



Standing Committee for Youth Justice

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STANDING COMMITTEE FOR YOUTH JUSTICE (SCYJ)

RESPONSE TO *THE BRADLEY REPORT AND HEALTHY CHILDREN, SAFER COMMUNITIES*

FEBRUARY 2010

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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: 4Children, Action for Children, Association of YOT Managers, Barnardo's, Catch22, The Children's Society, Children's Rights Alliance for England (CRAE), Council for Disabled Children, Howard League for Penal Reform, Just for Kids Law, JUSTICE, Nacro, National Youth Agency (NYA), National Association for Youth Justice (NAYJ), NCB, NSPCC, The Prince's Trust, Prison Reform Trust, Sainsbury Centre for Mental Health, Secure Accommodation Network (SAN), TACT and VOICE.

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

Introduction

1. In April 2009, Lord Bradley completed a major review (Department of Health, 2009) on people with mental health and learning disabilities in the criminal justice system. Although references were made to children and young people during the course of the review and some of the recommendations could be seen to have transferable applicability, Lord Bradley explicitly made the case for a separate further investigation into what diversion means for children and young people in the youth justice system taking into account their age, their very different needs, presentations and the very different strategic landscape.
2. In November 2009, the Department of Health confirmed that although there would be no full second review, the Health and Social Care strategy for children who offend (Department of Health, 2009), due for publication by the Department of Health in December 2009, would essentially fulfil the role of the second recommended report called for by Lord Bradley.
3. A national Programme Board was established to support the implementation of post Bradley developments for adults and children. The Programme Board will be held to account by a National Advisory Board made up of experts in various fields including mental health, learning disabilities and the criminal justice system. Representatives on both the Programme Board and the National Advisory Board (NAG) are predominantly expert in adult-related issues in the health and criminal justice system. Without vigilance the SCYJ has been concerned that there is a risk of adult models being superimposed on children.

The SCYJ supports the actions of 11 million (who are leading children's issues on the NAG) who are currently establishing a child-centred expert reference group, which will focus specifically on children and young people's needs in the youth justice system and feed directly into both the Programme Board and the NAG.

4. In addition, a cross-departmental health and social care programme board also exists to support the rollout of the newly launched Healthy Children, Safer Communities strategy.
5. **The activity of both of these boards will need to remain closely coordinated as developments from both strategic areas are rolled out.**

A summary of the SCYJ response to the Bradley review and to *Healthy Children, Safer Communities*

SCYJ members welcome Lord Bradley's report which has sharpened attention on the over representation of those with mental health vulnerabilities and learning disabilities in the criminal justice system, has highlighted the need for a whole pathway (and early intervention) approach to identifying, diverting and supporting the vulnerabilities that lead people to cycle in and out of the system and has underlined the need for greater integration between health and criminal justice activity creating more integrated and coordinated alternatives to diversion, prosecution and custody. SCYJ strongly agreed that children needed separate consideration in any Bradley type review given the very different legislative and safeguarding duties and young people's distinct needs.

Furthermore, although *Healthy Children, Safer Communities* does not represent a full review of the existing problems in the system for vulnerable children in the criminal justice system, we agree that the document is fairly comprehensive in its analysis of what needs to happen for young people to be supported to achieve their potential, avoid damaging their life chances and be more effectively encouraged away from offending and from the Youth Justice System. Of particular note, SCYJ members welcome the following key principles of this new government strategy:

- The broader World Health Organisation definition of mental health and emotional well being used in the document which recognises the importance of reducing risk and supporting protective factors in all work with children and young people.
- The recognition that children's mental health and learning disabilities present in different ways at this earlier age. They are less likely to have clearly diagnosable and visible mental health difficulties and are more likely to have risk factors for poor mental health outcomes, early signs of poor mental health and lower threshold mental health difficulties. For this reason, they are consequently more easily missed by those with the ability to support them.
- The importance of identifying and supporting early on speech, language and communication difficulties of young people at risk of offending.
- The recognition of the complex and predominantly multiple vulnerabilities experienced by children in, or on the edges of, the youth justice system with the need, as a result, to focus on their broader needs during assessment and support work. The strategy makes an important point that children may not have qualified for help (early on) because each different problem they had was not in itself serious enough to attract attention, even though the combination of problems put them at high risk.
- That there needs to be a higher priority given to safeguarding children in the Youth Justice System and to developing service responses which are accessible and above all engaging.
- The need to ensure that courts and sentencers receive systematic and accurate information about health and well-being needs and the services required to meet them.
- The importance of achieving continuity of care when children complete a custodial sentence.

- The identification of the very different strategic levers and mechanisms which will be necessary to drive diversionary activity and improvements forward for children (although it is agreed that some additional work will be needed to clarify the finer detail of how the strategy will get translated into practice.)

