people should be seen as a problem. It is often suggested that children and young people congregating in groups are threatening. SCYJ is concerned that increasingly children and young people hanging out in a group is seen as anti-social behaviour *per se*, and also that there is a presumption that young people who gather in a group will behave in an anti-social manner.

- 1.5 The term anti-social behaviour (ASB) is ill-defined and not clearly understood. We are aware of a number of cases in which complaints about anti-social behaviour have turned out to be young people playing football in the park. We also know of another case where older young people were the source of the problem rather than the younger group identified by those making the complaint. Young people tell us that they hang out in public places with friends for various reasons: in order to feel safe¹ or because they don't have anything else to do, and because they want time and space away from organised activities – and they have every right to do so.
- 1.6 The recent UK concluding observations of the UN Committee on the Rights of the Child stated that '[t]he Committee is concerned at the restriction imposed on the freedom of movement and peaceful assembly of children by [the] anti-social behaviour orders...as well as by the use of the so-called "mosquito devices" and the introduction of the concept of "dispersed [sic] zones"'. The Committee goes on to recommend that the UK reconsider these measures insofar as they may violate the rights of children to freedom of movement and peaceful assembly, 'the enjoyment of which is essential for the children's development'.²
- 1.7 It was disappointing to read the tone of para. 1.6 YCAP which talks about 'taking immediate steps to tackle peer driven delinquent behaviour by ensuring the police and local partners are using all their existing powers to maximum effect'. We would be very concerned that these powers could be used without first attempting to engage and understand the views of the young people involved. We would always advocate discussion with young people about the reason for their behaviour and giving time to exploring alternative solutions.
- 1.8 Our belief that ASBOs are unsuitable for children has been well-articulated elsewhere,³ but it is worth noting here that SCYJ believes that responses to children who display anti-social behaviour should be predominantly preventative rather than enforcement based, and inclusive rather than demonising. We would wholly support

¹ [Parenting and children's resilience in disadvantaged communities](#) (2006), P Seaman, K Turner, M Hill, A Stafford and M Walker, published for the Joseph Rowntree Foundation by the National Children's Bureau.

² Committee on the Rights of the Child, 49th Session, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Concluding observations, United Kingdom or Great Britain and Northern Ireland (2008), para. 34 and 35.

³ *Still Waiting for Youth Justice*, A position paper by the Standing Committee for Youth Justice, Autumn 2006.

the recent concluding observations of the Committee on the Rights of the Child, which recommends that 'the State party conduct an independent review on the ASBOs with a view to abolishing their application to children'.⁴

- 1.9 We were particularly disappointed by the announcement in May of a new national 'Action Squad' of ASB experts who will target areas that are not using the anti-social behaviour measures available or where the perception of ASB is high. There are two main problems with this. Firstly, we are strongly opposed to a system of targets in terms of the numbers of orders handed out, and this announcement seems to herald a return to this type of system. Secondly, there are many ways to work to reduce perceptions of anti-social behaviour that do not involve a reliance on orders being placed on young people – orders that could lead to imprisonment if breached.
- 1.10 There are alternatives which merit consideration and further work. Confronting misunderstandings, fear and perceptions through talking to members of the community and bringing younger and older people together can be successful in reducing stigmatisation and promoting tolerance.

Street-based teams (para 1.11 YCAP)

- 1.11 SCYJ strongly supports positive work and engagement with children and young people. The Youth Services have suffered from decades of cuts and under-funding and in this context we welcome the proposal to reverse this and create street-based teams of youth workers. However, we are extremely concerned about the drive to get young people off the streets and the threat of coercion where there is a failure to comply.
- 1.12 We are extremely concerned by the proposal that street teams, of youth workers and ex-gang members, should be able to issue 'increasingly tough punishments'. In the absence of a fair judicial process the issuing of 'punishments' is in direct violation of Article 6 European Convention on Human Rights (ECHR) and would therefore be unlawful under s6 Human Rights Act 1998. Further, the child or young person to whom a 'punishment' could be handed out might not be guilty of any

⁴ Op cit footnote 2, para. 80.

crime; in these circumstances Article 7 ECHR could also be breached. We are concerned that the authors of YCAP did not appreciate the vital importance of due process and their own obligations to ensure that it is protected.

- 1.13 Outreach youth work can provide an opportunity to work closely and in a sympathetic way with young people in their environment. The threat of sanctions, however, is at odds with the traditional ethos of youth work, which is based on the ability of workers to build up a relationship of trust and understanding with young people, listening to young people, and involving them in decisions. There is a danger that the threat of sanctions and the presence of the police will have a negative impact on the ability of workers to build up such a relationship.
- 1.14 The use of ex-gang members may be positive but this should not negate the need for trained professionals who are experienced in working with young people. Ex-gang members will need specific training and consideration needs to be given to the suitability of such individuals to work with children. The vast majority of children are not in gangs and, as noted in YCAP, peer groups should not be confused with gangs. Involving ex-gang members in some outreach work may not be appropriate and may be intimidating for some children.

Operation Stay Safe (paras 1.13 – 1.14 YCAP)

- 1.15 SCYJ welcomes this initiative but would hope that as police have a duty to protect children and young people at risk they would already be using child protection legislation to keep young people safe. We are concerned that this initiative is being used under the banner of controlling anti-social behaviour. Care needs to be taken to ensure that this does not result in children being swept off the streets. Children should only be 'removed to a place of safety' if they are at risk of harm as defined by the Children Act 1989. Implementation will depend on how the police interpret and use their powers, and interpretation of 'at risk' and 'place of safety' need careful consideration in this context.
- 1.16 Details of the scheme will need to be carefully agreed. The social care system currently struggles to provide emergency accommodation for children and it is easy to imagine that children will get 'stranded' in church halls or will end up spending the

night at a police station. This happens at present in police stations where bail cannot be granted because an address cannot be found for accommodation. YOTs struggle to get other services to accept referrals of children and it is a myth to imagine that there are services waiting to welcome and provide much needed services for vulnerable children who are in conflict with the law.

Basing Youth Offending Team workers in the police station (paras 1.15-1.16 YCAP)

- 1.17 We are unsure to what extent this proposal would be helpful although there may be merit in exploring this approach further. We understand that the aim of this initiative is to divert some young people from the criminal justice system and ensure input where appropriate from Children's Services. We support diversion but we consider that the difficulty is in the current rigidity of the existing pre-court framework and therefore we are unclear how locating YOT staff in police stations would address this.
- 1.18 It may be impractical to tackle young people's offending at point of arrest. In practice it is likely that a YOT worker based at a police station would only be able to provide limited help. The comparison with drug treatment services is false because the latter are simply making referrals to existing services in one specific area. As noted above, YOT workers struggle at present with problems concerning bail (often related to suitable accommodation) and the 'necessary services' often just don't exist or the child has already run through them.
- 1.19 The Department of Health are piloting the placement of workers in six pilot custody suites and if pursued this proposal should build on and integrate the learning accrued by the Department of Health over the last year about what works. If implemented, the introduction of YOT workers in the police station would require careful planning, functional guidance and independent evaluation.

Increase after school police patrols (para 1.17 YCAP)

- 1.20 It will be important to consult children and young people, possibly through school councils, about the extension of after school police patrols. Children and young people should advise if the measure is necessary and, if so, the extent to which

patrols should be deployed. The measure should aim explicitly to further develop positive relationships between the police and young people. The involvement of the lead safer school police officer in patrols would be helpful in developing a positive relationship.

Identifying prolific young offenders (paras 1.18-1.21 YCAP)

- 1.21 SCYJ is unsure of the merits of these specific proposals set out in YCAP; however, we would like to make a number of observations relating to these proposals. Firstly, we feel that the term 'prolific' is potentially very misleading. The term suggests that young people are constantly involved in criminal behaviour. This is not the case and it is important to avoid inflaming the public debate and also labelling children. Any information held about individual children therefore needs to be treated as highly sensitive.
- 1.22 'Deter' is also a loaded term to use and what is really needed is positive, constructive work to be undertaken on an interagency basis with this difficult group and not innumerable procedural devices, task groups and targets. YOTs have a great deal of evidence of efforts to work with prolific offenders being undermined by heavy-handed or inappropriate action by the police. Better co-ordination between different agencies is to be welcomed. The more prolific and deeply entrenched this behaviour becomes the greater the need for support in working to deal with the causes of crime and helping a young person to address their behaviour.