In this document the Standing Committee for Youth Justice seeks to respond to the main recommendations made both by Lord Bradley and *Healthy Children, Safer Communities* strategy and to identify any omissions, areas which require reinforcement or further work for the effective diversion and support of vulnerable young people in, or on the edges of, the youth justice system.

The scale of the challenge

Healthy Children, Safer Communities includes a useful summary of the scale of complex vulnerabilities experienced by young people in, or at risk of entering, the youth justice system including highlighting the speech and communication needs of young people (overlooked as a potential area of vulnerability in the Bradley report). Studies have indicated that around three quarters of young people in custody have high levels of speech, language and communication needs.

Speech, language and communication needs

A strong case has been made for early intervention with young people in schools to address speech, language and communication difficulties as well as learning problems at a very early stage to prevent escalating difficulties which hamper young people's progress (The Centre for Social Justice, 2008) and this has been usefully reinforced through *Healthy Children, Safer Communities*. Research consistently indicates that approximately 60% (Bryan K, 2007) of young people in the youth justice system have significant speech

language and communication needs. The Royal College of Speech and Language Therapists (RCLTS) welcomed the acknowledgement of the need for improved assessment processes, tools and support at the earliest possible opportunity in primary healthcare and schools, in police custody suites and in the secure estate for speech, language and communication needs.

There were some concerns that within the strategy the communication needs of young people were often referenced in relation to learning disability and not as a stand alone condition (since many vulnerable young people will have a communication need in the absence of a physical condition such as learning disability). The RCLTS also wished to see more detail about how joint commissioning, workforce development, and service provision would be improved in practice through the delivery of the strategy and how improved outcomes for children would be monitored and measured.

Learning disabilities

Generally, 2.7% of children have a statement of special educational needs and 20% of children have some kind of special educational need. *Healthy Children, Safer Communities* (Department of Health, 2009) states that "It is estimated that 25 to 30 per cent of children and young people in the Youth Justice System are learning disabled and that around 50 per cent of those in custody have learning difficulties." It is difficult to make direct comparisons between variations in rates of prevalence due to different definitions; however it is clear that the proportion of young people in custody with a learning disability is significantly higher than in the general population. Children with special education needs and disabilities are over nine times more likely to be permanently excluded from school than the rest of the school population (Department of Children, Schools and Families, 2007), and there is a long established link between being excluded from school and becoming involved in crime (Graham and Bowling, 1995).

Young people with mild to moderate learning disabilities, who are most at risk of being excluded from school, and their families, are rarely eligible to access support from social care teams. The past few years has seen a tightening of

eligibility criteria as a result of increasing pressures on social care budgets. A High Court ruling in 2009 found that the use of 'eligibility criteria' by local authorities to limit access to disabled children's services can be unlawful¹ however they continue to be used across the country.

Young people with learning disabilities are disadvantaged throughout their interaction with the criminal justice system, from their first contact with the police (Leggett, 2007) through to in custody (Loucks, 2007)². Behaviour that is caused by the learning disability is often misinterpreted, seen as obstructive behaviour and used against young people in these settings. Having a learning disability or a speech language and communication difficulty can also compromise young people's ability to understand what they are signing up to in Youth Offending Teams and engagement with offending programmes. Furthermore, many health practitioners in Youth Offending Teams (Yots) have highlighted low awareness of learning disabilities in Yots, poor knowledge of the support available in localities and the lack of provision for young people with mild to moderate learning disabilities.

In common with the adults cited in Lord Bradley's review, young people who offend tend:

- Not to access primary healthcare services or statutory services.
- To have other well-documented characteristics (such as unstable housing, low academic attainment, high levels of alcohol use, high levels of smoking, high levels of social deprivation etc) which are consistent with those who are at the greatest risk of poor health outcomes and inequalities in our society. This not only causes difficulties in terms of their quality of life and life expectancy but also has longer term significant health economic implications.

¹ http://www.edcm.org.uk/Page.asp?originx_9865jm_98358393056475n37c_20093135630z

² Dr Nancy Loucks (2007) *No one knows: offenders with learning difficulties and learning disabilities - review of prevalence and associated needs*, Prison Reform Trust.

- To be at greatest risk of entrenched social exclusion

Mental health needs

In terms of what we know about the mental health of children and young people in the youth justice system, we would also wish to add to the detail touched upon in *Healthy Children, Safer Communities* through highlighting the following information on mental health vulnerabilities.

The most common mental health difficulty experienced in childhood is that of conduct disorder affecting about 6% (Green, 2005) of all those aged between 5 and 16. Over 90% of these early starters become repeat offenders and they then go on to become responsible for 40% of all offences (Farrington, 1995). Conduct disorder which starts before the age of 10 has a high degree of persistence into adulthood, with approximately 50% developing anti-social personality disorder as adults. Early onset conduct disorder also increases the likelihood of a prison sentence by 70 times. Examined retrospectively it has been shown that around 90% of adolescent offenders had conduct disorder at the age of 8 and the best intervention programmes can cut offending by 50% or more for these groups. The lifetime cost of crime associated with this mental health difficulty in childhood is around £160,000 per case and similarly the lifetime cost of crime associated with those early conduct problems which fall short of a clinical diagnosis is around £45,000 per case (Sainsbury Centre for Mental Health, 2009). Although many of these children are likely to come from families who are perceived as 'hard to reach', there is also evidence that where services are designed to be accessible, non stigmatising and attractive to families and children, then engagement is much less of a problem. Hard to reach families are very often the product of services which are poorly designed to meet needs.

Accessible parenting interventions are currently systematically under developed in Children's Trusts and poorly targeted at families who might need additional support, although there is a drive to improve commissioning through the cross departmental Think Family agenda. Potential interventions include both primary care support at a pre natal stage with parents as well as

evidence-based parenting interventions with parent and child at the earliest opportunity (Barlow, Spencer, Coe, Laine, & Vostanis, 2004). The evidence reinforces the need for greater awareness of behavioural problems and parenting interventions among primary care and Children Centre workers, teachers, targeted youth workers, other children's services and Youth Justice Services.

The Pinnacle Project

An Action for Children project to support ethnic minority boys affected by absent fathers has brought huge improvements in behaviour and family relationships.

Boys from an ethnic minority and with an absent father have a greater risk of entering a life of crime or antisocial behaviour.

However, the Pinnacle project in Streatham, South London, has been successful at changing the behaviour of boys by addressing level of crime in the area, ethnic minority boys aged eight to 15 who were underachieving at school, at risk of social exclusion or on the edge of a life of crime were referred to Pinnacle.

The project uses "concurrent" interventions - providing services for the boys and their parents individually - to change behaviour. Interventions included group parenting sessions focusing on discipline, coping with challenging behaviour and promoting positive interaction and relationships with their sons.

Sessions for the boys looked at feelings, behaviour and interactions with peers, parents and other adults, building self-esteem and challenging negative patterns of thought and behaviour. The project also looked at the role of the father in the boys' lives, and tried to reignite a relationship where appropriate.

In terms of other mental health difficulties experienced by young people in the youth justice system, we know that these children and young people have higher than normal levels of depression (18%), anxiety disorders (10%) and psychotic-like symptoms (5%). One in ten boys and one in five girls in Young Offender Institutions have attention-deficit/hyperactivity disorder (ADHD) (Fazell, 2008).

Young females have greater mental health needs particularly for depression, post traumatic stress disorder, and self harm (Chitsabesan P., 2006). A history of self-harm is notably higher among young women in custody, with one study finding that over a third of 17 year-old girls in YOIs had engaged in self harm in the month beforehand. (Plugge, 2006)

Suicide statistics in prisons tell us that boys aged 15 to 17 years are 18 times more likely to commit suicide in these secure settings (Fazel, Benning & Danesh, 2005).

As young people in the youth justice system approach adulthood, we know that the extent of their mental health needs worsen. 8 out of 10 young people aged 16 to 20 in one large scale study (Lader D, 2000) were identified with more than one mental health difficulty highlighting the extent of complex needs faced by young people and young adults.

In a major study of 16 to 20 year olds, around 85% in custodial settings showed signs of a personality disorder (Lader D, 2000) (as compared with 10 to 13% in the general population) (National Institute for Mental Health , 2003).

The Standing Committee for Youth Justice supports the recommendation from page 32 of the Bradley report that ‘All staff in schools and primary healthcare, including General Practitioners, should have training to improve awareness of mental health, learning disability and speech language and communication needs in order to identify individuals (children and young people in particular) needing help and refer them to specialist services.’ Very early identification and access to

support will go some way towards reducing exclusion figures for young people with learning disabilities, mental health problems and speech and communication problems and ensuring that they are able to access mainstream services and help. The work outlined on page 29 of *Healthy Children, Safer Communities* (Department of Health, 2009), around increasing achievement of children with SEN and improving training for teachers supporting children with SEN should also reduce exclusion rates for this group.