Chapter 2 YCAP: Intervening early

Conceptual approach

- 2.1 SCYJ agrees that early action to deal with children's incipient problems is very important, the most likely to be successful and represents a good investment. At that very general level, we support the intentions behind Chapter 2 YCAP. However this work needs to be conceptualised, and carried out, in a broader context than YCAP's model of early intervention targeted on crime risks – for the reasons explained below.
- 2.2 Children's offending is typically but one symptom of multiple problems across the spectrum of their lives. The best route to avoiding adverse outcomes – offending or otherwise - is to tackle their root causes in a coordinated way. What is required is systematic and sustained work in early life to support the development of children who have the greatest concentrations of need or – in some cases - are specifically at risk of harm. This has now been acknowledged in key areas of Government policy – notably *Every Child Matters* (ECM) and the anti-poverty drive. (In the latter context Figure 2 on p28 YCAP shows that low socio-economic status has the strongest link with crime, yet the chapter makes no new proposals on tackling this).
- 2.3 Building on the above, we believe it is essential to bring concerns about averting future crime properly within the broader ECM policy and operational framework - a point we develop in commenting on Chapter 6 YCAP. Work by all the services and agencies concerned with children needs to focus on maximising their prospects of successfully achieving ECM's five outcomes, and meeting the needs of those who are falling or assessed as likely to fall short of achieving them.
- 2.4 This approach would also meet other, more specific concerns we have about Chapter 2 YCAP's present approach. It is wrong to identify as potential criminals young children who have done no wrong and indeed are well short of even England and Wales's very low age of criminal responsibility; disproportionate and unrealistic to target over 100,000 families as harbouring prospective prolific offenders (as para. 2.12 YCAP appears to do); and inappropriate and inaccurate to label broader social

initiatives such as Sure Start and Children's Centres as part of a crime reduction agenda.

Practical needs

- 2.5 Taking account of the above, SCYJ believe that early years work to meet children's ECM-related needs should in practice concentrate on ensuring that universal services are properly delivered to and actually help those in greatest need. This includes supplementary targeting as necessary to meet concentrations of need in particular communities or particular children. The work should also, as the Chapter recognises, help the child in the context of their family – but with a focus on support for the family which will help the child's development. Taken together these in turn require consistent, stable, professional relationships with the child and family – based on building respect and trust so as to win cooperation and enable provision of sustained support to help with often deep-seated problems.
- 2.6 This work with children in need should be co-ordinated and mainly delivered by the statutory services but make good use of the voluntary sector – where they have relevant skills and experience to offer and bearing in mind that they are often more able to secure engagement from the 'hard to reach'. Professionals, from whichever sector, need to be absolutely persistent in seeking to engage the hard to reach, not dropping cases because cooperation is hard to secure.
- 2.7 However it should not involve compulsion ('non-negotiable challenge and support') on families unless the Children Act 1989 test of *significant harm* is met – i.e. an emergency measure to deal with extreme and immediate welfare risks. That is the only approach consistent with the need to build respect and trust, or indeed compatible with the ECHR Article 8 and UN Convention on the Rights of the Child (UNCRC) Article 16 rights to respect individual and family privacy.

The Chapter's specific proposals

- 2.8 Against that background, SCYJ's views on the Chapter's specific proposals are as follows:

‘Ensure better targeting of universal services such as Sure Start on families that need them most’/ ‘Expand the provision of Family Nurse Partnerships’.

We welcome what we assume this refers to – para. 2.5 YCAP’s inclusion of outreach workers in the existing children’s centres programme, plus Family Nurse Partnerships (FNPs) (also outlined in para. 2.21 YCAP) and Parent Support Advisers. However apart from 10 FNPs no indication is given of scale or timing. The Government should commit itself to specific and substantial expansions.

2.9 **‘Significantly expand the reach of intensive family interventions’.** We agree with para. 2.12 YCAP’s proposal to fund and support all local authorities to run intensive family interventions, *but* subject to two very important provisos. These should be conceived and run as programmes focused on children in greatest need, not those specifically at risk of future criminality; and they should be based on sustained efforts at voluntary engagement without compulsion on these families at any stage (except in the circumstances outlined at 2.7, above).

2.10 **‘Make permanent exclusion from school an automatic trigger to a comprehensive (CAF) assessment of needs’.** We very much agree on the importance of this issue, and with the proposed mechanism so far as it goes. However CAF should not substitute for Child in Need assessments where they are required. More fundamentally, true prevention also requires steps at an earlier stage, to minimise the need for and use of school exclusions in the first place. The recent concluding observations of the UN Committee on the Rights of the Child criticised our high exclusion rate and stressed the need for this to be a last resort. The Government should commit itself to introduction with proper training of restorative processes in all schools, to deal constructively with emerging conflict inside and outside the classroom.

2.11 **‘Improve support in schools through safer school partnerships’ (SSPs).** This flies in the face of the evidence. The YJB’s evaluation of SSPs struggled to find any positive outcomes in the key areas of truanting, bullying and self-reported offending. Our restorative processes proposals above would be a more appropriate response.

2.12 **‘Increase the take-up of parenting support and offer better ways to engage (parents) in the youth justice system’.** This (paragraph 2.18 YCAP) is well

downstream from and can in no way substitute for early prevention work; but for children already involved in the youth justice system we do regard engagement with and support for parents as vital. This can help immediately in shaping final warning programmes and the remand and sentencing decisions of the courts, and if voluntary and continued beyond the term of the sentence would provide a belated but necessary way of engaging with the child's and family's wider problems. Help for YOT staff – who are not necessarily family specialists - from general family support /FIP workers would be welcome, but without compulsory elements.

2.13 **'Invest in the capacity of the third sector to reduce crime'**. Consistently with what we say at 2.6 above, we do think the voluntary sector can usefully contribute to children in need work, i.e. focusing on the '5 outcomes'. It can best be helped to do so through availability of 'priming' support to develop its supervisory and management infrastructure; but also through multi-year contracts, advertised and let well in advance; and by public sector customers recognising the key importance of quality and of sustained work with children in need.

2.14 **'Transform the quality of education provided to young people through Pupil Referral Units and other alternative provision'** (featured in para. 2.20 YCAP, though not the Chapter's headlines). We share the Chapter's frank recognition that PRU education is often poor, and look forward to detailed proposals from the Government on methods, scale and timing. We do believe the natural place for such intensive efforts is the school itself – to maintain a proper emphasis on reintegration and reduce the temptation to opt out of problems - but the bottom line is that PRUs and alternatives must have the scale and skills to cope well and this will require some pooled facilities.

The Chapter's specific consultation questions (paragraph 2.22 YCAP)

2.15 SCYJ note that two of the three questions the Government has chosen to ask in Chapter 2 are not about prevention or early intervention – our comments above on how to approach those matters are therefore important to the primary aim of this chapter. Taking account of the principles and practicalities we have outlined above, our answers to the specific consultation questions are as follows.

(a) 'Building on what we have set out here, what are the most effective ways for local agencies to increase further their focus on prevention and early intervention?'

2.16 We consider that what the Chapter describes as prevention and early intervention should take the form of multi-agency and in particular mainstream services work, first to maximise children's prospects of success across the 5 ECM outcomes and secondly to target with additional help (for children and their families) those who in early life are beginning to or are assessed as likely to fall short of such outcomes. Therefore, for those who require it, multi-agency children in need work should be systematically available, operating in all areas and linked to or compatible with the progressively-established Targeted Youth Support, CAF and lead caseworker mechanisms. The best format would be multi-purpose intervention Panels, modelled on YISPs but with a general not a crime-specific remit.