Other broader vulnerabilities

SCYJ would wish to add further to the pool of data available in *The Bradley Report* and in *Healthy Children, Safer Communities* on the complex needs of young people in the youth justice system through underlining other important areas of data which give an insight into what we know young people who end up in the youth justice system. For example:

- 2 out of 5 girls and 1 out of 4 boys in custody report experiencing violence at home (Prison Reform Trust, November 2009)
- Three quarters of young people in custody have lived with someone other than a parent (Youth Justice Board, 2007)
- 40% of children and young people have been homeless in the 6 months before they entered custody (Youth Justice Board, 2007)
- 84% of 12-18 year olds in custody have been identified with 'problematic' drug use and 64% also showed signs of concurrent mental health difficulties (Galahad SMS Ltd, publication pending)
- 1 in 3 girls and 1 in 20 boys in custody disclosed sexual abuse (Prison Reform Trust, November 2009).
- 1 in 10 young women in custody reported having been paid for sex (Plugge, 2006).

It is essential that a robust assessment process is developed that identifies the broader support needs of young people and ensures that they are not disadvantaged.

Early intervention: the foundation stone for diversion from offending for children and young people

SCYJ was pleased to see a strong emphasis on early intervention in *Healthy Children, Safer Communities*.

There is a clear recognition that children and young people with emerging emotional and behavioural problems, learning disabilities and speech, language and communication needs should be identified as early as possible in a non stigmatising manner and supported through evidence-based and accessible interventions. As indicated earlier in this document there is now robust evidence suggesting that the earlier mainstream services intervene with young people at risk of offending (Loeber, 1998) or with early signs of some mental health difficulties (McGorry PD, 2007) the better the prognosis and the more they will achieve their potential.

Effective interventions for children with early mental health difficulties usually (Department of Health, 2009) involve parenting interventions and need to be delivered by mainstream services taking care not to stigmatise or label the children involved.

The New Horizons public health strategy (Department of Health, 2009) also reinforces strongly the importance of this preventative approach to mental health difficulties as opposed to what has previously been a more reactive response to mental illness. Furthermore, New Horizons underlines the high levels of health inequalities experienced by young people who offend and the whole-population benefits and cost-savings which can be made across a number of government departments through improving the emotional well-being of children and young people as a whole population.

In the experience of SCYJ members, workers in children's services can currently be ill equipped to spot the indicators of early poor mental health, developmental difficulties, speech and communication needs; neither is there clarity about what types of support they might require. With children and

young people there are even greater implications for workforce development (e.g. it is not just a question of skilling up criminal justice stakeholders as outlined in Lord Bradley's report). Furthermore, a report by the New Economics Foundation (on behalf of Action for Children) analysing the economic and social advantages of transforming the way we invest in the future of society through our children, indicated that successive governments have failed to make the best use of public resources to improve the key areas that affect children's lives, such as poverty and inequality, together with the psychological and social dimensions of their wellbeing.

SCYJ would therefore endorse the recommendations made in *Healthy Children, Safer Communities* to:

- increase the availability of pre-natal interventions through good quality, targeted and non stigmatising primary care interventions such as the Family Nurse Partnerships;
- improve earlier non stigmatising identification and support for conduct problems, learning disabilities as well as speech, language and communication needs both in primary and secondary schools. Any such developments will need to be accompanied by a workforce development strategy to raise awareness of the importance of non stigmatising early identification of barriers to the achievement of potential. This awareness-raising will need to be backed up by the commissioning of improved pre school and school- based provision;
- provide systematic access to engaging and high quality evidence-based parenting programmes for those with behavioural problems, speech and communication interventions as well as providing support for those with learning disabilities (particularly those with mild to moderate learning disabilities who tend not to meet thresholds for specialist support and yet can often face barriers in terms of achieving their potential).

Diversion away from the youth justice system

Although there is significant discussion of the notion of diversion in *Healthy Children, Safer Communities*, most discussion adopts an interventionist view of diversion, rather than recognising that some young people who offend will mature out of their criminality and require no further intervention. Some SCYJ members felt that there was not enough reinforcement of the need to keep young people out of the youth justice system (as a core principle) to avoid potentially damaging labelling, further entrenchment of criminality and restricted life opportunities.

SCYJ would also maintain that to promote children and young people's well being, there is a need for urgent action to address the United Nation's criticisms of our current youth justice system. Although *Healthy Children, Safer Communities* acknowledges the importance of compliance with international legislation, the need for urgent compensatory action is not specifically detailed and requires additional reinforcement.

At present there is evidence that the United Kingdom is compromising the well being and life chances of many young people either through unnecessarily processing them through the criminal justice system as a result of police 'sanction-detection' targets or, more seriously, through not only using custody as a measure of last resort.

The Child Youth & Community Tribunal in Guernsey

For the first time in Guernsey the Child Youth and Community Tribunal will offer children and young people in need or in trouble the opportunity to have their case heard outside of a court environment.

As part of the new Children (Guernsey and Alderney) Law 2008, a Children's Convenor has been appointed. She will be initially responsible for considering cases where there is concern about a child or young person. If the Convenor

decides that grounds set out in the law may be met, the case can be referred to a tribunal.

The Child and Youth Community Tribunal has now recruited volunteers for this tribunal.

Based on factual reports and information presented, tribunal members will decide what action is required in the best interests of the child. They will be required to make an informed and unbiased decision on whether the child needs to be protected, guided or controlled.

The United Kingdom was examined by the UN Committee on the Rights of the Child in September 2008 (Committee on the Rights of the Child, 2008).³ In its Concluding Observations, the Committee made a number of severe criticisms of the UK's failure to comply with the Convention on the Rights of the Child in its treatment of children in the criminal justice system. One of these criticisms has centred upon the UK's record of having one of the lowest ages of criminal responsibility in the world; another centred upon the large number of children detained on remand and serving a custodial sentence.

Due to the potentially negative effects on a young person's well being and life chances, international legislation and the Convention on the Rights of the Child underline that as far as possible children should be diverted from the criminal justice system with arrest only being used as a measure of 'last resort':

According to article 40 (3) of CRC, the States parties shall seek to promote measures for dealing with children alleged as, accused of, or recognized as having infringed the penal law without resorting to judicial proceedings, whenever appropriate and desirable. Given the fact that the majority of child offenders commit only minor offences, a range of measures involving removal from criminal/juvenile justice

processing and referral to alternative (social) services (i.e. diversion) should be a well-established practice that can and should be used in most cases (Committee on the Rights of the Child, 2007).

In comparison with adults, there is, therefore, an even greater need to keep young people out of the criminal justice system due to:

- their increased vulnerability as a result of their age;
- the increased legislative duty to safeguard and protect children's rights and well being;
- the stigmatising impact of the criminal justice process on the formation of their identity, on life opportunities and on the achievement of potential;
- the enhanced evidence of the importance of non-stigmatising early intervention to prevent poor mental health and behavioural outcomes.

Restorative Justice

In some countries, restorative systems of Family Group Conferencing have also been used systematically as an alternative to prosecution and have proven an effective diversionary response to crime avoiding excessive stigmatisation through criminalisation (Maxwell, 2002). A recent report on the restorative Youth Conference system in Northern Ireland also found that 38% of 10 to 17 year olds participating in the restorative justice process in 2006 reoffended within a year, compared to 71% of those sent to prison that year.

The need to address inequality and social deprivation

However, all of the developments suggested so far will need to go hand in hand with proactive action and investment to address entrenched inequality and poverty which also significantly affect young people's well being and outcomes.

As demonstrated by Wilkinson and Pickett (2009) there is considerable evidence that inequality, particularly income inequality and the social class, lead to negative social outcomes on a number of levels including health, educational attainment and crime. Research shows that despite their extraordinary material success, some of the most affluent societies seem to be social failures. In societies where income differences between rich and poor are smaller, the statistics show that community life is stronger and more people feel they can trust each other. There is also less violence - including lower homicide rates; health tends to be better and life expectancy is higher.

The Children's Society and restorative justice work

The Restorative Justice approach is already being used successfully throughout the UK. The Children's Society has developed restorative approaches to dealing with conflict and offending in various settings; to tackle school exclusion, to deal with conflict in residential homes and to deal with anti-social behaviour in the community. In its work with YOTs and the police, it has effectively implemented restorative justice through victim and offender mediation, family mediation and conferencing with young people who have offended, helping to tackle minor and more serious offending behaviour as well as persistent offending.

At the Youth Justice North East (YJNE) project, nearly 70% of offenders who participated in the victim and offender mediation scheme did not re-offend while 72% of offenders who declined the scheme continue to offend (Source: The Children's Society Youth Justice North East project evaluation 2005).

Restorative justice also shows high satisfaction – around 90% - among victim participants. At the YJNE project, 97% of victims said they would recommend taking part in mediation. The restorative process is key in breaking the cycle between victimisation and offending

In fact most of the problems related to relative deprivation are reduced: prison populations are smaller, teenage birth rates are lower, maths and literacy scores tend to be higher, and there is less obesity. Friendship, sense of control, and good early childhood experiences are all highly protective of

health, while things like hostility, anxiety, and major difficulties, are damaging. We know that these factors are also associated with offending behaviour.