2.17 Children's Trusts should be responsible for making these mechanisms work. All statutory agencies should be required to support achievement of children in need 5 outcomes targets and contribute to assessments and solutions. Also locally-represented voluntary sector agencies should be given a full role in both assessments and solutions.

How can government ensure that parents are engaged when their children are in court and completing sentences? Should measures of compulsion be used and what should these measures be?

(b) Engaging parents when their children are in court

2.18 We strongly favour positive ways of promoting parental engagement when their children face trial. Parental involvement will help with the immediate questions of finding a suitable community-based remand and sentence as well as enabling a start to longer-term family-based work to tackle the child's needs. Moreover parents can face specific liabilities as a result of their child's court appearance – e.g. to meet an under 16 year old's unpaid fine or to give consent to a YRO mental health treatment requirement for an under 14 year old.

- 2.19 The primary means to secure this should be to make the legal system itself more child- and family- friendly – further contributing to the modernisation process started under the Government’s initial youth justice reforms and encouraged by the *Thompson and Venables* judgement. Irrespective of any fundamental legal changes, our youth courts could move closer to the informal, plain language, round-table, problem-solving style of the Scottish children’s panels. This would reduce parents’ impression that they too are somehow on trial – likely to be strongly-held by those previously in trouble with the law themselves
- 2.20 In support of this, consistently with the approach to engagement outlined under ‘Practical needs’ above, youth justice supported by family service professionals should make early and persistent efforts to engage parents/carers through the simple but often-effective methods of visits, phone calls and offers of help. These efforts should not be abandoned if initially unsuccessful, but continued and extended to the wider family. If the birth parents are very reluctant, the child themselves may be able to name a relative or family friend more likely to engage initially and possibly pave the way for bringing the parent(s) in later.
- 2.21 Where despite every such effort it is not possible for a parent or other suitable person connected with the family to attend, the child should be accompanied in court by an independent appropriate adult. This would give at least some of the personal support they need at what is a very testing time for any child, and help to secure fair process. (Without prejudice to the principles outlined here it may sometimes be necessary have an appropriate adult as well as a parent eg where the parent has been involved in abuse, neglect or leading the child into crime).
- 2.22 SCYJ does not support legal compulsion of parents to attend court, because the immediate family may be in great difficulty themselves, and simply unable at that stage to cope with the added stress of a court hearing or to make a positive contribution in court. These are matters that need investigation rather than an immediate summons. Moreover there can be more specific obstacles such as genuine inability to take time off work. The existing law is better balanced – giving discretion to require attendance by parents, guardians or local authorities and as appropriate to rely on YOTs or children’s social services as intermediaries.

2.23 Special consideration needs to be given to local authority corporate parents of looked after children, and foster parents. Notwithstanding the problems with summoning private individuals we do think it would be helpful to courts and children, and appropriate, for local authorities to be legally obliged to attend court with children they are looking after and to offer constructive advice to courts on remand and sentencing options. At present they can and some do refuse to get involved until courts have reached their decisions.

(c) *Engaging parents whose children are completing sentence*

2.24 As regards positive engagement, we consider that children on sentences require encouragement, information and guidance to help them successfully complete their sentence. Youth justice and supporting family professionals need to make every effort to involve parents through the direct and if necessary indirect (wider family and friends) means we have identified at **(b)** above.

2.25 To help engage them, parents need to be offered information on how the justice system works and what this means for their child, support with their and their children's problems, and someone to turn to for advice on how to support their children. Ideally, parents can play a key role in providing this support but it should be recognised that many parents of children who are in trouble may themselves be experiencing complex problems in their lives. For families in greatest difficulty, use could be made of 'whole family' support models of practice: family mediation or family group conferencing. These are recognised means of securing voluntary engagement, support and ownership.

2.26 By contrast, SCYJ opposes compulsion because it could not only put families in difficulty under unreasonable pressure but also aggravate problems with the child and even lead to youth homelessness - as a result of relationship breakdown or fear of fines or eviction, especially in ASBO cases. It would also raise difficult issues of responsibility and liability to sanctions if the child's order is breached: especially but not only if the parent had made reasonable efforts. At the very least it would require prior assessment of what the parents can manage and what support they need. Moreover it would be particularly unjust and inappropriate where the parents had earlier sought but been unable to obtain support.

Chapter 3 YCAP – Supporting Young Victims

- 3.1 We are pleased that YCAP recognises that there is a high incidence of victimhood amongst children and young people. The general bifurcation, however, between government policy towards young victims and that towards young offenders frequently inhibits good practice as it fails to recognise the complex relationships between offenders and victims, who are often the same young people; and indeed the impact of victimhood upon a young person's likelihood of offending. While there have been some welcome measures in recent years, such as the Young Witness Pack and the availability of special measures for vulnerable witnesses giving evidence in court, SCYJ is concerned that YCAP promises only minor, vague and piloted measures when there is an opportunity to make major, clear and comprehensive improvements to prevent victimisation and help children and young people who are or have been victims of crime.
- 3.2 SCYJ is extremely concerned that the government is failing to acknowledge the connection, established by research, between childhood experience of abuse and childhood offending. In particular, we are dismayed that the government has still failed to publish or implement the recommendations of the 2006 report *Past Abuse Suffered by Children in Custody – A Way Forward*.⁵ We fear that the wish to gain political currency from 'tough' treatment of young offenders and 'putting victims and witnesses first' has led to a refusal to countenance these links or to implement policies that would be far more effective at reducing crime and victimisation than the current approach.
- 3.3 We welcome the creation of the Joint Youth Justice Unit (JYJU) with staff from both the Department for Children, Schools and Families (DCSF) and the Ministry of Justice. We hope that its creation can usher in a new and holistic approach. Making children who offend or who are perceived as at risk of offending solely the responsibility of criminal justice agencies, and not of mainstream children's services, risks neglecting the responsibility of those latter services for preventing offending and preventing victimisation. As we outline elsewhere in this response, we welcome an increased focus on early intervention, especially with families with

⁵ Commissioned by the Youth Justice Board, available from the Howard League for Penal Reform, www.howardleague.org

particular problems and/or vulnerabilities; although we believe that such engagement should be voluntary unless/until a child is at risk of 'significant harm'.⁶ We also strongly recommend that children and young people going into custody do not cease to be deemed looked after children at that stage but that the responsibility of the local authority continue throughout and after their sentence. It is entirely anomalous that this should not be the case.

- 3.4 A holistic view of crime and victimisation prevention in relation to children and young people would emphasise the intervention of children's services when children are at risk not only of abuse but also of significant harm resulting from the influence of adults or other young people who seek to involve them in criminal activities. It would also stress the importance of funding high-quality mental health and therapeutic services for those children and young people, offenders and non-offenders who have suffered trauma or abuse in order not only to help the minority who would go on to abuse or commit serious crime in their turn but also to lessen the ongoing traumatic impact of victimisation for all such children and young people.
- 3.5 We are concerned that the blunt classification of much bad childhood behaviour as 'crime' without consideration of context is impeding the reduction of victimisation through its counterproductive results. For example, children are over-criminalised in relation to misbehaviour at school and in care settings when in a private dwelling (or indeed some private schools) the matter would be dealt with informally and through family or school discipline. The low age of criminal responsibility and the abolition of *doli incapax* means that incidents that might once have merited a telling off or detention (such as the taking of dinner money from another child) can now result in a prosecution for robbery and possibly, because of the expansion of the availability of custody for younger children, imprisonment.
- 3.6 This is not to say that such behaviour as bullying and violence, for example, in the school setting should be ignored. We urge government to take account of the success of restorative processes both within and outside education settings and to mainstream and properly to resource such provision. As well as directly reducing incidents of victimhood, by reducing exclusions from school such schemes will help to reduce the likelihood of further offending. It is evidently entirely counter-

⁶ See our response to Ch 2 YCAP, above.

productive for children who have offended or are at risk of offending to be excluded from school and given limited or no access to education; this has been a significant problem in the past. We are aware that under s101 Education and Inspections Act 2006 the LEA now has a duty to ensure that pupils subject to fixed term or permanent exclusion from a school or PRU are provided with a suitable full-time education from the sixth day of exclusion. Guidance adds that the first five days are to be used to undertake a CAF and assess whether, for example, the child has special educational needs. We would like reassurance that the government will be monitoring whether this new duty is being implemented – especially in the case of children and young people who have been involved in anti-social or criminal activity. We agree that the quality of PRUs should be improved but we also believe that children should only remain excluded from mainstream schooling while their presence in school represents an unacceptable risk to themselves or others and that any excluded child should be kept occupied by therapeutic and educational provision for the same number of hours per week as a child in school.

- 3.7 In relation to sexual offending, whilst the framework for protecting children and young people from those who have a history of violent or sexual offending against them should be robust, we are concerned that arrangements relating to Schedule One of the Children and Young Persons Act 1933 are sometimes inappropriately used (particularly where there is a child on child offence but with no indication of there being a long term risk of repetition).
- 3.8 We are further concerned that children who are being abused in the context, for example, of child sexual exploitation remain criminalised. We believe that children who are the victims of child sexual exploitation and/or human trafficking should never be criminalised; legislation should be amended accordingly so that children may come forward to seek help with confidence and so that public attitudes may be changed. Improved methods of detection and protection of such children should also be developed. Further, we emphasise that the response to the involvement of a child in offending (eg gun and knife crime, street crime) by adults or other young people should not uniquely involve criminal justice agencies: children's and youth services must be engaged in reducing the risk of such involvement generally and in nullifying specific risks to specific young people, if necessary by the use of legal powers.

- 3.9 In relation to practical provision, we would emphasise the importance of structured youth activities particularly for evenings and weekends both to divert young people from offending behaviour and equally to reduce victimhood by providing safe places for children and young people to go outside school hours. It should be ensured that children whose freedom of movement may be hampered by ‘gang’ boundaries can access these activities, for example by the provision of transport or more localised facilities, and/or by the increased presence of neighbourhood police in these areas where appropriate.
- 3.10 Children who are in custody and detention and/or in mental health provision are currently at considerable risk of becoming victims of abuse in the context of restraint, segregation and other practices and, in the mental health context, through the presence of adult patients on the same wards as children. The government has a particular responsibility to prevent offending towards children in its care and to avoid involvement in such offending through the sanctioning of unlawful practices and/or a failure to protect children and young people from unlawful acts. We emphasise that we regard the use of restraint against children in custody and detention as unlawful as contrary to Article 3 ECHR except where it is necessary and proportionate to prevent injury.
- 3.11 We urge the government to take full account of the judgment in the Court of Appeal in *R (C) v Secretary of State for Justice* [2008] EWCA Civ 882 (where it was held that the use of restraint to ensure good order and discipline would breach Articles 3 and 8 ECHR) and of the latest concluding observations in relation to the UK of the UN Committee of the Rights of the Child⁷ in which the UK was urged ‘to ensure that restraint against children is used only as a last resort and exclusively to prevent harm to the child or others...’. This should be implemented in relation to *all* settings in which children are detained or in the care of the state. We further urge the government to publish, as a matter of urgency, the report and recommendations of the independent review of restraint that reported to the government in summer 2008 but which has not yet been made public.

⁷ UN Doc CRC/C/GBR/CO/4, 3 October 2008 (unedited version).

- 3.12 The Committee on the Rights of the Child also urged the UK to ensure that corporal punishment was made wholly illegal in all settings; to actively promote positive and non-violent forms of discipline and to provide parental education and professional training in positive child-rearing. We agree.
- 3.13 We support the development of mechanisms for consultation with children and young people regarding victim services and other services. These must not be tokenistic, and must include children from diverse socio-economic and demographic groups. Any forums set up for this purpose should be inclusive of all groups likely to be victimised and must be geared towards real improvements to practice. We refer the government to the ‘Hear By Right’ standards for consulting children and young people:⁸ these are used in a wide variety of settings, including local authorities, strategic partnerships and the third sector, and could be re-drafted for YOTs and other authorities implementing YCAP.
- 3.14 Further recommendations that we would make in relation to this Chapter of YCAP include:
- The Code of Practice for Victims should be amended to include all those under the age of 18 as automatically considered to be vulnerable. This would be congruent with, for example, the proposed amendments to the Codes of Practice (Police and Criminal Evidence Act 1984) to treat those aged 17 as vulnerable;
 - We would welcome a review of the effectiveness of arrangements for compensation schemes (both in and out of the court setting) that have a separate focus on children and young people;
 - With regard to design solutions, funding should be considered to enable all secondary schools to provide secure locker facilities.

⁸ See www.nya.org.uk

Chapter 4 YCAP: Sentencing and Custody

General comment

- 4.1 As in other chapters of YCAP, the language used and tone adopted throughout Chapter 4 are distinctly punitive. SCYJ is concerned that this is inconsistent with the requirement under the UNCRC for children's best interests to be a primary consideration in all matters affecting them, and is incompatible with the additional rights protection afforded to children in trouble with the law. Furthermore, as is well-evidenced, conventionally punitive responses to juvenile crime are disproportionately costly and ineffective and, as such, of little value to the general public.⁹
- 4.2 SCYJ is also disappointed that YCAP makes few policy links between children in trouble with the law and children in need more broadly conceived, and specifically those in the looked after system and/or who have suffered serious abuse or neglect or have mental health issues, learning difficulties, autistic spectrum disorders or speech and communication difficulties. Research and practice experience confirms that these groups of children are most commonly drawn from the same population. Indeed, it was largely on such grounds that the JYJU, responsible both to the Ministry of Justice and DCSF, was established. In the view of SCYJ, therefore, YCAP represents a missed opportunity to develop an approach to youth crime grounded in a recognition that children who offend are commonly among the most disadvantaged and vulnerable members of the community.

Para 4.1 YCAP

- 4.3 SCYJ was disappointed that the Criminal Justice and Immigration Act 2008 (CJIA) introduced punishment as one of the specific purposes of sentencing for children. While we acknowledge that this provision was approved by Parliament, it is nonetheless unfortunate that the description of the purposes of sentencing in para. 4.1 YCAP makes no reference to the best interests or welfare of the child. (Other statutory purposes – reparation and the reform and rehabilitation of young people -

⁹ See for instance, McGuire, J and Priestley, P (1995) 'Reviewing 'What works': past present and future' in McGuire, J (ed) *What works: reducing reoffending*. Chichester: Wiley

are also noticeable by their absence.) The wording accordingly suggests a priority that is not present in the legislation and is, in the view of SCYJ, incompatible with other domestic statute and the UK's obligations under the UNCRC and other international standards, treaties, rules and conventions.

- 4.4 The paragraph also refers to 'the small number of young people who do end up in custody'. In fact, the population of the secure estate for children and young people is unacceptably high, both by historical and by international standards. The current use of custody for children has previously been acknowledged by a wide range of authoritative agencies - not least the Government, the Youth Justice Board (YJB) and the international community - to be problematic. Indeed in October 2008, the UN Committee on the Rights of the Child noted its concern that 'the number of children deprived of their liberty is high, which indicates that detention is not always applied as a measure of last resort'.¹⁰ It is disappointing that the wording in YCAP appears to suggest that there are no difficulties in this regard. It certainly gives no indication that reducing the custodial population is a priority for the Government or the YJB, and in the view of SCYJ, therefore sends out the wrong message to practitioners and policy makers.
- 4.5 As at July 2008, 2,938 children were detained in the secure estate for children and young people.¹¹ For every 100,000 children in the population of England and Wales, about 25 are in custody. The equivalent figure for France is 4, for Italy 2, and Finland 0.02.¹² The YJB's target to reduce the number of children in custody by 10% between 2005 and 2008, regarded by SCYJ as insufficiently ambitious, was not met. Given the scale of the problem, decisive action is required, and SCYJ is concerned at the apparent complacency of YCAP in this regard.
- 4.6 SCYJ accepts that some young people might have their liberty restricted as a measure of last resort and for the shortest appropriate period of time. Indeed, during the passage of the CJIA, SCYJ proposed the establishment of a clear threshold that would have restricted the use of custody to cases where the offence

¹⁰ United Nations Committee on the Rights of the Child (2008) *Concluding observations: United Kingdom of Great Britain and Northern Ireland*. Geneva: United Nations

¹¹ Figure from Youth Justice Board website <http://www.yjb.gov.uk/en-gb/yjs/Custody/CustodyFigures/> (accessed 27 June 2008)

¹² Muncie, J (2008) 'The "punitive turn" in juvenile justice: cultures of control and rights compliance in Western Europe and the USA' in *Youth justice* 8(2)

committed caused, or could reasonably have been expected to cause, serious physical or psychological harm and a custodial sentence was necessary to protect the public from a demonstrable and imminent risk of serious physical or psychological harm. The proposal was ultimately rejected by the government, but SCYJ will continue to press for the adoption of such a threshold. We do not therefore accept that children should be locked up for persistence alone as suggested in para. 4.1 YCAP.