The Edinburgh Study of Youth Transitions and Crime, a longitudinal study of pathways into and out of offending for a cohort of around 4,300 young people, further reinforces that: *'Recognition of the vulnerability of many convicted children (in particular recognition that neediness often underpins challenging behaviour), suggests that conviction rates may be more effectively reduced by subsuming youth justice within a broader social inclusion agenda... In particular, study findings show that social deprivation, street-life (hanging out most evenings), victimisation and family relationship difficulties form the backdrop to the lives of these youngsters and such factors are closely bound up with their offending'* (McVie, 2007)

Recommendations

SCYJ would make the following recommendations about the diversion of children and young people from the criminal justice system adding to and reinforcing those made by the Bradley review and *Healthy Children, Safer Communities*:

- **We would call for a further review of the current age of criminality to ensure that children's well being is promoted and is a key part of considerations relating to the diversion of vulnerable young people. Any review should take into account international legislation and developing knowledge on the development of the brain during childhood and adolescence and its impact on what we know about moral reasoning, consequential thinking, decision making and maturity. At the current time there are strange anomalies within the criminal justice system in that an adult who offends and who is identified as functioning socially at the level of a 10 year old could potentially be considered unfit to plead whilst a child of 10 years age would be considered fit to plead.**

- **In order to avoid young people drifting into the youth justice system, as indicated earlier, proactive early intervention is essential. However, very early intervention also needs to be backed up by better identification of vulnerability at crisis points in children's lives for example where young people are at risk of exclusion from school, or police have initial contact due to concerns about behaviour in the community or at the initial point of arrest. At these points, workers and families should have access, where necessary, to good quality, mainstream, coordinated and multi agency packages of support and intervention.**
- **We would like to see an expansion, as part of Children Trust activity, in the use of restorative justice approaches as alternatives to prosecution such as the youth and family group conferencing systems or the approaches being implemented in Guernsey (see page 9) and in Northern Ireland; restorative justice is one of the few areas not addressed in Healthy Children, Safer Communities.**
- **We would also advocate that systems (such as the Triage system and the Youth Justice Diversion and Liaison pilots) are put in place at the point of arrest to advise decision makers on the prosecution process and to support young people and their families into mainstream children's and health services as an alternative to prosecution where this is deemed appropriate.**
- **We would argue there is a need for a fuller investigation into how Children Act legislation can be used at an earlier stage to identify and support very vulnerable thus diverting them from the criminal justice system before behaviour patterns become more entrenched.**

- **We would call for the power to transfer vulnerable young people between the Youth Court and the Family Court when young people have high levels of vulnerability.**
- **Finally, there is a need for need for cross government policies and strategy which proactively address the entrenched inequality and poverty which we know significantly affect young people's well being, outcomes and progress.**

Diversion and the use of custody

There is evidence that the UK is currently not diverting enough young people from custody.

The Prison Reform Trust reports that the number of children sentenced to custody more than tripled between 1991 and 2006 (Prison Reform Trust, June 2009), although the figure has dropped slightly in the last year. Detention in custody is not used as a measure of last resort, nor for the shortest appropriate period. England and Wales have one of the highest child custody populations in the western world, standing at an average of 2,932 in the year 2007-08. Of these children, an average of 224 were held in secure children's homes, 252 in secure training centres and 2,456 in young offenders institutions. (Youth Justice Board, 2009). It is known from prevalence data that young people in custody have the highest rates of mental health diagnoses and learning disabilities. They also have very high speech, language and communication needs.

Furthermore, a recent Prison Reform Trust report on the overuse of remand found that the number of children imprisoned on remand had increased by 41% since 2000, whilst use of an alternative to custodial remand, remand to non-secure local authority accommodation decreased by 43%. Children on remand accounted for a fifth of all children in custody (with approximately 600 children locked up at any one time) and nearly half of all receptions into

custody in England and Wales. Of those who were locked up on remand, one-third had been charged with a non-violent offence, with three quarters of those remanded by magistrates and district judges subsequently either acquitted or given a community sentence (Prison Reform Trust, 2009). This report also highlighted significant variations from court jurisdiction to court jurisdiction in the use of custody.

Remand foster care

Since 1998 Foster Care Wessex Community Projects has been providing intensive fostering placements as an alternative to a remand in custody or as an opportunity after release from custody for vulnerable and alienated children aged 10 -17. Many of these young people have speech, communication and language difficulties which can lead to poor educational achievement and behavioural and emotional problems. Specially trained foster carers model effective communication skills which can benefit the young people's relationship with others, increase their self esteem and their ability to set realistic goals for a more positive future. Success has been achieved in reducing substance misuse and re-establishing positive links with family and community as well as in accessing education, training and employment. This is achieved by working closely with Youth Offending Teams, Children's and ETE Services and other involved agencies through joint planning and review meetings.

These family placements give young people the opportunity to become actively engaged in education, training or employment, separate from their peer group and to broaden their social opportunities leading ultimately to profound changes in behaviour.