4.7 Many children in custody are there for relatively trivial reasons that have nothing to do with them posing a serious risk or having committed especially serious offences. Indeed, the Ministry of Justice's own Offender Management Caseload statistics supplementary tables show that, in 2006, 448 15-17 year olds were received into prison establishments under sentence for breach of community sentence, 78 for threatening/disorderly behaviour and 723 for theft and handling offences.¹³ If the government is in doubt about this, SCYJ would ask that they consider recent research evidence that speaks to this issue. The Prison Reform Trust has, with the agreement of the Youth Justice Board, commissioned a study of children in the secure estate and their offending history. SCYJ awaits the outcome with interest.

Para 4.2 YCAP

4.8 SCYJ welcomes the provision in the CJIA that requires sentencers who impose a custodial sentence on a defendant below the age of 18 years to indicate why an intensive supervision and surveillance requirement, or intensive fostering requirement, cannot be justified for the offence. In addition, we acknowledge the importance of improving sentencer confidence in community-based disposals especially given the repeated failings of custodial sanctions. However these provisions fall short of the separate custodial threshold for the children that SCYJ considers necessary to ensure that detention is used as a last resort and for the shortest appropriate period.

4.9 In the absence of such a statutory provision, SCYJ would hope that the Sentencing Guidelines Council would produce guidance for the courts to ensure that custody is

¹³ Ministry of Justice (2007) *Offender management caseload statistics 2006*. Supplementary table 7.14. London: MoJ

reserved for the most serious cases. In 2005, the Youth Justice Board committed itself 'to work with the Sentencing Guidelines Council to agree on an operational definition of 'last resort''.¹⁴ SCYJ is not aware that any progress has been made on this issue in the interim period and would urge that it is now progressed as a matter of priority.

Para 4.3 YCAP

4.10 SCYJ acknowledges that some surveys have noted a public perception that the treatment of young people who offend is too lenient, even if such perceptions are inaccurate. Indeed, as is well-evidenced by robust research, public opinion is explained, to a large extent, by the fact that many people misunderstand the nature of disposals available to the juvenile court and underestimate the severity of sentencing of young people. Moreover, the evidence is contradictory. In one recent poll, 62% of respondents considered that sending children to custody was ineffective because prisons 'were equivalent to universities of crime' and 88% agreed that providing more constructive activities for young people would be an effective mechanism for preventing offending.¹⁵ In addressing this important concern, however, SCYJ considers that it is unhelpful to continue to frame the issue in terms of leniency or punishment: the public's main concern is in relation to what is effective, and improved information in relation to the operation of the youth justice system should focus on the nature of interventions that work to reduce the level and seriousness of reoffending. In particular, such information might usefully include the evidence that punishment for its own sake is ineffective and frequently counterproductive as indicated above.

Para 4.5 YCAP

4.11 The bullet points in para. 4.5 YCAP are intended to draw attention to improvements in the secure estate for children and young people. While accepting that considerable effort and resources have been directed to this end, SCYJ considers that YCAP should also acknowledge the areas of difficulty that remain and note

¹⁴ Youth Justice Board (2005) *Strategy for the secure estate for children and young people*. London: YJB, page 7

¹⁵ Prison Reform Trust (2008) *Criminal damage: why we should lock up fewer children*. London: Prison Reform Trust

some of the less positive developments so that these might be addressed rather than ignored. For instance, 30 children have died in penal custody since 1990; the failure to mention this and the thousands of children who continue to self-harm in the secure estate is an unacceptable omission; levels of restraint remain far too high, and the inquests into the deaths of Adam Rickwood and Gareth Myatt raised serious questions about the treatment of children within the secure estate. Amongst the shocking evidence uncovered by these inquests was the fact that the private contractors who manage secure training centres operated child restraint policies which were contrary to their own contracts over a period of years, without being held to account by the YJB or government, a situation that has drawn serious criticism from the Court of Appeal.¹⁶ How this was allowed to occur and what is now to be done to remedy these serious shortfalls remains to be addressed by government.

4.12 SCYJ is also disappointed at the closure of the open unit at Thorn Cross and the continued diminution of the stock and use of secure children's homes in favour of secure training centres (STCs) and young offender institutions (YOIs). We believe that secure children's homes offer the most child-centred, safest and most rehabilitative custodial regime of those currently available for children and young people, many of whom have vulnerabilities that cannot effectively be catered for in STCs and YOIs and who are therefore at risk of serious harm there. In this context, SCYJ does not consider the proposal to open a new young offender institution at Glen Parva to be a positive development. Similarly the proposed expansion of other YOIs at Cookham Wood, Wetherby, and Werrington represents an unwelcome acceptance that unacceptably high levels of incarceration of children are set to continue.¹⁷

Paras 4.6 – 4.8 YCAP

4.13 SCYJ considers that the principle of strengthening community involvement in the delivery of youth justice is interesting and merits further exploration. The proposal that Citizens' Panels should identify forms of reparation that might be undertaken by young people in the local area would however need to be approached carefully. In

¹⁶ *R (on the application of C) v Secretary of State for Justice* [2008] EWCA Civ 882

¹⁷ Youth Justice Board (2008) *Corporate plan 2008-11: business plan 2008-09*. London: YJB

particular, clear criteria would need to be established for the selection of reparative activity. Such criteria should include at a minimum: having regard to the safety and dignity of the young people performing the work; the importance of ensuring that any reparation should be achievable and within the capabilities of young people who offend; work should provide an opportunity to allow young people to expand their skills and should aim to build on strengths. Any activity should also pay due regard to statutory and human rights provisions and protections with regard to child labour.

4.14 Para. 4.8 YCAP notes that the government wishes to publicise community punishment undertaken by young people who offend. SCYJ considers that there is an important distinction to be drawn. On the one hand, once work has been completed, there are positive ways of drawing the community's attention retrospectively to the contribution that young people have made as part of a programme imposed in response to their offending behaviour. Such an approach contrasts sharply with that which involves contemporary identification of reparative projects on which young people are currently working, as envisaged in *Engaging communities in fighting crime*, the review published earlier this year by the Cabinet Office.¹⁸ The latter has the potential to identify individual young people and is as such in breach of UNCRC. It also carries a significant risk that young people may be subject to various forms of intimidation, vigilante action, abuse, or degrading treatment by spectators. SCYJ considers that the latter form of publicity is unacceptable, counterproductive and inconsistent with the Government's human rights obligations as provided by the UNCRC and other international standards, treaties rules and conventions.

Para 4.11 YCAP

4.15 SCYJ recognises the potential of intensive fostering to provide a constructive and positive response to young people whose offending is both serious and clearly related to home circumstances. Notwithstanding this, as all of the evidence confirms, children are best cared for in their own families wherever possible and every effort should be made to sustain this by way of appropriate levels of family

¹⁸ Louise Casey (2008), *Engaging communities in fighting crime: a review by Louise Casey*. London: Cabinet Office.

support (including financial support). Given that intensive fostering involves removal from home, it is also important that it should be reserved as a high tariff sentence of the court, and it is therefore appropriate that the statutory criteria preclude the use of intensive fostering except in circumstances where the court would otherwise impose custody. SCYJ also considers that the fostering episode should be subject to periodic review by the court during the course of the sentence to ensure that the circumstances which gave rise to removal from home still apply. In this context, we welcome, therefore, the commitment in YCAP to continued funding of the initiative. However, the current piloting is extremely limited, being restricted to just three areas. SCYJ therefore considers that, subject to the evaluation of the pilots being positive, central funding should be provided to roll out intensive fostering nationally to expand alternative to custody provision.

Paras 4.12 – 4.13 YCAP

4.16 It is obviously important that youth provision should be available when young people need access to it the most. SCYJ welcomes the commitment in YCAP to increase funding to ensure expanded provision of youth facilities and believes that these are best provided by mainstream statutory youth services. By contrast, the proposal in para. 4.12 YCAP to encourage the development of reparative and rehabilitative sessions during young people's *'leisure time so that they feel the impact of their sentence'* is difficult to justify. Firstly, it should be noted that reparative and rehabilitative activities, whenever they are carried out, necessarily impinge on young people's leisure activities because of the statutory requirement that they should so far as possible be such as to avoid any conflict with the religious observance, education or work.¹⁹ Insisting on conducting such activities during the evening would simply restrict the range of interventions available since many activities have to take place during daylight hours for reasons of practicability and safety.

4.17 In any event, the purpose of reparation and rehabilitation is, by definition, not to punish and attempting to combine different functions will, in the view of SCYJ, undermine the potential effectiveness of such activities. Young people will be less likely to engage positively in sessions that are deliberately delivered in a punitive

¹⁹ For instance, Schedule 6(7) to the Powers of Criminal Courts (Sentencing) Act 2000.

manner and, as a consequence, intervention will be less likely to reduce reoffending.²⁰ Preventing young people from engaging in positive leisure pursuits as a matter of policy, is unnecessarily punitive, is in tension with the UNCRC's requirement that the best interests of the child should be a paramount consideration, and will exacerbate significantly social exclusion, itself a major contributor to youth crime.

4.18 At a practical level, the lack of engagement is almost certainly likely to manifest itself in non-cooperation and higher levels of breach. This is of particular concern in the light of data showing that in 2006 – 2007, breach of a statutory order constituted the single most common offence leading to a custodial sentence, accounting for 2,238 such disposals.²¹

Para 4.19 YCAP

4.19 SCYJ is particularly concerned at the proposal in this paragraph to 'explore with the judiciary and the magistrates how far their use of discretion to remove reporting conditions can be encouraged for convicted 16 or 17 year olds'. The only justification provided is that it would improve the transparency of the youth justice system, but there are other mechanisms for doing so that would not involve the revealing the identity of individual children. Nor is it clear why such transparency would require publicity in relation to those aged 16 – 17 years alone and to single out that age group is artificially to impose a distinction not recognised in the legislation. It also suggests an attempt to extend aspects of the adult criminal justice system upon young people who are legally children and to whom children's rights protection applies. Indeed, SCYJ considers that it is totally inappropriate for the Government to seek to influence courts to go behind a statutory presumption. Sentencing courts are no doubt aware of their discretion to remove reporting restrictions, and if they currently elect to use that discretion sparingly, that is a reflection of the fact that they consider it inappropriate to do so. Publicising the names of convicted children is also a clear breach of Article 40(2)(b)vii UNCRC which requires that privacy should be 'fully respected at all stages of the proceedings'.

²⁰ See for instance, Mason, P and Prior, D (2008) *Engaging young people who offend*. London: Youth Justice Board

²¹ Youth Justice Board (2008), *Youth justice annual workload data 2006/07*. London: YJB

Para 4.20 YCAP

4.20 SCYJ welcomes developments that seek to improve feedback to sentencers in order to strengthen courts' confidence in community-based disposals. We consider that the proposal to pilot bringing 'high risk young offenders on the youth rehabilitation order' back to court should be subject to thorough research and evaluation so that implications in respect of compliance, the reduction of reoffending, and the impact on custody can be ascertained prior to the initiative being more widely adopted.

Para 4.21 YCAP

4.21 SCYJ welcomes the commitment to share evidence, drawn from national and international research and experience, as to effective practice with children who offend in order to improve youth justice services at the local level. We consider, however, that this is pitted with complexity and observes the counter-productive tendencies of interpreting such 'evidence' mechanistically in a way that constrains practitioner discretion rather than promotes local flexibility and innovation. SCYJ also takes the view that increased attention should be given to sharing the outcomes of qualitative research, particularly in relation to how youth justice interventions are experienced by young people subject to them, since that experience is crucial to the impact on future behaviour.

4.22 More generally, there should be a presumption of rigorous research and evaluation of all new initiatives within the youth justice arena. It is important that such evaluation does not focus simply on short-term recidivism, but should also consider the impact on the child's best interests both at the time of sentencing and in the longer term. Such an approach would be consistent with the commitment given by the JYJU that the five outcomes of *Every Child Matters* would extend equally to children within the youth justice system. All initiatives should be measured against those outcomes and against compliance with the UNCRC which sets out the international legal requirements for protection of children's rights, regardless of their circumstances or setting, to enable them to lead dignified and fulfilled lives. The

findings of research and evaluation should be published before decisions are taken in relation to whether or not that initiative should be rolled out nationally.

4.23 Despite the obvious rationale for such an approach, it is no means automatic practice at the current time. SCYJ notes, for instance, that the Youth Justice Board published a second version of *Youth Justice: the scaled approach* in September 2008, which it anticipates will be ‘the final model for interventions’. The evaluation of the scaled approach pilots, whose findings were known to the YJB by November 2007 at the latest (since the earlier version of the scaled approach published in that month claimed to be based on those findings) have yet to be published. This pattern has occurred repeatedly since 2000.

Para 4.22 YCAP

4.24 This paragraph purports to ‘set out, for the first time, the principles on which current and future development custodial provision should be assessed’. SCYJ welcomes the idea of having a clear set of principles that establishes the purpose of custody, the circumstances under which it should, or should not, be used, and the treatment of children subject to detention. It considers that such an endeavour is extremely valuable and important and should be subject to the widest possible consultation and debate. It is therefore regrettable that the proposed principles are located as the final paragraph of a chapter in YCAP whose sole question for consultation does not make any mention of this significant development.

4.25 At the same time, it is unclear how the principles within this paragraph relate to other developments. The Youth Justice Board’s *Strategy for the Secure Estate for Children and Young People*, for instance, which did seek to set out principles of custodial provision, is not referenced. There is no discussion on the relationship between the principles and current practice and, where these are in tension, what steps will be taken to align them.

4.26 For instance, the commitment to accommodate children in small-scale units (albeit subject to qualification) is not consistent with the current configuration of the secure estate for children and young people, which relies on the use of young offender institutions for more than 80% of placements. Moreover, recent developments are

likely to exacerbate the situation rather than improve it. Ten secure children's homes have closed since 2003, secure training centres now hold considerably larger numbers of children than originally planned, and the opening of a new young offender unit at Glen Parva, all run counter to the government's expressed commitment.

4.27 The promotion of family links also ought to be a prerequisite of any use of custody that is to avoid doing damage to children's future development. As indicated in YCAP, this would require a minimum use of transfer between custodial establishments, but current practice involves extensive movement of young people within the secure estate, and in many cases a presumption of transfer to a young offender institution in the case of boys when they turn 15 years of age. Despite recent improvements, many children and young people continue to be accommodated at considerable distances from their homes, compromising family links.

4.28 In these circumstances, SCYJ believes that the government should undertake a separate consultation on the future of the use of custody for children and principles that should inform the secure estate.

4.29 As they stand, SCYJ has some serious concerns in relation to the proposed principles in any event:

- We do not accept that custody should be used for young people whose offending is persistent or where community penalties have not prevented reoffending since motivation to change is dynamic. Previous failure to respond in the case of a child or young person is not therefore indicative of future non-cooperation.
- There is no commitment to reducing the use of custody so that it is used only as a last resort. As indicated earlier in this response, SCYJ considers that there should be a distinct, and heightened, threshold for the use of custody where the defendant is below the age of 18 years. In addition, there is no commitment that the length of any detention should be restricted to the shortest appropriate period.