BME groups and patterns of sentencing

Furthermore, there is evidence of a longstanding lack of equity in sentencing practice in relation to some BME groups. Young people from some Black and Minority Ethnic communities are considerably over represented both in the youth justice system and even more so in custody (Standing Committee for Youth Justice, 2009) with evidence that these young people serve longer sentences than those from white British backgrounds with similar offending histories and committing similar offences (House of Commons Home Affairs Committee, 2007). Such cumulative experiences of discrimination undermine the mental health of young people from the BME communities involved and impacts on experiences of social inclusion. This pattern needs urgent compensatory action if young BME people's emotional well being, mental health and life chances are to be promoted. In the United States where there have been even more extreme patterns of over representation of some BME groups in custody, attempts are now being made to proactively address this trend with some promising initial reports.

There has been a trend in the United Kingdom toward imprisoning young people in larger units and closing smaller units over the last year. HMYOI Hindley, with capacity to hold 440 young people, has this year become the largest dedicated child prison in Europe (Her Majesty's Inspectorate of Prisons, 2009). The United States, also criticised for locking up excessive numbers of young people in large adult-orientated units, has in a number of States begun to take more assertive action to reduce prison expansion programmes for young people (Aos, S, Miller, M, Drake, E, 2006). Washington State has produced an evidence-based league table outlining which interventions are most effective and efficient as a response to youth crime. The evidence indicates clearly that custody is one of the least effective and most resource intensive of all interventions. Interventions such as Mutisystemic therapy, multidimensional treatment fostering and other community based integrated treatment are much more effective and offer far better outcomes for the community, for the young person involved and for the public purse.

The Government and the main political parties all agree that too many children and young people are in prison in the UK, yet the Government has failed to take the radical action required to significantly divert children and young people away from custody. Government policy is that custody should only be used as a last resort, but this principle is not enshrined in UK law. As the UN Committee on the Rights of the Child has pointed out, the sheer numbers of children and young people still being incarcerated in UK prisons indicate that the requirement is not being met.

This assessment is clearly true when one considers the statistics, and has been verified by a number of recent studies. In 2007, 219 children aged 15-17 years-old entered prison in England and Wales for motoring offences, 105 for disorderly behaviour, 70 for criminal damage, 35 for fraud and forgery and three for drunkenness (Ministry of Justice, 2008). In its study of 214 children aged 12 to 14 who were sentenced to Detention and Training Orders (custodial sentences) in 2007-08, Barnardo's found that 35% did not meet the existing criteria for custody under English law (Barnardos, 2009).

Recommendations

SCYJ would:

- **Wish to see legislative changes to raise the age of criminal responsibility and to ensure that custody is used more systematically as a last resort;**
- **Wish to see the principle of custody as a last report enshrined in UK law;**
- **Endorse the recommendations for the expansion of non custodial alternatives to custody as outlined in *Healthy Children, Safer Communities*;**

- **Wish to see the development of a practical strategy testing out some of the compensatory action and strategies which are being used to address BME over-representation in the youth justice system and in custody in the United States (The Sentencing Project, 2008).**

Custody as a last resort: what should these settings look like?

As highlighted earlier in this document, in general residential and custodial interventions do not have a good record of preventing reoffending when compared with the best community interventions and should therefore be reserved as a last resort and for all but the most grave crimes. If, as a measure of last resort, young people must go into secure settings, we would like to see a more informed approach to the development of appropriate and child-friendly settings and regimes. Information about the most effective international approaches, models and ideal sizes of settings for those who must have some form of containment is poorly researched and collated. Evaluations of different residential care and secure care settings tend to be poorly designed methodologically making it difficult to compare what is provided and preventing clear conclusions being drawn on what works.

We would therefore like to see an up-to-date review of the current extent of the international evidence on what type and what size of settings work best for the small number of young people who must enter secure setting as a measure of last resort. We would also like to see better quality evaluation of the impact of current provision. This is particularly important in view of recent trends toward using larger units and pending increasing pressure to place young people in larger units as a cost-saving exercise. SCYJ would argue that this trend does not promote their well being and life chances, does not provide positive outcomes for communities and does not produce longer term savings.

Difficulties with accessing Tier-4 care and transferring young people from custody to these settings

Many SCYJ members have reported ongoing difficulty getting young people in the youth justice system prompt access to Tier-4 mental health and learning disability resources where there are significant concerns about need. Members talk of a shortage of beds for young people with emerging mental health needs; on the other hand the National Commissioning Group (NCG), who fund medium secure psychiatric beds for young people, reported bed vacancies and a shortage of young people meeting the criteria for these units around the country in 2009. This mismatch between perceived need and available resources raises questions and needs further investigation. Are the criteria for entry to such units set too high or is it appropriate that access should be restricted given that some organisations voice concern over the disproportionate restriction often for many years which accompanies entry into these units? Is there a lack of appropriate lower secure psychiatric and therapeutic care or crisis placements for young people with mental health and other complex needs? In addition, some Youth health practitioners have indicated that non mainstream adolescent psychiatric inpatient units are often disinclined to take in and assess young people who offend for fear of management problems on the wards.