- Accommodation in small-scale units, a commitment to positive development, wellbeing and safeguarding are all to be welcomed. However, there is insufficient reference to the nature of the environment in which children should be detained or the treatment to which they should be subject while away from home. There ought, for example, to be a presumption that establishments are child-centred, ensuring that young people's dignity, respect, and rehabilitation are prioritised and that restraint is precluded other than in closely defined circumstances where necessary to prevent injury.
- The above considerations will have a significant impact on the configuration of the juvenile secure estate itself, as it is doubtful that prison service establishments have the capacity to deliver a service that is compatible with such principles.²²

4.30 SCYJ would welcome the opportunity to comment in greater detail in due course on more developed Government proposals to establish a detailed set of principles governing the detention of children through the youth justice system.

²² See for instance, Nacro (2003) *Counting the cost: reducing child imprisonment*. London: Nacro

Chapter 5 YCAP: Breaking the Cycle of Offending

5.1 Overall SCYJ welcomes the proposals in Chapter 5 YCAP. We note that many of the planned developments (e.g. paras 5.7, 5.8 and 5.13 YCAP) are subject to further detailed proposals which we await with interest. However we would make the following specific observations.

Para 5.10 YCAP

5.2 The concept of a nominated senior officer ensuring continuity of provision is of course welcome. Given the location of the vast majority of YOTs within local authorities, there is a danger that unless these provisions are carefully framed, that this responsibility will be delegated to YOTs and have little real impact.

Para 5.11 YCAP

5.3 We are disappointed that YCAP makes no detailed proposals or targets for reducing the use of custody. However, we welcome the intent to better support young people leaving custody. Again, unless provisions are carefully drafted, these responsibilities are likely to be delegated to YOTs. This is unlikely to increase the level of support to individual young people. Young people who receive custodial sentences become the responsibility of the state. There is a direct parallel to a local authority being given parental responsibility through care proceedings. Consequently any legislation should recognise this and give the same level of support to children and young people who leave custody as exists for care leavers.

Para 5.15 YCAP

5.4 We note that the guidance *Joint working between Housing and Children's Services* is non-statutory. In order to ensure that young people do not fall between Children's services and housing services a review of the relevant legislation is required. The outcome should be an explicit duty to provide accommodation for young people leaving custody. Such provision needs to be in place before release.

Consultation Questions

5.5 The concept of a senior officer from the local authority overseeing resettlement provision is on the face of it a welcome development. However we would note the difficulties that this may cause for smaller authorities. We would also reinforce our earlier comments, that unless these provisions are carefully framed this responsibility may be delegated to the YOT and in reality little will change. The underlying issue that needs to be addressed is the tension between the duties on Children's Services and housing services. An explicit duty needs to be made on Children's Services to provide accommodation for young people leaving custody.

5.6 The key elements of a package of support for young people leaving care or custody should be:

- Wherever possible and appropriate reintegration with their family;
- A named key worker in Children's Services to facilitate resettlement (in addition to any YOT Worker);
- Guaranteed accommodation;
- Depending on age, an appropriate offer of education, training or employment;
- The above should be incorporated into a resettlement/pathway plan.

This could be achieved by giving young people who leave custody the same rights as care leavers, with services being delivered by the leaving care teams in Children's Services.

5.7 We agree that housing authorities should be represented on YOT Management Boards. Clear provision would need to be made for authorities where there are a range of District Councils.

5.8 The employability of young people with criminal records would be improved by reviewing the provisions of the Rehabilitation of Offenders Act.²³

²³ In 2002 the Home Office review *Breaking the Cycle: A Report of the Review of the Rehabilitation of Offenders Act* recommended a new scheme for disclosure re. juvenile offences, but its recommendations remain unimplemented.

Chapter 6 YCAP: Making it Happen

6.1 While the SCYJ broadly welcomes the plans for implementing the paper we are concerned that there are two particular omissions:

- We would note that there appears to be a serious omission within this section of the paper. There is no mention of the role of Safeguarding Boards and the statutory duties on agencies under section 11 Children Act 2004 to ensure that children are safeguarded. This of course includes responsibilities to ensure that children are protected from crime and fear of crime and specific responsibilities regarding young people in custody.
- We are concerned that the implementation plans do not include the courts and sentencers as core stakeholders. Without their engagement we consider that the efforts of local authorities and other partners will be hampered and the necessary joined up provision will not be achieved.

Strengthening the Strategic Response

Paras 6.5 - 6.14 YCAP

6.2 Overall we welcome the proposals to strengthen the role of Children's Trusts in preventing offending, in particular the proposals to set specific responsibilities to prevent youth crime and re-offending. We hope that the proposals signal a shift in thinking with a recognition of the role of mainstream services in preventing offending. We would also hope that the proposals will mean that service delivery to those at risk of offending will be located outside of YOTs, thereby reducing stigmatisation of children and families.

6.3 We support the proposal to strengthen YOT Management Boards through 'new specifications in statutory guidance' and advocate the involvement of housing authorities. We would also strongly advocate the involvement of representatives of the courts, ideally sentencers.

Para 6.13 YCAP

6.4 We welcome the proposals to review assessment procedures. There is a clear need to align Asset to CAF. Asset is currently focussed on criminogenic risk factors. There is a need to provide clear guidance to practitioners that criminogenic risk factors are almost always the factors that define a child as being 'in need'. There is a need to change the language of Asset away from vulnerability towards the language of safeguarding. In addition Asset does not address learning disability issues and has a poor record of accuracy in relation to mental health issues in research studies. We recommend that the revised Asset cover all these issues. Ideally, mental health, emotional and learning disability issues require more effective assessment in schools to prevent later escalation into destructive and self-destructive behaviours.

Paras 6.6 and 6.14

6.5 Setting specific responsibilities on Children's Trusts for the prevention of youth crime and re-offending is welcomed and whilst welcoming the intent to remind sentencers of their statutory levers to hold authorities to account we would suggest that there is also a need to remind local authorities of their responsibilities, e.g. under Schedule 2 to the Children Act 1989 the duty on local authorities to take steps to encourage children not to commit offences and to reduce the need to bring criminal proceedings against children, and the fact that those at risk of offending should be seen as children in need as defined in s17 Children Act 1989. We would suggest that consideration is given to issuing statutory guidance to local authorities and partners on their duties to prevent offending and re-offending.

Improving the Performance of Local Areas

Paras 6.15 - 6.19 YCAP

6.6 We welcome the ongoing monitoring of service delivery by local partners through the Central Area Agreement (CAA) and the Local Area Agreements (LAAs). However we would note the mixed take-up of the six indicators on youth crime. Numbers 43 (young people within the Youth Justice System who receive a

conviction in court who are sentenced to custody) and 46 (Young Offenders' access to suitable accommodation) were not chosen by any authorities to be part of their LAA while Number 19 (rate of proven re-offending by Young Offenders) was chosen by 49 authorities. Careful thought needs to be given to the inter-relationship between the role of the YJB and the CAA process and also how accountability for the indicators is distributed in the local authority and partners through the Local Strategic Partnership, Children's Trust, YOT Board and the Safeguarding Board. This could be an aspect of the statutory guidance suggested above. We also note that there is no mention of the role of HM Inspectorate of Probation in relation to YOT Inspections. Thought needs to be given to ensure that this compliments the CAA approach.

- 6.7 We are concerned that the new performance framework does not include the courts, nor are they delivery partners. Given that the prevention of offending is one of the guiding principles of the youth justice system, courts would be in a good position to become partners of local authorities in the achievement of this indicator, if not others. We are concerned that, if courts and sentencers are not partners in this performance framework, local authorities will be hampered in their efforts to achieve targets.