There are particular difficulties for young people with developing personality disorders in custody since there is a need for persistence of symptoms over a lengthy period for effective diagnosis. Without a clear diagnosis, they cannot access the help they need. There have been a number of reports of young people under 18 years of age who have had emerging and complex needs met poorly during periods of youth custody. Staff in YOIs, STCs and secure children's homes have talked of struggling to support and manage these young people's emotional and behavioural problems which can include cycles of destructive behaviour, unpredictable bouts of violence and excessive self harming. Many of these young people have had histories of physical and sexual abuse and have beforehand fallen for many years between placements in local authority care and in custody. When National Commissioning Group

assessment takes place at this earlier age, they are invariably not assessed as suitable for transfer to medium secure settings. Staff in custody have talked of needing to re-approach the NCG on a number of subsequent occasions for re-assessment as difficulties have continued. Eventually acceptance and transfer only tends to take place as they reach the age of 18. Staff say that the presenting *behaviours* and symptoms of these young people during the years that they remain untreated in custody do not change between the ages of 15 and 18; the only difference which appears eventually to prompt Mental Health Act transfer seems to be hitting the threshold for entry into adult medium secure psychiatric settings at 18 years of age. Although medium secure psychiatric units may not always be the right setting for children with emerging difficulties, neither are custodial units since the current range of provision for young people does not provide a predominantly therapeutic environment nor does it fulfil safeguarding responsibilities. The experiences of these young people appears to highlight a gap in what is provided for very vulnerable young people with complex emerging needs which are difficult to diagnose.

Finally, for the small number of young people who do get transferred via the Mental Health Act into psychiatric secure settings, rarely does this process begin at the first point of entry into the youth justice system; figures provided by the National Commissioning Group to the Sainsbury Centre for Mental Health indicate that 50% of young people have to wait until they are in a YOI before they are assessed and accepted into these psychiatric settings, rather than being identified and assessed (ideally in specialist therapeutic assessment units) at earlier stages in the court process. Barriers to early identification and assessment appear to be the low awareness of police custody staff, the lack of CAMHS skills in police custody suites, variations in the skills of the Forensic Medical Examiner who would be called to assess young people and commissioning complications (who pays for the psychiatric assessment at this earlier stage as well as ethical questions about the appropriateness of ordering a psychiatric assessment *before* guilt is admitted and before conviction).

For those small numbers of young people with the most complex needs, there needs to be further investigation into exactly what range of specialist therapeutic provision is needed to support extreme emerging emotional and behavioural problems. At the present time, there are indications that there are gaps in what is provided to meet children's needs with inappropriate placement in custody where needs remain unmet.

A clearer understanding of the specific barriers which are preventing timely identification, psychiatric assessment and transfer to appropriate settings at the earliest stage of contact with the youth justice system needs to be established and an action plan with practical solutions developed and monitored.

Staff in forensic secure psychiatric units have highlighted the need to develop good quality step-down care to ensure that young people who access medium secure psychiatric care don't then get stuck in these units unnecessarily. Stepped down care may include the development of supportive housing.

Other areas for further development:

Youth participation

The greatest area for development in *Healthy Children, Safer Communities* would appear to be the need for a much greater emphasis on youth participation in the youth justice system. At the present time, young people and families are not closely involved in shaping solutions to the difficulties identified.

We would like to see a second Bradley-type review being carried out by young people and their families themselves.

Implementation: the detail of how change will be delivered

Furthermore, more detail would be welcomed on how exactly the *Healthy Children, Safer Communities* strategy will, in practice, address some of the longer term challenges endemic to the system (such as providing effective mental health support to vulnerable young people aged between 16 and 18 years, workforce development issues in Children's Services and age transition problems as young people move over to adult services which are poorly designed for their specific needs at the age of 18 years). It is hoped that the follow-up documents planned by the Department of Health and the National Programme Board will begin to shed light on some of these questions.

Concluding remarks

As outlined throughout this document, the Standing Committee for Youth Justice generally very much welcomed the attention which both the Bradley Review and *Healthy Children, Safer Communities* has brought to the well documented vulnerabilities faced by young people who end up in the Youth Justice System. We welcome the definition of mental health and emotional well being emphasised by the strategy, the recognition of the importance of identifying and supporting speech, language and communication needs and learning disabilities at an early age to maximise children's ability to fulfil their potential, the emphasis on early intervention by mainstream services as a means of bolstering resilience factors to avoid future risks of offending and poor mental health outcomes and the acknowledgment of the importance of diversion for children and young people.

This document draws on the intelligence of SCYJ members to identify outstanding areas requiring urgent consideration and action so that these will inform the next stage of delivery both for *Healthy Children, Safer Communities* and for Lord Bradley's work.

Standing Committee for Youth Justice
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