Paras 6.20 - 6.21 YCAP

- 6.8 We welcome consultation with local authorities on new measures to support a further strengthening of their contribution to prevent offending. However we are concerned that YCAP assumes that reducing re-offending is the only mechanism for reducing custody. Differential custody rates suggest big differences in sentencing behaviour, and thus potential to reduce custody through changing that behaviour. Encouraging courts to request welfare assessments is one way of changing sentencing behaviour but it is only one means among many. We would also advocate enhanced training and guidance for youth court magistrates in child welfare considerations (including mental health and learning disability issues) and in the effectiveness of sentences, particularly short-term custodial sentences.

Para 6.22 YCAP

6.9 We welcome the suggestion that local authorities should be made responsible for the full cost of court-ordered secure remand. However we feel that this proposal should be extended to all remands in custody. If court-ordered secure remand were the only custody budget delegated to local authorities, care would need to be taken to ensure that YOTs still propose this form of remand (as opposed to remand in custody) for vulnerable 15-16 year old boys. We would also propose further examination of ways of removing the current financial disincentives for local authorities vis-à-vis children sentenced to custody. We welcome any moves to make the costs of custody more visible, but would also welcome moves to make local custody rates more visible, particularly to local sentencers.

6.10 The development of a formal review process for children who go into custody would be helpful in learning how custody could possibly have been prevented. However we feel that the meeting would be most productive if a representative sentencer were also present. This is particularly pertinent in those cases where the YOT strongly advocated a community sentence but the proposal was turned down by sentencers.

Paras 6.23 - 6.24 YCAP

6.11 We absolutely agree that the role of professionals who work with children in the YJS are vital to improving outcomes. We hope that among other issues, the 2020 Children's Workforce Strategy will make recommendations for improved training of prison staff who work in juvenile Young Offender Institutions.

Para 6.26 YCAP

6.12 We welcome the extra funding announced on 16th September 2008 for local initiatives to tackle youth crime. However we are concerned that this funding is being targeted at selected areas, rather than being offered to every local authority in the country.

Standing Committee for Youth Justice

October 2008

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Appendix A: Recent concluding observations of the UN Committee on the Rights of the Child re the United Kingdom²⁴

A.1 In its concluding observations on the United Kingdom, published on 3 October 2008, the United Nations committee on the rights of the child made a number of severe criticisms of the UK's failure to comply with the convention on the rights of the child (CRC) in its treatment of children in the criminal justice system. Some of the committee's key recommendations are summarised here.

Administration of justice

A.2 The committee recommended that the UK should fully implement international standards of juvenile justice, in particular articles 37, 39 and 40 of the CRC, as well as the General Comment n° 10 on "Children's rights in Juvenile Justice", the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("the Beijing Rules"), the United Nations Guidelines for the Prevention of Juvenile Delinquency ("the Riyadh Guidelines") and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty ("the Havana Rules"). The committee specifically recommended that the UK Government should:

- Raise the minimum age of criminal responsibility
- 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
- Introduce automatic, independent and public reviews of any unexpected death or serious injury involving children – whether in care or in custody
- Ensure that restraint against children is used only as a last resort and exclusively to prevent harm to the child or others; and abolish all methods of physical restraint for disciplinary purposes

²⁴ UN committee on the rights of the child, 49th session, Concluding Observations on the United Kingdom of Great Britain and Northern Ireland, 3 October 2008 (CRC/C/GBR/CO/4).

- Ensure that corporal punishment is explicitly prohibited in all institutions and forms of alternative care throughout the United Kingdom
- Ensure that children in conflict with the law are always dealt with within the juvenile justice system and never tried as adults in ordinary courts, irrespective of the gravity of the crime they are charged with
- Provide for a statutory right to education for all children deprived of their liberty
- Employ additional resources to meet the needs of children with mental health problems throughout the country, with particular attention to those at greater risk, including children in conflict with the law
- Following the welcomed withdrawal of its reservation to article 37(c) of the CRC, ensure that, unless in his or her best interests, every child deprived of liberty is separated from adults in all places of deprivation of liberty
- Review the application of provisions of the Counter-Terrorism Bill to children suspected or charged with terrorism offences (including extended pre-charge detention and notification requirements).

Privacy and dignity

- A.3 The committee expressed serious concerns at violations of children’s privacy and dignity in the UK, including the proposal in the Youth Crime Action Plan to remove reporting restrictions for 16 and 17 year-olds facing criminal proceedings “*to improve the transparency of the youth justice system*”.
- A.4 The committee recommended that the UK Government should ensure, both in legislation and in practice, that children are protected against unlawful or arbitrary interference with their privacy; and that it should intensify efforts, in cooperation with the media, to respect the privacy of children in the media, especially by avoiding messages publicly exposing them to shame, which is against the best interests of the child.

Anti-social behaviour

A.5 The Committee expressed concern at the application of ASBOs to children, including:

- The ease of issuing ASBOs, the broad range of prohibited behaviour and the fact that the breach of an order is a criminal offence with potentially serious consequences
- The fact that ASBOs, instead of being a measure in the best interests of children, may in practice contribute to their entry into contact with the criminal justice system
- The fact that most children subject to ASBOs are from disadvantaged backgrounds.

A.6 The committee recommended that the UK conduct an independent review on ASBOs with a view to abolishing their application to children.

Other key recommendations

A.7 The recommendations summarised below are amongst those of more general application which have particular relevance to juvenile justice – namely that the UK Government should:

- Adopt comprehensive plans of action for the implementation of the CRC in all parts of the UK, based on a child rights approach, and paying special attention to children belonging to the most vulnerable groups
- Allocate the maximum extent of available resources for the implementation of children's rights, with a special focus on eradicating poverty and reducing inequalities
- Introduce adequate and systematic training of all professional groups working for and with children, including law enforcement officials

- Ensure full protection against discrimination on any grounds, including urgent measures to address the intolerance and inappropriate characterisation of children, especially adolescents, within the society, including the media
- Take all appropriate measures to ensure that the principle of the best interests of the child is adequately integrated in all legislation and policies which have an impact on children, including in the criminal justice system
- Establish mechanisms for monitoring the number of cases and the extent of violence, sexual abuse, neglect, maltreatment or exploitation in institutional or other care; strengthen support for victims of violence, abuse, neglect and maltreatment in order to ensure that they are not victimized once again during legal proceedings; and provide access to adequate services for recovery, counselling and other forms of reintegration in all parts of the country.

Appendix B: Quotes from young people: taken from *Breaking the Cycle of Offending* – *Making the views of young people count*, The Prince's Trust, 2007

Quotes from young people who have experienced custody in England, aged 16 to 25:

“Don’t move people so much between Intitutes – so we can complete courses. We need consistency of courses across different prisons. Transferable qualifications from prison to college is what works”

“When you leave prison there is a real lack of support. When you have a crisis or get stigmatised it is harder to go the right path. You get rail roaded back into old ways”

“More should be spent on things to do; open places for young people to reduce youth crime”

“What worked – having support through the gate. A meaningful adult”

“Start up schemes run by ex-offenders who will educate possible offenders and young people in schools. More mentoring schemes and ex-users delivering services would really help”

“Local knowledge is what works – someone who can advise you about housing and employment and benefits”

“[Worker] doesn’t give up on you. You can just sit down and have a chat with her like you would a family member. I call her my auntie because you can sit down and talk to her like a normal person and she doesn’t judge you and she doesn’t have any preconceived ideas about you... she never gives up on you. She keeps giving me ideas and options for things you might want to do”

“I had an out-reach worker from [social services]. But in the couple of years before that I must have gone through about three social workers because they all left or went on sick. I mean, I was getting used to one and then I had to get used to another one then they moved me onto out-reach... I was 16 and I thought ‘is it me? Am I that much of a shit?’... Am I that bad that I was getting a new one each time”

Male, 19, Glasgow:

“I’m still giving back to the community; I’m still helping. I’ve actually stopped a lassie and two boys from drinking an d smoking cannabis. To this day I still see them walking about and that – they’ve never touched nothing”

Male, 20, Pembroke:

For me it was just hard to get back into a normal way of life because you are, im some ways, used to people doing things for you. So when you get back into normal life it’s a big shock”